

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED

May 27 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSHUA CW REHER,

APPELLANT

APPELLATE CASE NO 2018-002254

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS NO. 73 and 74 (VIDEOTAPES OF SULLIVAN’S EXPERIMENT)
STATE’S EXHIBITS NO. 75 and 76 (PHOTOGRAPHS OF SULLIVAN’S
EXPERIMENT)**

1 Q. Well, she told you nobody was going to testify
2 against you, correct?

3 A. That's what she said.

4 Q. All right. And you thought if nobody testified
5 against you, this case would be thrown out, didn't
6 you?

7 A. I thought it would be a done deal. Yes, sir.

8 Q. So to you, that would be a good thing if nobody
9 testified, correct?

10 A. Yes, sir.

11 Q. So you didn't want people to come in here and
12 testify and tell the truth, did you?

13 A. That's not what I wanted. That's just what I
14 heard.

15 Q. You just said that would be a good thing for
16 you.

17 A. It would be a good thing. But it's not what I
18 wanted.

19 Q. Why wouldn't it be a good thing for people to
20 tell the truth? Why didn't you tell Brooke, I just
21 want people to come here and tell the truth?

22 A. I believe I did say that. I did say the truth
23 will set me free. I believe I did.

24 Q. You told her to do whatever your attorney said,
25 correct?

1 A. Yeah.

2 Q. All right. And then you met at your attorney's
3 office with Brooke, J.L.F. , Jo.F. , and Helen
4 Bradberry, didn't you?

5 A. I didn't have a car at the time.

6 Q. Y'all all met together in the same room with
7 your attorney, right?

8 A. They drove me over there. Yes, sir.

9 Q. And y'all were all back living together at that
10 point, saw each other on a daily basis, right?

11 A. No, sir.

12 Q. How did you not see them on a daily basis if
13 y'all were living together?

14 A. Because you said at that point.

15 Q. Well, if you're meeting at your attorney's
16 office -- y'all are back living together, right?

17 A. Just because I meet her at my attorney's office
18 don't mean I'm living with them.

19 Q. Well, you've testified that y'all were living
20 together --

21 A. We did. We did.

22 Q. Y'all moved back in together?

23 A. Yes, sir.

24 Q. And you initially testified the reason your
25 statement was incorrect was because you were in a

1 state of shock?

2 A. Yes, sir. I was panicking. I was -- yes, sir.

3 Q. All right. But then earlier this week, didn't
4 you say the reason your statement was incorrect was
5 because you had some type of traumatic head injury?

6 A. Well, I was in a state of shock and I had a
7 head injury, you know. I believe all that together
8 combined is what leads up to that statement.

9 Q. The head injury was something new this week,
10 right?

11 A. No. I always had a head injury. That's my
12 chief complaint when I went to the hospital was
13 because of a head injury.

14 Q. I asked you about that and you said, I was in a
15 state of shock, he asked me multiple questions.

16 A. Yes, sir.

17 Q. You never mentioned anything --

18 A. Just because I didn't put it down don't mean it
19 didn't happen. That's what I'm telling you.
20 There's missing details in that statement.

21 Q. I'm asking you about what you testified to
22 under oath. I'm not asking you about your written
23 statement. I've asked you about this before. And
24 that's what you testified to under oath, quote, I
25 was in a state of shock, he asked me multiple

1 questions.

2 A. Yes, sir, he did.

3 Q. You remember saying that?

4 A. Yes, sir.

5 Q. All right. And you did not say anything about
6 having any type of head injury?

7 A. No, sir.

8 Q. Okay. In fact, you said you didn't think
9 Marthers did anything wrong in his questioning of
10 you, didn't you?

11 A. No, sir, I didn't.

12 Q. So why are you acting like he denied you
13 medical care now?

14 A. Because I never once seen a nurse to even get
15 checked on.

16 Q. You just told me a nurse told you to wash your
17 face. So you obviously saw a nurse.

18 A. That's when I was out in the hallway after I
19 was being handcuffed and taken out. The nurse came
20 up to me and asked me where I was going, and I told
21 her I was going to jail.

22 Q. So as the nurse sees you handcuffed and going
23 to jail, she tells you to wash your own face?

24 A. Well, I asked them, can I wash my face? And
25 they said, yeah, there's the bathroom. And that's

1 where I washed my face.

2 Q. And didn't you previously testify she walked to
3 the bathroom with you?

4 A. She never went in, but she walked me to the
5 door. Yes, sir.

6 Q. Okay. So you did see a nurse?

7 A. For maybe five minutes.

8 Q. You never lost consciousness after this
9 incident, did you?

10 A. Not that I'm aware of.

11 Q. You never vomited?

12 A. No, sir.

13 Q. You didn't have a concussion?

14 A. Not that I'm aware of.

15 Q. Never gone to see a doctor about a head injury
16 after this?

17 A. I was in the hospital -- I was in jail. I
18 don't think I could have gone to see a doctor.

19 Q. Well, they have medical staff there. You
20 didn't see anyone about a head injury, did you?

21 A. I didn't know I could.

22 Q. Now, when you got back into your house and you
23 saw Jersey wasn't leaving, what window were you
24 looking out of?

25 A. At that point in time, the storm door -- the

1 door was open and I could see through the screen
2 door. And then the window right there where the
3 laundry room was, I went and peeked out of that
4 window.

5 Q. So which one -- you're saying you looked out
6 the storm door first and then went and looked out
7 the laundry window?

8 A. Yes, sir. I went and looked out the laundry
9 window. And then when I come around, I seen him
10 still out there by his truck through the door. And
11 then I went and got my gun.

12 Q. And you testified that at that time, he was on
13 the back of his truck by his cooler?

14 A. Yes, sir.

15 Q. Getting a beer?

16 A. Getting a beer.

17 Q. And you never testified he was threatening you
18 at that time until today?

19 A. But he was saying things.

20 Q. Okay. Now, tell me this: You decide to go to
21 your door and fire -- rather than wait on the police
22 to get there, since you assumed they had already
23 been called, you decide to go to your door and fire
24 warning shots?

25 A. Yes, sir.

1 Q. Now, you live in a neighborhood, right?

2 A. Yes, sir.

3 Q. Why did you decide to fire four warning shots
4 in a neighborhood?

5 A. To tell him to leave, for him to know that I
6 meant what I said when I told him to leave my
7 property, because he was just sitting out there like
8 I was a joke.

9 Q. Why not fire just one shot? I mean, you had a
10 neighbor right beside you, right?

11 A. Yes, sir.

12 Q. So you decide to fire four warning shots?

13 A. Down low into the bottom of the toolbox, yes,
14 sir. I shot down low.

15 Q. Why did you decide to shoot your toolbox?

16 A. Because it was a metal object and I knew the
17 bullets wouldn't pass.

18 Q. You weren't scared of ricochet?

19 A. No, sir.

20 Q. Now, you previously testified that Joe's -- the
21 front of his truck was even with the front of your
22 garage. Do you remember testifying to that?

23 A. Yes, sir. It was probably about -- right about
24 to the end of the beginning of my driveway.

25 Q. And he has an F250 work truck with a long bed,

1 right?

2 A. Yes, sir.

3 Q. So the front of his truck is even with the
4 beginning of your --

5 A. Yes, sir. That's where the end of his truck
6 was.

7 Q. That's not what you testified to before.

8 A. Maybe I got you confused. What I meant is the
9 beginning of my driveway, at the garage door, that's
10 where the front of his truck was.

11 Q. All right. So that's changing today too?

12 A. Well, it's not changing. I just think I got
13 you confused.

14 MR. DEIRIG: Objection, Your Honor; that isn't
15 how the testimony went previously.

16 THE COURT: Clarify where the truck was,
17 because, perhaps, it was confused.

18 BY MR. MCNAIR:

19 Q. Did you not previously testify that Joe's truck
20 was almost level with the beginning of the garage
21 door?

22 A. Well, see, that's what I'm saying. The
23 beginning -- I was thinking of the one uphill, not
24 the one downhill.

25 Q. Oh. So the beginning is the back side to you?

1 A. Well, that's what I was thinking you were
2 referring to. Yes, sir.

3 Q. Okay. You would agree with me, though, that if
4 the beginning was the front of this garage and
5 that's where the front of his truck was, there's no
6 way you could even see him on the back of his truck?

7 A. Because that's not where his truck was.

8 Q. But if it was, you could not have even seen
9 him?

10 A. If his truck was there, the only way I could
11 see him was through that window. And that's not
12 where it was.

13 Q. What window? This one?

14 A. Yes, sir.

15 Q. The window with a covering over it?

16 A. I believe those are blinds.

17 Q. The windows with blinds over them, you could
18 have seen him through that window?

19 A. I said if that's where he was. But that's not
20 where he was.

21 Q. According to your testimony today?

22 A. Yes, sir. He was right there -- you took the
23 picture down.

24 Q. Now Joe, when you fired the warning shots, he
25 was on the back of his truck, right?

1 A. Yes, sir.

2 Q. Just sitting there --

3 A. Not sitting there.

4 Q. -- drinking a beer?

5 A. He was standing up on the tailgate, trying to
6 get into his cooler.

7 Q. And you were in the threshold of your door?

8 A. Yes, sir.

9 Q. How far away is your door from where Joe was
10 sitting?

11 A. Probably about that far.

12 Q. Well, this is about the distance of your
13 garage?

14 A. Yeah. Because the end of his truck was right
15 about level with the beginning of my garage.

16 Q. I remember I asked you this question before in
17 the bigger courtroom upstairs: And wasn't it more
18 about this distance?

19 A. No. That's, like, one step.

20 Q. This about right?

21 A. Right about, yes, sir.

22 Q. So when you fired four warning shots, he was
23 able to cover this distance before you could close
24 your door?

25 A. Yes, sir.

1 Q. He was able to cover that distance, open your
2 storm door, and then get to your wood door before
3 you could deadbolt it?

4 A. Yes, sir.

5 Q. Is that believable?

6 A. Yes, sir, it is.

7 Q. And then you're saying there was, essentially,
8 a tug of war on the door?

9 A. Yes, sir. There was a push-and-shove match
10 between the door and Joe and I. Yes, sir.

11 Q. And then what happened?

12 A. The shoving quit. And that's when I cracked
13 the door to see if Joe had left, and that's when Joe
14 pushed his way through the door.

15 Q. When your storm door closes, it makes a lot of
16 noise, doesn't it?

17 A. It has a spring on it -- a shock on it.

18 Q. You can hear a storm door close?

19 A. You can hear it go click. You can hear it
20 clicking, when it clicks shut.

21 Q. And Joe has a very loud truck too, doesn't he?

22 A. I wouldn't say it was very loud. But, yes, he
23 has a truck.

24 Q. You can hear it crank up?

25 A. I think so.

1 Q. So the pushing stopped. And you never heard
2 the storm door close and you never heard his truck
3 crank up. Did you crack the door to see if he was
4 still there?

5 A. Yes, sir.

6 Q. And you didn't fall down when he busted through
7 your door, did you?

8 A. No. I started walking back.

9 Q. You said you had your foot at the bottom of the
10 door?

11 A. Yes, sir.

12 Q. And he busted in and you're right there. And
13 you don't fall backwards?

14 A. After that I cracked the door open. So my foot
15 was not at the bottom of it anymore.

16 Q. Okay. But you're right on the other side of
17 the door. And he busted through the door?

18 A. Yes, sir. I back up out of the way of the door
19 and I start taking a step back. And that's when he
20 comes to me and I put my hand up and I make contact
21 with his shoulder with my hand. And I raise my gun
22 and I shoot him to the stomach.

23 Q. All right. And you testified that you put his
24 hand -- your hand on Joe's shoulder to tell him to
25 stop?

1 A. Yeah, in a stopping motion. Yes, sir, I did.

2 Q. All right. And he was coming head-on, straight
3 towards you?

4 A. Straight -- head-on, straight towards me.

5 Q. And you raised the gun up and shot to his
6 abdomen one time?

7 A. Yes, sir.

8 Q. All right. Will you show me how that
9 transpired?

10 A. Yes, sir.

11 Q. You can step down.

12 A. Just like that. (Demonstrating.)

13 Q. All right. Put your hand on my shoulder.
14 You're aiming this way? (Demonstrating.)

15 A. Yes, sir, just like that.

16 Q. Okay. Anybody have a camera? Do that one more
17 time and just hold it there.

18 A. (Demonstrating.)

19 Q. Okay. So that's kind of going at an angle?

20 A. Yes, sir.

21 Q. From, I guess, my left to my right?

22 A. Yes, sir.

23 Q. Is it going at a downward angle? Upward angle?

24 A. Joe is a bit smaller than me, so it would be
25 going down. Yes, sir.

1 Q. Okay. You're certain about that?

2 A. Positive.

3 Q. All right. And you're absolutely certain that
4 you fired four warning shots?

5 A. Yes, sir, positive.

6 Q. Why did you tell your mom that you fired three
7 warning shots into your toolbox?

8 A. Because I'm pretty sure that -- I can't recall
9 that. But I'm pretty certain it was four warning
10 shots I fired.

11 Q. You just told me you're absolutely certain you
12 fired four.

13 A. I did.

14 Q. Then why did you tell your mom you fired three?

15 A. I can't recall.

16 Q. Are you denying you said that?

17 A. No, sir. I just said I can't remember saying
18 it.

19 Q. No question Joseph Meyers was never armed, was
20 he?

21 A. I can't recall. I can't tell you if he was
22 armed or not.

23 Q. I've asked you that before and you said no. Do
24 you remember saying that?

25 A. Yes, sir.

1 Q. No question he never had any type of object
2 that he hit you with?

3 A. No, sir.

4 Q. So based on your demonstration that you just
5 showed, Joe's not trying to grab the gun?

6 A. Joe didn't try to grab the gun until after he
7 got shot and went to go leave. He tried to scoop it
8 up off the floor, and that's when I pushed him
9 outside the door. Joe did come in and try to take
10 the gun from me.

11 Q. All right. In previous testimony, you said he
12 fell on top of you, you got out from underneath him,
13 and then he ran out the door.

14 A. Yeah. And he tried to scoop the gun up on his
15 way.

16 Q. So this is additional detail and a new version
17 of what happened?

18 A. It's not new. He did get up and run and tried
19 to bend over and grab that gun. And that's when he
20 got pushed out the door.

21 Q. That's all the questions I have. Thank you.

22 THE COURT: Redirect?

23 MR. DERIEG: Briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. DEIRIG:

1 Q. Before today, has anyone ever asked you if you
2 saw Jo.F. at that window when you were at the
3 rosebushes?

4 A. Not that I'm aware of.

5 Q. Let's see. I believe on cross-examination
6 Mr. McNair said or asked you if you had testified
7 the last time that Jersey was never yelling at
8 Brooke. Right?

9 A. Yes, sir.

10 Q. And then he had you read some of the
11 transcript, right?

12 A. Yes, sir.

13 Q. I'll ask you to look at page 12, lines 14
14 through 23.

15 A. You want me to read them?

16 Q. Please.

17 A. When Joe was talking to Brooke about the kids
18 being in the front yard, was he mad?

19 Well, I can only imagine. He was using the
20 same tone he had with the other kids that was in the
21 front yard. Yes, sir, he probably was yelling at
22 them.

23 So did he yell at those kids in the front yard
24 too? Yes, sir.

25 And then he was yelling at Brooke?

1 Yes, sir.

2 Okay. What happened after that --

3 MR. MCNAIR: Judge, objection. Just reading
4 the transcript, I mean --

5 THE COURT: All right. Now, you can ask him
6 questions about the prior sworn testimony about
7 inconsistent statements.

8

9 BY MR. DEIRIG:

10 Q. So did you, in fact, at the last hearing,
11 testify that Jersey did yell at Brooke?

12 A. Yes, sir.

13 Q. And at the last hearing as well, when I was
14 asking you questions, did you testify that you and
15 Joe started drinking at noon?

16 A. Yes, sir.

17 Q. What happened at noon?

18 A. That's the company meeting.

19 Q. And what was provided at the company meeting?

20 A. Food and alcohol. Well, coolers -- it was
21 Coca-Colas in there too as well. But there was
22 drinks and alcohol -- I mean, food.

23 Q. Did you testify to that last time?

24 A. Yes, sir.

25 Q. When you waited the three-to-five-minute period

1 and then went to open the door, did you know that
2 Jersey was outside?

3 A. Yes, sir, because I could see him.

4 Q. After he stopped pushing on the door and you
5 cracked the door to look outside, did you know that
6 he was outside then?

7 A. No, sir, I did not.

8 Q. What were you doing when you cracked the door?

9 A. Checking to see if he was still there, see if
10 his truck was there or not.

11 Q. Are you supporting -- are you financially
12 supporting Brooke and/or her kids currently?

13 A. No, sir.

14 Q. Were you and Brooke living together when that
15 meeting at my office that Mr. McNair asked about
16 occurred?

17 A. Yes, sir, I believe so.

18 Q. Y'all were living together at that time?

19 A. I'm not quite sure when we met. I can't
20 remember the date.

21 Q. Okay.

22 A. So I just -- I believe so.

23 Q. Okay. And did you see the nurse out in the
24 hallway before or after you gave your statement to
25 Detective Marthers?

1 A. After I gave my statement to Detective
2 Marthers.

3 MR. DEIRIG: Thank you, Your Honor. That's all
4 I have.

5 THE COURT: Recross?

6 MR. MCNAIR: Nothing further, Your Honor.

7 THE COURT: You may step down.

8 THE DEFENDANT: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. DEIRIG: The defense would call John
11 Jenkins.

12 THE BAILIFF: Your Honor, he'll be up shortly.
13 He's being summoned from the smoking area.

14 JOHN FELTON JENKINS

15 being first duly sworn, testified as follows:

16 THE WITNESS: I do.

17 THE CLERK: Thank you. If you'll have a seat
18 over there, please, and state your name for the
19 record.

20 THE WITNESS: My name is John Jenkins -- John
21 Felton Jenkins.

22 DIRECT EXAMINATION

23 BY MR. DEIRIG:

24 Q. Good morning, Mr. Jenkins.

25 A. How are you doing?

1 Q. Good. And for the record, can you spell
2 Jenkins?

3 A. J-E-N-K-I-N-S.

4 Q. Thank you. Let's introduce you to the jury,
5 Mr. Jenkins. How old are you?

6 A. I'm 49.

7 Q. 49. Where are you from?

8 A. I'm from Macon, Georgia.

9 Q. And how long have you lived in this area?

10 A. Most of my life. I got here at eight years
11 old.

12 Q. Okay. How far did you go school?

13 A. High school.

14 Q. Where did you go?

15 A. Spring Valley High School.

16 Q. Okay. And what do you do for a living?

17 A. I build docks and barges, construction work.

18 Q. Back in August of 2015, what were you doing?

19 A. I was employed by GGE&C Services. I no longer
20 worked with Agnew Lake Service.

21 Q. Okay. At what point -- excuse me. Have you
22 ever worked for Agnew?

23 A. Yes, sir. I worked from September of '87 to
24 April of 2013.

25 Q. Okay. So a long time?

1 A. Yes, sir.

2 Q. All right. Do you know Joshua Reher?

3 A. Yes, I do.

4 Q. How do you know him?

5 A. He was trained under me in the welding shop.

6 And, you know, we were employees together and
7 friends over the years.

8 Q. Okay. About how long do you think you've known
9 Josh?

10 A. Since he was 14 when he got there, 15 years
11 old. He moved in with Joe Agnew and his wife.

12 Q. Okay. So you've known him for a long time?

13 A. Yes.

14 Q. Okay. Do you know a man by the name of Joseph
15 Meyers?

16 A. I do.

17 Q. Does he go by anything else?

18 A. Jersey Joe.

19 Q. Is that what you call him?

20 A. Yeah.

21 Q. How do you know Jersey?

22 A. Well, I never worked at Agnew while he worked
23 there. I know of him from the community. I have
24 had occasion to do side work building a boat for
25 him, a pontoon boat that he builds his docks with.

1 And I just see him around over at friends' houses
2 and stuff. Acquaintance more than a friend.

3 Q. Has he ever been over to your house?

4 A. He has.

5 Q. How many times?

6 A. Twice. About a week before the incident, Josh
7 and him were over at my house and there was some
8 friction, obviously. And it made me kind of
9 uncomfortable. I really wanted both of them to
10 leave.

11 Q. What kind of friction did they have?

12 A. It was domestic-type stuff. His girlfriend,
13 the kids doing stuff they're not supposed to. Like
14 I say, it wasn't really my business to be worried
15 about. It made me feel uncomfortable.

16 Q. When you say a week before the incident, you
17 mean about a week before August 21st, 2015?

18 A. Yes. After I heard what happened in the rumor
19 mill.

20 Q. Okay. And when they were having words at your
21 house a week before this incident, was anybody else
22 there?

23 A. No. It was just me.

24 Q. So why were the two of them over at your house?

25 A. Just visiting, talking about docks. And, you

1 know, I had been trying to get Jersey to possibly
2 buy ramps from me because he installs them and I was
3 trying to start my own fabrication operation at my
4 house. But, like I say, it became uncomfortable to
5 the point where I just -- I kind of told them I got
6 to work tomorrow, y'all please go on somewhere.

7 Q. Did Jersey ever have occasion to come back to
8 your house?

9 A. He came to pick up the parts I built probably
10 about two and a half years later after he got back
11 into building docks and whatnot, you know. He asked
12 me to do that work for him, to help him along with
13 his business. Like I said, I saw that as an
14 opportunity to make money.

15 Q. Have you ever had occasion to talk to Jersey
16 about what happened between him and Josh?

17 A. I was curious about it, and a friend of
18 Jersey's, Daniel Koon, he works with me now, he was
19 on his way over to his house. And I actually asked
20 him, you know, to kind of see what happened, because
21 I knew both of them, and I was just curious, you
22 know. And he started telling us what happened, you
23 know.

24 Q. So were you physically present when Jersey
25 started telling y'all what happened?

1 A. Yes, sir.

2 Q. Where was this?

3 A. Out in Daniel's shop.

4 Q. It was at Daniel's house?

5 A. Yes, sir.

6 Q. Okay. And what did Jersey tell y'all?

7 A. The gist of it? I asked Daniel to kind of --
8 how do you get shot and not go to the hospital?

9 That was just kind of the question.

10 Q. What do you mean by that?

11 A. Well, I was just curious as to why he wouldn't
12 have gone to seek medical attention. I would have
13 been scared to death. And so knowing Josh and
14 knowing him, we were just curious as to really what
15 had happened. And that was the opportunity to hear
16 it from the horse's mouth.

17 Q. Had you been hearing rumors?

18 A. Yes. And, like I say, it was exaggerated
19 beyond belief.

20 Q. Did any of the rumors that you had heard make
21 sense?

22 A. No.

23 Q. So is that why you went straight to Jersey and
24 asked?

25 A. I didn't go straight to him. I just used the

1 opportunity to ask Daniel to ask him and him
2 enlighten us as to his side of it.

3 Q. Okay. And what did he tell you happened?

4 A. Well, he said they were into a fight, an
5 altercation, and Josh ran into the house, grabbed a
6 weapon, came back out, shot the toolbox; he
7 attempted to go take the weapon from him and was
8 shot subsequently. He said he blacked out after
9 that.

10 Q. When you said -- I think you just said he
11 attempted to take the gun from him. Could you --

12 A. Josh. He attempted to go take the weapon from
13 Josh, is my understanding, by his --

14 Q. Jersey told you that he attempted to go take
15 the gun from Josh?

16 THE COURT: No leading. Leading.

17 MR. DEIRIG: I'm just trying to clarify what he
18 said.

19 THE COURT: And you're leading him.

20 MR. DEIRIG: Okay.

21 BY MR. DEIRIG:

22 Q. What did Jersey -- what else did Jersey tell
23 you?

24 A. He blacked out after that. The Sheriff's
25 Department came and -- with an ambulance, and made

1 him seek medical attention. And he said he was in
2 and out, memory-wise, after that. Like I said,
3 blacked out, is what he said.

4 Q. What did he tell you he did after he got shot?

5 A. Got in his truck and drove home.

6 Q. And when did this conversation happen?

7 A. Like I said, probably a year and a half ago.
8 This was after he was back in good health and back
9 into building docks and on his feet. So some
10 time -- a good bit of time had passed.

11 Q. Do you know who he was working for at the time?

12 A. Himself.

13 Q. Okay. So he wasn't working for Agnew anymore?

14 A. No.

15 Q. So if it was about a year and a half ago from
16 now, do you know roughly how long it was after the
17 incident that he told you?

18 A. Probably a year and a half. It's been, like,
19 five years, you know. A lot of time has passed.
20 I'm just not good at keeping up with dates and times
21 exactly like that.

22 Q. Okay. But you know it was about a year and a
23 half ago from now?

24 A. Yes, approximately.

25 Q. Okay. Is there any question in your mind

1 that's what Jersey told you?

2 A. No, sir.

3 Q. Are you here lying today for your friend?

4 A. No, sir.

5 MR. DEIRIG: I beg the Court's indulgence.

6 That's all I have, Your Honor. Thank you.

7

8

9

CROSS-EXAMINATION

10 BY MR. POGUE:

11 Q. Mr. Jenkins, you say you've known Josh for a
12 long time, right?

13 A. Yes, sir.

14 Q. Have you ever lived with Josh before?

15 A. Yes.

16 Q. Who do you currently live with?

17 A. He resides at my house.

18 Q. He lives with you right now?

19 A. Yes, sir.

20 Q. Wow. And who were you meeting with prior to
21 immediately taking the stand in the hallway out
22 there? Who were you meeting with?

23 A. Who was I meeting with?

24 Q. Who were you speaking with? Who were you in a
25 room with?

1 A. Oh, Daniel Koon.

2 Q. Who else was there?

3 A. No one.

4 Q. The defense attorney wasn't in there talking
5 with you?

6 A. He came and said y'all were taking a break and
7 we'd be up in a minute.

8 Q. Do you know what other people have testified to
9 on that stand before you today?

10 A. No, sir.

11 Q. Okay. So tell me again what it was you claim
12 Jersey told you.

13 A. He said that -- I mean, he described the events
14 of that altercation. Like I say, you know --

15 Q. Go ahead. What were the events that he told?

16 A. We asked him how, if you get shot, do you not
17 go to the hospital? That's when he enlightened us
18 to his side of events; to, you know, what happened.

19 Q. What did he tell you specifically happened?

20 A. That they were in a fight, that Josh retreated
21 into the home, came back out with a weapon, shot the
22 toolbox four times; he attempted to go take the
23 weapon away from Josh, and was subsequently shot.

24 Q. Does that seem to make sense to you that
25 somebody would run at somebody with an AR-15 rifle

1 he just fired?

2 A. You'd have to ask him.

3 Q. I'm asking you if that makes sense.

4 A. No, sir. That's why we asked the question.

5 Q. I thought you asked him -- did you not just
6 testify you asked him, because --

7 A. Well, Daniel asked him, sir. Daniel asked him
8 at my asking Daniel: Since he's coming over, go
9 ahead and see if we can get the story from him.
10 That was the gist.

11 Q. Okay. And you trained him, right? He worked
12 under you a long time?

13 A. I taught him how to fabricate and weld. Yes,
14 sir. He did a lot of other things for the company.

15 Q. Have you ever come forward to law enforcement
16 or the Solicitor's Office to try to provide a
17 statement?

18 A. No, sir.

19 Q. Okay. But your best friend that you live with
20 you knew was charged and was going to be going on
21 trial for attempted murder, but you didn't think it
22 was important to give a statement to law
23 enforcement?

24 A. I hadn't spoke with Josh for two or three
25 years. My employment being terminated kind of puts

1 a distance between folks. I actually spoke with
2 Jersey prior to speaking with Josh. And then when I
3 let Josh move in because he had no place to go,
4 couldn't find a place to stay, he told me his side
5 of it.

6 And the stories didn't match, so I offered that
7 to his lawyer, if he wanted it, so that the Court
8 could hear it. And it was up -- yes, sir -- I mean,
9 no, I didn't attempt to go to law enforcement.

10 Q. Josh has been working for Norman since he's --

11 A. Yes, sir.

12 Q. -- gotten out of jail in this case, right?

13 A. Yes, sir.

14 Q. Okay. So he makes money, right?

15 A. Yes, sir.

16 Q. What do you mean he had no other place to live?

17 A. Well, you can't get a lease and stuff like that
18 in this situation, I think, is what he told me. You
19 can't find a place to stay. I live right around the
20 corner, I work right around the corner. It's just a
21 tight community.

22 Q. Okay.

23 A. I mean, we've known each other a long time,
24 like I say.

25 Q. But you didn't think it was important to let

1 law enforcement know this information you claim
2 Jersey told you?

3 A. No, sir. I felt like I needed to let him know.
4 After he had that conversation with me, his
5 investigator wanted to talk with us, and then they
6 weighed the weight of it.

7 Q. All right. And so you never approached anybody
8 with that information? They came and asked you if
9 you had any information?

10 A. It was during the conversation after he was
11 moving in that the stories didn't line up and
12 corroborate. And then I enlightened him that I had
13 heard that from Jersey, and he asked me if I'd tell
14 his investigator that. That's how it transpired.

15 Q. Okay. But you didn't think it was a good idea
16 to give a statement in regard to these statements
17 that you're claiming Jersey made to a law
18 enforcement official with your friend on trial for
19 attempted murder? You didn't think that was
20 important?

21 A. Well, I felt like I gave it to an officer of
22 the court.

23 Q. Okay. I mean, yes or no?

24 A. The conversation took place. It was being
25 given -- I made an affidavit. I felt like that's

1 what you do.

2 Q. Okay.

3 MR. POGUE: No further questions, Your Honor.

4 THE COURT: Redirect?

5 MR. DEIRIG: No, Your Honor.

6 THE COURT: All right. You may step down, sir.

7 Thank you.

8 MR. DEIRIG: The defense calls Daniel Koon.

9 DANIEL KOON

10 being first duly sworn, testified as follows:

11 THE WITNESS: I do.

12 THE CLERK: Have a seat over there, please.

13 State your name, please, and spell your last for the
14 record.

15 THE WITNESS: Daniel Koon, K-O-O-N.

16 DIRECT EXAMINATION

17 BY MR. DEIRIG:

18 Q. Good morning, Daniel.

19 A. Morning.

20 Q. How old are you?

21 A. Sir?

22 Q. How old are you?

23 A. 34.

24 Q. And what kind of work do you do?

25 A. I do erosion control on Lake Murray.

1 Q. And do you live in the area?

2 A. Yes.

3 Q. Okay. Where are you from?

4 A. Right here in Richland County.

5 Q. Richland County?

6 A. Yes, sir.

7 Q. Okay. Have you been born and raised around
8 this area your whole life?

9 A. My whole life.

10 Q. Okay. Do you know Joshua Reher?

11 A. Yes.

12 Q. How do you know him?

13 A. I've been friends with him for, what, 20 years.

14 Q. 20 years?

15 A. Yeah.

16 Q. How did you get to know him?

17 A. Working at Agnew Lake Service.

18 Q. So you worked there too?

19 A. Yeah.

20 Q. When did you no longer work there?

21 A. Let's see. I was about -- right when I turned
22 18.

23 Q. Which was?

24 A. Year-wise?

25 Q. Yeah.

1 A. I'd have to say '98, something like that.

2 Q. Okay. And do you know Joseph Meyers?

3 A. Yes.

4 Q. Do you know him by any other name besides
5 Joseph?

6 A. Jersey.

7 Q. Okay. Is that what you call him?

8 A. Yeah. I always call him Jersey.

9 Q. How do you know him?

10 A. Through Agnew as well.

11 Q. Are the two of y'all friends?

12 A. Yes.

13 Q. After the incident between Josh and Jersey, did
14 you and Jersey continue to be friends?

15 A. Yep.

16 Q. Has Jersey ever had an occasion to come to your
17 house?

18 A. Yes.

19 Q. How many times, do you think?

20 A. Quite a few. I mean, I couldn't count them on
21 my hands and feet.

22 Q. Okay. So would it be fair to say that --

23 A. More than that.

24 Q. Okay. Have you ever been to his house?

25 A. No.

1 Q. Do y'all hang out a good bit?

2 A. I mean, kinda, sorta.

3 Q. Okay. Has there ever been an occasion that
4 Jersey was over at your house when John Jenkins was
5 there too?

6 A. Yes.

7 Q. Did it ever happen on more than one occasion?

8 A. Just one that I can, you know, remember
9 clearly.

10 Q. Okay. And that one time that you remember, did
11 the incident between Josh and Jersey come up?

12 A. Yes.

13 Q. How did it come up?

14 A. We were sitting around have a few beers,
15 talking about -- I don't remember exactly what we
16 were talking about.

17 Q. When you say we, who are you talking about?

18 A. Me, and John, and Jersey.

19 Q. Okay.

20 A. And he had -- I don't know how we got into the
21 conversation, but somehow we got to it. And it
22 was -- my main question was, how do you know that --
23 how do you not go to the hospital if you've been
24 shot?

25 Q. And what do you mean by that?

1 A. Well, the -- Jersey had told me that if the
2 cops wouldn't have showed up to his house, then he
3 would have laid there and died on his couch.

4 Q. Okay.

5 A. And that -- you know, that he didn't know that
6 he was shot until the cops had showed up.

7 Q. So you were wondering how that was possible?

8 A. Yeah. I mean, how do you get shot and not know
9 that you're shot?

10 Q. And what did he tell you?

11 A. He said he didn't know, that he blacked out.

12 Q. Did he tell you what happened between he and
13 Josh?

14 A. He said that they had gotten into it, rolling
15 around fighting, and that next thing he knew, that
16 Josh had gone in the house and got a gun and had
17 fired a few rounds or something like that towards --
18 down towards the ground or something. I can't
19 remember specifically. It's been so long. But --
20 and that they had gotten into it and that he had
21 blacked out and he was headed back to his house.

22 Q. Did he tell you how he got shot?

23 A. No, not specifically.

24 Q. Okay. Did he ever tell you that he tried to
25 take the gun from Josh --

1 THE COURT: Don't lead.

2 THE WITNESS: No.

3 BY MR. DEIRIG:

4 Q. Okay.

5 A. Not specifically.

6 Q. Did you say that he told you that he blacked
7 out?

8 A. Uh-huh.

9 Q. And when did this conversation occur?

10 A. I want to say it had to have been about a year
11 after the whole thing had gone down, I guess.
12 Probably about a year after that.

13 Q. Okay. And what did Jersey tell you happened
14 after Josh shot those shots into the ground?

15 A. That he went to his truck and went home.

16 MR. DERIEG: I beg the Court's indulgence.

17 No further questions, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. POGUE:

20 Q. How are you doing, Mr. Koon?

21 A. Hey.

22 Q. So I just want to understand your testimony.

23 You and John Jenkins were at John Jenkins' house, is
24 that correct, or at your house?

25 A. My house.

1 Q. At your house. Okay. And that was -- you and
2 John Jenkins were both there together when Jersey --
3 y'all claim that Jersey told y'all about what
4 happened, right?

5 A. Right.

6 Q. Okay. And your testimony is that Jersey never
7 told you how he got shot, right?

8 A. Right.

9 Q. Okay. All right. So if he never told you how
10 he got shot, John Jenkins would not know how he got
11 shot either, correct, unless he had another
12 conversation with John Jenkins without you. Right?

13 A. Right. Right.

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

15 THE COURT: You may step down.

16 MR. DEIRIG: Your Honor, briefly?

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. DEIRIG:

20 Q. Did you ever meet with the private investigator
21 that's helping Josh?

22 A. Yes.

23 Q. Is he in the courtroom today?

24 A. Yes.

25 Q. Where is he?

1 A. The private investigator?

2 Q. Yes.

3 A. Sitting right here beside Josh.

4 Q. Okay. And did you tell him --

5 MR. POGUE: I'm going to object to leading, if
6 that's where it's going, Your Honor.

7 THE COURT: Sustained to leading.

8 MR. POGUE: And, Your Honor, it's also not
9 responsive to my cross-examination either.

10 THE COURT: Agreed. Redirect.

11 BY MR. DEIRIG:

12 Q. Did you tell the private investigator the same
13 thing that you've testified to today?

14 MR. POGUE: Objection, Your Honor; not
15 responsive to my cross-examination.

16 THE COURT: I think it is. I'll let him answer
17 that.

18 THE WITNESS: No, sir.

19 BY MR. DEIRIG:

20 Q. I'm sorry. What?

21 THE WITNESS: Your Honor, I don't remember
22 exactly word for word, you know, what I had said. I
23 mean, that was -- that's been over a year ago, I
24 think, when I talked with the PI.

25 MR. DERIEG: Okay. This is marked for

1 identification.

2 THE COURT: We went through this yesterday.
3 You can't use a prior consistent statement to et
4 around cross-examination.

5 MR. DEIRIG: This is a prior --

6 THE COURT: I stopped the State from doing that
7 yesterday.

8 MR. DERIEG: This is a prior inconsistent
9 statement.

10 THE COURT: No, it's not. Y'all come back
11 here. I'm going to let the jury sit right here.
12 Y'all come outside.

13 (Off-of-courtroom bench conference.)

14 THE COURT: For the record, Ms. Creppon, if
15 either side wants to make it for the record, we'll
16 do that at next break. We had an out-of-courtroom
17 bench conference so I didn't have to necessitate
18 removing the entire jury back in the back and coming
19 back in for the lunch break. Either side will be
20 allowed an opportunity to make a record on that
21 point of both prior consistent and inconsistent
22 statements.

23 BY MR. DEIRIG:

24 Q. When is the last time you talked to Jersey?

25 A. Just the other night, the night before last, I

1 believe it was.

2 MR. POGUE: Your Honor, again, not responsive
3 to my cross-examination.

4 MR. DEIRIG: That's all I have, Your Honor.

5 THE COURT: Okay. I'm going to overrule the
6 objection. You can step down.

7 MR. DEIRIG: Your Honor, at this time, the
8 defense rests.

9 THE COURT: Very well. Is the State going to
10 have rebuttal?

11 MR. MCNAIR: Can we have ten or five -- five
12 minutes?

13 THE COURT: Sure. Okay. I want to do that
14 before lunch. So y'all step into your jury room.
15 What I'm going to do is if the State has any
16 rebuttal witness, and they can call a rebuttal
17 witness, I want to do that before lunch. It
18 shouldn't be a lengthy witness. So y'all step in
19 there for a few minutes. If they don't, then I'm
20 going to say y'all go to lunch. Don't discuss the
21 case.

22 (The jury exits the courtroom at 11:26 AM.)

23 MR. DEIRIG: Judge, at this point, I'd like to
24 renew my directed verdict motions as well as
25 renewing all previous objections and motions.

1 THE COURT: Consistent with my prior rulings,
2 there was ample evidence at the close of the State's
3 case to submit the issues of both indictments to the
4 jury. And that hasn't changed, so the factual basis
5 for the jury to consider and weigh the question. So
6 I find there is evidence within the record for the
7 jury to consider both charges, as well as the lesser
8 included ABHAN, which we've discussed off the record
9 that we would probably instruct the jury on as well.
10 All right?

11 MR. DEIRIG: All right. Well, and, Your Honor,
12 just out of an abundance of caution, based on some
13 conversations I've had with some appellate
14 attorneys, I've been advised to also renew our
15 immunity motion that was denied by Judge Keesley
16 based on the -- you've heard all the evidence in the
17 case. You've heard more than Judge Keesley heard.
18 And, based on the facts and circumstances that have
19 come from that stand, I'd make a motion at this time
20 that Josh Reher should be given immunity under the
21 Stand Your Ground law in South Carolina.

22 THE COURT: I think that's -- likewise, I have
23 heard testimony throughout the trial. And I'm not
24 certain, I've not reviewed the record from Judge
25 Keesley, but from what I've heard and presented, I

1 think the question of whether or not he had -- is
2 entitled to immunity, I deny that. But I believe
3 there is a question of fact as to whether or not he
4 proved he acted in a self-defense posture. So that
5 would be submitted to the jury, if y'all ask. I
6 mean, I assume it would.

7 MR. DEIRIG: Yes, Your Honor.

8 MR. MCNAIR: Judge, I said one witness. I'm
9 thinking two now. We may want to play a jail call
10 that I crossed the defendant about that he didn't
11 admit whether he made it or not. So he was
12 unequivocal about it -- or he was equivocated on it.
13 So I think we'd be entitled to play that.

14 It's the first jail call. We would just play
15 two excerpts from that. One is where he told his
16 mom he fired three warning shots into his toolbox;
17 the other one, he says the only people who were in
18 the house were M.A. and Jo.F. , and Jo.F. was
19 probably in the back. So we'd just play those two
20 statements and redact the rest of it. I just wanted
21 to tell Mr. Deirig in case --

22 THE COURT: Have you already redacted the
23 recording?

24 MR. MCNAIR: Yes, sir.

25 THE COURT: If he wants to play all of it, he

1 Give me the jury.

2 (Jury enters the courtroom at 11:44 AM.)

3 THE COURT: All right. The State wishes to
4 call a rebuttal witness or two.

5 So, State, call your witness.

6 MR. POGUE: Thank you, Your Honor. The State
7 calls Lieutenant Robbie Lint.

8

9 CHARLES ROBERT LINT

10 being first duly sworn, testified as follows:

11 THE WITNESS: I do. Thank you.

12 THE CLERK: Have a seat and state your name,
13 please. Spell your last for the record.

14 THE WITNESS: Charles Robert Lint, Jr. Lint is
15 spelled L-I-N-T.

16 REBUTTAL EXAMINATION

17 BY MR. POGUE:

18 Q. Good morning, Lieutenant.

19 A. Good morning.

20 Q. Where are you currently employed?

21 A. With the Lexington County Sheriff's Department.

22 Q. In what capacity?

23 A. I am lieutenant over the narcotics division.

24 Q. Okay. So you are in charge of that entire
25 division?

1 A. Yes, sir, I am.

2 Q. Okay. Let me ask, where were you employed in
3 August of 2015?

4 A. I was a sergeant in our Major Crimes Unit with
5 Lexington County Sheriff's Department.

6 Q. Okay. And what were your responsibilities as a
7 sergeant in Major Crimes?

8 A. I ran a unit. I had four to five investigators
9 assigned to my unit. We investigated anything from
10 simple assault to homicide, which would include
11 sexual assaults, aggravated assault, robberies,
12 anything in between, any crime against a person is
13 what our unit investigated.

14 Q. Okay. And in all, how long have you worked in
15 the Lexington County Sheriff's Department?

16 A. I became employed with Lexington County
17 Sheriff's Department in 2003. Previous to that, I
18 was employed with the Probation, Patrol and Pardon
19 Services for the State of South Carolina since 1997.

20 Q. Okay. So, in total, how many years of law
21 enforcement experience do you have?

22 A. 21 years.

23 Q. Do you have any idea, off the top of your head,
24 how many hours of training you've had?

25 A. More than I can count.

1 Q. Okay. Do you recall the incident that we're
2 here at trial about today?

3 A. I do.

4 Q. Okay. Who was in charge of the scene that day?
5 Who was the --

6 A. That was me.

7 Q. So you were in charge of crime scene that day?

8 A. Yes, sir.

9 Q. Okay. All right. And do you recall whether a
10 statement -- whether you or any of the members of
11 the Lexington County Sheriff's Department spoke with
12 J.L.F. , who was an individual that was, I
13 believe, asleep in the house that day?

14 A. Yes, sir. I did.

15 Q. Did he provide a written statement?

16 A. He did.

17 Q. Okay. And who took that written statement?

18 A. Originally, the statement was taken by
19 Lieutenant Rodgers who was working on the road that
20 night. He was a reserve deputy who worked for
21 Lexington County Sheriff's Department.

22 He initially started the written statements by
23 providing the statement form that you just held up
24 for him to begin writing his statement. When I
25 arrived on the scene and things started settling

1 down, I re-interviewed J.L-F. to go over his
2 statement, which my name is also on the form as the
3 one taking the statement.

4 Q. All right.

5 MR. POGUE: Permission to approach the witness,
6 Your Honor?

7 THE COURT: Sure.

8

9 BY MR. POGUE:

10 Q. Lieutenant, I'm handing you what's marked as
11 State's Exhibit 78 for ID purposes. Do you
12 recognize that?

13 A. I do.

14 Q. Okay. And do you recognize any of your
15 handwriting on that statement?

16 A. I do. On this form -- there's blue ink on this
17 form -- informs of my name written up at the top as
18 who made the statement known to, where I wrote my
19 name. Also, there's a question-and-answer portion
20 of the statement that's written in blue, and the
21 question portions are in my handwriting.

22 Q. Okay. All right. And can you tell me again,
23 as someone who took this statement and was also in
24 charge of the scene, did J.L-F. -- did he give
25 more than one written statement to any officers at

1 the scene that day?

2 A. This is the only statement form taken from
3 Mr. Lewis.

4 Q. Okay. Is it a common practice for Lexington
5 County Sheriff's Department to take multiple written
6 statements, three or four written statements, from
7 an individual unless they request it?

8 A. Unless they request it, no.

9 Q. Okay. And do you recall him ever requesting to
10 give additional statements?

11 A. Not to my knowledge, no, sir.

12 Q. Did you go over this statement with him?

13 A. I did.

14 Q. Did you ask him whether everything in here was
15 accurate?

16 A. I did.

17 Q. Did you ask him if he wanted to add anything to
18 it?

19 A. Yes, sir.

20 Q. And did he want to add anything to it?

21 A. Not other than what he put on the statement
22 form.

23 Q. Did he want to change anything in it?

24 A. Not to my knowledge. No, sir.

25 Q. Did he want to redact anything in it?

1 A. Not to my knowledge. No, sir.

2 MR. POGUE: No further questions.

3 THE COURT: Any cross?

4 SURREBUTTAL EXAMINATION

5 BY MR. DEIRIG:

6 Q. Who all questioned J.L.F. that night?

7 A. I know that I did. Yes, sir.

8 Q. Who else?

9 A. Again, to my knowledge, Lieutenant Rodgers, who
10 is on this form, is the one who initially gave him
11 the statement form to have him start writing the
12 statement. Once I arrived on scene and started
13 assessing the situation and see that multiple people
14 needed to be interviewed, I stepped in and began
15 interviewing Mr. Lewis.

16 Q. Okay.

17 A. To my knowledge, I was the only one who
18 interviewed him that night.

19 Q. Besides Rodgers?

20 A. Besides Rodgers, who provided him with the
21 statement form to begin writing, yes, sir.

22 Q. If he was interviewed by more than just you and
23 Rodgers, would you know about it?

24 A. I think I would know about it. But, to my
25 knowledge, that never happened.

1 MR. DEIRIG: That's all I have, Your Honor.

2 THE COURT: All right. You may step down.

3 THE WITNESS: Thank you.

4 MR. MCNAIR: That's all from the State, Your
5 Honor.

6 THE COURT: It's a few minutes to 12:00. I got
7 one juror with an appointment at 12:30. Let's try
8 to get back together at 1:30. Understanding that I
9 don't have control over the appointment, we'll wait
10 on him. Fair enough? So y'all go to lunch until
11 1:30. Be back in the jury room and we'll start as
12 close to 1:30 or thereafter as we can. We don't
13 start without anybody.

14 Don't discuss the case. We'll get closings and
15 summaries and whatnot and instructions to the jury
16 this afternoon. Okay? All right. See you in a
17 little bit.

18 (The jury exits the courtroom at 11:53 AM.)

19 THE COURT: All right. We'll stand at ease
20 until 1:30. Is that okay? Have you got any
21 requests to charge I don't know about?

22 MR. MCNAIR: Judge, I guess with attempted
23 murder, you charge express malice now and use the
24 definition in that King opinion.

25 MR. POGUE: The way I read King -- and I know

1 will give their closing summaries. Some people call
2 them closing arguments. They'll give you a summary
3 of what they believe the evidence has shown or not
4 shown. All the pieces fit together and kind of tie
5 everything together for you.

6 The State will go first, defense will go
7 second, and then the State will give a short reply
8 at the very end. Depending -- my guess will be,
9 fairly certainly, once they finish those summaries,
10 we'll take a short break, let y'all stretch your
11 legs, and then I'll give you my instructions on the
12 law, and then you'll begin your deliberations.

13 MR. MCNAIR: Thank you, Your Honor. May it
14 please the Court?

15 THE COURT: Yes, sir.

16 MR. MCNAIR: A man in fear of his life, head
17 smashed in, bloody, hit so many times he couldn't
18 even keep count, hyperventilating, crying, in shock.
19 Really? Whose case is built on smoke and mirrors,
20 as the defense attorney stated in the opening?

21 The sad truth of this case is that the
22 defendant tried to kill his unarmed best friend
23 after losing what the neighbor described as a
24 skirmish. Wasn't that an accurate description? A
25 skirmish. The guy he spent more time with than

1 anybody else; the guy he rode to work with every
2 day; the guy who he had hung out with before, had
3 drinks with before, never been in an argument with
4 before, never had issues with before, never been in
5 a fight with before.

6 But in a pathetic attempt to justify what he
7 did, he wants you to believe he was in fear of his
8 life. Please. He wants you to feel he was in fear
9 of his life because he had some cuts and some
10 bruises that most people give a child a Band-Aid
11 for? This is ridiculous. And I'm sorry for showing
12 emotion and getting upset about it, but it's absurd.

13 And then the defense attorney, in opening,
14 comes up here and says, this is a trial that a
15 fundamental American right is on trial. Really?
16 I'm all for defending yourself, your home, and your
17 family. That's not what this case is about. This
18 case is about a guy who invited his best friend
19 over, got drunk with him, started a fight with him,
20 lost the fight and then shot him, and wants you to
21 believe he was some type of home intruder.

22 The truth is so obvious in this case, isn't it?
23 I heard an old judge once say, I've been doing this
24 14 years, that's why I have such gray hair. I heard
25 an old judge once say, some lawyers see facts as

1 they are, and some see them as they wish them to be.

2 And just because they can put the kids who used
3 to call him Dad and Team Agnew up here to tell lies
4 and tell some story to try and fit the facts, that
5 does not change the facts and that does not change
6 the truth. They're just hoping you're gullible
7 enough to believe it. It's insulting.

8 The truth of this case is in that 911 call.
9 The terror in Brooke Floyd's voice when she pulled
10 up and saw that look in his eye and saw him holding
11 a gun, she saw a man in a rage. She didn't see a
12 man who had just acted in self-defense and who was
13 scared, hyperventilating. She saw the same man she
14 had seen prior to leaving that day, but this time he
15 had a gun. And when the person who had known him
16 the longest saw that look in his eye and him holding
17 that gun, she couldn't get out of there fast enough,
18 could she?

19 The truth of this case isn't what everybody
20 said that night on scene when they were too
21 terrified to lie, before they had a motive to lie,
22 before they got all together after the fact to
23 collude and try and figure out some story they could
24 tell to help him get off; before Helen Bradberry and
25 Brooke Floyd drove all of them up to the defense

1 attorney's office to meet with Josh and his
2 attorney; before Helen Bradberry started tampering
3 with all of their statements, because she couldn't
4 afford Brooke and the kids living on her dime, she
5 needed Josh back too.

6 Are we really to believe that after meeting
7 with the defense attorney and Josh in his office,
8 they all of a sudden remember more details now than
9 they did that night? And it just so happens that
10 all of their stories change to benefit the
11 defendant. Are we really to believe that? Because
12 that's what they're asking you to believe, because
13 they gave written statements. That's not what
14 somebody said they said; that's what they wrote in
15 their own handwriting that night.

16 It's a shameless attempt to sell you a lie when
17 the truth is so obvious. I don't even know that I
18 need to explain that to you or even point that out,
19 because it was just so obvious when they were
20 testifying. I felt bad for the kids.

21 Focus on what the witnesses said that night.
22 That's the truth. Everybody was consistent that
23 night, except one: The man on trial. There's a
24 principle called Occam's Razor. Some of y'all have
25 probably heard of it before. It's the

1 decision-making principle that says when you are
2 faced with two competing explanations for how
3 something happened, choose the explanation that
4 requires you to make the fewest assumptions. It's
5 just another way to say choose the explanation that
6 makes sense.

7 What makes sense in this case is that Josh
8 snapped. He's the one working every day to support
9 a girlfriend who uses his money to buy pills, who
10 lets kids hung out at their house and drink and eat
11 the groceries that he pays for. He gets home that
12 day. He's has more to drink than usual. More kids
13 are at the house. He gets mad about that. He goes
14 inside and confronts Brooke. He then gives Brooke
15 money, and Brooke leaves with her pill supplier, the
16 same thing he'd been complaining to Joe Meyers about
17 for months.

18 And Joe stokes the fire, because he says, you
19 dumbass, you just did what you've been telling me
20 you had a problem with for months. And he snapped.
21 He snapped and he attacked Joe. That makes sense.
22 That's supported by what the witnesses say.

23 Number one, he was drunk. Brooke's 911 call,
24 quote, my boyfriend came home drunk as hell. He
25 admits he drank, admits he drank more than usual;

1 three liquor drinks and two beers. He's trying to
2 paint Joe as being drunk, but in prior testimony, he
3 said there was probably some slurriness to his
4 speech, but he didn't really notice any.

5 He got mad about the kids being over there.
6 Joe says that, M.A. says that. He admits that.
7 He went inside and yelled at Brooke. Joe says that,
8 M.A. says that. Brooke says that on her 911
9 call: I just left because my boyfriend, who shot
10 his friend, started on me. Another quote: My
11 boyfriend was drunk when he came home, because he
12 started on me when he got home. He denied that to
13 you, didn't he? He denied that today, among other
14 things.

15 Brooke left with I.K. , her pill supplier, after
16 he gave her money. Joe says that, M.A. says
17 that. He admits that. He admits he gave Brooke
18 money and she left with I.K. . But he denies that
19 made him mad. Why? Why would he deny that?
20 Because that's why the fight started?

21 Then Joe made a comment about her using his
22 money to buy pills, and he snapped. He admits Joe
23 made that comment, but he denies that made him mad.
24 Again, why deny that? He was angry. When he went
25 back into the house to get that gun, he was angry.

1 But who said that? M.A. and J.L-F. and
2 Jo.F. . He ain't scared; he's angry.

3 His story about Joe getting mad because his
4 girlfriend or something -- he got -- that's hard to
5 follow. He got mad -- Joe Meyers got mad because
6 I.K. said something to Josh that it was all his
7 fault? I can't even follow that story. That story
8 makes no sense at all.

9 Why would Joe care about Brooke leaving with
10 I.K. ? He didn't have an explanation for what started
11 the fight when he talked to Detective Marthers that
12 night. Okay? He didn't provide an explanation.
13 That's new. Because he has to paint Joe as some
14 sort of mad man here, right? It's almost like he's
15 trying to attribute his actions to Joe. Joe's mad
16 about -- Joe's in a rage about the kids being there.
17 Joe yelled at Brooke. Joe snapped when Brooke left
18 with I.K. . It's absurd. That's absurd.

19 He's just trying to sell you another lie. He's
20 proven himself to be a liar. He admitted he's lied
21 from that witness stand before. He doesn't have any
22 qualms about lying from that witness stand. The
23 problem for him is that he had to tell a story to
24 Detective Marthers before he knew what all the
25 witnesses were going to say and before he knew where

1 the evidence was.

2 And after realizing his initial lies don't
3 match up with the evidence, he's trying to tell new
4 lies to you today. And they're not minor details;
5 they're big lies. He's lying about where the
6 shooting even happened. How could you ever forget
7 that?

8 His initial story to Detective Marthers was,
9 after the fight ended, he waited for 10 to 20
10 minutes in his house not knowing that Joe was still
11 there, so he went and got his gun and went to the
12 garage door to check and see if Joe was still there.
13 And at that point is when he says Joe barged in his
14 door and all shots were fired in his kitchen -- by
15 the island in the kitchen as he was backing up.

16 Well, when he told that story, he didn't know
17 there were four -- he had to account for four bullet
18 holes in his tool cabinet. So now here comes the
19 story about four warning shots. But he can't even
20 get that straight. Because he didn't deny that he
21 told his mama he fired three warning shots, did he?

22 Somebody who would lie about something that big
23 will lie about anything. How do you mistake that?
24 Where did the whole entire shooting occur? Read his
25 statement. I couldn't get him to admit that that's

1 what he put in his statement. Y'all read it. Take
2 it back there and read it. And you tell me -- or
3 talk amongst yourselves, does it not say that all
4 the shots were fired in his kitchen? He didn't want
5 to admit that on the stand, did he? He was so
6 evasive. I asked him over and over and over again.

7 Look at all the other lies he told the police.
8 Again, he doesn't know what started the altercation
9 that night. Now he has an explanation, but it
10 doesn't make sense.

11 Initially said, again, waited 15 to 20 minutes
12 before he went to the door because he didn't know
13 Joe was still there. Now he waited three to five.
14 He knew Joe wasn't leaving because he was drinking
15 a beer on the back of his truck. And today he's
16 adding that not only was Joe drinking a beer on the
17 back of the truck, but he's doing a victory dance or
18 a victory lap or something.

19 What I wonder is, if Joe is on the back of his
20 truck drinking a beer, did he have the wherewithal
21 to close his tailgate before he drove home after
22 being shot? This is Joe's truck at his house that
23 Detective Marthers found that night. So Joe got
24 shot, he's trying to get back in his vehicle after
25 being shot. But do we really think he closed his

1 tailgate?

2 He said Joe didn't argue with anybody else that
3 night, in his written statement. Now Joe is yelling
4 at everybody. He's a mad man. He never mentioned
5 getting choked in his written statement. He said it
6 was a wrestling match where a few punches were
7 thrown. Now he's getting choked. And today, he's
8 getting his head banged on the concrete. There is
9 no truth. This truth is evolving as things go,
10 because it has to keep up with all the new details.
11 Every time you pin him on a lie, it's got to change.
12 There is no truth. I asked him: The truth should
13 never change, there's one truth? There is no truth
14 with him. It's an evolving concept.

15 He told some story about Jo.F. bringing him
16 water as he's hyperventilating on the floor. But in
17 his written statement, he said he didn't know Jo.F.
18 was in the house. Then I asked him about a comment
19 he made to his mother that said Jo.F. must have
20 been in the back room. But now Jo.F. is an
21 integral part of his whole defense. Jo.F. is their
22 star witness. Jo.F. saw everything. But he didn't
23 know Jo.F. was in the house that night. Said he
24 saw M.A. in the window. Never mentioned
25 Jo.F. in the window until today. When do the lies

1 stop?

2 You know what the biggest problem is? How do

3 you get around M.A. ? How do you explain

4 M.A. ? What motive or bias does M.A.

5 have to lie? M.A. was friends with J.L-F.

6 . He was part of that group of kids that hung

7 out at that house. If anything, M.A. is more

8 affiliated with Josh and his folks than Joseph

9 Meyers.

10 And M.A. has told the same story from

11 day one. I guarantee you M.A. probably

12 wishes he could tell a story to help Josh. But he

13 can't, because he's telling the truth. And they

14 wanted him to change his statement, didn't they?

15 Helen Bradberry wanted to type up an affidavit for

16 him. But his statement hadn't changed. He's been

17 consistent from day one. And what he says is

18 consistent with what the other witnesses said that

19 night.

20 And then the defense attorney asked M.A.

21 about meeting with him at his office with Brooke and

22 J.L-F. present. He said, didn't you tell me you

23 helped Josh hold the door closed? You didn't hear a

24 witness say that. You never heard a witness from

25 that stand say M.A. ever said that. In

1 opening statement, the defense attorney told you
2 M.A. gave multiple versions of the story. Is
3 that true? Did you hear any witness from that stand
4 contradict what M.A. said or say M.A.
5 told them anything different? What he says is not
6 evidence. Why would he even ask that of M.A.
7 , didn't you tell me? Plant that seed in your
8 mind, make you think M.A. is giving an
9 inconsistent statement.
10 What does M.A. say? M.A. says
11 Joe Meyers never came in that house before he was
12 shot. He never even saw him in front of the steps
13 in the garage. He wasn't charging towards the
14 defendant. He was trying to get his stuff to leave,
15 like he said he was. He said when he saw them
16 outside, Joe was just holding him down; wasn't
17 punching him in the face repeatedly, wasn't choking
18 him, wasn't banging his head on the ground. Joe was
19 just ending a fight that the defendant started.
20 Then he said Josh comes in the house very mad,
21 immediately goes -- gets the gun and goes back to
22 that garage door and started shooting. He's not in
23 there looking out windows to see if Jersey is still
24 there. He immediately goes back and starts firing
25 shots. And before he fired shots, he didn't say

1 anything. He never told Jersey to leave. He just
2 starts popping off shots at him. M.A. says
3 he never asked anybody to call 911, he never heard
4 him screaming for anybody to call 911. Then he saw
5 the defendant point the gun at J.L-F. when J.L-F.
6 wanted to go out to help Joe.

7 And then what about the order of the shots?
8 One after another, about a second apiece. There's
9 not four shots then a break as Jersey is charging
10 and then one more shot. Five shots; boom, boom,
11 boom, boom, boom. There's no break.

12 Credible testimony is as good of evidence as
13 any. It is evidence. You, as a jury, get to
14 determine who's believable and who's not; who's
15 credible and who's not. One credible witness trumps
16 five liars all day long. You can convict him based
17 on M.A. 's testimony alone, if you find him
18 believable. M.A. saw the whole thing. He is
19 the eyewitness. His testimony alone is enough to
20 convict Joshua Reher.

21 And, I don't know, what do you say about
22 Jo.F. ? That was painfully obvious what was going
23 on. It hurt me. I hated -- I honestly hated
24 watching that. I've got two sons. I'm always
25 preaching to them the importance of telling the

1 truth. Then you see Jo.F. up here and J.L-F. , and
2 on the front end they're in a house where their dad
3 is drunk and belligerent, fights in their presence,
4 cusses at their mother, shoots a man at their house,
5 then he points the gun at J.L-F. and says I'll blow
6 your fucking head off. And now those kids are under
7 pressure to get up here, put their hand on the
8 Bible, swear before God to tell the truth, and
9 perjure themselves and recant written statements.
10 It's offensive.

11 You could tell they've been coached, couldn't
12 you? They're trying their hardest to regurgitate
13 the script they've been fed, but they can't remember
14 all the details. Then if you pin them on a lie,
15 it's because they were flabbergasted or in shock.
16 Jo.F. previously testified that when Josh fired the
17 four shots into the toolbox, Jersey was on the back
18 of his truck. And then yesterday, now Josh is
19 firing three warning shots over Jersey's head as
20 he's standing right in front of the garage door. He
21 didn't see it. And he's young and he can't keep up
22 with all the lies, because to be a good liar, you
23 got to remember the lies you told before. He can't
24 do it.

25 Then he claims he hadn't talked to anybody

1 concerning what he saw. How believable is that?
2 Why would you deny that unless you're trying to hide
3 the fact that people have been talking to you about
4 your testimony? It would be normal for him to talk
5 to his family about what happened that night. That
6 would be a normal thing. Why would he deny that?
7 Do you think they'd be driving him up to the defense
8 attorney's office if they hadn't talked to him about
9 his testimony?

10 J.L-F. says they talked about it every time he
11 saw Josh or Helen. That probably is the truth. And
12 did you see Jo.F. 's reaction when Mr. Pogue asked
13 him if he'd been pressured to get up there and
14 testify? His demeanor snapped, didn't it? He went
15 from sad to pissed. Those are his words: I'm
16 pissed. That hit a nerve because that hit on the
17 truth. They're just trying to manufacture a defense
18 around a lucky shell casing that happened to
19 ricochet off that cabinet behind them and Jo.F. 's
20 lies.

21 You saw the pictures where Investigator
22 Sullivan was shooting. Most of those shell casings
23 ejected behind the line of fire. When he shot
24 against this wall right here, he was standing at the
25 end of this tape measurer. Those casings end up

1 behind where he was standing. That shell casing
2 just hit off either the door frame or the cabinets
3 where that door was and just kicked behind him.

4 If that didn't happen, I don't know what he'd
5 hang his defense on. That cabinet, that's right by
6 the door right where he was standing, right where
7 the ejection portal on the weapon would have shot
8 the casing out. Are we really to believe that if he
9 did shoot in his kitchen, that shell casing would
10 land in the exact place where he says the shooting
11 happened? No. That's unbelievable.

12 As you know, he's charged with attempted murder
13 and he's claimed self-defense. When you claim
14 self-defense, you're not denying that you intended
15 to use deadly force. You're just claiming you were
16 justified in using deadly force. Attempted murder,
17 as the Judge will instruct you shortly, is that with
18 the intent to kill, you attempt to kill another
19 person with malice aforethought. And malice is
20 defined as ill-will, hatred, or hostility towards
21 another.

22 Now, malice does not have to exist for some
23 period of time. It doesn't have to be premeditated,
24 as a lot of people think. It just has to exist at
25 the moment somebody pulls the trigger. And,

1 obviously, we can't dissect someone's brain to know
2 exactly what they were thinking at the moment they
3 pulled the trigger, so it's provable by their acts
4 and their words surrounding when this happened.

5 And look at what happened. Well, look at where
6 he shot him. He shot him in his core. He shot him
7 in his abdomen. What other intent do you have than
8 to kill somebody when you shoot them in their core?
9 Look at the number of shots. Five shots. Those
10 other four weren't warning shots; those were misses.
11 He shot five times.

12 Look at his demeanor: Very mad, angry, as
13 M.A. , J.L-F. , and Jo.F. said. Look at his
14 statements, his words to J.L-F. after the fact, if
15 Jersey walks through that door, he's blowing him the
16 eff away. Malice. If you go outside, I'll shoot
17 you just like him, but in the head. Malice. And
18 why prevent J.L-F. from going out to help Jersey?
19 Did he want him to die?

20 In opening, the defense attorney told you in
21 regards to his intent, look at his actions when law
22 enforcement arrived. He told them. He told law
23 enforcement where Jersey was. The defense attorney
24 tried to get that out of J.L-F. , didn't he? And
25 J.L-F. said, no, I told law enforcement where Jersey

1 was, Josh didn't tell me to do that. He tried to
2 ask Josh that today: Did you tell J.L.F. to tell
3 them where Jersey was? He couldn't get it out of
4 Josh. There's no evidence of that. There's no
5 evidence that Josh told law enforcement where Jersey
6 was.

7 Self-defense. We have the burden of disproving
8 self-defense beyond a reasonable doubt.
9 Self-defense has several elements. If we prove he
10 doesn't meet one of those elements, he loses
11 self-defense all together. Okay? Number one, you
12 have to be without fault in bringing on the
13 difficulty, which essentially means you can't start
14 a fight and then claim self-defense. Isn't that
15 exactly what happened in this case? He started the
16 initial fight. Jersey had the right to defend
17 himself. Then when M.A. saw them, Joe was
18 just holding him down, again, just trying to subdue
19 him and stop the assault.

20 The defendant admitted that after the fight
21 ended that he went back into the house. Joe didn't
22 chase him or follow him. He made it safely back
23 into his house. If Joe wanted to fight more,
24 wouldn't that have been the time to do it? But rath
25 er than -- once he's in the safety of his own house

1 behind a locked door, rather than call the police,
2 he grabs his gun, he goes to the door to re-engage.
3 He brings on the difficulty again and fires four
4 warning shots? He's just reinitiating. He's
5 bringing on the difficulty. He fails under that
6 element of self-defense.

7 If that's not good enough, you move to the
8 second element. He must be in imminent, immediate
9 danger of losing his life or sustaining serious
10 bodily injury or believe he was and a reasonable
11 person would have felt the same way. You can kind
12 of put yourself in the shoes of what a reasonable
13 person would feel like or do.

14 Would you feel your life was in danger after
15 having a scuffle with your unarmed best friend?
16 Would you feel you were in imminent danger if you
17 were in your house behind locked doors with a gun
18 and phone to call the police?

19 He had plenty of time to call the police, if he
20 truly were in fear and wanted Jersey to leave. In
21 fact, if he told M.A. -- he said he waited in his
22 house three to five minutes before he went back to
23 the door. The police got there in three minutes
24 when somebody did actually call 911. So if he
25 really had asked someone to call 911 when he first

1 went back in that house, the police would have been
2 there in three minutes.

3 And then, according to his own testimony,
4 Jersey is just sitting on the tailgate drinking a
5 beer, until today, obviously, when now he's sitting
6 back there making threatening comments and doing a
7 victory lap.

8 I'm almost done. I won't talk to you about
9 reasonable doubt because a lot of people have
10 misconceptions about what that really means. I
11 heard a guy on the radio the other day make a
12 comment that the State did not prove their case
13 beyond a shadow of a doubt. Well, that's not the
14 standard. We don't have to prove our case to an
15 absolute certainty because, frankly, that doesn't
16 exist in this world. That's an impossible standard.

17 We just have to prove the case to you to the
18 point where you're firmly convinced of his guilt.
19 And if you are firmly convinced of his guilt, you've
20 taken an oath to find him guilty. And a reasonable
21 doubt is just that: It's a real doubt based on the
22 evidence. It's not based on some doubt the defense
23 can create or manufacture; it's just based on the
24 evidence. Focus on that.

25 Potential punishment is not for y'all to

1 consider at all. I know that's come up with juries
2 in the past based on juries I've talked to after
3 cases before. That's not for you to consider.
4 Punishment or mercy is for the Judge. You don't
5 need to -- you just take that burden off your
6 shoulders. You're not here to decide that. You're
7 here to apply the facts to the law and reach a
8 verdict, and that's it. The Judge will decide
9 everything else.

10 Ladies and gentlemen, we're all accountable for
11 our actions. He tried to tell Detective Marthers a
12 story that night to avoid accountability. He's
13 trying to tell a new story to you today to avoid
14 accountability. But this isn't some type of game
15 where you can keep trying to tell stories until you
16 finally tell one that matches up with the evidence
17 and claim there's reasonable doubt. That's making a
18 mockery of justice. That's insulting to our
19 intelligence.

20 He's already been given a break in this case in
21 that Joe Meyers didn't die. He's lucky we're not
22 here for a murder case. He's -- he was minutes away
23 from this being a murder case. It's time for the
24 lies to stop. It's time for the truth to rise up.
25 It's time that he be held accountable. I ask that

1 y'all bring back a verdict that speaks the truth.
2 Find him guilty. Thank you.

3 MR. DEIRIG: Judge, can I have two minutes?

4 THE COURT: Yes, sir.

5 MR. DEIRIG: Thank you, Judge.

6 THE COURT: Welcome.

7 MR. DEIRIG: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. DEIRIG: This was not a prosecution about
10 justice or about protecting the Second Amendment or
11 about protecting a person's right to self-defense in
12 their home or whatever else it was that Mr. Pogue
13 started off with in openings on Tuesday morning.
14 This was a prosecution aimed solely at winning.

15 It's a prosecution about telling a young man
16 who pushed back against the Lexington County
17 Sheriff's Department and the Lexington County
18 Solicitor's Office for almost three and a half years
19 and said, you're wrong. This is about proving to
20 Josh that you don't get to do that. And for three
21 and a half years, Joshua Reher has pushed back
22 against the Lexington County Sheriff's Department
23 and the Lexington County Solicitor's Office.

24 MR. MCNAIR: Objection, Your Honor; there's no
25 evidence of anything in that regard.

1 THE COURT: Let him argue. Only the facts.

2 MR. DEIRIG: Thank you, Your Honor.

3 Three years -- three and a half years Joshua
4 has pushed back, told the Solicitor's Office that
5 they are wrong. And now it's your turn. You can
6 tell from the way the State's witnesses answered
7 very simple questions they should have had simple
8 logical answers that this is a prosecution about
9 winning and not about justice.

10 Take Sprinkle. He refused to say the most
11 logical place that a bullet is going to fall -- or a
12 shell casing will fall after being shot is in the
13 room in which it was shot. You heard him over and
14 over and over say it's possible, it's possible, it's
15 possible. He wouldn't even say it's probably the
16 most logical common sense place for a shell casing
17 to fall is within the room in which it was shot.

18 Investigator Marthers. I think the best quote
19 from his entire testimony is when he told me on
20 cross-examination that more is always remembered
21 later. And remember that: More is always
22 remembered later. They only talked to Josh one
23 time. And, apparently, it is not okay for Josh to
24 remember more stuff over time, but it's perfectly
25 acceptable for Jersey to do the same thing, despite

1 the fact that Josh's story, especially the timeline,
2 stays fairly consistent and Jersey tells entirely
3 different versions of what happened to him. But
4 it's okay, according to the prosecutor.

5 It's okay for Jersey to get up on the stand and
6 tell -- and talk to law enforcement and tell
7 multiple different versions of the story that don't
8 even remotely match, that don't have anything in
9 common with each other, other than the fact that he
10 got shot. But yet, it's not okay for Josh to
11 remember more and tell you more as he remembers it,
12 even though Marthers specifically told you that more
13 is always remembered later.

14 Now, Josh's guilt, that wasn't even close to
15 proof beyond a reasonable doubt. And I'll get to
16 that later. But I'll tell you, there were a few
17 things that were proved beyond a reasonable doubt
18 this week: One, Princess Meyers is willing to lie
19 for her husband. She told you that herself in her
20 conversations and dealings with law enforcement.
21 She told you she lied to the cops because she was
22 trying to protect him. That's proof beyond a
23 reasonable doubt.

24 Second thing that was -- been proven beyond a
25 reasonable doubt is the State's case and theory of

1 the case of what happened from their own witnesses
2 is impossible. According to the laws of physics,
3 math, and we'll get to that, but it was proven
4 beyond a reasonable doubt by one of the State's
5 witnesses that the State's theory of the case is
6 impossible.

7 The third thing that was proven beyond a
8 reasonable doubt is Jersey is never going to tell
9 the same story twice. Think about all the different
10 stories that he told from the time when the cops
11 showed up until three and a half years later when
12 he's here testifying to you guys. He doesn't tell
13 the same story.

14 You know, it's difficult to know why agents of
15 the State of South Carolina decided to put so much
16 faith in the word of a man that was -- whose word
17 was proven so worthless this week. Jersey is a liar
18 and Helen Bradberry told you that, John Jenkins told
19 you that, Norman Agnew told you that.

20 Let's talk about the two different statements
21 or testimonies today, the last two that you heard
22 from the State between John Jenkins and Daniel Koon.
23 You heard Daniel and John tell two very different
24 accounts of the conversation that they had at
25 Daniel's house when they were talking to Jersey

1 about what had happened.

2 And really the only thing I'll touch on when it
3 comes to their different versions of events is that
4 you heard not only from Jersey, but you also heard
5 from Daniel Koon that Jersey started calling Daniel
6 Koon on Monday afternoon and they both admit that
7 they're very good friends.

8 Now, the law of this case, as the Judge will
9 instruct you, one of the major points in this case
10 is self-defense. Mr. McNair talked to you about two
11 of the three elements of self-defense, first one
12 being without fault. Well, you heard in Mr. Pogue's
13 opening, he acknowledged that someone in their own
14 home has the legal right to eject a trespasser by
15 use of reasonable force. And I'd argue to you,
16 ladies and gentlemen, that Josh tried to eject
17 Jersey from his property as a trespasser without any
18 force whatsoever. He certainly tried to scare him
19 into leaving. He shot his toolbox four times.

20 But he didn't shoot Jersey with his first shot
21 or his second shot or his third shot or his fourth
22 shot. He tried to scare Jersey into leaving, and he
23 never shot Jersey until he came through that kitchen
24 door. There's the fear and the danger and belief
25 that you're in imminent danger, that your life is in

1 danger, and that a reasonable person would feel that
2 way. Josh told you he was scared. He was in fear
3 for his life. And several other witnesses told you
4 that he was scared too.

5 And you heard about the first beating that Josh
6 took in the garage. You heard about the second
7 beating that Josh took in the bushes, the rose bed,
8 and you heard about how Jersey came in and tried to
9 administer a third beating. And you heard about how
10 Josh got choked in at least one of the first two
11 beatings.

12 It was very reasonable for any person to
13 believe that their life is in danger when someone
14 that is, as I believe SRO Barber described Jersey,
15 grotesquely intoxicated. It's very reasonable to
16 believe that somebody who is grossly intoxicated
17 that has already tried to choke you or has actually
18 already choked you and pounded your face over and
19 over and over again -- when they come in for a third
20 time, I think it's real reasonable to believe you're
21 in imminent danger, imminent peril of serious injury
22 or possibly death.

23 And then the third one that Mr. McNair just
24 glossed over or skipped entirely is that someone
25 claiming self-defense has to have no other options.

1 However, again, you heard Mr. Pogue on Monday talk
2 about someone in their own home has no duty to
3 retreat. So when Jersey comes through that door
4 that separates the garage and the kitchen, Josh has
5 no legal duty to retreat whatsoever. And that's the
6 fundamental American right that's on trial here,
7 whether or not a person has to retreat when they're
8 in their own home when somebody who has attacked
9 them twice already that day comes through that door
10 to try to do it again.

11 And Mr. McNair talked a little bit about
12 credibility and he also talked about Jo.F. .
13 And I'll use Jo.F. as an example of credibility.
14 It's obvious that he's an immature 14-year-old in
15 very many ways. And three years ago -- three and a
16 half years ago when this happened, he was obviously
17 going to be a very immature 11-year-old. And
18 they're questioning this immature 14-year-old using
19 a law school and college graduate vocabulary for
20 someone who clearly doesn't understand the questions
21 that are being asked of him. So he got confused, he
22 got tripped up.

23 Some of the details in his story changed. But
24 there are three things that Jo.F. never wavered on.
25 And no matter how many different questions he was

1 asked, no matter how confused he got, no matter how
2 emotionally upset he got, no matter which time he
3 was testifying, there's three things that never
4 changed for Jo.F. . And the repetition over and
5 over and over, the unchanging parts of his story,
6 lend to credibility.

7 And those three things are he did not get
8 pressure from his family and was not told by his
9 family what to say. He got mad when -- he got mad
10 when Mr. Pogue accused his family of pressuring him
11 and telling him what to say.

12 The second one, Jo.F. never wavered from where
13 he was when Jersey got shot. No matter how many
14 different times he was asked, no matter how many
15 different ways he was asked, Jo.F. never wavered
16 from being in the doorway between the kitchen and
17 the living room.

18 And the third thing that Jo.F. never wavered
19 from is where Jersey was when he got shot. Jersey
20 was in the doorway between the garage and the
21 kitchen with a foot in the door, with a foot into
22 the kitchen. Never wavered from that. No matter
23 what he was asked, how he was asked, how many times
24 he was asked, he never wavered from that, and that's
25 credibility.

1 Now, I told you in my opening that you were
2 going to hear about some kids that were in the front
3 yard or out in front of Josh's house when Jersey and
4 Josh drove up there. And I also told you that you
5 were going to be hearing from one of those kids this
6 week. However, one of the only things that was
7 entirely agreed upon between Josh and Jersey is that
8 both Josh and Jersey got out of the truck and yelled
9 at those kids. So there was no need to call
10 somebody to come in and tell you what Josh had
11 already told you and what Jersey already told you,
12 and they told the exact same story. Plus, it
13 streamlines the case to make sure that we get done
14 today.

15 In terms of credibility, I want to touch on the
16 law enforcement officer's assertion that Josh, at
17 the hospital, was free to leave and that he should
18 have felt free to leave. Let's think about that.
19 Josh's interactions with law enforcement: He's told
20 to come outside, he's told to put his hands up, he's
21 told to get on the ground; he's handcuffed, he
22 remains handcuffed in the ambulance, he remains
23 handcuffed at the hospital. The cuffs are removed
24 so that he can write a statement, then the cuffs are
25 put back on. His discharge paperwork goes to law

1 enforcement. There's two officers standing outside
2 of his hospital room until a third law enforcement
3 agent gets there.

4 Ask yourself whether or not a reasonable person
5 would have felt like they were free to leave and
6 would have felt like they were not in custody.
7 That's credibility. That's believability. That's
8 smokescreens the State is trying to throw up at you.
9 Josh was not free to leave. Use your common sense.
10 He couldn't have just walked away. And that lends
11 to the credibility of the people that told you that
12 he could have.

13 Now let's talk about what Jersey has said
14 throughout these three and a half years and compare
15 it with what Josh has said over these three and a
16 half years. What's the first thing that Jersey says
17 to law enforcement? Get out of my house unless you
18 have a warrant. What's the second thing he said? I
19 got jumped by some kids. Third thing he says, he
20 tells Norman Agnew he doesn't remember anything.

21 Fourth thing is that he writes a statement for
22 Marthers in the hospital, same day he tells Norman
23 that he doesn't remember anything -- excuse me, it
24 was an oral statement to Marthers. He hadn't
25 written a statement yet. This is two days after the

1 incident he gives an oral statement to Marthers
2 after he's given the I-know-nothing,
3 I-don't-remember-anything statement to Norman Agnew.

4 And the day that he's discharged from the
5 hospital, he tells Helen and Brooke, I don't
6 remember anything. I believe the testimony from
7 Helen was what the H happened. First thing he says
8 to them when he gets in the car is what the H
9 happened? Then a week to ten days later, he gives a
10 written statement to law enforcement. Then he tells
11 John Jenkins -- chronologically he tells John
12 Jenkins -- or John Jenkins told you that he said
13 that he beat up Josh and then he went to take the
14 gun from Josh and that he got shot trying to take
15 that gun.

16 Then six months to a year later, he comes and
17 testifies for the first time, which you've heard a
18 lot about the testimony from a year ago. And then
19 he's testified in here today or this week. Think
20 about that. The entire story, not just details here
21 and there, but the entire story changed at least six
22 times. And the details between the stuff that
23 stayed the same didn't match up either. So you've
24 got, potentially, nine different stories that Jersey
25 has told, with the very least, six.

1 Let's look at what Josh said. What's the very
2 first thing Josh said when he encountered law
3 enforcement? I shot him, he made me do it. The
4 second thing he says is in his statement to
5 Marthers. And you've got that statement. I'm sure
6 you're going to read it. Third thing, he talks
7 about what happened on the jail calls and visits
8 that you guys have heard so much about. And you've
9 heard testimony that they're recorded. And you've
10 heard that Josh was in jail for at least three
11 months. The only jail call they could come up with
12 where Josh has changed his story even slightly is
13 that he told his mom he fired three warning shots
14 instead of four.

15 And they've obviously -- the State obviously
16 has access to every one of those jail calls and
17 video visitation recordings. If he had said
18 anything else that varied from his statement and
19 what he says happened, don't you think you would
20 have heard about it, at least through a question, if
21 not through hearing the jail calls themselves? But
22 you didn't.

23 And you heard Norman and you heard Helen talk
24 about how many times they talked to Josh, how many
25 times they visited Josh, and how many times those

1 conversations that they had with Josh were recorded.
2 And they didn't have a single one they could pull
3 out where Josh varied from his story, other than one
4 time that he told his mom that there were three
5 warning shots instead of four.

6 With Josh, some details did change, obviously.
7 There's no question about that. There's some
8 details of his story that have changed over time.
9 And remember what Marthers told you: More is always
10 remembered later. However, the entire story
11 certainly has not changed and the sequence of events
12 has never changed. It has always been the same
13 timeline, the same sequence of events, the same
14 ending.

15 There's details within the story that got
16 changed. There's some times where he was obviously
17 upset, confused, wishes he could have cleared up the
18 statement that he gave initially. But testifying a
19 year ago and testifying in this courtroom is the
20 only chance that he's had to clean up those
21 statements. And remember, more is always remembered
22 later.

23 And you heard in Mr. McNair's closing, you
24 certainly heard when he was cross-examining Helen
25 Bradberry, he talked about the unvarnished truth

1 right after an incident being the best way to figure
2 out what really happened. The first thing that
3 Jersey says the night of the incident, besides get
4 out of my house unless you have a warrant, some kids
5 jumped me.

6 What's the first thing Josh said at the scene
7 upon law enforcement's arrival? He walks out of the
8 house with his hands up, screaming I shot him, he
9 made me do it. There's some unvarnished truth for
10 you, ladies and gentlemen. That is unvarnished
11 truth.

12 And then to Josh today and in his closing,
13 Mr. McNair said, truth should not change, it should
14 stay consistent. Well, think about six to nine
15 different versions of a story versus a story that is
16 told multiple times to multiple people and the
17 timeline always remains the same. The sequence of
18 events, the events that happened, always remain the
19 same. Think about which one is more credible, think
20 about which one you would believe is more truthful,
21 a story that changes over and over and over and over
22 and over and over and over or a story whose timeline
23 and sequence of events remains the same no matter
24 how many times they tell it. Some details may be
25 different, but the overall picture stays the same.

1 You know, if Joshua lied to law enforcement
2 upon his first encounter with them after this
3 incident exactly the way that Jersey did, it is very
4 likely that Jersey would not be sitting in this
5 courtroom this week. Without Josh coming out and
6 admitting what he'd done and who he had shot, very
7 good chance that Jersey is no longer with us. Josh
8 didn't want to kill Jersey, he just wanted to stop
9 being beaten by his friend --

10 MR. MCNAIR: Judge, that's -- there's no
11 testimony about that at all.

12 MR. DEIRIG: Josh told --

13 THE COURT: He can argue the facts.

14 MR. DERIEG: Thank you, Your Honor.

15 Josh repeatedly asked Jersey to stop. You can
16 assume that he wanted his friend to stop beating
17 him. And you heard over and over again how he asked
18 and told and demanded that his friend leave. And
19 when his friend would not leave, he fired some
20 warning shots into his own property, at his own
21 house, not at Jersey. He just wanted his friend to
22 leave. What happened is never what Josh wanted.

23 And remember what I told you guys in my opening
24 about comparing the two sides in this courtroom?
25 Who wanted to prey on your emotions and your

1 feelings; who was going to be angry and stomping
2 around and sighing heavily, and every other
3 emotional outburst that came from the State's side
4 this week versus who was going to focus on the
5 facts; who was going to ask you to use your common
6 sense; who was going to ask you to use your logic;
7 and, particularly, who was going to ask you to pay
8 special attention to the physical evidence in the
9 case other than so-called lucky shell casing.

10 Notice Mr. McNair never once in his closing
11 addressed the physical evidence in this case. And
12 he talks about eyewitness testimony, credible
13 eyewitness testimony being the most important best
14 evidence that there is. But y'all know that's not
15 true. You've heard repeated stories over and over
16 and over again in courts all over the country where
17 eyewitness testimony turns out to be the least
18 credible testimony --

19 MR. MCNAIR: Objection.

20 THE COURT: No expert testified to that effect.
21 Move on.

22 MR. DEIRIG: Okay. And remember, I asked you
23 to pay attention to who was going to try to prove
24 possibilities as opposed to asking you to make the
25 logical inferences using your common sense based on

1 what the physical evidence tells you. Because this
2 eyewitness testimony that they're talking about is
3 all over the place between both sides. They want
4 you to believe their witnesses entirely and they'll
5 impugn the credibility of the defense witnesses.
6 And I'm doing the same thing: I want you to believe
7 our witnesses and not believe theirs.

8 But let's think about what the questions were
9 and what each side tried to prove. Think about all
10 the times the State asked, especially its witnesses,
11 about if something was possible, if it was possible,
12 if it was possible, if it was possible, particularly
13 when we're dealing with the physical evidence,
14 dealing with Sprinkle, dealing with Investigator
15 Sullivan who did that -- that test; asked if it was
16 possible over and over and over again.

17 If you remember, there's only one question that
18 I asked one witness that contained the words is it
19 possible, and the answer is no. And it came from
20 Investigator Sullivan who happens to work for the
21 Solicitor's Office. And it's the single most
22 important answer in this entire case. If you
23 remember, I even thanked him for it. And that
24 answer of no, it is not possible, is the reason
25 that, regardless of whether you believe every single

1 word that the State's witnesses have to say and
2 don't believe a single word that the defense's
3 witnesses have had to say, Sullivan's answer of no,
4 it is not possible, will still require you to return
5 a verdict of not guilty because the State has to
6 prove its theory of the case beyond a reasonable
7 doubt.

8 And their own witness told you guys that their
9 theory of the case is impossible. And I'll show you
10 why. State's 52, this diagram that I'm sure y'all
11 are tired of looking at, there's no question that
12 Josh shot that toolbox. You've seen the bullet
13 holes. There's four holes in the toolbox. And
14 you've seen four shell casings in the garage. And
15 you've heard testimony from Investigator Sullivan
16 that the way an AR-15 ejects its casings is to the
17 right and down, and when the casing either hits the
18 ground or ricochets off of something else, it can go
19 really wherever.

20 So if Josh is pointing his weapon out of this
21 door and shooting four times into this toolbox,
22 which you've seen, it's been proven that that's
23 exactly what happened. This is exact -- based on
24 Sullivan's testimony -- this is exactly where you'd
25 expect to find these four shell casings. But I want

1 you to think about where Jersey put himself when he
2 got shot. He says somewhere around in here.

3 Think about the infallible M.A. . Where
4 did he put Jersey? He put him even further over
5 here. And for Josh to shoot out of this door to
6 here or to here, where would he have had to point
7 that gun? To the left.

8 What's the question that I asked Sullivan is it
9 possible that he answered no to? He said it is not
10 possible for a shell casing to eject out of that
11 AR-15 to the right, and without hitting anything,
12 come back left, over the shooter's head, and over
13 his left shoulder. Because if Josh is pointing in
14 the direction that either Jersey or M.A.
15 says, this gun is going to be pointed to the left.

16 There is nothing for that shell casing to
17 ricochet off of except this far wall. And I'm sure
18 there's no way that you guys will believe that a
19 shell casing ejected right out of his gun, went all
20 the way to the wall, and then came all the way back
21 to land here. So the only possible way that this
22 shell casing from the shot that hit Jersey could
23 have possibly ended up in this spot, given the place
24 where Jersey says he was and given the place where
25 M.A. says Jersey was, is literally

1 impossible. And you were told that by the State's
2 own witness, from an employee of the Lexington
3 County Solicitor's Office, no, it is not possible.

4 So regardless of whatever else you believe
5 about witness testimony in this case, the State's
6 own testimony through the firearms demonstration
7 that it did on its own, that it generated on its
8 own, acquits Josh. The only way for you to find
9 Josh guilty is to believe the State's case beyond a
10 reasonable doubt. And the only way that you can
11 believe the State's case beyond a reasonable doubt
12 is to believe that on the night of August 21st,
13 2015, the laws of physics, the laws of nature, cease
14 to exist in that garage, and that what the State's
15 own witness says is impossible actually happened.

16 It's not Josh's job to prove himself innocent;
17 it's the State's job to prove Josh guilty beyond a
18 reasonable doubt. And the Judge told you from the
19 beginning that Josh had no obligation to testify
20 himself, had no obligation to call witnesses on his
21 own behalf. It's the State's job to prove Josh
22 guilty beyond a reasonable doubt. And to do that,
23 they have to prove their theory of the case beyond a
24 reasonable doubt. And Investigator Sullivan tells
25 you that is impossible.

1 This is my last opportunity to talk to you
2 guys. And I'm almost done, but I wanted to touch on
3 a couple points, real emotional points that
4 Mr. McNair made before I sit down. I think he
5 yelled at you the truth of the case is what was said
6 on scene that night. That night, what did Joshua
7 say? We've already been over it. What did Jersey
8 say? Already been over it. It's pretty insulting.
9 All these smokescreens, trying to prey on your
10 feelings, trying to get you to ignore the physical
11 evidence, trying to get you to ignore the laws of
12 physics and nature, talk about insulting. Trying to
13 insult your common sense. It's physically
14 impossible for what the State says happened, either
15 through Jersey or M.A. , for it to have
16 happened. Impossible. And, again, the only way you
17 can convict Joshua Reher is to believe that an
18 impossibility occurred beyond a reasonable doubt on
19 August 21st, 2015.

20 And Mr. McNair asked you to choose the
21 explanation -- I guess he heard it from the Judge:
22 Choose the explanation that makes the most sense.
23 And he asked you to choose the explanation that is
24 supported by what the witnesses say. He didn't ask
25 you to look at the evidence, did he? He didn't ask

1 you to look at the one thing that can't lie, that
2 can't change its story, that can't have a bad
3 memory, that is what it is. He can't tackle the
4 evidence because it kills their case. Because the
5 evidence says what they are claiming is impossible.

6 And you want to talk about something that
7 should be insulting to you, ladies and gentlemen?
8 Mr. McNair just got up here. The first thing they
9 did in their case was to play Brooke's 911 tape.
10 Then one of last things that the State did was for
11 Mr. McNair to get up and talk about how terrified
12 Brooke sounded on the phone. But I want you to
13 think about the attack on Brooke that McNair made
14 while Josh was testifying today.

15 He went out of his way to make sure that you,
16 ladies and gentlemen, believe that Brooke is a drug
17 addict, a pill head, and had left with money that
18 Josh had given her and returned with her drug
19 dealer. But then turns around and, at the beginning
20 and end of his case, wants you to feel emotional
21 based on the way that this -- his
22 characterization -- drug addict was on -- how she
23 was on the phone after having money and being gone
24 for a little while with her drug dealer.

25 I think an easy inference is that Brooke had

1 gotten some pills and come home high. And it's that
2 visceral emotional, irrational screaming from Brooke
3 when she got home, with her perception clouded by
4 drugs, that Mr. McNair wants you to rely on.

5 And you heard Mr. McNair's closing about just
6 how it doesn't make sense, it's illogical, why would
7 Jersey care about Brooke leaving with I.K. and about
8 those kids being in the yard. I agree, it does seem
9 pretty illogical. However, you know it's true
10 because Jersey sat on that stand upstairs and told
11 you that it was. He heard about it over and over
12 and over and over and over. He told you that it
13 made him frustrated and that it made him mad.

14 So Jersey himself is completely opposite of
15 what Mr. McNair is asking you to believe, that it's
16 absurd for him to get mad like that, it's absurd to
17 think he would get mad like that. I think it's
18 absurd to make an argument like that when Jersey sat
19 on the witness stand and told you that he was mad
20 about it and told you why he was mad about it.

21 And you'll remember the testimony. What I tell
22 you is not fact, what Mr. McNair says is not fact,
23 what Mr. Pogue says is not fact. You guys get to
24 decide what the facts of the case are based on the
25 testimony and evidence you see in the courtroom.

1 But Josh never claimed that Jersey was sitting
2 on the back of his truck. He claimed that he went
3 to the back of his truck to get a beer. So this
4 nonsense about the tailgate couldn't be any more
5 obvious smokescreen. That's absurd. That's
6 insulting.

7 He said M.A. 's testimony is all you need
8 to be able to convict Josh. We've already been
9 through how the laws of physics and the laws of
10 nature make M.A. 's testimony impossible. So
11 in order to convict Josh solely on M.A. 's
12 testimony, again, you have to believe that on August
13 21st, 2015, at [REDACTED] in Irmo, that
14 the laws of physics and nature ceased to exist.

15 As I told you when I began, for three and a
16 half years Josh has pushed back against the
17 Solicitor's Office and pushed back against the
18 Sheriff's Department and told them that they're
19 wrong. His ability to push back is now over. Now
20 it becomes your job to hold the State to its burden.

21 Like I said, if you don't believe a single
22 thing that a single defense witness had to say this
23 week and you believe all of or almost all of
24 everything that the State's witness had to say this
25 week, if you use your common sense, you use your

1 education, you use Investigator Sullivan's
2 testimony, you cannot convict Josh.

3 There's no question that fundamental American
4 rights are on trial this week, and it's your job to
5 defend those rights. I submit to you, ladies and
6 gentlemen, that when you talk about this case in the
7 back and you go through the evidence and discuss the
8 testimony and discuss what, under the laws of
9 physics and nature, is actually possible, there's
10 only one, only one verdict that can be returned in
11 this case. The only verdict that can -- the only
12 just verdict that can be returned in this case.

13 This isn't -- this hasn't been a prosecution
14 about justice, it's been a prosecution about
15 winning. And now I implore each and every one of
16 you, you make it about justice. You make it about
17 upholding fundamental American rights. You make it
18 about holding the Government accountable when they
19 want to convict someone of something as serious as
20 attempted murder.

21 You hold them to their burden of proof. You
22 make them talk about the physical evidence, other
23 than calling one shell casing a lucky shot and then
24 just skipping over everything. It's your job to
25 push back against the Lexington County Solicitor's

1 Office now because Josh is no longer able to do it.

2 And I'll ask you that when you go back and
3 deliberate and you talk and you do the right thing,
4 the only verdict that can be returned in this case
5 is that Joshua Reher is not guilty of anything.

6 Thank you.

7 MR. MCNAIR: May it please the Court, Your
8 Honor?

9 I don't see how he can claim we have ignored
10 the physical evidence when we took the exact make
11 and model firearm to the range and shot the exact
12 same make and model of ammunition. And those videos
13 are in evidence for you to watch. Watch the ones
14 where Investigator Sullivan shot against the wall
15 and you can see the shell casings ejected at
16 slight -- at a backwards angle. So if Josh is in
17 the threshold of this door, as he claimed he was,
18 one foot in and one foot out, look at where that
19 ejection port is. Can you see my hand? So that
20 shell ejects straight out, it's hitting this
21 threshold. It's not at a backwards angle, it's
22 hitting this wall. We haven't ignored the physical
23 evidence. We did the experiment and filmed it so
24 you could see how that could happen.

25 If my demeanor and the way I get fired up

1 sometimes gets in the way of y'all seeing the truth,
2 forgive me. Set that aside. I'm not trying to
3 mislead you. I don't get paid by the case. I don't
4 have a client. I took an oath to seek justice as a
5 prosecutor. I don't -- I've dismissed my share of
6 cases. And I'm going to move on after this case
7 because I've got --

8 MR. DEIRIG: Objection, Your Honor.

9 MR. MCNAIR: -- file -- file cabinets full --

10 THE COURT: What's your objection?

11 MR. MCNAIR: He opened the door to that.

12 MR. DEIRIG: He's talking about dismissing
13 cases. Those aren't facts in evidence. Those
14 aren't inferences from the facts. They have no --
15 no place in closing, let alone reply.

16 THE COURT: You made your comments about the
17 Solicitor's Office was being pushed back. Facts in
18 the case.

19 Continue on.

20 MR. MCNAIR: It's at the point where I know --
21 I watched y'all. Y'all took notes. Refer to your
22 notes about what people say. Josh Reher did testify
23 he was sitting on the back of that truck drinking a
24 beer. But you don't have to listen to me, you don't
25 have to listen to him. Refer to your notes and your

1 memory. Y'all paid attention.

2 And he keeps assailing Joseph Meyers for all
3 nine inconsistent statements, but consider the
4 source. He called Helen Bradberry. Was she
5 truthful? How many times did she lie on the stand?
6 He called Norman Agnew. Is he credible? Josh is
7 his boy. They grew up together. He needs Josh.
8 He's Josh's friend. He wants to protect Josh. He
9 doesn't want to get Josh in trouble. Is he
10 credible? John Jenkins lives with Josh. He called
11 him to try to assail Joseph Meyers' credibility. Is
12 he credible?

13 What's funny to me is that you saw how often we
14 referred to that transcript, that testimony that was
15 taken under oath in a prior hearing. Did you ever
16 hear him ask Joe Meyers about anything he said in
17 this sworn testimony? Don't you think if Joseph
18 Meyers had said something inconsistent, he would
19 have brought it out in this sworn testimony? Soft.
20 A joke.

21 And Daniel Koon -- remember in opening, Daniel
22 Koon and John Jenkins were friends with both of
23 them. They had no reason to lie, according to the
24 defense attorney. Then Daniel Koon gets up there
25 and says, I didn't hear that conversation that John

1 Jenkins said he heard. That's their witnesses.

2 Their witnesses can't even agree.

3 And the reason I didn't talk about the duty to
4 retreat in self-defense, because I know you don't
5 have a duty to retreat if you're in your own home.
6 So why am I even going to talk to you about that?
7 Usually in a self-defense case you do have a duty to
8 retreat, if you can safely. But that doesn't apply
9 to this case because it happened in his house. I
10 didn't gloss over that. It just doesn't apply. I'm
11 not trying to hide something from you. I'm talking
12 about what matters for you to make a decision.

13 I've said enough. I trust y'all to see the
14 truth. I just ask that you render a verdict that
15 speaks the truth. Thank you.

16 THE COURT: All right. I told y'all I'd give
17 you a short break. Step in the jury room and let
18 the bailiffs know when you're ready to come back
19 out. I'll be ready to give you my instructions when
20 y'all are ready. Okay? Take about ten minutes or
21 so. Don't discuss the case yet.

22 (The jury exits the courtroom at 3:03 PM.)

23 THE COURT: We'll stand at ease.

24 (The jury enters the courtroom at 3:12 PM.)

25 THE COURT: All right. We're ready to go.

1 It's now my opportunity to instruct you on the
2 law in South Carolina. I've got several things
3 here. I'm going to read part of it. I'm going to
4 tell part of it to you. So understand this: These
5 instructions are kind of lengthy. But if you need
6 re-instruction or have questions about it, you'll
7 have an opportunity to ask. And you can submit
8 questions to me as things come up. Write me a
9 question, I'll try to respond to it.

10 The case is -- everything has been presented to
11 you. The State of South Carolina has charged
12 Mr. Reher with attempted murder and possession of a
13 weapon during the commission of a violent crime.
14 The verdict form has those two charges on it. I'll
15 also show you the two indictments I have in my hand
16 right here with those two charges.

17 Bear in mind he's pled not guilty. And by that
18 plea, he has asked for a jury trial and asked the
19 State to prove that case, those two indictments
20 separately, to prove beyond a reasonable doubt, to
21 prove his guilt. Y'all 12 are to resolve and answer
22 that question of fact as to whether the State has
23 met that burden of proving its case. The State has
24 to prove each and every element of those charges
25 beyond a reasonable doubt.

1 The Constitution makes you, as a group, the
2 finders of fact. It makes me -- as I asked you
3 earlier, you'll understand you'll have to accept an
4 oath to accept the law as instructed by the Court.
5 If you have a misunderstanding or a different
6 understanding of what the law is, you must disregard
7 and set aside that misunderstanding and accept it as
8 I'm giving it here to you this afternoon.

9 If I should make an error in instructing the
10 law, there's another time and another place to
11 consider that error and, if necessary, to correct
12 it. But for our purposes today, when you're making
13 your deliberations, you are to accept the law as I'm
14 giving it to you and disregard any misunderstandings
15 or different understandings I'm giving to you.

16 The State, in every criminal prosecution, must
17 prove its case beyond a reasonable doubt. And I'll
18 explain and define that for you in a minute. But as
19 such, the same Constitution which makes me the
20 instructor of law and makes you the finders of fact,
21 makes you, in essence, the judges of the facts. But
22 what you must do to do that is evaluate and
23 determine credibility. Credibility is simply
24 believability. What do you believe? What evidence
25 did you hear that you find believable?

1 Judging credibility of people who testify, you
2 can consider anything you like of the witnesses who
3 testified in the case. You can use anything in your
4 collective wisdom that you use daily in evaluating
5 whether someone is telling you the truth or telling
6 you a lie, whether you believe it or not. Anything
7 in y'all's collective experience you can utilize,
8 you may do so.

9 Some other things you may utilize, which the
10 Court's observed since we've been having jury
11 trials, is observations as to how or things you
12 might utilize in determining believability. How was
13 the manner and appearance of the witnesses who
14 testified? Were they straightforward in answering
15 questions? Were they hesitant in answering
16 questions? How did the witness come to know the
17 facts to which he or she testified? What was their
18 ability to recollect those facts? Is there some
19 reason a witness would want to give testimony which
20 would help or hurt one side or the other? In other
21 words, were they biased or prejudiced toward one
22 side or the other? Was testimony by the witness
23 strengthened or weakened by other testimony or other
24 witnesses?

25 Now, you can believe as much of a witness'

1 testimony as you want and disbelieve parts of it.
2 You're looking for the truth. That's y'all's task:
3 To find the truth beyond a reasonable doubt. So you
4 can believe one witness against many, many against
5 one, or any combination. You don't count the number
6 of witnesses on each side and say, okay, eight to
7 four, nine to three, six to six, and that's the
8 score. You must determine the credibility and
9 believability in reaching your verdict.

10 And the fact that testimony is not controverted
11 does not mean you must accept it as true and
12 undisputed. You still gauge the credibility of the
13 one presenting that testimony to you. Weighing
14 evidence, as I've instructed you to do, is entirely
15 a mental process. So evidence which you find
16 convinces you of its truth, regardless of where it
17 comes, whether the defendant or the State, your
18 objective is to find the truth here today.

19 There's generally two types of evidence
20 presented to you in trials. There were, in this
21 trial, direct testimony, direct evidence, or
22 circumstantial evidence. Direct testimony, direct
23 evidence is this: An eyewitness, I saw this, I
24 observed that, I smelled this, I noticed, firsthand
25 recollection, receiving information.

1 Circumstantial evidence is slightly different,
2 but just as effective and just as truthful or not
3 truthful as direct. Circumstantial evidence is a
4 proof of circumstances, when considered today, and
5 chained together, point to the existence of another
6 fact. All right?

7 Now, our law makes no distinction as to whether
8 there is a greater value or a greater weight of
9 circumstantial or direct. There is no greater
10 degree of certainty required of circumstantial
11 evidence and that of direct evidence. To the extent
12 the State relies on circumstantial evidence, all the
13 circumstances must be consistent with each other
14 and, when taken together, point conclusively to the
15 guilt of the defendant beyond a reasonable doubt.

16 If those circumstances merely portray his
17 behavior as suspicious, then the proof has failed.
18 So you must weigh all the evidence, no matter direct
19 or circumstantial, whatever it is, weigh it, and
20 whatever you believe you find is truthful, there's
21 your evidence.

22 Now, reasonable doubt. The State has got to
23 prove its case beyond a reasonable doubt.
24 Reasonable doubt is the cause of doubt which would
25 cause a reasonable person to hesitate to act.

1 Reasonable doubt may arise from evidence which is in
2 the case or from a lack or absence of evidence in
3 the case. Proof beyond a reasonable doubt leaves
4 you firmly convinced of a person's guilt. Now, it's
5 the kind of doubt one can assign a reason, that the
6 reason can be assigned firmly and convincingly.

7 A person accused is entitled to every
8 reasonable doubt which arises in the case. And what
9 that means is, if you have any doubt about anything,
10 you must resolve it in his favor. And the very fact
11 you discuss whether a reasonable doubt exists, guilt
12 or innocence, and have a thorough discussion, does
13 not, in and of itself, create a reasonable doubt.

14 You must find and make a determination of
15 whether or not a reasonable doubt, the kind of doubt
16 which causes you to hesitate to act, exists in the
17 case. So if you feel the State has not met that
18 burden, the defendant is entitled to a verdict of
19 not guilty.

20 Now, there's one element, criminal intent,
21 that's required in all criminal cases such as this.
22 Criminal intent must be proved by the State beyond a
23 reasonable doubt. It's a matter that you, the jury,
24 decide from the circumstances surrounding the
25 situation. A person is not allowed to have their

1 brain dissected or opened up to try to figure out
2 what they had in mind. There's no mathematical
3 calculation you can do to calculate criminal intent.
4 So our law states that intent may be inferred from
5 circumstances which were shown to have existed both
6 before and after the fact, and you must make a
7 determination whether or not that element requiring
8 intent was present.

9 But I'll tell you that criminal intent is a
10 state of mind that operates jointly in an act or an
11 omission to act in the commission of a crime. It is
12 a mental state of conscious wrongdoing. It's up to
13 you to determine what the defendant intended to do
14 based upon the circumstances shown to have existed.
15 And so the State must prove that intent beyond a
16 reasonable doubt.

17 I tell you also that these indictments stand
18 independently. You can consider them separately.
19 And I'll explain those more later. But the two
20 accusations made in these indictments, first is
21 attempted murder and the second is the possession of
22 a weapon during the commission of a violent crime.

23 Now, the attempted murder has -- the attempted
24 murder actually requires several things. But there
25 is also another conviction which the Court -- the

1 jury can find Mr. Reher guilty of. It's called a
2 lesser included offense. I'll try to explain those
3 together. But the best examples I can give you,
4 there are stair steps of severity.

5 And these laws -- they used to be named
6 differently. They were changed in 2010. It used to
7 be assault and battery, assault and battery high and
8 aggravated, assault and battery with intent to kill,
9 and then murder. Then we re-codified things. And
10 now there's murder, attempted murder, assault and
11 battery of a high and aggravated nature, and assault
12 and battery first, second, and third. There's three
13 steps; severity versus less severe. We're going to
14 consider the two in the middle, so to speak. But
15 the charge in this case is attempted murder.

16 In order for the State to prove Mr. Reher
17 guilty of attempted murder, the State must prove
18 beyond a reasonable doubt that he, Mr. Reher,
19 attempted to kill another person with malice
20 aforethought. Now I tell you that malice may be
21 proven. It is defined as hatred, ill-will, or
22 hostility towards another person. Malice is the
23 intentional doing of a wrongful act without just
24 cause or excuse and with an intent to inflict injury
25 or any circumstances the law infers evil intent.

1 Now, malice does not require that the malice --
2 malice aforethought does not require the malice
3 exist for any particular time before the act is
4 committed. The malice must exist in the mind of the
5 defendant just before and at the time the act is
6 committed. There must be a combination of evil
7 intent previous and the act itself.

8 Now, malice aforethought may be expressed or
9 inferred. Expressed means the manner in which
10 malice is shown to have existed. And you can
11 determine that based upon the evidence presented by
12 the State, from the facts and circumstances shown
13 which you found as facts.

14 Expressed malice is when a person speaks words
15 which convey or express -- expressed malice is when
16 a person speaks words which express hatred or
17 ill-will toward another showing that, or it can be
18 shown as a person prepared beforehand to do an act
19 which was later accomplished.

20 Now, inferred malice is shown by conduct
21 showing a total disregard for human life. Intent is
22 defined as the result which occurs, and not an
23 accidental, unintentional result. Now, intent for
24 and shown in the offense the State must prove for
25 attempted murder, the intent must be shown that the

1 defendant voluntarily and willfully committed the
2 act which in a natural tendency of his act which
3 would intend to destroy another person's life. Now,
4 you've got the act and conduct, ill-will, and the
5 intent. Assault -- I'm sorry. Attempted murder.
6 The intent has to show that the natural tendency
7 would destroy another person's life.

8 Now, just under attempted murder is a lesser
9 offense defined by our statutes as assault and
10 battery of a high and aggravated nature. So if you
11 don't find the attempted murder guilty, you can
12 consider assault and battery of a high and
13 aggravated nature. That offense, the State must
14 prove -- in order to prove that, the State must show
15 that a person injured another person and that great
16 bodily injury or another -- great bodily injury to
17 another resulted and the act was accomplished by
18 means likely to produce death or great bodily
19 injury.

20 Great bodily injury means bodily injury which
21 causes a substantial risk for death and which can
22 cause serious or permanent disfigurement or a
23 protracted loss or impairment of the person's bodily
24 members or an organ.

25 Now, the State also has indicted Mr. Reher with

1 the possession of a weapon during the commission of
2 a crime or attempted to commit a violent crime,
3 which is defined in our statutes. In order to prove
4 that, the State must prove beyond a reasonable doubt
5 that the defendant committed a violent crime. I
6 instruct you that either crime, attempted murder or
7 assault and battery high and aggravated, are
8 considered violent crimes defined by our statutes.

9 So the State must prove beyond a reasonable
10 doubt that the defendant had in his possession a
11 firearm or displayed what appeared to be a firearm
12 in a commission of a violent crime. A firearm means
13 a machine gun, automatic rifle, pistol, or a weapon
14 which was designed to expel a projectile.

15 And the State must also prove beyond a
16 reasonable doubt that the weapon further advanced or
17 helped in the commission of that violent crime.
18 Thus, in order to find Mr. Reher guilty of the
19 weapons charge, he must be found guilty of one of
20 the two assault charges, whether it be attempted
21 murder or assault and battery high and aggravated.
22 If he's not guilty of those, then there's no violent
23 crime for him to possess a weapon in commission of.

24 One of the issues you also need to consider in
25 this case, because of the facts that were presented

1 by both sides, is the conduct and what led to all of
2 the entire incident. And so the defense has raised
3 the issue of self-defense. And so you need to
4 consider whether Mr. Reher was acting in
5 self-defense.

6 Self-defense is a complete defense. If it is
7 shown and proven, it's an absolute, complete
8 self-defense. If the defendant was acting in
9 self-defense, his conduct was then lawful and you
10 must find him not guilty. A person trying to show
11 self-defense does not have a burden to prove
12 self-defense. The State must prove beyond a
13 reasonable doubt that the defendant was not acting
14 in self-defense.

15 If you have a reasonable doubt of the
16 defendant's guilt after considering the evidence,
17 including the evidence of self-defense, you must
18 find the defendant not guilty. However, if you have
19 no reasonable doubt of his guilt and after
20 considering all of the evidence, including the
21 evidence of self-defense, then you must find him
22 guilty.

23 Self-defense is shown by the following -- or
24 defined as the following: First, the defendant is
25 without fault. The defendant must be without fault

1 in bringing on the difficulty. If the defendant's
2 conduct was the type that was reasonably calculated
3 to and did provoke a deadly assault, the defendant
4 would be at fault in bringing on the difficulty and
5 would not be entitled to an acquittal based on
6 self-defense.

7 The second element of self-defense is the
8 defendant was actually in imminent danger of death
9 or serious bodily injury or that the defendant
10 actually believed he was in imminent danger of death
11 or fear of bodily injury. So if the defendant was
12 actually in imminent danger, it must be shown that
13 the circumstances would have warranted a person of
14 ordinary firmness and courage to strike, as the
15 defendant did, to prevent his death or his serious
16 bodily injury.

17 If the defendant believed he was in imminent
18 danger of death or serious injury, it must be shown
19 that a reasonably prudent person of ordinary
20 firmness and courage would have enjoyed and had the
21 same belief.

22 So in deciding whether the defendant was
23 actually or believed he was in imminent danger of
24 death or serious bodily injury, you consider all of
25 the facts and circumstances surrounding the incident

1 and the relationships of the parties.

2 Now, a person has the right to act upon
3 appearances, even if their assessment was incorrect.
4 It's not necessary that a defendant was actually in
5 danger; it's enough that he believed he was in
6 imminent danger, and a person who's reasonably
7 prudent and who possesses ordinary firmness and
8 courage in that same position with that same
9 knowledge would have held the same belief. So it's
10 for you to decide whether the defendant had a
11 reasonable fear of imminent danger of serious bodily
12 injury or death and that would have been felt by
13 another person of ordinary firmness and courage in
14 the same situation.

15 And words accompanied by hostile acts may,
16 depending on the circumstances, create an appearance
17 on the defendant that he could act in self-defense.
18 Also, the final element is that the defendant had no
19 other way to avoid the danger that was presenting
20 itself. So the defendant had no probable way to
21 avoid the danger of death or serious bodily injury
22 other than the act as he did in that particular
23 instance. And a defendant does not have to wait on
24 an assailant to get the drop on him before acting in
25 self-defense.

1 I'll also state that the defendant has no duty
2 to retreat if by doing so the danger of being killed
3 or suffering serious bodily injury would increase.
4 Also, a person confronted with a self-defense
5 situation is not required to make an exact
6 calculation of any amount of force needed to avoid
7 the death or serious bodily injury, but is permitted
8 to use the degree of force in self-defense that a
9 person of ordinary reason, firmness, and courage
10 would have believed he needed to prevent his own
11 death or his own serious bodily injury.

12 The force used in self-defense does not have to
13 be limited to the degree or the amount used by the
14 opposing party. A defendant has the right to use as
15 much force as appeared to be necessary to deploy a
16 complete self-protection and which a person of
17 ordinary firmness and courage would have had the
18 same belief to be needed to be used to prevent death
19 or serious bodily injury.

20 Therefore, in self-defense, a defendant has the
21 right to use the force needed to avoid death or
22 serious bodily injury, and the force used does not
23 have to be limited to the degree or the amount of
24 force used by the purported victim. A defendant has
25 the right to use as much force as appeared necessary

1 that he would have believed to need to prevent the
2 serious bodily injury.

3 Now, I also instructed an individual under
4 appropriate circumstances -- I'm sorry. That's not
5 in this case.

6 Now, if a person is justified in acting in
7 self-defense and using deadly force under the
8 standards that I've just explained, he's not guilty,
9 even if he used a firearm that was unlawful for him
10 to possess at that time. A person can be acting in
11 self-defense even if he is in the unlawful
12 possession of the weapon. If he is entitled to arm
13 himself in self-defense at the time of the shooting,
14 then that is justified in his actions of
15 self-defense.

16 A defendant is justified in defending himself
17 by firing a weapon, and then the defendant is also
18 justified in continuing to shoot until it is
19 apparent that the danger of death or serious bodily
20 injury has been completely ended.

21 Now, additionally in this case, the statement
22 of the defendant was utilized or presented to you
23 for your consideration. It's been admitted into
24 evidence in the case. The Court had to determine
25 whether the statement was admissible at all. And I

1 instruct you that once that was determined, that it
2 then becomes you, as a group of 12, making the
3 ultimate decision of whether or not the defendant
4 made the statement.

5 If the defendant did make the statement, you
6 must determine whether the statement was made by the
7 defendant voluntarily and of his own free will. And
8 that means that the statement was not caused by
9 pressure, force, fear, coercion, or intimidation, or
10 by hope of a promise or leniency or reward of any
11 kind. So in determining whether the statement was
12 voluntary, you consider both the characteristics of
13 the defendant, the details of the questioning.

14 And some of the factors you can consider: Age
15 of the defendant, his education or lack of
16 education, his mental ability and capacity, his IQ,
17 his background and environment, the place and length
18 of the detention in questioning, the nature of
19 questioning, the advice or lack thereof to the
20 defendant of his constitutional rights to remain
21 silent, that any statement could be used against him
22 in a court of law, his right to have a lawyer
23 present, and that if heed couldn't afford a lawyer,
24 that a lawyer would be appointed without cost, and
25 that he could stop making these statements at any

1 time.

2 Thus, you may carefully consider all the
3 surrounding circumstances before you give any weight
4 to any alleged statement. This statement has the
5 burden of proving -- I'm sorry. The State has the
6 burden of proving beyond a reasonable doubt that the
7 alleged statement was voluntary. And if you
8 determine it was, you may give the statement as much
9 consideration as you deem appropriate. And if
10 you -- you must -- you can also determine what
11 weight, if any, should be given to his statement.
12 And if you determine that the statement was not free
13 and voluntary, then you should not give the --
14 consider the statement at all in any manner.

15 And I also tell you that voluntary intoxication
16 is not a defensible crime. A person who becomes
17 voluntarily intoxicated is just as responsible for
18 any acts committed while intoxicated as a person who
19 is not intoxicated.

20 Additionally, I've let some of y'all take
21 notes -- I've let any of y'all take notes if you
22 wish to, change that. Please understand some people
23 didn't take notes. Some people are listeners, some
24 people are writers, some people are doers; how you
25 receive information, how you take it in. When

1 you're in the jury room and y'all are discussing the
2 case and what y'all heard as testimony or evidence
3 and how you evaluated it, a person's notes are a
4 person's notes and they don't trump a person's
5 ability to listen.

6 Note that 12 or 14 of you still, but 12 of you
7 who will be deliberating, y'all received information
8 from the courtroom while watching the lawyers, the
9 witnesses, whatever. All that is information coming
10 to you and it's all for y'all to consider. But a
11 person's notes doesn't trump a person who doesn't
12 take notes for their memory. Everybody stands on
13 equal footing. Your notes are for your own benefit
14 of what I recollect what was said was thus and so.
15 And a person that heard it may have said, well, I
16 was watching and I understood that's, you know,
17 something slightly different. Everyone is on equal
18 footing. A note taker doesn't trump the
19 non-note-taker, nor the other way around.

20 Now, Mr. Guinn, y'all will retire momentarily
21 to begin deliberations. I'm going to express the
22 hope that y'all understand when we started that I
23 made comments to the effect that it's my job to
24 conduct this trial fairly, justly, and impartially.
25 I've made every attempt to do just that. It's been

1 y'all's job to listen attentively, and y'all have
2 done that.

3 It's y'all's job now to make a fair and just
4 verdict considering the evidence you heard in this
5 courtroom, and the other courtroom on the other two
6 days, accepting the instructions of the law that
7 I've instructed you, weighing the evidence, and
8 making unanimous findings on the charges. And if
9 you do that and don't let outside influences come
10 in, anything not heard in the courtroom on the
11 record not influence your decision, but reaching a
12 unanimous verdict, then y'all have made a fair
13 determination on this case.

14 You've got no enemies to punish, no friends to
15 reward. Your job is to reach a unanimous verdict
16 considering the evidence, the testimony presented,
17 the instruction of the Court, and being unanimous
18 and listening to one another. That's y'all's job.
19 If y'all do that, your verdict will be fair and
20 just.

21 Now, I'll have the opportunity in a moment to
22 talk to the lawyers and they're going be able to
23 make comments as to the instructions I've given you.
24 They have the opportunity to say, Judge, you glossed
25 over thus and so fact, will you please reinstruct or

1 instruct the jury further to some area of the law?
2 And they can ask for those comments. I'll let them
3 put that on the record once y'all step back in the
4 jury room.

5 So if they have an issue that I did gloss over
6 something, I may bring you back in here, and say,
7 all right, look, I glossed over one portion, and
8 here's a little bit more clear instruction on that
9 aspect of the law. And I can do that.

10 If they're good with my instructions, you'll
11 get the evidence, the verdict form, and y'all can
12 begin your deliberations. Now, once we start
13 deliberations, I'll pull the two alternates out. I
14 can't remember which two they are. We have them on
15 the list over here. But once you start
16 deliberations, you're on your own time.

17 If you want a break, take a break. If you want
18 another pot of coffee, make a pot of coffee. If one
19 person wants to step out and get some air,
20 deliberations stop. Okay? You're on your time.
21 You don't have to ask me can you have a break. It's
22 up to you. I'll be here waiting. The lawyers will
23 be somewhere nearby. They won't be far either.
24 Y'all's time. Y'all do whatever pace you like.

25 If you have a question on the law, well, Judge,

1 you kind of glossed over that law, re-explain what a
2 reasonable doubt is. Many times I can write it out
3 on your question, give you part of my instruction
4 back to you, I can do that. Questions, I try to
5 answer with the lawyers' agreement, let's respond to
6 the question in this fashion because this is what
7 would be an appropriate response.

8 Questions I can't really answer is: Why didn't
9 so-and-so get called as a witness? I don't know
10 that and that doesn't matter. You've got to
11 consider what was presented to you. Why somebody
12 wasn't called by one side or the other is not a
13 proper question. The record is now closed as to
14 what you get to consider. So send me a question
15 about why they didn't call so-and-so, I don't know,
16 it's before me. Let's not ask the question about
17 why they called which witnesses.

18 So if you have questions on the law, I can try
19 to answer them. If you want a break, take it. If
20 you want to hear any testimony replayed of a
21 particular witness, write it down, we'd like to hear
22 the testimony of. Now, Ms. Creppon will take a few
23 minutes -- she's a whiz, and she's got a record of
24 it somewhere on her computer, and she can replay it
25 for you. But it will take a few moments for her to

1 que it up. So if you need testimony replayed, send
2 me a note and then take a break, because that would
3 be a good time for her to dig it out and then replay
4 it for you.

5 Were any recordings placed in evidence? If you
6 want to hear that again, we'll get you a computer,
7 we'll let you hear that again. That's in the
8 evidence too. You don't have to try to remember
9 what was said on the recording. We can play that
10 again, if you want to. So everything in the basket,
11 roll it back in the basket. Like I say, I'm going
12 to hold the firearm here in the courtroom. If y'all
13 want to examine it, we'll bring it back there, you
14 can have it for a few minutes, and then we'll pull
15 it back out, just so it's not sitting there in the
16 middle of the table as a big paperweight.

17 So those are my instructions. Y'all step into
18 the jury room, all 14 of you. And then when you get
19 settled, I'll pull the two alternates out, and then
20 y'all will commence your deliberations. Now, before
21 I get out of here, attempted murder, assault and
22 battery high and aggravated, possession of a weapon.
23 If either one of these are not guilty -- or if both
24 of these are not guilty, then this is a not guilty.
25 If either of these are guilty, you can consider this

1 one. Okay? This will be with you. And once you
2 get this and the evidence is when you begin your
3 deliberations. All right?

4 (The jury exits the courtroom at 3:43 PM.)

5 THE COURT: All right. Y'all got any
6 exceptions, suggestions, or comments on the
7 instructions?

8 MR. POGUE: Judge, you charged the jury on
9 inferred malice. And I'm pretty sure King says we
10 can't charge inferred malice.

11 THE COURT: I charged it with a singular
12 sentence: Not inferred as to use of a deadly
13 weapon, which is prohibited. I know exactly what I
14 read. I took most of it out. I think malice is
15 allowed. Inferred from a conduct showing a total
16 disregard to human life. And that's what I said.

17 MR. POGUE: Your Honor, and I'm -- the State's
18 position is, is that that is not permitted to be
19 charged per King. If you'll let me get King, I can
20 show you what I'm talking about. And you can agree
21 or disagree with me, but the State would request
22 that we have them disregard that portion of the
23 charge.

24 MR. DEIRIG: I join in that request.

25 MR. POGUE: I just would hate for it to come

1 back --

2 THE COURT: I don't disagree with you. The
3 charge I had had several things in it that I didn't
4 want in there and --

5 MR. POGUE: If it's from the old bench book --

6 THE COURT: I took a lot of things out.

7 MR. POGUE: Can I go grab King?

8 THE COURT: No, you don't have to. I'm
9 familiar enough with it.

10 Will y'all allow me to utilize the instruction
11 from the Nevada case that defines the expressed
12 malice and the resulting specific intent? Are y'all
13 okay with that?

14 MR. MCNAIR: Yes, sir.

15 MR. POGUE: Yes, sir.

16 MR. DEIRIG: Yes, sir.

17 THE COURT: That's what I'm going to do then.
18 Okay? Anything else?

19 MR. POGUE: I think you may need to instruct
20 them to specifically just disregard the portion that
21 you read about inferred malice, and apply that.
22 That would be my suggestion. I don't know if you
23 agree with that or not, but I think that would be
24 the appropriate remedy.

25 MR. DEIRIG: I would agree with that.

1 MR. POGUE: I don't want them to be any
2 confused that they can rely on that.

3 THE COURT: I'll be honest with you, I don't
4 think many jurors understand the difference in
5 expressed and inferred malice. Malice is defined as
6 and intent is the resulting act which almost
7 happens, it's confusing. I don't mind saying that,
8 but I don't think that they got it anyway, because
9 expressed and inferred malice can be shown, I think
10 that all gets combined into one big pot of soup that
11 it's just a bad act.

12 MR. POGUE: Your Honor, I think everybody in
13 this room is in agreement that we have a whole bunch
14 of smart people in this room, and we don't even know
15 exactly what it is that expressed and inferred
16 malice is, according to the Supreme Court. I think
17 I know what they're saying, but I'm not 100 percent
18 sure.

19 THE COURT: Okay. All right. Aside from this,
20 anything else before I bring them back in here?

21 MR. DEIRIG: Yes, Your Honor. Unless I missed
22 it, I didn't hear in your self-defense jury
23 instructions about someone not having a duty to
24 retreat when they're in their own home.

25 THE COURT: I thought I did. I don't know if I

1 said in their own home. And you want that?

2 MR. DEIRIG: Yes, sir.

3 THE COURT: All right. Anything else?

4 MR. DEIRIG: No, sir.

5 MR. POGUE: Your Honor, one last request we
6 would have, and I don't know what your position is
7 on this. I know the bench book talks about not
8 having to prove to an absolute certainty, regarding
9 a reasonable doubt, and it's not beyond all possible
10 doubt. There are very few -- you know that. There
11 are very few things in life we know with absolute
12 certainty, any doubt you have must be reasonable.

13 THE COURT: I normally don't use that language.
14 I know what you're talking about. I did say the
15 State has the burden of proving beyond a reasonable
16 doubt the defendant did not act in self-defense. I
17 think I stopped there. Then I went into that
18 explanation of, if you have a reasonable doubt of
19 his guilt after considering, includes self-defense,
20 you must find him -- that, both ways. You want me
21 to go back and say that?

22 MR. POGUE: I'm talking about the standard
23 reasonable doubt charge, Your Honor.

24 THE COURT: For disproving reasonable
25 self-defense?

1 MR. POGUE: Just the general definition,
2 Biggars v. Nebraska.

3 THE COURT: I don't know Biggars v. Nebraska.
4 What does it say?

5 MR. MCNAIR: I think it's the standard one in
6 the bench book. It doesn't require proof to an
7 absolute certainty.

8 MR. POGUE: Those would be our requests, Your
9 Honor.

10 THE COURT: All right. Bring the jury, please.

11 (The jury enters the courtroom at 3:54 PM.)

12 THE COURT: All right. Come on back in.

13 All right. Couple things I'm going to talk
14 about: One is, I want to make certain I explain
15 reasonable doubt clear or as clear as I can. And
16 when our law changes and the Supreme Court hands
17 down decisions to us and we read them, and it says,
18 you know, this case finds that, that, that. So what
19 they don't do is send new instructions; you know,
20 you instruct it this way and that's not right, so we
21 want you to instruct it differently. Many times
22 they don't send the new instructions; they say
23 utilize. And our law changes. And some of the new
24 laws that the General Assembly hands down causes the
25 instructions to change.

1 Anyway, trying to explain reasonable doubt.
2 Reasonable doubt is this: It's the kind of doubt
3 that would cause a reasonable person to hesitate to
4 act. It can arise from evidence in the case or from
5 a lack or absence of evidence. Reasonable doubt is
6 proof that leaves you firmly convinced of a person's
7 guilt. It's a doubt which one can assign a reason;
8 if the assignment can be done reasonably, firmly,
9 and convincingly.

10 Now, the State's not required to prove the case
11 beyond all possible doubt. It's beyond a reasonable
12 doubt. There are numerous things in life that you
13 may have doubt about, you know, like what to order
14 for lunch. But the State's got to prove its case
15 beyond a reasonable doubt which leaves you firmly
16 convinced. That's not beyond a shadow of a doubt;
17 it's a reasonable doubt. A reasonable doubt causes
18 a reasonable person to hesitate to act. That's the
19 burden. It's a reasonable doubt to hesitate to act.

20 Now, the defendant is also allowed to have
21 those doubts resolved in his favor. I told you the
22 very fact that you have a full and free discussion
23 on guilt or innocence does not create reasonable
24 doubt. A reasonable doubt is a doubt that lets you
25 be firmly convinced of a person's guilt. That's the

1 burden on the State.

2 Now, also on the attempted murder, attempted
3 murder is defined as malice and conduct which would
4 cause a person to lose their life. Attempted murder
5 is the performance of an act which can, but failed,
6 to kill a human being when acts are done with
7 expressed malice. And that is a person's deliberate
8 intention to unlawfully kill. That's attempted
9 murder. Malice is hatred, ill-will. Okay?

10 Now, I explained one way that malice can be
11 inferred. Malice must be expressed, it must be
12 stated and done or shown. Okay? That's what the
13 State must prove is, an act -- and y'all can
14 consider the testimony and the circumstances of the
15 situation. That's what you're to consider. But
16 performance of an act, when the acts tend but fail
17 to kill another human being and when such acts are
18 done with expressed malice, which means the
19 deliberate intention to unlawfully kill another
20 person.

21 Also, in the self-defense explanation and
22 definition, I told you that a person has no duty to
23 retreat if by doing so the danger of being killed or
24 suffering serious bodily injury would increase. I
25 can also tell you a person has no duty to retreat in

1 one's own home. All right? Those are my
2 modifications of some of the lengthy instructions I
3 gave you.

4 Those are your instructions. We're going to
5 inventory the exhibits. As soon as you get them,
6 you can start your deliberations. All right. Step
7 back in the jury room, please.

8 (The jury exits the courtroom at 3:59 PM.)

9 THE COURT: All right. Any exceptions to the
10 instructions now corrected?

11 MR. MCNAIR: Nothing from the State, Your
12 Honor.

13 MR. DERIEG: None from the defendant.

14 (Jury starts deliberating 4:08 PM.)

15 THE COURT: All right. Go get the jury,
16 please.

17 (The jury enters the courtroom at 5:55 PM.)

18 (Court's Exhibit Nos. 2 and 3 marked for
19 identification.)

20 THE COURT: Have y'all reached a verdict?

21 THE FOREMAN: Yes, sir.

22 THE COURT: Was your verdict unanimous?

23 THE FOREMAN: Excuse me?

24 THE COURT: Was your verdict unanimous?

25 THE FOREMAN: Yes, sir.

1 THE COURT: Very well. Would you hand it to my
2 bailiff?

3 All right. Madam Clerk?

4 THE CLERK: Indictment 2016-GS-32-1077 and
5 2016-GS-32-1837, State vs. Joshua Reher. As to the
6 charge of attempted murder, we, the jury, find the
7 defendant not guilty.

8 As to the assault and battery of a high and
9 aggravated nature, we, the jury, find the defendant
10 guilty.

11 As to the charge of possession of a weapon
12 during the commission of a violent crime, we, the
13 jury, find the defendant guilty.

14 It is so signed and dated the 13th of December
15 2018.

16 Ladies and gentlemen of the jury, is this your
17 verdict and is it still your verdict? If so, would
18 you please indicate by raising your right hands.

19 (All hands raised.)

20 THE CLERK: Thank you.

21 THE COURT: All right. Any further issue for
22 the jury?

23 MR. DEIRIG: No, Your Honor.

24 THE COURT: All right. Folks, step back to
25 your jury room. I'll come talk to y'all in a minute

1 and we'll send you on your way.

2 (The jury exits the courtroom at 6:08 PM.)

3 THE COURT: All right. Are we ready to proceed
4 with sentencing, Mr. McNair?

5 MR. MCNAIR: Yes, sir, Your Honor.

6 THE COURT: And Mr. Deirig?

7 MR. DEIRIG: Yes, Your Honor. If I could make
8 a motion first, just to --

9 THE COURT: Certainly. You got a right a to do
10 that.

11 MR. DEIRIG: Your Honor, I'd like to make a
12 motion first to set aside the verdict and have a new
13 trial ordered. No reasonable jury could have
14 properly or adequately performed their duties and
15 resolve the verdict in the way that they did based
16 on the facts and circumstances that were testified
17 to both in this courtroom and upstairs this week.

18 THE COURT: All right. In considering the same
19 facts that were presented at trial, both State and
20 defense, directed verdicts were denied only
21 considering the State's evidence in that case. But
22 all the evidence considered, the jury was well
23 within its parameters of the facts presented,
24 weighing the evidence, and making a determination,
25 unanimous verdict beyond a reasonable doubt to the

1 lesser included offense and possession of a weapon.

2 I'm not going to disturb that verdict. There
3 were facts for the jury to weigh and consider, and
4 they found those facts consistent and unanimously to
5 these two verdicts. So, respectfully, I'll deny
6 your motion.

7 MR. DEIRIG: Thank you, Your Honor.

8 THE COURT: Your record is protected.

9 MR. DEIRIG: Thank you.

10 THE COURT: All right. You ready to go?

11 MR. DEIRIG: Yes, sir.

12 THE COURT: All right. Come up here.

13 All right. Solicitor, let me hear from the
14 victims, if they want to say anything. And then I
15 want to hear from Mr. Deirig and Mr. Reher.

16 MR. MCNAIR: Yes, sir.

17 MR. MEYERS: Your Honor, I want to start by
18 thanking the solicitors and the officers and
19 everybody that worked hard on this case. And I'd
20 also like you to know this has been very trying on
21 me and my family. This has been going on for three
22 years. These are effects that I'm going to deal
23 with for the rest of my life.

24 The problems he put my kids through and my wife
25 through, it's not fair. And I just ask you to

1 sentence Josh to the maximum penalty of the law.
2 This is someone that I thought was my best friend.
3 And everybody in here that got on that stand told
4 you they believed that that was my best friend. And
5 for someone to do that to their best friend, it just
6 ain't right.

7 And to Josh, I would like to let you know,
8 Josh, what you did to Jo.F. was a scumbag move.
9 You put that kind on there and he wanted to crawl in
10 a hole. And not only did you do it once, you did it
11 twice. And that's it, Your Honor.

12 THE COURT: Okay. All right.

13 MR. MCNAIR: Your Honor, Mrs. Meyers would like
14 to speak.

15 MRS. MEYERS: Thank you, Your Honor. I just
16 wanted to say that I appreciate the process. And
17 this has been going on for three and a half years,
18 you know, and I have a lot of -- sorry -- feelings
19 about if I hadn't let the police in that day, if
20 they hadn't said what they said, if -- thank God.
21 If J.L.F. hadn't shown the cops where we lived, we
22 wouldn't be here right now.

23 But we also wouldn't have to be here if Josh
24 had just owned up to what he did as a drunk mistake
25 or whatever. But he's drug my husband's name

1 through the mud. And this beautiful man made some
2 dumb mistakes in his 20s and he's got the dumb
3 tattoos to prove it. But he's turned his life
4 around.

5 Ever since I've known him -- I met him in
6 2007 -- he's had integrity. He's an honest person.
7 He works hard. And he took care of Josh and was
8 willing to take care of those people that he loved.
9 And I don't think -- the fact that he can't own up
10 to it scares me. It scares me. And I love this
11 man.

12 And thank you so much to the solicitors and the
13 investigators and the officers and to Jo.F. -- I
14 mean, excuse me, J.L-F. . Because if he hadn't showed
15 them where we lived, he would have died because I
16 just thought he was drunk. I mean, what are you
17 doing? You don't drink. What are you doing?
18 You're driving, you're drinking? Thank you.

19 THE COURT: Solicitor, tell me his prior
20 record, if he has one.

21 MR. MCNAIR: I believe all he has is a simple
22 possession of marijuana, Your Honor.

23 THE COURT: Okay.

24 All right. Mr. Deirig, let me hear from you.

25 MR. DEIRIG: Thank you, Your Honor. And I

1 would concur; his complete record is a simple
2 possession of marijuana in 2013.

3 THE COURT: Okay.

4 MR. DEIRIG: Your Honor, you heard the facts,
5 saw the evidence, and understand how likely close of
6 a case this was. Frankly, I think the jury probably
7 compromised in their -- in their verdict. Quite
8 frankly, Your Honor, this is a zero-to-20-year
9 charge. So our legislature has clearly -- clearly
10 believes that there's at least some circumstances in
11 which an ABHAN conviction deserves to have
12 probation. And I believe that we are in that exact
13 circumstance.

14 He is an excellent candidate for probation. He
15 has never been in trouble besides a simple
16 possession of marijuana five years ago. He's
17 gainfully employed, and even with this conviction,
18 he still will be. You know about the one time he's
19 ever gotten in trouble prior to August 21st of 2015.
20 And he's not gotten in trouble at all in the last
21 three and a half years since the incident.

22 He's always going to be a convicted felon and
23 he will never be able to own a gun again. Your
24 Honor, I'm asking you to suspend 20 years over
25 Josh's head and put him on probation for the maximum

1 allowable five years and order random drug and
2 alcohol testing.

3 I don't believe that anyone's interests will be
4 furthered or be benefited with Josh in prison. He's
5 not someone who needed to be -- who needs to be
6 rehabilitated. He's a productive member of society
7 who simply had a bad night three and a half years
8 ago. Nothing in his history before that night or
9 his history since that night indicates that he's a
10 danger to anyone. And I don't believe society will
11 be benefited from incarcerating him.

12 As I said, he's a productive member of society.
13 He has a job, he pays taxes, contributes to our
14 economy. I think that it would be a detriment to
15 society at large, and certainly to Josh and his
16 future, should he end up in prison.

17 At the appropriate time, Your Honor, I believe
18 Josh's mother would like to address the Court. And
19 I also believe that Josh would like to address Your
20 Honor at the appropriate time as well.

21 THE COURT: Whichever way -- whichever order
22 you'd like to present it.

23 MR. DEIRIG: Mary.

24 MS. REHER: Thank you. I'm Josh's mother. And
25 I just wanted you to know that my son is a good boy.

1 He doesn't go out and get in trouble. He doesn't do
2 that stuff. That's not how he's made. He has a
3 heart. And he -- he has a heart, and it's all I
4 got. I live alone and he helps me; you know, he
5 supplements my little income. I work a little
6 part-time job in a laundromat, and he helps. I just
7 don't know what he's going to do. He's a good boy,
8 Judge. He's a good boy.

9 THE COURT: Yes, sir?

10 THE DEFENDANT: Your Honor, when I got home
11 that day, I didn't want any of this happen. I did
12 not ask Joe to drop an elbow on my face, as so he
13 said. That's not what I wanted, sir. I did not see
14 myself trying to attempt to kill Joe that day. I
15 hate the way the events escalated and unfolded. And
16 if I could do it again, I probably would change what
17 I did. But you can't go back in the past and you
18 can only move forward from where you're at now. And
19 I just give you my utmost apologies. I'm sorry for
20 my actions.

21 THE COURT: Solicitor?

22 MR. MCNAIR: Judge, I'll just say, you know,
23 you've dealt with me for a while. I consider my
24 self to be a very reasonable solicitor. I think
25 most people would say that about me. And I give

1 people points for taking accountability for their
2 actions. And I know you can't punish people for
3 exercising their right to go to trial, but to me,
4 from my perspective, this whole thing has been the
5 opposite of taking accountability. It's been
6 perpetuating a lie over and over and over, trying to
7 gain the system and hope to get a not guilty
8 verdict.

9 So in that sense, maybe he doesn't need
10 rehabilitation, but he just needs good old-fashioned
11 punishment for failure to take accountability for
12 what was so obvious. So the State would ask for
13 significant sentence.

14 THE COURT: How much pretrial confinement does
15 he have?

16 MR. DEIRIG: Four months.

17 THE COURT: Four months? So he'll be entitled
18 to those.

19 All right. Considering the facts that have
20 been presented, introducing weapons into a situation
21 like this is -- is bad. I don't think Mr. Reher's
22 behavior was very good. Considering everything, I
23 don't think he deserves the maximum.

24 The sentence of the Court is, on the assault
25 and battery of a high and aggravated, he be confined

1 to the department of corrections for a determinate
2 term of nine years, credit for four months, and
3 concurrent five years on the weapon. Good luck.

4 MR. DEIRIG: Thank you, Your Honor.

5 MR. MCNAIR: Thank you, Your Honor.

6 THE COURT: I hope that brings closure to
7 everyone. That's very close to the sentence on a
8 similar case.

9 -- END OF TRANSCRIPT OF RECORD --

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1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF LEXINGTON

5

6 I, the undersigned, Bethanie K. Creppon, Circuit
7 Court Reporter for the Eleventh Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the trial of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Lexington County, South Carolina, on the
14 10th, 11th, 12th, 13th of December, 2018.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18 May 27, 2019

19

20 s/*Bethanie K. Creppon*

21

22 Bethanie K. Creppon

23 Circuit Court Reporter

24

25

WITNESSES

Lexington County Sheriffs Department

B Marthers

Law Enforcement Case #: 15015990

REM

ARREST WARRANT NUMBER

2015A3210201431

ACTION OF GRAND JURY**TRUE BILL**

Foreperson of Grand Jury

Date: 4-11-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3201077**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE
vs.

Joshua Clayton Reher

CDR #: 3410

Indictment for

ATTEMPTED MURDER

§ 16-03-0029

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
ATTEMPTED MURDER

§ 16-03-0029

At a Court of General Sessions, convened on APRIL 2016, the Grand Jurors of Lexington County present upon their oath:

That **Joshua Clayton Reher** did in Lexington County, South Carolina, on or about August 21, 2015, with the intent to kill, attempt to kill another person with malice aforethought, to wit: the defendant shot at Joseph Myers multiple times with a rifle striking him once in the abdomen, in violation of §16-03-0029 of the South Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

RECEIVED
May 27 2020
SC Court of Appeals

s/AdamRuffin

Adam Sinclair Ruffin
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of May, 2020.