

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable William P. Keesley, Circuit Court Judge

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Aug 31 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HEIRBERONE HEAVA FOSTER,

APPELLANT

APPELLATE CASE NO. 2019-000892

RECORD ON APPEAL

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1 then?

2 A. Yes, that was -- I was there when it happened.

3 Q. Okay.

4 MS. ZMROCZEK: I beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. ZMROCZEK: Nothing further, Your Honor.

7 THE COURT: Redirect?

8 MS. PATTERSON: Just briefly.

9 REDIRECT EXAMINATION

10 BY MS. PATTERSON:

11 Q. Troy, do you remember other people being around when
12 Will got shot?

13 A. To be honest, ma'am, it was -- it was a bunch of us
14 that were there that day.

15 Q. But at that point you was just talking to Will,
16 correct?

17 A. Yes, yes, yes.

18 Q. And when the Defendant came out -- when Mr. Heirbrane
19 came out the door, do you remember him saying anything?

20 A. To be honest, he was like I told you about fucking
21 with me, then he shot him and shut the door.

22 MS. PATTERSON: Thank you, Troy. No further
23 questions.

24 THE COURT: Recross?

25 MS. ZMROCZEK: Yes.

1 | RECROSS EXAMINATION

2 | BY MS. ZMROCZEK:

3 Q. Troy, now you remember that Heirbrane was saying
4 something?

5 | A. Say what?

6 Q. You remember today that Heirbrane was saying
7 something?

8 | A. No, I -- I remember that.

9 Q. You remember that on that day?

10 | A. I remember that, that moment.

11	Q. Okay.
----	----------

12 | A. That particular moment.

13 Q. And so that particular moment when you gave the
14 statement to the police, they -- they were trying to make
15 sure that you told them everything that you remembered,
16 right?

17 | A. I guess.

18 Q. And that's why they gave you a copy, they had you
19 initial it?

20 | A. I guess.

21 Q. Okay. They had you sign it?

22 | A. I guess.

23 Q. Okay. Is that your signature?

24 | A. If it's on there, it's on there.

25 Q. Okay. So that's a yes. And you never said anything

1 about Heirbrane saying any words, did you?

2 A. I guess.

3 Q. So no?

4 A. I guess.

5 Q. You guess no?

6 A. I guess.

7 Q. All right. So when the police were there to get all
8 the information about what happened, you never told them
9 that he had said anything?

10 A. I guess. I don't know.

11 Q. Okay. And if you had, it would be written in your
12 statement?

13 A. I guess so.

14 Q. Okay. Well, let me hand you your statement one more
15 time and ask you if it's in there?

16 A. You just read it.

17 Q. Right. But let me hand it to you again.

18 A. What you want me to say, no? No, I didn't.

19 MS. ZMROCZEK: Thank you. No further questions,
20 Your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 (Witness excused.)

23 THE COURT: Call your next witness.

24 MR. PINCELLI: Your Honor the State calls Keith
25 Sprinkle.

1 (Whereupon, Keith Sprinkle was duly sworn by the
2 Clerk of Court.)

3 THE CLERK: Please be seated in the witness stand.
4 Once you are seated, please state your name; spelling your
5 last name for the record.

6 THE WITNESS: My name is Keith Sprinkle,
7 S-P-R-I-N-K-L-E.

8 KEITH SPRINKLE,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PINCELLI:

12 Q. Good morning, Mr. Sprinkle.

13 A. Good morning.

14 Q. Mr. Sprinkle, where do you work?

15 A. I currently am employed with the Federal probation
16 office in Columbia.

17 Q. Where were you working back in May of 2016?

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

19 Q. And what was your position there?

20 A. At that time, I was a crime scene investigator.

21 Q. So as of May 2016, you were a crime scene investigator
22 with Lexington County. How long had you been in that role?

23 A. At that time, it was about two -- right over two
24 years.

25 Q. And can you explain -- I'm sorry, what was your title

1 for that role?

2 A. Crime scene investigator.

3 Q. Okay. And what -- what were the duties of a crime
4 scene investigator?

5 A. As a crime scene investigator, I was centralized at
6 headquarters at Lexington County Sheriff's Department and
7 we responded all throughout the entire county to process
8 any kind of crime scenes, both of violence or any --
9 anything from burglaries to arsons, suicides, any kind of
10 suspicious deaths, all homicides, sex crimes. So we
11 responded to any kind of crimes that required any kind of
12 processing for evidence and upon -- being called upon to --
13 to conduct any kind of searches or processing of any kind
14 of crime scene. It was our job to utilize any kind of
15 forensic or scientific methods to identify and collect and
16 process a crime scene.

17 Q. So you talked about having to use some different
18 methods to collect information through your -- for your
19 investigations. Did you do any special kind of training
20 to be a crime scene investigator?

21 A. Yes, they put us through a lot of training.

22 Q. What -- what are some basic types of training or what
23 special knowledge did you need to better conduct your
24 investigations?

25 A. Well, they initially put you through an FTO or a

1 training phase. After that, they put you through some
2 basic CSI forensic training classes. And then from there
3 they -- through the years go on, they -- they put you
4 through numerous different classes and trainings. Through
5 my time in CSI I took eleven different classes, over
6 369 hours of forensic-related training.

7 Q. And going back to the incident in question, how did
8 you become involved?

9 A. On that date, on May 10, 2016, I was -- I was called
10 by CSI Shelby Derrick. She advised me of this crime scene.
11 And she was the primary CSI leading that day and she
12 called me for -- to assist because it's per policy that
13 any homicide or apparent homicide or suspicious death that
14 they require two CSI on a scene, so she called me and
15 notified me of the scene and I responded.

16 Q. And, I'm sorry, you said per policy you needed two
17 CSI's on-scene?

18 A. Yes, sir.

19 Q. And so you were one of those two people?

20 A. Yes, sir.

21 Q. And you explained your -- I'm sorry, what is the
22 timeline? When does CSI get on-scene for what you might
23 think is a suspicious death or a possible homicide?

24 A. I mean, I could give you the times that I responded,
25 but typically whenever a call comes out, say 9-1-1 is

1 called by an individual, the first individual -- the first
2 law enforcement typically on-scene is gonna be your road
3 patrol, a uniformed officer in a marked patrol vehicle.
4 They're the ones that are responding to the 9-1-1 calls.
5 Typically whenever they get on-scene and they assess --
6 they initially assess what's going on, what happened, and
7 they will notify major crimes and also a supervisor will
8 notify CSI to respond to the scene if need be.

9 Q. So that was -- you're speaking a little generally
10 there. Can you walk me through that process, how it
11 happened on this day, how you got called. You said Shelby
12 Derrick called and by your protocol you needed to be the
13 second person, second CSI, on-scene?

14 A. Yes.

15 Q. How did you receive that call and how long did it take
16 you to get there?

17 A. Again, I received a phone call from CSI Shelby
18 Derrick. And if you don't mind me taking a look at my
19 notes real quick, I received the call at 17:05, which is
20 5:05 PM. I arrived on-scene just at 5:45 PM. So
21 forty-nine minutes later it took me to prepare and drive
22 down to that scene. Again, notified by CSI Shelby Derrick,
23 but whenever I responded to the scene there were already
24 Lexington County investigators and deputies on-scene
25 already.

1 Q. And did you speak with those deputies once you got
2 on-scene?

3 A. I did.

4 Q. And what did you learn about the status of the scene?
5 What pertinent information did you gather from them?

6 A. I was advised that there were some individuals outside
7 of the -- in the yard. An incident occurred where -- I was
8 told that Mr. -- Mr. Heirbrane Foster had shot his son and
9 we had a victim or an individual that was deceased in the
10 yard. At that time whenever we respond, whenever the CSI
11 responds, there's -- at that time no one is inside that
12 crime scene, it is taped off, which it was in this case,
13 and investigators are speaking to witnesses at that time,
14 so. But I was -- I was advised that that was the incident
15 that took place and was told some other facts of the case
16 or -- or at that time what they had discovered and had that
17 one deceased individual in the front yard -- front right
18 part of the yard.

19 Q. And you described police tape. Would that be to
20 secure the location?

21 A. Yes, secured by crime scene tape and police presence.

22 Q. Did you learn anything else about how the location was
23 secured?

24 A. No, just by crime scene tape and officer presence
25 making sure that there's -- no one that goes in and out of

1 the crime scene and to do -- to ensure that, we have an
2 assigned deputy that takes a log of any individual, whether
3 it be EMS, fire, law enforcement, coroner's office or any
4 other individual going inside and outside of that crime
5 scene, it's all documented on a log.

6 Q. And would somebody have swept the inside of the house
7 to make sure it was secure?

8 A. Yes, that would have been done prior to our response.
9 So whenever deputies first respond on-scene, they have to
10 clear it to make sure that it is secure, meaning that
11 there's no threats in that area. Certainly inside that
12 house should have been cleared, and which I was told, as
13 that's one thing that we ask as CSI's when we respond to
14 the scene, speak to them, the responding deputy, meaning
15 the first deputies on-scene and also the investigators,
16 that the house -- the residence had been cleared, meaning
17 that they went through the house making sure that there's
18 no other dangers and that there's no other threats inside
19 that residence so it's safe for us to go in.

20 Q. And we've spoken a lot about that residence now. Can
21 you tell me the address that -- the location of that
22 residence?

23 A. Uh-huh. It was [REDACTED] 8 Glenn -- Oak Glenn Drive.

24 Q. And what county is that in?

25 A. That's in Lexington County.

1 Q. And so you said that the scene was secure. Can you
2 tell me about outside the police tape what the scene was
3 like?

4 A. Sure. There were numerous police vehicles, law
5 enforcement vehicles. We had fire and EMS and actually
6 there was a large crowd of people in that neighborhood that
7 were gathering and actually we had a news crew that started
8 showing up and was setting up.

9 Q. Thank you, Investigator Sprinkle. I'm gonna approach
10 you with some pictures of that scene you were describing.

11 MR. PINCELLI: I'm sorry. I need to get those marked.

12 (State's Exhibit Number 19 through 27 were marked for
13 identification.)

14 MR. PINCELLI: Again, these are gonna -- Your Honor,
15 I believe defense counsel is stipulating to State's 19
16 through 27 being entered into evidence.

17 MS. ZMROCZEK: That is correct, Your Honor.

18 THE COURT: They're in evidence.

19 (State's Exhibit Number 19 through 27, photographs,
20 were admitted into evidence.)

21 BY MR. PINCELLI:

22 Q. Investigator Sprinkle, I'm gonna put a picture up.
23 This is what's marked State's Exhibit 20. Do you recognize
24 that?

25 A. I do.

1 Q. And is that the house that you investigated?

2 A. Yes, that is ■ 8 Oak Glenn Drive, the residence at
3 that property.

4 Q. Is that where you would have gone, through that
5 entrance, to investigate?

6 A. Yes, that -- that was the -- the door that we entered
7 the residence on this case, yes.

8 Q. Is there any reason in particular that you went in
9 through that entrance?

10 A. There were three different doors in this -- on this
11 house. You had a front door, you had a back door, and then
12 the right side door. This door was open and we knew that
13 the incident took place in this area and so whenever we
14 process a crime scene we typically -- we always work our
15 way out and in. So knowing that this is where the incident
16 took place, after we processed the outside, we worked our
17 way into the -- the residence and it makes more sense for
18 that to be the entrance for this case.

19 Q. Sure. And for purposes of my questions, I might work
20 a little bit backwards with you. I might go kind of inside
21 out.

22 A. Okay.

23 Q. Was there anything inside the house that you'd been
24 alerted of that might be of interest to crime scene
25 investigation?

1 A. Yes, we were advised by the responding deputies
2 that cleared the residence that -- and also through
3 investigators through their investigation and talking to
4 witnesses that a firearm was located inside the kitchen
5 part of the residence, which that door that you showed
6 goes directly into the kitchen, and so --

7 Q. I'm gonna show you what's marked State's 23. Is that
8 the kitchen you're talking about?

9 A. Yes. So this right here is the door going from the
10 carport into the kitchen and so as soon as you step into
11 the residence, you have the kitchen and dining area and
12 then off to the left goes down the hall into the living
13 room and into the bedrooms, and right there is the firearm
14 that we were notified of. And that's exactly how we found
15 it once we responded on-scene. It's got the shotgun
16 partially covered by a floral blanket.

17 Q. I'm gonna show you what's marked State's 24. Can you
18 explain what's going on in that picture?

19 A. So whenever we identify a piece of evidence, in this
20 case this firearm, we take photographs of it without
21 placards before any kind of manipulation of any kind of
22 evidence; far photographs, medium photographs, and close-up
23 photographs, and then -- before any kind of manipulation,
24 and then we're going to identify it with placards, the
25 yellow ID placards. We identified this firearm as ID

1 Number 4. This placard is referencing this shotgun.
2 Numbers 5 and 6 are identifying the shotgun shells inside
3 the shotgun. We didn't find it like that obviously. Like
4 I said, we -- we take photographs prior to putting the
5 placards in, but the -- those shotgun shells were located
6 inside the shotgun. There was the one spent shell casing
7 inside the chamber of the shotgun and then three unspent
8 shells.

9 Q. So those were all ejected from the gun. What was the
10 purpose of that?

11 A. I'm sorry, can you repeat that?

12 Q. Why are those shells out of there if you found them
13 inside the weapon?

14 A. We have to render the -- the firearm safe. We cannot
15 just -- it's unsafe to take a firearm unknown if it's
16 loaded or not for us to be carrying it around and packaging
17 it and turning it into evidence and people handling it in
18 evidence to store. It's just unsafe for that reason and
19 also we have to search and identify if that firearm -- if
20 it's been used, if it has any kind of spent shell casings
21 or spent ammunition, if it's loaded. Those are things that
22 we have to know for the investigation so we're not going to
23 just collect it as is, we're going to go a step further
24 and find out what's -- what's inside the firearm if it's
25 loaded.

1 Q. And did you -- do those placards indicate that you did
2 collect all that information, all the evidence?

3 A. Yes, all those were identified and collected.

4 Q. And did you do any further testing of -- for DNA swabs
5 or fingerprints?

6 A. We did not in this case. It wasn't required or
7 necessary.

8 Q. Why do you say it wasn't required or necessary?

9 A. If we didn't know who or if we didn't have an idea
10 or an identified subject in this -- in this case, then we
11 would more than likely have processed the firearm for DNA
12 or fingerprints, but through investigation we had already
13 been notified that we had a suspect in this case, a
14 shooter, so we had witnesses. We had no reason to further
15 process the firearm for DNA or fingerprints.

16 Q. And, like I told you, I was gonna work a little
17 backwards than you did that day. I'm going inside out.
18 This is State's 21. Can you explain to the jury what we're
19 looking at there?

20 A. This right here is the concrete carport. You have the
21 dirt to the right side of the residence. The residence is
22 on the left side. This is the front side of the residence
23 and this is the back side of the residence and right here
24 you have several puddles of blood.

25 Q. And you said -- you indicated the residence was gonna

1 be to the left side of this photograph, State's 21?

2 A. Yes.

3 Q. And what part of the residence is that?

4 A. So this is the right side of the residence. The other
5 photograph that we looked at, the kitchen door, is right
6 here and so the kitchen is right in this area.

7 Q. And through your investigation, do you have any
8 indication of whose blood that was?

9 A. Yes.

10 Q. And whose was that?

11 A. It was the victim, Heirbrane William Foster.

12 Q. Did you take any DNA evidence of that?

13 A. I did not.

14 Q. Okay.

15 A. Again, in this case it was -- it was not needed.
16 Since we had a -- the starting of a blood pool and drops
17 -- continual blood drops to the victim's deceased body,
18 there was no need to identify whose -- whose blood it was.

19 Q. You talked about a blood trail and some blood pools.

20 A. Uh-huh.

21 Q. I'm gonna show you what's marked State's 22. Is there
22 anything on that picture that indicates the trail you just
23 mentioned?

24 A. Yes, this is the beginning of the blood trail, this
25 is the blood -- large blood puddles on the concrete, and

1 then you've got blood trailing all the way -- large -- a
2 large amount of blood drops going into the -- leading into
3 the right side of the yard into the sand directly where the
4 body was found.

5 Q. And this is State's 19. Can you explain to the jury
6 what we're looking at there?

7 A. Okay. This is the residence, ■ 8. This is the
8 carport that we were talking about. The kitchen to the
9 -- the door to the kitchen. The initial blood puddle is
10 right here and a trail of blood that leads to the body.
11 And this is the victim's body. This is how we found him.
12 The victim on-scene had been covered up by medical -- EMS.

13 Q. Okay. So now that you've established the trail and
14 where the body ended, I'm going back to State's -- State's
15 21. Can you tell me from your crime scene investigation
16 knowledge and experience were you able to determine that
17 was the initial -- that was the start of the blood
18 on-scene?

19 A. Yes.

20 Q. And what can you say about the positioning of that
21 blood?

22 A. The positioning of that blood, it's not blow back or
23 blood spatter from the -- from a gunshot wound. This is
24 heavy blood drops, 90-degree angles, directly right down
25 onto the concrete; this being the largest amount of blood

1 and then leading to the end source, the victim. There was
2 no other blood located on the scene. We didn't -- this
3 is -- this is the initial source of blood. It being a
4 90-degree angle, it indicated that the victim whenever he
5 was shot had to have been somewhere in this area. You
6 cannot tell if he was directly on the concrete or right on
7 the sand, but somewhere in this area, and at some point
8 he turned and a lot of blood -- a large amount -- he was
9 losing a lot of blood out of his chest cavity.

10 Q. And did you take any measurements --

11 A. Yes.

12 Q. -- through your investigation?

13 A. Yes, I did.

14 Q. Can you explain the purpose of those measurements?

15 A. The purpose of taking measurements of a crime scene
16 is to have a record of exactly where everything was found.
17 What we call triangulation. We take -- we take two stable
18 objects. In this case, we had -- or fixed objects. In
19 this case, we took the right front corner of the residence
20 and the telephone pole or electric pole. We took those
21 two points as our fixed points and took measurements of
22 certain items of the scene. The victim is always -- always
23 gonna be one of those points -- one of those items that
24 we -- or objects that we take measurements of so that if
25 needed to we can recreate the crime scene.

1 Q. And it's your testimony that you did take the
2 measurements based on those locations?

3 A. Yes, we did.

4 Q. That State's 19 that's up on the -- on the projector
5 there, you indicated that one of them -- one of the points
6 was the front of the house?

7 A. Yes.

8 Q. Is that shown on there?

9 A. Yes, it is. Right there.

10 Q. So you're indicating that's the bricks on the house,
11 not the carport?

12 A. Yes, that's correct. The bricks.

13 Q. And this is State's 11. Is this the telephone pole
14 you're talking about?

15 A. Yes. That right there.

16 Q. Okay. Did you take any measurements of any of the
17 blood and where that was in relation to the doors of the
18 house?

19 A. Yes. I took one -- one measurement. There's no need
20 to take multiple measurements, but just the -- the single
21 largest pooling of blood where it initiated is where we
22 took a measurement of for the pooling of the blood.

23 Q. And is that where the blood was initiated, is that
24 where you just referenced?

25 A. Yes.

1 Q. And what was that measurement?

2 A. From the center of the blood to -- if you don't mind,
3 let me --

4 Q. Sure. Yeah.

5 A. From the -- we took a measurement from the kitchen
6 door. So the center of the kitchen door to the blood is
7 exactly thirteen feet and four inches.

8 Q. Did you take a measurement from where Will's body was?

9 A. I did.

10 Q. And how far was that? What was the reference point?
11 Where did you measure that from?

12 A. From the body to triangulate. Like I said, that we
13 use two different points. Like the right corner of the
14 house, front right corner, and then the electric pole. And
15 so from the residence of -- the front right corner of the
16 residence to say his -- to his head was thirty feet and
17 one inch. And from the pole, how far away the pole over
18 here was --

19 Q. Now I'm putting up State's 11. That shows the pole
20 for you.

21 A. From the pole to his head, the center of his said,
22 was twelve feet four inches.

23 Q. And was there anything else -- again, I'm working
24 from inside out. So you've shown me the gun, you've shown
25 me the blood, you've spoken about how far the body was.

1 Was there anything else on the outside that you took note
2 of or collected for evidence?

3 A. Yes. Whenever we were talking to the investigators
4 at the beginning, and we communicate with them throughout
5 the processing of processing the scene, is that we were
6 notified of a two by four that had been used at some point
7 in an altercation identified right there at the -- near the
8 edge of the yard right at the edge of the road.

9 Q. I'm gonna show you what's State's 25. Is that the
10 same thing?

11 A. Yes, it is.

12 Q. Just a little more focussed on the two by four?

13 A. Yes. You have the body, the pole and the two by four
14 right there in the roadway.

15 Q. Okay. Now I'm gonna show you what's marked as
16 State's 26. What is that indicating?

17 A. We identified that item as Evidence ID Number 1.
18 Again, we work our way out to in. That being the furthest
19 item out from the residence, that's gonna be identified as
20 Number 1. No significance to Number 1 except that's just
21 the first piece of item -- of evidence that we identified,
22 but identified it with that placard, photographed it, and
23 collected that two by four.

24 Q. What does -- what happens to all this evidence once
25 you collect it from the crime scene?

1 A. After we are completely through processing a crime
2 scene, it's documented on the search warrant return all
3 the items that we've taken from the -- from the scene and
4 that's provided to the owner of the residence and then
5 the evidence itself is taken by CSI to the sheriff's
6 department and either, if needed, to continue any kind of
7 processing -- further processing or just packaged. A lot
8 of times in homicide cases things are bloody and needs
9 time to dry, so we take it into the crime scene lab at
10 the sheriff's department for either packaging or further
11 processing and eventually it's packaged and submitted into
12 evidence.

13 THE COURT: Hold on, Mr. Sprinkle.

14 Ladies and gentlemen of the jury, I'm gonna send you
15 back to the jury room. You've got to keep your eyes open.
16 Everybody needs to be able to stay awake and keep your eyes
17 open, so if you need some caffeine or something, tell the
18 bailiff. Leave you notes. Don't discuss the case.

19 (Whereupon, the jury retires to the jury room at
20 11:47 AM.)

21 THE COURT: Mr. Sprinkle, during the break you're not
22 permitted to discuss your testimony with anyone. You can
23 step down, if you'd like.

24 (Recess taken at 11:48 AM.)

25 BAILIFF: All rise. Court's now in session.

1 THE COURT: Thank you. Be seated, please.

2 Is the State ready for the jury?

3 MR. PINCELLI: Yes, Your Honor.

4 THE COURT: Is the defense?

5 MS. ZMROCZEK: Yes, Your Honor.

6 (Defendant's Exhibit Number 20 through 22 were marked
7 for identification.)

8 (Whereupon, the jury return to the courtroom at
9 11:59 PM.)

10 THE COURT: All right. You may continue, Solicitor.

11 MR. PINCELLI: Thank you.

12 BY MR. PINCELLI:

13 Q. Investigator Sprinkle, when we took a short break,
14 you were talking about that two by four and you'd also
15 earlier said that you took some measurements. Did you
16 take a measurement of that two by four?

17 A. Yes, I did.

18 Q. And what was the reference point from that -- from
19 that two by four's measurements?

20 A. The pole right there. The electric pole.

21 Q. Okay. And what was the measurement on that?

22 A. From the pole to Item 1 was approximately nine feet
23 eight inches and I also took a measurement from the
24 victim's head to the pole -- I mean, to the two by four.

25 Q. And how far from the victim?

1 A. And that was twenty-one feet nine inches.

2 Q. All right. I'm gonna show you --

3 MR. PINCELLI: This is an ID only.

4 MS. ZMROCZEK: You can put it in.

5 MR. PINCELLI: Okay. Are you gonna stipulate to
6 that?

7 MS. ZMROCZEK: Go ahead.

8 MR. PINCELLI: Stipulating?

9 Your Honor, what's marked as State's ID 3, is gonna
10 be stipulated into evidence.

11 THE COURT: Mark Number 3 into evidence.

12 (State's Exhibit Number 3, a photograph, was admitted
13 into evidence.)

14 BY MR. PINCELLI:

15 Q. I'm showing you State's 3. Would that be something
16 you observed on-scene, Investigator Sprinkle?

17 A. Yes, it was.

18 Q. Did that indicate just the items about your
19 investigative scene?

20 A. Yes. There were multiple, tools, equipment, lumber.

21 I mean, a lot of different items in the -- in the yard,
22 especially in the backyard around the -- the carport.

23 But, again, no items were indicating -- had blood on it

24 or anything like that. And also in this case where we

25 actually had witnesses that were speaking to investigators

1 who were relaying information to us that no other items
2 like that were actually used in this scene -- in this
3 incident, so none of those were identified or collected as
4 evidence.

5 Q. Okay. Now I'm gonna move on to the victim's body.
6 You indicated its location. You indicated what happens --
7 you told us what happens to the evidence you collect after
8 it's collected. What happened to Will's body?

9 A. It is a joint effort to investigate the scene
10 pertaining to the body, but after we are through
11 photographing, taking measurements, searching the body
12 itself, seeing what's on the individual, then the body is
13 actually taken into custody by the coroner's office, so
14 Lexington County Coroner's Office took possession of the
15 body and the next day they -- actually in this case the
16 next day an autopsy was conducted, so.

17 Q. And during the course of that, do you stay involved
18 in the investigative process?

19 A. Yes, we do.

20 Q. Were you present to notice anything or take any
21 pictures?

22 A. Yes.

23 Q. And I'm showing you what's State's 27. What is that?

24 A. That is a photograph of a shotgun wadding, the plastic
25 wadding, that actually was found inside the victim's chest

1 cavity, the gunshot wound cavity in his chest.

2 Q. And through your time in law enforcement and crime
3 scene investigation, have you had to deal with different
4 gunshot wounds before?

5 A. Yes.

6 Q. Have you had to deal with different ammunition before?

7 A. Yes.

8 Q. Through your general experience, can you explain the
9 inner workings of a shotgun shell and explain that how that
10 works into there?

11 MS. ZMROCZEK: Your Honor, we would object. That
12 would be beyond his scope. He has not been qualified as
13 an expert.

14 THE COURT: Do you wish to be heard?

15 MR. PINCELLI: I'm sorry, Your Honor?

16 THE COURT: Do you wish to be heard?

17 MR. PINCELLI: I don't think he would necessarily
18 need to be an expert in a shotgun shell. I think he's
19 experienced enough through his work as a CSI investigator
20 to explain what that is.

21 THE COURT: No, he'd have to be qualified as expert.

22 BY MR. PINCELLI:

23 Q. Investigator Sprinkle, through your training, you
24 said you've done three hundred and some hours of training
25 and multiple courses with Lexington County through your

1 work as an investigator. Have you taken any courses to be
2 able to identify firearms or ammunition?

3 A. I have.

4 Q. During those courses do you learn the inner workings
5 of ammunition?

6 A. Yes.

7 Q. And the parts, what they're made of?

8 A. Yes.

9 MR. PINCELLI: Your Honor, at this time I'd like
10 Investigator Sprinkle to be recognized as an ammunitions
11 expert.

12 THE COURT: Voir dire?

13 MS. ZMROCZEK: Yes.

14 VOIR DIRE EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. Of this three hundred hours of training, how much of
17 it was ammunition?

18 A. I have taken through the one -- going back the FTO
19 process, the field training process, we covered different
20 types of ammunition, the structure of a bullet and a
21 shotgun casing, and also through the crime scene technology
22 and evidence collection that I -- that I have taken, that
23 was 32-hour course at a forensic school, and that did cover
24 some on ammunition and firearms.

25 Q. And when was the last time you received any training

1 specifically on ammunition and firearms?

2 A. The last -- the last actual training was back on
3 May 16, 2016.

4 Q. And do you keep up with -- do you read peer journals
5 and articles?

6 A. I did whenever I was in CSI.

7 Q. Okay. Have you written any?

8 A. I have not.

9 Q. Okay. Are you a member of any organizations or
10 professional -- have any professional associations with
11 the literature on ammunition and firearms?

12 A. During the time while I was in CSI and actually
13 while I was at the sheriff's department even before CSI
14 I was a member of IAI, which is the International
15 Association of Identification, and that material is readily
16 available to us in CSI and we did read over material from
17 IAI.

18 Q. So you're saying that -- that you have an expertise
19 in identifying ammunition?

20 A. I have not ever been qualified as an expert in
21 ammunition, but I have taken classes and have had real life
22 experience and training experience identifying different
23 parts of ammunition and -- and firearms.

24 Q. Have you ever been qualified as an expert with
25 anything to do with firearms in a court before?

1 A. Not in firearms. In crime scene, but not firearms
2 specifically.

3 MS. ZMROCZEK: Your Honor, that's all the questions
4 that we have. We don't believe that his knowledge is --

5 THE COURT: Ladies and gentlemen of the jury, please
6 step into the jury room. Do not discuss the case.

7 (Whereupon, the jury retires to the jury room at
8 12:07 PM.)

9 THE COURT: Mr. Pincelli, I want you to proffer what
10 it is you want to elicit from him.

11 EXAMINATION (In-Camera)

12 BY MR. PINCELLI:

13 Q. Investigator Sprinkle, you said you found this wadding
14 as a result of the investigation of the autopsy?

15 A. Yes.

16 Q. And where was the wadding located?

17 A. It was inside of the chest cavity of the victim.

18 Q. And can you explain what the purpose of wadding is in
19 a shotgun shell?

20 A. The purpose of the wadding itself is to -- is to
21 actually contain the pellets of the -- which is the --
22 the trajectory or the ammunition inside the -- inside the
23 shotgun shell. You have the shell and inside the shell you
24 have the wadding, which contains the pellets, in this case
25 the pellets of the shotgun shell, and upon -- upon any kind

1 of a discharge of a shotgun you have the wadding that comes
2 out of the barrel and after release of the barrel, the
3 wadding falls to the ground while the pellets continue
4 travelling as they're heavier, they're metal, and they --
5 they travel. That's what the bullet in -- I say the
6 bullet, the pellets are considered in a shotgun. The
7 wadding is just simply the material that's holding the
8 pellets together until release of the shotgun -- out of the
9 shotgun.

10 Q. So that's part of the interior of a shotgun shell?

11 A. Yes, it is.

12 Q. And it's ejected when a shotgun shell is -- is fired?

13 A. Yes.

14 Q. And it does not -- are you saying it would not travel
15 as far as the actual lead inside the shotgun shell?

16 A. Correct.

17 Q. From your training and experience in investigations
18 and knowledge of ammunition, what -- what does the presence
19 of wadding in a body indicate to you?

20 A. Close range distance.

21 MR. PINCELLI: That would be the extent of my
22 questions, Your Honor.

23 THE COURT: Do you want to keep that out?

24 MS. ZMROCZEK: No. No, Your Honor. I just didn't
25 know what he was gonna testify to because they didn't

1 have him --

2 THE COURT: I didn't see why you would. Bring the
3 jury in.

4 MS. ZMROCZEK: No, we want to bring that in, Your
5 Honor. We're fine with that.

6 (Whereupon, the jury returns to the courtroom at
7 12:09 PM.)

8 THE COURT: So do you object now to him being --

9 MS. ZMROCZEK: I withdraw that objection, Your Honor.

10 THE COURT: All right. Thank you.

11 The objection is withdrawn. The witness has been
12 tendered without objection as an expert in the field of
13 ammunition and may render opinions in that regard.

14 You may continue.

15 MR. PINCELLI: Thank you, Your Honor.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. PINCELLI:

18 Q. Investigator Sprinkle, we were talking about what's
19 up on the board now in State's 29 {sic}. You referred to
20 that as wadding. Can you explain to the jury what wadding
21 in reference to a shotgun is?

22 A. So the ammunition of a shotgun is a shotgun shell.
23 Inside the shotgun shell you have your primer and inside
24 the tubing, the tube of the shell, you have -- you have the
25 wadding, the plastic wadding, which is kind of -- it's what

1 houses the pellets, which is the ammunition of the firearm,
2 of the bullet. It's like a plastic flower so to speak that
3 carries -- that houses the pellets through the -- once it's
4 -- the shell is actually discharged, the shell opens up and
5 the wadding containing the pellets travels through the
6 barrel and upon releasing through the barrel the wadding at
7 some distance will fall to the floor, to the ground, and
8 the pellets is what travels as the projectile.

9 Q. And, again, where was this wadding located during your
10 investigation?

11 A. The wadding was located inside the chest cavity,
12 which is the gunshot wound location of the -- in the
13 victim, inside the victim's body.

14 Q. Through your experience and expertise, what does that
15 indicate to you?

16 A. Close range.

17 Q. I'm gonna reference you back to what's marked
18 State's Exhibit 21. That's the pool of blood you indicated
19 measuring about thirteen feet from the door opening. Is
20 that what you testified to?

21 A. Yes.

22 Q. Would that be a consistent distance that would lead to
23 wadding inside the chest?

24 A. Yes. Absolutely.

25 MR. PINCELLI: Thank you, Investigator Sprinkle.

1 Please answer any questions from the defense.

2 I'm sorry. I beg the Court's indulgence.

3 THE COURT: Yes.

4 MR. PINCELLI: Investigator Sprinkle, please answer
5 any questions from the defense.

6 THE COURT REPORTER: Can I -- you referred to that
7 photo as Exhibit 29.

8 MR. PINCELLI: 21.

9 THE COURT REPORTER: No, the --

10 MR. PINCELLI: I'm sorry. This is 27.

11 THE COURT REPORTER: You said 29 though.

12 MR. PINCELLI: Okay. I need to make a correction.
13 The picture of the wadding is State's 27 and not
14 State's 29.

15 Thank you very much.

16 THE COURT: Cross?

17 MS. ZMROCZEK: Thank you, Your Honor.

18 And I believe that Defendant's 21, 22, 16, 17, 12, 13,
19 and 20 are in without --

20 MR. PINCELLI: In without objection, Your Honor.

21 THE COURT: Say those again.

22 MS. ZMROCZEK: I certainly will. It is 12, 13, 16,
23 17, 20, 21 and 22.

24 THE COURT: Defense?

25 MS. ZMROCZEK: Correct.

1 THE COURT: They're in evidence.

2 (Defendant's Exhibit Numbers 12, 13, 16, 17, 20, 21,
3 and 22, photographs, are admitted into evidence.)

4 MS. ZMROCZEK: Thank you.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. Agent Sprinkle, you said that being a CSI you received
8 a lot of training?

9 A. Yes.

10 Q. And you base your -- and you base your -- you kind
11 of tailor your testing and evidence gathering as to
12 information that you are relayed to while at the scene,
13 right?

14 A. Yes.

15 Q. So sometimes you don't have to take DNA if you know
16 that there was only one person that was shot?

17 A. Yes, sometimes. And especially in this case where we
18 had a lot of information given and witnesses, yes.

19 Q. Okay. And you would agree with me that part of CSI
20 is fingerprints?

21 A. That is -- that is one forensic field in -- yes,
22 that's one discipline in the forensic world, yes.

23 Q. One discipline?

24 A. Yes.

25 Q. And so -- and you can get fingerprints off of levels,

1 like aluminum or metal materials?

2 A. You can. It's -- nothing's guaranteed to have a
3 latent print on it for transfer or how long it may last
4 on material or an item. But, yes, you can or you might.

5 Q. Okay. And you didn't collect any metal or aluminum
6 items in this, such as a level or anything like that, did
7 you?

8 A. No.

9 Q. Okay. I'm gonna show you what is to be marked as
10 Defendant's 23 --

11 (Defendant's Exhibit Number 23 was marked for
12 identification.)

13 Q. -- and ask if you recognize this?

14 A. Yes, I do.

15 Q. And does that fairly and accurately represent a piece
16 of evidence that you collected?

17 A. Yes, it does.

18 Q. Okay.

19 MS. ZMROCZEK: Your Honor, at this time we'd move
20 Defendant's 23 into evidence.

21 THE COURT: Any objection to this?

22 MR. PINCELLI: No objection, Your Honor.

23 THE COURT: Mark 23 in evidence, please.

24 MS. ZMROCZEK: Thank you.

25 (Defendant's Exhibit Number 23, a two by four, was

1 admitted into evidence.)

2 BY MS. ZMROCZEK:

3 Q. And will you open that and take it out for me.

4 A. Does anybody have some scissors?

5 Q. Nobody has any. We can -- we'll move on from that in
6 the meantime if you can't get it open.

7 THE COURT: I've got a knife.

8 MS. ZMROCZEK: Oh, you do?

9 THE COURT: They let me carry one in the building.
10 They don't let others.

11 MS. ZMROCZEK: They abscond all my sharp objects.

12 THE COURT: It's not very sharp.

13 THE WITNESS: Thank you, Your Honor.

14 BY MS. ZMROCZEK:

15 Q. Okay. So this item, 23, and I believe -- I'm gonna
16 put up Defendant's 21. That's the same -- that's the same
17 item that you collected, correct?

18 A. Yes, that's correct.

19 Q. And you collected this because you were told that it
20 was an important piece of evidence in this case, right?

21 A. I was told by the investigators at Lexington County
22 Sheriff's Department that that two by four through their
23 investigation had been used at some point during this
24 altercation. It was not necessarily used during the
25 actual shooting incident, but during the altercation

1 between the son and father that that two by four had been
2 used at some -- some time.

3 Q. Okay. And when you collect it, you put evidence tape
4 on it to make sure that it's the same thing, right?

5 A. To make sure that the seal of the packaging of the
6 evidence is -- that it's secured in the packaging, yes.

7 Q. Okay. And on that day or at any time, were you ever
8 directed to go back and collect any more evidence?

9 A. After that -- after the 10th?

10 Q. Yes.

11 A. No.

12 Q. And, I mean, from the scene. I know that -- well,
13 we'll talk about the autopsy in a little bit. And I
14 want to show you a few more pictures while I'm here.

15 State's 22, it's kind of a different angle. One thing
16 that you do in crime scene investigations when you get to
17 a scene, like you said, is you work out in, right?

18 A. Yes.

19 Q. So you take pictures kind of -- of an overall view of
20 the area in which you were told that was important?

21 A. Uh-huh. Correct.

22 Q. And then as you get closer to items, closer to items,
23 you just take closer in pictures, right?

24 A. Yes.

25 Q. So this would be what you call a far away or a

1 distance shot?

2 A. Yes.

3 Q. Okay. And it has the house and this is -- and this
4 is the corner that you're using for measurements?

5 A. Yes.

6 Q. Okay. And this is the -- Defendant's 23 is the two
7 by four that we just saw?

8 A. Yes, that is -- that is the two by four right there.

9 Q. Okay. All right. And then the garage. And you did
10 all of these measurements, right?

11 A. Yes, we took those measurements.

12 Q. Okay. And those -- because those were areas of
13 importance?

14 A. Yes.

15 Q. So Defendant's 16 you said the -- can you show the
16 thirteen foot measurement on here?

17 A. Yes. Thirteen feet. The measurement was from the
18 center of this door leading into the kitchen directly to
19 the center -- center area of the blood pool, the initial
20 blood pool.

21 Q. Okay. And I want to talk about the center area of
22 the blood pool, which is right about there?

23 A. Yes.

24 Q. Okay. And you said it was not spatter?

25 A. No.

1 Q. And it was not impact?

2 A. It was not.

3 Q. Okay. So explain what impact blood would be.

4 A. Impact blood spatter is whenever you have an object
5 that already has an open wound, an open source of blood,
6 and whatever object, whether it be blunt force or --
7 whatever object makes contact with that blood pool and
8 upon motion creates -- dries that blood and transfers and
9 so whenever it hits an item, that's called blood spatter.

10 Q. Okay. So in this case we have someone who was hit,
11 right?

12 A. Uh-huh.

13 Q. And we know that they moved and walked, right --

14 A. Yes.

15 Q. -- because we have a trail. And so how is it that
16 you came up with where he was standing? Do you know if he
17 was hit and then moved back and the blood came out or do
18 you know that he was there, the blood comes out and then
19 he starts to move back? Do you know when he started to
20 move back?

21 A. I don't know exact as far as like a timeline goes,
22 but I can look at the blood -- the blood on the ground,
23 the blood pooling, and give a directional travel, yes.

24 Q. A directional travel, right?

25 A. Uh-huh.

1 Q. But -- so you know that when that blood landed there
2 that he was standing off the carport, correct?

3 A. Whenever he -- the blood on the carport, he had to
4 have been leaning over to where that blood was coming out
5 of the blood source, which was the open chest cavity wound,
6 and pouring onto the blood -- onto the carport.

7 Q. Okay.

8 A. So you have the initial blood, the blood drop, the
9 blood pooling on the carport, and then you have a turning,
10 so a turning motion where you have -- you follow the blood
11 trail in which --

12 Q. This is Defendant's 9.

13 A. Yes. So you have initial -- I'm sorry, this is not
14 working right. You have an initial and then you have
15 another large area of blood pooling.

16 Q. Hang on. Let me make it a little less -- I think it
17 might be getting blurry with all of these pictures up here.
18 Let's try it this way. Okay.

19 A. So you have an initial blood pooling and then a
20 turning of the -- of the blood trail leads out to the
21 victim's body.

22 Q. Okay.

23 A. So what that -- what that indicates or what it's
24 consistent with is that if an individual was shot in this
25 case, he leaned forward and you have blood just pouring

1 out of his chest cavity, you have the blood that's on the
2 concrete, and what the -- the trail indicates is that
3 there was a turning, a continuous pouring out of the chest
4 cavity, and then leading out into the yard where he was --
5 his final resting spot.

6 Q. So if there was no blood as soon as there was impact,
7 it's possible that he could have even been up on that
8 carport, right --

9 A. (Nods head.)

10 Q. -- gets hit and then starts to back up because of the
11 hit, right?

12 A. No, there's -- there's no indication of -- nothing
13 would be consistent with the victim moving backwards.

14 Q. Right.

15 A. There was one photograph that, as I said, where you
16 have the -- the pooling of the blood. I didn't take any
17 measurement as far as how far the edge of the concrete --
18 the carport was -- the right side of the carport was to
19 the pooling of the blood, we took the measurement from the
20 house to the blood, but roughly a foot or two. So what
21 I'm -- what I'm getting at is I cannot tell if the victim
22 was shot while standing at the edge of the carport or if
23 he was a foot or maybe even two feet from the carport and
24 took a step or just leaned over. That I cannot tell
25 because there's no blood spatter, which is high impact

1 blood spatter. You have to have a vertical plane for that
2 and that's not -- I cannot give a point of origin in this
3 case for impact of the gunshot wound. But in this case
4 where you do have that -- that horizontal plane and the
5 90-degree angle, that indicates and that tells me at some
6 point that that blood source came down at a 90-degree
7 angle to that concrete, travelled as a left turn and then
8 continued into the yard.

9 Q. Okay. And blood -- and blood obviously can travel.
10 Bullets, they go straight, right?

11 A. For the most part, yes.

12 Q. Okay. When is it --

13 A. Whenever they're travelling through the air, yes.

14 Q. Sorry. That's what I meant. When the bullet is
15 ejected from the firearm, it travels straight until it hits
16 something?

17 A. Yes.

18 Q. Okay. So we could actually see what -- what
19 direction if that were something that was investigated,
20 what direction Defendant's -- or State's 27, at what
21 direction it entered the chest, right?

22 A. For this -- for a shotgun you cannot because a --
23 a bullet is a single object and you have a narrow -- a
24 linear path. Say if it enters one -- one object enters
25 one side and out the other, you have two points, an entry

1 and an exit, you have those two points that you can
2 reference to obtain a trajectory path. On a shotgun you
3 don't really have -- you don't have that. It's a mass
4 spread of multiple pellets, so you cannot obtain an exact
5 trajectory per se.

6 Q. And the further -- and the further away you are, the
7 more spread out those pellets become, correct?

8 A. Correct.

9 Q. And, like you said, this wadding kind of flowers and
10 that's where the pellets come out and then the wadding
11 generally drops, right?

12 A. Yes.

13 Q. How far -- how far out of the ejection process from
14 the firearm does that happen?

15 A. Are you talking about from -- once the wadding and
16 pellets leave the shotgun barrel?

17 Q. Barrel.

18 A. The projectiles travel. They're made of metal and
19 they continue travelling until they -- they either land or
20 hit their target. The wadding itself, that varies. It is
21 not very aerodynamic, it's made the plastic. It can travel
22 -- I've seen anywhere from ten yards to fifty plus yards.

23 Q. And in this case you said that this came out of the
24 chest, right --

25 A. Yes.

1 Q. -- indicating a close range?

2 A. Yes.

3 Q. Thirteen feet is something that you learned at the
4 basic law enforcement academy is within that zone of
5 danger?

6 A. Area threat, yes.

7 Q. An area of threat. Okay. And so -- and we know that
8 because we have those measurements from you, right?

9 A. Yes.

10 Q. All right. I want to move on. So you also said you
11 went into the house and we saw some pictures and I just
12 want to go briefly through some of them with you. So,
13 again, we talked about how you kind of go from further to
14 closer to closer, right?

15 A. Uh-huh.

16 Q. And so here's Defendant's 17. Yes, Defendant's 17.
17 And are you standing on the carport looking up or are you
18 on a step?

19 A. That is on the carport. I mean, you can see the steps
20 right there.

21 Q. Okay. Defendant's 12, now that's a step inside the
22 home?

23 A. Several steps inside the home, yes.

24 Q. Okay. And we have the shotgun here. What do you see
25 over here?

1 A. This is going -- back this way is into the living
2 room, this is the kitchen area and the dining area. This
3 item that you were pertaining to is a small little -- I
4 mean, a standalone freezer.

5 Q. Okay. And you -- I'll come back to that. And here's
6 Defendant's 20. Did you open up the freezer and take some
7 pictures of it as well?

8 A. Yes, I did.

9 Q. Okay. Now we see some grocery bags here. Everything
10 -- you didn't put any groceries in there, that's just how
11 you found it, right?

12 A. That's correct.

13 Q. Okay. And this is the same freezer as this picture
14 here?

15 A. Yes, it is.

16 Q. All right. You talked about how you -- when you
17 got there you wanted to disarm the firearm. Here's
18 Defendant's 13. What are we looking at here?

19 A. Looking at just photographs, we have to tell a story
20 with the photographs that we take in CSI. We need to --
21 we make sure that we document everything that we do from
22 the first time we see that firearm and rendering it safe
23 by ejecting whatever ammunition is out of it and so this is
24 what we're doing at this time. So we take photographs of
25 -- we have already taken out at this point -- at this point

1 the spent shell casing that was inside the chamber has
2 already been taken out and so you do not see it. That
3 would have normally been in here, but that's already been
4 -- the slide had already been ejected -- ejected out the
5 spent casing, and this is into the tube, the feeding tube,
6 and this is an unspent shell casing inside the -- the tube.

7 Q. And did you take that one out as well?

8 A. Yes, all three of them. There were three unspent
9 shells inside the feeding tube.

10 Q. And you take those out because that's a part of
11 firearm safety, right?

12 A. Yes, it is.

13 Q. Because especially with shotguns they have been
14 known to what we call slam fire, fire without pulling the
15 trigger?

16 A. Not that I'm aware of, but we -- that's a safety thing
17 that we do for all firearms whether it be a small little
18 Derringer, which is actually not too dangerous, to, you
19 know, handguns, shotguns, rifles. We -- we unload every
20 firearm to render it safe before we continue any kind of
21 processing or definitely packaging and submitting into
22 evidence.

23 Q. Okay. And so -- but why would you need to take the
24 ammunition out if nobody is gonna pull the trigger?

25 A. Because I don't -- I can't say who is -- who might

1 pull the trigger or who might get ahold of that firearm
2 because in the process from the collection from the scene
3 to trial definitely, you know, there's -- there's multiple
4 people that have access to that firearm. We may send it
5 off to SLED for testing, we may send -- either side, the
6 defense or the prosecution, may have access to -- you know,
7 to take a look at the -- the evidence and certainly don't
8 want someone to be handling it or us bring it to court,
9 just like I am this piece of wood, and someone mishandle
10 it and it go off.

11 Q. Okay. And it go off, right. But -- so there's other
12 ways beside pulling a trigger that it can go off?

13 A. Not to my knowledge.

14 Q. There's no other way a gun can go off unless you pull
15 the trigger; is that your testimony?

16 A. To activate the -- the firing pin and the -- in a
17 firearm, the typical -- the method that a firearm is
18 designed for is to pull the trigger, which activates the
19 pin that discharges the firearm -- discharges the bullet of
20 the firearm.

21 Q. So it's your testimony that unless that trigger's
22 pulled, that firing pin cannot be activated?

23 A. Yes.

24 Q. Okay. So if there were fouling or residue, it doesn't
25 matter, a firing pin cannot be activated?

1 A. I'd say on a standard firearm that's how it is.
2 There are -- there have been, you know, history of either
3 recalls or issues with firearms, a malfunction of some
4 sort, but on a standard -- standard working firearm the
5 only way that that should -- a firearm should be going off
6 is whenever there's activation of the firing pin by pulling
7 the trigger.

8 Q. But there have been recalls because that's not always
9 the case, right?

10 A. Correct.

11 Q. Okay. And there were some other areas of interest you
12 were aware -- or were you aware that there were some other
13 address locations that were pertinent to this case?

14 A. Yes.

15 Q. Okay. Did you take any measurements between those two
16 areas?

17 A. Yes. The residence at ■0 -- hold on a second. You
18 have the primary residence, which is, like I said, the
19 ■8 Glenwood Drive, and then two houses down from that to
20 the right is ■0 -- hang on one second if you don't mind
21 me referencing. I want to make sure I get the address
22 correct.

23 Q. Can I help you out? Is it ■0 and ■8?

24 A. It's ■0 and ■8, but the ■0 is Oak Top. Oak Top
25 Drive.

1 Q. Okay.

2 A. It's not the same street.

3 Q. All right. But it's -- you would agree with me that's
4 -- you're talking about two house up?

5 A. Two houses down to the right is [REDACTED] 0 Oak Top Drive.

6 Q. And what were the -- what was the difference between
7 those two addresses?

8 A. The distance -- the measured difference between the
9 two was 117 feet and four inches.

10 Q. Okay. So 117 feet and four inches.

11 MS. ZMROCZEK: Okay. And I believe, Your Honor,
12 without objection we're putting Defendant's 18 in.

13 THE COURT: Mark 18 into evidence, please.

14 (Defendant's Exhibit Number 18, a photograph, was
15 admitted into evidence.)

16 BY MS. ZMROCZEK:

17 Q. And so this is Oak Glenn Drive, this is the [REDACTED] maybe
18 Oak Glenn, maybe Oak Top, and so you say the distance is a
19 hundred feet?

20 A. 117 feet --

21 Q. 117 feet.

22 A. -- and four inches.

23 Q. Okay. So under forty yards?

24 A. Yes, under forty yards.

25 Q. Okay. Did you measure any other addresses?

1 A. No, I did not.

2 Q. Okay. When you collected -- when you were at the
3 autopsy and you collected the wadding that we saw, you also
4 collected some blood that was drawn?

5 MR. PINCELLI: Objection, Your Honor.

6 THE COURT: Yes, sir.

7 MR. PINCELLI: I'm not sure what the relevance of
8 the contents of the blood would be if that's where this
9 testimony's going.

10 MS. ZMROCZEK: Okay.

11 THE COURT: It's too early for me to tell. Overruled.
12 Go ahead.

13 MS. ZMROCZEK: Thank you.

14 BY MS. ZMROCZEK:

15 Q. You collected other items as well?

16 A. I did not collect the -- the blood from the -- from
17 the victim in the autopsy. That's something that the
18 pathologist collects and this is submitted to my knowledge
19 to SLED.

20 Q. Okay. But -- and maybe I misspoke. I didn't mean
21 you actually collected the blood, but it's put into vials,
22 correct?

23 A. Correct.

24 Q. And then you collect it and it goes into evidence and
25 then goes wherever it goes?

1 A. Yes.

2 Q. Okay. Sorry. I should have been more clear.

3 Okay. You didn't draw any blood, but you received
4 blood that was drawn?

5 A. Yes.

6 Q. Okay. And -- and you just take all that into evidence
7 and do you transfer that evidence just like you transferred
8 this board?

9 A. Yes.

10 Q. So you package it?

11 A. It's packaged and -- well, it's -- it's packaged and
12 it is kept in a refrigerator. Whereas an item like a
13 two by four is not gonna be kept in a refrigerator, but
14 because it's bodily fluids it does need to be kept in a
15 refrigerated state.

16 Q. And you -- and you have protocols so that we can make
17 sure that any evidence received from that is accurate
18 information, right?

19 A. Yes.

20 Q. And you absolutely did that in this case as you were
21 trained?

22 A. Yes.

23 MS. ZMROCZEK: I beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 MS. ZMROCZEK: That's all I have, Your Honor. Thank

1 you.

2 THE COURT: Redirect?

3 MR. PINCELLI: Just briefly.

4 REDIRECT EXAMINATION

5 BY MR. PINCELLI:

6 Q. Investigator Sprinkle, we talked about the distance
7 and where the blood pool was and where the door was. This
8 is State's 18. We looked at that. You indicated that was
9 how far from the door?

10 A. Right under thirteen feet.

11 Q. And you indicated that you could draw some sort of --
12 from your experience, you could draw a direction that the
13 victim was travelling right after he was shot?

14 A. Yes.

15 Q. And what -- what did you say that was?

16 A. This is the initial blood pouring, you have a turn,
17 and then a trail that leads out to the victim's body over
18 there, and there's no other blood that was observed
19 on-scene that day.

20 Q. And because of -- you said that it looked like it
21 poured out, there was no spatter, so you couldn't tell
22 some things, but you could tell maybe where the victim was
23 standing, where Will was standing when he was shot?

24 A. The general area, very -- when I say general area,
25 this is pretty accurate, but I cannot say exactly which

1 pinpoint spot he is -- he was standing, but in a --
2 probably a two or three -- two or three foot radius.

3 Q. Would you be able to draw a circle with that laser
4 pointer on that picture?

5 A. Yes. Somewhere in this area he was standing while he
6 -- during the time that he got shot.

7 Q. Okay. And based on your experience with firearms and
8 in reality based on movies, does a -- does a firearm blow
9 you backwards when you're shot?

10 A. No.

11 MR. PINCELLI: I beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. PINCELLI: That's all for my questions. Thank
14 you, Investigator Sprinkle.

15 MS. ZMROCZEK: You can leave that up so the jury can
16 see.

17 MR. PINCELLI: Okay. Sure.

18 RECROSS EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. So your testimony is then he wasn't going backwards,
21 but that blood came because his -- he was coming forwards?

22 A. Yes. For that -- for that to -- that blood to be --
23 to fall at a 90-degree angle, the chest cavity, which is
24 where the blood is originating from, has to be angled for
25 it to be pouring down onto the -- onto the -- onto the

1 ground. I'm not saying that he was actually -- like I
2 said, if he was -- he could have simply been -- sorry.
3 This isn't working. Great. He could have been standing
4 here and leaned forward, he could have stumbled, he could
5 have taken a couple of steps forward; however, whatever
6 motion, at some point he was bent over and started the
7 blood trail.

8 Q. And you gave a couple of examples. He also could
9 have been aggressively walking forward?

10 MR. PINCELLI: Objection, Your Honor. I don't know
11 that he can say that.

12 THE COURT: Overruled.

13 A. I'm -- I'm not quite sure as to saying how -- how --
14 what -- at what pace he was -- could have been walking.

15 Q. We just know that it was in the forward --

16 A. It had to -- it had to have been very close as to
17 where the blood -- the blood started, the blood trail
18 started, as to where he was located during the time of the
19 -- during the gunshot, when it was -- occurred.

20 Q. And leaning forward?

21 A. And leaning forward.

22 MS. ZMROCZEK: Thank you. No further questions.

23 THE COURT: All right. Thank you, sir. You may
24 step down.

25 (Witness excused.)

1 THE COURT: All right. Ladies and gentlemen, we had
2 some backup cases for this week and one of those the person
3 is going to enter a plea and so I -- I have to take that
4 plea and I told them 2:00 today. So I want you back at
5 2:30. You should be -- we should be well through with that
6 by 2:30.

7 Don't discuss the case. You're on your own for lunch.
8 I hope you have a pleasant lunch and I need you back in the
9 jury room at 2:30, please. Leave your notes.

10 (Whereupon, the jury was excused for lunch at
11 12:43 PM.)

12 THE COURT: All right. For those of you who were not
13 here earlier in the week when I gave this instruction, I
14 say it in every case, please be careful as you leave that
15 you don't have contact with the jurors. The jurors are
16 gonna come around to the common area, they're probably
17 gonna use the same elevators, they may well go to the same
18 restaurants. Just please be careful that you don't say
19 anything about the case or anybody in it that might be
20 overheard by a juror and that you not have any contact
21 with a juror. The safest thing to do is to wait a few
22 minutes and let them clear out, but don't assume they've
23 gone because people do different things. Some people
24 don't eat lunch, they just kind of hang around.

25 We're at ease until 2:00, Madam Court Reporter; 2:30

1 on this case.

2 Thank you.

3 (Whereupon, a luncheon recess was taken at 12:45 PM.)

4 (Defendant's Exhibit Number 24 was marked for
5 identification.)

6 (State's Exhibit Number 28 was marked for
7 identification.)

8 (Back on the record at 2:30 PM.)

9 BAILIFF: All rise. Court is now in session.

10 THE COURT: Thank you. Be seated.

11 Is everyone ready?

12 MS. ZMROCZEK: Your Honor, there is an issue that I
13 think we need to address ahead of time.

14 THE COURT: All right. Go ahead.

15 MS. ZMROCZEK: So yesterday when I was trying to find
16 out who they were calling so that I could have my witnesses
17 prepared, Your Honor, so there's one witness that we've
18 been trying to get under subpoena and when they -- when I
19 asked -- yesterday when I asked them to send me finally
20 the rap sheets, they also included driver's licenses,
21 and they were also kind enough to give me his number
22 this morning because it's a fact witness, Your Honor,
23 that you've heard the name Vernon Blanding, and so my
24 investigator tracked him down and my investigator is
25 prepared this afternoon to testify as to the problems

1 with that, but the gist of it, Your Honor, is that he
2 said he is not -- and my investigator also went to two
3 locations that he had for his address. He said he is not
4 going to be found, that he met with the solicitor's office,
5 he told them he is not going to testify, he is not coming,
6 they cannot find him. He goes on to say some other stuff,
7 which is hearsay and has nothing to do with anything, but
8 the gist of the matter is, Your Honor, he told us that he
9 had met at some point -- or talked to the solicitor's
10 office, even named Jill, who is an investigator with them,
11 and then -- and said he told them he's not coming, he told
12 us he is in hiding, he is not coming.

13 And -- and, Your Honor, obviously, you know, at this
14 point he's a witness that we've heard about. He wrote a
15 statement. We need to get that statement into evidence.
16 He is unavailable or he is dodging us and said specifically
17 that he's in hiding is what he told my investigator, and
18 my investigator will come and testify to that on the stand.

19 So we're at a point where I have the officer who
20 signed that he witnessed the statement under subpoena who
21 can be here at 9 AM so that I can get the statement in
22 through that officer. That is what we intend to do if we
23 can't get this witness, Your Honor. We consider that he's
24 unavailable, specifically since he apparently had told
25 the solicitor's office that he wasn't coming. And, like

1 I said, we've been trying to serve him and he is
2 specifically in hiding, intentionally dodging our service.

3 I don't know if they had him under subpoena. I asked
4 the State if they had him under subpoena and they thought
5 that they had had him served, but then they said they
6 weren't sure. Now Ms. Patterson is shaking her head no,
7 but they did give me his -- his number and that was a
8 correct number for him, Your Honor.

9 So our position is that we would get his -- and we
10 don't necessarily have to put the written statement in.
11 I mean, we can, we're fine with that, but I was intending
12 on having the officer who took the statement verify that
13 he wrote these questions and that these were the answers.

14 THE COURT: Is there gonna be an issue about that?

15 MS. PATTERSON: I mean, Your Honor, we did attempt
16 to contact Mr. Blanding. I think he called our office
17 and he did -- and we were unsuccessful with getting him
18 served. He didn't want to testify with either side is my
19 impression, Your Honor. I'm not sure, Your Honor. I don't
20 -- I don't get the right to cross-examine Mr. Blanding if
21 his statement is simply admitted through this officer, so
22 I -- I may have a problem with that, Your Honor. I'm gonna
23 just have to research it and look and see what my options
24 are, but I would certainly, if they're gonna call him, like
25 to cross-examine him. I mean, it's -- it's not our fault

1 that he's in hiding. He talked to her investigator for a
2 while, he's even called up here, so I know he's certainly
3 around. We have his last known address. We can provide
4 that to the defense counsel, we can provide that to law
5 enforcement if you want to find a law enforcement officer
6 to go and -- and see if we can, I don't know, take him
7 into custody or what, Your Honor, but I would like to
8 cross-examine Mr. Blanding if he was called as a witness.

9 THE COURT: Do you know if he has any outstanding
10 charges against him?

11 MS. ZMROCZEK: His -- from the rap sheet that they
12 provided me, his most recent charge was 2018, he was
13 given a year, and it was a year active time. And I
14 believe actually Your Honor sentenced him and he just was
15 released. So he -- and he maxed out on that year. So
16 from the rap sheet I was provided, I don't see where he
17 has any pending charges. Do you? Because that was --
18 when we couldn't find him, Your Honor, we -- that's an
19 avenue that we looked at to try to see if I could get a
20 bondsman or an attorney. His last known attorney was
21 Derrick Mobley. I spoke with him who had a bad address,
22 but we have a West Columbia -- we have two. Actually my
23 investigator ran a people search and had two potential
24 addresses come up and he has been at both of those
25 knocking on doors and nobody is answering.

1 THE COURT: What did he say in his statement that
2 you need to get in?

3 MS. ZMROCZEK: Your Honor, he says on -- around about
4 5:30, 6:30 -- well, he said 6:30 and he crossed it out and
5 put 5:30, I, Vernon Blanding, arrived at my sister's house,
6 Latar Blanding, from work. I observed the father and son
7 having words. The son had a board in his hand. I'm sorry,
8 Your Honor. His handwriting is not great. And I ran --
9 oh, and -- I'm sorry. The son had a board in his hand
10 while something walk on behind the father with the board,
11 I told them to stop and took the board from Will. He said
12 he was not going to stop. The father walk in the house
13 and got the shotgun and stood in the doorway and I -- and
14 shot the son, Will, dead.

15 There's some questions. So, Your Honor, the point
16 is, is that he obviously took the board and he told Will
17 to stop and in his statement he says Will said he wasn't
18 going to stop, which is -- you know, there's been a whole
19 bunch of testimony about Vernon Blanding taking the board
20 and where he located the board and the timeline of when
21 this happened, Your Honor, and then -- you know, and then
22 he writes this statement.

23 You know, the rest of the pages are questions and
24 answers, which, I mean, we're not necessarily worried
25 about getting, you know, specific interrogation questions

1 in. We don't care, you know, but the gist of what his
2 statement in his handwriting is -- Your Honor, I think is
3 crucial to our defense, and so that's where we are.

4 THE COURT: Do you know when he gave his statement?

5 MS. ZMROCZEK: He did, Your Honor. It's given May 10,
6 2016, so the date of the incident.

7 THE COURT: What time?

8 MS. ZMROCZEK: At -- I do not -- oh. Nope. Your
9 Honor, it doesn't have a time on it, but I can certainly
10 hand it up so if maybe I'm not seeing a time.

11 THE COURT: All right. Rule 804 of the rules of
12 evidence deals with hearsay exceptions where the witness
13 is unavailable. In order for a witness to be declared
14 unavailable, it appears that the only possible applicable
15 subsection is 804(a)(5) and it would have to be -- I'm
16 sorry, 804(a)(2) or 804(a)(5), and (2) would require a
17 court order for the defendant to appear. Then looking at
18 the exception -- exceptions that apply where the witness
19 is unavailable, I don't see any under (b)1, 2, 3 or 4 that
20 apply to the situation here, so we have to go to Rule 803,
21 which is the hearsay exception when it doesn't matter
22 whether the witness is available or not.

23 Based on what you-all are saying, it appears that
24 the only possibly applicable one is 803, Subsection 1, a
25 presence sense impression; that is a statement describing

1 or explaining an event or a condition made while the
2 declarant was perceiving the event or condition or
3 immediately thereafter. There would have to be a
4 foundation established as to whether this was sufficiently
5 close in time as to be immediately thereafter.

6 Now I think there's a provision in the law where you
7 can require to have the witness arrested and taken into
8 custody.

9 You probably need to mark that as a Court's exhibit.

10 (Court's Exhibit Number 1 was marked for
11 identification.)

12 THE COURT: At a minimum it appears to be that
13 somebody is gonna have to try to serve a subpoena on this
14 gentleman.

15 MS. ZMROCZEK: And my investigator was gonna come
16 here, but I will have him continuing to try to do that
17 and then I will -- because he's been trying to do that,
18 and I will have him continue that throughout the day and
19 have him come testify tomorrow about the length of his
20 efforts to do that. And the officer, the investigator
21 who witnessed that, Your Honor, is out in the field today,
22 but can be here at 9 AM tomorrow as well.

23 THE COURT: Well you-all need to look up whatever
24 provision there is about taking a witness into custody if
25 he refuses to appear.

1 MS. ZMROCZEK: Okay.

2 THE COURT: I mean, I know a subpoena is one thing
3 if you get a subpoena served and he doesn't show up, but
4 we're gonna be running pretty close on time. He's not on
5 parole and he's not on probation?

6 MS. ZMROCZEK: No, and I'll have my investigator
7 double check that as well. But according to --

8 THE COURT: What's his last name? Vernon what?

9 MS. ZMROCZEK: Blanding, B-L-A-N-D-I-N-G.

10 THE COURT: Your investigator did talk to him on the
11 phone, right?

12 MS. ZMROCZEK: Mine, and as Ms. Patterson said, the
13 State's has as well.

14 THE COURT: All right. Well, let's try to keep
15 moving right now. Is the State ready for the jury?

16 MR. PINCELLI: We are, Your Honor.

17 THE COURT: Defense?

18 MS. ZMROCZEK: We are, Your Honor.

19 THE COURT: Bring in the jury, please.

20 (Whereupon, the jury return to the courtroom at
21 2:55 PM.)

22 THE COURT: All right. Members of the jury,
23 something came up after I finished with the guilty plea
24 we've been working on and we're now ready to continue.

25 Call your next witness, Solicitor.

1 MR. PINCELLI: The State calls Suzanne Cromer.

2 THE COURT: Come around, please.

3 (Whereupon, Suzanne Cromer was duly sworn by the
4 Clerk of Court.)

5 THE CLERK: Thank you. Please be seated in the
6 witness stand. Once you are seated, please state your
7 name; spelling your last name for the record.

8 THE WITNESS: My name is Suzanne Cromer, C-R-O-M-E-R.

9 SUZANNE CROMER,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. PINCELLI:

13 Q. Good afternoon, Suzanne. Where do you work?

14 A. I'm employed by the South Carolina Law Enforcement
15 Division, commonly referred to as SLED.

16 Q. And what's your title at SLED?

17 A. I am a firearm and toolmark examiner in the forensic
18 services laboratory.

19 Q. Do you go by Examiner Cromer?

20 A. That's fine.

21 Q. How long have you been working with SLED?

22 A. I've been with SLED -- it was twenty years this past
23 December.

24 Q. Twenty years?

25 A. Twenty years.

1 Q. And have you always been a firearms and tool examiner?

2 A. I've always been in the firearms department. I
3 started the train -- in-house training program for firearm
4 and toolmark examiners in February of 2000.

5 Q. And can you explain for the jury what your job
6 description is?

7 A. What I primarily do is called firearms identification.
8 I look at ammunition components, bullets, cartridge cases,
9 shotgun shells and unfired ammunition to determine whether
10 it was fired by or loaded into and extracted from a
11 specific firearm. If I don't have a specific firearm, I
12 can look at those ammunition components and give
13 investigators an idea of how many firearms were fired at
14 a scene. I also examine firearms, I also examine
15 toolmarks, bolt cutters on padlocks, I do serial number
16 restorations, I do entry into the National Integrated
17 Ballistic Identification Network, which is a digital
18 database -- searchable digital database for images of
19 cartridge cases. I am the NIBIN program's administrator
20 for South Carolina. Also I'm the representative for the
21 users group for North and South Carolina for that program.
22 I'm also a training officer in the department.

23 Q. Thank you. You listed a lot of job duties and they
24 sound specialized. Have you received training to perform
25 those duties?

1 A. Yes, I have. I have a bachelor's degree from Clemson
2 University. I did some graduate work at the University
3 of South Carolina in criminal justice. I have completed
4 SLED's in-house training program, which is a multiyear
5 program for firearm and toolmark examiners where we study
6 under other court-qualified firearms examiners. We take
7 written tests, oral tests, practical exercises, and upon
8 completion of all the modules in our training manual, we
9 are given a comprehensive final exam that includes essay
10 questions, firearm familiarization questions and also mock
11 cases. We are given several mock casework that represents
12 specifically what we do in our job. Those tests are graded
13 by our training officer and our lieutenant before we are
14 allowed to receive casework.

15 I have taken classes with the Association of Firearm
16 and Toolmark Examiners, which we call AFTE. AFTE is an
17 international organization for our profession. They meet
18 once a year for a week long seminar to discuss current
19 issues in our area. They also offer extra workshops.
20 I've taken such extra workshops as machine gun conversion,
21 barrel making, courtroom testimony, ethics, Hi-Point
22 firearm familiarization with the founder of Hi-Point
23 Firearms just to name a few. I've also taken classes with
24 the South Carolina chapter of the International Association
25 of Identification. The most pertinent being two -- three

1 different day shooting scene reconstruction workshops.
2 I've taken classes with the Bureau of Alcohol, Tobacco,
3 Firearms and Explosives, commonly referred to as the ATF,
4 in serial number restorations, and the National Integrated
5 Ballistic Network.

6 Q. Thank you. That sounds like quite a lot of classes.
7 Do you ever have to generate reports for your work?

8 A. Yes, sir. We --

9 Q. And -- I'm sorry. Do you -- are those reports peer
10 reviewed?

11 A. Yes, they are.

12 Q. Do you have a standard operating procedure of how you
13 generate your reports?

14 A. We have standard operating procedures for firearms
15 examination, for writing reports, for our technical
16 and peer review, and for our admin review, our micro
17 verification review.

18 MR. PINCELLI: Your Honor, at this time I'd like
19 this witness qualified as an expert in firearms.

20 THE COURT: Voir dire?

21 MR. SCHWARTZ: Yes, Your Honor.

22 VOIR DIRE EXAMINATION

23 BY MR. SCHWARTZ:

24 Q. Agent Cromer, have you ever been qualified as an
25 expert in the specifics of shotguns?

1 A. No, sir, I haven't. I've been qualified as an expert
2 in firearms and firearms identification.

3 Q. Okay. And that includes shotguns as well?

4 A. That includes shotguns as well.

5 Q. Okay. Have you ever been published?

6 A. No, I have not been.

7 Q. Okay. Are you a member of any specialized groups?

8 A. I am a regular member of the Association of Firearm
9 and Toolmark Examiners.

10 Q. Okay. Have you ever presented in any CLE's or what
11 we call CLE's?

12 A. I have presented at the National Advocacy Center
13 before, which is a training program for district attorneys
14 and solicitors. I've presented there.

15 Q. Okay. You said that you were peer reviewed on, I
16 guess, exams; is that right?

17 A. Yes. Once we do -- or once we come to a conclusion,
18 whether it's a microscopic conclusion, we have to have
19 another qualified firearms examiner come behind us, look
20 at the same stuff on our microscope and come to the same
21 conclusion before we're allowed to issue that report. We
22 take lots of bench notes. All of our bench notes have to
23 go to another examiner to be technically reviewed for
24 accuracy before those reports or before that bench --
25 those bench notes can be released, and then they are also

1 administratively reviewed.

2 Q. Okay. Have you ever failed one of those peer reviews?

3 A. No, sir, I haven't.

4 MR. SCHWARTZ: I've got no further questions of this
5 witness, Your Honor.

6 THE COURT: Anything --

7 MR. SCHWARTZ: No objection as well.

8 THE COURT: She's recognized as an expert in the
9 field of firearms and firearms identification.

10 MR. PINCELLI: Thank you, Your Honor.

11 CONTINUED DIRECT EXAMINATION

12 BY MR. PINCELLI:

13 Q. Suzanne, how did you become involved in the case
14 we're here for today?

15 A. I picked up evidence in this case from our evidence
16 control department on November 17, 1917 -- I'm sorry, 2017.
17 November 7th, '17. I then placed it in my evidence locker
18 and I was contacted by Matt Martin from the Lexington
19 County Solicitor's Office through e-mail about this case
20 on January 17th of 2018.

21 Q. And was this through your professional capacity at
22 SLED?

23 A. Yes, sir, it was.

24 Q. And what were you informed was the issue that you
25 would be helping with?

1 A. Mr. Martin had e-mailed me and said that there was
2 some question as to whether the firearm had accidentally
3 gone off and if I could do extra testing to see if that
4 could have been possible.

5 Q. And you said that you received the firearm from
6 evidence?

7 A. Yes, sir.

8 Q. Can you explain how -- just the stages of how you
9 received it, what condition it was in as far as securing
10 it, and how you stored it while you had it?

11 A. Yes. So evidence comes into the SLED lab through a
12 submitting agency, and in this case Lexington County. It
13 goes into our evidence control department. They then
14 decide where it's gonna go in our laboratory and place it
15 in a sealed place to wait for an examiner to pick it up.
16 And firearms have to be under an extra special layer of
17 lockdown just due to the nature of a firearm. So once I
18 pick it up from downstairs, we are given -- each piece of
19 evidence that comes into the SLED lab is given a barcode.
20 So that barcode was scanned in. It was created when
21 Lexington County dropped off the evidence, created in our
22 evidence control department, placed on the box, so that
23 when I went downstairs -- because our laboratory is on
24 the second floor. When I went downstairs to pick up the
25 evidence in this case, I then -- I have a personal barcode,

1 I scanned it to myself, and then I took it upstairs to my
2 evidence locker and placed it there until I was ready to
3 begin my exam.

4 Q. And did you have any reason to believe that the gun
5 had been tampered with from the time it went into evidence
6 until the time it got to you?

7 A. No. We take notes on that. When we receive evidence,
8 we look to see if any of the seals are broken, if it's
9 sealed. We did not note any of that.

10 Q. And can you give me a description of that firearm?

11 A. What I received was Mossberg Model 500A pump action
12 shotgun, a 12 gauge, and it had a pistol grip.

13 Q. Okay. And can you describe what a pistol grip on a
14 shotgun is?

15 A. It is a handheld grip that you would hold it with one
16 hand. When you typically see a shotgun, you see a longer
17 like stock that would go up against your shoulder or under
18 your arm. This did not have that. It just had the pistol
19 grip and then the forearm and the barrel protruding from
20 it.

21 Q. And did you measure the shotgun?

22 A. Yes, I did.

23 Q. And what was the length of the shotgun?

24 A. Let me check my notes, please. The total length of
25 the shotgun was approximately thirty inches. The barrel

1 itself was twenty inches long.

2 Q. And did you take notes of any other metrics or
3 measurements for that shotgun?

4 A. We take notes of the finish of the shotgun, how it
5 looks, what -- you know, what it's made of. We also
6 measure the magazine capacity and we also measure the
7 muzzle to trigger distance, so that means the distance
8 between the end of the shotgun to the trigger.

9 Q. How about anything else dealing with the trigger?

10 A. We measure trigger pull weight after our final testing
11 has been done.

12 Q. Can you explain to the jury what trigger pull weight
13 is?

14 A. Trigger pull weight is the amount of pressure that
15 has to be applied to that trigger to cause the firearm to
16 fire. And how we measure that is we have weights that kind
17 of hang from the trigger and then we just pick the gun up
18 and if it -- if it fires, we'll know. Typically I start
19 out very light and we go up in quarter pound increments.
20 So I tested this firearm and found that -- if I may check
21 my notes?

22 Q. Sure.

23 A. The trigger pull weight was five and three-quarters
24 to six pounds. So that means whenever I lifted five and
25 three-quarter pounds, it would not fire, but every time I

1 put on six pounds it would fire.

2 Q. And is that -- is there a typical trigger pull weight?
3 Does that compare with anything?

4 A. It felt average. It felt normal to me.

5 Q. And so you've told us all about that gun now. Did
6 you -- are there any identifiable marks on that gun to let
7 you know about where it's manufactured to make sure it's
8 the same gun?

9 A. Well, there's a serial number and then I also mark
10 that firearm with my lab number and my item number and my
11 initials, but the serial number on the firearm was P427092.

12 Q. This has been marked as State's Exhibit 28. I'm gonna
13 walk around behind you so you can --

14 A. Okay.

15 Q. And do you observe that to be secure in its present
16 condition?

17 A. Yes. So there's a trigger lock or cable lock through
18 the action of the firearm.

19 Q. And is this the firearm that you received in evidence?

20 A. Again, I'm looking at the markings. Yes, it is.
21 Again, it's marked in several locations with my item
22 number, my initials and my lab number, and also the serial
23 numbers match.

24 Q. You can put that up if you'd like.

25 A. (Witness complies.)

1 Q. You said that was sent to you and it was suggested
2 that -- that the gun might have gone off on accident and
3 that's what your job was to figure out, was to test it
4 from that point?

5 A. Yes. Whenever we're alerted to something like this,
6 we actually ask for a little more details. I want to
7 know how did they say it went off by accident; were they
8 racking the gun, were they working on the gun, did they
9 drop the gun. So I -- I wrote back to Mr. Martin and
10 asked him for a little bit more detail. He told me that
11 he believed that it was during racking the firearm. And
12 racking the firearm, if I may, means moving this forearm
13 forward.

14 Q. And what -- what does that do? Just explain to the
15 jury that might not know the function of the gun, what does
16 that do when you do that for a gun?

17 A. To load this firearm, you can either load -- this is
18 what we call the magazine tube. You can load the magazine
19 tube first or you can actually load one straight into the
20 chamber. To actually chamber an unfired round in your
21 -- in your chamber here, you actually have to pull the
22 forearm, which is this, forward and that completes the
23 action of chambering an unfired shot shell in a chamber,
24 so then it's ready to fire.

25 Q. So that draws the shell to a place where it can be

1 fired?

2 A. It draws the shell out of the -- out of the magazine
3 tube and up into the chamber.

4 Q. And based on those facts, what did you decide that
5 you should do as someone in your position, an expert and
6 examiner?

7 A. Well, first I did multiple things. We tested the
8 safety, which is right here, to see if it would fire with
9 the safety on, and it would not. Safety is paramount in
10 our department when we're handling guns all the time, so I
11 wanted to see if it would. So what we did a lot of is dry
12 firing, and dry firing means pulling the trigger without
13 anything -- or any ammo in it. So my thought was, is will
14 it -- will it function right, so we racked it multiple
15 times --

16 Q. And, again --

17 A. -- dry fired it multiple times.

18 Q. Again, I think you just explained it, but just for
19 people that might not be familiar, what does racking it
20 mean?

21 A. Moving the forearm. Moving it forward and backward.

22 Q. So like pumping it?

23 A. Yes, pumping it. So with Mossberg firearms -- and
24 this is not loaded, so I'm gonna hold it up like this.
25 With Mossberg firearms, how they work, is inside the

1 trigger -- or inside the receiver of the gun there is
2 what's called a disconnecter and the disconnecter is the
3 part that keeps semiautomatic firearms from firing full
4 auto. So when you pull the trigger, it moves the
5 disconnecter, the disconnecter turns another part called
6 the seer, the seer is holding the hammer back. Once the
7 seer is moved, that hammer slides forward and hits the
8 firing pin.

9 How Mossbergs are made is typically the disconnecter
10 has to be in an upward position for it to be engaged with
11 the seer. Well, when this forearm is all the way to the
12 back so you can load, that disconnecter is pushed down so
13 it's not engaging the seer of the firearm. So once the
14 forearm is pulled all the way forward, the seer's -- the
15 disconnecter is disengaged, so it's up higher, it's engaged
16 with the seer. If you pull the trigger, the seer rotates a
17 little bit, releases the hammer, the hammer slides forward
18 and hits the firing pin.

19 Q. And if you could break it down in very basic terms.
20 I appreciate your technical terms.

21 A. So what we did because I was trying to figure out if
22 I could get this gun to shoot without having to pull the
23 trigger, so racked it. We racked this gun, moved the
24 forearm back and forth multiple times. So then my other
25 thought was is it possible that the trigger was -- the

1 shooter actually had his finger on the trigger when he
2 racked the gun and that he racked it hard enough to pull
3 the trigger up against his finger, which I found multiple
4 times I could not make that happen because if the trigger
5 was pulled anywhere except when the forearm was in the
6 foremost distance, I had to let go of the trigger, let it
7 reset, let it gain that tension with the disconnecter and
8 the seer, and then pull the trigger, so I could not do
9 that.

10 I'm a left-handed person. I have a trainee that
11 worked with me on this case. She's right-handed. So I
12 tried multiple times, I made her try multiple times just
13 to see if it could have been a handed issue.

14 Q. Did you find it was a handed issue?

15 A. No, it was not. I did everything I could think of to
16 make this firearm fire without pulling the trigger and I
17 could not do it. Again, I can't account for every scenario
18 that could happen, but I could never make this firearm fire
19 without pulling the trigger.

20 Q. You say you couldn't account for every scenario. You
21 talked a lot about racking or pumping it, holding the
22 trigger down, and I believe you mentioned that it would
23 only work if you pumped it fully, returned the pump all the
24 way forward and then pulled the trigger. Is that my
25 correct understanding?

1 A. Yes, sir.

2 Q. Did you check anything else, any other information
3 available to you to see if there was any other possible way
4 the gun could possibly fire?

5 A. Yes. Again, I said I'm a member of the Association
6 of Firearm and Toolmark Examiners. AFTE has what we call
7 a recall and safety warning list, so I got online and I
8 looked. Mossberg 500 and 600 models did have one of those
9 recall and safety warnings that said if you beat on the
10 plastic portion behind the trigger guard with a mallet,
11 then you could possibly make it fire.

12 Q. Suzanne, I just want to pause just real quick. Could
13 you explain for members of a jury that might not know what
14 a trigger guard is, could you point that out to them and
15 tell them what -- what that is?

16 A. This is the trigger guard of the firearm, this is the
17 trigger, so that's the design -- it's designed to protect
18 that trigger from being hit or pulled unintentionally. So
19 that's the trigger guard. And the recall safety warning
20 list, typically for ones that have butt stocks that have a
21 longer gap between the trigger guard and the stock end,
22 that if you hit it with a hammer, then it could potentially
23 go off. That I -- I did check that. Obviously I couldn't
24 hit behind the trigger guard, so I hit it with a mallet on
25 the receiver and I still couldn't make it go off.

1 Q. You talked about dry firing and you talked about
2 those demonstrations with a mallet. Did you ever use any
3 other kind of ammunition or any other technique to see if
4 the gun worked?

5 A. Yes. Obviously we had to shoot it to get test
6 specimens to compare against any fired shells that we had,
7 so what I did was we fired normal rounds, normal shot
8 shells through it, and then I also took what we call primed
9 shot shells, that is shot shells that we've taken all of
10 the extra stuff out of the inside so that all that's left
11 is just the shell itself and the primer. So there's no
12 wad, there's no projectile, there's no gunpowder. That way
13 if we could make it go off it wasn't going to hurt anyone.

14 So we did that multiple times. We did that while we
15 were trying to rack the gun to get it to fire and still
16 could not get it to fire.

17 Q. And I think you said something about shell analysis
18 and that was part of the reason you used those primer
19 shells. Can you explain what -- what that process is?

20 A. What I do is I look at my fired ammunition from a
21 case and I -- if I have a suspect weapon like I did in
22 this case, I'll shoot similar ammo to what I received and
23 then I will go back and do a microscopic comparison first
24 of my test to each other to see how the firearm works and
25 then from my test to my evidence or to my unknowns, and I

1 did that in this case as well.

2 Q. And I'm gonna back you up just a second. You said you
3 did all those tests trying to make the gun fire?

4 A. Correct.

5 Q. What were your findings on the working -- well, did
6 you make findings?

7 A. Yes. I reported that this firearm was in working
8 order, meaning I could not find any defects. And, again,
9 because I could not find any defects, I did not attempt
10 to take the gun apart and inspect the internal workings
11 just because doing that could affect the function of the
12 firearm, so I did not want to do any of that because it was
13 in working order.

14 Q. And you talked about the -- you talked about the shell
15 analysis and what were the findings of that?

16 A. I was -- we render one of four conclusions. Positive;
17 yes, it was fired by that gun. Negative; no, it wasn't;
18 unsuitable for identification; meaning it was too damaged
19 to tell either way. Or inconclusive. And I was
20 inconclusive on this cartridge case versus this gun.

21 Q. And as an examiner, does inconclusive mean that it's
22 definitely not from that firearm?

23 A. No, it does not. I could sit here and watch someone
24 shoot into that wall, we could pull the bullet out and I
25 could take it back to my lab and examine it microscopically

1 against bullets that I fired from that same firearm and it
2 could be inconclusive forensically because what I base
3 factors on for a conclusion is the markings left by the
4 gun, it is not any of the information I'm given about the
5 case.

6 Q. How common are those inconclusive readings --
7 findings?

8 A. Depending on the type of firearm it is and how it
9 marks, it could be common.

10 MR. PINCELLI: I beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 BY MR. PINCELLI:

13 Q. So just to break down the operation of this gun, you
14 said you found it in working order?

15 A. That is correct.

16 Q. Can you describe in pretty basic terms for me and the
17 jury what is the -- what is the working order? How do you
18 correctly fire that firearm?

19 A. This firearm, safety off, forearm forward, round in
20 the chamber, pull the trigger.

21 Q. And how would you get the shell into the chamber?

22 A. If there's not one already, you can pull the forearm
23 forward if there's shells inside the magazine.

24 Q. So you'd have to pump it fully?

25 A. Pump it fully, pull the trigger. If there's one

1 already in the chamber, as long as your forearm's in the
2 most forward position, you can just pull the trigger.

3 Q. And was that the way -- was that the only way you
4 found that weapon to be able to be fired?

5 A. Forearm forward, trigger pulled, yes.

6 MR. PINCELLI: I have no further questions. Please
7 answer anything from the defense.

8 CROSS-EXAMINATION

9 BY MR. SCHWARTZ:

10 Q. Agent Cromer, you created a report in this instance?

11 A. Yes, I did.

12 Q. Okay. And you have a copy of that with you, I
13 believe?

14 A. Yes, I do.

15 Q. And that report is accurate?

16 A. To my knowledge, yes, it is.

17 Q. And it's complete?

18 A. Yes, sir.

19 Q. All right. Is there anything you wish to add or
20 change about it at this point?

21 A. No, sir.

22 Q. All right. In that report, you list -- and we went
23 over this, I'm not gonna belabor it, it's a Mossberg 500A?

24 A. Yes.

25 Q. Pistol grip and twelve gauge, correct?

1 A. I did not list pistol grip.

2 Q. Okay. You don't list that, but it is a pistol grip
3 shotgun?

4 A. It's a pump action shotgun with a pistol grip, yes.

5 Q. Okay. You can actually buy that firearm the way that
6 it's situated right now. Maybe not with the red dot site,
7 but --

8 A. That's correct.

9 Q. Okay. So it has not been modified except for the site
10 on it?

11 A. That's correct.

12 Q. Okay. You made some notations here in your report
13 about the condition of the shotgun. Do you want to flip to
14 that page?

15 A. In my report or in my notes?

16 Q. It looks like your report. Or your -- it's titled
17 worksheet.

18 A. Okay.

19 Q. I'm on page 1 of 2.

20 A. Okay.

21 Q. You list the -- the shotgun as having residue inside
22 the barrel?

23 A. Yes.

24 Q. Also you list that the shotgun's in fair condition?

25 A. Yes.

1 Q. All right. It's got, I believe, some -- some issues
2 with the paint?

3 A. Yes.

4 Q. And there's some chipping inside of the -- I believe
5 it was the chamber or the ejection port?

6 A. Yes, there's some paint missing, there's some chips on
7 the firearm.

8 Q. Okay. And the reason that you-all list these types
9 of things in a report is because the -- the quality of the
10 firearm or the -- I'm at a loss for words right now. Not
11 the value, but the -- how it presents. What's the word I'm
12 looking for? Sorry. The shape that it's in, right? The
13 shape that it's in. I'm sorry. The shape that's it in
14 could affect the operation of that -- of that firearm,
15 correct?

16 A. Its condition could affect the operation of the
17 firearm.

18 Q. Condition. That's what I was looking for. Thank you.
19 And you would agree with me that this -- this firearm was
20 not in good condition?

21 A. It was in fair condition --

22 Q. Fair condition.

23 A. -- meaning it functioned, but there were some cosmetic
24 wear and tear and chips.

25 Q. Okay. Could a firearm that's in bad shape be

1 defective?

2 A. A firearm in poor condition -- yes, there could be
3 instances where a firearm in poor condition could have
4 clogging of the firing pin channel so the firing pin
5 wouldn't move. I've seen that before, yes.

6 Q. Okay. We're talking about the firing pin. If the
7 firing pen had residue or corrosion on it, that could
8 affect the way that a firearm operates as well?

9 A. Potentially, yes.

10 Q. Okay. And you -- I think you said that you had done
11 numerous tests. You racked the firearm with and without
12 ammunition and found it to be in working order?

13 A. Yes, sir.

14 Q. But that's not the only way a firearm can -- can
15 actually malfunction or misfire; is that correct?

16 A. Correct. It could be user error. It could also be
17 wear and tear of the ammunition itself.

18 Q. Okay. Let's talk about the ammunition. Do you know
19 what type of ammunition was used in this incident?

20 A. I received one fired Estate brand shot shell.

21 Q. Okay. And that's a shot shell. What type of shot
22 shell was it? Was it birdshot or buckshot --

23 A. Number 8 birdshot.

24 Q. Okay. And that's typically used for hunting some type
25 of bird; a pheasant, dove, whatever?

1 A. I believe so, yes.

2 Q. Okay. And that type of shot shell has -- I don't know
3 how many hundreds. I would say a good handful of small
4 pellets of BB's in it?

5 A. It was labeled one and one-eighth ounce of 8 --
6 Number 8 birdshot pellets.

7 Q. Okay. And the function of that type of shotgun shell
8 is when -- when you're shooting a bird, you kind of want a
9 wide pattern, right?

10 A. Correct. But your patterns can also be determined by
11 the choke of the firearm.

12 Q. Sure. Well, let's talk about what a choke is. I
13 know what a choke is. Maybe some of the jurors don't.
14 It's a device you put on the end of the firearm to
15 actually control at a certain distance the spread of the
16 BB's, right?

17 A. Correct. It is something that you can put inside the
18 barrel of your shotgun to control the spread, whether you
19 wanted a tight knit shot pattern or to fly it out.

20 Q. Okay. And did this firearm have a choke on it?

21 A. No, this is a cylinder board; meaning no choke.

22 Q. Okay. And this type of ammunition is typically used
23 for hunting birds, not self-defense, correct?

24 A. I would believe so.

25 Q. Okay. And in your training and experience, the

1 closer -- the closer you get to a target with birdshot,
2 the smaller the -- the spread is gonna be?

3 A. Again, it depends on the firearm itself.

4 Q. Okay.

5 A. It can be.

6 Q. And you say it depends on the firearm, but barrel
7 length can also change the spread, right?

8 A. The barrel length, where there's a barrel shot off --
9 sorry -- sawed off or not, alterations to the firearm, if
10 there's a choke in there, and actual ammunition itself can
11 play a distance in -- or a determination in the pattern.

12 Q. Okay. But you would agree with me, generally
13 speaking, for shotguns the closer you are, the smaller the
14 spread, the farther you are, the larger the spread?

15 A. Yes, sir.

16 Q. Okay. And in a shotgun shell they have the -- what's
17 called the wad?

18 A. Yes, sir.

19 Q. And that's a piece of plastic that actually holds the
20 BB's together while it exits the barrel?

21 A. Wads can be made of plastic or cardboard. There is
22 a shot cup wad, which actually holds the BB's, and then
23 there's over-the-powder wad, which actually protects the
24 BB's from hitting the gunpowder in the shell.

25 Q. Okay. And when the shell is set off, that wad is

1 ejected with the BB's and at some point breaks apart and
2 the BB's continue?

3 A. Correct.

4 Q. In your training and experience, what would be your
5 estimated -- the average distance that a wad would go?

6 A. Again, there's so many factors depending on the gun,
7 depending on the ammo, depending on how they're shooting
8 the firearm, so I -- I can't tell that.

9 Q. How about -- well, what about relative to the BB's,
10 the wad's gonna be much shorter in distance than the BB's?

11 A. The wad typically falls off before the BB's stop their
12 flight.

13 Q. Okay. And you had mentioned that ammunition can also
14 cause an issue with firearms. Old ammunition can either go
15 off too early or the primer could be too light?

16 A. It depends. Not necessarily old, but how it was
17 stored, if it was in contact with water, or there can be
18 multiple things that could mess up ammunition.

19 Q. Okay. So ammunition that may be manufactured out of
20 spec could be --

21 A. It could be.

22 Q. It could be. Okay. So there's more than just the
23 actual mechanics of the firearm that can actually cause a
24 shotgun to -- to prematurely go off?

25 A. A shot shell or a shotgun?

1 Q. A shot shell. I'm sorry.

2 A. A shot shell to go off, yes.

3 Q. Okay. And we talked a little bit -- I believe you
4 talked a little bit about, you know, slam firing. Do you
5 understand -- do you know what that is?

6 A. A slam fire is typically when closing the action of a
7 firearm causes it to go off. So like in this case racking
8 the firearm would cause it to go off.

9 Q. And typically in a slam fire there's a malfunction
10 with the gun and the firing pin, correct?

11 A. It could be, yes.

12 Q. Okay. And a slam fire also can happen with -- like we
13 talked about with ammunition?

14 A. It depends on -- again, it depends on the gun, it
15 depends on the mechanics of that firearm and the
16 ammunition.

17 Q. Okay. But it is possible?

18 A. For?

19 Q. To slam fire if there's faulty ammunition?

20 A. It depends on the firearm --

21 Q. Okay.

22 A. -- and the safety mechanisms built into the firearm.

23 Q. Okay. You hit on that as well, but I think in your
24 -- in your report you noted that the -- the safety in this
25 firearm was difficult to move?

1 A. Yes. I believe it was because of the paint job. It
2 looked like it was -- there was some paint around it and
3 it was difficult to move.

4 Q. Were you able to fire the shotgun with the safety on?

5 A. No, I was not.

6 Q. Okay.

7 MR. SCHWARTZ: The Court's indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. SCHWARTZ:

10 Q. For this model firearm, do you -- do you know what the
11 average trigger pull is from the factory?

12 A. No, I do not.

13 Q. In your training and experience, is five -- I think
14 it's five and three-quarters to six pounds. Is that
15 normal?

16 A. That was my testing of this firearm. It did not feel
17 heavy, it did not feel too light. It just felt normal.

18 Q. Okay. And somebody who's inexperienced with using
19 firearms, if they had their finger on the trigger and they
20 racked it -- I think you called it a full rack, would the
21 firearm go off?

22 A. The forearm?

23 Q. Yes, ma'am.

24 A. On this firearm, no, it could not because the
25 disconnecter would not be in -- in the mode in connection

1 with the seer. It had to be racked all the way, the
2 trigger had to be reset and then pulled the trigger.

3 Q. Were you able to look at the trigger grip -- trigger
4 group in this firearm?

5 A. No. Again, I did not disassemble this firearm because
6 I didn't want to make any alterations to it before court.

7 MR. SCHWARTZ: No further questions, Your Honor.

8 THE COURT: Redirect?

9 MR. PINCELLI: Very briefly.

10 REDIRECT EXAMINATION

11 BY MR. PINCELLI:

12 Q. Suzanne, you talked about slam fired. Is that kind
13 of one of those things you tested for?

14 A. Yes, that's basically what I was testing for with
15 the manipulation of the forearm constantly. That's what
16 we were testing for.

17 Q. During your testing, did it ever go off in that
18 circumstance?

19 A. No, it didn't. It only went off when I pulled the
20 trigger.

21 Q. You also talked about the condition of the firearm.
22 Did any of those cosmetic issues I think you -- you called
23 them, did those have any effect on the functionality of
24 the firearm?

25 A. No, it did not.

1 Q. You talked some about user error. Did that affect
2 the functionality of the gun at all? Did it still have
3 the -- you explained the process that had to be done to
4 fire that weapon?

5 A. Right. No, this one had to be fully loaded or one
6 round in the chamber. The forearm had to be all the way
7 forward for it to fire.

8 Q. And you talked about -- some about the shell. I know
9 that you said that you got -- you did a shell comparison;
10 is that correct?

11 A. That's correct.

12 Q. So you did the comparison to the shell -- at least
13 one shell that was fired out of that firearm?

14 A. That is correct.

15 Q. So you had an opportunity to examine that shell?

16 A. I did so.

17 Q. Did you observe anything abnormal about that shell?

18 A. No, I did not.

19 MR. PINCELLI: No further questions. Thank you.

20 THE COURT: Anything further?

21 MR. SCHWARTZ: Just briefly, Your Honor.

22 RECROSS EXAMINATION

23 BY MR. SCHWARTZ:

24 Q. Agent Cromer, a slam fire can be an anomaly; isn't
25 that correct?

1 A. It can on certain firearms, but I tested this firearm
2 and the safety functions would not allow this one to slam
3 fire when I had it.

4 MR. SCHWARTZ: No further questions, Your Honor.

5 THE COURT: Thank you, ma'am. You may step down.

6 MR. PINCELLI: Your Honor, can we have our evidence
7 custodian put that firearm back?

8 THE COURT: Is it in evidence?

9 MR. PINCELLI: It is in evidence, but I don't know
10 how you'd like it stored in evidence.

11 MR. SCHWARTZ: It was never entered in evidence,
12 Your Honor.

13 THE COURT: Okay. It's not in evidence?

14 MR. PINCELLI: Okay.

15 THE COURT: I'm asking.

16 MR. PINCELLI: Can we recall her to put it into
17 evidence so it can be stored somewhere in the courtroom?

18 THE COURT: That's fine with me. Yes, sir.

19 Have a seat back up here. You're still under oath.

20 MR. SCHWARTZ: Your Honor, we stipulate to it being
21 into evidence.

22 MR. PINCELLI: Okay.

23 THE COURT: All right. You're free to go. Thank
24 you.

25 (Witness excused.)

1 THE COURT: Ladies and gentlemen, I'm supposed to
2 tell you something. In any case that has a firearm
3 entered into evidence, there are specific rules that have
4 been implemented by our chief justice and basically what
5 they provide is that the weapon has to be certified to be
6 empty, it has to be certified to be locked, and you saw
7 the trigger lock on it. I do not know if there will be
8 any ammunition offered in the case or not, but the rule
9 is that if they offer ammunition and a weapon, you cannot
10 have both of them at the same time even though it's got
11 the lock on it. So if during your deliberations you want
12 to see -- you have one and you want to see the other, you
13 have to send me a note and we have to take the one you
14 have and give you the other, okay?

15 We need a ten-minute break. I know you-all have been
16 back there, but we've been working the whole time since
17 2:00, so give us a ten-minute break, okay? Don't discuss
18 the case.

19 (Whereupon, the jury retires to the jury room at
20 3:37 PM.)

21 THE COURT: Mark that into evidence. I don't what
22 exhibit number it is.

23 THE COURT REPORTER: No, I've got it.

24 (State's Exhibit Number 28, a shotgun, was admitted
25 into evidence.

1 THE COURT: We're at ease for ten minutes.

2 (Recess taken at 3:37 PM.)

3 (Back on the record at 3:45 PM.)

4 BAILIFF: All rise. Court is now in session.

5 THE COURT: Be seated, please.

6 Do you have additional witnesses?

7 MS. PATTERSON: Your Honor, the State's gonna rest
8 at this time.

9 THE COURT: All right. Are there any motions?

10 MS. ZMROCZEK: Yes, Your Honor.

11 At this time the defense would move for a motion for
12 directed verdict on the charge of murder and possession
13 of a weapon during the commission of a violent crime.

14 Your Honor, as you know and are familiar with the
15 caselaw, there has to be substantial circumstantial
16 evidence in -- in order for Your Honor to send this case
17 to the jury. What element is lacking we assert in this
18 case is malice. There's been no substantial circumstantial
19 evidence regarding the malice aspect, an element of the
20 murder, and by default if they don't find him guilty of
21 murder, then they can't find him guilty of possession of
22 a weapon during the commission of a violent crime.

23 We were listening for it, we were listening for any
24 evidence of malice in this case, and -- and this is a
25 case where it's already been introduced through the

1 witness, the first witness who is now with probation, he
2 was the first officer on-scene, Schirra, I'm sorry,
3 and, Your Honor, he was asked -- there's evidence of
4 self-defense that he was told about that he told the jury
5 that he heard; that he -- have you ever had to shoot
6 someone, I had to, and -- and, Your Honor, because of that
7 and evidence to come, which when we renew our motion it
8 will be a little bit stronger, but because of that we
9 understand that under Belcher that malice can't be
10 inferred from the use of a gun, that that cannot be
11 charged to a jury, that malice can be inferred from the
12 use of a gun, and that's based on the ruling -- Supreme
13 Court ruling in Belcher.

14 So absent that, Your Honor, we just at this point
15 don't believe that there's any substantial circumstantial
16 evidence regarding malice.

17 Additionally, one of the things that Your Honor knows
18 that you have to consider is the testimony from the witness
19 stand. In particular, the lay witnesses are the ones that
20 are gonna be able to provide malice because they were the
21 ones there, and so if you look at the lay witnesses that
22 we have, we have Haley, Leeann and Troy, and when you're
23 looking at the consistencies or inconsistencies in their
24 testimony, there are a lot of inconsistencies, but
25 regardless, the one thing that they were consistent on

1 was there was no testimony that I heard for malice.

2 Your Honor, for those reasons we would move for a
3 directed verdict on this charge.

4 THE COURT: There's evidence that he went -- if the
5 jury believes it, there's evidence he went into the house,
6 he stayed three to five minutes, he armed himself with a
7 shotgun, which he had to take out from a cover, that he
8 came out and stood on the doorway or on the steps and said
9 something to the effect of I told you not to mess with me,
10 and fired a gun. I find there's an abundance of evidence
11 of malice if the jury believes it. The jury would have to
12 find it.

13 All right. Do you have witnesses?

14 MS. ZMROCZEK: We do, Your Honor. The first witness
15 that -- so obviously we're --

16 THE COURT: Your motion is denied. I'm sorry. Go
17 ahead.

18 MS. ZMROCZEK: Thank you. I do have witnesses, Your
19 Honor. I've spoken to my investigator. I told him not
20 to come here to testify today, to continue to search and
21 serve that person. Officer Watford was here. It's his
22 day off. His video is thirty-four minutes long. I sent
23 him home. He's gonna come back in the morning. We have
24 a couple more that are coming back in the morning, but
25 what I do have today, Your Honor, is the director of

1 communications for 9-1-1 and so certainly we're gonna call
2 her, Your Honor, and play two calls.

3 There are -- I want to go ahead and just preempt
4 this so we don't have to -- to deal with it and send the
5 jury out again. There are three other events in her
6 communications system that I intend on asking her about.
7 One is regarding a report from May 15th of 2015, which
8 was within twelve months of this, where the caller is
9 Mr. Foster and he's talking about that there were
10 individuals on his carport -- carport who are refusing to
11 leave.

12 The second, Your Honor, is a month later, on June 5,
13 2015. The caller is Cathy Foster. She says that the son
14 told the mother to call the police to get him out of there
15 before he does something wrong and it indicates caller
16 says father and son are present and then caller goes on
17 to say that's her son.

18 The third call, Your Honor, that we intend to
19 question her about, and certainly not put the reports in,
20 but just question her about, are -- is the one dated
21 from 11-19-2015, which is just a few months before this
22 happened, and it states that the caller is Will and, Your
23 Honor, that they were needing EMS, male threatening S-9.
24 Signal 9, Your Honor, is the signal that refers to death.
25 Also S-10 and S-13, Signal 10 and Signal 13, and there's

1 a quote from -- the male caller says please come get me
2 before I hurt someone.

3 Your Honor, all of this is being introduced in
4 rebuttal because we asked -- and the State actually asked
5 and we also asked several of the witnesses if there --
6 if Will had ever -- that they know of been violent and
7 aggressive. I think one witness testified only towards
8 Mr. Foster, but this evidence, Your Honor, goes directly
9 to Mr. Foster's knowledge of and needing to call 9-1-1
10 and asking for assistance and this is evidence that falls
11 specifically under 402(a) and being offered specifically
12 for that purpose, of determining the first aggressor in a
13 homicide case.

14 MS. PATTERSON: Your Honor, I would object to those
15 specific instances being mentioned. I never opened the
16 door and asked any of the witnesses on direct examination
17 about Will's reputation or propensity to violence. They
18 did that -- some of that on cross-examination. I never
19 opened the door. Again, Your Honor, these would be
20 inadmissible pursuant to State v. McCray. I've mentioned
21 this earlier this week, Your Honor. Testimony about
22 victim's previous violent acts was not relevant where the
23 State did not open the door, which I did not regarding his
24 character, where testimony was either situation specific,
25 unrelated to the victim's state of mind at the time of the

1 homicide, and was not so closely connected to the homicide
2 to admit it, and it's too prejudicial, Your Honor. We
3 don't even know if these were anything pertaining to the
4 Defendant. Again, it -- it does not show anything about
5 the victim's state of mind at the time of the homicide.

6 I have copies of State v. McCray if Your Honor wants
7 to look at it, but the victim -- I mean, he has the right
8 to attack the reputation of the victim for violence, but
9 he cannot do this by showing specific instances of
10 violence, Your Honor, or either this -- or either just
11 calls of concern to 9-1-1.

12 THE COURT: Which version of State versus McCray are
13 you referencing?

14 MS. PATTERSON: Your Honor, I'll pass a copy up.

15 MS. ZMROCZEK: And, Your Honor, after reading McCray,
16 we would go ahead and withdraw the 5-15 where it doesn't
17 specifically mention the -- it just says four people under
18 the carport, so we're simply asking to admit the two that
19 involve directly the victim and directly the -- and/or
20 directly the Defendant.

21 THE COURT: I appreciate you-all trying to move the
22 case along, but I don't know how I can rule on these until
23 there is testimony to establish the necessary link between
24 these incidents and the state of mind of the Defendant. I
25 know you indicated that there was evidence that you -- that

1 the witness testified about the victim's propensity to be
2 aggressive, but unless this is something that the Defendant
3 claims he knew, I don't know where it's relevant.

4 MS. ZMROCZEK: Right. And, Your Honor -- well, Your
5 Honor, on the communication it specifically says father
6 and son and the son saying -- son told the mother to call
7 the police to get them out there before he does something
8 wrong and --

9 THE COURT: Who's calling?

10 MS. ZMROCZEK: Cathy Foster is the listed caller.

11 MS. PATTERSON: Your Honor, there's still no link to
12 the Defendant's state of mind at the time of the homicide.

13 THE COURT: I don't -- there's no -- there has to be
14 a better foundation than what -- what you-all are telling
15 me. There has to be some evidence to say okay, that's so
16 and so calling, and I don't --

17 MS. ZMROCZEK: Right. And that's why -- and that's
18 why we intend to get that through the 9-1-1 operator.
19 These are records that are generated and, of course -- and
20 we're not trying to enter the records, but we certainly
21 can. But they're generated in the course of business and
22 that -- what she -- and what I anticipate her testimony to
23 be is that -- to explain how the CAD system works and,
24 Your Honor, this is an event report, so a call comes in,
25 they get the location, which is the address, they get the

1 caller name, address and telephone number, and then they
2 have the notes, and what she will testify to is the 9-1-1
3 call -- 9-1-1 calls are routed to the communication center,
4 that people typically call -- I mean, 9-1-1 calls have
5 certainly been entered numerous times because they are a
6 present sense impression and/or excited utterance, the
7 Court has let them in under both, and what these are,
8 Your Honor, since we don't have the calls -- and these
9 were provided to us in discovery, this is not something we
10 went out and searched for, and what they do, Your Honor,
11 is they -- they take the notes and they put them on a
12 report as they're being told to the operator and then
13 they're generated in this report, and so that would be
14 the foundation for them.

15 THE COURT: So you're not wanting to play the 9-1-1
16 recording, you're wanting to enter a report?

17 MS. ZMROCZEK: No, no. I'm playing the 9-1-1
18 recordings from this incident. These two reports are
19 from previous incidences and I --

20 THE COURT: I'm not talking about this incident.
21 I'm talking about the two that you're trying to get me to
22 rule on right now.

23 MS. ZMROCZEK: Okay. I don't have the 9-1-1 calls,
24 Your Honor, because what she will also testify to is that
25 after a certain number of days if they aren't requested,

1 they are disposed of, and so the only thing that we have
2 left are the reports that are generated.

3 MS. PATTERSON: And, Your Honor, I just don't see --
4 I just don't see how there's any foundation laid before
5 the Defendant testifies about the victim's then state of
6 mind at the time of the homicide. Again, that is the
7 requirement before the victim's character evidence can be
8 shown by specific instances. Again, Your Honor, calls
9 made months before the homicide does not show the victim's
10 state of mind at the time of the homicide and is not so
11 closely connected to admit it.

12 THE COURT: Well, it -- the victim's state of mind
13 may be one issue. The other issue is whether the Defendant
14 had a reasonable fear for his own safety or the safety
15 of others and the jury is allowed to consider prior
16 difficulties. What I'm wrestling with is foundational
17 and evidentiary hearsay. And I may not be understanding
18 you-all correctly, but there are two call reports that are
19 sought to be entered through a 9-1-1 operator who was not
20 present, so somebody is calling in and identifying
21 themselves to a 9-1-1 operator and then the 9-1-1 operator
22 makes a report, which is preserved, but the recording
23 itself is not.

24 MS. ZMROCZEK: Correct.

25 THE COURT: And one of these is from Cathy, the

1 mother, purportedly, and the other is from Will himself?

2 MS. ZMROCZEK: Yes.

3 MS. PATTERSON: Your Honor, she can call Cathy. She
4 called Cathy at pretrial. Cathy's available.

5 THE COURT: It's not a question of whether it might
6 ultimately come in, the question I'm wrestling with is
7 whether they can come in now under this when there's no
8 agreement. If there were an agreement, then fine, but
9 until the Defendant puts one of those issues I just
10 discussed into the case, that is that he was fearful for
11 his safety or that of others, then that issue --

12 MS. ZMROCZEK: And, Your Honor, we can wait --

13 THE COURT: There's no relevancy.

14 MS. ZMROCZEK: Right. And so what we can do if need
15 be then, Your Honor, is I'll go ahead and put -- since
16 this witness is here, I'll put in these 9-1-1 tapes,
17 reserve the right to recall her after evidence of him
18 being afraid for himself or for others has been presented.

19 THE COURT: I mean, that's not the only way it can
20 come in.

21 MS. ZMROCZEK: Right.

22 THE COURT: I'm just -- the second way that you-all
23 have been discussing relates to credibility, impeachment,
24 things of that nature, and then we have to go through the
25 hearsay analysis and determine whether there's an exception

1 to the hearsay rule and if it's a double hearsay, triple
2 hearsay, what -- what I'm dealing with. I'm kind of
3 shooting in the dark right here as to what I -- what
4 exactly is before me.

5 All right. Bring the jury in.

6 (Defendant's Exhibit Number 25 and 26 were marked for
7 identification.)

8 (Whereupon, the jury return to the courtroom at
9 4:10 PM.)

10 THE COURT: Ladies and gentlemen, after the ten
11 minute break, I was advised that the State is going to
12 rest at this point.

13 Is that correct?

14 MS. PATTERSON: Yes, sir, Your Honor.

15 THE COURT: And so rather than bring you in and send
16 you right back out, I went ahead and dealt with the issues
17 I told you at the outset of the trial when I explained to
18 you that -- how the case would go, that once we reached
19 the stage where the State rests, I have to discuss legal
20 issues with the attorneys, so that's why you've been
21 sitting back there. We've been going through that. I've
22 done that now and the next thing that will happen is that
23 the defense is given an opportunity to present evidence
24 for you to consider. The defense has no obligation to
25 put forth evidence. The burden of proof has not changed.

1 The burden of proof remains with the State throughout the
2 trial, but the defense is afforded the opportunity to
3 present evidence for you to consider in deciding whether
4 the State has met its burden of proof or whether it has
5 failed to meet its burden of proof.

6 Now my understanding is that what we're gonna do this
7 afternoon is we'll have one witness and then we'll break
8 for the day and come back tomorrow. And right now I don't
9 know if you're gonna get the case tomorrow, it may be
10 Friday, okay? There's another issue that's kind of come
11 up that could delay us. Hopefully, we can get around that.
12 And it just arose recently.

13 All right. Again, I'll try to keep you abreast of
14 what's going on. I invite your close attention.

15 Call your first witness.

16 MS. ZMROCZEK: Thank you, Your Honor.

17 We call Nikki Rodgers.

18 THE COURT: Come around, please.

19 (Whereupon, Nikki Rodgers was duly sworn by the
20 Clerk of Court.)

21 THE CLERK: Please be seated in the witness stand.
22 Once you are seated, state your full name; spelling your
23 last for the record.

24 THE WITNESS: Nikki Rodgers, R-O-D-G-E-R-S.

25 THE COURT: Spell your first name.

1 THE WITNESS: Nikki, N-I-K-K-I.

2 THE COURT: Thank you.

3 NIKKI RODGERS,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. Ms. Rodgers, will you please tell the jurors where
8 you're employed?

9 A. I am employed with Lexington County 9-1-1
10 communications.

11 Q. And what is -- what does that mean? Briefly describe
12 your duties.

13 A. I'm the chief of communications. I run the overall
14 operation as far as the entire department, the budget, the
15 training, complaints, addressing, computers. Everything
16 that's needed to run the 9-1-1 center.

17 Q. And so explain just a little bit about when someone
18 calls 9-1-1. What happens?

19 A. When someone dials 9-1-1, of course, it starts --
20 we start recording it before we actually pick up. The
21 9-1-1 operator will pick up the phone and transfer that
22 information into the computer and then ask them a series
23 of questions, decide whether they need police, fire or
24 EMS help, and then as they process that call it goes into
25 the computer-aided dispatch and then we dispatch the

1 appropriate response or resources that that citizen may
2 need.

3 Q. You said that it actually starts recording before
4 someone picks up?

5 A. Right.

6 Q. How does that work?

7 A. Any cell phone or landline, business phone, once they
8 activate the 9-1-1 by their touchpad on their telephone,
9 it actually rings one time for them and then it actually
10 starts recording in our center. So before we even hear it
11 ring, it's already what they call a ringing seizure on the
12 telephone line.

13 Q. Okay. And so sometimes before the operator comes on
14 and says Lexington County 9-1-1, there may be speaking
15 before that and that's because --

16 A. Correct.

17 Q. -- like you said, that's how it --

18 A. When you're hearing it ring, it's already recording
19 in our department.

20 Q. And -- and you said that a report is generated and
21 also that you ask if they need fire, medical or police
22 and that they are dispatched. Explain those things.

23 A. Correct. We announce the call by saying that
24 you've reached 9-1-1 and we ask for the location of your
25 emergency, then we go through a series of questions to

1 determine what is going on on the scene and then that
2 information is translated from the caller to the 9-1-1
3 operator and then typed into the computer and documented
4 on the call card so that the responders will know what is
5 happening and we can give them the appropriate fire, EMS
6 or law enforcement response.

7 Q. So they -- and so they know what's happening either
8 through the radio, but they also have a computer screen
9 that they can look at as well?

10 A. Some units do have computers in their vehicles and
11 some do not, so we give that information over the radio
12 and then that's kind of like a double receiving it. So
13 they can read it on the screen if they have an in-car
14 computer. If they don't, they get it over the radio.

15 Q. And then -- or also what I refer to as a CAD sheet
16 is generated. Tell them what a CAD sheet is.

17 A. CAD stands for computer-aided dispatch. It's
18 basically your call record log for incoming calls,
19 processing the call and making sure that it goes all the
20 way to completion, keeping up with the units that are
21 responding, when they arrive, when they clear, their times
22 that they ask for additional resources, whatever it may be.

23 Q. And what other information can you find on a CAD
24 report?

25 A. So a basic CAD report will have the date that it is

1 received, the time it's received, the address of the
2 location of where we're sending resources, the caller,
3 the telephone number of the caller, and then a series of
4 questions, answers that we have asked them. It will also
5 have the units that we responded and any of timestamps
6 that -- en route, dispatched, arrived, cleared, that kind
7 of thing.

8 Q. Okay. And what if someone calls and doesn't want to
9 give their name?

10 A. They can remain anonymous. They just have to tell us
11 that.

12 Q. Okay. And does the computer automatically record
13 phone numbers?

14 A. We have multiple computers. The telephone system
15 automatically -- if your telephone provider provides us
16 that telephone number, it will record that number, and
17 all we have to do is push one button and it dumps the
18 information into our computer, into the fields. If it
19 does not, then we have to ask and verify that information.

20 Q. And then does it also provide you location
21 information?

22 A. It does and then it doesn't, okay? If it is a
23 landline phone, that is your grandmother's old-timey
24 landline phone that was on the wall, absolutely 100 percent
25 we know exactly where you're at. If you're calling from

1 a cell phone, there's three different types of cell phones.
2 There is a -- just a regular wireless cell phone, a
3 wireless phase one cell phone, a wireless phase two cell
4 phone. The initial wireless call gives us absolutely
5 nothing, doesn't tell us where you're at, doesn't give
6 us any kind of approximate location. It gives us no
7 information. It says query caller for all information.
8 Those are some of the older phones, some of the burner
9 phones, some of the phones that can you buy at the gas
10 station, that kind of thing. Your wireless phase one
11 call, that gives us the location of the tower that you're
12 hitting. So depending on your phone carrier and how many
13 slots are available that they have paid for at a certain
14 tower, then you call and it goes to the closest available
15 tower to your location, then it is sent to the closest
16 9-1-1 center to that location. So we could get calls from
17 Augusta, we could get calls from Atlanta, we could get
18 calls from Sumter, Richland County. You usually get those
19 bounced around a lot. Especially, if you're like on a
20 border. Say you're on I-26 and Richland County's on one
21 side and Lexington County on the other, you know, we get
22 those. Wireless phase two, that actually gives us not
23 only your telephone number, but it also gives us the
24 ability to hit a button on our dispatch console and it
25 will give us a retransmit button or retransmit information

1 and it gives us your latitude and longitude, but it is not
2 exactly specific. It is about 500 feet all around in a
3 circle, so you could be anywhere within that, which is a
4 lot better than it used to be.

5 Q. So if you have an address on a CAD report, it's
6 typically because the person or someone probably gave you
7 that?

8 A. Correct. We have to verify that information.

9 Q. Okay. And then you said that notes are generated.
10 So are your 9-1-1 operators trained to ask certain
11 questions?

12 A. They are. They are trained with standard questioning
13 for every caller starting off with the location because the
14 location is the most important thing.

15 Q. And then -- and then I think you said that there are
16 notes typed in. So when a person responds to the questions
17 from the operator, is that what they're typing in?

18 A. We type in what the caller says, yes.

19 Q. Okay. And sometimes are -- sometimes they're in
20 quotes. Do they have to be? How does that work?

21 A. They don't have to be in quotes. Sometimes depending
22 on how fast you're a typer or what -- your grammatical
23 type. Some people hunt and peck, some people type faster,
24 some people type bullets, some people type full sentences.
25 It just depends. The operators are trained to take the

1 information that they are receiving from the caller and
2 type it in the call card as fast and as quickly as they
3 possibly can.

4 Q. So that that information can be dispatched?

5 A. Correct.

6 Q. Okay. So I want to talk right now about May 10th of
7 2016, and I'm certainly not gonna ask you to go off the
8 top of your head. Did you -- are those -- the records that
9 you bring, are those records that you keep in the normal
10 course of business?

11 A. They are.

12 Q. Okay. And the records I wanted to ask you about. So
13 these records, these CAD reports, do you ever just dump
14 them and get rid of them?

15 A. We have approximately ten years -- or ten years'
16 worth of CAD records as far as the paper or
17 computer-generated-type CAD reports. Our recordings are
18 only kept for ninety days.

19 Q. So the recordings are only kept for ninety days?

20 A. Correct.

21 Q. So if -- if I need to get a copy of a 9-1-1 call
22 that was made and I don't request that within ninety days,
23 then I'm likely out of luck?

24 A. Correct. It is completely reported over. We have a
25 digital recording system and it's automatically recorded

1 over.

2 Q. And so in this case though on May 10, 2016 -- and who
3 typically requests those calls from you?

4 A. Usually investigators, citizens if they've been in an
5 accident, that kind of thing. Anybody can request it.

6 Q. Anybody can request them, right?

7 A. Correct.

8 Q. But typically if it's involved in a case that's going
9 to court, you said an investigator would?

10 A. Yes.

11 Q. Okay. And are you familiar with -- for example,
12 Lexington County because that's where you work, do they
13 have a case investigator who's like one investigator
14 assigned to the case and then other people working under
15 them?

16 A. We actually dispatch for Lexington County Sheriff's
17 Department, eleven municipal police departments, EMS and
18 fire service. So we deal with Lexington PD, every
19 municipality in Lexington County except for Cayce police,
20 West Columbia police, and Batesburg-Leesville PD.

21 Q. So they have their own?

22 A. They have their own.

23 Q. Okay. And so --

24 A. Everybody else comes through us and then they have
25 multiple investigators and police officers.

1 Q. And a lot of people doing different jobs?

2 A. Yes.

3 Q. Okay. So in this case, on May 10th of 2016, how many
4 calls did you receive and did you provide?

5 A. Let's see. There were four.

6 Q. Okay. So we had four 9-1-1 calls and those were
7 requested that they be saved or downloaded, right?

8 A. Yes.

9 MS. ZMROCZEK: And, Your Honor, I believe without
10 objection we would move Defendant's 24 into evidence.

11 THE COURT: Any objection?

12 MR. PINCELLI: No objection, Your Honor.

13 THE COURT: Mark it into evidence, please.

14 (Defendant's Exhibit Number 24, 9-1-1 calls, was
15 admitted into evidence.)

16 BY MS. ZMROCZEK:

17 Q. And, Ms. Rodgers, you had an opportunity to actually
18 listen to the calls that were provided?

19 A. Yes, ma'am.

20 Q. Okay. And did they -- were they the calls that were
21 recorded by your office?

22 A. Yes, ma'am.

23 Q. You said that you had five calls. When did the first
24 call come in?

25 A. I believe there's four.

1 Q. I'm sorry?

2 A. Four calls.

3 Q. Oh, sorry. My brain.

4 A. The first call was actually received at 16:54:52, and
5 that would be 4:54 PM, in the afternoon.

6 Q. 4:54 PM. And do you have a name associated with that
7 call?

8 A. The first call was a female caller that had stated
9 that someone had been shot and then they disconnected the
10 phone, so there was no other information recorded.

11 Q. And that was at 4:54?

12 A. Correct.

13 Q. When was the second call?

14 A. The second call was 4:56.

15 Q. Okay. And who made that call?

16 A. That was a male that was on the line and he had stated
17 he had just shot his son.

18 Q. So the second call was at 4:56 and it was a male
19 stating that he had just shot his son?

20 A. Correct.

21 Q. And the third call?

22 A. The third call was also at 4:56 and it was another
23 caller -- hold on one second. I don't have whether the
24 caller was a male or a female, but it says another caller
25 states at [REDACTED] 8 Oak Top -- hold on one second. Caller

1 stating someone may hurt the officer.

2 Q. Okay.

3 A. There's multiple calls coming in on this call at one
4 time and since they are all coming in at the same time,
5 they use the same CAD report so that they are taking this
6 same information and putting it on one call card for
7 everybody to get the exact same information that's coming
8 in about the call instead of having separate ones.

9 Q. And so -- and that brings up an interesting question.
10 So are there more than one 9-1-1 operators -- is there more
11 than 9-1-1 operator?

12 A. Correct. There's anywhere from ten to twelve on duty
13 at a time.

14 Q. Okay. So you make sure that in their little room
15 there are at least ten to twelve?

16 A. During our normal busiest hours, yes, there's ten to
17 twelve.

18 Q. Okay. And then that way when a call comes in, it's
19 just routed to whomever is available?

20 A. It is. There's separate call-takers and dispatchers
21 during that time. They can all see what types of calls
22 that each other is receiving, so if there is multiple calls
23 coming in from the same street or the same area location,
24 they can -- they get a window that pops up that says
25 possible duplicate call. That way they're pulling up that

1 same incident report or incident card and they're typing
2 additional information in it. That's why it's got multiple
3 lines from different operators. I'm assuming they get to
4 see the report, but if you don't, every operator's name
5 will be in there and you have to kind of look at that
6 person's name and read all of the information that that
7 one operator is putting in, so that would be one call, and
8 separating out another person's caller and do the same
9 thing. So on this call there's four different callers.

10 Q. Okay. And then the fourth call, what time was that
11 one?

12 A. It was also at 16:56.

13 Q. Okay. And do you have the information from that of
14 who that caller was?

15 A. The caller is a neighbor.

16 Q. Okay.

17 MS. ZMROCZEK: And, Your Honor, may I publish two of
18 the calls?

19 THE COURT: Sure. They're in evidence.

20 MS. ZMROCZEK: Thank you.

21 (Whereupon, Defendant's Exhibit Number 24 was played.)

22 BY MS. ZMROCZEK:

23 Q. So how is a call disconnected? Do you-all ever hang
24 up first? Or explain how that works.

25 A. When a call comes in, if we can't get information

1 from them and we think that we are having multiple calls,
2 we'll stay on the line and just have an open line. If we
3 -- of course, sometimes we get different calls that are
4 like prank calls, that kind of thing, the caller will
5 disconnect and we'll call them back, so it could happen
6 either way.

7 Q. Okay. And the second call I'll play.

8 (Whereupon, Defendant's Exhibit Number 24 was played.)

9 BY MS. ZMROCZEK:

10 Q. And so that's a situation where after all the
11 information that you have is confirmed and that you have
12 confirmed that assistance is present, that's a situation
13 where dispatch would then disconnect?

14 A. Correct.

15 Q. Okay.

16 MS. ZMROCZEK: Thank you. Please answer any
17 questions that the State may have.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. PINCELLI:

21 Q. Good afternoon, Chief Rodgers. You talked about
22 the information on the CAD reports being date, time,
23 address and everything. You talked about the dates being
24 generated by the computer for the calls. How about the
25 notes that goes into those? You talked about the operators

1 putting in notes.

2 A. The notes are also timed stamped at the end. Every
3 time they hit return or enter, it puts a timestamp at the
4 end of it.

5 Q. And you said ten to twelve operators on duty at a
6 time, correct?

7 A. Correct.

8 Q. And you also said that they might type their reports
9 in different fashions because of the operator?

10 A. Correct.

11 Q. And would they be faster or slower depending on how
12 they did their report potentially?

13 A. They could be.

14 Q. And are the times on their reports stamped based on
15 when they enter the report?

16 A. Correct. As soon as that call-taker enters the
17 information, like if they were entering a description and
18 hit enter, as soon as they hit enter at the very end of
19 that comment it's gonna have a timestamp. So if they are
20 typing little bullets instead of long sentences, then each
21 bullet would have a timestamp, and then if they were to
22 take the same information and type in a long string, at
23 the end of that it would have a different timestamp, but
24 every time they hit enter for every comment it's got a
25 timestamp.

1 Q. And you explained to us there were four calls and
2 they came in at different times. You said that first one
3 was 16:54:52; is that correct?

4 A. Correct.

5 Q. The next one -- I don't think I got a second time.
6 Can you -- it was 4:56?

7 A. Okay. So the first call -- the initial call came in
8 at 16:54:52. Then the second call as soon as it came in,
9 the call-taker took that information and her first
10 timestamp is at 16:56 and 16. So the third call I believe
11 is at 16:56. They're all coming in within the same minute
12 or two and it's all the way down to the tenth of a second.

13 Q. And you said you generate information on the call card
14 and it will tell you -- you're able to say it was a female,
15 it was a male and you couldn't determine the gender.
16 Wasn't there -- where it says the third call, was that the
17 call that you couldn't determine?

18 A. Well, you should be able to follow each recording
19 with the actual CAD report. Even though there's multiple
20 calls going in, if you take each recording and follow that
21 call-taker and that caller, you should be able to follow
22 those comments up all the way up with different timestamps.

23 Q. How about that third call that came in?

24 A. So the third call -- all right. The third call is
25 16:56 and seventeen-tenths of a second.

1 MR. PINCELLI: I beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 BY MR. PINCELLI:

4 Q. And based on your call report, you said they were all
5 coming into one -- they're kind of -- all the information
6 is kind of funneling into one report?

7 A. One report.

8 Q. And there's a total of how many calls?

9 A. There were four incoming calls.

10 Q. We heard two calls here. One was from a male caller
11 and one was from a female caller. In that female caller's
12 audio, do you recognize the voice of the operator on there?
13 Not the person, but you heard two parties. Was one of
14 those people the operator?

15 A. Correct. Yes.

16 Q. And would that -- would that be the person that was
17 asking the questions?

18 A. Yes.

19 Q. On there, there were some questions about whether or
20 not it was an accident. Did that -- did you think that
21 was the information gathering part of the 9-1-1 call?

22 A. For the call-taker, yes.

23 Q. So that was a question posed by your operator?

24 A. Yes.

25 MR. PINCELLI: I don't have any further questions

1 for you. Thank you, Chief Rodgers.

2 THE COURT: Redirect?

3 MS. ZMROCZEK: Nothing further, Your Honor.

4 THE COURT: Thank you, ma'am. You may step down.

5 (Witness excused.)

6 THE COURT: Ladies and gentlemen of the jury, we're
7 gonna recess for the day. I need you back here tomorrow,
8 please, at 9:30. Be in the jury room then. Remember the
9 admonitions. I hope you have a pleasant evening. I look
10 to see you at 9:30 in the morning.

11 (Whereupon, the jury was excused for the day at
12 4:43 PM.)

13 THE COURT: Be careful as you leave that you don't
14 have contact with jurors, please. Don't be saying
15 anything about the case or anybody in it that might be
16 overheard by the jurors.

17 Court's in recess until 9:30 in the morning.

18 (Whereupon, the proceedings for May 22, 2019, were
19 concluded at 4:43 PM.)

20 (The following proceedings were held May 23, 2019,
21 beginning at 9:31 AM.)

22 BAILIFF: All rise. Court's now in session. The
23 Honorable William P. Keesley presiding.

24 THE COURT: Have a seat. Thank you.

25 Are there issues that need to be addressed before

1 the jury comes in?

2 MS. PATTERSON: Yes, sir, Your Honor. I know
3 yesterday we talked about Vernon Blanding and what the
4 Court could do in assisting the defense attorney in
5 getting Mr. Blanding here. Your Honor, I don't think
6 there's anything the Court can do unless he was properly
7 served. It's our position, Your Honor, that the defense
8 -- they've had time to properly serve Mr. Blanding.

9 Ms. Zmroczek filed a speedy trial motion on
10 February 25th. This trial was set a date certain sometime
11 in March in my absence, Your Honor. In filing the speedy
12 trial, I would say that you have to be ready -- you need
13 to be ready to call your witnesses. Mr. Blanding wasn't
14 anyone that was hidden. It was -- his name, his statement,
15 was contained in the original discovery that she got in
16 September. It has never been anything that just surfaced
17 all of a sudden; therefore, she had before the week of
18 trial to try to properly serve him in order to get the
19 Court to be able to assist here in getting his presence
20 in court.

21 Furthermore, Your Honor, after we finished yesterday,
22 me and my co-counsel went back and we was reading over an
23 e-mail that Ms. Zmroczek sent us detailing notes from her
24 investigator that actually spoke to Mr. Blanding. I know
25 I said it yesterday. I would ask that this person be

1 here and that the deputy who took his statement not be
2 allowed to just read his statement because I need to be
3 able to cross-examine him and not cross-examine -- and
4 cross-examine him not only on his statement, but the things
5 that he told her investigator, Your Honor, that may be of
6 some concern. And I made Your Honor a copy of the e-mail
7 so you can be fully aware of what Mr. Blanding told
8 Ms. Zmroczek's attorney. And this, I think, Your Honor --

9 MS. ZMROCZEK: My investigator, Your Honor. Not my
10 attorney.

11 MS. PATTERSON: I'm sorry. The investigator. Which
12 I think a lot of this would be detrimental to her case,
13 Your Honor, because according to Mr. Blanding, Mr. Foster
14 told him that he actually meant to kill his son, that he
15 told him he had to kill him, he's gonna have to kill him,
16 and that he took his wife, walked her down the street so
17 that he could kill him. I would certainly cross-examine
18 him on that, Your Honor. That shows malice, intent, all
19 the things that I need to be able -- to help me estab --
20 well, some of the things I need to be able to help me
21 establish that this was an intentional crime. I -- I hope
22 she understands that I certainly would get into that. I
23 would need to get into that. There was some testimony
24 about Mr. Foster putting his arms around his wife and
25 walking away before the shooting occurred and so I would

1 ask that the deputy not be allowed to read Mr. Blanding's
2 statement, that she should have properly served him.

3 MS. ZMROCZEK: Well, and if they wanted to
4 cross-examine him or direct examine him, Your Honor, they
5 had the same opportunity, but they also had the same
6 problem that we have had locating him. I have the crime
7 scene log here that the officer signed what time he signed
8 in and what time he signed out. He signed in at 17:10 and
9 he signed out at 19:15. So, Your Honor, that statement
10 was taken at some point during that time. It's certainly
11 a present sense impression. I have had the statement of
12 Mr. Blanding the whole time, which was why I've been asking
13 for redacted statements or, you know, his criminal rap
14 sheet so that I could find him because we did not wait
15 until yesterday to try to start locating him. We have
16 been continuously trying to locate him. So, you know, to
17 say that they want the opportunity to cross-examine him
18 or examine him, they've had the same opportunity to serve
19 him as well.

20 Your Honor, he is clearly dodging service and his
21 statement that he gave to their investigators, Your Honor,
22 was taken within an hour and a half -- an hour and --
23 yeah, an hour and forty minutes of the incident and, Your
24 Honor, we believe that it is proper evidence as a present
25 sense impression.

1 THE COURT: So what happened since yesterday? I
2 mean, you-all -- you-all seem to assume I know what
3 happened after we left court yesterday. I have not idea
4 what efforts were made to locate him or anything.

5 MS. PATTERSON: And I don't know either, Your Honor.
6 We was just trying to find a way in order for Your Honor
7 to help us secure his presence here and the only way that
8 we could find is if he had been properly served. We
9 didn't need him as a witness. We didn't desire to call
10 him as a witness. So, therefore, Your Honor, after -- and
11 we did try at first to at least talk to him and then we
12 decided we didn't need him so that our -- we ceased our
13 efforts to even try to even serve him. So it's not our
14 duty to serve a witness that she would like to call because
15 we decided we didn't need him. So, Your Honor, we made no
16 efforts to try to serve him.

17 We did go back and when I read the e-mail I was a
18 little concerned and I wasn't sure why exactly Ms. Zmroczek
19 wanted to at least try to call him because not only would
20 we cross him on his statement, prior record, impeachment
21 evidence, we would also impeach him on some of the things
22 that he told her investigator about Mr. Foster telling
23 him that he intended to kill his son, so I'm not sure
24 what efforts, if any, her investigator made to contact
25 Mr. Blanding.

1 MS. ZMROCZEK: He continued -- Your Honor, he had
2 two additional addresses that he went to last night in
3 addition to trying to continue to call back that phone
4 number. That phone number has now -- is now going
5 straight to voicemail every time and there's no voicemail
6 set up, and so he informed me that he had two additional
7 addresses that he would try related with any associates
8 of Mr. Blanding and none of them are fruitful.

9 THE COURT: All right. Yesterday I mentioned this,
10 and I'm -- I want to make sure I'm clear on it. If
11 you're trying to get evidence in based on the witness
12 being unavailable, under 804, hearsay evidence, I don't
13 see based on what you-all told me so far how that fits
14 within any of those 804 exceptions. 804(b) sets forth
15 that it has to be former testimony, a statement under
16 belief of impending death, a statement against interest
17 or a statement of personal or family history. I don't --
18 I don't see any of those based on what you-all have told
19 me.

20 So then we go to the other hearsay exceptions under
21 Rule 803, which are available regardless of whether the
22 declarant is available to come to court or not. You-all
23 mentioned 803, Subsection 1, and perhaps it could fall
24 under that, but you've got to put up evidence for me to
25 make a determination about that.

1 MS. ZMROCZEK: Thank you. And, Your Honor, we did
2 subpoena Investigator Burt. Is he here yet? He's here,
3 Your Honor, so we can proffer that now.

4 THE COURT: Okay. Go ahead.

5 MS. ZMROCZEK: Thank you.

6 We call Investigator Burt.

7 THE COURT: Come around, please.

8 (Whereupon, Nicolas Burt, was duly sworn by the
9 Clerk of Court.)

10 THE COURT: What's your name, sir?

11 THE WITNESS: Nicholas Burt, B-U-R-T.

12 THE COURT: Thank you.

13 NICHOLAS BURT,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION (In-Camera)

16 BY MS. ZMROCZEK:

17 Q. Investigator Burt, will you, please, tell the Court
18 where you're employed.

19 A. I'm employed with the Lexington County Sheriff's
20 Department.

21 Q. How long have you been employed there?

22 A. Since March of 2010.

23 Q. Were you employed in May of 2000 -- May 10th of 2016?

24 A. Yes.

25 Q. And did you have occasion to respond to an incident

1 at [REDACTED] 8 Oak Glenn Drive?

2 A. Yes.

3 Q. And what time did you arrive?

4 A. Approximately 5:16.

5 Q. Okay. And did you sign into the -- did you sign in
6 and out of the crime scene log?

7 A. Yes.

8 Q. And how are you aware about what time you arrived?

9 A. I documented it in my report. It was probably off
10 the clock in my truck.

11 Q. Okay. And so what time -- so you got there at
12 approximately 5:16?

13 A. Yes.

14 Q. And what were your duties?

15 A. I was a property crimes investigator at that time. I
16 heard the call come out and responded to assist.

17 Q. Okay. And what kind of assistance did you provide?

18 A. Once I got on-scene, coordinated with other deputies
19 for crowd control and then Vernon Blanding approached and
20 I took a statement from him.

21 Q. And how soon after you got there had Mr. Blanding
22 approached you?

23 A. It wasn't that long after I got there.

24 Q. It was -- I'm sorry?

25 A. It was not that long after I got there.

1 Q. Okay. And so as you got there and this -- this
2 incident occurred around 5:00 and you -- you were already
3 in the area?

4 A. I wasn't in the direct area. I responded, but --
5 yes, I was in the region.

6 Q. You were there within fifteen or so minutes, sixteen
7 minutes?

8 A. Right.

9 Q. And then not long after you spoke with him and then
10 not only did you speak with him, but you had him write a
11 statement; is that correct?

12 A. I did take a statement from him.

13 Q. And I'm gonna show you what's been marked as Court's
14 Exhibit 1. Is that the statement Mr. Blanding wrote for
15 you?

16 A. It is.

17 Q. And that was not -- not long after you arrived at
18 the scene?

19 A. Correct.

20 Q. And is that your signature at the bottom of the page?

21 A. It is.

22 Q. And did you also ask him questions?

23 A. I did.

24 Q. And he wrote the answers down?

25 A. It was in a question and answer format, yes.

1 Q. And you watched him sign it?

2 A. Yes.

3 Q. And -- and he was the -- actually the one who
4 approached you, right?

5 A. Yes. There was a large crowd of people and he came
6 up to us.

7 Q. Okay. After you signed that statement, what did you
8 do with it?

9 A. I took it with me and then eventually turned it over
10 to Investigator Miller.

11 Q. Okay.

12 MS. ZMROCZEK: Thank you. Please answer any
13 questions the State may have.

14 MS. PATTERSON: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION (In-Camera)

17 BY MS. PATTERSON:

18 Q. And, Deputy Burt, when you first got on-scene, did
19 you make contact with anybody else before you talked to
20 Mr. Blanding?

21 A. Not directly as witnesses like. So there was a crowd
22 of people that were coming from █10█ Oak Top and the area.

23 Q. But did you have any contact with any other officers
24 or anything before speaking with Mr. Blanding?

25 A. With Sergeant Govan over the radio.

1 Q. And did you also converse with other officers to
2 ascertain what was going on at the scene at that time?

3 A. Yes.

4 Q. And about how long did you converse with these
5 officers?

6 A. It was just a preliminary to get what was going on
7 as far as what they had seen when they arrived. I can't
8 give you an exact time how long that was.

9 Q. Okay. And was Mr. Blanding the first -- only person
10 you spoke with witness-wise?

11 A. I accompanied Sergeant Rawl when he -- after I talked
12 to him to look for other witnesses and he had gotten a
13 statement from another -- I believe a female, Latar, I
14 believe. No, she didn't want to write a statement. It
15 was from Damion.

16 Q. Okay. And did Mr. Vernon -- did Mr. Blanding provide
17 his address on his written form where he was living?

18 A. He did. ■10■ Oak Top Drive in Gaston.

19 Q. And about how long did it take him to write his
20 statement; do you remember?

21 A. It would be a guess. If I had to say how long it
22 took, it didn't -- I don't remember it taking terribly
23 long to write it.

24 Q. Okay.

25 MS. PATTERSON: Thank you, Deputy Burt.

1 THE COURT: Redirect?

2 MS. ZMROCZEK: No further questions, Your Honor --
3 oh, just one.

4 REDIRECT EXAMINATION (In-Camera)

5 BY MS. ZMROCZEK:

6 Q. I see that he signed every page.

7 A. Correct.

8 Q. Did he have an opportunity to review that statement?

9 A. Yeah, he was provided a copy of it.

10 Q. And, in fact, on the first line he actually scratched
11 out the time, initialled it and corrected it?

12 A. Right.

13 Q. Okay.

14 MS. ZMROCZEK: Thank you. No further questions,
15 Your Honor.

16 THE COURT: Anything else for the witness?

17 MS. PATTERSON: No, sir.

18 THE COURT: Let me see that.

19 THE WITNESS: (Hanging.)

20 THE COURT: Thank you. You may step down.

21 (Witness excused.)

22 THE COURT: All right. Do you need to put anything
23 else on the record?

24 MS. ZMROCZEK: That's all.

25 MS. PATTERSON: No, sir.

1 THE COURT: The 9-1-1 operator yesterday testified
2 that the computer records showed that the first call
3 about the shooting came in at 4:54 and 52 seconds in the
4 afternoon. So the shooting apparently took place sometime
5 shortly before that call was made. The witness today,
6 Investigator Burt, testified that he arrived sometime
7 around 5:16, which would be twenty minutes later, eighteen
8 to twenty minutes later. He then coordinated with crowd
9 control, did not say how long of a time passed between his
10 arrival and his talking with Mr. Blanding other than to
11 say that it did not seem to be a long time.

12 Rule 803 reads in Subsection 1 a statement describing
13 or explaining an event or condition made while the
14 declarant was perceiving the event or condition or
15 immediately thereafter. Subsection 2 is for excited
16 utterance, but there's nothing in the record related to
17 excited utterance.

18 I don't see any of the other ones that might possibly
19 fit, so the question is what immediately thereafter means,
20 which I assume is a case by case analysis and it's left to
21 the discretion -- the sound discretion of the presiding
22 judge.

23 We'll be at ease for a couple of minutes.

24 (Recess taken at 9:51 AM.)

25 (Back on the record at 9:56 AM.)

1 BAILIFF: All rise. Court's now in session.

2 THE COURT: Thank you. Be seated, please.

3 This is a difficult thing to review and it probably
4 is stretching the concept of immediately thereafter, but
5 after reviewing it in the context in which it's presented,
6 I believe I have to allow it be entered into the record if
7 the witness isn't here to testify about when the statement
8 was given.

9 MS. ZMROCZEK: Should we, Your Honor, change to a
10 defense exhibit or just get another copy of it?

11 THE COURT: I thought you said you weren't gonna
12 enter the --

13 MS. ZMROCZEK: No, I wasn't gonna enter the statement
14 anyway, but do you have a copy of it?

15 THE WITNESS: Yes.

16 THE COURT: Is that the one with the sticker on it?

17 MS. ZMROCZEK: Right. He has -- he has a copy of it
18 so I can ask him about it, Your Honor.

19 MS. PATTERSON: Your Honor, the second thing I want
20 to bring to your attention, it seems that the defense
21 attorney is gonna call Deputy Tyler Watford to get into
22 the dash cam video, Your Honor. I would submit to the
23 judge -- I mean, to the Court, Your Honor, that this is
24 self-serving hearsay. That's not allowed, Your Honor,
25 unless -- unless, first of all, the Defendant testifies

1 himself and then, Your Honor, after he testifies if it is
2 found that his testimony is inconsistent with his previous
3 statement or, Your Honor, if I allege some type of recent
4 fabrication, and then at that point that it can be
5 admitted, but until the Defendant testifies, Your Honor,
6 his statement cannot be published, Your Honor. That is
7 pursuant to State v. Terry.

8 In that case, Your Honor, the defense tried to submit
9 the defendant's self-serving statement prior to him
10 testifying without subjecting him to cross-examination and
11 the courts have -- have heavily ruled that that is not
12 acceptable and admissible, Your Honor, as self-serving
13 statements, Your Honor. If he wants to get up and testify
14 about something he says, he surely can do that, Your Honor,
15 and be subjected to cross-examination.

16 And I have a copy for defense counsel as well as
17 Your Honor for you to consider. And as I stated, if my
18 reading of Rule 801 is correct, 801(d), the statement,
19 which would not be hearsay, Your Honor, but certainly
20 self-serving, can only be admitted at that point if it's
21 inconsistent or, again, violates recent fabrication or
22 improper motive with the statement. Anything else, Your
23 Honor, the State would submit is self-serving hearsay,
24 and I can provide State v. Terry for Your Honor.

25 THE COURT: What's the defense's position?

1 MS. ZMROCZEK: Thank you, Your Honor. So I was
2 already familiar with Terry, but -- and especially this
3 line, unless -- it's not admissible. That statement,
4 Your Honor, is very different from this statement. That
5 statement was one that he was taken down to the station,
6 there was some time that had passed in between, and also,
7 Your Honor, it said that the statement was not admissible
8 unless corroborating circumstances clearly indicated its
9 trustworthiness. We find no corroborating circumstances
10 in that case, and they were referencing the Doctor case,
11 Your Honor, which is I think more similar to this case.

12 Your Honor, this case as we have heard repeated
13 testimony -- in fact, some testimony has already come in
14 of what Mr. Foster said through the investigator or, I
15 guess, at that time Deputy Schirra, but, Your Honor, we
16 had a whole hearing about this and, in fact, Your Honor
17 said that he felt like, you know, we needed to have a
18 Jackson v. Denno hearing. We never challenged this under
19 Jackson v. Denno, which is what they initially did with
20 this statement. Your Honor, this statement was made --
21 Deputy Watford testified, and I assume will not change
22 that testimony, that he received the call over dispatch,
23 was in the area, and as you saw the video, was actually
24 pulled -- had somebody pulled over on the side of the
25 road, immediately left and went there and was there while

1 Mr. Foster was still on the phone with 9-1-1. That's how
2 close in time this was. Your Honor, these are -- and, in
3 fact, he was questioned and he described the utterances,
4 he was just uttering things. Not only is it excited
5 utterance, but certainly a present sense impression that
6 was recorded on his dash cam.

7 Your Honor, it's certainly admissible under the rules
8 and had it said -- and it's not necessarily self-serving.
9 He says a lot of -- a lot of things in there that he's
10 literally just spouting out, all of which are corroborated
11 by the evidence that's already been put in. He talks
12 about the two by four as well. The two by four's in
13 evidence. He talked about the jack and the vehicle and,
14 Your Honor, we have that -- we have a picture of that in
15 evidence. He talked about the pipe. All of the things
16 that he was saying immediately -- I mean, immediately
17 after this happened, Your Honor, clearly indicates its
18 trustworthiness, and for those reasons we would seek to
19 enter that video in through Deputy Watford.

20 THE COURT: So your client does not intend to testify
21 or does intend to testify?

22 MS. ZMROCZEK: He does not.

23 THE COURT: Mr. Foster, I have to go over some things
24 with you. Would you raise your right hand?

25 (Whereupon, Heirbrane H. Foster was duly sworn by

1 the Court.)

2 THE COURT: Thank you. You can have a seat.

3 Mr. Watford, you understand that the defense is now
4 given the opportunity to present evidence for the jury to
5 consider?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What did I say, Watford? I apologize.

8 THE DEFENDANT: Yeah.

9 THE COURT: Foster. I apologize.

10 MR. SCHWARTZ: He understands, too, I think.

11 THE COURT: A senior moment. I apologize.

12 Mr. Foster?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand we're at the stage of the
15 trial where the defense can present evidence for the jury
16 to consider?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: In that regard, if you wish to testify
19 you may testify. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you choose not to testify, I'm gonna
22 tell the jury that they cannot hold your silence against
23 you in any way at all. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You have an absolute right not to

1 testify. You have an absolute right to remain silent. Do
2 you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So if you choose not to testify, I will
5 tell the jury they cannot hold your silence against you,
6 they're not to discuss it in their deliberations, it's
7 not to enter their minds in making a decision of whether
8 you're guilty or not guilty. Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: The decision about whether you testify
11 or not is your decision to make and yours alone. Do you
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I expect that you might confer with
15 family members, friends, anyone whose opinion you value
16 on important decisions, your attorneys, but ultimately
17 you're the person on trial and it's your decision to
18 make. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now if he testifies, would he have a
21 record that would subject him to impeachment?

22 MS. ZMROCZEK: I believe that -- Your Honor, there
23 were those -- the two CDVs that were from 2012, I believe.

24 THE COURT: CDV what?

25 MS. ZMROCZEK: HAN, high and aggravated in nature.

1 MS. PATTERSON: High and aggravated.

2 MS. ZMROCZEK: And it was a -- we had an issue about
3 that, which we didn't raise previously, but just that it
4 wasn't with this family -- it wasn't even with this family
5 member, any member of this family, Your Honor. Your Honor,
6 it was a completely unrelated paramour.

7 THE COURT: All right. Rule 609 reads that evidence
8 that a witness has been convicted of a crime is not
9 admissible where the accused is the witness unless the
10 Court determines that the probative value of admitting
11 that evidence outweighs its prejudicial effect to the
12 accused in this situation. This is for crimes which are
13 punishable by imprisonment in excess of a year and
14 generally within ten years and that did not involve
15 dishonesty or a false statement.

16 Reviewing the matter, I'm unable to make a
17 determination if the probative value of admitting that
18 evidence would outweigh its prejudicial effect to the
19 accused.

20 What that means, Mr. Foster, is if you take the
21 witness stand, I'm not gonna let the State ask you about
22 those two CVS. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The only way that would come in is if
25 you open the door in some way. And your attorneys can

1 discuss with you what opening the door means, but to give
2 you an example of what's happened in cases over which
3 I've presided, there have been situations where I've ruled
4 that the State could not ask the defendant about certain
5 crimes and then the defendant got on the stand and said
6 I've never been in any trouble with the law, which was
7 just a flat-out lie, they had several convictions, so they
8 opened the door for the State to be able to ask about the
9 convictions. Do you understand what I'm talking about?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: That might not be the only way to open
12 the door, but that's an example. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody exercised any type of undue
15 influence to get you to decide to testify or not testify?

16 THE DEFENDANT: No, sir.

17 THE COURT: So whatever decision you make it's your
18 decision and yours alone?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: It's made of your own free will?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Today are you under the influence of any
23 type of substance that adversely affects your thinking?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you suffer from any physical or mental

1 problems that adversely affect your thinking today?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Mr. Foster, I'm gonna make
4 some findings right now. You can change your mind if you
5 wish, it's up to you, but at this point I'm gonna make a
6 finding that you understand you have a right to testify,
7 you have a right not to testify. If you choose not to
8 testify, I'm gonna tell the jury they cannot hold your
9 silence against you in any way at all. You understand
10 that the decision about whether you testify or not is
11 yours and yours alone and that no one has forced you,
12 threatened you, coerced you, exercised in type of undue
13 influence over you to get you to testify or not testify.

14 Do you understand my ruling about if you testify
15 you're not going to be subjecting yourself to
16 cross-examination about prior convictions for domestic
17 violence?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So I find that you've made the decision
20 freely, knowingly, voluntarily and intelligently as to
21 whether you testify or not of your own free will and
22 accord.

23 Now whatever decision you've made at this point, as
24 I mentioned a moment ago you could change your mind until
25 such time as you might actually come up here and start

1 testifying. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay.

4 MS. PATTERSON: Your Honor, can I briefly say
5 something else about State v. Terry?

6 THE COURT: Yes, ma'am.

7 MS. PATTERSON: Your Honor, his statements are still
8 self-serving. It's not a question of whether or not we
9 have a situation with excited utterance or present sense
10 impression. I think the Court's analysis in this case,
11 the main focus was the Defendant can't make himself
12 unavailable to testify and then submit what I would
13 perceive, Your Honor, is a confession without being
14 subjected to cross-examination, and that's the issue here.
15 The court even stated that that is the basic rule of our
16 adversarial system. To otherwise -- to hold otherwise
17 would permit the criminally accused to set out all of the
18 facts which would fall in his favor without laying himself
19 open to cross-examination.

20 So, Your Honor, again, we ask that Deputy Watford's
21 dash cam video would not be submitted, Your Honor, without
22 the Defendant, first of all, testifying and then at that
23 time, Your Honor, the Court make a decision whether or
24 not that testimony was inconsistent with what his
25 testimony was or in the alternate if somehow it's alleged

1 a resent fabrication or motive to lie.

2 THE COURT: If a defendant asserts the Fifth
3 Amendment privilege against self-incrimination, the
4 defendant is not allowed to take advantage of the
5 unavailability under Rule 804. That's -- that's clear.
6 So the inquiry as to whether it wouldn't be admissible
7 under Rule 804 I think is established. The question then
8 becomes whether it's admissible under some other rule.

9 All right. Let's be at ease a few more minutes.

10 (Recess taken at 10:19 AM.)

11 (Back on the record at 10:25 AM.)

12 BAILIFF: All rise. Court's now in session.

13 THE COURT: Thank you. Be seated, please.

14 Again, this is a very difficult ruling. The
15 situation in Terry was that the -- the killing occurred
16 in May of 1994. In March of 1995, Terry went to the
17 police -- or gave a statement to the police in which he
18 indicated that he was at the victim's residence, he had
19 gone there to have consensual sex with the victim and
20 then lost his temper.

21 So, again, to reiterate what I said before the break,
22 I think it's clear if we're talking about an 804 analysis
23 for unavailability it's clear that you can't use the Fifth
24 Amendment privilege as a sword and shield to get that type
25 of statement in.

1 But we're not dealing with an unavailability issue
2 right now, we're dealing with a situation where -- where
3 there is a proposal to present evidence, which is hearsay
4 under 801, and the question is whether it could come in
5 under some exception to the hearsay rule. And while I
6 think this is a difficult call, and I -- and I hope I'm
7 making the right one, I watched this video the other night
8 and I don't know how it can be construed as anything other
9 than an excited utterance under 803, Subsection 2. It's a
10 statement relating to a startling event or condition made
11 while the declarant was under the stress of the excitement
12 caused by the event or condition. I will allow it.

13 What else? Anything else?

14 MS. PATTERSON: I don't have anything else, Your
15 Honor.

16 MS. ZMROCZEK: Nothing else, Your Honor.

17 THE COURT: Bring in the jury.

18 (Whereupon, the jury return to the courtroom at
19 10:29 AM.)

20 THE COURT: One other thing just quickly. The 9-1-1
21 call is in.

22 Call your next witness.

23 MS. ZMROCZEK: Thank you. I call Agent Kevin
24 Selinsky.

25 THE CLERK: Raise you right hand.

1 (Whereupon, Kevin Selinsky was duly sworn by the
2 Clerk of Court.)

3 THE COURT: What's your name, sir?

4 THE WITNESS: Kevin Selinsky.

5 THE COURT: Spell your last name.

6 THE WITNESS: S-E-L-I-N-S-K-Y.

7 KEVIN SELINSKY,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. ZMROCZEK:

11 Q. Agent Selinsky, will you tell the jury where you're
12 employed?

13 A. I'm employed by the South Carolina Law Enforcement
14 Division, commonly known as SLED.

15 Q. And what are your -- how long have you been employed
16 at SLED?

17 A. Since 2013. May of 2013.

18 Q. Prior to being employed at SLED, what is your
19 educational background?

20 A. I have my bachelor's in forensic toxicological
21 chemistry and I have my master's in forensic science.

22 Q. And have you -- what is forensic toxicology or
23 forensic science?

24 A. Well, at the lab we break our work into three main
25 things. We do post mortem toxicology for death

1 investigations to figure out if drugs play a role or not.
2 We do criminal sexual drug facilitated assaults and we
3 also do human performance toxicology for DUIs and things
4 along that line.

5 Q. Now are you a member of any associations or have you
6 received any special training in this area?

7 A. Yes.

8 Q. What is that?

9 A. I've received -- excuse me. According to SLED, I'm
10 a certified forensic toxicologist. I've gone through
11 several out of state training courses to further my
12 education as well.

13 Q. Have you ever been qualified as an expert in forensic
14 toxicology?

15 A. I have.

16 Q. How many times?

17 A. I'd say roughly a half dozen times.

18 MS. ZMROCZEK: Your Honor, at this time I move Agent
19 Selinsky as an expert in forensic toxicology.

20 MS. PATTERSON: Without objection.

21 THE COURT: He is so recognized.

22 BY MS. ZMROCZEK:

23 Q. Agent Selinsky, you said you work at SLED. How do
24 you typically receive evidence in a case?

25 A. Well, what would happen is throughout the week

1 various agencies will come in and will drop off evidence.
2 Some drop off a handful and some can drop off a lot and
3 then it will begin to work its way through our lab. So
4 the first thing that will happen is it will get brought
5 upstairs into our lab after it's dropped off and logged
6 in with our evidence technicians. A technician with our
7 lab will come down, pick it up and inventory it ourselves.
8 That includes taking pictures of it, check the labeling,
9 beginning the chain in our lab just to make sure that
10 we're starting off making sure things are as they should
11 be.

12 Q. And you say as they should be. When we're talking
13 about bodily fluids, is there a way that -- that they're
14 required throughout the -- the custody process to be
15 maintained?

16 A. There's some recommendations, but there's really
17 nothing set in stone as to a way. We have our
18 recommendations, but they're certainly not requirements
19 by any means. Typically it will come in two gray-topped
20 tubes which has a preservative and an anticoagulant in it
21 to keep the blood -- the blood kind of in the best state
22 for testing.

23 Q. And you said chain. You make sure that you know
24 where it's been?

25 A. Yes. It is done -- the first thing is as it comes

1 in is each case gets an individual barcode and then
2 everything is scanned in our laboratory information system
3 throughout. So if I'm gonna take it and do testing on it,
4 I'm gonna scan it into my custody and then so on and so
5 forth and scan it back to the fridge and if somebody else
6 is gonna do something until it moves along down the line.

7 Q. And what evidence did you receive in regards to the
8 case against Mr. Foster?

9 A. May I look in my report?

10 Q. Absolutely.

11 A. For this we received some blood, some urine, some
12 stomach contents, as well as some ocular or eye fluid.

13 Q. Okay. Now what's the difference between blood and
14 ocular eye fluid?

15 A. Aside from the obvious, the more -- in terms of the
16 toxicology interpretation of blood --

17 Q. Yes.

18 A. -- tends to be more at that given time what is going
19 on in the body, whereas in the ocular fluid or the eye
20 fluid it tends to lag behind a little bit, so you can sort
21 of tell whether somebody is going up or coming down and
22 you get a more rough estimate of when things may have been
23 ingested or if they're at peak levels or whatnot I should
24 say.

25 Q. So the blood is more at -- at the time of death?

1 A. Yes. Yes. Specifically, yeah.

2 Q. So explain that. So if someone passes away, then
3 what happens in their body to make sure that all of the
4 -- the toxicology remains the same in their blood?

5 A. Things just -- it sort of stops, but there's a big
6 thing, post mortem redistribution. With certain specific
7 drugs that you can kind of get, they can kind of go to
8 the more peripheral portions of the blood. That's why as
9 a toxicologist we ultimately prefer femoral blood coming
10 from the femoral artery because it's further away from
11 the heart and there's less concern for post mortem
12 redistribution with the drugs, so you're getting a more
13 true representation of what is there, but essentially the
14 metabolism will stop other than for that redistribution.

15 Q. And -- and so you received you said some fluids in
16 this case?

17 A. Yes.

18 Q. And tell the jury what you -- what kind of testing
19 you ran on those?

20 A. Every case that first comes in for the most part
21 we'll get a blood alcohol, so I ran a blood alcohol level,
22 found there to be ethenol in the blood at a level of
23 0.200 percent. In the ocular fluid there was 0.195. So
24 they're -- those numbers are for all intents and purposes
25 the same, so that means they were essentially -- they

1 weren't really coming up or coming down, they were sort of
2 what we consider at their peak level, and then there was
3 also a little bit of Alprazolam found as well.

4 Q. A little bit of what?

5 A. Alprazolam.

6 Q. And what's the generic term?

7 A. Xanax.

8 Q. When -- how does anybody get a blood alcohol content?
9 What are the ways that people have a blood alcohol
10 content? You say it's blood alcohol, so does that involve
11 alcohol?

12 A. Yes. The common one -- in this particular case, we
13 do a specific test for ethenol. We do all the tests as
14 well, but this one specifically found ethenol, and the
15 main -- the main way for that is oral consumption of
16 typical alcoholic beverages; beer, wine, hard liquor.

17 Q. Okay. So beer, wine, or liquor?

18 A. Yes.

19 Q. Okay. And can you tell -- are you familiar with what
20 the legal limit is of blood alcohol in South Carolina?

21 A. Yes.

22 Q. And what is that?

23 A. 0.08.

24 Q. So 0.08?

25 A. Yes.

1 Q. And your reading here was 0.20?

2 A. Yes.

3 Q. In the -- in the femoral artery?

4 A. In this case, it was iliac -- iliac vein blood, which
5 is similar, correct.

6 Q. Okay. And you say that you use toxicology in -- in
7 help understanding death. How do -- how does -- in your
8 studies, how does toxicology play a role? That's a poorly
9 asked question. What does ethenol or a blood alcohol of
10 .20 generally trans -- what generally happens?

11 A. Okay.

12 Q. Sorry.

13 A. It's a fair amount of alcohol for sure. That way
14 you're gonna be sort of a level of -- you're certainly
15 going to have some excitement, but at that level you'll
16 probably be a little bit past the euphoric, excitement
17 level, you're starting to have some more confusion,
18 certainly some decreased inhibitions, things along that
19 line.

20 Q. Do you see increased aggression?

21 A. Not necessarily. It doesn't really cause aggression.
22 It can maybe increase emotions.

23 Q. Increase emotions?

24 A. Yes.

25 Q. Okay. And you said -- and there was a combination

1 of -- you said a little bit of Xanax?

2 A. Yes. Very little, yes.

3 Q. What combination -- are there -- what effects do you
4 see if you have a combination of two substances?

5 A. Depending on what they are, these are very similar,
6 they're both CNS depressants, so what that means is it's
7 gonna depress the central nervous system and essentially
8 it's slowing the system down, putting it to sleep. It's
9 not very much Alprazolam. A drug like that depends on --
10 if it's your first time taking it, that could very well
11 put you to sleep, but if you take it more often, that's
12 not very much at all.

13 Q. Okay. And you said -- and they're both kind of the
14 same class of drug?

15 A. Yes, for sure.

16 Q. Okay.

17 MS. ZMROCZEK: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 MS. ZMROCZEK: Thank you. Please answer any
20 questions the State may have.

21 THE COURT: Cross?

22 MS. PATTERSON: Yes, sir.

23 CROSS-EXAMINATION

24 BY MS. PATTERSON:

25 Q. Mr. Selinsky, am I saying that, correct?

1 A. Yes.

2 Q. It's your testimony that the legal limit in South
3 Carolina is .08, correct?

4 A. Correct.

5 Q. Now that is the legal limit to drive, correct?

6 A. Correct.

7 Q. Okay. And the results of the Xanax, that was a low
8 level result, correct?

9 A. Yes. That's on the lower side, yes.

10 Q. And the alcohol level, you said even if that level
11 being over the legal limit to drive, however, at this
12 level it probably would have caused decreased inhibitions,
13 correct?

14 A. Most certainly at that level, yes.

15 Q. And confusion I think you said, correct?

16 A. Yeah.

17 Q. And at this point it would have started slowing the
18 system down where the person was about to go to sleep,
19 correct?

20 A. Maybe not to the point of going to sleep depending
21 on if it's a -- at that level if it's a naive drinker,
22 they very well could be passed out, but if it's somebody
23 that drinks on a regular basis, people are able to
24 function and get learned behaviors, whereas -- you brought
25 up driving. Driving is a very complex task. You're

1 checking your mirrors, you're checking your speed,
2 checking your lanes, doing all this and that, so it's
3 very -- you can't really learn those behaviors, but where
4 you might be able to carry on a conversation at a very
5 high level and lean on a bench or something like that and
6 appear to be okay.

7 Q. And you didn't find any other positive results in the
8 samples that you obtained, correct?

9 A. No, ma'am.

10 Q. And both -- the Xanax is considered a downer, correct?

11 A. Yes.

12 Q. And alcohol is considered a downer, correct?

13 A. Correct.

14 Q. And I think you testified that these downers causes
15 the central nervous system to be suppressed, correct?

16 A. Depressed, yes, but -- yeah, the same word, yes.

17 MS. PATTERSON: I beg the Court's indulgence.

18 THE COURT: Sure.

19 MS. PATTERSON: Thank you.

20 THE COURT: Redirect?

21 MS. ZMROCZEK: Just very briefly.

22 REDIRECT EXAMINATION

23 BY MS. ZMROCZEK:

24 Q. Depressed inhibitions meaning that you would do things
25 that you don't normally do?

1 A. Yes. That's a good way to sum it up, yes.

2 Q. Okay. And then she asked you about the legal limit to
3 drive. The reason that they set it at .08 is because --

4 MS. PATTERSON: Objection. Speculation.

5 THE COURT: Do you wish to be heard?

6 MS. ZMROCZEK: Well, yes, Your Honor. I mean, he's
7 an expert. I can ask him why they --

8 THE COURT: You can ask him, but --

9 MS. ZMROCZEK: Okay.

10 THE COURT: -- wait a second. I don't --

11 MS. ZMROCZEK: All right.

12 THE COURT: Wait a minute. I haven't finished.

13 MS. ZMROCZEK: Sorry.

14 THE COURT: You seem to be about to ask a leading
15 question. She didn't object on leading, I understand that,
16 but you seem to be about to ask a leading question. If
17 you ask him and he knows the answer to it, that's fine,
18 but don't lead him.

19 MS. ZMROCZEK: Thank you, Your Honor.

20 BY MS. ZMROCZEK:

21 Q. Do you know why they set the legal limit for driving
22 at .08?

23 A. It's just that studies have shown at that level or,
24 if anything, even lower levels -- some states are going to
25 an .05, which is where it ultimately probably will be for

1 most, if not all, states. It's just at that level is where
2 you're, I guess, materially and appreciably impaired and
3 unable to safely operate a vehicle.

4 MS. ZMROCZEK: Thank you. No further questions.

5 THE COURT: Recross?

6 RECROSS EXAMINATION

7 BY MS. PATTERSON:

8 Q. And, again, that is if you're operating a -- complex
9 equipment such as a vehicle, correct?

10 A. Correct.

11 Q. So it -- it doesn't have anything to do with if
12 you're just walking around in your yard, does it?

13 A. No.

14 MS. PATTERSON: Thank you.

15 THE COURT: Thank you, sir. You may step down.

16 (Witness excused.)

17 THE COURT: Call your next witness.

18 MS. ZMROCZEK: Thank you, Your Honor. We call
19 Nicolas Burt.

20 THE COURT: Come around, please.

21 THE CLERK: Raise your right hand.

22 (Whereupon, Nicholas Burt was duly sworn by the
23 Clerk of Court.)

24 NICHOLAS BURT,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. ZMROCZEK:

3 Q. Please tell the -- and it's investigator or deputy?
4 I'm sorry.

5 A. I'm currently an investigator, yes.

6 Q. Investigator Burt, please tell the jury were you're
7 employed.

8 A. I'm currently employed at the Lexington County
9 Sheriff's Department.

10 Q. How long have you been employed at the Lexington
11 County Sheriff's Department?

12 A. Since March of 2010.

13 Q. In order to be employed at the Lexington County
14 Sheriff's Department, what, if any, training did you
15 receive to become a police officer?

16 A. Well, we go to the criminal justice academy followed
17 by an FTO program, which is a field training officer
18 program.

19 Q. Were you working on May 10, 2016?

20 A. Yes.

21 Q. And in what capacity were you working on that day?

22 A. I was a property crimes investigator at that time.

23 Q. A property crimes investigator?

24 A. Correct.

25 Q. Did you have an occasion to respond to ■ 8 Oak Glenn

1 Road?

2 A. I did.

3 Q. Tell the jury how that happened.

4 A. The call came out over the radio that there was a
5 shooting and I responded. I was with another investigator
6 and we responded Code 3 to assist, which is lights and
7 sirens.

8 Q. And approximately what time did you arrive?

9 A. I arrived at approximately 5:16 PM.

10 Q. Approximately 5:16?

11 A. Yes.

12 Q. And how do you -- is it fairly approximate -- or
13 exact? How do you know or how do you keep track? How
14 does the sheriff's department keep track of where you are?

15 A. Well, I don't have an MCT, which is what the deputies
16 have, so I take notes and then transfer that into a report.
17 I documented in my report what time I arrived.

18 Q. And you document that so that when later on down the
19 road you can come and --

20 A. Testify.

21 Q. And so you write down in your report about what time
22 you got there. When you got there describe the scene for
23 the jury.

24 A. It was kind of chaotic. There was a large crowd at
25 ■10■ Oak Top, which is an adjoining street to where the

1 scene was, and when I arrived there was body at the end of
2 ■ 8 Oak Glenn Drive.

3 Q. And what, if anything, were you assigned to do?

4 A. At first it was crowd control and then a witness had
5 walked up and I took a statement from him.

6 Q. A witness walked up?

7 A. Yes.

8 Q. And who was that witness?

9 A. It was Vernon Blanding.

10 Q. And you said you took a statement from him?

11 A. Yes, a written statement.

12 Q. And do you have a copy of that statement?

13 A. I do.

14 Q. What did -- did Mr. Blanding tell you?

15 A. Do you want me to read the -- the whole thing verbatim
16 or --

17 Q. Well, so -- I guess that's a good question. So when
18 a witness walks up to you, you don't just hand them a piece
19 of paper and say start writing, do you?

20 A. No.

21 Q. Okay. So explain how that process works.

22 A. He came up and said that he was family with the
23 Defendant and he said he had arrived at ■ 10 ■ Oak Top Drive
24 at approximately 4:30 PM.

25 Q. Okay. And so did he -- do you -- the reason you --

1 why is the reason you had him write a statement? Did he
2 have information pertaining --

3 A. He advised that he saw what occurred.

4 Q. Okay. And so you have him write a statement. What
5 did he say about -- what information did he provide to you
6 about what Will had in his hand?

7 A. Well, he advised he had got home around 4:30 at [REDACTED] 10
8 Oak Top Drive and Will, who was the deceased, and his
9 father were arguing back and forth he believed over a grill
10 and that at some point Will had turned the grill over and
11 was cursing at the Defendant and had picked up a two by
12 four board and then following the Defendant around making
13 movements like he was gonna swing it at him. Vernon went
14 over and took the board from Will and then advised that
15 they went back to [REDACTED] 8 Oak Glenn Drive, the Defendant went
16 into the home and Will went to the side of the home. He
17 thought he was gonna pick up something else at that point.

18 Q. He thought Will was gonna pick up something else at
19 that point?

20 A. Uh-huh.

21 Q. And did he ever tell you about what he removed from
22 Will's hand?

23 A. He said he removed the -- what he described as a two
24 by four board from Will.

25 Q. And what did he say to Will?

1 A. He told him to -- both of them to stop.

2 Q. And what was Will's response to that?

3 A. I believe in his statement he wrote that -- that I
4 think -- he didn't write that part in his statement, but
5 he said that Will wasn't going to stop. That's what Will
6 told him. Unless it's in the question and answer part or
7 I'm missing it. Okay. It is in there.

8 Q. And so when he told Will to stop, what did he say
9 Will -- what did he tell you Will's response was?

10 A. That Will said he was not going to stop.

11 Q. Said he was not going to stop?

12 A. Uh-huh.

13 MS. ZMROCZEK: I beg the Court's indulgence.

14 Please answer any questions the State may have.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MS. PATTERSON:

18 Q. Investigator Burt, do you still have a copy of your
19 statement?

20 A. Yes, I do.

21 Q. And so after you talked to Mr. Blanding, he gave you
22 this written statement, correct?

23 A. Correct.

24 Q. And let's just go through this written statement a
25 little bit. Defense attorney got you to read a little

1 bit, but let's just go through it in a little more detail.

2 A. Okay.

3 Q. And so Mr. Blanding said in his statement that Will
4 said he wasn't gonna stop, correct?

5 A. Correct.

6 Q. But he also -- and he advised you that he was cousins
7 with the Defendant, Mr. Foster, correct?

8 A. He said second or third cousins.

9 Q. And he told you that they both were arguing, correct?

10 A. Correct. He believed over the grill.

11 Q. Over the grill, right. And that the argument occurred
12 between ■0 Oak Top and ■8 Oak Glenn? Is that what he --
13 Oak Top Drive, is what he said in his statement?

14 A. Yes, the actual address was, I think, ■0 and ■8 Oak
15 Glenn, but he wrote Oak Top in his statement because the
16 streets they T into each other at the corner.

17 Q. Okay. And then he also told you that -- you asked
18 who was all at the ■8 Oak Glenn Road and he said Will's
19 family, mom, sister and friend, Troy, correct?

20 A. Yes. I have their names, all that he gave me, that
21 were in the area.

22 Q. And he stated that he took the board from Will, didn't
23 he?

24 A. Correct.

25 Q. And then after he took the board from Will, he said he

1 saw the Defendant go in the house, correct?

2 A. Correct.

3 Q. And Will went to the corner of the house, correct?

4 A. I believe he said it was at the carport area and he
5 went toward the side of the house.

6 Q. Okay. And Will was standing on the side of the house
7 according to Mr. Blanding, correct?

8 A. Correct.

9 Q. And he also said that the Defendant said didn't I
10 tell you to stop fucking with me, correct?

11 A. Yes, he said the Defendant said, and he quoted,
12 didn't I tell you to stop fucking with me, and that's when
13 he turned around and saw Will standing at the open side
14 door of the carport of the garage at the steps and that he
15 saw the Defendant with the barrel of the gun pointed at
16 Will from that open door, which he described as a black in
17 color sawed off shotgun, and then he heard one shot.

18 Q. And then he said after he heard that shot he saw the
19 Defendant run, correct?

20 A. Yes. Well, he went in the back in the house and then
21 ran and jumped the fence.

22 Q. And jumped the fence in his backyard, correct?

23 A. Correct.

24 Q. And he also told you that at the time Will was shot
25 Will did not have anything in his hand, correct?

1 A. Correct.

2 MS. PATTERSON: No further questions.

3 MS. ZMROCZEK: Just briefly.

4 THE COURT: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. He advised that you he didn't have anything in his --
8 she asked about not having anything in his hands, but
9 Vernon -- what did he tell you that he -- after he took
10 the two by four what he thought Will was gonna do?

11 A. He said he thought he was getting -- picking up
12 something. He said like a shovel, a pipe, or a stick.

13 Q. And you were at -- you were at this location?

14 A. Yes.

15 Q. And you saw that there were a lot of items that were
16 laying around on the ground?

17 A. I never went to the carport backyard area. Where I
18 talked to him would have been in the street in front of
19 the home.

20 Q. Okay. And did you -- did you see the two by four that
21 he had taken from his hand?

22 A. It was -- yes, it was at the end of the road. Well,
23 at the end of the driveway, I'm sorry, near the road.

24 Q. And in your experience as a police officer, are
25 you-all trained to recognize that common items can also be

1 used as weapons?

2 A. Correct.

3 Q. Okay. And so he -- even though he took the two by
4 four, he thought he was gonna go pick something up and
5 then -- and he also, like you said, when he told Will to
6 stop, Will's response was?

7 A. That he wasn't going to stop.

8 MS. ZMROCZEK: Thank you. No further questions.

9 THE COURT: Recross?

10 RECROSS EXAMINATION

11 BY MS. PATTERSON:

12 Q. But he never said that Will actually picked up
13 anything else, did he?

14 A. Correct. He did not see that.

15 MS. PATTERSON: Thank you.

16 THE COURT: Thank you, sir. You may step down.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MR. SCHWARTZ: The Defendant calls Ms. Nellie Foster.

20 THE COURT: Raise your right hand.

21 (Whereupon, Nellie Foster was duly sworn by the
22 Clerk of Court.)

23 THE CLERK: Have a seat on the witness stand.

24 NELLIE FOSTER,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. SCHWARTZ:

3 Q. Can you see me, Ms. Foster?

4 A. Yes.

5 Q. Okay. Can you hear me?

6 A. I can hear you.

7 Q. You have your hearing aids in?

8 A. Yes.

9 Q. Okay. Will you state your name for the record?

10 A. Nellie Foster.

11 Q. All right. And how do you know Heirbrane Foster?

12 A. That's my son.

13 Q. And how do you know Will Foster?

14 A. That's my grandson.

15 Q. Okay. You love them both? You love them both?

16 A. I love them both. They're both very precious to me.

17 Q. Okay. Let's go back to May of 2016. May 10th. Do
18 you remember that day?

19 A. Yes.

20 Q. Okay. What did you do in the morning?

21 A. My son called me and wanted me to take him to the
22 grocery store. It was the 10th when they get public
23 assistance, food stamps.

24 Q. Okay.

25 A. So I picked him up around 10:00, 10:30.

1 Q. Okay. Did you pick anybody else up as well?

2 A. No.

3 Q. Okay.

4 A. Just me and him.

5 Q. Okay. So you and -- so you and Heirbrane went grocery
6 shopping about 10:30?

7 A. Yes.

8 Q. Where did you-all go?

9 A. We went to the IGA on 321 and the Food Lion.

10 Q. Okay. About how long were you-all shopping that day?

11 A. Around about four hours because --

12 Q. Four hours?

13 A. Yes.

14 Q. Okay. Do you-all do the grocery shopping for the
15 month all at once?

16 A. For the whole month he does.

17 Q. Okay. Is that why it takes so long?

18 A. Yes.

19 Q. Okay. When you picked up Heirbrane, was anybody else
20 out at his house?

21 A. Not -- I didn't see nobody when I picked him up.

22 Q. Okay. And when you dropped him off, about what time
23 was that?

24 A. That was 2:30 or 3:00.

25 Q. Okay. When you dropped him off at his house, is that

1 the [REDACTED] 8 address?

2 A. Uh-huh.

3 Q. Okay. And who was -- did you see anybody outside when
4 you dropped him off?

5 A. Yes.

6 Q. Who was out there?

7 A. My grandson and I don't know the other people.

8 Q. Okay. Your grandson, Will?

9 A. Will.

10 Q. Did you notice anything about Will when you dropped
11 him off?

12 A. Will always speak to me.

13 Q. Okay.

14 A. And that particular day Will come halfway to my car
15 with a Bud Light in one hand, and I don't know how much,
16 and a liquor bottle in one.

17 Q. Okay. All right. And he talked to you?

18 A. He just say hey, grandma.

19 Q. Okay. But you noticed that he had beer in one hand
20 and liquor in the other?

21 A. Yes.

22 Q. Okay. Did that concern you at all that day?

23 A. Yes.

24 Q. Why's that?

25 A. Because I know when he's drinking he gets way out of

1 hand.

2 Q. He gets out of hand?

3 A. Uncontrolled.

4 Q. Okay. About what -- how long did it take to unload
5 the groceries that day?

6 A. The groceries?

7 Q. How long did it take? Yes, ma'am.

8 A. To take it out the car?

9 Q. Yeah.

10 A. It took a good while.

11 Q. Okay.

12 A. And I -- Will didn't help get it out.

13 Q. Who did?

14 A. The guy -- I do remember him yesterday testifying with
15 the dreads.

16 Q. Okay.

17 A. I do remember he --

18 Q. Mr. Floyd?

19 A. -- was helping, yeah, and Heirbrane. I don't know
20 who else.

21 Q. Was Bradley out there?

22 A. I didn't -- Bradley was there and he came to the door,
23 but I didn't see Bradley.

24 Q. Okay. All right. Why did you -- did you tell
25 Heirbrane anything about Will that day?

1 A. Yes.

2 Q. What did you say?

3 A. When I seen Will with the liquor and the beer, then
4 I told Heirbrane go -- go in the house, don't say nothing
5 to Will. Because I know, you know, he was drinking and it
6 would escalate.

7 Q. It would escalate?

8 A. Yes. Yes.

9 Q. Had Heirbrane been drinking at all when he was with
10 you?

11 A. No. No.

12 Q. Do you know about what time you left the property?

13 A. Around 2:30 or 3:00. I would say about 3:00.

14 Q. Okay.

15 MR. SCHWARTZ: Court's indulgence, Your Honor.

16 THE COURT: Yes.

17 BY MR. SCHWARTZ:

18 Q. You don't -- you weren't there at that residence when
19 all this -- this happened?

20 A. No.

21 Q. Okay. But you're sure that your timeline from when
22 you got there until when you dropped off Heirbrane is
23 correct?

24 A. Yes, I'm sure.

25 MR. SCHWARTZ: No further questions, Your Honor.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MS. PATTERSON:

4 Q. Ms. Foster, I think you stated that the Defendant is
5 your son, correct?

6 A. Yes.

7 Q. Yes, ma'am?

8 A. Repeat that again.

9 Q. And the Defendant, Heirbrane, is your son, correct?

10 A. Yes. Yes.

11 Q. And you've been sitting in court all week listening
12 to the trial against your son, correct?

13 A. Yes.

14 Q. Because I think you said you remember Troy being here,
15 correct?

16 A. Yes.

17 Q. And you heard Troy's testimony, didn't you?

18 A. Yes.

19 Q. Okay. And you say you saw Will with a beer can and
20 you don't know if this beer can was open, do you?

21 A. No, I don't.

22 Q. And you don't -- you said you saw him with the liquor
23 bottle and you don't know if this was open, do you?

24 A. I don't know.

25 Q. And you never, in fact, saw Will drinking anything,

1 did you?

2 A. About Will drinking?

3 Q. Did you see Will drinking on May 10th when you
4 dropped --

5 A. No, I didn't see Will drinking.

6 Q. And you left and you went home, correct? I'm assuming
7 you left the [REDACTED] 8 address, correct?

8 A. Uh-huh.

9 Q. And so you don't know what your son did after you
10 left, do you?

11 A. No, I don't.

12 Q. And you don't know what your grandson did after you
13 left, do you?

14 A. No, I don't. No.

15 Q. So, in fact, you don't know anything about the way
16 this incident took place after you left, do you?

17 A. I don't know what -- I know both of them.

18 MS. PATTERSON: I beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 MS. PATTERSON: Thank you, Ms. Foster.

21 THE COURT: Redirect?

22 MR. SCHWARTZ: Nothing, Your Honor.

23 THE COURT: Thank you, ma'am. You may step down.

24 (Witness excused.)

25 THE COURT: Call your next witness.

1 MS. ZMROCZEK: Your Honor, we call Tyler Watford.

2 THE COURT: Come around, please.

3 THE CLERK: Raise your right hand.

4 (Whereupon, Tyler Watford was duly sworn by the clerk
5 of Court.)

6 TYLER WATFORD,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Investigator Wat -- or, sorry. Deputy Watford, will
11 you tell the jury where you're employed?

12 A. I'm employed with the Lexington County Sheriff's
13 Department.

14 Q. How long have you been employed there?

15 A. I've been with the sheriff's department since November
16 of 2015.

17 Q. And prior to joining or after joining the sheriff's
18 department, did you receive any training?

19 A. Prior to joining?

20 Q. Yes.

21 A. Yes.

22 Q. Okay. Where was that?

23 A. I went through the criminal justice academy in 2013
24 when I started with my first agency and after that I went
25 through an FTO program with that agency and then when I

1 came to the sheriff's department I went through an FTO
2 program with them as well.

3 Q. Okay. And so once you go through all that training --

4 A. Uh-huh.

5 Q. -- you then get put on the road? Is that your job?

6 A. Yes, that's correct.

7 Q. Okay. So describe a little bit about what the job of
8 a road deputy is.

9 A. The duties of a road deputy is to call -- is to
10 respond to any call for service. A hot call for service
11 meaning any crime in progress. Any call for service as far
12 as to take a report for something's that already happened,
13 like if something's broken into or, you know, to take a
14 report for a crime that's already occurred, so we are the
15 first ones to respond to anything.

16 Q. And so -- so you're kind of the first line of defense,
17 right?

18 A. Correct.

19 Q. And you have other duties as well, traffic tickets,
20 DUIs, things like that?

21 A. Making traffic stops and, yeah, enforcing traffic laws
22 and all that, yes.

23 Q. Enforcing traffic laws?

24 A. Yes.

25 Q. And so -- but on this day, I want to talk about May

1 10th. Is the county divided into regions?

2 A. They are. It is.

3 Q. Okay. And so are you assigned a certain region?

4 A. Yes, I'm assigned to what's called our south region.
5 It's basically from the -- about the Cayce area all the way
6 down to the Orangeburg, Calhoun, Aiken county lines between
7 I-26 and I-20.

8 Q. And were you working on May 10th?

9 A. I was.

10 Q. And what were your -- where were you?

11 A. I was in the Dixiana part of the county, which is
12 Charleston Highway and Highway 321, that particular area
13 of the county, the Dixiana, and I was in that area at the
14 time.

15 Q. And what were you driving?

16 A. I was driving a Ford Crown Vic.

17 Q. Okay. And that was a department-issued vehicle?

18 A. Yes. It was a fully marked county patrol vehicle.

19 Q. And so what else -- what other features did your
20 county patrol vehicle have in it?

21 A. My particular vehicle had a dash camera, a camera
22 mounted on the windshield.

23 Q. And explain how those work.

24 A. A dash camera is just like any other camera. It's a
25 recording system and it records for -- it records out the

1 front of the vehicle for when we conduct traffic stops or
2 we have interactions with anybody. Everything is recorded
3 onto a system inside of my car that's mounted to the
4 ceiling and it directly records to a DVD.

5 Q. And how do we hear interactions on your dash camera?
6 Are there different ways?

7 A. Well, the camera system has a body mic -- has a body
8 microphone that clips to wherever. I clip it on my belt,
9 some people clip it somewhere on their body, but it's just
10 a wireless microphone that connects to the system to record
11 any interactions that I have.

12 Q. So even though you -- so you can still be recorded
13 when you're not inside the vehicle?

14 A. Correct. Right. So some systems have -- well, excuse
15 me, the system -- the particular system I have also has an
16 in-car microphone. It's a microphone that's ran inside the
17 car, usually somewhere to the back where the subject is
18 sitting -- where the Defendant is sitting and I can also
19 unclip my body mic and place it inside the car to get a
20 better audio sound because usually the body mic has a more
21 clearer sound than the inside car mic.

22 Q. Now do you have body-worn cameras?

23 A. We do. I did not at the time.

24 Q. Okay. But you do now?

25 A. I do now, yes.

1 Q. Okay. So these -- May 10, 2016, the sheriff's
2 department hadn't acquired those quite yet, right?

3 A. Correct.

4 Q. Okay. So how did you know to respond to a call? How
5 does that work?

6 A. So a call comes in, somebody calls the Lexington
7 County dispatch center, it goes through dispatch, they do
8 whatever they need to do in their system, and then dispatch
9 contacts us. Dispatch calls us on the radio by unit number
10 depending on the call type. If it's a hot call, the radio
11 will tone -- it will do a tone and then that way everybody
12 knows to listen and then dispatch just gives it out and
13 everybody responds. If it's a nonemergent call, dispatch
14 will look at the map typically and see who's the closest
15 units and give it out that way, but dispatch calls us on
16 the radio by our radio number and gives us the call out
17 that way and then we respond.

18 Q. Okay. So every deputy is assigned a different number?

19 A. Correct.

20 Q. All right.

21 MS. ZMROCZEK: Your Honor, I'm gonna mark this and
22 that's Defendant's 27.

23 (Defendant's Exhibit Number 27 was marked for
24 identification.)

25 BY MS. ZMROCZEK:

1 Q. Let me ask this question. Did you -- when you are --
2 how is your dash cam activated?

3 A. My dash cam is activated by my blue lights. When I
4 turn my emergency equipment on, it -- the camera starts
5 recording automatically.

6 Q. And did that happen in this case?

7 A. It did.

8 Q. And what did you do with that recording after your
9 part of this case was finished?

10 A. Once my -- once the Defendant was moved from my
11 vehicle and turned over to an investigator, I stopped the
12 recording, took the DVD out, gave it to our crime scene
13 investigator that was on-scene at the time for her to enter
14 directly into evidence.

15 Q. Okay.

16 MS. ZMROCZEK: And, Your Honor, at this time we
17 would move Defendant's 27 into evidence.

18 THE COURT: Subject to previous objection?

19 MS. PATTERSON: Subject to previous objection.

20 MR. PINCELLI: Also could we approach just for one
21 quick matter?

22 THE COURT: Yes.

23 (Proceedings held at the bench; not reported.)

24 THE COURT: Ladies and gentlemen, the attorneys have
25 asked me to explain to you that this video has been

1 redacted, it's been shortened. There are long periods in
2 the original video where nothing's happening, somebody's
3 just sitting there, nothing's going on, so to save you
4 from having to watch an hour and something of video,
5 they've shortened it down by agreement. So if you see
6 it -- I haven't seen the redacted version, but if it's
7 chopped up or you see like it jumps from one time or
8 another, the only reason that's being done is because
9 there's nothing happening during those times, okay?

10 MS. ZMROCZEK: And --

11 THE COURT: All right. Mark it in evidence subject
12 to previous objection.

13 (Defendant's Exhibit Number 27, an in-car video, was
14 admitted into evidence.)

15 BY MS. ZMROCZEK:

16 Q. And, Deputy Watford, before I publish the video, so
17 you -- and we heard from the judge that there were times
18 -- the video was about fifty-four minutes or so long when
19 you downloaded it, correct?

20 A. Correct.

21 Q. And so explain to the jury -- you responded. How did
22 you know where to go and what you did?

23 A. All right. When the call came out, like I said,
24 I was nearby. I was in the Dixiana area. This incident
25 happened in the Dixiana area not far away. Dispatch gave

1 out the call, I responded Code 3, lights and sirens.
2 While I'm en route, another unit got on-scene first, said
3 that the subject had fled toward Dixiana Drive, the next
4 road over. While also en route, dispatch was giving out
5 over the radio that they were getting another call in about
6 it saying that our suspect that we were looking for was
7 currently at an address on Dixiana Drive. I was given
8 ■3 Dixiana Drive. When I responded to Dixiana Drive, I
9 located the address and saw some people standing outside,
10 I'm assuming the homeowners, standing outside, waiving
11 their arms up telling me to come over there, and that's
12 how I got to the address.

13 Q. Okay. And so -- and so you went -- instead of going
14 to ■8 Oak Glenn, you basically rerouted to --

15 A. Correct.

16 Q. -- to ■3 Dixiana?

17 A. Correct.

18 Q. I'm gonna show you State's 9. I'll let you see it
19 first, so. And I'll stand back here so that way everybody
20 can see it. So what's marked on this map is ■3 Dixiana
21 Drive, correct?

22 A. Yes.

23 Q. And that's where you responded?

24 A. I believe I went -- actually the address came out as
25 ■3 Dixiana Drive, but I believe I ended up at ■7 Dixiana

1 Drive.

2 Q. Okay. And then the incident location you had was
3 ■ 8 Oak Gland Road, correct?

4 A. That's correct.

5 Q. And actually it's a straight -- it's a straight line
6 if you run through the --

7 A. For the most part, yeah.

8 Q. And do you know approximately how long that was
9 between the two places?

10 A. I don't. I don't know how big the backyards are.

11 Q. Okay. Now you weren't the case agent in this case,
12 right?

13 A. Correct, I was not.

14 Q. What's a case agent?

15 A. The case agent is the -- whether it's the deputy, the
16 investigator, the one that's assigned the case, the one
17 that's over the case. The primary deputy or investigator
18 working the case.

19 Q. And so what -- when you arrived though because you
20 were the first to get to Mr. Foster?

21 A. Correct.

22 Q. And can you describe to the jury what you saw when
23 you got out of your vehicle?

24 A. When I got out of my vehicle, the Defendant was --
25 and I made my way around to where they were. The Defendant

1 was -- there was a metal chair, a metal folding chair, in
2 the driveway. The Defendant was on his knees leaning over
3 onto the chair almost like in a praying position on the
4 chair.

5 Q. And did he respond to your commends?

6 A. He did.

7 Q. Was he combative?

8 A. He was not.

9 Q. Was he polite?

10 A. He was.

11 Q. Did he follow all of your commands?

12 A. He did.

13 Q. You -- when you approached him, how did you approach
14 him?

15 A. When I approached him, of course, I was using caution
16 because at the time when I'm en route we don't know exactly
17 what's going on. We're just being told from dispatch what
18 happened. We were just told that someone had just shot
19 somebody and the suspect fled. I don't know where the
20 firearm is, I don't know where the weapon is, if he still
21 has it, so when I'm approaching, I'm approaching with
22 caution. I am ready to do if something were to happen.
23 As I come around the corner, the people are telling me
24 that the firearm -- he doesn't have the firearm, he doesn't
25 have the firearm. I do not see firearm on him and --

1 Q. So initially you have your hand on your -- on your
2 weapon?

3 A. Correct. Correct, because at the time I don't know
4 if he still has the firearm or not and if he does I want
5 to be ready.

6 Q. And you've been trained --

7 A. Correct.

8 Q. -- in the academy that there's a zone of danger,
9 right? Kind of?

10 A. Yeah. Yes.

11 Q. That you could be -- that twenty-one feet is what they
12 -- they train you to be prepared to defend yourself?

13 A. Twenty-one feet is a rule involving a weapon, yes.

14 Q. Okay. And -- and so the dash cam didn't -- even
15 though we can hear you, the dash cam doesn't get to see
16 how you saw Mr. Foster, right?

17 A. Correct. Yeah, he was on the other side of some
18 vehicles.

19 Q. Okay. So you had your body mic on?

20 A. I did.

21 Q. So when we hear it, that's what you just described to
22 the jury?

23 A. Yes.

24 Q. And then -- and then what do you do next?

25 A. After I approach him, realize that he -- they're

1 telling me he doesn't have a firearm, I don't see a
2 firearm, but what I'm being told he matches the
3 description. There I place -- I detain him. I ask him
4 to get up, put his hands behind his back, detain him in
5 handcuffs. I walk him over to the front of my patrol
6 vehicle, place him in front of my dash camera, check him
7 for any additional weapons, which I had to take a
8 pocketknife out of his right front pants pocket and place
9 it on the hood of my vehicle, and then he was -- once he
10 was cleared of any other weapons, he was placed in the
11 backseat of my patrol car to await for an investigator to
12 come speak with him.

13 Q. And I believe that you -- he had told you that he had
14 a knife in his pocket?

15 A. He did.

16 Q. Okay. And so you were just detaining him at that
17 point?

18 A. Correct.

19 Q. And did you ask him any questions?

20 A. I did not.

21 Q. Okay. Did -- but your dash cam did record, so did he
22 make any statements?

23 A. He spoke -- he spoke freely about the incident, but
24 I did not ask him any questions about the incident, no
25 investigative questions or anything like that. That was

1 not my job at the time to do.

2 Q. And about how -- how long after the incident did you
3 get there? You said there was one officer at [REDACTED] 8?

4 A. Uh-huh.

5 Q. How quickly were you behind?

6 A. That's hard to say. A matter of a few minutes. Like
7 I was just a few miles down the road. The dash -- you'll
8 see on the dash cam video from the time I activate my
9 lights to go that it's under -- it's within few minutes.
10 I can't give you an exact time.

11 Q. So it's fairly -- a fairly quick response time?

12 A. Correct.

13 MS. ZMROCZEK: And, Your Honor, at this time we
14 would publish Defendant's 27.

15 BY MS. ZMROCZEK:

16 Q. And what we're seeing right now, there's no sound;
17 is that correct?

18 A. That's correct.

19 Q. It eventually gets activated?

20 A. Correct. So what that -- what it does is there's
21 -- there's the camera -- I'll explain that. The camera
22 system is set up to when we activate our cameras, the same
23 way with our body cameras, the same way with our dash
24 cameras, is when we start recording, that's when the sound
25 starts recording. So the camera is constantly on standby

1 doing a live feed constantly recording stuff, so that way
2 when I hit record it actually backs up and will save the
3 prior fifteen seconds, thirty seconds, a minute, a minute
4 and a half, two minutes, whatever we set it to. That way
5 it catches anything beforehand. So if somebody were to
6 do something, run a red light or whatever, then we've
7 potentially got them on camera running that red light
8 before we activated our lights. So that's what this
9 silence is beforehand.

10 Q. And it looks like you're riding pretty fast. I think
11 you said you were running code?

12 A. Correct.

13 Q. Okay. So what does that mean?

14 A. Running code is running your lights and sirens, your
15 emergency equipment.

16 MS. ZMROCZEK: And, Your Honor, I'm gonna try to put
17 it up here so it's a little easier to see.

18 THE COURT: The screen needs to come down.

19 (Whereupon, Defendant's 27 was played beginning at
20 11:17 AM.)

21 (Whereupon, the video was paused at 11:30 AM.)

22 THE COURT: Ladies and gentlemen, step in the jury
23 room. Don't discuss the case.

24 (Whereupon, the jury retires to the jury room at
25 11:31 AM.)

1 THE COURT: Mr. Watford, don't discuss your testimony
2 with anyone during the break. We're at ease.

3 (Recess taken at 11:31 AM.)

4 (Back on the record at 11:40 AM.)

5 BAILIFF: All rise. Court's now in session.

6 THE COURT: Be seated. Thank you.

7 All right. Before we start back, if any of you don't
8 feel like you can control your emotions, aside from the
9 Defendant, I'm not addressing Mr. Foster, if you can't
10 control your emotions and want to leave, you need to leave
11 now.

12 All right. Bring in the jury.

13 Mark that as a Court's exhibit. That's the e-mail
14 from earlier.

15 (Court's Exhibit Number 2 was marked for
16 identification.)

17 (Whereupon, the jury return to the courtroom at
18 11:41 AM.)

19 THE COURT: Okay. You can start it back.

20 MS. ZMROCZEK: Thank you, Your Honor.

21 (Whereupon, Defendant's Exhibit Number 27 continued
22 playing.)

23 BY MS. ZMROCZEK:

24 Q. Deputy Watford, after -- after your involvement in --
25 when Mr. Foster was transferred out of your car, what, if

1 anything, else did you do in this case?

2 A. Once Mr. Foster was out of my patrol vehicle and in
3 the custody of Detective Miller at the time, I made sure
4 there was nothing else I could do and then I cleared the
5 scene altogether.

6 MS. ZMROCZEK: Thank you. Please answer any
7 questions the State may have.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MR. PINCELLI:

11 Q. Deputy Watford, before we watched that video, we
12 talked about your training and something came up about a
13 -- being trained on a zone of danger?

14 A. Yes.

15 Q. You said something about twenty-one feet. What is
16 that zone of danger training? What's the purpose of that?

17 A. The 21-foot rule was to show that someone with an
18 object, with a weapon in their hand, could assault a
19 deputy or an officer or whoever fatally, say if it was a
20 knife, within that twenty-one -- it's a reaction -- it's
21 reactionary training is what it is pretty much. Someone
22 within twenty-one feet if they had a knife if they -- by
23 the time it would take to me to react to him moving towards
24 me and getting my gun out of my holster, he would have
25 stabbed me in twenty-one feet.

1 Q. So that's training that you get as a law enforcement
2 officer?

3 A. Correct.

4 Q. And that's pertaining to weapons, situations with
5 weapons --

6 A. Yes.

7 Q. -- I believe that's what you testified?

8 A. Yes.

9 Q. Going back, you also testified that you're a road
10 deputy and that you're kind of first on-scene?

11 A. Correct.

12 Q. So you're the one that first deals with the situation,
13 picks up what's going on; is that correct?

14 A. Correct.

15 Q. Does that give you the opportunity throughout your
16 career to be one of the first people to speak with a
17 suspect or subject?

18 A. Yes.

19 Q. And over your career, have you heard suspects give
20 their own version of events before?

21 A. Yes.

22 Q. Kind of give their own story?

23 A. They do.

24 Q. And we saw this video, and I believe you already
25 testified that you didn't ask any of these questions, that

1 this was kind of just the suspect in the back of your car
2 giving his own version of the events?

3 A. Correct.

4 Q. In fact, we heard you seek advice at one point, it
5 was off screen and, I don't know, maybe I need to clarify
6 this with you, did you at one point talk to another officer
7 about asking questions?

8 A. I did. So what you heard of me stepping off screen
9 speaking with Detective Blake was being -- like this
10 happened in May of 2016. I was new -- I came to the
11 sheriff's department in November 2015, so I was fairly new
12 to the department, so I was still learning the procedures
13 of how they handled major crime incidences, you know, and
14 so I wanted to be sure that I didn't mess anything up
15 for the investigators or anything like that as far as
16 questioning or -- or anything because I was still learning
17 the process of how this department works their major
18 crimes and how they handle things.

19 Q. So you're being professional and extra careful there?

20 A. Correct.

21 Q. And being careful you were asked questions regarding
22 whether or not you should interrogate or try to get any
23 information out of the suspect; is that correct?

24 A. I didn't ask if I could ask any questions. I asked
25 if -- I let the detective know who had been there longer

1 than me hey, he's in here talking freely or anything like
2 that, I'm not asking him anything, you know, do I -- do I
3 need to ask him anything or do you just want me to leave it
4 alone.

5 Q. And you said he was in there talking freely. So you
6 asked for -- you asked other law enforcement members for
7 clarification because he's just in there giving you all
8 sorts of stories, correct?

9 A. Correct.

10 Q. And over the course of the video and when he was in
11 your car, you were there, you experienced it in person,
12 not just watching the video like we all did, did he say
13 the word "accident" many times?

14 A. He did.

15 Q. Is that -- did you -- do you recall him saying I'm
16 talking to put something in my mind?

17 A. Yes.

18 Q. Do you recall him saying I'm gonna get your gun,
19 something along those lines?

20 A. Yes.

21 Q. Do you recall him talking about any other weapons?

22 A. As far as him?

23 Q. Right.

24 A. No.

25 Q. So just you heard him about retrieving a weapon --

1 or, I'm sorry, a gun specifically?

2 A. Correct.

3 MR. PINCELLI: I beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. PINCELLI: Thank you very much, Deputy Watford.

6 I don't have any questions.

7 MS. ZMROCZEK: Very briefly, Your Honor.

8 THE COURT: Yes.

9 REDIRECT EXAMINATION

10 BY MS. ZMROCZEK:

11 Q. He asked you about -- about him freely talking and --
12 and you verified that and what -- when you asked -- was it
13 Detective Blake at the time?

14 A. (Nods head.)

15 Q. When you asked Detective Blake what you should do,
16 what did he say?

17 A. Just reassure him that somebody's going to come speak
18 with him and just to relax. The same thing I was already
19 doing.

20 Q. Yes. And to let him talk if he wanted to talk,
21 correct?

22 A. Correct.

23 Q. And then he asked you about were there any mentions
24 of weapons and certainly in the video he talks about the
25 two by four, he talks about a pipe and the jack?

1 A. Correct.

2 Q. Okay.

3 MS. ZMROCZEK: Thank you. No further questions.

4 THE COURT: Anything else of the witness?

5 MR. PINCELLI: No thank you, Your Honor.

6 THE COURT: Thank you, sir. You may step down.

7 MS. ZMROCZEK: May he be excused?

8 THE COURT: You're free to go. Thank you.

9 (Witness excused.)

10 THE COURT: Any other witnesses?

11 MS. ZMROCZEK: Your Honor, at this time the defense
12 rests.

13 THE COURT: Ladies and gentlemen of the jury, please
14 give me your intention. I need to give you an instruction
15 related to the election of the Defendant not to testify.
16 The fact that Mr. Foster elected not to testify is not a
17 fact to be considered by you in any way in your
18 deliberations and in your consideration on the question
19 of whether he is guilty or not guilty. His decision not
20 to testify must not be considered by you in any manner
21 whatsoever against him. An accused has a constitutional
22 right to remain silent and the assertion of that right
23 cannot and must not be used in any way against him in
24 your deliberations. Under your oath, you're to reach no
25 inference and you're to draw no conclusion whatsoever from

1 the fact that Mr. Foster elected not to testify. His
2 decision not to testify should not be discussed by you in
3 the jury room, it should not enter your minds in making
4 your decision on the question of whether he is guilty or
5 not guilty. The State has the entire burden of proof and
6 an accused has no obligation to prove anything at all.

7 Do you anticipate any reply evidence?

8 MS. PATTERSON: No, sir.

9 THE COURT: Okay.

10 All right. Ladies and gentlemen, you now have all
11 the evidence you're gonna have to decide the case and
12 we're at another one of those stages where I have to talk
13 about legal issues with the attorneys. This one takes
14 more time, so what I'm gonna do is give you an extended
15 lunch break. You'll be on your own for lunch. We'll stay
16 here and work. I'm gonna ask you to be back here at 2:30.
17 Hopefully I'll be ready by then. I'm having to put the
18 charge together and I can't put the instructions together
19 until I know what issues have been raised in the trial,
20 so I've been working along but I'm gonna need some quiet
21 time to sit down and put all of this together, so I need
22 you to back at 2:30.

23 You should get the case this afternoon unless I run
24 into major problems drafting the charge. Don't discuss
25 the case yet. I hope you have a pleasant lunch and I'll

1 see you around 2:30.

2 (Whereupon, the jury was excused for lunch at
3 12:16 PM.)

4 THE COURT: Motions?

5 MS. ZMROCZEK: Your Honor, at this time we would
6 just renew our motion for directed verdict. Certainly we
7 understand Your Honor's position before and we understand
8 that those facts haven't changed, but at this time just we
9 would move for a directed verdict on the -- for the showing
10 of a lack of malice.

11 THE COURT: There's evidence in the record from which
12 the jury could convict the Defendant for both offenses for
13 which he's charged. Your motion's denied.

14 MS. ZMROCZEK: Thank you.

15 And, Your Honor, if I can get on the Internet, I can
16 -- I have our proposed charges in Word to e-mail as well
17 once I do that.

18 THE COURT: All right. So it's murder, voluntary and
19 involuntary?

20 MS. ZMROCZEK: We would -- we would request that
21 voluntary not be charged, Your Honor. It's specifically
22 for the -- the reason that the motion for directed verdict
23 was denied. We -- I did a lot of reading into legal
24 provocation and heat of passion and it seems to be that
25 all the evidence presented was that there was a sufficient

1 cooling off period, so we would ask for murder, voluntary
2 -- or, excuse me, murder, involuntary, accident and
3 self-defense.

4 THE COURT: I'm gonna charge involuntary. Do you
5 want to be heard? I mean, charge voluntary. Do you want
6 to be heard?

7 MS. PATTERSON: No, sir.

8 THE COURT: What about involuntary?

9 MS. PATTERSON: Your Honor, we would ask that
10 involuntary not be charged, Your Honor. I think it's
11 inappropriate in this case.

12 I beg the Court's indulgence. I lost my place.

13 I think it's inappropriate to charge involuntary
14 under these circumstances, Your Honor. He intentionally
15 waived the gun around -- well, he intentionally pointed
16 the gun at someone, Your Honor. Actually it was several
17 people were in the area that he could have shot, but he
18 -- he pointed the gun, Your Honor, in the area of his son.
19 I would think that -- that that is more malicious, Your
20 Honor, and not criminal negligence, and that will also be
21 inconsistent with self-defense if Your Honor is gonna
22 charge self-defense.

23 THE COURT: I think the law is that he's entitled to
24 a charge on both with the jury issues that have to be
25 determined.

1 What's the defense's position on involuntary? I
2 assume since you don't want voluntary, you don't want
3 involuntary.

4 MS. ZMROCZEK: We do want involuntary, Your Honor.
5 We do believe that under these facts, under Mekler,
6 M-E-K-L-E-R, Brayboy, Light and all of those progeny,
7 Your Honor, I think that it does say that you can also --
8 you can be acting in self-defense or involuntarily -- as
9 well as involuntarily with the negligent handling of a
10 loaded gun, which we assert is what the facts show in this
11 case.

12 THE COURT: There's evidence in the record that the
13 Defendant could be construed by the jury to -- he could be
14 engaged in criminal negligence related to the handling of
15 a firearm and, therefore, involuntary manslaughter should
16 be charged in my view.

17 Here's what I want you-all to do. I want you to be
18 back at 2:15. I should have a printed out charge for you
19 then. You can review it. If you've got proposed charges,
20 you need to get them to me because I'm putting this
21 together. Some of these issues have been difficult to
22 rule on. That Terry issue really bothers me a lot. Some
23 of the initial part of that video I don't really have too
24 much concern about allowing. There's some of it toward
25 the end, but we didn't parse that out and because we didn't

1 parse it out, I didn't make individual rulings on each of
2 the things the Defendant said and the context in which he
3 said it, but it's done now. I did what I thought was
4 appropriate under the circumstances, but I'm troubled by
5 that ruling.

6 We're at ease until 2:15.

7 (Whereupon, a luncheon recess was taken at 12:22 PM.)

8 (Back on the record at 2:43 PM.)

9 BAILIFF: All rise. Court is now in session.

10 THE COURT: Thank you. Be seated, please.

11 My understanding is that none of you took issue with
12 the language in the charges that were proposed, the draft
13 charge I gave you; is that right?

14 MR. PINCELLI: No issues from the State, Your Honor.

15 MS. ZMROCZEK: No issues from the defense.

16 THE COURT: Well, after I give the charge, you can
17 preserve your objections to me, the charge of the lesser
18 includeds that you objected to.

19 Is the State ready to argue?

20 MS. PATTERSON: The State's ready.

21 THE COURT: Defense?

22 MS. ZMROCZEK: I am, Your Honor. I just -- I didn't
23 want to go through the State's pictures while they were
24 getting ready for theirs, so I may need just a minute to
25 get some pictures together in between.

1 THE COURT: Okay. Are you gonna open in full? Which
2 of you is gonna do it?

3 MR. PINCELLI: Ms. Patterson.

4 MS. PATTERSON: I thought I had to open in full and
5 then I get an opportunity to reply.

6 THE COURT: Is she right?

7 MS. ZMROCZEK: That was my understanding.

8 THE COURT: Okay.

9 MS. ZMROCZEK: Thank you.

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

11 (Whereupon, the jury return to the courtroom at
12 2:45 PM.)

13 THE COURT: Members of the jury, we've reached
14 the stage now where there are two remaining phases, the
15 closing arguments and the charge. The charge is -- the
16 charge is what we use as a term to define what the judge
17 tells to the jury.

18 Now I told you at the outset that in the opening
19 statements the attorneys were not permitted to engage in
20 what we call argument. Well, we've reached the point
21 where they now are permitted to use the art of advocacy
22 in an attempt to get you to see things as they would like
23 you to see them on behalf of their respective positions.

24 The way this works is the State will go first, will
25 close in full, then the defense will make its only closing

1 argument, and since the State has the burden of proof,
2 the State gets to come back and respond. They can't go
3 through the whole thing again, but can respond to what the
4 defense brought out.

5 Now, ladies and gentlemen, we play these things by
6 ear. I don't limit attorneys on how long they talk. I
7 never have. I always take a break between when they
8 finish and when I start so I can get set up. It's usually
9 a very short break. Sometimes we'll take a break between
10 the arguments to give them an opportunity to set up, so
11 we'll just kind of play it by ear and see how it goes.

12 I invite your close attention.

13 Solicitor, you're recognized for your closing
14 argument.

15 MS. PATTERSON: Thank you, Your Honor. May it
16 please the Court?

17 THE COURT: Yes, ma'am.

18 MS. PATTERSON: Good afternoon. It should have been
19 water under the bridge. May 10, 2016, should have been a
20 normal day in the Oak Glenn neighborhood. It should have
21 been a petty argument that ended with everyone going their
22 separate ways, but instead it was a tragic day. It was a
23 deadly day for Will Foster. He was shot and killed in
24 front of his home, in front of his girlfriend, the mother
25 of his child, in front of his sister, in front of his

1 mother, in front of neighbors in the neighborhood. He was
2 shot and killed by the Defendant, his father, Heirbrane
3 Foster. It was a petty argument, something that should
4 have been done and over, over a barbecue grill.

5 Now the Defendant is on trial for murder and
6 possession of a weapon during the commission of a violent
7 crime. Now the judge will instruct you on the law later,
8 but now it is my opportunity to give you the law and
9 relate it to the facts that I think we have presented this
10 week.

11 Murder. The killing of another with malice
12 aforethought, either express or implied. Now malice is
13 defined as ill will or hatred. It doesn't require ill
14 will toward the individual who actually gets hurt, but
15 rather it signifies a general malignant recklessness of
16 the lives and safety of others. It can be expressed,
17 it can be implied. Expressed are like words like the
18 Defendant used, didn't I tell you to leave me the fuck
19 alone. Or you heard that last video that the defense
20 played when he said I'll shoot you with your gun.
21 express malice.

22 Implied, showing conduct -- by showing conduct of a
23 total disregard for human life. You heard the testimony
24 from that stand. There was other people standing right
25 there next to Will. There were children around, there

1 was others around. It was a busy day.

2 Aforethought. This doesn't require a long period
3 of time. It's just sufficient that malice, that ill will
4 or hatred, occurs right before the act, right before that
5 shooting.

6 The judge is also going to instruct you on what we
7 call lesser included offenses, and these are just a step
8 under murder. The first one he's gonna instruct you on
9 is voluntary manslaughter. It's the unlawful killing of
10 another in the sudden heat of passion soon after legal
11 sufficient provocation without malice aforethought.
12 Again, we submit to you malice occurred in this case.

13 Now criminal negligence means doing an act not
14 naturally intended to cause death. I submit to you that
15 pointing a pump shotgun at someone, pumping the gun and
16 pulling the trigger is very likely to cause death.

17 He's going to also instruct you on involuntary murder
18 -- involuntary manslaughter. Excuse me. Involuntary
19 manslaughter is the unlawful killing of another without
20 malice and with criminal negligence. I apologize. And
21 that criminal negligence, as I stated, pumping a shotgun
22 at someone. That's criminal negligence. You know that's
23 intended to cause death.

24 And let me go back to voluntary manslaughter. In
25 the sudden heat of passion soon after legal sufficient

1 provocation without malice aforethought. If there's a
2 sufficient cooling off period, then it's murder, it's not
3 manslaughter. You heard testimony from at least four or
4 five people on this stand that everyone thought it was
5 over; that the Defendant was in the house three to five
6 minutes, maybe longer according to some witnesses. We
7 submit to you that a sufficient cooling off period did
8 exist in this case and if there is a sufficient cooling
9 off period, then it's murder.

10 The next thing he's charged with is possession of
11 a firearm during the commission of a violent crime. He
12 possessed a firearm. He admitted to that in that video
13 that they showed you with Deputy Watford during the
14 commission of a violent crime, and I submit murder and
15 manslaughter, they're violent offenses.

16 Now the judge is also gonna talk about self-defense.
17 In order for you to believe that the Defendant was acting
18 in self-defense, these factors must exist. First, the
19 Defendant was without fault in bringing about the
20 difficulty. We submit to you the difficulty was over.
21 They had gone on, started talking, laughing, planning on
22 the rest of their day. You heard that from Haley, you
23 heard from that Leeann, you heard that from Troy. You
24 even heard that from Savannah. She said that Will was
25 attempting to walk away. The Defendant brought about the

1 difficulty when he went inside, stayed a few minutes, got
2 that gun, unwrapped it from that fitted sheet, presented
3 himself back outside the door that he knew Will was at
4 and reengaged himself in the difficulty. They both were
5 mutually arguing back and forth across those yards as
6 Leeann testified and Troy testified about. Going back
7 and forth. They both were doing it. It was over. He
8 reengaged and started back up the difficulty.

9 The Defendant must also believe -- must actually
10 believe he was in imminent danger of losing his life or
11 sustaining serious bodily injury or he was actually --
12 or he actually was in such imminent danger. And also if
13 the defense is based on the Defendant's actual belief of
14 imminent danger, a reasonable prudent person of ordinary
15 firmness and courage would have entertained the same
16 belief. Or if the Defendant actually was in imminent
17 danger and the circumstances were such as would warrant
18 a person of ordinary prudence, firmness and courage to
19 strike the fatal blow in order to save himself from
20 serious bodily harm of losing his own life.

21 You heard the testimony. The Defendant was not in
22 imminent danger. It was over. Will was standing there.
23 Will was not pursuing him in the house. Will did not
24 enter the house. Will did not have anything in his hand
25 at the time of the shooting. He wasn't in any danger.

1 He -- some testimony said that he had even walked to the
2 edge of the driveway with his wife. It was over.

3 And the Defendant had no other probable means of
4 avoiding the danger of losing his own life or sustaining
5 a serious bodily injury than to act as he did in this
6 particular instance. Well, we know he was inside his
7 house. He could have locked the door, he could have
8 stayed inside, he could have went out another door. We
9 know he had his cell phone. He could have called for
10 help, but he didn't. There were other probable means of
11 avoiding the danger if he thought he was in danger, which
12 I submit to you he was not.

13 Now the judge is also gonna tell you that you have
14 the right to judge each witness that sat on this stand,
15 their credibility, their believability, what they have
16 to gain or lose by coming here today. None of these
17 witnesses wanted to be here. Haley didn't want to be
18 here. She loved her daddy and her brother. Leeann,
19 Troy, Savanah, they didn't want to be here to relive this
20 whole hurtful, tragic incident again. They're credible.

21 And the defense may talk about some of them had
22 prior criminal records. Ladies and gentlemen, that's the
23 reality of the place where these people lived. You heard
24 people describe this is a pretty rough place. They may
25 have criminal records, but you know what, those records

1 were old. They were nine, ten years old. Leann even
2 thought that hers had been taken care of. Troy's was
3 nine years old. He's working a steady job. Been at
4 that job for a year and half. These are very credible
5 witnesses that witnessed something tragic, something
6 terrible done to someone they loved. They didn't want
7 to be here.

8 The judge will also go over reasonable doubt with
9 you, and reasonable doubt is, it leaves you firmly
10 convinced. It doesn't have to be beyond all doubt
11 because there's very little that we know beyond all
12 doubt. Just that leaves you firmly convinced that these
13 offenses happened.

14 And I thank you for your paying attention, I thank
15 you for your patience, but now this is my time to go over
16 the evidence that was presented. And one of the hardest
17 things that a prosecutor does is get up here and start
18 talking because I know there's gonna be something I forgot,
19 but luckily I will have the opportunity to reply after
20 the defense attorney. So I hope you don't get tired of
21 listening to my voice, but it's my burden of proof, and
22 I've got a job to do. But I just ask you to bear with me
23 just a little while longer and just let me go over what I
24 think are some of the key points that you heard from this
25 stand this week.

1 Now the first thing I'd like to do is just go over
2 what the defense put up. Yesterday they put up the 9-1-1
3 communicator -- or director, and she talked about all
4 these 9-1-1 calls and how they're processed and how they
5 come into the office, and she talked about how the first
6 call came in and then two minutes later I think the
7 Defendant may have called. And you may be thinking --
8 and she also said though that the timestamp is when that
9 particular dispatcher hit enter, so just depending on how
10 fast they are, depending on what they're putting in the
11 system, that's what the timestamp is. And I know you're
12 thinking two minutes is not a lot of time, but I submit to
13 you it's a lot of time. As a matter of fact, let's just
14 sit here for two minutes.

15 And that's about two minutes. And remember Deputy
16 Schirra testified that he got to the scene in less than a
17 minute, so 9-1-1 had already been called. And you heard
18 Haley's 9-1-1 call. He had already got on his PA system
19 and if you listen carefully at the end of her 9-1-1 call,
20 you can hear Deputy Schirra on that PA system shouting
21 for the Defendant to come out because that was the
22 information he received at the time. I submit to you the
23 Defendant knew that the police were on their way, he knew
24 people were out there, he knew 9-1-1 was called, he knew
25 Deputy Schirra was already on the scene, and then he

1 decided to call.

2 And if you listen to the other 9-1-1 call that they
3 played from his neighbor, it was dispatch asking if it
4 was an accident. He wasn't the first to say it. She
5 asked if it was an accident, he took it, and he ran with
6 it. You have all the 9-1-1 calls. You can re-listen to
7 them and you can even listen to the other call that Leann
8 said her sister Ronita made. Listen to it and you decide
9 if what they're relaying to dispatch sounded like the
10 Defendant's version later on.

11 They also put up Deputy Burt to read in Vernon
12 Blanding's statement. I guess they wanted to get in that
13 he said that Will said he would not stop, but he did stop.
14 Vernon took the board from him and you saw where he placed
15 it. All the way up here on the edge of the road. He did
16 stop. He may have said it, but he did it. He stopped and
17 he began to have a conversation with Leann and Haley and
18 Troy.

19 Now Vernon Blanding's statement also said that Will
20 wasn't holding anything at the time of the shooting.
21 He's the Defendant's cousin, Mr. Blanding is, and he saw
22 his cousin walk in the house, shoot Will, and say didn't
23 I tell you to leave me the fuck along. And excuse my
24 language. Those are usually not my words. If you knew
25 me, those are not my words, but those are his words, and

1 those are his words that he said before he shot and killed
2 his son.

3 And Vernon also said it was over this grill that was
4 at Leann's house, so he saw that. Then he also said he
5 saw the Defendant leave out of the house, run through the
6 yard and jump the fence.

7 Now they called in the SLED toxicologist to get in
8 Will's blood alcohol level. And, yeah, it was above
9 legal limit to drive. That don't mean he couldn't walk
10 in his yard. That don't mean he couldn't hold a
11 conversation. Will wasn't driving. He was at his home
12 getting ready for a cookout. The toxicologist also
13 said that even the level Will was at he would have had
14 decreased inhibitions, slowing his system down to the
15 point where he would be sleepy. Same with the low level
16 of Xanax. And I know they're gonna make a big deal out
17 of that. They're both depressants and there was nothing
18 else in his system.

19 And Nellie Foster, she testified. She's the
20 Defendant's mom. She's been sitting here all week.
21 Things moms won't do for their sons. She knew what she
22 needed to say about Will, but what she also said is he
23 may have had something in his hands, but she didn't see
24 if they were open or not. She didn't see him drinking.
25 She left. She don't know what her -- what the Defendant

1 did after she left, she don't know what Will did after
2 she left.

3 And Deputy Watford's video. Again, I submit he knew
4 the police had been called. He was trying to get away,
5 although he says differently. His own cousin, Vernon,
6 said he saw him running through the yard, jumping over
7 the fence. So by the time Deputy Watford gets there he
8 was running with the accident story. It was his time to
9 give his version of the facts. No one else gave this
10 version, just him. And it's interesting on the video he
11 even says he was hoping to try to put something in his
12 mind. What kind of statement is that? I submit he was
13 trying to come up with a story to save himself and that's
14 exactly what he was doing. Everything he said was
15 self-serving. Did you notice not a tear on that video?
16 He was panting, he was apologizing, he was coming up with
17 excuse after excuse after excuse, but when the deputy
18 would open that door, it would get more intense. At the
19 end of the video, yeah, he asked about his son, but
20 everything else was just a coverup for himself.

21 Now let's talk about the witnesses that the State
22 put up. Savannah, she don't even live over there. She
23 was over there at her aunt's house looking out the window
24 because she heard arguing from both people. This was not
25 one-sided. She looked out the window and, yeah, she saw

1 Will with the board, she saw Vernon take the board. Will
2 had nothing in his hand. He was getting ready to walk
3 away she said. She said she saw the Defendant go in the
4 house three minutes and then she saw Will fall to the
5 ground.

6 Now Leann and Troy, they weren't here the day
7 Savannah testified and they had similar timeframes.
8 Again, yeah, Will drank. He was twenty-four years old.
9 A young man. Even Savannah said it was no big deal. Will
10 wasn't violent or disrespectful to her when he was
11 drinking.

12 And you heard from Haley. Haley loves both of these
13 people, feels caught in the middle I'm sure, and she said
14 her brother had something in his hand and she couldn't
15 remember what her daddy had, but if you also remember,
16 too, different people can be focussed on different things.
17 You heard how close she said her and Will was. They were
18 close. You heard Leann say they even took up for each
19 other, so her focus, I submit, was on Will. And so she
20 was focussed on Will. She knew that her mom was trying to
21 get something from Will's hand, but she knows ultimately
22 nothing was in Will's hand. She thought it was over.

23 She talked about her dad's dogs and everybody being
24 scared of those dogs and I even think he said he went and
25 stood by the dogs because he knew Will was scared of those

1 dogs. There's one in particular I think they're afraid
2 of.

3 But, again, everybody said it was over. They were
4 getting ready to go back to Leann's house and continue
5 with the plans of the day of having the party. Again,
6 she said Will never hit her dad, their dad. Listen to
7 her call. Listen to her 9-1-1 call.

8 And Leann, mother of Will's young child. I think
9 the baby was one month old at the time. She said she
10 felt confused, lost, empty. She even closed his eyes
11 when he died. She told her sister to call 9-1-1. Again,
12 her focus was on her kids. And the defense attorney may
13 make a big deal saying she gave her statement last year
14 to our office, but she explained that. And, yeah, like I
15 said, she had an arrest. I'm not the solicitor. I don't
16 know anything about the case. She has another attorney.
17 But she stated she didn't want to talk that day. She
18 didn't feel like talking. That's understandable. She
19 just had closed Will's eyes upon his death and her children
20 were standing there watching it. She was concerned about
21 them. But she also said she was more than willing to talk
22 when she was contacted and at first she was contacted by a
23 representative that represented the Defendant previously
24 and she said she talked to them and then when we called
25 she talked to us. There's nothing biased by that. She

1 just didn't want to talk May 10, 2016.

2 And she told you what happened. She told you she
3 had went to the store, came back. And, yes, her and Will
4 got into an argument at her house because there were some
5 girls over there, but she shut it down. She shut it down,
6 but Will was still angry and kicked over the grill. The
7 Defendant saw it just a house away. Leann's house, their
8 house. He said what Will had did to the grill and that's
9 where the argument went back and forth, back and forth,
10 back and forth. But she says she picked up the grill.
11 She started prepping. She thought, you know, they argue
12 all the time, it will be over soon. But then when she
13 noticed it wasn't, she did go over to tell them not to
14 behave that way in front of her son.

15 Again, if you notice, she didn't make this one-sided.
16 She said they both were engaged in this verbal altercation.
17 Nothing physical. Neither tried to swing on each other,
18 neither made contact with each other. If she wanted to
19 lie, she would have divulged a little more about the
20 Defendant's involvement, but she didn't. They both were
21 mutually engaged in this verbal altercation. And Vernon
22 took it, the stick or whatever, out of Will's hand. She
23 said she didn't take anything out of his hand, but what
24 they do know is they stood there, and I think defense had
25 her even get up and demonstrate where they were standing,

1 which is a little far -- this picture is a little far, so
2 you can look at other pictures that kind of coincide with
3 the same thing to see, but Leeann stood right over here
4 in this corner and demonstrated everything where they were
5 standing for minutes.

6 And you-all saw how long two minutes is in the
7 reality of things, so just think three to five minutes
8 they stood there. Again, nothing in Will's hand, thinking
9 it was over, saw the Defendant go in the house. Well, he
10 was in the house three to five minutes, but they may have
11 been there longer because she also said she saw him go to
12 the edge of the yard and have his arm around his ex-wife,
13 Cathy. Will with his back towards the door, the Defendant
14 comes out, he hears him, Will turns and gets shot in the
15 center of the chest.

16 And she described his motion, how he took a step,
17 turned to walk away. If you look at these pictures --
18 and I know defense will probably, you know, say, yeah, he
19 was standing on the pavement, but Leann, Haley and Troy
20 say he was in the dirt. And this is consistent with what
21 Agent Sprinkle testified because he gave a zone because
22 he said he couldn't be sure if he was on the pavement or
23 the dirt, and that's safe, he couldn't be sure because he
24 wasn't there. But the way Leann described, he took a
25 step, the blood pooled. And if you notice that's where

1 the path starts, the blood. He's standing, spatter,
2 turns, blood path. And I think Detective Sprinkle said
3 that was thirteen feet away from the door. Thirteen feet.
4 Thirteen feet. And we'll talk about that danger zone
5 that the defense tried to get the law enforcement officers
6 to talk about. I'll get to that in a minute.

7 Again, they tried to get Leann to say that Will
8 liked to drink. She said she didn't see him drink, but
9 he was drinking. That's okay. But she didn't see it.
10 She had went to the store, she started prepping for the
11 barbecue. She wasn't there up under him the whole time,
12 but she said he wasn't a mean drunk, he was kind of goofy
13 when he drank.

14 Now Troy, he talked about giving his written
15 statement and he was shaky. He said he was so shaky that
16 the officer had to finish it up for him. He said he was
17 at Vernon's house when it all started. They got his
18 attention because, again, both of them was arguing. So
19 he didn't see Will and Leann start that fight, the first
20 -- not fight, but first verbal altercation at her house.
21 He didn't see Will kick over the grill. His attention,
22 like I said, was when he saw the Defendant and Will
23 arguing. Now he remembers the Defendant saying didn't I
24 tell you leave me the fuck alone, knows Vernon took the
25 stick from Will, and that stick was found twenty-two feet

1 from Will's head, remember that, at the edge of the yard.
2 Remembers the Defendant having something in his hand,
3 don't remember what it was. Talking to Will three to
4 five minutes before he was shot. And, again, that would
5 be the area that he described they were at that would
6 still be consisted within that zone that Agent Sprinkle
7 talked about. Doesn't remember the Defendant working on
8 the car. Leann said he never started working the car.
9 That car had been parked in her yard for some time.

10 Now Agent Schirra, who worked at the sheriff's
11 department, like I said, he got to the scene in less than
12 a minute. Said it was chaotic, people were upset, yelling
13 at him that the Defendant was in the house and he'd just
14 shot his son. So in order to secure the premises so when
15 EMS did arrive there would be no other danger, he had to
16 try to get him out to secure the scene. He just kept
17 talking about securing the scene. And, again, if you
18 listen to Haley's 9-1-1 call, you can hear something over
19 the PA system from Deputy Schirra at the end. He began
20 yelling for him to come out, he didn't come out, then he
21 got information he had ran out the back door, which, again
22 Vernon said he saw him do. He radioed that in and then
23 got confirmation that Watford had detained the Defendant.

24 He began clearing the house with Deputy Burnett.
25 They made sure no one else was there. They see the gun

1 laying on the floor in the kitchen partially wrapped.
2 And I submit to you the Defendant was gonna wrap that
3 gun back up and hide it from wherever he got it, but he
4 didn't have time because he knew Schirra was already on
5 the scene. So instead he left it there, opened that back
6 door and took off. They told major crimes about the gun,
7 told CSI Sprinkle about the gun.

8 Now, again, she talked about this danger zone that
9 the police in the police academy learn about and that's
10 something that officers learn about when someone is
11 approaching them, someone with a weapon I think Deputy
12 Watford said. I submit to you this was no danger zone
13 for the Defendant. Although thirteen feet may be within
14 that twenty-one feet danger zone, it wasn't like he was
15 standing there the entire time. He had went in the house,
16 got the gun from wherever it was, so he had moved away
17 some more, began unwrapping it, doing whatever to get it
18 ready to come back to that door that he knew Will was
19 standing. So I submit to you that doesn't even apply in
20 this situation. The danger zone is when somebody is face
21 to face with somebody and at this point, once again, Will
22 did not have anything in his hand. Will was not trying to
23 go inside that house. Will did not go inside that house.

24 And I know she's probably gonna try to say because
25 none of these instruments were collected, nothing but the

1 two by four, and Sprinkle said the things that was brought
2 to his attention they collected. There was so many people
3 on the scene. People didn't feel like talking at the
4 scene. This information may have not gotten communicated
5 to him at the scene. We know we've got pictures of the
6 things that was just lying in the yard. And I submit to
7 you the Defendant had these things in his hand just like
8 Leann said. Troy said she saw something -- he saw
9 something.

10 I mean, everything wasn't collected. The grill
11 wasn't collected, but we know it had something to do with
12 this. What was collected -- they were called out because
13 of a shooting, not because of some assault in the front
14 yard, so they didn't collect all that stuff in the front
15 yard. What did they collect? The collected that gun.
16 They collected that gun that was later tested by Suzanne
17 Cromer, and I'll get to her testimony in a minute.

18 Deputy Schirra -- Agent Schirra also talked about
19 the wadding being close range. The wadding still stuck
20 in his chest. And thirteen feet, that would be consistent
21 with the wadding in his chest. So you don't have to be
22 up -- close up on somebody like this. That thirteen feet
23 would still be consistent just like the witnesses testified
24 that Will was standing.

25 Tiera Robinson was the paramedic. She got dispatched

1 to this scene. She testified there was a lot of blood
2 loss and tissue on the ground and she stated she was
3 certain it came from that three-inch hole in Will's chest
4 that was caused by the gunshot. He was pulseless,
5 breathless. His heart had stopped beating. She made the
6 decision to declare him dead and called the coroner's
7 office.

8 And as I stated, Suzanne Cromer, she was sent this
9 -- at this point they had made sure that there was no
10 more ammunition in the gun. They wanted to render it
11 safe not because it can accidentally go off, but because
12 somebody can pull the trigger, and that's just the
13 precautions they take with firearms because somebody can
14 pull the trigger. And she said she tested this gun and,
15 boy, did she test it. She said she tried her best to make
16 sure that the gun couldn't accidentally go off, but she
17 couldn't do it. She said the only way this gun was gonna
18 go off was have the safety off, pumping the gun, which the
19 Defendant said he did, and then pulling the trigger. And
20 not just gently pulling the trigger. She said it would
21 take six pounds of force to pull that trigger. And there
22 was some kind of recall on a 500 series Mossberg gun, but
23 it didn't pertain to this gun because of the pistol grip.
24 The recall had something to do with if the trigger and it
25 had space here it could be tapped by a mallet that it could

1 accidentally go off. There wasn't even no space here to do
2 it. But she even tried. She said she tapped it on the
3 side. This gun did not go off. Again, the only way this
4 gun will go off -- this particular gun would go off, safety
5 off, chamber pulled, trigger pulled -- chambered, racked,
6 trigger pulled.

7 She said it couldn't slam fire. She tried it as a
8 left-handed person. She even had the person that studied
9 under her right-handed try it. She tested many --
10 testified so many factors can determine the way the
11 wadding would go and multiple things can affect ammunition.
12 She talked about the ammunition, but she didn't have
13 enough markings to make a conclusion, so she rendered it
14 inconclusive. But she also talked about how she could
15 witness you shooting something, test that shell and
16 because it didn't have any markings it would still be
17 rendered inconclusive. So don't let that be a distraction.

18 Now is it normal for someone to feel remorse or feel
19 sorry after they did something? Sure. We recognize that.
20 It's understandable. And you certainly should after your
21 child is shot, but that doesn't mean that the Defendant
22 didn't mean to commit this offense. They thought it was
23 over. It was a petty argument over a barbecue grill.
24 Everybody's outside, the battle is over. Haley said over,
25 Troy said over, Leann said it was over. The Defendant

1 chose to go in that house and arm himself.

2 The defense in their opening said it was about
3 choices, causes and consequences. Yes, it was. The
4 choices he made. And he went -- again, went inside the
5 house, stayed three to five minutes, made the choice to
6 unwrap the gun, not lock the door, not call the police,
7 walk back out that door. Not the backdoor, not the front
8 door, but that particular door. Rack it, pull the trigger
9 while pointing at his son and shooting him in the chest.
10 If he wanted to just scare him, shoot the gun in the air,
11 just point the gun up. Maybe just use that pocketknife
12 that was in his pocket. No, he meant to shoot Will. And,
13 again, it don't have to be a long period of time that he
14 meant to do this. Just right when it happened. He meant
15 to do it. And he did so with malice aforethought and
16 intent.

17 And, again, I will have the opportunity to respond
18 after Ms. Zmroczek gets up here, but right now I just
19 thank you for your attention and I'll be back before you
20 shortly.

21 THE COURT: Thank you, Solicitor.

22 Do you need a few minutes, Ms. Zmroczek?

23 MS. ZMROCZEK: Yes, sir. Just a few.

24 THE COURT: Ladies and gentlemen, please step in the
25 jury room, don't discuss the case, and we'll have you back

1 out shortly.

2 (Whereupon, the jury retires to the jury room at
3 3:31 PM.)

4 THE COURT: We'll be in recess for five minutes.

5 MS. ZMROCZEK: Thank you. And, Your Honor -- sorry.
6 One thing that I didn't see because I wasn't looking for
7 it in the charge specifically, but because she said it
8 to the jury I think we need to make sure there's some
9 clarity. She said that -- she submitted to the jury,
10 and I know that yours is the charge on the law, but she
11 submitted to the jury that manslaughter is a violent crime.
12 Involuntary manslaughter is not a violent crime, so I just
13 need to make sure that there's some clarity that we don't
14 get an inconsistent verdict.

15 THE COURT: I think it's in here.

16 MS. ZMROCZEK: It may be. I just wasn't looking for
17 it in particularly, but I just wanted to mention that
18 before I forgot. And it may be in there, Your Honor. I
19 just didn't --

20 THE COURT: (Nods head.)

21 MS. ZMROCZEK: Thank you.

22 (Recess taken at 3:32 PM.)

23 BAILIFF: All rise. Court's now in session.

24 THE COURT: Thank you. Have a seat.

25 Are you ready for the jury?

1 MS. ZMROCZEK: Yes, Your Honor.

2 THE COURT: Bring them in.

3 (Whereupon, the jury return to the courtroom at
4 3:44 PM.)

5 THE COURT: All right. Ladies and gentlemen, you're
6 gonna hear the defense's closing argument.

7 Ms. Zmroczek.

8 MS. ZMROCZEK: Thank you, Your Honor. May it please
9 the Court?

10 THE COURT: Yes, ma'am.

11 MS. ZMROCZEK: Good afternoon. This is my last
12 opportunity to tell you what we think the facts show. And
13 the State and I agree on one thing, and one thing only,
14 and that is this. This case is a tragedy. It is a
15 tragedy for Mr. Foster, it is a tragedy for Will Foster,
16 it's a tragedy for every member of the Foster family that
17 has been sitting in here listening to these facts and
18 experiencing these for the last three years, so we, too,
19 thank you for the attention that you've paid.

20 It's our job as the judge told you to facilitate the
21 evidence and sometimes it's not -- it's not always done as
22 smoothly as we hoped, but your patience and listening and
23 understanding is why we're here. Because you are here to
24 answer a very important question of fact and if you can't
25 answer those questions based on the State's evidence, then

1 Judge Keesley will give you the law and the law will be
2 your guide.

3 And Judge Keesley will tell you that this case can't
4 be based on emotions, and I submit that that's what my
5 colleagues here, the State, have been doing for the last
6 four days. Playing one 9-1-1 call of a wailing daughter,
7 whose call came in after Mr. Foster's, but you get to
8 listen to that evidence. Standing up here for, I don't
9 know, a good minute showing you this picture of Will
10 Foster, twenty-four years old, with a hole in his chest.
11 The State wants to only talk about the consequences and
12 they don't want to talk about the choices and they don't
13 want to talk about the causes because, ladies and
14 gentlemen, until the State got up here in closing every
15 single fact witness that they put up there said Will
16 wasn't drinking. They even questioned his
17 seventy-nine-year-old grandmother that just because you
18 saw him with a bottle of liquor in one hand and a beer in
19 the other that don't mean he was drinking. Ladies and
20 gentlemen, we had to call the toxicologist. We. We have
21 no duty to defend our case, but we had to call the
22 toxicologist because every one of their fact witnesses
23 said that he hadn't been drinking. .20. Oh, that just
24 means he couldn't drive. That's not what that means. He
25 was materially and appreciably impaired and even Haley

1 resistantly said he got angrier when he was drunk, and
2 there's no question about that. And I am not trying to
3 impugn his character. It's just a fact and it's a
4 terrible fact this alcoholism and the results of alcohol
5 and the effects that they have on people is awful. And
6 that's, unfortunately, how we ended up here today.

7 But the State paraded witnesses up here that didn't
8 want to admit that he was drinking, questioned his
9 grandmother about his drinking, and they want to call
10 this a stick. This is not a stick. This is a two by
11 four that was wrestled out of Will's hands, not once,
12 not twice, and this is not a petty argument. This is a
13 -- this an object that was being swung at the Defendant,
14 Mr. Foster, it was wrestled from Will, and when you get
15 to go back and you get to review the testimony as you
16 remember it and -- and ask yourself how many people
17 testified that they had to hold Will back, that they were
18 afraid of him escalating it. How many people had to hold
19 Heirbrane back? Not a one.

20 They want you to believe the testimony of Leann and
21 Troy, which is -- which is why I asked them, well, where
22 were you standing? Troy doesn't remember who was there.
23 Leann remembers where they were standing, but she said
24 she never wrestled anything out of his hand. Haley, I
25 submit, did the best she could in telling the truth and

1 that truth is that mom, Haley, Leann and Vernon all had
2 to take objects out of Will's hand. Because if anyone
3 had malice in their heart and murder on their mind, it
4 was Will Foster.

5 And that's why we had to call -- we, the defense,
6 even though we have no burden, and just because we called
7 witnesses doesn't shift that burden. I never thought as
8 a defense attorney I would be asking my paralegal to get
9 police officers under subpoena so I could put them on the
10 stand, but we did. We did because in order for you to
11 make those very important findings of fact, you have to
12 have all of the information to do that, and that's why we
13 did that, ladies and gentlemen.

14 The judge is gonna give you a litany of jury charges,
15 and I'm not gonna go through all of them because you'll
16 have them to read, and you have to take those facts that
17 you find and then apply them to that law. And the State
18 charged Heirbrane Foster with murder, malice aforethought.
19 The reason that we played Deputy Watford's video is for
20 one reason only and that is literally within minutes of
21 this happening we have his emotional state, what he said
22 and what -- and what he told him. And you get to take
23 that back there because I submit he doesn't say I'll kill
24 you with your gun. Maybe that's what the State wants to
25 hear, but when you listen to it with your own ears what

1 you'll hear him say is everybody will tell you around
2 here, I walk off. I run from him. I went by the dog.
3 The dog. If he wasn't afraid of Will, why did he go by
4 the dog? Because he was afraid. Because he knew that
5 Will wouldn't come after him with the dog.

6 Is there evidence of a metal pipe in here like
7 Haley said, like he said? Look. Look in the evidence.
8 You'll find it. Is there evidence of a two by four? Yes.
9 Is there evidence of a jack that's up under a car that
10 Mr. Foster says he threatened to kick out if he were under
11 the car?

12 Ladies and gentlemen, those are threats on your life
13 and Heirbrane Foster was acting in self-defense. He went
14 and you heard his own words. He got the gun because he
15 wanted to scare him. And when he pumped it, it went off.
16 The State says oh, but they couldn't reproduce it so that
17 couldn't happen. That's the thing with an anomaly or an
18 accidental discharge. Accidental discharge. You can
19 still be armed in self-defense and negligently or
20 accidentally discharge that gun, and that's what he did.
21 He just wanted him to leave him alone. I told him to
22 leave me alone and he just kept coming and he just kept
23 coming and he just kept coming.

24 We had to get Vernon Blanding's statement in here
25 because Vernon Blanding, if he's a cousin of the Defendant

1 is also a cousin of the victim. It doesn't mean he's not
2 related to both. Vernon Blanding says I told him to stop.
3 Him, Will. I took the two by four and told him to stop
4 and he said he wasn't going to stop. That painful two
5 minutes that we all sat here? He could have gotten
6 another two by four. In fact, Vernon said in his own
7 statement I thought he was going to get something else.
8 You saw the rake, you saw all of the tools that he could
9 have used. And the two by -- it's just incredible to me
10 that they want you to rely on some of the testimony of
11 these fact witnesses when they don't add up, but when you
12 take bits and pieces of them could it be? Could it be
13 that just like Haley said Heirbrane goes out to the dog
14 because he knows that Will won't hurt him? She is
15 wrestling so much with him that his shirt comes off. She
16 says Leann even took the pipe from him. Leann says she
17 doesn't remember that. And that he goes away. Meanwhile,
18 Will goes get a two by four. His mom tries to take it
19 away, she can't take it. Vernon tries to take it away.
20 And they're out by the street. Out by the street. And
21 reluctantly Savanah said that she didn't see Heirbrane
22 and then all of a sudden she said oh, wait, maybe he was
23 running by. Was it him or was it Will? Because Vernon
24 had just taken his stick, but he was still mad because he
25 kept coming and he kept coming and he kept coming.

1 And, ladies and gentlemen, Judge Keesley is also
2 going to tell you that the State has the burden not only
3 of proving murder, but disproving self-defense. They have
4 to prove that he was not acting in self-defense. And if
5 they haven't proved that to you, their burden of proof has
6 failed.

7 They want to submit the -- a lesser included,
8 voluntary. Well, if we can't prove murder, then you
9 can find him guilty of voluntary. No, you can't. He
10 wasn't acting in the heat of passion, he was acting in
11 self-defense.

12 There's another lesser included, involuntary
13 manslaughter. Was he acting negligently by holding the
14 gun? That's certainly a fact for you-all to consider,
15 but before you even get there they have to disprove
16 self-defense.

17 Ladies and gentlemen, one of the -- the beauties
18 that Judge Keesley is gonna talk to you about in our law,
19 in our country, is the presumption of innocence, and the
20 presumption of innocence -- and he'll say it's like a
21 robe of righteousness wrapped around the Defendant. And
22 those are all very lovely and flowery legal words. It's
23 like an immunity idol, okay? If we were on Survivor, it's
24 like an immunity idol.

25 You are charged not with trying to find him guilty of

1 a crime, you are charged with making them prove it. Not
2 trying to find him guilty of something because the death
3 of Will Foster is sad, but it was caused by drinking, a
4 choice that he made at some point in that day because
5 it got his blood alcohol at 5:00 PM at .20. And the
6 consequences were tragic all the way around. You --
7 they say that you won't see any tears. Listen to Deputy
8 Watford's video. Listen to Heirbrane Foster's reaction
9 right after this happened. He fled. He went less than a
10 football field straight through his backyard, gets on the
11 phone and calls 9-1-1 and says I shot my son. And you can
12 hear his voice and you can listen to what he was feeling
13 and what he was saying. The State wants you to believe
14 that after watching all of this happen, after being in
15 fear because he just kept coming and he just kept coming,
16 that he then had a moment of clarity to come up with this
17 creative defense hoping that sometime three years down
18 the road I would stand up here and argue it for him.

19 No, ladies and gentlemen. The reason that I kept
20 asking Mr. Flood about his immediate statement right after
21 this happened and Savanah, who refused to admit that she
22 had written in her own handwriting that Will was swinging
23 the board at Heirbrane, is because as time passes, things
24 change. Your memory changes, things change, but what
25 you'll have back there are the immediate -- immediate

1 reactions, and you get to listen to them. I submit by
2 only playing the 9-1-1 call where Haley is screaming in
3 sadness and in fear was done so for one reason and one
4 reason only, to play on your emotions. And we are not
5 arguing that this wasn't tragic, it was tragic. The only
6 thing that would be more tragic would be not applying
7 justice and the law to these facts. Making them stand up
8 to their burden, to disprove self-defense.

9 We called Nellie Foster for one reason and one reason
10 only. Not to find out if Will had beer and wine -- or
11 beer and alcohol in his hand. It was for a timeline
12 because time is very fluid with a lot of these witnesses.
13 And Ms. Foster, who is seventy-nine years old, on the 10th
14 day of every month when the check was received she would
15 pick up her son and they would go shopping. She gave you
16 the time. Between 10:30 and 11:00. They were out for
17 three to four hours because he bought groceries for the
18 whole month. Look in the freezer. Look in the picture
19 that we entered of the freezer. She told you they went
20 to many stores; Food Lion being one of them. See if right
21 there in the freezer there isn't a Food Lion bag right
22 on top with food in it and right next to that freezer is
23 where Will's gun was. So Mr. Foster, who had been in the
24 house less than two hours was putting the meat away for
25 the family, sees the gun and he's being chased around and

1 he's being threatened, not with sticks, with pipes, with
2 two by four's, real weapons. Not petit larceny -- not
3 petty arguments, real weapons.

4 And when he went to that house there's some question
5 as to whether or not Will had anything in his hand and
6 the judge will give you the law on what's reasonable. If
7 the last time he saw Will he had something in his hands,
8 then it's reasonable. Even if Will didn't have anything
9 in his hands, but he said, as Vernon said, he wasn't going
10 to stop, that fear is reasonable, and that's the fear
11 that Heirbrane Foster had to face. And he had a terrible
12 choice to make to pick up that gun. And you heard him in
13 his own words. It was just to scare him. That's not
14 malice. That's not heat of passion. If it's negligence,
15 that's for you to decide, but in order to even get there
16 you have to make them disprove self-defense.

17 They also have to disprove accident. And they said
18 well, we put the gun person up and they couldn't recreate
19 it and she also reluctantly admitted that it couldn't be
20 recreated at times. And then they put Agent Sprinkle up
21 there who talked about how the wadding was in his chest.
22 And the reason that I had Ms. Leann demonstrate where
23 everybody was, and I kept asking her where Troy was
24 because Troy was supposedly there if you listen to his
25 testimony, she didn't see him, he didn't see them, and on

1 her testimony she said he wasn't even turned around, he
2 was walking away. How do you get shot in the chest if
3 you're walking away? And I think that she finally
4 realized that, which is why when I started to ask her,
5 that she really started to turn around. No, just like
6 Agent Sprinkle said, that blood was going forward because
7 you know who else was going forward? Will Foster. In a
8 heat of rage and alcohol that boiled over.

9 She said in her closing to you that oh, he only
10 asked about his son because he felt bad and sure you're
11 gonna feel bad after -- after shooting someone. No. No.
12 Listen, listen to that tape. The first -- within the
13 first two minutes he's asking about his wife, he's saying
14 my son, my baby, I didn't want to do it. I begged him to
15 leave me alone. Leave me alone. He kept picking up two
16 by four's and coming at me. I walk off, I walk off, I
17 walk off and he keeps coming and he keeps coming and he
18 keeps coming. And, ladies and gentlemen, that right there
19 is evidence that when he got that gun and picked it up
20 that he was acting in self-defense.

21 The question about -- to the officers that we called
22 about the zone of danger is because -- like they said,
23 because within twenty-one feet by the time that you are
24 prepared to defend yourself you can already be attacked.

25 And the judge is going to give you an instruction,

1 a legal instruction on the law, about the right to act
2 on appearances. Heirbrane Foster had a right to act on
3 appearances and from the appearances from the time he got
4 home from that grocery store and was putting away food for
5 that family and Will's blood alcohol level was at least
6 right under a .20 at that time, maybe he hadn't drank
7 anything then, but it was .20 at some point and it only
8 got there through drinking alcohol. I even had to ask
9 the toxicologist is there any other way that that blood
10 alcohol could have been there? No. And, again, it
11 doesn't mean that Will's a bad person and we have never
12 said that because he wasn't until he started drinking.
13 Then he wasn't Will.

14 Is there evidence to support or corroborate his story
15 that he was acting in self-defense? Look for the weapons,
16 listen to the testimony, look at the close range, listen
17 to Investigator Sprinkle's testimony, listen to his own
18 words immediately after this happened.

19 Is there evidence that he was walking away? Is that
20 supported by what they showed you? Ladies and gentlemen,
21 you get to be the judges of credibility. That's one of
22 the things that you get to do. And as Judge Keesley said
23 at the very beginning of this case, you don't leave your
24 common sense at the door. You don't leave your common
25 sense at the door and common sense will tell you that

1 Heirbrane Foster was acting because he was scared just
2 like he says on the video. Listen to it. He'll say it.
3 It's hard to hear, but you-all will have it back there and
4 you get to stop and slow it down, repeat it. The reason
5 that we did put in evidence was so that you could have all
6 of those facts to make your findings.

7 When I was thinking about this case and thinking
8 about the difficult relationships between fathers and
9 their children, it reminded me of growing up with my
10 father. I'm the oldest of seven and my father was a
11 football star and he wanted boys and he got seven girls.
12 And like some relationships my father's and I were
13 strained, but we had some similarities and one of those
14 things was I was a college athlete. Before I got there,
15 I was planning on getting up at 6:30 every morning to go
16 to the pool. When I was in fifth grade we hatched these
17 little chickens in class and I begged my parents please
18 let me have a chicken. Please, please let me have a
19 chicken. We lived in the middle of East Baton Rouge in a
20 neighborhood. My parents were like you are not getting a
21 chicken. I begged and cried and finally they said okay,
22 you can bring home the chicken, and then they told me,
23 but when your dog eats that chicken, that's on you.
24 Because I had a dog. Her name was Lucy, she was extremely
25 ornery, but I was determined to have that chicken. I

1 bring the chicken home. Dad makes a coop for it right
2 under the carport. The doghouse over here. Lucy and
3 Eggbert, who I thought was a boy, but laid one egg every
4 morning so turns out not a boy, Lucy and Eggbert got
5 along. They were friends. Every morning I would get up.
6 My dad would go on his run. I would get an egg, an egg
7 out of the cage, bring it inside and then get ready for
8 swim practice. When I was in eleventh grade going towards
9 the end of my eleventh grade year, at this point Eggbert
10 was so old, and I still called it "he", Eggbert was so
11 old the comb was flopped over and he still laid an egg
12 every morning. But on this morning I get up and I go to
13 the pen and I open it to get the egg and what I see is
14 just blood everywhere in the coop and I'm screaming at the
15 top of my lungs, which our neighbors in the neighborhood
16 did not appreciate at 5:30 in the morning, and my dad
17 comes running back and he's like what in the world is
18 going on and I said dad, dad, it finally happened, Lucy
19 finally killed the chicken, I just -- I can't believe it,
20 I just -- the chicken is in the doghouse and he's dead.
21 It was -- the head was severed, it was in two parts. It
22 was horrible and tragic and my dad is trying to get me
23 stop screaming in the neighborhood at 5:30 in the morning
24 and he looks at me and says Aimee, that's not what
25 happened. He said actually when I came out this morning

1 for my run Eggbert was in the cage -- and we don't know, a
2 opossum or something, must have gotten through the chicken
3 wire and killed the chicken, and when I came outside and
4 woke up Lucy, she must have gotten the chicken and brought
5 it into the doghouse. And I said that doesn't make any
6 sense. Why, why would she do that, and he said well,
7 because actually they were -- they were friends. And I
8 figured at that time that it was just my dad's way of
9 trying to get me to leave this correct assumption that
10 the dog had killed the chicken and try to make it okay.
11 When I graduated high school, the only gift my father ever
12 gave me was a picture that he had snapped one morning of
13 Lucy and Eggbert sitting in the doghouse. And the one
14 thing that I learned from this is that when we make
15 assumptions without knowing all of the facts that that
16 is improper, and I submit that's what the State is asking
17 you to do.

18 As Mr. Schwartz told you in our opening, the choice
19 that Will made that day to drink beer and to drink liquor
20 caused his anger to boil over, and that, ladies and
21 gentlemen, is what caused his father, Heirbrane Foster,
22 to be in fear for his life and to get that gun and to
23 make him stop. That's all he wanted.

24 Ladies and gentlemen, when you individually assess
25 the facts of this case and apply the law as Judge Keesley

1 gives it to you, we submit that you will find him not
2 guilty under both accident and self-defense because there
3 was no malice in his heart and this was not a case of
4 murder.

5 Thank you.

6 THE COURT: Thank you, Ms. Zmroczek.

7 Any response?

8 MS. PATTERSON: Yes, sir.

9 And who's being dramatic? That's dramatic if I've
10 ever seen dramatic. They don't know what Will was
11 drinking. No one on this stand said that Will wasn't
12 drinking. They said they didn't see him drinking. They
13 wasn't with Will the entire time. But what they also
14 said, he was not a mean, violent drunk. Savanah said he
15 was always nice and respectful to her. Leann described
16 him as goofy. Haley said he wasn't a mean alcoholic --
17 or mean when he drank.

18 And this is not a case about some chickens and
19 something killing a chicken. This is a case about an
20 actual person who was killed, who was shot in the chest
21 by his father over a grill, over maybe Will standing up
22 to him in front of all those neighbors finally.

23 And she wants to say we're being dramatic by playing
24 a wailing daughter's 9-1-1 tape. Seriously? This was a
25 sister who thought everything was over, just witnessed her

1 father come out of the door, pump a shotgun and kill her
2 brother right there in front of them. Yeah, listen to
3 the 9-1-1 tape. Listen to her. The 9-1-1 director said
4 first the female called. That call came from Haley.
5 Again, you hear the deputy who got there in less than a
6 minute at the end of her call. Listen to Ronita's call.
7 Gauge what their impression was with everything happening.
8 No, we didn't call every witness that we could have.
9 Some of them didn't want to come, but we called those who
10 were close by. There was a lot of officers there. We
11 called the ones who were first responders.

12 This was no accident. He meant to do it. Again,
13 they're going off his story, his story he told after he
14 knew police was there, after he ran and jumped that fence.
15 Their house, ran through the backyard, jumped the fence,
16 ended up here. He saw those neighbors outside. I submit
17 to you he probably wouldn't have stopped if he didn't see
18 them, but he knew he had to. He heard law enforcement,
19 he knew they probably heard the gunshot, so he stopped.
20 And, again, he said he was trying to get something in his
21 mind. He was trying to come up with a story.

22 So they all want to blame Will. Blame Will. Leann
23 told you what started it. He got angry because Will
24 kicked that grill. It started with him. And, yeah, I
25 asked grandma about Will drinking. They put her up, I

1 have the right to question her, and she -- she didn't
2 see him drinking. She don't know what happened after she
3 left.

4 Different people focus on different things. Troy
5 said he didn't want it to escalate, but he didn't say
6 escalate because of Will. That was his friend. He was
7 probably trying to protect him. No one said that Will
8 was swinging this. No one put that he was swinging it.
9 He had it in his hand. The Defendant had a shovel in
10 his hand at some point and this was taken from Will. It
11 was put all the way -- so far away from where Will was
12 standing when he was shot. About thirty feet I think.

13 He had malice. He had malice and, like I said, it
14 don't have to be for a long period of time. Just at the
15 point where he went in and got that gun, stood in that
16 doorway, pumped it and pulled the trigger and yelled out
17 didn't I tell you not to fuck with me. Don't forget
18 those words. Don't forget his words. That's malicious.

19 And, no, it couldn't have accidentally went off.
20 That's why we had it tested, sent off. We wanted to make
21 sure that it couldn't have accidentally went off and that
22 particular gun that he used could not have accidentally
23 went off. No one saw him go under the car and begin
24 working on it.

25 He brought about the difficulty because it was over.

1 He reengaged the difficulty. There was no self-defense.
2 They were both engaged in a verbal altercation. At some
3 point they both had objects in their hands, but at the
4 time of Will's shooting no one did until the Defendant
5 armed himself with that pump action shotgun. And no one
6 said that was Will's gun. No one said that.

7 And she talked about that painful two minutes we
8 sat here. I think it helped demonstrate to you that two
9 minutes just ain't two minutes, and especially three to
10 five minutes, and I think Haley said she thought he
11 stayed in the house longer than that. But, again, their
12 focus was on different things, on different people. They
13 knew where they were. Nobody said anything about them
14 chasing each other around or threatening each other.
15 They both were just cursing each other out. Both of
16 them.

17 And, again, they're giving you his version, his
18 version of what happened after he knew police was called,
19 after he knew those neighbors were standing in the yard
20 and he needed to stop. And I didn't say when I stood up
21 that he said he was going to kill Will, but he did say in
22 that video I'm gonna shoot you with your gun and he shot
23 him and he killed him and I submit to you he murdered him.

24 And you know what doesn't add up that she talked
25 about that it didn't add up? If he meant to scare him,

1 if it was an accident or whatever, he didn't drop the gun
2 when it went off. He didn't run and see about Will when
3 he went off -- when it went off. He didn't call for help
4 for Will right there at the house. He didn't stay there
5 at the house to tell law enforcement he was scared.
6 Instead, yeah, he ran and ran. He ran to get away. He
7 ran so he didn't have to face the consequences. And I
8 submit he only stopped because he saw those neighbors out
9 there and knew. And after jumping that fence I imagine
10 he probably knew he couldn't get far. He talked about --
11 complained about his back on that video. It probably
12 started bothering him, he knew he couldn't get far, so he
13 decided to stop right where he was and began to give his
14 version.

15 I submit to you we have met our burden of proof.
16 You heard from the people that were right there. You
17 heard from the expert who tested that gun. You heard all
18 his expressed malicious statements. Don't get distracted.

19 Again, I ask you to use your common sense, too.
20 Re-listen to those 9-1-1 calls. Listen -- listen to
21 Leann's sister's call, listen to Haley's call, listen to
22 his call. Find him guilty. Guilty of murder. Guilty of
23 possession of a weapon during the commission of a violent
24 crime. Don't send him back out of another door.

25 MS. ZMROCZEK: Objection, Your Honor.

1 THE COURT: Yes, ma'am. What's your objection?

2 MS. ZMROCZEK: Your Honor, I object to the statement
3 don't send him back there -- out there into the community.

4 THE COURT: Ladies and gentlemen, your job is gonna
5 be to decide whether the Defendant has been proven guilty
6 or not been proven guilty and your job has nothing to do
7 with sentencing. That's my job.

8 All right, folks. That's everything now except the
9 charge. It's my guess that you're gonna get this case a
10 little after 5:00. The charge is pretty long, so if you
11 need to make phone calls to tell people, then please do
12 them during this break. Tell the bailiff you need to
13 make a phone call. If there is something going on in
14 your life that is gonna cause a major problem if we stay
15 on additional time, and how long you stay is completely
16 up to you at this point, if you've got something going on
17 major in your life that's gonna create a real problem for
18 you stay tonight, please send me a note so I know about
19 it. I can't make everybody happy, but I can decide
20 whether we'll just have you come back tomorrow or what
21 we'll do, so send me a note.

22 All right. If you would, don't discuss the case.
23 Follow the bailiff. Leave your notes here right now.

24 (Whereupon, the jury retires to the jury room at
25 4:24 PM.)

1 THE COURT: We're at ease for a few minutes.

2 (Recess taken at 4:24 PM.)

3 (Back on the record at 4:35 PM.)

4 BAILIFF: All rise. Court's now in session.

5 THE COURT: Thank you. Be seated, please.

6 Do you need to put something on the record?

7 MS. ZMROCZEK: Oh, sorry. Thank you, Your Honor.

8 I think just reading the recent cases and watching
9 the recent arguments, I know that a lot of times arguments
10 aren't preserved and I wanted to make sure that -- that
11 I did. I know that I objected and that I believe you
12 sustained -- sustained the objection and -- and made some
13 clarifying remarks to the jury, but, Your Honor, again,
14 we would object to the -- to the last statement by
15 Ms. Patterson saying, you know, turning -- putting him
16 in the community or something to that effect.

17 THE COURT: She said don't let him walk back out
18 the door I think she said because he went out one door,
19 and that was the extent of it.

20 MS. ZMROCZEK: Oh, okay. And so we just wanted to
21 make sure that we've covered ourselves on that objection,
22 Your Honor. Thank you.

23 THE COURT: So what is it you want me to do?

24 MS. ZMROCZEK: Oh, sorry. Your Honor, and we would
25 move for a mistrial based on that remark.

1 THE COURT: I've instructed the jury it's not their
2 job to deal with sentencing, that's my job. I expect
3 them to follow that instruction and I don't see this is
4 grounds for a mistrial.

5 MS. ZMROCZEK: Thank you.

6 THE COURT: My law clerk gave you the proposed
7 verdict form and my understanding is that the State was
8 requesting I reverse the order of these. The options on
9 murder would be not guilty, guilty of the lesser included
10 offense of involuntary manslaughter, guilty of the lesser
11 included offense of voluntary manslaughter or guilty of
12 murder, and the State wants me to put not guilty, guilty
13 of murder and then do the manslaughters below that.

14 Is that right?

15 MS. PATTERSON: Yes, sir, Your Honor.

16 THE COURT: There's some law that if you require it
17 I think I have to do separate verdict forms for each one
18 of these possible forms of verdict, but in all my
19 experience I've always done it where we just list all
20 four on the same sheet of paper. So you don't object to
21 doing it this way, you just object to the order?

22 MS. PATTERSON: Yes, sir. I just think having
23 guilty of murder all the way at the bottom is just kind
24 of confusing. If we can just have it listed right up
25 under not guilty.

1 THE COURT: I don't think it's confusing. I'm not
2 gonna change it.

3 Anything else?

4 MS. PATTERSON: No, sir.

5 THE COURT: I'll explain it to them.

6 All right. Bring the jury in.

7 (Whereupon, the jury return to the courtroom at
8 4:39 PM.)

9 THE COURT: Members of the Jury, all the evidence
10 has been presented, you've heard the arguments of counsel,
11 and now it's time for me to instruct you on the law that
12 applies to these cases. Please continue to pay close
13 attention during the next stage, but first you need to
14 understand some basic ground rules.

15 You, the jury members, are the sole judges of the
16 facts. You decide all the issues of fact, the truth of
17 the evidence, its effect, its value and its weight. You
18 alone judge the credibility of the witnesses. In other
19 words, whether or not a witness's testimony is believable.
20 Now in evaluating the testimony of the witnesses, you may
21 believe all that a witness said or none of it. You may
22 believe part of what a witness said and not believe the
23 balance. You may believe one witness against many or
24 many against one. You may consider any interest, bias or
25 prejudice that you feel that a witness has in the case.

1 You may consider the demeanor and the appearance of the
2 witness and the opportunity for knowledge that the
3 witness has. You're not to exercise these considerations
4 arbitrarily. What I want you to do is to use your common
5 sense, your sense of logic and reason and your good
6 judgment.

7 Now the rules of evidence allow for opinion testimony
8 to be given under certain circumstances. One area where
9 that's allowed is where someone by virtue of education,
10 training or experience is permitted to testify as an
11 expert witness. The mere fact that an expert is allowed
12 to give opinions under our rules does not mean that you
13 must accept the opinions given if you choose not to do so.
14 You may accept or reject the opinion or the testimony of
15 an expert witness just as you may with any other witness,
16 in whole or in part.

17 It's not proper for me to give you a charge on the
18 facts of the case. I cannot discuss the facts with you
19 or even convey to you an impression as to what personal
20 opinions, if any, I might have about the facts of this
21 case. If you develop an impression that I have a personal
22 opinion about the facts, you are to remove that belief
23 totally from your mind. You're the sole judges of the
24 facts.

25 I am the judge of the law that applies to the case.

1 Under your oath, you must accept and apply the law as I
2 tell it to you. You have to abandon any conflicting
3 ideas you may have as to what the law is or what it
4 should be. I give you the law, you apply it to the facts
5 as you determine them to be, and in that way you reach
6 your verdicts.

7 It's also my job to decide what evidence is
8 admissible. If I rule something inadmissible or instruct
9 you to disregard something, you're not to consider those
10 things in arriving at your verdicts. Base your verdicts
11 on the competent evidence before you. Consider the
12 testimony of the witnesses and the exhibits admitted.

13 I need to explain to you that there are two types
14 of evidence that are generally presented during a trial.
15 There's direct evidence and circumstantial evidence.
16 Direct evidence directly proves the existence of a fact
17 and does not require deduction. Circumstantial evidence
18 is proof of a chain. It's proof of a chain of facts and
19 circumstances indicating the existence of a fact. Crimes
20 may be proven by circumstantial evidence. The law makes
21 no distinction between the weight or value to be given to
22 either direct evidence or circumstantial evidence; however,
23 to the extent that the State relies on circumstantial
24 evidence, all of the circumstances must be consistent with
25 each other and when taken together point conclusively to

1 the guilt of the accused beyond a reasonable doubt. If
2 the circumstances merely portray the Defendant's behavior
3 as suspicious, then the proof has failed. The State has
4 the burden of proving the Defendant guilty beyond a
5 reasonable doubt. This burden rests with the State
6 regardless of whether the State relies on direct evidence,
7 circumstantial evidence, or some combination of the two.

8 Now the Defendant in this case, Mr. Foster, is
9 presumed to be innocent. This is no mere legal theory.
10 It's a fundamental and substantial right to which all
11 citizens are entitled. It's been described as being like
12 a robe of righteousness that's placed around an accused
13 and it remains with him through every stage of the trial.
14 It continues with him after you go back to your jury room
15 to deliberate and continues to exist so that he is presumed
16 innocent unless and until you, the jury, determine that
17 the State has proved his guilt beyond a reasonable doubt.

18 A defendant is not required to prove his innocence,
19 he's not required to prove anything. The burden is on
20 the State to prove the guilt of the Defendant beyond a
21 reasonable doubt and it's required that every essential
22 element of an offence charged be proven by the State
23 beyond a reasonable doubt. The State is not required to
24 prove the guilt of the Defendant beyond all doubt or
25 beyond every doubt. The appropriate standard is proof

1 beyond a reasonable doubt.

2 Some of you may have served as jurors in civil court,
3 and if you have, you know the burden of proof there
4 requires establishing that something is more likely than
5 not. That's called the greater weight or preponderance
6 of the evidence. But in criminal court, such as we're in
7 now, the standard is much higher and the proof must be
8 much stronger than what is required in civil court. The
9 burden of proof in a criminal case such as this is proof
10 beyond a reasonable doubt.

11 So what do I mean by that term? Proof beyond a
12 reasonable doubt is proof that leaves you firmly convinced
13 of the Defendant's guilt. There are few things in the
14 world that we know with absolute certainty and in criminal
15 cases the law does not require proof that overcomes every
16 possible doubt. If, based on your consideration of the
17 evidence, you are firmly convinced that the Defendant is
18 guilty of a crime, then you are to find him guilty of
19 that crime. If, on the other hand, you think there's a
20 real possibility that he is not guilty, you must give
21 him benefit of the doubt and find him not guilty of that
22 crime.

23 There's no obligation on the part of the Defendant
24 to raise any doubt or any other possibility. He is
25 presumed to be innocent and the State has the entire

1 burden of proof and has to prove that the Defendant is
2 guilty to the exclusion of any other real possibility.

3 I remind you of the instruction I gave you earlier
4 that the fact that the Defendant elected not to testify
5 is not a factor to be considered by you in any way in
6 your deliberations and in your consideration on the
7 question of whether he is guilty or not guilty. An
8 accused has the constitutional right to remain silent and
9 the assertion of that right cannot be considered by you
10 in your deliberations. Under your oath you are to reach
11 no inference, you are to draw no conclusion whatsoever
12 from the fact that the Defendant elected not to testify.
13 His decision not to testify should not be discussed by
14 you in the jury room. It's not to enter your minds in
15 making your decisions. The State has the entire burden
16 of proof and the accused has no burden to prove anything
17 at all.

18 Now I need to go through you -- with you the law
19 related to statements. Evidence has been presented
20 about statements allegedly made by this Defendant. In
21 evaluating such statements, the first thing you need to
22 determine is whether the State has proven that the
23 Defendant made the statement. If not, then you do not
24 consider it in any manner against the Defendant. If the
25 Defendant made the statement, you then need to look at

1 whether the statement was given in response to police
2 interrogation or whether it was a spontaneous statement
3 made by the Defendant not prompted by police interrogation.

4 When a person is in police custody officers may ask
5 basic information about that person, such as identifying
6 information, but if the police are going to be
7 interrogating a person it's different. If the police are
8 not interrogating a person under custody or not engaged
9 in the functional equivalent of interrogation, the police
10 do not have to stop the person from spontaneously making
11 statements on his own, but before the police may question
12 a defendant about an incident when he's in custody, the
13 State has to prove that the defendant was properly warned
14 of his constitutional rights prior to the questioning and
15 the giving of the statement.

16 When an individual is taken into custody or otherwise
17 deprived of his freedom of action in any significant way
18 by a law enforcement officer, he must be warned of his
19 constitutional rights before any custodial interrogation
20 or custodial questioning, and those rights are that he
21 has the right to remain silent, that any statement that
22 he does make can and will be used against him in court,
23 that he has a right to an attorney, and if he does not
24 have the resources to hire a lawyer, the court will
25 appoint one for him at no expense, that he has the right

1 to consult a lawyer before answering any questions or
2 making any statements, that he has the right to have a
3 lawyer present with him at all times during all interviews
4 and all interrogations, and that he may stop answering
5 questions at any time.

6 These are commonly called Miranda warnings. And
7 while the exact words do not have to be used, the
8 substantial equivalent must be. If the State proves that
9 the Defendant -- excuse me. If the State proves that it
10 gave Miranda warnings prior to interrogating the Defendant,
11 the State then would have to prove that the Defendant
12 knowingly and intelligently waived his constitutional
13 rights and made the statement to police.

14 And the final requirement relating to statements is
15 that the statement in question must have been given
16 voluntarily. The State has to prove to you beyond a
17 reasonable doubt that the statement was the expression
18 of the Defendant's own free will and was not improperly
19 induced by compulsion, duress, force or fear, or by the
20 promise of some reward or hope of reward. Unless the
21 statement was given freely and voluntarily, you may not
22 consider it.

23 Now with regard to the alleged statements of this
24 Defendant to a law enforcement officer in response to any
25 interrogation by the officer, I instruct you that the

1 State must prove every requirement about which I've just
2 instructed you and such proof must be beyond a reasonable
3 doubt before you may use any statement against the
4 Defendant.

5 All right. Now we're gonna turn to the specific
6 charges that are alleged here; murder and possession of
7 a firearm during the commission of a violent crime. I
8 read the indictments to you at the beginning of the trial.
9 As you recall, it's alleged that Mr. Heirbrane Foster,
10 with malice aforethought, shot Will Foster in Lexington
11 County on or about May 10, 2016, proximately resulting in
12 Will Foster's death. In a separate indictment it's also
13 alleged that during the commission of that alleged murder,
14 which is a violent crime under the law, that Heirbrane
15 Foster possessed a firearm. I remind you that indictments
16 are not evidence. They are charging papers and you may
17 not accord any evidentiary value to the fact that the
18 Defendant has been charged with these crimes.

19 Now I need to explain to you the concept of criminal
20 intent. You need to understand that a person is guilty of
21 a crime only if he has the necessary criminal intent for
22 that particular crime. Intent is a mental state. The
23 State has to prove to you, it has to establish, criminal
24 intent beyond a reasonable doubt in order for the Defendant
25 to be convicted of a crime. So if something occurs as a

1 result of an accident as that term is defined in the law,
2 it is not a crime. And act is excused on the grounds of
3 accident if the act was unintentional provided that the
4 Defendant was acting lawfully and using reasonable care.
5 A person who is lawfully armed does not commit a crime if
6 he is using reasonable care concerning a weapon and it
7 accidentally discharges. If a person is acting lawfully
8 and is using reasonable care in the operation of a
9 dangerous instrumentality and harm to another person
10 results accidentally and unintentionally, that is not a
11 crime. The burden is on the State to prove beyond a
12 reasonable doubt that the act was not an accident.

13 Now Mr. Foster is charged with murder. Murder is
14 the unlawful killing of another person with malice
15 aforethought, either expressed or inferred. So to convict
16 the Defendant of murder, the State has to prove to you
17 beyond a reasonable doubt that on the date and at the
18 time and place alleged in the indictment the Defendant
19 unlawfully killed Will Foster and that the killing was
20 done willfully and with malice aforethought. Willfully
21 means that something is done consciously and intentionally,
22 not by accident or involuntarily.

23 Now criminal intent may be shown by acts and conduct
24 of the Defendant and other circumstances from which you
25 may naturally and reasonably infer intent, but the State

1 has to prove beyond a reasonable doubt that the Defendant
2 acted with malice.

3 Malice is a term that imports wickedness and it
4 excludes a just cause or a legal excuse. It is something
5 that springs from wickedness, depravity, a depraved spirit,
6 from a heart devoid of social duty and fatally bent on
7 mischief. It connotes hostility and ill will towards
8 another. It is the intentional doing of a wrongful act
9 without just cause or excuse with the intent to commit --
10 or inflict an injury or under circumstances such that the
11 law will infer an evil intent.

12 Malice may be expressed or inferred, which is to
13 say that the element of malice may be shown by direct
14 evidence or by inference. Now these terms "expressed"
15 and "inferred" do not mean different kinds of malice, but
16 merely the manner in which the malice may be shown to
17 exist. So malice may be proven by direct evidence or by
18 inference from the facts and circumstances that are proved
19 by the State. Malice may be inferred from conduct showing
20 a total disregard for human life. Malice is an essential
21 element of murder and has to be proven beyond a reasonable
22 doubt by the State.

23 Now whether the malice is expressed or inferred, the
24 malice must be aforethought. It must exist in the mind of
25 the accused just before and at the time of the commission

1 of the act. It is not required that the malice exist for
2 any particular length of time, but there has to be a
3 combination of the previous evil intent and the act that
4 produces the fatal result. To constitute murder, the
5 killing must be unlawful; meaning that the killing was not
6 justified or warranted under the law. So that's murder.

7 Now with regard to the charge of murder, the law
8 recognizes that certain crimes have within them lesser
9 offenses. Now we call them lesser included offenses. If
10 you find that the State has failed to prove beyond a
11 reasonable doubt that the Defendant committed murder,
12 you may consider whether the State has proved voluntary
13 manslaughter.

14 Voluntary manslaughter involves taking the life of
15 another in the sudden heat of passion based on sufficient
16 legal provocation. So both heat of passion and sufficient
17 legal provocation must be present at the time of the
18 killing to constitute voluntary manslaughter. Malice is
19 not a required element of voluntary manslaughter. The
20 law recognizes that sudden heat of passion may for a time
21 affect a person's self-control and temporarily disturb a
22 person's reason. The sudden heat of passion must be the
23 type that would make an ordinary person unable to coolly
24 reflect on his actions and would produce an uncontrollable
25 impulse to do violence. Sufficient legal provocation must

1 be the type that would make a person of ordinary reason
2 and caution to become enraged and lose control temporarily.
3 The provocation needed for voluntary manslaughter must
4 come from some act of or related to the person who is
5 killed. Words alone, however vulgar or insulting, are
6 not enough to constitute legal provocation. Where death
7 is caused by the use of a deadly weapon, the words must be
8 accompanied by some overt threatening act which produced
9 the heat of passion.

10 Now the exercise of a legal right no matter how
11 offensive it is to another is never sufficient legal
12 provocation for voluntary manslaughter. So while the law
13 recognizes a lesser offense to murder when a defendant is
14 acting under sudden heat of passion, the law does not
15 reduce murder to voluntary manslaughter if the heat of
16 passion had cooled or if there was enough time between
17 any provocation and the killing for the passion of a
18 reasonable person to cool. If there was sufficient
19 cooling off or if there was enough time that the accused
20 should have cooled off, the killing would not be voluntary
21 manslaughter.

22 In deciding whether a reasonable person would have
23 had enough time to cool off, you would consider all the
24 circumstances surrounding the killing. You may consider
25 the nature of the provocation, if any, the Defendant's

1 mental and physical state and the circumstances and the
2 relationships between the parties.

3 Now below the crime of voluntary manslaughter,
4 so this is a lesser included offense of voluntary
5 manslaughter and it's a lesser included offense of
6 murder, below those two is a crime called involuntary
7 manslaughter. If you find that the State has failed to
8 prove beyond a reasonable doubt that the Defendant
9 committed murder or voluntary manslaughter, you may
10 consider whether the State has proved involuntary
11 manslaughter.

12 Involuntary manslaughter is an unintentional killing
13 of another person without malice but while engaged in an
14 unlawful activity not naturally tending to cause death
15 or great bodily harm, or, it's an unintentional killing
16 without malice while engaged a lawful activity with the
17 reckless disregard of the safety of others.

18 Unintentional means that the Defendant did not
19 intend for anyone to be killed or seriously injured.
20 Reckless disregard for the safety of others is more than
21 mere negligence or carelessness. Mere negligence or
22 carelessness is the failure to use the care that a person
23 of ordinary reason would use under the same circumstances.
24 Recklessness is a conscious failure to use ordinary care.
25 Reckless disregard for the safety of others involves not

1 being interested in the consequences of one's acts or the
2 rights and safety of others. If a person who knows or
3 should know that ordinary care requires certain precautions
4 for the safety of others, but that person fails to use
5 those precautions without concern, the person's actions
6 are considered reckless.

7 The State has to prove to you beyond a reasonable
8 doubt that the Defendant's act was the proximate cause
9 of death. Proximate cause is a direct cause -- is the
10 direct cause. The direct, immediate and efficient cause
11 of death. There must be a chain of causation from the
12 time of the injury inflicted by the Defendant until the
13 time of the victim's death.

14 Okay. Now I need to talk to you about self-defense.
15 An issue has been raised concerning self-defense. If a
16 person is acting in self-defense, he is acting lawfully.
17 Self-defense is a complete defense. If a defendant was
18 acting in self-defense that -- and that act caused the
19 death of another, he is not guilty of a crime. The law
20 recognizes the right of every person to defend himself
21 from death or serious bodily harm. To do so a defendant
22 may use such force as is reasonably necessary or apparently
23 so even to the extent of taking the life of the assailant.

24 Now the elements of self-defense includes the
25 following things. First, the Defendant must have been

1 without fault in bringing on the difficulty. If the
2 Defendant was at fault or jointly at fault in bringing on
3 the difficulty, he is not protected by self-defense even
4 though the initial disagreement escalated beyond what may
5 have been or reasonably envisioned. The only way that
6 someone who is at fault in bringing on the difficulty
7 can be restored to the protections of self-defense is
8 where before the shooting occurred he had withdrawn from
9 the conflict and tried in good faith to avoid further
10 conflict and by his actions had made it known that he was
11 discontinuing and withdrawing from the dispute.

12 The second element of self-defense is if the
13 Defendant was without fault in bringing on the difficulty
14 or had withdrawn from the conflict and communicated that
15 to the other party. The next requirement for self-defense
16 is that the Defendant must have actually believed that
17 he was in imminent danger of using losing his life or
18 sustaining serious bodily injury, or, he must have actually
19 been in such danger of -- imminent danger of loss of life
20 or serious bodily injury. If he was actually in imminent
21 danger, the circumstances facing the Defendant must have
22 been such that would warrant a person of ordinary prudence,
23 firmness and courage to strike back in the manner that the
24 Defendant did. If he believed he was in imminent danger,
25 the circumstances must have been such that a reasonably

1 prudent person of ordinary firmness and courage would have
2 entertained the belief that he was actually in imminent
3 danger and that the circumstances were such as would
4 warrant a person of ordinary prudence, firmness and courage
5 to use deadly force in order to save himself from serious
6 bodily harm or losing his life.

7 And the fourth element is that the Defendant must
8 have had no other probable means of avoiding the danger
9 of serious bodily injury or death except to act as he did.
10 However, as I'll explain to you in a moment, a person in
11 his own home has no duty to retreat and may stand his
12 ground against the assailment. Now if the Defendant
13 acted in self-defense, you must find him not guilty of any
14 crime. The State has the burden of proof of disproving
15 self-defense beyond a reasonable doubt. In other words,
16 the State has to prove to you that the Defendant was not
17 acting in self-defense. If you have a reasonable doubt
18 of the Defendant's guilt after considering all of the
19 evidence, including the elements of self-defense, then
20 you must find the Defendant not guilty.

21 In assessing the issue of self-defense, you look
22 at all the facts and circumstances. In evaluating the
23 Defendant's perception of danger, a Defendant may act on
24 appearances and he is not required to have actually been
25 in danger. It is enough if the Defendant believed that

1 he was in imminent danger and a reasonably prudent person
2 of ordinary firmness and courage would have had the same
3 belief. The Defendant has the right to act on appearances
4 even though the Defendant's beliefs may have been mistaken.

5 Generally if a person has a means of escape, he is
6 required to use it. He must leave if he has a means of
7 escaping the danger unless by doing so the danger of being
8 killed or suffering serious bodily injury would increase.
9 However, as I mentioned a moment ago, one attacked by use
10 of a deadly weapon -- I'm sorry. I apologize. I haven't
11 gotten to that one yet. One attacked by the use of a
12 deadly weapon has no obligation to retreat. Someone in
13 his own home has no obligation to retreat.

14 Now a person -- a defendant who is acting in
15 self-defense has the right to use the amount of force
16 apparently necessary to avoid death or serious bodily
17 harm. The force used does not have to be limited to the
18 agree or amount of force used by the assailment. A
19 defendant has the right to use so much force as appeared
20 to be necessary for complete protection and which a person
21 of ordinary reason and firmness would have believed to be
22 needed to prevent death or serious bodily harm. Once a
23 defendant is justified in acting in self-defense in
24 defending himself, he is justified in continuing to use
25 force until it is apparent that the danger of death or

1 serious bodily injury to himself has completely ended.
2 When a defendant is operating under a reasonable belief
3 of his impending death or serious bodily injury, he's not
4 required to wait until the perceived assailant gets the
5 drop on him before he acts in self-defense.

6 All right. The other indictment charged Mr. Foster
7 with possessing a firearm during the commission of a
8 violent crime. It's a separate criminal offense to have
9 in one's possession a firearm during the commission of a
10 violent crime. I charge you that a shotgun is a firearm
11 under this law and that the offense of murder and voluntary
12 manslaughter are defined as violent crimes under South
13 Carolina law. Involuntary manslaughter is not a violent
14 crime. So in order for you to convict Mr. Foster of this
15 offense, you must determine that the State has proven him
16 guilty of either murder or the lesser included offense of
17 voluntary manslaughter because the possession of a firearm
18 has to be during the commission of a violent crime.

19 You must then determine if the State has proven
20 beyond a reasonable doubt that Mr. Foster possessed a
21 firearm during the commission of that violent crime as
22 alleged in the indictment. If upon reviewing the entire
23 case you have a -- an entire case you have a reasonable
24 doubt as to whether the Defendant had been proven guilty
25 of an offense, he's entitled to that doubt and a verdict

1 of not guilty as to that charge. On the other hand, if
2 upon reviewing a case you find that the State has proven
3 every essential element of its case against the Defendant
4 beyond a reasonable doubt, it's equally your duty to find
5 the Defendant guilty of that charge. If you have a
6 reasonable doubt as to whether the Defendant has been
7 proven guilty of a greater crime charged or a lesser
8 included offense, you must give him the benefit of the
9 doubt and find him guilty only of the lesser included
10 offense, but you cannot find him guilty of any offense,
11 greater or lesser, unless you're satisfied that the State
12 has proved every essential element of that offense beyond
13 a reasonable doubt. That's the law.

14 Ladies and gentlemen, when you go back to your jury
15 room, you're going to have with you all of the exhibits
16 that's been admitted in the trial. Hopefully they've
17 made arrangements to have something for you to play these
18 electronic media on and you're gonna have with you this
19 verdict form. Actually there are two separate pieces of
20 paper. There's one for each charge. Now before I go
21 over these with you, I want to make sure that I covered
22 the things about the firearms.

23 I mentioned to you the other day that we have
24 standard rules that apply to every case related to
25 firearms. One that I didn't mention is you're not to

1 point it at anybody, okay? So if the firearm's back there
2 with you, it should have the lock on it. It's -- it's
3 not loaded, but the rule states you're not to point it at
4 anybody. I don't think they introduced any ammunition,
5 so I don't have to cover that with you.

6 All right, folks. You've got two verdict forms; one
7 for each indictment. On the charge of murder, you have
8 four possible forms of verdict. Now I'm supposed to tell
9 you that you're not to infer from the order in which I
10 state these that I'm trying to tell you one is over the
11 other. I've got to list one first, one second, one third
12 and one fourth. The truth is I did most of these forms at
13 a computer school in the National Judicial College in 1993
14 or '94, so I just changed names and case numbers. So long
15 before I ever knew any of these folks basically this form
16 was done.

17 Now what I've done on it is I'm listing it from
18 lowest to highest on this one. So it reads we, the jury,
19 unanimously find the Defendant, and you can check one of
20 the options. You may find him not guilty, you may find
21 him guilty of the lesser included offense of involuntary
22 manslaughter, you may find him guilty of voluntary
23 manslaughter, a lesser included offense of murder, or you
24 may find him guilty of murder.

25 The other verdict form reads as to the charge of

1 possession of a firearm during the commission of a violent
2 crime, we, the jury, unanimously find the Defendant; two
3 options on this one. You may find him not guilty or you
4 may find him guilty of possession of a firearm during the
5 commission of violent crime.

6 Now obviously, and I hope you picked up on it, the
7 only way you can find him guilty of possessing a firearm
8 during the commission of a violent crime is if you have
9 first found that he's guilty of a violent crime. So those
10 two would be murder or voluntary manslaughter, it would
11 not be involuntary manslaughter, and obviously it would
12 not include a not guilty verdict on the murder indictment.

13 How you go about your votes, how you go about taking
14 your -- doing your deliberations, that's all in your
15 discretion subject to this requirement. Your verdict has
16 to be unanimous. All twelve of you must agree before the
17 verdict can be recorded.

18 Mr. Foreman, part of your job is to record the
19 verdicts. I think you'll find these forms
20 self-explanatory. You should -- you should consider the
21 murder charge first because obviously that effects how
22 you would deal with the second one, and just choose the
23 option chosen by the jury, sign your name on the signature
24 line, and then deal appropriately with the next charge,
25 the possession of a firearm.

1 I've told you a dozen times or more not to discuss
2 the case until I tell you to. It's not time yet. The
3 law says that I have to go over with the attorneys what
4 I've covered with you, and that's just common sense. We
5 don't want you back there deciding the case using the
6 wrong law. Now the truth is that during that long lunch
7 break you had I stayed here and I printed out a charge
8 for them and they've already read it and we've been over
9 it and this shouldn't take very long now, but some -- I
10 never read these things verbatim and sometimes I say
11 things I don't even know I said, so they have to be given
12 a chance to point it out me if I made a mistake.

13 Here's the signal you need to be looking for. If
14 I'm satisfied with what I've told you, I'm gonna send the
15 exhibits and the verdict form into the jury room. The
16 bailiffs are gonna bring the two alternates out. I'm
17 also going to give each of you the same copy I gave the
18 attorneys. In other words, you're gonna have a copy of
19 the charge. Now this needs to be destroyed at the end of
20 the trial, so don't take it home with you, but each of you
21 will have that to look over, it's about twenty-one pages,
22 I think, while you deliberate. Don't talk about it until
23 you have the exhibits and the verdict form in jury room and
24 the two alternates are out, but once that happens you don't
25 need to wait one more second. You start talking about the

1 case.

2 When you've reached your verdict, knock on the door,
3 the bailiff will respond to your knock. You can take your
4 notes with you. Remember the admonitions about the notes.

5 Thank you so much for your attention. Follow the
6 bailiff, please.

7 (Whereupon, the jury retires to the jury room at
8 5:14 PM.)

9 THE COURT: Stacy, I always mark as a Court's
10 exhibit, the charge.

11 THE COURT REPORTER: Okay.

12 (Court's Exhibit 3 was marked for identification.

13 THE COURT: All right. Exceptions, additions,
14 objections to the charge from the State?

15 MR. PINCELLI: No objection to the charge, Your Honor.

16 THE COURT: All right. Do you want to maintain your
17 objection to charging involuntary?

18 MR. PINCELLI: Yes, Your Honor.

19 THE COURT: Okay.

20 MS. ZMROCZEK: And we would just -- the only exception
21 we would have, Your Honor, would be the same argument that
22 we argued about voluntary.

23 THE COURT: Okay. So subject to previous objections,
24 I'm gonna stick with the charge I've got. Now what I'm
25 gonna do is I'm gonna send back this draft to the jury.

1 I've made a Court's exhibit of a copy of what's going back
2 to the jury, so any reviewing court would be able to see
3 it. Here's the verdict forms. You-all check the exhibits.

4 Do you-all have the means for them to play the
5 electronic media?

6 MS. ZMROCZEK: Yes, Your Honor, we do.

7 MR. PINCELLI: Your Honor, we've agreed that's a
8 clean computer. They can take that back and they can also
9 take the speaker that we've been using in the courtroom.

10 MS. ZMROCZEK: And I believe we already -- I know we
11 went through the exhibits. Do you-all need to go through
12 them again? Or you can go through them again if you need
13 to, but --

14 (Pause in proceedings.)

15 (Whereupon, the evidence and the verdict forms were
16 sent back to the jury at 5:18 PM.)

17 THE COURT: Bring the alternates out.

18 You-all don't leave until I discharge the alternates.

19 (Whereupon, the alternate jurors return to the
20 courtroom.)

21 THE COURT: Alternates, Ms. Rauch, Ms. Sickie, we
22 made it through the trial without having to use one of
23 you folks. I do have to use -- in about half of the cases,
24 I have to use an alternate, so I hope you understand I
25 had to have you over there. That double jeopardy you

1 hear about once a jury gets sworn, that's when jeopardy
2 attaches, and I have to keep going forward, so that's why
3 we had you sitting there.

4 I want to thank you very much for your service and
5 tell you that you're through with jury duty. You're
6 disqualified for a year at the state court level and then
7 for three calendar years, so 2019, '20, '21 you do not
8 have to serve if you wish not to. They're supposed to --
9 the computers are supposed to purge you from the list, but
10 it doesn't always work that way. You're welcome to stay
11 if you want to stay, but you're free to do if you wish to
12 go. If you need a slip for work or something --

13 THE CLERK: I've got those.

14 THE COURT: But thank you so much. You're discharged.

15 (Whereupon, the alternate jurors were discharged
16 from service.)

17 THE COURT: Ladies and gentlemen, I appreciate
18 everybody's hard work. Both sides were well prepared.
19 It's been a pleasure being with you folks. The jury has
20 the most difficult job in the courthouse. We put it in
21 their hands and see what they decide.

22 We're at ease pending a verdict.

23 MS. ZMROCZEK: Thank you.

24 MR. PINCELLI: Thank you, Judge.

25 (Recess taken at 5:22 PM.)

1 (Back on the record at 7:34 PM.)

2 BAILIFF: All rise. Court's now in session.

3 THE COURT: Thank you. Be seated, please.

4 I've been informed the jury has a verdict.

5 Obviously I have no way of knowing what they decided. I
6 say this in every case, so please don't think I'm singling
7 anyone out. Please don't show any sign of approval or
8 disapproval. Whether the verdict to you is good, bad or
9 indifferent, I expect you to stay still or stay quiet.
10 Don't shake your head in agreement or disagreement. Don't
11 make any sounds, please.

12 Bring the jury.

13 (Whereupon, the jury returns to the courtroom at
14 7:37 PM.)

15 THE COURT: Mr. Foreman, has the jury reached a
16 verdict?

17 FOREPERSON: Yes, sir.

18 THE COURT: Would you pass it to the bailiff, please?

19 FOREPERSON: (Handing.)

20 BAILIFF: (Handing.)

21 THE COURT: Thank you.

22 Case Number 2016-CP -- I'm sorry, 2016-GS-32-03022,
23 the State versus Heirbrane Heava Foster. As to the charge
24 of murder, we, the jury, unanimously find the Defendant
25 guilty of murder. Signed by the foreman.

1 Indictment 2016-GS-32-03340, as to the charge of
2 possession of a firearm during the commission of a violent
3 crime, we, the jury, unanimously find the Defendant guilty
4 of possession of a firearm during the commission of a
5 violent crime.

6 Ladies and gentlemen, if I've accurately stated your
7 verdict of guilty of murder and guilty of possession of a
8 firearm during the commission of a violent crime, please
9 signify by raising your right hand.

10 All twelve hands are raised. The verdict forms are
11 signed by the foreman.

12 Any matters to take up prior to the jury being
13 discharged from the State?

14 MS. PATTERSON: Nothing from the State, Your Honor.

15 THE COURT: From the defense?

16 MS. ZMROCZEK: We would just ask that they be
17 individually polled, Your Honor.

18 THE COURT: All right. As to each charge or just
19 to the overall verdict?

20 MS. ZMROCZEK: As to each charge.

21 THE COURT: Okay. Madam Clerk --

22 MS. ZMROCZEK: Well, I guess as to the first charge,
23 Your Honor. The overall case is fine, Your Honor.

24 THE COURT: Do you have list?

25 THE CLERK: I do.

1 THE COURT: All right. Ladies and gentlemen, what's
2 gonna happen is the clerk is going to call your name in no
3 order and as she calls your name if you'd raise your hand
4 so she'll know who to look at. Then you can put your hand
5 down. She's going to basically ask you these questions.
6 Was this your verdict, is it still your verdict, okay?
7 And just answer her truthfully.

8 THE CLERK: And I'm gonna call the numbers instead of
9 the names if I can.

10 THE COURT: Do you know your numbers? Okay.

11 THE CLERK: Juror Number 108, was this your verdict?

12 THE COURT: Wait a minute. Who was that? Okay.

13 Thank you.

14 JUROR: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR: Yes.

17 THE CLERK: Juror Number 139, is this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR: Yes.

21 THE CLERK: Number 169, is this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR: Yes.

25 THE CLERK: Number 144, is this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR: Yes.

4 THE CLERK: Number 190, is this your verdict?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes.

8 THE CLERK: Number 86, is this your verdict?

9 JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR: Yes.

12 THE CLERK: Number 132, is this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR: Yes.

16 THE CLERK: Number 128, is this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR: Yes.

20 THE CLERK: Number 24, is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR: Yes.

24 THE CLERK: Number 9, is this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes.

3 THE CLERK: Number 134, is this your verdict?

4 JUROR: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR: Yes.

7 THE CLERK: Number 171, is this your verdict?

8 JUROR: Yes.

9 THE CLERK: Is this still your verdict?

10 JUROR: Yes.

11 THE CLERK: Thank you.

12 THE COURT: All right. Thank you.

13 Anything further to take up with the jury prior to
14 being discharge?

15 MS. ZMROCZEK: Nothing from the defense.

16 THE COURT: Ladies and gentlemen of the jury, I want
17 to thank you very much for your jury service. You were an
18 exemplary group. You were always attentive. I appreciate
19 it.

20 Mr. Foreman, I need you to stay back there if you
21 would. I need you to sign the original indictments. I've
22 got some things to attend to out here.

23 You have an exception for three calendar years for
24 jury service and you're disqualified for one year. If you
25 need a slip for work, you just stay back there. The clerk

1 will bring you a slip for work. They'll mail you your
2 checks. It takes about ten days from the end of the term
3 to get those to you. Don't plan much with it.

4 All right. Follow the bailiff, please.

5 (Whereupon, the jury was discharged from service at
6 7:41 PM.)

7 THE COURT: Any motions?

8 MS. ZMROCZEK: Your Honor, at this time we would
9 ask to set aside the verdicts. Obviously there was a
10 lot of -- of evidence presented. The jury was out by my
11 calculations about two hours and especially based on --
12 just on the -- the numerous charges that were requested
13 in addition to the evidence that was presented, it didn't
14 seem like that was certainly enough time to go through all
15 of those matters, and that's all we have for now, Your
16 Honor.

17 THE COURT: There was evidence to support each
18 element of each offense charged. The jury was out -- I
19 was very impressed with the jury throughout the case. It
20 was obviously a very emotional matter and I'm convinced
21 they approached it seriously and diligently and -- and I
22 didn't listen to what was going on, but I could hear them
23 playing the videos. They -- they approached it in my view
24 very seriously. The motion is respectfully denied.

25 Do you-all have sentence sheets?

1 MS. PATTERSON: Your Honor, if you'll just give me a
2 few minutes, I'll run --

3 THE COURT: All right. We're at ease.

4 MS. PATTERSON: Thank you.

5 (Recess taken at 7:43 PM.)

6 THE COURT: I think we can probably go ahead.

7 Does the State have anything on sentencing?

8 MS. PATTERSON: Your Honor, obviously you heard the
9 facts of the case, you heard how tragic, senseless it was.
10 The family is torn, Your Honor. That's why they're --
11 they're not here. Cathy couldn't -- couldn't bear to be
12 here, Your Honor.

13 He does have a prior record. I know you've already
14 heard about some of the things on his record, but from
15 1998 he has an assault and battery of a high and
16 aggravated nature. In 2009, he has a criminal domestic
17 violence first offense. In 2012, he has two criminal
18 domestic violence of a high and aggravated nature. I
19 would like to point out that doesn't even involve his
20 wife, that involves someone else, Your Honor, so it's
21 like he has a trail of victims and violent offenses,
22 Your Honor.

23 THE COURT: All right.

24 From the defense, anything on sentencing?

25 MS. ZMROCZEK: Thank you, Your Honor.

1 Any statement -- I mean, any sentence at this point
2 is a life sentence for -- for our client. One of the
3 frustrating things I think in this case that -- obviously
4 I didn't get involved until later on, but the public
5 defender's office had this case for years and were
6 ready to try it and -- and then because of some late
7 disclosures from the State that involved a witness that
8 they represented ended up conflicting out that office
9 and, you know, we end up here maybe not being able
10 to find all the witnesses or, you know, changes in
11 witnesses' statements.

12 This is certainly, you know -- and I said it in
13 closing and I stand by it, you know, it is a tragedy.
14 We felt like this was a very strong case of involuntary
15 manslaughter and certainly the jury, you know, disagreed
16 with us for whatever reasons, but I know that his mother
17 who is a family member of both Will and of Heirbrane would
18 like to speak.

19 THE COURT: Yes.

20 What's your name again, ma'am? Tell me your name
21 again.

22 NELLIE FOSTER: Nellie Foster.

23 THE COURT: All right. What would you -- what would
24 you like to say, Ms. Foster?

25 NELLIE FOSTER: I just want to say that I know it

1 was an accident. I know he didn't intend to do that.
2 He's not guilty. I know Will from day one and I know
3 my son from day one. I know Will's actions when he's
4 drinking, I've seen it too many times, and my son has
5 tried to protect Will from a lot of stuff to keep from
6 him being -- going to jail. He did not intend to do
7 that. That was self-defense. Who know it better than
8 me? I know Will not three years ago. I know Will all
9 my life -- all his life. So it was an accident. He did
10 everything he could do to protect Will. When Will got
11 sentenced for three years, my son come into this court
12 and went up with Will and the judge told Will I can give
13 you fifteen years, but my son said -- told the judge he
14 acts out, but it was some of my fault that he act out. I
15 wasn't home with him all the time. So the judge say, you
16 know what, I could give you fifteen years, but I'm gonna
17 give you three. And, like I say, who know Will better
18 than I do? Will's been -- stayed in my home a long time.
19 I know his actions and everything and I tried to protect
20 him, too. And I know my son did. He loved his son. He
21 always have. I've got his back and he got mine, and
22 that's the way it was. It was an accident. I'm sure --
23 I'm sure it was an accident. He did not intend to murder
24 his son. It was an accident.

25 And if I may speak a little bit more, my oldest son

1 was an alcoholic and he died four years ago. He acts out
2 like Will when he's drinking. Nobody could rest, he got
3 knocked upside the head because he picks at people when
4 he's drinking, but he was good when he wasn't drinking,
5 and it's by the grace of God that I didn't hurt him
6 because he wouldn't let me sleep, in and out the door all
7 night long, up and down. So I say that to say this about
8 Will when he drinks. I know what he do when he drinks, I
9 know how he act. So if you would have -- the Court would
10 have mercy on my son because he did not intend to do that,
11 and that's basically all I've got to say.

12 THE COURT: Thank you, ma'am.

13 Did you say anybody else?

14 MS. ZMROCZEK: No, Your Honor. Obviously his other
15 sister is just too distraught to speak. You know, in
16 speaking with Cathy, who obviously is not here today,
17 even days before the trial, Your Honor, she was calling
18 my office telling me that she did not want this to go to
19 trial, that she did not want him to go to jail, which is
20 precisely, you know, why she's not here. She didn't want
21 to be a part of this. This is something that the State
22 decided to go forward with for -- for whatever reason,
23 and that's certainly their prerogative, Your Honor, but we
24 would just ask that the Court give the minimum sentence,
25 which, again, is a life sentence in this case, so it's --

1 I don't think it turns either way. He has to do it day
2 for day.

3 Thank you.

4 THE COURT: Mr. Foster, do you want to say anything?

5 THE DEFENDANT: No, sir.

6 THE COURT: Any appeal that you might wish to file
7 from these proceedings has to be done in writing. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And there's a very short timeframe in
11 which to file that, so you need to tell your lawyers to
12 file your appeal. Do you understand that?

13 THE DEFENDANT: Could you please file an appeal,
14 Ms. Zmroczek?

15 MS. ZMROCZEK: We're doing that, Your Honor.

16 THE COURT: Okay. All right. So you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right, Mr. Foster. The jury has
19 convicted you of murder and possession of a firearm during
20 the commission of a violent crime. Murder is a violent
21 offense. It's a felony which bars you from in the future
22 of transporting, shipping, receiving or possessing
23 a firearm or ammunition, and I'm making that specific
24 finding on the record.

25 The mandatory minimum on murder is thirty years,

1 and that's your sentence, thirty years in the Department
2 of Corrections, plus costs and assessments.

3 The sentence on the gun charge is five years, plus
4 costs and assessments, concurrent. You're given credit
5 for jail time under Section 24-13-40 to be calculated
6 and applied by the Department of Corrections.

7 Do you understand your sentence?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Good luck to you, sir.

10 Court's adjourned. Sine die.

11 MS. ZMROCZEK: Thank you, Your Honor.

12 (Whereupon, the proceedings were concluded at
13 8:01 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete transcript of record of all the
proceedings had and the evidence introduced in the trial
of the captioned case in Circuit Court on May 20th-23rd,
2019.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

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

October 28, 2019

1s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

Lexington County Sheriffs Department

B Miller

Law Enforcement Case #: 16009412

RWP

ARREST WARRANT NUMBER

2016A3210200790

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 12-12-16 *L. Scott Lister*

VERDICT
GUILTY

Mr. E. Miller
Foreperson of Petit Jury

Date: 5/23/2019

A TRUE COPY
 Lex. Co. C.C.C.P., G.S. & F.C.

DOCKET NO. 2016GS3203022

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2016

THE STATE

vs.

Heirberone Heava Foster

A/K/A HEIRBRANE #

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 MURDER

§ 16-03-0010

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

*A/K/A HEIRBRANE **

That Heirberone ^AHeava Foster did in Lexington County on or about May 10, 2016 willfully, feloniously, and with malice aforethought, either express or implied, shoot the victim, Heirbrane Will Foster and the victim died as a proximate result thereof, in violation of §16-3-10, Code of Laws of South Carolina, 1976, as amended.

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

* AMENDED WITHOUT OBJECTION
 AT BEGINNING OF TRIAL, ON
 THE RECORD, TO CORRECT A
 SCRIVENER'S ERROR.

William P. Keesley
 WILLIAM P. KEESLEY
 JUDGE

MAY 20, 2019

Reid Ralts

ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

B Miller

Law Enforcement Case #: 16009412

RWP

ARREST WARRANT NUMBER

2016A3210200791

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 12-12-16 *E. Scott***VERDICT***Guilty*

Foreperson of Petit Jury

Date: 5/23/2019

Lex. Co. C.C.P., G.S. & F.C.

A TRUE COPYDOCKET NO. 2016GS3203340**The State of South Carolina****County of Lexington**

COURT OF GENERAL SESSIONS
DECEMBER TERM 2016**THE STATE****vs.****Heirberone Heava Foster****A/K/A HEIRBRANE ***

CDR #: 0549

Indictment for**Possession of a Weapon During the
Commission of a Violent Crime****§ 16-23-0490**

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Possession of a Weapon During the
 Commission of a Violent Crime

§ 16-23-0490

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

*AK/A HEIRBERONE **

That ~~Heirberone~~^{Heava} Foster did in Lexington County, South Carolina on or about May 10, 2016 knowingly and willfully possess a firearm during the commission of a violent crime or attempt to commit a violent crime, to wit: murder, such weapon described as a firearm in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

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

* AMENDED WITHOUT OBJECTION
 AT BEGINNING OF TRIAL, ON
 THE RECORD, TO CORRECT A
 SCRIVENER'S ERROR.

William P. Keesley MAY 20, 2019
 WILLIAM P. KEESLEY
 JUDGE

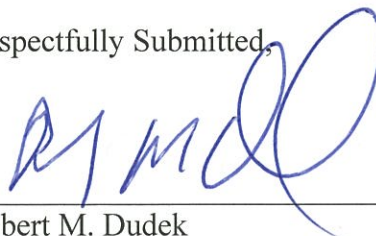
Phil Potts

ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Aug 31 2020

SC Court of Appeals

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

ATTORNEY FOR APPELLANT

This 31st day of August, 2020.