

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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May 14 2020

SC Court of Appeals

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROGER D. GRATE,

APPELLANT

APPELLATE CASE NO. 2019-000472

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

JIMMY A. RICHARDSON, II
15th Circuit Solicitor

W. JOSEPH MAYE
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina, 29211
(803) 734-3131

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

MARCH 11-14, 2019 TRIAL: STATE’S EXHIBIT #43 (DVD AUDIO INTERVIEW OF GRATE)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2017-GS-26-00930 AND 00931

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

March 11-14, 2019

ROGER D. GRATE,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Christopher D. Helms, Esquire
Catherine D. Owens
Attorneys for State

Kia T. Wilson, Esquire
DeShantell R. Singleton
Attorneys for Defendant

Kay H. Richardson
Circuit Court Reporter

1 marked by the court reporter, so that when we're looking at
2 them, we're not just having a generic discussion. You know,
3 for purposes of later review, they'll -- they'll know what it
4 is we're talking about, if I let it in or don't let it in.

5 MR. HELMS: Sure.

6 THE COURT: Okay?

7 MR. HELMS: Yes, sir.

8 THE COURT: Mark them and then you can say, you know,
9 State's 10 or whatever it is that you -- you object to and it
10 will be clear of what we're talking about. Okay?

11 MR. HELMS: Okay.

12 THE COURT: All right. Anything else?

13 MR. HELMS: Yes, Your Honor. Well, from the statement --
14 in his statement, Mr. Grate says, he's never had to pull --
15 he's never pulled his gun before and never had to pull his gun
16 before.

17 THE COURT: All right.

18 MR. HELMS: There are multiple witnesses that gave
19 statements to law enforcement that has also been turned over
20 to the defense, who contradict that. They will testify that
21 it is his habit in accordance with Rule, I think it's 6 --
22 hang on Judge, the writing is too small -- 406 that allows
23 evidence and habits come into play. It is the state's
24 position that he does in fact have a habit of pulling his guns
25 on people during the course of an altercation. And we have

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BY THE COURT - PRETRIAL

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1 numerous witnesses that will testify to that fact. And again,
2 that's Rule 406.

3 THE COURT: Okay.

4 MR. HELMS: And ---

5 THE COURT: Now, you would intend to use that in your
6 direct or as reply witnesses ---

7 MR. HELMS: Well, Your Honor ---

8 THE COURT: --- what he might testify to.

9 MR. HELMS: Because he says in his statement that he does
10 not -- has never had to pull his gun or never pulled his gun
11 on anyone else. I would attempt to use it in direct, my case
12 in chief. And again, I have case law on that point, the exact
13 case law and it's *State v. Brown*, Judge.

14 THE COURT: Okay. I'm gonna have to read that because
15 I'm not sure I'm gonna let you do that.

16 MR. HELMS: Okay.

17 THE COURT: What's the Southeastern cite?

18 MR. HELMS: Judge, it cut it off. Can I -- can I send it
19 to you, email it to you before the close of business?

20 THE COURT: How about do you have the South Carolina
21 cite?

22 MR. HELMS: No, sir; it cut it off on the ---

23 THE COURT: How about the year? How about the year?

24 MR. HELMS: Judge, I'm gonna have to send it to you. I'm
25 sorry. I just have a snippet here ---

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BY THE COURT - PRETRIAL

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1 THE COURT: Okay.

2 MR. HELMS: --- of the relevant case law.

3 THE COURT: All right. So, if you'll just send me the
4 cite then or send my law clerk the cite and we'll -- I'll look
5 through it and see.

6 MR. HELMS: I'll get that as soon as ---

7 THE COURT: Certainly, I wouldn't have any -- there's no
8 question about in reply, depending on what the -- what the
9 defendant would say should he testify in this case.

10 MR. HELMS: Yes, sir.

11 THE COURT: But, whether I'm gonna let you put it in your
12 direct evidentiary portion, I don't know. So, just send me a
13 cite and I'll read it and we'll talk about it.

14 MR. HELMS: I'll get it to you before we leave today.

15 MS. WILSON: And send me a copy of that cite.

16 MR. HELMS: I'll attach you on the email then.

17 THE COURT: All right. Good deal. Anything else?

18 MR. HELMS: One quick thing. There was prior testimony
19 sworn under oath in Court. I'm not gonna refer to impeachment
20 -- for impeachment purposes on cross examination. I will
21 refer to it as prior sworn testimony if that's sufficient.

22 THE COURT: I'm sorry, of Mr. Grate?

23 MR. HELMS: Of any of the defense witnesses that
24 testified at the previous stand your ground.

25 THE COURT: Okay. All right. Well, if someone has made

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1 a prior statement under oath that contradicts a statement they
2 make under oath in this courtroom, then certainly, you're able
3 to use that to impeach or question their testimony or the
4 credibility or believability of their testimony. So, just
5 what we would need would be to make sure that, that we have --
6 we have that. Did you have a court reporter transcribe that?

7 MR. HELMS: I did.

8 THE COURT: All right. Very good. So ---

9 MR. HELMS: And that was provided to both me and Ms.
10 Wilson.

11 MS. WILSON: Yes.

12 THE COURT: I mean, that's fine. So, you know, as long
13 as y'all have that, then certainly it's, you know, testimony
14 under oath at a prior hearing and if contradicts their current
15 testimony, then certainly they can be questioned about that
16 and their credibility and believability questioned as to it.

17 MR. HELMS: Thank you, Your Honor.

18 MS. WILSON: Okay. Thank you.

19 THE COURT: All right.

20 MR. HELMS: That's all I have.

21 THE COURT: All right. Good deal.

22 Anything else, Ms. Wilson?

23 MS. WILSON: No, sir; that's it.

24 THE COURT: All right. Great. We'll see y'all tomorrow
25 morning. Okay. All right. 9:30. See y'all at 9:30.

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BY THE COURT - PRETRIAL

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1 And, Ms. Wilson, figure out about the bond, please?

2 MS. WILSON: Yes, sir. Your Honor, my client tells me
3 that he is -- his family put up property and that he has --
4 that's the basis of his bond and -- it's property owned by his
5 parents that they posted for his bond. They are the ones on
6 his bond and ---

7 THE COURT: Okay. Well, they're gonna have to say that
8 they'll stay on the bond ---

9 MS. WILSON: Yes, sir.

10 THE COURT: --- during the entirety of the trial then.

11 MS. WILSON: They'll be here in the morning as well, Your
12 Honor.

13 THE COURT: All right. Very good. Thank you.

14 MR. HELMS: Thank you, Judge.

15 THE COURT: Thank you.

16 **RECESS - 4:59 P.M. - END OF DAY ONE**

17 *****OFF THE RECORD*****

18 **MARCH 12, 2019 - DAY TWO**

19 **(On the Record - 9:35 A.M.)**

20 THE COURT: Thank you very much. You may be seated.
21 Thank you. All right. You sent me that case, *State v. Brown*.

22 MR. HELMS: Yes, Your Honor.

23 THE COURT: And I read through it. I assume you've read
24 through it, Ms. Wilson?

25 MS. WILSON: Yes, sir; I have.

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BY THE COURT - PRETRIAL

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1 THE COURT: All right. What's your position?

2 MS. WILSON: Your Honor, I am going to -- I think that
3 what the state's requesting here is still inappropriate. My
4 position is that -- and I don't know the full extent of people
5 that he intends to call. Based on discovery we previously
6 had, there were about five witnesses that were listed as
7 character witnesses. To my knowledge, not one of those people
8 was actually present there on that night. And as such, I
9 would distinguish Ms. Brown from my case, this case, in that
10 certainly having a habit argument for their inclusion on
11 direct would necessitate, as this case even says itself, that
12 the situation is specific. Certainly, not being -- not an
13 eyewitness to the circumstances or the situation that night
14 would invalidate any argument they have that this was the same
15 situation or the same experience and that, given these
16 circumstances, these kind of behaviors always happen. I
17 assume that's where the state's going.

18 In *Brown*, it's very clear that the people who were
19 present and who testified, and who gave this information to
20 the Court during the course of the trial, were eyewitnesses to
21 this event. That's not gonna be the case here. I think that
22 that is probably the biggest, I think, impediment to habit
23 testimony on direct in this particular circumstance.

24 None of them are able to talk about the circumstances
25 that night. They can't form a connection or -- or show the

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BY THE COURT - PRETRIAL

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1 habit or what they claim is the usual behavior under similar
2 circumstances, and that's my position, Your Honor. Otherwise,
3 I think it's probably just a propensity argument, which I
4 think is improper.

5 THE COURT: All right. How many witnesses do you have,
6 Solicitor?

7 MR. HELMS: Well, Your Honor, Ms. Wilson stated
8 correctly, there are five potential character witnesses that
9 would -- up to five potential character witnesses. One is in
10 Charlotte, to be honest with you, and I don't know if I can
11 get him here on such short notice, but there are at least four
12 then if I can't get him here that will testify that Mr. Grate
13 does have a habit of pulling his gun during an argument.

14 THE COURT: All right. So, what we've got is as the
15 *State v. Brown* clearly put forth is there's a conflict between
16 Rule 406 and Rule 404. Okay?

17 MR. HELMS: Yes, sir.

18 THE COURT: Now, and they try and they caution against
19 it, but if the Court's gonna allow it, it has to be a
20 reference to a specific pattern, not a generalized pattern,
21 but a specific response to a particular event. I don't know
22 how I can try and assuage the conflict between Rule 404 and
23 Rule 406 without hearing their testimony. So, I'm gonna have
24 to have a hearing and all those people are gonna have to
25 testify and then we'll make a decision whether or not they can

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BY THE COURT - PRETRIAL

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1 testify before a jury. So, are all four of them present?

2 MR. HELMS: No, sir. I have one present currently.

3 THE COURT: Okay.

4 MR. HELMS: But I was waiting to contact the others,
5 since everyone was sequestered, I was waiting to contact the
6 others for a ruling from the Court. But I can certainly get
7 on that. But like I said, one is present.

8 THE COURT: All right. And you intended to call them
9 this morning?

10 MR. HELMS: No, sir.

11 THE COURT: All right. So, we can get started and we can
12 have this hearing at a later date?

13 MR. HELMS: Yes, sir.

14 THE COURT: All right. So, we can do that and then I
15 need some indication from you when all of them are gonna be
16 present so I can tell the jury not to be here because,
17 obviously, it's gonna take some extended period of time to
18 hear their testimony and hear the cross examination and see if
19 you can get past the 404 prohibition, which is an absolute
20 prohibition, except under certain circumstances and get in
21 this 406 evidence.

22 Now, I will tell you there's, based upon, and since we're
23 gonna have -- the statement of the defendant is gonna get
24 played, whether or not he testifies or not -- the defendant,
25 in his explanation, let me find it, that basically he did not

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1 intend, it was a mistake, an accident, that he shot the victim
2 in this matter. Now, one exception, again, we'll have to
3 look at whether or not it can fit into a specific pattern or
4 not. But, the Court can look at the evidence might be
5 admissible when it tends to establish motive, intent, absence
6 of mistake or accident. So, that might be a potential. But
7 again, as the case has indicated and other cases in other
8 jurisdictions have indicated, that if you're gonna let it in,
9 it's got to be very specific; it can't be general; and it has
10 to be specific in that there is a connection to the events
11 that -- for which he's on trial and his response. So, we'll
12 just have to hear the testimony and we'll see.

13 MR. HELMS: Yes, sir.

14 THE COURT: All right.

15 MR. HELMS: Yes, sir.

16 THE COURT: All right. So, with that then, is the state
17 ready to proceed?

18 MR. HELMS: We are, Your Honor. There are some other
19 matters that I'd like to take up briefly before we do proceed
20 with opening statements, however?

21 THE COURT: Okay. What might that be?

22 MR. HELMS: I've been in contact with Ms. Wilson in
23 regards to one of the witnesses that are under subpoena, Ms.
24 Carrie Grate. Ms. Carrie Grate is the wife of the defendant.

25 THE COURT: Okay.

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BY THE COURT - PRETRIAL

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1 did not just affirmatively take the oath as given by the
2 clerk's representative? If so, please stand.

3 No juror having stood, I find the jury properly sworn in
4 this matter.

5 All right. Ladies and gentlemen, I told you that the
6 state had indicted or charged the defendant with two crimes;
7 that being murder and possession of a weapon during the
8 commission of a violent crime. And you'll remember that I
9 read certain information to you contained in the indictments
10 to the panel as a -- as a whole. Remember of course, as I
11 told you, that's not evidence, can't be considered by you as
12 evidence in this case. I was only trying to see if there was
13 some information that needed to be brought to the Court's
14 attention.

15 But this indictment had another purpose. It charged the
16 defendant with certain crimes. When the defendant was charged
17 with those crimes, he pled not guilty to those crimes. That
18 meant that the burden of proof immediately came upon the State
19 of South Carolina to prove the defendant guilty beyond a
20 reasonable doubt. Immediately, the defendant was presumed
21 innocent of these crimes. That presumption of innocence
22 remains now. It will remain throughout the entirety of the
23 trial. It will remain when you are deliberating unless and
24 until you believe from the facts and evidence presented, the
25 state has proved to you beyond a reasonable doubt that the

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OPENING BY OWENS

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1 rule on a matter in your presence, please remember, I'm about
2 one of my duties. One of my duties is whether or not
3 something is proper for you to hear. I'm not commenting on
4 anybody's credibility or believability, whether you should
5 accept it or reject it in any fashion, all I would be saying
6 is yes, the jury can hear this, or no, the jury can't hear
7 this. They can't make their decision based upon that. So,
8 please understand that the distinction in our duties.

9 We understand we have asked you to accept this
10 responsibility. I know that you will carry forward with your
11 duties. I know you will pay attention, listen to the evidence
12 and the testimony presented and, with the proper explanation
13 of the law, I know that you will arrive at a unanimous verdict
14 in this matter as to whether or not the state has proved the
15 defendant guilty of the crimes charged beyond a reasonable
16 doubt.

17 Solicitor?

18 MS. OWENS: Thank you, Your Honor. May it please the
19 Court?

20 THE COURT: Yes, ma'am.

21 OPENING BY OWENS:

22 MS. OWENS: Silent night. Holy Night. All is calm, all
23 is bright. December 25th, 2016. Silent night. Holy Night.
24 All is calm, all is bright. Christmas night, time to be with
25 family; time to be with friends; time to be with those that we

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OPENING BY OWENS

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1 love. But that silent night was interrupted with the sounds
2 of arguing and yelling. That holy night, was interrupted with
3 the sound of a gunshot. All was no longer calm as family
4 rushed to save the life of one that they loved. All was no
5 longer bright as Darrell Doctor died in the road on that
6 Christmas night, murdered by the defendant, Roger Grate.

7 Ladies and gentlemen of the jury, my name is Catey Owens.
8 I appear before you today with my co-counsel, Christopher
9 Helms. We're here before you today because on December 25th,
10 2016, on Kennedy Street in Loris, South Carolina, within in
11 the confines of Horry County, the defendant, Roger Grate,
12 pulled out a gun. The defendant, Roger Grate, pointed that
13 gun at Darrell Doctor's head. The defendant, Roger Grate,
14 pulled the trigger on that gun and the defendant, Roger Grate,
15 murdered Darrell Doctor.

16 Now, we're gonna put forth multiple witnesses to prove to
17 you that Roger Grate murdered Darrell Doctor and that Roger
18 Grate was in possession of a weapon during a violent crime.
19 So, what are we gonna? Well, first, you're gonna hear the 911
20 call. You're gonna hear the call that was made after Roger
21 Grate shot Darrell Doctor. Listen to that call. Listen to
22 what's not on that call. You're gonna hear from the first
23 officer on scene, Officer Tomas Santiago from the Loris Police
24 Department. Through him we'll prove to you that Roger Grate
25 confessed to shooting Darrell Doctor. We'll prove to you that

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OPENING BY OWENS

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1 Officer Santiago apprehended Roger Grate, and that he
2 confiscated the gun that Roger Grate used that night to kill
3 Darrell Doctor. Ladies and gentlemen, you will see that gun.

4 You will hear from Joshua Drew. Mr. Drew was an EMT and
5 responded to the scene that night. Mr. Drew and others
6 attempted to save the life of Darrell Doctor. We will prove
7 to you that Mr. Drew pronounced Darrell Doctor dead in the
8 middle of the road that night.

9 You will see photographs. You will see photographs from
10 the scene that night. You will see photographs of that road.
11 You will see that scene as a whole through these photographs
12 and we will prove to you that this murder did not occur on
13 Roger Grate's property. This murder did not occur inside his
14 house. This murder occurred in the middle of the street, in
15 the middle of a public street on Christmas night.

16 You will hear Roger Grate's own words on that night
17 through the statement that he gave to Detective King
18 Hemingway. You will hear his own words. We'll prove to you,
19 through those words that there were a lot of people out there.
20 Some of those people included his own stepson, his own
21 daughter. We will prove to you through his words that they
22 didn't see anything. We will prove to you, Roger Grate never
23 saw Darrell Doctor with a weapon because Darrell Doctor did
24 not have a gun. We will prove to you Darrell Doctor never
25 threatened any violence to Mr. Grate. We will prove to you

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OPENING BY OWENS

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1 that Darrell Doctor was walking, walking when Roger Grate
2 pulled out his gun, aimed at his head and shot him right
3 there.

4 Ladies and gentlemen, you will hear from witnesses that
5 were there that night. You will hear from witnesses who spoke
6 with police that night, that cooperated since the day that
7 this happened. We will prove to you that Darrell Doctor did
8 not have a weapon. We will prove to you that again, that
9 Darrell Doctor was not threatening violence. Darrell Doctor
10 was walking on Christmas night.

11 Last, you'll hear from Dr. Edward Proctor. Dr. Proctor
12 is a forensic pathologist that performed the autopsy on Mr.
13 Doctor. And through him, we will prove to you the cause and
14 manner of death.

15 Now, why? In cases like this, we always want to know
16 why. Why on Christmas night? Silent night, holy night. Why
17 on Christmas night did Roger Grate murder Darrell Doctor?

18 As I've already said, we'll prove to you it's not because
19 Darrell Doctor had a weapon. We'll prove to you it's not
20 because he was threatening violence. Darrell Doctor never
21 threw a punch. Darrell Doctor never shoved. Darrell Doctor
22 never was violent, never.

23 Roger Grate and his stepson, Gregory, had an argument on
24 Christmas night. Darrell, a family friend, someone that he
25 had known forever. Darrell went to check on Gregory to see

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OPENING BY WILSON

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1 what happened, to see if he was okay. Roger Grate didn't like
2 that. Roger Grate wanted to pull out his gun. Roger Grate
3 wanted to point that gun at Darrell's forehead. Roger Grate
4 wanted to pull the trigger. Roger Grate wanted to murder
5 Darrell Doctor in the road on that Christmas night.

6 Ladies and gentlemen, listen, please, just listen.
7 Listen to all the testimony that will be given to you. Listen
8 to the statements of those that were that night. Listen.
9 Look at the photographs. Look at the scene. Listen as it's
10 all explained. Listen. Listen when the Judge instructs you
11 on the law. And at the end of all of this, when all the
12 testimony is given and all the statements that is given,
13 statements by witnesses that have cooperated since day one, we
14 will come back. We will come back and we'll talk to you, and
15 at that point in time, we will ask that you find Roger Grate
16 guilty of possession of a weapon during a violent crime, that
17 you will find Roger Grate guilty of murdering Darrell Doctor.

18 Thank you.

19 THE COURT: All right. For the defense, Ms. Wilson?

20 OPENING BY WILSON:

21 MS. WILSON: Thank you, Your Honor. Good morning, ladies
22 and gentlemen. I am Kia Wilson and I do represent Mr. Roger
23 Grate. I'm assisted by DeShantell Singleton, who you also see
24 sitting at the table.

25 It wasn't really a silent, holy night; it was Christmas

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OPENING BY WILSON

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1 night. I would probably characterize it more as a Holly Jolly
2 Christmas. People had gathered, there's drinking, there's
3 some raucousness, things that happen when a family gets
4 together. It's a normal situation out there. Yes, Mr. Grate
5 does have an argument with his stepson. Yes, Darrell Doctor
6 inserts himself into that situation. You'll hear that Darrell
7 Doctor was heavily intoxicated. You'll hear that he was asked
8 to leave many times and refused to do so. You'll hear that
9 Mr. Grate tried to get away from that situation. Yes, a
10 shooting did occur. Yes, someone has died, is dead, but you
11 will also hear that there are reasons and circumstances as to
12 why that has happened. It is not as cut and dry as the state
13 would have you believe. It is not a simple matter of a
14 malicious killing. That didn't happen here. This is a matter
15 of someone who defended himself, had a right to do so in the
16 street, in the yard, in the edge of the yard, wherever. He
17 had a right to defend himself and that's what he did here.
18 It's your job to determine if you think that defense was
19 reasonable.

20 Now, you're gonna hear from lots of people during the
21 course of this trial and only you can determine who you
22 believe and what you believe. That's part of your function as
23 the jury. And again, I'm not trying to instruct you on what
24 the law is or anything of that nature; the Judge is going to
25 tell you that very same information. What I'm going to say is

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OPENING BY WILSON

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1 that I too ask you to just listen carefully and critically to
2 the witnesses that take the stand. I ask you to not just
3 accept at face value any story that the state wants to give
4 you. Yes, they have the burden of proving that Roger Grate is
5 guilty of murder. They have a job to do and it's not a
6 simple, easy, low burden. It's a high burden. It should take
7 more than just telling you a story that they believe is true
8 in order to get you to convict him of murder.
9 I'm asking you very simply today to just keep an open mind, to
10 listen to all of the evidence, not to form any opinions before
11 the Judge tells you you can deliberate, but just to listen to
12 what is presented, who takes the stand, and what they're
13 saying. I believe if you do that, you will find that Mr.
14 Roger Grate had no malicious intent and I think that if that's
15 the case, you will find him not guilty of murder and not
16 guilty of a possession of a weapon during the commission of a
17 violent crime.

18 I will add that and it will come up during the course of
19 this trial, that Mr. Roger Grate has a concealed weapons
20 permit, and I think that's going to also weigh heavily into
21 your understanding about what occurred here. Again, I'm not
22 going to belabor this. I know the state has talked to you so
23 I'm not going over the extent of my communication with you in
24 this opening statement. But, I do want you to understand that
25 we're just asking you to listen carefully, critically, and as

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1 I have just said, I think that if you that, you will find that
2 Mr. Grate is not guilty of murder.

3 Thank you.

4 THE COURT: All right, Solicitor, your first witness
5 please, sir.

6 MS. OWENS: Thank you, Your Honor.

7 THE COURT: Ma'am.

8 MS. OWENS: The state would call Bill Burhans.

9 THE COURT: All right, sir. Please come all the way
10 around up here and meet the clerk's representative up front
11 please, sir.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible.

14 BILL BURHANS, HAVING BEEN SWORN

15 TESTIFIES AS FOLLOWS:

16 CLERK: Please state your name and spell your name for
17 the Court.

18 MR. BURHANS: Bill Burhans, B-I-L-L, B-U-R-H-A-N-S.

19 THE COURT: Go ahead, Solicitor.

20 MS. OWENS: Thank you, Your Honor.

21 DIRECT EXAMINATION OF BILL BURHANS BY MS. OWENS:

22 Q: Good morning, Mr. Burhans, how are you today?

23 A: I'm good.

24 Q: Mr. Burhans, can you tell the jury what your occupation
25 is?

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1 A: I'm a 911 Quality Assurance Specialist. I've been
2 working Horry County since 2001, May, 16 years. Since October
3 2014, I've been a records custodian as part of my job as
4 Quality Assurance Specialist.

5 Q: Okay. What are all of your duties in that capacity?

6 A: Whenever there's a request for information, like a tape
7 recording of radio traffic, telephone traffic, or documents
8 from our computer at dispatch, I'm the one that processes the
9 requests and issues the information.

10 Q: Okay. So, does your department maintain 911 records?

11 A: Yes, we do, in the course of business. For each call for
12 service, we initiate a computer dispatch report. All the
13 telephone call and radio transmissions that process through
14 our room are recorded.

15 Q: Okay. How are they maintained after they are recorded?

16 A: They're secured in a back room that has locked access and
17 then a password protected program to get into the telephone
18 and the radio recordings.

19 Q: How long are they kept for?

20 A: 180 days.

21 Q: I'm not real technical on this stuff, so can you explain
22 to us again just how they're preserved. Are they -- you said
23 through a computer program?

24 A: It's a -- it's a digital recording program that copies --
25 that records every incoming telephone call and every radio

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BILL BURHANS - DIRECT BY OWENS

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1 transmission that we make.

2 Q: Okay. So, when someone calls 911, are the events before
3 or after the call is made recorded also?

4 A: Yes, as soon as the phone call starts, as soon as it
5 crosses our switches, we start a recording on it.

6 Q: Okay. But it records -- does it record anything else in
7 the room?

8 A: It will record background -- people speaking in the room,
9 but it's associated with the telephone or the radio that is
10 being broadcasted or talked on at that time.

11 Q: Okay. Now, these phone calls can be accessed at a later
12 date by your department?

13 A: Up to the 180 days.

14 Q: Okay. And with each of these calls, is there
15 documentation that's kept in the ordinary course of business
16 with them?

17 A: Yes. Yes, there is. If there's a request for
18 information, then I keep a log of that; who requested it, when
19 it was released and that sort of thing.

20 Q: Okay. Can these calls be tampered with at all?

21 A: No.

22 Q: They cannot be tampered with?

23 A: Well, nobody has access except the password protected
24 people and there is the ability to redact the calls, but I
25 don't -- when I release a call for information, no one can

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1 tamper with it. It's presented exactly as it was recorded.

2 Q: Was your office asked to provide a 911 call to our office
3 in this case?

4 A: Yes, it was.

5 Q: Okay. And did y'all do that?

6 A: Yes, we did.

7 MS. OWENS: Okay. Your Honor, may I approach the
8 witness?

9 THE COURT: Yes, ma'am.

10 BY MS. OWENS:

11 Q: Mr. Burhans, do you recognize this?

12 A: Yes, this is a call I reviewed.

13 Q: And you've seen this before?

14 A: Yes.

15 Q: Okay. Have you listened to it?

16 A: Yes.

17 Q: What is on this disc?

18 A: That's a recording of the 911 call associated with this
19 case.

20 Q: Okay. And how do you know that?

21 A: Because -- because I signed -- I initialed and dated it
22 that I had listened to that call.

23 Q: Now, is this a fair and accurate representation of the
24 911 call made from Kennedy Street on December 25th, 2016?

25 A: Yes, it is.

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1 Q: And was this call -- was this 911 call kept in the
2 ordinary course of business?

3 A: Yes.

4 MS. OWENS: Your Honor, we would ask to enter and to
5 publish the 911 call to the jury?

6 THE COURT: What's the exhibit number is it?

7 MS. OWENS: Your Honor, it's Exhibit Number 37.

8 THE COURT: Any objection, Ms. Wilson?

9 MS. WILSON: No objection, Your Honor.

10 THE COURT: All right.

11 MR. HELMS: May we approach as that's being prepared?

12 THE COURT: Yes, sir. State's 37 is in evidence without
13 objection.

14 STATE'S EXHIBIT NUMBER 37

15 ADMITTED INTO EVIDENCE

16 (REPORTER'S NOTE: Bench conference is held off the record in
17 the presence of but outside the hearing of the jury.)

18 THE COURT: All right, ladies and gentlemen, the parties
19 have a stipulation about this 911 call. A stipulation is an
20 agreement of fact and you must take it as such. It is a fact
21 that the parties agreed on that the call was made by Ms.
22 Carrie Ann Grate, who is the wife of the defendant. You may
23 proceed.

24 MS. OWENS: Thank you, Your Honor.

25 (REPORTER'S NOTE: State's 37 published to the jury. Audio

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BILL BURHANS - CROSS BY WILSON

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1 not transcribed herein.)

2 BY MS. OWENS:

3 Q: Is that the 911 call associated with this case?

4 A: Yes, it is.

5 Q: Thank you. Please answer any questions the defense may
6 have for you.

7 THE COURT: Ms. Wilson?

8 MS. WILSON: Just very briefly, Your Honor.

9 CROSS EXAMINATION OF BILL BURHANS BY MS. WILSON:

10 Q: I'm sorry. I want to make sure I pronounce your name
11 correctly, Burhans?

12 A: Yes, ma'am.

13 Q: Mr. Burhans, okay. Now, I understand everything about
14 what you said you do and your function, but you aren't
15 actually the person on this 911 call, are you?

16 A: No, ma'am.

17 Q: So, you didn't take this call?

18 A: No, ma'am.

19 Q: Do you know who it was?

20 A: No, ma'am.

21 Q: Okay. All right. No further questions.

22 THE COURT: Any redirect?

23 MS. OWENS: No, Your Honor.

24 THE COURT: Do you wish the witness to be excused?

25 MS. OWENS: We do, Your Honor.

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1 THE COURT: Any objection.

2 MS. WILSON: No objection, Your Honor.

3 THE COURT: All right, sir, you're released from your
4 subpoena and may go back to your regular duties.

5 Next witness please?

6 MR. HELMS: Can we have Mr. Tomas Santiago, please. The
7 state would call Tomas Santiago.

8 THE COURT: All right, Officer, if you would come all the
9 way around up here and meet the clerk's representative up
10 here, please, sir.

11 CLERK: Please raise your right hand and place your left
12 hand on the Bible.

13 TOMAS SANTIAGO, HAVING BEEN SWORN
14 TESTIFIES AS FOLLOWS:

15 CLERK: Please be seated. Please state your full name
16 and spell first and last name.

17 MR. SANTIAGO: My name is Tomas Santiago, T-O-M-A-S, S-A-
18 N-T-I-A-G-O.

19 DIRECT EXAMINATION OF TOMAS SANTIAGO BY MR. HELMS:

20 Q: Mr. Santiago, where are you employed, sir?

21 A: Currently I'm employed with the Andrews Police Department
22 in South Carolina.

23 Q: You just started there; am I right?

24 A: Yes, sir.

25 Q: Where were you employed prior to that?

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1 A: Loris Police Department.

2 Q: And how long were you employed at the Loris Police

3 Department?

4 A: Just under two years.

5 Q: Where were you employed before that?

6 A: North Myrtle Beach Police Department.

7 Q: How long with the North Myrtle Beach Police Department?

8 A: Just over four years.

9 Q: And what did you do with these individual departments?

10 A: North Myrtle Beach Police Department I was a patrol

11 officer. Loris Police Department I was a Corporal in charge

12 of the B Shift Patrol Unit and currently I'm just a patrol

13 officer again at the City of Andrews.

14 Q: When -- let's talk about your time with the Loris Police

15 Department. You say you worked there for how long?

16 A: Just under two years, about a week less than two years.

17 Q: And when you left, what was your rank and position?

18 A: I was the corporal of B Shift.

19 Q: What does corporal mean? I'm not good with that rank

20 stuff. What's that mean?

21 A: It's one rank above patrol officer and basically you're

22 in charge of the shift that's on duty.

23 Q: So, you served in not only a police capacity, but a

24 supervisory capacity?

25 A: Yes, sir.

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1 Q: Okay. Were you employed in that capacity on Christmas
2 night of 2016?

3 A: Yes, sir; I was.

4 Q: All right. Now, what shift were you working on Christmas
5 night?

6 A: It was the P.M. shift, 6:00 P.M. to 6:00 A.M.

7 Q: So, the night shift?

8 A: Yes, sir.

9 Q: And on Christmas night of 2016, did you respond to a call
10 for service?

11 A: Yes, I did.

12 Q: Do you remember where that call for service was?

13 A: Not the exact address, but it was in the Kennedy Street
14 cul-de-sac over by -- off of Spring Street.

15 Q: And that's in what city?

16 A: In the city of Loris.

17 Q: In Horry County?

18 A: Yes, sir.

19 Q: Speaking of call for service, can you tell us what a call
20 for service is?

21 A: Anytime an officer is dispatched to a call, that is
22 considered a call for service.

23 Q: Okay. So, you responded about what time to Kennedy
24 Street?

25 A: I would say it was about 11, 11:30 or later.

1 Q: It was late?

2 A: Yes, sir.

3 Q: Were you aware of the nature of the call you were
4 responding to?

5 A: Not the specifics, just a shots fired call.

6 Q: So, you knew you were responding to a shots fired call?

7 A: Yes, sir.

8 Q: A pretty serious call?

9 A: Yes, sir.

10 Q: And you did respond?

11 A: Yes, sir; I did.

12 Q: I want you to tell this jury when you responded, what you
13 saw, what your initial impression was as you arrived to -- to
14 the Kennedy Street?

15 A: Well, initially, on my way there by way of Spring Street,
16 it's a pretty dark -- dark street to drive on, so I saw
17 nothing. So, I didn't think anything more than call
18 preparation. As I turned the corner onto Kennedy Street where
19 the cul-de-sac is, I witnessed three people at the end of the
20 cul-de-sac; one was laying on his back, one was attempting to
21 give some kind of first response service to the victim, and
22 one was standing beside the other two.

23 Q: Did you try to find out what was going on?

24 A: Initially, I called first for a backup unit because it
25 did look like at that point, there was a serious incident.

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1 Q: Uh-huh, (affirmative response).

2 A: And then I approached and did try to question, albeit it

3 was a little difficult with everything that was going on.

4 Q: What do you mean; what was going on?

5 A: The -- there was one gentleman on the ground with a, it

6 looked like a hole in his head, some blood underneath his head

7 and he was -- and there was another gentleman giving him CPR

8 or attempting to do so, and the one gentleman that was

9 standing up was a little emotional. He was giving me some

10 answers, but they were vague at that point.

11 Q: Were you ever able to actually elicit any answers from

12 anyone as to what was going on; yes or no?

13 A: No, sir.

14 Q: Okay. Did you have an opportunity to come in contact

15 with the defendant there?

16 A: Yes, sir; I did.

17 Q: And did you approach him or did he approach you; do you

18 remember?

19 A: I approached him.

20 Q: Okay. And what was he doing?

21 A: When I approached him, he was just leaning calmly up

22 against his truck or a truck.

23 Q: Okay. So, you approached him; he did not approach you.

24 And what did you say to him when you approached him?

25 A: The same thing I said to everyone else I spoke to that

1 night. I basically asked what did you see or did you hear
2 anything?
3 Q: You mean, you didn't walk up to him and say, what did you
4 do?
5 A: No, sir.
6 Q: You didn't walk up to him and say, what crime did you
7 commit?
8 A: No, sir.
9 Q: Well, why didn't you say those things to him?
10 A: Because at the time, he wasn't a suspect, and I just felt
11 that there were other people there and I just felt like he
12 might have had some information just like the others or might
13 not have any information. I had no idea what his presence
14 there meant.
15 Q: So, as far as you knew, he was a bystander like everybody
16 else?
17 A: Yes, sir.
18 Q: Was he responsive to your question as to what did you
19 see?
20 A: Yes, sir, he was.
21 Q: And what was his response?
22 A: He informed me at that time that he didn't know what
23 happened and that he was the one who shot the victim that was
24 on the ---
25 Q: And then what did he do; what did he give you?

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1 A: He gave me the weapon that he had in his waistband.

2 Q: Okay. And did you seize that weapon?

3 A: Yes, sir.

4 MR. HELMS: Your Honor, if I could have the Court's
5 indulgence for one second?

6 THE COURT: Yes, sir.

7 MR. HELMS: May we approach, Judge?

8 THE COURT: Yes, sir. Thank you so much.

9 (REPORTER'S NOTE: Bench conference is held off the record in
10 the presence of but outside the hearing of the jury.)

11 MR. HELMS: Ma'am, if you would, I'd like to mark this,
12 please?

13 BY MR. HELMS:

14 Q: Sir, I'm showing you now, Mr. Santiago, what's been
15 marked for identification purposes as State's Exhibit Number
16 38. This is State's Exhibit 38, sir, I want you to take a
17 look at that and do you recognize that item?

18 A: Yes, sir; I do.

19 Q: And what is that item?

20 A: That is the weapon that I seized from Mr. Grate.

21 Q: Okay.

22 MR. HELMS: Your Honor, at this time, I would seek to
23 enter State's 38 into evidence.

24 THE COURT: Any objection?

25 MS. WILSON: Without objection, Your Honor.

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1 THE COURT: All right. And, Solicitor, the state has
2 secured that weapon with some type of lock or tie?

3 MR. HELMS: It appears to be secured in the box with a
4 tie, Your Honor, yes, sir. I can't even take it out.

5 THE COURT: All right. And there is no ammunition or
6 other projectiles with it?

7 MR. HELMS: There is a -- and we'll seek to enter this
8 into evidence too, but these are separate pieces of evidence.
9 There is actually a fired shell casing and a fired projectile.
10 There are no live ammunition with this weapon.

11 THE COURT: All right. With that then, the State's 38
12 the -- the weapon only is in evidence without objection.

13 MR. HELMS: And, Your Honor, the only other thing in here
14 is an empty magazine. It is empty; I have confirmed that.

15 THE COURT: All right.

16 MR. HELMS: And I would just seek to publish to the jury
17 by holding it up, Your Honor.

18 THE COURT: All right. Any objection to that, Ms.
19 Wilson?

20 MS. WILSON: No, objection, Your Honor.

21 THE COURT: You may do so.

22 STATE'S EXHIBIT NUMBER 38

23 ADMITTED INTO EVIDENCE

24 BY MR. HELMS:

25 Q: And tell me again, Mr. Santiago, what this item is?

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1 A: That's the weapon that I seized or was actually turned
2 over by Mr. Grate on the evening of the incident.

3 Q: And again, where was this item located before he gave it
4 to you?

5 A: On his waistband.

6 Q: Leaving Mr. Grate alone or aside, what else did you do
7 after that, just you?

8 A: Just tried to control the scene. It was rather chaotic.
9 People were showing up and coming out of their homes and at
10 that point, just tried to coordinate with all the other
11 officers and EMS and personnel that was on scene.

12 Q: What do you mean the scene was chaotic; what does that
13 mean, can you be a little more specific?

14 A: Yes, sir. We had family members coming out of their
15 home, obviously very emotional because of the scene, a couple
16 of arguments seemed to be starting, we had folks that were
17 showing up that weren't even living on the street, but once we
18 had taped off the area, they were coming and some were trying
19 to get under the crime scene tape area. So, we had to control
20 who was coming and going from the scene.

21 Q: Do you remember with any specificity -- and I'm not
22 asking what anybody said, but do you remember with any
23 specificity, who you had to control or separate?

24 A: One of the family members, I believe it was the daughter
25 of the victim's mother had a very verbal outburst directed

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TOMAS SANTIAGO - CROSS BY WILSON

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1 towards Mr. Grate.

2 Q: All right. Did you then take Mr. Grate into custody?

3 A: Yes, sir.

4 Q: Did you transport Mr. Grate?

5 A: Yes, I did.

6 Q: Where did you transport him to?

7 A: To Loris Police Department.

8 Q: Please answer any questions the defense may have.

9 A: Yes, sir.

10 THE COURT: Cross examination?

11 MS. WILSON: Thank you, Your Honor.

12 CROSS EXAMINATION OF TOMAS SANTIAGO BY MS. WILSON:

13 Q: Good morning, Officer Santiago.

14 A: Good morning.

15 Q: So, Roger was actually the first person you spoke to on
16 the scene, right?

17 A: No, ma'am.

18 Q: Who was the first person?

19 A: The gentleman that was standing by the victim was the
20 first one I asked if he had seen or heard what happened.

21 There was another person there. I believe it was another
22 young man. I also approached him first and then I think Mr.
23 Grate was the third person I spoke to.

24 Q: So, Mr. Grate's the third person you talked to and when
25 you go up to him and you speak to him, he tells you

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TOMAS SANTIAGO - CROSS BY WILSON

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1 immediately what happened, didn't he?
2 A: Yes, he did.
3 Q: He didn't hedge his bets?
4 A: No, ma'am.
5 Q: He didn't try to cover and say something other than the
6 truth to you about what happened?
7 A: Yes, ma'am.
8 Q: And after you ascertained what happened, he then gave you
9 the weapon?
10 A: Yes, ma'am.
11 Q: You say he pulled it from his waistband, but that's not
12 correct, is it?
13 A: Yes, ma'am; it is.
14 Q: Didn't he actually have a holster?
15 A: Yes, ma'am; the holster was on his waistband.
16 Q: Okay. And the gun was actually holstered at that time,
17 correct?
18 A: Yes, it was.
19 Q: So, he didn't give it to you from his waistband; he gave
20 it to you from the holster, which was on his belt, correct?
21 A: Yes, ma'am; from the holster on the waistband.
22 Q: I'm sorry?
23 A: From the holster on his waistband; yes, ma'am.
24 Q: Yes, thank you. Now, you also seized, at that time, the
25 actual holster, didn't you?

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1 A: No, ma'am.

2 Q: You didn't take that?

3 A: No, ma'am.

4 Q: So, you only got the weapon?

5 A: Yes, ma'am.

6 Q: You also got an ID?

7 A: Yes, ma'am.

8 Q: Anything else that you remember?

9 A: No, ma'am, not that I can recall.

10 Q: You didn't get a copy of the concealed weapons permit?

11 A: No, ma'am.

12 Q: So, just a picture ID and the weapon?

13 A: Yes, ma'am.

14 MS. WILSON: Court's indulgence?

15 THE COURT: Yes, ma'am.

16 MS. WILSON: No further questions, Your Honor.

17 THE COURT: All right.

18 Any redirect?

19 MR. HELMS: None, Your Honor. I would just ask that Mr.

20 Santiago be released.

21 THE COURT: Any objection?

22 MS. WILSON: Without objection, Your Honor.

23 THE COURT: All right, sir, you are released from your

24 subpoena and you may go back to your regular duties.

25 MR. SANTIAGO: Thank you.

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JOSHUA DREW - DIRECT BY OWENS

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1 THE COURT: Next witness.

2 MS. OWENS: Thank you, Your Honor. Your Honor, the state
3 would call Joshua Drew.

4 THE COURT: All right, Mr. Drew, come all the way around
5 up here and meet the clerk's representative right up front
6 please, sir.

7 CLERK: Please raise your right hand and place your left
8 hand on the Bible.

9 JOSHUA DREW, HAVING BEEN SWORN
10 TESTIFIES AS FOLLOWS:

11 CLERK: Please be seated. Please state your full name
12 and spell your name for the Court.

13 MR. DRE: Joshua Drew, J-O-S-H-U-A, D-R-E-W.

14 THE COURT: Go ahead, Solicitor.

15 MS. OWENS: Thank you, Your Honor.

16 DIRECT EXAMINATION OF JOSHUA DREW BY MS. OWENS:

17 Q: Mr. Drew, where are you employed?

18 A: Right now, I'm employed with Midway Fire and Rescue.

19 Q: Okay. And where were you employed in December of 2016?

20 A: Yes, ma'am.

21 Q: No, no, where were you employed?

22 A: Horry County Fire and Rescue.

23 Q: Okay. And what was your position at that time?

24 A: Firefighter/EMT.

25 Q: Firefighter/EMT. How long had you worked there at that

1 point?

2 A: I was coming up on my third year.

3 Q: Third year. So, you started in roughly 2013?

4 A: Uh-huh, (affirmative response).

5 Q: Yes?

6 A: Yes, ma'am. Sorry about that.

7 Q: What kind of training and experience do you have?

8 A: I've got 13 years altogether in fire service; I've been

9 an EMT, I'm coming up on my fifth year now.

10 Q: And what does an EMT do?

11 A: Basic life support, assist the paramedic, who can do

12 advanced medications, plug leads, IV's and all that stuff.

13 Q: And you respond to?

14 A: We respond to vehicle accidents, fires, shootings,

15 stabbings, all that.

16 Q: Back in 2016, was that the position you were in and the

17 same kind of duties you were just describing?

18 A: Yes, ma'am.

19 Q: Okay. And on December 25th, 2016, did you respond to a

20 call?

21 A: Yes, ma'am; we did.

22 Q: On Kennedy Street in Loris?

23 A: Yes, ma'am.

24 Q: Why did you respond to that location?

25 A: We were initially dispatched as a possible gunshot and

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1 that's all that was given to us.

2 Q: Approximately what time did you respond?

3 A: About 11:30, 11:45.

4 Q: And when you arrived on scene, what did you observe?

5 A: When we arrived on scene, my partner told me to go ahead
6 and grab the LIFEPAK 12, which is the monitor that you place
7 on somebody's chest in order to see if they have a heartbeat.
8 When we walked up, the patient was laying supine next to a
9 vehicle and the bystanders had told us the patient didn't have
10 a pulse. My partner confirmed there was no pulse and we
11 placed the pads on him. And when we placed the pads, there
12 was no electrical activity from his heart.

13 Q: What kind of injuries did the victim have?

14 A: We had noticed a gunshot to the forehead and there was
15 brain matter protruding from the skull.

16 Q: Where was the victim located?

17 A: At the end of the cul-de-sac as you pull in on Kennedy
18 Street. It was a dead end.

19 Q: So, when you -- when you came up to the victim, was he
20 breathing?

21 A: No, ma'am; he was not.

22 Q: Was there any sign of life?

23 A: No, ma'am; none whatsoever.

24 Q: Okay. And so the only apparatus that you applied was to
25 ---

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JOSHUA DREW - DIRECT BY OWENS

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1 A: The AED pads, and we had to cut the victim's shirt in
2 order to place the pads there.

3 Q: Okay.

4 A: One goes on top and one goes down here on the bottom and
5 we'll check and see if there is any electrical activity in the
6 heart.

7 Q: In the heart. Okay. Approximately, how long were you
8 out there at the scene?

9 A: I want to say we got on scene -- I know it took us six
10 minutes when we were dispatched to go in rout and then to
11 arrive on scene, and I think we were there for about 20 or 25
12 minutes.

13 Q: How long after -- let's see. How long after you were
14 there did you determine that the victim was deceased?

15 A: Probably two to three minutes after we had made contact
16 with the patient.

17 Q: What happens after you determine that?

18 A: My partner will contact our dispatch and request for the
19 coroner to contact us so we can give them the information.

20 MS. OWENS: Your Honor, may I approach the witness?

21 THE COURT: Yes, ma'am.

22 STATE'S EXHIBIT NUMBER 39

23 MARKED FOR IDENTIFICATION

24 BY MS. OWENS:

25 Q: Do you recognize this document?

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1 A: Yes, ma'am. That's one of our EMS reports we have to do.

2 Q: Okay. And do you recognize this specific EMS report?

3 A: Yes, ma'am; I do.

4 Q: And do you prepare an EMS report in the ordinary course
5 of business?

6 A: Every single call we go on, we have to do an EMS report.

7 Q: And what does the EMS report entail?

8 A: It'll describe what you witnessed when you were on scene,
9 the treatments provided, medications given, if there was any
10 delays in the response, and you pretty much just draw a
11 picture for -- if our reports get Q & A or pulled into court
12 and so ---

13 Q: And this is the EMS report that you prepared in this
14 case?

15 A: I did not do the EMS report, my partner did, Jason
16 Hatfield.

17 Q: Were you able to determine who the deceased individual
18 was?

19 A: I was not. My partner did all that stuff as I was
20 loading the equipment back in the truck.

21 MS. OWENS: Court's indulgence for one second?

22 THE COURT: Yes, ma'am.

23 BY MS. OWENS:

24 Q: No further questions at this time. Please answer any
25 questions the defense may have for you.

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1 County Police Department.

2 THE COURT: Please come around, sir, and meet the clerk's
3 representative right up here please, sir.

4 CLERK: Please raise your right hand and place your left
5 hand on the Bible.

6 DENNIS MCLAIN LEWIS, HAVING BEEN DULY
7 SWORN TESTIFIES AS FOLLOWS:

8 CLERK: Please be seated. Please state your full name
9 and spell it for the Court.

10 MR. LEWIS: My whole name?

11 CLERK: Yes, sir.

12 MR. LEWIS: Dennis McLain Lewis, D-E-N-N-I-S, M-C-L-A-I-
13 N, L-E-W-I-S.

14 DIRECT EXAMINATION OF DENNIS MCLAIN LEWS BY MR. HELMS:

15 Q: Mr. Lewis, where are you employed, sir?

16 A: Horry County Police Department.

17 Q: And what do you there?

18 A: I work in the Criminal Investigation Division with the
19 Crime Scene Unit.

20 Q: Commonly referred to as CSI?

21 A: That is true, correct, yes.

22 Q: What is your rank; what is your position?

23 A: Investigator.

24 Q: How long have you been there?

25 A: Approximately close to 14 years.

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1 Q: You received any kind of training?

2 A: I have.

3 Q: What kind of training have you received?

4 A: Well, I've been to the Criminal Justice Academy in
5 Columbia, South Carolina; I've been to the FLETC in Georgia,
6 photography and fingerprinting and blood spatter analysis.

7 Q: All kinds of stuff?

8 A: Yes.

9 Q: Is that -- is that kind of training ongoing continuing
10 education type stuff, too?

11 A: It is.

12 Q: Okay. And you've maintained that during your career?

13 A: Yes, sir.

14 Okay. As a crime scene investigator, what do your duties
15 specifically entail; what do you do? We all see it on T.V.
16 and we think we know, but it ain't like that, is it?

17 A: No, sir.

18 Q: Talk to us a little bit about that, tell us.

19 A: Well, mainly we arrive at the scenes and we document the
20 scene and we do that by taking photographs, also measurements
21 and notes.

22 Q: What kind of scene, I'm sorry, what kind of scene?

23 A: Any crime scene, major crime.

24 Q: Keep going, I'm sorry.

25 A: Yes. And we do that in purposes of maybe having to

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1 reconstruct the crime scene. So, we just for documentation
2 and collecting evidence.

3 Q: Documentation and collection of evidence. So, it's not
4 quite as exciting as it is on T.V.?

5 A: That's correct.

6 Q: Sorry. Were you working that same capacity on Christmas
7 night of 2016?

8 A: I was.

9 Q: Did you have an opportunity to become involved in this
10 case on that night?

11 A: I did.

12 Q: How?

13 A: I was notified by my lieutenant to respond to Kennedy
14 Street up there in Loris in reference to a shooting incident
15 that had just occurred.

16 Q: Were you aware there was a body on the scene?

17 A: I wasn't at the time that I was notified.

18 Q: Can you tell us -- do you remember about what time it was
19 when you ---

20 A: It was about quarter to 12:00 at night, midnight; close to
21 12:00.

22 Q: Late hours?

23 A: Uh-huh, (affirmative response).

24 Q: Can you tell this jury what you saw when you got there,
25 sir?

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1 A: I pulled down Kennedy Street, which is a dark street in
2 the City of Loris and -- it was a residential community. It
3 was a paved street. Went down to the west end of Kennedy
4 Street and I'd seen a crime scene tape had been set up around
5 the initial area. There was two vehicles was inside the crime
6 scene and it looked like to me that there was a body up under
7 the sheet.

8 Q: Did you investigate the scene?

9 A: I did.

10 Q: Specifically, how did you investigate the scene?

11 A: Well, initially when we respond, we contact the responding
12 officers and ask them to get some preliminary notes together
13 of what happened. And they advised us that the individual
14 that had shot the victim was in the police vehicle at that
15 time and he had surrendered his weapon and admitted to
16 shooting the victim.

17 Q: But specifically, on the scene, did you -- did you
18 document the scene?

19 A: I did.

20 Q: Did you photograph the scene?

21 A: I did.

22 Q: Did you photograph the deceased?

23 A: I did.

24 Q: Did you collect any evidence?

25 A: I did; yes, sir.

1 Q: Tell us what you collected; do you remember?

2 A: I do. I collected the projectile that was located

3 approximately in the center of the roadway, a spent casing,

4 .45 caliber spent casing, and two pair of sun shades.

5 Q: You say -- and this was in the cordoned off area?

6 A: Yes, it was.

7 Q: Specifically, where was the cordoned off area?

8 A: Well, it was at the very -- it was at the west end of

9 Kennedy Street. It -- the street actually dead ends and it

10 was at the west end and roped off, approximately, I would say

11 40 to 50 yards up the street from the dead end.

12 Q: Of the street?

13 A: Of the street.

14 Q: So, we're not talking about a scene cordoned off in

15 somebody's yard?

16 A: No, sir.

17 Q: Not somebody's driveway?

18 A: No, sir.

19 Q: This was in the street?

20 A: In the street.

21 Q: Paved street?

22 A: Paved -- paved street, yes, sir.

23 Q: Okay. Is this a marked street?

24 A: It is.

25 Q: Okay. I mean, when I say marked, I mean with a city sign?

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- 1 A: Yes, sir.
- 2 Q: Okay. You said you collected a projectile, a projectile
3 could be anything. If I threw a pencil right now, that would
4 be a projectile; be more specific?
- 5 A: A fired bullet.
- 6 Q: A fired bullet?
- 7 A: Yes, sir.
- 8 Q: And one casing you said?
- 9 A: One casing; that's correct.
- 10 Q: Now after you collected this evidence and after you
11 photographed the scene and after you photographed the
12 deceased, did you do anything else; did you compile a report?
- 13 A: I did.
- 14 Q: Did you, I know sometimes and the jury may not know this,
15 sometimes y'all do a sketch; did you do a sketch?
- 16 A: I did, yes, sir.
- 17 Q: What is that sketch of?
- 18 A: It's of the initial scene that I responded to, the
19 location where I collected the evidence, the measurements.
- 20 MR. HELMS: Your Honor, I'm showing the witness what's
21 been marked for identification purposes as State's 40.
- 22 BY MR. HELMS:
- 23 Q: Investigator Lewis, take a look at that right there; do
24 you recognize that sketch?
- 25 A: I do.

1 Q: What is that?

2 A: That's the sketch of the -- Kennedy Street and the initial
3 incident location with the items of evidence marked and the
4 victim.

5 Q: And the vehicles?

6 A: And the vehicles, yes, sir.

7 Q: And homes?

8 A: And homes.

9 Q: Who drafted this sketch?

10 A: I did.

11 Q: And is that a fair and accurate sketch of the scene as you
12 saw it that night?

13 A: It is.

14 MR. HELMS: Your Honor, I would seek to enter State's 40
15 into evidence.

16 THE COURT: Any objection?

17 MS. WILSON: Court's indulgence?

18 THE COURT: Yes, ma'am.

19 Any objection, Ms. Wilson?

20 MS. WILSON: Without objection.

21 THE COURT: All right. So, State's 40 is into evidence
22 without objection. You may proceed.

23 STATE'S EXHIBIT NUMBER 40

24 ADMITTED INTO EVIDENCE

25 MR. HELMS: Your Honor, at this time, I would seek to

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1 publish to the jury.

2 THE COURT: You may do so.

3 MR. HELMS: Thank you.

4 MR. HELMS: Your Honor, at this time, I would ask that
5 Mr. Lewis be able to come down off the stand so that we can
6 explain this fully to the jury?

7 THE COURT: I don't have a problem with that. Just make
8 sure you either stand right here next to the microphone or
9 over there where the box is.

10 MR. HELMS: Understood, sir, understood.

11 BY MR. HELMS:

12 Q: Mr. Lewis, if you don't mind, come on down here for me.
13 Stand right there in front of the box right there.

14 And I want you to show us what you documented on this
15 sketch you drew?

16 A: Okay. Kennedy Street, this is west. I documented the
17 items of evidence 1, 2, 3, and 4, there was the victim's
18 location and two vehicles.

19 Q: Okay.

20 A: And that's the residences on the north and south side at
21 the end of the street.

22 Q: So, all the items that you collected, 1, 2, 3, and 4 and I
23 would imagine those are also documented -- and if you don't
24 mind step right over here for me, so that they can all see it.
25 I would imagine that you documented this photographically as

1 well?

2 A: I did.

3 Q: Okay. But all the items with the exception of Number 4

4 over here; what was Number 4, do you know?

5 A: A pair of like reader glasses.

6 Q: What was 1, do you remember?

7 A: Yes, sir, the fired bullet.

8 Q: 2?

9 A: Spent casing.

10 Q: 3?

11 A: A pair of sunshades.

12 Q: Okay. So, the vast majority as well as the deceased,

13 everything you documented was in the street; is that correct?

14 A: That is correct.

15 Q: Okay. Now, you said these are two vehicles right here?

16 A: They are.

17 Q: And you documented the tags on these two vehicles; one was

18 a Louisiana tag and one a North Carolina tag?

19 A: That's correct.

20 Q: And you and I have reviewed this sketch, right?

21 A: Yes, sir.

22 Q: And we've also compared it and cross referenced it to the

23 photographs that you took?

24 A: That's incorrect.

25 Q: What's incorrect about that?

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- 1 A: The license tags; I reversed the license tags of the Honda
2 Accord and the Buick.
- 3 Q: So, everything else in this sketch, is accurate?
- 4 A: It is.
- 5 Q: And the only thing that's inaccurate is that and that are
6 reversed?
- 7 A: Reversed; that's correct.
- 8 Q: Do you know whose house that is?
- 9 A: That's the defendant's.
- 10 Q: Okay. All right. If you don't mind, take the stand again
11 for me. Thank you so much, Mr. Lewis.
- 12 I'm now showing you what's been marked -- well -- Mr.
13 Lewis, I'm now showing you what's been marked for
14 identification as State's 41 and 42, I think that's right, 41
15 and 42. Do you know what those are?
- 16 A: Yes, sir.
- 17 Q: What are those, Mr. Lewis?
- 18 A: It's the fired bullet and the spent casing that I
19 collected from the roadway.
- 20 Q: Which on is which? 41 is what, Mr. Lewis, tell us?
- 21 A: Number 42 is the spent casing. Number 41 is the fired
22 bullet.
- 23 Q: Okay. And those are indicated on this map as Items 1 and
24 2?
- 25 A: Yeah, that's correct.

1 Q: And the 1 is what?

2 A: The fired bullet and the spent casing.

3 Q: Okay. What caliber was that casing?

4 A: .45.

5 Q: Do you know what caliber the gun associated with this case
6 was?

7 A: Yes, sir.

8 Q: What caliber was that?

9 A: .45.

10 Q: And that's been entered into evidence previously.

11 MR. HELMS: Your Honor, at this time, I would seek to
12 enter State's 41 and 42 into evidence.

13 THE COURT: Any objection?

14 MS. WILSON: Without objection, Your Honor.

15 THE COURT: All right. So, State's 41 and 42 are in
16 evidence without objection.

17 STATE'S EXHIBIT NUMBER 41 AND 42

18 ADMITTED INTO EVIDENCE

19 MR. HELMS: Thank you, Judge.

20 BY MR. HELMS:

21 Q: Mr. Lewis, I'm now showing you a notebook that's been
22 marked for identification as State's Number 4, chronologically
23 speaking through 35. Now, I want you to take a brief look at
24 that notebook and tell me if you know what those photographs
25 are of?

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1 A: Yes, sir.

2 Q: What were these photographs of, sir?

3 A: The crime scene.

4 Q: Who took these photographs?

5 A: I did.

6 Q: When did you take them?

7 A: The night that I responded, the 25th, it was actually the
8 26th at that time.

9 Q: Did you provide me with these photographs?

10 A: I did.

11 Q: Do these fairly and accurately represent the scene as you
12 saw it December 25th, 2016?

13 A: They do.

14 Q: Been altered in any way?

15 A: No, sir.

16 MR. HELMS: Your Honor, at this time, I would seek to
17 enter State's 4 through 35 into evidence.

18 THE COURT: All right. With the Court's previous
19 rulings, any objection to State's 4 through 35, and I know
20 that there might be one or two that are not in there?

21 MS. WILSON: Your Honor, no objection; it's already been
22 stated.

23 THE COURT: All right. Very good. So, I'm going to
24 allow them into evidence subject to the Court's prior rulings.

25 STATE'S EXHIBIT NUMBERS 4-19, 20A, 22, 23, 24A, 26-35

1 ADMITTED INTO EVIDENCE

2 MS. WILSON: Thank you.

3 MR. HELMS: Thank you, Your Honor. And I seek to publish
4 to the jury at this time.

5 THE COURT: You may do so.

6 MR. HELMS: Thank you, Judge.

7 BY MR. HELMS:

8 Q: Mr. Lewis, you may have to, I don't know how to do this
9 exactly, but I'm gonna ask you what is in each one. I'm
10 showing you what's been ---

11 THE COURT: You want him to stand down again?

12 MR. HELMS: I think that might be best, Judge.

13 THE COURT: Why don't you go ahead and do that.

14 MR. HELMS: Thank you, Judge.

15 THE COURT: Just make sure that you're next to that
16 microphone, sir.

17 BY MR. HELMS:

18 Q: All right. Let's do these one at a time. Back up a
19 little bit so that everybody can see, and I'm gonna show you
20 what's been marked as State's 5. Did you take that
21 photograph? Did you take all of these photographs?

22 A: I did.

23 Q: All right. What is that photograph of?

24 A: That's the residence of the defendant.

25 Q: Okay. The next photograph, tell me what State's 6 is?

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1 A: Pointing westwardly, that's the end of Kennedy Street.

2 Q: Show me how that corresponds on this map what that's a
3 photograph of; show this jury where you were taking the
4 photograph.

5 A: I'm taking it from this area pointing in this direction
6 with the two vehicles.

7 Q: All right. And tell us what's in that photograph, if you
8 don't mind, sir.

9 A: The two vehicles, the body that's under the sheet, and the
10 crime scene tape that's surrounding and a blood spot.

11 Q: Again -- all right. We'll get to that, but again, this is
12 all in the street?

13 A: It is.

14 Q: Okay. Next is State's 6. Now, you mentioned the blood
15 spot, we're at State's 7 now. Tell us what's that a
16 photograph of?

17 A: It's what assumed to be blood in the center of the street.
18 All right. The blood, you had training in this type thing, so
19 you know how to answer this. Is that a blood spatter, a blood
20 pool, what is that?

21 A: A pool.

22 Q: Okay. And what does that indicate to you as a crime scene
23 investigator?

24 A: It indicates that somebody was injured in this direction
25 and this is droplets, 90 degrees, and when he got to here,

1 that's where he come to rest.

2 Q: Okay. And think we might need to back up just a little
3 bit so that the other jurors can see. All right. So, one
4 more time, that is a blood what?

5 A: Pool.

6 THE COURT: You're gonna have to speak up, though. You
7 keep moving back so, I don't mind you moving back, you just
8 got to keep your voice up.

9 A: Okay.

10 MS. OWENS: Your Honor, I believe the foreperson had an
11 issue.

12 THE COURT: No, he was just trying to get them to move so
13 that they could see.

14 BY MR. HELMS:

15 Q: And again, that indicates what to you?

16 A: It indicates to where somebody come to rest or some
17 injured person where they bled, it's really a pool of blood.

18 Q: And other than the one deceased body that was by the cars,
19 did you see any other bodies there?

20 A: I did not.

21 Q: What is that in that picture right there, that item other
22 than the blood pool?

23 A: It's a can.

24 Q: Okay. That was State's 7. I'm now showing you State's 8.
25 Tell us what's in that photograph, Mr. Lewis?

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1 A: That's the photograph of the Honda Accord and the
2 photograph of the body.

3 Q: I just showed you 7 and 8. On this poster, once again,
4 indicate to me where that blood pool was in State's 7, please.

5 A: In this area.

6 Q: About how far from the actual body was the blood pool?

7 A: About 15 feet.

8 Q: And you know that how?

9 A: Measurements.

10 Q: Okay. And this next picture of State's 8, we're showing
11 the body beside the car. Point to the car?

12 A: This car.

13 Q: Thank you very much. And that's in State's 8, right?

14 A: Yes, sir.

15 Q: I'm showing you State's 9. Tell me what I'm looking at
16 here.

17 A: At the west end of Kennedy Street pointing eastwardly, I
18 took the photograph showing the front of the Honda Accord and
19 the body.

20 Q: And that's that same car that was in the previous
21 photograph?

22 A: That is.

23 Q: That was State's 9. I'm looking at State's 10. What am I
24 looking at?

25 A: Standing on the west end of Kennedy Street, pointing

1 eastward, I took the photograph of the Buick Century.

2 Q: Okay. Show me again, this sketch has been entered in

3 evidence, which car is the Century?

4 A: This one.

5 Q: Thank you. State's 11, tell me what I'm looking at?

6 A: That's a fired bullet.

7 Q: And that's the bullet you collected that was just entered

8 into evidence?

9 A: It is.

10 Q: And again, I'm just gonna bring this thing over here so I

11 don't to keep walking. Show me in this sketch where that was

12 collected from?

13 A: Number 1.

14 Q: Thank you. What is that?

15 A: Also is a fired bullet.

16 Q: Now, how many bullets were they that you collected?

17 A: One.

18 Q: So, that's the same bullet that was in the previous

19 photograph?

20 A: It is.

21 Q: And you didn't move it; that's the same location?

22 A: That is.

23 Q: Okay. What am I looking at here in State's 13?

24 A: A spent casing, .45 caliber.

25 Q: Okay. And where was that collected?

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- 1 A: In the roadway.
- 2 Q: Show me on the map, please?
- 3 A: Number 2.
- 4 Q: Again, in the roadway?
- 5 A: In the roadway, yes, sir.
- 6 Q: All right. And what, there's a marker there; is that how
- 7 you identified it as Item Number 1?
- 8 A: It is.
- 9 Q: Okay. And that's again the ---
- 10 A: Fired bullet.
- 11 Q: Fired bullet. The same thing with the casing except it's
- 12 indicated as Number 2?
- 13 A: Number 2; that's correct.
- 14 Q: Okay. And that was State's 15. They're what?
- 15 A: Sunshades.
- 16 Q: Sunshades. Show us on the map, if you don't mind.
- 17 A: Item Number 3.
- 18 Q: And again, Item Number 3 is where?
- 19 A: In the roadway.
- 20 Q: Tell me what I see here.
- 21 A: It looks like a pair of reader glasses reflected on the
- 22 south side of Kennedy Street, Item Number 4.
- 23 Q: So, that was right next to the roadway?
- 24 A: It was.
- 25 Q: So, two pairs of glasses?

1 A: That's correct.

2 Q: All right. Tell me what I'm looking at here.

3 A: Pointing westwardly, you're looking at the scene with the
4 documentation with the numbers and location of evidence.

5 Q: So, these are the evidence markers showing all of the
6 evidence in the road before you collected it?

7 A: That is correct.

8 Q: And obviously, there's a blood pool there; is that the
9 blood pool that you photographed earlier?

10 A: Yes, sir.

11 Q: Now, this one also includes the location of the body.
12 Tell us again, and this is, I'm showing you State's 19. Tell
13 us again, in relation to the blood pool, where the body is?

14 A: The body is about 15 feet farther westwardly from where
15 the blood pool was.

16 Q: Closer to the car?

17 A: It is correct.

18 Q: What does that indicate to you?

19 A: It indicates they was trying to get him to the vehicle.

20 Q: Okay. So, somebody moved the body.

21 All right. Now, tell me what I see here?

22 A: That's a picture of the victim.

23 Q: And what does that picture illustrate?

24 A: It illustrates that he has a gunshot wound to the head.

25 Q: Is that why you took that photograph?

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1 A: That is.

2 Q: And that was State's 28. Tell me what I'm looking at
3 here?

4 A: The Defendant's left hand.

5 Q: The defendant or the victim?

6 A: I mean the victim's left hand.

7 Q: Why did you photograph the victim's hand?

8 A: To document that there wasn't any offensive or defensive
9 wounds on his hands.

10 Q: And did you see any offensive or defensive wounds on his
11 hand?

12 A: No, sir.

13 Q: Did you see any wounds on him other than a bullet wound?

14 A: That was all.

15 Q: So, no bruising, no cuts, no scrapes, no abrasions on his
16 hands?

17 A: No, sir.

18 Q: What about that one?

19 A: That's the victim's right hand.

20 Q: Same thing?

21 A: Same thing.

22 Q: No bruising, no cuts, no abrasions, no scrapes?

23 A: None.

24 Q: Tell me what I'm looking at here, Mr. Lewis.

25 A: The victim's back.

1 Q: And why did you photograph the victim's back?
2 A: To make sure that it wasn't injured.
3 Q: Did you see -- were you able to see a wound -- or in this
4 picture, photograph, can you see a wound on the back of his
5 head?
6 A: I did; yes, sir.
7 Q: Okay. And what did that indicate to you?
8 A: That the bullet traveled through the victim's head.
9 Q: Would that explain the location of the fired projectile in
10 the road?
11 A: It would.
12 Q: As well as the spent casing?
13 A: Yes, sir.
14 Q: All right. Keep going, Mr. Lewis. Tell me what I'm
15 looking at here.
16 A: Again, pointing westwardly, it's a photograph of the crime
17 scene with the body in relation to the blood pool.
18 Q: And again, how many feet?
19 A: Approximately 15 feet.
20 Q: What is this right here?
21 A: That's a picture of the identification, driver's license.
22 Q: Whose identification -- of the victim?
23 A: Of the victim.
24 Q: Did you collect that item of identification?
25 A: I did.

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1 Q: From where?

2 A: Out of his pocket.

3 Q: And what name is on that identification?

4 A: Doctor, Darrell Doctor.

5 Q: Thank you, sir. And you gathered that?

6 A: I did.

7 Q: Were there items in his pockets?

8 A: There was. There was some change, there was bankcards,

9 there was ---

10 Q: We'll get to that. We're getting to that. Tell me what

11 we see here.

12 A: Some currency, possibly around 20 or 40 some dollars

13 currency, some bankcards, we got some change, ink pens,

14 receipts, and some car keys, identification.

15 Q: Okay. And where did these items come from?

16 A: From his pants pocket.

17 Q: Was there anything else in his pants pocket?

18 A: There was not.

19 Q: No drugs?

20 A: No, sir.

21 Q: No weapons?

22 A: No, sir.

23 Q: No knives?

24 A: No, sir.

25 Q: No guns?

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DENNIS MCLAIN LEWIS - DIRECT BY OWENS

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1 A: No.

2 Q: Anything illicit whatsoever?

3 A: None.

4 Q: And tell me one more time -- and this is kind of a close-

5 up of what you just showed us. Just tell us one more time,

6 itemize what we have here; I want to know one more time.

7 A: We had currency, bankcards, receipts, ink pens, it looked

8 like some candy, identification, and some car keys.

9 Q: Car keys. Do you remember if those car keys were in his

10 left or his right pocket or you don't remember?

11 A: I don't remember.

12 Q: But they were definitely in his pocket?

13 A: Yes, sir, in his pants pocket.

14 Q: What am I looking at here, Mr. Lewis?

15 A: That's the residence on the north side of Kennedy Street.

16 Q: Whose residence?

17 A: I don't know.

18 Q: Well, you don't know?

19 A: No, sir.

20 Q: Okay. Fair enough. What is this? We're almost to the

21 end.

22 A: That's pointing eastward, that's Kennedy Street from

23 inside the crime scene looking down the street.

24 Q: Looking the other way?

25 A: Yes, sir.

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DENNIS MCLAIN LEWIS - DIRECT BY OWENS

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- 1 Q: So, you can be standing at the body facing down the
2 street?
- 3 A: Yes, sir.
- 4 Q: What do we have here?
- 5 A: That's pointing westwardly down Kennedy Street showing
6 that there was a street lamp that was operating that give me
7 ample lighting for the scene.
- 8 Q: Was the body underneath the street lamp?
- 9 A: It was.
- 10 Q: Tell me what I have here.
- 11 A: That's the license plate of the Honda Accord.
- 12 Q: Now, that's the Honda Accord. That's the car that the
13 body was directly adjacent to?
- 14 A: Yes, sir.
- 15 Q: Now, what -- what state is that license plate from?
- 16 A: Louisiana.
- 17 Q: Well, let's go back to this real quick, just cause I want
18 to clarify. On this map, you associated North Carolina with
19 that one; is that incorrect again?
- 20 A: That is incorrect.
- 21 Q: And we know that now, that's supposed to be Louisiana.
22 So, all you would have done differently or incorrectly was
23 draw the wrong arrow to the wrong car?
- 24 A: That's right.
- 25 Q: Okay. And what do we see here?

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DENNIS MCLAIN LEWIS - DIRECT BY OWENS

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1 A: That's the southward view of the defendant's home and the
2 vehicles.

3 Q: So, I see the evidence tags in the street still here and
4 that's the defendant's home?

5 A: Yes, sir.

6 Q: Okay. So, all of the evidence was collected from the
7 street in front of the victim's home?

8 A: That's correct.

9 Q: Okay. And I think those are just the photographs again, I
10 mean the sunglasses again. So, I won't get into that. We've
11 covered that. You can retake the stand, sir.

12 So, Mr. Lewis, just to clarify, based on your experience
13 and your training and all the many, God knows how many crime
14 scenes you documented, where did all the evidence come from;
15 where was it collected from?

16 A: From the street.

17 Q: And what does that indicate to you -- oh, and where was
18 the blood pool?

19 A: The street.

20 Q: Where was the body?

21 A: In the street.

22 Q: What does that indicate to you, sir?

23 A: That the incident occurred in the street.

24 Q: Okay. Did you find any weapons?

25 A: No, sir.

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DENNIS MCLAIN LEWIS - DIRECT BY OWENS

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- 1 Q: So, you didn't find any weapons near the victim?
- 2 A: I did not.
- 3 Q: And again, you didn't find anything illicit near or on him
- 4 either?
- 5 A: No, sir.
- 6 Q: No drugs?
- 7 A: No drugs.
- 8 Q: Did you have any reason to believe, based on your
- 9 investigation and your documentation that there was any other
- 10 crime scene?
- 11 A: No, sir.
- 12 Q: You had no reason to believe that?
- 13 A: No, sir.
- 14 Q: So, the entirety of your investigation consisted of you
- 15 documenting the street?
- 16 A: That's correct.
- 17 Q: Did you have any indication that that body, the body of
- 18 Mr. Darrell Doctor, had been located anywhere except in the
- 19 street after he was injured?
- 20 A: No, sir.
- 21 MR. HELMS: Court's indulgence, Judge?
- 22 BY MR. HELMS:
- 23 Q: And other than the bullet wound to the head, you didn't
- 24 see any other wounds on the victim?
- 25 A: I did not.

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DENNIS MCLAIN LEWIS - CROSS BY WILSON

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1 Q: Please answer any questions Ms. Wilson may have for you,
2 sir.

3 A: Yes, sir.

4 THE COURT: Cross examination?

5 MS. WILSON: Thank you, Your Honor.

6 CROSS EXAMINATION OF DENNIS MCLAIN LEWIS BY MS. WILSON:

7 Q: I was about to say good morning. Good afternoon.

8 A: Good afternoon, ma'am.

9 Q: So, when you arrived, you didn't actually put up the crime
10 scene tape yourself, correct?

11 A: No, ma'am.

12 Q: And when you arrived, you said the crime scene tape was
13 actually already up?

14 A: It was.

15 Q: So, you don't know who put it up?

16 A: I don't.

17 Q: And that means that then you don't know who was on that
18 scene before you got there, do you?

19 A: I do not.

20 Q: Now, I know you commented that it appears, and I think you
21 said from the photograph that you took, that there's a blood
22 pool where you believe the shooting actually occurred and then
23 the body was moved, correct?

24 A: Correct.

25 Q: You don't know how many people came in contact with that

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DENNIS MCLAIN LEWIS - CROSS BY WILSON

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- 1 body before you got there, do you?
- 2 A: No, ma'am.
- 3 Q: You don't know who came into contact with any other
- 4 evidence that was out there before you got there?
- 5 A: No, ma'am.
- 6 Q: As a matter of fact, you didn't arrive there probably for
- 7 about an hour or so after the initial call; would that be
- 8 approximately right?
- 9 A: That's right.
- 10 Q: So, in an hour, at a family gathering, there was a lot of
- 11 people who would've been in and out there probably, correct?
- 12 A: Correct.
- 13 Q: And you didn't see any of those people, you didn't -- you
- 14 weren't there to observe any of those things and you don't
- 15 know what was happening on that scene prior to your arrival?
- 16 A: No, ma'am.
- 17 Q: So, everything that you've documented, you've documented
- 18 since the time that you got there and you don't know what
- 19 could've happened to it before that?
- 20 A: That's correct.
- 21 Q: And we're talking about defensive wounds. If a person
- 22 pushes or shoves, are they likely to have a defensive wound?
- 23 A: No, ma'am.
- 24 Q: Are they likely to have any kind of bruising or injury?
- 25 A: No, ma'am.

1 Q: And just to be clear, now, you don't have any independent
2 firsthand knowledge of what happened that night, do you?

3 A: No, ma'am.

4 Q: Now, the state talked about what you found there, and I
5 know you said the bullets and you documented those and you
6 documented where the vehicles were and that's all fine. But,
7 you couldn't possibly know what was on Mr. Doctor's person at
8 the time that you got there other than what you found?

9 A: That's right.

10 Q: So, if for example, during the timeframe in the hour
11 before you -- approximately the hour before you got there, if
12 someone had moved something or taken something off of him, you
13 wouldn't know that, would you?

14 A: I would not.

15 Q: And it would not be there for documentation, would it?

16 A: No, ma'am.

17 Q: Matter of fact, you don't have any idea about who came
18 into contact with this -- this body before you got there?

19 A: No, ma'am.

20 Q: And you couldn't say how many people approximately came
21 into contact with it?

22 A: I could not.

23 Q: I'm sorry?

24 A: I could not.

25 Q: I'm sorry, I'm not trying to talk over you. So, in

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DENNIS MCLAIN LEWIS - CROSS BY WILSON

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1 essence, your documentation can only be as good as where you
2 found it at the time that you arrived?

3 A: That is correct.

4 Q: You have no way of knowing or documenting anything that
5 occurred prior to you getting there?

6 A: No, ma'am.

7 Q: Correct?

8 A: Other than the first responders.

9 Q: Yes, sir.

10 A: Yeah.

11 Q: Okay.

12 MS. WILSON: Court's indulgence?

13 THE COURT: Yes, ma'am.

14 BY MS. WILSON:

15 Q: Just one final thing. I know you said that there was only
16 the small issue of the license plates being incorrect on your
17 sketch. You made this sketch shortly after this -- you
18 actually went out to the scene, correct, or was it made the
19 same night or did you make it while you were out there?

20 A: I done a rough sketch, yes, ma'am, of the night and then I
21 actually transferred that.

22 Q: So, this is not actually the sketch you made that night?

23 A: No, ma'am.

24 Q: This is a reconstructed sketch?

25 A: It is.

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DENNIS MCLAIN LEWIS - REDIRECT BY HELMS

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1 MS. WILSON: Court's indulgence?

2 No further questions, Your Honor.

3 THE COURT: Redirect?

4 MR. HELMS: Briefly.

5 REDIRECT EXAMINATION OF DENNIS MCLAIN LEWIS BY MR. HELMS:

6 Q: Mr. Lewis, did you have any reason to believe anything was
7 removed from that body?

8 A: No, sir.

9 Q: Okay. She mentioned the sketch, I'm gonna show you this
10 one more time and, again, this is State's 40. I want you to
11 indicate or show us and tell us what those two red dots
12 indicate right there; are those vehicles?

13 A: Yes, sir.

14 MR. HELMS: No further questions, Your Honor.

15 THE COURT: Anything on those questions, Ms. Wilson?

16 MS. WILSON: I'm sorry, Your Honor, just one question
17 briefly.

18 RECROSS EXAMINATION OF DENNIS MCLAIN LEWIS BY MS. WILSON:

19 Q: The fact that you have -- and I think the question and I
20 don't want to misstate or misspeak about what the state just
21 asked you -- but the fact that you had no reason to believe
22 that something's not there doesn't mean that it is not what
23 happened and is not correct the way you found it, correct?
24 And I know that's a convoluted question and I apologize for
25 it. Do you understand what I'm asking?

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BY THE COURT

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1 MR. HELMS: Your Honor, I am using these witnesses for an
2 extremely limited purpose. It will be extremely brief on all
3 of them.

4 THE COURT: All right. So, if we did it now, if we have
5 them testify and they're cross examined to whatever extent Ms.
6 Wilson needs to cross examine them, how long is all four of
7 them going to take?

8 MR. HELMS: I'm not gonna take more than five minutes a
9 witness. And there are only three. There are only three, not
10 four, there are only three.

11 THE COURT: Okay. An hour?

12 MR. HELMS: I don't think it will take that long; no,
13 sir. No, I surely do not believe, even with cross
14 examination, I do not anticipate it taking more than 30
15 minutes.

16 THE COURT: Okay. And I assume you wanted to call them
17 this afternoon as witnesses?

18 MR. HELMS: Yes, sir.

19 THE COURT: Okay. All right. Go tell the jury that
20 we've got an issue and we'll be with them whenever we'll get
21 to them.

22 All right. Call your first witness.

23 MR. HELMS: At this time, the state would call Terri
24 Doctor.

25 THE COURT: Come all the way around up here and meet the

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TERRI DOCTOR - PROFFER DIRECT BY HELMS

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1 clerk's representative, ma'am.

2 CLERK: Please raise your right hand and place your left
3 hand on the Bible.

4 TERRI DOCTOR, HAVING BEEN SWORN
5 TESTIFIES AS FOLLOWS:

6 CLERK: Please be seated. State your full name and
7 spell it for the Court.

8 MS. TERRI DOCTOR: Terri Doctor, T-E-R-R-I, D-O-C-T-O-R.

9 PROFFERED DIRECT EXAMINATION OF TERRI DOCTOR BY MR. HELMS:

10 Q: All right. Terri, how do you know -- how did you know
11 the victim, Darrell, in this case?

12 A: Well, I knew Darrell because he was one of my first
13 cousins, which is my Aunt Robersena's son, and he was a well-
14 mannered young man, he was well known.

15 Q: Now, I'm not getting into all that. I'm must asking you
16 how you knew him.

17 A: Okay.

18 Q: How do you know the defendant in this case, Roger Grate?

19 A: I know him because he's married to my Aunt Carrie Ann
20 Grate.

21 Q: Okay. So, family, too?

22 A: Family, too.

23 Q: Okay. Have you ever or do you know Mr. Grate to carry a
24 gun?

25 A: I have.

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TERRI DOCTOR - PROFFER DIRECT BY HELMS

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- 1 Q: Have you ever seen Mr. Grate pull that gun and point it
2 at anyone?
- 3 A: I have.
- 4 Q: I want you to tell this Court about that experience.
- 5 A: Well, one night we was at his house under his carport.
6 We was all playing cards, having a card game.
- 7 Q: Whose house?
- 8 A: At Roger's house.
- 9 Q: Okay.
- 10 A: We was having a card game.
- 11 Q: Whose we?
- 12 A: It was me and a couple other people, I can't remember
13 everybody that was there.
- 14 Q: Okay.
- 15 A: But him and we was all playing and, of course, you know,
16 we sitting here, we playing and you get -- they get mad
17 because -- Roger get mad because he losing, his daughter get
18 made because she losing, and then him and one of the other
19 cousin get -- well, my cousin got -- they began to argue or
20 whatever the situation was about the card game because they
21 was losing their money. So, then he proceeds to go and pull
22 out the gun and pointing the gun at him and telling him, you
23 can leave, you can get out my yard, you can do this and you
24 can do that or whatever, and that's what happened.
- 25 Q: And did that -- did he in fact leave?

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TERRI DOCTOR - PROFFER CROSS BY WILSON

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- 1 A: Well, he -- he got up, he left and he said let me go
2 ahead and leave before, you know, it goes any further and I
3 dismissed myself as well from the card game.
- 4 Q: And then it ended?
- 5 A: And then it ended.
- 6 Q: And you witnessed the whole thing?
- 7 A: And I witnessed the whole thing; I was there.
- 8 Q: What kind of a gun was it; was it a big gun or a little
9 gun?
- 10 A: It was like a handgun.
- 11 Q: Okay. Please answer any questions Ms. Wilson might have.
- 12 PROFFERED CROSS EXAMINATION OF TERRI DOCTOR BY MS. WILSON:
- 13 Q: Ms. Doctor, you said your cousin, who was your cousin?
- 14 A: My cousin, Kentrez Hilton.
- 15 Q: And you say that Carmen and Roger got upset. Kentrez
16 Hilton didn't get upset because you said he was arguing?
- 17 A: Well, Kentrez was upset as well. He would be upset if
18 somebody pulled a gun out on him because they're playing cards
19 and you're losing. If you're losing, that's nobody's fault
20 but your own.
- 21 Q: So, the argument didn't start, you said, until he pulled
22 out the gun?
- 23 A: No, the argument started before he pulled out the gun.
- 24 Q: So, then Mr. ---
- 25 A: Whenever the argument started, that's when Roger pulled

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TERRI DOCTOR - PROFFER CROSS BY WILSON

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1 out the gun.

2 Q: So, Mr. Hilton was arguing with Roger prior to the gun
3 coming out?

4 A: No, he did not argue with Roger at all, but he -- but he
5 did say, let me get up and go ahead and leave before it gets
6 any heated or gets any worser than what it is, and he
7 dismissed hisself from the card game.

8 Q: So, what you're saying to the Court is there was no
9 difficulty or problem prior to the gun being pulled out?

10 A: After he pulled -- after Roger pulled the gun, Kentrez
11 dismissed hisself before it became a problem, but there was
12 already a problem because, number one, Roger and Carmen, they
13 losing their money, of course, they're upset, they're mad.
14 When they're playing cards, they're cheaters -- I mean, I play
15 with these -- I know these people.

16 Q: Okay. But my question to you is, you just stated that
17 there was an argument and then Roger pulled out the gun. So,
18 my question is, you said Kentrez Hilton is who he pointed the
19 gun at and I'm asking you, did -- was Kentrez Hilton involved
20 in an argument with Roger prior to the gun coming out?

21 A: What you mean as far as arguing before the gun came out?

22 Q: I'm specifically asking that ---

23 A: They were arguing about the card game and the gun came
24 out; he pulled the gun out.

25 Q: So, there was an argument?

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TERRI DOCTOR - PROFFER CROSS BY WILSON

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1 A: Yes, there was, over a card game.

2 Q: Okay. And you weren't there the night of this incident,
3 were you?

4 A: No, I was not.

5 Q: And you didn't observe ---

6 A: The night of what incident?

7 Q: The night of this shooting?

8 A: No, I was not.

9 Q: That's the question, of this trial.

10 A: No, I was not.

11 Q: Okay. So, you don't know anything about what happened on
12 the particular night in question?

13 A: About the trial?

14 Q: Right?

15 A: No.

16 Q: All right.

17 MS. WILSON: No further questions, Your Honor.

18 THE COURT: All right. Redirect?

19 MR. HELMS: No, sir.

20 THE COURT: All right. Ms. Doctor, when did this
21 happened?

22 A: This happened about the year before this incident
23 happened and I can remember because it was a year before this
24 incident happened, it was during the wintertime.

25 THE COURT: Okay. So, did ---

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VERONICA DOCTOR - PROFFER DIRECT BY HELMS

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1 A: It had to be like around in October or November of that
2 nature.

3 THE COURT: Okay. October or November ---

4 A: Of 2015.

5 THE COURT: 2015.

6 A: I was there. I saw it. I know what I -- I was there, I
7 seen it.

8 THE COURT: Okay. Thank you, ma'am.

9 All right. You may step down.

10 Next witness?

11 MR. HELMS: At this time, we call Veronica Doctor.

12 THE COURT: I'm sorry, who?

13 MR. HELMS: Veronica Doctor.

14 CLERK: Please raise your right hand and place your left
15 hand on the Bible.

16 VERONICA DOCTOR, HAVING BEEN SWORN

17 TESTIFIES AS FOLLOWS:

18 CLERK: Please be seated. State your full name and spell
19 your name for the Court.

20 MS. VERONICA DOCTOR: My whole name?

21 CLERK: Yes, ma'am.

22 MS. VERONICA DOCTOR: Okay. Veronica Doctor, V-E-R-O-N-
23 I-C-A, last name Doctor, D-O-C-T-O-R.

24 PROFFERED DIRECT EXAMINATION OF VERONICA DOCTOR BY MR. HELMS:

25 Q: Veronica, how did you know the victim, Darrell, in this

1 case?

2 A: He was my first cousin.

3 Q: How do you know the defendant, Roger Grate?

4 A: That's my aunt's husband.

5 Q: So, you're related to both?

6 A: Correct.

7 Q: I'm going to get right to it. Have you ever spent time

8 around Roger?

9 A: I have.

10 Q: And do you know him to carry a gun?

11 A: Yes.

12 Q: Is that pretty common knowledge?

13 A: Yes.

14 Q: Does he make any secret about it?

15 A: No.

16 Q: Have you ever seen him pull out that gun?

17 A: I have seen him pull out a gun, I haven't seen him pull

18 out that gun.

19 Q: Okay. But you've seen him pull out a gun?

20 A: Correct.

21 Q: A big gun or a hand gun?

22 A: Hand gun.

23 Q: All right. I want you to tell the Court a little bit

24 about that situation, what happened, where you were, when was

25 it and what you saw?

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VERONICA DOCTOR - PROFFER CROSS BY WILSON

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1 A: It was at my grandma house and him and one of my uncles
2 had got into an altercation. They was arguing, things got
3 heated. He told my uncle to stay right here till I get back,
4 he left and went and got a gun and came back. When he came
5 back, he got the gun and pointed it at him, and my Aunt Carrie
6 Ann had got in the middle of it and was saying, Roger, what
7 you doing, put that gun up, and it stopped.

8 Q: Okay. So, she intervened?

9 A: Correct.

10 Q: But you know him to habitually, normally carry a gun?

11 A: Yes.

12 Q: Please answer any questions Ms. Wilson has.

13 MS. WILSON: Court's indulgence?

14 THE COURT: Yes, ma'am.

15 PROFFERED CROSS EXAMINATION OF VERONICA DOCTOR BY MS. WILSON:

16 Q: Ms. Doctor, you're not a blood relative of Roger Grate,
17 correct?

18 A: I'm not.

19 Q: But you are a blood relative of Darrell Doctor?

20 A: Correct.

21 Q: And I know you said -- and I'm sorry if I asked you to
22 repeat something. You said that someone told him to put the
23 gun up. Who did you say that was?

24 A: My aunt, which is his wife.

25 Q: Okay. And who would that be?

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VERONICA DOCTOR - BY THE COURT

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1 A: Carrie Grate.

2 Q: Okay. All right. And but you just did say, correct,
3 that he always carried it?

4 A: I said he always carried a gun.

5 Q: Right. So, then he didn't actually have one on him that
6 night, did he, when you said you saw him say stay right here,
7 I'm gonna go get it?

8 A: Correct.

9 Q: So, he didn't have it on him?

10 A: That's what I said, he didn't have it on him; he went and
11 got it.

12 MS. WILSON: Okay. Court's indulgence for a quick
13 second.

14 BY MS. WILSON:

15 Q: Ms. Doctor, you weren't there that night of this
16 incident, were you?

17 A: I was not.

18 Q: So, you don't know anything about how anything transpired
19 on this evening, do you?

20 A: No, I don't.

21 Q: All right.

22 MS. WILSON: No further questions, Your Honor.

23 BY THE COURT:

24 THE COURT: All right. Ms. Doctor, the incident you
25 described, when did it happen?

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ROMANA PARKER - PROFFER DIRECT BY HELMS

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1 A: This was about 10 years ago.

2 THE COURT: Okay. Thank you, ma'am.

3 Any other questions, counsel?

4 MR. HELMS: No, Your Honor.

5 MS. WILSON: Nothing for this witness.

6 THE COURT: You may step down, ma'am.

7 Your next witness?

8 MR. HELMS: Romana Parker, please.

9 CLERK: Please raise your right hand and place your left

10 hand on the Bible.

11 ROMANA PARKER, HAVING BEEN SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: Please be seated. State your full name and spell

14 your name for the Court.

15 MS. PARKER: Romana Parker, R-O-M-A-N-A, P-A-R-K-E-R.

16 PROFFERED DIRECT EXAMINATION OF ROMANA PARKER BY MR. HELMS:

17 Q: Ms. Parker, where do you live?

18 A: [REDACTED] Kennedy Street.

19 Q: Who's your neighbor?

20 A: Roger Grate and Carrie Ann Grate.

21 Q: How long have you lived there?

22 A: Since '07.

23 Q: And have you ever had an occasion to come in contact with

24 Roger?

25 A: I have.

1 Q: Tell this Court about that occasion, please?

2 A: We had some dogs. I have a dog in the backyard, which
3 was a lab and he had several dogs in his backyard. One of his
4 dogs got lose and impregnated my dog and so, unfortunately,
5 she had puppies. They kept getting out and getting into his
6 yard. The dog actually was over at his yard this day and he
7 said that the dog was chewing his shoe up. So, he approached
8 me as I was getting out of my car to go in the house and he
9 cornered me and asked me about the dog and the situation. And
10 I asked him, is that how you approach people when you come to
11 their house and he said yeah. So, we had words back and
12 forth, he walked back across to his yard, and I proceeded to
13 go in the house and get my telephone to call the cops. As I
14 walked back out in the yard to see where the puppies were, he
15 came out of his front door with a gun, a big gun on his hand,
16 looking at me walking to the dog fence and walking back out of
17 the yard.

18 Q: And when did this occur?

19 A: It was in the summer, I believe a couple of years ago.

20 THE COURT: I'm sorry, I didn't hear your answer, ma'am?

21 A: In the summer a couple of years ago, three years ago.

22 THE COURT: Three years ago?

23 BY MR. HELMS:

24 Q: So, bottom line was is there was an argument?

25 A: There was an argument.

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ROMANA PARKER - PROFFER CROSS BY WILSON

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1 Q: Y'all had exchanged words?

2 A: We did exchange words.

3 Q: And he went and got a gun?

4 A: And he got his gun.

5 Q: Please answer any questions Ms. Wilson may have.

6 PROFFERED CROSS EXAMINATION OF ROMANA PARKER BY MS. WILSON:

7 Q: Ms. Parker, he didn't have the gun on his person; Mr.
8 Grate didn't have the gun on his person, you said he went in
9 the house and came out with it?

10 A: After we had an altercation in my yard, he went into his
11 house. When I was coming back out to see where the puppies
12 was and calling the police officer, he had a gun in his hand
13 walking back and forth to the fence. Our yards are close
14 together in proximity, and he looked at me to let me know that
15 this is what he had.

16 Q: Okay. And you called the police and made that report?

17 A: I did and he was put -- I did.

18 Q: So, you're saying there's a report of this incident?

19 A: There is a report of this incident.

20 Q: Do you know the outcome of it?

21 A: He was told not to come back in my yard. He was placed
22 on no trespassing.

23 Q: All right. Now, you again, on the night of the 25th,
24 when this shooting occurred, you weren't present, were you?

25 A: I was in my house.

1 Q: Right, but you weren't present at his house?

2 A: I was at my house.

3 Q: Again, not present at Roger Grate's house, correct?

4 A: At my house.

5 THE COURT: Ma'am, please listen to the question and
6 answer the question that is asked. Thank you.

7 BY MS. WILSON:

8 Q: So, my question is, you were not present at Roger Grate's
9 house, correct?

10 A: No, I was not.

11 Q: All right. And on this particular night, you don't
12 anything that happened in this case, do you, about the -- I'm
13 sorry. You don't know anything about the circumstances of
14 this case, that's the subject of this trial, do you?

15 A: No, I know nothing about the altercation.

16 Q: And I know you said this happened approximately three
17 years ago. Do you remember approximately when three years
18 ago? You might've said summer, I'm not sure.

19 A: It was hot, so it was the summertime.

20 MS. WILSON: Court's indulgence?

21 BY MS. WILSON:

22 Q: Just a couple of quick questions more. You were the only
23 person outside at that time?

24 A: Yes, I was.

25 Q: So, there are no other witnesses to this incident?

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ARGUMENT BY HELMS

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1 A: To the dog altercation?

2 Q: Or to him bringing the gun out.

3 A: No, it was my word against -- yeah, what I was telling
4 the officer was my word, yeah.

5 Q: All right. And isn't it true, that the officer had you
6 and Roger to stay away from each other's property?

7 A: No, sir. No, ma'am.

8 Q: All right. No further questions.

9 THE COURT: Redirect?

10 MR. HELMS: Nothing, Your Honor.

11 THE COURT: You may step down. Thank you very much.

12 Further witnesses?

13 MR. HELMS: No, sir, Your Honor.

14 THE COURT: All right. Let me hear your arguments?

15 MR. HELMS: Me first, Your Honor?

16 THE COURT: Yes, sir.

17 ARGUMENT BY HELMS:

18 MR. HELMS: Judge, the rule is conduct and conformity
19 with a habit, and his habit is clear and it's illustrated
20 clearly by all three witnesses. If he gets in an argument, he
21 pulls a gun. All three stories are similar in that regard; he
22 did that. He argued with those three different individuals
23 and then he got a gun.

24 Judge, also, additionally, I've got to prove -- I have to
25 assume that based on his statement, he's gonna say it was a

1 mistake. This shows, this testimony shows that he handles
2 guns, he has guns, numerous guns, pulls them all the time and
3 there's never been a mistake before, at least as far as we
4 know and as far as these witnesses are testifying.

5 Additionally, Judge, I have to negate self-defense. I
6 think this goes to his intent in addition to negating a
7 mistake, and I think it would be admissible under law and if
8 not habit.

9 Judge, these witnesses, while they didn't see the
10 incident, I don't know how that's -- or the incident that the
11 case is about, I don't know how that's relevant to the purpose
12 of their testimony, but that's why I'm offering this
13 testimony. He, he -- he has an argument and he pulls a gun,
14 Judge, that's his habit, and that's exactly what happened
15 we're alleging happened on this incident as well. And it's
16 very -- it's just very similar to -- to *State v. Brown*. I
17 think it's extremely analogous.

18 THE COURT: Ms. Wilson?

19 ARGUMENT BY WILSON:

20 MS. WILSON: Thank you, Your Honor. Your Honor, the
21 state just stated why it's important that these people were
22 not present on this particular occasion and it's in this case.
23 It specifically said that evidence of habit of a person is
24 relevant through the conduct of the person on a particular
25 occasion was in conformity with the habit. They weren't even

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ARGUMENT BY WILSON

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1 there this night. They don't know what happened this night.

2 My position is, Your Honor, that the fact that they don't
3 know the circumstances and the conditions under which this
4 happened, they can't really make an analogy between how he has
5 behaved in the past and what happened on this particular
6 evening. And I am distinguishing this situation from the
7 *State v. Brown* case in that it's very clear that the people
8 who are testifying in this case, clearly were present on the
9 scene and were able to make connections between what occurred
10 that evening and what they had previously experienced with
11 him. None of these people were present that night. That's
12 number one. Number two, Your Honor, I appreciate that the
13 state feels, you know, understands that they have a burden
14 here, but the fact they have a burden does not make it our
15 burden to help them along. The bottom line is that this is
16 character evidence; it is purely character evidence. The
17 people, one incident from 10 years ago, one is from three
18 years ago. Clearly, Your Honor, the most recent one, I
19 believe was Terri Doctor, she said hers happened approximately
20 a year ago. And she's saying he pulled out a weapon after an
21 argument. Again, in two of the instances, they're saying that
22 he went somewhere to get the weapon, not that it was on him,
23 not that he carried it, but that he had to go retrieve it.
24 Certainly, Your Honor, the fact that he went to get a weapon,
25 doesn't mean that he always had it on him, which is something

1 that they're clearly trying to state, and I think that that's
2 distinguishable as well.

3 But in addition to that, Your Honor, my third issue is
4 this. And I go back to what I said previously, this case
5 talks about habit, being very situation specific. And, I am
6 harping on that language for a reason because I think that in
7 order for it to be situation specific, there ought to be some
8 connection between the people who are testifying about the
9 circumstances and what they saw or experienced that night.
10 The state does not have that and that's exactly what happened
11 in this case. I do not believe that *State v. Brown* is on
12 point as the state has stated. I feel that certainly there
13 are some analogies, if you are inclined to look for them, but
14 certainly I think that what this case says about character
15 evidence and have it being often, you know, improperly
16 exchanged for one another, I think that's particularly
17 relevant in this case. I don't believe that this is more than
18 propensity evidence and I think that that's improper, and I'm
19 asking the Court to exclude these witnesses as habit
20 witnesses.

21 MR. HELMS: Judge, I would just like to clarify, in *State*
22 *v. Brown*, the witness wasn't present for the murder.

23 THE COURT: All right.

24 MS. WILSON: And I'm sorry, I do want to state the two
25 witnesses, one statement came from the wife and one from, I

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BY THE COURT

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1 believe the grandson, who was at the house and both of them
2 were present at the house and left, and that was their
3 testimony.

4 BY THE COURT:

5 THE COURT: I'm gonna tell you, I don't think whether
6 they were present that night or not is the question. That's
7 just not the question. The question is, is it inadmissible
8 under 404 or admissible under 406. They didn't have to be
9 there that night. They can testify to some specific pattern
10 or habit and have no knowledge of what happened the night in
11 question. So, it's not that -- that doesn't mean anything in
12 this case; it doesn't mean a thing. It's whether or not it's
13 improper under one rule or proper under another.

14 MS. WILSON: I'm sorry, Your Honor. The reason I'm
15 arguing it is because I think it is appropriate to distinguish
16 about who was there and what they saw. They're arguing -- and
17 I'm saying it because I think that it makes it character
18 evidence as opposed to appropriately admitted under habit
19 evidence or has habit. They're getting up here on direct
20 basically to relay a circumstance or an instance of something
21 happening and it's based on just the fact they want to get up
22 and say it. There is nothing else. There is no way to
23 contradict that. There is nebulous people who were present.
24 They are truly giving a statement to the Court in front -- and
25 want to give it in front of the jury on direct about something

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1 that nobody can say anything about. It's purely their take on
2 his character; that's all it is. It's not really about habit.
3 This is about them saying that he was of a poor quality
4 character. And that's why I'm saying that I think it is
5 important to note what was going on that night and distinguish
6 it from what they are claiming, because they weren't there and
7 they don't know anything. But, I appreciate what the Court
8 has said as well and I understand the Court's decision about
9 that.

10 THE COURT: Okay.

11 MS. WILSON: I'm ---

12 THE COURT: Yes, ma'am, anything else?

13 MS. WILSON: Yes, sir, just briefly. I would also say
14 that the last two -- and I stated it previously, but I think
15 it's worth going back over. The last two witnesses in
16 particular didn't provide added evidence. I mean, if
17 anything, the circumstances that claim there are different
18 from what allegedly happened in this case because they say he
19 left to go get a weapon. He came back armed, not that he had
20 it and pulled it out on somebody. Certainly, it's different
21 -- it's a different set of circumstances that they're claiming
22 happened there.

23 That would be it, Your Honor.

24 All right. Thank you.

25 All right. 404(b) says other crimes, wrongs, or acts.

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1 Evidence of other crimes, wrongs, or acts, is not admissible
2 to prove the character of a person in order to show action in
3 conformity therewith. It may, however, be admissible to show
4 motive, identity, existence of a common scheme or plan, the
5 absence of mistake or accident or intent.

6 Now, when you're talking about similar acts, case law has
7 indicated that evidence of similar acts is admissible when
8 there is some special relation between them that would tend to
9 prove or disprove some fact in dispute. Evidence of similar
10 facts, conditions, or occurrences is inadmissible if not
11 pertinent to the issues in the case. Evidence of similar
12 occurrences or conditions may be admitted upon a showing of
13 substantial identity of circumstances and reasonable proximity
14 in time. When the circumstances or conditions depicted by
15 such evidence are so dissimilar that the evidence offered
16 lacks substantial probative value, there arises the danger
17 that the jury's confusion of the issues will outweigh any
18 benefit to be derived from admitting the evidence and, in such
19 a case, the evidence should be excluded.

20 Just so we're clear, 406 says evidence of the habit of a
21 person or of the routine practice of an organization, whether
22 corroborated or not, and regardless of the presence of live
23 witnesses, is relevant to prove that the conduct of the person
24 or organization on a particular occasion was in conformity
25 with a habit or routine practice.

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1 So, trying to reconcile 404 and 406 and what *State v.*
2 *Brown* has found in 543 S.E.2d 552, 2001 case has to say about
3 it, it's whether or not these incidents that were described by
4 Terri Doctor, Veronica Doctor, and Romana Parker are so
5 similar that -- and so fact specific that would show the
6 defendant's actions in conformity therewith and then
7 potentially to alleviate any argument about mistake.

8 Now, let's be clear, we're talking about putting this
9 evidence in in the state's direct case, direct evidence, not
10 in reply. So, I'm making that distinction because it could
11 become relevant later.

12 Ms. Terri Doctor indicated an argument over a card game.
13 The defendant got mad, pulled a gun out and pointed it at the
14 other person involved and told him to leave.

15 Ms. Veronica Doctor indicated that there was an argument,
16 heated argument. The defendant went and retrieved a weapon
17 from another place and pointed it at another person, and that
18 happened about, she said 10 years ago.

19 Romana Parker indicates that she is having an argument
20 with the defendant in the summer three years ago. She goes in
21 her house, he goes in his house, he comes out with a gun, and
22 as she indicated, made it clear that so that she knew that he
23 had a gun.

24 The incident testified to by Veronica Doctor and Romana
25 Parker are not so similar occurrences or conditions that the

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1 Court could find to admit them, because they don't show a
2 substantial identity of circumstances, nor are they reasonably
3 proximate in time. One is 10 years ago and the other is over
4 three years ago.

5 Now, one that I do find to be similar, closeness in
6 proximity of time and similar of occurrence, is testimony of
7 Terri Doctor indicating there's an argument and his response
8 to the argument is to pull out a gun and order somebody to
9 leave. That one is, I do find, of a similar act that shows
10 substantial identity of circumstances and is reasonably close
11 in time and proximity.

12 So, in looking at the competing interest of 404 and 406,
13 I do find that the specific nature of the incident described
14 by Ms. Terri Doctor is proper under 406, habit, routine, and
15 practice. And, also could be used under 404 to show the
16 actions of mistake or accident, which is clearly what the
17 defendant is indicating in his statement to Detective King
18 Hemingway.

19 So, I would allow you, Solicitor, to use Ms. Terri
20 Doctor. I will not allow you to use in your direct
21 presentation of the case, the testimony of Veronica Doctor or
22 Romana Parker. If the defendant testifies in this case, you
23 can revisit that, I'm not saying I'm gonna allow it in then
24 either, but we'll just have to see what is testified to, and
25 if there is a ground to allow their testimony in this matter.

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1 All right?

2 MR. HELMS: Yes, sir.

3 THE COURT: All right.

4 MS. WILSON: Your Honor?

5 THE COURT: Yes, ma'am.

6 MS. WILSON: I'm sorry. I would just reserve my
7 objection ---

8 THE COURT: You've objected and objected, Ms. Wilson. I
9 just don't -- you know, we've had the hearing, I've ruled.
10 Obviously, you presented a argument against it. So, I don't
11 see that there's a necessity for you to keep doing that.
12 Okay? And if it is an issue or you think it's an issue, you
13 -- I'm telling you right now, you do not need to stand up in
14 front of the jury and object to the testimony of Ms. Terri
15 Doctor, if and when the state calls her. You've already done
16 that. Okay?

17 MS. WILSON: Yes, sir.

18 THE COURT: That's the Court's ruling and you know, if --
19 I don't know if I can excuse you from the Appellant Court
20 rules, but I'm just -- I have mislead you then, okay, in that
21 -- in that -- just, you know, I don't see the necessity of you
22 having to repeat your objection over and over again. You've
23 argued it, you've objected, I've overruled it, I'm gonna allow
24 it. I granted it on the other two that you objected to. I
25 think it's pretty clear. There's no need for you to do it

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1 again.

2 MS. WILSON: Yes, sir, and I just want you to understand,
3 I'm not doing it just to be ---

4 THE COURT: No and I understand that. So, I just want it
5 to be clear so that I'm just telling you ---

6 MS. WILSON: I won't get up.

7 THE COURT: You don't have to. Okay?

8 MS. WILSON: Thank you.

9 THE COURT: And if for some reason, some reading of an
10 Appellant Court rule would think that you have to, I'm just
11 telling you, you don't have to. That should excuse it. Okay?

12 MS. WILSON: Thank you.

13 THE COURT: All right. Good deal. So, with that then,
14 why don't we take five minutes, y'all get ready. Whoever your
15 next witness is, why don't you call them in the courtroom and
16 have them sitting in the back so when -- so when the jury is
17 in here and you call them, they can just stand up and come on
18 up to the witness stand. Okay?

19 MR. HELMS: Yes, sir.

20 MS. WILSON: Thank you, Your Honor.

21 THE COURT: All right. Good deal.

22 **RECESS - 2:38 P.M.**

23 *****OFF THE RECORD*****

24 **(On the Record - 2:42 P.M.)**

25 (REPORTER'S NOTE: The following takes place outside the

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1 up. Okay?

2 MR. HELMS: Yes, Your Honor.

3 THE COURT: All right. Ask the jury to come in please.
4 It's *State v. Broadnax*.

5 MR. HELMS: Your Honor, could you repeat that?

6 THE COURT: *State v. Broadnax*, it's 779 S.E.2d 789.

7 (REPORTER'S NOTE: Jury enters courtroom @ 2:47 P.M.)

8 THE COURT: All right, Solicitor, your next witness
9 please.

10 MR. HELMS: Judge, at this time, the state would call
11 Detective King Hemingway to the stand.

12 THE COURT: All right. Please come around to be sworn,
13 sir.

14 CLERK: Please raise your right hand and place your left
15 hand on the Bible.

16 KING HEMINGWAY, HAVING BEEN SWORN

17 TESTIFIES AS FOLLOWS:

18 CLERK: Please be seated. State your full name and
19 spell your name for the Court.

20 MR. HEMINGWAY: King Hemingway, K-I-N-G, H-E-M-I-N-G-W-A-
21 Y.

22 DIRECT EXAMINATION OF KING HEMINGWAY BY MR. HELMS:

23 Q: Mr. Hemingway, where are you employed?

24 A: Horry County Police Department.

25 Q: And what do you do there?

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1 A: I'm a violent crimes detective assigned to a
2 Homicide/Robbery Division.

3 Q: And how long have you worked there?

4 A: Sixteen years.

5 Q: Did you receive any kind of training to do the job that
6 you, sir?

7 A: Yes, sir.

8 Q: What kind of training have you received?

9 A: I've attended multiple classes and courses involving
10 interviews, investigations, homicide classes, and of course
11 the yearly training from the South Carolina Criminal Justice
12 Academy.

13 Q: You've received a lot of training?

14 A: Yes, sir,

15 Q: Is that ongoing, you always have to do something new
16 every year?

17 A: Yes, sir.

18 Q: And you do pretty good keeping up with that, right?

19 A: Yes, sir.

20 Q: I would imagine so. What do some of your duties entail?

21 A: To investigate crimes of violence, considered violent
22 crimes, such as homicides, attempted murders, overdoses,
23 suicides, any death that is not deemed natural.

24 Q: And when you say investigate, that could mean a myriad of
25 things right?

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- 1 A: Yes, sir.
- 2 Q: Is one of those things and one of the duties that you're
3 charged with interviewing and questioning suspects and
4 witnesses?
- 5 A: Yes, sir.
- 6 Q: Were you engaged in this or were you employed in this
7 capacity on Christmas back in 2016?
- 8 A: Yes, sir; I was.
- 9 Q: And were you working that night?
- 10 A: Yes, sir; I was.
- 11 Q: And did you have an opportunity to become involved in
12 this case?
- 13 A: Yes, sir; I did.
- 14 Q: Please tell the jury how that came to be?
- 15 A: On 7/25th, 2016, I was notified by my sergeant to respond
16 to the city limits of Loris to assist Loris with the
17 investigation into the death of Mr. Darrell Doctor. And my
18 duties that night was to interview Mr. Roger Grate.
- 19 Q: And did you do that?
- 20 A: Yes, sir; I did.
- 21 Q: And where did that take place at?
- 22 A: At the Loris Police Department.
- 23 Q: About what time was that?
- 24 A: Close to midnight.
- 25 Q: So, was he there when you got there?

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- 1 A: Yes, sir; he was.
- 2 Q: Was he in handcuffs?
- 3 A: No, sir; he was not.
- 4 Q: Specifically, where did the interview take place?
- 5 A: They have a conference room at the Loris Police
6 Department. That's where he was initially placed and that's
7 where I conducted the interview at.
- 8 Q: So, it didn't take place in a holding cell?
- 9 A: No, sir.
- 10 Q: It didn't take place in a drunk tank?
- 11 A: No, sir.
- 12 Q: It took place in a conference room?
- 13 A: Yes, sir.
- 14 Q: Were there bars in the conference room?
- 15 A: No, sir.
- 16 Q: Okay. Did you follow all necessary procedures before you
17 interviewed him?
- 18 A: Yes, sir; I did.
- 19 Q: Did he appear intoxicated to you?
- 20 A: No, sir; he did not.
- 21 Q: Did he sound intoxicated?
- 22 A: No, sir; he did not.
- 23 Q: Did you promise him anything or threaten him in any way
24 to get him to talk to you?
- 25 A: No, sir; I did not.

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1 Q: Was the statement that he gave that night, did it concern
2 the shooting that happened on Kennedy Street?

3 A: Yes, sir; it did.

4 Q: Okay. And give me a summary, a brief summary of what he
5 told you?

6 A: Mr. Grate had stated he and his son had got into an
7 argument that night. The argument got a little heated and as
8 he was walking away from his son, his nephew, Mr. Darrell
9 Doctor, approached his son, trying to inquire what was going
10 on, why were they arguing. During that time, Mr. Grate got
11 back involved with his son and Mr. Darrell, and at some point,
12 during that time, the argument continued. Mr. Grate stated he
13 asked Mr. Darrell to leave his residence. Shortly after that,
14 is when the gunshot incident occurred.

15 Q: Now, you went to the scene before you went to the police
16 station, right?

17 A: Yes, sir.

18 Q: You actually went to Kennedy Street?

19 A: Yes, sir.

20 Q: And you saw the crime scene?

21 A: From a distance, yes, sir.

22 Q: Okay. And where was that crime scene, generally
23 speaking?

24 A: In the roadway on Kennedy Street.

25 Q: So, Mr. Doctor wasn't in the residence?

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- 1 A: No, sir; he was not.
- 2 Q: He was in the roadway?
- 3 A: Yes, sir.
- 4 Q: Okay. And did Mr. Grate also indicate to you that the
- 5 shooting took place in the roadway?
- 6 A: I believe he did; yes, sir.
- 7 Q: How long did this statement last?
- 8 A: Roughly about an hour and five to 10 minutes.
- 9 Q: Was this audio or video recorded?
- 10 A: It was audio recorded.
- 11 Q: And did you put that recording -- did you save that
- 12 recording?
- 13 A: Yes, sir; I did.
- 14 Q: Who else was present with you when you interviewed him?
- 15 A: Detective Britt was also present during the interview.
- 16 Q: Who was the lead interviewer?
- 17 A: Me.
- 18 Q: Okay. Did you -- and you saved it to a disc?
- 19 A: Yes, sir; I did.
- 20 Q: Did you provide that to my office?
- 21 A: Yes, sir, I did.
- 22 MR. HELMS: Your Honor, I'm showing the witness what's
- 23 been marked for identification purposes as State's Exhibit 43.
- 24 BY MR. HELMS:
- 25 Q: Detective, do you recognize that?

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1 A: Yes, sir.

2 Q: What is on that disc?

3 A: The recorded interview with Mr. Roger Grate.

4 Q: Is that the entirety of your contact with Mr. Grate?

5 A: Yes, sir; it is.

6 Q: Does it fairly and accurately depict the conversation you
7 had with Mr. Grate at the police station on Christmas night of
8 2016?

9 A: Yes, sir; it is.

10 Q: Has it been altered in any way?

11 A: Not by me, no, sir.

12 Q: Okay.

13 MR. HELMS: Your Honor, at this time, I would tender
14 State's 43 into evidence.

15 THE COURT: Any objection.

16 MS. WILSON: Without objection, Your Honor.

17 THE COURT: All right. State's 43 is in evidence without
18 objection. You may proceed.

19 STATE'S EXHIBIT NUMBER 43

20 ADMITTED INTO EVIDENCE

21 MR. HELMS: May I publish, Judge?

22 THE COURT: Yes, sir, you may.

23 MR. HELMS: Thank you.

24 (REPORTER'S NOTE: State's 43 published to the jury. Audio no
25 transcribed herein.)

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1 BY MR. HELMS:

2 Q: Detective, is that the interview that you had with Roger
3 Grate Christmas night?

4 A: Yes, sir; it is.

5 Q: And after that interview was concluded, did you make a
6 determination to charge Mr. Grate with murder?

7 A: Yes, sir.

8 Q: And did you charge him with murder?

9 A: Yes, sir.

10 Q: And possession of a weapon during the commission of a
11 violent crime?

12 A: Yes, sir.

13 Q: I want to go over just a few things that we heard and
14 I'll try not to be too redundant. It seemed like at first,
15 you were trying to prompt him to tell you what the argument
16 between him and his son was about and to me, he seemed a
17 little evasive; was that your impression?

18 A: Yes, sir.

19 Q: As a matter of fact, it seemed like you had to prompt him
20 numerous ---

21 MS. WILSON: Objection, Your Honor, may we approach?

22 THE COURT: Yes, ma'am.

23 (REPORTER'S NOTE: Bench conference is held off the record in
24 the presence of but outside the hearing of the jury.)

25 BY MR. HELMS:

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1 Q: Did you prompt him numerous times before he gave you any
2 details?
3 A: Yes, sir.
4 Q: How did he say the victim approached him?
5 A: He was casually walking towards him.
6 Q: Did he say walking more than one time?
7 A: Yes, sir.
8 Q: Did he say he produced a weapon?
9 A: Yes, sir; he did.
10 Q: Not the defendant, the victim?
11 A: No, sir; the victim did not produce a weapon.
12 Q: Did he tell you the victim threatened him?
13 A: No, sir; the victim did not threaten him.
14 Q: In fact, was he able to tell you anything the victim
15 said?
16 A: No, sir; he was not.
17 Q: As it concerns his kids, did he tell you -- what did he
18 tell you about Carmen Grate; did he tell you she saw the whole
19 thing?
20 A: He said she did not. She was over by the barrel.
21 Q: And what did he tell you about his son, Gregory; did he
22 say he was there?
23 A: He said he was there.
24 Q: Okay. Did he tell you if he's ever pulled a gun on
25 anybody before?

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- 1 A: He stated he has not ever pulled a gun on anyone.
- 2 Q: Okay. Did he tell you that he had the victim had never
3 had a cross word?
- 4 A: No, sir.
- 5 Q: What did he tell you in that regard?
- 6 A: That him and the victim never had any arguments or any
7 problems in the past.
- 8 Q: And again, after this interview concluded, you elected to
9 charge murder?
- 10 A: Yes, sir.
- 11 Q: Well, let me ask you this line of questions. Did you do
12 anything else in this investigation?
- 13 A: No, sir.
- 14 Q: You didn't help execute a search warrant on the house?
- 15 A: I did actually, after the interview and Mr. Grate was
16 transported, I went back to the scene to see if they needed
17 any assistance.
- 18 Q: During that time and pursuant to him telling you that
19 Gregory saw it, during that time, did y'all try to talk to
20 Gregory?
- 21 A: We did.
- 22 Q: And what was your impression then?
- 23 A: He was very uncooperative and would not provide any
24 information.
- 25 Q: Did y'all at any time try to talk to Carmen?

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KING HEMINGWAY - CROSS BY WILSON

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1 A: We did.

2 Q: And what was your impression?

3 A: Also she was very uncooperative.

4 Q: Detective Hemingway, I thank you. Please answer any
5 questions Ms. Wilson has for you.

6 THE COURT: Cross examination?

7 MS. WILSON: Thank you, Your Honor.

8 CROSS EXAMINATION OF KING HEMINGWAY BY MS. WILSON:

9 Q: Detective Hemingway, you just told the solicitor that,
10 that Roger actually walked away and then kind of got back into
11 an argument with his stepson, Gregory, and Darrell Doctor,
12 correct?

13 A: Correct; according to his statement, yes, ma'am.

14 Q: But actually in his statement he just said, and I think
15 we all just heard it on the tape, that he said that he and his
16 stepson were arguing and he was approached and questioned and
17 argued with by Darrell Doctor right there in the spot. So, it
18 wasn't a separate incident, was it?

19 A: It was. He said that him and his son was arguing by the
20 roadway. As he was walking away, Darrell approached his son
21 and they were having a communication between them and then Mr.
22 Grate got back involved with their conversation, which lead to
23 Mr. Grate and Mr. Darrell having a argument at that point.

24 Q: Actually, what he said was -- and if we need to go back
25 over it for clarification, we can, but what he actually said

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KING HEMINGWAY - CROSS BY WILSON

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1 was that the son was approached. He and his son were still
2 there arguing ---

3 MR. HELMS: Objection, Your Honor, she's testifying.

4 THE COURT: This is cross examination.

5 MS. WILSON: Thank you, Your Honor.

6 BY MS. WILSON:

7 Q: He was standing there with his stepson, they were arguing
8 and that Darrell Doctor approached, questioned the stepson and
9 then questioned him; isn't that what he said?

10 A: No, ma'am. To the best of my recollection, he said, when
11 him and Mr. Doctor got into an altercation, he was away from
12 his son.

13 Q: Okay. Maybe then we're just misunderstanding each other.
14 So, let me go back and make sure I'm being clear because it's
15 a lot of information. At the time that Darrell Doctor first
16 approached Roger Grate and his son, they were in the yard or
17 at the car or at the edge of the yard, however you want to put
18 it, and Darrell Doctor approached them then; is that correct?

19 A: He approached his son. When Darrell approached his son,
20 Mr. Grate was not with his son, he was walking away from his
21 son. I believe he said he was like 12 feet away, 10 or 12
22 feet away.

23 Q: All right. And I think again, we're still mixing things.
24 So, we may have to go back and replay that portion for you,
25 but I'm gonna move on and I'm gonna come back to that issue,

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1 because I think it will be clear what was actually said. But,
2 we'll come back to that.

3 A: Okay.

4 Q: Now, for our purposes, let's break this up. There is the
5 incident at the vehicle where my client, Mr. Grate, and his
6 stepson are at the car arguing, that is the first approach of
7 Darrell Doctor. After that, then there is the incident where
8 d the shooting happens, correct?

9 A: Yes, ma'am.

10 Q: And you stated that that, based on your understanding,
11 was something that happened in the road, correct?

12 A: Yes, ma'am.

13 Q: All right. So, clearly, at one point, they're standing
14 in the yard and at one point they're standing in the road,
15 correct?

16 A: He stated by the road. I don't know if he specifically
17 was meaning in his driveway or in the road, but he stated by
18 the roadway.

19 Q: So, at some point, he did say he was actually in the
20 road, correct?

21 A: Yes.

22 Q: So, by the road, doesn't mean the actual inside of the
23 roadway, would it?

24 A: No, ma'am.

25 Q: All right. So, Roger specifically said that he and his

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1 stepson were by the road?

2 A: Yes, ma'am.

3 Q: And he didn't say that he was only in the street when
4 Darrell Doctor approached to talk to him, did he?

5 A: No, ma'am; not specifically.

6 Q: And he told you specifically that Darrell was actually
7 coming at him, didn't he?

8 A: Walking towards him, yes, ma'am.

9 Q: He also said the words coming at me, did he not?

10 A: Yes.

11 Q: And so, I know the solicitor asked you the question and
12 you said, well, he said yes, he was casually walking. At what
13 point, did he use the phrase casually walking?

14 A: He didn't; he stated he was walking towards me. He
15 didn't say he was rushing or walking fast; he said he was
16 walking towards me.

17 Q: Okay. So, coming at me, walking towards me, but not
18 casually, correct?

19 A: Yes, ma'am.

20 Q: That's your impart to this, this -- what he said, your
21 characterization of what he said, correct?

22 A: Yes, ma'am. I consider someone walking towards you, not
23 in a rush, as a casual walk.

24 Q: But that's not what he told you, correct?

25 A: No, ma'am.

1 Q: And we're talking about what he said to you, correct?

2 A: Yes, ma'am.

3 Q: Not what you think about it, correct?

4 A: Yes, ma'am.

5 Q: Okay. And also it appears that at some point, when he

6 told you that he pulled out the gun to stop Darrell, who was

7 coming at him. Okay?

8 A: Yes, ma'am.

9 Q: Is that correct?

10 A: Yes, ma'am.

11 Q: He told you, at that point, that he was scared, did he

12 not?

13 A: He did.

14 Q: And he also told you that they had been engaged in an

15 argument, correct?

16 A: Minutes before that, yes, ma'am.

17 Q: So, clearly, when Darrell Doctor approaches, there was

18 already an argument with my client, Roger Grate, and his

19 stepson, correct?

20 A: Yes.

21 Q: And obviously, that was a heated conversation because

22 Darrell comes over and involves himself in the situation or

23 attempts to; does he not?

24 A: I assumed it was a heated conversation, because it caught

25 his attention, but he never stated it was a heated

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1 conversation. He said it was an argument.

2 Q: Okay. I'm sorry. But there was an argument and it

3 caught the attention of Darrell Doctor, who apparently comes

4 over, according to what my client explained to you, correct?

5 A: Yes, ma'am.

6 Q: All right. And then an argument ensues between Darrell

7 Doctor and Roger Grate, correct?

8 A: Over Darrell coming over to speak to his son about their

9 conversation, yes, ma'am.

10 Q: But specifically, after and again, I know we're gonna

11 have to get back to playing it, but after he -- Roger Grate

12 specifically says on this tape that after Darrell addressed

13 Gregory, the stepson ---

14 A: Uh-huh, (affirmative response).

15 Q: --- and he never addressed him. And you're saying you do

16 not recall that what you just heard there?

17 A: Oh, yes, he did ask him what was going on.

18 Q: Okay. Which was what I was actually asking you about

19 before.

20 A: I'm sorry; I misunderstood.

21 Q: It's okay. I know it's a lot going on. So, let's

22 clarify. At the time that Roger and his stepson are arguing

23 at the car, Darrell comes over and addresses Gregory, and then

24 he inserts himself and addresses Roger; did he not?

25 A: Yes.

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1 Q: So, there's actually an argument that begins between the
2 two of them at that point, correct?

3 A: I wouldn't say an argument, he asked him what was going
4 on.

5 Q: Okay. And did he tell you that he was mumbling some
6 other things?

7 A: Yes, he was mumbling something, he didn't know what he
8 was saying.

9 Q: Right. He couldn't recall the content, correct?

10 A: Yes, ma'am.

11 Q: But you don't know the content either, do you?

12 A: No, ma'am; I do not.

13 Q: And what he told you was that he was mumbling after the
14 argument with Gregory. He then proceeded to question Mr.
15 Grate, and Mr. Grate told you that he was mumbling and having
16 words with him, correct?

17 A: Yes.

18 Q: And then Mr. Grate tells you that Darrell and Gregory
19 proceed to move away or they're still there at the car arguing
20 or something or talking or having a conversation, correct?

21 A: I believe he said that's when Mr. Doctor started walking
22 towards him.

23 Q: Right. Okay. And at that point, Mr. Grate has told you
24 that he's fearful, correct?

25 A: Yes.

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1 Q: And did he -- he didn't tell you anything specifically
2 about Mr. -- excuse me -- Mr. Doctor's demeanor, do you know?

3 A: No, ma'am.

4 Q: And you didn't ask him anything about Darrell Doctor's
5 demeanor, did you?

6 A: No, ma'am.

7 Q: Now, he did tell you very specifically that this entire
8 incident happened very quickly, didn't he?

9 A: Yes, ma'am.

10 Q: And did you try to -- you didn't try to ascertain any
11 timeframe for how it quickly it happened, did you?

12 A: No, ma'am; I did not.

13 Q: So, he indicated to you that he was scared at the moment
14 that he pulled out his weapon because he's coming at him?

15 A: Yes.

16 Q: And you specific -- and specifically he told you he was
17 trying to shoot, not kill, but to shoot in the air around him
18 ---

19 A: Yes.

20 Q: --- trying to intimidate or frighten him?

21 A: Yes, ma'am.

22 Q: Now, I know that you told the solicitor -- I know you
23 told the solicitor that Mr. Grate -- and I'm sorry, I just
24 need the Court's indulgence for one quick second?

25 THE COURT: Yes, ma'am. No problem.

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1 Q: I'm sorry about that. I know at the very end there, you
2 told the solicitor that Mr. Grate says he never pulled a
3 weapon on anyone before. That's not actually what he said on
4 there, is it?

5 A: I specifically asked him has he been in a situation where
6 he had to pull his weapon while he had his concealed weapons
7 permit and he said no.

8 Q: Is it actual question that you asked him, have you ever
9 had an opportunity or reason to pull your weapon and shoot
10 someone; is that not what you asked?

11 A: I don't recall that being my exact language. It could be
12 but I don't believe that was what I said exactly.

13 Q: Would you like us to replay your testimony for you so
14 that you can hear it?

15 THE COURT: That's your decision.

16 MS. WILSON: Your Honor, we would like to replay it
17 please.

18 THE COURT: All right. Y'all going to have to find it.

19 MS. OWENS: Court's indulgence, Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. WILSON: Court's indulgence?

22 THE COURT: Yes, ma'am. Should we give the jury a short
23 break while we're finding it?

24 MS. WILSON: That would be much appreciated. Thank you.

25 THE COURT: All right. Mr. Foreman, ladies and

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1 to sit down and get up when they come in?

2 THE COURT: You can stay there; that's fine.

3 MS. WILSON: Okay.

4 (REPORTER'S NOTE: Jury enters courtroom @ 4:02 P.M.)

5 THE COURT: All right, Ms. Wilson, you may continue,
6 ma'am.

7 MS. WILSON: Thank you, Your Honor.

8 BY MS. WILSON:

9 Q: Just to get back to where we were at the break. I was
10 asking you, I know at the close of the state's questioning,
11 you indicated that Mr. Grate, Roger Grate, told you that he
12 had never had reason to discharge his -- to present his
13 weapon, correct?

14 A: Yes, ma'am.

15 Q: And I asked you specifically if that was exactly what he
16 said, and you indicated that you thought that it was, correct?

17 A: Yes, ma'am.

18 Q: And I indicated, too, at that point, that the audio
19 actually does not reflect what you're saying. It actually
20 reflects that you asked him specifically -- you asked him
21 specifically if he ever had reason to pull his weapon and use
22 it, and I think I may've said shoot it, but use, shoot it,
23 that's the question. I'm gonna play that portion of your
24 testimony -- I'm sorry -- of the audio at this point so you
25 can hear what you actually said.

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KING HEMINGWAY - REDIRECT BY HELMS

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1 A: Okay.

2 Q: And we're going to start at 17:45.

3 (REPORTER'S NOTE: Portion of State's 43 published for the
4 jury.)

5 BY MS. WILSON:

6 Q: All right. So, do you recall that now?

7 A: Yes, ma'am.

8 Q: All right. So, he told you he had a never had a reason
9 to present his weapon before and use it, correct?

10 A: Yes, ma'am.

11 Q: All right.

12 MS. WILSON: Court's indulgence for one more second?

13 THE COURT: Yes, ma'am.

14 MS. WILSON: No further questions, Your Honor.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION OF KING HEMINGWAY BY MR. HELMS:

17 Q: That question she just asked you about, did you hear that
18 question?

19 A: Yes, sir.

20 Q: All right. What were the exact wordings in that
21 question, the first time -- you're addressing him pulling a
22 gun. What did you say? Did you say had to pull your gun out
23 prior?

24 A: Yes, sir.

25 Q: And what was his response to that question, did you have

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KING HEMINGWAY - REDIRECT BY HELMS

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1 to pull your gun out prior?

2 A: The answer was no.

3 Q: She said, she brought up the point where he said he was
4 scared of you. Do you remember what was put on the arrest
5 warrant as his weight and height?

6 A: I do not.

7 Q: Or scared of Darrell, I apologize. If I show you that
8 warrant, will that refresh your memory?

9 A: Yes, sir.

10 Q: All right.

11 MR. HELMS: Do I need to mark this, Judge, because I'm
12 not entering it?

13 THE COURT: No.

14 Q: If you can tell this Court if Mr. Grate told you his
15 weight ---

16 THE COURT: Well, what he can do is refresh his memory
17 and then give you the document and then you can ask the
18 question.

19 MR. HELMS: I apologize.

20 BY MR. HELMS:

21 Q: Does that refresh your memory?

22 A: Yes, sir.

23 Q: What did -- what is his listed weight?

24 A: 275 pounds.

25 Q: And what about his height?

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KING HEMINGWAY - RECROSS BY WILSON

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1 A: Six feet, one inch.

2 Q: But he told you he was scared of his nephew walking
3 towards him?

4 A: Yes, sir.

5 Q: Okay. No further questions.

6 THE COURT: Any on those questions?

7 MS. WILSON: Yes, sir, very briefly.

8 RECROSS EXAMINATION OF KING HEMINGWAY BY MS. WILSON:

9 Q: He told you he was scared, correct?

10 A: Yes, ma'am.

11 Q: Because he told you that he thought his nephew was armed,
12 correct, because he had his hand in his pocket?

13 A: I think he had said because his nephew was walking
14 towards him with his hand in his pocket.

15 Q: Uh-huh, (affirmative response). Indicating that he
16 thought he had a weapon, correct?

17 A: He never said, I don't believe specifically, he thought
18 he had a weapon. He just said he was scared because his
19 nephew was walking towards him with his hand in his pocket.

20 Q: Okay. And so, then you understand then by that statement
21 that he was afraid and it had nothing to do with his weight
22 and height, correct?

23 A: Yes, ma'am.

24 Q: Okay. No further questions.

25 THE COURT: Do you wish -- you can step down, sir. You

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KING HEMINGWAY - RECROSS BY WILSON

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1 can have a seat.

2 Solicitor?

3 MR. HELMS: Your Honor, may he -- well, he's gonna
4 remain, but may he be excused from this hearing?

5 THE COURT: You're released from your subpoenas, but
6 obviously you're going -- subpoena, but obviously you're gonna
7 remain.

8 All right. Your next witness?

9 MR. HELMS: Your Honor, at this time, we'd call Terri
10 Doctor.

11 THE COURT: All right.

12 COURT REPORTER: Mr. Helms, may I have that exhibit
13 please?

14 MR. HELMS: Yes, ma'am.

15 COURT REPORTER: Thank you.

16 MS. WILSON: Your Honor, may we approach briefly?

17 THE COURT: Yes, ma'am.

18 (REPORTER'S NOTE: Bench conference is held off the record in
19 the presence of but outside the hearing of the jury.)

20 THE COURT: All right. Go ahead.

21 CLERK: Please raise your right hand and place your left
22 hand on the Bible.

23 TERRI DOCTOR, HAVING BEEN SWORN
24 TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated. State your full name and

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TERRI DOCTOR - DIRECT BY HELMS

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1 spell your name for the Court.

2 MS. DOCTOR: Terri Doctor, T-E-R-R-I, D-O-C-T-O-R.

3 DIRECT EXAMINATION OF TERRI DOCTOR BY MR. HELMS:

4 Q: Hi, Terri.

5 A: Hey.

6 Q: You ever met me?

7 A: Yes, I have.

8 Q: Your last name's Doctor. How do you know Darrell; how

9 did you know Darrell?

10 A: Darrell Doctor is my aunt's son, which he's my first

11 cousin.

12 Q: So, he's your cousin?

13 A: Yes.

14 Q: Do you know the defendant, Roger Grate?

15 A: Yes, I do.

16 Q: And how do you know Roger Grate?

17 A: He's married to my aunt, Carrie Ann Grate.

18 Q: What city do you live in?

19 A: Loris, South Carolina.

20 Q: How long you lived there?

21 A: All my life, 33 years.

22 Q: So, remind me one more time how you know Roger?

23 A: He's married to my aunt, Carrie Ann Grate.

24 Q: And how long have you known Roger?

25 A: My entire life.

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TERRI DOCTOR - DIRECT BY HELMS

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- 1 Q: Okay. Have you ever been over to his house?
- 2 A: Plenty of times.
- 3 Q: You ever hung out with him?
- 4 A: Plenty of times.
- 5 Q: Okay. Have you ever seen him get mad?
- 6 A: I have.
- 7 Q: Have you ever seen him -- did you know him to have a gun?
- 8 A: I have.
- 9 Q: Did you know him to carry a gun?
- 10 A: I have.
- 11 Q: Have you ever seen him pull a gun?
- 12 A: I have.
- 13 Q: Have you ever seen him pull a gun and point it at
- 14 somebody?
- 15 A: I have.
- 16 Q: Tell us about that time, please?
- 17 A: Approximately around in 2015, around October or November,
- 18 we was at his house. We was up under the carport and we were
- 19 all there sitting around playing cards and, of course, him and
- 20 his daughter was on the card table. We were all on the card
- 21 table; we were playing.
- 22 Q: Who's his daughter?
- 23 A: Carmen Grate is his daughter.
- 24 Q: Keep going.
- 25 A: And we were all playing and then there was a guy, he was

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TERRI DOCTOR - DIRECT BY HELMS

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1 sitting around the table, his name was Kentrez Hilton, and he
2 was winning. Of course, they got mad because he was winning
3 and, of course ---

4 Q: Who got mad?

5 A: Roger and Carmen got mad because he was winning the money
6 and when -- when they -- when they not winning, it's not okay.
7 They want to get mad; it's a problem.

8 Q: Okay.

9 A: So, him and Kentrez had a argument or whatever. So, as
10 they was having their argument, he proceeds to pull out the
11 gun. He pulls out the gun, Kentrez, they arguing or whatever
12 and he pulls out the gun, get up and Kentrez got up and was
13 like, let me dismiss myself from the situation before it got
14 any worser than what it already was. And after that, I also
15 left.

16 Q: So, there was an argument about cards?

17 A: Uh-huh, (affirmative response).

18 Q: And Roger pulled out a gun?

19 A: Uh-huh, (affirmative response).

20 THE COURT: You have to answer yes or no, ma'am.

21 A: Yes.

22 BY MR. HELMS:

23 Q: Now, you're related to both sides. You're related to
24 Darrell and you're related to Roger?

25 A: Yes.

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TERRI DOCTOR - DIRECT BY HELMS

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- 1 Q: Not my marriage, but you're related to his ---
- 2 A: I'm related to him by marriage, but I'm related to
- 3 Darrell because my Aunt Robersena and Aunt Carrie Ann are
- 4 sisters, two sisters' kids.
- 5 Q: So, you're just as related by blood to Carrie Ann as you
- 6 are Darrell?
- 7 A: Yes.
- 8 Q: And Carrie Ann again is who?
- 9 A: My aunt.
- 10 Q: And who is she to Roger?
- 11 A: His wife.
- 12 Q: Okay. So, do you have any loyalties to one side or the
- 13 other?
- 14 A: What you mean when you say that like ---
- 15 Q: Would you get on the stand today and tell a falsehood or
- 16 lie in this courtroom?
- 17 A: No, I would not.
- 18 Q: For one side or the other?
- 19 A: No, I would not.
- 20 Q: Do you understand perjury is a crime?
- 21 A: I understand that.
- 22 Q: And you're telling the truth here today?
- 23 A: Yes.
- 24 Q: And your testimony is that you saw Roger pull a gun on
- 25 somebody after an argument?

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TERRI DOCTOR - CROSS BY WILSON

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1 A: Yes, I did.

2 Q: Now, let me ask you this, the person he pulled the gun
3 on, did they -- did they threaten him?

4 A: Not at all.

5 Q: Did they -- was he -- did he have a gun pointed at him?

6 A: No, he did not.

7 Q: How about a knife, did anybody point a knife at him?

8 A: Nothing at all.

9 Q: He just pulled a gun out because he was arguing?

10 A: Because he was arguing and he was mad.

11 Q: Please answer any questions Ms. Wilson has, Terri. Thank
12 you.

13 THE COURT: Cross examination?

14 MS. WILSON: Just very briefly, Your Honor.

15 CROSS EXAMINATION OF TERRI DOCTOR BY MS. WILSON:

16 Q: Ms. Doctor, just to go back over it and you said that
17 you're blood related to Darrell Doctor, but not to Roger
18 Grate, correct?

19 A: Correct. Darrell is my first cousin and I'm related to
20 Roger by marriage of my Aunt Carrie Ann.

21 Q: Right. So, he's not your blood relative?

22 A: No.

23 Q: And it's clear that you're saying that you saw him pull
24 out a weapon before?

25 A: I have.

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BY THE COURT

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1 Q: Did he shoot anyone at that time?

2 A: No, he did not, but he pulled out the weapon.

3 Q: Not a discharged weapon --he didn't discharge the weapon,
4 correct?

5 A: He didn't.

6 Q: Okay. Thank you.

7 A: But he pulled it out.

8 Q: I have no further questions.

9 THE COURT: Redirect?

10 MR. HELMS: Nothing, Your Honor.

11 THE COURT: All right. You may step down, ma'am.

12 Do y'all want to come up and talk to me for a second?

13 MR. HELMS: Yes, sir.

14 (REPORTER'S NOTE: Bench conference is held off the record in
15 the presence of but outside the hearing of the jury.)

16 BY THE COURT:

17 THE COURT: All right, ladies and gentlemen, the next
18 witness is Dr. Edward Proctor, who did the autopsy, a forensic
19 pathologist associated with Grand Strand -- I guess they don't
20 call it Regional Medical Center anymore -- Grand Strand
21 Medical Center. And he's on his way, but he is not here.
22 He's coming obviously from Myrtle Beach, from his practice at
23 the hospital. So, hopefully, the solicitor will check on it
24 and see how far away he may be, but I don't anticipate, from
25 what they've told me already, that he'll get here before 4:30.

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EDWARD PROCTOR, JR. - DIRECT BY OWENS

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1 (REPORTER'S NOTE: Defendant enters courtroom.)

2 THE COURT: All right, ma'am, ask the jury to come in,
3 please.

4 (REPORTER'S NOTE: Jury enters courtroom @ 4:25 P.M.)

5 THE COURT: All right. Solicitor, your next witness,
6 please.

7 MS. OWENS: Thank you, Your Honor. Your Honor, the state
8 would call Dr. Edward Proctor.

9 THE COURT: All right, sir. Please come around, sir.

10 CLERK: Please raise your right hand and place your left
11 hand on the Bible.

12 DR. EDWARD PROCTOR, JR., HAVING BEEN SWORN
13 TESTIFIES AS FOLLOWS:

14 CLERK: Please be seated. Please state your name and
15 spell name.

16 DR. PROCTOR: Yes, ma'am. I am Edward Proctor, Jr. and
17 that's P-R-O-C-T-O-R.

18 THE COURT: Go ahead.

19 MS. OWENS: Thank you, Your Honor.

20 DIRECT EXAMINATION OF DR. EDWARD PROCTOR, JR. BY MS. OWENS:

21 Q: Dr. Proctor, what's your occupation?

22 A: I am a physician engaged in the practice of pathology.

23 Q: Okay. And how long have you been doing this?

24 A: I have been a pathologist, board certified, since 1982.

25 Q: And what did you do prior to that?

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1 A: Prior to that, I was in medical school, college.

2 Q: So, you've been doing this your entire profession?

3 A: That's correct.

4 Q: And what are your duties in this capacity?

5 A: Well, I am an anatomic and clinical and forensic
6 pathologist. Primary duties are examining specimens and
7 rendering diagnoses for physicians. Clinical side is running
8 the laboratory, blood bank, microbiology lab, those things,
9 and forensic is the medicolegal investigation of a death.

10 Q: I'm sorry, what was that last part?

11 A: Forensic is the medicolegal investigation of a death.

12 Q: Of a death?

13 A: Uh-huh, (affirmative response).

14 MS. OWENS: Your Honor, at this point, we would ask the
15 defense to stipulate -- if they will stipulate to Dr. Proctor
16 being an expert?

17 THE COURT: Do you wish to voir dire the witness or
18 challenge his qualifications?

19 MS. WILSON: Your Honor, I probably just have a couple of
20 quick questions.

21 THE COURT: Sure. Go ahead.

22 VOIR DIRE OF DR. EDWARD PROCTOR BY MS. WILSON:

23 Q: Good afternoon, Dr. Proctor?

24 A: Good afternoon.

25 Q: I know you said that you obviously went to college and

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1 medical school?

2 A: Uh-huh, (affirmative response).

3 Q: And that you have been board certified since 1982. What
4 other, I guess, continuing education type courses or classes
5 have you engaged in in this field?

6 A: Well, you are required by South Carolina state law to
7 maintain a 150 hours of continuing education in our specialty
8 to keep my license and that's every three years, 150.

9 Q: And you're up to date on your licensure?

10 A: Yes, ma'am.

11 MS. WILSON: Court's indulgence for one quick second?

12 THE COURT: Yes, ma'am.

13 MS. WILSON: No further questions, Your Honor.

14 THE COURT: All right. I find Dr. Proctor to be
15 qualified in the field of pathology -- more specifically for
16 this case, the field of forensic pathology. You may continue.

17 MS. OWENS: Thank you, Your Honor.

18 CONTINUATION OF DIRECT EXAMINATION OF EDWARD PROCTOR, JR. BY

19 MS. OWENS:

20 Q: Just real briefly, I know you've already been qualified
21 as an expert, but how many times have you testified as an
22 expert?

23 A: In this courtroom, several hundred or more.

24 Q: Okay. Now, where exactly are you employed?

25 A: I have an office at Grand Strand Medical Center in Myrtle

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1 Beach.

2 Q: And did you work in this capacity at Grand Strand back in
3 December of 2016?

4 A: Yes, I did.

5 Q: And did you have an opportunity to conduct an autopsy on
6 the victim in this case?

7 A: On December 26th of 2016, I performed an autopsy on
8 Darrell B. Doctor; yes, ma'am.

9 Q: And where was the autopsy conducted?

10 A: That was conducted at Grand Strand Medical Center.

11 Q: And pursuant to that autopsy, did you prepare a report?

12 A: I did.

13 MS. OWENS: Your Honor, may I approach the witness?

14 THE COURT: Yes, ma'am.

15 BY MS. OWENS:

16 Q: For identification purposes, I'm showing you what's been
17 previously marked as State's Exhibit Number 44; do you
18 recognize this document?

19 A: Yes; I do. It is a copy of my complete autopsy report.

20 Q: And this report is the same report that you provided to
21 our office in this case?

22 A: Yes; it is.

23 Q: And does this report accurately reflect your findings
24 regarding the autopsy of the victim in this case?

25 A: Yes, ma'am; it does.

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1 Q: Has it been altered in any way?

2 A: No.

3 MS. OWENS: Your Honor, at this time, I'd like to enter
4 State's Exhibit Number 44 into evidence, the Anatomical
5 Pathology Results prepared by Dr. Proctor.

6 MS. WILSON: Without objection.

7 THE COURT: All right. So, it's into evidence without
8 objection.

9 STATE'S EXHIBIT NUMBER 44

10 ADMITTED INTO EVIDENCE

11 MS. OWENS: Thank you, Your Honor.

12 BY MS. OWENS:

13 Q: Can you describe for us what an autopsy entails?

14 A: An autopsy in the realm of forensic pathology entails
15 taking what clinical history may be available from -- in South
16 Carolina, the coroner or law enforcement, examining the
17 deceased through an external examination followed by an
18 autopsy examination where we look at organs and tissues, we
19 obtain material for toxicology, and then based upon all of our
20 examination, we formulate a cause and manner of death.

21 Q: Okay. And you performed all those steps in this case?

22 A: Yes, ma'am.

23 Q: Can you tell us here today what your initial impressions
24 were and your ultimate findings in this case were?

25 A: In this case, this gentleman received a single gunshot

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1 wound to the head. It entered the head in the eyebrow area
2 above the right eye, it passed anteriorly to posteriorly and
3 slightly to the victim's right, and it exited in the posterior
4 head or occipital area. There was hemorrhage into the cranial
5 cavity and extensive damage to the brain tissues of the right
6 side of the head.

7 Q: And what caused that?

8 A: That was caused by the projectile that passed through or
9 the bullet that passed through the head.

10 MS. OWENS: Your Honor, may I approach the witness?

11 THE COURT: Yes, ma'am.

12 MS. OWENS: Your Honor, I'm approaching the witness with
13 what's been previously marked for identification purposes
14 State's Exhibit Number 45.

15 BY MS. OWENS:

16 Q: Dr. Proctor, do you recognize this object?

17 A: Yes, I do.

18 Q: And can you explain to us what this is?

19 A: This is -- this is a depiction of the projectile path as
20 it entered just in the eyebrow area passing anterior to
21 posteriorly exiting the posterior right opposite the occipital
22 area.

23 Q: Did you prepare this object?

24 A: I did.

25 MS. OWENS: Your Honor, at this time, we would move to

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1 put Exhibit Number, State's Exhibit Number 45 into evidence?

2 THE COURT: objection?

3 MS. WILSON: Just a quick question?

4 THE COURT: Yes, ma'am.

5 MS. WILSON: I didn't hear that last answer. He said he
6 did?

7 A: I did prepare that; yes, ma'am.

8 MS. WILSON: Without objection, Your Honor.

9 THE COURT: It's in evidence without objection.

10 STATE'S EXHIBIT NUMBER 45

11 ADMITTED INTO EVIDENCE

12 BY MS. OWENS:

13 Q: So, let's just go over one more time. The trajectory
14 rod, the bullet entered here and exited here?

15 A: Entered -- entered right on the eyebrow area above the
16 right eye and out in the right occipital area or posterior
17 here, yes, ma'am.

18 MS. OWENS: Your Honor, at this time, we would move to
19 publish this to the jury.

20 THE COURT: You may do so.

21 MS. OWENS: Thank you.

22 BY MS. OWENS:

23 Q: Let's go back to the pathology results. Can you tell us
24 what the weight and height of the victim was?

25 A: This gentleman was approximately 68 inches tall and had

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1 an estimated weight of approximately 250 pounds, I believe.

2 Q: For those of us that are not as good at math, how tall is
3 68 inches?

4 A: Five feet, eight inches.

5 Q: Thank you. Were you able to make a determination if
6 there was any alcohol in the victim's system?

7 A: The toxicologic evaluation, we performed a blood alcohol
8 and a blood drug screen on all of our cases. And in this
9 case, the blood drug screen was negative, the blood alcohol
10 was 159 milligrams per deciliter and converting that to -- the
11 way express it on a breathalyzer, it's .159 grams percent or
12 basically .16.

13 Q: Were there any drugs found, any illicit drugs found in
14 his system?

15 A: No, there were not.

16 Q: What was the ultimate cause of death?

17 A: The ultimate cause of death was extensive trauma to the
18 brain tissues caused by the gunshot wound.

19 Q: Okay. Did you recover a bullet or projectile of any kind
20 from the deceased?

21 A: We did not.

22 MS. OWENS: Court's indulgence for one second?

23 THE COURT: Yes, ma'am.

24 BY MS. OWENS:

25 Q: Dr. Proctor, when you examined the victim in this case,

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1 were there any other injuries to him?

2 A: There were -- there were not.

3 Q: So, the only injury was the bullet wound to his head?

4 A: That is correct.

5 Q: So, you can state with a reasonable degree of medical
6 certainty that Darrell Doctor died from the gunshot wound to
7 the head?

8 A: That is certainly my stated cause for his death, yes.

9 Q: Was there any stippling?

10 A: All right. Stippling, stippling occurs when the bullet
11 is close range or within 18 to 24 inches of the victim. And
12 in this case, I saw no residue, which is the actual powder
13 coming out of the end of the gun and no stippling, which is
14 the burning caused by the powder. I did not see either one.
15 So, the shot was fired from greater than 18 to 24 inches.

16 MS. OWENS: Court's indulgence one more second?

17 THE COURT: Yes, ma'am.

18 MS. OWENS: No further questions at this time.

19 Your Honor, we would ask to publish the pathology results
20 to the jury.

21 THE COURT: All right. You may do so.

22 MS. OWENS: Thank you, Your Honor.

23 THE COURT: All right. Cross examination?

24 MS. WILSON: Thank you, Your Honor.

25 CROSS EXAMINATION OF DR. EDWARD PROCTOR, JR. BY KIA WILSON:

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1 Q: Dr. Proctor, I know you said that the blood alcohol level
2 was .16 and you said that's in terms of, I guess, how law
3 enforcement might use it?

4 A: That's correct; yes, ma'am.

5 Q: And so then, .16, isn't that almost -- that's actually
6 double the legal limit, isn't it?

7 MR. HELMS: Objection, Your Honor.

8 THE COURT: I'm gonna allow the question. Thank you.

9 MS. WILSON: Thank you.

10 BY MS. WILSON:

11 Q: I'm sorry?

12 A: Yes. Double .08; that's correct.

13 Q: Yes, sir. And that would actually render a person very
14 intoxicated, correct?

15 A: It -- in general terms, yes.

16 Q: Yes. And

17 MS. WILSON: Court's indulgence one second?

18 THE COURT: Yes, ma'am.

19 MS. WILSON: All right. Your Honor ---

20 THE COURT: Do you need the pathology report?

21 MS. WILSON: Actually -- Your Honor, I would actually
22 like to approach the witness. This has not been marked as an
23 exhibit. I would just like to approach him with this.

24 THE COURT: Go ahead.

25 BY MS. WILSON:

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1 Q: And this is -- is this your report?

2 A: This is the report produced by National Medical Services
3 Laboratory, which is a certified forensic testing laboratory.
4 This is where we send all of our toxicologic specimens.

5 Q: Yes, sir. And is that -- that report is the result of
6 your ---

7 A: That is correct.

8 Q: --- your request?

9 A: That is correct.

10 Q: And in making that request, you actually took a blood
11 sample from Darrell Doctor?

12 A: Yes, I did.

13 Q: And sent that off for testing?

14 A: Yes, we did.

15 Q: And these were the results?

16 A: Yes.

17 Q: And just for clarification, can you please read the blood
18 alcohol level again?

19 A: Okay. Ethanol result 159 milligrams per deciliter, and
20 put it in blood alcohol concentration, which is grams percent,
21 that's .159.

22 Q: Yes, sir. Thank you.

23 A: Yes, ma'am.

24 MS. WILSON: Your Honor, Court's indulgence for just a
25 second?

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1 THE COURT: Yes, ma'am.

2 BY MS. WILSON:

3 Q: Just one more quick question, Dr. Proctor. When you
4 talked about stippling earlier, you said there was no residue
5 and no stippling ---

6 A: That's correct.

7 Q: And you, I'm sorry. I didn't mean to cut you off?

8 A: Sure.

9 Q: No residue and no stippling and you indicated that that
10 that is typically indicative of a person standing from farther
11 than 18 to 24 inches, you said?

12 A: That is correct.

13 Q: So, if someone claims to be standing approximately three
14 to four feet or so away, certainly you wouldn't expect to see
15 any of that?

16 A: That's correct.

17 Q: Thank you. No further questions.

18 THE COURT: Redirect?

19 MS. OWENS: Briefly, Your Honor.

20 REDIRECT EXAMINATION OF DR. EDWARD PROCTOR, JR. BY MS. OWENS:

21 Q: Dr. Proctor, does the victim having alcohol in his system
22 make him any less dead?

23 A: No.

24 MS. WILSON: Your Honor, I'm gonna object to that
25 question.

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1 THE COURT: I'm sorry, I didn't hear it. So, I heard the
2 beginning of it, then you mumbled away, I couldn't ---

3 MS. OWENS: I do apologize, Your Honor.

4 THE COURT: I'm sorry.

5 MS. OWENS: Your Honor ---

6 THE COURT: Y'all come up and talk to me.

7 (REPORTER'S NOTE: Bench conference is held off the record in
8 the presence of but outside the hearing of the jury.)

9 MS. OWENS: Thank you. I'll rephrase the question, Your
10 Honor.

11 BY MS. OWENS:

12 Q: Dr. Proctor, what was the cause of death just one more
13 time?

14 A: The cause of death was a gunshot wound to the head with
15 extensive cerebral or brain trauma.

16 Q: Does that have anything to do with the alcohol that was
17 found in his system?

18 A: No.

19 Q: Thank you. No further questions.

20 THE COURT: Anything on those questions?

21 MS. WILSON: Just briefly.

22 RECROSS EXAMINATION OF DR. EDWARD PROCTOR, JR. BY MS. WILSON:

23 Q: Dr. Proctor, clearly, you wouldn't have any knowledge
24 about the -- the behavior of a severely intoxicated person at
25 the time of this incident, would you?

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BY THE COURT

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1 MS. OWENS: Your Honor, I would object to the term
2 severely intoxicated. He has not stated that and that is not
3 in evidence.

4 THE COURT: All right.

5 MS. WILSON: I will rephrase it.

6 THE COURT: Rephrase the question.

7 MS. WILSON: Thank you, Your Honor.

8 BY MS. WILSON:

9 Q: Dr. Proctor, and I'm sorry, you would not have any way of
10 knowing of the behaviors of a person who is intoxicated at
11 double the legal limit, would you?

12 A: No, ma'am.

13 Q: Thank you. No further questions.

14 THE COURT: All right. Do you wish the witness to be
15 excused, Solicitor?

16 MS. OWENS: Yes, Your Honor.

17 THE COURT: Any objection?

18 MS. WILSON: No objection, Your Honor.

19 THE COURT: All right. Doctor, you are released from
20 your subpoena and may go back to your regular duties.

21 DR. PROCTOR: Thank you, Your Honor. Good to see you.

22 THE COURT: Yes, sir.

23 BY THE COURT:

24 THE COURT: All right. Solicitor, if you don't mind, if
25 you can retrieve the exhibits, please and give them to the

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1 please, sir.

2 MR. HELMS: Yes, Your Honor. At this time the state
3 would call Mr. James Grate to the stand.

4 THE COURT: All right. Very good.

5 All right, sir, just come all the way around and meet the
6 clerk's representative right up front.

7 CLERK: Please raise your right hand and place your left
8 hand on the Bible.

9 JAMES GRATE, HAVING BEEN SWORN
10 TESTIFIES AS FOLLOWS:

11 CLERK: Please be seated. Please state your name and
12 spell your name for the Court.

13 MR. JAMES GRATE: My name is James Grate, J-A-M-E-S, G-R-
14 A-T-E.

15 THE COURT: Go ahead, Solicitor.

16 MR. HELMS: Thank you, Your Honor.

17 DIRECT EXAMINATION OF JAMES GRATE BY MR. HELMS:

18 Q: Mr. Grate, what is your occupation?

19 A: I'm a First Sergeant in the United States Army.

20 Q: First Sergeant. How long have you been in the armed
21 forces?

22 A: I hit 20 years in June.

23 Q: In fact, are you not on leave right now?

24 A: Yes, sir.

25 Q: Did you just come back from deployment?

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1 A: Yes, seven months deployed.
2 Q: And you've testified under oath before?
3 A: Yes.
4 Q: As it concerns this matter?
5 A: Yes; it did.
6 Q: And was that statement a sworn statement?
7 A: Yes.
8 Q: And did you tell the truth?
9 A: Yes.
10 Q: Did you not also give a statement to law enforcement
11 about this matter?
12 A: Yes; I did.
13 Q: And were telling the truth then?
14 A: Yes, sir.
15 Q: Let me ask you a hypothetical question. If you were ever
16 convicted of say, perjury, or got in trouble for something
17 like that, would that have negative consequences on your
18 position in the armed forces?
19 A: Yes; it would.
20 Q: So, would you ever perjure yourself?
21 A: No.
22 Q: And you know what perjury is?
23 A: Uh-huh, (affirmative response).
24 Q: All right. Are you here to tell the truth to this jury
25 today?

1 A: Yes.

2 Q: Did you know the victim in this case, Darrell Doctor?

3 A: Yes; I did.

4 Q: How did you know Darrell?

5 A: He's relationship, third cousin.

6 Q: A third cousin?

7 A: Uh-huh, (affirmative response).

8 Q: Now your last name is Grate. Are you any relation to the

9 defendant, Roger Grate?

10 A: No relation.

11 Q: Do you know the defendant, Roger Grate?

12 A: Yes.

13 Q: How do you know the defendant, Roger Grate?

14 A: Growing up in the community, and he's married to my

15 cousin, Carrie Grate.

16 Q: Okay. He's married to your cousin, Carrie Grate?

17 A: Uh-huh, (affirmative response).

18 Q: But y'all are not related by blood or anything like that?

19 A: No blood.

20 Q: And Carrie Grate, we know who Carrie Grate is. Okay.

21 Have you ever been to the defendant's home?

22 A: No, that was my first time that night.

23 Q: Now, try to speak clearly and speak up so we can hear

24 you. What was the answer to that question, have you ever been

25 to his home before?

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JAMES GRATE - DIRECT BY HELMS

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1 A: Just that first time in 2016.

2 Q: On Christmas night?

3 A: Christmas night.

4 Q: And what were you doing there?

5 A: I was coming through the bottom and then I met a friend
6 of mine and they said, hey, they having a party, a Christmas
7 party there. So, I said, why not, I went up there to the
8 Christmas party.

9 Q: Were you here -- were you in the armed forces then?

10 A: Yes.

11 Q: Obviously.

12 A: Uh-huh, (affirmative response).

13 Q: Were you here on leave then?

14 A: Yes, I was on leave.

15 Q: So, were you going there to see family members and
16 friends?

17 A: Yes, I just, you know, like I said, it was a party, a
18 Christmas party, and like I haven't seen people in a long
19 time. So, I said I'd go up, and so I went up there and stuff.

20 Q: And who did you go there with?

21 A: Marcus Grate.

22 Q: Is he related to you?

23 A: No relation.

24 Q: Okay. There's a lot of Grates running around Loris.

25 So, about what time did you get to the house?

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1 A: I want to say probably about 11 o'clock, maybe 10:30 or
2 11 o'clock in that area like that.

3 Q: And what did you see when you got there, what happened
4 when you get there?

5 A: Well, when I got there, there was a lot of people under
6 the carport drinking and stuff like that, drinking and stuff,
7 and I went in the house and spoke to Carrie Ann, you know, I
8 haven't seen her in a while. I spoke to her and everything
9 like that and then I came back out.

10 Q: Okay. Were you drinking anything?

11 A: I had two beers before I got there.

12 Q: Did you speak to anybody else?

13 A: I spoke to Carmen, Carmen Grate, and I introduced myself
14 to her because that's the first time I seen her. I said, hey,
15 I think me and you cousins, and she say something like I don't
16 know who the fuck you is, I don't know who the fuck you is,
17 get out of my face and stuff like that. I said, well it's
18 time for me to go, you know.

19 Q: So, is that when you went outside?

20 A: Yes.

21 Q: So, when you went outside, what happened? Walk us
22 through it slowly, please.

23 A: Okay. When I went outside, I was walking toward my car
24 and I seen Roger Grate and his stepson, Darrell, not Darrell,
25 I mean Greg and they was out in the middle of the road fussing

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1 and everything at each other and stuff like that. So, I guess
2 they stopped fussing. And after they stopped fussing, Greg
3 walked towards his car and Roger followed Greg and when he
4 jacked Greg up on the car ---

5 Q: Who jacked Greg up on the car?

6 A: Roger Grate.

7 Q: And you saw that happen?

8 A: Yeah, I saw that happened.

9 Q: When you say he jacked him up, what does that mean?

10 A: He picked him up and laid him on the car.

11 Q: In an aggressive manner?

12 A: Aggressive manner.

13 Q: Then what happened?

14 A: And I guess he let him go. He let him go and then he
15 walked back in the street. At that time, Darrell Doctor was
16 on the other side of the street, he was like -- I don't know
17 exactly what he said, he said something like, maybe he said
18 why y'all doing this and stuff like that. And so, at that
19 time, that's when Roger Grate said get the fuck out of my yard
20 like that. He said get the fuck out of my yard. And Darrell
21 said, at that time, I'll get the fuck -- he said, I'll get out
22 of your yard, let me go get in my truck. So, as he started
23 walking toward the truck, Roger Grate -- he's in the middle of
24 the road still, as he started -- cause he come from this side
25 of the road, Roger is in the middle of the road. So, as he

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1 started walking, Roger walked pretty much kind of catty-
2 cornered in the front of him right there, he pulled the gun
3 out of his pocket. When I saw the gun come out the pocket, I
4 -- and I ducked and I heard the bullets. And then when I got
5 up, Darrell was in the middle of the road and everything. So,
6 at this time, Corey, another cousin of mine, somebody -- they
7 picked him up from the middle of the road and tried to drag
8 him to my car, probably less than ---

9 Q: Picked who up?

10 A: Darrell on the ground. They picked Darrell up and tried
11 to bring him to my car and I said, no, we have to do CPR. So,
12 he moved him probably about 10 feet to try to get out the -- I
13 said, no, we're not gonna put him in my car; we're going to do
14 CPR, cause my military instincts kicked in. You know, at
15 least, you know, give him CPR. So, I tried to -- I say help
16 me, help me, I need to do this and like that, right. And, you
17 know, so, at the time, I see the bullet, you know the exit
18 wound and ---

19 Q: The entrance wound?

20 A: The entrance wound, I mean -- you'll have to excuse me.
21 And I checked the pulse and at that time, he was -- already
22 gone. There's ain't gonna nothing -- he was probably dead
23 when he hit the ground, so...

24 Q: All right. Let's stop there. I want to back up.

25 You said, Roger jacked up Gregory?

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1 A: Yes.

2 Q: And Darrell came to who -- who did he come -- walk to?

3 A: He didn't walk, he was on the other -- so, when he, Roger
4 and -- Roger and his stepson were arguing in the middle of the
5 road, so they stopped arguing. So, Roger -- Greg started
6 walking towards his car. Roger followed him.

7 Q: All right. Wait right there. Let's do it like this,
8 because this is gonna be the easiest way to do it.

9 MR. HELMS: May I approach, Judge?

10 THE COURT: Yes, sir.

11 MR. HELMS: Thank you very much.

12 BY MR. HELMS:

13 Q: I'm showing you now what's been entered into evidence as
14 State's Exhibit 40. Now, I'll tell you what I want you to do.

15 If you don't mind, Your Honor?

16 THE COURT: I don't mind, but again, he's got to be next
17 to a microphone.

18 MR. HELMS: Well, I'll tell you what I'll do.

19 THE COURT: You got to have him next to a microphone.

20 MR. HELMS: Thank you, Judge.

21 BY MR. HELMS:

22 Q: Have you seen this before?

23 A: Yes, sir.

24 COURT REPORTER: Mr. Helms?

25 MR. HELMS: Yes, ma'am. I'm very sorry, but I need to

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1 see him and you're blocking me.

2 THE COURT: Why don't you just ---

3 MR. HELMS: You tell me where to be, Judge.

4 THE COURT: If he's going to go up there, you're not
5 going to see him either.

6 MR. HELMS: How about right here; is this okay?

7 COURT REPORTER: Yes, sir.

8 MR. HELMS: All right.

9 BY MR. HELMS:

10 Q: You've seen this before?

11 A: Yes, I have.

12 Q: What does this look like to you?

13 A: The area or location where I was at that night, where the
14 car was parked there at the house and everything, all the
15 other two vehicles parked.

16 Q: Previously, under sworn testimony, you placed these two
17 stickers here, did you not?

18 A: Yes; I did.

19 Q: I want you to tell this jury what that sticker right
20 there is?

21 A: There was a car right there that was facing that way.

22 Q: Wait a minute. Do you know whose car that was?

23 A: I believe Gregory's.

24 Q: All right. What color car was that?

25 A: I can't recall. It's like a teal green or green.

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1 Q: Okay. It was a green car?

2 A: Uh-huh, (affirmative response).

3 Q: Tell me whose car that is?

4 A: That SUV, that was Darrell's.

5 Q: That's Darrell's car?

6 A: Uh-huh, (affirmative response).

7 Q: All right. So, start from the beginning. I want you to

8 start from where Gregory and Roger get into an argument, and

9 show us and point to where they were when that happened?

10 A: So, they was pretty much right in the middle of the road

11 right there, and I was coming from right there.

12 Q: All right. Now, this is the carport, right?

13 A: That's the carport right there, carport and driveway. I

14 was walking out the driveway. I could see them fussing and

15 arguing right there, so ---

16 THE COURT: Watch the microphone.

17 MR. HELMS: Yes, Your Honor.

18 A: I can see them arguing right there, Greg and his step-

19 dad.

20 BY MR. HELMS:

21 Q: Okay.

22 A: So, when they stopped arguing, Greg walked towards his

23 car and then Roger followed him. When he got there, he jacked

24 him up and picked him up and laid him on top of the hood, and

25 then he let him go, and he walked back in the road, Roger.

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1 Darrell was on this side and he was saying, I guess, this is
2 something happened by what's going on back there.
3 Q: Say that again. He was saying what?
4 A: Just he was saying something like why did this happen or
5 what y'all doing, you shouldn't be doing this on Christmas Eve
6 or something like that.
7 Q: Did it appear to you that he was trying to make the
8 peace?
9 A: To make peace, it wasn't no like, all this and that, and
10 that's ---
11 Q: Was Darrell being aggressive towards anyone?
12 A: No, he wasn't being aggressive.
13 Q: Was he trying to start a fight with anybody?
14 A: No. And then at that time, that's when Roger said, get
15 the fuck out my yard, like that.
16 Q: Who did he say that to?
17 A: Darrell.
18 Q: Where is Roger standing when he says that?
19 A: He's still in the middle of the road.
20 Q: Right there?
21 A: Uh-huh, (affirmative response).
22 Q: Right there where the word victim is?
23 A: Uh-huh, (affirmative response).
24 Q: And point to where Darrell is when he says that?
25 A: Darrell is around about like this area right here.

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- 1 Q: All right. What happens next?
- 2 A: So, Darrell started walking, just casually walking -- let
3 me go get my truck and I'll get out your yard.
- 4 Q: Say that again. He said what?
- 5 A: He said, let me get my truck and I'll get out your yard.
- 6 Q: Let me get my truck and I'll get out your yard. But, are
7 they actually in Roger's yard?
- 8 A: No, he's not in the yard.
- 9 Q: They're in the street, but everybody is just referring to
10 it?
- 11 A: Uh-huh, (affirmative response).
- 12 Q: Okay. So, after he says let me get my truck, what does
13 he do?
- 14 A: So, he started walking like going this way. Darrell
15 started walking. Roger comes up in front of him. I saw him
16 on this side -- I saw him when he went to his right-hand
17 pocket, pulled a gun out. When he pulled the gun out, I
18 ducked, I said, oh, hell, a bullet don't got no name. And
19 heard a shots and I ducked.
- 20 Q: You said shot or shots?
- 21 A: Shot. Probably maybe one, it was one shot, but I thought
22 it was two.
- 23 Q: Okay.
- 24 A: But it was one. And he ---
- 25 Q: It could have been an echo?

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1 A: --- you know, so many -- and so I saw him pull the gun
2 cause they was like right there, close range, he was like like
3 right there.

4 Q: In the middle of the street?

5 A: Yeah, right there, cause when he did like that, he just
6 stepped in front him.

7 Q: Who stepped in front of who?

8 A: Roger stepped in front of Greg, pulled the gun. When I
9 saw the gun, I ducked. And when I got up, that's when I saw
10 the victim laying in the road and Corey tried to pick him up
11 and bring him to my car.

12 Q: Let me stop you right there. You said Roger stepped in
13 front of Greg. Greg is actually his son. You mean Roger
14 stepped in front of Darrell?

15 A: I mean, yes, Darrell. I'm sorry.

16 Q: Slow down. I know you get tongue tied. Keep going.

17 A: So, like I say, he stepped in front of Darrell because
18 Darrell was like going, like coming up this way going to get
19 his truck, going to the truck.

20 Q: You know that because he said that?

21 A: Yeah, he said let me go get my truck out your yard. I
22 mean, as soon as he came that way, Roger stepped in front,
23 pulled the gun out and boom.

24 Q: So, is it your testimony here today that after Darrell
25 said let me go get my truck -- where is his truck again,

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1 indicate?

2 A: It was right there.

3 Q: That red sticker right there. After Darrell said let me

4 go get my truck, Roger stepped in front of him?

5 A: As he walked, as he walked.

6 Q: Was Darrell charging Roger?

7 A: No, he wasn't charging him.

8 Q: Was he walking towards Roger?

9 A: He was walking like, if you're going, like a V, like

10 going ---

11 Q: So he was walking towards his truck?

12 A: He was walking to the truck.

13 Q: Was he challenging Roger?

14 A: No. No.

15 Q: Did he say anything in a threatening manner to Roger?

16 A: No.

17 Q: Did he say I'm gonna beat your ass or anything like that?

18 A: No, nothing like that.

19 Q: Did he appear to be acting aggressive in any way, shape

20 or form?

21 A: No, he was just walking, just going to go get his truck.

22 Q: And did Roger -- was Roger in a position where he had to

23 shoot Darrell?

24 A: No, I think he should've. I mean, I ---

25 Q: Well, I'm asking you could he have walked away?

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- 1 A: Yeah, he could have walked away.
- 2 Q: Was he pinned in anywhere?
- 3 A: Nothing pinned in there, everything was open. So, he
- 4 wasn't in like no, you know ---
- 5 Q: Did you see Darrell give Roger a reason to shoot him?
- 6 A: No, I didn't.
- 7 Q: So, then what happens when Darrell -- where are you at
- 8 when he pulls out the gun?
- 9 A: So, he pulled out the gun, I see it, I ducked.
- 10 Q: Where did you duck?
- 11 A: Up in here, right in this area right here, almost beside
- 12 my car -- it wasn't in the front of the car, it's like a --
- 13 so, up in this area, I ducked right in there by my car.
- 14 Q: So, this is your car?
- 15 A: Yeah, my car is right there.
- 16 Q: And you're saying you ducked beside it?
- 17 A: Beside it; uh-huh, (affirmative response).
- 18 Q: And why did you do that?
- 19 A: Because I say a bullet ain't got no name.
- 20 Q: A bullet ain't got no name?
- 21 A: Ain't got no name.
- 22 Q: Sounds like a military saying. So, did you actually see
- 23 him pull the trigger?
- 24 A: I seen him pull up the gun.
- 25 Q: And point it at Darrell?

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- 1 A: Yes. And I heard -- I definitely heard the gun fire.
- 2 Q: Did you see what Darrell did when he pointed the gun at
- 3 him?
- 4 A: No.
- 5 Q: Okay. So, you ducked and heard a gun fire?
- 6 A: Yes.
- 7 Q: Then what?
- 8 A: When I got up, that's when I saw the victim in the road
- 9 and I seen Corey picking him up and another guy, they picked
- 10 him up ---
- 11 Q: Now, who is Corey again?
- 12 A: Another cousin of ours.
- 13 Q: Another cousin?
- 14 A: Uh-huh, (affirmative response). They picked him up and
- 15 tried to bring him, they said let me put him in your car. I
- 16 said no ---
- 17 Q: Why was he doing that?
- 18 A: Trying to get him to the hospital.
- 19 Q: Okay.
- 20 A: And I said no, we gonna do CPR, you know, try to get a
- 21 pulse and everything, you know ---
- 22 Q: And you stopped him from doing that because you knew from
- 23 military training ---
- 24 A: Uh-huh, (affirmative response).
- 25 Q: --- that that's what needed to occur?

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1 A: Even though a brain shot wound, he's still ---
2 Q: Did you receive CPR training in the military?
3 A: Yes, sir.
4 Q: As a sergeant?
5 A: Uh-huh, (affirmative response).
6 THE COURT: That was a yes?
7 A: Yes.
8 THE COURT: All right.
9 BY MR. HELMS:
10 Q: Okay. Did you feel for a pulse?
11 A: Yes.
12 Q: Did you feel the pulse?
13 A: No.
14 Q: Do you know how to find a pulse?
15 A: Yes.
16 Q: Okay. And again, just for clarification?
17 A: Okay.
18 Q: Point to the victim's car.
19 A: Right here.
20 Q: Point to where he was right before he got shot?
21 A: On this side over here.
22 Q: And point to where the defendant was?
23 A: In the middle of the road.
24 Q: Okay. You can sit down.
25 THE COURT: And if you would, move that microphone.

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1 Thank you, sir.

2 BY MR. HELMS:

3 Q: So, after you give him CPR, attempt to give him CPR and
4 you don't find a pulse, then what do you do?

5 A: Say that again.

6 Q: After you didn't find a pulse on Darrell, then what?

7 A: I say somebody call the ambulance, you know, call the
8 ambulance, you know, so ---

9 Q: And did the ambulance in fact come?

10 A: It seemed like maybe 20 minutes later or 30 minutes later
11 like the police showed up, the ambulance showed up, everything
12 just started happening so fast.

13 Q: All right. So, when the police showed up, did they talk
14 to you?

15 A: Yes, I went to a detective. They had like a detective
16 car. I can't think of her name right now.

17 Q: And did she ask you what happened?

18 A: Yes, she did.

19 Q: And did you tell her what happened?

20 A: Yes.

21 Q: Did you cooperate?

22 A: Yes.

23 Q: Did you try to answer all of her questions?

24 A: Yeah, she asked me questions. She asked me questions and
25 I was -- I was just like so frustrated and angry and just seen

1 all this stuff that happened.

2 Q: Were you nervous?

3 A: Yes.

4 Q: Were you kind of frazzled?

5 A: A little, yes.

6 Q: Were you talking real fast like you're talking today?

7 A: Yes, I was.

8 Q: Sometimes, when you get nervous and frazzled, do you say

9 something that like you -- remember when you said Gregory was

10 there or something like that, is that a common thing that you

11 do?

12 A: Yeah, if I get to talking fast and I'm real nervous.

13 Q: Is it possible that when you were talking to this

14 detective, you might've said something in the heat of the

15 moment you didn't mean?

16 A: Yes, I did.

17 Q: Let me ask you specifically, I know there was a gun

18 involved?

19 A: Uh-huh, (affirmative response).

20 Q: People involved?

21 A: Uh-huh, (affirmative response).

22 Q: When she asked you what Darrell said when he was walking

23 to your car, to his car, is it possible, you let out something

24 about a gun?

25 A: Yes, I did.

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- 1 Q: Did you mean to say that Darrell was going to get a gun?
- 2 A: I didn't mean to say that, I was talking fast and I was
- 3 like car, I say gun, going to get his gun, that was what I was
- 4 thinking, but he never said that. So ---
- 5 Q: Okay. So did Darrell give any indication he was going to
- 6 get a gun?
- 7 A: No, sir.
- 8 Q: Did he say, I'm going to my car to get my gun?
- 9 A: No, sir.
- 10 Q: What did he actually say?
- 11 A: He said let me go get my truck out your yard.
- 12 Q: So, he indicated to Roger that he was going to leave?
- 13 A: Uh-huh, (affirmative response), after he say get the ---
- 14 Q: Again, he wasn't challenging him?
- 15 A: No, he wasn't challenge him.
- 16 Q: He didn't threaten Roger?
- 17 A: No, he didn't.
- 18 Q: He didn't say anything about a gun?
- 19 A: No.
- 20 Q: Were you able to hear Darrell clearly, say from where you
- 21 were standing?
- 22 A: Yes.
- 23 Q: When he said I'm going to -- were you able to hear that
- 24 clearly?
- 25 A: Uh-huh, (affirmative response).

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1 Q: Is there any doubt in your mind about what he said?
2 A: There's no doubt.
3 Q: Was Darrell drinking anything, do you know?
4 A: I don't know if he was drinking or not.
5 Q: I'm sorry?
6 A: I don't know if he was drinking or not at that moment.
7 Q: From Darrell's appearance, did he appear to you to be
8 intoxicated the way he was acting?
9 A: No, he didn't appear to be intoxicated.
10 Q: Was he stumbling around?
11 A: No, not to my knowledge.
12 Q: Was he slurring his speech?
13 A: No.
14 Q: Was he acting inappropriately towards anyone?
15 A: No.
16 Q: About how long did this entire thing last? Let's talk --
17 from the time you got to the house, give me some kind of
18 timeframe; how long did all this last?
19 A: I'd say about 30 minutes to 40 minutes. It happened so
20 fast, 30 or 40 minutes, it could've been about an hour. It
21 just happened so fast. It just seemed like it happened.
22 Q: It's hard to remember?
23 A: Uh-huh, (affirmative response).
24 Q: After Darrell went down ---
25 A: Uh-huh, (affirmative response).

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1 Q: --- did anyone else try to help him?

2 A: Like I said, it was Corey, the cousin, that picked him up
3 and tried to bring him to my car, and I said no. That was the
4 only one.

5 Q: Was there a nurse lady that came and tried to help?

6 A: Yes, the next-door neighbor, she came out there and
7 checked his pulse, too.

8 Q: What happened with her; did anything happen with her?

9 A: While she was checking the pulse, all of a sudden Carmen
10 ran out there out the blue and just knocked her -- I don't
11 know why she hit her for. She just hit her for no reason, you
12 know. You think they would try to be helping ---

13 MS. WILSON: Your Honor, I'm gonna object.

14 THE COURT: Sustained. It has nothing to do with this
15 case. The jury will disregard.

16 BY MR. HELMS:

17 Q: Were you -- were you scared that night after the
18 shooting; were you nervous and anxious?

19 A: Nervous.

20 Q: What did Roger do after he shot Darrell?

21 A: Standing in the middle of the road, just -- he ain't go
22 nowhere, just stood right in the area.

23 Q: Did he scream, oh my God, what have I done?

24 A: No.

25 Q: Did he look surprised at what had happened?

1 A: I just -- normal looking face, just stood right there and
2 just know that he probably did something wrong.
3 Q: Did he bend down and try to help Darrell at all?
4 A: No.
5 Q: Did he yell for somebody to come help, help?
6 A: No, I don't remember that.
7 Q: And again, did Darrell say anything about going to get a
8 gun?
9 A: No.
10 Q: Before he was shot, do you remember where Darrell's hands
11 were? I mean, I know you said you ducked after you saw the
12 gun, do you remember? If not, that's okay; I'm just asking.
13 A: No, I don't remember where his hands was at.
14 Q: Okay. Did you see any weapons on Darrell?
15 A: No.
16 Q: After he went down and you were helping him and Corey was
17 helping him, did you see any weapons near his body?
18 A: No, there weren't no weapons.
19 Q: Did you see any weapons on his body?
20 A: No.
21 Q: Did you take anything away from the scene?
22 A: No.
23 Q: Did you see Corey take anything away from the scene?
24 A: No.
25 Q: Do you -- did you have any reason or any indication that

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1 Darrell had a weapon?

2 A: No, sir.

3 Q: From what he said or how he acted or what he did?

4 A: No reason to think he have a weapon.

5 Q: Please answer any questions Ms. Wilson has.

6 THE COURT: Cross examination?

7 MS. WILSON: Thank you, Your Honor.

8 CROSS EXAMINATION OF JAMES GRATE BY MS. WILSON:

9 Q: Good morning, Mr. Grate?

10 A: Good morning. How you doing?

11 Q: You say you admittedly had drinks that night, correct?

12 A: Yes.

13 Q: And you had drinks before you arrived at this family
14 gathering, correct?

15 A: Two drinks before I got there.

16 Q: And you're saying to this Court that you didn't have any
17 drinks since you got there?

18 A: I didn't have any drinks once I got there.

19 Q: Nothing?

20 A: Nothing whatsoever.

21 Q: But you weren't invited to this gathering, were you?

22 A: Say again?

23 Q: You were not invited to this gathering?

24 A: Like I say, I came through the bottom, Marcus Grate,
25 said, hey, your cousin, my cousin, they having a Christmas

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1 party. I said okay. I take -- and I went up there, got
2 there. Like I said, a lot of people was under the thing. I
3 walked in, spoke to Carrie Ann and I walked back out and I
4 spoke to Carmen, and then I left -- got ready to leave.
5 Q: But you weren't invited, correct?
6 A: No, I wasn't invited.
7 Q: And you said, I believe, that you are a blood relative of
8 Darrell Doctor, but you are not a blood relative of Roger
9 Grate, correct?
10 A: No, no.
11 Q: And you're telling us that you were getting into your
12 car?
13 A: Walking towards my car.
14 Q: Walking towards your car?
15 A: Uh-huh, (affirmative response).
16 Q: And basically, you're saying that you witnessed the
17 incident between Roger and Darrell?
18 A: Yes, the whole thing.
19 Q: And but you didn't actually see the whole thing, did you?
20 A: I saw everything -- when he really, his son, his stepson
21 fussing and arguing and everything. It came to the point
22 where he got up and started to walk -- after he said everybody
23 get the fuck out of my yard. I say when Darrell started
24 working. I saw Roger went in his pocket, pulled a gun out,
25 and that's when I ducked.

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1 Q: Okay. So, you recalled previously -- because I know the
2 state talked about your previous sworn statement, you do
3 recall saying that you did see everything, right?

4 A: I did say I seen everything.

5 Q: And you then admit then that you are now saying that you
6 don't -- you didn't see everything?

7 A: I did not say I didn't see everything. You asked me if I
8 seen everything and I said yes, I saw like Darrell -- Roger
9 and his stepson was fussing and fighting. Then I saw him pull
10 out the gun and that's when I ducked.

11 Q: So again, my question is, you understand that you told
12 the state, because the state asked you about your sworn
13 testimony before?

14 A: Uh-huh, (affirmative response).

15 Q: And you said you recall that?

16 A: Yes.

17 Q: And today, you testified that you didn't see the entire
18 incident?

19 MR. HELMS: Objection. That's not what he testified to.

20 THE COURT: All right. Hold on a second. It's cross
21 examination. She can ask the questions. The witness can
22 agree or disagree.

23 Sir, when the attorney asked you a question, you do your
24 best to answer the question. If you need to explain your
25 answer, you're certainly welcome to explain your answer.

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1 Okay?

2 Go ahead and ask your question, ma'am.

3 MS. WILSON: Thank you, Your Honor.

4 BY MS. WILSON:

5 Q: I'm sorry, I'm gonna go back.

6 A: Okay.

7 Q: The state questioned you and asked you about previous
8 sworn testimony?

9 A: Uh-huh, (affirmative response).

10 Q: In which you said you understand ---

11 THE COURT: You need to say yes or no because the Court
12 Reporter has to ---

13 A: Okay.

14 BY MS. WILSON:

15 Q: I'm sorry, I lost my train of thought. Let me try it
16 again.

17 A: Okay.

18 Q: The state asked you about previous sworn testimony that
19 you gave in this matter?

20 A: Yes.

21 Q: And you agreed that you understand the difference between
22 a truth and a lie?

23 A: Yes.

24 Q: And that is critical to your employment?

25 A: Yes.

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1 Q: That's what you said, right?

2 A: Uh-huh, (affirmative response).

3 Q: And what my question is, is you did state previously in
4 your sworn testimony that you did see everything that happened
5 here?

6 A: Yes.

7 Q: Correct?

8 A: Uh-huh, (affirmative response).

9 Q: Including the shooting, correct?

10 A: Uh-huh, (affirmative response).

11 Q: And you are admitting today that you did not see
12 everything; is that not correct?

13 A: That's not correct.

14 Q: Okay. So, you didn't just tell the state that you did
15 not see the actual shooting; didn't you just say that?

16 A: I said I saw pull the gun out and I ducked and I heard
17 the fire shot.

18 Q: Okay. And my question is very specific. You admitted
19 today that you did not see everything?

20 A: I did not say it. I did not say it.

21 MS. WILSON: Your Honor, if we could replay ---

22 THE COURT: Ma'am?

23 MS. WILSON: Yes, sir.

24 THE COURT: Y'all come up and talk to me.

25 MS. WILSON: Yes, sir. Thank you.

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1 (REPORTER'S NOTE: Bench conference is held off the record in
2 the presence of but outside the hearing of the jury.)

3 BY MS. WILSON:

4 Q: Mr. Grate, you said that before the gunshot, you ducked
5 down?

6 A: Yes.

7 Q: And you said it's because you saw the gun?

8 A: I saw him pull -- I saw him pull it out, when I saw when
9 he pulled it out, that's when I ducked.

10 Q: And at the point that you ducked, you did not see
11 anything during that timeframe, correct?

12 A: When I got up, I saw the victim on the ground.

13 Q: And again, my question is, when you ducked down, you did
14 not see anything at the scene, correct?

15 A: When I ducked down, I saw him pull the gun up, and I
16 ducked. Then when I got up -- when I heard the gunshot,
17 that's when I got up.

18 Q: Okay. And my question again is very specific. When you
19 ducked down ---

20 A: Well, I did not see.

21 Q: Thank you. When you ducked down and you saw nothing?

22 A: Yes.

23 Q: And then when you got back up, you say you saw Darrell
24 Doctor on the ground, correct?

25 A: Yes.

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- 1 Q: And that that point you, you said that -- I think you
2 said Corey came over and moved him to start performing CPR?
3 A: He was trying to bring him to my car.
4 Q: All right. And at that point, you're saying, don't bring
5 him to the car, let's perform CPR right here?
6 A: Yes.
7 Q: And your car is actually parked, and for demonstration
8 purposes, you're parked right here?
9 A: Yes.
10 Q: And so you said you -- I believe in your previous sworn
11 testimony, you said you were actually here at the front of
12 your car, didn't you?
13 A: Yes, beside my car.
14 Q: Okay.
15 A: Front ---
16 Q: I'm sorry. No, no. I don't want to interrupt you. What
17 were you gonna say?
18 A: By the side of my car; almost it's beside my car.
19 Q: Okay. So, do you recall your previous sworn testimony
20 saying you were at the front of your car?
21 A: Yes.
22 Q: All right. So, today you're saying you were beside it,
23 which would be on the side, correct?
24 A: Almost near the front.
25 Q: Okay. But previously, you said you were at the front?

1 A: Yes, but I mean beside the front of the car.

2 Q: Okay. Now, we've established that you never actually saw
3 the shooting take place, correct?

4 A: Yes.

5 Q: And you admit that Darrell was trying to insert himself
6 into the situation between Roger and his stepson, correct?

7 A: Can you repeat that again?

8 Q: You admit Darrell involved himself in a situation between
9 Darrell -- I mean, between -- I'm getting things mixed up now
10 -- between Roger and his stepson, Gregory?

11 A: So, after, like I said, after Roger -- when Roger and
12 Darrell -- I mean, when Roger and Gregory was in the middle of
13 the road fussing. They stopped and Roger walked behind
14 Gregory towards his car and that's when he jacked him up. He
15 let him go. And after that, Roger walked back in the road and
16 the only thing Darrell was saying something like family
17 members, this and that, and then that's when Roger said let me
18 -- get the fuck out of my yard, and Darrell said let me go get
19 my car and I'll get out your yard.

20 Q: But you admit that Darrell inserted himself into the
21 difficulty between Roger and his stepson?

22 A: You're saying insert by saying why y'all doing this,
23 that's -- that's just asking a question.

24 Q: Okay. He ---

25 A: Yeah, that's just asking a question or saying -- making a

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1 statement why y'all doing this on a night like this.

2 Q: Well, I guess my question then is gonna be Roger did not
3 call Darrell over there, did he?

4 A: Darrell did not went over there. After he said -- after
5 he said y'all need -- he said, get the -- after he say ---

6 THE COURT: All right, sir. You need to listen to the
7 question being asked, directly answer the question being
8 asked.

9 A: Okay.

10 THE COURT: If you need to explain it, then you can
11 explain it. Okay?

12 A: Okay.

13 THE COURT: Thank you.

14 BY MS. WILSON:

15 Q: Roger did not call Darrell over there, did he?

16 A: No, he didn't call him.

17 Q: Gregory did not call Darrell over here, did he?

18 A: No, because -- no.

19 Q: Okay. Now, previously, when the state questioned you,
20 you said that -- and in your prior sworn testimony,
21 specifically you said that you heard -- and it's unclear
22 exactly what you're trying to say, but it appears that you're
23 trying to say in your sworn testimony that there were multiple
24 shots, and today you said yeah, it might have been multiples,
25 maybe it was an echo, but today I think you were trying to say

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1 it was just one shot. Is that just a correction because you
2 know it was only one shot at this point?

3 A: So, the last -- the last thing on -- yea, I say multiple
4 shots, shots clap out, echo or ring, but it ---

5 Q: I'm so sorry, repeat that last word so the record is
6 clear.

7 A: I said I thought it was more than one shot because it
8 echoed, because it was so close, but it was only one shot.

9 Q: So, you admit then that your testimony today is different
10 from what you previously told the officers and what you ---

11 A: No, it's not different. Like I say, I thought I heard
12 two at that time, but it was an echo, but it was actually one
13 I heard one shot. I thought it was an echo.

14 Q: But it is different from what you previously said,
15 correct?

16 MR. HELMS: Asked and answered, Your Honor.

17 THE COURT: I'm gonna allow the question. You may ask
18 the question.

19 MS. WILSON: Thank you, Your Honor.

20 BY MS. WILSON:

21 Q: It is different today than what you previously stated,
22 correct?

23 A: No, I don't think it's different, no, because I said I
24 thought it was echo. I said on that day, but it probably was
25 one shot; it was one shot.

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1 Q: But to be clear, even though you're saying one shot today

2 ---

3 A: Yes, I said previously, yes.

4 Q: Thank you. Now, you are saying that you're -- you're
5 obviously saying that you're certain about the events of that
6 night?

7 A: Yes.

8 Q: But it's clear that there are lots of inconsistencies in
9 what your recollection is from that night, isn't there?

10 A: No.

11 Q: So, you don't think that being mistaken about the number
12 of shots, being mistaken about where you were when the shots
13 -- when the shot happened, about location of people and
14 things, you don't think that those are inconsistencies?

15 A: Somewhat.

16 Q: All right. So, you then obviously admit that you aren't
17 a hundred percent certain about the events of that night?

18 A: A hundred percent -- like I said, somewhat mistaken, but
19 99.8 percent that I know what I saw.

20 Q: So, you're somewhat mistaken about what you saw that
21 night?

22 A: Somewhat, but mostly the majority, 80 percent up to a
23 hundred.

24 Q: Now, the state mentioned it and questioned you about it,
25 but we're gonna cover it again because it bears covering. You

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1 said that Darrell never threatened Roger, but you admit that
2 you told the police that Darrell said he was going to his
3 truck to get his gun, correct?
4 A: Yes, I ---
5 Q: And, but you're now saying that was just a mistake in
6 what you said?
7 A: Yes, because she kept asking me questions and kept asking
8 me questions and stuff. Like I say I was excited, nervous,
9 everything, that's what I thought; he didn't say that. He
10 said I'm going to get my truck and I'll get out your yard.
11 Q: So, you had a few drinks, you said that you were nervous
12 about everything, and that is understandable. I don't think
13 anybody would find that unreasonable, do you?
14 A: No, ma'am.
15 Q: So, you're excited, nervous, had a few drinks and
16 obviously probably a little bit in shock maybe?
17 A: A little bit, little bit.
18 Q: Okay. So, you're saying that because of that, you may
19 have made some errors in what you said, correct?
20 A: Yes.
21 Q: So, you're telling us today that everything you're saying
22 today is everything that happened, but what you said
23 previously, we can't rely on that, correct?
24 A: I'm not saying that.
25 Q: But there are some things you admittedly are saying isn't

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1 correct, that you originally said, right?

2 A: Agree.

3 Q: Okay. Now, you're saying that -- if I understand it

4 correctly, that Roger Grate and his stepson were in the street

5 ---

6 A: Yes, ma'am.

7 Q: --- when the argument started. Is that what you're

8 saying?

9 A: When I walked up they was in the street arguing.

10 Q: So, you don't know where they were prior to you walking

11 that way, correct?

12 A: No, when I saw them, they was in the middle of the street

13 arguing.

14 Q: Okay. So, prior to that though, you have no idea about

15 where they were located, do you?

16 A: No. No, I don't. I know when I walked out I seen where

17 they was at in the middle of the road.

18 Q: So, at the point that you walked out ---

19 A: Uh-huh, (affirmative response).

20 Q: --- you saw them in the street?

21 A: Yes, ma'am.

22 Q: But obviously, you weren't -- you weren't able to know or

23 you weren't aware of where they were prior to going to the

24 street, correct?

25 A: No.

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1 MS. WILSON: Court's indulgence for just a second?

2 THE COURT: Yes, ma'am.

3 BY MS. WILSON:

4 Q: Just very briefly. You identified -- you identified this
5 car as belonging to who?

6 A: Gregory.

7 Q: All right. But isn't in fact this Gregory's car that was
8 parked beside yours?

9 A: I don't know. I mean, it was my understanding it was his
10 car because he was gonna go get inside. That's why I say his
11 car. He said he was going to get inside his car. That's my
12 understanding, it was his car.

13 Q: Okay.

14 A: He opened the door and I guess whatever after that opened
15 the door. So, I saw him, like, go to that car.

16 Q: Okay. So, you're -- your testimony is that you don't
17 know if this was Gregory's car, you just believe it was,
18 correct?

19 A: Yeah, by opening that door. I saw him open the door.

20 Q: Okay. All right. Thank you.

21 MS. WILSON: No further questions, Your Honor.

22 THE COURT: Redirect?

23 MR. HELMS: Yes, sir.

24 REDIRECT EXAMINATION OF JAMES GRATE BY MR. HELMS:

25 Q: Okay. Let's clear some things up. She made a point

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1 about saying you weren't invited to the party. When you got
2 there, how long did you stay?

3 A: Kind of more like I said, I walked into the house, I
4 spoke to Carrie Ann, and I walked back out and spoke to Carmen
5 then. That when she said -- cussed me out and I said let me
6 ---

7 MS. WILSON: Your Honor, again, I'm going to object.

8 BY MR. HELMS:

9 Q: Here's what I'm asking. I'm going to rephrase the
10 question.

11 A: Uh-huh, (affirmative response).

12 Q: Just answer my question?

13 A: Okay.

14 Q: How long were you there?

15 A: Probably from the time I got there until the incident?

16 Q: Yeah.

17 A: Probably like 20 minutes.

18 Q: Did anybody -- during that 20-minute time period, did you
19 see people?

20 A: Yes.

21 Q: Did people see you?

22 A: Yes.

23 Q: Did you see your cousin, Carrie, or -- is she your
24 cousin?

25 A: Yes; uh-huh, (affirmative response).

1 Q: Thank you. Did you see your cousin, Carrie?

2 A: Yes, I did.

3 Q: Is that her house?

4 A: Her and Roger's, I guess.

5 Q: Okay. When you walked into Carrie and Roger's house, did
6 Carrie and Roger tell you to leave?

7 A: No, sir.

8 Q: So, did you feel welcome there?

9 A: I felt welcome with Carrie Ann -- when I spoke to Carrie
10 Ann, but when I walked back outside and I spoke to the
11 daughter, I felt, I ---

12 Q: Let's not get into that. All right. Let's talk about
13 this shooting situation and duck behind the car. First and
14 foremost, would you consider the chain of events you saw to be
15 a shooting?

16 A: Yes.

17 Q: Okay. Even though you might not've seen the bullet enter
18 Darrell's head, did you witness a shooting?

19 A: Yes.

20 Q: When you ducked behind your car -- and I'm approaching,
21 Your Honor, if that's okay?

22 THE COURT: Yes, sir.

23 MR. HELMS: Thank you, sir.

24 BY MR. HELMS:

25 Q: When you ducked behind what you identified to be your car

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1 ---

2 A: Uh-huh, (affirmative response).

3 Q: --- were you closer to the front of the car or the back
4 of the car?

5 A: More like toward the back of the car. That's why I said
6 the front, but it was up in this area right here close in this
7 area right here.

8 Q: But is the point you were trying to convey to the police
9 and the point you're trying to convey to this jury was that
10 you ducked behind the car?

11 A: Yes.

12 Q: Okay. How long after Roger picked the gun up and pointed
13 it at Darrell's head, how long did it take for you to hear the
14 shot?

15 A: Within a second, two seconds.

16 Q: So, how long were you actually ducked behind that car?

17 A: Probably no more than five seconds.

18 Q: Is there any doubt in your mind that Roger Grate is the
19 one that shot Darrell Doctor?

20 A: Yes.

21 Q: There is a doubt?

22 A: No, no, no; there's no doubt.

23 Q: I'm not trying to confuse you. I know you get confused,
24 but ---

25 A: Yes.

1 Q: But I'm not trying to confuse you. Okay? Is that the
2 person that shot Darrell Doctor?
3 A: Yes.
4 Q: She talked about the number of shots and you weren't
5 quite sure, one or two. Was it a stressful situation?
6 A: Yes, it was.
7 Q: Is it possible you heard an echo?
8 A: Yes.
9 Q: When you saw Darrell, you saw a bullet wound?
10 A: Yes.
11 Q: How many bullet wounds did you see in Darrell?
12 A: One in the middle of his head.
13 Q: Thank you. Is that why you're saying it was one shot?
14 A: I ---
15 Q: And I want to talk about Gregory's car and you not
16 knowing if this is Gregory's car, that's fair, but you said
17 you assigned to that car to Gregory, why?
18 A: Because after the incident, I saw him open that car door.
19 Q: What do you mean after the incident; after Roger jerked
20 him or snatched him up on it?
21 A: Yeah.
22 Q: And then -- and then Gregory opened the door?
23 A: Yes, that's why I assumed it was his car.
24 Q: It makes sense to me. No further questions.
25 MS. WILSON: Very briefly, Your Honor.

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1 THE COURT: Yes, ma'am.

2 RECROSS EXAMINATION OF JAMES GRATE BY MS. WILSON:

3 Q: Mr. Grate, it's clearly obvious -- obvious that you were
4 stressed that night, correct?

5 A: Yes.

6 Q: And your recollection of everything is not a hundred
7 percent -- as you said, it's maybe 80 percent, correct?

8 A: Yes, ma'am.

9 Q: And so, it stands to reason that today you're saying
10 things after the fact that you weren't able to say previously,
11 correct?

12 A: That's not correct. I mean, like I say, the majority of
13 everything I said last time is almost identical, 80 percent.
14 I might have left out -- might've left out, maybe mistaken
15 certain things, but I know what I saw and I saw it.

16 Q: But you admit to some mistakes?

17 A: Some mistakes.

18 Q: Okay. Thank you. No further questions.

19 THE COURT: All right. Do you wish this witness to be
20 excused?

21 MR. HELMS: Your Honor, I do, so that he can return to
22 active deployment.

23 THE COURT: Any ---

24 MS. WILSON: Your Honor, I have no objection to that. I
25 do have something I'd like to say to the Court briefly with

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1 counsel there at the bench.

2 THE COURT: Okay. Y'all can come forward.

3 (REPORTER'S NOTE: Bench conference is held off the record in
4 the presence of but outside the hearing of the jury.)

5 THE COURT: Thank you very much. Sir, you are released
6 from your subpoena and you may go back to your regular duties.

7 Thank you very much.

8 Next witness, Solicitor?

9 MS. OWENS: Your Honor, the state would call NaQuishe
10 Gause.

11 THE COURT: All right, ma'am, just come all the way right
12 up here to where the clerk's representative is. Thank you.

13 CLERK: Please raise your right and place your left hand
14 on the Bible.

15 NAQUISHE GAUSE, HAVING BEEN SWORN

16 TESTIFIES AS FOLLOWS:

17 CLERK: Please be seated. State your name and spell your
18 name.

19 MS. GAUSE: My name is NaQuishe Gause, N-A-Q-U-I-S-H-E,
20 Gause, G-A-U-SE.

21 DIRECT EXAMINATION OF NAQUISHE GAUSE BY MS. OWENS:

22 Q: Good morning, NaQuishe. What name do you go by?

23 A: Neandra.

24 Q: Neandra. Is that what you want me to call you here
25 today?

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1 A: Yes, ma'am.

2 THE COURT: Speak louder, ma'am, please.

3 Q: How do you spell Neandra?

4 A: N-E-A-N-D-R-A.

5 Q: N-E-A-N-D ---

6 A: R-A.

7 Q: --- R-A. All right, Neandra, how old are you?

8 A: Eighteen.

9 Q: And where do you live?

10 A: [REDACTED] Kennedy Street.

11 Q: Okay. And what -- yes -- are you nervous?

12 A: No, ma'am.

13 Q: You're not nervous? Okay. Can you slow down just a

14 little bit?

15 All right. Can you repeat where you live?

16 A: [REDACTED] Kennedy Street.

17 Q: Okay. And where is that; what city is that in?

18 A: Loris, South Carolina.

19 Q: How long have you lived there?

20 A: Since 2007.

21 Q: Okay. Who do you live with?

22 A: My mother.

23 Q: Where do you go to school?

24 A: Loris High School.

25 Q: What grade are you in?

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1 A: Twelfth.

2 Q: Do you play any sports or anything?

3 A: Basketball.

4 Q: Are you good?

5 A: Yes, ma'am.

6 Q: Okay. Have you ever been and testified in a court

7 before?

8 A: No, ma'am.

9 Q: You just took an oath, do you understand what that means?

10 A: No, ma'am.

11 Q: The oath to tell the truth.

12 A: Oh, yes, ma'am.

13 Q: Okay. And you're here today to tell the truth, right?

14 A: Yes, ma'am.

15 Q: Did you live at that address you gave us on Christmas

16 night in 2016?

17 A: Yes, ma'am.

18 Q: What did you do that Christmas Day?

19 A: Ma'am?

20 Q: That Christmas Day, tell us what you did; do you remember

21 it all?

22 A: No, ma'am.

23 Q: No?

24 A: No, ma'am.

25 Q: What did you do that night?

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- 1 A: I was in my room on the phone.
- 2 Q: You were in your room on the phone?
- 3 A: Yes, ma'am.
- 4 Q: Okay. Like a normal teenager on the phone?
- 5 A: Yes, ma'am.
- 6 Q: Okay. Where is your room in your house?
- 7 A: At the front.
- 8 Q: At the front?
- 9 A: Yes, ma'am.
- 10 Q: Do you have any windows in your bedroom?
- 11 A: Yes, ma'am, three.
- 12 Q: You have three windows. Do you know the defendant, Mr.
- 13 Roger Grate?
- 14 A: Yes, ma'am.
- 15 Q: How do you know him?
- 16 A: He my neighbor.
- 17 Q: Your neighbor?
- 18 A: Yes, ma'am.
- 19 Q: Where?
- 20 A: My left side, on the left side of my house.
- 21 Q: Okay. So, if you're looking at your house, though, where
- 22 is his house?
- 23 A: To my left -- on the left.
- 24 Q: On the left?
- 25 A: Yes, ma'am.

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- 1 Q: Okay. And he lives right next door to you?
- 2 A: Yes, ma'am.
- 3 Q: So, that's how you know him. And he lived there and you
- 4 both lived there Christmas night?
- 5 A: Yes, ma'am.
- 6 Q: 2016?
- 7 A: Yes, ma'am.
- 8 Q: Let's talk about that night. You were playing on your
- 9 phone in your bedroom?
- 10 A: Yes, ma'am.
- 11 Q: What happened?
- 12 A: That night, I heard a lot of arguing and when I -- and
- 13 when I heard a lot of arguing, it made me look out the window
- 14 because there's usually a lot of noise going on over there.
- 15 So, when I looked out the window at the time, I seen Darrell,
- 16 he was -- he was there and they were arguing. When I seen
- 17 Roger, he was coming with his gun and Darrell had his hands up
- 18 and he shot him and he stood there in shock like he knew he
- 19 shot him.
- 20 Q: Okay. Let's break this up a little bit. You said you
- 21 looked out your window?
- 22 A: Yes, ma'am.
- 23 Q: Is it hard for you to look out your window?
- 24 A: No, ma'am.
- 25 Q: And how did you look out your window?

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- 1 A: It's -- we have like sheer curtains, so I just moved it
2 back and looked.
- 3 Q: And you looked out why?
- 4 A: Because there was a lot of noise and I didn't know what
5 was going on at the time.
- 6 Q: When you say noise, what do you mean by that?
- 7 A: Arguing.
- 8 Q: Could you see who was arguing?
- 9 A: At the time, I didn't really couldn't see because it was
10 dark and I seen Roger and Darrell, that's his name.
- 11 Q: And you know Roger?
- 12 A: Yes, ma'am.
- 13 Q: And you could identify him clearly?
- 14 A: Yes, ma'am.
- 15 Q: Okay. Could you -- you said arguing, could you hear what
16 was being said at all?
- 17 A: No, ma'am.
- 18 Q: So, you can't distinguish that. But the arguing is what
19 made you look outside?
- 20 A: Yes, ma'am.
- 21 Q: You said you saw Darrell. Do you know Darrell?
- 22 A: No, ma'am.
- 23 Q: Had you seen Darrell before?
- 24 A: Yes, ma'am.
- 25 Q: Where?

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- 1 A: Just around the neighborhood.
- 2 Q: So, you could recognize Darrell?
- 3 A: Yes, ma'am.
- 4 Q: And you clearly could see that it was Darrell talking?
- 5 A: Yes, ma'am.
- 6 Q: You say you saw Darrell and Roger in the street. Let's
- 7 break it down real slow. What happened when you saw them in
- 8 the street?
- 9 A: Roger had came with his gun and shot him. Darrell had
- 10 his hands up.
- 11 Q: When you say came with his gun, where did he come from?
- 12 A: From his house, off the porch.
- 13 Q: From his house, off the porch?
- 14 A: Yes, ma'am.
- 15 Q: Can you see his porch from your window?
- 16 A: No, ma'am.
- 17 Q: So, you don't know if he came off the porch?
- 18 A: No, ma'am.
- 19 Q: Okay. You just saw him coming towards Darrell; is that
- 20 what you saying?
- 21 A: Yes, ma'am.
- 22 Q: And he had his gun?
- 23 A: Yes, ma'am.
- 24 Q: Did you see him pull his gun out?
- 25 A: Yes, ma'am.

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1 Q: And where did he point the gun?
2 A: At him. Directly at him and he shot him.
3 Q: And you saw him shoot him?
4 A: Yes, ma'am.
5 Q: What happened to Darrell at that point?
6 A: He fell. He had his hands up and he fell.
7 Q: Did he fall forward, backward, sideways?
8 A: Backwards.
9 Q: Okay. Did, did you see Darrell attack him in any way?
10 A: No, ma'am.
11 Q: Did you see him running at him in any way?
12 A: No, ma'am.
13 Q: What was Darrell doing?
14 A: He was backing up with his hands up and he fell.
15 Q: You trailed off a little. He was doing what now?
16 A: When he -- when Roger came with his gun, he had his hands
17 up and he fell and that's when Roger shot him.
18 Q: Okay. Did he fall before or after he was shot?
19 A: After he was shot.
20 Q: Okay. But you couldn't see him being aggressive in any
21 way?
22 A: No, ma'am.
23 Q: After he fell backwards, what happened?
24 A: At the time, no one knew who to call. There was a whole
25 bunch of people out there, but no one called the police at the

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1 time. And I seen, I don't remember his name, that was just
2 here, he -- they was like put him in the car, put him in the
3 car. They had lifted him up to try to put him in the car, but
4 they couldn't at the time.

5 Q: Okay. Did you go outside?

6 A: No, ma'am.

7 Q: Why didn't you go outside?

8 A: Because when I -- when I seen the shot, I went in the
9 room and woke my momma up and told her that Roger had just
10 shot someone. And then at the time, my momma went over there
11 to do CPR, and that's when Carmen had came and ---

12 MS. WILSON: Your Honor, object.

13 THE COURT: Sustained.

14 BY MS. OWENS:

15 Q: But you didn't go outside at all; you didn't go out to
16 the scene?

17 A: No, ma'am; I stayed on the porch.

18 Q: So, did you go outside onto your porch?

19 A: Yes, at the time.

20 Q: But you didn't leave your porch?

21 A: No, ma'am.

22 Q: Okay. Did the police come to your house that night?

23 A: Yes, ma'am.

24 Q: Did you speak with the police that night?

25 A: Yes, ma'am.

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1 Q: And you told them ---

2 A: It was a detective that came.

3 Q: Detective?

4 A: Yes, ma'am.

5 Q: And you told the detective?

6 A: What happened.

7 Q: And that's what you're telling us here today, too?

8 A: Yes, ma'am.

9 Q: Okay. You have no reason to lie about what happened?

10 A: No, ma'am.

11 Q: And what you told them that night is the truth?

12 A: Yes, ma'am.

13 Q: And nobody has promised you or threatened you in any way?

14 A: No, ma'am.

15 Q: No further questions at this time. Please answer any
16 questions Ms. Wilson has for you.

17 THE COURT: Cross examination?

18 MS. WILSON: Thank you, Your Honor.

19 CROSS EXAMINATION OF NAQUISHE GAUSE BY MS. WILSON:

20 Q: Good morning, Miss Gause. You said you understand the
21 importance of your oath here today, correct?

22 A: Yes, ma'am.

23 Q: And so, clearly you want to make sure that your testimony
24 is truthful?

25 A: Yes, ma'am.

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1 Q: And correct?

2 A: Yes, ma'am.

3 Q: But you just stated to the solicitor that you saw Roger

4 coming off of the porch?

5 A: Yes, ma'am. But I ---

6 Q: Did you -- I'm sorry.

7 A: No, go ahead.

8 Q: No, I don't want to interrupt you. You were about to add

9 on?

10 A: He came with his gun, and that's what I seen.

11 THE COURT: You need to speak up, ma'am, I can't hear

12 you.

13 A: He came off the porch with his gun.

14 BY MS. WILSON:

15 Q: Okay. But then you also just told the solicitor that he

16 didn't come off the porch and you didn't see that, correct?

17 A: Ma'am?

18 Q: I said that you did just answer the solicitor and say

19 that he didn't actually come off the porch and that you did

20 not see that, correct?

21 A: Correct.

22 Q: So, that would be a mistake on your part?

23 A: No, ma'am.

24 Q: So, it's just an untruth on your part?

25 A: It's true.

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NEQUISHE GAUSE - CROSS BY WILSON

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1 Q: Well, which one are you saying is true, ma'am?

2 A: Ma'am, I seen him come off his porch with the gun. I
3 didn't really see him come off the porch, but I know he came
4 from his porch because that's the way that they take off their
5 porch.

6 Q: Okay. So, you're -- you told the solicitor that you
7 didn't see that, but you're now saying that you did; is that
8 what you're telling me?

9 A: No, ma'am.

10 Q: Again, my question is then, what are you saying?

11 A: That I seen him come with the gun is what I'm saying.

12 Q: So, not off the porch, correct?

13 A: No, ma'am.

14 Q: So, that would have been an untruth previously that you
15 stated?

16 A: Yes, ma'am.

17 Q: And then you also said that Darrell Doctor had his hands
18 up, but you didn't tell the officer that that night, did you?

19 A: Yes, I did; I told the detective that he had his hands
20 up. Yes, ma'am, I did.

21 Q: So, if I were to replay your statement for you, it would
22 say that his hands were up?

23 A: It probably would. I do not remember.

24 Q: So, then you don't know what you told the officer that
25 night, correct?

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NEQUISHE GAUSE - CROSS BY WILSON

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1 A: I did.

2 Q: And you don't have any idea about what was being said
3 that night, do you?

4 A: What was the officer that asked me?

5 Q: No, no, no. I'm sorry. I guess I should have been
6 clearer. I'm talking about in the argument. You do admit
7 that you didn't hear any of the argument?

8 A: I didn't understand what they was arguing about. I just
9 heard arguing and I looked out the window.

10 Q: You just heard the noise?

11 A: Yes, ma'am.

12 Q: All right. So, you don't know what was being said?

13 A: No, ma'am.

14 Q: Or by whom?

15 A: No, ma'am.

16 Q: Okay. And you did -- do you recall telling the police
17 that you saw Roger about three to five feet from Darrell; is
18 that what you told them?

19 A: It was a good distance. I told her how far.

20 Q: All right. And hold on one second.

21 MS. WILSON: Court's indulgence?

22 THE COURT: Yes, ma'am.

23 BY MS. WILSON:

24 Q: You said it was dark, correct?

25 A: Yes, ma'am.

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NEQUISHE GAUSE - CROSS BY WILSON

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1 Q: And that you really couldn't see some things, right?

2 A: Yes, ma'am.

3 Q: But you didn't offer any specific about a lot of things.
4 So, I want to address that.

5 MS. WILSON: Court's indulgence?

6 THE COURT: Yes, ma'am.

7 MS. WILSON: Your Honor, can I approach the witness?

8 THE COURT: Yes, ma'am.

9 BY MS. WILSON:

10 Q: Is this a picture of your home?

11 A: Yes, ma'am.

12 Q: Can you show me where on here your bedroom is? So, your
13 bedroom is on the front left side of the house?

14 A: Yes, ma'am.

15 Q: Okay. So, not on the side that's closest to where Mr.
16 Grate's house is; it's actually on the other side ---

17 A: Yes, ma'am.

18 Q: --- where Mr. Grate's house is, correct? And in the
19 darkness of that night, there's cars parked because there's no
20 clear line of sight for you, is there?

21 A: There's a light.

22 Q: There's cars parked in the yard, correct?

23 A: Yes, ma'am.

24 Q: And you saw those cars there that night, right?

25 A: Yes, ma'am.

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NEQUISHE GAUSE - CROSS BY WILSON

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1 Q: I'm sorry. Just bear with me one moment.

2 MS. WILSON: So, Your Honor, may I approach again?

3 THE COURT: Yes, ma'am. You just need to identify the
4 exhibit.

5 MS. WILSON: I'm sorry. I'm showing the witness State's
6 Exhibit Number 9.

7 BY MS. WILSON:

8 Q: That's your house over there?

9 A: Yes, ma'am.

10 Q: And this is the location where this car is parked; is
11 that correct?

12 A: Yes, ma'am.

13 Q: So, your house is back over there, correct?

14 A: Yes, ma'am.

15 Q: All right. So, just to be clear -- and I'm sorry. In
16 this photo, it's even hard for me to see, it's so dark. Okay.

17 THE COURT: Do you want her to step down?

18 MS. WILSON: Yeah, I think so, Your Honor. That would be
19 helpful.

20 THE COURT: Step down and go in front of that box on the
21 jury box.

22 COURT REPORTER: Ms. Wilson, if you'll just let her --
23 just switch places with her.

24 THE COURT: The box in the middle.

25 MS. WILSON: I apologize, Your Honor.

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NEQUISHE GAUSE - CROSS BY WILSON

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1 COURT REPORTER: Yeah, right there.

2 MS. WILSON: Okay.

3 COURT REPORTER: Thank you.

4 MS. WILSON: All right.

5 THE COURT: There you go.

6 BY MS. WILSON:

7 Q: Okay. I apologize. This is -- in this picture and I'm
8 sorry, if I'm blocking anyone. This is a vehicle, correct?

9 A: Yes, ma'am.

10 THE COURT: Speak up, please.

11 A: Yes, ma'am.

12 Q: And your house is actually back over here in the corner,
13 correct; that's your house?

14 A: That's my house right there.

15 Q: Yes.

16 A: This is my house.

17 Q: Okay. So, you're actually not even in this part of your
18 house, correct?

19 A: I'm on the right side of my house where my window -- you
20 can see.

21 Q: So, your window is on the left ---

22 A: Yes, ma'am.

23 Q: --- of the house?

24 A: No, on the right side to the front of the house.

25 Q: Now, I just asked you where your ---

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NEQUISHE GAUSE - CROSS BY WILSON

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1 A: I didn't understand your question.

2 Q: Okay. So, let's try that again because here is where
3 you're saying your house is, correct?

4 A: Yes, ma'am.

5 Q: In this corner. There is a car there blocking that view
6 and your car, your family car is parked in that yard, correct?

7 A: I don't remember.

8 Q: Do you see that car right there; that's your yard,
9 correct?

10 A: Yes, ma'am.

11 Q: So, there is two cars there in that line of sight,
12 correct?

13 A: Yes, ma'am.

14 Q: And your house is back over here in the dark area?

15 A: Yes, ma'am.

16 Q: Which is where you said it was so dark you couldn't
17 hardly see some things, correct?

18 A: (Indicates affirmatively.)

19 THE COURT: You need to answer out loud.

20 A: Yeah.

21 BY MS. WILSON:

22 Q: I'm sorry.

23 A: Can you repeat the question?

24 Q: I can. You said it was so dark that you could barely see
25 some things, correct?

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NEQUISHE GAUSE - CROSS BY WILSON

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1 A: I didn't say it was so dark.

2 Q: It was dark?

3 A: Yes, ma'am.

4 Q: Okay. And you indicated previously when I showed you the
5 picture of your house that your bedroom was on the left side
6 of your home, correct, which would mean on the far side, not
7 on the side where Roger Grate's house is; that's what you
8 said, correct?

9 A: Right.

10 Q: All right. So, but now you're saying that it was on the
11 right side of the house?

12 A: My house is -- my window is at the front on the ---

13 COURT REPORTER: I can't hear you; I'm sorry.

14 BY MS. WILSON:

15 Q: I didn't understand that.

16 A: My window is at the front on the right side of the house
17 that Roger's house is on the left side.

18 Q: Okay, but that's not true, is it? Roger's house, if
19 you're facing the two houses, Roger's house is on the right?

20 A: Roger's house is right on the left side of the house.

21 Q: That is not correct.

22 THE COURT: Ma'am, you -- you just have to ask the
23 questions. You can't testify either.

24 MS. WILSON: Yes, sir. I apologize.

25 THE COURT: All right. You ask the questions and it's

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NEQUISHE GAUSE - CROSS BY WILSON

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1 for the jury to determine. You can go back and have a seat.
2 If she's knows what she's talking about or not.

3 MS. WILSON: Court's indulgence for one quick second?

4 THE COURT: Yes, ma'am.

5 MS. WILSON: All right. If I could approach the witness
6 one more time?

7 THE COURT: Yes, ma'am.

8 BY MS. WILSON:

9 Q: All right. Understanding that this is a dead-end road,
10 correct?

11 A: Yes, ma'am.

12 Q: This is Roger Grate's house, correct?

13 A: Yes, ma'am.

14 Q: You're saying your house is over here?

15 A: No, my house is right here.

16 Q: So, that would be to the left of this house, correct?

17 A: Yes, ma'am.

18 Q: All right. So, we've established then that your house is
19 to the left of Roger Grate's home?

20 A: Yes, ma'am.

21 Q: So, not to the right?

22 A: Yes, ma'am.

23 Q: So, that means then when you tell me that your bedroom is
24 on the right, do you understand that that -- where that

25 actually is on your house?

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NEQUISHE GAUSE - CROSS BY WILSON

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- 1 A: Yes, ma'am.
- 2 Q: All right. So, you're now saying that your bedroom is on
3 the left of your house or the right of your house?
- 4 A: My bedroom is on -- it's in the front of the house, but
5 it's on -- Roger's house is on the left and mine is right here
6 on the right.
- 7 Q: Okay. I'm sorry?
- 8 A: My bedroom.
- 9 Q: I'm sorry, go ---
- 10 A: Go ahead.
- 11 Q: You were going to say your bedroom?
- 12 A: Yes.
- 13 Q: So, your bedroom you are saying is on the right of your
14 house?
- 15 A: Yes, ma'am, facing -- right now, my bedroom is on the
16 right side.
- 17 Q: Okay. So, my question previously was about the location
18 of your bedroom in the dark from that distance with the cars
19 in between, and you said that it was dark, correct?
- 20 A: Yes, ma'am.
- 21 Q: And my question then to you is, you couldn't have seen
22 everything that you said you claim or you're claiming that you
23 saw given that distance, given the darkness, and given those
24 cars, correct?
- 25 A: Ma'am, I know what I seen.

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NEQUISHE GAUSE - CROSS BY WILSON

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1 Q: You know what you seen?
2 A: Yes, ma'am.
3 Q: But you don't know what side of the property your house
4 is on. You said it was dark, correct?
5 A: Yes, ma'am.
6 Q: And you freely admit that you're on the far right side of
7 your house on the front, nevertheless, but on the right,
8 correct?
9 A: And you can see. It didn't happen in his yard, it
10 happened in the road.
11 Q: And if you saw it happen in the road, you still didn't
12 see all of the details of that night, correct?
13 A: Ma'am, I know what I seen at the time.
14 Q: You know what you saw at the time?
15 A: Yes, ma'am.
16 Q: So, you don't recall what you were doing Christmas Day?
17 A: I recall what I was doing. I was on the phone.
18 Q: Okay. But you did tell the state that you didn't recall
19 what you were doing earlier that day?
20 A: That day, I don't remember.
21 Q: All right. And you did admit to the state that it was
22 dark?
23 A: It was.
24 Q: And you did admit that you were mistaken about where
25 Roger was coming from to the state, correct?

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NEQUISHE GAUSE - CROSS BY WILSON

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1 A: Right.

2 Q: So, you were unclear or untruthful about where you said
3 he was coming from, correct?

4 A: Right.

5 Q: And you admit that you did not understand which side of
6 the -- of this house your house is located?

7 A: I didn't understand your question at the time.

8 Q: Well, then are you saying then that you now understand it
9 and admit ---

10 A: I understand.

11 Q: --- that your house is on the left and that your bedroom
12 is on the far side of the house, correct?

13 A: Correct.

14 Q: All right. And given that distance, you're still saying
15 you saw everything and you have no mistakes or errors about
16 what you thought you saw that night?

17 A: No.

18 Q: Okay.

19 MS. WILSON: No further questions, Your Honor.

20 THE COURT: Would you put that photograph back.

21 COURT REPORTER: I think you have it on your desk, 9?

22 MS. WILSON: Yes.

23 THE COURT: And you have to put that back where you found
24 it in the book, please.

25 MS. WILSON: And I apologize for that.

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NEQUISHE GAUSE - REDIRECT BY OWENS

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1 THE COURT: That's all right.

2 MS. WILSON: I didn't mean to take it out.

3 COURT REPORTER: Thank you.

4 THE COURT: All right.

5 Yes, ma'am?

6 MS. OWENS: Thank you, Your Honor.

7 REDIRECT EXAMINATION OF NAQUISHE GAUSE BY MS. OWENS:

8 Q: There's a lot coming at you today, right, a lot of
9 questions, right?

10 A: Yes.

11 Q: Okay. There was a lot of questions that night, too?

12 A: Yes.

13 Q: When you talked to the police that night. So, let's --
14 Ms. Wilson brought this up, so let's go over this. Your
15 bedroom windows, how many do you have?

16 A: Three.

17 Q: Where are they in the house?

18 A: There's two at the front and then one on the right side
19 of my room.

20 Q: What window were you looking out of?

21 A: The first two that's at the front.

22 Q: Can you see the street from your window?

23 A: Yes.

24 Q: Is there a light in the street?

25 A: Yes.

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NEQUISHE GAUSE - REDIRECT BY OWENS

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- 1 Q: And was the light on that night?
- 2 A: I don't remember.
- 3 Q: Could you see people in the street?
- 4 A: Yes.
- 5 Q: Could you make out who the people were and tell us who
- 6 they were?
- 7 A: I remember seeing Little Darrell, Roger, Little Greg and
- 8 there was another one that I couldn't understand -- I didn't
- 9 see who he was.
- 10 Q: Okay. So, you can clearly make out those people?
- 11 A: Yes.
- 12 Q: You say you saw Roger coming from -- coming towards the
- 13 street?
- 14 A: Yes.
- 15 Q: And you said off the porch. Where did you mean by that?
- 16 A: Like he was coming -- how I know it is that's how they
- 17 are always coming off the side of the porch, so that's their
- 18 porch.
- 19 Q: What does the porch mean to you?
- 20 A: A car porch.
- 21 Q: A car porch. Okay. So, we're not -- are we talking like
- 22 a porch at the front of the side or what are we talking about?
- 23 A: On the side.
- 24 Q: On the side. Okay. But it's not like a rocking chair
- 25 porch; what do you mean by that?

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NEQUISHE GAUSE - REDIRECT BY OWENS

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1 A: It's like a porch that you pull your car onto.
2 Q: Okay. So, what most people call it a carport.
3 A: Oh.
4 Q: Okay. Is that right?
5 A: Yes.
6 Q: Okay. And you said there is an issue as to Ms. Wilson
7 brought an issue as to how you saw his hands. Where were
8 Darrell's hands?
9 A: Up in the air.
10 Q: They were in the air?
11 A: They were up.
12 Q: Is that what you told the police that night?
13 A: Yes.
14 Q: And you told police that night how exactly his hands
15 were?
16 A: I did.
17 Q: Tell it to us one more time exactly how you said it was?
18 A: His hands were up like this (indicating).
19 Q: Okay. And what -- his hands were like that and what did
20 you tell the police he was doing?
21 A: He was backing away.
22 Q: With his hands like that?
23 A: Yes.
24 Q: No further questions.
25 MS. WILSON: Very briefly.

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NEQUISHE GAUSE - RECROSS BY WILSON

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1 THE COURT: On those questions only, please.

2 MS. WILSON: Yes, sir.

3 RECROSS EXAMINATION OF NAQUISHE GAUSE BY MS. WILSON:

4 Q: You just told the solicitor you said carport, but you did
5 admit already that Roger didn't come from the porch area,
6 correct?

7 A: Yes.

8 Q: All right.

9 MS. WILSON: And if I could, Your Honor, could we
10 approach briefly?

11 THE COURT: Yes, ma'am.

12 (REPORTER'S NOTE: Bench conference is held off the record in
13 the presence of but outside the hearing of the jury.)

14 BY THE COURT:

15 THE COURT: All right. Very good. All right. All
16 right. Ladies and gentlemen, we're gonna take a short break
17 for about five minutes so the attorneys can locate something.
18 So, y'all go to your jury room and I'll call you back out very
19 shortly. Thank you very much.

20 Everyone else remain seated while the jury retires,
21 please.

22 (REPORTER'S NOTE: Jury exits courtroom @ 10:42 A.M.)

23 THE COURT: All right. We'll take a short break for
24 about five minutes.

25 MS. WILSON: Thank you, Your Honor.

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NEQUISHE GAUSE - RECROSS BY WILSON

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1 THE COURT: Miss Gause, if you need to step down and use
2 the restroom, you can, but you can't talk to anybody, you
3 understand?

4 MS. GAUSE: Yes, sir.

5 THE COURT: Okay. Thank you, ma'am.

6 **RECESS - 10:43 A.M.**

7 *******OFF THE RECORD*******

8 **(On the Record.)**

9 THE COURT: Thank you very much. You may be seated.
10 Thank y'all. Did we find the statement?

11 MS. WILSON: We did, Your Honor.

12 THE COURT: And ready to play it?

13 MS. WILSON: Yes, sir.

14 THE COURT: All right. The state ready for the jury?

15 MS. OWENS: Yes. Yes, Your Honor.

16 THE COURT: And Defense?

17 MS. WILSON: Yes, sir.

18 THE COURT: Ask the jury to come in please, ma'am.

19 (REPORTER'S NOTE: Jury enters courtroom @ 10:58 A.M.)

20 THE COURT: All right, Ms. Wilson, you may proceed.

21 MS. WILSON: Thank you, Your Honor.

22 **BY MS. WILSON:**

23 Q: Just very briefly, to make sure that we're all on the same
24 page. You stated that Darrell Doctor was backing up and had
25 his hands up, correct?

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NEQUISHE GAUSE - RECROSS BY WILSON

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1 A: He did.

2 Q: You still insisted that's what you told the officer that
3 night, correct?

4 A: Yes, but I don't remember. I think I did tell her that.

5 Q: All right.

6 MS. WILSON: Your Honor, we would like to, at this time,
7 play her statement.

8 THE COURT: You may do so.

9 MS. WILSON: Thank you.

10 (REPORTER'S NOTE: Defendant's 1-ID published to jury.)

11 THE COURT: All right. Now, you need to mark that
12 recording as Defense Exhibit for identification only.

13 MS. WILSON: Yes, sir.

14 DEFENDANT'S EXHIBIT NUMBER 1

15 MARKED FOR IDENTIFICATION

16 THE COURT: Go ahead, ma'am, you may proceed.

17 MS. WILSON: Thank you, Your Honor.

18 BY MS. WILSON:

19 Q: Ms. Gause, you heard your statement as we played it,
20 correct?

21 A: Correct.

22 Q: And you never said to the officer that night that Darrell
23 Doctor had his hands up, did you?

24 A: No, ma'am.

25 Q: So, it's clear that while you did say that he was backing

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NEQUISHE GAUSE - RECROSS BY WILSON

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1 away, you never told the officer anything about hands up, the
2 posture, correct?

3 A: Correct.

4 Q: And it's also clear that today you came in saying that his
5 hands were up?

6 A: Correct.

7 Q: So, you're embellishing your testimony for court today,
8 correct?

9 A: Excuse me?

10 Q: You were adding to or trying to help your testimony along
11 today, aren't you?

12 A: He had his hands up and I may not have mentioned it, but
13 he had his hands up that night.

14 Q: So, you're saying now that your recollection about what
15 occurred is better today than it was the very night of this
16 incident?

17 A: Correct.

18 Q: Is that what you're telling the Court; you're saying yes?

19 A: Correct.

20 Q: So, your memory is better today than it was the night you
21 gave the statement?

22 A: He had his hands up that night.

23 Q: So, you don't feel then or you don't believe that your
24 testimony today has changed from what it was?

25 A: (Inaudible.)

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NEQUISHE GAUSE - RECROSS BY WILSON

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1 Q: I'm sorry?

2 A: Can you clarify your question?

3 Q: You are saying then that your testimony was not wrong?

4 A: It's not wrong.

5 Q: At all?

6 A: It's not wrong.

7 Q: Okay. And you clearly said on this audio that you saw

8 Darrell and Roger arguing, correct?

9 A: Correct.

10 Q: But you admit, you didn't tell the officer that Darrell

11 had his hands up the night that you gave this interview?

12 A: I admit.

13 Q: The night that was probably within minutes of the police

14 arrival and you talking to the officer, correct?

15 A: Correct.

16 Q: But today you're saying it?

17 A: Correct.

18 MS. WILSON: No further questions, Your Honor.

19 THE COURT: Redirect on that part -- point only?

20 MS. OWENS: No, Your Honor.

21 THE COURT: All right, ma'am, you may step down.

22 Do you wish the witness to be released from her subpoena?

23 MS. OWENS: Yes, Your Honor, please.

24 THE COURT: Any objection?

25 MS. WILSON: Without objection, Your Honor.

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KENTREZ HILTON - DIRECT BY WILSON

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1 KENTREZ HILTON, HAVING BEEN DULY

2 SWORN TESTIFIES AS FOLLOWS:

3 CLERK: Please be seated. Please state your name and
4 spell your name.

5 MR. HILTON: Kentrez Hilton, K-E-N-T-R-E-Z, H-I-L-T-O-N.

6 THE COURT: Go ahead, Ms. Wilson.

7 MS. WILSON: Thank you, Your Honor.

8 DIRECT EXAMINATION OF KENTREZ HILTON BY MS. WILSON:

9 Q: Good afternoon, Mr. Hilton. Now, I want to ask you very
10 specific questions. Just to be clear, you were not present on
11 the night of December 25th, 2016, at Roger Grate's house, were
12 you?

13 A: No, ma'am.

14 Q: All right. Now, do you know a Terri Doctor?

15 A: Yes, that's my cousin.

16 Q: All right. And what level of cousin is she to you, first,
17 second, third, fifth?

18 A: I can't recall right now.

19 Q: But she is your cousin?

20 A: Yes, ma'am.

21 Q: Do you know Roger Grate?

22 A: Yes, ma'am.

23 Q: Is he related to you?

24 A: No, ma'am.

25 Q: Not at all, not a blood relative is what you mean?

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KENTREZ HILTON - DIRECT BY WILSON

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1 A: No, ma'am.

2 Q: Okay. Now, you've been to Roger's house before, correct?

3 A: Yes, ma'am.

4 Q: And while there, you've been just hanging out, was it for
5 certain activities?

6 A: No, just go over there and hang out and play cards and all
7 that.

8 Q: Okay. And my question is very specific. At any point in
9 time, when you were at the house playing cards or anytime,
10 have you had an argument with Roger?

11 A: Never.

12 Q: And at any point in time, while you were at the house
13 playing cards with Roger or just hanging out, did he ever pull
14 out a gun and point it at you?

15 A: Never.

16 Q: Never happened?

17 A: (Indicates negatively.)

18 MS. WILSON: Court's indulgence for one second?

19 THE COURT: Yes, ma'am.

20 MS. WILSON: All right. Your Honor, at this time, we
21 have no further questions for this witness.

22 THE COURT: All right. Very good.

23 Cross examination?

24 MS. OWENS: Your Honor, may we approach?

25 THE COURT: Yes, ma'am.

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BY THE COURT

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1 (REPORTER'S NOTE: Bench conference is held off the record in
2 the presence of but outside the hearing of the jury.)

3 BY THE COURT:

4 THE COURT: Ladies and gentlemen, go to your jury room.
5 I'm sorry. Please go to your jury room.

6 (REPORTER'S NOTE: Jury exits courtroom @ 1:18 P.M. The
7 following takes place outside the presence of the jury.)

8 THE COURT: Mr. Hilton, let me ask you a couple of
9 questions. In 2017, did you -- were you convicted of
10 possession of cocaine?

11 MR. HILTON: Yes, sir.

12 THE COURT: Okay. Now, was that a conditional discharge
13 or what -- what happened with that?

14 MR. HILTON: Conditional discharge. It got dismissed.

15 THE COURT: Okay. Did you successfully complete it?

16 MR. HILTON: Yes, sir.

17 THE COURT: Okay. You successfully completed the
18 conditional discharge?

19 MR. HILTON: Yes, sir.

20 THE COURT: Okay. Well, unless -- what you have to show
21 to me now, is a certified true copy of the conviction, the
22 NCIC can show what it is, but it is not -- it's not the
23 records of the Clerk of Court of Horry -- and that was here in
24 Horry County, right?

25 MR. HILTON: Yes, sir.

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1 THE COURT: All right. Very good. So, the records of
2 Horry County in the clerk of court's office would show what
3 happened with this case. So, that's what I need.

4 MR. HELMS: Yes, Your Honor.

5 THE COURT: Not the NCIC.

6 MR. HELMS: Yes, sir.

7 THE COURT: All right.

8 MR. HELMS: Given that I was just given this information
9 prior to him taking the stand, the information to run his
10 NCIC, may I have a moment to run down to the clerk's office?

11 THE COURT: Yes, sir.

12 MR. HELMS: Okay. Thank you.

13 THE COURT: All right. We'll take a short break. Thank
14 you.

15 Sir, if you need to go to the bathroom or something or
16 you need to stand up, you can do that. You just can't leave.
17 Okay?

18 All right. I'm sorry, what?

19 CLERK: I have pulled the ---

20 THE COURT: So, you've got the GS Number, 2017-GS, what?

21 CLERK: 17-GS-26-3066.

22 THE COURT: 3066, 3-0-6-6?

23 CLERK: Yes, sir.

24 THE COURT: All right. So, you're gonna go downstairs
25 with it?

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1 MR. HELMS: Okay.

2 THE COURT: Great. That would be good. Well, Ms.
3 Wilson?

4 MS. WILSON: Yes, sir.

5 THE COURT: If you want to go along with him?

6 MS. WILSON: I'm sorry, I will.

7 THE COURT: All right. Why don't you go along with him
8 and then you can look at the file, too.

9 MS. WILSON: All right. Thank you.

10 THE COURT: All right. We'll take a short break.
11 Thank you.

12 MS. OWENS: Thank you, Your Honor.

13 **RECESS - 1:20 P.M.**

14 *****OFF THE RECORD*****

15 **(On the Record - 1:28 P.M.)**

16 THE COURT: Thank you very much. You may be seated.
17 Thank you.

18 All right. So, if I understand it, Solicitor, regarding
19 Mr. Hilton's conditional discharge, it was successfully
20 completed and then nolle prossed by the state; is that
21 correct?

22 MR. HELMS: That's right. It hadn't made its way off his
23 NCIC yet for the expungement, but he has completed the
24 conditional discharge and it was nolle prossed as a result.

25 THE COURT: Okay. Very good.

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KENTREZ HILTON - CROSS BY HELMS

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1 All right. So, is the state ready for the jury to come
2 back in?

3 MR. HELMS: We are.

4 THE COURT: Very good. Ask them to come in.

5 What that means, Mr. Hilton, is they can't ask you about
6 it.

7 (REPORTER'S NOTE: Jury enters courtroom @ 1:29 P.M.)

8 THE COURT: All right, Solicitor, cross examination?

9 MR. HELMS: Thank you, Judge.

10 CROSS EXAMINATION OF KENTREZ HILTON BY MR. HELMS:

11 Q: Mr. Hilton, you testified that you're not related to Roger
12 Grate; is that right?

13 A: Yes, sir.

14 Q: Who is Carrie Grate?

15 A: My cousin.

16 Q: Okay. And who is Carrie Grate to Roger?

17 A: His wife.

18 Q: Okay. You still go over there and hang out with them?

19 A: Yes, ma'am -- I mean, yes, sir.

20 Q: Okay. Do you always tell the truth?

21 A: Yes.

22 Q: Do you know what perjury is?

23 A: Yes.

24 Q: And you know it's illegal not to tell the truth in the
25 courtroom?

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KENTREZ HILTON - REDIRECT BY WILSON

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1 A: Yes.

2 Q: Okay. Are you afraid of Roger Grate?

3 A: No.

4 Q: You're not scared of him?

5 A: No.

6 Q: Is it your testimony here today under oath, that you've
7 never seen Roger with a gun?

8 A: Yes, I've seen him with a gun before.

9 Q: No further questions.

10 THE COURT: Anything else, Ms. Wilson?

11 MS. WILSON: Just very briefly, Your Honor.

12 REDIRECT EXAMINATION OF KENTREZ HILTON BY MS. WILSON:

13 Q: When you indicated you weren't related to Roger, you meant
14 a blood relative, right?

15 A: Right, I'm not kin to him at all.

16 Q: I'm so sorry?

17 A: I'm not kin to him at all.

18 Q: Right. You're only related through blood to his wife?

19 A: Yes.

20 Q: Not to him at all?

21 A: Not at all.

22 Q: All right. Thank you.

23 MS. WILSON: No further questions, Your Honor.

24 THE COURT: Do you wish the witness to be excused?

25 MS. WILSON: Yes, sir.

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1 THE COURT: Any objection.

2 MR. HELMS: No objection, Your Honor.

3 THE COURT: All right, sir, you're released from your
4 subpoena and may go back to your regular activities. Thank
5 you.

6 Next witness please, ma'am?

7 MS. WILSON: Yes, sir. Your Honor, at this time, we call
8 Gregory Grate.

9 THE COURT: All right.

10 MS. WILSON: And he's in the end rooms.

11 THE COURT: All right. Very good.

12 MS. WILSON: I apologize, Your Honor.

13 THE COURT: That's fine. I understand we have to have
14 everybody in different places.

15 All right, Mr. Grate, if you'll can come all the way
16 around and come up front up here by next to the clerk's
17 representative right up here, please, sir.

18 CLERK: Please raise your right hand and place your left
19 hand on the Bible.

20 GREGORY GRATE, HAVING BEEN DULY SWORN

21 TESTIFIES AS FOLLOWS:

22 CLERK: Please be seated. Please state your name and
23 spell your name.

24 MR. GREGORY GRATE: My name is Gregory Grate.

25 MS. WILSON: Spell it?

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1 MR. GREGORY GRATE: G-R-E-G-O-R-Y, Grate, G-R-A-T-E.

2 DIRECT EXAMINATION OF GREGORY GRATE BY MS. WILSON:

3 Q: Thank you, Mr. Grate. Now, how old are you?

4 A: Thirty-seven.

5 Q: And where do you live?

6 A: Whiteville, North Carolina.

7 Q: Okay. How are you related to Roger Grate?

8 A: My stepdad.

9 Q: Okay. How long has Mr. Grate been a part of your life?

10 A: All my life.

11 Q: Okay. Now, are you related to Darrell Doctor?

12 A: Yes, ma'am.

13 Q: How?

14 A: First cousins.

15 Q: Okay. Now, where were you on Christmas Day of 2016?

16 A: At my mom's.

17 Q: All right. And is that Roger lives?

18 A: Yes, ma'am.

19 Q: Okay. Now, what was happening that day?

20 A: We was celebrating Christmas outside. Everybody was just
21 chilling, I guess.

22 Q: What were they doing?

23 A: Drinking.

24 THE COURT: Could you move up a little bit closer to the
25 microphone, if you don't mind, please, sir.

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GREGORY GRATE - DIRECT BY WILSON

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1 BY MS. WILSON:

2 Q: Please speak up. And I'm sorry, I think I asked, you said
3 they were chilling and I asked you what were they doing and
4 you said what?

5 A: Drinking.

6 Q: Drinking, anything else?

7 A: No, ma'am.

8 Q: Now, did you get into a dispute that day?

9 A: Yes, ma'am.

10 Q: Can you tell me about it?

11 A: Yes, me and my stepfather got in an argument over some
12 Christmas presents.

13 Q: Okay. And you said it was over what?

14 A: Christmas presents.

15 Q: Okay. And Christmas presents for who?

16 A: The family.

17 Q: All right. Was it about giving gifts, not giving gifts,
18 what was it about?

19 A: It was basically like, when we was coming up, like he did
20 stuff for us and he want me to do the same thing.

21 Q: You mean for the family?

22 A: Yes, ma'am.

23 Q: Okay. So, where were you when and Roger were arguing
24 about the presents?

25 A: Like, we was in the yard at the back of the green car that

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1 was parked in the yard.

2 Q: Okay. So, still in the yard at that point you said?

3 A: Yes, ma'am.

4 Q: All right. But at the back of the car?

5 A: Yes, ma'am.

6 Q: Okay. So, near the road?

7 A: Yes, ma'am.

8 Q: Okay. Now, after -- at some point, something else

9 happens, what is it while you and Roger are at the car

10 arguing, tell me what happened?

11 A: That's when my cousin came up.

12 Q: And your cousin is who?

13 A: Darrell.

14 Q: All right. And what -- what happened then, what was he

15 doing?

16 A: He asked me what was going on.

17 Q: Okay. And then what?

18 A: I told him it wasn't nothing. So, I kept on walking or

19 whatever.

20 Q: Uh-huh, (affirmative response).

21 A: So, I told him like, stay out of it, you got nothing to do

22 with this.

23 Q: Who told him that?

24 A: Us.

25 Q: All right. And did he stay out of it at that point?

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1 A: No, ma'am.

2 Q: What happened?

3 A: He kept -- well, I was trying to leave or whatever, and he
4 came behind me, like what's going on. So, I told him, I said
5 let's go, you know what I'm saying. So, I was trying to get
6 in my car and he was like you ain't going nowhere until you
7 tell me what's going on. So ---

8 Q: I'm sorry. I'm sorry, I didn't want to interrupt you or
9 stop you.

10 A: So, I was like, come on let's go. So that's when me and
11 Roger -- well, Roger was standing like in front of my car or
12 whatever. So, Darrell was standing like right beside me. So,
13 as I was going to get in my car, he went like back towards
14 where Roger was.

15 Q: Okay. So, let me hold on for one second. And I'm going
16 to bring up State's Exhibit -- I assume this is Exhibit Number
17 40. Okay. And I'm pointing here because I want to make it
18 clear. Where is your car in this picture?

19 A: It was backed up like -- it was two cars side my car. It
20 was ---

21 Q: So, point, do you see where your car would've been located
22 here; can you see it? So, basically, let me orient you. This
23 is where the dead end is where the trees are. This would be
24 Roger and Carrie's house.

25 A: Okay.

1 Q: This is the driveway and there are two cars here.

2 A: Okay.

3 Q: There's a car here and here. Where is your car?

4 A: My car was like there (indicating), parked side of ---

5 Q: If I had to point at it, can you point to it for me; can

6 you see it there?

7 A: Yes, ma'am.

8 Q: Okay. So, where on here is your car?

9 A: Like, I mean, (indicating), I think.

10 Q: It's okay. I know it's kind of -- tell me, do you think

11 you were parked over here or down here?

12 A: I was parked right close -- back towards the woods.

13 Q: Okay. So, when you say back towards the woods, what area

14 are you indicating; up here?

15 A: Yes, ma'am.

16 Q: Okay. And please note, just for the record, that I'm

17 pointing to where the two cars are next to the dead end.

18 And which of these two cars belong to you?

19 A: The one on the inside, I think; on the inside, yeah.

20 Q: This one or this one? You said here? Okay.

21 A: The one on this side, front side.

22 Q: Yeah, this is your car?

23 A: Yes, ma'am.

24 Q: So, you said you were backed in?

25 A: Yes, ma'am.

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1 Q: So, do you recall this being a front car facing -- backed
2 in and this one is the one that's driven in?
3 A: Yes, ma'am.
4 Q: So, one is facing the dead end and one is not?
5 A: Yeah, one was -- yeah, that's right.
6 Q: So, you're saying your car was backed in or driven in?
7 A: My car was backed in.
8 Q: So, then the backed in car is this one?
9 A: Yeah.
10 Q: So, then you are actually this car on the right side; is
11 that correct?
12 A: Yes, ma'am.
13 Q: Okay. And can you please point to that for the jury?
14 A: What, to the car?
15 Q: To the car that you said was backed in?
16 A: Yes, ma'am. (Indicating.)
17 Q: Okay. Now, when you said you went to your car, you said
18 you were where; at your car, where were you?
19 A: Trying to get in my car.
20 Q: Okay. So, you were on which side of your car?
21 A: The driver's side.
22 Q: All right. And you said that when you walked to your car,
23 you tried to get Darrell to go with you?
24 A: Yes, ma'am. That's what my reason was for going to the
25 car, so he would come on and let's go.

1 Q: Okay. And why did you do that?

2 A: Just to keep the confusion down because I knew, you know

3 what I'm saying, nobody to get heated, and so it wouldn't be

4 no big commotion.

5 Q: Right.

6 A: So, I was just gonna solve the problem and leave.

7 Q: Right. And did Darrell leave with you?

8 A: No, he didn't leave with me.

9 Q: Did you ask him to leave ---

10 A: Yes, ma'am.

11 Q: --- with you?

12 A: Yes, ma'am.

13 Q: How many times?

14 A: About two or three times.

15 Q: And he refused each time to leave with you?

16 A: Yes, ma'am.

17 Q: And you said that you saw him walking towards Roger?

18 A: Yes, ma'am.

19 Q: And what did you observe then?

20 A: Like, when I was trying to open my car, that's when he

21 turned around like going next towards him because he was like

22 in front of my car.

23 Q: Okay. And let me, just so we're using names, you said he

24 turns, he turns towards him; who do you mean?

25 A: Darrell.

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1 Q: Turns towards whom?

2 A: Roger.

3 Q: And does what?

4 A: He spoke to him. I was trying -- like at the time, I was
5 trying to get in the car, so I seen him when he turned around,
6 but as I was trying to get in the car, that's when he was
7 walking towards him?

8 Q: Okay. And did he say anything -- did Darrell say anything
9 at that time to you?

10 A: Yeah, I think he told -- I think he told me, he said he
11 weren't going nowhere.

12 Q: Okay. Did you actually see the shooting?

13 A: No, ma'am, because at the time, I was trying to get in the
14 car.

15 Q: All right. But you did see Darrell fall?

16 A: Yes, ma'am.

17 Q: Okay. And at that point, do you recall -- do you recall
18 what you did at that point?

19 A: All right. After that, I jumped across the ditch and like
20 went behind a house that was next door or whatever.

21 Q: Okay. And ---

22 A: Onto the next street.

23 Q: Okay. And why did you do that?

24 A: I guess it was just panic.

25 Q: Okay. Did Roger and I may have already asked this, but I

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1 just want to reiterate, did Roger do anything to you when you
2 guys were standing at the car?
3 A: No, we was just talking, like arguing -- like we was
4 arguing like. You know what I'm saying?
5 Q: Okay. So, you say y'all were arguing?
6 A: Yeah, he didn't never put his hands on me or nothing.
7 Q: Okay. So, he didn't slam you up against the car or jack
8 you up or anything like that at the car?
9 A: No.
10 Q: Now, I know that you didn't talk with officers immediately
11 after this, because you say you left, correct?
12 A: Yes, ma'am.
13 Q: And did the officers ever try to come back and talk to
14 you?
15 A: Yeah, they came back after I had came back like two -- I
16 think about two or three detectives that was out there.
17 Q: Okay. And when -- did you ever speak to them?
18 A: He asked me like what was going on, you know what I'm
19 saying. So, I was like, I done been through a situation
20 before and I know how it goes, so, I was like, I don't know
21 what was going on. I don't really want to talk to you; you
22 know what I'm saying?
23 Q: Okay. And when you say you knew the situation, you don't
24 mean the situation with Roger, do you?
25 A: No, I'm talking about -- no; huh-uh, (negative response).

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1 Q: So, you just mean you are familiar with situations where
2 the police talk to you?

3 A: Yes, ma'am.

4 Q: And what was your concern? I mean why were you concerned
5 about speaking with them and telling them what happened?

6 A: Because I just didn't want to say nothing to them and make
7 it, you know what I'm saying, like a bigger problem than what
8 it was, just ---

9 Q: Okay.

10 A: Them put words in my mouth of what I said what was going
11 on.

12 Q: So, you felt like they wouldn't be truthful about what
13 your statement was?

14 A: Yes, ma'am. Yes, ma'am.

15 Q: Okay.

16 MS. WILSON: Court's indulgence?

17 BY MS. WILSON:

18 Q: Just briefly, one more thing. This incident with the
19 argument between you, Roger and Darrell getting into it, this
20 incident happened how? I mean, did it take a short amount of
21 time, a long amount of time -- I mean how would -- what kind
22 of time frame are we talking about?

23 A: I'd say a good -- at least about a good 10 or 15 minutes.

24 Q: For the whole thing to play out?

25 A: Yeah.

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1 Q: Okay. But the shooting itself, was that five minutes, one
2 minute, 30 seconds, how long?
3 A: Right when I was trying to get in the car.
4 Q: Okay. So, it happened in an instant is what you're
5 saying?
6 A: Not like an instant, but after he turned around, I guess
7 towards him, that's when it -- you know what I mean?
8 Q: Right.
9 A: Like going towards him, that's when it happened.
10 Q: So, it was the final thing that occurred?
11 A: Yes, ma'am.
12 Q: Okay. All right. Thank you. No further questions.
13 THE COURT: Cross examination?
14 MR. HELMS: Yes, sir. I hate to ask, Judge, but can I
15 approach?
16 THE COURT: Yes, sir.
17 (REPORTER'S NOTE: Bench conference is held off the record in
18 the presence of but outside the hearing of the jury.)
19 CROSS EXAMINATION OF GREGORY GRATE BY MR. HELMS:
20 Q: Gregory, do you remember me?
21 A: Sir?
22 Q: Do you remember me?
23 A: Yes, sir.
24 Q: How do you know me?
25 A: You was here the last time I came.

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1 Q: And you were here last time and testified, right?
2 A: Yes, sir.
3 Q: Was that testimony given under oath?
4 A: What you mean like?
5 Q: Did you take an oath to swear to tell the truth?
6 A: Yes, sir.
7 Q: Okay. Did you take that same oath today?
8 A: Yes, sir.
9 Q: And are you telling the truth today?
10 A: Yes, sir.
11 Q: Were you telling the truth back then?
12 A: Yes, sir.
13 Q: What about when you talked to law enforcement, were you
14 telling the truth?
15 A: I didn't ever talk to law enforcement.
16 Q: Oh, you didn't?
17 A: Which ---
18 Q: You didn't talk to law enforcement?
19 A: He didn't ever -- he asked me, but I told him didn't
20 nothing happen.
21 Q: But that was a lie, right?
22 A: It was -- you said it was a lie? I told them that because
23 I didn't want to talk to him about what happened to the law,
24 so I just that's why I told him that for.
25 Q: And you told him that nothing happened?

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1 A: Yeah, that's what I told him.
2 Q: But something did happen, right?
3 A: Yes, sir.
4 Q: That's why you're here today?
5 A: Yes, sir.
6 Q: So, that was a lie?
7 A: Yes, sir.
8 Q: Okay. So, we know that you're not a truthful person,
9 right? You're willing to lie, right?
10 A: No, sir.
11 Q: Okay. I'm confused. You just admitted that that was a
12 lie. You told a lie, right, to law enforcement, right?
13 A: I told you the reason why I said it because I didn't want
14 to talk to him about the case and what was going on, so I
15 wouldn't have to write no statement. That's why I told them
16 that for. Like I been in law -- been in trouble with law
17 enforcement before, so that's why I told him that.
18 Q: You have been in trouble with the law, haven't you?
19 A: Yes, sir.
20 Q: In fact, you're a convicted felon, are you not?
21 A: Yes, sir.
22 Q: Where do you live?
23 A: Where now?
24 Q: Yeah.
25 A: North Carolina.

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1 Q: North Carolina?
2 A: Yes, sir.
3 Q: Where did you live when the shooting happened?
4 A: North Carolina.
5 Q: You didn't live -- you never lived with Roger?
6 A: That was -- no, I been moved out.
7 Q: I couldn't understand you.
8 A: I been moved out.
9 Q: But you have lived with him?
10 A: Yeah, a long time ago, yeah.
11 Q: Okay. And he's your stepdad?
12 A: Yes, sir.
13 Q: And you love your stepdad?
14 A: I love everybody.
15 Q: Okay. And your mom?
16 A: I love her, too.
17 Q: And you want her to be happy?
18 A: I want everybody to be happy, sir.
19 Q: You wouldn't want to see him in trouble, would you?
20 A: I don't want to see nobody in trouble, sir.
21 Q: Okay. When did this happen?
22 A: What day did it happen?
23 Q: Well, yeah, you know the exact date when -- when did it
24 happen, do you remember?
25 A: Christmas.

1 Q: What year?

2 A: 2016.

3 Q: And how long ago was that now?

4 A: I think it was about two years ago.

5 Q: A little over two years, right?

6 A: Yes, sir.

7 Q: Okay. And you ain't never talked to law enforcement?

8 A: No, sir.

9 Q: What about when I sent my investigator out to your home;

10 did you not contact him when could he dropped his card off

11 with Carrie Ann? Did you contact him; yes or no?

12 A: Who that was?

13 Q: My investigator. I sent a law enforcement officer to your

14 home, do you not remember that? You testified about it the

15 last time and you testified that you didn't want to talk to

16 him. Do you remember that?

17 A: I probably did.

18 Q: Okay. Do you think your statement is helpful to your

19 stepdad? Do you think it helps his position?

20 A: I'm just telling the truth what happened; that's all.

21 Q: But do you think your truth, do you think that lends to

22 his version of events, that helps him?

23 A: I'm just telling what was going on.

24 Q: My question to you is this, if you're here to tell the

25 truth today -- what are you here to tell the truth for? What

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- 1 is your purpose in being here; why are you here?
- 2 A: To tell the truth what happened at the time.
- 3 Q: And you're -- no matter what happens as a result of your
- 4 testimony?
- 5 A: What you mean like?
- 6 Q: What do you want to see happen again to this thing?
- 7 A: I'm just telling the truth to make sure -- what I seen and
- 8 just telling what happened.
- 9 Q: Because what you saw is important, right?
- 10 A: Yes, sir.
- 11 Q: If what you saw that night, Gregory -- this is my question
- 12 and I want you to listen to it, if what you saw that night is
- 13 so important, is so important to the truth, why didn't you
- 14 tell law enforcement what happened the night of the shooting?
- 15 A: Because like I said, I've been with law enforcement before
- 16 and they made me write statements and stuff and then it was
- 17 like -- that's just like you coming to me and asking me stuff,
- 18 I'd rather talk to a lawyer first before I talk to you.
- 19 Q: But you weren't accused of any wrongdoing, why would you
- 20 need to speak to a lawyer?
- 21 A: Because -- because I would prefer to talk to the lawyer
- 22 before I talked to the investigator about something.
- 23 Q: Is it your position that they just make stuff up?
- 24 A: No, sir, what you mean?
- 25 Q: So, what reason could you possibly have for not telling

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1 the truth?

2 A: I just didn't want to talk to them at the time, sir.

3 Q: When I asked you this line of questioning the last time
4 you testified, do you remember saying -- I asked you, do you
5 talk to law enforcement, Gregory, and this was under oath and
6 you said, quote, no. I didn't talk to nobody but you and
7 whoever else is in here. I asked you today, have you talked
8 to law enforcement prior to today, and you said no. I said
9 you didn't tell them anything? You said, I didn't write no
10 statement, none of that, no. I asked did they approach you
11 and ask you to talk to them, you said he tried. Do you
12 remember saying that?

13 A: That's what I'm -- that's what you just asked me a few
14 minutes ago, didn't you? You just said did he ask me, what
15 did I know anything was going on, right, and I told him no.

16 Q: And didn't you say when I asked you why the last time,
17 didn't you say it's because I don't do statements; didn't you
18 say that?

19 A: Yeah, like I don't write statements.

20 Q: Okay. All right. But you're giving a statement here
21 today, right?

22 A: Yes, sir.

23 Q: So, that's not true either. Okay. I want to ask you ---

24 MR. HELMS: Your Honor, may I approach with Exhibit 40?

25 THE COURT: Yes, sir.

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GREGORY GRATE - CROSS BY HELMS

406

1 BY MR. HELMS:

2 Q: The car that you and Roger had an argument at and you
3 classified it as an argument, you indicated it was that one
4 right there? When Ms. Wilson asked you, that's what you said,
5 right?

6 A: Which car you talking about?

7 Q: Was that the car you and Roger had an argument behind,
8 where that red dot is?

9 A: That's Darrell car. No, that's Darrell car. That's the
10 green car.

11 Q: Oh, so that's Darrell's car?

12 A: That's Darrell car right -- what color it is?

13 Q: Well, I'm asking you, you tell me. You were there; I
14 wasn't.

15 A: I think that's the green car, I think.

16 Q: Right there?

17 A: Yeah.

18 Q: And that's where you and Roger had the argument?

19 A: Yes, sir.

20 Q: Okay. And it's your testimony that he didn't put his
21 hands on you?

22 A: Yes, sir. He didn't -- and we was the only two that was
23 really back there when he was talking to me.

24 Q: And Darrell is your cousin?

25 A: Yes, sir.

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GREGORY GRATE - CROSS BY HELMS

407

1 Q: And when he saw you arguing with Roger, he came up to you,
2 right?
3 A: Yeah, he walked up to me.
4 Q: That's fair. And what did he say to you?
5 A: He was like, what's going on?
6 Q: Wanted to know what's happening, right?
7 A: Yeah.
8 Q: Did he threaten you?
9 A: Who, Darrell?
10 Q: Yeah.
11 A: No.
12 Q: Did you see any weapons on him?
13 A: I don't know if he had one or not, I didn't see none.
14 Q: That's what I'm asking, you didn't see any. Okay.
15 A: It was wintertime; we all had on jackets. So, I wouldn't
16 really know.
17 Q: Okay. And you said under direct examination, when Ms.
18 Wilson was asking you, after he came up to you, Roger said to
19 Darrell, stay out of it; is that true or not?
20 A: He said you ain't got nothing to do with this, like stay
21 out of it.
22 Q: So, the first exchange between Roger and Darrell was
23 initiated by Roger, right? He said stay out of it, right?
24 A: Yeah, stay out -- because he was talking, yeah.
25 Q: Because Darrell was talking to you?

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GREGORY GRATE - CROSS BY HELMS

408

- 1 A: Yes, sir.
- 2 Q: Okay. You also said, Gregory, that after you tried to get
3 Darrell to come with you, even though he had his car there
4 though, right?
- 5 A: Yes, sir.
- 6 Q: Well, why would he come with you if he had his car there?
7 If he drove his car, why would he come with you?
- 8 A: That's the point. I was telling him to let him -- let's
9 go get in my car, let's go, because everybody been drinking
10 and whatever, you know what I'm saying. So, I told him for
11 him to come on with me so we could go ahead and go because his
12 car was in the yard.
- 13 Q: So, everybody had been drinking?
- 14 A: I don't know who had been drinking. I ain't had no cup --
15 everybody, so I don't know.
- 16 Q: What about Roger, did you see Roger drinking?
- 17 A: I don't know.
- 18 Q: Okay. You said everybody, I think on direct examination,
19 gets heated; is that what you said?
- 20 A: Yeah, like, you know, like -- like, you know what I mean,
21 yeah.
- 22 Q: Well, elaborate, tell me what you mean?
- 23 A: Like a big heated like, mad like.
- 24 Q: Did you see Roger get heated?
- 25 A: What you mean?

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GREGORY GRATE - CROSS BY HELMS

409

1 Q: Was he heated? Did you see Roger get heated? When he
2 told him to stay out of it, was he heated?

3 A: He was just like you stay out of it. Like it was like a
4 big -- you know if me and you arguing, so I tell you something
5 like it's a big commotion so everybody can hear. That's my
6 reason for me to leave to cool the confusion down between
7 everybody.

8 Q: Okay. And again, you ain't never told law enforcement
9 none of this, have you?

10 A: No.

11 Q: Don't you think they would've liked to have known this?

12 A: That's why I said I rather talk to the lawyer first.

13 Q: But don't you think you could have prevented all this? If
14 they believed your version of events, don't you think we might
15 not even have to be here?

16 A: I don't know what they would do.

17 Q: If you had it to do over again, would you do the same
18 thing or would you talk to law enforcement?

19 A: I'd do the same thing, tell them I don't know what's going
20 on.

21 Q: No further questions.

22 THE COURT: Any redirect?

23 MS. WILSON: Just briefly, Your Honor.

24 REDIRECT EXAMINATION OF GREGORY GRATE BY MS. WILSON:

25 Q: So, you have a felony conviction?

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GREGORY GRATE - REDIRECT BY WILSON

410

- 1 A: Yes, ma'am.
- 2 Q: Does that keep you from knowing what happened?
- 3 A: No, ma'am.
- 4 Q: Does it keep you from telling that story today ---
- 5 A: No, ma'am.
- 6 Q: --- about what happened?
- 7 A: No, ma'am.
- 8 Q: Because of your conviction, you are distrustful of the
- 9 police?
- 10 A: No, ma'am.
- 11 Q: Well ---
- 12 A: I was talking about, oh, yes, ma'am. Like I just don't
- 13 like ---
- 14 Q: Let me ask you first, so you don't have to try to
- 15 anticipate. My question is, has your experience made you
- 16 distrustful of police or if you can tell me again why you said
- 17 you didn't want to give a statement?
- 18 A: I didn't want to give the statement because I don't know
- 19 -- I don't like to talk to them because they get me say stuff
- 20 I don't want to say or do whatever, you know what I'm saying.
- 21 So, I rather talk to a lawyer first and tell them what's going
- 22 and then talk to them.
- 23 Q: All right. And I guess my follow-up question is, is that
- 24 because of your experience with police?
- 25 A: Yes, ma'am.

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GREGORY GRATE - RECROSS BY HELMS

411

1 Q: Now, you're testifying here today, you don't know whether
2 or not Darrell had a gun, do you?

3 A: No, ma'am. We all had on jackets.

4 Q: And so, you can't say that he didn't have gun?

5 A: No, ma'am.

6 Q: Now, I know you said everybody was drinking and then you
7 told the solicitor you don't know specifically who was or had
8 or hadn't been drinking or how much?

9 A: Yes, ma'am.

10 Q: That night, Darrell, was he drinking?

11 A: Yes, ma'am; he was drunk, yeah.

12 Q: All right. Was he drunk in your way of seeing him?

13 A: Yes, yes..

14 Q: Okay. No further questions.

15 THE COURT: Anything on those questions, Solicitor?

16 MR. HELMS: Yes, sir.

17 THE COURT: All right.

18 RECROSS EXAMINATION OF GREGORY GRATE BY MR. HELMS:

19 Q: You just testified that -- on her question, you just
20 testified that you didn't know if Darrell had a gun; is that
21 right?

22 A: Sir?

23 Q: You don't know if Darrell had a gun?

24 A: I said all of us had on jackets, so I didn't really know
25 if he had a gun or not because it's wintertime. I just told

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GREGORY GRATE - RECROSS BY HELMS

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1 you that a few minutes ago.

2 Q: How about a knife, do you know if he had a knife?

3 A: I couldn't go in his jacket and his pockets, so how should
4 I know.

5 Q: Okay. What about a bow and arrow?

6 A: A bow and arrow big enough for you to see, right?

7 Q: Or a bomb, do you think he could have a bomb under his
8 jacket?

9 A: I'm sorry?

10 Q: A stick of dynamite?

11 A: A bomb or stick of dynamite?

12 Q: Yeah.

13 A: Not really, not under no jacket, you can't?

14 Q: Okay. You don't know what Darrell had, do you?

15 A: Not if he had on his jacket, I wouldn't know.

16 Q: All right. Thank you.

17 THE COURT: All right, Ms. Wilson, do you wish the
18 witness to be excused?

19 MS. WILSON: Yes, sir. Thank you, Your Honor.

20 THE COURT: All right, sir, you're released from your
21 subpoena, you may go back to your regular duties.

22 Thank you.

23 All right. Can y'all come up and talk to me for one
24 second, please?

25 MS. WILSON: Yes, sir.

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BY THE COURT

413

1 (REPORTER'S NOTE: Bench conference is held off the record in
2 the presence of but outside the hearing of the jury.)

3 BY THE COURT:

4 THE COURT: All right, ladies and gentlemen, we need to
5 take a short break for about five minutes or so. Please go to
6 your jury room.

7 Thank you very much.

8 (REPORTER'S NOTE: Jury exits courtroom @ 1:58 P.M.)

9 THE COURT: All right. We'll take a short break for
10 about five minutes or so and Ms. Wilson, let me know when
11 you're ready please, ma'am.

12 MS. WILSON: Yes, sir. Thank you.

13 THE COURT: Thank you very much.

14 MR. HELMS: Thank you, Judge.

15 RECESS - 1:59 P.M.

16 *****OFF THE RECORD*****

17 (On the Record - 2:15 P.M.)

18 THE COURT: Thank you very much. You may be seated.
19 Thank you.

20 All right, Ms. Wilson?

21 MS. WILSON: Thank you, Your Honor.

22 THE COURT: Defense ready?

23 MS. WILSON: Yes, sir, and Mr. Grate is our next witness,
24 Roger Grate.

25 THE COURT: All right. Very good. The state ready for

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BY THE COURT

414

1 the jury?

2 MR. HELMS: Yes, Your Honor.

3 THE COURT: All right. Ask the jury to come in, please.

4 MS. WILSON: Your Honor, just briefly before that

5 happens, I would ask the Court for a brief moment after Mr.

6 Grate's testimony.

7 THE COURT: Okay. Well, I'll find out if there's any --

8 if you'll have any other witnesses and then I'll see if

9 there's any reply testimony, and then obviously, we'll have to
10 take a break then anyway.

11 MS. WILSON: Okay. Thank you.

12 (REPORTER'S NOTE: Jury enters courtroom @ 2:16 P.M.)

13 THE COURT: All right, Ms. Wilson, your next witness
14 please, ma'am.

15 MS. WILSON: Thank you, Your Honor.

16 Your Honor, at this time, I would call Roger Grate to the
17 stand.

18 THE COURT: All right. Please come around, sir, and meet
19 the clerk's representative right over here, sir.

20 CLERK: Please raise your right hand and place your left
21 hand on the Bible.

22 ROGER GRATE, HAVING BEEN DULY SWORN
23 TESTIFIES AS FOLLOWS:

24 CLERK: Please be seated. Please state your name and
25 spell your name.

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ROGER D. GRATE - DIRECT BY WILSON

415

1 MR. GRATE: Roger Grate, R-O-G-E-R, Grate, G-R-A-T-E.
2 DIRECT EXAMINATION OF ROGER GRATE BY MS. WILSON:
3 Q: Now, Mr. Grate, how old are you?
4 A: Fifty-three.
5 Q: And where do you live?
6 A: Loris, South Carolina.
7 Q: Okay. And how long have you lived there?
8 A: Probably 10 years or better.
9 Q: Who do you live there with?
10 A: Me, my wife, and my children.
11 Q: Okay. When you say your children, who were you referring
12 to?
13 A: Carmen; Josh; and my grandson, Theo; and my wife, Carrie.
14 Q: Okay. Now, you got a concealed weapons permit?
15 A: Yes, ma'am.
16 Q: How long have you had that?
17 A: I'm not sure, but I renewed it one time, so, I'm not sure.
18 Q: Okay. And I don't know if you remember all the
19 requirements that you had to meet to have that permit, but did
20 you take a class or you just sign up for it; how did you get
21 that permit?
22 A: You take a eight-hour class, and then go to a range, a gun
23 range.
24 Q: Okay. So, you took a course to get your permit?
25 A: Yes, ma'am.

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ROGER D. GRATE - DIRECT BY WILSON

416

1 Q: All right. Do you know if they do background checks on
2 that to get that permit?
3 A: Yes.
4 Q: You said they do?
5 A: Yes.
6 Q: Okay. So, where can you carry your gun in the state?
7 A: Just about anywhere except for they have these stickers
8 and stuff up on the window that you can't bring them in.
9 Q: So, you can carry it at home?
10 A: Yes.
11 Q: In your yard?
12 A: Yes.
13 Q: In the street?
14 A: Yes.
15 Q: Down the road a piece?
16 A: Yes.
17 Q: Let me turn your attention to the afternoon or the evening
18 of December 25th, 2016; do you remember that day?
19 A: Yes, ma'am.
20 Q: And can you give us an idea about what was happening that
21 day at your house?
22 A: On Christmas, I usually start cooking about 2 o'clock that
23 morning. So, I was up at 2:00 cooking. And later on that
24 evening, some of the family start getting together. So, we
25 was just sitting around.

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ROGER D. GRATE - DIRECT BY WILSON

417

- 1 Q: Okay. You know how many people were out there?
- 2 A: I'm not sure.
- 3 Q: Now, did you have any difficulties or any arguments later
- 4 on in the evening?
- 5 A: Yes, later on.
- 6 Q: All right. Tell me -- tell me about it?
- 7 A: I was in the house and I was talking to my wife and I
- 8 asked her what -- what Gregory had gotten for Christmas and
- 9 she said nothing. I always told him when -- when he was in
- 10 trouble that his momma always looked out for him. So, if you
- 11 don't get nobody else nothing, always try to look out for your
- 12 momma because they'll be there when they won't nobody else be
- 13 there.
- 14 Q: Okay.
- 15 A: So, so, so, after that, I walked back out the door. He
- 16 was at the edge of the road on the phone, so I called him.
- 17 That's when me and him walked behind the green Cadillac in the
- 18 driveway, and then that's when we started fussing about that.
- 19 Q: Okay. And did you do anything to Gregory?
- 20 A: No, ma'am.
- 21 Q: So, you just had an argument, a verbal argument?
- 22 A: Yes, ma'am.
- 23 Q: Never got physical?
- 24 A: No, ma'am.
- 25 Q: Now, did you happen to have your weapon on you at this

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ROGER D. GRATE - DIRECT BY WILSON

418

1 time?
2 A: Yes, ma'am.
3 Q: All right. And where was it?
4 A: In my holster on the side.
5 Q: Okay. And did you pull -- did you pull it at any time
6 with Gregory?
7 A: No, ma'am.
8 Q: So, you and Gregory are arguing and then what happens?
9 A: And that's when Darrell came -- came out the yard from the
10 barrel and approached us from behind the green car.
11 Q: Okay. And what happened then?
12 A: And then while me and my son was arguing, he -- he come up
13 -- come up talking about what's going on, and I told them that
14 was -- that was between me and him, to leave.
15 Q: Okay.
16 A: And after that, after that, he stayed over there. So,
17 when they was at the green car, that's when I walked off to
18 get out of the situation. And that's when him and my son
19 walked to his car.
20 And then while I was standing up, he left me where the
21 son was and came, came back to me.
22 Q: Came back to you?
23 A: Yes, ma'am.
24 Q: So, at the time that you told him to leave, you were
25 standing where when you first told him to leave?

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ROGER D. GRATE - DIRECT BY WILSON

419

1 A: Behind the green car.
2 Q: That was in your yard?
3 A: Yes, right at the edge -- yeah, in the driveway.
4 Q: So, it's near the edge?
5 A: Yes.
6 Q: Of your parking lot?
7 A: Yes.
8 Q: Okay. And did he go?
9 A: No, ma'am.
10 Q: Did Darrell go? I'm sorry.
11 A: No, ma'am.
12 Q: All right. And after you walked out in the street to
13 distance yourself from where they were, you said they walked
14 where?
15 A: To my son's car.
16 Q: Okay. And do you know what they were saying or doing at
17 that time?
18 A: Oh, they was over there arguing about something, I don't
19 know what they was -- then when he left from over there,
20 that's when he came, came at me.
21 Q: Came at you.
22 A: Yes, ma'am.
23 Q: All right. And when he came at you, what was his posture
24 like? I mean, how was his -- how was he?
25 A: Like he was like in a walking sort of and it looked like

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ROGER D. GRATE - DIRECT BY WILSON

420

1 you coming at somebody like ---
2 Q: And I'm sorry, because I want the jury to understand
3 exactly what you mean. So, he's not running at you?
4 A: No, like in a -- in a fast pace; he wasn't running.
5 Q: So, he's -- and you put it as coming at. Describe what
6 that means to you so they understand what that means?
7 A: Like a fast walk towards you.
8 Q: So, do you -- did you think he was coming at you in a way
9 that seemed aggressive?
10 A: Yes.
11 Q: Or are you saying he was walking towards you like, hmmm,
12 might go talk to Roger; which one are you saying?
13 A: In an aggressive way.
14 Q: All right. And was there anything else about how he was
15 coming to you that made you hesitant?
16 A: Yes, when he was coming in an aggressive way and stuck his
17 hand in his -- in his pocket in his jacket.
18 Q: Okay. Now, when you say he stuck his hand in his jacket,
19 what -- what does that mean to you?
20 A: Well, I thought had a -- had his gun in his pocket; I
21 didn't know.
22 Q: All right. So, you thought he had his gun?
23 A: Yes.
24 Q: Now, you didn't see this gun, right?
25 A: No, ma'am.

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ROGER D. GRATE - DIRECT BY WILSON

421

- 1 Q: So, you thought he had one based on what?
- 2 A: I knew he had one.
- 3 Q: Okay. And how did you know that?
- 4 A: Because I sold it to him.
- 5 Q: Okay. So, you knew he had a weapon and owned a weapon,
- 6 rather ---
- 7 A: Yes.
- 8 Q: --- because you sold it to him?
- 9 A: Yes, ma'am.
- 10 Q: And how did that make you feel?
- 11 A: Threatened.
- 12 Q: Okay. What did you think he might do?
- 13 A: Shoot, shoot me. Shoot me or beat me; I didn't know. I
- 14 wasn't sure that night what, what he had intentions of.
- 15 Q: And tell me again, how old did you say you were?
- 16 A: Now or when that happened?
- 17 Q: Well, either one will actually would work?
- 18 A: 53.
- 19 Q: 53 now?
- 20 A: Yes, ma'am.
- 21 Q: So, at the time of this incident, you would've been 50 or
- 22 51?
- 23 A: 51.
- 24 Q: All right. And do you remember how old Darrell was?
- 25 A: I'm not sure.

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ROGER D. GRATE - DIRECT BY WILSON

422

- 1 Q: Younger than you or older?
- 2 A: Younger.
- 3 Q: Okay. And is he a skinny guy?
- 4 A: No.
- 5 Q: Was he hefty? How was he?
- 6 A: I would say he weighed about 250 or something, 255 or
- 7 something; I'm not sure.
- 8 Q: So, stocky guy?
- 9 A: Yes.
- 10 Q: Big?
- 11 A: Yes.
- 12 Q: Okay. When the shooting happened and you admitted that
- 13 you shot him, correct?
- 14 A: Yes, ma'am.
- 15 Q: Is that what you intended; did you mean to shoot him?
- 16 A: No, I was just trying to keep him -- I was trying to scare
- 17 him and stop him from coming at me.
- 18 Q: And then what happened that you ended up shooting him?
- 19 A: When he came at me and that's when I pulled my gun out to
- 20 shoot to scare him or to stop him to keep him off of me.
- 21 Q: Okay. But instead of shooting to scare him, you actually
- 22 shot him?
- 23 A: Yes, ma'am.
- 24 Q: And did you mean to do that?
- 25 A: No, ma'am.

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ROGER D. GRATE - DIRECT BY WILSON

423

1 Q: So, you're saying that was an accident?
2 A: Yes.
3 Q: An unintended thing that happened?
4 A: Yes.
5 Q: Now, at that point, you realized that you shot him?
6 A: Yes, ma'am.
7 Q: What was going through your head?
8 A: I was in shock, basically.
9 Q: So, you were in shock because what, because why?
10 A: Because basically I was just trying to scare him and stop
11 him from coming at me.
12 Q: So, you didn't really -- what, were you surprised that you
13 actually hit him?
14 A: Yes, ma'am.
15 Q: Okay. Now, after the shooting, do you remember what you
16 did?
17 A: Waited on the -- waited on the officer to come.
18 Q: Okay. And where did you go?
19 A: Right there in the yard. I didn't go nowhere.
20 Q: So, you walked back to the yard?
21 A: Yes.
22 Q: All right. And did you stay there?
23 A: Yes.
24 Q: Until when?
25 A: Until the first officer came.

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ROGER D. GRATE - DIRECT BY WILSON

424

1 Q: All right. And when that first officer showed up, do you
2 remember who that was?

3 A: Santiago somebody.

4 Q: So, Officer Santiago was the first one. And did you talk
5 to him?

6 A: Yes.

7 Q: And what did you tell him?

8 A: I walked out there when he pulled up. I told him I'm the
9 one did it and handed him my gun and my license.

10 Q: Okay. And when -- now, I know that at some point, he
11 takes you to Loris Police Department?

12 A: Yes.

13 Q: What -- what happens then when you get to Loris Police
14 Department?

15 A: I probably sat there a while, and then some other
16 detectives came later on that night.

17 Q: Okay. Do you remember who those -- who one of those
18 detectives was or do you remember both of them; do you
19 remember their names?

20 A: I believe one of them was Keith Hemingway, I believe. I
21 don't know the other one, or Keith whatever his name is.

22 Q: I think it's King Hemingway.

23 A: King Hemingway.

24 Q: King Hemingway was the detective and did you talk to
25 Detective Hemingway?

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ROGER D. GRATE - DIRECT BY WILSON

425

1 A: Yes.

2 Q: All right. And I think that the statement was played here
3 earlier, correct?

4 A: Yes.

5 Q: Is that your statement?

6 A: Yes.

7 Q: And did you tell him the same story?

8 A: Yes.

9 Q: All right. Did you feel that you were trying to
10 cooperate?

11 A: Yes.

12 Q: And is that why you immediately told the officer that you
13 were responsible for the shooting?

14 A: Yes, ma'am.

15 Q: Is that the hundred percent truth?

16 A: Yes.

17 Q: Of what happened?

18 A: Yes, ma'am.

19 MS. WILSON: Court's indulgence for one second?

20 THE COURT: Yes, ma'am.

21 BY MS. WILSON:

22 Q: Just one more quick question just to clarify something. I
23 know I asked you about SLED doing a background check on you
24 when you applied for a concealed weapons permit and you said
25 that they did do a background check?

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ROGER D. GRATE - CROSS BY HELMS

426

1 A: Yes. Yes, ma'am.

2 Q: You didn't have any problems with anything or any
3 background or your criminal history or anything, did you?

4 A: No, ma'am.

5 Q: Because there's nothing on there, correct?

6 A: No, ma'am.

7 Q: Okay.

8 MS. WILSON: No further questions at this time, Your
9 Honor.

10 THE COURT: Cross examination?

11 MR. HELMS: Yes, sir.

12 CROSS EXAMINATION OF ROGER D. GRATE BY MR. HELMS:

13 Q: So, Mr. Grate, you did give a statement to law
14 enforcement?

15 A: Yes.

16 Q: That statement was played in court. Were you here for
17 that?

18 A: Yes, sir.

19 Q: Was that you on that recording?

20 A: Yes, sir.

21 Q: Okay. Did you tell the law enforcement officer the truth?

22 A: Yes, sir.

23 Q: Are you telling the truth here today?

24 A: Yes, sir.

25 Q: So, let me ask you this question. If there's something

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ROGER D. GRATE - CROSS BY HELMS

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1 different between what you told the law enforcement and what
2 you're saying today, which one is correct?
3 A: Which one is correct?
4 Q: That's my question? If you're saying something today that
5 is different than what you told that man right there, which
6 one is right? Which time were you telling the truth, today or
7 when you were talking to him?
8 A: I'm telling the truth now.
9 Q: Okay. Now, now you're telling the truth. Let's start
10 with things we can agree on. We can agree that Darrell is
11 dead, can't we?
12 A: Yes, sir.
13 Q: And we can agree that he's dead because a bullet went
14 through his head, can't we?
15 A: Yes, sir.
16 Q: And we can also agree that that bullet that went through
17 Darrell's head came from your gun; is that right?
18 A: Yes, sir.
19 Q: I want to show you something. This is State's Number 38;
20 is that the gun?
21 A: Yes, sir.
22 Q: Okay. And that's the gun -- you can -- we can agree
23 that's the gun that you shot Darrell with?
24 A: Yes, sir.
25 Q: So, if Darrell -- if Darrell is dead, it's because you

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1 shot him, right?

2 A: Yes, sir.

3 Q: Okay. We can agree that Darrell was at your house for one
4 to two hours, that's what you told law enforcement; is that
5 right?

6 A: Something like that.

7 Q: And prior to this incident where you shot him, where y'all
8 interacted and you shot him, y'all didn't have a cross word,
9 did you?

10 A: No, because I was in the house before I come on the
11 outside.

12 Q: So, you didn't have a cross word. As a matter of fact,
13 Mr. Grate, didn't you tell law enforcement and we can play
14 your statement for you if you want us to, but didn't you tell
15 law enforcement that you and Darrell had never had a cross
16 word?

17 A: Yes, sir.

18 Q: I mean, not so much as a, a, a middle finger at each
19 other; is that fair?

20 A: Yes, sir.

21 Q: Okay. You say that Darrell was younger than you; is that
22 right?

23 A: Yes, sir.

24 Q: Was he not also six inches shorter than you?

25 A: I'm not sure how many inches, but he was shorter than me.

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ROGER D. GRATE - CROSS BY HELMS

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1 Q: And was he not also smaller in stature than you?

2 A: No, sir.

3 Q: Well, you heard Officer King testify that you told law
4 enforcement you weighed 275 pounds; is that right?

5 A: Yes, sir.

6 Q: Okay. And you heard Dr. Proctor say Darrell weighed about
7 250; is that -- did you hear that? You were in the courtroom.

8 A: Yes, but he's still more stockier than me.

9 Q: But we agree that 250 is a smaller number than 275?

10 A: Yes, sir.

11 Q: And 5'8" is a smaller number than 6'1", right?

12 A: Yes, sir.

13 Q: Okay. So, Darrell is a smaller person?

14 A: Yes, sir.

15 Q: All right. Let's talk about your CWP. You said -- you
16 really don't have any business having a CWP, do you?

17 A: Yes, sir.

18 Q: I mean, you don't even really know how a gun works, do
19 you?

20 A: Yes, sir.

21 Q: You do? So, you know if you pull the trigger a bullet
22 comes out?

23 A: Yes, sir.

24 Q: And you know then that if you don't pull a trigger, a
25 bullet don't come out; you know that?

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ROGER D. GRATE - CROSS BY HELMS

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- 1 A: Yes, sir.
- 2 Q: So, for a bullet to come out of this gun, you had to pull
3 the trigger on that gun, right?
- 4 A: Yes, sir.
- 5 Q: Okay. Let's talk about the difficulties, that's the word
6 y'all used for or you were having with Gregory. Was he
7 living with you at the time this happened?
- 8 A: No, sir.
- 9 Q: No, was he ever living with you?
- 10 A: Yes, he did.
- 11 Q: Okay.
- 12 A: Yeah.
- 13 Q: Was that after he got out of prison?
- 14 A: Both before, yes.
- 15 Q: Before and after?
- 16 A: Yes.
- 17 Q: Okay. You said you were behind the green car; do you
18 remember saying that?
- 19 A: Yes.
- 20 Q: Okay. And you've been in Court ---
- 21 MR. HELMS: May I, Your Honor?
- 22 THE COURT: Yes, sir.
- 23 MR. HELMS: Thank you.
- 24 BY MR. HELMS:
- 25 Q: And you've been in court where multiple people have

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ROGER D. GRATE - CROSS BY HELMS

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1 identified in State's 40, as that being the green car; is that
2 right?

3 A: No, sir.

4 Q: So, you disagree with the testimony of all the other
5 witnesses?

6 THE COURT: Solicitor.

7 MR. HELMS: I apologize. I'll withdraw or I'll rephrase.

8 THE COURT: That -- that question is improper, ladies and
9 gentlemen, it's struck from the record. Thank you very much.

10 MR. HELMS: I apologize, Your Honor.

11 BY MR. HELMS:

12 Q: Where -- where do you say the green car was?

13 A: The green -- the green car is sitting in the driveway.

14 Q: Okay. And you were behind it?

15 A: Yes, sir.

16 Q: Would you agree with a contention that this whole thing
17 took place in the middle of the road?

18 A: Yes, sir.

19 Q: Okay. So, you shot Darrell in the road?

20 A: Yes, sir.

21 Q: He was in the road and you were in the road?

22 A: Yes, sir.

23 Q: It wasn't on your property?

24 A: No, sir.

25 Q: Okay. You said something about you thought he might have

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1 a gun; is that right?

2 A: Yes, sir.

3 Q: Did he say anything about having a gun?

4 A: No, he didn't.

5 Q: Did he ever flash a gun that night at you?

6 A: Not that night.

7 Q: Did you see a gun in his possession?

8 A: Not that night.

9 Q: So, you're testifying that he did carry a gun?

10 A: I know he had -- he have a gun. I said before, he had a

11 gun.

12 Q: That's not what I'm asking you. Lots of people have guns;

13 not everybody carries them. I'm asking you, is it your

14 testimony that Darrell Doctor carried a gun?

15 A: Sometimes, I can't say all the time.

16 Q: But you've seen it?

17 A: Yes, sir.

18 Q: Okay. Okay. You said on direct examination -- how did he

19 approach you? Tell us again what your wording is, how he

20 approached you?

21 A: In an aggressive manner like.

22 Q: So, he approached you in an aggressive manner.

23 A: Yes, sir.

24 Q: And you said, quote, he was walking fast. Is that right?

25 A: Yes, kind of fast, yeah.

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ROGER D. GRATE - CROSS BY HELMS

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1 Q: Well, Mr. Grate, would it surprise you to know that that
2 is the exact opposite of what you told Detective King
3 Hemingway. Did you hear the statement that was played in
4 court?

5 A: Yes.

6 Q: And that was you?

7 A: Yes.

8 Q: Yeah, he was coming at me. I did not know what to do.
9 Did you say that?

10 A: Yes.

11 THE COURT: You need to answer yes or no.

12 A: Yes, sir.

13 BY MR. HELMS:

14 Q: Detective Hemingway said, was he running at you or walking
15 fast. And what was your response?

16 A: He was coming at me.

17 Q: No, just walking and talking. Is that exactly how you
18 responded?

19 A: Well, he was saying something, but I don't know what he
20 was saying.

21 Q: I'm asking if that's your response to that question on
22 that tape right there: No, he was just walking and talking.
23 Is that how you responded to that question?

24 A: I don't know. I don't remember. I'm not sure.

25 Q: So, he wasn't running at you; we can agree to that?

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ROGER D. GRATE - CROSS BY HELMS

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- 1 A: No, sir.
- 2 Q: Okay. And he didn't tackle you?
- 3 A: No, sir.
- 4 Q: He didn't punch you?
- 5 A: No, sir.
- 6 Q: He didn't even push you, did he?
- 7 A: No, because I was backing up when he was coming at me.
- 8 Q: As a matter of fact, he didn't even get to you before you
- 9 shot him dead; is that right?
- 10 A: No, sir.
- 11 Q: I want to talk about this contention today that you were
- 12 trying to scare him and you didn't mean to shoot him; is that
- 13 your position today?
- 14 A: Yes, sir.
- 15 Q: So, it's your testimony that you were not actually trying
- 16 to shoot Darrell?
- 17 A: I was trying to keep him from getting to me.
- 18 Q: That's not my question. Is it your testimony that you
- 19 were not trying to shoot Darrell?
- 20 A: Yes, sir.
- 21 Q: Okay. So, you felt the need to shoot to scare him, but
- 22 you didn't feel the need to actually shoot him?
- 23 A: No, I was trying to stop him from coming at me.
- 24 Q: Now, let me ask you this, what if he had of been coming at
- 25 you with chain saw, would you think you need to shoot him

1 then?

2 A: Yes, sir.

3 Q: Okay. So, you didn't really need to kill Darrell, he
4 didn't need to die; is that your testimony now?

5 A: I was trying -- trying to shoot to keep him away from me,
6 like I said earlier.

7 Q: Is that because you were not scared enough of him to
8 actually try to kill him?

9 A: I didn't know what he was gonna do. I was trying to stop
10 him.

11 Q: But you didn't feel the need to actually shoot Darrell,
12 did you?

13 A: I was trying to stop him from coming at me.

14 Q: That's a yes or no question, Mr. Grate. Did you feel the
15 need to shoot Darrell?

16 MS. WILSON: Your Honor, I'm going to object.

17 THE COURT: All right. All right. Hold on a second.
18 Sir, if you would, if you can, you respond directly to the
19 solicitor's question and then you may explain your answer.

20 A: Yes, sir.

21 THE COURT: Go ahead. Go ahead.

22 MR. HELMS: Yes, Your Honor.

23 BY MR. HELMS:

24 Q: Did you feel the need to shoot Darrell?

25 A: I wasn't trying to shoot him; I was trying to stop him

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ROGER D. GRATE - CROSS BY HELMS

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1 from coming toward me.

2 Q: Didn't you tell law enforcement when they asked you what
3 it was Darrell was saying, he was just mumbling and walking?

4 A: I told them I couldn't understand what he was saying.

5 Q: So, you couldn't understand what he was saying?

6 A: No, sir.

7 Q: So, you -- it's your testimony, you have no idea what
8 Darrell was saying?

9 A: No, sir.

10 Q: So, he could've been saying anything, right?

11 A: Yes.

12 Q: He could've been saying Merry Christmas for all you know;
13 right, Mr. Grate?

14 A: But I doubt it.

15 Q: You doubt it but you don't know, do you?

16 A: No, sir.

17 Q: And it's your testimony that you shot and killed him based
18 on what you don't know? When you said you don't know if he
19 had a gun, you don't know what he was gonna do, you don't know
20 what he was saying, so you shot and killed Darrell Doctor
21 because of what you did not know; is that your testimony?

22 A: No, sir.

23 Q: Well, correct me, sir.

24 A: I know he was coming at me and I knowed -- and I know that
25 he have a gun. So, what I'm gonna do, stand there and wait

1 until he shoot me and then it's too late.

2 Q: Do you know if I had a gun?

3 A: I don't know you.

4 Q: You don't know, right?

5 A: I don't know you.

6 Q: If I walk towards you right now, do you think you're

7 allowed to shoot me?

8 A: No, sir; but I don't know you.

9 Q: That's right.

10 A: Me and him hung together, I know him.

11 Q: You hung together?

12 A: And I know him. I know what he's capable of.

13 Q: And this is the same person that you told law enforcement

14 you had never had an altercation with?

15 A: I haven't, but I know what he's capable of.

16 Q: And you didn't know what he was saying. Were you

17 surprised to learn, Mr. Grate, that there wasn't a gun on

18 Darrell Doctor? That's a question; were you surprised?

19 A: Yeah. Yes, sir.

20 Q: Where were his hands?

21 A: He stuck his hand in his coat.

22 Q: He stuck his hand where?

23 A: In his coat, in his pocket.

24 Q: In his pocket?

25 A: Yes.

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1 Q: Do you know now what was in his pocket?

2 A: No, I still don't know.

3 Q: You weren't here for the testimony where Dennis Lewis
4 showed this jury that all he had was some money and car keys
5 in his pocket?

6 A: Yes, by the time they got there.

7 Q: So, it's your testimony, somebody hid a gun?

8 A: It's possible.

9 Q: Let me ask you this, last line of questioning please, sir.

10 MR. HELMS: Your Honor, if I may?

11 THE COURT: Yes, sir.

12 BY MR. HELMS:

13 Q: Where was Darrell's vehicle?

14 A: Back over this way (indicating).

15 Q: All right. Okay. So, that's wrong and that's wrong?

16 A: Yes, sir.

17 Q: Okay. And you're telling the truth here today?

18 A: Yes, sir.

19 Q: Despite saying to Detective King Hemingway that he was
20 just walking towards you and now you're changing it to that he
21 was walking aggressively and fast towards you?

22 A: I said he was coming toward me.

23 Q: Well, it's on that tape and the jury can listen to it if
24 they want to. So, I'm giving you an opportunity now, did you
25 tell Detective King Hemingway he was just walking towards me?

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ROGER D. GRATE - CROSS BY HELMS

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- 1 A: I told he was coming toward me, walking toward me.
- 2 Q: What did you do after you shot him?
- 3 A: Waited on the officers to come.
- 4 Q: Did you ask anybody to help you?
- 5 A: No, sir.
- 6 Q: Did you say anything?
- 7 A: No, because basically, I was in shock.
- 8 Q: You didn't intend to shoot him, right?
- 9 A: I told you, I was trying to stop him from coming at me.
- 10 Q: Well, what does that mean, Mr. Grate? Did you mean to
- 11 shoot Darrell Doctor, or you didn't mean to shoot him; was it
- 12 an intentional shooting or not?
- 13 A: No, sir.
- 14 Q: Okay. You were here when Dr. Proctor testified as to
- 15 where the entrance wound was, right?
- 16 A: Yes, sir.
- 17 Q: And it was right in the middle of his head, right?
- 18 A: Yes, sir.
- 19 Q: He wasn't shot in the arm?
- 20 A: No, sir.
- 21 Q: Or the leg.
- 22 A: (No response.)
- 23 MR. HELMS: Court's indulgence? Nothing further, Judge.
- 24 THE COURT: Redirect?
- 25 MS. WILSON: Just briefly, Your Honor.

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ROGER D. GRATE - REDIRECT BY WILSON

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1 REDIRECT EXAMINATION OF ROGER D. GRATE BY MS. WILSON:

2 Q: Mr. Grate, there is no question that you admitted
3 immediately to the shooting, correct?

4 A: Yes, ma'am.

5 Q: And there is your prior statement to me on direct that you
6 were anxious, basically, at the time he was coming at you; you
7 felt threatened?

8 A: Yes.

9 Q: And is -- in that moment, in that instant, when you're
10 pulling up your gun, what happened?

11 A: I pulled it out and shot it to try to get him to stop from
12 coming at me.

13 Q: Yeah. And it did what; what happened?

14 A: It hit him, shot him.

15 Q: All right. And was that your intention?

16 A: No, ma'am.

17 Q: Your intention was to do what?

18 A: Just scare him and stop him from coming at me.

19 Q: And you said that you and Darrell never had any problems?

20 A: No, ma'am.

21 Q: Y'all actually got along well?

22 A: Yes, ma'am.

23 Q: But you did know him, because you did hang out with him?

24 A: Yes.

25 Q: And so, you knew that he had a gun?

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ROGER D. GRATE - REDIRECT BY WILSON

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1 A: Yes, ma'am.

2 Q: You weren't certain about whether or not it existed that
3 night, but you thought so, correct?

4 A: Yes, ma'am.

5 Q: Now, did you think you needed to wait until he beat you up
6 or shot you in order to defend yourself?

7 A: No, ma'am.

8 Q: That's not required under the law, is it?

9 A: No, ma'am.

10 MR. HELMS: Objection, Your Honor.

11 THE COURT: All right. I will instruct the jury as to
12 the law. Rephrase the question.

13 MS. WILSON: I'm sorry, Your Honor.

14 BY MS. WILSON:

15 Q: Given the circumstances of Darrell Doctor and arguing with
16 you, was that a heated situation?

17 A: Yes, ma'am.

18 Q: And when he came back towards you, immediately after you
19 had just had that exchange?

20 A: Yes, ma'am.

21 Q: How did you react to that; how did you feel about that?

22 A: It scared me because I didn't know basically what he had
23 on his mind or what he was coming back at me toward me for.

24 Q: All right. And in that moment, you pulled out your weapon
25 to stop him?

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ROGER D. GRATE - REDIRECT BY WILSON

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1 A: Yes, ma'am.

2 Q: Your statement to King Hemingway, you did say coming at
3 you, didn't you?

4 A: Yes.

5 Q: And he asked you about how he was approaching -- and this
6 is the same question I just asked you, was he running, and I
7 think you said he wasn't walking, just walking, but I'm not a
8 hundred percent clear what you told the state just now about
9 the walking. I know you said at the end, that he was coming
10 at you and that he was walking at you or walking up on you?

11 A: Yes, aggressively like.

12 Q: So, then did King Hemingway ask you if it was aggressive?

13 A: I don't think he did; I'm not sure.

14 Q: He just asked you how he was coming?

15 A: Yes.

16 Q: And at that point, did you expound on it or did he ask you
17 to explain more about how he was approaching you then?

18 A: I'm not sure.

19 Q: Okay. It's okay if you don't remember.

20 MS. WILSON: Court's indulgence one brief second?

21 THE COURT: Yes, ma'am.

22 BY MS. WILSON:

23 Q: Just one more quick question. Actually, hold on one more
24 second, I apologize.

25 THE COURT: Yes, ma'am. Not a problem.

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ROGER D. GRATE - RECROSS BY HELMS

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1 Q: One quick thing. You said that Darrell Doctor was
2 mumbling when he came -- when he was coming back to you?
3 A: Yes.
4 Q: And you said you couldn't understand what he was saying?
5 A: No, ma'am.
6 Q: Is there any reason for that, that you think you couldn't
7 -- he was unintelligible? When I say unintelligible, that you
8 couldn't understand him. Is there a reason why you think he
9 might have been hard to understand; was he slurring his words
10 or anything like that?
11 A: I believe he was about drunk, I believe, now, I can't ---
12 Q: Well, I'm asking specifically, were his words slurred?
13 A: Yes.
14 Q: Or he just couldn't make out what he was trying to say?
15 A: Yes.
16 Q: Was it him talking low or was he talking low or was it
17 loud and just not clear?
18 A: It just wasn't clear.
19 Q: Okay. All right.
20 MS. WILSON: No further questions, Your Honor.
21 THE COURT: Solicitor, questions on those just asked?
22 MR. HELMS: Just one.
23 RECROSS EXAMINATION OF ROGER GRATE BY MR. HELMS:
24 Q: What words were slurred?
25 A: Whatever he was saying, that's why I couldn't basically --

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ROGER D. GRATE - RECROSS BY HELMS

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1 that's why I told him I couldn't understand what he was
2 saying.

3 Q: Well, was it because he was mumbling or slurring his
4 words?

5 A: He was slurring what he was saying; I couldn't understand
6 what he was saying.

7 Q: Before you testified he was mumbling; which is it, Mr.
8 Grate?

9 A: I couldn't understand what he was saying.

10 Q: Because he was mumbling or slurring?

11 A: I ---

12 Q: Nothing further, Your Honor.

13 THE COURT: All right, sir, you may step down. Thank you
14 very much.

15 Further witnesses on behalf of the defense?

16 MS. WILSON: At this time, Your Honor, the defense will
17 rest.

18 THE COURT: All right. Very good.

19 Reply testimony by the state?

20 MR. HELMS: One rebuttal witness, Your Honor, brief.

21 THE COURT: All right. Very good. They here?

22 MR. HELMS: They are, Your Honor.

23 THE COURT: All right. Call your reply testimony.

24 MR. HELMS: At this time, the state would call Veronica
25 Doctor.

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VERONICA DOCTOR - REPLY DIRECT BY HELMS

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1 THE COURT: All right, ma'am, come all the way around up
2 here right up front, ma'am, right next to the clerk's
3 representative please, ma'am.

4 CLERK: Please raise your right hand and place your left
5 hand on the Bible.

6 VERONICA DOCTOR, HAVING BEEN DULY
7 SWORN TESTIFIES AS FOLLOWS:

8 CLERK: Please be seated. State your full name and spell
9 your name.

10 MS. VERONICA DOCTOR: Veronica Doctor, V-E-R-O-N-I-C-A;
11 last name, Doctor, D-O-C-T-O-R.

12 THE COURT: Go ahead, Solicitor.

13 REPLY DIRECT EXAMINIATION OF VERONICA DOCTOR BY MR. HELMS:

14 Q: Veronica, I won't be long. How did you know Darrell?

15 A: He's my first cousin.

16 Q: Okay. Do you know Roger?

17 A: I do.

18 Q: Okay. Did you hang out with Darrell a lot?

19 A: On family occasions, yes.

20 Q: How long have you known him?

21 A: All my life.

22 Q: All your life. You ever known him to be violent?

23 A: Never.

24 Q: Ever known him to be a trouble maker?

25 A: Never.

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VERONICA DOCTOR - REPLY CROSS BY WILSON

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1 Q: Have you ever known him to carry a gun?

2 A: Never.

3 Q: Ever seen him with a gun?

4 A: Never.

5 Q: Was he ever in trouble with the law?

6 A: Not to my knowledge.

7 Q: Is that something you would've been aware of in your
8 family?

9 A: Yes.

10 Q: And you never saw him with a gun?

11 A: Never.

12 Q: Did he talk about guns?

13 A: Never.

14 Q: He ever pull a gun on anybody; you never saw him pull a
15 gun on anybody?

16 A: Never.

17 Q: Please answer any question the defense may have.

18 THE COURT: Cross examination?

19 MS. WILSON: Thank you, Your Honor.

20 REPLY CROSS EXAMINATION OF VERONICA DOCTOR BY MS. WILSON:

21 Q: Ms. Doctor, you say you've never known him to have a gun?

22 A: Correct.

23 Q: You can't be certain about that, can you?

24 A: I said I've never known him to have a gun.

25 Q: So, my question is, you cannot be certain about that, can

1 you?

2 A: I never known for him to have a gun.

3 Q: And, ma'am, I'm sorry, this is a yes or a no. You cannot

4 be certain that he did not have a gun, can you?

5 A: I'm certain.

6 Q: So, you have never known it and you're certain now?

7 A: Correct.

8 Q: Okay. And how -- did you live with him?

9 A: With?

10 Q: With Darrell Doctor?

11 A: I have.

12 Q: So, when was the last time you lived with him?

13 A: It had been years ago.

14 Q: How many years ago?

15 A: Probably maybe 20 years ago.

16 Q: Twenty years ago. So, 20 years ago, you lived with him,

17 so in the last 17 years, approximately, prior to his death,

18 you did not live with him, correct?

19 A: Correct.

20 Q: So, in that 20 years, you did not live anywhere with him,

21 correct?

22 A: No.

23 Q: All right. So, in 20 years you hadn't lived with him, how

24 often did you hang out with Darrell Doctor?

25 A: As I stated before on family occasions.

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VERONICA DOCTOR - REPLY CROSS BY WILSON

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1 Q: Okay. Are we talking about major holidays?

2 A: Correct.

3 Q: So, Christmas, Thanksgiving?

4 A: Maybe Mother's Day, birthdays.

5 Q: Yes, ma'am. So, certainly you didn't hang out with him on
6 the weekends going out having a good time, that kind of thing,
7 but mainly family gatherings because you're relatives?

8 A: Correct.

9 Q: All right. And in the past 20 years, you hadn't lived
10 with him, you didn't hang out with him on weekends or regular
11 in that sense, but family holidays?

12 A: Correct.

13 Q: All right. And you are telling this Court today that you
14 are a hundred percent certain about what he might have had?

15 A: Yes, I am telling that Court that I am a hundred percent
16 certain. Yes, that's what I'm telling the Court.

17 Q: Okay. And you weren't aware though that he had purchased
18 a gun from Roger, were you?

19 MR. HELMS: Objection, Your Honor.

20 A: That's a word of mouth.

21 THE COURT: All right. Overrule the objection, you may
22 ask the question.

23 MS. WILSON: Thank you, Your Honor.

24 THE COURT: Go ahead and ask the question.

25 MS. WILSON: I'm sorry, I just forgot my question.

1 BY MS. WILSON:

2 Q: You weren't aware that Darrell had purchased a gun from
3 Roger, were you?

4 A: No, I wasn't aware of that.

5 Q: Okay.

6 MS. WILSON: No further questions, Your Honor.

7 THE COURT: Redirect?

8 MR. HELMS: Nothing, Your Honor.

9 THE COURT: All right, ma'am, you may step down and
10 released from your appearance here in Court.

11 BY THE COURT:

12 THE COURT: Further reply witnesses by the state?

13 MR. HELMS: No, sir, Judge.

14 THE COURT: All right. Matters of law for the defense at
15 this point in time?

16 MS. WILSON: Yes, sir, Your Honor.

17 THE COURT: All right. Very good.

18 All right, ladies and gentlemen, as at the end of the
19 state's case when the evidentiary portion of the trial has
20 been concluded, there are matters of law that I must take up
21 with the attorneys. I'm gonna talk to them about that and the
22 status of the case, whether we will continue to proceed now or
23 continue first thing in the morning. So, if you would go to
24 your jury room. I'll communicate with you shortly.

25 Thank you.

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1 sir.

2 (REPORTER'S NOTE: Jury enters courtroom @ 9:39 A.M.)

3 THE COURT: All right. Mr. Foreman, ladies and gentlemen
4 of the jury, we have reached the stage of the trial where we
5 are going to go into the closing arguments of counsel. Now,
6 I'll remind you, as I told you at the very beginning, opening
7 statements, closing arguments, that's not evidence. You've
8 received all of the evidence you are going to receive in this
9 case already. But the closing arguments are important. They
10 are each side's summation to you of what they believe the
11 evidence has shown to you during the course of trial and of
12 course, what they will be asking of you regarding your
13 unanimous verdict in this particular matter. After we get
14 done with the closing arguments, I will give you the law that
15 you will apply to the facts and evidence you have heard in
16 this case and then I will submit and give the case to you for
17 your deliberations and unanimous decision in this particular
18 matter.

19 So, with that, Solicitor?

20 MR. HELMS: Thank you, Judge.

21 CLOSING BY HELMS:

22 MR. HELMS: Normally, at this point in the trial, I have
23 to stand up here and ask the jury to do a job, quite frankly,
24 that's even harder than the one I'm asking you to do. And I
25 don't mean that you have an easy job; don't take it as that.

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1 But, what I mean is, I have to stand up here and I have to ask
2 a jury to determine what happened, who did it, and were they
3 justified in doing it if they did it. I don't have to ask you
4 to find those three things because, folks, we know what
5 happened. That man over there shot and killed Darrell Deas in
6 the middle of the street and unarmed. We know that happened.
7 He admitted it. I don't have to ask you to find out who did
8 it, you don't have to determine that, because this ain't a
9 whodunit. He did it. We know that; he admitted it. Nobody
10 said he didn't do it. The only thing I have to ask you is to
11 determine whether or not he was justified. Was it reasonable?
12 Is he excused for what he did for some reason? They say he
13 is. Of course, they say he is but he's not, and the evidence
14 says he's not. You can't kill an unarmed person in the middle
15 of the street for walking towards you, especially, when
16 they're your nephew, especially when they didn't say anything
17 to you. And he can't tell you what he said to him, because he
18 didn't say anything. First he said, he told law enforcement
19 he was mumbling. How is that provocation? He's going to tell
20 you that was provocation, he was provoked. Even if that's
21 true, how is mumbling provocation? Then he took the stand
22 yesterday and told you, well, now he was slurring his speech.
23 And my final punch, I don't know if you remember, but I asked
24 him, what was he mumbling or slurring, because they ain't the
25 same thing. And what was his answer? He didn't have one,

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1 because he's had three years, almost three years to come up
2 with that slurring speech story because they want you to
3 believe because Darrell Doctor was drinking, that he deserved
4 to die, and that's absurd. Yes, he was drinking. But by that
5 logic, when I had a glass of wine last night and walked across
6 the street to my mailbox, I should've been shot. Now, doesn't
7 that sound absurd? And it's because it is. Darrell Doctor
8 did not deserve to die.

9 Now, the defendant wants to harp on the fact that he had
10 a CWP, a Concealed Weapons Permit. One of these. I'm gonna
11 tell you what this allows me to do. This allows me to carry
12 my gun where it may not allow someone else to carry it; that's
13 it. This does not exempt me from the law. This is not a
14 license to kill. This lets me carry my gun on my person
15 concealed in places it doesn't allow someone without one to
16 carry. This is not a license to kill. Yes, when the officer
17 got there, Officer Santiago, he gives him his license, but
18 he's wrong. He gave him his license like this is a free pass.
19 Folks, this is not. This does not exempt him from murder.
20 This is irrelevant to what he did.

21 Now, South Carolina has determined that either juries or
22 legislators or judges, there are certain situations where a
23 person is justified in killing somebody. Folks look, if
24 you're at home in the middle of the night sleeping in your bed
25 and at 2:00 A.M. I kick in your door and come in with a

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1 handgun and you shoot me -- this isn't legal advice -- but
2 there's a good chance you ain't going to get prosecuted. Fair
3 enough? If I'm walking down the street with my wife arm in
4 arm and somebody hits me in the back of the head with a
5 crowbar, grabs her, and tries to throw her in the back of a
6 windowless van, and I pull my gun and shoot that person,
7 again, there's a pretty good chance I ain't getting
8 prosecuted. That's justified.

9 Shooting your unarmed nephew between the eyes in the
10 middle of a public road, who did nothing to you and you've
11 never had an altercation or cross word with, by his own
12 admission, is not justified.

13 So, what do we know? We know he shot him. How do we
14 know that? Tomas Santiago took that stand, Officer Tomas
15 Santiago with the Loris Police Department. And he responded
16 to that scene that night. And he gets there and he
17 immediately realizes something is going on, of course, there's
18 a body over here and there's people everywhere. So, he asked
19 all these people, what happened, what happened? Nobody tells
20 him anything. Anybody out there had the opportunity,
21 including Gregory Grate, the defendant's stepson, to come up
22 to Tomas Santiago and explain to him exactly what they believe
23 they saw. Nobody said anything.

24 To his own credit, Roger did, because there's no escaping
25 it. Too many people saw him shoot him. Somebody is gonna say

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1 something eventually, like the James Grates of the world, the
2 NaQuishe Gausens of the world. There's no escaping it, but
3 it's okay because he's got a CWP. So, he comes up to Officer
4 Santiago, tells him I shot him and hands him his gun and CWP.
5 And this is the gun he handed him, and he admitted it so we
6 know this is the gun he handed him. This is the gun that shot
7 Darrell Doctor in the head.

8 That was really the extent of Officer Santiago's
9 involvement. Then he takes the defendant to the police
10 station to be interrogated or interviewed by law enforcement,
11 Horry County Police Department. Specifically, I don't see him
12 in here -- there he is back there -- Detective King Hemingway.
13 And he arrives and he does speak with him, and we'll get to
14 that because the statement in this case is so paramount. They
15 are the defendant's own words. And I'm going say something I
16 never get to say. You can believe him. You can believe that
17 statement he gave right after the shooting, but we'll get to
18 it.

19 What do we have next? We have Joshua Drew. Joshua Drew
20 was with Horry County Fire and Rescue. He didn't have long
21 testimony, because the point of his testimony was to show you
22 that Darrell Doctor was dead on the scene, and he told you
23 that. He knows when somebody is dead and he declared him
24 dead. He's qualified to do that as a EMS person and that's
25 what he did, and that was the extent of his involvement.

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1 But then we had Dennis Lewis. Now, who was Dennis Lewis?
2 If you remember, Dennis works with Horry County CSI, crime
3 scene investigations. And it may not be the most exciting
4 testimony but it was very, very important that you know what
5 Dennis Lewis did, because he told you his job is to document
6 and collect evidence and that's exactly what he did. He
7 documented the scene and he collected evidence. He took
8 pictures and he collected evidence. So, what did he collect?
9 He collected one fired projectile and one shell casing, a .45
10 caliber. That's a .45 caliber gun. One, not two, but one.
11 You know why one? Because it only took one shot to kill
12 Darrell. Two shots weren't necessary. He killed him with the
13 first shot right here. He collected some sunglasses. And
14 where did he get this stuff? In the middle of the street.
15 He told you that he determined, based on his investigation, it
16 all took place in the street and we don't have anything to
17 contradict that. He photographed the deceased, Darrell, and
18 you saw the photograph and I won't show it to you again. If
19 you want to see it, it's in evidence, by all means, look at
20 it. But just as important as the single gunshot wound to his
21 head, did you see his hands? Nothing on his hands, no
22 bruises, no scratches, no abrasions, no cuts, nothing, and
23 there's a reason. Because he didn't hurt nobody. He didn't
24 try to hurt anybody. He didn't make contact with anybody.
25 There's no testimony he swung at anybody. As a matter of

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1 fact, all the testimony says he was shot five feet away.
2 There was no way he could've hurt anybody, because he wasn't
3 close enough to him. And the defendant wasn't gonna give him
4 a chance. In fact, those are his words. Listen to the
5 testimony. You can listen to it; that's in evidence too,
6 that's at your disposal. I wasn't taking no chances. Is that
7 reasonable to you?

8 Then we get to the statement, where King Hemingway went
9 out to the Loris Police Department and interviewed Roger
10 Grate. The interview, like I said, is paramount, folks. It
11 tells the story. As strange as it is, he thinks he's
12 justified; he's not. And when he tells that story that night,
13 I submit to you that was more true than anything he said on
14 this stand because they're not -- they're not the same and
15 I'll get to that. I want to point out a few things he said to
16 you. First of all, he admits to drinking. Were you drinking;
17 oh, you're drinking? Yeah. Are you supposed to drink when
18 you carry a firearm?

19 Later on, about four and a half minutes in, Detective
20 Hemingway says, I want to ask you if you're injured, hurt?
21 Have you sustained any injuries tonight? No. Of course not,
22 because Darrell Doctor never laid a hand on him.

23 Later on in the interview, about 14 minutes in, he's
24 talking to him about what he said to him when he told him to
25 leave. Did he say, no, I'm not leaving? Mr. Grate: No. No,

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1 he ain't. I told him two or three times. He didn't -- still
2 didn't leave. That's when he started coming towards me, and
3 then he shoots him. Is that reasonable? Did you warn him or
4 anything? No, because he's scared of me. You know how many
5 times me and my nephew have argued? He's 20 years old. He's
6 bigger than me, he's faster than me, well, he's taller than
7 me, anyway, not bigger. He's faster than me; I promise you,
8 he's probably stronger me. You know how many times me and
9 that boy have argued? Many times. More than they've argued
10 because they say they never have. He said they never have.
11 Me and that boy argue all the time, but even in the midst of
12 an argument, if he's walking towards me and I shoot him and he
13 doesn't have a weapon on him, guess what that means? It's
14 murder, and I'd be sitting in that chair right there.

15 Later on, about 15 minutes in, why did he scare you?
16 That's a reasonable question, because up to this point,
17 nothing he said justifies him being scared. Quote -- this is
18 the answer to that question. Why did he scare you? Quote,
19 shit, I'm too old to be fighting. I'm too old to be fighting.
20 So, he wasn't even going to take a chance. I'm too old to be
21 fighting; that's why he shot him. I'm gonna tell you
22 something, it makes no sense that this man shot his nephew; we
23 all know that, he makes no sense. But I'm gonna tell you what
24 my theory is. Mr. Grate thinks he's the patriarch of the
25 Grate clan, he's the top dog, and that ain't gonna be

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1 questioned. How do we know? Use context, use the
2 circumstances that we know. We know that he jerked up --
3 well, let's just start with the argument. We know that he was
4 getting after Gregory for whatever reason, as silly as it was
5 at Christmas or something, and James tells us and you can
6 judge James Grate's credibility, Sergeant James Grate. You
7 can judge his credibility and that's your job actually, to
8 judge his credibility. Do you believe that he snatched him up
9 against that green car or was he making that up? Why? Why
10 would he make it up? He wouldn't; he has no reason. He has
11 nothing to gain and everything to lose by coming in this
12 courtroom and lying to you. He thinks he's the patriarch, the
13 top dog and that gun -- and he's too old to be fighting, so he
14 ain't even going to take the chance, but he's gonna remain the
15 top dog and he's going to do it with a gun. Why else would
16 you carry a gun? I'm not saying he wasn't allowed to, but why
17 else would you carry a gun at a family gathering? Look, I
18 don't have to carry my gun. I don't do it at a family
19 gathering; there's no need. That's silly. At my house. Now,
20 again, I'm not saying he wasn't allowed to, I'm going to tell
21 you why he was guilty, because he's going to remain top dog
22 and nobody is going to challenge him and that's exactly what
23 he thought Darrell was doing, challenging him. When he walked
24 over to his nephew after he snatched him up against the car
25 and asked him what was going on. Is that reasonable?

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1 He goes on during that line of questioning. Okay. Have
2 you and Darrell had any problems in the past; huh-uh,
3 (negative response), me and him always been tight. Detective
4 Hemingway, Been tight? Okay. So, you and him haven't had
5 any recent issues, nothing over the holidays? Quote, none.
6 Were you and him arguing? None, that's what I'm saying, none.
7 He goes on to ask him about a gun and Darrell with a gun and
8 he's the only person that said anything about Darrell having a
9 gun. But do we have any evidence that Darrell had a gun? And
10 you know, it was kind of silly and I was being kind of silly,
11 but I asked him, did you see him with a bow and arrow, did you
12 see him with a stick of dynamite? Of course not, because each
13 one is each as plausible or implausible as him having a gun.
14 There's zero evidence of Darrell having any kind of weapon.
15 So, we asked him, did you see him with one, meaning a gun?
16 No; that was his answer, no.

17 About 16 minutes in, still talking about a gun, Detective
18 Hemingway: But he didn't have one? Darrell Grate: I don't
19 know. He don't know because he didn't show one. There's no
20 reason to think he had a gun. Asked him, how many times did
21 you pull the trigger? Mr. Grate: One. Folks, that's all it
22 took. That's all it took.

23 About 17 minutes in, Okay, when you pull your gun out,
24 did you give him any commands like stop? Mr. Grate: No,
25 because he -- Detective Hemingway: I've got a gun? No,

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1 because he was coming at me.

2 Asked what was going on -- this was about 19 and a half
3 minutes in. Detective Hemingway: Asked what was going on.
4 Did you have like an attitude or anything when you told your
5 nephew it's between you and him? Mr. Grate: Well, I was just
6 telling him. I was telling him that's between me and him.
7 Told him to leave two or three times. And did he make any
8 negative comments towards you after you told him it's between
9 you and him? Yeah, he started mumbling something, but
10 everything was just -- it happened so fast, so I can't. Now,
11 there's where he says mumbling. And normally, you'd probably
12 gloss over that, but that wouldn't be important. But he
13 testified to something different yesterday. Now, he's
14 slurring. Now, isn't that convenient? He's had almost three
15 years or two and a half years to come up with he's slurring.
16 So, he's drinking now. Well, we know that he's drinking. It
17 don't mean you can kill him. He's slurring now. And I asked,
18 Well, sir -- my question to him, was he mumbling like you said
19 the night you shot him or was he, quote, slurring now. He
20 didn't have an answer. About how far was he when you told him
21 to leave? Mr. Grate: Well, he was further back when I told
22 him, but he started coming up towards me. Okay, but he
23 approached you first to ask what was going on? Yes, he's
24 asking what's going on.

25 If you take it at face value like I told you, he's asking

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1 what's going on. Does that deserve to be shot in the head?
2 Okay. When he asked what was going on, were you guys face to
3 face at that point? No, no. I'll tell you why he wasn't face
4 to face with him, because Darrell was talking to his cousin,
5 Gregory. Gregory told us that. He come over and asked him.
6 And then by Gregory's own statement, the first exchange
7 between Darrell and Roger was initiated by Roger. He
8 initiated it. He come over and said that's between me and
9 him, because he wasn't going to be challenged because he's top
10 dog.

11 And this is 20 minutes in. This is important. Detective
12 Hemingway: He didn't approach you when you and D -- when you
13 and your son got in an argument? Hu-huh, indicating no. And
14 again, this is in evidence. And you were not there during the
15 conversation between them? No, they're standing over there
16 talking. That's when I told him that's between us. You can
17 take it at face value. They're standing over there talking
18 and I told him that's between us. Now, I'm gonna get into
19 this in a minute, but does that sound like he's without fault
20 of bringing on the difficulty? That brought on any
21 difficulty.

22 Twenty-three and a half minutes in. Detective Hemingway:
23 You have your argument. Your nephew at that time is over with
24 everybody else? Yes. He come over and you're saying he talks
25 to your son first? Mr. Grate: Yeah. Or he asked you what's

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1 going on? Mr. Grate: Oh, no, he asked him what's going on
2 and that is when he had -- that's when I had told him that's
3 between -- that's between us and he started saying things.
4 All right. This is Detective Hemingway: When he came over
5 and was talking to Gregory, how far were you from him at that
6 point? Are we talking a table length or further? Probably
7 further. So, they're further than a table length away but he
8 inserts himself into Darrell and Gregory's conversation from
9 that far away. So, who's at fault for bringing on the
10 difficulty? I'm gonna tell you who, that man sitting over
11 there. Darrell wasn't confronting him. He was checking on
12 his cousin, y'all. That's what the testimony showed you.
13 That's what James Grate told you. That's what the boy told
14 you, Gregory.

15 Twenty-five and a half minutes in. Detective Hemingway:
16 Okay, you said you were at the green car? Yeah, I was right
17 there behind the green car. Everybody that identified --
18 everybody in this case identified that red dot right there as
19 the green car except the defendant. Why? Because he's got to
20 put some holes in this somewhere, folks, because if you start
21 believing this evidence, if you believe the evidence that the
22 state put together, that the state showed you, this is murder.
23 So, they've got to put some holes in this somewhere. They've
24 got to muddy the waters and I don't blame them for that.
25 That's her -- Ms. Wilson's job; I understand that. But if you

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1 believe the evidence that we presented to you, this is murder.
2 So, I got to start putting some holes in stuff somewhere. Oh
3 no, that's not the green car, and that's not Darrell's vehicle
4 either. He's the only person that said that. So, you were at
5 the green car? Yeah, behind the green car. Where was Darrell
6 and Gregory at? That's Detective King. Well, after I told
7 him to leave, that's when he started walking towards me.
8 Detective -- detective: He was walking towards you from his
9 car? No, from the other car. Whose car did that belong to?
10 My son. From your son's car, so he was walking to you from
11 your son's car? Yeah. Where was his son's car? He told us,
12 right over here. So, he's that far away from him. We know
13 Roger is over here behind the green car. They're over here at
14 his son's car and he inserts himself into that conversation
15 from that far away. Who's at fault for bringing on the
16 difficulty?

17 Y'all bear with me, I'm almost done with this. Twenty-
18 eight minutes in, Detective Hemingway: Was his car blocked
19 in? Meaning Darrell's car. No. Okay. Was his car blocked
20 in? No. Why is that important? He testified he had his
21 hands in his pockets when he was walking towards him. Now, if
22 he's walking towards him from over here and we know Darrell's
23 car is right here and Roger is somewhere in the middle. Is he
24 walking towards Roger or is he walking towards his car, y'all?
25 We know what was in his pockets and it certainly wasn't a gun.

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1 What did Dennis Lewis tell us was in his pockets? Money and
2 car keys. So, if you take him at his word from what he said
3 that night to Detective Hemingway, if he did have his hands in
4 his pockets, he wasn't reaching for no gun. He was reaching
5 for his car keys and he was walking to his car. And we know
6 that because his car was behind Roger and we know that because
7 James Grate, unequivocally told you -- and again, judge his
8 credibility by all means. He unequivocally told you he said
9 let me get my car. The man was trying to leave and he was
10 shot dead by his uncle. That's what happened. He told him to
11 leave and he was leaving, not that he had a right to tell him
12 to leave from the middle of a public road. He could've told
13 him to leave his house, but he wasn't in his house. He was
14 trying to leave.

15 Twenty-nine minutes in. Have you and him ever run into a
16 fight with each other? Mr. Grate: Who, Darrell? Yeah. No,
17 me and Darrell used to hang together. Detective: I mean,
18 have y'all ever had an altercation? Quote, never.

19 Thirty and a half minutes in. You and him never had any
20 problems before, what would make you think that he has intent
21 to harm you to where you have to pull your gun? Quote -- Mr.
22 Grate: Cause of the way he stand. Does that make any sense
23 to y'all, cause of the way he stand?

24 Finally, towards the end interview, 33 and a half minutes
25 or 33 and 15 seconds. Detective Hemingway: Was he running at

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1 you or walking fast? No, he just walking and talking.
2 Detective Hemingway: Just normal walking? Walking toward me.
3 If he was walking aggressively, if Darrell was walking
4 aggressively, like that defendant testified yesterday, isn't
5 that how he would have responded to that question way back
6 then, the night he shot him? Wouldn't he have told him if he
7 was justified in shooting him because he was walking quote,
8 aggressively towards him, wouldn't he have told Detective
9 Hemingway that that night? But that ain't what he said,
10 y'all. That ain't what he testified -- that's not what he
11 told Detective Hemingway. And just like the slurring of the
12 speech, he's embellishing that testimony to justify now what
13 he did and knows is wrong. He wasn't walking aggressively and
14 that's why he didn't say it to the detective. And that was
15 his statement and that's what Detective Hemingway told you.
16 Again, it's on the disc, you can listen to it if you want.

17 We called Terri Doctor to the stand and she said she seen
18 him pull a gun on somebody before. Now, it either happened or
19 it didn't. It can't be both ways. Either Mr. Hilton is lying
20 or Terri is lying. I'll let you decide; you're the judge of
21 the credibility. You're the judge of the facts. We contend
22 it happened. Well, why would Mr. Hilton lie? He's proven
23 that he's willing to shoot somebody. We know he is; that's
24 undisputed. Why would Mr. Hilton lie? Because he's afraid of
25 him, and rightfully so.

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1 Next, y'all, we put up James Grate. James Grate
2 obviously, his testimony was extremely important. What did
3 James tell you? He said he snatched Gregory up against the
4 car. He said Darrell went to check on Gregory. He said Roger
5 confronted Darrell, said Darrell acquiesced to his commands,
6 not wishes, not requests, his commands, get the F out of my
7 yard. He wasn't even in his yard. But, Darrell acquiesced to
8 it; he agreed. All right, let me go get my car. Said he was
9 walking to his car, said that the defendant stepped in front
10 of him, pulled his gun and pulled the trigger. Now, the
11 defense would have you believe he didn't see a shooting
12 because he ducked behind the car. Let me explain something to
13 you, I would've ducked behind the car, too. Said he was
14 behind that car for five seconds. So what, he didn't see the
15 bullet enter his head, but he saw him pull the gun and he
16 ducked behind the car and when he looked up, he's still
17 holding the gun and Darrell is on his back. He's on his back.
18 Is there any doubt that he shot him? No. But he said he was
19 going to get his car.

20 Now, they -- Mr. Grate was excitable, admittedly, and he
21 gets to talking fast and maybe said some things he don't mean.
22 I asked him, Did you say he was going to get a gun? No, sir.
23 Did you mean to convey to law enforcement Darrell was going to
24 get a gun? No, sir. I was talking fast, I was frazzled. He
25 said he was going to his car, going to get his car.

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1 Finally, we put up NaQuishe Gause, the teenage girl that
2 lives next-door. Why would NaQuishe Gause come to this court
3 and testify against James Grate? Again, he's proven he'll
4 kill somebody and she lives beside him.

5 MS. WILSON: Your Honor, I'm gonna object.

6 THE COURT: Y'all come up and talk to me for a second.
7 (REPORTER'S NOTE: Bench conference is held off the record in
8 the presence of but outside the hearing of the jury.)

9 MR. HELMS: Back to my point. Why would she come
10 testify? He's proven he'll shoot a person. He's done it; he
11 admitted to it. She come to testify and tell you what
12 happened, y'all, because that's what happened. Now,
13 admittedly, Ms. Wilson had her confused about the orientation
14 of her house. To be honest, she had me confused. She
15 probably had some of y'all confused, too. Let me clarify
16 something -- well, Ms. Gause actually clarified it when she
17 pointed to the map. Where's the house? Right there. Done.
18 It's beside it. Where's your bedroom? At the end of the
19 house. Can you see the street from your bedroom? Yes.
20 There's no testimony the shooting took place over here where
21 she couldn't see. It took place right there, we know that.
22 She can see the street from her bedroom.

23 Well, let's talk about the orientation of her house. She
24 was confused. It's on the left; it's on the right. Let me
25 show you something. If this Mr. Grate's house and I'm

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1 NaQuishe Gause and I'm standing -- I'm in my house, the house
2 is on my left. But watch this, I walk out of my house, I face
3 my house. Guess what? His house is on my right. So, when
4 she finally realized what she was talking about, she pointed
5 to where her house was. Don't -- I submit to you not to
6 discount her testimony because the teenager was confused. She
7 confused me, too. She told you where her house was. She told
8 you what she saw. And what did she see? She saw the
9 shooting. She saw the defendant and she saw the victim,
10 Darrell. And what was Darrell doing? Y'all, she testified
11 that he had his hands up and was backing up. Why would she
12 lie? Why would she lie?

13 Now, admittedly, James said he ducked behind the car for
14 about five seconds. That's long enough to put my hands up,
15 back up and get shot. She saw it. Does that sound reasonable
16 to you? And then she said he fell down and was on his back.
17 She saw it.

18 It's your job to judge the credibility of these
19 witnesses. Why would they come to this courtroom to lie to
20 you with nothing to gain and everything to lose? They
21 could've have said I didn't see anything. When Detective
22 Hardwick came over to her house that night, she was talking to
23 her and James Grate at the scene, they could've said, I didn't
24 see anything just like Gregory did, just like everybody else
25 did, but they've told the truth. They told the truth on

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1 December 25th, 2016 and they told the truth in this courtroom
2 yesterday.

3 Let's talk about the defense witnesses real quick. Mr.
4 Hilton, again, you either believe that happened or it didn't.
5 There's no in between. He either pulled a gun way back on him
6 or he didn't; that's up to you. That's not my job to decide.
7 You either believe Terri or you believe Mr. Hilton.

8 Gregory Grate, I think Gregory's testimony speaks for
9 itself. How credible is that? He don't talk to cops. He
10 don't talk to cops. He testified previously, I don't give
11 statements. I sent an investigator out there, he didn't talk
12 to him. Mr. Hemingway tried to talk to him; didn't talk to
13 him. But all of a sudden, two and a half years later, when
14 that man faces the jury, he's got a story to tell. All of a
15 sudden now want to come out of the woodwork and tell you what
16 really happened. Well, why would he lie? I's his stepfather.
17 Nobody wants to see their family go to prison. Nobody wants
18 to see their family in trouble. But, he broke the law when he
19 murdered a person. He's a convicted felon; we know that. He
20 admitted he lied. And, I'm going to tell you something else,
21 the last thing I asked him, I gave him an out, and he could've
22 rehabilitated his whole testimony. I said, Well, Mr. Grate,
23 if you had it to do all over again, maybe we could've avoided
24 all of this, right? If you had it to do all over again, would
25 you have still lied to the police when you said, you didn't

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1 see nothing? Yep. He's said he admitted to lying.

2 Finally, we have the defendant. You know what he said in
3 the statement, I just read most of it to you. Compare that
4 with his testimony yesterday, walking aggressively all of a
5 sudden. Nowhere in this statement that he gave to King
6 Hemingway did he use the word walking aggressively. He said
7 walking many, many times. He never said the word
8 aggressively. Again, he's embellishing because he's facing a
9 jury. And he's got to change something, because if you
10 believe this, the state's witnesses, the evidence, it's
11 murder. So, he's got to change something, but he couldn't
12 change the word walking. He said it too many times. So, now
13 it's aggressively.

14 So, he's got two stories. He either shot the victim
15 because he's scared or he didn't mean to shoot the victim.
16 Pick one. It can't be both. You were either scared enough to
17 shoot this man because you were in fear of great bodily injury
18 or death or you were trying to scare him, but it can't be
19 both. He didn't shoot him in the knee, he didn't shoot him in
20 the arm, he didn't even shoot him center mass. This was a
21 shot in the middle of the head by a person who says he knows
22 very well how to use his gun and knows the only way a bullet
23 comes out is by pulling the trigger. Y'all, that's what's
24 called an intentional act.

25 So, let's talk about that real quick and I'll wrap it up.

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1 This is what we charged this man with, murder, because that's
2 what he's guilty of. He's guilty of the killing of another
3 with malice aforethought. He killed him; there's no doubt.
4 Darrell is dead. And Darrell is another person; he's not the
5 defendant, he's another person. Let me grab a marker here so
6 I can be clear. So, Darrell is dead because he killed him,
7 and he's another person, with malice aforethought.

8 Now, let's talk about that real quick. This is what
9 malice is and it can be confusing but it really isn't. It's
10 either an intentional doing, pulling of a trigger, of a
11 wrongful act. Shooting an unarmed man in the street is a
12 wrongful act. With ill will, hatred, or hostility to another.
13 Get the F out of my yard. Just got done snatching up Gregory,
14 he has ill will. Folks, he has hostility. And when Darrell
15 -- when he knew Darrell was challenging him as the big dog,
16 then he formed hostility towards Darrell with a reckless
17 disregard for life and safety of others. We have testimony
18 there were numerous people out there at that party. Shooting
19 a gun around numerous people, aimed at an individual who means
20 you no harm, yeah, I think that's reckless disregard. So, do
21 we have malice? We got malice. And if we got malice, look
22 what we got, murder.

23 Now, the defendant claims he shot that man in self-
24 defense. There are four elements to self-defense, and all
25 four have to be present for you to find that he was defending

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1 himself and these are it. The defendant is without fault in
2 bringing on the difficulty. Gregory himself told you that he
3 inserted himself in Darrell and Gregory's conversation. He
4 went over there, but even before that, he started the fight
5 between him and Gregory when he snatched him up on that car.
6 Is he without fault when Darrell didn't even say anything to
7 him? No, he ain't without fault. So, we don't have that.
8 So, already, you don't have self-defense. But let's keep
9 going. The defendant actually believed he was in imminent
10 danger of losing his life or sustaining serious bodily injury.
11 Of losing his life or sustaining serious bodily injury, how?
12 The boy never had a weapon. He never touched you, he never
13 hit you, never said I'm going to hit you. You don't have that
14 so let's mark that off. So, we still don't have self-defense.
15 A reasonably prudent person of an ordinary firmness and
16 courage would have entertained the same belief, referring to
17 number two. So, let's say you actually believe number two.
18 Would you have believed that? Would an ordinary person
19 believe that? Of course not. Like I told you, if I shot my
20 nephew under those circumstances, I'd be sitting there, too.
21 So, we don't have that. And the defendant -- and the last
22 one, the defendant had no other probable means of avoiding the
23 danger. There again, an open street, go anywhere. If you
24 believe he's walking towards you like you say he's walking,
25 walk away. He's not in his house, he's not pinned in a

1 corner, he's not trapped in his car; he's in an open street.
2 Could he have walked away? My God, yeah. Let's mark that
3 out. So, self-defense don't apply, so, look where we're back
4 to, murder.

5 But then the defense would have you believe, well, wait a
6 minute, if he's not -- if he wasn't defending himself -- just
7 hang on now. If he wasn't defending himself, he still isn't
8 guilty of murder because look, it was an accident. He
9 admitted he pulled the gun, pointed it, and pulled the
10 trigger. Ladies and gentlemen, that's an intentional act;
11 that's not an accident. I can't stab you in the neck and then
12 say whoops. It's not an accident. You don't shoot somebody
13 between the eyes and call it an accident, especially, when you
14 know how to use your gun because you're trained to use it
15 because you've got one of these. You're so well trained. Is
16 that an accident? No, it's an intentional act.

17 But wait a minute, okay, if you don't believe he was
18 defending himself and you don't believe it was an accident,
19 well, then it's voluntary manslaughter. And here's what that
20 means, I was just so mad because I was legally provoked by
21 Darrell that I couldn't control myself, just couldn't control
22 myself. He pulled the gun five feet away and we know it had
23 to have been that because that's the testimony and Dr. Proctor
24 said there's no stippling on the wound, no burn marks or
25 powder marks, so we know he was the distance away that --

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1 frankly, the defendant said five feet away, deliberately
2 pulled that gun, pointed it at him and pulled the trigger.
3 That's a cool, calm head right there, folks. That's a person
4 that means to kill somebody, and that's exactly what he did.
5 So, don't buy this mess about throwing everything against the
6 wall to see what sticks. He's guilty of one thing and that's
7 it.

8 The last point I want to make, and I touched on it, but I
9 want to ask you something and I'm going to leave you with
10 this. If what he said yesterday was true versus what he said
11 way back when, and that man is coming at him fast, walking at
12 him fast, his momentum was forward, and he was coming at him
13 like this, like he meant to do something aggressive, how did
14 he end up on his back? He shot him in the head and he ended
15 up on his back. He would've fell forward, common sense. I'll
16 tell you how he ended up on his back. Because what NaQuishe
17 Gause told you was absolutely true.

18 MS. WILSON: Your Honor, can I object, please? Could we
19 approach?

20 THE COURT: Yes, ma'am.

21 (REPORTER'S NOTE: Bench conference is held off the record in
22 the presence of but outside the hearing of the jury.)

23 MR. HELMS: What NaQuishe told you was true. The man was
24 backing up and he was backing up because he meant that man no
25 harm because that's his uncle. He hadn't ever fought with him

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1 before and he wasn't fighting with him that night. He was
2 checking on his nephew.

3 You've got to make a determination whether Darrell Doctor
4 deserved today at the hands of Roger Grate. We know the
5 answer, but it's your job to find the truth and I know you
6 will.

7 THE COURT: All right, Ms. Wilson.

8 MS. WILSON: Thank you, Your Honor.

9 CLOSING BY WILSON:

10 MS. WILSON: Ladies and gentlemen of the jury, the state
11 is trying to sell you a very specific story and we know
12 they're trying to sell you a specific story because they only
13 charged one thing -- well, two charges. One is murder. The
14 other is possession of a weapon during the commission of a
15 violent crime and that's what I told you when I spoke to you
16 at the start of this case and I'm repeating that to you right
17 now. They have a very specific set of facts that they want
18 you to believe.

19 Now, the solicitor has talked to you a whole lot about
20 what I'm gonna say. In part, he's correct, because he already
21 understands what the holes and the problems are in his own
22 case and he's trying to fill those holes. And as he said,
23 about me, I'm not angry that he's trying to fill them. I
24 understand why he wants to do that but it doesn't change the
25 fact that the state has a burden here. I don't have a burden;

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1 my client doesn't have one. We don't have to prove anything
2 to you. It's all on them, all of it. If they don't meet
3 their burden, you cannot find Mr. Grate guilty and it's that
4 simple.

5 Now, certainly the state has gone on and on about what
6 everybody has said and I'm not going to take you back through
7 all of that. I don't think it's necessary. I'm going to take
8 you back through what I perceive are the issues and the
9 problems with the state's case because that's the real problem
10 here. They have a job to do. If they don't do it, not
11 guilty. There is no two ways about that.

12 So, from the start of this case, I said that this wasn't
13 a murder. It's a case of self-defense that resulted in an
14 accidental shooting. And unlike what the state just tried to
15 tell you, Roger Grate never said that he was defending himself
16 and, in shooting his weapon intentionally, he accidentally
17 shot. That's not what he said and you can go back and listen
18 to it. Just like he told you, you can go back and listen to
19 it. What he said is that as he's pulling up his weapon to
20 defend himself -- and he said as he pulls it up, not to shoot,
21 but to stop Darrell Doctor, not to shoot him. Not to shoot
22 him but to stop him. Stop him in his tracks. If you see a
23 gun, you don't keep going, do you? Nobody would. He pulls it
24 out to stop him and, in that moment, he says he accidentally
25 discharges the weapon. Not I'm pulling up my gun and I'm

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1 going to shoot you in the head and just shoot you; that's not
2 what he said happened. And the point is that he gave this
3 statement more than one time. This is not a brand new
4 statement, what you heard on the stand. You heard him on the
5 audio tape. You heard him being questioned by Detective King
6 Hemingway. You heard it. You heard it yourself. Don't let
7 the state rewrite for you what you already know to be the
8 case. They don't get to do that. You listened to the tape;
9 you listen to him on the stand.

10 And frankly, the fact that Roger Grate thinks the car is
11 here instead of here, guess what, that green car is still
12 where? In his yard. That is where he says that he first
13 tells Darrell to leave. That's what he has a right to do in
14 his own yard, tell somebody to leave. Everybody has that
15 right. You don't have to have anybody there that you don't
16 want there. You get to say, I want you out of my yard. Even
17 if you curse at them, you can do that because it's your house
18 and your yard. Get the F out. You get to say that. That is
19 not malice to say get out of my yard. It is not malice. As I
20 think one of the witness claims, she said the fuck out of my
21 yard. Those things are not malicious; those are words. And,
22 he is entitled to use them where he was at that point, which
23 was in his yard at the back of that car. That's not what he
24 just told you, but that is what is true.

25 Now, the Judge is going to instruct you on what the law

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1 is. I can't do that, the state can't do that, even though
2 they spent a lot of time trying. But I am going to talk to
3 you about it because I think it's important for you to
4 understand just what is going to be said to you when the Court
5 charges you on what the law is.

6 Now, the state, as they -- they're so desperate to do,
7 they want you to find Roger Grate guilty of murder. That is
8 their fondest wish. They also want that possession of a
9 weapon during the commission of a violent crime that I told
10 you about. The murder is the killing of a person with malice
11 aforethought. Possession of a weapon during the commission of
12 a violent crime just means you have a weapon while committing
13 a violent crime. But the only way that can -- that conviction
14 can happen, is if you find that that's what happened here, if
15 you believe that that's the circumstances here.

16 The Judge though, is also going to charge or instruct you
17 on the law about involuntary manslaughter and voluntary
18 manslaughter. Okay? So, involuntary manslaughter is the
19 unlawful killing of another without malice. Okay? There was
20 no ill will, there is no bad blood, there is no hard feelings,
21 none of those elements are present here. And, with criminal
22 negligence, and basically criminal negligence is a reckless
23 disregard for the safety of others. That's an involuntary
24 manslaughter.

25 A voluntary manslaughter is an unlawful killing of a

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1 human being in a sudden heat of passion of mind. Example, the
2 argument that Roger says that he was having with Darrell.
3 Soon after a legally sufficient provocation, example, Roger --
4 when Roger said that Darrell is coming at him, coming at him
5 and has his hand in his pocket and he thinks he's got a
6 weapon. And that's without -- also, without malice
7 aforethought. So, the difference -- one of the main
8 differences that I'm gonna be talking about with you this
9 morning is the fact that malice is not present in those things
10 and malice is present in murder, but there's no malice in this
11 situation.

12 And again, I submit to you that Roger is innocent of
13 these charges. That is our position. And where Roger sits
14 over there, he is innocent. The state has, as I just said,
15 the burden to prove him guilty beyond a reasonable doubt.
16 That is not a low burden. That is not something that he gets
17 to just show up in court with a couple of poster boards and
18 tell you that everything he's told you today or this week is
19 correct or true, because we already know that it's not. We've
20 seen some of the people that got up on the stand. We've heard
21 some of the stories they had to tell. You've seen the lies
22 exposed.

23 Now, Roger is a concealed weapons permit holder, and I
24 know the state didn't want to talk about that in their case in
25 chief and they did a pretty good job of not talking about it,

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1 but he is. So, when Officer Santiago got on the stand and
2 says, well, he handed me the gun from his waistband like he's
3 some common thug on the street, we already know that that's
4 not true. Because when I followed up the question with he
5 actually had a holster and he had the gun in the holster and
6 it happened to be a holster on his waist, he had to admit that
7 yes, that's actually the truth. Is that what he initially
8 said when he got up here? It's not. And the reason he didn't
9 say it is because they have a story that they want to tell
10 you. A man with a permit, with a holster with his gun there,
11 not walking around with it in his back pocket or in his
12 waistband, that doesn't fit with the narrative. But when
13 pressed about it, he told the truth, and that is a point that
14 you need to seriously consider. It is not a pass, as the
15 state has suggested to you that it is, for killing anyone.
16 This doesn't mean that you automatically your best sharp
17 shooter or weapons person in the country or in the state or
18 even in the county or the city. What it means is you have a
19 right that a lot of people don't if they don't have this
20 permit, and that is a right to carry a weapon on your person.
21 That is what a concealed weapons permit is for, that's what it
22 does, that's what it allows. You can carry that weapon in
23 your house, in your car on the way somewhere on your person,
24 you can carry it in the street, at the store if you want to
25 and there's no prohibition against it. The point is he was

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1 not engaged in an unlawful behavior or an act that was
2 unlawful. He wasn't doing anything wrong.

3 Now, yes, Roger was arguing with his stepson. But that
4 is not the difficulty that brought on the problems with
5 Darrell; that's not it. And there is no question that the
6 testimony reflects that Roger and his stepson were in the yard
7 by the car arguing when Darrell comes in and inserts himself.
8 Now, the state is telling you, well, he doesn't say anything
9 to Roger. Well, Roger says he did. But, let's just assume
10 for the sake of argument that the state's right and that he
11 doesn't say anything to Roger right then, Roger still lawfully
12 tells him to get out of his yard. And, when he doesn't go,
13 Roger walks out to the street. Darrell -- excuse me --
14 Gregory says that he then goes to his car, which he says is
15 over here, and he is asking Darrell to come and leave with
16 him. He says, I told him to let's go. I told him that a
17 couple of times. That was his testimony. Now, he says
18 Darrell refused to go and said, no, I'm gonna find out what's
19 going on. So, he goes back over to Roger. Roger, at this
20 point, has already tried to distance himself from that
21 argument and that difficulty because he saw that Darrell
22 wasn't leaving when he told him to leave, and that is when he
23 pulls out his weapon in defense, because he says he knows that
24 Darrell has a gun.

25 Now, the state has harped on the fact repeatedly that,

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1 you know, that he's in the street and, well, you know, he
2 doesn't even know that he's got a gun. Well, the bottom line
3 is, number one, Darrell -- and we've already heard this from
4 Dr. Proctor -- Darrell is double the legal limit intoxicated.
5 Okay? He's drunk, extra drunk. Okay? And Roger has already
6 had a confrontation with him at the car where he's been
7 basically belligerent and refused to leave the party. Roger
8 walks away and then Darrell still comes back at him. He
9 doesn't know what's gonna happen, and he told you that. He
10 told the detectives that in the first statement. None of
11 those things are surprises; none of that is new information.
12 He didn't get up here and tell you something very different
13 when he testified yesterday. That's exactly what he said
14 before. He was coming at me. Now, the state only wants to
15 use the phrase walking. Roger freely admitted that he wasn't
16 running at him. What do you call that? If it's not a run,
17 it's a walk. But he said coming at me, which indicates that
18 he also saying, look, this wasn't just him sauntering towards
19 me like, hey man, what's up. It wasn't that kind of coming at
20 me. And the state's suggestion that mumbling and slurring are
21 so completely different that, you know, he must not be telling
22 the truth. If someone mumbles something and slurs something,
23 you still don't understand what they're saying, and that is
24 the point of the statement.

25 Now, when Roger is in the street and Darrell is heading

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1 back to him, he clearly says that Darrell has got his hand in
2 his pocket and that he is fearful because he doesn't know what
3 Darrell's about to do. He says he knows he has a weapon
4 because he is the one who sold it to him.

5 MR. HELMS: Objection, Judge, he never said that.

6 MS. WILSON: If we could approach?

7 THE COURT: Solicitor, I'm not gonna make any comments
8 into what I believe the evidence was, but I believe the
9 defense attorney is properly commenting on the facts. I'll
10 leave it to the jury to believe what they heard. Thank you.

11 MS. WILSON: Thank you, Your Honor.

12 I'm sorry.

13 So, I think I was saying that Darrell heads back towards
14 Roger with his hand in his pocket and that's when Roger pulls
15 his gun in self-defense, in an effort to stop Darrell in his
16 tracks, to stop him from coming at him. He says he knew
17 Darrell owned a gun because he says he sold it to him. And
18 again, I just want to reiterate, not to shoot it. He didn't
19 say I was -- I meant to pop him somewhere. He says I wanted
20 to stop him from coming at me because I felt threatened. He
21 told the officer, I was scared. That's the same night,
22 immediately thereafter. In that moment, he says, yes, I
23 accidentally discharged my weapon. Those things are not
24 mutually exclusive. It doesn't have to be that it was just a
25 self-defense only or it was accident only. He admits he

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1 pulled out his gun. He said I pulled it out because I wanted
2 to stop him where he was. I didn't want him to get closer to
3 me. At the end of the day, I need you to understand, he is
4 not required to wait until he gets hit. He is not required to
5 wait until he sees a gun. He is not required to get beaten or
6 to get knocked or hit before he says I get to defend myself.
7 That's not what the law requires. That's not what it says.
8 And in that moment that he discharged the weapon, he told you
9 he was in shock. He said it right here on the stand. He told
10 the officer that in the audio that you heard. He immediately
11 disclosed that he was responsible for the shooting. He didn't
12 run away, he didn't flee, he didn't go somewhere and hide
13 anything. He stood by the side of the road and waited on the
14 police to come so he could then disclose what had happened.
15 There's no question about that, no question. And then, he
16 talked to Detective King Hemingway and told him what happened
17 in the case.

18 Now, the real difference between the conversation with
19 Santiago and with Hemingway is that Hemingway didn't want to
20 accept what he told him. He felt there had to be some
21 ulterior motive and his entire line of questioning then
22 proceeds from that. It couldn't be an accident. He threw
23 that out of the window right away. It couldn't be self-
24 defense. He threw that out. It was never going to be just
25 what Roger said. He was looking for a different story and he

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1 intended to get one. And frankly, that follows straight
2 through to today. Everything you've heard this week has been
3 a continuation of the state's search for that particular
4 story. Not what is right in front of them but what they want
5 to believe, what they've chosen to believe, and how they've
6 chosen to proceed.

7 Now, reasonable doubt is anything, whether it's testimony
8 or evidence that doesn't leave you firmly convinced, okay,
9 that Roger Grate is guilty of this crime or of any crime.
10 Now, we started off with James Grate, and Mr. Grate, what can
11 I tell you about him? Bottom line is he's a blood relative of
12 Darrell Doctor, not related to Roger Grate. He admits that he
13 was excited and nervous, which is understandable. I don't
14 fault him for that. And that he is not a hundred percent
15 certain of the events of that night. Now, he's talking like
16 he is a hundred percent certain. I mean, he clearly is
17 claiming to be very firm about what he says he observed that
18 evening. But ultimately, he admitted that he's a, I think 80
19 percent sure he said about the events of that night. Ladies
20 and gentlemen, that 20 percent of uncertainty is reasonable
21 doubt. That's exactly what that is. He is not certain of
22 anything that he saw. And the bottom line is, that
23 uncertainty is where the reasonable doubt comes in for you.
24 He also admitted to, you know, correcting and cleaning up his
25 testimony for trial. Clearly, when questioned about his

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1 previous statement or sworn testimony, he admitted that, yes,
2 he was mistaken about some things before but, now, he says
3 he's gotten those things right. That's reasonable doubt.

4 The state showed you the weapon that Roger used. They
5 never had anybody to come in here and testify that the bullet
6 came from that gun. Now, there's no question that Roger has
7 admitted to the shooting. Okay? That's not the issue. The
8 point is, you don't know anything about that bullet and the
9 reason you don't know is because they didn't do their due
10 diligence in making sure that it was clear to you. That,
11 ladies and gentlemen, is also reasonable doubt.

12 Terri Doctor is a blood relative of Darrell Doctor. She
13 got on the stand here and lied to you, point blank lied. She
14 got up here because she also had a story that she wanted to
15 tell you, got on the stand and told you that at a card game --
16 I forget, I think she said maybe a year ago -- that she and
17 family members were at the house with Roger Grate playing
18 cards and that Roger got mad because he was losing the card
19 game and then pulled out a weapon on Kentrez Hilton. And she
20 didn't say a name at first. I had to press her to get the
21 name. Well, when she gave the name, I'm like, you know, okay.
22 But, Mr. Hilton showed up here himself to testify and, despite
23 what the state is saying, look, there is no reason to believe
24 that Mr. Hilton is coming because he's afraid of Roger Grate.
25 He didn't have to show up. He doesn't live with Roger Grate.

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CLOSING BY WILSON

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1 They hang out. He said, that I'd go over there to play cards
2 and I hang out over there. He has no reason to lie to you.
3 There is no basis for it. She has plenty of reason to lie.
4 Her reason for lying is she has got an ax to grind because her
5 cousin is dead, and I understand the upset, I can understand
6 the emotion, but that is not an excuse for lying to the Court.
7 It's not an excuse to lie to you and it does not invalidate
8 what Mr. Kentrez Hilton told you on the stand. She clearly
9 lied to support the story that she wanted to tell you and that
10 she wants you to believe. That is reasonable doubt.

11 Now, NaQuishe Gause, the state had worked hard in their
12 statement to you to clean up the confusion that she caused
13 herself. Now, certainly, my questions weren't that difficult.
14 Where is your house? It's either on the left or the right.
15 You had already said that it's on the left of Roger Grate's
16 house but, when you get up here and I'm questioning you about
17 something and you don't want to give me the answer because you
18 know it doesn't fit with the narrative you want to tell, then
19 you become suddenly, I don't understand, I don't get it, I
20 don't know, I'm confused about what I'm pointing at and what
21 I'm seeing on the map that I've already pointed to when the
22 state was up here talking to me. That's not confusion; that's
23 a lie and lies create confusion. When you're not being
24 truthful, there's a lot of mixed up information. Why?
25 Because it's hard to keep that story going when it's not the

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1 truth. The truth has a way of coming out and, in this
2 instance, the truth came out in her testimony. When I
3 questioned her and even when the state questioned her. She
4 admitted on the stand a lot of things. First, she said her
5 house wasn't located where we all know it is. Then she said
6 it was dark when the state questioned her. She told me the
7 light was on and that it was light. Then she said that Roger
8 was coming from the porch. When the state redirects and
9 questions her again, she says no, that wasn't the case. But
10 then when I asked her about it again, she then says well, no,
11 I'm sticking with my first story. That's not confusion;
12 that's a deliberate attempt to mislead you about what is true
13 in this case. That's not confusion. She wanted to embellish
14 her testimony. Why? Perhaps she doesn't like Roger Grate.
15 Perhaps they're not friendly neighbors. I don't know the
16 reasons. But, my point is, it's not my job to fill that in
17 for you. What is clear is that the state put somebody on the
18 stand who lied when she got up there. That is clear. Not
19 your job to fix it for the state, not my job to fix it for the
20 state.

21 Roger Grate is entitled to you reviewing the evidence and
22 if there is confusion or a mistake or error on the part of the
23 state, that's not our problem, that's their problem, and you
24 shouldn't resolve their errors in their favor.

25 Veronica Doctor, she also took the stand. Veronica got

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1 on the stand to tell you that she's a hundred percent certain
2 that Darrell would never have a gun, never. And certainly,
3 you know, she's his blood relative, also. She probably had a
4 close relationship with him at some point, which is why I
5 questioned her about when that was. She said that she was a
6 hundred percent certain he would never have a weapon and there
7 was nothing that could change her thoughts or mind about that.
8 So, I said well, exactly when was it that you, you know -- I
9 mean, did you live with him? How did you know this for a
10 hundred percent certainty? And she says, well, we lived
11 together. Well, when I pressed her about when they lived
12 together, she said 20 years ago, 20 years ago. Not a couple
13 of months, not a year or two, but 20 years. Come on, folks,
14 20 years ago. I can't tell you what I was doing 20 years
15 ago.

16 Clearly, she had a particular story that she wanted to
17 tell this Court. She wanted you to believe a certain thing,
18 which is that Darrell would never have a weapon. The reality
19 is, when pressed about how often she saw him, she said -- I
20 suggested to her, I was like, she said holidays and I
21 suggested Christmas and Thanksgiving as two of the most major
22 that family gets together, and she said and Mother's Day. So,
23 we're talking about three times a year, people, that she said
24 she sees her cousin. She has no clue about who he is or who
25 he was, what he was doing, or what he had. She has no way of

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CLOSING BY WILSON

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1 knowing and testifying about knowing that he would've had a
2 gun. She has no clue and there's no way for her to know that
3 given what she stated her relationship was with him.

4 Now, we all heard Crime Scene Investigator Lewis tell us
5 that he arrived approximately an hour after the shooting took
6 place, and I understand that. He gets there, things have
7 already taken place, things have happened. People have walked
8 through the scene, things have possibly been moved, removed,
9 taken out, but that's not even really the point. The point
10 here is he admitted on the stand that he can't know, obviously
11 he couldn't photograph or mark down any evidence that wasn't
12 there at the time of his arrival. That means that for an hour
13 before he got there, we don't know what was going on with any
14 certainty. We don't know. And that, ladies and gentlemen, is
15 also reasonable doubt.

16 Detective King Hemingway did question Roger Grate. You
17 heard the audio for yourselves. Roger told him at that time,
18 and you know he didn't have to take the stand, he did so, so
19 you could also hear it in this courtroom. He told you he
20 didn't mean to kill Darrell Doctor. He told the detective
21 that the night of this incident, he immediately admitted to
22 the shooting and says, look, I didn't intend for this to
23 happen, this is my nephew, it was an accident. He said it.
24 He told the officer that. The state is correct when they tell
25 you there's no question about the shooting. He admitted

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1 outright what he did at the outset. That is not the act of
2 somebody who is running from responsibility. That's not what
3 he's doing. That's never been what he tried to do in this
4 case. He's always been up front and forthright with the
5 state. That's the police and both officers, not just one, he
6 talked to two. He told him -- when King interviewed him, he
7 told him and you can hear it on the tape. Listen to that
8 portion again when he says, look, I pulled my gun and it
9 accidentally discharged. And he says, I did not mean to kill
10 Darrell Doctor, and I don't think he said, Doctor, he might
11 have said nephew, but my point is, he said he didn't mean to
12 do it and he further said that he hated that it happened, that
13 he hated that it happened. He's remorseful about it. This
14 wasn't intended, didn't want to shoot him, wasn't the plan to
15 shoot him. And I think he even said on the stand and I think
16 he said it on the audio as well and you can listen to that, he
17 said I intended to fire over his head or fire in the air, not
18 to shoot him, definitely not to kill him. That testimony,
19 that statement, that testimony is reasonable doubt.

20 Now, the state wants you to believe that Roger Grate had
21 a duty to retreat because he was in the street. That is
22 simply not true. It's not true. It fits with the narrative
23 they want to tell you, which is why you keep hearing that come
24 up over and over again; well, he was in the street, he
25 couldn't tell him to leave from the street. Bottom line is,

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CLOSING BY WILSON

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1 he had no duty to retreat while he was in the street. He had
2 no duty to go, to walk away.

3 The Judge is going to instruct you on the law of self-
4 defense and, when he does, you'll understand that Roger Grate
5 had a right to defend himself, whether he saw a gun or not.
6 He didn't have to see a weapon, which is something else the
7 state was telling you that's not correct. He doesn't have to
8 see a gun, he doesn't have to see a knife, he doesn't have to
9 see was it a bow and arrow or a firearm. He doesn't have to
10 see a stick of dynamite in order to defend self. As long as
11 he reasonably believed that Darrell had a gun, that, ladies
12 and gentlemen, is reasonable doubt.

13 Now, I'm gonna wrap this up because I know you're tired
14 of hearing all of this talking this morning. But, I just want
15 to say a few more things and I'll be done. You have all heard
16 the testimony presented here. You've seen all the evidence
17 that's gonna be presented in this case. One thing should be
18 very clear; this is not a case of murder. It is not a murder.
19 No amount of the state wanting it to be a murder makes it one.
20 No amount of the state claiming that it has to be this, makes
21 it a murder. You all get to decide that. It never even been
22 charged as murder, frankly. There was absolutely no malice
23 here. The witnesses they put up on the stand to try to
24 establish the malice were clearly lying, and it was obvious
25 through the witnesses and through the questioning that they

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CLOSING BY WILSON

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1 were lying. Telling somebody to leave, not malicious.
2 Cursing at someone, not malicious. No bad blood between
3 Darrell and Roger by Roger's own statement and basically,
4 through the testimony of others. That's not malice. And as I
5 told you before, the state wants you to believe that Roger is
6 a thug with a gun, that's also not true. There is no evidence
7 that the state has presented, no truthful evidence that the
8 state has presented that establishes that Roger is a lawless
9 -- refusing to abide by the law. He is not -- that's not who
10 he is and there's nothing they've presented in this case
11 that's truthful that tells you that. There is no support for
12 the state's claim for murder. It's not your job to fill in
13 the blanks for the state. If it's missing, the state has
14 failed in their burden to prove Roger guilty beyond a
15 reasonable doubt. If you're confused about something, then
16 the state has failed in their burden to prove Roger guilty
17 beyond a reasonable doubt. Any, any confusion or error, as I
18 said before, should be resolved in favor of Roger Grate. He
19 has no burden. He has nothing to prove. He didn't even have
20 to speak. It's all on them and any failure in this case is
21 theirs and that should result in a not guilty for Mr. Grate.

22 Now, I want to just say that each of you has an important
23 role to play. No one person's thoughts or opinions is more
24 important than anybody else's and each person is free to hold
25 to their beliefs about how they view the evidence in this

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REPLY CLOSING BY HELMS

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1 case. I thank you for your time and attention this morning
2 and throughout this trial and I respectfully ask you to return
3 a verdict of not guilty.

4 Thank you.

5 THE COURT: All right. Final argument by the state?

6 REPLY CLOSING BY HELMS:

7 MR. HELMS: I'll be brief, Your Honor. Ms. Wilson said
8 we want it to be murder. No, we don't. We want Darrell
9 Doctor back. His family, his mom and dad, need Darrell Doctor
10 back. We don't want it to be murder; we wish it had never
11 happened, but it did.

12 She mentioned confusion, if you're confused, then you got
13 to find him not guilty. Remember when I told you they got to
14 muddy the waters? They want you to be confused but it's not
15 confusing. The way you know it's not confusing is, she's
16 right, we charged him with one thing because that's what he's
17 guilty of, murder. They're giving you all this other stuff,
18 self-defense, involuntary manslaughter, voluntary
19 manslaughter. They're hoping that muddies the waters. They
20 need you to be confused. They need you to not see this for
21 what it is because if you're confused, you're just gonna throw
22 your hands up, but it's not confusing.

23 I keep hearing this word, accident. Does that look like
24 an accident to you from five feet away? If he's bringing his
25 gun and just goes off, would it go straight through his head?

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REPLY CLOSING BY HELMS

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1 There'd be some angle, something somewhere else. No, he was
2 shot straight through his head. That's not an accident;
3 that's a purposeful act. Was it an accident when he put his
4 gun on his body? Was it an accident when he reached his hand
5 for it? Was it an accident when he pulled it from his
6 holster? Was it an accident when he picked it up and from
7 five feet away, he admitted, the only way for a bullet to come
8 out of the gun is if he pulled the trigger. Remember, I asked
9 him that. So, he pulled the trigger. Was it an accident?
10 It's not an accident; it's a willful act.

11 She talked about he had no duty to retreat. Ladies and
12 gentlemen, I showed you the elements and the Judge is gonna
13 tell you of self-defense. He absolutely had a duty to
14 retreat. In the charges, it's worded, no other means of
15 avoiding the harm. He had to have no other means. Again,
16 he's in the street, of course he had other means, walk away.
17 He said he was walking towards him, walk away. He's not
18 coming driving a truck at you. He had many other means to
19 avoid the harm, but there was no harm. There was no harm.
20 Said he had a right to tell Darrell to leave, said as a matter
21 of fact he was entitled to tell him to leave. No, he was not.
22 I don't care where he was standing. Darrell was in the
23 street. He had no more a right to tell him to get out of the
24 street than I have to tell you to get out of the parking lot.
25 It ain't my parking lot. He had no right and there was not

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REPLY CLOSING BY HELMS

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1 entitlement.

2 Said he had no ill will. Does get the fuck out of my
3 yard sound like ill will to you? It does to me. He wasn't
4 saying Merry Christmas, Happy Holidays. That sounds like ill
5 will to me and, if he had ill will, he had malice and, if he
6 had malice, he committed murder.

7 Said we didn't get the bullet tested. No, I didn't get
8 the bullet tested. I didn't need to get the bullet tested.
9 There was one bullet, there was one gun that he admitted to
10 firing and the bullet was the same caliber as the gun. What's
11 the suggestion there, there was another gun? Where's it at?
12 She's talking about Darrell having a gun. Who took his gun
13 what gun? Where is this imaginary gun? There is zero
14 evidence and that's what you've got to consider, evidence,
15 that there was a gun on this victim. Nobody -- there's no
16 gun. Nobody testified he had a gun.

17 Said the argument with Gregory was not the difficulty in
18 bringing on the harm. It was precisely the difficulty of
19 bringing on the harm. He argued with his son, slammed him
20 against the car. His cousin checks on him and then he gets
21 shot for it.

22 MS. WILSON: Your Honor, could I object for a second?

23 THE COURT: Yes, ma'am.

24 (REPORTER'S NOTE: Bench conference is held off the record in
25 the presence of but outside the hearing of the jury.)

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BY THE COURT

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1 THE COURT: Thank you.

2 MR. HELMS: They keep saying he's drunk because he had
3 alcohol in his system. Yes, he had alcohol in his system.
4 Did he deserve to die because of it? At the same time, they
5 keep harping on how big a boy he was. He's either a big boy
6 that can hold his liquor or he can't. I mean, he's so drunk
7 because he's got a .15 on his system, but he's a huge boy.
8 Pick one. And even he was drunk, let's say he was plastered,
9 did he deserve to get shot in head for it?

10 And then finally she started with something about a
11 holster. Congratulations. Does it undo that? He kept the
12 gun in a holster. Guess what, in my house, I've got my
13 kitchen knives in a sheaf but, if I stab you with it, I still
14 murdered you. Congratulations, you got a holster.

15 I'm not gonna be a dead horse anymore. If this ain't
16 murder, murder don't exist, and we know that ain't true.

17 BY THE COURT:

18 THE COURT: All right, Mr. Foreman, ladies and gentlemen
19 of the jury, go to your jury room for a little bit and we'll
20 come back and I'll give you the law in this case. All right?

21 Thank you very much.

22 (REPORTER'S NOTE: Jury exits courtroom @ 11:02 A.M.)

23 THE COURT: All right. We'll take a short break for
24 about five or 10 minutes.

25 Thank you very much.

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CHARGE TO JURY

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1 RECESS - 11:03 A.M.

2 *****OFF THE RECORD*****

3 (On the Record - 11:15 A.M.)

4 THE COURT: Thank you very much. You may be seated.
5 Thank you.

6 All right. Is the state ready for the jury to come in?

7 MR. HELMS: Yes, Your Honor.

8 THE COURT: Defense?

9 MS. WILSON: Yes, sir, Your Honor.

10 THE COURT: Ask the jury to come in please, sir.

11 (REPORTER'S NOTE: Jury enters courtroom @ 11:17 A.M.)

12 CHARGE TO JURY:

13 THE COURT: All right, ladies and gentlemen, it's now my
14 duty and responsibility to give you the law that you will
15 apply to the facts and evidence you have heard in this case.
16 I told you at the very beginning, one of your jobs, duties and
17 responsibilities was to judge the credibility and that is the
18 believability of the witnesses that came before you and
19 testified under oath in this case.

20 Now, in doing so, you can believe one witness against
21 several, you can believe several against one, you can believe
22 a portion of what a witness says. If you got a good and sound
23 reason of doing so, you could disregard in its entirety the
24 testimony of a particular witness. You look at whether or not
25 that witness has exhibited to you any kind of interest,

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CHARGE TO JURY

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1 motive, bias, prejudice they might have in giving you the
2 testimony. And, obviously, you consider the opportunity for
3 knowledge; how did they come about that information that they
4 gave you from the witness stand. In your examination of the
5 witnesses in this case, you don't have any friends to reward,
6 you don't have any enemies to punish. You have to examine the
7 facts and evidence in this matter and determine what in
8 evidence convinces you whether or not the state has proven to
9 you the guilt of the defendant of the crime charged beyond a
10 reasonable doubt.

11 In the presentation of evidence in this case, there has
12 been presented two types of evidence and it's basically,
13 virtually every single case that is presented usually has
14 these two types, direct and circumstantial evidence. Direct
15 evidence, that's the testimony of a person who claims or
16 asserts to know something, what happened in their presence,
17 what they saw, what they heard, what took place.
18 Circumstantial evidence is a chain of facts indicating the
19 existence of a fact. The law doesn't make any distinction
20 between the two. A greater degree of certainty in one over
21 the other is not required. But to the extent, the State of
22 South Carolina relies on any circumstantial evidence, all of
23 the circumstances must be consistent with each other and, when
24 taken together, point conclusively to the guilt of the accused
25 beyond a reasonable doubt. If the circumstances merely

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CHARGE TO JURY

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1 portray the defendant's behavior as suspicious, the proof has
2 failed. The state has the burden of proving the defendant
3 guilty beyond a reasonable doubt and that burden rests on the
4 state regardless of whether the state uses direct evidence,
5 circumstantial evidence or some combination of the two. After
6 weighing all the evidence, if you are not convinced of the
7 guilt of the defendant beyond a reasonable doubt, you must
8 find the defendant not guilty.

9 The parties entered into a stipulation of fact at the
10 very beginning of the trial. That's basically an admission or
11 concession by both parties that this is an established fact
12 and you must accept it that way as if it has been conclusively
13 proved to you.

14 I allowed one of the witnesses or qualified one of the
15 witnesses to give their opinion. Sometimes they're called
16 expert witnesses. We don't normally allow witnesses to give
17 their opinion; you have to say what you actually saw, heard or
18 took place. But some witnesses, by reason of their
19 experience, training, education in a particular field will
20 allow them to give their opinion. That doesn't give them any
21 special status. You judge all of the witnesses the same. You
22 look at all the witnesses, you judge all their credibility and
23 believability the same.

24 The statement alleged to have been made by the defendant
25 was admitted into evidence. I allowed it into evidence, but

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CHARGE TO JURY

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1 it is your job to make certain determinations. Obviously, you
2 have to determine the defendant made the statement. You have
3 to determine that the statement was made freely and
4 voluntarily of his own free will, that it wasn't caused by
5 pressure, force, fear, threats, coercion or intimidation or
6 hope or promise of leniency or reward of any kind. You can
7 consider the circumstances of how the statement was taken,
8 when it was taken, any number of circumstances. You can take
9 into consideration age, education, mental ability,
10 environment, place, length of detention, and obviously you
11 consider whether or not Miranda warnings were properly given
12 to the defendant at the time, including but not limited to:
13 the right to remain silent; that any statement that you give
14 can be used against you in a court of law; you can stop making
15 the statement at any point in time; if you cannot afford a
16 lawyer, one will appointed to you. Obviously, you consider
17 all of those factors and then you determine what weight, if
18 any, that statement should be given based upon the facts and
19 circumstances of this case.

20 Evidence of a prior bad act. If you conclude it was
21 true, it may only be considered by you on the question of
22 credibility and believability and for no other purpose. You
23 may give this evidence, if you have found it to be true, the
24 weight and value, if any, you find it should have, only on the
25 issue of credibility. You must not, you may not consider

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1 evidence of any prior bad act as proof of the defendant's
2 guilt of the crime for which he is charged today.

3 Prior record of a witness. A person who has a past
4 criminal record can testify in any trial. Their past record
5 does not affect their ability to testify. The past record may
6 only be considered by you, if it is considered at all, in
7 determining, again, the witness' credibility and
8 believability.

9 I told you at the very beginning, when the state charged
10 the defendant through the indictments, I talked to you about
11 the indictments, the charging documents, which brought the
12 matter to court. That immediately put the burden of proof
13 upon the State of South Carolina to prove the defendant guilty
14 beyond a reasonable doubt. The defendant was immediately
15 clothed with the presumption of innocence. That innocence
16 does not end, it has not ended now, it does not end at any
17 point in time unless and until you believe the state has
18 proved the guilt of the defendant to you beyond a reasonable
19 doubt. Now, this presumption of innocence, it's likened to a
20 robe of righteousness. We place it on the shoulders of the
21 defendant and it stays on the shoulders of the defendant
22 unless and until you believe the state has proved the guilt of
23 the defendant beyond a reasonable doubt. This is not just
24 some legal theory, it's not some legal phrases; it's a
25 substantial right to which every defendant, which every

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1 American is entitled, unless you, the jury, are satisfied of
2 from the evidence of the defendant's guilt beyond a reasonable
3 doubt.

4 Reasonable doubt, the kind of doubt that would cause an
5 ordinary, reasonable, person to hesitate to act. Proof beyond
6 a reasonable doubt is proof that leaves you firmly convinced
7 of the defendant's guilt. Now, there are very few things that
8 we can know with absolute certainty and the law doesn't
9 require the State of South Carolina to give you that kind of
10 proof. But what is required is, if based upon your
11 consideration of the evidence, you are firmly convinced the
12 defendant is guilty of the crime charged, you must find the
13 defendant guilty. On the other hand, based upon your
14 examination and consideration of the evidence, you are not
15 firmly convinced that the defendant is guilty of the crime
16 charged, you must give the defendant the benefit of the doubt
17 and find him not guilty.

18 The defendant has raised the defense of accident. The
19 act may be excused on the ground of accident if it is shown
20 that the act was intentional -- unintentional. The act was
21 unintentional, that the defendant was acting lawfully and that
22 reasonable care was used by the defendant. Now, as with
23 everything else, just because the defendant raised this
24 defense doesn't put any burden on him. It is the State of
25 South Carolina's burden of proof to prove to you beyond a

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1 reasonable doubt that it was not an accident. The state has
2 the burden of proof on everything and it is beyond a
3 reasonable doubt on everything. So, for accident, the state,
4 by the facts and evidence they presented to you, must have
5 proved to you that this was not an accident. That it was
6 caused by negligence or carelessness on the part of the
7 defendant in the handling of dangerous instrumentality or by
8 unlawful activity by the defendant. If you have a reasonable
9 doubt of the defendant's guilt after considering all of the
10 evidence, including evidence of accident, you must find the
11 defendant not guilty. On the other hand, if you have no
12 reasonable doubt of the defendant's guilt, after considering
13 all of the evidence, including the defense of accident, you
14 must find the defendant guilty.

15 You must also consider the defense of self-defense.
16 Self-defense is a complete defense if it is established and,
17 if it is established, you must find the defendant not guilty.
18 Again, the State of South Carolina has the burden of
19 disproving self-defense by proof they have presented to you
20 beyond a reasonable doubt. Again, the state has the burden of
21 proof on every single thing. So, if you considered all of the
22 evidence including the evidence of self-defense and if you
23 have a reasonable doubt as to the defendant's guilt, you must
24 find the defendant not guilty. On the other hand, if you have
25 no reasonable doubt of the defendant's guilt after considering

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1 all the evidence, including the evidence of self-defense, you
2 must find the defendant guilty.

3 So, what's needed to establish or what are the elements
4 of self-defense. The elements of self-defense: One, without
5 fault, the defendant must be without fault in bringing on the
6 difficulty. If the defendant's conduct was the type which was
7 reasonably calculated to, and provoke a deadly assault, the
8 defendant would be at fault for bringing on the difficulty and
9 would not be entitled to a finding of not guilty.

10 Imminent danger. The second element of self-defense is
11 that the defendant was actually in imminent danger of death or
12 serious bodily injury or that the defendant actually believed
13 he was in imminent danger of death or serious bodily injury.
14 If the defendant was actually in imminent danger, it must be
15 shown that the circumstances would have warranted a person of
16 ordinary firmness and courage to prevent the death or serious
17 bodily injury by acting as the defendant did. If the
18 defendant believed he was in imminent danger of death or
19 serious bodily injury, it must be shown that a reasonable,
20 prudent person of ordinary firmness and courage would have had
21 the same belief. In deciding whether the defendant was
22 actually or believed he was in imminent danger of death or
23 serious bodily injury, you consider all the facts and
24 circumstances surrounding the matter, including the physical
25 condition and characteristics of the defendant and the victim.

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

527

1 Right to act on appearances. The defendant does not have
2 to show that he was actually in danger. It is enough that the
3 defendant believed he was in imminent danger and a reasonable,
4 prudent person of ordinary firmness and courage would have had
5 that same belief. The defendant has the right to act on
6 appearances even though the defendant's belief may have been
7 mistaken, but it must be the belief that an ordinary,
8 reasonable, prudent person would have had that same belief.
9 It is for you to decide whether the defendant's fear of
10 immediate danger or death or serious bodily harm was
11 reasonable and would have been felt by an ordinary person in
12 the same situation.

13 The relative sizes, age, weights of the defendant and
14 victim may be considered in deciding the apparent or actual
15 need for force of self-defense or the amount of force needed.

16 The intoxication of a victim may be considered in
17 deciding whether the defendant's fear of death or bodily harm
18 was reasonable.

19 The final element of self-defense is that the defendant
20 had no other probable way to avoid the danger of death or
21 serious bodily injury than to act as the defendant did in this
22 particular instance.

23 The defendant has no duty to retreat if, by doing so, the
24 danger of death or serious bodily injury would increase.

25 A person cannot be required to make an exact calculation

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

528

1 as to the degree or amount of force, which may be needed to
2 avoid death or serious bodily harm. Therefore, in self-
3 defense, the defendant has the right to use the force needed
4 to avoid death or serious bodily harm. The force used in
5 self-defense does not have to be limited to the degree or
6 amount of force that might have been used by the victim. The
7 defendant has the right to use so much force as appeared to be
8 necessary for complete self-protection, and which a person of
9 ordinary reason and firmness would have believed to be needed
10 to prevent death or serious bodily harm.

11 The defendant has been charged by the State of South
12 Carolina with the crime of murder. The state has to prove to
13 you, beyond a reasonable doubt, that the defendant killed
14 another person with malice aforethought. Malice, that's
15 hatred, ill will, hostility towards another person. It's the
16 intentional doing of a wrongful act without just cause or
17 excuse with an intent to inflict an injury or under
18 circumstances that the law would infer an evil intent. It
19 indicates a wicked or depraved spirit intent on doing wrong.
20 Malice aforethought does not require that malice exists for
21 any particular time before the act is committed, but malice
22 must exist in the mind of the defendant just before and at the
23 time the act is committed. There has to be this combination
24 of the evil intent and the act.

25 It can be expressed or inferred. That means, express

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

529

1 malice, that's shown when a person speaks words of -- which
2 express hatred or ill will for another. It can also be
3 inferred from conduct showing a total disregard for human
4 life. If facts are proved beyond a reasonable doubt
5 sufficient to raise an inference of malice to your
6 satisfaction, the inference would simply be an evidentiary
7 fact to be considered by you along with all the other
8 evidence. You give it the weight you should decide it should
9 receive. And again, the state has the burden of proving
10 everything to you beyond a reasonable doubt.

11 Now, included within the crime of murder are certain
12 subsets of crimes. So, if you find the state has failed to
13 prove to you beyond a reasonable doubt that the defendant
14 committed the crime of murder, you will then consider whether
15 or not the state has proved to you beyond a reasonable doubt
16 that the defendant committed the crime of voluntary
17 manslaughter.

18 To prove voluntary manslaughter, the State of South
19 Carolina must prove that the defendant took the life of
20 another in the sudden heat of passion, based upon sufficient
21 legal provocation. Both heat of passion and sufficient legal
22 provocation must be present at the time of the killing to
23 constitute voluntary manslaughter. Sudden heat of passion may
24 for a time, affect a person's self-control and temporarily
25 disturb a person's reasoning. It must be the type that would

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

530

1 make an ordinary, reasonable person unable to coolly reflect
2 on their actions and produce this uncontrollable impulse to do
3 violence.

4 Sufficient legal provocation must be the type that would
5 make a person of ordinary, reason, and caution to become
6 enraged and to lose control temporarily. The provocation
7 needed for voluntary manslaughter must come from some act of
8 or related to the victim. Words alone, however vulgar or
9 insulting, are not enough to be legal provocation. Where
10 death is caused by the use of a deadly weapon, the words must
11 be accompanied by some overt act, some threatening act, which
12 could have produced the heat of passion. The exercise of a
13 legal right, no matter how offensive it is to another, is
14 never sufficient legal provocation for voluntary manslaughter.
15 If the heat of passion had cooled or if there was enough time
16 between the provocation, if any, and the killing, for the
17 passion of a reasonable person to have cooled, the killing is
18 not voluntary manslaughter. You consider all of the
19 circumstances surrounding, you consider the nature of the
20 provocation, if any, the defendant's mental and physical
21 state, the circumstances and relationships between the
22 parties.

23 If you find the State of South Carolina has not proved to
24 you beyond a reasonable doubt that the defendant committed the
25 crime of voluntary manslaughter, you will then consider

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

531

1 whether or not the state has proved to you beyond a reasonable
2 doubt that the defendant committed the crime of involuntary
3 manslaughter. To prove involuntary manslaughter, the state
4 must prove to you beyond a reasonable doubt that the defendant
5 unintentionally killed the victim without malice but while
6 engaged in an unlawful activity, not naturally tending to
7 cause death or great bodily harm or that the defendant
8 unintentionally killed the victim without malice while engaged
9 in a lawful activity with reckless disregard for the safety of
10 others. Unintentional means the defendant did not intend for
11 anyone to be killed or seriously injured. Reckless disregard
12 for the safety of others is more than mere negligence or
13 carelessness. Recklessness is a conscious failure to use
14 ordinary care. Reckless disregard for the safety of others
15 means you are not interested in the consequences of your acts
16 or the rights and safeties of others. If a person who knows
17 or should know that ordinary care requires certain cautions to
18 be taken for the safety of others when using a dangerous
19 instrumentality, but that person fails to use those
20 precautions without concern, the person's actions can be
21 considered reckless.

22 The State of South Carolina also has to prove to you
23 beyond a reasonable doubt that the defendant's act was the
24 proximate cause of death. Proximate cause is the direct
25 cause, what caused the death of the defendant.

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

532

1 If you have a reasonable doubt as to whether or not the
2 defendant is guilty of a greater or a lesser offense, and you
3 have a reasonable doubt as to that, it is your duty to resolve
4 that doubt in favor of the defendant and find him guilty of
5 the lesser offense if that is your view of the evidence and
6 again, the state has proven it to you beyond a reasonable
7 doubt.

8 If you find the defendant guilty of the crime of murder
9 or voluntary manslaughter, you may then consider the second
10 crime the state charged him with, that is possession of a
11 weapon during the commission of or attempt to commit a violent
12 crime, because murder and voluntary manslaughter are
13 classified by the State of South Carolina as a violent crime.
14 Involuntary manslaughter is not so considered. So, to
15 consider that second charge, you must have previously found
16 him guilty beyond a reasonable doubt of murder or invol -- or
17 voluntary manslaughter, voluntary manslaughter.

18 Now, to prove to you possession of a weapon during the
19 commission of or attempt to commit a violent crime, the state
20 has to prove to you beyond a reasonable doubt that the
21 defendant was in possession of a firearm during the commission
22 of a violent crime. In order to find the defendant guilty of
23 possession of a weapon during the commission of a violent
24 crime, as I told you, you must have found him guilty of
25 committing that violent crime, either murder or voluntary

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

533

1 manslaughter, and the state has to prove to you beyond a
2 reasonable doubt that the weapon further advanced or helped
3 the commission of the crime.

4 So, that's the law. That's the law that you have to
5 apply to the facts and evidence you've heard in this case.

6 Now, I've had prepared for you the verdict form and I'll
7 go through that with you. It's got the caption of the case,
8 pretty straightforward. The first charge, as we've talked
9 about is murder. On the charge of murder of Darrell Doctor,
10 we, the jury, by unanimous consent, find the defendant -- and
11 I've got two choices here, I put one before the other, don't
12 assign anything to that, you have to put one before the other
13 -- not guilty or guilty.

14 So, Mr. Foreman, if your jury, after deliberation and
15 talking about the matter, finds the state has proven to the
16 jury as a whole that the defendant is guilty of the crime of
17 murder beyond a reasonable doubt, you use this form or, if
18 they found the state hasn't proven it to you beyond a
19 reasonable doubt, check the block, whatever it is, not guilty
20 or guilty, sign it and move on to the next one.

21 Voluntary manslaughter. Obviously, if you found him
22 guilty of murder, that's the end of that and you go on to
23 possession of the weapon charge. But, if you found him not
24 guilty of murder, you go to voluntary manslaughter. On the
25 charge of voluntary manslaughter of Darrell Doctor, we, the

State v. Grate - 2017-GS-26-00930 and 00931
CHARGE TO JURY

534

1 jury, by unanimous consent find the defendant, again, two
2 choices, not guilty or guilty. Whichever it is, if it's
3 guilty, again you can go on to the possession of the weapon
4 charge. If it's not guilty, you go on to the involuntary
5 manslaughter charge.

6 On the charge of involuntary manslaughter, we, the jury,
7 by unanimous consent, find the defendant not guilty or guilty.
8 Again, you can check that appropriate block and thereafter
9 sign your name, that being the unanimous verdict of the jury.

10 Again, if the jury has found him guilty of murder or
11 voluntary manslaughter, then you consider the second charge.
12 Again, possession of a weapon during the commission of a
13 violent crime, we, the jury, by unanimous consent, find the
14 defendant again, not guilty or guilty.

15 Now, I have said unanimous I don't know how many times,
16 but it means exactly what you think it means. It means
17 whatever your decision is, whatever the decision of the jury
18 is, it is 12/0, not 11/1, 10/2 any combination thereof. So,
19 Mr. Foreman, you're checking these blocks, you're signing your
20 name, you're telling the Court every single member of the jury
21 agrees that's their verdict so that after the verdict is read
22 by the clerk's representative, all members of the jury can
23 raise their right hand and affirm that is their verdict.

24 So, what I'm gonna ask that you do, Mr. Foreman, is take
25 the jury to the jury room. The two alternates, gentlemen, you

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BY THE COURT

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1 stay with us. Take your other members of the jury to the jury
2 room. Do not, do not begin your deliberations until the
3 bailiff hands to you the verdict forms and the exhibits. When
4 the bailiff does that, you may begin your deliberations.

5 Now, we've had lunch ordered for you. It'll come
6 somewhere around in about 15 or 20 minutes or so. How you
7 proceed is up to you. If y'all want to work and eat lunch at
8 the same time, you want to stop and enjoy it, however it is,
9 y'all are in charge of that. But, I'm just letting you know
10 that it will come somewhere about 15 or 20 minutes and they'll
11 bring it in to you.

12 So, take your jury to the jury room, don't begin
13 deliberations until they give you the verdict form and the
14 exhibits. Thank you very much.

15 The two alternates, stay with us.

16 (REPORTER'S NOTE: Jury exits courtroom @ 11:45 A.M.)

17 BY THE COURT:

18 THE COURT: All right. As to the alternates in this
19 matter, is there any reason the Court should not excuse the
20 alternates at this time from the state?

21 MR. HELMS: No, sir.

22 THE COURT: From the defense?

23 MS. WILSON: No, sir, Your Honor.

24 THE COURT: All right, gentlemen, I appreciate your
25 service in this case. I'll tell you, it happens a lot more

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RECHARGE TO JURY

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1 COURT'S EXHIBIT NUMBER 1

2 MARKED FOR IDENTIFICATION

3 BY THE COURT:

4 THE COURT: All right. So, I'll explain the note to you,
5 anyway. The jury has sent a note in and they want a recharge
6 of murder and voluntary manslaughter and that's what I intend
7 to do.

8 MS. WILSON: Yes, sir.

9 MR. HELMS: Yes, Your Honor.

10 THE COURT: Ask the jury to come in please, sir.

11 (REPORTER'S NOTE: Jury enters courtroom @ 12:27 P.M.)

12 RECHARGE TO JURY:

13 THE COURT: Okay. Thank you.

14 Mr. Foreman, you sent a note in to the Court and you are
15 asking again for the Court to recharge or redefine murder and
16 voluntary manslaughter for you and I'll do that at this point
17 in time.

18 Murder, the state must prove to you beyond a reasonable
19 doubt that the defendant killed another person with malice
20 aforethought. Malice that's hatred, ill will, hostility
21 towards another person. It's the intentional doing of a
22 wrongful act without just cause or excuse and with an intent
23 to inflict an injury or under circumstances that the law will
24 infer an evil intent. It indicates a wicked or depraved
25 spirit intent on doing wrong.

State v. Grate - 2017-GS-26-00930 and 00931
RECHARGE TO JURY

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1 Now, malice aforethought does not require that malice
2 exists for any particular time before the act is committed,
3 but it has to exist in the mind of the defendant just before
4 and at the time the act is committed. There has to be this
5 combination of the evil intent and the act.

6 Now, it can either be express or inferred. Now, that
7 means that -- express, an example of that is a person speaks
8 words, which expresses hatred or ill will for another. Malice
9 can be inferred from conduct showing a total disregard for
10 human life. Now, an inference of malice, that's an
11 evidentiary fact to be considered along with all the other
12 evidence, if it exists, and again, the state has to prove all
13 this to by you proof that convinces you of the guilt of the
14 defendant beyond a reasonable doubt.

15 Now, if you find the state has failed to prove to you
16 beyond a reasonable doubt that the defendant committed the
17 crime of the murder, there is within the crime of murder the
18 lesser included offense of voluntary manslaughter. The state
19 must prove beyond a reasonable doubt that the defendant took
20 the life of another in the sudden heat of passion based upon
21 sufficient legal provocation. Both heat of passion and
22 sufficient legal provocation must be present at the time of
23 the killing to constitute voluntary manslaughter. Sudden heat
24 of passion may for a time affect a person's self-control,
25 temporarily disturb a person's reasoning. It must be the type

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RECHARGE TO JURY

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1 that would make an ordinary, reasonable person to unable
2 to coolly reflect on their actions and produce an
3 uncontrollable impulse to do violence. It must be the type
4 that would make a person of ordinary reason to become enraged
5 and to lose control temporarily. Now, that provocation needed
6 for voluntary manslaughter must come from some act or related
7 to the victim. If the heat of passion had cooled or if there
8 is enough time between the provocation, if any, and the
9 killing for the passion -- for the passion of a reasonable
10 person to cool, the killing would not be voluntary
11 manslaughter. In deciding whether a reasonable person would
12 have had enough time to cool off, you consider all the
13 circumstances surrounding the killing, you consider the nature
14 of the provocation, if any, the defendant's mental and
15 physical state, and the circumstances and relationships
16 between the parties.

17 Now, those are the two that you asked. I'll be glad to
18 charge, because it won't take very long, involuntary
19 manslaughter if you would like me to do so. Would you like me
20 to do so?

21 (REPORTER'S NOTE: Foreperson indicates affirmatively.)

22 THE COURT: All right.

23 Involuntary manslaughter, that means that the state
24 hasn't proved to you beyond a reasonable doubt murder or
25 voluntary. To prove involuntary manslaughter, the state has

State v. Grate - 2017-GS-26-00930 and 00931
RECHARGE TO JURY

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1 to prove beyond a reasonable doubt that the defendant
2 unintentionally killed the victim without malice but while
3 engaged in an unlawful activity, not naturally tending to
4 cause death or great bodily injury, or the defendant
5 unintentionally killed the victim without malice while engaged
6 in a lawful activity but with reckless disregard for the
7 safety of others. Unintentional means the defendant did not
8 intend for anyone to be killed or seriously injured. Reckless
9 disregard for the safety of others, that's recklessness, a
10 conscious failure to use ordinary care. It means you're not
11 interested in the consequences of your actions and the
12 safeties of others.

13 The state has to prove also beyond a reasonable doubt
14 that the defendant's act was the direct cause of the death.
15 Now, if you've got a reasonable doubt as to whether the
16 defendant is guilty of a greater or a lesser offense, it's
17 your duty to resolve the doubt in favor of the defendant, find
18 him guilty of the lesser offense if that's your view of the
19 evidence and, again, the state's proved it to you beyond a
20 reasonable doubt.

21 So, that does take care of what you wanted, Mr. Foreman?

22 JUROR 350: Yes, sir.

23 THE COURT: All right. Lunch came. They're gonna bring
24 it right in to you, so y'all can take whatever time you want
25 to and enjoy it and then you can resume your duties. All

State v. Grate - 2017-GS-26-00930 and 00931
BY THE COURT

542

1 right?

2 Thank you very much.

3 (REPORTER'S NOTE: Jury exits courtroom @ 12:34 P.M. The
4 following takes place outside the presence of the jury.)

5 BY THE COURT:

6 THE COURT: Any exceptions, deletions, additions to the
7 recharge as requested by the jury from the state?

8 MR. HELMS: No, Judge.

9 THE COURT: From the defense?

10 MS. WILSON: No, Your Honor.

11 THE COURT: All right. Very good. We'll be at ease
12 until the jury needs us.

13 Now, one thing and I neglected to do this earlier, the
14 jury has retired to deliberate. Mr. Grate is delivered into
15 the custody and control of the Horry County Sheriff's Office
16 at this time.

17 Thank you very much.

18 MS. WILSON: Yes, sir, Your Honor.

19 **(RECESS - 12:35 P.M.)**

20 *******OFF THE RECORD*******

21 **(On the Record - 1:59 P.M.)**

22 THE COURT: Thank you very much. You may be seated.
23 Thank you very much.

24 All right. I understand, Counsel, that the jury has
25 returned a verdict in this case. Is the state ready to

State v. Grate - 2017-GS-26-00930 and 00931
VERDICT OF JURY

544

1 (REPORTER'S NOTE: Jury enters courtroom @ 2:03 P.M.)

2 THE COURT: All right, Mr. Foreman, has the jury reached
3 a verdict in this matter.

4 JUROR 350: Yes, we have, Your Honor.

5 THE COURT: Very good. Could you hand the verdict form
6 to the clerk's representative, please, sir.

7 You may publish the verdict.

8 VERDICT OF THE JURY:

9 CLERK: Indictment Number 2017-GS-26-930, the State of
10 South Carolina, County of Horry versus Roger D. Grate, on the
11 charge of murder of Darrell Doctor, we, the jury, find by
12 unanimous consent, find the defendant guilty.

13 Indictment Number 2017-GS-26-931, the State of South
14 Carolina, County of Horry, versus Roger D. Grate, on the
15 charge of possession of a weapon during the commission of a
16 violent crime, we, the jury, by unanimous consent, find the
17 defendant guilty.

18 Signed by foreperson, James Terpstra, dated March the
19 14th of 2019.

20 Ladies and gentlemen of the jury, if this is your
21 verdict, so signify by raising your right hand.

22 THE COURT: Thank you, ma'am.

23 The jury having affirmed their verdict by the raising of
24 their hand.

25 Does the state wish the jury polled?

State v. Grate - 2017-GS-26-00930 and 00931
SENTENCING

556

1 is concerned to have two years credit, but we would request
2 that credit if the Court is amenable.

3 THE COURT: Thank you, ma'am.

4 MS. WILSON: Thank you.

5 THE COURT: 2017-GS-26-930, State of South Carolina,
6 County of Horry versus Roger D. Grate regarding the crime of
7 murder. The facts of this case, it's just an absolute
8 tragedy. There's just no reason that makes any sense
9 regarding what happened. It's a tragedy for the family. A
10 man is dead. Another man is basically going to spend the rest
11 of his life in the Department of Corrections.

12 The sentence of the Court is the defendant is committed
13 to the State Department of Corrections for a determinate term
14 of 35 years. The defendant is given credit for the time that
15 he have on the monitor.

16 2017-GS-26-931, possession of a firearm during the
17 commission of a violent crime. The defendant is committed to
18 the State Department of Corrections for determinate term of
19 five years concurrent to 2017-GS-26-930.

20 Thank you very much.

21 MS. WILSON: Thank you, Your Honor.

22 MR. HELMS: Thank you, Your Honor.

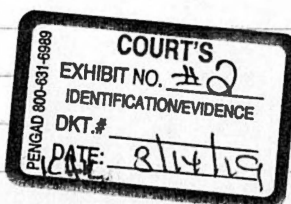
23 MS. OWENS: Thank you, Your Honor.

24 THE COURT: The proceedings are now at an end.

25 **ADJOURNED - 2:35 P.M.**

DEFINE MURDER -V- VOLUNTARY
MANSLAUGHTER

[Handwritten signature]



WITNESSES

Emilie Maria Jackson-Hardwick Horry County
Police Department

B. Wilson

DOCKET NO. 2017-GS-26-00930

The State of South Carolina

County of Horry

Christopher D. Helms
17H00385

COURT OF GENERAL SESSIONS

February, 2017 TERM

THE STATE

vs.

Roger D Grate
B/ M Kennedy St
Loris, SC 29569
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: Kia T. Wilson

Indictment for
MURDER

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
ORIGINAL

Jimmy A. Richardson, II, Solicitor
CER [REDACTED]

ARREST WARRANT NUMBER

2016A2610203553

CDR: 0116 16-03-0010, 0020

DOA: 12/26/2016

ACTION OF GRAND JURY

TRUE BILL

Michael Carroll
Foreperson of Grand Jury FEB 23 2017
Date:

VERDICT

Foreperson of Petit Jury
Date:

FILED
HORRY COUNTY

2017 MAR -1 AM 8:50

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM
GRAND JURY

RECEIVED

MAR 20 2019

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

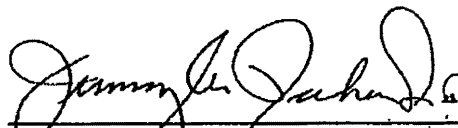
At a Court of General Sessions, convened on February 23, 2017, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010, 0020

That Roger D Grate did in Horry County, on or about December 25, 2016, willfully, feloniously, and intentionally kill the victim, Darrell Doctor - Deceased, with malice aforethought, either express or implied, by means of Shooting, and the victim did die as a proximate result thereof on or about December 25, 2016 in Horry County, in violation of Section 16-03-0010, S. C. 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.



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY

RENEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

COUNTY OF
STATE

Horry

VS.

Roger D Grate

AKA:

Race: BLACK Sex: M Age: 53

DOB: SS#

Address:

City, State, Zip:

DL#: SID#: SC01349359

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2017GS2600930

A/W#: 2016A2610203553

Date of Offense: 12/25/2016

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Helm, Christopher D.

100116

SC Bar#

Defendant

Wilson, Kia T.

Attorney for Defendant

SCB69441

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC, including time on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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:

☐ Set by SCDPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (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)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

Judge Code:

Sentence Date:

RECEIVED
MAR 20 2019
SC Court of Appeals

FILED
Horry County
MAR 14 PM 3:30
RENEE N. ELVIS
CLERK OF COURT
Horry County

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 4/14/2019\$ 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.

[Signature]
3/14/19

WITNESSES

Emilie Maria Jackson-Hardwick Horry County
Police Department

B. Wilson

DOCKET NO. 2017-GS-26-00931

The State of South Carolina

County of Horry

Christopher D. Helms
17H00385

FILED
HORRY COUNTY

2017 MAR -1 AM 8:50

RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM

GRAND JURY

COURT OF GENERAL SESSIONS

February, 2017 TERM

ARREST WARRANT NUMBER

2016A2610203554

CDR: 0549 16-23-0490

DOA: 12/26/2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 23 2017

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

Roger D Grate
B/ M Kennedy St
Loris, SC 29569
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: Kia T. Wilson

Indictment for
POSSESSION OF A WEAPON DURING
THE COMMISSION OF A
VIOLENT CRIME

RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
ORIGINAL

Jimmy A. Richardson, II, Solicitor

RECEIVED

MAR 20 2019

SC Court of Appeals

CERTIFIED COPY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 23, 2017, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Roger D Grate did in Horry County, on or about December 25, 2016, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. 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.

CERTIFIED COPY

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

361

COUNTY OF
STATE

Horry

VS.

Roger D Grate

AKA:

Race: BLACK

Sex: M

Age: 53

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#: SC01349359

*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 Firearm During Commission of a Violent Crime

INDICTMENT/CASE#: 2017GS2600931

A/W#: 2016A2610203554

Date of Offense: 12/25/2016

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

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(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Helms, Christopher D.

100116

SC Bar#

Defendant

Wilson, Kia T.
Attorney for Defendant

SCB69441

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 years or ☐ under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2017-65-26-930

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC, include time on enable monitor.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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:

☐ Set by SCDCPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (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)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

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Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 4/14/2014\$ 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.

Presiding Judge

Judge Code:

Sentence Date:

3/14/19

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.”

RECEIVED**May 14 2020****SC Court of Appeals**

Respectfully Submitted,

s/Susan B. Hackett

Susan B. Hackett

Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of May, 2020.