

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Letitia H. Verdin, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

JOHN WILLIAM MCCARTY,

RECEIVED

JUN 13 2019

APPELLANT

SC Court of Appeals

APPELLATE CASE NO. 2017-002377

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

MICHAEL D. ROSS
Assistant Attorney General
S.C. Bar No. 73986
South Carolina Office of the Attorney General
P.O. Box 11549
Columbia, SC 29201

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
IMMUNITY HEARING TRANSCRIPT DATED FEB. 23, 2017	1
TESTIMONY	
RANDY WILSON	
Direct Examination by Mr. Newton.....	3
Cross Examination by Mr. Cleveland.....	26
Redirect Examination by Mr. Newton.....	45
JOHN MCCARTY	
Direct Examination by Mr. Newton.....	48
Cross Examination by Mr. Cleveland.....	55
MOTION TO DENY IMMUNITY	75
COURT'S RULING	77
TESTIMONY	
JOEY WILLIAMSON	
Direct Examination by Ms. McCall.....	78
JACOB KIRK	
Direct Examination by Mr. Cleveland.....	84
Cross Examination by Mr. Newton	105
BRIAN GIBSON	
Direct Examination by Mr. Cleveland.....	110
ARGUMENT BY MR. NEWTON.....	112
CLOSING ARGUMENT BY MR. CLEVELAND.....	115
MOTION FOR 16-11-450 HEARING FILED JAN. 19, 2017	131
ORDER FILED APRIL 11, 2017	132
DEFENDANT'S EXHIBIT #1 (WRITTEN STATEMENT).....	136
TRIAL TRANSCRIPT DATED OCT. 16-18, 2017	138
OPENING STATEMENT BY MR. CLEVELAND	139

OPENING STATEMENT BY MR. NEWTON	155

TESTIMONY

JOEY WILLIAMSON

Direct Examination by Ms. McCall	160
Cross Examination by Mr. Newton	166

MICHAEL NIX

Direct Examination by Ms. McCall	168
Cross Examination by Mr. Newton	174

JACOB KIRK

Direct Examination by Mr. Cleveland	175
Cross Examination by Mr. Newton	217
Redirect Examination by Mr. Cleveland	234

KEVIN CAMPBELL

Direct Examination by Ms. McCall	236
Cross Examination by Mr. Newton	247

BURGESS SHUCKER

Direct Examination by Ms. McCall	248
Cross Examination by Mr. Newton	254

RANDY WILSON

Direct Examination by Mr. Cleveland	255
Cross Examination by Mr. Newton	302
Redirect Examination by Mr. Cleveland	312

J. B. KELLY

Direct Examination by Mr. Cleveland	312
Cross Examination by Mr. Newton	317
Redirect Examination by Mr. Cleveland	317

ANTHONY RAINES

Direct Examination by Mr. Cleveland	318
Cross Examination by Mr. Newton	321

J. T. ALBRECHT

Direct Examination by Mr. Cleveland	322
Cross Examination by Mr. Newton	344

BRIAN GIBSON

Direct Examination by Mr. Cleveland	345
Cross Examination by Mr. Newton	353

JAMES FULCHER

Direct Examination by Mr. Cleveland	355
Cross Examination by Mr. Newton	365
Redirect Examination by Mr. Cleveland	366

CHUCK JAMES

Direct Examination by Ms. McCall	368
Cross Examination by Mr. Newton	379
Redirect Examination by Ms. McCall	384

MOTION FOR DIRECTED VERDICT	386

COURT'S RULING	388

RENEWAL OF MOTION FOR IMMUNITY FROM PROSECUTION	389

COURT'S RULING	389

CHARGE CONFERENCE	390

TESTIMONY

LALONNIE TUCKER

Direct Examination by Mr. Newton	410
Cross Examination by Mr. Cleveland	413

BETTY BOLLMAN

Direct Examination by Mr. Newton	416
Cross Examination by Mr. Cleveland	419

BRADLEY MERCER

Direct Examination by Mr. Newton	421
Cross Examination by Mr. Cleveland	427

JOHN MCCARTY

Direct Examination by Mr. Newton	431
Cross Examination by Mr. Cleveland	453
Redirect Examination by Mr. Newton	475

DEFENSE RESTS	477

RENEWAL OF MOTION FOR DIRECTED VERDICT	478

COURT'S RULING	479

RENEWAL OF MOTION FOR IMMUNITY FROM PROSECUTION	479

COURT’S RULING	479
CHARGE CONFERENCE.....	480
CLOSING ARGUMENT BY MR. CLEVELAND.....	487
CLOSING ARGUMENT BY MR. NEWTON	505
REPLY ARGUMENT BY MR. CLEVELAND	515
CHARGE ON THE LAW	519
VERDICT	541
SENTENCING	543
COURT’S EXHIBIT #3 (WRITTEN JURY INSTRUCTIONS).....	549
INDICTMENTS AND SENTENCE SHEETS.....	569
CERTIFICATE OF COUNSEL	570

**THE FOLLOWING EXHIBITS FROM THE IMMUNITY HEARING DATED FEB. 23,
2017, ARE ON FILE WITH THIS COURT:**

**STATE’S EXHIBITS #1-7 (PHOTOGRAPHS); STATE’S EXHIBIT #8 (INTERVIEW
CD); DEFENDANT’S EXHIBIT #2 (911 CALL).**

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) : 2015GS3902275,
	)	2015GS3902276
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
John W. McCarty,	)	
	)	
Defendant.	)	
	)	

February 23, 2017
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

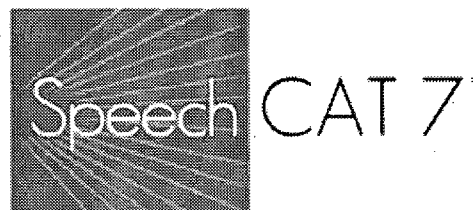
A P P E A R A N C E S:

BAKER CLEVELAND, Esquire
BRITNI McCALL, Esquire
Attorneys for the Plaintiff

ROBERT NEWTON, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M, CM
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



P R O C E E D I N G S

(WHEREUPON, proceedings begin on the 23rd day of February, 2017 at approximately 10:06 a.m.)

(WHEREUPON, State's Exhibits 1 through 7 are marked for identification purposes.)

THE COURT: All right. I believe this is your motion to --

MR. NEWTON: It is, Your Honor.

THE COURT: All right. Yes, sir.

MR. NEWTON: Your Honor, as you know, this is a murder case, and I have moved under the Protections of Persons and Property Act to have it declared. I just want to summarize what I want to do ---

THE COURT: That's fine.

MR. NEWTON: --- in the interest of time. I only have two witnesses I want to call ---

THE COURT: Okay.

MR. NEWTON: John McCarty, who is the defendant, and Mr. Randy Wilson and there's also two -- a couple of 911 tapes, which are very short, which ---

THE COURT: All right.

MR. NEWTON: --- I would like to offer as well. And that's about it from my side.

1 **THE COURT:** All right. Any thoughts or
2 ideas how long the State's portion would be?

3 **MR. CLEVELAND:** The State only intends to
4 call one witness that may be of some length
5 than the other two would be -- the other two or
6 three would be short for context.

7 **THE COURT:** All right. All right. Very
8 well then. If you're ready to proceed.

9 **MR. NEWTON:** The defendant calls Randy
10 Wilson to the stand.

11 **THE COURT:** All right. Sir, if you would,
12 come forward and be sworn.

13 **RANDY WILSON**
14 having first been duly sworn, testifies as follows:

15 **THE CLERK:** State your full name for the
16 record.

17 **THE WITNESS:** Randy Gene Wilson.

18 **THE CLERK:** Please be seated.

19 **DIRECT EXAMINATION**

20 **BY MR. NEWTON:**

21 **Q** Mr. Wilson, how are you this morning?

22 **A** Hurting a little bit, but okay.

23 **Q** Are you familiar with the events that
24 happened on July the 15th of 2015?

25 **A** Yes, sir.

1 Q Were you familiar with the deceased?

2 A Yes.

3 Q What was his name?

4 A Mitchell.

5 Q Last name?

6 A Bradley.

7 Q How did you know Mr. Mitchell Bradley?

8 A Through the family. I worked for the
9 grandfather for many years. Then my condition started
10 getting worse and I was starting to have other
11 things, so I had to start slowing down on work with
12 him. Eventually, I just quit, you know, quit working
13 for him. It was a friendship based -- his brother
14 stayed with us.

15 Q Who was his brother that stayed with you?

16 A Jacob Kirk.

17 Q And when you said, stayed with you, what
18 address was that at?

19 A [REDACTED].

20 Q And where is that? What town is that?

21 A Liberty, South Carolina.

22 Q Who all lived there at the time of this
23 incident?

24 A It was me, John McCarty, Jacob and Bradley.

25 Q Was Mitchell Bradley actually living there?

1 **A** No, no. Bradley Mercer, which is my great-
2 nephew. I have custody of him.

3 **Q** At the time of the -- on July the 15th of
4 2015?

5 **A** Yes, he wasn't present. He was at the
6 college --

7 **Q** Oh, okay.

8 **A** -- Christian college up in North Tennessee.
9 North Carolina or Tennessee, a Christian college up
10 there, attending.

11 **Q** What sort of residence is that?

12 **A** Uh --

13 **Q** Is it a house or a trailer?

14 **A** Mobile home.

15 **Q** Mobile home?

16 **A** Yes, sir.

17 **Q** And who was the owner of it?

18 **A** I am.

19 **Q** How long have you owned it?

20 **A** Owned that mobile home since, I'd say,
21 probably about 2007. No -- 6, 5 -- probably about
22 2005. I moved the mobile home on that property in
23 2007, approximately about August of 2007.

24 **Q** All right. You referred to a condition you
25 have. What condition is that?

x 1 **A** I have a broke neck from the C-2 to the C-
2 7. They went in and did surgery, took bones from
3 other parts of my body to repair, to fuse the bones
4 back together. They were crushed.

5 **Q** How did that happen and when?

6 **A** I just got back from a job interview, my
7 first job at age 16. A lady came up behind me doing
8 65 miles an hour and clipped my bicycle. I hit my
9 head on the windshield and flipped me over and it
10 broke my neck there. That was on March the 9th of
11 1980 -- '80, I believe. On March the 18th, they
12 rushed me into surgery and gave me a five percent
13 chance of coming off the operating table alive and
14 never being able to walk again.

15 **Q** Okay. Do you remember approximately how
16 much medical bills you had from that incident?

17 **A** The total bills were \$175,000.

18 **Q** That was back in 1980?

19 **A** Yes.

20 **Q** All right. So were you able to work as an
21 adult with that condition?

22 **A** Yes, I did work. I did work, you know,
23 various jobs. By trade, I'm an electrician. My dad
24 owned his own company so I worked with him. That's
25 how I learned my trade. So I started in that field

1 there and then just started learning more of the
2 electrical trade, you know, doing different things,
3 repairing washing machines, dryers, you know, stuff
4 like that.

5 Q How long were you able to do that?

6 A Up until about -- to do it full time, I
7 would say up until about '95, '96. Then I started --
8 Mr. McCarty opened up a company, a business. So I
9 would just go and get the materials loaded on the
10 truck and take it to the job site and do stuff like
11 that and do the phone calls and taking them in.

12 Then I met Mr. Alexander, Clayton Alexander

13 --

14 Q I'm sorry to interrupt you, but did there
15 come a time when you were no longer able to be
16 employed?

17 A Yes, it was approximately about three years
18 ago, four years ago, roughly. That's when I really
19 started slowing down with Mr. Alexander. I was just
20 hurting too bad all the time.

21 Q When you say you were hurting too bad, what
22 part was hurting?

23 A Both would be my neck. I couldn't pick up
24 refrigerators and change out dryers and stoves, and
25 do the hard labor stuff. His grandsons would come and

1 help me sometimes. He said just supervise them, and
2 that's what I did. Then I'd hire other people to do
3 jobs for me and I'd watch them.

4 Q So if I understand correctly, this is all
5 because of the problems from the automobile accident
6 back in 1980, correct?

7 A Yes.

8 Q All right. Now, we've established the
9 deceased in the case is Mr. Mitchell Bradley. His
10 brother, Jacob Kirk, was living with you and Mr.
11 McCarty?

12 A Yes, sir.

13 Q How did Jacob Kirk come to be living there?
14 Why was he living there?

15 A He was staying with some girls over off of
16 White Horse Road and they got evicted. Jacob called
17 me and asked if he could stay for a couple of days
18 until he found permanent residence. So I said sure,
19 no problem. So we -- John went and loaded all his
20 stuff up in a truck and got his belongings of the
21 trailer that they were renting. Brought them to the
22 house. Some of it was stuck in our RV mechanic thing
23 -- NASCAR truck. Then I talked to John about Jacob
24 just permanently staying there and helping me out
25 around the house, sweeping, mopping floors, taking

1 the garbage, doing -- going to the grocery store for
2 me and stuff like that in exchange for rent free, no
3 money coming out of his pocket going to mine or
4 John's. The only stipulation that I asked him to do
5 was to take the money and put it into a saving
6 account so he could build up some savings. And he did
7 so, by my understanding, through what he would tell
8 me.

9 Q Mr. McCarty had a full-time job, correct?

10 A Yes, sir.

11 Q Correct?

12 A Yes, 15 years.

13 Q So he was not around to help you with these
14 various chores you're talking about?

15 A No, sir.

16 Q Which is why you needed some other help?

17 A Yes, sir.

18 Q And Mr. Jacob Kirk agreed to do that?

19 A Yes, sir.

20 Q All right. What sort of things would he do
21 for you to help you around the house?

22 A He would haul off the garbage, sweep and
23 mop floors, dishes with the dishwasher, go to the
24 grocery store, just, you know, stuff like that.

25 Q Are you on disability?

1 **A** No, sir. I'm not. I have applied for it and
2 am still going through the process for that.

3 **Q** All right. All right. How long have you
4 known the defendant, Mr. John McCarty?

5 **A** Since October the 17th of 1987, six months
6 prior to that, we'd become friends. After that, on
7 that date, we set a commitment to each other and
8 we've been partners ever since.

9 **Q** Since what year?

10 **A** 1987.

11 **Q** '87.

12 **A** So 29 years, we have been together.

13 **Q** All right. So let's move to the incident in
14 question, around July 15th of 2015. Who all was
15 present in the residence on that day?

16 **A** It was John McCarty, he was in bed; it was
17 me, Mitchell Bradley, and Jacob Kirk.

18 **Q** All right. What was -- how did Mitchell
19 Bradley end up there? What was he doing there? Who
20 invited him over?

21 **A** He called me on my phone records that I
22 gave you and asked if he could come over. I told him
23 yeah. You know, I never had a problem with him. I
24 even took him to Myrtle Beach with us on vacation,
25 expenses paid for. Took him on a cruise. He was just

1 a friend. So he called to see if he'd come over. I'm
2 assuming that he talked to his brother earlier and
3 asked could he come over. I'm not for sure on that or
4 anything. I said, yeah, I don't have a problem. I
5 didn't go into details on what to do and not to do
6 and stuff like that because he'd always been
7 respectful, you know, and so has Jacob, in my home.

8 Q Did Mr. Bradley show up the day of the
9 shooting or did he arrive --

10 A He was there approximately -- I believe he
11 got there on Monday, Monday or Tuesday, and he spent
12 the night there. Wednesday, I had to go take care of
13 some family business in Fountain Inn. So Jacob -- Mr.
14 Bradley stayed at the house. I trusted him. I mean,
15 there was no issue on that part. Took care of my
16 business. It was about 6:30, roughly 7 o'clock.

17 That's when I proceeded to leave Fountain
18 Inn to come home. Then I called Mr. McCarty to let
19 him know that I was going to stop by the grocery
20 store and then I'd be on my way. It was approximately
21 about 7:00 roughly, somewhere around that time, by
22 the time I got home. And since it --

23 Q Well, how did things escalate to the point
24 that ended up in the shooting death of Mr. Mitchell
25 Bradley that day?

1 **A** Okay. I was on the phone with my family,
2 Loloni Tucker. I had already fixed dinner. It was
3 just leftovers. It was so late, so I just put a bunch
4 of stuff on plates. John and I had already ate. There
5 was two plates in the microwave that I stuck in
6 there. Jake and Mitchell were on the back porch
7 drinking and, you know, whatever else.

8 Then I was on the phone with my niece,
9 Loloni Tucker. Jacob kept trying to listen to her. He
10 was, like, whose plate is whose? Divvy this up. I
11 couldn't really understand what she was saying at the
12 time, so I said, can't you see I'm on the phone.

13 That's when Jacob got pissed off, you know.
14 And when he came by me, he hit me on the shoulder and
15 spun me around with the plates. I told him, I said,
16 that was pretty damn rude. Then he just started
17 screaming and hollering and just going off. That's
18 when I called -- hung up from my niece on the phone
19 and called 911 and had the deputy to come out.

20 **Q** Was he intoxicated at the time?

21 **A** Yes, he was.

22 **Q** Do you recall what he was screaming and
23 saying?

24 **A** No, I really don't. He just kept saying if
25 you want me out, tell me, I'll get out, or something

1 like that. So he went in the bedroom and started
2 getting all his stuff together and piling it by the
3 door there.

4 Q Why did you feel it necessary to call 911?

5 A Because of the anger that I never seen out
6 of him. Again, it was just out of control. I just
7 never seen it. I've known him for a lot of years when
8 he was -- I met him when he was probably about 16 or
9 17 years old before he went into the Navy. I just
10 never seen that side of him ever before.

11 Q All right. And what -- did an officer
12 respond when you made that phone call?

13 A Yes, there were two officers that
14 responded. Now, prior to that, before the officers
15 responded, Mitchell, he started getting mouthy while
16 Jacob was getting his stuff. And I looked at him and
17 I said, well, you can leave. I said, you don't live
18 here. I said, the best thing, you need to leave
19 because it's none of your business. He said I'm not
20 leaving, whatever. Then I called -- that's when I
21 called 911 and then reported it to 911 to have an
22 assistant to come out.

23 Q All right. Just to be clear, Mitchell
24 Bradley was a non-resident of that place?

25 A No, sir.

1 Q Not a resident. He was an invited guest
2 temporarily, correct?

3 A Yes, sir.

4 Q You asked him to leave and he refused to
5 leave?

6 A Yes, sir.

7 Q What happened when the officers arrived?

8 A The officers came and I was working on
9 Jacob's truck because it was broke down. It needed a
10 new electronic control module on it. So I was up
11 underneath the hood on it, putting it on to get it.
12 His little car at the time wouldn't hold all his
13 stuff. So I fixed the truck and got it running.

14 In the meantime, Mitchell came out to the
15 truck as I was working on it. He had his beer sitting
16 up on the radiator thing. I'm down in the engine
17 compartment trying to get the module on, which is
18 down by the oil pan. I reached up to grab the tool,
19 special tool for it, knocked his beer over. He lost
20 it. He grabbed me by my left arm, on the inside,
21 slung me around. My other arm was holding the piece
22 on. That pulled me around to the driver's fender.

23 I said, what the hell you doing. He says,
24 you knocked over my beer, blah, blah, blah. I said
25 it's an accident. I'm trying to reach for my tool.

1 Then he went back up under the porch.

2 Oh, the officers came before that, before
3 the altercation with Mitchell. The officers came. I
4 asked the officers please let him leave. You know,
5 make him leave. He began to leave.

6 Q Who? Who were you asking?

7 A Mitch.

8 Q Mitch.

9 A I was asking the police officers.

10 Q He goes, well, what are you doing?

11 A I said, I'm fixing his truck, Jacob's
12 truck. He goes, well, that's awful nice of you. I
13 says, well, he just needs a way to move all his
14 stuff. He's moving and his car won't hold it. He
15 says, well, that's nice. Then he says, we can't make
16 him leave because he was invited by his brother,
17 Jacob Kirk. That was not -- my understanding was that
18 was never an invitation from Jacob and Mitch. It was
19 through me and Mitch on my phone records and
20 conversation that we had. So the officer says that
21 they couldn't do anything. I said, please, you've got
22 to do something or it's just going to escalate.
23 They're going to get onto me again.

24 Then it was -- I started working on the
25 truck again. That's when I knocked over Mitch's beer.

1 That's when he grabbed me by the arm. I thought,
2 pretty much, it was okay. Mitch went back up on the
3 porch and got him another beer. Then I got done with
4 the truck. I started coming up onto the porch. Mitch
5 was standing right there where my steps are, coming
6 down off the porch from the mobile home area. Mitch
7 hit my -- I had a headlight on in which to see. He
8 hit that off. He said what are you going to do about
9 it now.

10 I didn't do nothing. I started going up the
11 steps. He's standing there. So I took my arm and I
12 just pushed him off the side and he shoved me down
13 the steps. That broke my leg. It broke two of the
14 treadsteps. It broke two of them as hard as I hit
15 them. It broke my left leg, the top of my foot. I'm
16 still having problems with that. I have osteoporosis.
17 I'm a negative 32, which is a severe case of
18 fractures and bone breakage.

19 I had to grab ahold of the railing, the
20 handrailing and get up off of the concrete pad where
21 I was laying down and hop up onto it. I got closer
22 and knocked over another beer that he had on the
23 handrailing. It fell behind a piece of plastic that I
24 had hanging up. So I went to reach for the door,
25 opened up the door and then Mitch shoved me in my

1 back, pushed me in by back. Slammed the door. I
2 screamed for John. Mitch spun me around to the corner
3 of the trailer, which my door opens outward, it
4 swings out. I was on the hinge part with my back up
5 against the bannister. Mitch was right on top of me.

6 Q All right. Was he -- what was he doing?

7 A He was holding me and shoving me and had me
8 right here and just shoving like that. Out of the
9 corner of my eye, it looked like he was drawing back
10 to punch me.

11 Q Did he punch you at any time?

12 A No, he did not punch me. During that --
13 that's when Mr. McCarty came out and fired the
14 warning shot.

15 Q Let's back up.

16 A Okay.

17 Q Were you in fear of your life?

18 A Yes.

19 Q Why?

20 A At that time, I was. The first time, I just
21 kind of dismissed it because he was drinking and
22 drunk. Didn't dismiss it but just was cautious. When
23 I got up onto the steps, then he shoved me down. Then
24 I started getting really scared, you know, to make it
25 to the door and inside of the house. My intentions

1 was to lock the door, lock them out.

2 Q Okay. Was his brother, Jacob Kirk, outside
3 at the time?

4 A Yes, on the porch.

5 Q What was he doing while Mitchell was
6 assaulting you?

7 A Standing up beside the fireplace. I have a
8 fireplace standing out there. He was standing there,
9 which is approximately about eight feet, roughly. The
10 porch is ten feet.

11 Q Was he trying to get his brother off of you
12 or help you in any way?

13 A No, sir.

14 Q What was he doing?

15 A No, sir. He was more agitating it on. When
16 Mitch shoved me down the steps, he just kept telling
17 his brother, watch out, he's going to pick up
18 something and cold cock you with it or hit you with
19 it. You know, he's going to hit you. He's going to
20 hit you. And I -- I'm just assuming that it intensified
21 his anger level, you know.

22 Q Had Mitchell been drinking as well?

23 A Yes, sir.

24 Q Would you -- how would you describe the
25 level of intoxication, the way they were acting?

1 **A** Pretty well lit. Pretty well lit.

2 **Q** Had you been drinking?

3 **A** I had one and a half drinks of liquor. I
4 drank one of the liquor and I poured another one. I
5 drank about a sip out of that. That was when the
6 altercation of Jake started. That's when I started
7 drinking. I wasn't having a part of that.

8 **Q** Okay. And where was Mr. McCarty when all
9 this was going on?

10 **A** He was in bed in his bedroom.

11 **Q** He didn't come out initially?

12 **A** No, he did not come out until I screamed
13 for help for him. I was in fear -- at that point in
14 time, I was definitely in fear of my life. I needed
15 help to get out of the situation that I was in.

16 **Q** All right.

17 **A** That's when John McCarty come out the
18 bedroom.

19 **Q** So you said that the door there swings
20 outward and you were -- y'all were pressed up against
21 the door?

22 **A** Yes, sir. I was by the hinges. Here is the
23 trailer itself. Here would be the porch right there.
24 I was right there in that corner. There was a
25 refrigerator. There was only one refrigerator there,

1 at the time, behind Mitch, which would clear the door
2 of it opening. Then Mr. McCarty tried to get out the
3 door and could not get out the door.

4 Q Did you hear shots?

5 A I heard the first shot. Yes, I did. I heard
6 the warning shot. That's when Jacob hollered to his
7 brother, he's got a gun. Then, I don't know the time
8 frame about what's in that time frame of the initial
9 shot.

10 Q After that first shot, did Mitchell stop
11 attacking you?

12 A No, sir. It was just like a dead
13 standstill. Mitch's arms dropped. Then Jacob said,
14 are you hit, Mitch? And Mitch was just standing
15 there.

16 Q No, sir. After the first shot that you
17 described as a warning shot.

18 A He did not stop.

19 Q Okay. But then there was another shot?

20 A Yes, sir.

21 Q Do you remember how many more shots there
22 were?

23 A No, sir. I don't.

24 Q Okay.

25 A I don't recall how many shots were fired.

1 Q After the shot hit Mitchell, he dropped off
2 of you, you said?

3 A Yes.

4 Q What did you do at that point?

5 A I knelt down beside him and was watching,
6 you know, vitals when he start -- stopped breathing.
7 I didn't feel no pulse. That's when I started the CPR
8 on him. And I can't explain why I did that. It was
9 just something out of -- that was inside of me that
10 just took over to do that. I just never had that
11 situation ever in my life before that, you know, I
12 had to rescue somebody.

13 Q I assume somebody called 911 to report the
14 shooting?

15 A Yes, sir.

16 Q And did the police and ambulance respond to
17 that?

18 A Yes.

19 Q All right. When they arrived, Mitchell
20 Bradley was dead, correct?

21 A Deceased already, yes, sir. I could not
22 bring...

23 Q Is there a -- did Mr. McCarty have any
24 other alternative other than taking the action he did
25 to protect you?

1 **A** No. No other alternative. He did try to
2 kick open the door. The rest would be like, if he
3 would have, you know, then he would have had the both
4 of them on him at the time, if he could have got out.
5 But he could not get out the back door. The other one
6 would be the front door. Concerning our front door,
7 of course, it's all the way across the other side of
8 the trailer. For John to get out from the back door
9 -- from the back door to all the way back around to
10 the other place, from the door to the first gate
11 where the dog kennel is, six-foot fence, at 60-some-
12 odd feet, 63 feet, something like that, from the door
13 to the gate.

14 Now, we had to wire -- the gate wired in
15 order to keep the bigger dog from pushing the gate
16 open and getting out. So he would have had to unwire
17 that gate and come all the way back around the
18 trailer, which would probably have been about --
19 let's see, that'd be 40, 50, maybe roughly around 100
20 feet to 150, give/take, you know, about that to get
21 to the porch.

22 **Q** So --

23 **A** At that time, I -- with that, you know, I
24 don't think that John would have made it around to
25 that end of that trailer back around.

1 **Q** In the meantime, Jacob Kirk, the brother,
2 was standing right there, correct?

3 **A** Yes.

4 **Q** Doing absolutely nothing to ---

5 **MR. CLEVELAND:** Objection to leading.

6 **MR. NEWTON:** --- break up the fight. ..

7 **THE COURT:** Sustained.

8 **BY MR. NEWTON:**

9 **Q** Was he taking any effort to stop this
10 situation from happening?

11 **A** No, sir.

12 **MR. NEWTON:** Your Honor, at this time, I'd
13 like to play the tape of where he made the
14 initial 911 call.

15 **THE COURT:** All right.

16 **MR. NEWTON:** It's already loaded.

17 **THE COURT:** Okay. That's great. Would the
18 attorneys approach for just a minute?

19 (WHEREUPON, a bench conference is held off the
20 record.)

21 **MR. NEWTON:** Anyway, again, at this time,
22 I'd like to ---

23 **THE COURT:** Please.

24 **MR. NEWTON:** --- play the 911 call.

25 **MR. CLEVELAND:** No objection for the

1 purpose of this motion.

2 (WHEREUPON, the 911 recording is played, and then
3 paused.)

4 BY MR. NEWTON:

5 Q Now, was that your voice?

6 A Yes, calling 911 and then Jacob's in the
7 back..

8 (WHEREUPON, the 911 recording is resumed, and
9 then paused.)

10 BY MR. NEWTON:

11 Q At that time during that call, the call had
12 been made and was off the hook?

13 A Yes. Yes. They called back. The phone was
14 out of my hands. It hung up. Then 911 called back. I
15 hit the answer button and let it record.

16 Q Who was doing the screaming in the
17 background?

18 A It was Jacob Kirk and then Mitch. You can
19 barely hear Mitch in the background. Jacob was closer
20 to the phone and to me than Mitch was.

21 (WHEREUPON, the 911 recording is resumed and
22 played to the end.)

23 MR. NEWTON: That's it, Judge. Apparently,
24 it cuts off at that point.

25 THE COURT: Okay.

1 BY MR. NEWTON:

2 Q So you mentioned you had a broken leg or
3 foot. Did you go to the hospital after?

4 A Yes, sir. I did. They took me in an
5 ambulance.

6 Q And you received treatment for that?

7 A Yes, sir.

8 Q What -- I saw you had some crutches today.

9 A Yes, sir. That was part of the broken leg
10 that I received that night on the 15th.

11 Q Were you using crutches before this
12 incident?

13 A Periodically, I did. I have a gout issue.
14 This is not related to the gout. It's usually in my
15 left foot. The bone structure on my foot and my leg,
16 that bone on my leg was broken. The top part of my
17 foot broke and having problems healing.

18 Q Okay. Have you fully recovered from that?

19 A No, sir.

20 Q Are you ever going to?

21 A It all depends on if the doctors can get my
22 bone density back up. Because right now, it's so low
23 that if they go in there and they do put the plates
24 in like they want to do, it probably would not heal
25 back correctly. So they are just letting -- I'm

1 taking shots, once-a-week shots to get to bone -- try
2 and get that back up.

3 Q All right. All right. Thank you. Yeah. To
4 summarize, do you feel that John McCarty saved your
5 life that night?

6 A Absolutely.

7 Q Do you feel that if he had done -- not done
8 what he did, that you still be alive today?

9 A I don't think I'd be sitting here right
10 now.

11 Q That you would have --

12 A Not like I am. I wouldn't have probably
13 walked up here. I could have been paralyzed or dead.

14 Q And that's partially because of your
15 weakened neck from the automobile accident long ago,
16 correct?

17 A Yes.

18 Q All right. No more questions of this
19 witness.

20 THE COURT: All right. Yes, sir.

21 MR. CLEVELAND: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. CLEVELAND:

24 Q Mr. Wilson, just to be clear, you didn't
25 suffer any injuries to your neck that night, did you?

1 **A** Yes. It was painful. It was very painful
2 because I only have two vertebrae that work, which is
3 number 2, number 1 and number 8.

4 **Q** Oh, yeah. But you didn't suffer anything
5 that would -- you didn't suffer any great injury to
6 your neck. You can still walk. You can still move,
7 correct?

8 **A** Yes, yes.

9 **Q** You didn't have a re-break or any of those
10 ---

11 **A** No, sir.

12 **Q** --- types of things. And these injuries
13 that occurred to your foot, that happened during the
14 first, I'll call it, scuffle, when he pushed you off
15 the porch, right?

16 **A** The second.

17 **Q** You said you broke your -- in your
18 testimony, you said you broke your foot when you
19 broke the step and fell off the porch?

20 **A** Yes.

21 **Q** That's when that first -- that's when those
22 injuries occurred. It didn't occur standing beside
23 the door when you initially were tangling?

24 **A** No, not my foot. No, sir.

25 **Q** Okay. So in summary, you didn't suffer any

1 permanent injuries during the fight by the door with
2 Mitch, correct?

3 A Not -- not -- Yes, sir.

4 Q Okay.

5 A No, sir.

6 Q Isn't it true you told police a little
7 different version of the story, both on the recorded
8 interview and in your written statement than what you
9 told this Court today, correct?

10 A No, sir. Not to my knowledge.

11 Q Well, in your statement, you never
12 mentioned anything about Mitchell grabbing you by the
13 truck after you spilled his beer, correct?

14 A No, sir. I didn't.

15 Q All right.

16 A I did at the hospital with the SLED
17 investigator. He called in the camera person and took
18 pictures of my left arm where the first -- when
19 Mitchell first grabbed me on this side.

20 Q Well, I mean, do you remember writing this
21 two-page statement?

22 A I told the two-page statement.

23 Q Okay. But you remember signing it?

24 A Yes.

25 Q At the bottom. Did you review it prior to

1 signing it?

2 **A** I have dyslexia, so it's hard for me to
3 read and write.

4 **Q** Well, at the bottom, it says, I read each
5 page of this statement consisting of two pages, et
6 cetera, et cetera, et cetera and this is your
7 signature. Did you acknowledge that that was your
8 statement when you signed it?

9 **A** Yes.

10 **Q** But in that statement -- I don't know if
11 you've had a chance to review it or not. I'll be
12 happy to let you read it. But you never said anything
13 about Mitch grabbing you. You never said anything
14 about being in fear for your life during the fight,
15 correct?

16 **A** I don't know.

17 **Q** Well, I'll just read you a portion. It
18 says, he shoved me into the left corner, like if you
19 were walking into the back door of my house. Then I
20 started hollering because he was shoving me and
21 hurting me. This is when John came and saw what was
22 happening. You never said, at that point in time, I
23 feared for my life, correct?

24 **A** I did say that I did have a broke neck to
25 the detective.

1 Q Yeah, and I acknowledge that. What I'm
2 saying is when you're telling this story like you
3 told it today, you never said, at that point is when
4 I was fearful for my life, right?

5 A I don't recall. I could have.

6 Q Okay.

7 A I did. I was fearful or I would not have
8 hollered for Mr. McCarty to come.

9 Q Okay. And do you remember the detective
10 giving you -- recording a statement when you were
11 sitting on the back of the pickup truck that night
12 after all this happened?

13 A Yes.

14 Q All right. And you never said during that
15 statement that you were in fear for your life,
16 correct? You had a chance to listen to it?

17 A I haven't listened to none of that or
18 anything like that, no.

19 Q All right.

20 A I was so upset at that time that it was
21 just hard for me to comprehend everything that just
22 happened.

23 Q Okay.

24 A I never had that -- you know, someone die
25 or pass away like that.

1 Q All right. And just to talk back about your
2 testimony a little bit, you said that -- correct me
3 if I'm paraphrasing you incorrectly. After Mitch
4 grabbed you by the truck for spilling his beer, you
5 walked up on the porch and that's when he shoved you
6 off the porch. Then you went back up on the porch and
7 that's when the fight started. You thought it was
8 essentially over, but you went back up to try to go
9 in the house and he grabbed you again.

10 A Yes.

11 Q But in your statement to police, what you
12 told them was that after the police had left, you
13 told them that if they don't do something,
14 something's going to happen because it's only getting
15 worse. After that, you started pouring out their
16 beers.

17 A No, sir. I took -- there was a case of beer
18 that was on the porch. I dumped their beer -- the
19 first beer was on the hood of Jacob's truck.

20 Q Yeah.

21 A So that poured out.

22 Q But you said, after that, I started pouring
23 out their beers and that is when Mitch started
24 shoving me down the porch off the steps and that's
25 when I injured my knees. Do you remember telling the

1 police that?

2 A No.

3 Q You don't --

4 A I never touched one beer except for the
5 beer that was laying -- there was a case. It looked
6 like it was, I'm assuming, empty. I grabbed the case
7 of beer and threw it off of the porch.

8 Q All right.

9 A As far as picking up a beer and pouring it
10 out, no, sir. Absolutely not.

11 Q So at 1:51 a.m. at the hospital, the night
12 after this incident, which was 7/15 -- 7/16/15, you
13 did not tell the police officer that you started
14 pouring out their beers and that's when Mitch
15 attacked you, pushed you off the porch.

16 A I spilled the beer, yes.

17 Q But you didn't --

18 A Pouring, no.

19 Q What I'm getting at, Mr. Wilson, is it
20 sounds an awful lot to me like you were egging them
21 on by pouring out their beers, with this statement.
22 But you're saying that didn't happen here today?

23 A Correct. I never touched their beer to pour
24 the beer out. I did knock over the beer, yes.

25 Q Now, I want to just talk about initially

1 this fight was between you and Jake. Mitch didn't
2 have anything to do with it, correct?

3 A Correct.

4 Q And it was not physical, correct?

5 A With Jake and I?

6 Q Yeah.

7 A Yes.

8 Q It was not physical?

9 A It was, at first. That's when Jake
10 footballed me, whatever you call it. Shoulder to
11 shoulder.

12 Q Right, but no one threw any punches or
13 anything?

14 A No, sir. I was threatened by Jacob Kirk
15 that he was going to slice me up.

16 Q Okay. Let me ask you, all right, you've had
17 this neck condition for 30 -- almost 37 years now,
18 correct?

19 A Yes, sir.

20 Q And it -- to you, the way you describe it,
21 you could have a very fragile neck injury that could
22 end your life, right?

23 A Yes.

24 Q And is it fair to say that you have -- I
25 guess you're more susceptible to injury than someone

1 else, to their neck, right?

2 **A** Yes, sir.

3 **Q** So why, if you're this fragile, when you're
4 around these two younger men, did you stay engaged
5 and involved with them?

6 **A** No, sir. Not after I left outside the house
7 to fix the truck. I did not go and speak to either
8 one of them. Jake didn't say nothing to me. Mitch is
9 -- came out to the truck to me.

10 **Q** So -- all right. So Mitch comes out to you
11 and he grabs you?

12 **A** For knocking the beer off --

13 **Q** For knocking the beer over. And he's drunk.
14 By your testimony, he's drunk, Jacob's drunk, you're
15 sober. Mitch grabs you by the truck. Why, at that
16 point in time, did you even go anywhere near them if
17 you are so fragile?

18 **A** I thought it was done and over with because
19 I thought it was an accident.

20 **Q** All right. And when you went up on the
21 porch and knocked around a few beers that you now
22 testify that's contrary to your statement, and Mitch,
23 with no provocation, grabs, smacked your headlight
24 off and threw you down the stairs breaking your leg?

25 **A** He didn't throw me; he pushed me.

1 **Q** Pushed you down the stairs. All right. At
2 that point in time, is it fair to say that it's not
3 over. Why, at that point in time, did you go -- if
4 you're so fragile, did you go back around these two
5 young men that were so drunk and belligerent, by your
6 testimony?

7 **A** To get into the house.

8 **Q** But the house has another door, correct?

9 **A** Yes. I could not make it because I already
10 had a broke foot from being shoved off the porch.
11 Couldn't even walk.

12 **Q** Yeah, but you walked up on the porch?

13 **A** Yeah.

14 **Q** Off the stairs?

15 **A** Yeah.

16 **Q** Around the corner to the door, right?

17 **A** Bannister, yes, sir.

18 **Q** All right. But at that point in time, you
19 weren't hollering for John to come help you.

20 **A** I couldn't get close enough to the door.

21 **Q** I mean, if you would walk from the back
22 yard to the door, how come you couldn't walk 63 feet
23 around the trailer to go in the front door?

24 **A** Because it was about eight feet from the
25 door to there. There was a bannister there.

1 Q Regardless, if you can walk, you can walk.
2 If you can't, you can't. You agree with me on that?
3 Eight feet or 60 feet, if you can walk, you can walk
4 a distance, right?

5 A Yes and no.

6 Q All right. Why could you walk eight feet
7 and you couldn't walk 60 feet if your life depended
8 on it?

9 A Because there was a bannister there. There
10 was a ledge there that I could grab ahold of to keep
11 the pressure off of my right leg.

12 Q Okay. Is it your testimony that you --

13 A From 60-some-odd feet, there is nothing to
14 hold on to.

15 Q All right. So is it your testimony that you
16 were clinging to the ledge to get up on the porch to
17 try to get to the door and Mitch attacked you?

18 A Once I was on the porch to the door to open
19 it up, that's when the beer that was on the
20 handrailing that was knocked off in behind the
21 plastic piece of Poly Shield, whatever it is, that's
22 when that beer knocked off. I did not pour the beer
23 out. The beer knocked off of the bannister.

24 Q Did you push Mitchell out of the way to get
25 on the porch?

1 **A** Yes.

2 **Q** Okay. How did you push Mitchell if you're
3 clinging to the bannister?

4 **A** With one arm, while I'm holding on to the
5 bannister and standing on my left leg.

6 **Q** So at that point in time is when this fight
7 started. Tell me what Mitchell did to you, what
8 actual, physical force he exerted on you.

9 **A** When I got to the door, the beer was
10 already knocked over. I started opening up the door.
11 He took his hands -- hand or hands, shoved me in my
12 back, slammed the door. Then I -- when I hit the
13 door, I bounced back -- not bounced back but come
14 back a little bit and went up against the bannister.
15 That's when he got in front of me and was head to
16 head. I had no way to go nowhere from that point on.

17 **Q** So y'all were chest to chest at the
18 bannister?

19 **A** His arms were stretched out against me
20 pushing up against me.

21 **Q** All right.

22 **A** It was like embracing, you know, not like
23 that. He had me like this and was pushing me over the
24 bannister, which is 36 inches high and was pushing me
25 backwards like that.

1 Q He wasn't hitting you or striking you. He
2 was just pushing and shoving.

3 A Not at that time, no.

4 Q All right. So when did he start that?

5 A He didn't.

6 Q Huh?

7 A He did not hit me.

8 Q All right. So you were fearful for your
9 life by him pushing on your face?

10 A Yes, pushing on my face, twisting my neck
11 where it's not to be able to go. This is as far as I
12 can turn it to the left. That's as far as I can turn
13 it to the right. That's it.

14 Q All right. You testified that John wasn't
15 able to open the door. But if you were so tangled up
16 with Mitchell and concerned for your life, how were
17 you able to tell what John was able to do at all?

18 A Because we were right there at the door.

19 Q Well, you were right there. The door's got
20 a window, correct?

21 A Correct.

22 Q But you're up against the wall. So you're
23 looking at the door at a pretty steep angle, right?

24 A Yes, sir.

25 Q You can't see into the kitchen, correct?

1 **A** Correct.

2 **Q** But -- and by your testimony, you've got a
3 drunk kid that has got your neck at the point of
4 where it could break and severely injure you, but you
5 seem to have a very good understanding of what John
6 was doing inside the kitchen that you couldn't see.
7 Is that a fair assessment?

8 **A** No. I heard -- I hollered for him. I heard
9 the door go "bam." I'm assuming that it was kicked
10 because after the fact, I looked at the door and I
11 could see where it was hit, kicked in the center part
12 on it. So he was attempting to get out. I heard that.
13 Then a minute later, something like that, John fired
14 the warning shot into the floor. I heard that shot.
15 Then I heard the second shot. I don't know how many
16 total. There was two total. One was the warning. The
17 other -- the glass busted in the meantime.

18 **Q** After the shot was fired, Mitch fell to the
19 ground, correct?

20 **A** The second?

21 **Q** Yes.

22 **A** Yes.

23 **Q** The whole time, Jake was just standing on
24 the porch right there, correct?

25 **A** Yes.

1 Q All right.

2 A He even told his brother that John had a
3 gun ---

4 Q All right.

5 A --- after the first fire.

6 Q How long have you known Jake?

7 A I met Jake when he was a boy, 16, I would
8 say, through his grandfather.

9 Q All right.

10 A And then he was 18 when we got to talking,
11 just before he went into the Navy.

12 Q All right. So you've known Jake for, give
13 or take, 10 years?

14 A Yes.

15 Q Is that fair to say? And how long have you
16 known Mitchell?

17 A Mitchell? I would say about the same length
18 of time. I spent more time with Jake than I did with
19 Mitchell. We would go and have Christmas dinner and
20 Thanksgiving dinner with the Alexanders, the
21 grandfather.

22 Q But Jake did nothing to intervene in the
23 fight, correct?

24 A No.

25 Q He didn't help his brother assault you, did

1 he?

2 **A** He was -- not physically, no, sir. But
3 antagonizing, yes, sir.

4 **Q** All right. But you didn't tell police in
5 either one of your statements that Jake was
6 antagonizing at all, did you?

7 **A** No. Not that I can recall. I know that Jake
8 was there approximately about eight feet from us. Six
9 to eight feet.

10 **Q** And it's true that Jake was a permanent
11 resident of that location at the time, is this
12 correct?

13 **A** Yes.

14 **MR. CLEVELAND:** Your Honor, at this time, I
15 would like to play a -- it's about a six-minute
16 recorded interview of Randy Wilson on the night
17 of the incident. Again, I can have the officer
18 authenticate it, but I think he's made some
19 statements.

20 **MR. NEWTON:** No objection.

21 **(WHEREUPON, the recorded interview is played.)**

22 **BY MR. CLEVELAND:**

23 **Q** You remember making that statement?

24 **A** Yes.

25 **Q** You agree you never mentioned at any point

1 in that statement that you were in fear for your
2 life?

3 **A** No, I did not.

4 **Q** And you never mentioned anything about --
5 well, you said his feet were at the -- your feet were
6 at the door so he couldn't open the door?

7 **A** Yes, both of us were. We were both at the
8 door.

9 **Q** At any point, did you mess with Mitchell
10 Bradley's personal belongings that were on the porch?

11 **A** No.

12 **Q** And isn't it true that when this whole
13 thing happened that Jacob Kirk had already packed all
14 his stuff and had it ready to go, ready to leave?

15 **A** By the back door inside the house, yes.

16 **Q** And just real briefly, I want to show you
17 State's Exhibits 1 through 6. They are just
18 photographs. I don't need a whole lot of explanation.
19 I just want to have you authenticate and say that's
20 what it seemed like the night of the incident. Just
21 take a moment and flip through those please. Those
22 are just for the Court's consideration.

23 **A** Yes, this wasn't there, not in this
24 position here. This was over here. That would have
25 been Mitchell ---

1 Q Yeah. Okay.

2 A --- that was underneath that. He was over
3 here. You can see where the door --

4 Q Yeah. I'm not talking about -- I don't want
5 you to explain what happened here.

6 A Okay.

7 Q I just want you to look at the pictures and
8 say if they accurately represent the way everything
9 looked after it happened.

10 A Yes.

11 Q That's your door?

12 A Yes, that is my door. There is where I was.

13 Q Yeah, just flip through them and tell me if
14 that's...

15 A (Reviewing.)

16 Yes, sir, except for that one that was
17 there.

18 MR. CLEVELAND: Let the record reflect that
19 the witness has looked at State's Exhibits 1
20 through 6 and said they accurately reflect the
21 night in question.

22 THE COURT: All right. It so reflects.

23 BY MR. CLEVELAND:

24 Q You didn't try to get out from under Mitch
25 on the porch, did you?

1 **A** Yes. He was too strong for me. I could not
2 get him off of me. Could not push him off of me.

3 **Q** So --

4 **A** Which part are you talking about? At the
5 door?

6 **Q** I'm talking about -- I'm talking about when
7 he was killed.

8 **A** Okay. I could not physically. He was a lot
9 bigger than me and stronger than me. I could not
10 physically get him off of me.

11 **Q** If you don't mind me asking, Mr. Wilson,
12 how tall are you, how much do you weigh?

13 **A** I'm 5 foot 8 and I weigh 145.

14 **Q** You didn't try to go to the right where the
15 steps were on the porch to get out from under him?

16 **A** I possibly tried. I don't remember. I don't
17 know what maneuvers I tried to do at the time just to
18 try to get him off of me.

19 **Q** All right. Mitch didn't have any weapons,
20 correct?

21 **A** Not that I know of.

22 **Q** He didn't pull a knife or a gun on you?

23 **A** No.

24 **Q** He didn't have a bat or a stick?

25 **A** No.

1 **MR. CLEVELAND:** That's all the questions I
2 have for this witness.

3 **THE COURT:** Any follow-up questions?

4 **MR. NEWTON:** Briefly, Judge.

5 **REDIRECT EXAMINATION**

6 **BY MR. NEWTON:**

7 **Q** The prosecutor referred to Mr. Bradley as a
8 kid. Approximately how old was he at the time? Was he
9 about 23 years old?

10 **A** I believe so. He was in his 20s. He was of
11 age to buy alcohol. He had just got back from the
12 store from buying more alcohol.

13 **Q** And was he a stronger person than you?

14 **A** Yes, definitely stronger than me.

15 **MR. NEWTON:** Your Honor, since this
16 witness' prior written statement has been
17 challenged, we'd like to introduce it into the
18 record and question him about it.

19 **THE COURT:** All right.

20 **MR. CLEVELAND:** I don't have any objection.
21 It's for the Court's consideration.

22 **THE COURT:** What would this be? Defense's
23 1?

24 **MR. NEWTON:** Yes, ma'am.

25 **(WHEREUPON, Defendant's Exhibit 1 is marked for**

1 identification purposes.)

2 **BY MR. NEWTON:**

3 **Q** Mr. Wilson, you did provide a written
4 statement the day after this incident, correct?

5 **A** The day of, yes, sir.

6 **Q** Is this a copy of it? Two pages long?

7 **A** (Reviewing.)

8 It looks to be, yes, sir.

9 **Q** All right. I'm directing your attention to
10 the last sentence of that statement, the last
11 sentence on the second page. Can you read it aloud
12 please?

13 **A** Which part?

14 **Q** The very last sentence, sir.

15 **A** Right there? That part right there?

16 **Q** Uh-huh.

17 **A** Have done what I --

18 **Q** Of this statement, the part right there.

19 **A** Start right there?

20 **Q** Yes, sir.

21 **A** Oh. There is no doubt in my mind that if
22 John had not done what he had -- he did to help me, I
23 would have seen -- looks seen taken to -- I have
24 dyslexia and I have a hard time reading. So...

25 **Q** I'm sorry.

1 **A** It's really embarrassing because I don't
2 like people to know.

3 **Q** I don't mean to embarrass you, sir. So you
4 did not -- this is not in your own handwriting. You
5 did not write this?

6 **A** No, I did not write that. I cannot write
7 like that.

8 **Q** So a police officer wrote this for you?

9 **A** Yes, sir. A SLED officer did, yes, sir.

10 **MR. NEWTON:** If there's no objection, I'll
11 read the last sentence aloud.

12 **MR. CLEVELAND:** No objection.

13 **MR. NEWTON:** There is no doubt in my mind
14 that if John had not done what he did to help
15 me, I would have been taken to the morgue. So
16 you did tell the police that. No more questions.

17 **THE COURT:** All right. Anything else for
18 this witness?

19 **MR. CLEVELAND:** No, Your Honor. Thank you.

20 **THE COURT:** All right, sir. You can step
21 down.

22 Let's take a five-minute break.

23 **MR. CLEVELAND:** Thank you, Your Honor.

24 **(WHEREUPON, the Court goes off the record at**
25 **approximately 11:15 a.m.)**

1 **(WHEREUPON,** the Court goes on the record at
2 approximately 11:25 a.m.)

3 **THE COURT:** Are we ready for our next
4 witness?

5 **MR. NEWTON:** Yes, Your Honor. I don't
6 think he will take nearly as long.

7 **THE COURT:** Okay.

8 **MR. NEWTON:** I was just establishing a lot
9 of the background with the first witness.

10 **THE COURT:** I understand. No, I certainly
11 understand.

12 **MR. NEWTON:** We call John McCarty to the
13 stand.

14 **JOHN McCARTY**

15 having first been duly sworn, testifies as follows:

16 **THE CLERK:** State your full name for the
17 record.

18 **THE WITNESS:** John William McCarty.

19 **THE CLERK:** Please be seated.

20 **DIRECT EXAMINATION**

21 **BY MR. NEWTON:**

22 **Q** Mr. McCarty, let's cut to the chase here
23 and go directly to the day in question, the day of
24 the shooting. You had been working that day, correct?

25 **A** Yes, sir.

1 Q About what time did you get home, do you
2 remember?

3 A I don't really recall what time because my
4 hours fluctuate each day. I believe it was around --
5 it was either 5:30 or 6:30 because that's normally
6 about an average time of when I did get home from
7 work.

8 Q What sort of work do you do?

9 A I do heating and air, heating and air
10 conditioning. We put in generators, solar panels, a
11 variety of things. I work for Carolina Heating. I
12 been there for actually 14 years, not 15 years. It
13 will be 14 years at the end of this month.

14 Q All right, sir. Now, when you got home, who
15 all was there at that time?

16 A Jacob was there. He had -- he just seemed
17 like he had come home in a bad mood that day from his
18 work. He was just already drinking and stuff like
19 that, him and Mitch. Randy stopped in later.

20 Q So -- okay. Did you stay up and drink with
21 these people or what did you do?

22 A I had one glass of wine that day with my
23 dinner. Sometimes I'll drink one glass of wine or a
24 glass and a half of wine a day. I don't normally
25 drink no more than that.

1 Q All right. Well, I mean, did you stay out
2 in the common area or did you go somewhere else
3 inside the trailer?

4 A I stayed in the common area for a little
5 bit. I don't know if I went in to read a little bit
6 because a lot -- sometimes I'll read my Bible here
7 and there. Mostly, I'm just running -- either I'm in
8 the living room watching TV or I'm in the bedroom.

9 Q Okay. So you were in your bedroom, correct?

10 A Yeah, that evening.

11 Q All right. Did you hear a commotion at any
12 point?

13 A There was a little bit of a commotion
14 earlier that evening. But even before I went to bed,
15 it was like a normal quarrel where, you know, people
16 go back and forth in life with disagreements. It was
17 all that was earlier in the night.

18 Q All right.

19 A So I had went on to bed. I didn't think
20 nothing of anything.

21 Q Were you aware that there was a time that
22 sheriff's deputies came out there during the evening?

23 A Yes. There was -- the first time that the
24 sheriffs come out, I started to get up out of bed and
25 the officer looked in the room. He sat there and he

1 told me that there was no reason for me to get up,
2 that they had the situation under control. So I
3 turned around and I just went back to sleep because I
4 had to get up the next morning to go to work.

5 Q And had you heard the yelling that led to
6 the officer showing up?

7 A Yeah, I heard -- I was up and down, but I
8 dozed back off most of the time.

9 Q You didn't take it seriously or didn't
10 think there was any reason for you to intervene?

11 A No, it was a little heated, but I wasn't
12 really concerned at that point in time.

13 Q But then later in the evening, did
14 something else happen that made you concerned?

15 A The time that I got concerned was after the
16 officer came. He said that I didn't have to get up,
17 that they had it under control. I didn't know how
18 much time had elapsed. I just went back to sleep. I
19 heard Randy cry like I never heard him cry before, a
20 help cry of life-or-death. So I jumped out of bed. I
21 didn't even put any clothes on. I just jumped out of
22 bed and went straight to the door to see what was
23 wrong.

24 Q Did you take a firearm with you?

25 A Yes, I took my firearm with me because it

1 was like a baby's cry. A baby's cry has a certain
2 sound to it that is a piercing sound. When they have
3 that piercing sound, it's totally different than a
4 normal sound. Randy's cry was abnormal. I never heard
5 it before.

6 Q When you say cry, do you mean like a
7 scream?

8 A A screaming help.

9 Q Was he calling for you, your name
10 specifically?

11 A Yes.

12 Q What exactly did he cry out, if you recall?

13 A I believe all it was was help, I need your
14 help. But it was in a tone of voice that I can't
15 explain. It was something that would wake you up out
16 of a dead sleep.

17 Q And what was going through your mind at the
18 time?

19 A I panicked. I knew there was something
20 seriously wrong. I grabbed my firearm, walked towards
21 the door. I fired one warning shot in the floor?

22 Q When you got to the door, what did you do?
23 What did you see?

24 A I seen Randy -- Mitch had Randy held. At
25 the same time, I fired a warning shot to where it

1 would break him up, where it would stop everything.

2 Q What effect did that have, if any?

3 A That didn't have no effect. Then I started
4 seeing Mitch swinging.

5 Q This warning shot, where did you fire the
6 warning -- the bullet into?

7 A Into the floor.

8 Q Into the floor?

9 A Probably -- the bullet hole is still there
10 in my mobile home. I have to look at it everyday.
11 It's about two feet -- two, two and a half feet from
12 the doorway.

13 Q Did you try to open the door and go
14 outside?

15 A I tried to kick the door and open the door
16 at the same time.

17 Q You were unable to do that?

18 A I was not able to do that.

19 Q Why not?

20 A Because Randy and Mitch both had the door
21 blocked. It wasn't just Randy, it was both of them
22 that had the door blocked. Randy was at the corner of
23 the door and Mitch was right there at the other side
24 of the door. There's no other room there.

25 Q And this door opens outwards?

1 **A** And the door opens outward.

2 **Q** Why didn't you go out the front door and go
3 around the trailer? Why didn't you do that?

4 **A** By the time I would have got there, Randy
5 would have been dead.

6 **Q** That's what you saw? It was that serious?

7 **A** That's how serious I thought it was. It was
8 a life-or-death. I made a choice. I'm not happy with
9 it. I'm not happy with the choice that I had to make,
10 but I still had to make a choice.

11 **Q** What was the choice?

12 **A** To stop the threat.

13 **Q** Or?

14 **A** Or lose Randy -- Randy lose his life.

15 **Q** You shot through the window?

16 **A** I shot through the window. That was my only
17 choice that I felt like I had.

18 **Q** What did you do after the shooting?

19 **A** I -- once I noticed that the altercation
20 was at a standstill, I went and put my weapon away
21 and I paced the floor until the police officers got
22 there.

23 **Q** And did you go -- did you give a statement
24 to the police?

25 **A** Yes, sir. I did give a statement to the

1 police.

2 Q You did? All right.

3 MR. NEWTON: No further questions of this
4 witness at this time.

5 THE COURT: All right. Yes, sir.

6 MR. CLEVELAND: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. CLEVELAND:

9 Q Mr. McCarty, you shot Mitchell Bradley
10 twice in the upper torso at point-blank range killing
11 him, correct?

12 A I'm not -- I shot it in the lower --
13 somewhere in that area, but I'm not exactly sure
14 where.

15 Q Not once, but twice, correct?

16 A That, I can't argue. I can't argue that I
17 didn't shoot him twice, but I can't argue that I
18 didn't shoot him once.

19 Q All right. And if this was such a dire
20 life-or-death situation, how can you explain stopping
21 and pausing and firing a warning shot?

22 A A lot of times, if you fire a warning shot,
23 you can diffuse a situation, things would break up
24 and then you'd have a chance to talk with the people.

25 Q Sure.

1 **A** And it would --

2 **Q** I agree with you. But your testimony wasn't
3 it was a diffusable escalating situation, you said
4 Randy cried like you never heard him cry and it was a
5 life-or-death situation.

6 **A** Correct.

7 **Q** How did you have time to pause, fire a
8 warning shot and then move on to shooting if it was
9 life-or-death when you got to the door?

10 **A** Because I was trying not to have to shoot.

11 **Q** Well, Randy's life, in your opinion, as you
12 testified, would have been over in just the amount of
13 time that it would have taken you to walk out the
14 front door and walk around the end of a single-wide
15 trailer. But your testimony also is that you had time
16 to stop, look at the situation and fire a warning
17 shot, that Randy wasn't in so much danger where you
18 had to act immediately. But just after firing a
19 warning shot, then he was in a life-or-death
20 situation where you had to shoot, correct?

21 **A** It continued, yes.

22 **Q** It didn't get worse though. It was the same
23 situation, right?

24 **A** No, it actually intensified.

25 **Q** And how was Mitch standing when you shot

1 him? Where was he?

2 A He was over Randy.

3 Q And you were inside the kitchen, correct?

4 A Correct.

5 Q Weren't you worried about striking Randy
6 with the bullet if he was right over Randy when you
7 shot him?

8 A No, because I aimed towards Mitch.

9 Q All right. Let's look at a photograph. I'm
10 going to put up what's been marked as State's Exhibit
11 Number 5. Is this the back door of your residence
12 where this whole thing happened?

13 A Yes, sir.

14 Q And if Mitch had Randy up against the
15 railing there and you were inside the kitchen which
16 was somewhat offset, you were having to shoot him
17 from some angle, weren't you?

18 A No.

19 Q So you shot straight into Mitch is what
20 your testimony was?

21 A I shot left-handed.

22 Q You shot left-handed. So as you're standing
23 on the other side of that door --

24 A No, I shot him with my right hand.

25 Q Okay.

1 **A** I mix up my left and my right all the time.

2 **Q** And you were shooting to kill, correct?

3 **A** No.

4 **Q** But you shot him -- let me ask you this,
5 it's true that you hunt deer, right?

6 **A** I shot to wound. I didn't shoot to kill.

7 **Q** In his upper torso, where his vital organs
8 are, where you shot him twice --

9 **A** The only clear shot I had was his lower --
10 was his lower torso.

11 **Q** Okay.

12 **A** When you -- if you sit -- when you sit
13 there and you only -- if I would have went up higher,
14 then I would say, yeah, I was more intent to kill
15 that person. But I shot lower, the only area where I
16 could see because it was dark.

17 **Q** You couldn't see his shoulder?

18 **A** I could have shot his -- seen his shoulder.
19 But then if I shot at his shoulder, it would have
20 been straight through his heart. His arm was up like
21 this when I shot him.

22 **Q** So your testimony is you shot him in his
23 lower torso with intent to wound?

24 **A** Yes.

25 **Q** All right.

1 **A** I never intended to kill him.

2 **Q** Let's go back through your statement just a
3 little bit. Now, you talked -- first off, I want to
4 talk to -- you talked to the police the night of this
5 incident, correct?

6 **A** Yes, sir.

7 **Q** And that interview lasted about two hours,
8 correct? An hour -- an hour maybe?

9 **A** About an hour and a half.

10 **Q** Okay. And during that interview, you agree
11 with me that initially you didn't tell the police
12 what you told us in court today, that you
13 intentionally shot Mitchell, correct?

14 **A** (No audible response.)

15 **Q** Did you tell police that you tried to open
16 the door but the gun hit the door and just went off?
17 You recall telling the police that?

18 **A** I'm still not sure to this day because I
19 was fighting with trying to get the door open and
20 trying to sit there and get through the door. I had
21 my gun in my hand at the door. That's the same thing
22 as what I told the officer that day. I wasn't sure.

23 **Q** Okay. All right.

24 **A** But I sit there and I told him, I said,
25 either way, regardless, I still shot him.

1 Q But you're not refuting the evidence that
2 Mitch was shot twice, correct?

3 A I'm not refuting that because I could have,
4 in --

5 Q Can we agree Mitch was shot twice in this
6 case, correct?

7 A Yes. Yeah, we can agree.

8 Q And both of those shots came from your
9 Beretta nine millimeter?

10 A Yes.

11 Q But during this, you didn't have -- make
12 any assessment whatsoever whose fault this fight was,
13 correct?

14 A I couldn't tell you. To be honest, no, I
15 can't say whose fault -- who started it. All I know
16 is I had to make a choice.

17 Q And the choice you made was, at all cost,
18 you were going to protect Randy from what you
19 perceived was an attack on him, correct?

20 A Correct. Was to save his life.

21 Q Now, your testimony is you couldn't open
22 this door. They were both in front?

23 A They were both blocking the door, yes.

24 Q All right. But I'm a little confused.
25 Please explain to me. On one hand, we've heard

1 testimony that Mitchell had Randy bent over the
2 railing over here.

3 **A** Right there -- Randy was right there at the
4 -- you see where the seam of the door is?

5 **Q** Mr. McCarty, if you'd like, there's a laser
6 pointer in front of you. There's a red button. That
7 black thing has got a red button on it that says
8 "Laser." You can use that. When you shot him, where
9 was Randy and where was Mitchell?

10 **A** Randy was right here. That's where Randy
11 was, was right there leaned over this right here.
12 Mitch was right here with his head -- his head was
13 about here. His arm was about here. His lower torso
14 where I shot through at a downward angle was the only
15 clear shot I had.

16 **Q** All right. So he was in the middle of that
17 door, was that a fair statement?

18 **A** Yes.

19 **Q** And the fridge -- you've got about -- let's
20 say about a one-foot gap on this side between the
21 fridge and the door frame, correct?

22 **A** Less than that, actually.

23 **Q** Ten inches, something like that. Wouldn't
24 you agree with me that you wouldn't have to get that
25 door all the way open, all you would have to do is

1 get that door cracked enough to get your body through
2 it. You could have passed out and been on the porch
3 with them, too, while they were fighting, correct?

4 A No.

5 Q So what you're saying is -- I'm just asking
6 if it was possible. All you had to do was to get the
7 door cracked open enough to slide through it in front
8 of the fridge.

9 A When both of them were totally against the
10 door --

11 Q I -- I -- yeah. We'll get there. I
12 apologize if I'm not being clear. Let's assume nobody
13 was there. What is the least you would have to open
14 that door to be able to pass out? Would you agree it
15 would be maybe a foot, 18 inches or so?

16 A About 18 inches.

17 Q At this point, with Mitchell in the middle
18 of the door with you on the other side, you had a
19 substantial amount of leverage on him being able to
20 push on the outside of the door if he was standing in
21 the middle, correct?

22 A No. I tried kicking it and pushing it at
23 the same time and I still could not get past Mitch.

24 Q You testified you had your gun in your
25 hand, right ---

1 **A** Yes.

2 **Q** --- the whole time? So you could only push
3 on the door with one hand because your other hand was
4 occupied with the gun, correct?

5 **A** With my hand ---

6 **Q** Yeah.

7 **A** --- and with my foot.

8 **Q** Okay. But wouldn't you agree with me that
9 you would have a lot more force pushing on a door
10 with two hands than just one or a hand with one gun
11 in it?

12 **A** Then you also have to think, if I was to
13 lay the gun down somewhere and I got out the door or
14 someone got back in the door, then they could have
15 had the weapon in their hand and shot somebody else.

16 **Q** Yeah, but that didn't happen, Mr. McCarty.
17 I'm asking you would you agree with me that you had a
18 lot more force -- you could have exerted a lot more
19 force on that door had your hands been empty than the
20 way you had the gun in your hand the whole time?

21 **A** Possibly.

22 **Q** All right. But you didn't do that. You
23 didn't put the gun down. You didn't holster the gun.
24 You didn't put the gun in your waistband. You held on
25 to the gun the whole time, correct?

1 **A** Correct.

2 **Q** All right. Randy testified it was between
3 63 and 100 feet around the front door of the house to
4 the back porch. It was, in your opinion, that -- how
5 long would it take you to run around the house?

6 **A** About five to eight minutes.

7 **Q** Five to eight minutes?

8 **A** Yes, because I'd have to go out the front
9 door. I'd have to unwind the gate that stays locked
10 because it's the dog kennel. Then I would have had to
11 come around. Then I would have probably had to go
12 through Jake that evening to get to Mitch to get
13 Mitch off of Randy.

14 **Q** All right. Five to eight minutes. The
15 statement that we listened to from Randy earlier was
16 seven minutes long, give or take. You're saying it
17 would take longer than that recording of Randy for
18 you to walk out, undo a gate and come around the back
19 of the house?

20 **A** Yes.

21 **Q** What about windows? The house has windows,
22 doesn't it?

23 **A** Yeah, the house has windows.

24 **Q** Are they operable to get out? Do they open?

25 **A** Yes. It was about eight foot off the

1 ground.

2 Q The front side, we saw pictures. But on the
3 back side, is it that far?

4 A I'm talking about the back side. It's about
5 eight foot up off the ground.

6 Q All right. So you couldn't go out the
7 window. Let me ask you, you test -- just to back it
8 up a little bit, you testified you worked with
9 heating and air conditioning. Is that manual labor?

10 A Yes.

11 Q Okay. So would you consider yourself to be
12 a physically able person?

13 A (No audible response.)

14 Q Do you have any infirmities that prevent
15 you from doing manual labor?

16 A No.

17 Q Okay. Now, I want to talk just a little bit
18 about what you said in your -- what was put in your
19 written statement that day that Sergeant James wrote
20 for you. Do you remember him typing a statement for
21 you and reading it back and you signing it?

22 A Yes.

23 Q In that statement, you say that when they
24 got home at 5:30, they were already drinking. So is
25 it a fair statement to say that by the time this

1 incident occurred, they had been drinking for five
2 and a half hours.

3 **A** Yes, sir.

4 **Q** All right.

5 **A** And even earlier that night, I told Mitch
6 that he's had enough to drink and not needed to go to
7 the store.

8 **Q** All right. But you said when you came home
9 around 5:30 that Randy, Jacob and Mitchell were
10 already drinking. Do you remember saying that?

11 **A** Yeah, I remember saying that.

12 **Q** All right. So Randy was drinking when you
13 got home.

14 **A** No, Randy wasn't home at that point in
15 time.

16 **Q** You said you went to bed around 9:30 and
17 they were still drinking but nobody was arguing, is
18 that true?

19 **A** Yes.

20 **Q** At this point in time, they had been
21 drinking for four hours. Everybody had continuously
22 drank between 5:30 and 9 o'clock?

23 **A** Give or take.

24 **Q** All right. Now, let's get to the point to
25 where you said you woke up to a heated argument

1 between Randy, Mitchell and Jacob. You could hearing
2 yelling, door slamming and things being thrown. You
3 could hear Randy telling Mitchell to go home or Jacob
4 to move out. And Randy called the police. The police
5 came out. But despite that argument, you never woke
6 up and got out of bed to see what was going on the
7 entire time.

8 **A** Right.

9 **Q** So at this point in time, isn't it true
10 that you just thought they were just drunk and acting
11 a fool?

12 **A** Yeah, at that point in time.

13 **Q** Well, couldn't throwing something hurt --
14 couldn't something being thrown at Randy hurt his
15 fragile neck?

16 **A** Nothing was thrown at Randy.

17 **Q** You were asleep. How do you know that? If
18 you were asleep and in your bed or laying in your
19 bed --

20 **A** I was laying in the bed, and awake. I could
21 hear Randy.

22 **Q** Okay.

23 **A** But then I could hear Jacob carrying on.

24 **Q** So even when the police showed up, you
25 didn't think it was serious enough to warrant you

1 getting up out of bed and going --

2 **A** They told me I didn't need to get out of
3 bed, that they had it under control.

4 **Q** Yeah, but come on, Mr. McCarty, it's --
5 these are people that live in your house. The police
6 show up. It's your testimony that you took the
7 police's word for it despite all of this argument you
8 been hearing going on?

9 **A** Well, aren't we supposed to trust the
10 police?

11 **Q** Well, certainly. But didn't you want to see
12 what was going on for yourself?

13 **A** I kind of knew that it was just a normal
14 argument, just an argument.

15 **Q** Okay. So at this point in time, even though
16 the police had been called out, there was no life-or-
17 death situation?

18 **A** Not at that point in time. There was no
19 fight or anything like that broke out at that point
20 in time.

21 **Q** All right.

22 **A** It wasn't until after the cops left that
23 something broke out.

24 **Q** All right. It wasn't until Randy hollered
25 for you crying like a baby that you realize there was

1 something serious going on. Everything else before
2 that, in your mind, had just been drunken bickering.
3 Tell me if that's not a fair assessment.

4 **A** Well, when you -- we've had other parties
5 at the house and things like that. Jake and Mitch has
6 been over there prior and other times, you know, and
7 drinking and carrying on and belligerent.

8 **Q** All right.

9 **A** But this was, you know -- I really didn't
10 think much about it.

11 **Q** All right. And I just want to be clear.
12 Isn't it true that you did not get up and go see what
13 was going on without your gun? You grabbed your gun
14 from the first moment you got up out of bed, correct?

15 **A** When I heard the cry like he cried.

16 **Q** Yeah. And let's pause right there. This is
17 not the first time that you've taken your gun at the
18 defense of Randy, correct?

19 **A** Correct.

20 **Q** And isn't it true that you -- when he's
21 been in a fight, you've fired warning shots into the
22 ground before?

23 **A** One other time. One other time.

24 **Q** All right.

25 **A** And it diffused the fight.

1 Q So you came into the kitchen armed. Is it
2 not true that you had to rack your gun to put one in
3 the chamber?

4 A Yes, sir.

5 Q And you didn't say -- and, of course, you
6 didn't tell the police this. It's just my assessment
7 of your previous statements. You never told anybody
8 or said stop, you never said anything to the folks
9 outside, correct?

10 A That would be because someone else said it.

11 Q You never said, hollered, yelled, gave a
12 warning shout. You just fired a warning shot,
13 correct?

14 A I fired a warning shot and then someone
15 said, he's got a gun.

16 Q All right. But you didn't say, Don't make
17 me do this, Mitch; I'll do it; Get off him; You're
18 going to kill him? You didn't say anything?

19 A No, cause I figured -- I figured Jake would
20 have done something ---

21 Q All right.

22 A --- because he was closer -- he was easier
23 to get to his brother and he knew his brother better
24 than I did.

25 Q He also knew Randy too. Based on your

1 understanding, he knew Randy had a condition with his
2 neck, correct?

3 A Yes.

4 Q So you didn't say a word. All you did was
5 fire a shot in the ground and then fire two shots
6 into Mitchell Bradley, killing him, correct?

7 A Yes.

8 Q You didn't yell at Jake, Jake, stop your
9 brother. You didn't say -- correct?

10 A No.

11 Q Now after the police got there or after you
12 shot, you testified you paced the floor. You didn't
13 go outside to render aid to Mitchell?

14 A No.

15 Q You didn't go outside to check on Randy,
16 who you feared was in a life-or-death situation?

17 A I seen Randy. Then I went and put my gun
18 away.

19 Q All right. You didn't call the police or
20 EMS?

21 A No, because they were already on the phone
22 with the police.

23 Q You just quietly retired to your room?

24 A No, I paced the floor.

25 Q You just stayed inside the house and waited

1 on the police.

2 **A** Waited on the police.

3 **Q** Now, you said that Randy -- this fight,
4 this pushing and swinging on his neck, you
5 interpreted as a life-or-death situation. Is it not
6 true that you have gotten into physical altercations
7 with Randy before?

8 **A** Back when he was younger.

9 **Q** I'm talking about within the last couple of
10 years. Are you saying you never got into a fight or
11 put Randy in a headlock or anything like that?

12 **A** Nope.

13 **Q** You said those fights were years ago. You
14 met Randy after his injury, correct?

15 **A** Yes.

16 **Q** So those fights you had years ago when he
17 was younger, he was -- it was after he still had the
18 same neck condition, correct?

19 **A** Mostly it was not a fight. You keep calling
20 it a fighting match or something like that. It was
21 more of a wrestling.

22 **Q** Okay.

23 **A** A lot of times, we would wrestle. It
24 wouldn't be a fight because I knew of his condition.

25 **Q** Okay. But you would agree with me that

1 people get seriously injured by wrestling all the
2 time. I mean, it's --

3 **A** Not when you know -- when you've known a
4 person for 30 years, you know of ways that you can
5 wrestle with them and ways that you can't wrestle
6 with them.

7 **Q** All right.

8 **A** And ways that will not hurt them.

9 **Q** Okay.

10 **A** The majority of times when we wrestle or if
11 we get into an altercation or a wrestling match, I
12 make it to where he falls on top of me to where he
13 does not get hurt.

14 **Q** All right. And we talked earlier about
15 this, kind of going back to the evening. Do you
16 remember telling the police when you were being
17 interviewed by Detective Taylor and Detective James
18 and during the arguing, you would say that Randy and
19 Mitch and Jake were all equal aggressors in the
20 argument?

21 **A** Yes, because I don't know the full
22 situation. I was not there for the whole
23 confrontation. I can not sit there and say Randy was
24 the main aggressor, Jake was the main aggressor or
25 Mitch was the main aggressor. I told the officer that

1 it was equal ---

2 Q Sure.

3 A --- rather than to sit there and say one
4 over the other.

5 Q Sure. So is it a fair statement to also say
6 you also can not say that Randy didn't have anything
7 to do with starting the argument?

8 A No, I can't say that neither.

9 Q All right.

10 A Because I don't know, like I don't know the
11 whole situation. All I know is the last part where I
12 had to make a choice.

13 Q And just to be clear, you and Randy, y'all
14 are partners, correct?

15 A Correct.

16 Q Intimate partners. Y'all are in a
17 relationship?

18 A Yes. Randy's more open than I am with it. I
19 try and keep it under the closet because of my work
20 and my reputation at work and stuff like that.

21 Q Sure. But he is --

22 A He's more open about it than I am.

23 Q He's the one in this whole situation that
24 you were the most loyal to, correct?

25 A Correct.

1 **Q** And just to clear up, when you shot
2 Mitchell, you didn't know who was the start or what
3 was the cause of that physical fight that was
4 happening on your back porch. You just made a
5 decision and shot Mitchell?

6 **A** Correct.

7 **MR. CLEVELAND:** That's all the questions I
8 have.

9 **THE COURT:** Any follow-up?

10 **MR. NEWTON:** Nothing further.

11 **THE COURT:** Sir, you can step down.

12 **MR. NEWTON:** Ma'am, that's it for --

13 **THE COURT:** All right. Anything from the
14 State?

15 **MR. CLEVELAND:** Your Honor, at this time,
16 it's the State's position that the defense has
17 not established, by a preponderance of the
18 evidence, immunity under the Castle Doctrine.
19 The deceased was a central guest in the house
20 and he had a right to be there. We have case law
21 on point. I can elaborate about, but that's the
22 issue. Going on to subsection (C) --

23 **THE COURT:** But didn't he try to eject
24 him? Didn't -- didn't one of the parties who
25 also lived there try to eject him?

1 **MR. CLEVELAND:** He did.

2 **THE COURT:** In fact, even called law
3 enforcement to eject him?

4 **MR. CLEVELAND:** He did. Again, the victim's
5 brother also lived there. He was his guest at
6 that point in time. I believe Mr. Wilson
7 testified the cop said, well, the brother says
8 he can be here. I can't make him leave. That's
9 when Randy said y'all are going to come back and
10 something's going to happen. Furthermore, under
11 subsection (A), I believe it requires a forceful
12 unlawful entry. There's no allegations there was
13 an entry being made. It was just a scuffle on
14 the back porch where both of them had a right to
15 be. I don't think subsection (A) applies.

16 The same under subsection (C). I think we
17 haven't heard -- each element -- sorry. I'm
18 ahead of myself.

19 **THE COURT:** That's okay.

20 **MR. CLEVELAND:** I believe that what the
21 court treats as self-defense or defense of
22 others is an issue that the courts essentially
23 agree that self-defense without the duty to
24 retreat must be proved to -- prove immunity
25 under the Castle Doctrine by preponderance of

1 the evidence. I believe that's State v. Curry. I
2 have a copy of that case.

3 **THE COURT:** All right.

4 **MR. CLEVELAND:** I don't think there's -- I
5 don't think there's any proof. I think it's a
6 jury question as to whether Randy is one without
7 fault, whether he had the right to exert self-
8 defense, himself. That would have to be the case
9 before Mr. McCarty would be allowed to defend
10 him with deadly force.

11 **THE COURT:** All right.

12 **MR. CLEVELAND:** I don't think -- again, the
13 State is prepared to present its side of the
14 case. But just based on what we've heard, I
15 don't think it's been established at this point.

16 **THE COURT:** All right. Your motion is
17 respectfully denied at this time. I know you'll
18 review it, this being a motion hearing rather
19 than a trial, when you proceed with the next
20 witness.

21 **MR. CLEVELAND:** Thank you, Your Honor. I'm
22 going to let Ms. Britni McCall with our office
23 handle the next witness.

24 **THE COURT:** All right.

25 **MS. McCALL:** Thank you, Your Honor. The

1 State calls Deputy Joey Williamson at this time.

2 **JOEY WILLIAMSON**

3 **THE CLERK:** Please state your name for the
4 record.

5 **THE WITNESS:** Joseph Williamson.

6 **DIRECT EXAMINATION**

7 **BY MS. McCALL:**

8 **Q** Thank you, Deputy Williamson. Will you
9 please tell the Court where you work?

10 **A** I work at the Pickens County Sheriff's
11 Office.

12 **Q** How long have you been an officer with the
13 Sheriff's Office?

14 **A** The Sheriff's Office? About three years.

15 **Q** Okay. And how long have you been an
16 officer?

17 **A** Going on 14 years.

18 **Q** Okay. Were you working on the night of July
19 15th, 2015?

20 **A** I was.

21 **Q** Were you called out to [REDACTED] that
22 evening?

23 **A** Yes.

24 **Q** How many times were you called out to that
25 location?

1 **A** Twice.

2 **Q** Okay. If you would, please explain the
3 circumstances of the first call you received to go to
4 that residence.

5 **A** The first call I received, a disturbance
6 had broke out at the residence. I arrived on scene
7 and met with Randy first. Speaking with him, his
8 speech was slurred. He appeared to be grossly
9 intoxicated. He wanted Mitchell Bradley to leave
10 because Mitchell was grossly intoxicated.
11 Approximately, Randy, Mitchell, Jacob and all got
12 into an argument.

13 **Q** You said that you spoke with Randy Wilson.
14 Did you also speak with Mitchell Bradley?

15 **A** I did speak with Mitchell.

16 **Q** Okay. And how did he appear?

17 **A** Mitchell's speech was slurred. He appeared
18 to be grossly intoxicated as well.

19 **Q** Okay. Did you also speak with Jacob Kirk
20 that evening?

21 **A** I did.

22 **Q** How did he also appear?

23 **A** His speech was slurred. He appeared to be
24 grossly intoxicated as well.

25 **Q** And was there anyone else present at the

1 residence that evening?

2 **A** Mr. McCarty was there. He was in his
3 bedroom. Didn't speak with him.

4 **Q** Okay. And when you spoke with these three
5 individuals, were they all outside? Were they inside?

6 **A** They were outside when I spoke to them.

7 **Q** Okay. Did they remain outside of the
8 residence the ---

9 **A** Yes..

10 **Q** --- entire time you were there?

11 **A** Yes.

12 **Q** And Mr. McCarty did not come outside of the
13 residence while you were there?

14 **A** No, no.

15 **Q** And what was the conversation, again, if
16 you could tell us, with Mr. Randy Wilson?

17 **A** Randy just said he had gotten into an
18 argument with Jacob over food. Then it escalated
19 between Jacob, Mitchell and Randy. They were just all
20 arguing with each other. They all intoxicated. Randy
21 wanted Mitchell to leave. Jacob wanted Mitchell to
22 say. It was confirmed -- I talked to Randy. Randy
23 said Jacob lived there. Jacob said he lived there and
24 he didn't want Mitchell go anywhere.

25 **Q** Okay. Did Randy appear angry at that point?

1 **A** Yes, Randy was aggravated. Jacob was
2 aggravated.

3 **Q** And how did Mitchell act? I know you said
4 he seemed intoxicated, but ---

5 **A** Mitchell --

6 **Q** --- was he --

7 **A** Sorry.

8 **Q** Mitchell was quiet. He didn't say a whole
9 lot to me other than I asked him direct questions and
10 he gave me direct answers. But that was the end of
11 it.

12 **Q** How long would you say you were at that
13 residence for that first call?

14 **A** Maybe 15 minutes, 20 minutes.

15 **Q** And did you determine that Mitchell Bradley
16 was there as an invited guest of Jacob Kirk?

17 **A** Yes.

18 **Q** And did Jacob Kirk want Mitchell Bradley to
19 remain at the residence?

20 **A** Yes, he wanted his brother to stay there.

21 **Q** And how did you conclude that call, that
22 first initial call?

23 **A** I spoke with Randy and told him my position
24 with the Sheriff's Office and what I could and
25 couldn't do. Everybody was sort of chill. But as I

1 was walking back to the patrol car, I could hear
2 Randy hollering that I was going to have to come back
3 and I was going to have to come back over and over
4 again.

5 Q At that time, you left the residence for
6 that first call?

7 A Yes.

8 Q When did you receive the second call from
9 dispatch to return to that residence?

10 A I don't exactly what time it was, but I
11 hadn't been gone five minutes.

12 Q Okay. And when the call came in, what type
13 of call was it?

14 A It was that shots had been fired and
15 somebody had been struck.

16 Q Did you receive any additional information
17 before you arrived on scene from dispatch?

18 A Only from the deputies that had beat me
19 there. They already posted up and they were taking
20 people into -- securing people. I walked past Jacob,
21 who was standing in the yard. I went around the
22 corner. I seen Randy on top of Mitchell. He was doing
23 CPR. I stepped over Mitchell, cracked the door open
24 and went inside and secured Mr. McCarty. Randy said
25 that John didn't mean to shoot Mitchell.

1 Q Let me back up for just moment. Jacob Kirk
2 was in the car when you arrived?

3 A Yes.

4 Q And where was Mitchell Bradley?

5 A He was on the porch.

6 Q And he was lying on the porch?

7 A Correct.

8 Q And where was Randy Wilson?

9 A He was leaning over top of Mitchell doing
10 CPR.

11 Q Okay. And how did you get into the
12 residence?

13 A I just cracked the door open enough to
14 where I could get in there, shimmied my way in and
15 went and found Mr. McCarty. Mr. McCarty was standing
16 still in the kitchen. He showed me his hands.

17 Q You entered the residence from the door on
18 the back porch?

19 A Yes.

20 Q That was the same porch where this incident
21 allegedly occurred?

22 A Yes.

23 Q And when you made contact with the
24 defendant, how did he act? What was his demeanor
25 like?

1 **A** He was, I think, almost in shock. He didn't
2 say a whole lot. He complied with putting his hands
3 behind his back and explained to the other deputy
4 where the weapon was. He was placed into a chair
5 until investigators could arrive.

6 **Q** Did he remain calm? Did he appear calm?

7 **A** Yes.

8 **Q** Those are all the questions I have, Deputy
9 Williamson. Thank you.

10 **THE COURT:** Any questions for this
11 witness?

12 **MR. NEWTON:** No, Your Honor.

13 **THE COURT:** All right. Sir, you can step
14 down. Thank you.

15 **MR. CLEVELAND:** Thank you, Your Honor. The
16 State would call Jacob Kirk at this time.

17 **JACOB KIRK**
18 having first been duly sworn, testifies as follows:

19 **THE CLERK:** State your full name for the
20 record.

21 **THE WITNESS:** Jacob Kirk.

22 **THE CLERK:** Please be seated.

23 **DIRECT EXAMINATION**

24 **BY MR. CLEVELAND:**

25 **Q** Mr. Kirk, how are you related to Mitchell

1 Bradley?

2 A He's my younger brother.

3 Q And how do you know John McCarty and Randy
4 Wilson?

5 A Through my grandfather ---

6 Q All right.

7 A --- on my mom's side.

8 Q On July the 15th of 2015, were you living
9 with Randy and John?

10 A Yes, sir.

11 Q And how long had you been living there?

12 A Roughly a year and a half to two years,
13 approximately. I don't know.

14 Q All right. What was your relationship with
15 John and Randy?

16 A I was just someone that lived there.

17 Q All right. What was your agreement with
18 them for living there? Were you paying rent?

19 A I mean, I offered at times, but they always
20 refused. I would just cut grass, weedeat, mop floors,
21 like he said, dust and stuff like that.

22 Q All right. Let's go to, the day in question,
23 do you remember July 15th of 2015?

24 A Yes, sir.

25 Q All right. Tell me what y'all were doing

1 that day.

2 **A** I got home first. My brother arrived home.
3 Thereafter, John. And then Randy came back from the
4 grocery store. I started drinking, like, right when I
5 got home, 5:00, 5:30, something like that.

6 **Q** All right. How did your brother get there?

7 **A** I believe he drove.

8 **Q** He had his car at the residence?

9 **A** Yes, sir.

10 **Q** All right. What were y'all drinking?

11 **A** Bud Light, me and him.

12 **Q** When you say him, who do you mean?

13 **A** My brother Mitchell.

14 **Q** All right. Who else was drinking?

15 **A** We were all drinking. John had the homemade
16 wine. Randy was drinking Southern Comfort, like he
17 always does.

18 **Q** All right. And tell me about -- did an
19 argument break out that night?

20 **A** Not until late.

21 **Q** All right.

22 **A** Not until the food thing.

23 **Q** By the time the food thing happened, had
24 John already gone to bed?

25 **A** Yes, sir.

1 **Q** Tell me -- tell the judge about your
2 experience with the food thing that you're referring
3 to.

4 **A** I walked in. Me and my brother was hungry.
5 I said -- Randy had his back turned. He was where the
6 stove is. He said -- he was talking to his family. I
7 told him, Randy, I'm going to divvy up these plates.
8 Do you have any way you want them divided up, let me
9 know. He said, I'm going to have to call you back and
10 then slammed his phone down on the counter. He turned
11 around slowly. He pointed and said, I want you and
12 you off my property now.

13 **Q** Okay. Had you -- how much had you observed
14 Randy to drink at that point in time?

15 **A** I mean, normally, he takes the bottle, like
16 a half-gallon and then pour a pint and pour himself a
17 drink for that night.

18 **Q** Okay.

19 **A** I don't know absolutely that that's how
20 much he drank. But typically, by that time, he would
21 have drank that much.

22 **Q** Okay. You mean a pint of straight liquor?

23 **A** Yes, sir.

24 **Q** Okay. Did you perceive him to be under the
25 influence at the time?

1 **A** Yes, sir.

2 **Q** All right. Were you under the influence at
3 the time?

4 **A** Yes, sir.

5 **Q** What about Mitchell?

6 **A** Yes, sir.

7 **Q** All right. Were y'all -- were you and
8 Mitchell on the same page or was one of y'all drunker
9 than the other?

10 **A** It was probably about 10 beers apiece, at
11 least.

12 **Q** All right. So why did Randy tell y'all to
13 leave?

14 **A** I have no earthly idea. We had not caused
15 any trouble. We had been outside the entire time. I
16 came in and said that. That's just what sparked
17 everything.

18 **Q** All right. What happened from there?

19 **A** Randy was yelling. I was yelling.
20 Eventually, he walked outside. After I had a little
21 bit of time to cool down, I started packing up my
22 stuff.

23 **Q** You were in the courtroom when the 911 call
24 prior to the shooting was played. Who was yelling in
25 the background?

1 **A** That was me yelling.

2 **Q** All right. You sounded pretty mad. What
3 were you mad about?

4 **A** I was furious. He was yelling at me before
5 this. You don't have a recording of that, his
6 behavior. Of course, he knows the recording is going
7 on so he's not going to act the same way that he was
8 acting.

9 **Q** Was he yelling at the same intensity as you
10 are recorded on the tape yelling, or less?

11 **A** Probably not quite. I was trying to do more
12 of an intimidating type of thing showing him that I'm
13 not afraid of him ---

14 **Q** Yeah.

15 **A** --- even though he was trying to body up
16 me.

17 **Q** What was Mitch's involvement in this?

18 **A** Mitchell didn't do nothing.

19 **Q** Uh, --

20 **A** He was always in the background trying to
21 calm me down.

22 **Q** All right. How did it get to the point to
23 where the police showed up?

24 **A** Well, like I said, he had that recording
25 going. I supposed they just came out there to

1 investigate the situation while I was packing up my
2 stuff.

3 Q Okay. And what were you doing when the
4 police arrived the first time?

5 A I was packing my belongings.

6 Q All right.

7 A And I moved them out to the front where the
8 kitchen is and walked outside where they were, you
9 know, listening to what they were telling us.

10 Q All right. Did the police make you and
11 Mitchell leave?

12 A No, sir.

13 Q Why not?

14 A Cause I was a residence -- a resident.

15 Q All right. Mitchell had his car there. This
16 is a pretty serious situation, I think you will
17 agree. Why didn't y'all just leave anyway?

18 A Well, if I had it all to do over again, I
19 definitely would have, drunk or not, or called
20 somebody. That would have been the first choice. But
21 I never expected it to go where it went.

22 Q Certainly. But why didn't y'all -- was
23 there any other reason why y'all didn't leave?

24 A I got a DUI, like, two weeks before that.

25 Q Okay.

1 **A** And Mitchell was drunk. I didn't want him
2 to get a DUI. The whole argument started over
3 nothing. I just didn't even see the point in the
4 reason Randy wanted us to leave.

5 **Q** Did you have somewhere to go nearby or
6 would you have had to drive somewhere far away?

7 **A** I could have drove to my aunt's. Excuse me.

8 **Q** But at the end of the day, is it fair to
9 say that you were too drunk to -- both were too drunk
10 to drive?

11 **MR. NEWTON:** Objection to leading
12 question.

13 **THE COURT:** Sustained.

14 **THE WITNESS:** Definitely was too drunk to
15 drive.

16 **BY MR. CLEVELAND:**

17 **Q** All right. So did you want -- when the
18 police were there, did you want Mitchell to stay and
19 did you want to stay?

20 **A** I didn't really think I had another choice.

21 **Q** Yeah.

22 **A** Didn't really want to stay, no. But I
23 didn't have -- I didn't have it in my mind to call
24 somebody.

25 **Q** Nobody forced you to leave?

1 **A** No.

2 **Q** After the police left, what happened?

3 **A** Walked up to Randy while he was fixing my
4 truck. And I said, see, just because it's your
5 property doesn't mean that you get to control
6 everything that goes on here.

7 **Q** Uh-huh.

8 **A** And he, like, threw down his tool or
9 smacked it down on the truck or whatever and walked
10 up and started just shuffling through Mitchell's
11 stuff. He had, like, cigarette tubes where he rolls
12 his own cigarettes and he was just making a mess of
13 things, throwing his stuff around.

14 **Q** All right.

15 **A** And then Mitchell walked up, like he said,
16 stop f'ing with my S, Randy. So he grabs Randy and
17 Randy, like, grabs at him at the same time. And then
18 Mitchell pivots and shoves him. Randy falls down the
19 porch. His foot hits and it snaps the step.

20 **Q** All right. Right there. Look at real quick,
21 State's Exhibit 2. Is this where all that happened?

22 **A** The -- okay. Randy is right here behind
23 this. There is where Mitchell's stuff was. From what
24 I remember, this was over here. This blue tote was
25 over here. That's where Mitchell's stuff was. And

1 there was a chair. That's where he was crumpling up
2 Mitchell's tubes and ---

3 Q Hold on a second.

4 A --- whatever else he was grabbing.

5 Q I've got a photo of that. Hang on. That's
6 State's Exhibit Number 4.

7 A That's the cigarette tubes.

8 Q Yeah.

9 A And that's what he was crumpling up. So
10 Mitchell walks up the stairs, grabs them, throws them
11 down and right here below the stairs, there's like a
12 patio.

13 Q Showing you State's Exhibit Number 2. Does
14 that show that patio?

15 A Yes, sir. Randy is laying right here. I'm
16 standing right here above him. And he's hollering for
17 John at this point. The other thing with the --
18 Mitchell grabbing Randy by the truck, that never
19 happened.

20 Q All right. So you never saw Randy grab
21 Mitchell by the truck?

22 A Unless it happened whenever I was packing
23 up my stuff, but I don't believe it. The way that
24 Randy is trying to say it is that it happened --

25 Q Just say what you -- just tell the Court

1 what you saw and what you observed.

2 **A** Okay. So I'm standing right here above him
3 while he's hollering for Randy, I mean, for John.
4 John doesn't come. I don't know. He's down on the
5 ground maybe 30 seconds, 45 seconds. So he gets up to
6 his feet. I back up. I let him go up the stairs.
7 He's holding on to the railing. I didn't know that he
8 had the broke foot at the time. He has the gout in
9 his leg. I thought he was just, you know, hurting
10 from the gout. So he's coming up. And right here,
11 there was a beer sitting right there. I guess that's
12 that beer. When he got to the top part, to the second
13 step from the top, he went like this and smacked the
14 beer off the railing.

15 **Q** Whose beer?

16 **A** Mine or Mitchell's. I don't know if it
17 matters. Whatever happened, it incited Mitchell to
18 grab Randy and push him into the corner like they
19 said that they was at.

20 **Q** Let me ask you this, was it trying to keep
21 his balance and knocked it over or did you --

22 **A** No, he swung ---

23 **Q** Okay.

24 **A** --- with, like, screw you guys, basically.

25 **Q** So then tell me what happened between

1 Mitchell and Randy.

2 **A** Mitchell put him in the corner. Randy kept
3 on screaming for John. At this time, he didn't have
4 him pushed. He was just there and he was popping him
5 in the face.

6 **Q** When you say he was popping him --

7 **A** With an open hand.

8 **Q** All right.

9 **A** Like this, across the face.

10 (Demonstrating.)

11 Not with, like, serious force, but he was
12 slapping him, trying to, I suppose, incite him to
13 throw the first punch.

14 **Q** Okay. All right. Tell us what happened
15 next.

16 **A** Well, he kept on popping him saying, What
17 you hollering for John for, Randy? What you hollering
18 for John for? About that time, maybe, after they been
19 in the corner for like 20 or 30 seconds, John walks
20 up. From my angle, it looked like John had the gun in
21 his left hand walking across.

22 **Q** Where were you -- where were you standing
23 in all this?

24 **A** I was right behind that shimmy at the edge
25 of the porch this way.

1 Q All right. How did you see the gun in
2 John's hand?

3 A I could see it through the glass corner of
4 the door. In my brain, I feel like the door was
5 cracked open. But I'm not certain.

6 Q Okay.

7 A I know that I saw the gun.

8 Q Okay.

9 A I said that John's got a gun before he ever
10 shot.

11 Q Yeah.

12 A It was obvious that he's got a gun. He
13 shoots the floor.

14 Q So what happened? How did the whole thing
15 transpire?

16 A Okay. He was -- he walked up with the gun.
17 When I say he's got a gun, Randy threw a punch.

18 Q Okay.

19 A It seemed like neither one of them was
20 hitting each other. It was like both hits were either
21 hitting a shoulder or missing completely.

22 Q Okay.

23 A Then John fired that one shot and Randy
24 pushed Mitchell off of him. Mitchell hit the fridge.
25 John raised up and popped him.

1 Q Where was Mitchell shot?

2 A He was up against the fridge.

3 Q And what did Mitchell do after he was shot?

4 A He, like, just jerked from the impact and
5 fell.

6 Q Did John say anything at all?

7 A Not a word.

8 Q Did you see John struggle or try to get out
9 the door?

10 A I don't remember him struggling. He might
11 have pushed it open one time and jumped back in, but
12 it was, like, that quick. I mean, it happened all so
13 fast.

14 Q From your vantage point, did you ever see
15 John struggle to try to get out the door and not be
16 able to do so?

17 A Not like a sincere struggle. It was just
18 like one push. Oh, that's not working.

19 Q Yeah.

20 A Then shoots somebody.

21 Q Did he ever say anything to you, plead with
22 you to get your brother off Randy?

23 A No.

24 Q Did he ever plead with Mitchell?

25 A He did not say a word.

1 Q How long -- you've known Randy for a long
2 time, correct?

3 A Yeah, since I was about 16, I met him once.
4 Then when I was, like, 19, I, you know, worked with
5 him a couple of times.

6 Q Did you know about his neck injury?

7 A I don't remember when I found out. I knew
8 when this incident happened.

9 Q All right. Did you know that he was -- he
10 claimed to be in fragile condition?

11 A Oh, yeah. Big time.

12 Q How did you know that? When you say big
13 time?

14 A Cried all the time.

15 Q Did you have any understanding as to the
16 limits of his ability to take physical violence or
17 any type of assault?

18 A All I know is that them two have fought
19 multiple times, that I've witnessed, with each other.

20 Q Okay. We'll talk about that in a second.
21 Just when it comes to Randy, did you --

22 A He would boast about his fighting skills---

23 Q Okay.

24 A --- and how he would grab a person by --
25 grab a man by his material down there and, like,

1 punch him in the face, or grab him in the throat and
2 punch him in the face.

3 Q All right. That's not really what I'm
4 asking. What I'm asking is did you -- did you know
5 how fragile he was?

6 A I never saw Randy as fragile.

7 Q Okay. But understanding that he had a neck
8 injury, did you see Mitchell do anything to him that,
9 in your understanding, could jeopardize his life?

10 A You're asking if Mitchell was trying to
11 jeopardize Randy's life?

12 Q Yeah. Or not trying. Did you see him doing
13 anything that, in your observation and your
14 understanding of Randy's condition?

15 A No.

16 Q Were you friends with Randy?

17 A Yes.

18 Q Did you want to see Randy get hurt that
19 night?

20 A Not like serious injury. I wanted to see
21 him fight it out.

22 Q But did you ever think that either one of
23 them were in any -- in any line of harm?

24 A No, sir.

25 Q To your knowledge, did Mitchell have any

1 ill will towards Randy, other than ---

2 A No, not that I know of.

3 Q At the time that Mitchell was shot by the
4 defendant, was he pummeling Randy?

5 A No, they hadn't even had 10 seconds to
6 fight.

7 Q You mentioned earlier about seeing them
8 fight, do you -- who do you mean?

9 A Mitchell and Randy.

10 Q Mitchell and Randy?

11 A Oh, you mean before this incident?

12 Q Yeah, before this incident.

13 A John and Randy.

14 Q Tell us about -- tell us what you observed
15 them fight.

16 A One night, I don't remember what month it
17 was or whatever time of the year it was, but I was
18 washing my clothes. Inside the house, there is the
19 washing machine, the back bedroom that John and Randy
20 slept in and I slept in. Then there's the kitchen.
21 And over here, there is the stove where Randy did his
22 cooking and the dining room table. Like I said,
23 here's the washing machine and dryer.

24 So I'm here. And John -- for some reason,
25 they're going back and forth arguing verbally. He

1 just picks up his plate full of food and chunks it
2 across the kitchen. And Randy has pots and pans
3 hanging up. It hits -- burst glass everywhere at one
4 of the big pans. So I'm in bare -- I'm barefooted
5 right now. I can't get across all the broken glass,
6 but I can see them scuffling.

7 I go back to the bedroom and put some shoes
8 on. Whenever I come back in there, Randy's, like,
9 hanging onto the recliner in the living room. John is
10 like partially on the floor with his arm wrapped
11 around his neck. Randy was saying to John something
12 to the extent of you need to let me go and we need to
13 stop fighting or something. I forget but it was
14 something to that extent.

15 Q Was this during the time that you lived
16 with them?

17 A Yes.

18 Q In the back of the -- did you listen to the
19 911 tape when it was played?

20 A The one of me screaming?

21 Q Yes.

22 A Yes, sir.

23 Q I want to ask you a little bit about the
24 house. Is there another way out of the house?

25 A Aside from the windows, just the front

1 door.

2 Q All right. And have you used the front door
3 before?

4 A Yes, sir.

5 Q All right. How long would it take you, if
6 you were inside of the house, to get out of the front
7 door and come around to the back?

8 A If I had to do it as quick as possible, I
9 could do it in a matter of 20 to 30 seconds.

10 Q All right.

11 A Maybe even 10.

12 Q What is in your way just to impede you
13 between that front door and getting around to the
14 back?

15 A From where John was standing, you'd have to
16 go around the counter to the front door, down the
17 stairs. You could hop the railing and hop the wired
18 fence. You would be around this edge of the trailer,
19 like I said, no more than 20 to 25 seconds a piece.

20 Q To your knowledge, is John a physically
21 able individual?

22 A Oh, definitely. I seen this man work. He
23 was like a spider monkey.

24 Q Describe to the court your brother's size,
25 please.

1 **A** He was about 5'11, 150.

2 **Q** Okay. Would you characterize him as a
3 muscular individual?

4 **A** He was slender. He might have been toned at
5 best.

6 **Q** Yeah.

7 **A** At the time of this incident, Randy wasn't
8 145. He was around 180.

9 **Q** Okay. Was Mitchell -- did you observe
10 Mitchell go for or try to attack Randy prior to a
11 beer being slapped away?

12 **A** When he was jumbling up the stuff before
13 that.

14 **Q** No, no. Let me -- well, let me back up. I'm
15 sorry. Prior to Randy messing with his property or
16 his cigarette papers, did you see Mitchell ---

17 **A** No, sir.

18 **Q** --- go after Randy physically at all?

19 **A** No, sir.

20 **Q** At any point in the evening?

21 **A** No, sir.

22 **Q** After that incident with the stairs, while
23 Mitchell was still on the porch, did you see Mitchell
24 try to re-engage Randy, physically, prior to him
25 slapping the beer over or anything?

1 **A** Not prior. After the beer, yes.

2 **Q** Okay. Just real briefly, how did Mitchell
3 come to be at the house on this particular situation?

4 **A** All I remember is that he went to the beach
5 with them. It could have been like a week before
6 that, two weeks before that. He had stayed the night
7 the night before, I'm certain. I thought the night
8 before that, but I can't remember for sure now. He
9 had so many days off work before he had go back to
10 work. He had to go to work the next day. I remember
11 that.

12 **Q** Randy testified that he hadn't worked in a
13 while. What was your knowledge of Randy's work
14 situation at the time of the incident?

15 **A** He would just do side jobs to make extra
16 money. Nothing strenuous. He would have Bradley or
17 myself do it. He would just basically tell us how to
18 do it.

19 **Q** Did Mitchell have a weapon at all during --
20 at any point in this altercation?

21 **A** No, sir.

22 **Q** Had you thought Mitchell was severely
23 hurting Randy, would have intervened?

24 **A** Yes.

25 **MR. CLEVELAND:** That's all the questions I

1 have, Your Honor.

2 **THE COURT:** Any questions for this
3 witness?

4 **CROSS-EXAMINATION**

5 **BY MR. NEWTON:**

6 **Q** Jacob, you said you and your brother had at
7 least 10 beers a piece?

8 **A** Yes, sir.

9 **Q** Could it have been more?

10 **A** Possibly.

11 **Q** So you were pretty -- really, really drunk
12 at the time, right?

13 **A** I was fair drunk -- fairly drunk, yes, sir.

14 **Q** All right. So is it possible that in your
15 extremely drunken condition you missed certain things
16 that were going on, didn't notice certain things that
17 were going on?

18 **A** I remember what happened.

19 **Q** Sure. Remember, you said earlier today that
20 you wanted to see them fight, Randy and Mitchell?

21 **A** I thought that they both needed to fight
22 because of the simple fact that Randy was instigating
23 the entire thing from start to finish.

24 **Q** How so?

25 **A** Just by the way that he was speaking to me,

1 nagging us on physically, verbally.

2 Q Did he ask you to leave?

3 A He did ask us to leave.

4 Q But y'all preferred to stay and escalate it
5 to a physical confrontation, isn't that true?

6 A We didn't escalate it to a physical
7 confrontation until -- actually, I was never
8 physical. Mitchell didn't go physical until he
9 started messing with his belongings.

10 Q And you say those are some cigarettes?

11 A He had the right to mess with us just
12 because of some cigarettes?

13 Q No, I'm asking you. Is it just cigarettes
14 that you're talking about?

15 A It was cigarettes, tobacco, beer. I know
16 those all aren't things to get upset about. But to
17 some people, it's an attack to their character. So if
18 someone was messing with, like, say, another person's
19 mother, even though it's not them directly, they're
20 going to go and retaliate. I'm not saying that I'm
21 that type of person, but there are plenty of people
22 that are like that.

23 Q What was Randy doing to the cigarettes?

24 A Crumpling them up. Throwing them around.

25 Q How many did he do that to?

1 **A** The thing has, like, 200 in it. A carton
2 deal. A case of 200.

3 **Q** Did he do that to all 200?

4 **A** Probably.

5 **Q** Probably? You don't know?

6 **A** I didn't investigate it.

7 **Q** How many did you see him actually do?

8 **A** I was from a distance from further than me
9 to you. I don't know. All I know is he grabbed it
10 like that. That's all I know.

11 **Q** So did you see a big pile of broken
12 cigarettes?

13 **A** I was not investigating the stuff. It
14 wasn't my stuff.

15 **Q** All right. So in addition to being
16 extremely drunk, you weren't paying attention to
17 that, were you?

18 **A** It wasn't my concern.

19 **Q** All right. When you say you wanted to see
20 Mitchell and Randy fight, you mean by that you wanted
21 to see Mitchell take -- teach a lesson to Randy,
22 right? You wanted to see Mitchell beat up Randy cause
23 you thought Randy deserved it, correct?

24 **A** If Randy got the better of Mitchell, then
25 that would just be the way the cards fell.

1 Q Wasn't Randy the one trying to retreat away
2 from the fight and get back into his house with a
3 broken foot? Wasn't he the one trying to retreat away
4 from the fight?

5 A Not before throwing Mitchell's stuff around
6 again.

7 Q You're referring to one beer on the railing
8 that he knocked over as he was trying to go in the
9 house?

10 A Yes, sir.

11 Q One beer, a Bud Light. Who bought that
12 beer?

13 A Mitchell. I'm not saying that he had
14 probable cause to be angry, but it made him angry.

15 Q So you thought Randy deserved to be beaten
16 up by Mitchell because he knocked over his beer?

17 A Not only for the beer, for the way that he
18 was treating us the entire night. I don't think that
19 physical violence is my way of doing things, but I'm
20 not one to speak for everyone.

21 Q But again, you approved of Mitchell trying
22 to attack him. You stated that, right? You wanted to
23 see that happen. Did you take any effort to break it
24 up?

25 A No, sir.

1 **Q** You didn't break it up because you wanted
2 it to happen, right?

3 **A** I was okay with it happening.

4 **Q** Were you encouraging your brother? Were you
5 saying, hit him?

6 **A** No, I was warning him that he would fight
7 him dirty. That's all I was doing. I wasn't
8 encouraging. I was saying, just watch out. He's going
9 to grab you by your balls.

10 **Q** Did he do that?

11 **A** No.

12 **Q** Okay. But you do agree with me, correct,
13 that Randy was trying to get away, trying to get back
14 in the house and Mitchell wasn't letting him do that?
15 You agree with that, right?

16 **A** Yes, sir.

17 **MR. NEWTON:** No further questions.

18 **THE COURT:** Anything else for this
19 witness?

20 **MR. CLEVELAND:** No, Your Honor.

21 **THE COURT:** Sir, you step down.

22 **THE WITNESS:** Thank you.

23 **THE COURT:** Thank you.

24 Anything else from the State?

25 **MR. CLEVELAND:** Your Honor, briefly call

1 Brian Gibson.

2 THE COURT: Certainly.

3 BRIAN GIBSON

4 having first been duly sworn, testifies as follows:

5 THE CLERK: State your full name for the
6 record.

7 THE WITNESS: Brian Edward Gibson.

8 THE CLERK: Please be seated.

9 DIRECT EXAMINATION

10 BY MR. CLEVELAND:

11 Q Deputy Gibson, did you do the forensic
12 information gathering at this crime scene?

13 A I was involved in it. I was assisting in
14 other -- one of our forensic units.

15 Q And did you have an opportunity to observe
16 the deceased in this case?

17 A Yes, sir. I did.

18 Q In what situation did you observe the
19 deceased?

20 A I observed the deceased at the scene. Also,
21 I attended the autopsy.

22 Q All right. How many gunshot wounds in the
23 deceased did you observe?

24 A Two gunshot wounds. One exit wound.

25 Q Okay. And were there any other shots fired

1 based on your investigation?

2 **A** I believe there was one in the floor of the
3 kitchen area right out -- right inside the front of
4 the -- I guess you call it the rear door.

5 **Q** All right. Did you ever recover a
6 projectile or shell casing from that shot?

7 **A** I did not do that part of the
8 investigation. That was Officer Albreicht.

9 **Q** Okay. But were there any other injuries to
10 the victim in this case, other than the two gunshot
11 wounds that you observed?

12 **A** No, sir.

13 **MR. CLEVELAND:** That's all the questions I
14 have. Thank you.

15 **THE COURT:** All right.

16 **MR. NEWTON:** No questions.

17 **THE COURT:** Sir, you can step down.

18 **MR. CLEVELAND:** Beg the Court's indulgence
19 for just one moment.

20 **THE COURT:** Oh, certainly.

21 **(WHEREUPON, there is a pause.)**

22 **MR. CLEVELAND:** That's the conclusion of
23 the State's testimony, Your Honor.

24 **THE COURT:** All right. Anything in reply
25 at all?

1 **MR. NEWTON:** No, Your Honor.

2 **THE COURT:** All right. If anybody wants to
3 make any type of closing remarks, I'm happy to
4 hear from you. We'll just do it just like we do
5 a regular motion hearing where if there's
6 anything you want to say in reply, certainly
7 I'll give you some time to do it, since it's
8 your motion.

9 **MR. NEWTON:** Okay. Again, Judge, I do
10 believe the act applies. The prosecutor said
11 that (A) does not apply. I believe it arguably
12 does, so I'm going to make that argument.
13 Certainly, (C) applies in this case.

14 **THE COURT:** That was my question, was
15 about (C). Go ahead.

16 **MR. NEWTON:** (A) is the one which, if
17 established, raises the presumption of
18 reasonable fear and imminent peril. I think even
19 though there was some advice given to Mitchell
20 and Jacob that night about how he did not have
21 to leave, just as invited guests. Randy Wilson
22 had every right to ask Mitchell Bradley to leave
23 the house. He should have left at that point. If
24 that had happened, none of the -- none of the
25 subsequent events would have obviously happened.

1 But you heard the 911 tape. You heard the
2 tone of voice that the excessive drunkenness led
3 to and the hostility there. The -- I think the
4 facts are quite clear that Randy was outside
5 trying to get back into the house, trying to
6 avoid a physical altercation. Mitchell Bradley,
7 the deceased, pursued him, attacked him, was
8 physically assaulting him right outside the door
9 so that John could not open the door afterwards,
10 and that his brother, Jacob Kirk, who had a
11 chance to break it up or stop it, was actually,
12 if anything, encouraging it to happen because he
13 wanted to see it happen. So this is no fault of
14 John's, certainly, and no fault of Randy. He had
15 every right to ask somebody to leave, a guest to
16 his house.

17 You've heard the testimony about his
18 condition, his weak condition, his weak neck
19 from the automobile accident back in 1980. He
20 was in clear peril of having suffered great
21 bodily injury, serious bodily injury. I don't
22 think there's any reasonable doubt about that.
23 John knew that. He was aware of the weakened
24 condition.

25 There was no other reasonable alternative

1 that John McCarty could have taken, under the
2 circumstances, to avoid Randy Wilson sustaining,
3 at least, serious bodily injury, and perhaps his
4 life. Under the law, I believe that qualifies
5 him for immunity. That's what it's all about.
6 The right to use, if necessary, deadly force in
7 order to prevent serious bodily injuries to
8 someone else. That's what happened.

9 In the -- Mr. Cleveland had said (A)
10 obviously does not count. I disagree with that.
11 Again, I think certainly (C) does, and arguably
12 (A). I argue for both. But I don't believe that
13 Mitchell Bradley had any right to remain in that
14 house after he was asked to leave. He was not a
15 resident there. He was merely an invited guest.
16 An invitation to a guest can be revoked at any
17 time. And it was revoked. Instead of leaving,
18 doing the rational right thing, we had two
19 drunken brothers who insisted on staying around
20 to escalate it into a physical fight of such
21 nature, again, that Randy Wilson was in danger
22 of serious bodily injury. John McCarty did what
23 he did to defend against that. Therefore, I
24 respectfully move to declare immunity in this
25 case.

1 **THE COURT:** Okay. Thank you.

2 Yes, sir.

3 **MR. CLEVELAND:** Thank you, Your Honor. The
4 State disagrees with the defense's position and
5 thinks that immunity should not be granted in
6 this case because it's not applicable. Under
7 subsection (A) -- and a lot of my argument's
8 based upon a case that is pretty factually on
9 point to the situation we have. It's State v.
10 Curry. This is 752 S.E. 2d, 263. I've got a copy
11 for the court.

12 **THE COURT:** I think we've got it pulled up
13 already.

14 **MR. CLEVELAND:** And the initial point of
15 State v. Curry, it makes -- when discussing
16 social guest, in this case, Mr. Collins -- it
17 says because Collins was a social guest and
18 rightfully at the apartment, subsection (A) is
19 inapplicable to the appellate and, therefore, he
20 is defaulted into subsection (C).

21 There's testimony from Jacob Kirk, who was
22 a resident. It's uncontroverted that Jacob Kirk
23 was a resident there, that he wanted his brother
24 to stay there, and as a tenant and legal
25 resident, he had every right, just like everyone

1 else, to permit or exclude guests as he willed.
2 He wanted his brother to be there.

3 Be that as it may, even looking further
4 into subsection (A), it's concerned with
5 defending against unlawful entries in the
6 presumption of great bodily injury or death.
7 There's no indication that Mr. Bradley, in this
8 case, was attempting an entry. This all occurred
9 outside. So I don't think subsection (A)
10 applies. I can elaborate on that further, but I
11 think the real crux of the argument is
12 subsection (C).

13 **THE COURT:** Right.

14 **MR. CLEVELAND:** Subsection (C) indicates
15 that persons not engaged in unlawful activity
16 who is attacked in another place where he has a
17 right to be, has no duty to retreat, has the
18 right to stand his ground and use force or
19 force, including deadly force, and reasonably
20 believes it necessary to prevent great bodily
21 injury to himself or another person.

22 I think that in this case we have a couple
23 of key words in there that raise the jury
24 questions. Certainly -- I mean, I don't think
25 the facts are controverted. I just think how the

1 court is handling it, it's being argued
2 different.

3 First off, a person who is not engaged in
4 unlawful activity. There is testimony that Randy
5 Wilson is not only destroying the property of
6 another, but that he's doing something to egg
7 this situation on. I think that also plays into
8 self-defense with him not being without fault
9 for bringing about the difficulty.

10 Furthermore, what Mr. McCarty is alleging
11 that he had the right to use deadly -- to meet
12 -- we're talking about meeting force with force.
13 All we've got is two, albeit, somewhat
14 intoxicated, grossly intoxicated individuals
15 engaged in a fist fight from which no injuries
16 was there that no gross threat came from. Yet,
17 Mr. McCarty jumped straight to using deadly
18 force.

19 **THE COURT:** But isn't it just what Mr.
20 McCarty reasonably believes? In other words, it
21 doesn't matter what the intent of the victim in
22 this case was and it doesn't matter what the
23 victim in this case knew about this gentleman's
24 medical condition. Isn't it just what the
25 defendant in this case would reasonably believe

1 and what he knew about the medical condition?

2 **MR. CLEVELAND:** Well, I think if that's the
3 case, then what you have to do is -- again, I
4 think it's a jury question. The jury has to say
5 that if it's a reasonable belief, then a
6 reasonably prudent person of ordinary firmness
7 would have to share that same belief and go with
8 the same act. I don't think -- I think that --

9 **THE COURT:** So are you saying immunity is
10 never available then at this stage?

11 **MR. CLEVELAND:** No, I think immunity is
12 available at this stage if they proved that fact
13 beyond a preponderance of the evidence. I don't
14 think that's the case. I think that they proved
15 it -- they haven't proved it. Again, it would be
16 for the State to disprove an element of self-
17 defense or defense of others than for the jury.
18 I don't think he gets one full gambit on that.

19 I think it could be completely reasonable
20 to say that two people watching two drunks
21 having a fight is not reasonable to pull a gun
22 and shoot and kill the one they wanted to lose
23 the fight. I mean, using that logic, Mr. McCarty
24 could follow Mr. Wilson around anywhere and let
25 Mr. Wilson pick fights and egg on people. And as

1 soon as they swung a punch at him, because of
2 his weak neck, whether they knew about it or
3 not, he could shoot and kill them. I don't think
4 that's what the law seeks to prevent.

5 I think what the law seeks to prevent is
6 someone who is defending another person, you
7 know, from what is a reasonable fear of great
8 bodily injury or death where they have to step
9 in. They have no other means of doing it.
10 Furthermore, we talked about it being necessary
11 -- we all talked about it being necessary.
12 Again, he has time to pause and fire a warning
13 shot during this scuffle, but he --

14 **THE COURT:** Doesn't that cut both ways
15 though? I mean, he fired a warning shot and it
16 didn't stop the situation.

17 **MR. CLEVELAND:** Well, that's true. But at
18 the same time, his testimony was that it was a
19 perilous life-or-death situation. If it was a
20 perilous life-or-death situation, the reasonable
21 thing would be to be to diffuse it immediately.
22 You don't need to fire a warning shot. There's
23 no duty in self-defense or defense of others to
24 warn upon the use of deadly force if it is
25 rightfully used.

1 **THE COURT:** I mean, I -- and I'm really
2 just asking you these questions because we won't
3 have another chance for me to do this before I
4 rule. I wouldn't imagine that I would have
5 another chance to ask you these questions.
6 Doesn't firing a warning shot -- doesn't that
7 also cut in the direction, again, of reasonable
8 behavior? He was attempting to diffuse the
9 situation. He didn't go directly to deadly force
10 first.

11 **MR. CLEVELAND:** Well --

12 **THE COURT:** And I understand what you're
13 saying that it goes to his potential perception
14 of the situation, how deadly it was. But doesn't
15 it also go to what his intent was in this?

16 **MR. CLEVELAND:** Well, I agree with you. I
17 mean I certainly understand the warning shot was
18 just that, a warning shot in an attempt to
19 diffuse the situation, but the law requires that
20 his use of deadly force be the necessary means
21 to do it. I still think there's plenty of room,
22 factually, based upon the testimony, that
23 there's other things he could have done, that
24 killing Mitchell Bradley was not necessary.

25 Maybe he could have gotten out the door. It

1 appears from Jacob Kirk's testimony that he
2 didn't really struggle to try to get out the
3 door. Maybe he could have run around and done
4 it. Obviously, nobody was severely injured in
5 the fist fight or slap fight or whatever was
6 happening on the porch portion of this fight.
7 The only injury that Mr. Wilson indicated was
8 when he was pushed down the stairs. He got back
9 up, and there's testimony that he re-engaged,
10 even after suffering this bad injury. Which
11 brings me to -- you know, I'm wading through
12 this. Of course, it's a pretty new law, and it's
13 interesting how the courts have interpreted it.

14 **THE COURT:** Yeah.

15 **MR. CLEVELAND:** Using State v. Curry, they
16 bring self-defense into the Castle Doctrine,
17 when it's part of it. They say, you know, they
18 take this opportunity to interpret what they
19 believe is the legislative intent regarding
20 trials regarded to weigh the underlying claim of
21 self-defense in determining the accused
22 immunity. When they're talking about force, they
23 essentially say the Court should entertain self-
24 defense, except for the duty to retreat portion.
25 I've gotten my notes everywhere.

1 The Court should consider without fault and
2 bringing on the difficulty, actual imminent
3 danger of losing life, or he actually believed
4 he was in imminent danger of losing life, and if
5 it was based upon actual belief that a
6 reasonable prudent person of ordinary firmness
7 and courage would have entertained the same
8 belief in striking the final blow.

9 **THE COURT:** Well, this is sort of a
10 strange situation, though. The defendant in this
11 case -- the defendant in this case doesn't know
12 who was -- who actually brought -- brought --
13 was at fault in bringing this about. And -- but
14 his perception -- at least if we're to believe
15 the defense's side, his perception was that he
16 didn't have the time to ascertain that. He could
17 only find out what was happening at that
18 moment ---

19 **MR. CLEVELAND:** If that's the case --

20 **THE COURT:** --- in defense of others.

21 **MR. CLEVELAND:** Again, Your Honor, if
22 that's the case, then I would argue that he
23 would have the right to kill either one of them.
24 I don't think that's what the law does. If he --
25 if he sees what's been identified as a mutual

1 fight between two people, if he decided he was
2 on Mitchell's side that day, he could have shot
3 and killed Randy and had the same argument.

4 **THE COURT:** But he didn't know about the
5 victim's medical -- he didn't know -- I mean,
6 the victim, I don't think, had a medical
7 condition that he knew about. I'm really just
8 asking you ---

9 **MR. CLEVELAND:** I understand.

10 **THE COURT:** --- these questions wanting to
11 discuss it. I'm not --

12 **MR. CLEVELAND:** No, I understand.

13 **THE COURT:** I'm wanting you to respond.

14 **MR. CLEVELAND:** I understand completely.
15 But let's just assume for illustration's sake
16 that both of them were fragile ---

17 **THE COURT:** Yeah.

18 **MR. CLEVELAND:** --- or both of them were
19 not fragile and both of them were armed. If he
20 came out and he could pick and choose -- and I
21 don't think the law allows that. Actually, what
22 the law allows is that an accused that provokes
23 or initiates an assault can not claim self-
24 defense unless he both withdraws from the
25 conflict and communicates his withdrawal by word

1 or adversary. That also, corresponding with
2 defense of others, is that defense of others is
3 only available if they, the person involved,
4 would have had the right to kill the assailant
5 themselves in self-defense.

6 **THE COURT:** Uh-huh.

7 **MR. CLEVELAND:** In this case, there's
8 testimony that Randy provoked the situation and
9 because he is at fault with bringing about the
10 difficulty, then that element of self-defense is
11 not satisfied and, therefore, is not available
12 to him. Therefore, it's also not available to
13 Mr. McCarty. I think the law requires a little
14 more diligence on someone who is willing to act
15 on appearances and use deadly force to kill
16 somebody. Again, like I said, otherwise, anybody
17 that ever is in a fight with Randy, all Mr.
18 McCarty would have to say is, I thought he was
19 going to hurt his neck, so I shot and killed
20 him. That's not -- that's not what the law
21 requires. He has to be without fault -- Randy
22 would have had to have been without fault in
23 bringing about this difficulty.

24 I'm referring to State v. Jackson. This is
25 384 S.C. 84. Like I said, it says very clear, an

1 accused who provokes or initiates an assault can
2 not claim self-defense unless he both withdraws
3 from the conflict and communicates his
4 withdrawal by word or act to the adversary,
5 which is not present in this case. So it's a bit
6 of a tiered argument, I realize, but ---

7 **THE COURT:** Yeah.

8 **MR. CLEVELAND:** --- the crux of it is this,
9 there is evidence -- oh, you know, when it all
10 comes back around to State v. Curry, which is a
11 very similar case which involves self-defense
12 and everything, it says the appellate's claim of
13 self-defense is a coincidental jury question,
14 which most assuredly is not a situation
15 warranting immunity from prosecution.

16 I think that because there is a conflicting
17 account of what happened that night, that there
18 is evidence that Randy was the aggressor in this
19 situation, I think that immunity does not apply
20 and it's a question of defense of others that
21 should be submitted to the jury. I think that --
22 I think they would have had to prove beyond a
23 preponderance of the evidence that self-defense
24 did apply, that Randy was not at fault.

25 In this case, all we've got is the credi --

1 the word of two witnesses. I think that because
2 it's essentially word versus word, that that is
3 a determination that the jury should make and
4 they haven't proven it to the standard that is
5 required in this case law as the self-defense
6 and defense of others standard.

7 **THE COURT:** All right. All right.
8 Anything in reply to that?

9 **MR. NEWTON:** Briefly. Judge, in any civil
10 case, the standard is preponderance of the
11 evidence. Further, there's conflicting testimony
12 on both sides all the time. The testimony on
13 both sides do not have to be animus, it's simply
14 who has shown their case to be more likely true
15 than not. That's what preponderance of the
16 evidence means.

17 Here, once again, the prosecutor is talking
18 about how somebody has to withdraw. Even
19 assuming Randy somehow instigated this -- which
20 I don't believe anything he did was legal
21 provocation to be assaulted -- even assuming
22 that, he was trying to withdraw. He was trying
23 to retreat, even calling out for help while he
24 was in his own -- the decedent's brother just
25 testified that he was being taunted as he was

1 being slapped. Why are you trying to call John?
2 Why are you trying to call John? Clearly, he was
3 trying to break off and get away. He was in
4 serious risk of great bodily injury, serious
5 bodily injury. I don't think there's any doubt
6 about that.

7 John tried to get out the door. He could
8 not. He even tried -- Mr. Cleveland makes it --
9 tries to hold it against him that he fired a
10 warning shot insinuating he should have shot to
11 kill right away. It's in his favor. It shows he
12 was not a reckless person who was just, let's
13 just shoot somebody to kill them.

14 **THE COURT:** Right.

15 **MR. NEWTON:** He did everything -- he took
16 reasonable steps to stop this situation before
17 finally doing what he had to do.

18 **THE COURT:** All right.

19 **MR. NEWTON:** All right.

20 **THE COURT:** All right. Well, I appreciate
21 that -- there's somebody that wants to talk. You
22 think you want to talk to him for a second?

23 **MR. CLEVELAND:** If the Court doesn't, I --

24 **UNIDENTIFIED SPEAKER:** May I say something?

25 **THE COURT:** No, ma'am.

1 **MR. CLEVELAND:** No, ma'am.

2 **UNIDENTIFIED SPEAKER:** Why? Cause I'm the
3 mother?

4 **THE COURT:** No, because you weren't a
5 witness in this matter.

6 **UNIDENTIFIED SPEAKER:** I know but --

7 **THE BAILIFF:** Shhh.

8 **THE COURT:** Anything that needs to be
9 added?

10 **MR. CLEVELAND:** Nothing further from the
11 State. I mean, I would just -- you know, I think
12 the courts are a lot more eloquent than I am.
13 And State v. Jackson and State v. Curry, I think
14 they offer a lot of guidance in this case. I ask
15 that using that guidance, that it be denied in
16 this case and allowed to proceed to trial.

17 **THE COURT:** All right. Well, I'm going to
18 need to take this matter under advisement, as we
19 discussed and as we've all talked about in this
20 matter, it's a complicated legal issue. This
21 raises a complicated legal issue, being a social
22 guest, but a tenant, and it's -- and another
23 person who actually fired the weapon who was not
24 present from the beginning of any of this
25 altercation. So it is going to be a very tricky

1 legal issue to look at.

2 I'm going -- I would not anticipate I'd
3 have a decision within the next two weeks. I
4 would think it would be two weeks to a month
5 that I'll have a decision in this because I
6 really understand that it's such an important
7 decision to both sides. So I'm going to take
8 this matter under advisement, but I'll have the
9 decision for you as shortly as possible.

10 **MR. CLEVELAND:** Yes, Your Honor. Just for
11 housekeeping, we played both the 911 and the --

12 **THE COURT:** Oh, yeah.

13 **MR. CLEVELAND:** I would mark those as
14 State's Exhibits -- or he can --

15 If you want to mark yours as a Defense
16 Exhibit, I'll mark mine as a State's Exhibit.

17 **(WHEREUPON, Defendant's Exhibit 2 is marked for**
18 **identification purposes.)**

19 **(WHEREUPON, State's Exhibit 8 is marked for**
20 **identification purposes.)**

21 **MR. NEWTON:** Your Honor, I've already
22 provided the State a copy of this case. It's a
23 United States Supreme Court case he read off
24 which has relevant information.

25 **THE COURT:** All right. Thank you. I

1 appreciate it.

2 And we've -- Mr. Cleveland, we've already
3 pulled up the two cases, State versus Randolph
4 and State v. Curry that you alluded to as well.
5 So we'll be looking at all of those.

6 **MR. CLEVELAND:** Very good. Thank you, Your
7 Honor. Anything else you need from us?

8 **THE COURT:** I don't think so. I don't
9 think so. Thank you.

10 **MR. CLEVELAND:** We await your decision.
11 Thank you.

12 **THE COURT:** Thank you.

13
14 (WHEREUPON, proceedings conclude at
15 approximately 1:07 p.m.)
16
17
18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
2015-GS-39-02275

COUNTY OF PICKENS

THIRTEENTH JUDICIAL CIRCUIT

STATE

2017 JAN 19 P 4: 06

v

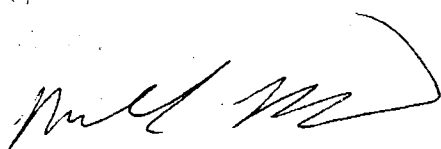
MOTION FOR 16-11-450 HEARING

John William McCarty,
DEFENDANT

DOB: [REDACTED]

DEFENDANT is charged with Murder, and moves for a hearing under section 16-11-450 of the Protection of Persons and Property Act to determine immunity from prosecution.

IT IS SO MOVED.


Robert Newton
310 Rutherford St,
Greenville, SC 29609
864-298-0000
Attorney for Defendant

Greenville, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT
CLERK OF COURT
THE STATE OF SOUTH CAROLINA) PICKENS COUNTY INDICTMENT # 2015GS3902275
SOUTH CAROLINA)

VS.)

2017 APR 11 A 11:09

JOHN W MCCARTY,
DEFENDANT.)

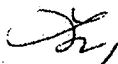
ORDER

Hearing Date: February 23, 2017
Presiding Judge: The Honorable Letitia Verdin
State's Attorneys: Baker Cleveland, Britni McCall
Defendant's Attorney: Robert Newton

This matter is before the court pursuant to the Defendant's Motion asserting statutory immunity from prosecution under the Protection of Persons and Property Act ("the Act"), S.C. Code § 16-11-410, et. seq. The Defendant was indicted for murder under the above-captioned indictment for the killing of Mitchell Bradley in Pickens County on or about July 15, 2015. The Defendant admits to shooting the victim, however he claims that his actions were justified and he is therefore immune from prosecution under the Act. The Defendant has the burden of proving his immunity by a preponderance of the evidence. State v. Duncan, 709 S.E.2d 662, 665 (S.C. 2011). After considering the evidence presented, it is the ruling of the Court that the Defendant failed to meet the burden of proof for the reasons set forth below, and his Motion for immunity is therefore denied.

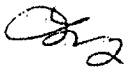
FACTS

Through the Defendant and the State's presentations, all witnesses who were present during the shooting testified at the hearing, and the core facts are largely uncontested. The incident occurred in the evening of July 15, 2015 at a mobile home located off Watts Road in Pickens County. Living at that location at the time was the Defendant, Randy Wilson, Jacob Kirk, and a juvenile relative of Randy Wilson (who was not present at the time of the shooting). Also present was the victim Mitchell Bradley, Jacob Kirk's brother.



On that evening, the parties were drinking at the home, and at some point an argument began between Kirk, Bradley, and Wilson. As the argument escalated, Wilson demanded Kirk and Bradley leave the residence and called law enforcement. By that point, the Defendant had gone to bed. Deputy Williamson with the Pickens County Sheriff's Office responded and observed Kirk, Bradley, and Wilson, who he testified all appeared to be intoxicated. Deputy Williamson informed Wilson that because Kirk was a resident of the home and Bradley was his invited guest, he could not make either leave. Deputy Williamson then left the residence. The argument continued and turned physical between Bradley and Wilson. Bradley shoved Wilson down a small set of stairs at the back porch, injuring Wilson's foot. Wilson came back onto the porch and Bradley shoved him into the corner where it adjoins the residence and the rear door. Wilson called out for the Defendant who was still asleep and had not witnessed any of the ongoing argument. The Defendant immediately retrieved his 9mm pistol and went to the kitchen of the residence where he could see Bradley pinning Wilson against the porch railing through the window of the exterior door. The Defendant fired a warning shot into the interior floor of the residence, and then fired two shots through the window directly at Bradley, striking him in the torso. Bradley died at the scene. Wilson had a broken bone in his foot, but suffered no serious injuries. The shooting occurred approximately twenty minutes after Deputy Williamson left the residence.

Despite the general consensus regarding the basic facts, there was some dispute as to the cause and nature of the argument between Wilson, Kirk, and Bradley. Wilson testified that he had not had much to drink that night, and that Kirk and Bradley had acted aggressively toward him. Wilson also testified that due to a previous neck injury, he feared for his life as Bradley had him pinned in the corner of the porch. Kirk testified that it was Wilson that incited the argument, specifically indicating that Wilson destroyed some of Bradley's property that was outside on the porch, angering Bradley enough to shove Wilson down the stairs. When Wilson came back on the porch, he slapped Bradley's beer away, which provoked Bradley to push him in the corner. Kirk also testified that he did not perceive the fight to be serious, and knowing of Wilson's previous injuries, he would not have allowed the fight to continue if Bradley was seriously injuring Wilson.



LAW / ANALYSIS

The relevant portion of the Act is found at S.C. Code § 16-11-440(C), which provides in part:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person

State v. Curry, 752 S.E.2d 263 (S.C. 2013), gives guidance in applying the above provision and provides that "a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity . . . save the duty to retreat." Id. at 266. The elements of self-defense are well established and need not be fully recounted here. The Defendant in this case was not in danger himself, but rather acting in defense of Randy Wilson. The law provides a person the right to act in the defense of another person if the person being protected would have had the right to kill the assailant in self-defense, a doctrine commonly referred to as "defense of others." See State v. Long, 480 S.E.2d 62 (S.C. 1997).

It is the Defendant's burden to prove by a preponderance of the evidence that he had the right to act in defense of others. The determination must include an analysis of Wilson's right to act in self-defense, if any, as Wilson was the person the Defendant argues he was attempting to defend. In order to invoke the doctrine of self-defense, each and every element must be proven by the moving party. In considering the evidence presented, we find the Defendant failed to meet his burden because he did not prove that Wilson was without fault in bringing about the difficulty. Since this issue is dispositive, the Court need not consider the other elements of self-defense.

Whether or not a defendant is without fault in bringing on the difficulty presents "a quintessential jury question" which is "not a situation warranting immunity from prosecution." Curry, 752 S.E.2d at 267. Since the Defendant, claiming to have acted in defense of Wilson, is only entitled to immunity if Wilson was entitled to act in self-defense, it becomes a material question as to whether Wilson was at fault in

23

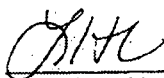
bringing about the difficulty. As a matter of law, one is not entitled to act in defense of others if the other person provoked the encounter and therefore would not be entitled to act in self-defense. See State v. Jackson, 681 S.E.2d 17 (S.C. Ct. App. 2009). The evidence presented conflicting views as to Randy Wilson's involvement in the argument that led to the fatal encounter, and that presents a factual question that must be answered by a jury.

CONCLUSION

The Court finds that the Defendant failed to prove by a preponderance of evidence that he is immune from prosecution pursuant to the Protection of Persons and Property Act, specifically § 16-11-440(C).

Other provisions of the Act do not apply to offer immunity. Therefore, the Defendant's Motion is denied.

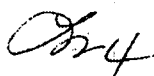
IT IS SO ORDERED.



The Honorable Letitia H. Verdin
Presiding Judge, Thirteenth Judicial Circuit

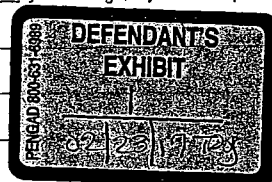
Pickens, South Carolina

Dated: 4/7/17



VOLUNTARY STATEMENT

DATE 7/16/15 PLACE Baptist Hospital Easley TIME STARTED 1:51 A.M.
 I, the undersigned, Randy Gewe Wilson, am 49 years of age, my date and place of
 birth being [REDACTED] at Hollywood Fl.
 I now live at [REDACTED] Liberty, S.C.
 Before answering any questions or making any statements, J.B. Kelley



a person who identified himself as a Detective with Pickens County Sheriff's Office
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any
 questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses
 concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning
 or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime
 during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I
 choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already
 answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make
 the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer
 present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without
 coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

On July 15th, 2015 I Randy Wilson was at my residence which is [REDACTED]
Liberty on the phone. Jacob Kirk came in and said I am going to disby this
up. I already had three dinner plates fixed, then Jacob walked by me
and hit my shoulder, he said again that he was going to divy up this food.
I told him I'm on the phone he then brushed me and shoved me and I told
him that was really rude. Then it escalated from there. His brother
Mitchell Bradley then started jumping up in my face and I told him you
can leave you don't live here. I told him your brother can stay but your brother
can leave too if he chooses to. Then I went outside and started fixing the truck
so they could leave. So Jake started packing up all his stuff so he could
put it in the truck. Then I called the Officers out here on 911 and
left the phone open so it could be recorded. Jake threaten to slice me
to cut me open then it went on escalating. Then Pickens County came here
and I told them if you don't do something about this something is going to happen
because it is only going to get worse. After that I started pouring out their
beers and then that is when Mitch started shoving me down the porch off
the steps and that is when I injured my knees and ankle. I struggled to get
back in the house and that is when Mitch attacked me again. He shoved
me up in the left hand corner like if you were walking into the back door of my house.
Then I started hollering because he was shoving me and hurting me. That is when
John McCarty came and saw what was happening and shot one hole in the
floor. I think it was a 9mm Beretta. John saw that Mitch had me hanging
over the left side of the balcony at the back door and Mitch was on top

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify
 that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of
 this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in
 this statement.

This statement was completed at 3:05 A.M. on the 16th day of July, 2015.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

DATE 7/16/15 PLACE Baptist Hospital Easley TIME STARTED 1:51 A.M.
 I, the undersigned, Randy Gene Wilson am 49 years of age, my date and place of
 birth being the [REDACTED] at Hollywood Fl.
 I now live at [REDACTED] Liberty, S.C.
 Before answering any questions or making any statements, J.B. Kelley

a person who identified himself as a Detective with Pickens County Sher. PP's Office
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any
 questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses
 concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning
 or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime
 during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I
 choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already
 answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make
 the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer
 present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without
 coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

of me hurting me. John could not open the door because my feet
 And body was Against the door as well as Mitch who was still
 Assaulting me on my head and neck which caused a cut to the inside
 of my mouth. Then evidently because John could not get out the
 door to help me he shot threw the window of the back door
 and that shot hit Mitch but I don't know where. Then Mitch
 fell down on the back porch and Jake hollered Mitch did you get
 shot but Mitch never answered Jake. ~~I saw the blood on Mitch~~
 I went down and I saw Mitch's face and I hit redial on my
 phone and called 911 as I was doing R.P.R. with one hand I had
 felt the left side of his neck and didn't feel a pulse so I
 started doing compression on his heart with my left hand because
 I couldn't use my right shoulder because it was injured during
 Mitch attacking me. I have been informed by the Doctor in the Emergency
 Room that I HAVE A broken bone in my right foot, a broken right tibia
 back in 1980 I was in an accident and had to have the C-3 to C-7
 in my neck repaired and wires and pins and bones from cadaver put
 in my neck. There is no doubt in my mind that if John had not
 have done what he did to help me I would have been taken
 to the morgue.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify
 that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of
 this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in
 this statement.

This statement was completed at 3:05 A.M. on the 16th day of July, 2015.

WITNESS: [Signature]

WITNESS: J.B. Kelley

Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) : 2015GS3902275,
	)	2015GS3902276
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	VOLUME 1 OF 3
John W. McCarty,	)	
	)	
Defendant..	)	
	)	

October 16-18, 2017
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

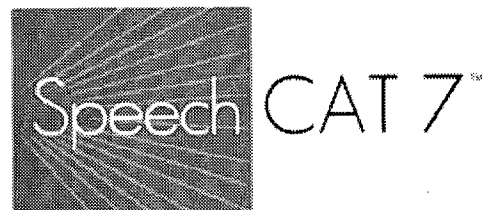
A P P E A R A N C E S:

BAKER CLEVELAND, Esquire
BRITNI McCALL, Esquire
Attorneys for the Plaintiff.

ROBERT NEWTON, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



1 **THE COURT:** All right. Now, I need to ask
2 y'all a question. I need an honest answer from
3 you. We think opening statements are going to,
4 total, last about 30 minutes. Is everybody okay
5 to go about 30 minutes more, then we'll break
6 for lunch? If you're not, we'll break for lunch
7 now. Anybody want to -- need to break now?
8 Okay. I just want to make sure anybody who, you
9 know, with blood sugar or anything doesn't need
10 to take a break. All right then. We're ready to
11 proceed.

12 Yes, sir.

13 **MR. CLEVELAND:** Thank you, Your Honor.

14 Mr. Newton.

15 Ladies and Gentlemen of the jury, I
16 couldn't help but kind of notice the collective
17 sigh and look of disappointment as y'all saw
18 everybody else walking out. And once y'all got
19 picked on this jury, I know you're thinking,
20 you know, man, there's 80 or so people here,
21 what are the chances that I'm going to be
22 picked? But I'll tell you, y'all are such an
23 integral part of this system that we couldn't
24 be having this trial, we couldn't resolve any
25 disputes without you.

1 The reason that the 14 of y'all are sitting
2 there is because me, Ms. McCall and Mr. Newton
3 all think that you are the 12 best suited to
4 hear this case and determine the factual
5 dispute that we have. I ain't blowing sunshine.
6 There's not a judge, there's not a lawyer,
7 there's not a Supreme Court Justice, a police
8 officer, magistrate, anybody in our judicial
9 system that can determine the facts of the case
10 if there's a dispute, from a speeding ticket
11 all the way up to like we're standing today on
12 a case involving murder.. If you invoke your
13 right to a jury trial, jurors are the only
14 people who can resolve a factual dispute in a
15 case. So without y'all, this whole system falls
16 apart.

17 With that being said, this is on the more
18 important end of that spectrum, a murder trial.
19 Y'all are here today and for the next day or
20 two to hear the case against John William
21 McCarty. Obviously, there's a factual dispute.
22 I'm going to get into what I'm going to present
23 in evidence in just a little bit. But at the
24 end of the day, y'all are going to be left with
25 a decision to make as to the guilt or non-guilt

1 of Mr. McCarty.

2 Real quick, I want to start by what's not
3 in dispute. What is not in dispute in this case
4 is on July the 15th of 2015, a little over two
5 years ago, John William McCarty drew his
6 Beretta 9-millimeter pistol in his own home,
7 walked into his kitchen where he observed a
8 physical altercation between his partner Randy
9 Wilson and Mitchell Bradley. He shot one round
10 into the floor, as a warning shot, then drew
11 his gun up and shot Mitchell Bradley twice in
12 the side, killing him.

13 There's absolutely no dispute that John
14 McCarty was the shooter and Mitchell Bradley
15 died as a result of those gunshot wounds. As a
16 result of that, in the legal system, he's here
17 charged with Murder and Possession of a Weapon
18 During the Commission of a Violent Crime.

19 I will tell you that Murder is a violent
20 crime in the state of South Carolina. So being
21 that he's charged with having a pistol while he
22 allegedly committed murder, that substantiates
23 the charge of Possession of a Weapon During the
24 Commission of a Violent Crime.

25 I want to talk to you a little bit too, in

1 addition to the facts, about the law in this
2 case in this opening statement. It's really
3 important for you to consider as you hear the
4 facts. There's some -- there's some legal
5 intricacies to this case that I want y'all to
6 be thinking about during the evidence, during
7 the presentation.

8 Now, Judge Verdin is the judge on the law.
9 She will give you the law as it is in South
10 Carolina at the end of the case. If she says
11 anything different than what I'm about to tell
12 you or what I tell you in closing arguments,
13 defer to what you hear from her. She's the
14 judge of the law, just like y'all are the judge
15 of the facts. But I think my illustration will
16 be good just to give y'all a little timeline on
17 what you can expect to see and what I expect
18 the issues to be in this case.

19 I said on that date, in 2015, John McCarty
20 shot and killed Mr. Bradley, period. No
21 questions about it. He was charged with murder.
22 And murder, under our law, is defined as the
23 unlawful killing of another with malice
24 aforethought. That's kind of a mouthful. Let's
25 break that down for you.

1 Unlawful means not justified; there's no
2 legal justification. It's an illegal act that
3 you did that resulted in that death. Killing,
4 obviously, means taking the life of another.
5 Malice aforethought -- that's old language
6 that's come down from English common law, but
7 it's still the law of this state -- it
8 basically means you did it with some type of
9 meanness. You did it without justification,
10 without any type of noble motivation in your
11 heart, with just pure meanness, with
12 willingness to do evil. Aforethought means that
13 you actually had that evil developed in your
14 heart at the time you struck the fatal blow or
15 the time you pulled the trigger, in this case,
16 or just right before that.

17 Sometimes you hear terms like premeditated
18 murder and everything. South Carolina doesn't
19 require anything other than just premeditation.
20 That's what the aforethought is. You had to at
21 least think about it while you're doing it for
22 a split second before. You don't have to sit
23 and plan it. You don't have to hide out in the
24 bushes or anything like that waiting for
25 someone to come out. There's no real time

1 table, but at least you have to have that
2 malice, that hatred in your heart, at the time
3 you strike the fatal blow. That's what John's
4 charged with in killing Mitchell Bradley.

5 Also like I said, Possession of a Weapon
6 During the Commission of a Violent Crime. That
7 one's a little easier. There's not a whole lot
8 of legal hoops to jump through there. If you
9 find that he's guilty of murder and had a gun
10 in his hand, it stands to reason that he's
11 guilty of Possession of a Weapon.

12 So you're probably scratching your head and
13 saying, okay, if he shot and killed Mr. Bradley
14 and there's no dispute as to that, then why are
15 we here? It doesn't sound like there's a whole
16 lot of factual dispute to work out in this case
17 at all. That's where I think things are going
18 to get a little bit complicated.

19 In addition to proving him guilty of murder
20 and proving those elements I just talked about,
21 it is my burden to prove he did not act in
22 self-defense or have any other legal
23 justification in this case. I submit to you
24 that through the evidence, it will be the
25 State's position that our position is just

1 simply that. He did not have any justification.

2 But you'll hear some excuses, some reasons
3 where, in South Carolina, even if you do take
4 the life of another, there is a justification
5 for it. And if that's the case, you're not held
6 liable for the crime that you're charged with.
7 Mainly, in this case, it involves the defense
8 known as the defense of others.

9 In South Carolina, you're actually
10 permitted to take the life of someone if they
11 are assaulting a friend, a family member or so,
12 and that person who is being assaulted or
13 accosted would have the right themselves to act
14 in self-defense against the person attacking
15 them. So, essentially, what you would be doing
16 is you would be putting yourself in the shoes
17 of someone who's in a position to where they
18 are being threatened to the extent of losing
19 their life or suffering great bodily harm. And
20 if they were able to retaliate in self-defense,
21 then someone else, an onlooker, would also be
22 able to act in their defense. That's the law in
23 South Carolina.

24 I'm going to break down just a couple of
25 parts to you. Self-defense is a four-part test

1 in South Carolina. All of the parts have to be
2 present in the facts for that defense to stand.
3 That being said, it's got to be perfect. You
4 can't have two of the three. You can't have,
5 you know, three of the four. You can't kind of
6 think it's some and not think it's others. It's
7 got to be perfect.

8 So self -- in order to act in self-defense,
9 and by analogy, defense of others in South
10 Carolina, the person who is being attacked has
11 to be without fault in bringing on the
12 difficulty that got them in that situation.
13 Quite simply, you can't pick a fight with
14 someone and then when they start to get the
15 better of you, you pull out a gun and shoot
16 them. You brought about that difficulty.

17 So the law says, if you got yourself into
18 it, you've got to get yourself out of it.
19 You're not allowed to have a legal defense to
20 killing someone or acting violently if you
21 brought about the problem yourself. That's the
22 first prong.

23 The second prong is, you've got to be in
24 actual imminent danger of death or serious
25 bodily injury. Now, a couple of points to that

1 that I want y'all to think about. Actual
2 imminent danger means that it's there; it is
3 imminent; it's going to happen right now; it's
4 not maybe going to happen; it's not could
5 happen; it's not I'm scared I might get hurt;
6 it's got to be me or them right then. The
7 imminent part of it. In danger, of course, is a
8 substantial threat to lose life.

9 The third part is kind of part and parcel
10 to that. If the damage -- if the danger isn't
11 actual, you've got to at least believe you were
12 in actual imminent danger. Sort of the checks
13 and balances for that is we don't just take
14 your word for it. A reasonable person of
15 ordinary firmness and courage, if they were in
16 the same situation, would also share that.

17 So you've either got to be in actual danger
18 or the third prong is you've got to believe you
19 were in danger and all of you with your common
20 sense has got to look at it and say, you know
21 what, yeah, another reasonable person in the
22 same situation, we see where they're coming
23 from. You can't be hit with a spit ball or
24 something like that and say, oh, my goodness, I
25 thought it was going to be something horrible

1 and everything else. It was going to cause me
2 to die. You can't do that. A reasonable person.
3 It's got to be based on a reasonable person
4 standard.

5 And lastly, you've got to have no other
6 means of avoiding the danger. I will add that
7 in South Carolina, I think everybody is pretty
8 familiar with the term of Castle, regarding the
9 no other means to avoid the danger. If you're
10 at your house, like Randy and John was, you do
11 not have to retreat from a threat. If someone
12 threatened you at your house, you still have to
13 be without fault. You still have to be in
14 imminent danger, but you're not required to run
15 out of your own house.

16 In this case, this actually happened at
17 John and Randy's house. While Randy, in this
18 case, didn't have any duty to retreat, there
19 still is that element of means to avoid the
20 danger. That's self-defense. Of course, you
21 have to take that, put yourself in the shoes of
22 whoever is being defended and justify whether
23 the actor in this case, Mr. McCarty, was able
24 to act in self-defense. Only then would
25 somebody be able to act in defense of others.

1 That's essentially the issue in this case.

2 Let me introduce y'all to the case parties
3 a little bit and sort of talk about what
4 happened. The evidence is going to show in this
5 case that on the 15th of July, that John
6 McCarty and Randy Wilson, his partner,
7 Mr. Jacob Kirk, who is going to testify for the
8 State, and Jacob's brother, Mitchell Bradley,
9 were all at the residence in Liberty, [REDACTED]
10 [REDACTED] in Liberty down on Pendleton Street, into
11 the evening hours.

12 Mr. Kirk lived in the residence with John
13 and Randy. There was also another person who
14 lived there, but they weren't present. They
15 were hanging out that night drinking. At some
16 point in time, an argument developed between
17 Randy, Jacob and Mitch. You'll hear more detail
18 about that argument later, but ultimately, it
19 led to a physical altercation between Mitch --
20 Mitchell Bradley, and Randy Wilson. That was on
21 the back porch of the property.

22 Randy called out. Mr. McCarty had already
23 gone to bed. At that point in time, he got up.
24 He grabbed his Beretta 9-millimeter pistol,
25 walked into the kitchen where he could see

1 through the window on back porch. He fired a
2 shot in the ground and then fired two shots in
3 the side of Mitchell Bradley. Mitchell died on
4 the scene. He was 23 years old.

5 After that, the police responded.
6 Everybody, for the most part, was cooperative
7 at the scene. What it's going to boil down to
8 is whether when John McCarty got up and got
9 that pistol -- were all of those elements --
10 did he act reasonably to kill Mitchell Bradley?
11 Mr. Bradley wasn't armed, neither was Randy
12 Wilson. Nobody was on top of one another, down
13 on the ground, nobody was choking out or
14 anything like that. You'll hear the details of
15 the fight.

16 But the State's position in this case is
17 going to be through the evidence, and it's
18 going to be affirmative at the end that he did
19 not have any justification for that. It's
20 threefold. I want to hit on what my burden is
21 and how are y'all to determine.

22 I have to prove this case beyond a
23 reasonable doubt. The defense and the defendant
24 in the case, in every criminal matter, has no
25 burden of proof. They don't have to put up

1 anything in this case. It is purely on the
2 State. If I fail to prove the burden, they
3 don't have to do anything. It's all on my
4 shoulders. I squarely accept that burden in
5 this case.

6 The burden is beyond a reasonable doubt. It
7 is not a burden beyond all doubt. It's not
8 beyond a shadow of a doubt. You wouldn't need
9 jurors to the extent that we do if everything
10 had to be black and white. It would be pretty
11 obvious. A machine could determine either it is
12 or it wasn't.

13 Reasonable doubt is not perfect. It just
14 means that it leaves you firmly convinced of
15 the guilt of the defendant of each of those
16 elements of murder, unlawful killing of malice
17 aforethought. If you are firmly convinced of
18 each of those elements and if that's the case,
19 then you've taken an oath, and you are to find
20 the defendant guilty of that crime, likewise
21 with Possession of a Weapon During a Violent
22 Crime.

23 You probably would say, Baker, how can we
24 say something is fact if we don't have to prove
25 it all the way, we just prove it most of the

1 way saying there's reasonable doubt? Well,
2 there's where you, as the juror, comes in.
3 Y'all don't check your common sense at the
4 door. You need to rely on your common sense
5 that you use to make decisions every day, that
6 you use -- have used throughout your life,
7 learned throughout collective life experience
8 of who to trust, who not to, what type of
9 dealings do you have to make decisions. That's
10 how you fill the gap between reasonable doubt
11 and then saying what happened in the case and
12 what the verdict is.

13 It's the human element. These are crimes
14 created by humans. These are crimes committed
15 by humans involving human parties. Your common
16 sense is the key to reaching a unanimous
17 verdict in this case.

18 Obviously, it's not easy that two people
19 agree on where to go to dinner sometime or what
20 to do on Saturday, so asking 12 people to come
21 together and collectively agree on something is
22 high burden. But the oath y'all took and the
23 way the system works, we are confident that
24 y'all are going to be able to get together and
25 determine the facts of this case.

1 So lastly, you say, well, how are we going
2 to determine that? There's obviously a dispute.
3 You've got to, essentially, pick which side to
4 believe and figure out what facts you believe
5 and how that applies to the law in this case.
6 You'll do that from right here. The credibility
7 of the witnesses in this case is exclusively
8 for you to determine.

9 Just because someone testifies, you have --
10 you still have the ultimate decision on whether
11 to believe or disbelieve what they said,
12 whether it's to believe part of what they said
13 or whether to believe none of what they said,
14 whether to think that someone might be skewing
15 the truth one way or might be skewing the truth
16 another way. I expect throughout the testimony
17 in this case you'll probably hear a couple of
18 different versions of what happened --
19 obviously, there's a disparity -- but good old
20 fashioned common sense and using the same
21 skills you do -- use to trust people and not
22 trust people in everyday life is how you
23 determine the credibility of witnesses.

24 You need to think to yourself, who has a
25 dog in this fight? Who has an axe to grind? Who

1 doesn't? Who might have a better recollection
2 and who might not have a better recollection?
3 Who -- any number of reasons would make someone
4 misrepresent. You can consider all that to
5 determine what to believe and what not to
6 believe. It's the way the cases have been being
7 tried for at least as long as this country has
8 existed and many more hundreds of years before
9 that. Y'all are to determine the credibility of
10 a witness and you make a decision based on
11 that.

12 Again, thank y'all for being with us. Thank
13 y'all very much. It's a very important case.
14 It's been two and a half years almost in the
15 making to get this case, from 11 o'clock on
16 July the 15th of 2015 to 11:00 -- or 12:30 here
17 on October 16th. So -- and we're going to do
18 our best to get that in two and a half days of
19 presentation.

20 But thank y'all, again. It's a very
21 important case for the State. It's a very
22 important case for the defense. I will have a
23 chance again at the end of the trial to address
24 you and, again, express what I think the
25 evidence shows that Mr. McCarty is guilty as

1 charged. Thank you.

2 **THE COURT:** Mr. Newton?

3 **MR. NEWTON:** Thank you, Your Honor. May it
4 please the Court?

5 **THE COURT:** Yes, sir.

6 **MR. NEWTON:** Ladies and Gentlemen, I
7 generally keep my remarks in opening statement
8 very short, primarily because what I have to
9 say is not evidence. What the prosecutor just
10 told you is not evidence, only what you hear
11 from the witness stand. I will say, however,
12 that I do agree with a lot of what the
13 prosecutor said, a good deal of it. One thing
14 that is true, there is no dispute as to who did
15 the shooting in this case and who died. That is
16 true. It did happen.

17 The question, of course, as the prosecutor
18 did mention to you is, is it legally justified
19 or not. I'm sure all you have heard the right
20 of self-defense. The judge in this case will
21 read the law on self-defense. The law of self-
22 defense, as you also heard, is the law on
23 defense of others. Basically, if a person has
24 the right to use self-defense, somebody else
25 has the right to defend them. Same law applies.

1 Basically, in a nutshell, here's a general
2 overview of what I think the evidence will show
3 to you in this case. There was, over two years
4 ago, July 15th, 2015, a gathering at my
5 client's house, John McCarty's house, where he
6 and Randy Wilson --

7 Randy, could you stick your hand up?

8 That's Randy Wilson over there. They are
9 partners of almost 30 years. I think tomorrow
10 will be 30. On this occasion, Jacob Kirk, who
11 was also living there and Jacob Kirk's brother,
12 Mr. Bradley, were in the house as well. John
13 had been at work. The other three had been
14 drinking or were drinking. John comes home from
15 work, eats a little bit and goes to bed.

16 Meanwhile, as the evening gets late, an
17 altercation breaks out. It starts verbally, a
18 lot of shouting. There are 911 tapes that we're
19 going to play. You're going to hear shouting
20 and how upset Mr. Jacob Kirk was. The police
21 were actually called out there once. The police
22 said Randy Wilson was demanding Mitchell
23 Bradley -- Jacob Kirk's brother -- demanding
24 for Mitchell Bradley to leave, leave the house.
25 "Go. Go ahead. We don't need this stuff. What's

1 all this arguing about? Get out."

2 The police tells them that since Jacob Kirk
3 was actually kind of -- had been living there
4 for a minute, he could not force Jacob to
5 leave. And since Jacob Kirk wanted his brother,
6 Mitchell Bradley to stay, then Randy couldn't
7 make Mitchell leave either. Randy tells them
8 this is not going to continue -- this is going
9 to continue. When you leave, they're going to
10 start right back up again. Please defuse the
11 situation. The police say there's nothing they
12 could do. They leave.

13 After the police leave, the altercation
14 starts up in the yard, this time, between
15 Mitchell Bradley, who ends up being the dead
16 person, the deceased person, and Randy Wilson,
17 again, sitting back there. At one point,
18 Mitchell Bradley pushes or shoves or does
19 something. The details -- you will hear
20 conflicting testimony about -- different
21 versions about what exactly happened. What is
22 not in doubt is that Mitchell Bradley did
23 something to shove Randy Wilson down the stairs
24 to the point that he broke his foot.

25 Now, Randy is trying to disengage. He's

1 trying to get back into the house. He climbed
2 up the stairs with the broken foot. Mitchell
3 Bradley will not leave him alone. Randy is
4 trying to retreat in the house. He's hollering
5 out for John who is asleep in the bedroom,
6 "John, John, I need your help." Okay. Randy is
7 trying to get into the house, away from the
8 fight. Mitchell Bradley will not let him go. He
9 pins him down right against the door, holds him
10 down and starts beating on him.

11 Randy hears my client -- John hears the
12 screaming and Randy calling. He will testify
13 that it was unlike anything he ever heard. He
14 said Randy cried a scream of pain and help and
15 fear. When he heard that, that's when he got
16 his pistol expecting something horrible is
17 going on.

18 He goes to the door. He tries to open the
19 door. It opens outwards. The bodies are pressed
20 against the door. Mitchell Bradley is holding
21 down and beating up on Randy Wilson. Brad is
22 against the door. John cannot open the door to
23 try to physically break that fight. He thinks
24 at that time that he's got to break up the
25 fight and Randy is going to be in some

1 dangerous, serious bodily injury.

2 Randy, as you will hear in testimony, was
3 involved in an automobile accident when he was
4 about 16 years old. He was riding a bicycle and
5 was hit by a car. Ever since that time -- well,
6 he had serious surgery on his neck -- ever
7 since that time, he's had a very weak neck.
8 He's more vulnerable than a person would be.
9 Everybody there knows that.

10 Bottom line is John McCarty has no option
11 to avoid serious bodily injury to Randy Wilson.
12 First, he fired a warning shot. Get off. No
13 reaction of Mitchell Bradley. He continues on.
14 Then John McCarty shoots again twice, and he
15 got him.

16 Again, the judge will charge you the
17 applicable law at the end of this case. I do
18 urge you to pay attention to all the testimony.
19 I hope you'll find -- or you should find, under
20 the law of South Carolina, that the shooting
21 was justified in order to avoid serious bodily
22 injury or death. Thank you.

23 **THE COURT:** All right. Ladies and
24 Gentlemen, we've now come to a good point for a
25 break. I'm going to sound like a broken record

1 please the Court?

2 **THE COURT:** Yes.,

3 **MS. MCCALL:** The State calls Deputy Joey
4 Williamson to the stand.

5 **JOEY WILLIAMSON**

6 having first been duly sworn, testifies as follows:

7 **THE CLERK:** Have a seat and state your
8 name for the record please.

9 **THE WITNESS:** Joseph Russell Williamson.

10 **DIRECT EXAMINATION**

11 **BY MS. MCCALL:**

12 **Q** Deputy Williamson, if you would, speak into
13 the microphone so we can all hear you. It's a big
14 courtroom.

15 **A** Okay.

16 **Q** Where do you currently work?

17 **A** Pickens County Sheriff's Office.

18 **Q** And how long have you worked there?

19 **A** At the sheriff's office, about three years.

20 **Q** What is your title or what position are you
21 in currently?

22 **A** Deputy on road patrol.

23 **Q** And in 2015, about July, what was your
24 position then?

25 **A** Same thing. Deputy, road patrol.

1 Q Okay. Were you working on July 15th, 2015?

2 A Yes.

3 Q And were you dispatched at any point to a
4 residence at [REDACTED] in Pickens County?

5 A Yes.

6 Q Were you dispatched more than once to that
7 residence?

8 A Yes.

9 Q When were you first dispatched there?

10 A The first time, I believe, was 11:28 in the
11 evening on the 15th.

12 Q And did you receive any information before
13 you arrived at the residence from dispatch as to why
14 you were going out?

15 A They said there was a disturbance going on
16 among the people that lived there.

17 Q When you arrived, what did you find?

18 A When I arrived the first time, I met with
19 Randy and he had told me that him and Jacob had
20 gotten into an argument over food. It escalated
21 between Randy and Jacob and Mitchell.

22 Q When you arrived, who all was present there
23 at the residence?

24 A Randy and Jacob and Mitchell were all
25 outside. John was inside. I never made contact with

1 John. They said he was inside and had gone to bed.

2 Q How long were you at that residence that
3 first time for that call?

4 A Probably 20 minutes.

5 Q At any point during that time, did the
6 defendant come outside?

7 A No.

8 Q So you didn't make any contact with him at
9 that point?

10 A No.

11 Q As far as the parties that were outside,
12 how were they acting?

13 A Randy, Jacob and Mitchell, they all -- in
14 conversation, they all had slurred speech. Randy and
15 Jacob were very aggravated. They all appeared to be
16 grossly intoxicated. Mitchell was quiet and reserved,
17 but answered my questions.

18 Q So while you were on scene that first time,
19 did you investigate why -- why you were there and
20 talked to them about that situation?

21 A I did. I talked to -- I talked to Randy.
22 Randy said he got upset with Jacob over some food. I
23 can't remember the details behind the food situation.
24 Him and Jacob got into an argument over it. Mitchell
25 joined in and they all were arguing about the food

1 situation. Randy wanted Mitchell to leave and go
2 somewhere else. Jacob, his brother who lived there on
3 [REDACTED] wanted his brother to stay.

4 Q Did you determine who all lived at that
5 residence?

6 A I did.

7 Q Who was that?

8 A Randy lived there. Jacob had been living
9 there. Even Randy said that Jacob had been living
10 there. And John lived there. Mitchell was an invited
11 guest for both Randy and Jacob before the disturbance
12 broke out.

13 Q And what did you conclude at the end of
14 your time there? Did you make anyone leave?

15 A State law, I can't make anybody leave that
16 lives there, on top of the fact that Mitchell was an
17 invited guest. Can't make him leave. Mitchell was --
18 to me, Mitchell wasn't causing any problem. When I
19 was talking to Randy or Jacob, they were all
20 aggravated with each other.

21 Q You said you were at the residence that
22 time about 20 minutes; is that correct?

23 A Correct.

24 Q Was anything else said before you left the
25 residence after you declined to make anyone leave?

1 **A** Yeah, I was headed back to my car. I could
2 hear Randy hollering back at me that I was going to
3 have to come back. He just kept repeating that over
4 and over again.

5 **Q** And at that point, did you leave the
6 residence?

7 **A** I did.

8 **Q** Were you dispatched to return at any point
9 that night?

10 **A** I was, about -- I think I left the
11 residence at 11:40. At 11:44, another call came in
12 from the same residence that shots had been fired and
13 somebody had been struck.

14 **Q** Did you immediately return to the
15 residence?

16 **A** I did.

17 **Q** What did you find when you returned there?

18 **A** Deputy Nix was already in the driveway. He
19 was securing Jacob who was out in the yard. I went
20 around the corner and approached the porch. I seen --
21 I could see Mitchell laying on his back. Randy was
22 over top of him sort of doing CPR. I could see John
23 through the door into the kitchen. I could see John
24 standing in the kitchen. I hollered for John to show
25 me his hand, which he did.

1 Q Let's stop right there and just back up,
2 just to give us a little bit of context. Can you
3 explain what this property looked like from the time
4 you turn off of the road to the time that you get to
5 the house?

6 A When you get to their house, there was a
7 long dirt driveway. The trailer sits parallel with
8 the road that they use the back door to get in and
9 out of their house. The front was gated and had
10 fencing for dogs and whatnot, so you had to enter
11 their house through the back door.

12 Q And the back of the house, is there a porch
13 at the back of the house?

14 A It's a little small porch, yes.

15 Q So you said that you saw the victim,
16 Mitchell, there. What else did you -- what did you do
17 at that point when you saw him?

18 A Mitchell was laying on the ground. Randy
19 was on top. Randy was saying over and over again that
20 John didn't mean to shoot him, John didn't mean to
21 shoot him. Like I said, I could see John. I wanted to
22 make contact with John. I went around Mitchell,
23 cracked the door open, went in and secured John
24 inside the residence.

25 Q When you say that you went in, did you have

1 to step over Mitchell to get in the house?

2 **A** I did.

3 **Q** And then you opened the door and were able
4 to get inside?

5 **A** Correct.

6 **Q** When you encountered the defendant inside,
7 how did he appear to be acting?

8 **A** Almost like he was in shock at everything
9 that had just took place. He was very quiet. He
10 complied with everything. It wasn't a problem. He put
11 his hands behind his back. Secured his hands. Deputy
12 Nix was able to secure the weapon visually. He didn't
13 take it from where it was at. We just secured where
14 it was at and waited for investigators to get there.

15 **Q** Did you do anything else on scene that
16 evening?

17 **A** That was the extent of it.

18 **Q** I have no further questions. If you will,
19 answer anything Mr. Newton has.

20 **THE COURT:** Mr. Newton.

21 **CROSS-EXAMINATION**

22 **BY MR. NEWTON:**

23 **Q** Just one question, Deputy. How much time
24 passed between the first time you were out there
25 after you left and when you had to go back? You know

1 how much time it was?

2 **A** I left at 11:40. The next call came in at
3 11:44, so roughly four minutes. It took -- I didn't
4 get there until 11:47, if I'm not mistaken.

5 **Q** So you're saying that you were called back
6 four minutes after you left?

7 **A** Correct.

8 **Q** Are you sure about that?

9 **A** Based on what I remember from the CAD
10 sheet.

11 **Q** Do you have an incident report that you
12 filled out with times on it?

13 **A** Yes. I don't have it with me.

14 **Q** You don't have it with you? No further
15 questions.

16 **MS. MCCALL:** I have no further questions
17 for this witness, Your Honor.

18 **THE COURT:** Sir, you can step down. Thank
19 you.

20 **MS. MCCALL:** Your Honor, may he be
21 excused?

22 **THE COURT:** Any objection to that?

23 **MR. NEWTON:** No.

24 **THE COURT:** All right. Thank you, sir, for
25 being here.

1 **MS. MCCALL:** The State calls Michael Nix
2 to the stand.

3 **MICHAEL NIX**
4 having first been duly sworn, testifies as follows:

5 **THE CLERK:** Have a seat and state your
6 name for the record please.

7 **THE WITNESS:** My name is Michael David Nix.

8 **DIRECT EXAMINATION**

9 **BY MS. MCCALL:**

10 **Q** Officer Nix, where do you currently work?

11 **A** I work at Tri-County Technical College as a
12 police officer.

13 **Q** And in 2015, around July, did you work for
14 Pickens County?

15 **A** Yes.

16 **Q** What was your job for --

17 **A** I was a deputy for uniform road patrol.

18 **Q** And on July 15th of 2015, were you
19 dispatched to [REDACTED] in Pickens County?

20 **A** Yes, ma'am.

21 **Q** What was the reason for that call that you
22 went to?

23 **A** It was [REDACTED], shots fired. That
24 was the call that I was dispatched to.

25 **Q** When you arrived on scene, had any other

1 officers gotten there yet?

2 **A** Not at that point in time. I was the first
3 on the scene at that shooting incident call. I
4 remember pulling into the driveway -- I never been to
5 the residence before, even though that was my zone of
6 responsibility -- long driveway thinking -- when you
7 go to a scene like that, you start thinking
8 tactically, you know, how to approach, you know, in
9 the safest manner. And there was a long road driveway
10 with a fence on both sides -- I'm thinking, I've
11 never been here, where am I going to go. I get up to
12 the house and I see a trailer kind of off to my
13 right. And I start seeing vehicles up here. There was
14 a big box van. So when I got out of the vehicle, I
15 rolled out of my car and I made my way up towards the
16 box van and a light pole.

17 Again, the gravity of a call like that, you
18 start going over in your head how best to maneuver
19 the situation. I think it got real small behind the
20 light pole real quick. That's when I saw Jacob kind
21 of coming out of the darkness yelling, "My brother,
22 my brother, he's been shot. He's been shot." I was
23 giving Jacob commands to come out of the darkness and
24 drop what was in his hands and asking him where the
25 weapon was, "Where's the gun? Where's the gun?" He

1 said in the house.

2 At that point in time, obviously, my
3 adrenaline was going, so time frame is a little
4 loose. I start seeing other vehicles pull up,
5 responding officers. I get Jacob to me and kind of
6 pass him off. I see Deputy Williamson pulling up
7 towards my right. I see him coming out of his vehicle
8 making his way around the trailer. I knew that I
9 needed to get in behind him for backup. We both made
10 our way around the trailer and made entry into the
11 back.

12 Q And explain for us what the back of the
13 trailer looked like where you made entry.

14 A The back of the trailer is a real small
15 porch. When we went up -- if you're looking at the
16 rear of the trailer, you can see the porch, but you
17 actually have to enter the left-hand side of the
18 porch to go up the steps to make direct entry into
19 the home. Deputy Williamson went in. I was just steps
20 behind him. Stepped over the victim. And then Randy,
21 the witness, he was on top of the victim doing chest
22 compressions. I just remember looking down and
23 thinking this is not good, and we went inside and
24 secured John McCarty.

25 Q Can you explain just briefly what the --

1 how the victim was lying on the porch.

2 **A** The victim was on his back, face up. Randy
3 was on top of him, like I said, doing chest
4 compressions. Everything was moving really fast.
5 Obviously, our main goal, at that point in time, was,
6 obviously, to secure the suspect, secure the weapon
7 so other units can come in and slow the scene down
8 and the investigation can get under way. Like I said,
9 the victim was laying down face up. We moved over him
10 very quickly. Our objective at that point is to
11 secure the suspect.

12 **Q** When you moved over him, did you then go
13 inside the house?

14 **A** Yes.

15 **Q** And were you able to make entry through the
16 door that was on the back porch?

17 **A** Yes.

18 **Q** Officer Nix, when you first arrived on
19 scene, you said that you encountered Jacob walking
20 toward you and you made him drop some things in his
21 hand. What was he holding in his hand?

22 **A** I could tell he had a beverage can. It was
23 a beer can. I told him to put his hands up. I had my
24 weapon drawn at this point in time because of the
25 gravity of this -- the call. He had a beer can in his

1 hand. "Raise your hands." And I start giving him
2 questions. "Where's the gun? Where's the gun?" He
3 sips his beer and I'm yelling, drop -- drop what's in
4 your hands. Drop what's in your hands. He drops the
5 beer and he had something black in his other hand,
6 which turned out to be a cell phone. A few more
7 commands, and he dropped it. Then I got him to me.
8 Like I said, I handed him off to responding officers.

9 Q At that point, you did not know who the
10 shooter was ---

11 A No.

12 Q --- correct?

13 A No.

14 Q Once you made entry through the door, what
15 did you do inside of the home?

16 A Deputy Williamson was already in there. He
17 had already gotten Mr. McCarty secured. I asked
18 Mr. McCarty where the weapon was. He said it was in
19 the back bedroom by a nightstand. I went into that
20 back bedroom, secured and made sure no one else was
21 in there. Looked and visually secured that weapon. I
22 knew, due to the gravity of the incident, that I
23 wasn't going to touch the weapon. We were at a call
24 for more advanced units, forensics, to come and
25 handle that processing part of the scene.

1 Q So you didn't touch the weapon. What did
2 you do the rest of the time on the scene?

3 A Mr. McCarty was secured. Once we were in
4 there and we had him secured and the weapon located
5 and secured, we called for EMS to come on scene for
6 the victim. I stood by with Mr. McCarty in the small
7 kitchen area. He stood for a little bit. Then we got
8 him seated until the detectives were ready on their
9 end to come in and take control of the situation.

10 Q What was the defendant's demeanor at that
11 point?

12 A Say that again.

13 Q The defendant's demeanor, how was he acting
14 at that point?

15 A He was very even-keeled. He was very
16 compliant and not really saying much. I knew, again,
17 due to the gravity of the call, it wouldn't be
18 pertinent for me to ask too many questions. I read
19 him his Miranda warning and just kind of secured him
20 until the detectives could start their investigation.

21 Q Did he appear to understand the Miranda
22 warnings that you read to him?

23 A Yes.

24 Q I have no further questions.

25 A Okay.

1 Q If you will, answer anything that
2 Mr. Newton has.

3 THE COURT: Mr. Newton?

4 CROSS-EXAMINATION

5 BY MR. NEWTON:

6 Q Just briefly. The procedure you followed,
7 is that pretty much standard procedure when
8 responding to any shooting case?

9 A Yes.

10 MR. NEWTON: No further questions.

11 THE COURT: Anything else?

12 MS. MCCALL: Nothing else from the State,
13 Your Honor. He may be excused.

14 THE COURT: Any objection?

15 MR. NEWTON: No objection.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you for being here.

18 MR. CLEVELAND: May I have the Court's
19 indulgence for just one moment.

20 THE COURT: Certainly. And Ladies and
21 Gentlemen, I have not said this to you, but I
22 want you to feel free, as witnesses are coming
23 to and from the witness stand, if you want to
24 stand, stretch, do anything, do that. It wakes
25 you up. If anybody needs a break at any time,

1 please let me know.

2 Look. I'm going to do the same thing, sir.

3 I'm going to stand and stretch too. It does.

4 It's refreshing.

5 **MR. CLEVELAND:** I apologize.

6 **THE COURT:** Certainly.

7 **MR. CLEVELAND:** The State would call Jacob
8 Kirk.

9 **JACOB KIRK**

10 having first been duly sworn, testifies as follows:

11 **THE CLERK:** Have a seat and state your
12 name, for the record, please.

13 **THE WITNESS:** My name is Jacob Kirk.

14 **DIRECT EXAMINATION**

15 **BY MR. CLEVELAND:**

16 **Q** Good afternoon, Mr. Kirk. Would you tell
17 the jury what your relation to Mitchell Bradley, the
18 deceased in this case, was?

19 **A** He was my younger brother.

20 **Q** And if you wouldn't mind, speak close to
21 the microphone. Sometimes, it will trail away if you
22 turn your head.

23 **A** He was my younger brother.

24 **Q** And at the time of his death, how old was
25 he?

1 **A** He was 23 in, like, two days.

2 **Q** How old are you?

3 **A** I'm 29 now. I was 27.

4 **Q** Do you have any other siblings?

5 **A** Yes, sir.

6 **Q** All right. Who are they?

7 **A** Caleb Bradley, Kelsey Kirk, Sierra Rowland.

8 **THE COURT:** I ask you just to scoot a
9 little bit closer to that microphone, if you
10 can, and try to speak into it.

11 **THE WITNESS:** Yes, ma'am.

12 **THE COURT:** Thank you.

13 **BY MR. CLEVELAND:**

14 **Q** Thank you, Mr. Kirk. Do you know the
15 defendant, John McCarty?

16 **A** Yes, sir.

17 **Q** How do you know Mr. McCarty?

18 **A** I met Randy through my grandfather. That's
19 how I met John.

20 **Q** Okay. And we'll get to Randy in a second,
21 but how long had you known John?

22 **A** I'd say six or seven years.

23 **Q** All right. You mentioned Randy. What's
24 Randy's last name?

25 **A** Wilson.

1 Q And how long had you known Randy?

2 A Probably 10, at this point, now. Like,
3 eight when the incident occurred.

4 Q Okay. How did you come to meet or come to
5 know Randy? By the connection of John?

6 A I'm sorry?

7 Q How did you come to know Randy?

8 A I met him --

9 Q Give us a little information about that.

10 A I met him through my grandfather. Like, he
11 would do repairs on my grandfather's rental
12 properties, fixing floors and plumbing and
13 electricity -- electrical stuff like that.

14 Q Okay. So is it your testimony that Randy
15 was a handyman for your grandfather?

16 A Yes, sir.

17 Q Okay. Did you work with your grandfather
18 any during that time you met Randy?

19 A Occasionally.

20 Q Okay. At some point in time, did you come
21 to live with John and Randy?

22 A Yes, sir.

23 Q All right. When was that?

24 A The first time I lived with him was when I
25 was, I'm going to say 22 or 3, and only lived there

1 for a brief period. The last time I lived with him
2 for, like, two years, a year and a half.

3 Q All right. How did you come to live with
4 them?

5 A Just by happenstance. I lost my job. I
6 moved in with them. They helped me get back and forth
7 to a job and get, you know, back settled to where I'd
8 have normal transportation.

9 Q All right. So you said you lived with them
10 for about two years. Was that two years before this
11 incident which occurred on July of 2015?

12 A Yes, sir.

13 Q Okay. Were you friends with John and Randy?

14 A I believe so.

15 Q All right. At the time you lived with them
16 leading up to this incident, who else lived in that
17 residence?

18 A Other than us, there was Randy's nephew. He
19 was 12 or 13.

20 Q Okay. Now, just briefly, describe this
21 residence to the jury, just so they kind of know the
22 scene.

23 A It was just a trailer on a two to two and a
24 half acre piece of property. A bunch of, like,
25 vehicles that didn't run in the back yard. On a big

1 hill.

2 Q All right. How many bedrooms were in that
3 trailer?

4 A Two.

5 Q All right. Who lived in what bedrooms?

6 A Bradley had his own bedroom. John and Randy
7 and I shared a bedroom.

8 Q All right. Y'all shared a bedroom. How was
9 it set up?

10 A You walk into the bedroom. My bed was on
11 the left. Their bed was sitting longways on the right
12 or right behind it. There was, like, a place where
13 they had their belongings and bathroom and closets.

14 Q Okay. What was John and Randy's
15 relationship?

16 A They were a couple.

17 Q Okay. Had they been together as long as
18 you'd known them?

19 A Yes, sir.

20 Q All right. Jacob, I want to cut on to July
21 15th of 2015. What do you remember about what you
22 were doing that day or that evening that lead up to
23 this incident?

24 A I'd gone to work, came home. I got there
25 probably 10 or 15 minutes before my brother Mitchell;

1 and, say, another 5, 10, 15 minutes, John pulled up;
2 and then 10 more minutes, Randy.

3 Q About what time of day was that?

4 A I normally got off around 5:30 -- 5:30,
5 6:00.

6 Q And where were you working at the time?

7 A Right here in Pickens. We were working at
8 the high school, like, cutting out the overgrowth and
9 retention ponds, like, making it to where the water
10 could flow through properly.

11 Q Were you working for your grandfather or
12 you were working for someone else?

13 A Working for a company called H.G. Rentals.

14 Q Okay. And what did y'all do once y'all got
15 home?

16 A Well, I had stopped at the gas station to
17 buy a 12-pack of beer. I had just started drinking
18 and listening on the radio, like a general day.

19 Q All right. What about Mitch? What was he
20 doing?

21 A Mitchell came home. And he didn't have any
22 of his own beer, so we went out to get some. He was
23 just hanging out with me.

24 Q All right. What were Randy and John doing
25 that night?

1 **A** Randy was cooking and dealing with
2 something with his family on the phone. He -- Randy
3 was drinking Southern Comfort like he always does.
4 And John had made this homemade wine that would have
5 been fermenting. He was opening up that and having
6 himself a glass or two.

7 **Q** All right. At what point in time did a
8 disagreement occur?

9 **A** It was late. 10:00, 10:30.

10 **Q** All right. By that time, how much had you
11 had to drink?

12 **A** I'd say 9, 10 beers.

13 **Q** What about Mitchell?

14 **A** Approximately the same, estimated.

15 **Q** Did you have the opportunity to see how
16 much Randy had to drink at that point in time?

17 **A** Not in any certainty. I just knew how much
18 he normally drank. I believe it was that much, but I
19 don't have any, like, concrete evidence.

20 **Q** How much did he typically drink?

21 **A** Like a pint or a fifth, maybe. Whatever
22 that size is, the thin bottle.

23 **Q** Okay. Of what?

24 **A** Southern Comfort.

25 **Q** Tell us about the disagreement.

1 **A** I just came inside and said, Randy, I want
2 to divvy up these dinner plates. If you have any way
3 you want them divided up, can you let me know.

4 **Q** Okay. Where were the dinner plates -- what
5 was Randy doing?

6 **A** The dinner plates was in the microwave, and
7 there was two, which I didn't realize might have been
8 just for me and Mitchell. I didn't know where Randy's
9 was, so I wasn't sure what the situation was with
10 that. And Randy was on the phone by the oven where we
11 would, like, smoke cigarettes underneath the oven
12 fan.

13 **Q** All right. And what was he doing when you
14 asked him about the dinner plates?

15 **A** He was on the phone. He slammed down the
16 phone. No, he said, I'm going to have to call you
17 back. Like, hollered at whoever he was on the phone
18 with, and then he slammed the phone down and turned
19 around and said I want you and your F-ing brother out
20 of my house or something to that extent.

21 **Q** Okay. How did that make you feel?

22 **A** I wasn't understanding why he was upset
23 with me. I, like, shouted back at him.

24 **Q** All right. Did you --

25 **A** And it just escalated.

1 Q -- did you physically bump into him or hurt
2 him in any way at that point in time?

3 A Nothing serious. Shoulder to shoulder, but
4 there was no -- I didn't have enough force to knock
5 him off balance or anything.

6 Q Was that --

7 A It was just a small space in the kitchen.

8 Q Was that an intentional move on your part
9 or was that just because it was a tight space?

10 A I don't doubt that it was intentional. I
11 probably bumped him, but I wasn't trying to hurt him.

12 Q Was that after he told you to leave or
13 before?

14 A After.

15 Q Other than that bump, did that disagreement
16 ever turn physical inside the house?

17 A No, sir.

18 Q All right. Was Mitch involved in that
19 argument?

20 A Only holding me back.

21 Q Okay. Is it safe to say that it made you
22 pretty mad?

23 A The situation made me mad.

24 Q Okay. Why did the situation make you mad?

25 A I been there two years and I haven't never

1 had any issue with anything and then this one night
2 happens. We never had any kind of issue all night
3 long and now, just bam, you want me gone.

4 Q Was it your understanding that Randy was
5 serious that you wanted to leave -- that he wanted
6 you to leave?

7 A Was he serious?

8 Q Yeah.

9 A I believe he was serious.

10 Q All right. How did that -- what did you do,
11 I guess, as a result of that argument? What did you
12 do?

13 A After I, like, done some screaming and
14 hollering, kind of had my composure and I decided,
15 okay, this isn't worth it. I need to get my stuff
16 together. I was planning on leaving in the morning,
17 so I was packing up my stuff. Then the cops showed
18 up. So I stopped packing all my stuff and then I went
19 outside to see, you know, what they were saying.

20 Q All right. You said you were yelling and
21 screaming. Was Randy yelling and screaming at you
22 too?

23 A Yes, sir.

24 Q Do you even know who called the cops?

25 A Do I know who called the cops?

1 **Q** Yeah.

2 **A** I believe he called the cops.

3 **Q** All right.

4 **A** I didn't know that at the time.

5 **Q** Did he tell you he was calling the cops or
6 did you just --

7 **A** He threatened to call the cops.

8 **Q** Did it surprise you when the cops showed
9 up?

10 **A** Yeah, I thought it was a bluff.

11 **Q** Okay. And what, if anything, happened when
12 the police got there?

13 **A** Nothing happened. I was inside, like I
14 said. They stepped in. Once I realized the cops was
15 here, I walked outside. Mitchell was sitting on the
16 porch. Randy was standing at the bottom of the steps
17 or in the yard on the patio. The cops was just
18 basically explaining to us that I didn't have to go
19 because I lived there and Mitchell didn't have to go
20 because I wanted him to stay. And he was trying to
21 explain that to Randy and said, there's nothing else
22 we can do. Y'all have a good night.

23 **Q** All right. Based on what you observed that
24 night, did it make Randy mad that the cops didn't do
25 what he wanted them to do?

1 **A** Yes, sir.

2 **Q** So you said you were screaming and yelling,
3 was Mitch involved in the screaming and yelling at
4 all?

5 **A** No, sir.

6 **Q** What was Mitch doing while you and Randy
7 were having this argument about leaving or not
8 leaving?

9 **A** Give me one second. (Pause.)

10 Yeah, Mitch was just holding me back. I was
11 trying to tell him that I wasn't going to do
12 anything.

13 **Q** When you say you weren't going to do
14 anything, what do you mean?

15 **A** This is -- what I'm talking about right now
16 is when the cops hadn't showed up.

17 **Q** Yeah.

18 **A** This is when he was holding me back. He was
19 holding me back and I told him I wasn't going to do
20 anything. I wasn't going to attack Randy. I wasn't
21 going to hurt nobody. He was just doing the right
22 thing, stopping me.

23 **Q** Okay. Where did most of this argument
24 occur? Was it outside or inside the house?

25 **A** Most of the argument occurred outside -- I

1 mean, no, inside.

2 Q Okay. Where was John McCarty during all of
3 this yelling and screaming?

4 A In the room in his bed.

5 Q All right. Did the argument ever spill over
6 into John and Randy's bedroom?

7 A Yeah, there was a point where I'm packing
8 up my stuff and Randy came in once he knew he had the
9 cops on the phone and I went back to yelling at him
10 because he came in, like, pestering me, bugging me
11 while I'm sitting there in the room trying to gather
12 my belongings.

13 Q Okay. Are you yelling back at him at that
14 point?

15 A I think I was the only one yelling at that
16 point.

17 Q All right. Was John awake or asleep at the
18 time?

19 A I don't see how he could have slept through
20 it, but he was in bed.

21 Q Were the lights on or off?

22 A I had the lights on.

23 Q All right. I want to give a little context.
24 Have you had occasion to listen to the 911 call made
25 from the residence that night prior to the police

1 coming out the first time?

2 **A** No, sir.

3 **Q** Based on what you heard, in your memory, is
4 that a true recording of what was going on inside the
5 trailer?

6 **A** Yes, sir.

7 **MR. CLEVELAND:** All right. At this time,
8 Your Honor, the State would like to enter into
9 evidence State's Exhibit Number 26, a 911 call.

10 **MR. NEWTON:** No objection.

11 **THE COURT:** All right then. Without
12 objection, it's so admitted.

13 (State's Exhibit 26 is admitted into the
14 record.)

15 **MR. CLEVELAND:** All right. Jake, I'm going
16 to publish this call for the jury. I'm going to
17 play it right now, and then I'll come back to
18 you in just a second.

19 (State's Exhibit 26 is played.)

20 **BY MR. CLEVELAND:**

21 **Q** Would you agree with me that Randy seemed a
22 lot less angry in that phone call than you did?

23 **A** Yes, sir.

24 **Q** At any point in time, did Randy ever speak
25 or yell at you louder than what was heard on that

1 phone call?

2 A Yes, sir.

3 Q Was that before or after the call that he
4 yelled or screamed?

5 A It was before the call.

6 Q On that call, we heard someone say
7 something about cut somebody's throat or something
8 like that. Could you tell the jury what that context
9 was?

10 A I said "I would slit," and then I stopped
11 myself. And then Randy said, oh, you're going to slit
12 my throat. Then, I realized that I was being, like,
13 overly doing it, trying to intimidate somebody, so I
14 said that I was going to slit your throat.

15 Q Did you have a knife on you at any point in
16 time in the night?

17 A No, sir.

18 Q Did you ever have any intent on hurting
19 Randy?

20 A No.

21 Q Slitting him or anything like that?

22 A No, sir.

23 Q Why did you make that threat?

24 A I don't have a good reason. I was irate.

25 Q At any point in time during that argument,

1 were you in your bedroom where John McCarty was?

2 A Yes.

3 Q What point? Could you tell the jury?

4 A Like whenever the initial call came in
5 where he made the phone call, I said that's a fake
6 call. Then when they came back, I was in the room
7 packing. Whenever Randy came back with the phone --
8 with them on the phone, I was in there packing.

9 Q Okay. Despite the call to police and
10 everything else, why didn't you just leave anyway if
11 Randy was that mad at you, for that matter?

12 A I had too much to drink. I had a DUI not
13 even two weeks before this event took place. I didn't
14 want to risk getting another DUI.

15 Q Was -- in your observation, was Mitch in
16 any condition to drive?

17 A No, sir.

18 Q Just to be clear, in this whole prior
19 altercation, was there ever any physical -- did it
20 ever turn physical between anybody involved?

21 A Before the cops came, no. After they left,
22 that's when it got physical.

23 Q All right. We're about to get there in a
24 second. After the police showed up and left and
25 didn't make anybody leave, tell the jury what

1 happened then.

2 **A** Okay. So the cops was leaving, and they
3 said y'all stay away from each other. And I didn't
4 listen. Me and Mitchell walked down the steps to
5 where Randy was at in the yard. He was leaning over
6 my truck. I said, just because you own this property
7 doesn't mean that you get to control everything that
8 goes on here.

9 He, like, not ran, but walked with a
10 purpose, up the stairs and started fumbling through
11 Mitch's belongings. That's when Mitchell darted up
12 after him. They grabbed one another or Mitchell
13 grabbed him. Randy grabbed him back and started
14 pulling him and tugging him, pushing and shoving.
15 Mitchell spun and pushed him off the stairs. He
16 stepped through a step at the bottom that was weak
17 and busted that step. I heard, later on, that he had
18 broken his foot. He's laying on his back.

19 **Q** Before you go -- before you get any
20 farther, you said he was going through Mitch's stuff.
21 What kind of belongings and stuff was he going
22 through and what was he doing with it?

23 **A** He had cigarette tubes, cigarette tobacco,
24 a notebook that he was using to roll his own
25 cigarettes. I'm not sure he had anything else up

1 there, but I know that's what was up there.

2 Q What was Randy doing to it?

3 A He just grabbed it, like threw it, crumpled
4 it, threw it around.

5 Q And based on your observation, that made
6 Mitchell mad?

7 A Yes, sir.

8 Q All right. So let's go back. You said Randy
9 was laying on the patio. What happened next?

10 A He was hollering for John, like, John,
11 John, four or five times. I don't know.

12 Q All right. Did John come out at that time?

13 A No, sir.

14 Q All right. What happened then?

15 A He gets up to his feet. Then he starts
16 using the rail, leaning on the rail and pulling
17 himself up the steps. At this point, I'm thinking
18 that it was his gout issue. I didn't have no idea
19 about his foot being broke. He gets to the top of the
20 steps, and either my beer is sitting here or
21 Mitchell's beer is sitting here, and he smacks it
22 off. That's when Mitchell grabs him again and pins
23 him in the corner.

24 Q All right. When you said he smacked the
25 beer off, based on your observation, was that an

1 intentional act or was that an accident?

2 **A** Absolutely intentional.

3 **Q** All right. So Mitchell was on the porch at
4 this time. Where were you?

5 **A** I was at the bottom. That's where I was in
6 the yard whenever Mitchell chased Randy up. Randy
7 fell down the stairs. So I was right there on the
8 patio where Randy was laying.

9 **Q** All right.

10 **A** Just watched them go up the steps.

11 **Q** Do you lay hands on him or anything, at
12 that point?

13 **A** No, sir.

14 **Q** All right. So back up on the porch. Randy
15 has slapped Mitch's or your beer away. What does
16 Mitch do then?

17 **A** He grabbed him and he pushed him up against
18 the rail. Randy started hollering for John again.
19 John walks up. And the door, at this point, was
20 cracked. I can see through the door that he had a gun
21 in his hand. I said, big man John's got his gun. At
22 this point, Mitchell had taken his open hand and was
23 slapping Randy in his face. And John fired a warning
24 shot. Randy swung on Mitchell. Then John tried to
25 push the door to get out. They were like swinging on

1 each other, and bumped the door back closed. At that
2 point, Randy pushed Mitchell. He went to the fridge.
3 John pulled up and shot him.

4 Q Okay. What did John shoot Mitchell -- you
5 said there was a door there. Was there a window in
6 the door?

7 A Yes, you could see through the window.

8 Q Was it glass? Screen?

9 A Glass.

10 Q Did the glass break when he shot?

11 A Yes, sir.

12 Q Where was Mitchell exactly when John shot
13 him?

14 A He was against the frigerator door.

15 Q And we're going to -- I'll show you some
16 pictures in a second. But was his back to the door,
17 his side to the door, front to the door?

18 A His back was to the frigerator door. His
19 right side was to the door of the back of the house.

20 Q And where was Randy, relative to him?

21 A Across from him to his left to the back
22 door of the house.

23 Q All right. And what happened when John
24 shot? I don't mean the warning shot. I mean when he
25 shot Mitch.

1 **A** When he shot Mitch, he just, like,
2 convulsed or whatever. He made like a jerk and then
3 slumped down the fridge and his legs sunk out.

4 **Q** Okay. Did he ever move again after he fell
5 down?

6 **A** He took, like, a deep breath, but I think
7 that was just a reaction from the convulsions in his
8 chest.

9 **Q** Okay. You said he was slapping -- I want to
10 go back a little bit. I want to make sure we have
11 this picture painted of this fight. You said he
12 pushed Randy up against and he was slapping his face.

13 **A** Uh-huh.

14 **Q** Did he ever land any blows on Randy other
15 than slaps to the face?

16 **A** Not that I saw.

17 **Q** Okay. Going forward a little bit. You said
18 they were swinging punches at each other. Did Mitch
19 ever land a punch on Randy?

20 **A** No.

21 **Q** Did Randy ever land a punch on Mitch?

22 **A** Again, not that I saw.

23 **Q** Okay.

24 **A** It was like they were missing right by the
25 face.

1 Q After this warning shot is fired, did both
2 Randy and Mitch continue to tussle?

3 A The warning shot incinerated the fight.

4 Q Okay.

5 A It was a slapping thing before that.

6 Q Okay. So after the warning shot, who swung
7 first?

8 A Randy.

9 Q And then what?

10 A And then it was like they were both trying
11 to swing on each other. Randy pushed him off of him
12 into the fridge and John shot him.

13 Q All right. Randy pushed with both hands,
14 one hand?

15 A Both hands.

16 Q How far apart after he pushed them off was
17 Randy and Mitchell when the shot was fired at
18 Mitchell?

19 A Two and a half, three, three and a half
20 foot.

21 Q Okay. So Mitchell was not directly up on
22 top, pressed against Randy, is that a fair
23 assessment, when he was shot?

24 A No.

25 Q Okay. Did John ever say a word?

1 **A** No.

2 **Q** Did John ever try to come out the door
3 during the fight?

4 **A** The first time, after the warning shot.

5 **Q** All right.

6 **A** That's when they were scrapping. They
7 bumped the door, and he couldn't get out. But when
8 Randy pushed him off of him, he definitely could have
9 got out.

10 **Q** Why do you say that?

11 **A** I mean, he wasn't pressed up against the
12 door.

13 **Q** Okay. I want to look at some photographs
14 real quick. I want you to look at what's been marked
15 as State's Exhibit 2, 3, 4, 5, 6, 7, 8, 10, and 11.
16 All right. Jake, I'm going to show you these. Please
17 take a moment and look at each one of those photos.
18 What I want you looking at them for is to see if they
19 accurately reflect the scene as it was that night
20 after this incident.

21 **A** (Reviewing.)

22 Yes, sir.

23 **Q** All right. Mr. Kirk, have you had an
24 opportunity to review each of these State's exhibits?

25 **A** Yes, sir.

1 **Q** Do they each accurately reflect the scene
2 as it was that night?

3 **A** Yes, sir.

4 **MR. CLEVELAND:** All right. At this time,
5 Your Honor, the State would like to move State's
6 Exhibits -- pardon me -- 2, 3, 4, 5, 6, 7, 8, 10
7 and 11 into evidence.

8 **THE COURT:** Any objection?

9 **MR. NEWTON:** No, Your Honor.

10 **THE COURT:** All right. They are so
11 admitted.

12 (State's Exhibit 2, 3, 4, 5, 6, 7, 8, 10 and 11
13 are admitted into the record.)

14 **BY MR. CLEVELAND:**

15 **Q** Real quick, Mr. Kirk, let's just go over
16 these in order. All right. I'm going to put up
17 State's Exhibit Number 2 and publish it for the jury.
18 I'll put it up on this overhead. If you will, look to
19 your right. There's a little remote control. It has a
20 laser pointer built in. If you need that to describe
21 what I'm asking you, please feel free to use that
22 laser pointer. All right. This is State's Exhibit
23 Number 2, is that the porch where the fight took
24 place?

25 **A** Yes, sir.

1 Q All right. State's Exhibit Number 3,
2 there's a beer can in that photograph. What's the
3 significance of that beer can?

4 A That would be the one that was slapped off.

5 Q Okay. So going back to State's 2, can you
6 show about where it was sitting when it was slapped
7 off?

8 A Right here.

9 Q Okay. Thank you. Skipping forward now just
10 real quick, this is State's Exhibit Number 7. What's
11 the significance of the items sitting in the chair?

12 A This is what -- Mitch's belongings that
13 Randy was fumbling with and the beers that he was,
14 like, pouring out or knocking over.

15 Q Okay. Was he doing that the first time when
16 he went up and was messing with Mitchell's
17 belongings?

18 A Uh-huh.

19 Q Okay. Let's go to State's Exhibit Number 3.
20 This patio area, what happened right there?

21 A Nothing happened right here.

22 Q What about --

23 A Well, when he pushed him down the stairs,
24 he was laying right here and I was standing right
25 here.

1 Q Okay.

2 A But no, no other event happened other than
3 that.

4 Q State's Exhibit Number 1, where is that? Is
5 there any significance to that photograph?

6 A I don't remember any significance to this
7 photograph.

8 Q Is that the way the patio looked the night
9 in question?

10 A Yeah, I believe so.

11 Q State's Exhibit Number 6. State's Exhibit
12 Number 6, what happened right here in this area?

13 A This is where we had been sitting. There's
14 another chair somewhere around to sit on. It was
15 easier to smoke outside than to be crowded around the
16 oven smoking.

17 Q All right. Jake, I said a moment ago,
18 because I was counting out of order, number 9 was
19 missing. Would you look at State's Exhibit Number 9
20 and see if that accurately reflects the condition of
21 the scene after the shooting?

22 A Yes.

23 MR. CLEVELAND: At this time, Your Honor,
24 the State would seek to admit State's Exhibit
25 Number 9.

1 **MR. NEWTON:** No objection.

2 **THE COURT:** All right then. It's so
3 admitted.

4 (State's Exhibit 9 is admitted into the record.)

5 **BY MR. CLEVELAND:**

6 **Q** All right. What does State's Exhibit Number
7 9 show?

8 **A** This is the back door. This is where Randy
9 and Mitchell were. That's the fridge where he got
10 pushed up against.

11 **Q** Where were you standing watching this
12 altercation go down?

13 **A** If you go back to the other picture, I can
14 show you. It's right there at the end of the porch
15 where the steps are.

16 **Q** Pardon me just one second. (Pause.)
17 Is this the photo you're talking about?

18 **A** Yes, sir. I was right in this general area.

19 **Q** Okay. So going to State's Exhibit Number 9,
20 was that basically your vantage point?

21 **A** Yes, sir.

22 **Q** All right. So when Mitchell was face-
23 slapping Randy, as you testified, where were they?

24 **A** Right in the corner here.

25 **Q** All right. Where did you see John appear?

1 **A** I saw John walk from the bedroom and appear
2 here.

3 **Q** All right. Was the door opened or closed?

4 **A** It was just slightly cracked on the right
5 side.

6 **Q** And did you see the gun at that time?

7 **A** Yes.

8 **Q** All right. Did you remain standing in this
9 basic position for the entirety of the altercation?

10 **A** Yes, sir.

11 **Q** Okay. When John fired the warning shot, use
12 your laser pointer and describe to the jury in this
13 picture what you observed.

14 **A** He was standing right here.

15 **Q** You said "he." Who is he?

16 **A** John was standing right here ---

17 **Q** Okay.

18 **A** --- looking out when he walked up. Mitchell
19 gave him the slap. That's when he fired the warning
20 shot.

21 **Q** Mitchell gave who the slap?

22 **A** Randy.

23 **Q** Okay. After the warning shot, who was
24 where?

25 **A** They were still in the same spot. John was

1 here inside. Randy and Mitchell was here. That's
2 where they were at.

3 Q And where -- you described there was a push
4 at some point in time?

5 A Yes, like a warning shot after Mitchell
6 slapped him. Then they started swinging and Randy
7 pushed him. The fight couldn't be all but five
8 seconds.

9 Q Okay. When Randy pushed Mitch and Mitch was
10 ultimately shot, exactly where was he in this
11 photograph?

12 A Back here. He got shot immediately. Like,
13 whenever he was away from Randy, pow.

14 Q Okay. Did Randy remain in the corner over
15 here?

16 A Randy was over there.

17 Q All right. The window is broken. What broke
18 the glass?

19 A The gunshot.

20 Q Okay. All right. I apologize because I know
21 this is difficult. I'm going to show you State's
22 Exhibit Number 10 and publish it for the jury.

23 (Pause:)

24 This is State's Exhibit Number 10. Who's
25 that laying on the deck?

1 **A** Mitchell Bradley.

2 **Q** Is that the same position he fell in after
3 he was shot?

4 **A** As far as I can tell.

5 **Q** It appears that there's some medical
6 intervention and the shirt's cut off. Does it appear
7 that someone has moved him a great distance?

8 **A** Nothing significant, no.

9 **Q** There's some testimony that Randy started
10 doing chest compressions. Where was Randy after Mitch
11 was shot?

12 **A** He was right here. One of his feet came
13 out. That's when we got down to check him out and see
14 if he was alright. Randy started doing chest
15 compressions. I got on the phone with 911.

16 **Q** Who called 911?

17 **A** I did.

18 **Q** Have you had an opportunity to review that
19 911 call that you made?

20 **A** Yes, sir.

21 **Q** The recording of that 911 call, to the best
22 of your recollection, is that the actual call you
23 made that evening?

24 **A** Yes, sir.

25 **MR. CLEVELAND:** At this time, Your Honor,

1 the State would seek to admit State's Exhibit
2 27, the second 911 call.

3 **THE COURT:** All right.

4 **MR. NEWTON:** No objection.

5 **THE COURT:** Then it's so admitted and you
6 may publish it.

7 (State's Exhibit 27 is played.)

8 **BY MR. CLEVELAND:**

9 **Q** What happened after the police arrived?

10 **A** I'm not sure what the deputy's name was,
11 the one that got called second. He told me to drop
12 what I had in my hands, and detained me and put me in
13 one of the police cars.

14 **Q** All right.

15 **A** I was there for the remainder of the time.

16 **Q** Did you talk to the police?

17 **A** Yes, sir.

18 **Q** All right. Did EMS ever arrive?

19 **A** No, sir.

20 **Q** You weren't arrested for anything, were
21 you?

22 **A** No, sir.

23 **Q** I just want to ask you a couple of more
24 things about this fight since, obviously, that's what
25 we're here about. Focusing on John, did you ever see

1 John really try to get out the door?

2 A The one time.

3 Q Was that before or after Randy pushed Mitch
4 off of him?

5 A Before.

6 Q Based upon your vantage point, was the door
7 able to be opened once Mitch pushed -- was pushed off
8 Randy?

9 A Yes, sir.

10 Q After John shot, did he come outside to
11 check on Randy or to check on Mitch?

12 A No, sir.

13 Q Did he say anything after he shot?

14 A No, sir.

15 Q Did he -- did you ever see John again after
16 he shot him?

17 A I saw him -- they had me take the police
18 inside because there were two Boxers in the front
19 yard. To take him out the front door, for whatever
20 reason -- I don't know why they wanted to take John
21 out the front door -- but I had to lead the deputies
22 up there so they could walk John out.

23 Q Okay. But before the police got there,
24 while the situation was still going on, did you ever
25 see John again?

1 **A** No, sir.

2 **Q** Let's talk a little bit about the trailer
3 some more. Is there another way out of that trailer?

4 **A** The front.

5 **Q** All right. In your estimation, how long did
6 it take him to get from the kitchen out the front
7 door to come around behind the trailer?

8 **A** 15, 20, 25 seconds.

9 **Q** I'm talking about if you really wanted to
10 do it, if you're really in a hurry or something.

11 **A** I could make a lap around that trailer in
12 less than a minute the entire -- entire fenced-in
13 area.

14 **Q** Yeah.

15 **A** Or where the dogs stayed, not the entire
16 fenced-in area. They were saying that they had to run
17 around.

18 **Q** Okay. Is the front yard fenced in?

19 **A** The front yard has, like, a low electric
20 fence that you could hop.

21 **Q** All right. So describe for the jury, if
22 you're standing where John McCarty was when he shot
23 Mitch, what would he have to do at this home to get
24 back around and get to the porch where they were on
25 the other side?

1 **A** He would have to go around an island
2 through -- back through the kitchen and the living
3 room and down the steps. Then you could jump where
4 they had this electric fence I was talking about. You
5 go down the front -- out the front door, down the
6 steps, down the porch and around and back up. You
7 wouldn't have to go all the way down. That was not
8 how they had it set up.

9 **Q** Okay.

10 **A** They didn't have it high in this one
11 location that you could have jumped.

12 **Q** Was that -- the low location, was that a
13 shortcut to get around to the back of the trailer?

14 **A** Yes.

15 **Q** Okay. I'm going to show you State's
16 Exhibits 25 and 24. Were those photos taken out at
17 the house at [REDACTED]?

18 **A** Yeah, this was how it looks, but this fence
19 was not here.

20 **Q** Okay. I'm going to -- let me put them in
21 evidence.

22 **A** All right.

23 **MR. CLEVELAND:** At this time, Your Honor,
24 the State would like to admit State's 24 and 25.

25 **THE COURT:** Any objection?

1 **MR. NEWTON:** No objection.

2 **THE COURT:** All right. They are so
3 admitted.

4 (State's Exhibits 24 and 25 are admitted into
5 the record.)

6 **BY MR. CLEVELAND:**

7 **Q** All right. Which one were you saying, this
8 is how it looks?

9 **A** This part here was there. I mean, this was
10 here. This was not there.

11 **Q** Okay. So you got, for reference, State's 25
12 was here and there were some changes in State's 24;
13 is that correct?

14 **A** Yes.

15 **Q** All right. Please describe that. So it's a
16 little bit dark, but describe for the jury what
17 you're talking about that's a little different.

18 **A** Okay. This here, that thin line -- I can't
19 hold my hand straight -- but that thin line right
20 there is the electric fence.

21 **Q** Okay.

22 **A** And that is barely over your knee, probably
23 only knee high. This part is a regular fence. That
24 was not there.

25 **Q** Okay. I'm going to zoom in on that.

1 **A** Like I said, this part right here, this
2 line, the electric fence, that was only knee high.
3 This would have been waist high.

4 **Q** Okay.

5 **A** I could have jumped that. I know if I could
6 jump it, then John could.

7 **Q** Okay. Let's look at State's Exhibit 25 real
8 quick. Is that the rest of the yard?

9 **A** Yes, sir.

10 **Q** Who's that standing there?

11 **A** That's Randy.

12 **Q** How high is that fence around the rest of
13 the yard?

14 **A** That's probably chest high.

15 **Q** Okay. All right. You said you know if you
16 could get over it, John could. Is John, to your
17 knowledge, in good physical condition?

18 **A** To my knowledge, yes, sir.

19 **Q** Does he have any physical limitations that
20 you know of?

21 **A** Not that I can recall.

22 **Q** Does he work a full-time job?

23 **A** He did.

24 **Q** Okay. Is it manual labor or white collar?
25 What kind of job does he do?

1 **A** Manual labor. He's HVAC. He does -- runs
2 the ductwork, does it all with the HVAC.

3 **Q** To your knowledge, is he a capable HVAC
4 laborer?

5 **A** I know for a fact he was, at one time.

6 **Q** What about at the time of the shooting, was
7 he in good physical condition?

8 **A** Yes, sir.

9 **Q** All right. Now, what about Randy's
10 condition? What kind of physical condition was Randy
11 in at the time of the shooting?

12 **A** Well, Randy had been dealing with gout.
13 It's already been stated that he had had a neck
14 injury. He was on oxycodone, for pain, pills. Other
15 than that, I don't know of any other issues.

16 **Q** All right.

17 **A** Gout and --

18 **Q** You spoke about his neck injury. You know
19 what kind of neck injury that was? Did he have any
20 physical limitations, to your knowledge?

21 **A** I was told that it was -- he was on a
22 bicycle or dirt bike that got hit by a car. I think
23 it was a bicycle.

24 **Q** Okay. You know what kind of injury it was,
25 though? What kind of -- neck, shoulder, back?

1 **A** It was a neck injury. And he had a halo,
2 when he was, like, 16.

3 **Q** Okay.

4 **A** And if he looks at you, he would have to,
5 like, turn his -- he would do like this sometimes. He
6 was mindful of which way he turned his neck.

7 **Q** Did he have limited range of motion to your
8 knowledge?

9 **A** I don't know for a fact, but I think he
10 believed he did.

11 **Q** Knowing of that neck condition, whether he
12 got into this scuffle with Mitch, were you scared
13 that he might be seriously injured?

14 **A** Never crossed my mind that he would be
15 seriously injured. Honestly, I figured Randy would
16 have gotten the better of Mitchell.

17 **Q** Why do you say that?

18 **A** He was just bigger. Randy weighed as much
19 as I did, if not more, at the time.

20 **Q** How much did you weigh at the time?

21 **A** I weighed 175, 180.

22 **Q** And what about Mitch, how much did he
23 weigh? Do you know?

24 **A** I think he weighed around 150, maybe 160.

25 **Q** Was he cut-up 150 or skinny 150?

1 **A** He was slender.

2 **Q** How tall was he?

3 **A** He was about six foot.

4 **Q** Okay.

5 **A** 5'11.

6 **Q** Knowing Randy's condition, that he had a
7 neck problem and that he had gout, did you ever see
8 -- at any point, anything Mitch was doing to him, in
9 your perception, would put him in danger of serious
10 bodily injury or death?

11 **A** He never tried to put him in the headlock,
12 grab his head and turn his neck. He never tried to do
13 anything that would have put his already broken neck
14 in, like, more risk. It was just trying to punch each
15 other in the face. Both of them, that's what they
16 were doing.

17 **Q** Did Mitch ever land a punch on Randy?

18 **A** No.

19 **Q** Did Randy ever land a punch on Mitch?

20 **A** No.

21 **Q** Is there any reason why you weren't scared
22 that he was in serious bodily injury or death or in
23 risk of it?

24 **A** It was a fist fight. I don't know of any
25 fist fights that's ever been fatal. I mean, I'm sure

1 there has been, but I don't know of any.

2 Q Had you ever seen Randy get in a fight
3 before?

4 A Yes.

5 Q Tell us about that fight.

6 A I saw Randy fighting John one time. It was
7 probably a year to a year and a half before this
8 incident occurred. I was washing my clothes in the
9 laundry room. The bedroom is here, where I was
10 packing up my clothes that night. The laundry room is
11 here. Here's the dining room. Here's the kitchen.
12 Here's that door. John is sitting here.

13 He takes a plate full of food. I think it
14 was a glass or ceramic plate. He chunks it in the
15 direction of Randy, standing by his, like, kitchen
16 counter. He has pots hanging over it. It smashes into
17 that. There's glass on the floor. I had bare feet, so
18 I had to go get shoes before I could cross. When I
19 get in there, John has Randy in a headlock hanging
20 off of him from where the recliner in the living room
21 is. I don't know how to give a better example other
22 than to demonstrate.

23 Q You'd seen Randy in a fight where he's in a
24 headlock before?

25 A Yeah.

1 Q So based on what you've seen Randy do and
2 how you've seen Randy act, did you ever feel that
3 anything Mitch ever did put him at risk of serious
4 body injury or death?

5 A No, sir.

6 Q Did you ever see Mitch physically engage
7 Randy before Randy started going through his stuff?

8 A No, sir.

9 Q Was Mitch going for Randy again when he was
10 coming back up on the porch before he slapped the
11 beer or was it after he slapped the beer?

12 A After he slapped the beer.

13 Q Did you -- when he yelled out for John as
14 he's being slapped, was it a scream like you'd ever
15 heard Randy scream before?

16 A There was no significant scream. It was not
17 like I'm dying screaming or just burnt myself on hot
18 exhaust pipes scream. It was like, John. Like, I
19 don't want to do it, but, you know, he was just
20 hollering for John.

21 Q All right. Did you want to see Randy get
22 hurt that night, bad?

23 A No. Still wouldn't. Even after all of this
24 happened. I mean, I still don't have any animosity,
25 not, like, cruel. I don't want to see no pain come to

1 nobody.

2 **Q** Knowing Randy's neck condition and
3 everything else, if Mitch had of really been
4 pummeling him, would you have intervened?

5 **A** Of course. Of course.

6 **Q** Did you want to see Mitch get hurt that
7 night?

8 **A** No, sir.

9 **Q** Based upon your take on the home fight, was
10 it necessary to shoot Mitch to protect Randy at any
11 point that night?

12 **A** No, sir. It wasn't even necessary for a gun
13 at all, not even as a threat or a warning.

14 **Q** That's all the questions I have, Mr. Kirk.
15 Please answer any questions the defense has.

16 **A** Yes, sir.

17 **THE COURT:** I'll tell you what, we're
18 probably at a point to take a break. I just ask
19 everyone in the gallery to remain seated while
20 the jury leaves. We'll take a break, our
21 afternoon break.

22 (Jury exits at approximately 3:27 p.m.)

23 **THE COURT:** All right. Sir, you're --

24 **THE BAILIFF:** The jury is secure, Your
25 Honor.

1 **THE COURT:** Thank you. You can -- you can
2 take a break. You cannot discuss your testimony
3 with anyone. Okay.

4 **THE WITNESS:** Yes, ma'am.

5 **THE COURT:** All right. We're in recess for
6 10 minutes.

7 (Court goes off the record at approximately
8 3:27 p.m.)

9 (Court goes on the record at approximately
10 3:42 p.m.)

11 **THE COURT:** All right. Y'all ready to
12 bring the jury back in?

13 **MR. CLEVELAND:** The State's ready, Your
14 Honor.

15 **MR. NEWTON:** Defense is ready.

16 **THE COURT:** Okay. Very good.
17 (Jury enters at approximately 3:43 p.m.)

18 **THE COURT:** All right. Yes, sir.

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

21 **THE COURT:** Yes, sir.

22 **CROSS-EXAMINATION**

23 **BY MR. NEWTON:**

24 **Q** How are you?

25 **A** All right.

1 Q It's not the first time we've asked each
2 other questions; is it?

3 A No, sir.

4 Q Wasn't there a hearing a few months ago in
5 this very case where you also took the stand and
6 testified?

7 A Yes, sir.

8 Q All right. At that prior hearing, did you
9 not testify that while Mitchell was holding Randy
10 down in front of the door that he was yelling
11 something at the same time? Mitchell was.

12 A He was yelling.

13 Q Was Mitchell saying anything when he was
14 assaulting Randy?

15 A What are you calling for John for?

16 Q What tone of voice was he saying that in?

17 A Saying, what are you calling for John for,
18 Randy? What are you calling for John for?

19 Q You've very soft-spoken here in the
20 courtroom. Was that the tone of voice he was using or
21 was it something more louder than that?

22 A He was yelling about the same loudness that
23 John was hollering -- Randy was hollering for John.

24 Q All right. So it's your testimony that
25 Mitchell was slapping Randy in the face and saying,

1 what are you hollering for John for? What are you
2 hollering for John?

3 A Yes, sir.

4 Q What do you think he meant by that?

5 A Like, you are antagonizing me, but now that
6 I'm back up with you antagonizing you back. Why are
7 you calling for John, instead of handling what you
8 already started?

9 Q In your opinion, how was Randy Wilson
10 antagonizing Mitchell?

11 A Well, he was shuffling through his
12 belongings, throwing stuff around.

13 Q Stop right there. His belongings. By that,
14 you mean some cigarettes?

15 A Cigarette tubes and cigarette tobacco and
16 beer.

17 Q All right. Didn't the prosecutor just show
18 you a picture of the cigarettes? Was it not apparent
19 in the picture that all the cigarettes were neatly
20 packaged? Did you see any thrown anywhere in that
21 picture?

22 A No, sir.

23 Q I believe you testified earlier that you,
24 on the way home from work, stopped off to get a 12-
25 pack of beer for yourself. Is that correct?

1 **A** Yes, sir.

2 **Q** Then Mitchell, later, comes back to the
3 house. Mitchell was not living there at the time,
4 correct?

5 **A** Correct.

6 **Q** Okay. But he didn't have any beer, so 'y'all
7 decided to go out again to get more beer for
8 Mitchell?

9 **A** Correct.

10 **Q** So the 12-pack was not enough to share with
11 him?

12 **A** He was going to have his own beer and I was
13 going to have my own.

14 **Q** He was going to have his own 12-pack and
15 you had your own 12-pack?

16 **A** Yes, sir.

17 **Q** All right. How many beers had you had when
18 you went to the store with him to get more?

19 **A** When we went to the store to get more, I
20 hadn't had too many. I had had maybe two, three,
21 whenever we went to get him beer.

22 **Q** But later, once the argument got started
23 over the dinner, I believe you said you had had at
24 least 10 beers at that time?

25 **A** Yeah, about 9, 10.

1 Q I understand that's what you say today --

2 A Nah, that's what I said. I said I had
3 around 9 or 10.

4 Q And I asked you at that time, possibly you
5 could have had more than that. You said yes?

6 A I possibly could have, but I'm estimating
7 9 or 10.

8 Q All right. You had at least 9 or 10
9 possibly.

10 A I'm estimating that.

11 Q Now, again, you're very soft-spoken here in
12 the courtroom. You come across as a nice guy, but the
13 jury has heard what you sounded like that night after
14 all those beers.

15 A I understand that.

16 Q Okay. So was Mitchell -- did he eventually
17 get to the point of extreme anger that you were
18 demonstrating?

19 A Nowhere near like I was demonstrating.

20 Q Then why was he assaulting Randy Wilson?

21 A Mine was verbal. I was hollering and
22 getting loud.

23 Q You also threatened Randy to slit his
24 throat, didn't you?

25 A I didn't threaten to slit his throat.

1 Q Didn't you say that?

2 A I didn't say that. I said "I will slit you"
3 and then I stopped myself.

4 Q And, I believe, once -- you testified to
5 that earlier today. You said, "I will slit you." You
6 said you were trying to intimidate Randy.

7 A Yeah.

8 Q Elaborate more on that please. Why were you
9 trying to intimidate him?

10 A I don't know why I was doing that. I was
11 just trying to -- I don't know -- seem like I wasn't
12 afraid of him if he was going to. He would always
13 talk about how he would be able to get the better of
14 somebody in a fight. I was just basically showing him
15 that I wasn't scared to fight him. But I'm not the
16 type of person to initiate the fight, like,
17 physically.

18 Q Did Randy physically assault you?

19 A No, sir.

20 Q Did he physically assault Mitchell?

21 A No, sir.

22 Q Isn't it true that you were encouraging or
23 egging on your brother to fight Randy Wilson that
24 night?

25 A That's not true.

1 Q You wanted to see them fight; isn't that
2 true?

3 A Seems better than a gun to me, what about
4 you?

5 Q That wasn't the question. Forget the gun.
6 Before that happened, you wanted Mitchell to fight
7 Randy. You wanted that to happen. You wanted to see
8 that. You were standing by trying to encourage that,
9 weren't you?

10 A I wasn't encouraging.

11 Q This is a transcript of the prior hearing,
12 your testimony.

13 MR. NEWTON: Your Honor, I...

14 THE COURT: I'm sorry.

15 MR. NEWTON: The transcript of the prior
16 hearing that you conducted. I just want to show
17 it to him and ask him some questions.

18 THE COURT: Okay. I'm sorry. Certainly.

19 BY MR. NEWTON:

20 Q This is a transcript taken by that court
21 reporter sitting right there. (Indicating.)

22 When you were asked that question, could
23 you please read that question aloud.

24 A Sure. I remember you said --

25 Q This is the question you were asked.

1 **A** Sure. I remember you said earlier today
2 that you wanted to see them fight, Randy and
3 Mitchell?

4 **Q** And that was your answer. (Indicating.)
5 What did you say?

6 **A** I thought that they both needed to fight
7 because of the simple fact that Randy was instigating
8 the entire thing from start to finish.

9 **THE COURT:** Can I ask you to speak into
10 the microphone a little bit more?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** I don't think we've got --
13 You need him to repeat that?
14 Can we repeat all that please?

15 **THE WITNESS:** Yes, ma'am. The question was,
16 sure. Remember you said earlier today you wanted
17 to see them fight, Randy and Mitchell? I
18 answered, I thought that they both needed to
19 fight because of the simple fact that Randy was
20 instigating the entire thing from start to
21 finish.

22 **BY MR. NEWTON:**

23 **Q** You said you thought they needed to fight.
24 You wanted them to fight. Isn't that correct?

25 **A** Yes.

1 Q You were standing outside. You had every
2 opportunity to intervene and try to break this fight
3 up. You stood by encouraging your brother in the
4 fight. Isn't that true?

5 A I did not encourage him.

6 Q You took no steps whatsoever to break it
7 up, correct?

8 A I did not break it up. I did not try to
9 break it up.

10 Q You were right there outside. Why did you
11 not try to break it up?

12 A Because it was a fist fight. I did not see
13 any potential harm coming to Randy or Mitchell.

14 Q Well, you just testified earlier that you
15 were aware of Randy Wilson's physical condition,
16 including his weak neck.

17 A And football players still play with
18 injuries. I mean, like, I don't see that a fist fight
19 is going to come to him breaking his neck again.

20 Q Isn't it true that Randy was trying to get
21 back into the house? He wanted no more of any fight.
22 He was trying to get back into the house. And your
23 brother --

24 A He's also constantly instigating the entire
25 thing.

1 Q How so?

2 A By throwing his stuff around, pouring out
3 his beer, slapping his beers around.

4 Q You testified to the one that he knocked
5 off the railing?

6 A Yes, sir.

7 Q Randy testified that was an accidental
8 knocking off.

9 A But he also admits in his testimony that he
10 poured out beers. He was taking somebody else's
11 belongings and just throwing them away.

12 Q The way y'all were acting that night, maybe
13 somebody needed to pour your beers out. You think you
14 needed to drink any more?

15 A I could agree that we didn't need alcohol
16 and if alcohol wasn't legal, maybe this situation
17 would never have happened.

18 Q So that's your answer, alcohol should be
19 illegal?

20 A I would prefer that it was. But, I mean --

21 Q You would prefer that alcohol was illegal?

22 A Yes, sir. It's caused me a lot of issues in
23 my life.

24 Q Because you can't take responsibility for
25 your own actions? You don't have any control over

1 what you do when you're drinking? Is that what you're
2 saying?

3 **A** I've taken responsibility of my actions and
4 I don't drink now, but I had to learn a long, hard
5 road along the way with alcohol. I told you I had two
6 -- my second DUI happened two weeks before this, this
7 event. I don't touch alcohol.

8 **Q** Alcohol can make people do things they
9 wouldn't normally do. Do you agree with that?

10 **A** Yes, sir..

11 **Q** Now, you did mention the DUI earlier as the
12 reason why you didn't feel like you could drive, or
13 didn't want to drive. But could you not have called
14 somebody to come pick you and Mitchell up? I mean,
15 here's Randy Wilson, the owner of the house, wanting
16 y'all out of his house and you refused to go. You
17 tried to explain to us that you were afraid to drive
18 cause you were too drunk, but couldn't you have
19 called somebody or tried to call somebody to come
20 pick you up?

21 **A** I wish now I would have used better
22 judgement and called my aunt to come pick me up or
23 called my grandfather, because he got called out
24 later. I wished that I had used better judgement.

25 **Q** All right. Your judgement -- it's safe to

1 say your judgement was pretty poor that night, right,
2 because of all the alcohol?

3 **A** I believe all of ours was, yes, sir.

4 **Q** And isn't it true that the amount of
5 alcohol you had to drink maybe -- maybe you didn't
6 notice a lot of what happened. Maybe what you think
7 you remember is not actually what happened. Isn't
8 that possible?

9 **A** I believe these vision -- I mean, these --
10 what I saw is, like, burned in my mind. I can't stop
11 thinking about it.

12 **Q** Yes, sir. But alcohol can affect somebody's
13 ability to observe what's going on, process correctly
14 what is going on; isn't that true?

15 **A** Yes, sir.

16 **Q** To the extent that people may take great
17 offense at something that they normally -- wouldn't
18 bother them?

19 **A** Yes, sir.

20 **Q** Like a fight over beer or having a beer
21 knocked off the rail, correct?

22 **A** Yes, sir.

23 **MR. NEWTON:** Beg the Court's indulgence.

24 **THE COURT:** Certainly.

25 (There is a pause.)

1 BY MR. NEWTON:

2 Q Now, on the 911 tape that we all listened
3 to, we could hear you screaming. Didn't Randy sound
4 fairly calm when he was on the phone? He didn't sound
5 that drunk to me, how about you?

6 A Oh, he sounded drunk to me. But of course,
7 he sounded calm. Wouldn't you remain calm if you had
8 knowledge that you had a 911 call recording your
9 conversation? If I had had that advantage, I believe
10 that I would have stuck the phone in my pocket and
11 then gone on about my business like I was, you know,
12 not doing anything wrong. It seemed like he had the
13 good plan.

14 Q You knew who he was on the phone with when
15 you interrupted him the first time?

16 A I was under the impression that the first
17 call he made was a fake, so I believed that it was
18 nobody on the other line.

19 Q I mean when you were interrupting his phone
20 conversation to ask him about food. Do you know who
21 he was on the phone with at that time?

22 A At that time, I didn't know. I found out
23 later.

24 Q Who was that?

25 A An aunt. Somebody that --

1 Q Would that be Ms. Lalonnie Tucker?

2 A That's probably -- yeah.

3 Q Do you recognize her in the courtroom here
4 today?

5 A Uh...

6 Q Sitting out in the audience?

7 A Yes.

8 Q Could you point her out to me?

9 A She's right to the right of Randy.

10 (Indicating.)

11 MR. NEWTON: Your Honor, I would ask
12 Ms. Tucker to stand up for identification.

13 THE COURT: All right. She has done so.

14 MR. NEWTON: Thank you.

15 BY MR. NEWTON:

16 Q Okay. Now, you were aware of Randy and
17 John's relationship, correct?

18 A Yes, sir.

19 Q All right. You were not involved in that in
20 any way?

21 A No, sir.

22 Q All right. How exactly -- were you paying
23 any sort of rent to them or doing anything of that
24 sort for them allowing you to stay at their house?

25 A I had offered money a few different times.

1 They always refused it.

2 Q Uh-huh.

3 A I did chores, like, I would wash dishes,
4 mop floors, vacuum floors, cut grass, mainly, weed
5 eat.

6 Q So, basically, you did chores for rent,
7 instead of rent?

8 A (Nods head.)

9 Q And you said you lived there since you lost
10 your job about two years prior, correct?

11 A Yes.

12 Q Now, there's something I want to clear up
13 so there's no confusion. You said one person who was
14 living there was Randy's nephew Bradley.

15 A Yes, sir.

16 Q Now, that's a different person from
17 Mitchell Bradley, correct?

18 A Yes.

19 Q And Bradley, the little nephew, was not
20 there at the time, correct?

21 A Right.

22 Q How long had Mitchell been at the house
23 before this incident? Your brother Mitchell.

24 A He was there the night before.

25 Q So this was the second night in a row that

1 he had been staying?

2 **A** Yes, sir.

3 **Q** And Mitchell certainly was not involved in
4 any love triangle or anything like that, correct?

5 **A** Not to the best of my knowledge.

6 **Q** It was just John and Randy who were the
7 partners?

8 **A** Yes, sir.

9 **Q** That fence, did you ever try to jump over
10 the fence yourself? You said it could easily be
11 jumped over, did you ever do that?

12 **A** Yes, sir.

13 **Q** Why?

14 **A** I don't know.

15 **Q** What part of the fence would you jump?

16 **A** Running and jumping and playing with dogs
17 and Bradley, being like a young kid at heart, just
18 playing.

19 **Q** Okay. You were, what, 27 at the time?

20 **A** Yes.

21 **Q** Both Randy and John are considerably older
22 than that, aren't they?

23 **A** Yes, sir.

24 **Q** You ever seen John jumping the fence just
25 to be playing around?

1 **A** I don't recall my --

2 **Q** How high would you say that fence is?

3 **A** The wired fence, electric fence was, like,
4 this high.

5 **Q** But there's a higher fence outside of that,
6 correct?

7 **A** There wasn't. That's what I was saying.
8 That fence fence, not the electric fence, was not
9 there.

10 **Q** So in the picture, the big fence that we
11 could see in the picture, your testimony is that that
12 was put there in the past two years?

13 **A** Yes, sir.

14 **Q** You're positive the fence was not there
15 before?

16 **A** The one part leading back to the back of
17 the house wasn't there. The other part that was high
18 and not, like, stepped on, was all there.

19 **Q** Didn't the police just testify they had to
20 go around to the back because they couldn't get into
21 the fence from the front?

22 **A** No, they wanted me to walk them through the
23 fence so the dogs wouldn't bother them. I don't know
24 why they wanted to bring them out the front instead
25 of the back.

1 **Q** Okay. Is it possible your memory of the
2 condition of the fence is not accurate?

3 **A** No, I remember that it was like that. And
4 regardless if the fence would have been there, the
5 height of it, I still could have jumped it.

6 **Q** How high can you jump?

7 **A** I imagine I could jump over this with my
8 hand. If I place my hand on it, I could clear that
9 and probably even land on the bench.

10 **MR. NEWTON:** I'm sorry, Your Honor. One
11 moment.

12 **THE COURT:** Certainly.

13 (There is a pause.)

14 **MR. NEWTON:** No further questions of this
15 witness.

16 **THE COURT:** All right. Anything else for
17 this witness?

18 **MR. CLEVELAND:** Just briefly, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MR. CLEVELAND:**

21 **Q** A statement that you made was brought up
22 about you thought they needed to fight. In making
23 that statement, did you think either one of them
24 needed to get hurt, or should have gotten hurt, or
25 did you want to see either one of them actually get

1 hurt?

2 **A** No.

3 **Q** And defense counsel asked why you didn't
4 break it up. Why didn't you break the fight up other
5 than the fact that you wanted to see them tussle?

6 **A** I just imagined it, like, resolving itself.
7 I don't know. Boiling over and it makes a little
8 mess, but then there's not enough water to boil out
9 of the pot no more.

10 **Q** There was talk about Randy instigating the
11 whole thing. Did Randy throw punches, push, continue
12 to fight Mitch after Mitch pushed him in the corner
13 the first time?

14 **A** He didn't swing on Mitchell until the first
15 one shot -- the warning shot was fired.

16 **Q** But just to be clear, he didn't say -- when
17 he was yelling for John, he didn't say, whoa, Mitch,
18 I've had enough, stop, and disengage?

19 **A** All he said was, John, over and over, like
20 three or four times.

21 **Q** I know it's -- hindsight is 20/20. You
22 testified that you would have called someone, now,
23 knowing everything. Did it ever cross your mind at
24 any point in time, based upon what was going on, that
25 anyone was going to get seriously hurt or lose their

1 life that night before John shot Mitch?

2 A Never imagined that it would come to that.

3 MR. CLEVELAND: That's all the questions I
4 have. Thank you, Mr. Kirk.

5 THE COURT: Anything else?

6 MR. NEWTON: No, Your Honor.

7 THE COURT: Sir, you can step down.

8 THE WITNESS: Thank you, Your Honor.

9 MS. MCCALL: The State calls Kevin
10 Campbell.

11 KEVIN CAMPBELL

12 having first been duly sworn, testifies as follows:

13 THE CLERK: Have a seat and state your
14 name for the record please.

15 THE WITNESS: My name is Kevin Campbell.

16 DIRECT EXAMINATION

17 BY MS. MCCALL:

18 Q Mr. Campbell, where do you work?

19 A I work for Pickens County EMS.

20 Q And how long have you worked for EMS?

21 A 13 years with the county.

22 Q And did you work anywhere before that with
23 EMS or has that been your only job?

24 A Only job.

25 Q Okay. And what's your position?

1 **A** Right now, I'm an assistant supervisor and
2 paramedic.

3 **Q** And what does that job entail? What are
4 your job duties?

5 **A** My job duties, as an assistant supervisor,
6 is to maintain and make sure people are doing their
7 job appropriately and properly in the proper care..
8 And then, at the same time, I actually function on a
9 truck. So I do provide patient care and advanced
10 care.

11 **Q** What type of training did you have to do to
12 become a paramedic?

13 **A** About two years total time of paramedic
14 school. By the time you get through, about 500 hours
15 worth of riding, or observer time, and that kind of
16 stuff. Then there's lots of extra classes,
17 Prehospital Trauma Life Support, Advanced Cardiac
18 Life Support, Pediatric Advanced Life Support, tons
19 of classes.

20 **Q** Okay. When you are on an ambulance, are you
21 the paramedic in charge? Are you the one that gives
22 out, kind of, orders, for lack of a better word, I
23 guess?

24 **A** Yes, ma'am.

25 **Q** Okay.

1 **A** As long as I'm working with an EMT or an
2 advanced EMT, I'm the one in charge, no matter what.
3 If it is a dual paramedic ambulance, for the most
4 part, I'm usually still the one in charge because of
5 the rank structure at this point.

6 **Q** Were you working on the night of July 15th,
7 2015?

8 **A** Yes, ma'am.

9 **Q** And were you dispatched to [REDACTED]
10 in Liberty?

11 **A** Yes, ma'am.

12 **Q** And is that within the county of Pickens?

13 **A** Yes, ma'am. South side of the city.

14 **Q** So as a Pickens County paramedic, you only
15 respond to calls in the county; is that right?

16 **A** Unless otherwise called outside, yes,
17 ma'am.

18 **Q** And on that night, were you given any
19 information before you arrived on scene?

20 **A** As I recall, we were dispatched to a
21 gunshot, man down, that kind of thing. Usually, we
22 don't get a whole lot more. After that, we had to
23 wait on law enforcement, somebody to get on the scene
24 and kind of give us a heads up. But our en route time
25 and staging time was so minimal that we really didn't

1 get a whole lot more, that I recall.

2 Q When you got that call, how long did it
3 take you to make it to the residence?

4 A Like I said, a call like that, we usually
5 stage for law enforcement because of the danger to
6 us. We don't have any means of defense or offense or
7 anything like that. So, from the time we got
8 dispatched, I want to say around 23:43 that night, we
9 were on scene by 23:52, I believe.

10 Q So approximately nine minutes?

11 A Yes, ma'am. We had a very minimal staging
12 time. Law enforcement got there pretty quick, and we
13 had a distance from the city to get there.

14 Q Explain what you mean by staging time.

15 A So until law enforcement gets on scene, we
16 have to stay at some distance back, usually a mile or
17 so, especially with a gunshot or anything like that,
18 for the risk of us getting shot or shot at. So we
19 stay away until we're cleared by law enforcement to
20 enter. It could take an unknown amount of time. If
21 somebody gets into an altercation or anything that,
22 it kind of increased our time. Not this time.

23 Q Once you were able to actually come on
24 scene, what did you see? What did you observe?

25 A So we pulled up behind law enforcement, who

1 was parked up inside the back side of the residence.
2 We could see that we had to go around to the back
3 side where they were actually parked at. So as we
4 grabbed the cardiac monitor -- we usually grab the
5 blue bag that helps us do just basic care in the
6 field if we need to. I'm the medic. I grabbed the
7 monitor to apply to the patient. We walk around the
8 corner.

9 Q Let me stop you for just one moment. When
10 you say "we", who is that?

11 A My partner, Burgess Shucker, who's in the
12 back back there -- so there's just the two of us on
13 the ambulance -- and then whoever else is dispatched,
14 whether it's Fire and Rescue, whatever else.

15 Q Okay. I'm sorry. Continue on.

16 A So grabbed the monitor. Went around to the
17 back side of the residence. Went up the stairs where
18 they directed us towards the patient who had been
19 shot. Found him laying on his right-hand side. He
20 still had his shirt intact. Legs were kind of
21 crumpled underneath him. He appeared to be,
22 obviously, dead.

23 In order to make access to his chest to
24 place him onto the cardiac monitor to confirm that he
25 has no cardiac function at that point in time, cut

1 down the side of his shirt, making sure not to mess
2 with any holes, any cuts, anything like that. We
3 don't want to mess up any evidence that may be there.
4 Pulled that back. Placed a four-lead cardiac monitor
5 on. Turned it on. It showed asystole on the monitor,
6 meaning he had no electrical activity of the heart at
7 that point in time. Took the monitor off. Confirmed
8 that he was dead and notified dispatch to have a
9 coroner out.

10 Q Did you observe any wounds on the victim's
11 body?

12 A Yes, ma'am. A document in my report, he
13 also had one left-hand midaxillary wound, which is
14 basically the left flank. Then he had two
15 penetrating-type wounds on the right-hand side, also
16 on the right-hand flank. Blood noted from both at
17 that point in time.

18 Q And you're indicating that those gunshot
19 wounds were on the right side. Can you explain for
20 the record where at on his right side?

21 A Midaxillary is -- I don't remember exactly
22 -- it's right below the armpit. Midaxillary is right
23 through the center, right through here. So he had two
24 penetrating trauma-type wounds here and then opposite
25 on the other side.

1 Q So at that point, you said that you
2 pronounced him ---

3 A Yes, ma'am.

4 Q --- dead; is that correct? What is the
5 procedure, at that point, once you take that step?

6 A Once I make the decision somebody is
7 confirmed deceased at that point in time, we will
8 remove our stuff, not touch anything else. We don't
9 want to disturb any evidence or anything that's
10 potential there for law enforcement. We back out of
11 the scene. We back off the steps. Call back to
12 dispatch to confirm that there was a death on scene.
13 Then, they notify a coroner unit. And then anything
14 else that we do need. We cancel all the other
15 incoming units. Fire and rescue was still coming. I
16 believe our supervisor was on the way. We canceled
17 all of them. Not needed.

18 Q So at that point, you were the only
19 ambulance on the scene?

20 A Yes, ma'am.

21 Q Did you do anything else with the victim's
22 body, at that point, as far as moving it?

23 A No, ma'am. He was found, like I said, on
24 his back with his legs crumpled, exactly like in the
25 picture earlier.

1 Q After you called in to your supervisor and
2 called off the other response teams, did you stay on
3 scene? Did you leave at that point?

4 A We stayed on scene, yes, ma'am. We waited
5 on law enforcement.

6 Q And were you instructed to attend to anyone
7 else at the scene?

8 A We were there almost an hour, close to an
9 hour before -- Randy was the next patient that we did
10 have to talk to. He was dealing with law enforcement
11 at that point in time, so we just kind of hung back.
12 He was moving around. Everything seemed okay. We
13 stayed back away.

14 Q Did an officer instruct you to go over and
15 talk to him?

16 A That, I don't remember. Sorry.

17 Q What do you remember when you first
18 encountered Randy?

19 A I remember sitting on the tailgate of one
20 of the pickup trucks that was parked there in the
21 driveway. He was answering their questions. He seemed
22 a bit jittery and shaken up, like I would expect him
23 to be. Otherwise, good motion -- good range of
24 motion. Looked around like he should have been.
25 Obviously, no major trauma like we had already had

1 already.

2 Q Did you notice any injuries on his body
3 that were visible?

4 A From what I recall, he had some cuts to the
5 bottom of his knees. That was about it, at the
6 initial assessment. We were just looking at him.

7 Q While on scene, you note -- you also noted
8 that Burgess Shucker was also there with you on the
9 ambulance. Do you take primary care over one
10 particular patient when there are multiple patients
11 on scene? Or do you both generally attend to one
12 patient at a time? How does that work?

13 A Depending on the severity and how many
14 patients and all that kind of stuff and depending on
15 the type of call. So in this case right here, we go
16 in. My patient is the gunshot victim. There are no
17 other patients at that point in time that are
18 obvious. Nobody else is damaged and dying. So because
19 of that, we both tag-teamed that one patient and
20 decide what's going to happen. After we decide he's
21 dead, we step back. Then Randy presented as another
22 patient after, like I said, about 45 minutes or so,
23 to an hour.

24 He was in no obvious severe distress. No
25 severe, life-threatening injuries. So because of

1 that, Burgess is an advanced EMT, more than capable
2 of handling taking care of that patient. No life
3 threats, then he takes care of that patient from
4 there.

5 Q So did you provide any treatment to Randy
6 on scene?

7 A No, ma'am.

8 Q At any point, did you transport anyone to
9 the hospital?

10 A Yes, ma'am. We did take Randy to the
11 hospital, I believe to Baptist.

12 Q And was that at Randy's request? Or did you
13 determine that he needed to go to the hospital?

14 A That was at his request. We do honor
15 requests like that.

16 Q So is there a certain policy when it comes
17 to someone requesting to go to the hospital?

18 A You can call us for anything, anything at
19 all, any medical complaint or whatever, and we are
20 required by state law to take you to the hospital. We
21 can determine which one, based on the severity of the
22 injuries. So major trauma goes to Greenville. Other
23 stuff can go to any county hospital, such as Canada
24 Baptist. But we are required to take you.

25 Q Do you remember any complaints that were

1 being made from Randy as far as injuries go, or would
2 Mr. Shucker had been the one to handle all of those?

3 **A** He handled all that in the truck. Once we
4 got him into the truck, it's my job, at that point,
5 to drive us to the hospital. Mr. Shucker provided all
6 that patient care on the way to the hospital.

7 **Q** Once you arrive at the hospital, do you
8 completely hand over care to the doctors there?

9 **A** We -- what we do is we will take the
10 patient out, whether they walk in on their own or
11 they ride in on the stretcher. In this case, we rode
12 in on the stretcher, which is our preference. We take
13 him straight in. We get a room assignment from the
14 nurse or we get assigned a triage where we take them
15 out and put them in the waiting room. As soon as that
16 happens, they are turned over to the nurse. The nurse
17 signs the report saying they took custody of that
18 patient from us, because we have to give them to an
19 equal or higher level cert. Then we can clear to
20 leave at that point.

21 **Q** So was that the extent of your involvement
22 with this situation that evening?

23 **A** Yes, ma'am.

24 **Q** I have no further questions. Thank you.

25 **THE COURT:** Mr. Newton.

CROSS-EXAMINATION

BY MR. NEWTON:

Q Just a -- maybe I misheard you. But did you say that you found Mitchell Bradley, the deceased, laying on his right side when you first arrived?

A He was laying on his back.

Q Laying on his back?

A Yes, sir.

Q All right.

A His legs were curved to the right-hand side.

MR. NEWTON: No further questions.

THE COURT: Any other questions for this witness?

MS. MCCALL: Nothing from the State, Your Honor.

THE COURT: Sir, you can step down.

MS. MCCALL: May he be excused, Your Honor?

THE COURT: Any objection to this witness being excused?

MR. NEWTON: No, Your Honor.

THE COURT: Thank you for being here.

MS. MCCALL: The State calls Burgess Shucker to the stand.

1

BURGESS SHUCKER

2

having first been duly sworn, testifies as follows:

3

THE CLERK: Have a seat and state your

4

name for the record please.

5

THE WITNESS: My name is Burgess Shucker.

6

DIRECT EXAMINATION

7

BY MS. MCCALL:

8

Q Mr. Shucker, who do you currently work for?

9

A Pickens County EMS.

10

Q And how long have you worked for Pickens

11

County?

12

A Approximately six years.

13

Q So on July 15th, 2015, you were working for

14

Pickens County; is that correct?

15

A That is correct.

16

Q And in what position were you working?

17

A Advanced EMT.

18

Q And what type of training is required to be

19

an Advanced EMT?

20

A Approximately nine months of training, and

21

as Kevin had noted, ride along times.

22

Q And that evening, were you working with

23

Kevin?

24

A Yes, ma'am.

25

Q Did you also respond to [REDACTED] in

1 Pickens County that evening?

2 **A** Yes, ma'am.

3 **Q** And what do you recall when you first
4 arrived on scene?

5 **A** Typically, as denoted, we grab the bag,
6 grab the cardiac monitor. Walked up the driveway.
7 Turned to the right. Went in behind the residence.
8 Stepped up on the stairs. We were told the patient
9 was up there. Same thing that he denoted, went up to
10 the patient. Assessed the injuries. Basically, opened
11 up the shirt. Applied the cardiac monitor. He read
12 the monitor. That's not part of my job. He read the
13 monitor. From that point forward, kind of what he
14 said, stepped back off the porch and waited.

15 **Q** Mr. Shucker, if you don't mind, just lean
16 up a little bit toward the microphone to make sure
17 everyone can hear you. Thank you. So you were
18 assisting Mr. Campbell with Mitchell Bradley?

19 **A** Correct.

20 **Q** Once you finished your assessment of
21 Mr. Bradley, then what did you do on the scene?

22 **A** Kevin and I stepped off back towards the,
23 kind of the side of the trailer. Randy was sitting in
24 the back of the pickup truck, as denoted. Was talking
25 to the sheriff's department. It was approximately 45

1 minutes to an hour that we stood and waited. Then we
2 were notified by the sheriff's department, I do
3 remember that, to come back over and talk to
4 Mr. Randy.

5 Q And did they ask you to talk to him because
6 they were receiving complaints that he wanted to
7 speak with you as far as medical attention goes?

8 A He stated that he was injured, yes.

9 Q And when you began speaking with Randy,
10 what did you observe? Any injuries?

11 A I could see bilateral, which means both
12 knees. I could see both had little bits of blood on
13 them. From what he had stated, that was from kneeling
14 on the porch doing CPR, the glass. Other than that, I
15 did not see any injuries that were visible injuries.
16 He complained of right ankle pain, right hip pain,
17 right shoulder pain, and then some neck pain.

18 Q And in your job, do you ask patients
19 questions so that you can further determine what type
20 of treatment they need?

21 A Yes, ma'am.

22 Q What types of questions do you ask them?

23 A I, typically, start off by asking them,
24 kind of, time, place, date and event. That gives you
25 an idea that they know what's going on. They know

1 what's happening. They are in the right frame of
2 mind. You ask them about the pain level and where --
3 their different areas of pain. I believe he started
4 off with his right ankle and said that was hurting
5 the worst?

6 I assessed the right ankle. I believe I
7 found it positive for some swelling. He did state
8 there was pain. He did have a range of motion to it,
9 but it was limited range of motion. I applied an ice
10 pack to that. There's not much more we can do to
11 that.

12 Then he denoted right hip pain. Not severe
13 right hip pain, just his right hip hurt. He said his
14 right shoulder hurt with range of motion. So
15 basically, if he moved it, it was sore. Didn't denote
16 any obvious injuries. Didn't see anything -- obvious
17 deformities or any type of bruising.

18 Then, he complained of neck pain. I
19 palpated his neck. It was a prior medical history, as
20 denoted earlier, that he does have some neck
21 problems. Didn't see any gross abnormalities or
22 anything, just complained of neck pain.

23 Q Did -- at any point, did you ask him if he
24 was taking any medications?

25 A I did, because I denoted that. Yes.

1 Q And what did he -- do you recall being told
2 what he was taking or prescribed at that point?

3 A If I may refer to my note?

4 Q Certainly.

5 A Four medications.

6 Q If you will, just review them. Just review
7 your notes, then you can explain for the court.

8 A Yes, ma'am. Oxycodone, which is a pain
9 medicine; Valium, which can be given for pain and/or
10 anxiety; the indomethacin -- I believe is --
11 pronounced that properly -- is for gout; and the
12 other one is Colcris -- I believe it's pronounced
13 Colcris -- is also for gout.

14 Q When you were evaluating Mr. Wilson that
15 evening, did you notice any injuries on his face or
16 head?

17 A I did not. I did not note that either. If I
18 had seen it, I would have noted it.

19 Q Did he appear to be coherent?

20 A Yes, ma'am.

21 Q And he was able to answer the questions
22 that you were asking him?

23 A Yes, ma'am.

24 Q While evaluating Mr. Wilson, was he doing
25 anything else? Talking with law enforcement at that

1 point? I know you mentioned that he had previously
2 talked to him. Talking to anyone else at the time? Or
3 was he focused on treatment with you?

4 **A** Once we -- basically, we brought the
5 stretcher up to the back of the vehicle and moved him
6 over into the stretcher, secured him, wheeled him
7 down to the ambulance. He spoke to someone on the
8 phone -- on the cell phone. Don't know who it was. He
9 basically was just talking about the pain that he was
10 in. Really was not -- he answered all of their
11 questions appropriately, as we continued transport to
12 the hospital, but nothing beyond the ordinary of what
13 we already been through and what we already talked
14 about.

15 **Q** On your way to the hospital, did you
16 provide any additional medical treatment?

17 **A** No, ma'am. I did not. I just took vital
18 signs. That's all I did.

19 **Q** And once you made it to the hospital, what
20 other steps did you take at that point with
21 Mr. Wilson?

22 **A** We wheeled Mr. Wilson into the hospital,
23 put him in the room. It was what we call a patient
24 transfer. We take the sheet that he's on and slide
25 him over to the bed. So we slid him over to the bed.

1 At that point in time, we pass along patient care to
2 the nurse, and the report. I gave them the report,
3 complete of what I had done.

4 Q Did that end your involvement with
5 Mr. Wilson that evening?

6 A Yes, ma'am.

7 Q Have you had any involvement with him since
8 then?

9 A No, ma'am.

10 Q I have no further questions.

11 THE COURT: Any questions for this
12 witness?

13 MR. NEWTON: Very briefly.

14 CROSS-EXAMINATION

15 BY MR. NEWTON:

16 Q When your involvement with the patient is
17 over, as it was with Randy Wilson, do you get follow-
18 up reports of any other things that are found in the
19 hospital by other hospital personnel or not?

20 A No, sir. We do not.

21 Q You just don't get any further information?

22 A No. Typically, we don't ever.

23 Q All right. So if the doctor found broken
24 bones, you wouldn't get notified of that?

25 A No.

RANDY WILSON

having first been duly sworn, testifies as follows:

THE CLERK: Have a seat and state your name for the record please.

THE WITNESS: Randy Gene Wilson.

DIRECT EXAMINATION

BY MR. CLEVELAND:

Q Good morning, Mr. Wilson. Mr. Wilson, by way of background, how do you know the defendant John McCarty?

A We're partners.

Q How long have y'all been partners?

A 30 years, today.

Q Where do you live?

A [REDACTED], Liberty.

Q And how long have you lived at that location?

A Since 2007, July of 2007.

Q All right. Do you know Jacob Kirk?

A Yes, I do.

Q How long have you known him?

A Roughly about 10 years, approximately. Something like that. I met him when he was a little boy at his grandfather's house, Thanksgiving dinner, Christmas dinner, stuff like that. Never, you know,

1 conversation-wise. The next time was when he was 18.
2 He was going into the military to the Navy.

3 Q All right. And did you know Mitchell
4 Bradley?

5 A Yes, I did.

6 Q All right. How long have you known
7 Mitchell?

8 A Not absolutely for sure. I only met him
9 through the get-togethers at the grandfather's house,
10 Clayton Alexander's. We'd do Christmas and
11 Thanksgiving.

12 Q All right. Now, had you -- up until July of
13 2015, had you spent some time with Mitchell Bradley?

14 A We did. We were going to Myrtle Beach for
15 Father's Day weekend, and he was invited down with
16 us.

17 Q Did he go with y'all?

18 A Yes.

19 Q And how long did y'all stay down at Myrtle
20 Beach?

21 A I think about three, maybe four days.
22 Definitely three.

23 Q Who else went on that trip?

24 A It was my great-nephew that we have custody
25 of and then John. That was it. Just the three of us.

1 Q The four of y'all or the three of y'all?

2 A Well, three of us stayed in the condo down
3 on the beach. John McCarty and his mom went up to
4 Arlington to his father's grave.

5 Q Okay. So John didn't go on that trip. It
6 was just you, Mitch and --

7 A We all drove down together. Mitch drove his
8 car, and then we drove our vehicle down.

9 Q Okay. Jacob Kirk didn't go on that trip?

10 A No, Jake had to work.

11 Q All right. Did you consider yourself to be
12 a friend of Mitchell Bradley, inviting him to trips
13 and stuff?

14 A Yes. Yes.

15 Q How much time did Mitchell spend at your
16 house?

17 A Off and on, he would come over and visit.
18 He would call me and ask if he could come over. I
19 said sure. You know, he would spend time with Jake.
20 You know, the majority of the time, would spend time
21 with Jake out on the back porch and stuff until --
22 like, during the weekdays is when Mitch had off.

23 Q Okay.

24 A So Mitch would just sit around, watch TV,
25 play video games or whatever, until Jake got home.

1 Q Okay. But Mitch wasn't always a tagalong
2 with Jake. You had a rapport with Mitch as well,
3 correct?

4 A A what?

5 Q A rapport. You were friends with Mitch
6 independent of Jake, correct?

7 A Yes.

8 Q And just to clarify, this Father's Day
9 weekend when y'all went to the beach, is that, give
10 or take, six weeks before this incident happened?

11 A Approximately, yes.

12 Q Okay. I want to just cut right into July
13 15th of 2015. You remember that day?

14 A Yes.

15 Q All right. Just tell the jury in your own
16 words what happened that evening.

17 A I was at the -- I was down at Fountain Inn
18 and started heading home. Stopped at Bargain Foods,
19 which is a grocery store. Did grocery shopping. Left
20 from there. When I left from there -- I always call
21 John whenever I get on the road or right as I'm
22 getting on the road and let him know that I'm on the
23 road to travel where my destination is. I don't know
24 exact time when I called John. I do have the phone
25 records. I just didn't look at that. I called him.

1 Jake and Bradley and John was already at home. They
2 were all there. Then I got there and unloaded the
3 groceries and put them all away. Then I started
4 preparing the food, the dinners. Made four dinner
5 plates. John ate his. I ate mine. Put the other two
6 -- because they weren't ready to eat, they were still
7 on the back porch -- put theirs in the microwave.

8 Then I got back on the phone with my niece,
9 Lalonnie Tucker, and was talking to her for a length
10 amount of time, different phone calls in and out. Had
11 some family stuff going down there that I was helping
12 her with. So then I was on the phone with her,
13 standing by my stove.

14 Jake and Mitch, I guess, was ready to eat.
15 So Jake came in and he pulled the food out of the
16 microwave, the two plates that I had fixed for them
17 already. Jake kept interrupting me, you know, about
18 the plates, dinner plates or something. There was two
19 already in the microwave, fixed, ready for them to
20 eat. All they had to do is heat it up -- back up.

21 Jake was saying which plates were whose and
22 dah, dah, dah. So he kept going. I said I'm on the
23 phone. Then he came right directly in front of me,
24 which is probably about maybe two and a half, three
25 feet from me. Then he said, which plate is ours, I

1 need to divvy it up? Or something like that. There
2 were two plates already. There was just two people
3 left to eat.

4 Q Okay. Was it safe to say Jake didn't want
5 to eat your -- eat all of your food? He was asking if
6 he needed to save some for you or John or if he could
7 have it all?

8 A No, because, see, I always, always fixed
9 plates, individual plates. There's no plates that
10 need to be shared with anybody else. Everybody has
11 their own plates. I don't set the table and have
12 people come and fix their own plates. I fix their own
13 plates.

14 Q Okay.

15 A Then if they want seconds, then they could
16 come back and fix their own plates, you know, get
17 whatever they need left.

18 Q All right. Continue.

19 A (No response.)

20 Q Continue to tell the jury what happened.

21 A Then Jake kept talking to me. I was trying
22 to pay attention to my niece. I just told him, I
23 said, well, that's rude. I said, don't you see I'm on
24 the phone. Then he got pissed. Then when he walked by
25 me, he hit me on my shoulder, like football kind of

1 thing, shoulder to shoulder. I'm standing like this.
2 He hit me hard enough, not real hard, but hard enough
3 to push me up against the pantry there. I said,
4 that's pretty damn rude. And then he turned around.
5 He just started screaming and then waving his arms. I
6 kept telling him don't touch me, you know, keep your
7 hands off of me.

8 Then Mitchell started in with saying stuff.
9 I pointed at Mitchell. I said, you can leave. I said,
10 you need to leave right now. He was getting
11 aggravated because, I guess, Jake was aggravated and
12 that aggravated Mitch. So I told them both they can
13 leave. I said, Mitch, you can leave. You don't stay
14 here. You don't live here. I cannot make Jake leave
15 because he lives here. Jake says, if you want me to
16 leave, all you got to do is just tell me to leave. I
17 said, well, I want you to leave. He said, well, I'll
18 just move out.

19 So he went into the bedroom and started
20 packing his clothes. Jake's truck was broke down at
21 the time. It needed a control module. Mitch was just
22 going on, verbally. So I walked outside and started
23 working on the truck. I came back through to get my
24 miner light, which is the headlight. I went back out,
25 started working on the truck down in the engine

1 compartment.

2 Then Mitch came out and started. I was
3 ignoring Mitch. Down in the engine department, I was
4 down there. I had to reach up where the radiator is
5 to get the wrench, special wrench to do the control
6 module on the side of the distributor. I knocked over
7 his beer. Then he grabbed me by my left arm here and
8 just pulled me out of the engine compartment. I asked
9 him what he was doing. I said, man, that was an
10 accident. Then everything was, like, calmed down and
11 fine. So I didn't think too much about it.

12 So, I got finished with the truck. Mitch
13 and Jake was on the back porch. I started coming up
14 to the back porch. That's when Jake took whichever
15 hand and slapped on my miner light. He goes, well,
16 what the hell you gonna do -- well, not hell, but he
17 says what are you going to do about that. I said,
18 well, I think everybody's had enough to drink. So
19 there was a beer there; I poured that beer out.

20 Then I started -- as I started going back
21 up the steps, the other steps, that's when Mitch
22 shoved me. That's when I fell down the steps and
23 broke my right leg and -- my right foot. Then I had
24 to use the bannister on the left side to get up. As I
25 was going up, the bannister is loose. It's not loose,

1 wobbly -- it's wobbly, but not, like, fixing to fall
2 off. I'm assuming that Jake's beer was on the
3 bannister.

4 Q Don't assume. Just tell us what --

5 A That beer knocked over. As I was heading to
6 the door to get inside the house, that's when Mitch
7 shoved me in the back to the door. I already started
8 opening up the door. The door slammed shut. Then
9 Mitch swung me around and pinned me up against the
10 bannister. Mitch was on top of me, not on the ground
11 top of me, but I was hanging over the bannister.

12 Q Was he at your back or was he at your front
13 side?

14 A He was at my front side then. He was at the
15 back when I was going into the house.

16 Q All right. What happened next?

17 A Then he started to put his hands on me.
18 Started swinging. Visibly, I did not have no marks on
19 me because I was blocking most of them. But he
20 connected with this side of the mouth, which cut my
21 gum inside of my mouth pretty bad on the inside. Then
22 I started hollering for John. I was really starting
23 to get scared there, because now, you know, he done
24 broke my leg when I was trying to get in the house.
25 Then I started screaming for John because it was just

1 totally out of control. He had no control.

2 Then I heard the first shot, which John
3 fired into the floor. I heard the door kick or
4 something like that, a big bang on the door. Then I
5 heard the warning shot. Then I just heard John
6 hollering something or saying something in the mix --
7 or somebody was. Then the shot came through the
8 window through the door.

9 And when Mitch was shot, Mitch was really
10 close to me. He wasn't that far away from me. His
11 hands were still towards me. When he was shot, he
12 started going down. I grabbed ahold of his sides, up
13 underneath his arms and led him down. Then, when he
14 went down, I went down with him to put him down on
15 the ground so he didn't just fall. So I let him down.

16 I don't know what happened. It was like the
17 first instinct, you know, to help somebody that's in
18 need -- needs medical attention. Everything else just
19 went blank and that just kicked in. I can't explain
20 why it happened. I just don't know.

21 I started, you know -- I was watching him.
22 You know, he was breathing. I had a pulse, then there
23 was no pulse. I was feeling the side of his neck.
24 Then, when I started -- did not feel no pulse, then I
25 started chest compression to get the heart back up.

1 Didn't know -- I'm not an expert on CPR. I just know
2 what I've seen, what I've heard to revive somebody.
3 That's what I proceeded to do. I did that until the
4 officers got there.

5 One officer come up on the porch. He asked
6 me is he gone yet. I was like, I don't know. I think.
7 I don't know. So the two officers that arrived, they
8 helped me get off of the porch. Because of my broken
9 leg, I could not walk by myself without assistance.
10 They both helped me off the porch. One officer came
11 back on the porch, grabbed Mitch by his left arm, and
12 pulled him away from the door so that officer could
13 gain access to the house.

14 The other officer led me to the back of my
15 pickup truck, which he let down the tailgate, and I
16 got up on the tailgate. I remained there and I
17 answered questions through the detective. I don't
18 remember the detective's name, but I have not seen
19 him here in the courtroom.

20 Then EMS came and went to Mitchell Bradley
21 and assisted him. When they finished with Bradley,
22 they came to me and was asking me questions, you
23 know, about my condition.

24 Q Then what happened?

25 A They got an ice pack. My foot started to

1 swell up. They got an ice pack. Put the ice pack on.
2 A few minutes later, they brought a stretcher in.
3 They put me on a stretcher and took me to the
4 hospital.

5 Q Okay. Did you talk to police any more at
6 the hospital?

7 A Yes, the detective.

8 Q Okay. I just want to go back and ask some
9 clarifying questions about this evening. When you
10 were -- prior to making dinner or during making
11 dinner, were you drinking alcohol?

12 A I had one drink, one full drink, which was
13 Southern Comfort liquor.

14 Q Okay.

15 A Not like glasses; just a liquor, something
16 like a shot glass. I only had one full one, at that.
17 And then I poured another one, which I took about a
18 sip out of that, and then that was it. I was not
19 intoxicated, like, drunk. No, absolutely not.

20 Q You -- just to skip around a little bit.
21 You told EMS that you were on oxycodone and Vicodin.
22 Had you taken that medication that day?

23 A No. That's what my -- that's what is
24 prescribed to me.

25 Q Okay. Was Mitchell and Jake drinking?

1 **A** Yes.

2 **Q** All right. What were they drinking?

3 **A** Beer. Budwei -- Bud-something. There was
4 the three cases, at the house, of beer.

5 **Q** So when you and Jake started arguing, other
6 than this, that you describe as a football push, a
7 shoulder to shoulder, was there ever any physical
8 contact inside the house?

9 **A** Jake, like, put his hand on me. It wasn't,
10 like, hurting. Put his hand on -- he was waving his
11 hands around. I just kept telling him don't put your
12 hands on me, don't put your hands on me. Then he was
13 just screaming. I called -- I was on the phone with
14 my niece. I hung up from her and then I called 911.
15 It was really getting -- I was getting concerned
16 because --

17 **Q** I was going to get there. In your initial
18 story, you just testified you didn't say anything
19 about calling the police, but you heard the 911 call
20 play in the courtroom. When had you called the
21 police?

22 **A** When I got off the phone with my niece, it
23 was, like, within 30 seconds. I mean, there wasn't
24 much time. I mean, it was a matter of seconds, by the
25 time I dialed 911 and asked for an officer.

1 Q Okay. Was that the time you called and just
2 let the phone record or is that the time you called
3 and actually requested police to come?

4 A I actually requested them to come.

5 Q Okay. Did you hang up on 911 or did they
6 hang up on you?

7 A I probably hung up on them or I laid the
8 phone down and then it hung up. Then they called
9 back. My phone was on the counter, on the island
10 counter. When it rang, I just hit the talk button and
11 left the phone there. Then, Jake was hollering and
12 everything there, so that was being recorded. So when
13 Jake walked back into the bedroom, I picked up the
14 phone. When he started coming back out of the
15 bedroom, I laid the phone back down. I didn't want
16 any further confrontation, him seeing that I'm on the
17 phone, so I just laid the phone down. Now, I knew
18 that they were --

19 Q Okay. So just to clarify, you didn't want
20 Jake to know that you were on the phone with 911?

21 A Correct. Not the second time.

22 Q Okay.

23 A But I did -- he did hear me on the phone on
24 the first time when I was asking for assistance.

25 Q All right. So this whole call that we heard

1 in the courtroom where Jake's yelling, is that the
2 time that he didn't know 911 was on the line, but you
3 did know 911 was on the line?

4 **A** Yes.

5 **Q** Okay. Where was John during all of this
6 argument in the kitchen and the 911 call?

7 **A** In the bed.

8 **Q** All right. How far was the -- was the
9 bedroom door closed or open?

10 **A** Not for sure, at the time. You can't see
11 the bedroom when -- from my kitchen -- the bedroom
12 door, where I stand.

13 **Q** All right. But at some point in time, you
14 testified Jake went into the bedroom and you followed
15 him in there, correct?

16 **A** That was -- the first initial part, I did
17 not follow Jake into the bedroom. That's when 911
18 called. I stayed in the kitchen. Then I needed to go
19 into the bedroom in the bathroom. So I went in there
20 and Jake was laying on the floor getting his stuff up
21 from up underneath the bed. I stepped over the bed.
22 Some words were exchanged, like, you know, I don't
23 know exactly word for word. But it was there. There
24 wasn't no screaming back and forth. It was, like, a
25 loud, just a loud talk. I walked out of the room.

1 Proceeded to go to the truck and finish up.

2 **Q** All right. Was the light on when John
3 McCarty was in the bedroom and Jake was in there
4 packing and arguing?

5 **A** I do believe so, yes.

6 **Q** Did he ever respond, get up, say anything?

7 **A** No.

8 **Q** Did he ever acknowledge the argument in any
9 way inside the house while it was going on?

10 **A** No, sir. No.

11 **Q** So it's my understanding that both Jake and
12 Mitchell had their own cars, not including the truck,
13 but had their own vehicles at the house, correct?

14 **A** Yes.

15 **Q** What was the urgency in fixing Jake's truck
16 at midnight, basically?

17 **A** Jake had a small car. And with all his
18 stuff, it would not have fit into his small car. I
19 did not take into consideration of Mitch's car being
20 there, but the truck was right there by the back
21 porch. I commenced to fixing his truck because I told
22 him I'd fix it. I just wanted him gone.

23 **Q** Okay.

24 **A** Just end it. Just go.

25 **Q** Okay. Wouldn't you agree with me that he

1 would still have to come back and get his car, even
2 if you fixed the truck and he left in the truck?

3 **A** Well, yes, he would still have to come back
4 to get the car, but all his belongings would have fit
5 in the back of his pickup truck.

6 **Q** All right. So on the 911 call, one of the
7 last things that was said from you was, telling the
8 cops that, something to the effect of, y'all better
9 get here because more "S" was going to go down. Is
10 that your words to the police?

11 **A** Probably, most likely, I would have to
12 agree with that, yes.

13 **Q** All right.

14 **A** It was getting more, more aggressively,
15 more verbally.

16 **Q** And did the cops ever show up?

17 **A** Yes, sir.

18 **Q** All right. Tell me about what happened when
19 the police got there.

20 **A** They came to me first. I was on the back of
21 the truck. I talked to them. Jake and Mitch was on
22 the back porch. Mitch asked me, from the back porch
23 over to the truck, he said did you call the law? I
24 told him -- I said yes, I did. Then he left from the
25 back porch and went to his car. Then he came back and

1 got back on the porch and the law came up. He spoke
2 to me first. Then, I -- then they went and spoke to
3 them. I don't know exact timeframe they spent with
4 them. They came back out to me -- well, one of them
5 did, and was telling me that they could not make
6 Mitch leave. And I didn't understand why they could
7 not make Mitch leave, because he didn't live there.
8 That just kind of puzzled me.

9 Q All right. Did that make you mad?

10 A No, didn't make me mad, no.

11 Q It frustrate you?

12 A I would say I was a little perturbed, you
13 know, frustrated. I wanted it to end. I didn't know
14 if that was not resolved, then when the police left,
15 then it was going to start right back up again. I
16 stayed out under the truck after the law left.

17 Q I want to go back just a little bit.
18 Earlier, you testified that after you knocked over
19 Mitch's beer, you told him it was an accident, and it
20 kind of cooled down after that.

21 A Yes.

22 Q So was that before or after the police
23 came?

24 A That was after. That was -- that was -- no.
25 Before. That was before the police. Jake only --

1 Mitch only came to the vehicle one time without Jake.

2 Q Okay.

3 A That was before.

4 Q So at some point in time, is it a fair
5 assessment to say that this argument sort of defused
6 itself?

7 MR. NEWTON: I object to leading
8 questions.

9 THE COURT: All right. Sustained. If you
10 will, rephrase it.

11 BY MR. CLEVELAND:

12 Q Did the argument calm down before the cops
13 arrived at any point?

14 A Yes, when the -- when I told them -- when
15 Mitch asked me did I call the law, and I said yes,
16 that's when it calmed down. Mitch went to his car,
17 for some reason. Then he came back.

18 Q Okay. So even though the argument had
19 calmed down, it still perturbed you that the cops
20 didn't make Mitch leave?

21 A No, not perturbed, but I was concerned.

22 Q Your words, not mine, Mr. Wilson.

23 A Right.

24 Q That's what you just said.

25 A Not like -- I wasn't mad. I just didn't

1 understand why the law did not remove -- or ask Mitch
2 to leave or to make assistance for him to leave.

3 Q Was it still calm, the argument when the
4 police left?

5 A No, it started back up with verbal, just
6 verbal from the porch to the truck.

7 Q Before the police left or after the police
8 left?

9 A After the police left, it started. I mean,
10 you could hear -- I could hear them -- I wasn't
11 paying attention. I was ignoring them. Then both of
12 them came out to the truck while I was working on the
13 truck, and Jake.

14 Q Gotcha. I just want to be clear. It was
15 calm while the police were there, but after the
16 police left is when you testified that they started
17 things back up?

18 A Yes, sir.

19 Q Did you tell the police as they were
20 leaving that they are going to have to come back out
21 here because this is going to get worse?

22 A I believe so, at that time, yes.

23 Q Why did you tell them that if, at that
24 point in time, the argument had calmed down between
25 y'all?

1 **A** Because there was nobody else there as
2 witnesses to stop the -- after they left, there was
3 nothing there to stop more stuff from happening. I
4 already done knew that. I figured that that was done
5 because they started on the porch, then they would
6 calm down when they knew the law was coming.

7 **Q** Okay. So was the argument just calmed
8 because the police were there?

9 **A** Yes, I believe so.

10 **Q** All right. So going forward a little bit,
11 after the police left, you testified they came down
12 to the truck together?

13 **A** Yes.

14 **Q** When did you start pouring out their beers?

15 **A** When I started coming up onto the porch and
16 Mitch flipped my miner light, headlight that goes
17 over your head so wherever you look at, it shines a
18 light. As I was coming up the steps, that's when
19 Mitch flipped my headlight off. He asked me what was
20 I going to do about it. More words were added to it.

21 Then I started coming back up the steps.
22 There was a beer on the right side. I smacked it off
23 hard. Knocked it off. Then I started proceeding back
24 up to the porch. That's when Mitch took both hands
25 and shoved me onto my chest down. I hit the two

1 bottom steps, trying to catch myself, broke them in
2 half, and hit the patio on my right side.

3 Q Okay. That's when you broke your leg? When
4 Mitch pushed you down the stairs ---

5 A Yes.

6 Q --- is that your testimony, and the step
7 broke, correct?

8 A Yes.

9 Q So did he kick you in the leg or actually
10 hurt your leg or did it break as a result of you
11 going down the stairs?

12 A It broke because I was going down -- I was
13 being pushed down the steps.

14 Q Okay. Did you get up on your own power?

15 A Yes, I did. I got up on my left side. Had
16 to grab ahold of the beginning of the bannister at
17 the end of the steps to assist. I could not put no
18 pressure on the leg to get up to the steps.

19 Q All right. And when you and Mitch tussled
20 again there in the corner, you testified that you
21 were blocking most of his hits, but he connected one
22 time on your right side?

23 A Correct.

24 Q Was that a punch?

25 A I believe it was a punch. It could not have

1 been a slap. It wouldn't have did the damage inside
2 of my left cheek.

3 Q Okay. Did you ever throw any punches back
4 at him?

5 A I tried to defend myself. Could not connect
6 with him.

7 Q Okay. There's a difference between blocking
8 and trying to connect. Which one was it?

9 A Both. It was blocking him from swinging.

10 Q And were you swinging on him?

11 A And I did try to swing, to get him, to
12 protect myself.

13 Q At the same time, were you hollering for
14 John?

15 A Yes.

16 Q Did you ever say Mitch, stop?

17 A Yes.

18 Q Now, just to be -- kind of cut the cord a
19 little bit, did you suffer any major debilitating
20 injury during that fight with Mitch?

21 A Yes.

22 Q To your -- I --

23 A What part?

24 Q We heard testimony about a neck condition
25 that you have. Did you suffer any debilitating or

1 major injury to your neck or shoulders during your
2 fight with Mitch?

3 **A** Yes, I did. My right -- my right shoulder.
4 When I hit the concrete, my right shoulder and my
5 right hip. I've had scars and surgeries on my hip.

6 **Q** Okay. Let me rephrase that. Did you suffer
7 any surgery that would -- or any injury that would
8 potentially paralyze you or could have possibly
9 killed you during that fight?

10 **A** During which part, the steps?

11 **Q** No, the actual -- what I will call the
12 tussle in the corner.

13 **A** The tussle in the corner? No. I didn't -- I
14 felt the pain in my neck. It only turns a certain
15 way. So with force, it grinds a bone and pulls on the
16 wires and pins. I only have the C-1 and C-8 that's
17 moveable. The rest is wires and pins in it to hold it
18 together.

19 **Q** Okay. Is that a new surgery or is that an
20 old surgery?

21 **A** It's old surgery back in 1980.

22 **Q** Okay. Now, Mr. Wilson, this isn't your
23 first time either talking to the police or testifying
24 under oath in this matter, correct?

25 **A** Correct.

1 Q Specifically, I want to go to the first
2 conversation you had with police on the back of your
3 pickup truck, I believe you testified to, correct?

4 A Yes.

5 Q During that conversation, isn't it true you
6 never said anything about Jake attacking you in any
7 way?

8 A Jake?

9 Q Yes.

10 A No.

11 Q Okay.

12 A At the time, I was totally just confused,
13 distraught. Everything happened. I never experienced
14 the death of somebody in watching that.

15 Q I'll give you plenty of opportunity to
16 explain. But you never -- in that first statement,
17 admittedly, sure -- but did you ever say anything
18 about being fearful for your life?

19 A In the first statement to the law?

20 Q Yes.

21 A Possibly, I could have. If it was, then it
22 would be on the recording. I was being recorded.

23 Q I'm just asking you your recollection. Is
24 it -- did you, in making your first statement to the
25 police -- it was approximately midnight on the back

1 of your pickup truck at [REDACTED] to the
2 detective -- did you ever say that you were -- or
3 isn't it true that you never said you were in fear of
4 your life?

5 A I don't remember.

6 Q Okay. Moving forward a little bit, you gave
7 a second statement to Detective Kelley at the
8 hospital?

9 A Yes, sir.

10 Q And did he write that statement out for
11 you?

12 A Yes.

13 Q All right. Did you have an opportunity to
14 review that statement and say that that's true and
15 accurate?

16 A Yes, it was read back to me.

17 Q In that statement, isn't it true you never
18 said you feared -- you, specifically, feared for your
19 life?

20 A Yes, I did, at the bottom of it. With my
21 statement, I was just -- everything was going through
22 my mind so quick and the stress and anxiety, I was
23 just jumping around because I had started a point
24 then just going emotional, crying. I was just crying.
25 I couldn't hold it in.

1 Q All right. But you never mentioned anything
2 about Jake slapping your headlight, correct?

3 A Not that I know of, no. Not Jake. It was
4 Mitch who's the one who slapped my headlight.

5 Q Oh, I apologize. Correct me if I'm wrong. I
6 believe I heard you say in your testimony earlier
7 that Jake was the one on the porch that slapped your
8 headlight and said what are you going to do about it.
9 I think your exact words were, what the hell you're
10 going to do about it -- no, he didn't say hell, but
11 what are you going to do about it. And Jake said
12 that.

13 A No, Mitch said that.

14 Q Okay.

15 A Mitch is the one that -- from the time
16 outside, Mitch is the one that was actually putting
17 his hands and physically on to me.

18 Q Okay.

19 A Jake did not do nothing. Then, when Mitch
20 pushed me down, that's when Jake told Mitch watch
21 out, he'll pick up something and cold cock you with
22 it.

23 Q Okay. It's interesting you say that because
24 you also, in this two-page statement that you
25 acknowledge was your words, you never said anything

1 about Jake egging on the fight or saying to Mitch
2 something about cold cocking him, correct?

3 **A** That is true. I don't believe I said
4 anything. At the time, everything was going through
5 my brain. It was hard to focus on minute-by-minute
6 going on.

7 **Q** You testified earlier that Mitch connected
8 with a punch to your right side that injured your
9 cheek. Isn't it true in this statement that you never
10 said punched you? You were talking about shoving and
11 hurting; is that correct?

12 **A** Yeah, I -- yes.

13 **Q** So you testified -- you did mention in that
14 statement, like you testified today, that you poured
15 out the beers.

16 **A** Beer.

17 **Q** Beer. Did you recall, at another hearing on
18 this matter, testifying on February 23rd, 2017?

19 **A** Yes.

20 **Q** And do you remember testifying, at that
21 hearing, that you never poured out anybody's beer?

22 **A** Yes, not physically picked up and poured,
23 like you pour out a glass of water or something like
24 that, yes.

25 **Q** Well, your testimony today was that you

1 said I think everybody's had enough to drink and you
2 picked up and poured out one of Mitch's beers. And
3 then on your way back up to the porch, you knocked
4 over Jake's beer and knocked it off. Is that correct?

5 **A** Not Jake's. I don't believe it was Jake's
6 beer. I believe it was Mitch's beer on the right-hand
7 side, as you're going up the porch on the right-hand
8 side, and then someone else's. Whichever beer it was
9 -- don't know who's beer it was -- was on the left
10 side on the bannister.

11 **MR. CLEVELAND:** Beg the Court's indulgence
12 one moment, Your Honor.

13 **THE COURT:** All right.

14 (There is a pause.)

15 **BY MR. CLEVELAND:**

16 **Q** All right. So your testimony today, you're
17 saying you poured out the beers. But earlier, back in
18 February, in this courtroom, did you not testify -- I
19 asked you -- you were asked, do you remember telling
20 police you poured out beers? You answered I never
21 touched one beer, except for the beer that was laying
22 -- there was a case. Like, it was, I'm assuming,
23 empty. I grabbed the case and threw it off the porch.

24 **A** Yes.

25 **Q** Then you said, as far as picking up a beer

1 and pouring it out, no, sir, absolutely not.

2 **A** Correct. I did not pick up to pour out.
3 Knocked off.

4 **Q** Okay. But did you not just testify earlier
5 that you said everybody's had enough to drink and you
6 picked up Mitch's beer and poured it out?

7 **A** Yes.

8 **Q** And did you not tell police, in both
9 statements, that you started pouring out their beers
10 after some incident?

11 **A** Don't recall that, but possibly.

12 **Q** Your testimony earlier was that you were
13 going to the door and Mitch pushed you into the door,
14 with your back, correct?

15 **A** Yeah, like, open hand.

16 **Q** So --

17 **A** The door -- as I was opening up the door to
18 go in.

19 **Q** Okay. So you walked up on the porch and
20 went to the door and that's when Mitch contacted you,
21 correct?

22 **A** Correct.

23 **Q** Did you not testify in that earlier hearing
24 in February that you had to push Mitch out of the way
25 to get on the porch?

1 **A** Yes, to get up to the porch cause he was
2 blocking me going back onto the porch.

3 **Q** Okay. Well --

4 **A** I used the right hand to back him up.

5 **Q** All right. In your earlier testimony, when
6 I asked how you got up to the porch, you said you
7 grabbed the bannister and it was rickety. But you
8 never mentioned contacting Mitch or pushing him.

9 **A** Correct.

10 **Q** So did you have to push Mitch to get back
11 on the porch?

12 **A** Not shove, but yes. So he -- the porch is,
13 like, about maybe two and a half, three foot wide. He
14 was sitting right there. I was trying to get up onto
15 the porch. I pushed him back so I could get up around
16 to the corner onto the physical porch. That's when I
17 did. He backed up.

18 **Q** Was that before or after you slapped the
19 beer off the bannister?

20 **A** He hit my headlight. Then he asked me what
21 I was going to do about it. Then I hit the beer off
22 the porch, poured the beer out. Then I proceeded up
23 to the porch. That's when he contacted with both
24 hands onto my chest, shoved me off of the partial
25 step and onto the porch. Then I fell back down.

1 Q All right. That's when the tussle started,
2 correct?

3 A After I proceeded to get onto the porch,
4 the other beer, whosever beer it was -- don't know
5 whose -- which -- whose beer it was, that's when that
6 beer fell off.

7 Q All right. Based on your observation, did
8 it make Mitch and Jake mad that you were pouring out
9 their beers?

10 A Yes, I would believe so, yes. There was a
11 12-pack -- the garbage can was completely full of
12 beer cans. So they used an old 24-pack, whatever,
13 putting their beer cans into. It was right there in
14 my way. I couldn't get that. So I grabbed that and
15 threw that out of my way.

16 Q Okay. All right. I'm not specifically
17 talking about that. I'm talking about when you said
18 you -- everybody's had enough to drink and you poured
19 out a beer or knocked off a beer, and then on your
20 way back up, you knocked off another beer. Did it not
21 -- you did not agree that it made Mitch and Jake
22 angry that you were knocking over and pouring out
23 their beers?

24 A Yes, I would believe so, after the fact ---

25 Q All right.

1 **A** --- that it made them angry.

2 **Q** Do you think that's part of what
3 antagonized them for this situation to go on?

4 **A** Me antagonizing? No. As far as the second
5 beer, no. I was making a point that they had enough
6 to drink. That was it. They were already drunk. The
7 second beer was not intentionally knocked off. It was
8 not intentionally poured out. It just fell off of the
9 bannister.

10 **Q** Okay. But the first beer that you admit you
11 poured out, everybody had too much to drink?

12 **A** Yes.

13 **Q** You do not agree that would make Mitch and
14 Jake mad or madder?

15 **A** I -- I don't know for certain, no.

16 **Q** But it's reasonable?

17 **A** Yes. At the time, I didn't think that it
18 would make them mad or if it didn't make them mad.

19 **Q** Well, you agree that the situation was
20 already pretty heated from what had been going on
21 inside the house, correct?

22 **A** Yeah. But it was all calmed down, I mean,
23 it seemed like it was calmed down.

24 **Q** Okay. I thought you said after the police
25 left, they came back down off the porch and then

1 started back up.

2 **A** Yeah.

3 **Q** Now, you're saying it was calm.

4 **A** When they -- when they calmed down after
5 the police left, they came down and approached me at
6 the truck. Then, you know, I was ignoring them. You
7 know, I said, leave me alone. Then, they both went
8 back up onto the porch. There was no physical, just
9 leave me alone. They just went back up onto the
10 porch. Then I could hear talking. Couldn't understand
11 what they were saying between the both of them.

12 **Q** All right. You're -- let's go to the fight.
13 We already talked about a previous statement a little
14 bit. You said Mitch hit you on the right side and
15 that caused a cut inside your cheek. But then, you
16 were blocking and throwing punches defensively back
17 at him. Is that your -- a fair --

18 **A** Yes, trying to protect myself. Yes, I was
19 blocking. The majority of it, I was blocking.

20 **Q** Okay. Did you have any injuries to your
21 forearm from blocking, sir?

22 **A** Not physically. I don't know cuts. Yes, I
23 was blocking.

24 **Q** Okay. I want to go back to your previous
25 testimony a little bit. You were asked, he wasn't

1 hitting you or striking you, he was just pushing or
2 shoving? And you said, not at the time, no. I said,
3 all right, when did he start that. You said, he
4 didn't. You were asked to clarify. Huh? You said, he
5 did not hit me. Was that your testimony on February
6 23rd?

7 **A** Yes.

8 **Q** But that's different than your testimony
9 here today that Mitchell hit you and connected on the
10 right side, correct?

11 **A** Correct.

12 **Q** As a matter of fact, isn't it true that all
13 you testified to was he was pushing on your face,
14 pushing and shoving?

15 **A** Yes, he did -- he did have his hands on my
16 face, my neck and had me pinned up against the
17 bannister bent backwards. I was standing on one leg
18 because the leg and the foot on my right side was
19 broke. I couldn't do nothing with that.

20 **Q** Okay. Correct me if I'm wrong. I thought
21 your earlier testimony was, he wasn't slapping me or
22 anything like that, he just punched me. He just hit
23 me, correct?

24 **A** He was putting his hands on me. So he was
25 contacting me. He probably did put -- hit me a couple

1 of times. I'm not absolutely for sure because my mind
2 was going 900 miles an hour at the time.

3 Q Was Mitch armed with any type of weapon?

4 A No.

5 Q Were you armed with any type of weapon?

6 A No.

7 Q Based on your just general observation, how
8 drunk were Mitch and Jake?

9 A I would -- for certain, I don't know, but I
10 know that they were pretty well lit because of all
11 the beer that they, you know, drank.

12 Q You ever spent any amount of time, either
13 yourself being intoxicated or being around drunk
14 people?

15 A Would I what?

16 Q You ever been around drunk people or been
17 drunk yourself?

18 A Yes, yes.

19 Q Just based on your observation, does your
20 physical ability and coordination get better or
21 worse?

22 A I would say worse, your coordination. Anger
23 would increase.

24 Q But you would agree that cuts both ways,
25 doesn't it?

1 **A** Correct.

2 **Q** So how close was Mitch to you when John
3 shot him?

4 **A** He was ahold of me. We were in -- it was --
5 we were probably about a foot and a half from each
6 other, within that proximity.

7 **MR. CLEVELAND:** Beg the Court's indulgence.

8 **THE COURT:** Certainly.

9 (There is a pause.)

10 **BY MR. CLEVELAND:**

11 **Q** Were you in fear for your life during this
12 fight with Mitch at any point in time?

13 **A** Yes.

14 **Q** At what point in time were you in fear for
15 your life?

16 **A** Towards the end.

17 **Q** Why is that?

18 **A** Because he was just nonstop attacking me,
19 physically, hands on me.

20 **Q** What, specifically, about you made --
21 essentially, a drunken tussle make you fear for your
22 life?

23 **A** Because of my condition and -- with my
24 neck.

25 **Q** What is that?

1 **A** That it was broken.

2 **Q** This the same break you're talking about
3 from over 30 years ago?

4 **A** Yes.

5 **Q** How does that make you more fragile than a
6 normal 49-year-old male?

7 **A** There is wires and pins holding it
8 together.

9 **Q** Okay. Wires are made of metal; aren't they?

10 **A** Yes.

11 **Q** You have a limited range of motion because
12 of that surgery?

13 **A** Yes.

14 **Q** So is it -- correct me if I'm wrong, is it
15 a cervical fusion where bones are actually fused
16 together solid?

17 **A** They are -- some are -- a couple of them
18 are fused, but there is wires and pins that holds the
19 rest of them together.

20 **Q** But this is the same basic injury and
21 condition you've lived with 37 years, correct?

22 **A** Correct.

23 **Q** Is that what made you fear for your life,
24 because of the fragileness of your neck?

25 **A** The fragileness of my bones.

1 Q Okay.

2 A I am -- I have osteoporosis, which is a
3 minus 32, which is very susceptible to fractures ---

4 Q All right.

5 A --- from breakage.

6 Q So was it the osteoporosis or your neck
7 fusion that made you fragile?

8 A Both.

9 Q Okay. If you're as fragile as you say you
10 are, admittedly, you testified you broke your leg or
11 you fractured your leg, you weren't in fear of
12 hurting yourself when you got pushed down the stairs?

13 A That's when I knew that, you know, that I
14 was more -- that they were more agitable to do more
15 damage to me. It was just the way they were talking,
16 expressing themselves, wanting to hurt me.

17 Q But by your own testimony, you walked back
18 up onto the porch with these people you were scared
19 of?

20 A Yes, that was my only way into the house at
21 the time, with the broken leg and foot.

22 Q Is there not another door to the house?

23 A Yeah, there's another door, but there's
24 nothing to assist me to get to inside that house.

25 Q Well, did you have your cell phone on you?

1 **A** I don't remember. I believe my cell phone
2 was laid -- up in the house.

3 **Q** So -- but if you're in fear of your life,
4 why did you even go anywhere near these two guys
5 while they are still hot and bothered?

6 **A** To get into the house to get into safety.
7 That's what my whole thing was, to get up and get
8 into the house.

9 **Q** By your own testimony, you knocked off
10 another one of their beers on your way back up to the
11 porch.

12 **A** Did not knock off. It fell off of the
13 bannister.

14 **Q** Okay. You also shoved Mitch out of the way.

15 **A** Not shoved, pushed.

16 **Q** Okay. Physically engaged him. Would you
17 agree with that?

18 **A** Yes, and he did back up for me to get up
19 onto the porch.

20 **Q** So what were you afraid of was going to
21 happen that was going to cause you death or serious
22 bodily injury?

23 **A** That was when Mitch shoved me up against
24 the door and then twisted me around and put me up
25 against the bannister right beside the door. I was

1 leaning somewhat onto the side of the trailer, which
2 it was a space about this much, maybe six inches from
3 the door to the bannister. I was right up -- right
4 there at it.

5 Q All right. So was it from the punch? Was it
6 front pushing, shoving? What specific event were you
7 scared he was going to do to you that would cause you
8 to die?

9 A When he had me pushed up against the
10 bannister. He was physically touching me and hurting
11 me -- trying to hurt me. That's when I started
12 screaming for John.

13 Q Okay. But we agree that, thankfully,
14 nothing horrible happened to you, correct?

15 A Thank God, yes.

16 Q Mitch never injured you to the point of
17 serious bodily injury. So when you hollered for John,
18 does John know about your condition?

19 A Yes.

20 Q John came to the door and fired the warning
21 shot?

22 A Yes.

23 Q You said you heard him try to push to kick
24 the door when he couldn't get out?

25 A Correct.

1 Q Which way does that door swing open?

2 A Outward.

3 Q From which hinge? It was the hinge on the
4 side you were standing or was it on the side of the
5 refrigerator?

6 A The hinge that I was -- the hinge where I
7 was standing is where the hinges were.

8 Q Okay. So essentially, trying to open the
9 door, it would be mashed up against you and Mitch?

10 A Correct. It would be more against Mitch on
11 -- as far as the body-wise go. My left leg was closer
12 to the door. The door would be on my left. That would
13 stop the door, too, if my leg was in the way.

14 Q But he only tried to open the door once?

15 A He kicked the door, hit the door. It just
16 made a big, loud bang, you know.

17 Q And after John shot Mitch, did he ever come
18 outside and check on you or check on Mitch?

19 A No.

20 Q Did he ever say anything to you whatsoever?

21 A Asked if I was all right. Then that was it..
22 He walked back. I didn't see exactly because I was
23 down on the ground with Mitch. But when I lifted up,
24 John was by the stove, which is across the island,
25 the kitchen island.

1 Q It was some time before EMS came and saw
2 you on the scene that night, correct?

3 A Yeah, I don't know the exact time.

4 Q They testified that it was by your request
5 that they transported you to the hospital, correct?

6 A They asked me if I needed to go, and yes, I
7 did.

8 Q Okay. When you got to the hospital, isn't
9 it true the doctor told you you had no injury to your
10 head or neck?

11 A Correct, after they did the CT scan.

12 Q Okay. The only real injury you sustained
13 was your foot and leg, correct?

14 A The knees, the right side, my right
15 shoulder was in pain -- I'm still having issues with
16 that -- my neck. There's no broken bones. The wires
17 are still intact, but I'm still having pains, more
18 pains than what I did before. I've always lived in
19 pain my whole life. They prescribed me the
20 oxycodones. I don't take them all the time. I use the
21 liquor to numb the pain so I can do the dishes and
22 clean and cook, you know.

23 Q During the 37 years that you've had this
24 injury and the osteoporosis, you ever been in a
25 fight?

1 **A** No, not in a fistfight, no.

2 **Q** Have you ever been in any type of
3 altercation that involved your head or neck?

4 **A** No.

5 **Q** Were you not in a -- get in a fight at some
6 point in time in the last couple of years in an
7 argument that involved you being put into a headlock?

8 **A** No.

9 **Q** Is this, in 37 years, the first time you've
10 been in a fight?

11 **A** , 37 years? Into like that, yes, with the
12 physicals, yes, like, you know, throwing punches,
13 arms going, being shoved down stairs, yes.

14 **Q** Okay. So shoved, just no fistfight, is your
15 testimony?

16 **A** Correct.

17 **Q** What kind of work did you do during your
18 career?

19 **A** I started out as an electrician. That
20 started getting -- because you have climb through the
21 attics and rafters and pull wire, carry heavy wire,
22 spools of them. So then I got out of that trade. So
23 with that, I've learned so much in my life that I can
24 repair, remodel and stuff like that. That's what I
25 proceeded in, because I can set my own schedule

1 instead of working for a company. When I do stuff,
2 then it would cause a strain on me. Then I'd have to
3 take a rest, a break a couple of days and then get
4 back to it.

5 Q Sure, but manual labor. You didn't do an
6 office job, correct?

7 A Yes.

8 Q You worked for -- at some point in time,
9 you worked for Mr. Alexander?

10 A Yes, I did.

11 Q Which is Mitch and Jacob's grandfather?

12 A Correct.

13 Q You did manual labor for him?

14 A Yes.

15 Q It involved remodeling, moving appliances
16 and things of that nature?

17 A Yes.

18 Q And up until when, did you cease working
19 for him, doing that kind of work?

20 A I'd say for up until about two years,
21 roughly, maybe three up until the incident happened.
22 Then, I would get his grandsons to help me. Clayton
23 would help me. I couldn't push the drill, the
24 cordless drills. He would assist me on holding the
25 drill, pushing the drill in. I'd put the screw into

1 place, pull the trigger. He did the manual, physical,
2 pushing-wise. Then I wouldn't tote the refrigerators
3 and put them up on hand trucks. He would do that.
4 Loading stoves, washers, dryers, he would assist in
5 that.

6 Q All right.

7 A Then there would be other people there to
8 help.

9 Q But for the most part, for over 30 years
10 while you had your neck condition, you were able to
11 work manual labor, correct?

12 A Not the full time, no. I would go through
13 periods where I would have to quit the work, the
14 jobs, and, you know, take that break, so I could
15 reheal myself.

16 Q Prior to this evening, or this horrible
17 incident that happened to Mitch, did you and him
18 always get along?

19 A Yes.

20 Q Was he respectful in your home?

21 A Absolutely, yes.

22 Q Ever had any problem with him, whatsoever?

23 A None. That's what was the whole shocking
24 part.

25 Q That's all the questions I have,

1 Mr. Wilson. Thank you.

2 **THE COURT:** All right. I'll tell you what,
3 we've probably come to a point for our morning
4 break. Ladies and Gentlemen, if you will, step
5 to your jury deliberation room for just a moment
6 and have a short break.

7 I ask everybody in the gallery to remain
8 seated.

9 (Jury exits at approximately 10:46 a.m.)

10 **THE BAILIFF:** The jury is secure, Your
11 Honor.

12 **THE COURT:** Sir, you can certainly take a
13 -- you don't need to -- okay -- you can
14 certainly take a break and step down from the
15 witness stand, but you can't discuss your
16 testimony with anyone. It's just as if you're
17 still up on the witness stand. All right.

18 **THE WITNESS:** Yes, ma'am.

19 **THE COURT:** All right. We'll be in recess
20 for 10 minutes.

21 (Court goes off the record at approximately
22 10:47 a.m.)

23 (Court goes on the record at approximately
24 11:04 a.m.)

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

1 bring the jury back in?

2 MR. CLEVELAND: State's ready.

3 MR. NEWTON: Defense is ready.

4 THE COURT: All right.

5 (Jury enters at approximately 11:04 a.m.)

6 THE COURT: All right. Mr. Newton.

7 CROSS-EXAMINATION

8 BY MR. NEWTON:

9 Q How long have you been using that cane?

10 A Since July the 15th of 2015.

11 Q Did you use a cane at all beforehand?

12 A Periodically, yes. Not mostly the cane,
13 more crutches, when I have gout flare-ups.

14 Q You testified that you had a broken foot?

15 A Correct.

16 Q Have you fully recovered from that?

17 A No, sir.

18 Q Could you describe your current condition
19 as a result of that?

20 A The bones did not heal back up because of
21 the osteoporosis that I have. They want to do -- put
22 pins in and stuff and re-break and reset it. But with
23 the bone not healing properly, they don't want to
24 take that chance. So it's better off to leave it as
25 it is and deal with what I got to deal with every day

1 with pain of walking. I do need the cane to assist me
2 to walk to relieve the pain from the pressure being
3 put down on my leg and foot.

4 Q Okay. You testified earlier that you heard
5 the sound of John trying to force open the door?

6 A Yes, sir.

7 Q I'm going to show you two pictures for
8 identification and identify what these are.

9 A That is the back door that was attached to
10 the mobile home, that had to be replaced because the
11 door would not latch back.

12 Q All right. And do these pictures accurately
13 represent the condition of the door?

14 A Yes.

15 Q At what time after the incident were these
16 pictures taken?

17 A After -- when you come to the house.

18 Q This was not right at the incident; this
19 was sometime later, correct?

20 A Correct.

21 Q All right.

22 A That piece there was put in there to stop
23 the weather from coming in.

24 MR. NEWTON: All right. Your Honor, I'd
25 like to have these marked as Defendant's

1 Exhibits 1 and 2.

2 **THE COURT:** Any objection?

3 **MR. CLEVELAND:** No objection, Your Honor.

4 **THE COURT:** They are so admitted.

5 (Defendant's Exhibits 1 and 2 are marked for
6 identification and admitted into the record.)

7 **BY MR. NEWTON:**

8 **Q** Now, those pictures were taken after the
9 door was removed, correct?

10 **A** Correct.

11 **Q** Y'all had to replace the door, correct?

12 **A** Correct.

13 **Q** Why?

14 **A** The door was bowed to where it could not
15 latch and stay latched. You could get it if you
16 really slammed it hard, but it was really hard to --
17 the striker pin or whatever -- to release that into
18 it. Then, I would have to wire the door shut with a
19 coat hanger to keep it pulled, too, because the dogs
20 were inside the house.

21 **Q** So you're saying the door was damaged from
22 John's attempt to get out of the house?

23 **A** Yes.

24 **Q** What about the window?

25 **A** The window was in place prior to the

1 shooting. But with the shooting, the window was
2 busted out.

3 Q So that had to be replaced?

4 A The window could not be replaced. The door
5 was twisted so much that if I would have brought the
6 piece of glass, it would not have -- you know, you
7 can't bend glass. So a new door was purchased to take
8 its place.

9 Q All right. Is a massive dent visible in
10 those pictures of the door?

11 A Yes, it is.

12 Q And what was that dent from?

13 A John getting out the door, trying to get
14 out the door.

15 MR. NEWTON: All right. Your Honor, if I
16 may publish these to the jury at this time.

17 THE COURT: All right. Certainly.

18 BY MR. NEWTON:

19 Q While the jury is passing those around, let
20 me show you another picture. Can you identify what's
21 in this picture?

22 A This is the part of the front end -- front
23 kennel part of the front yard where I let my dogs
24 into. There's a 2x6 there that was put by my great
25 nephew who we have custody of. There's a 2x6 there to

1 where he can gain access into the kennel part in
2 order to gain access to the house, because we never
3 locked our front door.

4 Q We'll explore that further.

5 A Okay.

6 Q For now, does that picture accurately
7 represent that section of the yard?

8 A Absolutely, yes.

9 MR. NEWTON: I'd like to have this marked
10 Defendant's Exhibit Number 3 ---

11 MR. CLEVELAND: No objection.

12 THE COURT: All right.

13 MR. NEWTON: --- and publish it to the
14 jury.

15 (Defendant's Exhibit 3 is marked for
16 identification and admitted into the record.)

17 BY MR. NEWTON:

18 Q Now, there is a board visible. What is that
19 for?

20 A That is to -- so my great-nephew could get
21 over the fence to get inside the house if I'm not at
22 home from work by the time he gets off the school
23 bus.

24 Q Who is your great-nephew?

25 A Bradley Mercer.

1 Q Bradley what?

2 A Mercer.

3 Q Mercer. And how old is he today?

4 A He is 17.

5 Q Okay. Did he normally live with you?

6 A Yes, we got custody of him back in 2009.

7 Q Okay. But he was not present during this
8 July 15th --

9 A No, he was in Kentucky at a college
10 Christian camp retreat. Since we got him, that was
11 one of the things that we taught him, that he would
12 be attending church every time the church doors were
13 open at any church function.

14 Q You said that the board was there so that
15 he could get in over the fence?

16 A Yes, sir.

17 Q Cause he could not get over the fence
18 otherwise?

19 A No, sir. The gate that we had, the dogs
20 were pushing the bottom of the gate open. We had to
21 take wire and wire the bottom of the gate so that the
22 gate would not open because of the dogs. We had three
23 dogs at the time, big Boxers.

24 Q So when he got home from school, you said
25 that's so he could get in the house. How does that

1 work, exactly?

2 **A** He would climb up instead of trying to
3 climb over the jagged points of the chain link fence.
4 He would use the two by -- 2x6 -- 2x12, actually, to
5 be correct. He would walk that -- walk up that and
6 then jump from the top of the 2x6 over into the
7 kennel part and then walk around to the -- there's
8 two levels of the porch. One was a bigger porch down
9 on the lower part. Then there was 12 feet of steps
10 coming up to the smaller porch to gain entrance to
11 the front of the house.

12 **Q** So was that door inside the fence unlocked?

13 **A** Yes, it was unlocked.

14 **Q** So he didn't have a key?

15 **A** There was a key, but we just never un -- we
16 just never locked it, because where we lived, it was
17 a safe place. I mean, we have good neighbors. They're
18 always there. They are retired. One's in their 80's
19 and the other one's in their 70's. You know, they're
20 always home. I call them my ADT system. I don't need
21 an alarm system because they're always there and
22 looking out of their windows and stuff, and they can
23 see my property all the time when they're watching
24 TV.

25 **Q** Okay. So your nephew would use the board to

1 get inside the fence to go in the front door?

2 A Yes, sir. The front, very front door, yes.

3 Q Also, it's not clear from this video, but
4 is that also a chain link section?

5 A Yes, it was all squared in, all chain link
6 from corner to corner.

7 Q Completely enclosed?

8 A Completely enclosed.

9 Q This was previously entered as State's.
10 Exhibit Number 24. Is that the walkway or stairway
11 you are referring to inside the fence in the front
12 yard?

13 A Yes, sir. It is.

14 Q Okay. Let's go through the events of
15 July 15th, 2015. You did give a statement, which the
16 prosecutor referred to, at the hospital that very
17 evening. It actually would have been the 16th because
18 it was like 3 o'clock in the morning, right?

19 A Yes, sir.

20 Q And did you not say that, to the police,
21 that there is no doubt in my mind that if John had
22 not done what he did to help me, I would have been
23 taken to the morgue.

24 A Yes.

25 Q You recall what Jacob Kirk was doing or

1 saying when Mitchell was assaulting you?

2 **A** Not to -- I just heard voice -- you know,
3 the voice. Was not paying attention to word for word.

4 **Q** What -- do you recall anything he was
5 shouting or saying?

6 **A** The only thing that I can remember is when
7 I was laying on the ground, Jake mentioned to his
8 brother, he's going to pick up something. He's going
9 to pick something up. You know, letting his brother
10 know that I would come back forcefully to him.

11 **Q** But you didn't do that, did you?

12 **A** No, sir. I did not.

13 **Q** Did -- in your opinion, was Jake trying to
14 defuse the situation or was he trying to encourage
15 his brother to assault you?

16 **A** I would believe that he was trying to
17 encourage, but he was definitely not defusing, trying
18 at all.

19 **Q** Now, the prosecutor, during this
20 questioning to you, kept trying to get you to say was
21 there one particular thing that made you fear for
22 your life. But the truth is, it was the whole
23 circumstances, correct?

24 **A** Yes.

25 **Q** Everything that was happening.

1 **A** Once I was pushed down, and broke my leg,
2 then I know it was getting so much, physically.
3 That's when I started, you know, concern, worried,
4 you know, about it and trying to get into the house.

5 **Q** You were trying to get into the house when
6 Mitchell assaulted you?

7 **A** The very last time, yes.

8 **Q** Bent you against the railing?

9 **A** Yes.

10 **Q** You honestly feared that you were danger of
11 serious bodily injury at that point, honestly?

12 **A** Yes, it had already happened with the porch
13 and shoving me off the porch. Both of them knew I had
14 the condition that I had.

15 **Q** Is that why you were calling for help from
16 John?

17 **A** Yes.

18 **Q** Do you remember how loud you -- I know this
19 happened fast -- but do you remember how loudly you
20 were calling for John at that time?

21 **A** I would say pretty loud. He didn't respond
22 until I got closer to the door, which is
23 approximately 15 feet, you know. Then, him being in
24 the bedroom, when I got closer to the door, he was
25 able to hear me screaming.

1 **Q** No further questions for this witness at
2 this time.

3 **THE COURT:** Any redirect?

4 **MR. CLEVELAND:** Just briefly.

5 **REDIRECT EXAMINATION**

6 **BY MR. CLEVELAND:**

7 **Q** You testified you yelled for John. But did
8 you ever say anything -- all you were doing was
9 yelling for John while Mitch was attacking you?

10 **A** Yes.

11 **MR. CLEVELAND:** That's all I have, Your
12 Honor.

13 **THE COURT:** Anything else?

14 **MR. NEWTON:** No.

15 **THE COURT:** Sir, you can step down.

16 **THE WITNESS:** Okay.

17 **MR. CLEVELAND:** The State would call J.B.
18 Kelly at this time, Your Honor.

19 **J.B. KELLY**

20 having first been duly sworn, testifies as follows:

21 **THE CLERK:** Have a seat and state your
22 name for the record please.

23 **THE WITNESS:** J.B. Kelly.

24 **DIRECT EXAMINATION**

25 **BY MR. CLEVELAND:**

1 Q Deputy Kelly, where do you work now?

2 A Pickens County Sheriff's Office, assigned
3 to Special Victims Unit.

4 Q All right. And you are a detective, is that
5 correct?

6 A At the present time, I serve as a school
7 resource officer at Dacusville Middle and Elementary.

8 Q Certainly. On the 15th of July, 2015, what
9 was your assignment?

10 A I was assigned to the Special Victims Unit.
11 I was the on-call investigator.

12 Q All right. And what was your -- were you
13 called out to the shooting at [REDACTED]?

14 A I was.

15 Q All right. And what was -- when you got
16 there, what did you do?

17 A Upon my arrival, I was informed by the
18 deputies on the scene what had occurred. They gave me
19 the briefing. Then, I talked to the gentlemen that
20 testified, at the rear of the residence. He was
21 outside. I had him sit on the tailgate of the pickup
22 truck. At which time, I took his statement, as far as
23 verbally, and asked him what happened. He told me his
24 side of -- version of what happened.

25 Q All right. After you'd given him his

1 rights, did you record that statement?

2 A I did.

3 Q And have you reviewed that recorded
4 statement -- have you reviewed that recorded
5 statement prior -- after that incident, but prior to
6 testifying today?

7 A I have.

8 Q Do you recognize State's Exhibit 28?

9 A Yes. That is the recorded statement.

10 Q Thank you.

11 MR. CLEVELAND: At this time, Your Honor,
12 the State would seek to admit State's Exhibit
13 28, the recorded statement of Randy Wilson.

14 THE COURT: Any objection?

15 MR. NEWTON: No, Your Honor.

16 THE COURT: All right.

17 (State's Exhibit 28 is admitted into the
18 record.)

19 BY MR. CLEVELAND:

20 Q Before we publish this, Detective Kelly,
21 you said you had him sit on the tailgate of the
22 truck. How did he get to the tailgate of that truck?

23 A He was there, as far as in the yard. I just
24 had him sit up -- hop up on it.

25 Q Did he do that under his own power?

1 **A** Yes.

2 **Q** I'm going to show you State's Exhibit 1,
3 Detective. You recognize that?

4 **A** Yes, that's the night of the incident.

5 **Q** All right. Is that --

6 **A** He was sitting on the tailgate, yes, sir.

7 **Q** Is that an accurate depiction of how Randy
8 Wilson was sitting?

9 **A** Yes, it is.

10 **MR. CLEVELAND:** The State would admit
11 State's Exhibit Number 1 into evidence at this
12 time.

13 **THE COURT:** It's so admitted.
14 (State's Exhibit 1 is admitted into the record.)

15 **MR. CLEVELAND:** Permission to publish to
16 the jury?

17 **THE COURT:** Certainly.

18 **BY MR. CLEVELAND:**

19 **Q** So is that the way Randy Wilson appeared as
20 you took his statement?

21 **A** That's correct.

22 **Q** Thank you.

23 **MR. CLEVELAND:** At this time, the State
24 would publish that recorded statement. It's
25 approximately six minutes.

1 **THE COURT:** Okay.

2 (State's Exhibit 28 is played.)

3 **BY MR. CLEVELAND:**

4 **Q** Did that conclude your interview of Randy
5 Wilson on the scene that night?

6 **A** At the residence, yes, sir, it did.

7 **Q** Did you go to the hospital later?

8 **A** I did.

9 **Q** Did you speak to him again there?

10 **A** I did.

11 **Q** All right. After you spoke to him at the
12 hospital, did that conclude your involvement in this
13 investigation?

14 **A** I took his statement at the hospital. As he
15 gave it, he asked me to write it, so I wrote it for
16 him. After writing it, I reread it to him to make
17 sure that it was accurate. I had a nurse come in and
18 witness it. Then he signed it and corroborated that
19 that was what he had said.

20 **Q** Very good. And that concluded your
21 involvement?

22 **A** Yes, sir.

23 **Q** Thank you, Detective. That's all the
24 questions I have. Please answer any questions the
25 defense has.

1 **THE COURT:** Mr. Newton?

2 **CROSS-EXAMINATION**

3 **BY MR. NEWTON:**

4 **Q** Detective, have you had a chance to review
5 the statement you took from Randy?

6 **A** I've seen it, yes.

7 **Q** Isn't it true that he did say that he
8 basically did fear for his life? He didn't use those
9 words, but he did say that if John had not done what
10 he'd done, he would have been in the morgue?

11 **A** Yes, that was what he put in his statement.

12 **Q** No further questions.

13 **THE COURT:** Any other questions for this
14 witness?

15 **MR. CLEVELAND:** Just briefly on redirect.

16 **REDIRECT EXAMINATION**

17 **BY MR. CLEVELAND:**

18 **Q** How long after the incident was that
19 written statement taken?

20 **A** Probably an hour or longer.

21 **Q** Okay. Thank you.

22 **THE COURT:** Any other questions?

23 **MR. NEWTON:** Oh, no.

24 **THE COURT:** Sir, you can step down.

25 **MR. CLEVELAND:** May the witness be excused?

1 **THE COURT:** Any objection?

2 **MR. NEWTON:** No.

3 **THE COURT:** Thank you for being here.

4 **MR. CLEVELAND:** The State would call
5 Anthony Raines.

6 **ANTHONY RAINES**

7 having first been duly sworn, testifies as follows:

8 **THE CLERK:** Have a seat and state your
9 name for the record please.

10 **THE WITNESS:** Anthony Raines.

11 **DIRECT EXAMINATION**

12 **BY MR. CLEVELAND:**

13 **Q** Deputy, what's your current rank and
14 assignment with the sheriff's office?

15 **A** I'm a forensic investigator with the
16 detective division at the sheriff's office.

17 **Q** Okay. How about on July 15th, 2015? What
18 was your role?

19 **A** I was assigned to the general investigation
20 division at the sheriff's office, meaning the
21 detective division.

22 **Q** All right. Did you respond to [REDACTED]
23 [REDACTED] in reference to a shooting on that date?

24 **A** I did.

25 **Q** Was there other law enforcement on the

1 scene when you arrived?

2 **A** There was. I believe -- I believe Captain
3 Brooks was there. There were some road patrol
4 deputies.

5 **Q** All right. What assignment were you given
6 as a part of this investigation?

7 **A** I was assigned the task of obtaining a
8 search warrant for the residence.

9 **Q** All right. What was the purpose of
10 obtaining a search warrant?

11 **A** To go inside the residence. There was a
12 shooting. Obviously, we're there to investigate. We
13 wanted to obtain the search warrant to go inside the
14 residence and search for any evidence of the crime.

15 **Q** Okay. And what's the basic process of
16 obtaining a search warrant?

17 **A** In the search warrant, you're going to have
18 the location of the residence or place or person that
19 you want searched. You're going to list that in
20 there. Then you're going to have the affidavit
21 listing all the probable cause for the search
22 warrant.

23 **Q** All right. After you -- is that standard
24 department procedure?

25 **A** It is.

1 Q Does the judge issue that warrant?

2 A Yes, sir.

3 Q So on this night in question, was a search
4 warrant granted for the residence at [REDACTED]?

5 A It was, yes, sir.

6 Q Who actually executed that warrant?

7 A It was a deputy -- Forensic Deputy Albrecht
8 and Gibson. They executed the search warrant once I
9 returned back to the scene with it.

10 Q Okay. When you got back to the scene, did
11 you do any further investigation into the scene?

12 A The only thing I did, once the search
13 warrant was obtained, I went into the residence with
14 the forensic investigators. We located -- or they
15 located shell casings that were inside the residence
16 and the firearm that was used during the incident. We
17 located a hole that was in the floor just inside the
18 back door of the residence. We located a hole that
19 was in the floor. After we finished up inside getting
20 the shell casings and the photographs that we needed,
21 collecting the firearm, I went underneath the house
22 and searched for a projectile that may have been
23 underneath the house.

24 Q All right. Did you have any luck looking
25 for that projectile?

1 **A** I found where a projectile had struck a
2 cinder block that the mobile home was sitting on, one
3 of the pillars underneath the house. I found where
4 that projectile had most likely struck that cinder
5 block. From there, we could not locate that
6 projectile.

7 **Q** All right. Did you assist in gathering any
8 other evidence or doing anything else with that
9 investigation?

10 **A** No, sir.

11 **Q** Did that conclude your role in this
12 investigation?

13 **A** Yes, sir.

14 **Q** To your knowledge, was the search warrant
15 executed and returned properly?

16 **A** It was.

17 **Q** That's all the questions I have. Please
18 answer any questions the defense has.

19 **THE COURT:** Yes, sir.

20 **MR. NEWTON:** Very briefly.

21 **CROSS-EXAMINATION**

22 **BY MR. NEWTON:**

23 **Q** You found three spent casings just inside?

24 **A** I believe that's what the forensic officers
25 found.

1 **Q** Three shell casings, two holes through the
2 window and one through the floor, correct?

3 **A** Yes, sir, to my knowledge.

4 **MR. NEWTON:** No further questions.

5 **THE COURT:** Anything else for this
6 witness?

7 **MR. CLEVELAND:** No, Your Honor.

8 **THE COURT:** Sir, you can step down.

9 **MR. CLEVELAND:** At this time, the State
10 would call J.T. Albrecht to the stand.

11 **J. T. ALBRECHT**

12 having first been duly sworn, testifies as follows:

13 **THE CLERK:** Have a seat and state your
14 name for the record please and, if you will,
15 please spell your last name.

16 **THE WITNESS:** J.T. Albrecht,
17 A-L-B-R-E-C-H-T.

18 **DIRECT EXAMINATION**

19 **BY MR. CLEVELAND:**

20 **Q** Deputy Albrecht, what's your current rank
21 and assignment with the sheriff's office?

22 **A** I'm assigned to the forensics division
23 within the -- within the detective division.

24 **Q** Were you in the same capacity on the 15th
25 of July 2015?

1 **A** Yes.

2 **Q** Did you respond to the shooting incident at
3 [REDACTED] in Liberty?

4 **A** I did.

5 **Q** What was your main role when you arrived on
6 the scene?

7 **A** We were responding to a shooting. So just
8 like any other crime scene, it's evidence
9 identification, location, documentation and
10 collection.

11 **Q** All right. What was the first thing or
12 person you encountered when you arrived on the scene?

13 **A** One of the first people I spoke with was --
14 he previously testified. I can't remember what his
15 name is.

16 **Q** The gentleman in the tan jacket?

17 **A** Yes.

18 **Q** Randy Wilson?

19 **A** Yes.

20 **Q** All right. And if you need -- did you --
21 just -- did you generate a report after this
22 incident?

23 **A** Yeah.

24 **Q** If you need to look at your report to
25 refresh your memory, just let the Court know.

1 **A** Thank you. (Reviewing.)

2 Yes, Randy Wilson.

3 **Q** All right. Where was Randy Wilson when you
4 spoke to him?

5 **A** He was in the back of the pickup truck.

6 **Q** Previously admitted State's Exhibit Number
7 1. You recognize that photograph?

8 **A** Yes, I took it.

9 **Q** Okay. Is that where Randy Wilson was and
10 how he appeared when you spoke to him?

11 **A** It is.

12 **Q** Is that a true and accurate recitation of
13 Randy Wilson's physical condition on the night in
14 question?

15 **A** It is.

16 **Q** Was he complaining of any injuries?

17 **A** His knees and his ankles. And he said he
18 had hurt his hands.

19 **Q** Okay. Did you take that photograph for
20 documentation of that?

21 **A** I did.

22 **Q** Did you speak with anybody else on the
23 scene?

24 **A** Jacob Kirk.

25 **Q** All right. And did you obtain a GSR kit

1 from anybody on the scene?

2 **A** I did.

3 **Q** Who did that come from?

4 **A** I conducted a GSR on Mr. Wilson.

5 **Q** All right. Did you do one on Jacob Kirk?

6 **A** Yes.

7 **Q** Anybody else?

8 **A** No.

9 **Q** What is a GSR kit?

10 **A** It's a gunshot residue test.

11 **Q** And what is the purpose of obtaining a
12 gunshot residue kit sample?

13 **A** Well, we were on a shooting. So we had been
14 told who was alleged to have done the shooting. We're
15 trying to eliminate possible -- anybody else that was
16 present, we're going to test to see if they, in fact,
17 are the shooter.

18 **Q** Gunshot residue is essentially used to
19 determine whether someone fired a gun or not. It can
20 indicate that?

21 **A** It can.

22 **Q** It indicates -- if there's no dispute over
23 who did the shooting, is that evidence very valuable?

24 **A** If there's no dispute over who did the
25 shooting? No.

1 **Q** To your knowledge, in this case, was the
2 gunshot residue test ever followed up on or ever
3 completed?

4 **A** Not that I'm aware.

5 **Q** Did you execute the search warrant that was
6 obtained by Detective Raines?

7 **A** I did.

8 **Q** All right. Did you photograph the scene as
9 you saw it there that night?

10 **A** I did.

11 **Q** Did you take any evidence into custody from
12 the scene?

13 **A** Yes...I collected a Beretta 9-millimeter
14 pistol, some spent shell casings, a projectile, GSR.

15 **Q** All right. Let's talk about the photographs
16 first. I'm going to show you what's been marked as
17 State's Exhibits 12 through 16. Take a look at these
18 photographs and see if they are a true and accurate
19 representation from the scene that night.

20 **A** (Reviewing.)

21 Yes.

22 **MR. CLEVELAND:** All right. At this time,
23 the State would seek to admit State's Exhibits
24 12 through 16, Your Honor.

25 **THE COURT:** Any objection?

1 **MR. NEWTON:** No, Your Honor.

2 **THE COURT:** All right. They are so
3 admitted.

4 (State's Exhibits 12 through 16 are admitted
5 into the record.)

6 **BY MR. CLEVELAND:**

7 **Q** First off, when you first entered -- when
8 you first began executing the search warrant, what
9 was your first, I guess, thing you observed?

10 **A** Inside the residence?

11 **Q** Well, at any point in time. There are some
12 other photographs admitted. I'll let you look at
13 them, if it will help you describe what you did.

14 **A** All right. Basically, what we do is we
15 photograph our way in. Everything we do outside, as
16 far as what we identify as possible evidence or
17 evidence, we photograph before we proceed to the next
18 point. It's easier for me to tell what I did by the
19 pictures. I walk in and I'm shooting the whole time.

20 So we start with exterior, or what we call
21 perimeter pictures. We're shooting the things on the
22 outside. I can do that before the search warrant.
23 It's just common area. Once the search warrant is in,
24 then we shoot our way in. So the first things I would
25 have encountered upon the execution of the search

1 warrant would have been the door, broken glass, and
2 then immediately inside, the bullet hole in the
3 floor, projectile hole in the floor and spent shell
4 casings.

5 Q Well, take a moment -- with the exception
6 of these defense exhibits and State's Exhibit 24 and
7 State's Exhibit 25, take a minute and flip through
8 those and tell me if you actually took all those
9 pictures.

10 A (Reviewing.)

11 I do.

12 Q All right. Just walk through them. State's
13 Exhibit Number 2.

14 A It's at the rear of the residence. That's
15 the back porch area where we had been told the
16 shooting -- it's the porch the shooting took place on
17 and where the fight was.

18 Q All right. State's Exhibit Number 3.

19 A That's also still just the back area. It's
20 photographing alcohol containers.

21 Q State's Exhibit Number 4.

22 A That is at the base of the steps, back
23 porch area. It's more alcohol containers. It's just a
24 continuation of my process of walking toward the
25 porch.

1 Q Okay. State's Exhibit Number 5.

2 A That's a beer -- that particular photograph
3 is taken based off of comments that were made by
4 Mr. Wilson. He was insistent about a beer being
5 poured out. That's what started the fight. He kept
6 insisting that was the beer I was pouring out. So
7 that one was -- you'll notice it had a placard number
8 next to it. The other beer cans and the other
9 photographs, there is no placard. That was identified
10 as an item of evidence by me. That's why it's got a
11 placard next to it. It's singled out in that
12 photograph. It's based off of his complaint that
13 that's what started the fight.

14 Q State's Exhibit Number 6.

15 A It's a continuation of the porch leading
16 toward the rear door of the residence.

17 Q State's Exhibit Number 7.'

18 A It's more alcohol containers on the porch.

19 Q State's Exhibit Number 8.

20 A That's just another photograph of the
21 contents of the back porch. That's kind of hard to
22 see in that picture, but that's a bunch of
23 cigarettes. People that roll their own cigarettes.

24 Q State's Exhibit Number 9.

25 A That's upside down. That's the back door.

1 Q State's 10.

2 A That's a -- I backed up off of the shot so
3 you could see the position of the body in relation to
4 the porch rail, the door and the refrigerator.

5 Q All right. Now, I'll slow down for just a
6 second. State's Exhibit Number 11. There's some
7 placards noted in there. What were you photographing
8 in State's Exhibit Number 11?

9 A Shell casings.

10 Q All right. Do each of those placard
11 represent a shell casing?

12 A Yes. Number 4 is the projectile hole.
13 Number 5 is the shell casing. Number 6 is a shell
14 casing.

15 Q All right. Tell me a little bit about that
16 projectile hole.

17 A It's just a hole through the floor. It was
18 most likely caused by a firearm discharge.

19 Q And State's Exhibit Number --

20 A That's from inside the kitchen now facing
21 toward the back door. You know, it's pretty much a
22 repeat of the same shot, just fired from a different
23 angle.

24 Q Okay. How many total shell casings did you
25 recover at the scene?

1 A We recovered three.

2 Q State's Exhibit Number 13.

3 A That's the --

4 Q Where is that?

5 A -- that's the interior of the residence
6 leading back toward a bedroom where we were told the
7 firearm had been placed, the firearm in question.

8 Q All right. And State's Exhibit Number 14.

9 A That's the -- just a catalog photograph of
10 other firearms in the residence.

11 Q Where in the residence was that photo
12 taken?

13 A That's in the bedroom.

14 Q State's Exhibit Number 15.

15 A That's the location of the firearm that was
16 sought. That's also in the bedroom.

17 Q And State's Exhibit Number 16.

18 A That's the same firearm. I had removed it
19 from the holster. I removed the magazine, operated
20 the slide, removed the live round from the chamber.
21 That picture is taken in the kitchen on the counter.

22 Q And did you take into evidence those items?

23 A I did.

24 **MR. CLEVELAND:** Beg the Court's indulgence
25 for a moment. I have some items I need to mark.

1 May I approach briefly, Your Honor?

2 **THE COURT:** Sure.

3 (Bench conference is held off the record.)

4 **THE COURT:** Ladies and Gentlemen, in just
5 a moment, it's my understanding that the State
6 intends to introduce a handgun into evidence.
7 You will have access to that handgun in your
8 jury deliberations, but I want to make everyone
9 assured of this right now, the deputy's going to
10 explain to you in just a moment the way in which
11 this gun has been made safe. But it has been
12 made safe, triple-tied, I believe, and has no
13 ammunition. There's no clip in it. I just want
14 to assure you of this gun's safety. At no time
15 will any juror or any witness handle both the
16 gun and ammunition at the same time. We will
17 just not allow that in any way. But if there's
18 any additional concerns about having it in the
19 jury deliberation room, that will be a matter to
20 take up with our Madam Foreperson.

21 And if you would just -- you can certainly
22 let me know if there's any concern about having
23 this disabled weapon in the jury deliberation
24 room at any time. All right.

25 We just want to make -- we just want to

1 make everybody assured that you are safe.

2 **MR. CLEVELAND:** Thank you, Your Honor.

3 (State's Exhibits 31, 32, 33, 34 and 37 are
4 marked for identification.)

5 **BY MR. CLEVELAND:**

6 **Q** Deputy Albrecht, I'm going to hand you now
7 what's been marked as State's Exhibit 31. You
8 recognize that item?

9 **A** Yes, sir.

10 **Q** What is that item?

11 **A** It's a Beretta 92 model 9-millimeter. This
12 was the weapon used in this incident.

13 **Q** How are you sure that's the weapon?

14 **A** Cause I collected it.

15 **Q** Okay. Serial number matches your paperwork
16 and documentation?

17 **A** It does.

18 **Q** Certainly, the weapon alleged to have been
19 used in this incident, has it been rendered safe by
20 you at this time?

21 **A** It has. I removed the magazine. It's a
22 magazine-fed semi-automatic pistol. Removed the
23 magazine ammunition from the weapon. Pulled the slide
24 to the rear. Locked it open and applied zip ties
25 through the handle up through the breach to keep it

1 slide-locked back and secured it to the box itself
2 through that strap, as well as another strap and
3 strap across the handle.

4 **MR. CLEVELAND:** At this time, Your Honor,
5 the State would seek to admit State's Exhibit
6 31, the Beretta 9-millimeter pistol, into
7 evidence.

8 **THE COURT:** Any objection?

9 **MR. NEWTON:** No, Your Honor.

10 **THE COURT:** All right. So admitted.

11 (State's Exhibit 31 is admitted into the
12 record.)

13 **BY MR. CLEVELAND:**

14 **Q** All right. I'm going to try to take these
15 in order. State's Exhibit 38, which has been
16 collected together, what are the items in State's
17 Exhibit 38? Did I say that right? Is that the right
18 number? 33, I apologize. State's Exhibit 33.

19 **A** These are the spent shell casings from
20 inside the residence.

21 **Q** Where, specifically, were those shell
22 casings found? You don't have to tell me where each
23 individual one was found.

24 **A** In the kitchen.

25 **Q** Okay. I'll show you, now, State's Exhibit

1 32.

2 A This is the magazine from the Beretta 92
3 and ammunition that was in the magazine.

4 MR. CLEVELAND: Sorry. I forgot.

5 (State's Exhibit 38 is marked for
6 identification.)

7 BY MR. CLEVELAND:

8 Q I'm going to hand you now what's been
9 marked as State's Exhibit 38.

10 A This is the round that was in the chamber
11 of the weapon.

12 Q How do you know that's the round that was
13 in the chamber?

14 A Cause I marked it.

15 Q What'd you mark it with?

16 A C.

17 Q Has it been in your -- did you take it into
18 custody that night?

19 A Yes, sir.

20 Q Same thing with the magazine and the ---

21 A That's correct.

22 Q --- live rounds. Does Pickens County have a
23 secure facility to store evidence like this?

24 A We do.

25 Q Did you place it into that evidence

1 facility?

2 **A** I did.

3 **MR. CLEVELAND:** All right. At this time,
4 the State would seek to admit State's Exhibit 38
5 and 32 into evidence.

6 **THE COURT:** Any objection?

7 **MR. NEWTON:** No, Your Honor.

8 **THE COURT:** They are so admitted.

9 (State's Exhibit 32 and 38 are admitted into the
10 record.)

11 **MR. CLEVELAND:** Likewise, Your Honor, I
12 would also like to admit State's Exhibit 33 into
13 evidence that's been showcased.

14 **THE COURT:** Any objection?

15 **MR. NEWTON:** No, Your Honor.

16 **THE COURT:** All right. It's admitted.

17 (State's Exhibit 33 is admitted into the,
18 record.)

19 **BY MR. CLEVELAND:**

20 **Q** Last couple of items, State's Exhibit 37
21 and State's Exhibit 34, do you recognize those two
22 items?

23 **A** This is the projectile that was recovered
24 next to the body.

25 **Q** Would you refer to it by number please? I'm

1 sorry.

2 A State's Exhibit 34 ---

3 Q Okay.

4 A --- is the projectile that was recovered on
5 the porch next to the body.

6 Q Okay. What about State's Exhibit -- I
7 believe that one is --

8 A 37. State's Exhibit Number 37 is the
9 projectile that was removed during the autopsy.

10 Q All right. Were both of these, to your
11 knowledge, taken into Pickens County safe evidence --
12 safe evidence facility?

13 A They were.

14 MR. CLEVELAND: At this time, the State
15 would seek to admit State's Exhibits 34 and 37.

16 MR. NEWTON: No objection.

17 THE COURT: All right. They are admitted.

18 (State's Exhibit 34 and 37 are admitted into the
19 record.)

20 BY MR. CLEVELAND:

21 Q All right. Now, that we're through that
22 little bit of housekeeping, I want to talk about did
23 -- were you the one that located State's Exhibit 34,
24 the one that you testified was found at the scene
25 next to the body?

1 **A** Yes, sir.

2 **Q** All right. Tell me about your observation
3 of that porch and how you found that item.

4 **A** The projectile was -- had passed through
5 the body and had come to rest. It was sort of hung up
6 in his t-shirt. And when the t-shirt had been cut,
7 presumably by EMS to check for vitals, it was right
8 there. It had gone right through. It was hung up in
9 the shirt right underneath the body.

10 **Q** Did you observe the body for presence of
11 entrance and exit wounds?

12 **A** I did, and photographed them.

13 **Q** How many entrance wounds were there?

14 **A** He had one right through here.

15 **Q** Entrance or exit?

16 **A** He had an entrance to his side. I
17 photographed it.

18 **Q** How many total wounds?

19 **A** Two.

20 **Q** How many total exit wounds?

21 **A** One.

22 **Q** So State's Exhibit 34 is the projectile
23 that passed all the way through Mr. Bradley?

24 **A** That's correct.

25 **Q** All right. Did you document the scene of

1 the porch with a sketch or anything of that nature?

2 **A** I did.

3 **Q** And what was the purpose of that?

4 **A** Measurements and sketches are done so we
5 can recreate, so that if we have to, we can go back
6 and look at the scene.

7 **Q** All right. Did you take measurements of
8 this location?

9 **A** I did.

10 **Q** Show you State's Exhibit 30. Is that the
11 sketch you made at the scene?

12 **A** Yes.

13 **Q** Do the measurements drawn on here reflect
14 the actual dimensions of that porch and the items on
15 it?

16 **A** They do.

17 **MR. CLEVELAND:** All right. At this time,
18 the State would seek to admit State's Exhibit
19 30.

20 **THE COURT:** Any objection?

21 **MR. NEWTON:** Your Honor, there's been no
22 testimony that it was drawn to scale on that
23 picture.

24 **THE COURT:** Why don't you lay a little bit
25 more foundation?

1 **MR. CLEVELAND:** Thank you.

2 **BY MR. CLEVELAND:**

3 **Q** Take a look at State's Exhibit 30.

4 **A** Okay.

5 **Q** After you drew the general shape, did you
6 take measurements of dimensions of the porch?

7 **A** Yes. Everything's measured.-- all your
8 measurement numbers --

9 **Q** Don't show the jury.

10 **A** -- all your measurement numbers are marked
11 ---

12 **Q** Okay.

13 **A** --- as far as the distances from point A to
14 point B of whatever we designate a measuring point to
15 be.

16 **Q** Okay. Which is reflective of accuracy, the
17 measurement numbers or the actual scale to which the
18 drawing was drawn?

19 **A** The measurement numbers.

20 **Q** So is the drawing just a general layout of
21 the porch?

22 **A** Yes.

23 **Q** But are the measurements, actual
24 measurements you took on scene --

25 **A** They are.

1 **Q** And are they all actively reflected on that
2 drawing?

3 **A** They are.

4 **Q** Did you also measure the dimensions of the
5 porch and the location of Mr. Bradley on that porch?

6 **A** Yes.

7 **Q** And did you record those measurements on
8 that drawing?

9 **A** They are.

10 **MR. NEWTON:** I object to that. Since it's
11 not drawn to scale, he can, of course, testify
12 as to the measurement -- distances that he
13 measured. But as far as introducing that chart,
14 I don't think it's precise enough.

15 **THE COURT:** I'm going to -- I'm not going
16 to allow this. I'll allow him to testify from
17 it, but I'm not going to admit it into evidence.
18 I think it could cause some confusion for the
19 jury.

20 **MR. CLEVELAND:** Yes, Your Honor.

21 **BY MR. CLEVELAND:**

22 **Q** All right. Based upon your measurements,
23 how wide was the walkway between the refrigerator and
24 the railing on that porch?

25 **A** I'm sorry. You're -- I didn't hear you.

1 Q I apologize. How wide was the walkway
2 between the refrigerator and the railing on that
3 porch?

4 A 4 feet, 7 inches.

5 Q All right. And how long was the porch,
6 overall, from the house to the outside edge?

7 A 11 feet.

8 Q How far was Mr. Bradley's head from the
9 edge of the door?

10 A It was measured from his feet to his hands
11 to the tip of his nose ---

12 Q Okay.

13 A --- to his shoulders and then from the door
14 to the refrigerator. So from the tip of his nose, he
15 was 3 feet, 9 inches from the door.

16 Q From the door of the house?

17 A Correct.

18 Q Thank you. Was the gun and ammunition and
19 projectiles sent for any further testing?

20 A Yes, everything, the firearm and the
21 recovered things were sent to SLED.

22 Q And what was the purpose of sending those
23 items to SLED?

24 A Firearm identification and matching. Those
25 two things. We sent it to SLED so they can certify

1 that it functions as a firearm. And then the
2 projectiles are matched to prove that they came from
3 that firearm.

4 Q All right. And what are the results of this
5 particular case? What did SLED find?

6 A The firearm was test-fired, which sort of
7 indicates function. The spent projectiles were
8 compared to the recovered test fire projectile and
9 were a match. So basically, trying to make it as
10 simple as possible, SLED said those bullets came from
11 that gun.

12 Q All right. Did SLED provide you with a
13 report to that effect?

14 A They did.

15 Q I'm going to show you State's Exhibit 36.
16 Is that that report?

17 A It is.

18 MR. CLEVELAND: At this time, Your Honor,
19 the State would seek to admit State's Exhibit 36
20 into evidence.

21 THE COURT: Any objection?

22 MR. NEWTON: No, Your Honor.

23 THE COURT: All right. It's so admitted.

24 (State's Exhibit 36 is admitted into the
25 record.)

1 **MR. CLEVELAND:** That's all the questions I
2 have.

3 Thank you.

4 **THE COURT:** Mr. Newton?

5 **MR. NEWTON:** Just very briefly, Your
6 Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. NEWTON:**

9 **Q** When you were out on the scene and took
10 those measurements of distances of the porch and
11 body, other people had already been engaged with the
12 body, right? EMS?

13 **A** Yes.

14 **MR. NEWTON:** All right. No further
15 questions.

16 **THE COURT:** Anything else from this
17 witness?

18 **MR. CLEVELAND:** None, Your Honor. Thank
19 you.

20 **THE COURT:** You can step down.

21 **MR. CLEVELAND:** May I approach?

22 **THE COURT:** Certainly.

23 (Bench conference is held off the record.)

24 **THE COURT:** Ladies and Gentlemen, we're
25 just about ready to break for lunch. We want to

1 Gentlemen, I hope you had a good lunch. We're
2 ready to get back started.

3 Mr. Cleveland?

4 **MR. CLEVELAND:** Thank you, Your Honor. May
5 it please the Court.

6 **THE COURT:** Yes, sir.

7 **MR. CLEVELAND:** The State calls Brian
8 Gibson.

9 **BRIAN GIBSON**

10 having first been duly sworn, testifies as follows:

11 **THE CLERK:** Have a seat and state your
12 name for the record please.

13 **THE WITNESS:** Brian Edward Gibson.

14 **DIRECT EXAMINATION**

15 **BY MR. CLEVELAND:**

16 **Q** Deputy Gibson, what was your assignment on
17 July 15th, 2015 with the sheriff's office?

18 **A** I was assigned to the Pickens County
19 Sheriff's Office Forensics Unit.

20 **Q** All right. And did you respond to the
21 shooting at [REDACTED]?

22 **A** Yes, I did.

23 **Q** What was the purpose of your responding to
24 that scene?

25 **A** I responded to assist the forensic unit

1 J.T. Albrecht in processing the crime scene.

2 Q All right. What did you do on the scene?

3 A Several things were done on the scene. I
4 assisted Deputy Albrecht in pulling measurement for
5 the crime scene drawing, making sure we had the
6 lengths and everything of the building and just doing
7 overall general collecting and looking and marking of
8 evidence for later, photographs and collection.

9 Q Did you take in any evidence into custody
10 or did Deputy Albrecht do everything?

11 A At the scene or in the overall?

12 Q At the scene.

13 A To my knowledge, I don't remember, at that
14 point.

15 Q Okay.

16 A If you have the sheet, I'll be glad to look
17 at it.

18 Q That's okay if you don't recall. But did
19 you assist in the -- you mentioned the crime scene
20 sketch.

21 A Yes, sir.

22 Q Did you assist in executing the search
23 warrant inside the house?

24 A Yes, sir. I did. I was there when
25 investigators from our detective division came back

1 with our -- with the search warrant for the
2 residence. It was executed by detectives and myself
3 and Deputy Albrecht.

4 Q After you were done at the scene, did you
5 go anywhere else that night in relation to this case?

6 A That night, no, I did not. I cleared the
7 scene after everything had been secured and all the
8 evidence had been collected. The scene was cleared by
9 our investigators and secured if we needed it for
10 anything else based on the search warrant. We cleared
11 the scene that night.

12 Q All right. So you cleared the scene. Did
13 you go to the hospital at any point in time?

14 A The next day, I -- I believe it was the
15 next day.

16 Q If you need to reference your report to
17 refresh your memory --

18 A Yes, sir. Yes, sir. It was the next day --
19 7/16 of 2015, I went to Greenville Memorial Hospital
20 where the morgue is located for the autopsy of the
21 deceased.

22 Q Let's back up. Now, you're talking about
23 the hospital. Did you see Randy Wilson at the
24 hospital?

25 A That night? Yes, sir. Yes, sir. That night,

1 I did.

2 Q I apologize if I wasn't clear. Where was
3 Randy Wilson in the hospital?

4 A He was in Easley -- I don't know what you
5 call it, I call it Easley Baptist Hospital, myself --
6 but Easley Baptist Hospital in one of the ER trauma
7 rooms.

8 Q What did you do at the hospital?

9 A When I got there, I met -- I believe it was
10 with our Investigator J.B. Kelly that took
11 photographs of some injuries that had been reportedly
12 sustained by the subject.

13 Q All right. And how did you know where to
14 photograph?

15 A I was pointed out those areas by the
16 investigator, and the subject also pointed out the
17 areas that were -- were injuries.

18 Q All right. Right now, let me show you some
19 photographs that were marked previously as State's
20 Exhibits 17, 18, 19, 20, 21, 22 and 23. Take a moment
21 and look at those photos and see if they are a clear
22 and accurate representation of how Randy Wilson
23 appeared in the hospital.

24 A (Reviewing.)

25 Yes, sir.

1 Q All right.

2 A They are.

3 Q These are all true and accurate
4 representations of how Randy looked in the hospital?

5 A Yes, they are, the night that I -- when I
6 met him.

7 MR. CLEVELAND: All right. Your Honor, at
8 this time, the State would seek to admit State's
9 Exhibit 17 through 23.

10 THE COURT: Any objection?

11 MR. NEWTON: No, Your Honor.

12 THE COURT: All right. They are so
13 admitted.

14 (State's Exhibits 17 through 23 are admitted
15 into the record.)

16 BY MR. CLEVELAND:

17 Q Did you observe any injuries to Randy
18 Wilson's face in State's Exhibit 17?

19 A No, sir. I did not. I did not that night.

20 Q And State's Exhibit -- I'm going to go
21 through these real quick, State's Exhibit 18, what
22 were you photographing there?

23 A He had some injuries on his feet or one of
24 his -- one of his feet, just small scratches, some
25 small scratches on his shin area.

1 Q All right. State's Exhibit 21. What were
2 you photographing there?

3 A His knee. I believe that would be his left
4 knee on the bottom. He had a few scratches and just
5 some small abrasions on his knee.

6 Q Okay.

7 A They were -- to me, what I observed in the
8 photograph, looked like they were kind of healing
9 because they had scabbed a little bit.

10 Q Okay. What's this here in State's Exhibit
11 22?

12 A I don't remember if the subject told me or
13 the investigator told me, but something about
14 somebody had grabbed him on his arm and left a mark
15 or bruise or red spot. That's what that was showing
16 on the inside of his left arm.

17 Q All right. Is there any injuries that he
18 had that you didn't photograph, visible injuries?

19 A No, sir. All the photographs -- all the
20 photographs that are there are photographs of the
21 injuries that were observed that night.

22 Q You mentioned earlier that you went to the
23 Greenville morgue. What was the purpose you went to
24 the Greenville morgue the next day?

25 A To observe the autopsy of Mitchell Bradley.

1 Q Were you present during that autopsy?

2 A Yes, I was.

3 Q Did you take any items of evidence from
4 that autopsy?

5 A I took several pieces of evidence, I
6 believe clothing, a projectile that was recovered,
7 photographs of the subject.

8 Q All right. Do you, specifically, recall
9 this -- recognize this item that's been previously
10 entered as State's Exhibit 37?

11 A Yes, this is the projectile from the
12 subject's spinal area.

13 Q All right.

14 A It has my marking. You want me to go into
15 that? I can tell you.

16 Q If you made enough marking to recognize
17 that as the item, just feel free to testify.

18 A Based on our evidence -- we fill out an
19 evidence sheet with all the items that we collect.
20 This is listed as item number 14(I). That is my
21 handwriting. I normally use a blue Sharpie. This
22 would have been entered as item 14(I) in our
23 evidence.

24 Q Okay. Was that the projectile that was
25 recovered at the autopsy?

1 **A** Yes, sir.

2 **Q** Was that recovered from within the
3 deceased?

4 **A** It was recovered from the deceased spinal
5 cord area.

6 **Q** All right. Did you witness that?

7 **A** Yes, sir. I did.

8 **Q** I want to go back to when you went and saw
9 Randy at the hospital, just briefly.

10 **A** Yes, sir.

11 **Q** What was his demeanor and condition at the
12 time?

13 **A** He was in the bed with a blanket. Covered
14 himself up. Not really in any kind of -- what I felt
15 like he was any kind of -- felt like he was in any
16 kind of danger of anything.

17 **Q** What do you mean? The hospital is a safe
18 environment, correct?

19 **A** Well, yeah. He didn't seem like he was
20 shaken up or scared from anything that had happened
21 previously.

22 **Q** Okay. About what time did you get to the
23 hospital? Do you recall?

24 **A** It was later -- it was kind of late when we
25 were there. Actually, the incident occurred on into

1 the morning hours of that same day. It was later in
2 the -- either late at night or early morning hours.

3 Q How long after the incident? Do you recall?

4 A I don't really recall. We were there doing
5 the scene. As soon as we were able to clear the
6 scene, I was able to leave and go to the hospital.

7 Q Okay. That's all the questions I have. If
8 you would, please answer anything the defense may
9 have.

10 A Thank you.

11 THE COURT: Mr. Newton, any questions for
12 this witness?

13 MR. NEWTON: Just very briefly.

14 THE COURT: Certainly.

15 CROSS-EXAMINATION

16 BY MR. NEWTON:

17 Q Isn't it true that, that night at the
18 hospital, Randy Wilson told you about the injury to
19 the inside of his mouth and you stated that you
20 didn't have any lenses to photo the inside of the
21 mouth? You recall anything about that?

22 A No, sir. I do not.

23 Q You recall him telling you about the injury
24 to the inside of his mouth?

25 A To the inside of his mouth?

1 **Q** Yes, sir.

2 **A** Not that I can recall, no, sir.

3 **Q** Okay. You said you photographed the visible
4 injuries, correct?

5 **A** Correct.

6 **Q** No -- bones broken inside are clearly not
7 visible, correct?

8 **A** Correct.

9 **Q** All right. No further questions.

10 **THE COURT:** Any other questions for this
11 witness?

12 **MR. CLEVELAND:** Nothing on redirect.

13 **THE COURT:** Sir, you can step down.
14 Are you looking to release this witness?

15 **MR. CLEVELAND:** Yes, Your Honor.

16 **THE COURT:** Any objection?

17 **MR. NEWTON:** No objection.

18 **THE COURT:** Thank you, sir, for being
19 here.

20 **MR. CLEVELAND:** Your Honor, I left my pen.

21 **THE COURT:** Okay.

22 **MR. CLEVELAND:** At this time, the State
23 would call Dr. James Fulcher.

24 **JAMES FULCHER**

25 having first been duly sworn, testifies as follows:

1 **THE CLERK:** Have a seat and state your
2 name for the record please.

3 **THE WITNESS:** Dr. James William Fulcher.

4 **DIRECT EXAMINATION**

5 **BY MR. CLEVELAND:**

6 **Q** Dr. Fulcher, where do you work?

7 **A** I'm a forensic pathologist with Pathology
8 Associates of Greenville, South Carolina.

9 **Q** All right. And as part of your duties, do
10 you perform autopsies for various governmental
11 agencies?

12 **A** Yes, I perform autopsies for Greenville
13 County, Pickens County and Laurens County, South
14 Carolina.

15 **Q** Who else in your office performs autopsies?

16 **A** Dr. Michael Ward.

17 **Q** All right. And what type of training and
18 education do you have that qualifies you for that
19 position?

20 **A** Sure. I'm a physician, just like a
21 pediatrician or a surgeon would be. I went to medical
22 school in Virginia at the Medical College of
23 Virginia, then did a four-year residency in anatomic
24 and clinical pathology and a one-year fellowship
25 after that. After high school, that's 13 years of

1 training and came here ever since. Been practicing
2 here approximately nine years.

3 Q All right. And in your nine years of
4 practice, do you have any idea how many autopsies
5 you've performed?

6 A Approximately 2700.

7 Q Have you ever testified in state or federal
8 courts in the fields of forensic pathology as an
9 expert?

10 A Yes, sir. Several times. Usually, once or
11 twice a month.

12 MR. CLEVELAND: All right. At this time,
13 Your Honor, the State would like to offer
14 Dr. James Fulcher as an expert in the field of
15 forensic pathology.

16 THE COURT: Any objection?

17 MR. NEWTON: No objection.

18 THE COURT: All right. Ladies and
19 Gentlemen, normally, a witness cannot testify to
20 his or her opinion, just to things that they've
21 actually seen or heard, something along those
22 lines. There's an exception to that that we call
23 an expert witness. When someone has been
24 qualified in an area of education or experience,
25 then the court can qualify them as an expert

1 witness, and they are able to give their
2 opinion, as well as the basis for that opinion.

3 This -- this doctor will be qualified in
4 the area of -- forensic pathology?

5 **MR. CLEVELAND:** Forensic pathology.

6 **THE COURT:** -- in the area of forensic
7 pathology to give his opinion to you in that
8 area. You may use that opinion in any way that
9 you see fit.

10 Yes, sir.

11 **MR. CLEVELAND:** Thank you, Your Honor.

12 **BY MR. CLEVELAND:**

13 **Q** Is the purpose of an autopsy to determine
14 the cause of death?

15 **A** It is, yes. After autopsy, you should have
16 a sound medical and scientific understanding of why
17 that person died.

18 **Q** All right. And in the case of Mitchell
19 Bradley, did you perform the physical autopsy or did
20 Dr. Ward?

21 **A** Dr. Ward performed the autopsy in this
22 case.

23 **Q** In drafting an autopsy report though, is --
24 was this autopsy report co-authored between you and
25 Dr. Ward?

1 **A** It is, yes. Dr. Ward and I, as a matter of
2 just good practice, we have co-signed each other's
3 homicide autopsies since the beginning of our
4 existence here.

5 **Q** Why do you do that?

6 **A** It's an internal review. Typos, errors,
7 difference of opinions, stuff like that. An autopsy
8 doesn't leave our office -- a homicide autopsy does
9 not leave our office until both pathologists have
10 signed off on it.

11 **Q** All right. And during the conduction of
12 that autopsy, were photographs taken and notes made
13 as to the condition of items within the body?

14 **A** Yes.

15 **Q** And did you review those items as part of
16 your co-authorship of this report?

17 **A** We do, yes.

18 **Q** And is that practice common in the field of
19 forensic pathologists?

20 **A** It is, yes. Many training offices, where
21 you actually have doctors in training, they will
22 perform autopsies with the supervision of the
23 attending physician. In those cases, oftentimes,
24 those papers are co-signed. In fact, it's fairly
25 common practice from those agencies that, as those

1 doctors in training leave and go to other areas of
2 the country, the original physicians that were the
3 attendings will testify on their behalf.

4 Q All right. But to be clear, that report
5 didn't leave your office until both you and Dr. Ward
6 had agreed on its contents?

7 A Yes.

8 Q All right. Let's get right into it. Tell me
9 a little bit about Mr. Bradley and how you start --
10 how this autopsy was conducted and what analysis was
11 made.

12 A Sure. Mr. Bradley is a 154-pound, 70-inch-
13 tall, white male. He was received with multiple
14 wounds, including two gunshot wounds to the chest.
15 Would you like me to describe the wounds in detail?

16 Q Okay. So you said he was 154 pounds, 70
17 inches tall and is 5-foot-10?

18 A Correct.

19 Q Yes. Please describe the wounds that are of
20 significance.

21 A Mr. Bradley suffered two wounds. Both
22 entrances -- I will kind of point to my own body --
23 both entrances are on the side of the chest on the
24 right side. Each bullet crosses midline in the
25 directionalities from right to left. The wounds of

1 interests are, there are multiple wounds in both
2 lungs, the heart and one of the bullets came to rest
3 in the body of the vertebral spine, so the spinal
4 column inside the chest. One of the bullets hit the
5 spine and stops. The other bullet passes through and
6 exits the left side of the chest. One bullet stays in
7 the body, and one bullet goes totally through.

8 Q Was there anything of interest about the
9 entrance wounds?

10 A Yes, the entrance wounds are surrounded by
11 -- let me describe this -- irregularly shaped in
12 size, abrasive defects present on the skin surface
13 surrounding both wounds. So, normally, when a bullet
14 enters the body, we'll look for things like soot or
15 stipple. But if it hits an intermediate target,
16 oftentimes, pieces of that material can hit the body
17 as well. If you shoot someone through a window or a
18 car door, fragments of that other item can hit the
19 body, as well as they are carried forward from the
20 bullet. In this case, we believe that these satellite
21 injuries surrounding these wounds are from the
22 intermediate target.

23 Q All right. Would these wounds be consistent
24 with someone being shot from being on the other side
25 of a glass window?

1 **A** , Definitely.

2 **Q** All right. How far apart were each of these
3 entrance wounds from each other?

4 **A** I'm referring to my notes. I'm sorry.

5 **Q** Take your time.

6 **A** (Reviewing.)

7 Looks like approximately -- looks like they
8 are within three inches of each other, both
9 surrounded by the same glass shattering pattern on
10 the skin surface, that intermediate target I was
11 discussing.

12 **Q** What was the cause of death in the case, in
13 your opinion, of Mitchell Bradley?

14 **A** Sure. In this case, because we have a --
15 and we do the full autopsy, so part of this procedure
16 is examining every organ, brain, even organs that may
17 or may not have been injured. Giving that he is a
18 healthy 22-year-old, white male, with no natural
19 disease and having sustained two gunshot wounds to
20 the chest that caused significant bleeding, both
21 lungs, the body of the heart severely damaged with
22 1200 cc's of blood in the right chest -- the right
23 side of the chest and 900 cc's or mls of blood in
24 the left chest -- a man his size should have a blood
25 volume of approximately 5000 cc's. So he has two-

1 fifths of his blood volume in his chest, which is,
2 obviously, not compatible with life. So because of
3 these factors, we determined that his cause of death
4 was both gunshot wounds to the chest. Either one
5 could have been fatal.

6 **Q** Okay. So Mr. Bradley was shot twice. But
7 even if he had only been shot with one or the other
8 gunshot wounds, could they have contributed to his
9 death?

10 **A** Yes, gunshot wound number two, which we
11 labeled as the one that actually passes through the
12 body, it is the gunshot wound that severely wounds
13 the heart and both lungs, while the projectile we
14 recover, that gunshot wound only affects the right
15 lung. Arguably, gunshot wound number 2 was more
16 fatal, but one would have also killed the decedent.
17 Just more trauma.

18 **Q** Is there any degree of medical
19 intervention, in your opinion, that if the decedent
20 had of-received, it could have saved his life?

21 **A** I do not believe so, given the damage to
22 the heart. It was quite traumatizing. The description
23 of the heart is that -- if you think of the heart as
24 something about the size of your fist, basically, the
25 bullet passes straight through side to side and

1 almost obliterates a large portion of the heart, so
2 huge amounts of blood. Probably would not have been
3 surgically repairable.

4 Q Is there any -- you say you examined all of
5 his organs, are there any other indications within
6 him, disease or other injuries that could have
7 contributed to his death?

8 A No, sir.

9 Q Did you note all the injuries that were
10 present on the decedent?

11 A Once again, they should have been noted.
12 Generally, our disclaimer is that very superficial
13 injuries may not be observed at autopsy. So I did not
14 identify -- Dr. Ward did not identify or mark any
15 significant injuries to the feet or extremities. I
16 should point out that the X-rays -- we would have
17 taken X-rays in this case. X-rays of the chest would
18 not show any fractures, except where injured by
19 projectiles. We would not have X-rayed the
20 extremities, nor the head, in this case.

21 Q As a matter of course, in an autopsy, did
22 you do any toxicology analysis on the decedent?

23 A Yes, we did. In this case, post-mortem
24 toxicology on Bradley Mitchell showed several things
25 present. This is in his blood. He had an alcohol

1 level of .197. This is several times the legal limit
2 to operate a motor vehicle in this state, that is,
3 .08. That's .08. And we are at .19, so we're a little
4 over double that. He also had the by-products of
5 marijuana, the active ingredient delta-9-thc and its
6 metabolite delta-9-carboxy-thc. These quantities, to
7 me, indicate that he probably smoked a marijuana
8 cigarette sometime around the time, hours before he
9 was probably killed.

10 Q Are those levels of THC, in your opinion,
11 could that put him under the influence of a drug?

12 A Minimally so, but not nearly severe as the
13 amount of alcohol.

14 Q Did you memorialize all these findings in a
15 report?

16 A Yes.

17 Q I'm going to hand you State's Exhibit 35.
18 Is that such report?

19 A Yes, this is the autopsy report.

20 MR. CLEVELAND: All right. At this time,
21 Your Honor, the State would seek to admit
22 State's Exhibit 35.

23 THE COURT: Any objection?

24 MR. NEWTON: No, Your Honor.

25 THE COURT: All right. It will be so.

1 admitted.

2 (State's Exhibit 35 is admitted into the
3 record.)

4 **MR. CLEVELAND:** That's all the questions I
5 have, Dr. Fulcher. Thank you.

6 **THE COURT:** Any questions?

7 **MR. NEWTON:** Just briefly, Your Honor.

8 **THE COURT:** Certainly.

9 **CROSS-EXAMINATION**

10 **BY MR. NEWTON:**

11 **Q** Are you aware of any combined effect that
12 marijuana can have with alcohol --

13 **A** It certainly could, yes.

14 **Q** -- I'm sorry.

15 **A** Yes.

16 **Q** Let me finish the question -- so that it
17 has a synergistic effect? Please then, go ahead.

18 **A** Yeah. There is a synergistic effect between
19 marijuana and alcohol and that someone drinking and
20 smoking at the same time can have intoxication beyond
21 what you would expect with either substance. It
22 exists. It's real -- the challenge is -- from an
23 individual to individual, is difficult to predict
24 exactly how they might be intoxicated.

25 **Q** Now, in reporting .197, which was the blood

1 alcohol ---

2 **A** Uh-huh.

3 **Q** --- would y'all normally round that up to,
4 say, .20?

5 **A** You could. The laboratory gives it to us
6 with three decimal places. Generally speaking, the
7 autopsy report would show it as such, yes.

8 **Q** So in effect, he was .20 when the legal
9 limit is .08?

10 **A** Yeah, that's very close.

11 **Q** Thank you. No further questions.

12 **THE COURT:** Any other questions?

13 **MR. CLEVELAND:** Briefly on follow-up.

14 **REDIRECT EXAMINATION**

15 **BY MR. CLEVELAND:**

16 **Q** He -- the defense mentioned the synergistic
17 effect. Is THC and alcohol, are those stimulants or
18 depressants?

19 **A** So alcohol is definitely a depressant.
20 THC's effect on the brain is really multifactorial.
21 It doesn't fit as neatly into a box as you want.
22 Generally speaking, it is a mild sedative. Generally
23 speaking. Not everyone reacts the same way with
24 marijuana, though.

25 **Q** Marijuana or alcohol?

1 **A** Marijuana. Alcohol is always a depressant.
2 It would be very strongly classified as a depressant
3 drug.

4 **Q** I guess a fair characterization, marijuana
5 and alcohol are both sedatives or depressants?

6 **A** Depressants.

7 **MR. NEWTON:** Object to the leading
8 question.

9 **THE COURT:** Sustained.

10 **MR. CLEVELAND:** That's fine. I don't have
11 any other questions.

12 **THE COURT:** Any other questions?

13 **MR. NEWTON:** No, Your Honor.

14 **THE COURT:** All right.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Thank you. You can step down.
17 And would you like to have him released?

18 **MR. CLEVELAND:** Yes, Your Honor.

19 **THE COURT:** All right. Any objection ---

20 **MR. NEWTON:** I'm sorry?

21 **THE COURT:** --- to having the doctor
22 released?

23 **MR. NEWTON:** No objection.

24 **THE COURT:** Okay. Thank you.

25 **THE WITNESS:** Thank you.

1 **MS. MCCALL:** The State calls Chuck James
2 to the stand.

3 **CHUCK JAMES**
4 having first been duly sworn, testifies as follows:

5 **THE CLERK:** Have a seat and state your
6 name for the record please.

7 **THE WITNESS:** Lieutenant Chuck James.

8 **DIRECT EXAMINATION**

9 **BY MS. MCCALL:**

10 **Q** Lieutenant James, do you work at the
11 Pickens County Sheriff's Office?

12 **A** I do.

13 **Q** And what is your position there?

14 **A** I am the supervisor over the General
15 Investigations Division at the Pickens County
16 Sheriff's Office.

17 **Q** Did you have that same position in July of
18 2015?

19 **A** I was a detective sergeant, which was a
20 supervisory position.

21 **Q** And did you respond to this incident at [REDACTED]
22 [REDACTED]?

23 **A** I did.

24 **Q** When you arrived on scene, what actions did
25 you take?

1 **A** Immediately, upon arriving on the scene,
2 there were three other -- actually two other
3 investigators and what we call an OIC, which would be
4 the Officer in Charge -- they are generally on call
5 -- which was Captain Rodney Thomas. The other
6 investigators that were on the scene was Detective
7 Jan Kelly and Detective Anthony Raines, both of whom
8 I believe have already testified. Upon arriving, I
9 was briefed by them as to what transpired. As
10 additional resources poured in, I believe to provide
11 people with assignments as to what to do.

12 **Q** What role did you have in addition to
13 providing those assignments?

14 **A** I assisted Detective Sergeant Art Taylor
15 with the interview of the defendant.

16 **Q** When you arrived on scene, did you enter
17 the trailer at any point?

18 **A** I did not enter it. I walked around the
19 perimeter, observed the perimeter and observed the
20 immediate crime scene.

21 **Q** What did you observe behind the house?

22 **A** On the porch, specifically?

23 **Q** Yes.

24 **A** As I approached the back porch, I observed
25 the victim lying on the ground on his back. There was

1 glass surrounding him. He appeared to have multiple
2 wounds to his sides that were consistent with a
3 gunshot wound.

4 Q At this point, had the victim already been
5 declared dead?

6 A He had.

7 Q Did you speak with Randy Wilson on scene at
8 all?

9 A I did not directly speak with Randy Wilson.
10 I observed Detective Kelly conversing with him.

11 Q And where was Mr. Wilson when you saw this
12 interaction taking place?

13 A He was sitting on the back of the truck.

14 Q And can you explain for us his appearance
15 that night? Just his physical appearance..

16 A Physically, I did not see him standing. I
17 saw him sitting. He was a little heavier, I believe,
18 than he is now. Maybe 15 or 20 pounds difference, as
19 I recall. As a matter of fact, I didn't recognize him
20 when I saw him.

21 Q After you delegated these duties and you
22 said that you assisted Mr. Taylor in interviewing the
23 defendant, how did you come into contact with the
24 defendant?

25 A So the defendant was seated in the house.

1 He was with Deputy Nix. Due to the fact that there
2 was -- the victim was lying on the back porch, I
3 asked that Deputy Nix bring him to the front door, so
4 that we can bring him out so not to disturb the crime
5 scene. At which point, he was brought out and that's
6 where I first made contact with him.

7 Q Did you make contact with him in the yard
8 -- in the front yard?

9 A Yes.

10 Q And how did you make entry into the front
11 yard?

12 A We went through, I believe, a gate. There's
13 a little gate there, as I recall.

14 Q Do you recall taking a long time to get
15 into that front yard area?

16 A No, we did have to have Jacob Kirk corral
17 several dogs.

18 Q Once you came into contact with the
19 defendant, what did you discuss with him?

20 A I asked him if he'd be willing to speak
21 with us, due to the fact there were numerous
22 emergency personnel on the scene. It was really not a
23 conducive environment to do a sit down, kind of in-
24 depth interview with an individual. I asked him if
25 he'd be willing to come to the Pickens County

1 Sheriff's Office and voluntarily sit down with us, to
2 which he consented.

3 Q So, at this point, he was not under arrest?

4 A He was not. It was explained to him that
5 this was a voluntary interview.

6 Q Did he agree to come with you?

7 A He did.

8 Q And how did he arrive? Did you drive him?

9 A No, he rode with Detective Sergeant Taylor.

10 Q Once you arrived at the police station, at
11 that point, did you begin conducting an interview?

12 A We did.

13 Q And did you read him his Miranda rights
14 before beginning that interview?

15 A He was. He was read his Miranda rights and
16 he also signed a waiver of rights form.

17 Q How was his condition at that point, as far
18 as his demeanor and coherency?

19 A He was exceptionally lucid. He did not
20 appear to be under the influence of anything, just
21 cooperative.

22 Q When you arrived at the police department,
23 did you offer him anything to drink, eat, offer him
24 to use the restroom?

25 A We did. We offered him something to drink.

1 He was offered multiple times throughout the
2 interview to use the restroom.

3 Q Based on your experience and your
4 observation and interaction with the defendant, do
5 you believe that the interview that he gave was
6 freely and voluntarily given?

7 A Without a doubt.

8 Q I'm going to show you what's been marked as
9 State's Exhibit 29. Do you recognize that?

10 A I do.

11 Q And what is it?

12 A It is a recorded copy of the interview that
13 myself and Detective Sergeant Taylor did with the
14 defendant.

15 Q If you would, just briefly, explain to us
16 what is on that video. You don't have to give too
17 many details. Just kind of lead us through what we're
18 going to see on that video.

19 A So when Mr. McCarty was brought in,
20 obviously, he was read his Miranda, provided an
21 opportunity to use the restroom, offered a drink.
22 Then we begin to kind of go through the individuals
23 who reside at the residence and kind of the
24 chronological steps leading up to what transpired. At
25 some point during my interview with him, there's the

1 allegation that he was trying to open the door and he
2 had a gun in his hand. The gun hit the door and,
3 subsequently, discharged, kind of without him
4 realizing it. I later challenged him on that, and his
5 story changes to where it was more of an intentional
6 act.

7 Q Will this video fairly and accurately
8 depict the interview that was conducted of the
9 defendant that evening?

10 A It will.

11 MS. MCCALL: Your Honor, at this time, the
12 State moves to admit this into evidence. It's
13 State's 29.

14 THE COURT: Any objection to that?

15 MR. NEWTON: No, Your Honor.

16 THE COURT: All right.

17 (State's Exhibit 29 is admitted into the
18 record.)

19 MS. MCCALL: Your Honor, we also move to
20 publish it to the --

21 THE COURT: Yes, sir.

22 MR. NEWTON: No, that's fine.

23 THE COURT: I wanted to make sure I didn't
24 cut you off. I'm sorry.

25 MR. NEWTON: No.

1 **THE COURT:** Okay. Go ahead.

2 **MS. MCCALL:** We move to publish it to the
3 jury. It is quite long. We are not going to
4 publish, at this point, or to play the entire
5 interview. We seek to play the portion of the
6 interview up until the point that a written
7 statement is discussed. We would provide it to
8 the jury in the entirety for their own viewing.

9 **THE COURT:** Any objection to it being
10 published, at this point, in that manner?

11 **MR. NEWTON:** No.

12 **THE COURT:** All right. All right then.

13 **MR. NEWTON:** Can we approach?

14 **THE COURT:** Certainly.

15 (Bench conference is held off the record.)

16 **THE COURT:** These attorneys are so nice
17 that they think this is going to be long enough
18 that it might be a point for us to just take a
19 quick afternoon break. So, if you will, just
20 step to your jury deliberation room for a very
21 quick break, we're just going to start it right
22 when you get back. We just didn't want you to
23 have to sit quite that long..

24 (Jury exits at approximately 2:46 p.m.)

25 **THE COURT:** Let's take a 10-minute break.

1 (Court goes off the record at approximately
2 2:46 p.m.)

3 (Court goes on the record at approximately
4 2:59 p.m.)

5 **THE COURT:** Y'all ready to bring the jury
6 back in?

7 **MS. MCCALL:** We are, Your Honor.

8 (Jury enters at approximately 2:59 p.m.)

9 **THE COURT:** All right.

10 **MS. MCCALL:** Thank you, Your Honor.

11 **THE COURT:** Yes, ma'am.

12 **BY MS. MCCALL:**

13 **Q** Lieutenant James, we're going to proceed
14 with watching the interview. If you could, just
15 briefly just tell us, are we getting started? At this
16 point, had you been in there at all? If you will,
17 just give us a little bit of background.

18 **A** Yeah, I believe I been in there just very
19 briefly setting up my computer. I just have a drink
20 and notepad, and Mr. McCarty is walking in right now.

21 (State's Exhibit 29 is played.)

22 **BY MS. MCCALL:**

23 **Q** Lieutenant James, what did you do at this
24 point during the interview?

25 **A** Basically, we discussed what transpired. I

1 physically typed that into a written statement for
2 him, which he then observed the statement, read it
3 and signed it as a true and accurate representation
4 of what transpired.

5 Q I'm going to show you what has been pre-
6 marked as State's Exhibit 39. Would you take a look
7 at that?

8 A Yes.

9 Q Do you recognize what that is?

10 A I do.

11 Q What is that?

12 A That is the statement that I wrote on
13 behalf of Mr. McCarty on the morning of July 16th,
14 2015.

15 Q And is it signed by Mr. McCarty?

16 A It is.

17 Q So what is reflected there? Is that what
18 continues on this recording?

19 A Yes.

20 MS. MCCALL: At this time, Your Honor,
21 I'll seek to move this into evidence as State's
22 Exhibit 39.

23 THE COURT: Any objection?

24 MR. NEWTON: No objection.

25 THE COURT: It's so admitted.

1 **MS. MCCALL:** Thank you.

2 (State's Exhibit 39 is admitted into the
3 record.)

4 **BY MS. MCCALL:**

5 **Q** At this point of the interview, we're going
6 to play just a small snippet of this section. It
7 should be self-explanatory, but can you tell, from
8 this point, what we're about to see? Do you know?

9 **A** If I recall, I believe had him get up and
10 we go through, if I'm standing, I'm Randy and he's
11 Mitchell, and he kind of takes me through what was
12 going on, kind of physically acting it out.

13 **Q** Okay.

14 (State's Exhibit 29 is played.)

15 **BY MS. MCCALL:**

16 **Q** Lieutenant James, what continues on the
17 remainder of this video?

18 **A** We continue to collect a statement. I read
19 the statement to him, let him read it over, provide
20 him with a copy of it and he signs.

21 **Q** At this end of this interview, was he under
22 arrest?

23 **A** No, we actually returned him -- Sergeant
24 Taylor returns him to the incident location where we
25 advise him, for his own protection, you know, in case

1 there's any retaliation or anything like that, if he
2 can find somewhere else to stay, to stay in contact
3 with us as we continue the investigation. He was cut
4 loose and free to go.

5 Q Okay. So he was arrested at a later time?

6 A He was. He was arrested -- that was the
7 morning of the 16th. The incident occurs on the 15th.
8 I believe he was arrested on the 17th.

9 Q Okay. Turning to Mr. Wilson, did you serve
10 a subpoena on Randy Wilson regarding this case
11 recently?

12 A Last, I think, Tuesday. Last week.

13 Q And where did you serve that subpoena?

14 A [REDACTED].

15 Q And can you tell us about his appearance on
16 that day?

17 A He answered the door. His motion was a
18 little more fluid than it was here. I did not see him
19 walking with a cane.

20 Q All right. I have no further questions,
21 Lieutenant James. Please answer anything Mr. Newton
22 has.

23 **CROSS-EXAMINATION**

24 **BY MR. NEWTON:**

25 Q Are you suggesting Mr. Wilson is faking the

1 cane thing today?

2 **A** I'm not suggesting it. I'm just, letting you
3 know what my 10-second observation was.

4 **Q** Inside the house, a person has walls they
5 can --

6 **A** Absolutely.

7 **Q** All right. You mentioned when John McCarty
8 was arrested, what was he arrested for?

9 **MS. MCCALL:** Objection, Your Honor. I
10 don't think that's relevant.

11 **THE COURT:** Will y'all approach?

12 (Bench conference is held off the record.)

13 **THE COURT:** Overruled.

14 **BY MR. NEWTON:**

15 **Q** What was he arrested for, sir?

16 **A** Voluntary manslaughter.

17 **Q** Not murder?

18 **A** Correct..

19 **Q** To your knowledge, who upgraded the charge
20 to murder at a later date?

21 **A** I believe the Solicitor's Office did.

22 **Q** All right. Thank you. Whose input goes into
23 deciding how to make a charge? Is that your -- your
24 decision?

25 **MS. MCCALL:** Objection, Your Honor.

1 **THE COURT:** I think we're going far afield
2 now. The Solicitor's Office has the right to
3 make a decision on what to, ultimately, charge.

4 **BY MR. NEWTON:**

5 **Q** This taped interview, the time is visible
6 in red at the top, correct?

7 **A** Yes, that would be.

8 **Q** So that was correct, it was just a few
9 hours later? That time shows 3:02 a.m.,
10 approximately?

11 **A** It does.

12 **Q** In your experience as a police officer,
13 after a traumatizing event, isn't it true that people
14 can be very confused, especially when events are very
15 fast flowing?

16 **A** In some cases, correct.

17 **Q** And it's hard to remember exactly what
18 happened?

19 **A** That would be accurate.

20 **Q** Isn't it true that for that very reason,
21 when police officers are involved in shooting
22 somebody, isn't it policy to give them 48 hours
23 before they have to make a statement to anybody?

24 **A** Not that I'm aware of.

25 **Q** In other jurisdictions, you've never heard

1 of that before?

2 **A** I have not heard of that. In none of my
3 experiences have I ever dealt with that. But that's
4 just my experience.

5 **Q** So you've never been involved in a case
6 where a police officer shot somebody?

7 **A** I have not.

8 **Q** You, earlier, referred to Jacob Kirk having
9 to corral some dogs so that you could go through the
10 front yard?

11 **A** Yes.

12 **Q** Do you remember how many dogs there were?

13 **A** If I recall correctly, there were two dogs.
14 There might have even been a deer.

15 **Q** A deer?

16 **A** Correct. It snuck up on us and licked us at
17 one point. It was odd.

18 **Q** I'm sorry. Was that a joke?

19 **A** No, it was legitimate. I believe there was
20 a deer out there that evening, a doe.

21 **Q** Okay. Are deer good at jumping? Can they
22 jump good?

23 **A** Yes.

24 **Q** Do you remember how high the fence was?

25 **A** Off the top of my head, I do not recall how

1 high that fence was.

2 Q Do you recall when you entered through that
3 fence, what was it locked with? Do you recall?

4 A I don't.

5 Q Do you remember Jacob Kirk having to undo
6 some wiring so that you could go through there?

7 A He may have. Now, that you say that, it
8 does sound familiar.

9 Q Okay. It's not a case you just open a fence
10 and walk on through. It's more involved than that,
11 correct?

12 A Correct.

13 Q Did you feel like you could jump that
14 fence? Or did you have to go through the gate?

15 A Well, I went through the gate because the
16 gate was available. I don't -- like I stated, I don't
17 recall how tall that fence was. It was also midnight.

18 Q Okay.

19 A It was very dark in the front.

20 Q Now, the Solicitor did not play all of that
21 video just now, isn't that true?

22 A Yes, that's true.

23 Q And it is in evidence and the jury can
24 watch the entire thing if they'd like. But you
25 recall, on that video, Mr. McCarty saying things,

1 like, I just shot somebody. That is not me. That's
2 what he was thinking after the shooting? He was
3 stunned by the fact that, well, it just happened.

4 **A** Yeah.

5 **Q** And he said, that's just not me?

6 **A** Yeah.

7 **Q** Okay. Thank you. I have no further
8 questions at this time.

9 **THE COURT:** Any further questions?

10 **MS. MCCALL:** Briefly, Your Honor.

11 **THE COURT:** Certainly.

12 **REDIRECT EXAMINATION**

13 **BY MS. MCCALL:**

14 **Q** Lieutenant James, are you familiar with the
15 grand jury process?

16 **A** I am.

17 **Q** And does a charge have to be presented to
18 the grand jury prior to proceeding to trial?

19 **A** It does.

20 **Q** And as part of that process, do you have to
21 present the facts of the case to the grand jury?

22 **A** Yes, the facts are presented before the
23 grand jury and then the grand jury --

24 **MR. NEWTON:** Objection.

25 **THE COURT:** All right. Sustained.

1 sitting there waiting on us this afternoon, what
2 I'm going to do is I'm going to go ahead and
3 release you for today. I ask you to be back in
4 your jury deliberation room tomorrow morning at
5 9:30.

6 I will let you in on what we were talking
7 about here. We still very much anticipate that
8 the case will be in your hands probably the
9 middle of the day tomorrow. So, very much still
10 on track, even though we're taking this break
11 early, and we're going to spend our hour here
12 before we go home taking care of some legal
13 matters so that we won't slow you down tomorrow.
14 All right.

15 Thank you so much. I know I've told you --
16 I sound like a broken record -- but please don't
17 discuss the case with anyone or do any kind of
18 independent research. We're not to the end yet.
19 Thank you so much. Have a good evening.

20 (Jury exits at approximately 3:56 p.m.)

21 **THE BAILIFF:** Okay. Judge, the jury is
22 secure.

23 **THE COURT:** Thank you. All right.
24 Yes, sir.

25 **MR. NEWTON:** Your Honor, I have a motion.

1 The prosecutor did a great job summarizing the
2 elements of murder, I thought, in the opening
3 statement and one of those elements, of course,
4 were on malice aforethought which requires, as
5 Mr. Cleveland stated, certain wickedness of
6 heart, just doing an act out of pure meanness
7 and, basically, for no other reason.

8 I submit that, in the light most favorable
9 to the State, there is no evidence the jury
10 could convict or find malice aforethought in
11 this case, that every indication is that
12 Mr. McCarty did not shoot out of pure meanness
13 or malice, but correctly or incorrectly, to
14 defend the health of another person. So, I
15 submit the murder charge should be dismissed.

16 **THE COURT:** All right. Yes, sir.

17 **MR. CLEVELAND:** Thank you, Your Honor. May
18 it please the Court.

19 **THE COURT:** Yes, sir.

20 **MR. CLEVELAND:** In the light viewed most
21 favorable to the State, I think there's ample
22 evidence to support this charge going to the
23 jury. What the evidence shows is that
24 Ms. McCarty -- Mr. McCarty drew his gun from his
25 bedroom and walked up to the situation after

1 just hearing it and, essentially, shot twice,
2 killing a young man who was engaged in nothing
3 more than a drunken brawl. There's ample
4 evidence that Randy Wilson was at fault in
5 bringing about this difficulty, and there's
6 ample evidence that shows that he was still
7 engaged in the fight throwing punches and
8 everything else, as a mutual combatant, at the
9 time.

10 Very little evidence was shown that there
11 was anything done about it. Very little evidence
12 showing that he even said or did anything other
13 than just firing a warning shot, which shows
14 that he is capable of reflecting on the
15 situation and making an informed decision. Then,
16 he fired not one, but two shots, into a young
17 man, killing him on the scene. Two very close
18 wounds, where he had to pull the trigger once,
19 reacquire his target, and pull the trigger
20 again.

21 I think that malice can be expressed or
22 implied. Out of -- just from the circumstances
23 of bringing the gun to nothing more than a
24 drunken fist fight shows extreme indifference
25 for human life and meanness, which could be

1 considered malice. I'm certain he had that in
2 his heart when he pulled the trigger, which
3 there's no premeditation time requirement, just
4 as long as he struck the final blow. And based
5 upon Randy Wilson's -- the evidence that he was
6 at fault in bringing about the difficulty, self-
7 defense and defense of others would have not
8 been available to him. There's evidence that
9 Mr. McCarty is and could be considered and found
10 guilty by a jury of the charge of murder.

11 **THE COURT:** Well, you know, since the
12 jury's not here, I'll comment on the facts and
13 say, I don't know that I think there's ample
14 evidence, but I think that there is at least
15 some evidence upon which a jury could base a
16 verdict for murder. At least some that the jury
17 could base a verdict and, of course, that's the
18 standard. So I will respectfully deny your
19 motion.

20 Because I'm not really -- I have not really
21 looked at this, are you intending on renewing
22 your motion under -- renewing your motion under
23 Stand Your Ground? Do you feel like you need to
24 renew that now and renew that at the end? I'm
25 not sure.

1 **MR. NEWTON:** Well, I certainly will. You
2 were, of course, the judge at that hearing and
3 heard everything.

4 **THE COURT:** All right. Well, I'll say that
5 I stand by my previous ruling. I may have heard
6 a little bit more about the case now, but I
7 stand by my previous ruling, at least at this
8 point. And I'll -- and so, again, respectfully,
9 deny your motion so far as immunity from
10 prosecution. I don't know if you have to do that
11 or not.

12 **MR. CLEVELAND:** Your Honor, I think there
13 is case law out there that at least says that a
14 hearing prior to the trial is not necessary and
15 can be decided during the trial as an issue. So
16 being that it's sort of a split situation where
17 we've already had a hearing and now we're now at
18 the conclusion of the State's part of the trial,
19 then certainly, for you to reconsider any motion
20 made on that end, at least to get to trial, at
21 this point -- I mean, I couldn't have picked the
22 jury if you had granted his motion in February.
23 So at this point, I think it's within your
24 purview, but still, we standby your decision.

25 **THE COURT:** All right. So I would think in

1 light of that probably, you know, don't know
2 what's going to happen, but, certainly, at the
3 close of testimony and then if there is any
4 verdict against Mr. McCarty probably to renew
5 that motion at that same time. That's kind of
6 uncharted waters for me, personally. I don't
7 know if it is --

8 **MR. NEWTON:** I believe for everybody in
9 the courtroom, it is.

10 **THE COURT:** So we'll err on the side of
11 caution there. All right. So let's turn now to
12 -- let's turn now to the charge in this case.
13 I'm assuming that the State does not contest, or
14 maybe you do, that the lesser included of
15 voluntary would be proper, based on the evidence
16 that's been presented. I might be putting words
17 in your mouth.

18 **MR. CLEVELAND:** I'm not quite there, Your
19 Honor.

20 **THE COURT:** Okay.

21 **MR. CLEVELAND:** And I'm relying on State v.
22 Cook ---

23 **THE COURT:** Okay.

24 **MR. CLEVELAND:** --- which is a case very
25 similar to this. I'm not going to -- I'm like

1 you. I've heard no evidence in this trial that's
2 really different, when you review the case and
3 everything. State v. Cook is a decision to seek
4 an indictment for murder. It's a case where an
5 individual was convicted of manslaughter and the
6 jury ruled that because the defendant was not
7 incapable of cool inflection based upon the
8 evidence that that was improper to charge
9 voluntary manslaughter in that case. And because
10 he was convicted of manslaughter, he was
11 essentially acquitted on the charge. I can give
12 that citation.

13 **THE COURT:** Okay.

14 **MR. CLEVELAND:** So, again, I think it's
15 worth the Court's consideration, but I certainly
16 respect whatever decision the Court does make.

17 **THE COURT:** It's okay.

18 **MR. CLEVELAND:** I apologize. It's Cook v.
19 State. The citation is 784 S.E. 2d, 665. It's a
20 South Carolina Supreme Court dated December 9th,
21 2015.

22 **THE COURT:** Okay. I'll take a look at it
23 and we can talk about this in the morning again.
24 But I will need to take another look at it.
25 Hearing what I've heard about the testimony, and

1 not have -- I haven't read through the Cook
2 case. At least in my recollection, I've not read
3 the Cook case -- you know, I would think that
4 voluntary might potentially fit the evidence
5 that's been presented here these last two days.
6 What about involuntary?

7 **MR. CLEVELAND:** I would oppose to charging
8 involuntary manslaughter, Your Honor. I think
9 that the uncontroverted evidence is that the
10 defendant pulled the trigger and intentionally
11 -- intentionally killed the victim in this case.
12 Battle, State v. Battle, is descriptive of the
13 issue. I don't think that he was just doing
14 something in a reckless manner. I think that
15 firing two shots into someone is an intentional
16 act that would very likely bring about death. It
17 wasn't just reckless. He wasn't just doing
18 something that naturally would have caused
19 death. It's something that he did to actually
20 cause death.

21 **THE COURT:** All right. I've been sort of
22 thinking about that one. I certainly will hear
23 from you, Mr. Newton. Is there anything you want
24 to add at this point about -- or are you even
25 asking for voluntary?

1 **MR. NEWTON:** I wasn't asking at this
2 point, Your Honor. To be perfectly candid, I
3 sometimes wonder if this is not a case to seek
4 an all or nothing. I'm just speaking out
5 loud ---

6 **THE COURT:** That's fine.

7 **MR. NEWTON:** --- my thought process on it.

8 **THE COURT:** That's fine. I wondered what
9 you'd want to do. I just wanted to hear the
10 State's position on voluntary and involuntary
11 while we're here at this point. Defense of
12 others, I'm assuming ---

13 **MR. NEWTON:** Absolutely.

14 **THE COURT:** --- that you're asking for
15 defense of others. Okay. All right. And is -- I
16 know the State's going to argue greatly against
17 it in front of the jury. Do you think it's
18 improper to be charged?

19 **MR. CLEVELAND:** No, I don't think it's
20 improper to charge. That's what the whole basis
21 of the case is.

22 **THE COURT:** Okay. All right. Well, y'all
23 are kind of too easy in a charging conference.

24 **MR. CLEVELAND:** We do have some language,
25 based on some cases, that I would like to

1 request be added to the jury charge.

2 **THE COURT:** Let's hear it.

3 **MR. CLEVELAND:** I can type that up.

4 **THE COURT:** That's okay.

5 **MR. CLEVELAND:** For starters, from State v.
6 Bryant, the language is "an accused who provokes
7 or initiates an assault cannot claim self-
8 defense unless he both withdraws from the
9 conflict and communicates his withdrawal by word
10 or act to his adversary." That's State v.
11 Bryant, 520 S.E. 2d, 319 and 322 is the pinpoint
12 cite. It's a 1999 case.

13 **THE COURT:** All right.

14 **MR. CLEVELAND:** I think that charge within
15 self-defense and defense of others would be
16 appropriate.

17 **THE COURT:** I may have it already covered
18 in my defense of others charge. Let me take a
19 look at it and see how it fits in with what I've
20 already got.

21 **MR. CLEVELAND:** Yes, Your Honor. In looking
22 at the standard charge, there's a lot of talk
23 about provoking a deadly assault and this, that
24 and the other and everything. What we've got
25 here is two theories. One is that it's just a

1 regular fistfight, and the defense's theory is
2 that any fistfight would be a deadly assault.

3 **THE COURT:** Right.

4 **MR. CLEVELAND:** I'm kind of torn on whether
5 the deadly assault language is really
6 appropriate or really not. Certainly, the
7 State's position is that it's not. But I think
8 that this simplifies the issue of without fault,
9 bringing about the difficulty regarding just a
10 standard fight. I think that specific language,
11 I think, is appropriate in this case.

12 **THE COURT:** Okay. I'll take a look at it
13 and see. I will do that. If we don't email you
14 at least something this evening, then I'll get
15 it to you tomorrow and give you copies of it
16 tomorrow. Of course, all of this is not having
17 heard the defense's case at all.

18 **MR. NEWTON:** Sure.

19 **THE COURT:** So anything you want to add on
20 that particular language?

21 **MR. NEWTON:** Well, just the whole without
22 fault part. It is a major point of contention as
23 to why exactly what we charge. Of course, I just
24 want the jury to understand that doesn't mean,
25 like, anything.

1 **THE COURT:** Right.

2 **MR. NEWTON:** It has to rise to a legally
3 sufficient level of fault. So -- so that's just
4 a major concern.

5 **THE COURT:** Okay. I'll look at that and
6 see if we can't -- see if we can't clarify that
7 maybe a little bit.

8 **MR. NEWTON:** Anybody can argue -- I'm not
9 suggesting he's going to do this -- but he can
10 get up there and say, well, the guy looked at
11 him the wrong way, he's at fault.

12 **THE COURT:** Right.

13 **MR. NEWTON:** You know, so it has to be
14 legally sufficient action.

15 **THE COURT:** Right. If you come across
16 something like that, we'll look at it too. If
17 you come across something from language like
18 that or you have an idea about it, I'd
19 definitely consider it.

20 **MR. CLEVELAND:** Your Honor, I think that
21 State v. Jackson, 384 S.C. 29 is pretty good on
22 that point. It's factually similar to this case
23 in that it's a fight between a mother and, I
24 believe, another relative, and the son comes and
25 tries to break it up. It's about defense of

1 others and who's at fault and what constitutes
2 being at fault and what kind of actions there
3 are. I would direct your attention to that. If I
4 could pick out some specific language ---

5 **THE COURT:** Okay.

6 **MR. CLEVELAND:** --- it would be from that
7 case.

8 **THE COURT:** Okay.

9 **MR. CLEVELAND:** It's State v. Jackson. It's
10 a 2009 Court of Appeals case from South
11 Carolina.

12 **THE COURT:** Okay. All right. Anything else
13 anybody can think of?

14 **MR. NEWTON:** Just, you do have my correct
15 -- email address, correct?

16 **THE COURT:** Well, let's see if I can get
17 it.

18 Of course, Baker, I've got yours.

19 Next -- one other question, so far as
20 voluntariness of the statement, since you all
21 have not contested voluntariness of the
22 statement, I can tell the jury that, ordinarily,
23 they'd have to consider the voluntariness of the
24 statement, but that you all have conceded or
25 stipulated to the fact that it's voluntary.

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 18th day of October, 2017 at approximately 9:25 a.m.)

THE COURT: So we've got just a couple of minutes to talk about the charge just a little bit more.

Mr. Newton, you don't -- you don't have to commit to anything at this point. I'm not going to force you to do that because you haven't put up a case yet, if you are going to put up a case, but are you at a point now to where you've given any thought or final thought to what you want in the charge?

MR. NEWTON: Well, yes, Your Honor. For one thing, we are not requesting charges of lesser included offenses.

THE COURT: Okay. All right. All right.

MR. NEWTON: I would just prefer a straight murder, guilty or not guilty.

THE COURT: All right. And defense of others, I mean, I spent a good deal of time last night looking at defense of others definitely and maybe thinking about some language to flesh some things out. This is a straight -- this is a strange case in that for

1 defense of others, you know, the way I
2 understand the testimony from the past hearing
3 and from this one, Mr. McCarty may not have
4 known who was at fault in bringing on the -- in
5 bringing on the trouble, so he may not have had
6 that information at that time. So I think that
7 definitely weighs into it. I'm going to have to
8 -- I don't know if there's a case out there
9 that talks about that, specifically. If there
10 is --

11 **MR. NEWTON:** Your Honor, my understanding
12 is that, basically, whenever a third party
13 intervenes, as has happened in this case, they,
14 basically, do so at their own risk. They are
15 put in the same position of, of course, the
16 person being assaulted. So at their own risk,
17 they are taking the chance on whether that
18 person assaulted themselves have a right to
19 self-defense or not. Now, they don't have to
20 know for sure ahead of time to act. They are
21 just taking a risk.

22 **THE COURT:** I mean, I just wondered if you
23 felt like there was some broader language out
24 there than that. All right.

25 Yes, sir.

1 **MR. CLEVELAND:** I agree with Mr. Newton on
2 that point. I think that, you know, the case
3 law says, you know, that if the person that
4 they are defending had a right to self-defense,
5 they could act in self-defense for them. I
6 think if you walk up to a situation and don't
7 know all the facts, it's at your own peril what
8 you choose to do. If that person is not able to
9 act in self-defense and you defend them, then
10 that's just your peril. If they were, then you
11 chose right. I think it's incumbent upon
12 someone taking the life of another to undertake
13 that risk or assess the situation to understand
14 what's going on. I do have some requests on the
15 charge, Your Honor.

16 **THE COURT:** Yes, sir. Let's hear it.

17 **MR. CLEVELAND:** I was kind of on the fence
18 yesterday regarding any lesser included
19 offenses. I went back and read some cases.
20 While it is the State's contention and the
21 State will still argue that there is evidence
22 for murder and that's what we're going forward
23 on on the charge, I do think that in the
24 existence of evidence, there is enough on the
25 record to substantiate a charge on voluntary

1 manslaughter. I think that this jury and sort
2 of as an officer of the court, I could not in
3 any good conscience oppose that and I think
4 that the jury, you know, in all candor,
5 probably should have the opportunity to
6 consider both of those options.

7 I think that there is no question in this
8 case that there is sufficient legal
9 provocation. I think the question would be
10 whether there was a heat of passion or whether
11 there was malice or whether it was defense of
12 others if it was either one of the two. So, at
13 this point, I think the State would prefer to
14 let the jury have the opportunity to consider
15 both of those charges in the case. I would --

16 **THE COURT:** What about the warning shot?

17 **MR. CLEVELAND:** The --

18 **THE COURT:** What about the warning shot?

19 **MR. CLEVELAND:** The warning shot
20 completely gets rid of any chance to charge
21 involuntary manslaughter. But, you know, I
22 think it's a question of fact. Certainly, I
23 think that the warning shot indicates the
24 ability to coolly reflect on the situation.

25 **THE COURT:** That's what -- that's --

1 **MR. CLEVELAND:** Then any killing would be
2 the malice. I guess that's what I would argue.
3 Again, I'm kind of reserving this to see what
4 the defense is going to put up.

5 **THE COURT:** Sure.

6 **MR. CLEVELAND:** I will have a little
7 clarity at the end of that testimony. But just,
8 you know, kind of based on what we've heard so
9 far, I think there's probably enough evidence.
10 I certainly rely on the Cook case in charging
11 this. I mean, I think it's very similar to
12 someone trying to do something to defuse a
13 situation before firing the shot.

14 They said, look, if you did anything to
15 defuse this, that shows that this isn't
16 voluntary manslaughter. It's either murder or
17 self-defense, one of the two, because you
18 obviously had the ability to comprehend the
19 situation you were in and make a choice to do
20 it. And by Mr. McCarty's own testimony in the
21 prior hearing, which we are able to rely on, he
22 says he made a choice, and that's his own
23 words..

24 **THE COURT:** Well, what about if Mr. Newton
25 just doesn't even want -- doesn't even want to

1 go there? He doesn't even want to go into
2 voluntary manslaughter.

3 **MR. CLEVELAND:** I think either side can
4 request. It's permissible for either side to
5 request and I think it's up to Your Honor to
6 determine what that is.

7 **THE COURT:** I mean, absolutely. I'm just
8 wondering what, you know, if that plays into it
9 at all. I mean, you still want -- even if he
10 doesn't want it, you're still asking for it.

11 **MR. CLEVELAND:** At this -- and again, I'd
12 like to renew my final requests once all the
13 case is done. I think there's been evidence
14 presented to where a jury could reasonably, you
15 know, essentially, find guilt on voluntary
16 manslaughter, if they essentially believe most
17 of the defense's case, but not all of it
18 regarding self-defense or the defense of
19 others.

20 **THE COURT:** Gotcha.

21 Yes, sir. Anything else?

22 **MR. NEWTON:** There are additional points,
23 Judge, for consideration. We would like to --
24 sort of a request on withdrawal since the
25 prosecution had brought up that Randy Wilson

1 provoked the whole thing. There is principles
2 of law that even if he was the initial
3 instigator, if he tries to withdraw, then he
4 regains the right of self of defense.

5 **MR. CLEVELAND:** I don't oppose that.
6 That's the State v. Bryant language that I
7 mentioned yesterday. I think the exact quote
8 from the case is an accused who provokes or
9 initiates an assault cannot claim self-defense
10 unless he both withdraws from the conflict and
11 communicates his withdrawal by word or act to
12 his adversary, State v. Bryant, 336 S.C. 340. I
13 would request that. I think that's appropriate
14 in this case.

15 **MR. NEWTON:** I agree.

16 **THE COURT:** I have no problem charging
17 that ---

18 **MR. NEWTON:** Okay.

19 **THE COURT:** --- and I will.

20 **MR. NEWTON:** Okay. And finally, there's a
21 reasonableness element is belief of imminent
22 danger. There is a precedent for saying that
23 even if the perceived danger was not real, if
24 it reasonably appeared that way, a person is
25 still entitled.

1 **THE COURT:** Okay.

2 **MR. CLEVELAND:** That's the law as I
3 understand it, Judge.

4 **THE COURT:** Yeah, and I think I've got
5 that covered in my charge, but let's -- but
6 we'll just make sure that we've got --

7 **MR. CLEVELAND:** Lastly, Your Honor, a
8 little bit of just some guidance on the
9 language for malice. I know it's been defined
10 over the last several hundred years. I've got
11 -- I can make a copy for the defense on this.

12 **THE COURT:** Yes, sir.

13 **MR. NEWTON:** There may be an issue as to
14 the fact that my client shot not once, but
15 twice. There is case law that says that if a
16 person who shoots -- basically, if a person is
17 justified in firing the first shot, he is
18 justified in continuing to shoot until it's
19 apparent that the danger has ceased. So,
20 basically, Your Honor, I think that's very
21 important.

22 **THE COURT:** I charged it before.

23 **MR. NEWTON:** Okay.

24 **MR. CLEVELAND:** I think that's fine. I
25 just want -- I'm sorry. I didn't have enough

1 copies. Basically, I would like, as far as
2 definition of malice -- and I'm quoting State
3 v. Bell -- malice may be inferred from doing
4 the wrongful act intentionally without just
5 cause or excuse. Malice may be -- this is State
6 v. Johnson -- malice may be inferred from
7 wrongful intent to injure another indicating a
8 wicked or depraved spirit intent on doing
9 wrong.

10 Malice may be inferred from evidence of
11 intent to kill, intent to do serious bodily
12 harm, a depraved or malignant heart and then it
13 says commission of a felony, but I don't think
14 that's appropriate. Just the standard
15 definitions of malice. I think most of these
16 are in the charge and everything.

17 **THE COURT:** I might charge the first or
18 the second ---

19 **MR. CLEVELAND:** Okay.

20 **THE COURT:** --- or first and second.
21 Probably won't charge the third.

22 **MR. CLEVELAND:** Okay.

23 **THE COURT:** Yes, sir. We're just going
24 back and forth.

25 **MR. NEWTON:** I would request a charge

1 requiring reasonableness. The standard is a
2 person of reasonable firmness of mentality,
3 character with the physical characteristics of
4 the person being assaulted. They could take
5 that into consideration, if there's a disparity
6 between the parties in age or physical
7 condition. If one party -- that can be taken
8 into consideration. The standard is a person of
9 reasonable firmness with those physical
10 conditions.

11 **THE COURT:** Yeah. Okay. I get what you're
12 saying. I'd like to see it sort of written out.

13 **MR. NEWTON:** Okay.

14 **THE COURT:** If you've got it right
15 there --

16 **MR. CLEVELAND:** I'd like to see some
17 context on that one too, Your Honor.

18 **THE COURT:** Yeah. I would just like to see
19 it written out. but that sounds fair. I mean,
20 we charge something very like -- very much like
21 that, but I don't mind clarifying that point.

22 **MR. NEWTON:** Sure. Well, if I may.

23 **THE COURT:** Sure.

24 **MR. NEWTON:** In determining whether the
25 defendant's belief of the apparent danger and

1 necessity of his action meets the objective
2 standard, the model for comparison is a
3 hypothetical person of ordinary firmness, but
4 one who shares some of the physical
5 characteristics of the defendant, at least age,
6 general physical condition and gender, which
7 does not apply in this case.

8 **THE COURT:** Okay.

9 **MR. NEWTON:** At least age and general
10 physical condition. And of course, in defense
11 of others, the relevant person would be Randy
12 Wilson's physical condition.

13 **THE COURT:** Can I have --

14 **MR. NEWTON:** Sure.

15 **MR. CLEVELAND:** Is there a case cited by
16 that?

17 **MR. NEWTON:** Yeah, it's referring to State
18 v. Hendricks, 244 S.E. 2d 503, 1978 case.

19 **THE COURT:** Okay. Could we hold on to that
20 for just a minute?

21 **MR. NEWTON:** Sure.

22 **THE COURT:** Okay.

23 **MR. NEWTON:** This paragraph, and the
24 sentence I read is here.

25 **MR. CLEVELAND:** I have a copy of the case,

1 Your Honor, if you're rather see that.

2 THE COURT: Okay. Either way.

3 MR. CLEVELAND: It's printed teeny tiny.
4 It's like a microfiche.

5 THE COURT: Unless I've got my glasses
6 with me, that's probably not going to help me.
7 My help my law -- oh, I do have my glasses.

8 MR. CLEVELAND: Let me see if I have it --
9 yeah, I do. I have a big copy.

10 THE COURT: Oh, okay, good.

11 MR. CLEVELAND: Please ignore any
12 editorial notes I made on the --

13 THE COURT: I will. I will. Okay.

14 All right. Is our jury back?

15 MR. NEWTON: Your Honor, that's all I have
16 on charge. There is one additional matter, that
17 is -- I did not have him on the first initial
18 witness list, but in light of Jacob Kirk's
19 testimony about the section of the fence being
20 open, I have -- would like to call a witness to
21 address that, that it's not true basically.

22 THE COURT: Okay.

23 MR. NEWTON: It's Mr. Bradley Mercer.

24 MR. CLEVELAND: He just wasn't on the
25 witness list, Your Honor.

1 Mr. Newton, you ready to proceed?

2 **MR. NEWTON:** Absolutely, Your Honor.

3 **THE COURT:** All right.

4 **MR. NEWTON:** Your Honor, the defense calls
5 Lalonnie Tucker.

6 **LALONNIE TUCKER**

7 having first been duly sworn, testifies as follows:

8 **THE CLERK:** Have a seat and state your
9 name for the record please.

10 **THE WITNESS:** Lalonnie Tucker.

11 **DIRECT EXAMINATION**

12 **BY MR. NEWTON:**

13 **Q** How are you this morning?

14 **A** I'm all right. A little on the nervous
15 side.

16 **Q** You know the defendant, John McCarty?

17 **A** Yes, sir.

18 **Q** How do you know him?

19 **A** He is my uncle's partner.

20 **Q** And who is your uncle you are referring to?

21 **A** Randy Wilson.

22 **Q** Okay. So Randy Wilson is your uncle?

23 **A** Yes, sir.

24 **Q** How long have you known -- I assume you've
25 known Randy your whole life.

1 **A** Pretty much.

2 **Q** How long have you known John McCarty?

3 **A** My -- since I was probably about 12.

4 **Q** Okay. Calling your attention to the evening
5 of July 15th, 2015.

6 **A** Yes, sir.

7 **Q** Were you on the phone with Randy Wilson at
8 that time?

9 **A** Yes, sir. I was.

10 **Q** Would you tell the jury about the
11 circumstances of the phone call and what you heard?

12 **A** When we first got on the phone, like
13 previous, we were having family issues and I was
14 taking care of some things for him. We were in a
15 conversation. Mitchell -- not Mitchell -- Jacob
16 walked in the house. I heard him talking about some
17 food. My Uncle Randy told him that they had it in the
18 microwave, like he always does. He prepares them and
19 puts them in the microwave. Then I heard Jacob saying
20 something about the food. He said I'm on the phone.
21 You're being rude.

22 **Q** Who said that?

23 **A** My Uncle Randy did.

24 **Q** Okay.

25 **A** He said you're being rude. I'm on the

1 phone. You know I don't like that, you know. Then I
2 heard my Uncle Randy say don't shove me, don't put
3 your hands on me. After that, there was a whole bunch
4 of screaming. I don't -- I don't know what Mitchell
5 sounds like. I've never met Mitchell. I know Jacob
6 was in the background. I could hear him screaming and
7 hollering. And then my Uncle Randy put the phone
8 down. I kept saying Uncle Randy, Uncle Randy, Uncle
9 Randy, and nobody was there. But then I had some
10 other discrepancies on my end, so I had to hang up
11 the phone.

12 Q Did you know Jacob Kirk before?

13 A I met him through Randy and John.

14 Q Had you ever heard Jacob Kirk in such a
15 state as you heard him that day?

16 A No, sir. No, sir. I never known him -- all
17 the times that I go over there, he's never been like
18 that, ever.

19 Q Were you concerned?

20 A I was. I tried to call him back and there
21 was no answer. I didn't find out until the next day
22 what had happened.

23 MR. NEWTON: No further questions.

24 THE COURT: All right. Yes, sir.

25 MR. CLEVELAND: Thank you, Your Honor.

CROSS-EXAMINATION**BY MR. CLEVELAND:**

Q Ms. Tucker, good morning.

A Good morning.

Q You weren't at the house that night, you were just on the telephone?

A No, sir.

Q And you testified you didn't know Mitchell, but you know Jake?

A I do know Jake. I do not know Mitchell.

Q I want to talk a little bit about the situation, just in general terms.

A Okay.

Q Isn't it true y'all were having problems with -- who was the person y'all were having problems with?

A My -- my cousin and her partner.

Q Okay. And Randy had met the police or picked her up from the police or got her at the bus station or something like that?

A He called me and asked me if I would help her to the bus station.

Q Okay. But would you agree with me that it was a pretty stressful situation that y'all were dealing with at the time?

1 **A** No. We didn't -- all we -- she wanted to
2 get away from my cousin.

3 **Q** Okay.

4 **A** So he had asked me to just take her to the
5 bus station.

6 **Q** All right.

7 **A** And when she was dropped off at my house, I
8 took her later that night. I had some stuff that I
9 had to take care of. My daughter's boyfriend was
10 there and I had to take him home. I had my cousin's
11 girlfriend and him with me. Then I called him to
12 explain what was going on, because my cousin showed
13 up at the bus station and she started causing a lot
14 of problems there at the bus station.

15 **Q** All right. So you were in a stressful
16 situation at the time?

17 **A** Uh-huh.

18 **Q** And --

19 **A** I mean, it wasn't stressful for me because
20 all I was doing was dropping her off. I didn't have
21 anything to --

22 **Q** You were in the middle of some type of
23 conflict at the time, correct?

24 **A** Yes.

25 **Q** You had a lot going on on your end?

1 **A** Yes, sir.

2 **Q** And Randy had been dealing with this
3 earlier, so he had obviously had a lot going on that
4 day as well, right?

5 **A** There wasn't no conflict that I knew of. It
6 was just a favor that we were to do -- we were doing
7 for my cousin's girlfriend.

8 **Q** All right. But your testimony is, because
9 of what was going on, you were having to deal with,
10 you actually had to hang up the phone even though
11 there was something going on on the other end?

12 **A** Yeah. I hung up the phone. I had to deal
13 with the situation with them on that line.

14 **Q** All right. Thank you.

15 **A** Uh-huh.

16 **Q** No further questions.

17 **A** You're welcome.

18 **THE COURT:** Any other questions for this
19 witness?

20 **MR. NEWTON:** No, Your Honor.

21 **THE COURT:** All right, ma'am. You can step
22 down.

23 **THE WITNESS:** Thank you.

24 **MR. NEWTON:** The defense calls Betty
25 Joanne Bollman to the stand.

BETTY BOLLMAN

having first been duly sworn, testifies as follows:

THE CLERK: Have a seat and state your name for the record please.

DIRECT EXAMINATION

BY MR. NEWTON:

Q State your name for the record please.

A Betty Bollman.

Q Do you know the defendant, John McCarty?

A Pardon?

Q Do you know the defendant, John McCarty?

A Yes, yes.

Q How do you know him?

A I know him through my son.

Q Who is your son?

A Randy Wilson.

Q Randy Wilson is your son?

A About 25 or 30 years, I've known John.

Q All right. Calling your attention back to when Randy was about 16 years old, was he involved in some sort of accident at that time?

A Yes, sir.

Q He was 14.

A 14?

Q 14. Could you explain to the jury what that

1 accident involved?

2 **A** He was driving his bicycle and he had left
3 the street -- the road that we lived on and went out
4 onto another road. How it really happened, I don't
5 know. He went in front of a car. He was probably
6 turning left to come down the road. The car hit him.
7 He went over the top of the hood. That's what I was
8 told.

9 They took him to the hospital. He had a --
10 his leg broken in two different places. He wore that
11 metal halo, they called it. They had to do surgery.
12 Then they put the halo on him. He had that about six
13 months.

14 **Q** All right. And you stayed in contact with
15 your son Randy over the years? How often do you have
16 contact with him?

17 **A** With Randy?

18 **Q** Yes, ma'am.

19 **A** Pretty often.

20 **Q** Have you kept track of his physical
21 condition?

22 **A** Other than he never did have much movement
23 in his neck. It's gotten worse. The movement is a lot
24 less than what it has been over the years, gradually.
25 They say that the spurs have come up and making it

1 worse.

2 Q Yes, ma'am.

3 A They kept telling him he needs to see a
4 specialist to see what they can do to help him. He's
5 been in a lot of pain.

6 Q Yes, ma'am. Has he been able to work over
7 the years?

8 A No.

9 Q If so, how much?

10 A Not -- no steady job.

11 Q And why is that?

12 A Because of the movement of his neck.

13 Q All right.

14 A It hinders him.

15 Q Are you concerned about him, his health? Is
16 he more vulnerable than a normal person because of
17 his condition?

18 A I don't know what you mean by that. I don't
19 know what you mean by that.

20 MR. CLEVELAND: Judge, he sounds like he's
21 asking for a medical opinion from a lay witness.
22 I certainly -- she can testify to what she knows
23 about her son, but this seems a little far
24 afield.

25 THE COURT: First of all, I want to say, I

1 don't need input from the gallery. So if there's
2 anybody who wants to have input, you can step
3 outside. Okay. I don't allow that in any way.

4 Secondly, I'm going to allow her to answer
5 the question. Rephrase it so you're not asking
6 for a medical opinion.

7 **BY MR. NEWTON:**

8 **Q** To your knowledge, has Randy's neck
9 condition made it more difficult for him to do
10 ordinary things, like hold down a job?

11 **A** Yes.

12 **Q** Yes. Because it's a physical limitation?

13 **A** Yes.

14 **MR. NEWTON:** May we approach?

15 **THE COURT:** Certainly.

16 (Bench conference is held off the record.)

17 **MR. NEWTON:** I have no further questions
18 for this witness.

19 **THE COURT:** Any questions for this
20 witness?

21 **CROSS-EXAMINATION**

22 **BY MR. CLEVELAND:**

23 **Q** Ms. Bollman, you're Randy Wilson's mother?

24 **A** Yes.

25 **Q** And isn't it true that you want what's best

1 for your son?

2 **A** Pardon?

3 **Q** Isn't it true that you want what's best for
4 your son?

5 **A** Yes.

6 **Q** Thank you. No further questions.

7 **THE COURT:** Any other questions?

8 **MR. NEWTON:** Nothing further.

9 **THE COURT:** Ma'am, you can step down.

10 **MR. NEWTON:** The next witness is the one
11 that we talked about.

12 **THE COURT:** What is his name?

13 **MR. NEWTON:** His name is Bradley Mercer.

14 **THE COURT:** Ladies and Gentlemen of the
15 jury, there was a witness that was not listed on
16 our potential witness list by the name of
17 Bradley Mercer.

18 Sir, would you stand for me please.

19 Any member of the jury panel believe that
20 you know Mr. Mercer or have any acquaintance
21 with Mr. Mercer?

22 (No response.)

23 And all are signaling no. All right. All
24 right.

25 **MR. NEWTON:** The defense calls Mr. Mercer

1 to the stand.

2 **BRADLEY MERCER**

3 having first been duly sworn, testifies as follows:

4 **THE CLERK:** Have a seat and state your
5 name for the record please.

6 **THE WITNESS:** Bradley Mercer.

7 **DIRECT EXAMINATION**

8 **BY MR. NEWTON:**

9 **Q** Mr. Mercer, do you know the defendant, John
10 McCarty?

11 **A** Yes, sir.

12 **Q** How do you know him?

13 **A** He is my great-uncle's partner.

14 **Q** All right. And who is your great-uncle?

15 **A** Randy Wilson.

16 **Q** Randy Wilson. Where do you live?

17 **A** Like the address?

18 **Q** Yes, sir.

19 **A** [REDACTED].

20 **Q** Is that with Randy and John?

21 **A** Yes, sir.

22 **Q** How long have you been living in that
23 house?

24 **A** About eight years now.

25 **Q** All right. And they have legal custody over

1 you; is that true?

2 **A** Yes, sir.

3 **Q** All right. Now, the events of July 15th,
4 2015, which this trial is about, isn't it true you
5 were not there at the time?

6 **A** Yes, sir.

7 **Q** Where were you at the time?

8 **A** A church trip.

9 **Q** A church trip?

10 **A** In Kentucky.

11 **Q** In Kentucky. How long did that last?

12 **A** It was a week-long trip.

13 **Q** It was scheduled for a week. Did you end up
14 staying longer than you originally planned?

15 **A** I came home on the regular schedule, but I
16 ended up staying with my youth pastor.

17 **Q** And do you know why?

18 **A** Because my Uncle Randy did not want me to
19 stay at the house at that time.

20 **Q** Why?

21 **A** Cause he said he was in, like, a lot of
22 stress.

23 **Q** Because of the shooting?

24 **A** Yes, sir.

25 **Q** How long was it before you actually went

1 back to the house?

2 **A** It was about a month and a half, two
3 months.

4 **Q** All right. Now, [REDACTED], that house,
5 which door do you normally go in in the house, the
6 front door or the back door?

7 **A** The back door.

8 **Q** Why?

9 **A** That's just where we parked the car so it's
10 easier to get in.

11 **Q** Is there some difficulty getting in the
12 front door?

13 **A** Yes, sir. We have a kennel around it. It's
14 for the dogs.

15 **Q** A what?

16 **A** A kennel.

17 **Q** A kennel.

18 **A** A fence.

19 **Q** Okay. And how many dogs -- back in July of
20 2015?

21 **A** I think we had two. We've had multiple
22 dogs.

23 **Q** What kind of dogs were they?

24 **A** Boxers.

25 **Q** Boxer dogs?

1 **A** Yes, sir.

2 **Q** And I assume by "kennel", you mean a
3 fenced-in area?

4 **A** Yes, sir. There's a chain link fence.

5 **Q** Do you recall how high that fence was?

6 **A** Some portions of it was six-foot. Some
7 portions were four foot.

8 **Q** You're saying the lowest portions were four
9 feet tall?

10 **A** Yes, sir.

11 **Q** All right. Now, I'm going to show you a
12 picture that's already been entered into evidence.
13 It's Defendant's Exhibit Number 3. Do you recognize
14 that picture?

15 **A** Yes, sir.

16 **Q** What does it show?

17 **A** It shows the six-foot part of the fence,
18 and there is a piece of wood laying against it.

19 **Q** What is the piece of wood there for?

20 **A** I did not have a key to the back door at
21 the time. We'd normally leave the front door
22 unlocked, since it would be difficult for people to
23 get through, and that's where the dogs are staying.
24 I'll put the piece of wood over there so I could jump
25 over the fence.

1 Q Okay. How would you use the piece of wood
2 to get over the fence?

3 A It would lay it down. I could not climb
4 over it without the piece of wood.

5 Q Okay. So you couldn't just jump over this
6 fence?

7 A No, sir.

8 Q What was the top of the fence like? Was it
9 smooth or jagged or what?

10 A It was pretty jagged.

11 Q Okay. Now, you ever gone hunting?

12 A Yes, sir.

13 Q You ever had any gun safety training?

14 A Yes, sir. When I was 12 years old, Mr. John
15 McCarty made me go to a hunting safety class and take
16 the class before he would let me hold a gun in the
17 woods.

18 Q All right. Has Mr. McCarty ever talked to
19 you about gun safety?

20 A Yes, sir.

21 Q Could you elaborate on that, please, what
22 he's told you?

23 A He would always tell me to hold the gun
24 down, never point it at anybody, always have it on
25 safety, always have it with the strap on and just lay

1 it down nicely, don't throw it around or anything,
2 never keep it loaded.

3 Q Do you recall when that board was first put
4 there that you were using?

5 A It had to be about two or three years ago.
6 That fence has been there for a while.

7 Q All right. To your knowledge, has any
8 changes been made to the fence since 2015? Well, the
9 fence is gone now, right?

10 A Yes, currently, it's gone.

11 Q But the time that picture was taken, after
12 the incident on July 15th, to the time that picture
13 was taken, were any changes made to the fence?

14 A No, sir.

15 Q So it appears in the same condition it was
16 on July 15th, 2015?

17 A Like today?

18 Q No.

19 A Like after?

20 Q Does that picture show what the fence --
21 that section of the fence looked like on July 15th,
22 2015?

23 A Yes.

24 Q Thank you. No further questions.

25 THE COURT: All right. Any questions of

1 this witness?

2 **MR. CLEVELAND:** Yes, Your Honor. Just
3 briefly.

4 **CROSS-EXAMINATION**

5 **BY MR. CLEVELAND:**

6 **Q** Good morning, Mr. Mercer.

7 **A** Good morning.

8 **THE COURT:** If you would like to publish
9 it on on the overhead, I'm sure the Solicitor's
10 Office would --

11 **MR. CLEVELAND:** I was actually going to do
12 it.

13 **THE COURT:** Okay.

14 **MR. NEWTON:** All right.

15 **BY MR. CLEVELAND:**

16 **Q** Give me just one moment, Mr. Mercer..

17 (Pause.)

18 Are you doing all right this morning?

19 **A** Yes, sir.

20 **Q** This is State's Exhibit 24. Is that the
21 same section of fence you're talking about?

22 **A** Yes, sir.

23 **Q** Is that the board that you put up on the
24 fence?

25 **A** Yes, sir.

1 Q And how is that? Do you shimmy up the board
2 like a plank and jump over the fence?

3 A Yes, sir. I would go about half way up,
4 then I would jump over the fence from there.

5 Q And it looks like -- I'm going to show you
6 State's Exhibit 25, too. That's not the same section
7 of fence, but is that the same fenced-in area?

8 A Yes, sir.

9 Q All right. And looking at that side, isn't
10 it true those are like cattle fence posts? They are
11 not big round fence posts?

12 A No, sir.

13 Q How was that fence attached to those posts?
14 Do you know?

15 A We have wire link -- electrical wire is
16 what we use for the -- like what we use on the
17 electric fence. We just wrapped it around the post
18 about four times.

19 Q And the section of that fence -- looking at
20 Defendant's Exhibit 3 that you were just shown, the
21 section of the fence with the board doesn't have the
22 top post or anything on it, it's just a free chain
23 link fence, correct?

24 A Yes, sir.

25 Q It's not like a pole that runs on it. Okay.

1 I want to talk a little bit about the hunting
2 experiences you had with Mr. McCarty. You said
3 Mr. McCarty made you do a hunter safety course?

4 A Yes, sir.

5 Q Is it your understanding that Mr. McCarty
6 is familiar with guns?

7 A Yes, sir. He's -- he knows what to do with
8 guns, like, safety-wise.

9 Q All right. Have you ever seen him handle a
10 pistol before?

11 A Whenever he took his CWP test.

12 Q Okay. What type of hunting did you two do
13 together?

14 A Deer hunting. That's all we got the chance
15 to do.

16 Q All right. Have you ever been with him when
17 he's killed a deer?

18 A No, sir.

19 Q You ever killed a deer?

20 A No, sir.

21 Q How many times have y'all been hunting
22 together?

23 A I would say about 8 to 10 times.

24 Q Okay. Did he teach you about general
25 aspects of deer hunting as well as how to handle a

1 firearm safely?

2 **A** Yes, sir.

3 **Q** Did he -- if you had the chance to shoot a
4 deer, has he ever told you, you know, where you want
5 to shoot a deer?

6 **A** Yes, sir. You want to shoot them in the
7 heart or the lungs.

8 **Q** No further questions. Thank you.

9 **THE COURT:** Any other questions for this
10 witness?

11 **MR. NEWTON:** No, Your Honor.

12 **THE COURT:** Sir, you can step down.

13 **MR. NEWTON:** Last witness the defense
14 would call is John McCarty.

15 **THE COURT:** Okay. Before we do that,
16 Ladies and Gentlemen, I need to take up one
17 quick legal matter. I'm sorry. This is
18 completely my fault. I should have done this
19 before you stepped in. Will you step to your
20 jury deliberation room for just a moment?
21 Literally, just a moment.

22 (Jury exits at approximately 10:08 a.m.)

23 **THE COURT:** All right.

24 **THE BAILIFF:** The jury is secure, Your
25 Honor.

1 colder? You think there's a good chance? (Pause.)

2 All right.

3 **MR. NEWTON:** The defense calls John
4 McCarty to the stand.

5 **JOHN MCCARTY**

6 having first been duly sworn, testifies as follows:

7 **THE CLERK:** Have a seat and state your
8 name for the record please.

9 **THE WITNESS:** John William McCarty.

10 **DIRECT EXAMINATION**

11 **BY MR. NEWTON:**

12 **Q** Mr. McCarty, let's jump right to the events
13 of July 15th, 2015. Tell the jury what you initially
14 heard and what you were doing before anything
15 happened.

16 **A** What I heard, at first, is normal-type
17 argument, earlier. But right before I went to bed, I
18 kind of started a little bit that way.

19 **Q** Okay. Had you been at work that day?

20 **A** Yes, I had been at work all that day. I got
21 home --

22 **Q** Where do you work, sir? Where had you been
23 at work?

24 **A** Carolina Heating and Air.

25 **Q** And how long had you been working for

1 Carolina Heating and Air?

2 **A** This February 28th will be 15 years that
3 I've been in there.

4 **Q** What exactly do you do?

5 **A** I crawl up underneath houses, change out
6 heating and air conditioning systems, go into attics,
7 do geothermal and also generators.

8 **Q** And, of course, you know Randy Wilson?

9 **A** Yes, sir, I do.

10 **Q** How do you know Randy and how long have you
11 known Randy?

12 **A** I've known Randy for -- yesterday was our
13 30th anniversary. Prior to that, I've known him,
14 approximately, about six months prior to that.

15 **Q** How long ago are we talking? How old are
16 you now?

17 **A** I am 49.

18 **Q** Since you were about 19 years old?

19 **A** Roughly.

20 **Q** And do you know Jacob Kirk?

21 **A** Yes, sir, I do.

22 **Q** How do you know Jacob?

23 **A** Through Clayton and Randy.

24 **Q** Who is Clayton?

25 **A** Clayton Alexander is Jacob's grandfather.

1 Q How long have you known Clayton Alexander,
2 Jacob's grandfather?

3 A I'm not really sure. Randy's known them
4 longer than I have. Randy was the first one that met
5 both Mitchell and Jacob. I met them maybe a couple of
6 years after Randy had met them.

7 Q Was Jacob Kirk living in the house at the
8 time?

9 A Yes, sir.

10 Q How did he come to be living there?

11 A He run into some trouble. He got kicked out
12 of his apartment. He asked if he could come and live
13 with us. He had really no other place to go. So I
14 went and helped him get his furniture and stuff out
15 of the apartment and things like that and we helped
16 him out. Through that process, he lost some furniture
17 that he really wanted.

18 Q How long had he been living at your
19 residence before the events of July 15th, 2015?

20 A Two, two and a half years, at that point in
21 time.

22 Q Was he paying any sort of rent?

23 A No, sir.

24 Q How --

25 A He would mainly just help around the house.

1 Q That was basically substitute for rent?

2 A That was substitute for rent, and plus he
3 was also to help Randy because of his condition.

4 Q What sort of things would he do to help
5 Randy?

6 A He would help with the dishes. He would
7 help with mopping the floors, things that Randy
8 couldn't do.

9 Q In the time you've known Randy, has he
10 tried to work, have a job?

11 A He would try to work. Earlier in his life,
12 he would work, he would be able to work in longer
13 increments. But as years went by, he's gotten worse
14 over the years. He would work a couple of days. And
15 then he would be either laid in bed because he
16 couldn't get up out of bed because he'd be hurting
17 too bad, or he would sit there. Sometimes, I would
18 have to carry him and put him in, because he couldn't
19 move at all.

20 Q And what sort of -- you said because of his
21 condition. What condition, specifically, are you
22 referring to?

23 A Because of his broke neck, back when he was
24 younger. I only heard the stories of it from him
25 telling me and from his mom telling me was the only

1 way I knew about it.

2 Q Well, did you see signs of that,
3 physically?

4 A Yes.

5 Q All right.

6 A And everybody seen signs of it.

7 Q Could you give an example of what you're
8 talking about? Like the time you said you had to
9 carry him, what would he have been doing that you
10 would have to carry him?

11 A A lot of times, he would try and do more
12 than what he was capable of doing. That was just
13 Randy. He wasn't a typical person that would just go
14 out and -- because he -- anybody that would just try
15 and get disability. He wouldn't be a person like
16 that. If he could lift a finger, he would try to do
17 something. A majority of the times, he would overdo
18 things and then that's when he would end up doing
19 more than what he was supposed to be doing.

20 Q All right. You mentioned Jacob Kirk getting
21 into some trouble. Did -- is it true that Jacob Kirk
22 went into the military at one point?

23 A Yes, sir.

24 Q Which branch of the military?

25 A I believe Navy.

1 Q Was he honorably discharged or not?

2 A No, as far as I know, it was dishonest.

3 MR. CLEVELAND: Objection.

4 THE COURT: Hold on.

5 MR. NEWTON: Hold on.

6 THE COURT: What's the --

7 MR. CLEVELAND: I object. I think this is
8 improper character evidence of a witness in this
9 case.

10 THE COURT: Where are you going with this,
11 Mr. Newton? Will y'all approach?

12 (Bench conference is held off the record.)

13 THE COURT: I sustain your objection.

14 BY MR. NEWTON:

15 Q July 15th, 2015, did you have any dogs? Did
16 you own any dogs?

17 A Yes.

18 Q How many?

19 A Actually three.

20 Q What kind of dogs were they?

21 A They were Boxers.

22 Q For anybody who may not be familiar with a
23 Boxer, is that a big dog, a small dog?

24 A Maggie was what you would consider a
25 miniature Boxer. Bugsy was a lot larger. He was a

1 medium to a large size dog. I'm trying to think of
2 the other -- name of the other dog at the time.

3 Q That's okay. You don't have to remember the
4 name.

5 A Maggie was the smallest one.

6 Q Where did you keep the dogs?

7 A Mostly in the kennel.

8 Q And where was the kennel?

9 A In the front yard.

10 Q Does the kennel surround the front door,
11 what we would call the front door?

12 A Yes, sir.

13 Q So what would you have to do in order to
14 use the front door of the trailer?

15 A I would have to go out the front door, go
16 out to the gate, undo the gate and go around the gate
17 to get around to the other side of the house.

18 Q When you say undo the gate, what do you
19 mean by that? How was the gate secured?

20 A It was by little ties.

21 Q Ties of what?

22 A It's the same thing that we used for the
23 electric fence that was also there.

24 Q Was it metal or some other material?

25 A It's like a -- I don't know if it's made

1 out of aluminum or steel. That, I'm not sure of. But
2 it's whatever they use for electric fences.

3 Q Well, as a practical matter, did y'all use
4 the front door much at all or the back?

5 A Mostly, we always used the back door.

6 Q All right. Did you ever even go out through
7 the fence?

8 A The only time I would go through the fence
9 is when I was mowing the grass because I would open
10 the fence to where I could get the lawn mower in to
11 mow the grass.

12 Q How long would it take you to undo all the
13 ties on the gate of the fence?

14 A We had about five ties on the one side. I
15 would say roughly 10 to 15 minutes.

16 Q Do you recall how high the fence was from
17 the highest point to the lowest point of the fence?

18 A Some parts were six foot and some parts
19 were four foot.

20 Q All right. Why such a high fence?

21 A Some of it was a chain link fence, which
22 was four foot. Then some parts of it was like a gate
23 that was six foot. And then other areas, it was
24 several different fences put together. It wasn't just
25 all one same size fence.

1 Q Yes, sir. My question is the height of the
2 fence, was that for a particular reason?

3 A To keep the dogs inside the yard.

4 Q Would the dogs try to jump over the fence
5 if it was lower?

6 A They still; every once and a while, would
7 jump the fence.

8 Q All right. Was there another section of
9 electrical fence inside of the main fence?

10 A Yes, that was to help keep them in.

11 Q Help them from doing what?

12 A Getting out -- out of the fence.

13 Q How would they to get out of the fence, if
14 not for the electric?

15 A They would either try and dig, they would
16 try and peel up the bottom side of the fence, or they
17 would try and jump the fence.

18 Q Would they also try to dig under?

19 A Yes.

20 Q Okay. On the video we watched yesterday of
21 your interview ---

22 A Yes, sir.

23 Q --- you referred -- it sounded like you
24 referred to previous times when you would fire a
25 warning shot.

1 **A** Yes, sir.

2 **Q** How many previous times are we talking
3 about?

4 **A** There was one other time when I drew my
5 weapon and shot to resist a fight.

6 **Q** And when was that? Would you tell the jury
7 about that?

8 **A** I don't know the exact time. But it had to
9 deal with Randy's niece, which was Jessica. She -- I
10 don't know what her reason -- reasonings were. She
11 was in an aggravated, bad mood that day.

12 **Q** Was she living on the property at the time?

13 **A** She was living on the property. We were
14 trying to help her, get her off of drugs. She was on
15 drugs down in Florida.

16 **Q** What drugs was she addicted to?

17 **A** As far as I know, it was meth. It may have
18 been more than -- more than that. We try and help a
19 lot of people like that.

20 **Q** So what lead you to think, at that time,
21 that you needed to fire a warning shot?

22 **A** She sat there and lit a propane tank
23 cylinder, threw it up underneath the trailer to
24 eventually burn down our home. Then she was arguing
25 back and forth with Randy. Then she was --

1 Q Do you recall what kind of mental state she
2 was in at the time she was trying to throw a lit
3 propane tank under the trailer?

4 A There's a -- you know, it was like a
5 bipolar -- bipolar action.

6 Q Was she under the influence of meth at the
7 time, to your knowledge?

8 A I -- I don't know if she was under any
9 drugs or anything like that. But normally when she
10 was, that's when she would react.

11 Q So go ahead with the explanation. What
12 happened?

13 A She lit a propane tank cylinder and tried
14 to throw it up underneath the trailer to try to burn
15 the trailer. Her and Randy kind of got into it back
16 and forth, arguing back and forth. I heard them
17 going. I was actually cleaning my gun at the time. So
18 I went outside, fired a couple of shots and
19 everything mellowed out.

20 Q Was there a physical altercation happening?

21 A There was no real physical. It was a
22 wrestling back and forth and arguing.

23 Q Okay. What was Randy trying to do?

24 A Randy was trying to get her under control,
25 but Randy had no luck as far as trying to get her

1 under control. So I fired two warning shots. She sat
2 there and it -- she mellowed out after that. Then the
3 police were called.

4 Q When you say trying to get her under
5 control, what about the lit propane tank?

6 A After that, the propane tank was gotten and
7 taken care of.

8 Q So Randy was basically trying to keep the
9 house from burning down?

10 A Yes.

11 Q Stop her from burning the house down?

12 A Yes.

13 Q All right. So on the evening of July 15th,
14 2017, you said you had been at work and you got home.

15 A Yes, sir.

16 Q About what time did you get home?

17 A It was around 6 o'clock that night.

18 Q I believe I said 2017. It was 2015.
19 July 15th, 2015.

20 A Yeah.

21 Q What did you do when you got home?

22 A Went in, do normally what I normally do. I
23 go in. Sometimes I take a shower. I'm not sure --
24 right after work, a lot of times I'm full insulation
25 or something like that or I'll walk into the living

1 room and start playing my game.

2 Q All right. On this particular evening, do
3 you recall exactly what you did? How long did you
4 stay awake before you went to bed?

5 A Probably two to three hours.

6 Q You recall what time you went to bed?

7 A About 9:30.

8 Q 9:30. And while you're trying to sleep in
9 your bed, did you hear any commotion at any point in
10 time?

11 A I heard a little bit of commotion, at
12 first. I didn't really think much about it. Then
13 later on, I heard other commotion where things were
14 being thrown and tossed. That's when the police were
15 called.

16 Q Did you get out of bed at that point?

17 A I was instructed not to get out of bed. A
18 police officer said that when he opened the door and
19 shined the light in -- I was fixing to get up out of
20 bed. He sit there and asked me -- he said there was
21 no reason for me to get up, that they had it under
22 control.

23 Q Well, before that policeman arrived, did
24 you feel any need to get out of bed once you heard
25 the commotion?

1 **A** I really didn't feel like it was to the
2 point of that far of a heated argument, at that point
3 in time.

4 **Q** Do you recall what was being said?

5 **A** Not really.

6 **Q** Were you fully awake or just kind of half
7 awake at the time?

8 **A** Half awake.

9 **Q** What did occur -- spur you to get out of
10 bed later in the evening?

11 **A** Well, Randy sit there and hollered like I
12 never heard him holler before.

13 **Q** When you say he sat there, where was he
14 when he was hollering?

15 **A** He was at the front door.

16 **Q** Outside?

17 **A** He was outside.

18 **Q** So describe this. You said you never heard
19 him holler like that before?

20 **A** Yes.

21 **Q** Would you elaborate on that and what it
22 sounded like?

23 **A** It was a very high-pitched like a baby
24 crying.

25 **Q** How loud?

1 **A** It was very loud. In order to -- in order
2 to wake me up, a lot of times, my alarm has to go off
3 and it has to be really loud. I'm a hard sleeper. So
4 for someone to wake me up instantly, it has to be a
5 very sharp and -- and after kind of seeing what --
6 everything that's going on, understanding more that
7 Randy was so much in pain that that explains how loud
8 and how much of a cry it was.

9 **Q** All right. So when you first heard that,
10 what was your reaction, what were you thinking?

11 **A** I knew he was in trouble.

12 **Q** In trouble? What do you mean by in trouble?

13 **A** He was in danger.

14 **Q** What did you do?

15 **A** I grabbed my 9-millimeter Beretta and I ran
16 right straight towards the door to see what was going
17 on.

18 **Q** And what did you see when you got towards
19 the door?

20 **A** I seen him and Mitch going at it.

21 **Q** Mitchell Bradley?

22 **A** Mitchell Bradley and Randy.

23 **Q** Describe exactly what you saw.

24 **A** I saw Mitchell Bradley having Randy against
25 the side of the rail.

1 Q Was this -- you talking about right in
2 front of the door?

3 A Right in front of the door..

4 Q What did you do when you saw that?

5 A I fired a warning shot.

6 Q Okay. The reason you did that, what was
7 Mitchell doing that you felt you needed to fire a
8 warning shot in the first place?

9 A He sit there and had him in the neck area.
10 He had him around the neck area and up above.

11 Q Can you -- let's, for a second, pretend
12 that I'm Randy.

13 A Uh-huh.

14 Q Will you demonstrate to the jury what
15 Mitchell was doing that you saw? Come on.

16 A (Steps down from the witness chair.)

17 Q First of all, where was Randy, from your
18 perspective?

19 A Randy was -- the door is -- was right here.
20 (Indicating.)

21 Q Uh-huh.

22 A And the wood of it is about right here.

23 Q Uh-huh.

24 A Randy was right here on this side of the
25 door. Mitch was right there next to him and had ahold

1 of him.

2 Q Was Randy fully standing straight up?

3 A No. He was leaned over the bannister, which
4 the bannister is weak.

5 Q And which direction? Was he leaned over
6 backwards or forwards?

7 A He was leaned over backwards.

8 Q Okay. So I don't want to crowd the jury
9 over there. So let's say I'm Randy and this is the
10 bannister you are referring to. And you're saying he
11 was --

12 A He was over the bannister.

13 Q Put me in the position. Like this?

14 A Little bit further.

15 Q Little bit further?

16 A Yes.

17 Q And what was Mitchell Bradley doing?

18 A He was sitting there and had his hands on
19 him and around his neck.

20 Q Okay. You say that lightly or with great
21 force?

22 A With great force.

23 Q Okay.

24 A In order to push Randy that far over, you
25 would have to have great force.

1 Q Well, don't be shy. Put your hand on me.
2 What you saw?

3 A It was like this.

4 Q Okay.

5 A And it was over a little -- maybe a little
6 bit further..

7 Q So he was choking him, basically?

8 A Choking him, basically.

9 Q What else did you see in addition to that?
10 You can resume your seat. Thank you.

11 A (Returns to witness chair.)

12 I seen, then, him trying to swing.

13 Q All right. At what point did you fire the
14 warning shot?

15 A I fired the warning shot after he started
16 to swing.

17 Q After Mitchell?

18 A After Mitchell.

19 Q All right. You said he started to swing. He
20 started to swing, did he complete the swing? How many
21 swings was he doing?

22 A Several.

23 Q All right. Was there any reaction to the
24 warning shot?

25 A No. There was no reaction to the warning.

1 Q Mitchell just kept right on?

2 A Mitchell kept right on.

3 Q Then what did you do after the warning
4 shot?

5 A I sit there and try to bust through the
6 door to get to Mitchell. I had to save Randy's life.

7 Q When you say you tried to bust through the
8 door, what did you do, specifically?

9 A I kicked the door, pushed and turned the
10 handle at the same time. Still, I had my gun in my
11 hand.

12 Q Uh-huh. So you pushed and kicked?

13 A Pushed and kicked.

14 Q Do you recall how long you tried to bust
15 out?

16 A I just -- everything happened so fast. I
17 tried pushing really hard and busting out the door at
18 the same time. I had to do something.

19 Q All right, sir. You were unable to get out.

20 A I was unable to get out the door.

21 Q Why was that?

22 A Because they were both blocking the door.

23 Q They were pressed up against the door?

24 A Yes.

25 Q Was there any doubt in your mind, at that

1 time, that Randy was in danger?

2 A Yes.

3 Q Did you have any doubt -- in your mind,
4 were you convinced that Randy's life was in
5 danger ---

6 A Yes.

7 Q --- at that time? What did you do after you
8 failed to get out the door?

9 A I shot at Mitch.

10 Q Through the window?

11 A Through the window.

12 Q You recall how many times you shot?

13 A No, I don't. Everyone keeps saying two --
14 two shots.

15 Q But this happened fast in your mind?

16 A Yeah, everything happened so fast. My only
17 concern was to save Randy's life.

18 Q Why didn't you try to -- since you couldn't
19 get out the back door, why didn't you try to go
20 through the trailer and out the front door and
21 through the fence and around the trailer?

22 A By the time I would have got around there,
23 I would have had to go through Jake and Mitch at the
24 same time, and try and sit there and secure Randy to
25 get him in the house.

1 Q How long would it have taken you to go out
2 through the trailer, out the front door, through the
3 fence and around the trailer to try to break it up?
4 How long would it have taken you?

5 A Probably about five minutes.

6 Q Why that long?

7 A Because I would have had to go out the
8 door, try and get over -- either go over the fence or
9 undo the fence, go through the fence, go all the way
10 around the trailer to get to him.

11 Q And in your mind, was there enough time to
12 do something like that?

13 A No, not when I have to sit there, have a
14 choice of maybe having to fight both of them at the
15 same time to try to get to him for his safety.

16 Q What convinced you in your mind that
17 Randy's life was in critical danger at that time?
18 Please be specific. What convinced you that his life
19 was in danger?

20 A His life was in danger with the strikes to
21 the head and neck area. It doesn't take much.

22 Q From what you saw, was Mitchell just kind
23 of playing around, slapping him?

24 A No.

25 Q Was it a serious assault?

1 **A** It was a serious assault.

2 **Q** What was Jacob Kirk doing while this was
3 going on?

4 **A** He was standing right on the porch, just
5 standing there, watching.

6 **Q** Was he making any effort to intervene or --

7 **A** No.

8 **Q** Would you have shot Mitchell Bradley if you
9 didn't think it was absolutely necessary to save
10 Randy's life?

11 **A** No, I wouldn't have shot him at all.

12 **Q** Have you ever shot anybody before?

13 **A** No.

14 **Q** It was a serious thing that you did, you
15 know that?

16 **A** Yes.

17 **Q** Do you wish it could have happened some
18 other way, that it did not have to go to that point?

19 **A** The only thing I wish is, if the law would
20 have at least -- I don't know if it's in the law
21 books or anything like that -- if they could have
22 done like a detox hold that night for everybody to
23 calm down, then there would have never been a
24 situation or the cops could have called them a ride.

25 **Q** How well did you know Mitchell Bradley

1 before that evening?

2 **A** I didn't know Mitchell Bradley that well at
3 all, so I didn't know his demeanor or not much about
4 the type of person he was. I just known him a couple
5 of times that he's been over at the house.

6 **Q** You said that everybody should have been
7 detoxed. Do you know how much Randy Wilson had been
8 drinking?

9 **A** No.

10 **Q** Well, did you mean to include him in the
11 detox or were you talking about Jacob and Mitchell?

12 **A** Mainly talking about Jacob and Mitchell.
13 But even still, if it would have been prognosed as,
14 like, all three, then at least it would have been a
15 calm-down period.

16 **Q** Anything else you'd like to tell this jury?

17 **A** (Shakes head.)

18 **Q** All right. No more questions for you at
19 this time. Answer any questions the prosecutor has.

20 **THE COURT:** Mr. Cleveland.

21 **MR. CLEVELAND:** Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. CLEVELAND:**

24 **Q** So Mr. McCarty, you said if there could
25 have been some type of cool down, you think this

1 would have prevented this whole situation from
2 happening?

3 **A** I feel like if the cops would have -- even
4 though Jacob Kirk lived there and they said they
5 couldn't do nothing, I kind of feel like if the cops
6 would have put them on, like, a detox hold. I don't
7 know if it's in the law books or anything like that.
8 That way, they could have been taken away for the
9 night, sobered up, and then realized their condition.

10 **Q** Isn't it true that you were in bed during
11 all of this argument and everything that was going on
12 outside?

13 **A** Yes, sir.

14 **Q** So you don't know actually whether it
15 calmed down at any point in time when the cops were
16 there or not?

17 **A** No, I don't.

18 **Q** You don't know whether whatever was
19 happening in the house de-escalated to the point to
20 where everything was fine between the parties that
21 were there, Randy, Jacob and Mitch, correct?

22 **A** Correct.

23 **Q** And as a matter of fact, you really don't
24 know what caused this physical altercation that you
25 walked up on on your back porch, correct?

1 **A** No.

2 **Q** I want to go back to the beginning and just
3 cover a few things. You stated you work for Carolina
4 Heating and Air, crawling on floors and attics and
5 everything, correct?

6 **A** Yes, sir.

7 **Q** Isn't it true that you are physically
8 capable?

9 **A** Pretty much.

10 **Q** And going back to that night, as well,
11 wouldn't you agree with me that Randy Wilson, before
12 the fight, one, he was a little heavier than he is
13 now, right?

14 **A** Not much.

15 **Q** All right. We've got a photograph of him.
16 I'm going to show you State's Exhibit Number 1. He's
17 a little -- isn't it true he's a little heavier than
18 he was or is today?

19 **A** Yeah, about 150 pounds.

20 **Q** Isn't it true that he didn't have a broken
21 foot, so prior to this night, his mobility was a lot
22 better than it is today, right?

23 **A** Not much better.

24 **Q** But despite Randy's mobility and
25 everything, it's your testimony earlier that Randy

1 would try to overdo things?

2 **A** Yes.

3 **Q** And even prior to this incident, when you
4 pulled out your Beretta 9-millimeter and fired
5 warning shots, that Randy was trying to get Jessica
6 under control, physically?

7 **A** Wrestling. Not physically, like what you're
8 implying.

9 **Q** Well, I'm not implying anything. I'm just
10 simply asking. You said that he was trying to get her
11 under control. And wrestling, you would agree, is a
12 physical activity, correct?

13 **A** To a point.

14 **Q** Well, one person physically touching
15 another one is a pretty aggressive physical activity.
16 Would you not agree?

17 **A** Correct.

18 **Q** Would you think -- did you think Randy was
19 overdoing it the way he was engaging Jessica on that
20 day?

21 **A** No.

22 **Q** I want to talk a little bit about the fence
23 as well. On the day of the shooting, isn't it true
24 that Mitchell Bradley's car was actually parked
25 inside the fence area?

1 **A** Not in that part of the fence area.

2 **Q** Okay. I have wanted to clarify this. Did
3 you not tell Detective Taylor and Detective --

4 **A** Yes, there is, like, two parts of the
5 fence. There is one that's the dog kennel. That's
6 what you see in the pictures. Then, there's another
7 one that's just a regular electric fence. That's
8 where Mitchell's car was parked.

9 **Q** Okay. All right. I was just wanting to
10 clarify that. Thank you. During the incident when you
11 fired the gun prior, would you agree with me that was
12 on or about the month of November, 2014?

13 **A** I don't recall the day.

14 **Q** And no one went to the hospital or anything
15 like that at that incident, correct?

16 **A** No. Not certain the ambulance was called,
17 but I don't know if anybody went to the hospital or
18 anything.

19 **Q** All right. Let's talk a little bit about
20 this argument. You testified that you went to bed
21 about 9:30, correct?

22 **A** Yes, sir.

23 **Q** And you drank some homemade wine or some
24 wine prior to going to bed?

25 **A** With my dinner.

1 Q But is it a safe characterization that you
2 were not intoxicated by the time the shooting
3 happened?

4 A No.

5 Q Okay. You went to bed about 9:30. There was
6 some arguing going on, but nothing serious. When the
7 yelling and throwing started, isn't it true that woke
8 you up?

9 A That woke me up the first time.

10 Q All right. And you had to go to work the
11 next day?

12 A Yes, sir.

13 Q What time do you, typically, go to work?

14 A It varies. I leave anywhere between 5:45
15 and 6 o'clock in the morning.

16 Q Pretty early in the morning?

17 A Yes, sir.

18 Q And it's hard doing a day's work of
19 physical labor with not much sleep, correct?

20 A Correct.

21 Q So is it safe to say that it frustrated you
22 a little bit when you were awoken with this bickering
23 and arguing in your house?

24 A No.

25 Q All right. Let's go forward. At some point,

1 is it true that the argument actually spilled into
2 your bedroom when Jacob Kirk was gathering his
3 belongings, correct?

4 A Yes.

5 Q And the light was on during that argument?

6 A Yes.

7 Q And this was later in the evening?

8 A Yes, sir.

9 Q So it's safe to say that that frustrated
10 you a little bit about what was going on?

11 A No, because I've been around Randy's aunt
12 and uncle, and I've been around other drunk people.
13 I'm kind -- I've been used to it.

14 Q Okay. And then later, when the cops
15 actually arrived or it got bad enough that somebody
16 called the cops, you were still in bed at the time,
17 right?

18 A Yes, sir.

19 Q The police actually came in your room. Did
20 that frustrate you or give you any concern?

21 A That concerned me at that time.

22 Q All right. What was your concern?

23 A Of, mainly, what was going on, but the
24 officer said that he had everything under control.

25 Q All right. And you took him at his word,

1 correct?

2 **A** Aren't we supposed to?

3 **Q** I mean, it's your choice. It's your home.

4 **A** I know, but the law is there to serve and
5 protect.

6 **Q** All right. And at that point in time, was
7 there any arguing going on between Randy and Jake and
8 Mitch?

9 **A** There was arguing, but I didn't really --
10 you know, I didn't really listen to what they are
11 arguing about or what it was over.

12 **Q** All right. So how long after the police,
13 left did Randy call out for you? Do you know?

14 **A** I'm not sure of a time. I had just went
15 right back to sleep, so 15, 30 minutes. I'm not
16 absolutely certain on what time.

17 **Q** All right. There had been some earlier
18 testimony that the police left about 11:40 and then a
19 call came back in about 11:44. Could it have been
20 four minutes?

21 **A** I doubt that.

22 **Q** So at that point in time with the argument
23 spilling into your room and the police coming, isn't
24 it true that you still have really no idea what was
25 the source and cause of that argument?

1 **A** No.

2 **Q** You hadn't had a conversation with Randy.
3 Randy didn't come in and say Jake's being a jerk.
4 Jake didn't come in and say Randy's drunk. No one
5 told you anything about the fight?

6 **A** No.

7 **Q** And at that point in time, you didn't know
8 who started it or anything of that nature, correct?

9 **A** No.

10 **Q** So let's go to right when you hear Randy
11 call out. You took your -- you got -- you jumped out
12 of bed and grabbed your Beretta 9-millimeter. Did you
13 have a bullet in the chamber when you withdrew it
14 from your holster?

15 **A** Nope.

16 **Q** All right. At what point did you -- at what
17 time did you rack the firearm to load a live round?

18 **A** As I was running to the door.

19 **Q** All right. So even before you could see
20 what was going on or had any idea what was going on,
21 you got your gun and racked it and put a live round
22 in the chamber?

23 **A** Yes, sir.

24 **Q** Did you take the safety off?

25 **A** When I don't have a live round in, safety,

1 is never on.

2 Q So when you racked that firearm, did you
3 take the safety off at the same time as racking it
4 and putting one in the chamber?

5 A It's under safety when there's no bullet in
6 the chamber.

7 Q All right. There's no disagreement that you
8 pulled the trigger and shot the gun at some point in
9 time, correct?

10 A Correct.

11 Q So you had to take the safety off it at
12 some point in time?

13 A Yes.

14 Q When did you take the safety off?

15 A I never took the safety off.

16 Q Oh. What you're saying is the gun wasn't
17 going to fire when there's no bullet in the chamber?

18 A Right.

19 Q So as soon as you racked it, that Beretta
20 9-millimeter was ready to go?

21 A Yes.

22 Q All right. So you come to the door and your
23 testimony was you saw Mitchell choking Randy,
24 correct?

25 A Yes.

1 Q Isn't it true that in your interview with
2 Detective Taylor and Detective James that you never
3 told them that you saw Randy with his hands around
4 his neck -- Mitchell with his hands around Randy's
5 neck choking him or anything of that nature?

6 A No.

7 Q And that interview was taken the night of
8 the incident, correct?

9 A Correct.

10 Q Right after you seen it happen?

11 A I was still in shock when everything
12 happened. They were sitting there trying to ask me
13 everything. And I'm trying to take in everything of
14 what happened and trying to remember the whole
15 incident. Everything happened so fast.

16 Q All right. And I understand that. We
17 watched 45 minutes of that interview. Don't you think
18 it's a pretty important detail that you saw Mitchell
19 with his hands around Randy's neck?

20 A Yeah.

21 Q As a matter of fact, what you told them
22 was, I observed Mitchell swinging at Randy with a
23 closed fist while Randy was attempting to block
24 punches.

25 A That's when I shot.

1 **Q** All right.

2 **A** Not at the warning shot.

3 **Q** Okay. But that was before you said after
4 that sentence that Jacob was on the back porch, but
5 he was not fighting. While still inside the kitchen,
6 I fired a warning shot. You said that the fist fight
7 -- the punches thrown, in that case, was before you
8 fired the warning shot.

9 **THE COURT:** Yes, sir.

10 **MR. NEWTON:** I object to the form of the
11 question. The prosecutor is talking about what
12 Jacob is doing.

13 **MR. CLEVELAND:** The statement is in
14 evidence, Your Honor. I'm just asking him if his
15 words are in the statement that he gave or what
16 his testimony was.

17 **MR. NEWTON:** The statement --

18 **THE COURT:** Will you reread the section
19 you are asking him about?

20 **MR. CLEVELAND:** I asked him if he said, I
21 observed Mitchell swinging at Randy with a
22 closed fist while Randy was attempting to block
23 punches. He said that was after the warning
24 shot. I said following that, the next two lines
25 are, Jacob was also on the back porch, but he

1 was not fighting. While still inside the
2 kitchen, I fired a warning shot.

3 **THE COURT:** You can ask him the question.

4 **BY MR. CLEVELAND:**

5 **Q** I'll rephrase it. Did you not tell the
6 detectives that you saw him throwing punches before
7 you fired the warning shot in the interview?

8 **A** Yes.

9 **Q** Okay. And even at this point in time, as
10 you get to the door and you're seeing this happen,
11 you still have no idea really who is the main person
12 at fault for this fight. Who started it?

13 **A** No.

14 **Q** Did you ever put down the gun at any point
15 in time or did you always have it ready and ready to
16 fire at your right hand?

17 **A** After the threat was over, I put my gun
18 back in its holster.

19 **Q** Okay. But any time while you were watching
20 this fight, did you ever put the gun down or did you
21 always remain armed?

22 **A** I remained armed the whole time.

23 **Q** And I guess I'll just continue the line of
24 when you heard Randy hollering. This is the third
25 time I believe you'd been awoken by this?

1 **A** Second time.

2 **Q** Okay. At this point, it's close to
3 midnight. Wouldn't you agree?

4 **A** Somewhere around in there.

5 **Q** All right. And did it frustrate you a
6 little bit that even after the cops came out there
7 that this, essentially, drunken bickering was still
8 carrying on?

9 **A** Pretty much.

10 **Q** And when you fired the warning shot and the
11 fight kept going, did that kind of frustrate you a
12 little bit that these folks weren't respecting your
13 home?

14 **A** Yes.

15 **Q** There's been some testimony and a picture
16 admitted of the door of the residence. This is
17 Defendant's Exhibit Number 2. I'm just going to put
18 it up here. What's the source of that dent in the
19 door?

20 **A** That is my knee right below the window and
21 my foot at the bottom.

22 **Q** Okay. Did you cause that dent on the night
23 in question?

24 **A** Yes.

25 **Q** All right. Was that the only attempt you

1 made to get out of the door?

2 **A** That's the -- that's the -- I don't know if
3 there's any other dents, but as hard as I was trying
4 to get out of the door.

5 **Q** All right. But -- and you say the door was
6 blocked. Who actually blocked the door? Was it
7 Mitchell or was it Randy?

8 **A** I can't really say which one was blocking
9 the door, but both of them were there at the door.

10 **Q** Okay.

11 **A** I don't know where Randy's foot was because
12 I couldn't see it. It was low visibility.

13 **Q** All right. And you'd agree that Mitchell
14 was a pretty trim guy, correct?

15 **A** Not really.

16 **Q** Well, there was testimony that he weighed
17 154 pounds. Are you saying that that was incorrect?

18 **A** 154 pounds is not a slim -- slim person.

19 **Q** All right. Well, we can agree on his
20 weight. Wouldn't you agree with me that if you -- to
21 try to open this door forcefully, that you would have
22 a lot more leverage putting your force on the edge of
23 the door rather than the center of the door?

24 **A** When things like this happen, you don't
25 think. You just react. It was -- everything was spur

1 of the moment. I had to do what I had to do.

2 Q Okay. Well, you had to do what you had to
3 do with the gun. What I'm asking is, you obviously
4 approached the door and made a conscious decision to
5 fire a warning shot, right?

6 A Yes, to break up the fight.

7 Q When you first arrived, was Randy -- based
8 on your observation, is it a life or death situation?

9 A Yes.

10 Q So why didn't you just go ahead and shoot
11 Mitch as soon as you walked up to him?

12 A Cause I figured, if I fired a warning shot,
13 I could defuse a situation.

14 Q All right. But in the time between that
15 warning shot and the time you got the chance to do
16 something, couldn't Mitchell have done something to
17 kill Randy if he was in that much danger?

18 A There was only a couple of seconds in
19 between the shot through the floor and that.

20 Q Okay. So is it your testimony that the
21 situation you thought, at first, was defusable, but
22 then within a few seconds, you decided it wasn't and
23 shot and killed Mitch?

24 A Trying to get out of the door at the same
25 time.

1 Q So within a few seconds, you shot the
2 floor, tried to get out of the door, realized you
3 couldn't get out of the door and then drew up and
4 shot Mitch?

5 A Uh-huh.

6 Q Where was Mitch standing when you shot him?

7 A About the middle ways of that door.

8 Q Where was Randy at the time?

9 A Right against the bannister.

10 Q All right. State's Exhibit Number 9. And
11 I'll just walk over. You said Mitch was in the middle
12 and Randy was on the side?

13 A Yep.

14 Q So they weren't chest to chest. There was
15 some separation between them?

16 A Not much.

17 Q Weren't you scared that you could,
18 potentially, hit Randy when you shot at him if they
19 were that close?

20 A My only observation was I was trying to
21 defuse the situation and protect Randy.

22 Q Okay. Did you not try to get out of the
23 door before you fired the warning shot?

24 A I tried the whole time trying to get out of
25 the door.

1 Q But you only needed that one time. You only
2 really hit it hard once is what you're saying?

3 A No.

4 Q So were you actually trying to get out of
5 the door when you fired the warning shot? Or did you
6 fire the warning shot and then tried to actively get
7 out of the door?

8 A I tried to get out of the door, fired a
9 warning shot, and then I tried -- re-tried to get out
10 of the door. Then, I shot Mitch.

11 Q Did you ever say anything to Mitch or Jacob
12 or anybody during this altercation?

13 A No.

14 Q You never said, Mitch, you're going to hurt
15 him, stop? You never said, I've got a gun, stop, I'll
16 do it, you're going to hurt Randy?

17 A No. Someone else hollered, he's got a gun.

18 Q Who -- who hollered that?

19 A I don't know.

20 Q So, essentially, your testimony is you let
21 the gun do the talking for you, right, by the warning
22 shot?

23 A Yeah.

24 Q And even after you pulled the trigger and
25 shot Mitch, you still, at that point in time, really

1 didn't have any clue who started the altercation or
2 how it got to be where it was?

3 **A** No.

4 **Q** There has been ample evidence presented
5 that there were two gunshot wounds in Mitchell's
6 heart. Do you contest the fact that you shot him
7 twice?

8 **A** That's what -- that's what -- at first, I
9 thought I only shot him once.

10 **Q** Okay. This Beretta 92, 9-millimeter, semi-
11 automatic pistol ---

12 **A** Yes.

13 **Q** --- requires a pull of the trigger every
14 time for rounds to be fired, correct?

15 **A** Pretty much.

16 **Q** I mean is there a situation where it would
17 fire two times with one pull of the trigger?

18 **A** A moment when you are in a rage, in shock
19 and in a rush to try and defuse a situation --

20 **Q** I'm not talking about you, specifically,
21 Mr. McCarty. I'm talking about that gun. Your
22 familiarity with that gun, you have to pull the
23 trigger. It fires one round for every time you pull
24 the trigger, correct?

25 **A** Yeah.

1 Q So two rounds require two trigger pulls,
2 correct?

3 A Correct.

4 Q And being a fairly high-powered pistol,
- 5 it's got a little bit of a kick to it, doesn't it?

6 A A little bit.

7 Q And after that gun goes off and it kicks,
8 you have to reacquire a target and pull the trigger
9 again, correct?

10 A No.

11 Q I mean, to hit the same target.

12 A No.

13 Q After the shooting, did you go outside to
14 check on Randy?

15 A No, cause I could see him.

16 Q Did you go outside to check on Mitchell who
17 you just shot?

18 A No, Randy was helping Mitch.

19 Q Did you call 911?

20 A No, someone was already on the phone with
21 911.

22 Q What did you do?

23 A I put my weapon away. I paced the floor.

24 Q You paced the floor? What were you waiting
25 on?

1 **A** Waiting on the police to get there.

2 **Q** All right. Randy never had any long-
3 suffering injuries to his neck from this altercation;
4 did he?

5 **A** He complained about pains.

6 **Q** But he didn't actually re-break his neck or
7 anything at the hands of Mitchell Bradley?

8 **A** No, because I prevented that.

9 **Q** And despite your knowledge of his neck
10 condition in the 30 years y'all have known each
11 other, has he ever re-broken his neck and had to have
12 surgery on it again?

13 **A** No, because he's always been safe.

14 **Q** He's always been safe because he's always
15 had you there to defend him?

16 **A** No. He's always been safe because he's
17 careful on how he drives. And every once in a while,
18 he will sit there and put a neck brace around his
19 neck when he's driving down the road to keep his neck
20 from any shock.

21 **Q** Did Randy drink to numb the pain that he
22 was enduring?

23 **A** Yes, because he didn't like the
24 prescription pills that the doctors prescribed him.
25 He would rather do that than take oxycodones that are

1 worse for you than sitting there having a shot or two
2 of liquor.

3 Q Okay. You said he was careful driving. Are
4 you -- isn't it true that he wrecked one of Clayton
5 Alexander's cars several years before this?

6 A Yeah.

7 Q And that didn't re-break his neck, did it?

8 A No, but he knows how to prepare for -- he
9 knows how to hold a wheel and how to position himself
10 to where he doesn't injure his neck. And it wasn't
11 but a 25-mile -- 20 or 25 mile-an-hour little bump.
12 It was nothing.

13 MR. CLEVELAND: Beg the Court's indulgence.

14 THE COURT: Certainly.

15 BY MR. CLEVELAND:

16 Q Twenty -- that's interesting because, isn't
17 it true that on the interview, you testified to the
18 detectives that Randy couldn't withstand but a five-
19 mile-an-hour collision?

20 A Right.

21 Q But your testimony here is he actually
22 survived a 20 or 25 mile-an-hour collision?

23 A Correct.

24 MR. CLEVELAND: Beg the Court's indulgence.

25 THE COURT: Certainly.

1 (There is a pause.)

2 **BY MR. CLEVELAND:**

3 **Q** Just to be clear to the jury, just to
4 solidify this point, your testimony is you did
5 intentionally shoot Mitchell Bradley, correct?

6 **A** No.

7 **Q** Well, I understand your reasoning that you
8 testified to, but you did intentionally point the gun
9 at Mitchell Bradley and shoot him?

10 **A** Correct.

11 **Q** Nothing further.

12 **THE COURT:** Anything else?

13 **MR. NEWTON:** Briefly.

14 **THE COURT:** Certainly.

15 **REDIRECT EXAMINATION**

16 **BY MR. NEWTON:**

17 **Q** The prosecutor was asking you about what
18 you did or did not hear. Prior to the situation that
19 lead to your shooting, at one point, you hear Randy
20 telling Mitchell and Bradley -- or Mitchell and Jacob
21 to leave the house. Did you hear that?

22 **A** Vaguely. But it -- vaguely, I heard it.

23 **Q** Did your -- the gun that you used, did it
24 have a silencer on it at the time?

25 **A** No.

1 Q So about how loud was that gun? Is it
2 normal or loud as a usual gun, very loud?

3 A Yeah, it's very loud.

4 Q All right. So there's no question that they
5 could have heard it right outside the door, correct?

6 A Correct.

7 Q When you fired the warning shot.

8 A Uh-huh.

9 Q No reaction from Mitchell whatsoever?

10 A No reaction.

11 Q Now, the prosecutor asked you if you knew
12 who had instigated the whole situation. You said no.
13 But from what you saw, could you tell who was in
14 danger and who was not?

15 A Yes, I could.

16 Q Who was in danger?

17 A Randy Wilson.

18 Q Did Mitchell Bradley look like he was in
19 danger at all from Randy Wilson?

20 A No.

21 Q Regarding the second shot, second entry
22 wound, do you recall hearing testimony yesterday that
23 the entry wounds were approximately three inches
24 apart?

25 A Correct.

1 **Q** What does that tell you?

2 **A** That tells me that it's possible in a quick
3 response.

4 **Q** Two rapid shots?

5 **A** Two rapid shots.

6 **Q** If you had taken more time, do you think,
7 between the shots, the entry wounds would have been
8 further apart?

9 **A** Yes.

10 **MR. NEWTON:** I have no further questions.

11 **THE COURT:** Any other questions for this
12 witness?

13 **MR. CLEVELAND:** None from the State, Your
14 Honor.

15 **THE COURT:** Sir, you can step down.

16 **MR. NEWTON:** The defense rests.

17 **THE COURT:** All right. The State
18 anticipate any reply testimony?

19 **MR. CLEVELAND:** No reply, Your Honor.

20 **THE COURT:** All right. Ladies and
21 Gentlemen, we've now come to the end of
22 testimony in this case. There are necessarily
23 some legal matters that I have to take up with
24 the attorneys. Next, we'll come back and hear
25 closing statements and my charge on the law. And

1 there was a high -- I would have a concern of a
2 compromised verdict in this case, as I know
3 everyone would, potentially, in this case, so
4 I'm not going to charge voluntary.

5 I think -- I think we've included
6 everything that you all have requested. We're
7 going to print you a copy of the charge so you
8 will have a copy of the charge, give you a few
9 minutes to look it over. We're going -- in fact,
10 if y'all wanted to go and expedite the process,
11 go to the third floor. We're sending it to --

12 Trish, can you print from here?

13 **THE CLERK:** Yes, ma'am.

14 **THE COURT:** All right. We've still got a
15 motion or so to take up.

16 **MR. NEWTON:** I renew my motion for a
17 directed verdict on the grounds that I do not
18 think that any evidence shows malice
19 aforethought. Everything indicates that my
20 client was not acting with malice aforethought
21 and, instead, he was acting to defend the health
22 and safety of another person. Now, there could
23 be an argument as to whether his opinion about
24 that was correct or not, but that does not
25 change the fact that that was going on in his

1 mind. He was not acting with malice
2 aforethought. He was acting in his mind to
3 defend another person.

4 **THE COURT:** I understand. I think there is
5 at least some evidence upon which a jury could
6 base a verdict of guilty. Therefore, I am going
7 to allow this case to go to a jury. You're
8 renewing your motion --

9 **MR. NEWTON:** Also, the Stand Your Ground
10 motion.

11 **THE COURT:** All right. I still rest on my
12 previous ruling. However, your motion is noted
13 for the record. All right. I'll go print off the
14 charge for y'all. Then we'll be ready to come
15 back and argue and charge in just a few minutes.
16 I'll give you about 15 minutes to look over it.
17 Is that fair?

18 **MR. NEWTON:** Yes.

19 **THE COURT:** Enough time?

20 **MR. CLEVELAND:** Yes, Your Honor.

21 **THE COURT:** Okay. And just to be -- just
22 to be all on the same page, I think in the new
23 world of State v. Beatty, you'll close in full.
24 Then you'll have the opportunity to close. Then
25 just reply to anything. No new material. Just

1 **MR. CLEVELAND:** Oh, no, Your Honor.

2 **THE CLERK:** Is it okay to order it now?

3 **THE COURT:** Yes, please. It's going to be,

4 like, I think, 1 o'clock.

5 **THE CLERK:** You want it here about 1:00?

6 **THE COURT:** Don't y'all think it will be

7 about 1 o'clock? My charge will take about 20

8 minutes.

9 **MR. CLEVELAND:** Yes, Your Honor. We're kind

10 of balling this thing down. I don't think the

11 closing is going to be all that long.

12 **MR. NEWTON:** Sounds about right.

13 **THE COURT:** 12:30 or 1:00?

14 **MR. CLEVELAND:** Probably 1:00.

15 **MR. NEWTON:** I'm thinking 1:00, yeah. So

16 15-minute break?

17 **THE COURT:** Yeah, 15-minute break.

18 **MR. NEWTON:** All right. Thank you.

19 (Court goes off the record at approximately

20 11:25 a.m.)

21 (Court goes on the record at approximately

22 11:49 a.m.)

23 **THE COURT:** Yes, sir.

24 **MR. CLEVELAND:** Your Honor, regarding the

25 charge on defense of others, it does not state

1 that all elements of self-defense must be proven
2 or must be present. It just, specifically -- it
3 starts out saying, first, the person must not
4 have fault. But then it goes on and says to show
5 that a person -- it says defense of another
6 person is excusable, if the defendant has
7 reasonable grounds to believe in -- good faith
8 belief that the person he defends is in imminent
9 danger of serious bodily harm.

10 **THE COURT:** Right.

11 **MR. CLEVELAND:** It doesn't say -- it
12 doesn't indicate that ---

13 **THE COURT:** You're right.

14 **MR. CLEVELAND:** --- it also must be without
15 fault in bringing about the difficulty.

16 **THE COURT:** Okay. Sorry.

17 **MR. NEWTON:** That fault language is in
18 there. It's in a different place.

19 **MR. CLEVELAND:** Yeah, but it doesn't say
20 that all elements -- if one element of self-
21 defense must be proven, then the defense fails
22 -- or is not proven.

23 **MR. NEWTON:** The defense does not have to
24 prove anything. It's up to the State to disprove
25 self-defense.

1 **MR. CLEVELAND:** If the State doesn't
2 disprove -- if the State disproves one -- any
3 element of self-defense, then --

4 **THE COURT:** Disprove any element of self-
5 defense. Okay. That's an interesting way of
6 saying it, but yeah, I mean, I think it is the
7 law. Yeah.

8 **MR. NEWTON:** I'm sorry. Maybe it does say
9 it. But, Judge, self-defense, does it say in
10 here that the State must disprove self-defense?

11 **THE COURT:** It does not.

12 **MR. NEWTON:** That should probably be in
13 there, and beyond a reasonable doubt too. Must
14 prove beyond a reasonable doubt.

15 **THE COURT:** We were so focused on the
16 other -- the other things, I think we missed
17 that. That's very important. So you're asking
18 exactly what now?

19 **MR. CLEVELAND:** Essentially, I would like
20 some language that says defense of others --
21 under the law of self-defense, defense of others
22 has been presented in this case as a defense.

23 **THE COURT:** Okay.

24 **MR. CLEVELAND:** In order -- I think the
25 language I remember from a charge is that is a

1 complete defense and if you believe the defense,
2 the defendant must be found not guilty. The
3 State must disprove -- it's the State's burden
4 to disprove -- yeah, if the State disproves any
5 element of self-defense or defense of others,
6 then the defense fails.

7 **THE COURT:** All right. All right. I think
8 my -- I think my standard charge on self-defense
9 -- and I think you've seen it before, my charge
10 on it, the defendant has raised the defense of
11 self-defense. It is a complete defense. And if
12 established, you must find the defendant not
13 guilty.

14 The State has the burden of disproving
15 self-defense by proof beyond a reasonable doubt.
16 If you have a reasonable doubt of the
17 defendant's guilt after considering all of the
18 evidence, including the evidence of self-
19 defense, then you must find the defendant not
20 guilty. On the other hand, if you have no
21 reasonable doubt of the defendant's guilt after
22 considering all the evidence, including the
23 evidence of self-defense, then you must find the
24 defendant guilty. The following elements are
25 required to establish self-defense -- and then I

1 go into the elements.

2 MR. CLEVELAND: It doesn't say if any of
3 the one elements are disproven, then the defense
4 fails.

5 MR. NEWTON: I like your standard charge
6 that you just read.

7 THE COURT: Yeah, we'll add that in there.

8 MR. NEWTON: Okay.

9 THE COURT: I'll let you argue that. I
10 certainly will let you argue that, but that's --
11 that's -- I think that's the general gist of
12 what I'm charging.

13 MR. CLEVELAND: Yeah, I just don't want
14 them to think that if they prove any one element
15 -- I think from the current charge you handed
16 me, it's misleading, that if they prove any
17 element of defense of others, then they are
18 entitled to a verdict. I think it just needs to
19 be very clear to them that it has to be both
20 without fault and in imminent harm or believe
21 he's in imminent harm and that has to be the
22 reasonable person standard. All of that has to
23 be present for defense of others and self-
24 defense to stand.

25 THE COURT: All right. Yeah, I think we

1 will -- we're going to flesh that out a little
2 bit more. I might add a little bit more about
3 just... (Pause.)

4 And then we'll just say all the elements
5 are required -- all of the elements are required
6 to establish self-defense. We'll just say that
7 they're all required.

8 **MR. CLEVELAND:** Okay.

9 **THE COURT:** So we'll be sure to add that.

10 **MR. CLEVELAND:** I've got the standard
11 charge. I'm trying to find the language as it's
12 in here.

13 **THE COURT:** And I kind of played with mine
14 over the years just a little bit.

15 **MR. CLEVELAND:** I understand.

16 **THE COURT:** But I think we're going to lay
17 out the elements a little bit -- maybe a little
18 bit more clearly, but then -- and work with it
19 here just a little bit more. But that's it. It's
20 nothing more than the four elements.

21 **MR. CLEVELAND:** Thank you.

22 **MR. NEWTON:** And, of course, the State
23 must disprove one of the elements.

24 **THE COURT:** Oh, yeah. That's what I mean.
25 I'm going to add my initial paragraph in here.

1 We'll definitely do that.

2 **MR. CLEVELAND:** If the State disproves any
3 one of these elements.

4 **THE COURT:** Something -- something along
5 those lines to that extent.

6 **MR. CLEVELAND:** All elements must be
7 present.

8 **THE COURT:** All elements must be present,
9 yes. Rather than saying the negative, the double
10 negative there, then that's it. They all have to
11 be present. All right. Anything else?

12 **MR. NEWTON:** No, nothing from the
13 defendant.

14 **THE COURT:** Anything else from the State?

15 **MR. CLEVELAND:** No, Your Honor. Thank you.

16 **THE COURT:** Okay. Sorry. I normally like
17 to get this to you the evening before. This was
18 just one that really hinged on the defendant's
19 testimony or the defendant's case, so I'm sorry
20 about that.

21 **MR. CLEVELAND:** I was right there with Your
22 Honor.

23 **THE COURT:** So I apologize in being late.
24 Okay. We're ready to bring the jury back in.
25 (Jury enters at approximately 11:57 a.m.)

1 **THE COURT:** Ladies and Gentlemen, we're
2 now ready to hear final arguments from the
3 attorneys. Thank you for your patience with us.

4 All right. Yes, sir.

5 **MR. CLEVELAND:** Thank you, Your Honor. May
6 it please the Court.

7 You can't just walk up to a drunken brawl,
8 pick who you want to win, and shoot and kill a
9 man. It's not excusable. It's not defense of
10 others. It's not reasonable. It's murder.

11 Now, your common sense probably aligns with
12 that same fact. There's no telling how many
13 drunken tussles go on in the world, in this
14 state, in this county on any given day. If the
15 law was that you could walk up, not knowing much
16 about the fight, not knowing what happened, not
17 really knowing what was going on and just decide
18 that, you know what, I'm tired of this, you're
19 going to lose and shoots and him, we'd be living
20 in anarchy.

21 John McCarty is charged with murder for
22 doing exactly that. I went over the elements of
23 murder in opening and I'm going to hit that
24 again in a second. But one thing I want to talk
25 about before we go into the State's position on

1 this case, let's talk about the credibility of
2 witnesses.

3 You've heard many witnesses testify in this
4 case, law enforcement, lay witnesses,
5 essentially, character opinion witnesses and --
6 by way of expert, and the defendant himself who
7 is on trial here. You've got to determine the
8 facts in this case from assessing the
9 credibility of each and every one of those
10 witnesses. That is completely within your
11 purview.

12 You've got to determine whether you're
13 going to believe someone over someone else.
14 You've got to determine whether you can through
15 away someone's testimony completely or believe
16 someone completely or you believe certain parts
17 and don't believe other parts. In considering
18 what you want to believe, you do just like you
19 do in everyday life. You consider who has a dog
20 in the fight, who has something to gain, who has
21 something to lose and any motivation they might
22 have to testify the way they did. You also can
23 consider discrepancies in their testimony that's
24 occurred over the course of this trial.

25 The credibility of the law enforcement in

1 this case basically is what it is. They came
2 down to the scene after it happened, and they
3 reported what they saw and what they found. I
4 don't think there's a lot of dispute to any of
5 that testimony. The real dispute here comes
6 between the version of events between Randy
7 Wilson, Jacob Kirk and John McCarty. Of those
8 three witnesses, who is the most credible
9 witness in this case?

10 Jacob Kirk was there and his brother was
11 shot. He certainly has an emotional interest in
12 this case. There is no question about that.
13 Jacob Kirk witnessed this from start to finish.
14 He had been drinking, sure. He was arguing with
15 Randy. He was mad at Randy, but he didn't have
16 any ill will or want Randy to get hurt. He
17 testified as to what happened in this case, that
18 Randy Wilson egged this situation on, that he
19 was a full participant in the fight, that he was
20 -- even after they cooled down, that he started
21 to do stuff and continued to do stuff to engage
22 them, which lead to the ultimate physical
23 altercation between Jake -- I mean, between
24 Mitch and Randy.

25 On the flip side, let's talk about Randy a

1 little bit. What dog does Randy have in this
2 fight? Well, for starters, he's John McCarty's
3 partner. He lives with him. He's been with him
4 for 30 years. He has his best interest at heart.
5 Consider that in his testimony that he's given
6 you on what he's told you has happened. Consider
7 if he has any reason to be biased or to
8 misrepresent or to skew things in his favor, in
9 the defendant's favor. Same thing with the
10 defendant. It's perfectly legitimate to consider
11 because he's the one on trial here. Take into
12 account what you've heard with those
13 considerations.

14 Also, going to Randy Wilson's testimony, I
15 want y'all to look at the inconsistencies that
16 had been drawn out in his stories since this
17 incident occurred. The first time he ever
18 mentioned being in fear for his life and he
19 admitted pouring out their beers -- and actually
20 pointed out to the officer those are beers I was
21 pouring out that caused them to get mad. Yet, in
22 another instance, he testified he absolutely did
23 not pour out anybody's beer. Here in the trial,
24 he came back, yes, well, I told them they had
25 too much to drink and I poured it out.

1 Inconsistences are indicative that their
2 credibility might be an issue. It's easy to tell
3 the truth, because the truth never changes.
4 Think about that when he changes his testimony.

5 Likewise, John McCarty, John took the stand
6 to talk to us today. But the first time John
7 McCarty had an opportunity to tell what
8 happened, he told police that the gun just went
9 off, that he was trying to get out the door, and
10 the gun hit the glass, and the gun just went
11 off. But when the credible evidence and the
12 actual physical evidence on the scene was looked
13 at and he was presented with it and he was
14 challenged by it, he admitted that he
15 intentionally shot him.

16 Let me ask y'all something, why they --
17 what are reasons people don't tell the truth? To
18 get what they want and to get out of trouble.
19 Ask yourself what John McCarty's mindset was
20 when he was talking to the cops that night. Did
21 he truly feel like he was defending Randy Wilson
22 and he had a legal right to do that? Or did he
23 realize he was in big trouble and he had to come
24 up with some type of story, an accident, to try
25 to minimize his involvement in this situation?

1 And this is before the trial. This is before he
2 was even arrested. This is right after it
3 occurred.

4 Let's talk about the law in this case.
5 Essentially, what this case boils down to, did
6 John McCarty have a legal right to defend Randy
7 Wilson? Did he act with malice and intentionally
8 shoot him to kill him? The State -- the State's
9 position is, clearly, he acted with malice and
10 intentionally killed Mitch. It was not necessary
11 and it was not legally justifiable.

12 Murder is malice -- is killing -- unlawful
13 killing of someone with malice aforethought. The
14 judge will tell you what malice is. But it's
15 essentially ill will, hatred or hostility
16 towards someone or some situation. Aforethought
17 means that you had that at the time that you
18 pulled the trigger. Unlawful killing is just
19 simply that, there's no legal basis for the
20 killing.

21 The defense in this case is the defense of
22 others. Defense of others is essentially if a
23 person has the right to act in self-defense,
24 then another person involved in the situation
25 can defend them if they could have defended

1 themselves. And it's got some very specific
2 parts to it. Every single part of self-defense
3 or defense of others must be present. You must
4 believe it for that defense. I had burden of
5 disproving it. If I -- if y'all felt like I
6 disproved any element of it, then the defense
7 fails and you throw that away.

8 So what is the defense of defense of
9 others? What is that? First off, the judge is
10 going to tell you that the person must be
11 without fault in bringing about the difficulty.
12 If the action of a person are those that are
13 likely to bring about an assault, a deadly
14 assault, then they are with fault in bringing
15 about that difficulty and they cannot act in
16 self-defense and someone else can't act in
17 defense of others, unless they withdraw from the
18 situation and communicate that withdrawal by
19 words or actions. It's got to be affirmed. The
20 shooter or whoever on the other side has got to
21 know that, alright, I'm trying to stop this,
22 before they can turn around and act in self --
23 act in defense of others. That's the fault prong
24 of it.

25 The second prong of this is, they must

1 either be in imminent danger of great bodily
2 injury or death or believe they are in danger,
3 imminent danger of great bodily injury or death
4 and that belief must also be the same belief
5 shared by a reasonably prudent person of the
6 same physical condition. Essentially, it can't
7 be a one-off type thing. It's got to be any
8 reasonable person sitting in their shoes must
9 factually believe the same thing. There's 14
10 reasonable people sitting right here. Again,
11 that's where your common sense comes into play,
12 as it does in many parts of your deliberation.

13 If you don't -- if you believe that the
14 evidence that we put forward is that Randy
15 Wilson wasn't in imminent danger of serious
16 bodily injury, not just in danger of serious
17 bodily injury now that this thing had been going
18 on for a while, but that it was going to happen,
19 then that element of self-defense and defense of
20 others fails and you must move on past self-
21 defense or defense of others, i.e., John McCarty
22 did not have any legal right to shoot and kill
23 Mitchell Bradley.

24 So let's compare the evidence in this case
25 to the law that we just talked about. Regarding

1 defense of others, Jake testified that this was
2 an ongoing argument back and forth between him
3 and Randy -- Mitch was actually trying to hold
4 him back, at some point in time -- that Mitch
5 didn't get involved until Randy started messing
6 with his belongings. And even after Mitch and
7 Randy started to tussle, Randy came back up on
8 the porch, slapped his beer, continued to incite
9 anger in Mitch and that's what led to this
10 tussle in the corner, which, Ladies and
11 Gentlemen, I submit, was nothing more than a
12 drunken tussle. This was a kid who was two and a
13 half times the legal limit of alcohol. Randy
14 Wilson was under the influence. Nobody here is a
15 professional boxer going crazy. This is a
16 drunken tussle, unsteady on their feet, unsteady
17 at hand.

18 Randy Wilson, by pouring out the beers he
19 admitted to doing, by slapping the beers off the
20 porch, by calling the police, he admittedly and
21 reasonably was frustrated the police didn't do
22 what he wanted them to do, and by pushing Mitch
23 out of the way, even after he was thrown down,
24 he certainly was not without fault in bringing
25 about this fight, and he never withdrew from the

1 fight.

2 The testimony, from even John McCarty in
3 the interview, says that he was throwing
4 punches. Mitch says he was throwing punches. All
5 of the evidence shows that this is a straight
6 up, squared up fight between these two men.
7 Randy Wilson is not without fault in bringing
8 about the difficulty.

9 But -- and furthermore, the competent
10 evidence in this case shows that Randy Wilson
11 was never in imminent danger of serious bodily
12 injury or death. First off, y'all've got
13 pictures of him. Y'all can see what he looked
14 like immediately after the assault. The most
15 serious -- the most serious injury he had is a
16 swollen foot -- we know he fractured his foot --
17 and his ankle was hurting. There was blood on
18 his knees caused from the broken glass when he
19 got down doing CPR on Mitch. Other than that,
20 his face, his neck, his head is without injury.

21 He asked to be transported to the hospital.
22 The EMS workers didn't even assess on their own
23 that he was needed to be transported. The
24 doctors told him he did not have any injury to
25 his head or his neck and there are no wounds on

1 his face like he had been pummeled and hit a
2 couple of times. Again, this was a drunken
3 tussle. It was nothing more than that. It was
4 one that he was engaged in as much as Mitch was.

5 Furthermore, he says he was blocking. There
6 is no -- there is a picture of a bruise on his
7 arm. There is no mention of defensive wounds. He
8 never mentioned hurting his arms or anything
9 like that. If Mitch was throwing and pummeling
10 and punching him, wouldn't you think that it
11 would stand to reason that if he was being
12 truthful about all those blocks and how hard and
13 how much danger he was in, that he would have
14 injuries?

15 Furthermore, listen to what Jake said
16 happened. It makes perfect sense that Randy,
17 when the shot was fired, pushed Mitch off and
18 swung at him, because John would not have shot
19 if Mitch and Randy were completely embroiled in
20 one another. It's too much risk. In that type of
21 situation, everything's moving too fast. There's
22 too much risk you're going to hit someone else.
23 John had a clear shot at Mitch and he took it
24 and he killed him. That's because they weren't
25 completely close together. That's because they

1 were off. They were spread apart. He had his
2 opportunity, and he took it.

3 Randy never withdraw. Randy was just in the
4 middle of that fight, just like the testimony
5 that Jake says he was. It's corroborated by John
6 saying that Randy always does more than he
7 thinks he should. He's always willing to go
8 forward and do stuff that he shouldn't. So if
9 you believe the credible witness in this case,
10 that Randy was at fault in the difficulty and
11 that Randy was never in imminent serious bodily
12 injury.

13 Now, I'm not doubting -- I'm not going to
14 stand up here and doubt that Randy doesn't have
15 a condition. He certainly does. There's been
16 evidence. It's not be controverted. Everybody
17 knew. But just how weak is that injury? You
18 heard just now from John McCarty that he wrecked
19 a car going 25 miles an hour. He was fine after
20 that.

21 But for illustration's sake, let's talk a
22 little bit about Randy's version of the event.
23 If Randy is as weak as he says he is and you
24 take the defense's stance that you have to do
25 something to bring about a deadly encounter to

1 be at fault in bringing about difficulty, then,
2 by Randy being involved in any way, shape or
3 form in bringing about the fight or the assault
4 himself, any encounter for him is a deadly
5 encounter. That's what he says. Even one punch,
6 one hit. That's the defense's version.

7 So if Randy did anything to contribute to
8 this, then he is at fault for bringing about
9 what they are alleging is a deadly encounter,
10 but I don't think it's credible. Furthermore, to
11 believe him and say, okay, we think you're
12 right, we think you are right that you were at
13 imminent risk of serious bodily injury, by his
14 own admission of how he involved, what he did to
15 put himself in that situation makes him at fault
16 for bringing about what they are alleging is a
17 deadly encounter. But, quite simply, Ladies and
18 Gentlemen, I think he was at fault.

19 Keep in mind what Randy said when the
20 police first showed up. As the police walked up
21 on the porch, he didn't say John had to do it or
22 he was going to kill me. He didn't say he saved
23 my life, this man was trying to kill me. No, he
24 said John didn't mean to shoot him. That was
25 what -- the first thing that came out of his

1 mouth when the cops approached the house. The
2 first response when he got there. John didn't
3 mean to shoot him. John didn't mean to shoot
4 him. Because it wasn't necessary for John to
5 shoot him. Randy knew it. John knew it. Jake
6 knew him. Jake told you in court.

7 Furthermore, let's talk a little bit about
8 John McCarty's actions surrounding this whole
9 thing. John tried to get out of the door.
10 There's a picture of that. There's a dent.
11 There's been no evidence to contradict what
12 they're saying. It just is what it is. But John
13 never said anything. John never went to any
14 extent.

15 I say that because that shows the malice
16 and hatred that was in the John's heart. John
17 never said, please, Mitch, stop, his neck.
18 Mitch, stop, please. I've got the gun. Don't
19 make me use this Mitch. Don't make me do this.
20 He wasn't begging and pleading. He wasn't doing
21 anything. He tried to get out of the door one
22 time and he never said a word. Raised his
23 firearm and he shot Mitch twice, through the
24 heart and lungs, which is interesting. Right
25 where an experienced deer hunter, where he