STATE OF OHIO) IN THE COURT OF COMMON PLEAS
) ss.
COUNTY OF MAHONING) **CASE NO. 2022 CR 438**
2024 MA 40

STATE OF OHIO	
State	**DEFENDANT'S**
-vs-	**TRANSCRIPT OF PROCEEDINGS**
John Eugene Morgan	**AND EXHIBITS ON APPEAL**
Defendant	**VOLUME I OF V**

APPEARANCES: **Atty. Robert J. Andrews**
Atty. Patrick Fening
ATTY. Kyle Hilles
On behalf of the State

Atty. Justin M. Weatherly
Atty. Brandon J. Henderson
On behalf of the Defendant

BE IT REMEMBERED that at the jury trial of the above-entitled cause, in the Court of Common Pleas, Mahoning County, Ohio, beginning on the **20th** day of **February, 2024**, and continuing thereafter, as hereinafter noted, before **the Honorable Maureen A. Sweeney**, and a Jury of 12 members, the above appearances having been made, the following proceedings were had:

I-N-D-E-X

WITNESSES:		PAGE:
KAITLYNN MORGAN		
Direct By Mr. Fening	44	14
Cross By Mr. Henderson	61	2
Redirect By Mr. Fening	185	2
Recross By Henderson	197	2
Further Redirect By Mr. Fening	208	2
Further Recross By Mr. Henderson	210	2
OFFICER DAVID HILLIARD		
Direct By Mr. Fening	211	11
Cross By Mr. Henderson	219	2
OFFICER ROBERT GIOVANNI		
Direct By Mr. Andrews	242	11
Cross By Mr. Henderson	252	2
Redirect By Mr. Andrews	262	2
Recross By Mr. Henderson	263	2

OFFICER GREG MILLER		
Direct By Mr. Fening	269	11
Cross By Mr. Henderson	295	2
Redirect By Mr. Fening	303	2
Recross By Mr. Henderson	304	2
DANIEL PEEK, JR.		
Direct By Mr. Fening	308	17
Cross By Mr. Henderson	318	2
Redirect By Mr. Fening	344	2
Recross By Mr. Henderson	346	2
MARY FRANCES MORGAN		
Direct By Mr. Andrews	348	6
Cross By Mr. Henderson	382	2
Redirect By Mr. Andrews	413	2
Recross By Mr. Henderson	423	2
Further Redirect By Mr. Andrews	433	2

DR. DANIEL SULLIVAN		
Direct By Mr. Fening	436	11
Cross By Mr. Henderson	454	2
Redirect By Mr. Fening	462	2
Recross By Mr. Henderson	464	2
DET/SGT ANTHONY VITULLO		
Direct By Mr. Andrews	466	11
Cross By Mr. Henderson	509	2
Redirect By Mr. Andrews	563	2
Recross By Mr. Henderson	575	5
Further Redirect By Mr. Andrews	583	2
Further Recross By Mr. Henderson	584	2
Further Redirect By Mr. Andrews	585	2
WILLIAM GRANGER		
Direct By Mr. Weatherly	591	12
Cross By Mr. Andrews	612	2
LISA MARKIJOHN		
Direct By Mr. Weatherly	614	10
Cross By Mr. Andrews	645	2
Redirect By Mr. Weatherly	655	2

MEGAN OWENS

Direct By Mr. Weatherly	662	10
Cross By Mr. Andrews	707	2

TIMOTHY DIMOFF

Direct By Mr. Weatherly	713	10
Cross By Mr. Fening	770	2
Redirect By Mr. Weatherly	775	2

JOHN MORGAN

Direct By Mr. Henderson	778	16
Cross By Mr. Andrews	882	2
Redirect By Mr. Henderson	929	2
Recross By Mr. Andrews	940	2
Further Redirect By Mr. Henderson	945	2
Further Recross By Mr. Andrews	946	2

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E-X-H-I-B-I-T-S

STATE'S EXHIBITS IDENTIFIED

NUMBER/DESCRIPTION			IDENTIFIED	
1	Photograph		379	23
2	Text conversation		49	14
3	Map printout		51	3
4	Photograph		277	22
5	Photograph		55	13
6	Photograph		277	22
7	Photograph		277	22
8	Photograph		277	22
9	Photograph		277	22
10	Photograph		277	22
11	Photograph		277	22
12	Photograph		277	22
13	Photograph		277	22
14	Photograph		277	22
15	Photograph		277	22
16	Photograph		277	22
17	Photograph		277	22
18	Photograph		277	22
19	Photograph		277	22
20	Photograph		486	8

1	21	Photograph	486	8
2	22	Photograph	486	8
3	23	Photograph	486	8
4	24	Photograph	486	8
5	25	Photograph	486	8
6	26	Photograph	486	8
7	27	Photograph	287	14
8	28	Photograph	287	14
9	29	Photograph	287	14
10	30	Photograph	293	1
11	31	Photograph	293	1
12	32	Photograph	442	23
13	33	Photograph	442	23
14	34	Photograph	442	23
15	35	Photograph	442	23
16	36	Photograph	442	23
17	37	Photograph	442	23
18	38	Photograph	442	23
19	39	Photograph	442	23
20	40	Photograph	442	23
21	41	Photograph	442	23
22	42	Photograph	442	23
23	43	Photograph	442	23

44	Photograph	442	23
45	Photograph	442	23
46	Photograph	442	23
47	The firearm	215	20
48	Shell casing	285	14
49	Dash cam	289	6
50	Projectile from yard	293	1
53	Crime Lab report	275	21
54	Search warrant for Charger	492	21
56	Autopsy report	441	5
58	911 call from Mary Morgan	307	4
59	911 call from John Morgan	307	4
61	DVD VIDEO	291	1

DEFENDANT'S EXHIBITS IDENTIFIED

NUMBER/DESCRIPTION		IDENTIFIED	
A	Facebook messages	125	7
B	Text messages	189	17
D	Dash cam video	340	22
E	Transcript of Jail Phone Call	703	10

E-X-H-I-B-I-T-S

STATE'S EXHIBITS

EXHIBIT NO.	OFFER	OBJECT	RECEIVE	REFUSE	WITHDRAW
1	587 20		588 17		
2	587 20		588 17		
3	587 20		588 17		
4	587 20		588 17		
5	587 20		588 17		
6	587 20		588 17		
7	587 20		588 17		
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22	587 20		588 17		
23	587 20		588 17		
41	587 20		588 17		

42	587 20	588 17		
44	587 20	588 17		
45	587 20	588 17		
46	587 20	588 17		
47	587 20	588 17		
48	587 20	588 17		
49	587 20	588 17		
50	587 20	588 17		
53				587 20
54	587 20	588 17		
56	587 20	588 17		
58	587 20			
61	587 20	588 17		

DEFENDANT'S EXHIBITS

EXHIBIT NO.	OFFER	OBJECT	RECEIVE	REFUSE	WITHDRAW
A	947 22	948 11	948 17		
B	948 20	949 2	949 4		
D					1018 22
E	950 9		950 17		950 17
C					1018 22

REPORTER'S NOTE

Defendant's Exhibit A, facebook messages, was sent to the jury.

Defendant's Exhibit B, text messages, was sent to the jury.

Defendant's Exhibit C, excerpt of recorded interview, was withdrawn.

Defendant's Exhibit D, the transcript of the jail phone call, was withdrawn.

The dash cam video referred throughout the transcript interchangeably as Defendant's Exhibits D and E by counsel was ultimately marked as Defendant's Exhibit E, which was sent to the jury.

State's Exhibits were marked and offered into evidence as specified in the record.

THE COURT: Okay. We have a jury. Ladies and gentlemen of the jury, if you will please stand, I have to swear you in again. Please raise your right hand.

(WHEREUPON, the jurors were administered the oath or affirmation at 12:02 p.m., February 20th, 2024, after which the proceedings continued as follows:)

THE JURORS: Yes.

THE COURT: Please have a seat.

THE COURT: Ladies and gentlemen, it is important that you be fair and attentive throughout the trial. Please understand there is no note taking during the trial. Do not discuss the case among yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form or express any opinion on the case until it is finally submitted to you. More difficult for you to understand that you may not discuss this case among yourselves until it's finally submitted to you. You will receive the opening statements, the evidence, the arguments of counsel, and the law from the Court in that order. It would be unfair to discuss the case among yourselves before you received everything necessary to reach an informed decision. You must explain this rule prohibiting discussion of this case to your family and friends. When the trial is over, you will be released from this instruction. At that time, you may, but are not required to, discuss the

case and your experience as a juror. Until that moment, you must control your natural desire to discuss the case both here and at home. The Court instructs you not to converse with attorneys, parties, or witnesses during the trial. Likewise, the participants in the trial must not converse with you. If anyone should attempt to discuss this case with you, please report the incident to the Court, or to the Bailiff immediately. You may not investigate or attempt to obtain additional information about this case outside the courtroom. It is highly improper for any one of you to attempt to do so.

You are instructed not to read, view or listen to any report in the newspaper, radio, internet, social media or television on the subject of this trial. If you should acquire information from an outside source, you must not report it to the other jurors and you must disregard it in your deliberations.

In addition, you should report the

outside source of information to the Bailiff or to the Court at your first opportunity.

The procedure for the trial is controlled by statute. First, Counsel for the State, the Prosecutor outlines what he expects his evidence will be. The Counsel for the Defendant may then state what their evidence will be. These opening statements are not evidence. They are a preview of the claims of each party, designed to help you follow the evidence and understand the case as it is presented.

In the presentation of the evidence, the State proceeds first. Thereafter, the Defendant may offer evidence and the State may offer rebuttal evidence. This trial will conclude with the arguments of counsel and the instructions of law by the Court. Then you will deliberate upon your verdict.

Before we hear opening statements of counsel and begin to take evidence, I believe, it would be helpful if you had some preliminary instructions to follow in

listening to and considering the evidence, which you will hear in this case. Later, after you have heard all of the evidence and closing arguments of counsel, I will give you further instructions covering the additional law which you are to follow in this case. It is the duty of the Judge to instruct you in the law, and it is your duty to follow the law as I will state it to you, both now and at the conclusion of all the evidence.

First of all, it is your exclusive duty to decide all questions of fact submitted to you. In connection with this duty you must determine the effective value of the evidence. You must not be influenced in your decision by sympathy, prejudice, or passion toward any party, witness, or attorney in the case.

If, in these instructions, or in instructions which I will give you at the conclusion of the evidence, any principle or idea repeated or stated in varying ways, no emphasis thereon is intended and none must be

inferred by you. Therefore, you must not single out any particular sentence or individual point or instruction and ignore the others, but rather you are to consider all of these instructions as a whole and are to consider each instruction in relation to all of the other instructions. The fact that I give you some of the instructions now and some at the conclusion of the evidence has no significance as to their relative importance, nor has the order in which I give you the instructions.

The attorneys from the parties will, of course, have active roles in the trial. They will make opening statements to you, question witnesses and make objections. And, finally, they will argue the case as their last step before you will hear my final instructions and commence your deliberations. Remember that attorneys are not witnesses, and since it's your duty to decide the case solely on the evidence which you see or hear in the case, you must not consider as evidence any

statement of any attorney made during the trial. There is an exception, and that is if the attorneys agree to any fact. Such agreement, stipulation, or admission of fact will be brought to your attention, and you may then regard such fact as being conclusively proved without the necessity of further evidence on such fact.

If a question is asked and an objection to the question is sustained, you'll then not hear the answer, and you must not speculate as to what the answer might have been, or as to the reason for the objection. If an answer is given to a question and then the Court grants a motion to strike out the answer, you are to completely disregard such question and answer, and not consider them for any purpose. A question in and of itself is not evidence, and may be considered by you only if it supplies meaning to the answer.

Any facts in this case may be proven by either direct or circumstantial evidence. Direct evidence means exactly what the name

implies, that is, it is evidence which directly proves a fact without having to infer that fact from some other fact. Direct evidence is usually the testimony given by a witness who has seen or heard the facts to which he testifies. It includes exhibits admitted into evidence during the trial.

Circumstantial evidence, on the other hand, is the proof of facts by direct evidence from which you may infer a fact in question. For example, if the question of fact in a given case is whether or not Johnny ate the cherry pie, testimony by a witness that he saw Johnny put the pie in his mouth and eat it, would be direct evidence of such fact. However, if a witness testifies that he arrived in the kitchen only to see Johnny standing there with an empty pie plate in his hand and cherry pie on his face, this would be circumstantial evidence of the fact that Johnny ate the pie.

The law makes no distinction between

direct and circumstantial evidence as to the degree of proof required, and facts may be proven by either type of evidence or a combination of them. Each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

As jurors, you have the sole and exclusive duty to decide the credibility of the witnesses who will testify in this case, which simply means it is you who must decide whether to believe or disbelieve a particular witness, and how much weight, if any, to give to the testimony of each witness. In determining these questions, you will apply the tests of truthfulness which you apply in your daily lives. These tests include the appearance of each witness on the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear and know the things concerning which he testified; his accuracy of memory; his frankness or lack of it; intelligence;

interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Applying these tests, you will assign to the testimony of each witness such weight as you deem proper. You are not required to believe the testimony of any witness simply because it was given under oath. You may believe or disbelieve all or any part of the testimony of any witness.

You should not decide any issue of fact merely on the basis of the number of witnesses who testify on each side of such issue. Rather, the final test in judging evidence would be the force and weight of the evidence, regardless of the number of witnesses on each side of an issue. The testimony of one witness believed by you is sufficient to prove any fact.

Also, discrepancies in a witness' testimony or between his testimony or that of others, if there are any, does not necessarily mean that you should disbelieve the witness, as people commonly forget facts

or recollect them erroneously after the passage of time. You are certainly all aware of the fact that two persons who are witness to an incident may often see or hear it differently. And considering a discrepancy in a witness' testimony, you should consider whether such discrepancy concerns an important fact or a trivial one.

If you conclude that the witness has willfully lied in the testimony as to a material fact, you may distrust all of his testimony, and then you would have the right to reject all of the testimony, unless, from all the evidence, you believe that the probability of truth favors his testimony in other particulars.

This will conclude my preliminary instructions to you, and I hope that they will be of some assistance to you in listening to it and considering the evidence.

Please keep these instructions in mind as you listen to the evidence and the statements of counsel.

THE COURT: I may give you additional instructions during the trial. When the evidence and closing arguments are concluded, I will give you additional instructions on the law in which you are to follow, together with the instructions you have just heard and any given during the conduct of the trial.

Ladies and gentlemen, it's lunch time. And so at this time we are going to break for lunch.

Please do not discuss the case among yourselves or with anyone else. Do not permit any one to discuss it with you or in your presence. Do not form or express any opinion on this case until it's finally submitted to you.

We will -- at 1:15, we will reconvene in the jury office room here. The bailiff will show you. At that time, you're going on a field trip. You will be taken to the scene involved in this case. Specifically East Florida Avenue, Youngstown Ohio, 44502. You'll remain together under the supervision

of the bailiff until you return to the courthouse.

Counsel will accompany you but they may not discuss the case with you or demonstrate anything related to it. The bailiff may call your attention to an object previously requested by counsel. What you observe at the scene is not evidence. Please note that the conditions may have changed during the time of the events in this case. The evidence as to the physical appearance of the scene must come to you from the witness stand. The sole purpose of this view is to help you understand the evidence as presented during the trial.

At this time, you will go to the jury room. And then at 1:15, the bailiff will organize you and you will go with the bailiff under her supervision to the scene of the crime. After that, you will be returned to the jury room and we'll conclude for the day.

There will be no questions allowed,

there will be no talking, you must keep your jury badges on throughout the view. When you return to court you may engage in casual conversation but obviously do not discuss the case. Okay.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom:)

THE BAILIFF: This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, the Court recessed at 12:12 p.m., February 20th, 2024, and the jury reconvened at 1:15 p.m., at which time a jury view was conducted. Thereafter, the jurors were dismissed for the day and returned at 9:30 a.m., February 21st, 2024, and the proceedings continued as follows:)

THE BAILIFF: All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in session. The

Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: Good morning, ladies and gentlemen. At this time we will have opening statements. Opening statements of counsel are brief and concise statements of what they believe the evidence will show. Opening statements are not evidence. The State proceeds first.

MR. ANDREWS: Thank you, Your Honor.

Good morning, ladies and gentlemen, there are five main characters in this trial. John Morgan, who is actually -- still is married to Mary Morgan. They were estranged in July of '22. They have a daughter Kaitlynn Morgan. Mary in July of '22 was living with Danny Peek and Danny Peek, Sr. Danny Peek had a son, Daniel -- or Daniel, Jr. Now, what this case is about you need to use reasoning and common sense. I need to ask you to do that.

Now, I apologize for having my back to you when I said that. Because there's some

things that you don't do with your back to people. You don't give an opening statement in a murder trial, you don't propose marriage. And one other thing that you don't do with your back to someone, you don't give that person reasonable grounds to believe that you are an immediate or imminent threat to cause death or great bodily harm.

We talked yesterday in voir dire -- you have a pretty good idea what's going to happen here. You know that John Morgan shot and killed Danny Peek. You know there's a video of it, you're going to see that video. And at the end -- again, I want you to use your reasoning and common sense.

You're going to see Danny Peek not only had his back to the defendant when he shot him, Danny Peek was running away from him. You're going to see Danny Peek is at least a car length away running away from the defendant when the defendant shot him in the back.

All right. On July 31st of '22, around

noon, the defendant was coming over to pick up his daughter, Kaitlynn, and his grandson. You're going to hear that they got together pretty much every Sunday and had lunch and dinner together. It was set up through a text. You're going -- I anticipate you're going to hear that Kaitlynn texted her father and said, meet me at the end of the street. Don't come to the house. Meet me at the end of the street. He ignored that. He came in -- and you're going to watch his dash cam, you're going to see the way he came flying into that driveway. It wasn't a leisurely drive, he came flying into that driveway at 1417 East Florida to pick up Kaitlynn

You're going to see as the defendant gets out of his car he's pulling his gun out of his holster. At the same time Danny is running off the porch. And you see Danny, he doesn't have a shirt on, he's taking his chain off. The defendant gets out of the car and he immediately fires a shot into the ground.

You're going to see Danny turn his back to the defendant as the defendant pistol-whips him in the back. Not his face. He pistol-whips him from behind. When he does this he loses the gun and it goes over near the front driver's-side tire of the defendant's car.

You're going to see the defendant get on top of Danny, take him down, and Danny then flips him and gets on top of him. And you're also going to notice the size difference. Danny is about half the size of the defendant. And you're going to see then Danny starts getting the best of him. Danny is punching him, hitting him, kicking him. You're going to see Mary come off the porch, and then you're going to see Daniel -- or Daniel, Jr. come down and help his father. And he and his father are -- do get several strikes in on the defendant.

You're going to see then Daniel disengage and head towards the back of the house. You're going to see Danny grab the

defendant by his shirt and just -- unfortunately for him, he throws the defendant right back to the gun. Then you're going to see Danny run to the back, through the side yard on the driver's side of the car, into the backyard. And you're going to see the defendant pick up the gun and fire a shot at Danny.

By the time he shoots, Danny -- you can only see Danny's left arm. That's all you can see of him in the screen. He's that far away. You're going to find that he fires off a shot and hits him with it. You're going to hear he hits him in the back, bullet comes up -- up here in his chest.

You're going to hear the defendant tried to shoot him more but his gun jammed.

You're going to see Mary react. She appears to be in shock. And then you see her go to the back of the house.

What's not on the video, Danny makes it around the corner, headed across the backyard, collapses on the other side of the

house.

EMT's get there and they take him to the hospital but he's declared dead when he gets to the hospital.

You're going to hear Mary call 911. You're going to hear that call.

The defendant, he didn't leave, he stayed there, he called 911 also.

The police arrive. And you're going to hear from a few police officers, they're going to tell you what they did at the scene.

Danny, as I said he was declared dead at St. Elizabeth's.

The defendant is taken to the police station and he is interviewed and he gives a statement as to what happened. I'm not going to go through that statement now, you're going to hear from Detective/Sergeant Vitullo. But listen to the things that the defendant says about what happened. Then you're going to see the video. Compare what the defendant says happened to what's in that video. It just does not add up.

All right. You have some choices that are going to be put before you. Count 1, is murder. On or about July 31st, 2022, in Mahoning County, Ohio, the Defendant, John Morgan, purposely caused the death of Daniel Peek, Sr. That's one -- that's Count 1. And as stated the State has to prove all five of these counts. All right?

If you find the defendant guilty, then you're going to have what's called a firearm specification. Which is, that the defendant had a firearm while he was committing the offense of murder and that he -- in this case -- used the weapon. Okay? That is Count 1.

Count 2, is also murder. These are two separate findings and the Judge will explain you can find the defendant guilty of both, not guilty of both, or you can find guilty of one and not guilty of the other. Same date, same place, the defendant caused the death of Daniel Peek.

Now, as a proximate result of committing

felonious assault. Okay? What the felonious assault is there -- is that he was shooting Danny Peek. These do sound somewhat redundant. But if you find that he is shooting Danny Peek, committing the felonious assault, and you find that him shooting Danny Peek caused the death of Danny Peek then he's guilty of murder also on Count 2.

Then you will have a firearm specification with that. And, again, it's the same thing that he had a firearm while committing the offense and that he used it. Okay?

Count 3, is a separate felonious assault. Okay? Same day, same place, the defendant knowingly caused or attempted to cause physical harm to Danny Peek with a deadly weapon. Okay? What that is -- this is not the shooting of Danny Peek -- this is when he pistol-whipped Danny Peek. Okay?

And so Count 3, is pistol-whipping Danny Peek. Count 2, is shooting Danny -- Counts 1 and 2 are shooting Danny Peek.

And then also with that, again, firearm specification the defendant had a firearm while committing the offense and that he used the weapon.

All right. We know there was talk about in, voir dire, that this will be a case regarding self-defense. You have to listen to the -- the judge is going to give you a long instruction regarding self-defense. But the first -- the first step in determining whether self-defense is applicable is the State has to show beyond a reasonable doubt that one of these three things occurred for you to find that there was not self-defense. And so self-defense does not apply if the defendant was at fault in creating a situation. The defendant was told not to come to the house, he comes to the house, he comes to the house with a gun, and as soon as he gets out of the car he fires the gun, and then he pistol-whips Danny. Okay? The defendant is at fault in creating the situation.

Number two, no reasonable grounds to believe imminent or immediate danger of death or bodily harm. Again, when he shoots Danny Peek, Danny Peek has his back to him, is about at least a car length away from him; and he shoots him in the back. How is Danny Peek a threat to him when he is running away?

And number three, he did not use reasonable force. He was getting punched and kicked and he ends up shooting. Okay? There's an old adage, you don't bring a gun to a fistfight. Okay? He had the right to hit back, he had the right to defend himself, but it has to be reasonable. Using a gun when someone is hitting you is not reasonable. And, again remember, the fight was over. Danny is running away. This isn't self-defense, this is someone getting pissed off. That's not self-defense.

And, again, for you to find that self-defense does not apply, finding that beyond a reasonable doubt the State has to

prove one of these. Not all three of them. One of these. Either he was at fault, it wasn't reasonable grounds, or he did not use reasonable force. I'm going to tell you, you're going to see all three of those are proven. This is not self-defense.

Again, listen to his statement to the police and then watch the video. Use your reason and common sense and you will have no choice but finding the defendant guilty on all three counts and the firearm specifications. Thank you.

THE COURT: Thank you.

Defense?

MR. WEATHERLY: Thank you, Your Honor.

Good morning, ladies and gentlemen. And so I found the State's opening remarks interesting. I hope you did as well. Because they certainly fit the narrative that the State is attempting to sell. You know, the State began with yesterday, if you recall, my colleague from yesterday during voir dire about the Super Bowl. And some

of you have are sport fans and some of you weren't. But he remarked that the Super Bowl is just one football game. That's it. Nothing more, nothing less. It's not about Taylor Swift or anything else. It's just about the game. But that's not true. Yes. The Chiefs and the 49ers played in the football game but they had to play an entire season to get there. A regular season full of football games. And then they had to make the playoff game, where they had to beat a playoff teams. And then they wound up in the championship game. It's not just about the game, it's about what lead up to it that makes it a championship game.

And in this case the narrative isn't just what you're going to see on that dash cam, it's everything that lead up to it.

Because at the end of the day, the Judge is going to tell you to put yourselves in the shoes of the defendant in establishing whether or not there was self-defense in this case. What did the defendant know? What did

John feel? What was he experiencing at the time? Was it reasonable for him to believe that he was in imminent danger of life-threatening harm?

And so the story doesn't begin in July of 2022, the story actually begins way back when John turned 30. And as a 30 year old, John has a heart attack because he's in extremely poor health. He may be twice the size of Daniel Peek, but he's no match for anybody. Not with that health condition. And he continues to suffer from his health problems.

The story then continues to several years ago when John is innocently driving down the street and a car pulls up next to him and randomly opens fire. John is unarmed, John has no dash cam, John has no idea who these people are and why they're firing at him. They unload 18 rounds into his car and he crashes, he survives it.

He calls the police, and the police say, well, could you identify the man who is

shooting at you? No, I didn't see him. Did you get the license plate? No. I was ducking for cover. Did you fire back? No I didn't have a gun. They never caught the folks who shot at him. And John is advised, maybe you should get a dash cam if this happens again. And maybe with you and your health issues you should get a gun.

And so John installs a dashboard camera in his car. And so if he is ever shot at again and he can't see the license plate the dash cam will.

He gets his CCW license and he arms himself. And, of course, this happens while he's still married to one of the players here, Mary. Right? So Mary knows that he carries a gun for purposes of self-defense. And she also knows that he is in extremely poor health.

The marriage goes south. Mary and Dan, the decedent, they begin a relationship while John and Mary are still married. Evidence will show that that is not a motive for John

to have any animosity towards Dan. As a matter of fact, John doesn't even care. He goes on with his life, he gets his own girlfriend. He's been with that girlfriend for years. And Mary is with Dan for years before this incident ever even occurs. They just happened to be legally married.

And, now, we're getting to the day. About six weeks before this incident occurs, John decides I need to finalize this divorce. I have not lived with this woman for years, I have not been with this woman for years, let's just fill out the paperwork and get it over with. And so he starts to fill out the paperwork and he needs her address. She's living with Dan, he didn't know what the address is. He knows where it is and he knows how to find it. It's one of the things where you know where to go but you don't know the numbers on the house. And so he calls Mary to try to get the address. She doesn't answer him.

A few minutes later as the evidence

will show, Mary calls back. Except it's not Mary, it's Dan using Mary's phone. Intoxicated, upset, and angry, before John can even say a word. All John wants is the address so that he could file for a divorce. But the conversation immediately escalates. And as you'll hear from witnesses to that conversation, Dan begins threatening John's life on that phone call that very night.

And so, now, there's the relationship between John and Dan which isn't great. And all of a sudden those Sunday dinners that my colleague alluded to were stopped. Every Sunday John drives over there, picks up Kaitlynn, picks up Kaitlynn's son, John's grandson, and takes him over to Will's house. Will is Kaitlynn -- is Mary's son. And he's with a woman by the name of Lisa and they have one child and they're about to have their second. Will has a better relationship with John than with Mary even though John is just the stepfather. Will is Mary's

biological son.

And so John picks up Kaitlynn -- and, once again, Mary and John's daughter and little Willy. That's Kaitlynn's son, John's grandson. And he picks him up with a car seat because John doesn't have a car seat. And the diaper bag is little Willy's -- he's not even two years old at the time, and all that goes along with a toddler, right? The blankets, the lovies, the toys, everything else. All that is packed into John's car every single Sunday to drive down to Canfield for dinner with Will and Lisa. And it's a lovely Sunday every single time until that phone call.

Because after that phone call, you'll hear evidence that there's basically heat from Danny. John's not allowed to come around here. Kaitlynn is too afraid to tell him. And so she makes up excuses as to why they can't do Sunday dinner. Imagine that? She says she's got COVID or she's too busy? Whatever the excuse there is the whole reason

is she doesn't want John coming over because she's afraid of what Danny might do when John gets there. Was that fear justified? The evidence will show absolutely. We wouldn't be here today otherwise.

And so Kaitlynn on the date of the shooting sees that Danny is about to get into the shower and she sees her chance. Well, heck, if Dan is in the shower he won't even know that John showed up and picked me up, and I can finally do Sunday dinner with my family. I had to do it behind Dan's back so he won't get angry and upset or do something stupid like pick a fight. The problem is the evidence will show Dan sees Kaitlynn coming down the stairs with the diaper bag, with the car seat, with the lovies, everything else that she has to take with her when her and Willy go somewhere. And so Dan knows John is on his way.

And you'll hear evidence that he specifically says if that guy comes over here I'm going to whip his ass.

And so John thinks he's coming over to pick up his daughter and grand daughter (sic), and Dan is sitting there waiting for him to kick his butt and John doesn't know anymore about it. The only warning he gets -- at least, the State had the courtesy to allude to that is a text message from Kaitlynn that says, now there's a problem, you could pick me up from the corner-- on the corner, Lol. That's it. That's the only warning. Not, you better not come in the driveway. Dan is in a mood. He's going to be violent with you. Nothing like that. John has no idea. All John knows is, why would you go to the corner? You got this car seat, you got your diaper bag, you got the overnight bag with you. Why are you walking to the end of the block with all that stuff? Just stay at the house. I'll pull in the driveway and I'll pick you up and we'll go to dinner as usual. What's the problem?

Unbeknownst to John, the problem is Dan is sitting on the porch waiting for

him, lirking. He's literally sitting on the porch. It's indisputable. He's sitting on the porch and so when John pulls in he can start a fight with him.

The State talked about how John pulls into the driveway real fast. That's because when John's coming down the street he can see Dan on the porch. And as he's pulling in front of the house -- and you guys went there yesterday -- and he turned right into the driveway, he sees Dan get up, he starts walking across the porch, towards the staircase, down the porch, into the driveway where John was about to pull in. And John realizes he's in a vulnerable position, and so he's trying to get there and get out of his car. And he knows he's no match for Dan.

Dan is ready to roll. Shoes on, shirt off, flying off that porch.

John, meanwhile, is wearing mesh shorts and flip flops. He has no idea what is awaiting him.

And so when Dan comes hot off the porch,

John awkwardly stumbles out of his car, draws his weapon because he knows he can't take Dan on. Forget the -- forget this whole size difference. John can't last two seconds in a fight without his heart giving out. And he knows that. That's why he has the gun. And so he fires a warning shot into the ground because he doesn't want to hurt Dan, and he doesn't want to get hurt himself. After he fires the warning shot, you could see it's almost too late. And you could watch the video. He sort of awkwardly, clumsily stumbles forward to get really close to each other.

And, now, it's at this point, the State accuses John of a, quote, unquote, pistol-whip. I urge you to watch that video it is nothing of the sort. If you're going to pistol-whip someone, you're going to grip the gun hard and you're going to hit them hard. But when John is doing this motion with the gun, you can see he releases the gun. The evidence will show he is not

pistol-whipping Dan, he is throwing the gun away because he doesn't want to hurt the man. And then, he immediately uses that size and that weight to sort of jump on top of Dan to restrain him. He's not throwing punches, he's not trying to hurt him, he's trying to just end the situation as it is. But, again, John is not in good shape. He is not a fighter.

And Dan starts getting the best of him. Dan immediately, he slips right out from underneath him, and gets on top of him, and the beating ensues.

And if it were just that, the evidence will show you that we probably would not be here today. If it were just Danny, if it were just John. That's not how it stays. Because Dan Peek, Jr., Dan's son, comes flying off the porch -- and you'll see it on the video -- and he kicks John square in the back of the head. While Dan is beating him on the front, Dan Peek, Jr. is beating him up in the back and they proceed to brutally beat

this man on camera. A man with a heart condition who cannot defend himself.

And, of course, at this point, John's given up his weapon. He didn't want to hurt Dan. But he didn't realize Danny, Jr. was going to put his life in jeopardy by double teaming him with his father. When Danny Peek, Jr. jumps into the fray that escalates the situation. It created a life-threatening situation for John Morgan.

And I do want to urge you to listen to his statements and Dan Peek's statements after this occurred. The State is right. A lot of the things John says don't make any sense. For instance, the whole part about the gun jamming. John distinctly remembers that gun jamming and it never did. This is a traumatic event.

Daniel Peek, Jr. will describe things in his statement that are clearly contradicted by the video as well.

It's like a bar fight with twelve people, they all see the same thing but you

get twelve different versions. That's what happens in a traumatic event. No one has a photographic memory. And so don't expect them to. But also don't look at this as a singular event. Take all of these considerations into play.

And know -- use your common sense just like the State asked you to, to realize that once a man has been kicked in the back of the head and beaten and punched and kicked he's going to be a little disoriented. And with his health conditions he's also going to be fearing for his life.

And the only way to stop the beating was when he saw that he fortunately or unfortunately was thrown violently on top of the gun that he had relinquished only moments ago. And so, in order, to end the beating and save his life, John Morgan picks up the gun and blindly fires. And he says that. He doesn't even know what he was shooting at. Fires one shot, that's it. He doesn't fire -- he thinks he fires repeatedly but he

doesn't remember. The video shows it clearly that he fires one shot. Unlucky shot of his life. Goes right through Dan's back and collapses his lung and kills him.

At the end of the day you're going to look at the indictment and you're going to have to go through these elements of the offense. The first thing the State is going to ask you to do is to decide that John Morgan purposely caused the death of Danny Peek.

John Morgan was just going to pick up his kid and his grandson for Sunday dinner and caught a violent beating and shot blindly after he was so disoriented he didn't even know where he was. He didn't purposely mean to hurt anyone.

And even if you find that, even if you determine he knows that was a purposeful shot. Again, if he's doing that in self-defense the verdict is not guilty.

And then the State is going to say well, he didn't do it purposely he did it

knowingly. He was knowingly firing that weapon to either cause or attempt to cause harm upon Daniel Peek. Again, he didn't know what he was doing. He was being violently beaten and so he grabbed his gun and he shot to save his own life. And so it wasn't done purposely and it wasn't done knowingly.

Again, even if you think to yourself maybe it was. Because the man's life is in jeopardy. It was in self-defense.

And then lastly, there's this alleged pistol-whipping. Watch the video. It's not a pistol-whipping. He's releasing the gun. He let's go of the gun voluntarily. That's the only reason it leaves his hands.

The State wants you to argue that John Morgan started that fight. Evidence contradicts that completely. Dan Peek was waiting for him so he could start that fight. It's indisputable. The State wants you to believe that there's no reasonable grounds to believe that he was in imminent danger. You listen to what John was experiencing

while he was being beaten. Make that decision for yourself.

And by the way we are missing one. Another way that self-defense applies is if the situation is escalated. John would have just taken a beating from Dan, that's fine. When Dan Peek, Jr. jumps in that creates a life-threatening situation. Because you'll see from the video Dan Peek Jr. jumps in it with a foot to the back of the head.

If you never experienced that yourself ask someone who has. Talk to -- amongst yourself about what that does to a person. That escalates the situation, that does create a life-threatening situation for John; meaning he did use reasonable force when he blindly fired that gun. He never wanted to hurt Danny, he never wanted to kill Danny, he just wanted to pick up his daughter and his grandson for dinner. It was Dan who wanted to fight. If he didn't we wouldn't be here today.

Don't forget, as long as you don't there

is only one just verdict in this case. And that's not guilty on all counts. Thank you.

THE COURT: Thank you. State may call its first witness.

MR. FENING: The State calls Kaitlynn Morgan.

THE COURT: Please raise your right hand.

* * * * *

WHEREUPON, the State called

KAITLYNN MORGAN,

who, being first duly sworn, testified as follows:

THE WITNESS: I do.

THE COURT: Okay. You can sit down, and you have to pull the microphone real close to you and talk very loudly and clearly.

DIRECT EXAMINATION

BY MR. FENING:

Q Good morning.

A Good morning.

Q Please state your name and spell your last name for the record.

A Kaitlynn Morgan, M-O-R-G-A-N.

THE COURT: I need you to move closer to the microphone.

BY MR. FENING:

Q You got to pull that mic right up to you.

You can pull on it there and speak loudly because it's a big courtroom.

A Kaitlynn Morgan, M-O-R-G-A-N.

MR. HENDERSON: Your Honor, I'm sorry to interrupt. It's just hard to see because with this in the way. Is there anyway we can move this?

THE COURT: Can you move the TV?

MR. HENDERSON: Thank you.

BY MR. FENING:

Q All right. How old are you?

A Twenty-three.

Q Where do you live?

A On East Florida.

Q Okay. Do you have any kids?

A One.

Q And how old is he? Is it a boy or girl?

A A boy. He's four now.

Q All right. What's his name?

A William.

Q Do you know Danny Peek?

A Yes.

Q Who is he?

A He was my stepdad.
Q Is he -- was he with your mother?
A Yeah.
Q Who is your mom?
A Ah.
Q Who's your mom?
A Mary Morgan.
Q All right. Do you know John Morgan?
A Yes.
Q Who is he?
A My dad.
Q Okay. I'll take you back to July 31st of 2022; do you remember that day?
A Vaguely.
Q What was going on that day?
A I was supposed to go with my dad to eat at my brother's house.
Q Was this first thing in the morning you were going over? Or had you been doing anything else that day?
A A little bit later in the morning I had woken up a little late.
Q Who was at the house at that time? Were

you --

A Oh.

Q -- excuse me, were you at the house on East Florida?

A Yes.

Q Who was there with you?

A Danny, his son, and my mom.

Q His son, Daniel Peek, Jr.?

A Yeah.

Q All right. And what was you guys doing in the morning?

A Not really anything. We were just --

Q Just hanging out?

A Pretty much.

Q Okay. And so you indicated that you were going to go over with your dad to have dinner?

A (Nods her head.)

Q Where were you going to go?

A I think my brother's house.

Q Okay. Please tell me how -- how was that suppose to go?

A I was going to get picked up by my dad and go.

Q Okay. Was this the first time that you were going to be doing this? Or had you done it in the past before July 31st?
A We have done it in the past before.
Q Okay. Did you -- had you called your dad to let him know to come over?
A I had texted him after I was ready to go.
Q Okay. Now, initially, when you're having him come pick you up, where was he going to go?
A I figured kind of like in front of the house in the street.
Q Okay. Is that where he's picked you up in the past?
A Yeah.
Q Okay. Did he normally go just in the street in the front and you met him out there? Or did he --
A Yeah.
Q Did he ever pull in the driveway?
A No.
Q Okay. And so on this day you called him and you let him know that you're ready to get picked up?
A Yeah.
Q He was going to come over and you was just

going to meet him out front?
A I texted him.
Q All right. Did anything happen to change those plans?
A Danny saw me getting ready and he got upset that my dad was coming to get me.
Q All right.
A And so I was going to go to the corner to get picked up.
Q And this is -- I'm going to show you what's been marked as State's Exhibit 2.

(WHEREUPON, State's Exhibit No. 2 was identified for the record.)

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:
Q If you can take a look at that and let me know if you recognize what that is?
A Yes.
Q What is that?
A That's the text messages between me and my dad.
Q All right. And can you read what the text

messages is that you sent to your father on that -- on this day?

A I said okey dokey, I will. Do I read mine and his? Or just mine?

Q Just yours when you had said that -- after there was a problem with Danny and you were going to walk down.

A Okay. He had let me know that he was on his way. And I said awesome. I said, Lol, now there's a problem so I'm walking down the road with Willy.

Q Okay. And did he respond to that?

A Yeah. But I didn't see it until way later.

Q Okay. What did he say back to that?

A I'm going to the house. Wait there.

Q Okay. Now, did -- which -- when you say you were walking down the street. Which direction were you walking?

A When you walk out, like, facing the street from the house it would be to the right.

Q To the right?

A (Nods her head.)

Q Okay. I'm going to hand you what's been marked as State's Exhibit 3.

(WHEREUPON, State's Exhibit No. 3 was identified for the record.)

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q Do you recognize that?

A Yeah.

Q Okay. Just if can you describe for the jury what that is. What I just handed you.

A It's a sky view map of the block of Florida and Humbolt that's here.

MR. FENING: Your Honor, permission to publish to the jury.

THE COURT: Is there any objections?

MR. HENDERSON: No objection, Your Honor. Thank you.

MR. FENING: I'm going to publish it to the jury. One moment. I'm sorry.

BY MR. FENING:

Q All right. And so if we're looking at the map here. You could refer to the ones in front of you if it's easier -- is the house that you were staying at is it right here on East Florida, correct?

A Yep.
Q All right. You indicated if you're facing the street you would walk to the right?
A Uh-huh.
Q And would that be the corner of Shirley rather than East Florida Avenue that you were going to be waiting at for your dad?
A Yes.
Q Okay. Did you -- had you made it out all the way down to the corner?
A Yes.
Q All right. What did you see from that point?
A I stood at the corner facing towards where it goes upwards on Shirley Road. And I could see when his car came up to Humbolt and made a right.
Q Okay. And so your dad is heading south -- and this map is running north and south. He's heading south on Shirley -- you know, there's -- actually, there it looks like there's a car turning towards Humbolt in this picture. That's where you see your dad turning up there?
A Yes.
Q Okay. What did you do at that point?

A I turned around and started walking back towards the house.
Q Okay. Did you see your dad's car again?
A Yes.
Q Okay.
A I had gotten -- about to the second house, I think, when he had turned from Hunter Avenue onto East Florida.
Q And so that would mean he would be turning right onto East Florida?
A Yes.
Q Okay. And so you see him turn there as you're walking back?
A That would have been left.
Q You're right. What do you see at that point?
A I remember him coming down and then turning into the driveway.
Q Okay. Turned into the driveway at --
A That --
Q -- where --
A That --
Q -- you live at?
A Yeah.

Q What's the address there?

A 1417 East Florida Avenue.

Q Okay. And that's the -- okay. And so it would be the first house here? Kind of like that?

A Yeah.

Q There's a grass strip in the driveway?

A Yeah.

Q All right. And so you see him pull into the driveway?

MR. HENDERSON: Objection, Your Honor.

THE COURT: Sustained.

MR. FENING: Okay.

BY MR. FENING:

Q What do you observe at that point?

A I see him get out of the car. And from where I was, I can see Danny come down from the porch. And then both of them left my view as I was walking up.

Q Okay. And why was it that they -- how did they leave your view?

A There was -- the house next to ours had -- she had -- she has like a tree, bush, shrub in the front and they had gone like behind that and I couldn't see them.

Q And were they heading up the driveway towards the garage?

A A little bit. Yeah.

Q Okay.

A They were like in front of his car.

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q I'll hand you what's been marked as State's Exhibit 5.

(WHEREUPON, State's Exhibit No. 5 was identified for the record.)

Q There are -- you -- that's the angle where you see the bush in there that you're referencing?

A Yes.

MR. FENING: Permission to publish, Your Honor?

THE COURT: Any objection?

MR. HENDERSON: No objection. Thank you, Your Honor.

THE COURT: Thank you.

BY MR. FENING:

Q And so what you were just talking about is

this bush here --
A Yes.
Q -- sort of over the hood of the car? All right. And so you lose sight of them?
A Uh-huh.
Q Could you hear anything?
A Kind of like scuffling noises.
Q Scuffling? Could you make out any phrases, words, anything?
A No.
Q Okay. Do you continue at this point to walk towards --
A I --
Q -- 1417?
A -- had slowed down. But only continued because I had my son with me.
Q Okay. How old was Willy at this point?
A He was going to be turning three that year.
Q Okay.
A He was two at the time.
Q And so -- that's okay. And just continue to walk us through. What did you see from there?
A I -- I didn't see Danny at all anymore

after that point. And after a little bit I can see my -- my dad back up after fighting and I heard a gunshot.

Q It's okay.

A And then I screamed. And I can hear my mom's voice. I -- I had stopped closer to the fire hydrant that -- and I -- I just stopped.

Q The fire hydrant -- it looks like you could see it over the spoiler?

A Yeah.

Q And so you stop there?

A Uh-huh.

Q And when you say you saw your dad get back up?

A I like --

Q Did you --

A Kind of like the angle that he came from it was like he was standing up.

Q Okay. Did -- was he holding anything at that time?

A I couldn't really tell. But from, like, how his hand looked, I assumed that he had his gun in his hand. And that he had --

MR. HENDERSON: Objection.

THE COURT: Sustained.

BY MR. FENING:

Q Did you hear -- what did you hear when you see him stand up?

A I don't remember. I just -- the gunshot. I don't know.

Q Once you stop at the fire hydrant, what happens from there?

A I don't really remember. I was sitting there holding my kid and he was just screaming. And I just --

Q Do the police --

A I remember -- I remember --

Q Do the police ever come?

A -- cops coming shortly after.

Q Okay.

A And then I don't really remember that much.

Q Once you see your dad get up --

A Ah.

Q -- the situation is kind of over at that point after -- when you stopped at the fire hydrant, the situation stopped?

A At that point, I didn't see Danny or anyone other than my dad. And I don't remember seeing anyone else. It's just -- but him.

THE BAILIFF: Do you need water?

THE WITNESS: No.

MR. FENING: You want a water?

THE WITNESS: I'm okay.

BY MR. FENING:

Q Earlier I had asked you if you knew John Morgan and you said he's your father?

A Yes.

Q Is he in the courtroom today?

A Yes.

Q Would you point him out and just indicate what he's wearing?

A White shirt, gray tie, and a black jacket.

MR. FENING: Your Honor, let the record reflect that the witness has identified the defendant, John Morgan.

THE COURT: It will.

MR. FENING: Thank you.

BY MR. FENING:

Q Once the police arrived are you interviewed

at that point?

A Not like right off the bat. I -- I didn't know what was happening. I kind of -- I remember going straight for the porch because the dog was on the porch and he was crying. And so I had left my stuff close to the hydrant and went straight for the porch.

Q Were you eventually interviewed by the police?

A Shortly after that. Yeah.

Q Okay. And you relayed what you saw that day?

A (Nods her head.)

MR. FENING: No further questions, Your Honor?

THE COURT: Cross?

MR. HENDERSON: Yes, Your Honor. Thank you.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Kaitlynn, my name is Brandon Henderson. We've met before, correct?

A Yes.

Q All right. I'm going to ask you some questions. All right?

A Yeah.

Q If I am not loud enough or if I talk too fast. I tend to talk too fast sometimes. And so if I talk too fast, let me know and I'll be more than happy to rephrase the question. Okay?

A (Nods her head.)

Q All right. And so we're talking about July 31st, 2022, correct?

A Yes.

Q And on that day you had made plans with your dad via text, correct?

A Yes.

Q And on that day, what you were going to do is do what you normally did on Sunday; is that right?

A Sort of.

Q Okay. You guys were going to go and have a

family dinner?

A I'm sorry?

Q Do you want me to rephrase or --

A No.

Q You guys were going to go and have a family dinner; is that right?

A Yeah.

Q Okay. You folks did that often on Sundays, right?

A Sort of. But not every Sunday.

Q No. I'm not saying every Sunday.

A Oh.

Q I'm saying often --

A Yeah.

Q -- correct?

A It was usually a Sunday.

Q Okay. And that consisted of you, right?

A Uh-huh.

Q Little Willy --

A Yes.

Q -- at the time, your son who is about two or so, correct?

A Yes.

Q Okay. That consisted of your father, John?
A Yes.
Q Right?
A (Nods her head.)
Q That consisted of your brother William?
A Yes.
Q William is your mother Mary's biological son? Right?
A Yeah.
Q But William is not -- William is not John's biological son, correct?
A Correct.
Q But John took William in as his own son; is that right?
A Yeah.
Q I'm sorry. I'm having a hard time hearing you.
A Yes.
Q Okay. Thank you. And so it also included Lisa, who is William's -- older William's fiance I believe?
A Yeah.
Q As well as Aries, which is their daughter,

correct?
A Yes.
Q And Aries was right aroun- -- around Willie's age? Your child's age --
A He's --
Q -- group?
A -- younger. Or she is younger.
Q She's a little bit younger?
A Yes.
Q Okay. How much younger?
A A year.
Q Okay. And so maybe she was one around the time and Willy was about two?
A I'm not sure. Yeah.
Q And so you got Lisa and you got William, Sr.?
A Uh-huh.
Q And you got Aries?
A Uh-huh.
Q Correct? And you have Kaitlynn?
A Uh-huh.
Q You have little Willy, correct?
A Yes.
Q And you have John who is coming to pick you

up?
A Uh-huh.
Q Is that right?
A Yes.
Q And like we said your dad would do this often, correct?
A Sort of.
Q You guys having these dinners often kind of stopped at one point?
A Yeah.
Q Is that true?
A Yeah.
Q And that was due to a phone call between your father and Mr. Peek, the individual who is deceased in this matter; is that correct?
A I believe so. Yeah.
Q Okay. Your dad had tried -- had attempted to call your mother one night, right?
A I guess. I don't -- I'm not even exactly sure how that had happened.
Q Okay.
A How that went on?
Q Okay. Well, you were there when it happened;

weren't you?
A Yeah.
Q Okay. And you heard the phone call; didn't you?
A Yes.
Q Okay. And so John calls your mom and your mom doesn't answer; is that right?
A I guess.
Q And when your mom doesn't answer, Daniel Peek takes it upon himself to grab your mom's phone and call the number back; is that correct?
A I don't know.
Q Are you certain?
A Yeah.
Q Okay. You don't know if Daniel Peek called your father that day from your mother's phone?
A I'm pretty sure that there are multiple calls from his number to my Mom's.
Q You don't remember during that phone call Daniel Peek threatening your father?
A No. I was -- I was not listening to the call or conversation.
Q You weren't?

A No. Because at one point he had gone outside on the phone when I was in the house.

Q All right. And you heard him screaming outside?

A No. I heard him raise his voice a little. The windows were open.

Q Okay. Are you scared of repercussions from the Peek family?

A No.

Q Have you ever told anyone that?

A No.

Q You never told me that in person?

A No, I didn't.

Q Or any of my associates?

A (Shakes her head.)

Q You don't remember saying that?

A (Shakes her head.)

Q Okay. Let's remember that. Do you remember ever telling anybody that you were scared of repercussions from your mother?

A No.

Q Okay. Let's remember that as well. On this day, July 31st of 2022, Daniel Peek got upset because

he realized that your father was coming over, correct?
A Yes.
Q Okay. And he -- he -- and in getting so upset -- the reason why he got upset is he -- he saw that you had started to pack up some stuff for young Willy; is that right?
A He had saw I had gathered things to go to my dad's.
Q Right. You thought that he was going to be going down to take a shower?
A Yeah.
Q The shower is in the basement?
A Yes.
Q And so you thought that would be a good time to text your father -- the text that we went through, correct?
A Yes.
Q The prosecutor said -- had showed you that text, right?
A Yes.
Q And that's when you and your father made plans and you texted him to come pick you up; is that right?

A Yes.
Q And you did that because you thought that Mr. Peek was getting in the shower, right?
A Yes.
Q And then he wouldn't be around when your father arrived, correct?
A Pretty much.
Q I'm having a hard time hearing you. I'm sorry.
A I -- I have a sore throat and I am having trouble talking.
Q Yes --
A I apologize.
Q -- I'm sorry. Okay. No problem. I forget what my question was. I think it was something along the lines of --
A That Danny would be in the basement taking a shower --
Q Correct.
A -- when my dad arrived.
Q Correct. And so in a way you felt that you had to sort of sneak around your own house?
A Not really.

Q Okay. But you were specifically waiting for him? Mr. Peek?

A (Nods her head.)

Q So that way he wouldn't know that your dad was coming over, correct?

A He would've known. Because my dad would've had to have dropped me back off and he would have.

Q I understand. I'm saying at the time you wanted him to be in the shower when your dad showed up, right?

A Yeah.

Q Okay. And that was due to this phone call from six weeks earlier; is that correct?

A Not entirely.

Q And so you've told people that that day that Danny got mad, Daniel Peek -- and he made you take Willy down the street, correct?

A He didn't make me do anything.

Q Okay. Daniel didn't make you take Willy down the street?

A (Shakes her head.)

MR. HENDERSON: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

BY MR. HENDERSON:

Q Kaitlynn, I'm going to show you this. And I just want you to tell me -- if you could just read this one part right here (indicating) to the jury. Does that part say, Danny got mad and made me take Willy down the street?

A That was supposed to say had not made.

Q Danny got had?

A No. Danny got mad and had.

Q Okay.

A Not made.

Q Danny got mad and had me take Willy down the street. Is that what it says?

A (Nods her head.)

Q Okay.

A To go get picked up at the corner.

Q Okay. And so Danny did get upset and had -- we don't need to use the word made. Danny had you walk down to the corner?

A Uh-huh.

Q Okay. And so Danny, who's this grown adult who's 46 years old at the time, correct?

A (Nods her head.)
Q Is that right?
A Yes.
Q All right. You have a diaper bag with you?
A Yes.
Q You have a car seat with you?
A It's a booster seat.
Q A booster seat?
A Yeah.
Q What else do you have with you?
A My son.
Q Little Willy?
A Yes.
Q Terrible neighborhood?
A Huh? (What?)
Q It's a bad neighborhood?
A Not -- yes and no.
Q Okay. And it's the middle of July -- or end of July? Summer heat, correct?
A Yes.
Q And because this 46-year-old man is upset that John is coming over he has you and your son walk down to a corner, correct?

A Yeah.
Q Okay. Your mom knew -- your mom, Mary Morgan, knew that Danny Peek was doing this; is that right?
A I think. I don't know.
Q Okay. And your mom never said, Dan, act like an adult. My daughter is not walking down to a corner?
A I had already started walking.
Q I'm sorry?
A Pretty much right as Danny said I should go get picked up at the corner. I was, like, all right I'm going to the corner.
Q Well, no, because he didn't start to get upset until he saw you packing stuff up, right?
A I had packed the diaper bag and had the booster seat and was on the porch.
Q Okay. And your mom knew that you were walking down to the corner, correct?
A I don't know.
Q Do you remember texting -- do you remember saying -- that having a conversation that Danny attacked your father?
A I don't remember.

Q Would it help if I refreshed your memory by showing you a text message?

A Sure.

Q Okay.

MR. HENDERSON: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. HENDERSON: Thank you.

BY MR. HENDERSON:

Q Kaitlynn, in order to refresh your recollection, I'm going to read this -- this part right here. Okay? And I want you to tell me if I'm reading this correctly. Your text is, Danny attacked him so my dad shot at him. Is that correct?

A Yeah.

Q The individual you're texting then says, did Danny hit your dad? Right?

A (Nods her head.)

Q Yes?

A Yes.

Q You then said yes. Correct?

A Uh-huh.

Q Okay. And so you would agree with me that on

that day you saw Daniel Peek assaulting your father?
A I did not see their interaction.
Q Okay. And so -- but you could see Danny's arms swinging onto your dad, correct?
A I could also see my dad's movement.
Q The question is: Could you see Danny's arms swinging onto your dad?
A Barely.
Q Okay. And so do you remember texting anyone, I could see Danny's arms swinging onto my dad?
A No. I don't remember.
Q I'm sorry?
A I don't really remember.
Q Would it refresh your recollection if I showed you?
A Sure.
Q Okay. All right. Kaitlynn, I'm just going to read this portion of this text that you wrote. I can see Danny's arms swinging onto my dad. Is that correct?
A It also says I couldn't see all of it.
Q No. I under --
A I couldn't see --

Q -- I agree with that. Okay. But I couldn't see all of it. Meaning, the whole situation?
A (Nods her head.)
Q But I could see Danny's arms swinging onto my dad, correct?
A Barely.
Q Okay. You didn't write barely in your text messages; did you?
A No, I did not.
Q All right. You would agree with me that your dad actually called 911 on himself? Is that accurate?
A Yes.
Q Your dad had a dash camera in his car, correct?
A As far as I knew.
Q And instead of destroying evidence -- he didn't destroy any evidence, correct?
A Not that I know of.
Q He didn't flee the scene, correct?
A No.
Q He stayed there on scene?
A Yes.
Q Okay. And the first thing -- the first

thing that he did after this whole situation was went and called 911; is that correct?

A No.

Q Okay. What was the first thing he did?

A Unloaded his pistol and placed it on the vehicle.

Q Okay. And so the first thing that your father did after this fact -- from what you remember -- is unloading his weapon; is that correct?

A Yes.

Q And he placed it out of his way; is that correct?

A Sure.

Q Well, I don't -- I don't want you to just agree with me. I think that it's -- is it true or not?

A I think so.

Q Okay. And after that he calls 911, correct?

A Yeah. Yeah.

Q And he let's them know, hey, I just discharged my firearm, right?

A Yes.

Q Officers arrive on scene --

A Yes.

Q -- correct? You do tell officers that your Dan -- that -- that Daniel Peek has been threatening your father, correct?

A I'm not sure.

Q Would it refresh your recollection if I showed you?

A Sure.

Q Okay.

MR. HENDERSON: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. HENDERSON: Thank you.

BY MR. HENDERSON:

Q Kaitlynn, I'm going to read this and I just -- I just want you to tell me if I'm reading this correctly. And yes I told the officers, too, that Danny has been threatening my dad. Is that what that says?

A Yes.

Q Okay. And so it is true? And this was a while ago. This was like 19 months ago, right?

A Yes.

Q And so would you agree with me that the

texts that are from right around that time, July 31st of 2022, the same day were more fresh in your mind?

A I don't really remember much of the day.

Q I understand. I'm just saying things that you record that day or put down that day were more fresh in your mind at the time than some 19 months later here in trial, correct?

A I guess.

Q From what you saw -- and I know you said you didn't see everything and I -- I take that into account. From what you saw you got the impression it was your father defending himself, correct?

A At first.

Q Okay. Well, I'm just asking your impression in the moment. In that moment you were under the impression that your dad was defending himself, correct?

A I guess so.

Q In fact, you never seen your dad pull his pistol out of his holster, correct?

A No.

Q The only time you've seen your dad pull his pistol and his holster out is when he got home,

correct? And laid it on the table or something. Is that right?

A I think so.

Q Okay. And you're aware of your dad's medical conditions?

A Yes.

Q And part of that was the fact that he had a heart attack at the age 30, right?

A I don't remember. I was little.

Q Understood. Understood. You are aware that he does have advanced heart disease, correct?

A Sort of. I don't know. I just know that he has heart problems.

Q Fair enough. And you're aware that he has pretty severe back problems?

A I didn't realize how severe they were. Just that he had back pain like my whole life.

Q Okay. And you're aware that they think he has -- he has had a stroke?

MR. ANDREWS: Objection, Your Honor.

THE COURT: Sustained. Move on.

THE WITNESS: I'm aware that he had --

THE COURT: You don't have --

THE WITNESS: -- a stroke.

THE COURT: -- to answer.

THE WITNESS: Oh.

BY MR. HENDERSON:

Q After this whole incident -- obviously, Mr. Peek is deceased, correct?

A Yes.

Q And a bunch of friends and family were around, correct?

A Yes.

Q Okay. And they were talking about how great of a guy he was; is that accurate?

A Yes.

Q And you felt that you had to sit there and bite your tongue, correct?

A Not exactly.

Q You felt like you had to bite your tongue because he threatened your mother, correct?

A I don't recall this.

Q Would it help if I refreshed your recollection?

A Sure.

Q Okay.

MR. HENDERSON: May I approach, Your Honor?

THE COURT: Yes.

MR. HENDERSON: Thank you.

BY MR. HENDERSON:

Q Kaitlynn, I'm going to read this text. It's labeled July 31st, 2022, correct?

A Uh-huh.

Q 5:44 p.m. Is that right? Can you see that?

A Uh-huh.

Q I'm trying to lean over as far as I can. I'm going to read this and you tell me if I read this correctly?

MR. ANDREWS: Your Honor, may we approach?

THE COURT: Yes.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: Ladies and gentlemen, at this time we're going to take the morning

break.

Please do not discuss this case amongst yourselves or with anyone else. Please don't permit anyone to discuss it with you or in your presence. Please don't form any opinions on this matter until it's given to you for your deliberations.

We will reconvene in approximately 15 minutes.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom:)

THE BAILIFF: This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows with the Court, the attorneys, and the court reporter in the office of the bailiff:)

THE COURT: Do you waive his appearance?

MR. WEATHERLY: We waive.

MR. HENDERSON: We waive.

MR. ANDREWS: Your Honor --

(WHEREUPON, the court reporter interrupted the proceedings.)

THE COURT: Go ahead. Start again.

MR. ANDREWS: Your Honor, we would object. There is, I believe, 95 pages of texts. The defense is already used some of them in cross-examining Kaitlynn Morgan. We were not given any of these. We've now been informed there's an interview -- a recorded interview. We were not given any of that in discovery either. And so we would object to any of these. I mean, I'm not objecting to them continuing with their cross. But as far as using any of these text messages or what was said in this interview, we would object to her being cross-examined subject to those items whether through impeachment or any other method that they use.

MR. WEATHERLY: Your Honor, if I may?

THE COURT: Uh-huh.

MR. WEATHERLY: And so, Your Honor, we did explain this a little bit in conversations prior to going on the record,

in that we had previously interviewed Kaitlynn no less than three -- I would say probably five times prior to this trial. We had her at the office, we visited her at the house, we've gone over her communications with other folks. And in one interview we did record it for purposes of preparing for trial. And when Mr. Henderson took the podium to cross examine Kaitlynn, he assumed she would answer in conformity with prior statements that she's made to us.

For approximately 48 hours before trial she -- for lack of a better phrase -- ghosted us, and -- and ceased communications with Mr. Morgan, as well as our office which put us in a bit of a state of panic. And so as a result we made sure to get -- to print out copies of these things in the event that she would have failed to remember previous statements. And I did put my fingers up in quotation marks for the record. Or not testify in conformity to previous interviews that we had with her. And so we now are in a

position where we have to use these -- this as impeachment evidence. Because we did not anticipate that she would not be testifying in conformity to her prior statements to us.

The rule on impeachment is fairly clear, in that, we're not required to disclose to the State anything that we use for impeachment because we can't anticipate what she's going to say on the stand until she says it. That's all -- a lot to say. And that when Mr. Henderson asked her a question. Such as -- and one of the questions --

MR. HENDERSON: I --

MR. WEATHERLY: You can go ahead.

MR. HENDERSON: -- quite, frankly -- obviously, it is very uncomfortable for me because this is his own daughter. And so I'm getting up there thinking that there's -- there's no way she would ever throw her dad under the bus. She's been in to speak with us, she's been in to discuss all this with us, she's been on his team. And this blew my mind. I mean, you might have seen there was

a bit of shock in me. I tried to remain calm. But at the same point, she started testifying totally against what she's told us in the past and what she's -- what she's provided information in the past. And so certainly I don't want to sit in there and beat up this young girl in front of a jury when it's her own -- when it's his own daughter. I mean how awful does that make us look?

And so the only thing I can do is point out, but Kaitlynn come on you have said this. I don't know what else to do, because I had zero clue that she was going to take an oath and then absolutely a hundred percent lie. Part of that audio recording is the fact that she is extremely scared of repercussions from the entire Peek family. Okay? And I -- I can almost guarantee that part of the reason why she is so hesitant to speak in there is because there is an entire family over there of Peeks' and she's extremely scared of repercussions from these folks.

And I don't know what else to say other than it took us totally by surprise that she got up there and just lied. You could see that she lied about many things. And I think it's extremely unfair that were not going to be able to impeach her with her previous inconsistent statements. Which all of these are. I mean she wouldn't even give me one.

MR. WEATHERLY: And so at this point the State and the Court has the text messages. The audio file has been uploaded to a USB, which will be reproduced for the Court as well. But this is now evidence that, one, we had no intention of using at trial because we anticipated that Kaitlynn would testify as to -- we prepared her for testimony as if it was in direct, Your Honor.

THE COURT: Okay.

MR. WEATHERLY: We didn't even know that the State was going to call her until the final pretrial.

THE COURT: Okay.

MR. WEATHERLY: We thought we would have

to call her a direct witness.

THE COURT: Okay.

MR. WEATHERLY: That's how confident we were in her testimony.

THE COURT: Okay.

MR. WEATHERLY: And so, now, we've got to impeach her. We didn't think we were going to have to, we never anticipated disclosing these text messages because we never anticipated using them. The same with the audio recording of the interview. And that's the position we're in.

MR. HENDERSON: And I think that the credences to that and the corroboration to that comes from the fact that it's his own daughter -- and we had zero clue that she was going to get up there and throw him under the bus which is what she's doing.

THE COURT: Do you want to respond?

MR. ANDREWS: Well, I would say that's an unfair characterization. I don't know that these are necessarily being used for purposes of impeachment. I don't recall her

denying anything. She's saying she doesn't remember a lot of things. And so they're being used to rehabilitate her. And I may be wrong. Maybe, she did deny something. I -- I don't recall. But, I believe, it's just she doesn't remember things. This happened 19 months ago. And I'm not saying that these are things that necessarily shouldn't be used. But, we were unaware of any of these. Especially, an interview -- a recorded interview. We were unaware of any of this. And so we would ask that the text, the copies of the texts, and the interview be excluded.

MR. WEATHERLY: And, Judge, if I may briefly respond? She specifically said in the statement she is not fearful from any repercussions from the Peek family. That is something that she said to us during that recorded interview last year. And so that's specific denial.

Additionally, again, we prepared her for direct examination, not cross.

Direct, meaning we were going to call her as a witness. And so we -- we would ask her questions when we were preparing her for that. Such as, what did you tell Megan Owens? And what did you tell Lisa via text? And so that she could then -- and then she would say these things. And so we don't have to disclose a recorded text message to something that she's going to testify to.

THE COURT: The problem is that you had them and you didn't disclose them. Because you can't predict the way a witness is going to testify. Nobody can. And they should have been disclosed.

The remedy, I don't know. I'm going to think about it. We're going to take an early lunch break. I'll give the jurors lunch.

MR. WEATHERLY: We may argue, Judge, that the remedy is now that -- now that we are forced to disclose them because of the witness not being consistent. Is that we now have to use them to impeach her? And the rule on impeachment is that we do not have to

disclose impeachment evidence prior to the testimony of the witness who's being impeached. That's a clear rule.

THE COURT: Okay. You didn't know these were going to be impeachment documents?

MR. WEATHERLY: But I --

THE COURT: And so they should have been disclosed?

MR. WEATHERLY: We didn't know that we would have to impeach her. Until she took the stand and started saying things in contradiction to what she said to us previously. We feared it, though. But we didn't know it.

THE COURT: I'll make a decision after lunch.

MR. ANDREWS: Well, if I could just put --

THE COURT: Go ahead.

MR. ANDREWS: If they were preparing to direct her then they would be required to give us this information if -- because they weren't intending on using it for

impeachment. And so --

MR. WEATHERLY: But we weren't using it as -- we were going to use her testimony not the exhibits.

MR. FENING: If that was -- her anticipated testimony was in conformity with the text messages then that should have been disclosed. That was her anticipated testimony on direct.

MR. WEATHERLY: She's -- she can say what she said on the stand. And so, for instance, her prior interview that she did with the police that's not coming into evidence and that's not going to the jury.

MR. ANDREWS: Correct.

MR. WEATHERLY: And so this is -- this -- she's simply going -- our intention was for her to simply testify to what she had told us in the past.

THE COURT: And then it should have been disclosed and it wasn't. And that's the problem. And so like I said, I will make a decision when we get back from lunch.

THE BAILIFF: Do you want to go in and let the jury know to go to lunch?

THE COURT: Yes.

(WHEREUPON, at 11:33 a.m., February 21st, 2024, the Court, bailiff and court reporter entered the jury room, and the following proceedings were had in the presence of counsel and the defendant:)

THE COURT: Ladies and gentlemen of the jury, due to some discovery issues that are going on right now we are going to take an early lunch.

Please do not discuss the case amongst yourselves or with anyone else. Please don't permit anyone to discuss this matter with you or in your presence. Do not form any opinions on this matter until it's given to you for your deliberations.

We will reconvene in approximately -- what time is it? Right.

THE BAILIFF: 12:30.

JUROR: 11:30 right now.

THE COURT: Around 12:30-ish. Thank

you.

(WHEREUPON, the Court recessed for lunch at 11:34 a.m., February 21st, 2024, and reopened at 12:55 p.m., February 21st, 2024, and the proceedings continued as follows in the office of the bailiff:)

THE COURT: Okay. The Court finds that the text messages that they should have been disclosed to the State of Ohio prior to trial. The Court further finds that based on impeachment they did not have to be disclosed. However, the Court does not believe that you are impeaching her correctly. Therefore, from here on in, anything that you want to offer to her, you have to show her first, read it to herself, allow her to explain why she's changing her mind, if she is, and then you can redirect her on all that.

MR. WEATHERLY: Your Honor, may I please ask a follow-up question? If her response is that I did not say that, but I don't recollect. At that point --

THE COURT: She's not lying then to you.

MR. WEATHERLY: And so our argument would be that she's being purposely evasive. Because --

THE COURT: Well, and we'll handle each objection that way.

MR. WEATHERLY: Thank you, Your Honor.

THE COURT: One way or the other.

MR. HENDERSON: And so, Judge, just -- just so I can make sure. I just -- I don't want to go against your ruling. And so could I just write down exactly what you just told me.

THE COURT: Yeah.

MR. HENDERSON: On what I need to do for each question.

THE COURT: Yeah.

MR. HENDERSON: Can I borrow a piece of paper from somebody?

MR. FENING: Okay.

MR. HENDERSON: Thank you.

MR. ANDREWS: Your Honor, if I may? Based on -- I don't really want to do this,

but based on your ruling, could we have a continuance until tomorrow morning so we have a chance to go over these things?

THE COURT: As long as we're done with this by next Thursday. This trial.

MR. ANDREWS: I don't see that being an issue.

MR. HENDERSON: I don't think that's going to be a problem.

MR. WEATHERLY: That's not going to be a problem.

THE COURT: Okay.

MR. ANDREWS: Thank you.

MR. HENDERSON: And so, Judge, can we just get -- I just want to make sure that I don't go against your ruling.

THE COURT: Like I said just ask her to read it back to you.

MR. HENDERSON: Okay. Yes. Yes, Ma'am.

THE BAILIFF: Do you want to go and let the jury go for the day?

THE COURT: Yeah. Let's go to the jury deliberation room.

And she can read it back to you.

(WHEREUPON, at 12:55 p.m., February 21st, 2024, the Court, bailiff and court reporter entered the jury room, and the following proceedings were had in the presence of counsel and the defendant:)

THE COURT: Ladies and gentleman of the jury, due to matters beyond the Court's control and the discovery issues that we broke for lunch early on, we are now going to adjourn for the day and restart the testimony tomorrow morning.

This evening, please do not discuss the case amongst yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form any opinions on this matter until it's been given to you for your deliberations.

The Vindicator was in there today so don't read the paper.

JURORS: Oh, okay.

THE COURT: Thank you. I'll see you tomorrow morning at 9:00.

JURORS: Thank you, Judge.

(WHEREUPON, the jury was excused for the day at 12:55 p.m., and the proceedings continued as follows:)

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: Do you just want me to do it? Or do you want to --

MR. ANDREWS: Yes, Your Honor.

THE COURT: When you were testifying earlier and you said you couldn't remember to Attorney Henderson. The issue became whether or not you couldn't remember or are you deliberately trying to stall their defense of their cross examination of you.

THE WITNESS: Okay.

THE COURT: And that's why they kept introducing the text messages that you had sent to other people. You are under oath.

THE WITNESS: Yes.

THE COURT: If you cannot remember, that

is fine. If you are stalling or just trying to tell a different story now as opposed to your text messages you're in contempt of court and you would perjure yourself.

THE WITNESS: I understand.

THE COURT: And so we are going to quit for the day. And I know you were upset, too.

THE WITNESS: Uh-huh.

THE COURT: We're going to quit for the day and start again tomorrow morning at 9:00. And make it clear that if you can't remember, you can't remember. Do not lie, though.

THE WITNESS: Okay.

THE COURT: Anything else?

MR. ANDREWS: No, Your Honor. Thank you.

THE COURT: Anything else?

MR. HENDERSON: Nothing else, Your Honor. Thank you.

THE COURT: Okay. Thank you.

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, the Court recessed at

12:56 p.m., February 21st, 2024, and reopened at 10:03 a.m., February 22nd, 2024, and the proceedings continued as follows:)

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

MR. ANDREWS: Your Honor, just to put on the record. This morning we informed the Court that it did not appear that the texts that we received were a complete screenshot. However, we believe it was in the way they were copied. We have since been provided a complete copy of everything, and so I believe, we are in complete possession of everything at this time.

Also, if the parties agree to give Kaitlynn Morgan a copy of all those text messages, which she was being cross examined on. She is reviewing those now. Hopefully, that will allow the process to go a little faster once we proceed.

THE COURT: Is there anything else that

has to go on the record?

MR. ANDREWS: One other thing. We agreed -- we probably should have done this before the trial started but a separation of witnesses. Both parties agreed on it.

THE COURT: Okay.

MR. WEATHERLY: And stipulation on authenticity.

MR. ANDREWS: Oh. Yeah. The parties are also going to stipulate to the authenticity of the 911 calls. The two 911 calls. One made by Mary Morgan and one made by John Morgan.

THE COURT: Okay. Anything else?

MR. WEATHERLY: No, Your Honor. Thank you.

MR. ANDREWS: No.

THE COURT: Thank you.

THE BAILIFF: All rise. This Honorable Court of Common Please is now in recess.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

THE BAILIFF: All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: Good morning, ladies and gentlemen, I apologize about the delay in starting.

I remind you, you're still under oath. You may continue with your cross.

MR. HENDERSON: Judge, thank you.

* * * * *

CROSS EXAMINATION CONT'D

BY MR. HENDERSON:

Q Kaitlynn, how are you today?

A I've been better.

Q I'm sorry?

A I've been better.

Q Okay. I'm sorry to hear that. I know we got off to a little bit of a rough start yesterday, right?

A Uh-huh.

Q Okay. And so we're back here today and we're here to try to clear up some of the, you know, things and make sure we get through this together. Okay? I promise you I'll -- I'll shoot you a hundred percent straight, if you do the same to me; is that fair?

A Yes.

Q Okay. Last night, did you meet with anyone regarding your testimony?

A No.

Q Okay. Did you speak with your -- your mom is Mary Morgan?

A Yes.

Q Did you talk to your mom, Mary Morgan, at all about your testimony last night?

A No.

Q How about anybody else?

A No.

Q Okay. And today, you're aware that we do have text messages between yourself, as well as Megan Owens, correct?

A Uh-huh.

Q Those text messages were from around the time of the incident, correct?

A (Nods her head.)

Q We need --

A Yes.

Q -- a verbal. Just for the court reporter, we need a verbal answer?

A Yes.

Q Okay. And you're aware that you and Megan Owens were texting the same day of the incident?

A That's what it said on the papers.

Q Okay. And do you have any reason to disagree?

A I just don't remember it.

Q No, I understand. But you saw it was 7-31-22, correct? On your text messages?

A I saw it on the screenshots that was shown.

Q Okay. And so I guess that brings me to the next question. You -- we gave you an opportunity to review those text messages, correct? This morning?

A Just now.

Q I'm sorry?

A Just now.

Q No, I understand that. But you had time to review those?

A Yes.

Q Okay. And you took the time to review them and go through them?

A Yes.

Q All right. And you're also aware that we have text messages between yourself as well as Lisa Markijohn?

A Yes.

Q Around the time of this incident, correct?

A Yes.

Q Including some on the same day of the incident as well as immediately there after; is that correct?

A I -- I'm not sure. I didn't read the dates

on them.

Q Okay. But we did give you a chance to review those as well?

A Yeah.

Q And we allowed you to take your time to review those?

A Yes.

Q Okay. And you did review those?

A The messages? Yeah.

Q And you reviewed both the messages between you and Lisa Markijohn, right?

A Yes.

Q As well as Ms. Megan Owens, correct?

A Yes.

Q Okay. What did you have for dinner last night?

A I didn't eat yesterday.

Q Okay. Did you watch any movies last night?

A Thanksgiving.

Q That was the name of a movie?

A Yeah.

Q Okay.

A We didn't -- I didn't really pay attention to

it.

Q Do you remember watching any movies three weeks ago?

A No.

Q On a Wednesday?

A No.

Q You don't remember that?

A No.

Q Okay. I guess my point is, and I kind of fell flat a little bit. But I guess my point is, what you do more recently sticks in your memory versus what was done quite a while ago? Would you agree with that?

A Yeah.

Q Okay. You would agree with that statement?

A (Nods her head.)

Q Right?

A Yeah.

Q If you and Megan Owens texted last night about something -- hypothetically, right?

A Right.

Q That would probably be more fresh in your memory than the messages that you just read from 19 months ago, correct?

A Yeah.

Q Okay. You also gave an interview to Detective Vitullo in this incident? Is that correct?

A I don't remember the name.

Q Okay. But you remember going to the police station; is that right?

A Yeah.

Q You --

A We went the same day.

Q I'm sorry?

A The police escorted us to the police station the same day to be interviewed.

Q Okay. And do you remember giving an audio and video recorded statement to a detective? In --

A I don't remember.

Q I'm sorry?

A I don't remember.

Q You don't remember giving an -- any interview to any police officers?

A Well, I know I did that day but I don't remember after.

Q But you remember being at the police station?

A Yeah.

Q Do you remember being in a room?

A Yes.

Q Do you remember people asking you questions?

A Yes.

Q Okay. And you're also aware that we are in possession of an audio recording between yourself as well as members of my law firm, correct?

A I was not aware.

Q But you are aware that we are in possession of that?

A Now I am.

Q Okay. Is it okay if we go through some of those messages and statements that you just --

A Yeah.

Q -- had a chance to review?

A Yeah.

Q Okay. And we started off yesterday with a couple messages between yourself and Megan Owens, correct?

A I believe so. Yes.

Q All right. And just to kind of recap. And I swear it will only be like two or three questions. We covered that you -- that Mr. -- that Daniel Peek got

mad and had you take Little Willy down to the corner, correct?

A Uh-huh.

Q And we covered the fact that your dad called 911 after the incident; is that correct?

A Uh-huh.

Q Okay.

A Yes.

Q Now, you stated yesterday that your dad unloaded his firearm and put it on top of the car, correct?

A Yes.

Q And you stated he did that before he called 911; is that correct?

A Yes.

Q You also stated that the only time you've ever seen your dad pull his weapon was when he got home and he took it out -- as well as the holster -- to put it on the table or a -- what? A dresser or something; is that right?

A Well, there -- there have been other times. But, yeah.

Q I'm sorry?

A I've seen him with his gun several times. But, yeah, that was an example.

Q You've seen him pull his gun out and use it?

A No. But I've seen him with his gun.

Q I understand that. I guess my question is, have you ever seen him pull it out from his waistband other than the day of the incident?

A Yeah.

Q Okay. And was that to put it down somewhere or something? Or --

A Yeah.

Q It wasn't for -- to harm or do any -- to do any bad things, correct?

A No.

Q Okay.

A No.

Q Now, I think where we left off yesterday -- and I thank you for going through that with me a little bit. I think where we left off yesterday was -- that -- and after Daniel Peek died a lot of his friends and family were sitting around saying how great he was, correct?

A Uh-huh.

Q And you felt the need to bite your tongue; is that correct?

A Uh-huh. That's what the message stated. Yes.

Q Okay. And that was your message?

A It had my name on the screenshot, but I do not remember the message.

Q You were the author of that message, correct?

A I do not remember.

Q Okay. And so you're saying -- are you trying to intermate to this Court that somebody else is just acting as you?

A All I'm saying is that I do not remember.

Q Okay. And so an individual with your account wrote that you felt you had to bite your tongue when people were talking about him that way; is that correct?

A I don't know.

Q Okay. And he had threatened your mother, correct?

A He's never threatened my mom.

Q Kaitlynn, we just gave you a chance to review these messages?

A I -- I read them.

Q Okay.

A Danny has never threatened my mom.

Q And so your text message was a lie?

A It had to have been.

Q Okay. And so, again, we covered -- those text messages were done 19 months ago? Right around the date of the incident, right?

A Yes.

Q Correct?

A Yes.

Q When it was fresh in your mind, right? Correct?

A I don't know.

Q When you were living with Daniel Peek?

A Yes. I lived there.

Q And you were living with your mother?

A Yes. And I still do.

Q I understand that. And at that time, you wrote a text message that he had threatened your mom, correct?

A I do not remember writing that.

Q I'm not saying -- I'm not asking you if you

remember writing it. We just let you review it. You saw that you had --

A I had --

Q -- written it, right?

A -- read it.

Q Okay. And you --

A But I'm not confirming that it was me or not because I have no memory of it.

Q I understand. I'm not asking you to confirm that it was you.

A Yeah, you are.

Q You had -- and you wrote that he had threatened your dad, correct?

A They've threatened each other.

Q You wrote that he had threatened your dad, correct?

A I don't remember it. It says it in the paper but I have no memory of it.

Q And so it says in an account with your name on it that Dan has threatened your dad, correct?

A Yes.

Q All right. It doesn't say, dad threatened Dan, right?

A No.

Q Okay. And you said that he had, quote, talked shit about your brother?

A That is on the paper. Yes.

Q Okay. And about you?

A Well, yeah.

Q All right.

A It's on the paper.

Q Okay. Again, this paper that is --

A The screenshot.

Q And again, you're not saying that somebody hacked your account?

A No. All I'm saying --

Q Okay.

A -- is I don't remember --

Q Understood.

A -- them.

Q And I'm not trying to argue with you.

A I know.

Q I'm just -- I'm trying to make things clear for the folks here. Okay?

A I'm aware.

Q And you said that he walked around acting

like he was a badass, right?

A It's what it said.

Q And you said that he acted like he could, quote, beat the shit out of anyone, correct?

A That's what it says. Yes.

Q And so you got a chance throughout the time you were living with him which was almost three years; is that right?

A I'm not sure. I don't know how long I lived with him.

Q How long were him and your mother together?

A I also don't know. I'm not sure.

Q During the time that you did live with him.

A Uh-huh.

Q Again, not totally certain how much time. You had a chance to really witness how this man talked and acted, correct?

A Yes.

Q And you did not think he was a great man at all; is that accurate?

A No.

Q That's not --

A That's not accurate.

Q Okay. Do you remember offering a text message saying that?

A No, I do not.

Q Okay. Do you remember authoring -- do you remember saying that he was hateful?

A No, I do not.

Q That he was mean?

A No, I do not.

Q That he was a racist?

A No, I do not.

Q Would that text message help refresh your recollection?

A I have already read that.

Q Oh. And so you do remember writing that?

A No. I already read it when you had me review your evidence.

Q Okay. And so you do remember that at some point that was written by you?

A Yes.

Q That he was mean, correct?

A But he wasn't.

Q But you wrote that; didn't you?

A I don't remember. I don't know.

Q Okay. It was written that he was mean, correct?

A It was written in the thing.

Q And it was written that he was hateful correct?

A That's what I had read.

Q And it was written that he was a racist, correct?

A That's what I read.

Q And, again, you're not trying to say to the folks -- to the jury today that you didn't write that; Are you?

A All I'm saying is I don't remember it and I don't know.

Q Okay. And so you don't remember that you thought that he was a hateful man?

A I didn't.

Q You don't remember if you thought he was a mean man?

A I didn't.

MR. ANDREWS: Objection. He asked and --

THE COURT: Sustained.

MR. ANDREWS: -- answered. He's asked and answered.

THE COURT: Sustained.

BY MR. HENDERSON:

Q And, so, again, you heard your dad call 911 after the incident; is that correct?

A His phone was connected to his radio and his door was open. And so I heard most of the call.

Q Okay. And so your dad discharged his firearm, correct?

A Yeah.

Q And then after that the first step he took was to call 911, right?

A Yeah.

Q Okay. And you believe that your dad did everything right after the fact, correct?

A At the time I believed so.

Q Okay. You actually at certain times felt guilty and blamed yourself over this situation, right?

A Well, yeah.

Q And is that because you invited him over knowing the state that Dan was in?

A I didn't -- I told him that I wouldn't even

be at the house.

Q You told -- I'm sorry? Say that again.

A The message that I had sent my dad was that I wasn't even at the house.

Q You said, LOL, there's --

A There's a --

Q -- a problem now --

A Yeah.

Q -- right? Doesn't LOL -- what's LOL mean?

A Laugh out loud.

Q Okay. And so does that seem very serious to you?

A No.

Q Okay. There are people from Daniel Peek's family who were blaming you for this incident, correct?

A That wasn't a correct -- that was my assumption.

Q Okay. And so when you wrote this 19 months ago it was your assumption back then?

A That I felt like his family blamed me for my father killing him. Yes.

Q Okay. It's because --

A I felt like they blamed me.

Q It's because you invited your own father over to pick you up, correct?

A I told my dad that I would be down the road.

Q Yes. But you invited your father to come pick you up essentially to go have a family day, right?

A Sure. Yeah.

Q And so as a result of that you felt that Mr. Peek's family was blaming you?

A Yes.

Q And your mom was one of those people?

A I felt like she did.

Q Okay.

A I couldn't --

Q Fair enough.

A I never meant that she does.

Q Fair enough. Just -- just asking. And at one point you were actually scared of people, correct?

A Well, yeah. I was terrified. My dad had just killed a man. I --

Q You were actually scared that there will be retribution, correct? That there will be --

A No.

Q -- revenge?

A I was just scared to exist.

Q Were you scared that there will be repercussions?

A I just said, no.

Q Okay. Let's remember that. Not scared of repercussions. And you believe in your heart that your dad never meant to shoot anyone, correct?

A In the beginning. Yeah. Correct.

Q Okay. In fact, you knew, quote, damn well. Right?

A What?

Q You knew damn well?

A Oh.

Q Right?

A That's what was said in the messages between me and Lisa.

Q Okay.

A Because at the time I truly believed I knew who my father was.

Q And you wished that you would have lied to your dad again and told him you were sick, correct?

A Yeah.

Q Because you had to lie to your dad on

previous occasions, right?

A I didn't have to. But I did.

Q You lied to him so he didn't come over on those days, correct?

A Yeah.

Q Dan's stepdaughter blamed you, right?

A That was never confirmed that she blamed me. It was my assumption that people did.

Q Okay. And so that's why you wrote that?

A I guess so. Yeah.

Q And one of his sons blamed you, correct?

A I -- that was my feeling. Like, my assumption. Nothing was confirmed that he did.

Q And that's why you wrote that as well?

A I guess so. Yeah.

Q And your mom was angry with you, correct?

A Well, she was emotional when I -- sometimes. Not really angry but she'd get frustrated with me. And as I reviewed your evidence I clarified that.

MR. HENDERSON: Your Honor, may I have just a brief moment, please?

THE COURT: Yes.

MR. HENDERSON: Your Honor, at this

point, I would just like to hand -- I don't know how I'm supposed to do it. Do I just hand it to the witness or hand this to the bailiff? Exhibit A.

(WHEREUPON, Defendant's Exhibit A was identified for the record.)

MR. HENDERSON: Megan Owens texts with Kaitlynn.

THE COURT: You could approach.

MR. HENDERSON: And just ask her --

THE COURT: You could approach.

MR. HENDERSON: Well, no. No. I was just saying what has previously been admitted as --

THE COURT: They haven't been admitted; have they?

MR. HENDERSON: Well --

THE BAILIFF: No.

MR. HENDERSON: What was previously -- I'm sorry. Previously marked --

THE COURT: Okay. What are we doing?

MR. HENDERSON: -- as Defense Exhibit A.

THE COURT: And what are we doing with

this?

MR. HENDERSON: Nothing. I was just --

THE COURT: I mean give it to the court reporter then.

THE BAILIFF: What am I doing?

THE COURT: I don't know.

BY MR. HENDERSON:

Q All right. Kaitlynn, we also -- as we discussed before, you had an opportunity -- you had an opportunity to review messages between yourself and Lisa Markijohn; is that accurate?

A Yes.

Q And can you tell me -- can you tell me who Lisa Markijohn is?

A My brother's girlfriend.

Q Are they fiance at this point or no?

A I don't know.

Q Do you talk to them?

A Not really.

Q And you have a niece; is that right?

A Yes.

Q And the niece's name?

A Aries. Aries.

Q Aries. And Aries is what a year or so less than -- in age than Willy?

A I think so. I'm not -- I think she is a year younger than my son. Yes.

Q Okay. And how old is Willy now?

A Four.

Q And so back then he would have been two --

A Two.

Q -- right?

A Yes.

Q And during your discussions with Lisa Markijohn you discussed the fact that your dad was trying to get divorce information from your mother, correct?

A That's what I believed. Yeah.

Q Because at the time your dad was trying to finalize the divorce with your mom, right?

A Well, they never really started one. That's just what I -- my dad had told me.

Q I guess -- but my question is, your dad was trying to contact your mother at one point about getting divorce information, correct?

A Oh, I don't know. I just -- that's just what

my dad told me.

Q Well, okay. But you wrote to Lisa Markijohn that your dad was trying to get divorce information from your mom, correct?

A Because that's what he told me.

Q Okay. And -- but, obviously, if you're trying to get divorce information it's usually to try to start the divorce process, correct?

A To start. Yeah. Probably.

Q Okay. But -- and you were present for this -- the night that your dad called your mom, she didn't answer, correct?

A I think so. Yeah. I don't --

Q And --

A I wasn't paying attention to that.

Q Well, you told Lisa Markijohn that your mom had blocked your father's number, correct?

A I thought so. Yeah.

Q And, in fact, you said this is just another one of my mom's lies, correct?

A I think so.

Q Because the call actually came through, right?

A Well, I don't know his number. And so I didn't know who it was either. I said, let me answer it, it's like a bill collector. And --

Q And you said -- I'm sorry?

A Just --

Q Please.

A No. No.

Q Your dad called, correct?

A Yes.

Q On your mother's phone --

A Yes.

Q -- is that right?

A Yes.

Q You recognized it as your father's number?

A No, I didn't.

Q Okay. You don't know your father's number?

A No, I don't.

Q Okay. And the phone was not answered, correct?

A I don't believe so.

Q Well, you -- okay. And so Daniel Peek actually picked up your mother's phone and called your dad back, correct?

A I think. I don't know.

Q But, again, this is what you wrote, correct?

A And I had read it.

Q I'm sorry?

A And I had read it.

Q Okay. And so you -- you wrote this?

A And I was quoting what my father had told me from their conversation.

Q You don't remember stating that Dan called Danny (sic) back and was threatening Danny?

MR. ANDREWS: Objection. This is hearsay.

THE COURT: Sustained.

BY MR. HENDERSON:

Q You just read these text messages, correct?

A Yes.

Q Okay. And so you don't remember -- are you trying to tell us that you were not there when your father called to try to get divorce information?

A I don't know if that's actually what he called for, and I was in the same house. Yes.

Q Okay. And are you trying to tell us that you don't remember that Daniel picked up the phone and

called your father back?

A I didn't know if he called him back or answered a call. All I saw was him pick up the phone.

Q Who? Daniel?

A Yes.

Q Correct. And he called and he was talking with someone, correct?

A Yeah.

Q Okay. And he was threatening someone, right?

MR. ANDREWS: Objection. That's hearsay.

THE COURT: Sustained.

BY MR. HENDERSON:

Q You heard him getting loud and aggressive on the phone, correct?

A I heard him raise his voice when he was outside on the phone.

Q In the middle of the night you heard him screaming and yelling --

A It was not in the middle of the night.

Q Okay.

A It had gotten dark out.

Q All right. Do you remember that -- with

regards to the incident from what you could see, it was self-defense on behalf of your father, correct?

A I then later said that I didn't see --

Q I'm sorry, Kaitlynn, the question is, at that point?

A At the time, yes, I truly believed that it was.

Q Okay.

A Because I didn't see it.

Q Okay. And you believe that because it was from Daniel Peek beating on your dad, correct?

A I didn't have all of the information from the start. And so from my --

Q And --

A -- perspective I had.

Q And that's why you wrote that, correct?

A Yeah.

Q Okay. We've covered the fact that your dad took the responsibility to call 911 himself, correct?

A There were multiple 911 calls that day.

Q Thank you. Well, we've covered the fact that your dad did as well?

A He was one of them. Yeah.

Q And we've covered the fact that your dad disarmed himself, correct?

A Yes.

Q Your dad stayed on the scene, right?

A Yeah.

Q Didn't flee, correct?

A Correct.

Q Didn't try to dump the firearm?

A Well, no.

Q Didn't try to get rid of that?

A No.

Q Okay. And there was a dash cam in his car?

A Yes.

Q It has a little SD card in it that saves the information, correct?

A Yes. I know what a SD card is.

Q And your dad didn't take that SD card out; did he?

A He didn't really have a chance to.

Q Well, he had a chance to call 911?

A Yeah. He had his phone in his pocket.

Q He had a chance to unload his firearm?

A Yeah.

Q He had a chance to pull the magazine out?
A Yes.
Q Correct? He had a chance to get a bullet out of the chamber, correct?
A He had already fired. Wait. I don't understand.
Q He had a chance --
A Yes.
Q Okay. He had a chance to put all that up on top of the vehicle and so it's out of the way?
A Okay.
Q Right?
A Yes.
Q And so it's nonusable, correct?
A Yes.
Q He had a chance to put his hands in the air and wait for the police officers, correct?
A He didn't do that until officers arrived.
Q Okay.
A Yeah.
Q I'm just saying he had a lot of chances to do a lot of these things, correct?
A I guess so. Yes.

Q It wouldn't take long to just get an SD card out, correct?

A He would have had to have gotten in his car and sat down and reached for it.

Q His car was right there, right?

A Yeah. But he was standing and walking around.

Q Okay.

A But, yeah.

Q Okay. And you noticed that your dad was breathing very heavily, correct?

A Yeah.

Q I'm sorry?

A Yeah.

Q And you were scared that he might actually have another heart attack, right?

A It looked like he was. Yeah.

Q Okay.

A But I didn't --

Q Okay. And Little Willy was with you?

A Yes.

Q And he calls your dad, Papa?

A Yes.

Q And he was asking for Papa, right?

A Yes.

Q Their buddies --

A Well, yeah.

Q -- correct? He spent a lot of time with Little Willy? Didn't he?

A For the most part, yeah. When we lived together.

Q Well, you also went on family retreats on most Sundays, correct?

A Not most. But usually some.

Q My point is him and Little Willy had -- had a wonderful relationship? Would you say that's true?

A Well, he's a toddler. And so, yeah.

Q All right. Are you just going to fight me on every question I ask?

MR. ANDREWS: Objection.

THE COURT: That's sustained.

BY MR. HENDERSON:

Q Him and Willy had a nice relationship --

A And --

Q -- right?

A -- I said, yes.

Q Okay. Thank you. And, in fact, do you know a guy named Shane?

A Shane Carnahan (phonetic), he's friends with me. He's been friends with my dad since I was -- I didn't even exist, honestly.

Q Okay.

A Like an uncle figure.

Q Okay. And you had some contact with Shane around this time; is that right?

A Yeah. He worked midnights. And I was having a hard time sleeping and so I was messaging him.

Q Okay. And so you had contact with Shane around this time?

A Yeah.

Q And you actually felt safer when Shane discussed with you the fact that he could take you over to your brother's house, correct?

A To go hang out. Yeah.

Q Okay. And you felt safer because you were in fear that people would see you get in your car and follow you, correct?

A Yes.

Q Okay.

A I didn't see that in the papers that I was provided.

Q Would you like to?

A No. It's probably like -- no.

Q And so you felt safer because you --

A Yeah.

Q -- were in fear that people would see you get in the car and they would try to follow you, correct?

A What? Yeah.

Q Okay. And you had fear that someone would try to retaliate because they couldn't get to your father. He was in jail. And so you had fear that somebody would try to retaliate against a family member?

A Well, yeah. Because he had someone contact me saying that someone threatened to kill his family.

Q Okay. Any idea who those people might have been?

A John -- Johnny Peek.

Q Who's Johnny?

A Danny's schizophrenic brother who --

Q Okay. And so a family member --

A -- was never actually a threat.

Q And so a family member of Danny's was contacting you and saying --

A He was in jail with my dad.

Q My point is -- my point is, a family member -- why are you looking over at them?

A I saw something moving.

Q Oh, okay. A family member of Daniel's was contacting folks saying that he's going to kill a family member?

A No. He had contacted my dad while in jail together. Per my father's word, and it was relayed to me and my brother.

Q And so your dad obviously cared about you and he didn't want you to get hurt, correct?

A That's how it seemed.

Q You even had a fear of your own son, Willy, playing in your front yard, correct?

A Not of anyone. It was just the neighborhood and the front yard is tight. He's never played in the front yard.

Q Just a bad Neighborhood?

A Yes and no.

Q You sent your dad a photo of you and Willy

because that would make --

A He wanted me to --

Q -- that would make him happy?

(WHEREUPON, the court reporter interrupted the proceedings.)

MR. HENDERSON: I apologize.

BY MR. HENDERSON:

Q Go ahead. I'm sorry.

A He -- at the time, I was worried for my dad and he was pretty emotional. You know, he wanted a picture, and so I wanted to send him a picture of me and his grandson.

Q Well, Lisa had sent him a picture, correct?

A Yeah. She --

Q A current --

A -- had given me the idea.

(WHEREUPON, the court reporter interrupted the proceedings.)

MR. HENDERSON: I'm sorry.

THE WITNESS: I'm sorry.

BY MR. HENDERSON:

Q No. It's okay. Can I just -- if I can just finish my question. That's all.

A Yeah.

Q I know you're nervous. Lisa and Aries, Lisa's daughter were in a picture that they sent to John, correct?

A Yes.

Q While he's in jail to give him -- to give him some peace of mind?

A Yes.

Q Let's say. Okay. And so you wanted to do the same; is that accurate?

A Yeah.

Q Okay. And so you and Willy took that photo and sent it away?

A What?

Q Is that right?

A What?

Q You and Willy took a photo -- a nice photo and sent it to your father, correct?

A I sent it to Lisa and she said I can send it a text message with it. And so I sent it to her so she could send it.

Q Understood. And at one point, you were actually a little disappointed with how the detectives

were pursuing this case, correct?

A Yeah. It seemed like they didn't care.

Q It seemed like they just thought it was an open and shut case, right?

A Yeah.

Q Okay. And you actually -- part of that was actually pressing them about trying to get security footage, correct?

A Yeah.

Q From a neighbor's house?

A Yes. But no one wanted to answer the door to see if there was anything inside.

Q And the detectives came out one time to do that; is that accurate? From what you know?

A I only know of the one time. I don't remember any other time.

Q Okay. And so you don't feel they cared about the investigation --

A That's --

Q -- correct?

A -- how it seemed to me.

Q And you feel like they thought it was just -- it is what it is. Open and shut, right?

A Well, yeah. Pretty much.

Q Okay. It was also hard for you to understand -- you have social media?

A Yeah.

Q Facebook?

A Yeah.

Q I'm presuming others, right?

A I have quite a few. Yeah.

Q Okay. And on Facebook I'm sure you were probably getting --

A I was seeing posts -- is that what you're referring to?

Q I'm sure you were seeing different things about this --

A There --

Q -- correct?

A -- were a lot of things.

Q Okay. Sure. Okay. Fair enough. And it was hard for you to understand how folks on social media --

A Well, no, that --

(WHEREUPON, the court reporter interrupted the proceedings.)

THE WITNESS: I'm sorry.

MR. HENDERSON: I'm sorry.

BY MR. HENDERSON:

Q And, again, just -- it's hard for you to understand how folks on social media couldn't understand how your father was being attacked by two people at once, correct?

A That was my thought at first. Yeah.

Q And so your thought right now is that he was not being attacked by two people?

A My thought right now is, why did he go to the house in the first place if he knew I wasn't there?

Q Because that's what he always did, correct?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q He always picked you up at the house, correct?

A Not always. He --

Q He picked you up at the corner?

A Out in the street.

Q He picked -- okay. And so you didn't --

A He would be somewhat in front of the house in the street.

Q And so your testimony today is he did not pull in the driveway?

A He's never pulled in the driveway to pick me up before.

Q Okay. He came over, many, many, many times to pick you up, correct?

A Not many, many, but a good few.

Q You guys -- you guys did Sunday or Saturday almost every weekend, right?

A Not almost every. Like, most. Like, some weekends it would be two in a row and sometimes it would be weeks in between.

Q Okay. And so there was a lot of times -- many, many times he came over to the house, correct?

A He's always stayed outside. I don't know.

Q But in three years, I'm saying. There's a lot of times he came over to the house to pick you up; is that right?

A Well, it wasn't always him. It was sometimes my brother, Megan.

Q Okay. I understand that. I'm -- and that was nice of them as well, right?

A Right.

Q But my point is there was a lot of times that your dad came over to pick you up, right?

A Sure.

Q Okay.

MR. ANDREWS: Objection. Asked and answered.

MR. HENDERSON: I don't believe it was answered.

THE COURT: She just said, sure.

MR. HENDERSON: Okay.

THE COURT: Move on.

MR. HENDERSON: Thank you.

BY MR. HENDERSON:

Q And so during all of those times, your dad never exited the vehicle?

A He's never left his car.

Q Your dad never went up to the door, correct?

A That would include leaving the car.

Q Agreed. There was times when them people were -- you know, maybe Daniel and your mom, Mary Morgan, were outside on the porch, correct?

A I don't remember.

Q Having barbecues, right?

A I don't remember.

Q Okay.

A I mean.

Q But you do remember there was never a time where John acted inappropriate, correct?

A No.

Q Where John acted aggressive, correct?

A Not in front of me.

Q Where your dad walked out and had words with anyone, right?

A Not to my knowledge.

Q He was there to pick up you and his grandson Willy, right?

A Yeah.

Q And that's what he did and he went on his merry way, right?

A Yes.

Q And then you guys would get whatever meal you're going to cook that day and go over to your brother's house, correct?

A Wait. What?

Q And then after leaving, you guys would go and get some food together and go over to your brothers and

have a barbecue sometimes? And --

A Oh. Well, yeah.

Q Okay.

A We cooked out like one time at my brother's house that I can remember.

Q I'm sorry?

A Nothing.

Q And so I'd like to get back to this -- this social media question that you couldn't understand how others couldn't understand that he was being attacked by two people, correct?

A At the time.

Q Okay. And that they couldn't understand that he's a disabled man, correct?

A At the time.

Q He's not disabled now?

A He is now.

Q Oh, okay.

A He has been my whole life.

Q And couldn't understand how they thought how else is he supposed to protect himself, correct?

A At the time.

Q At the time. At the time when everything was

fresh in your memory, right?

A I -- I can't really answer that. I don't remember. I don't know.

Q You would agree with the fact that he always carried his firearm and never had a problem before?

A There were a lot of times he would go places and it would be in the center console or on his body.

Q Okay. I appreciate that answer. My question was: He always carried his firearm and he never had a problem before, correct?

A To my knowledge, not always.

Q Okay. Not always?

A I'm not sure. I don't know.

Q All right. This isn't -- it's not like this is the only time he's carrying a firearm over to the house to pick you up, correct?

A It is the first time that I knew he had a gun coming to pick me up.

Q Kaitlynn, you're aware that after your dad was involved in a drive-by shooting he carried his weapon all the time, correct?

A I wasn't like a hundred -- that's what I'm trying to say. I'm not a hundred percent sure with

most of which you're asking. I want to say yeah.

Q Well, it's not stuff I'm asking you. It's stuff that you -- it is stuff that --

A Well, I --

Q -- I'm asking you.

A Well, I know.

Q Let me finish. I'm sorry. But it is stuff that you authored, correct? You wrote those things, correct?

A I don't remember. But, yeah.

Q Okay. And so, again, it's not like this was the one time he was carrying it over to their house, correct?

A Sure.

Q Okay. And you felt that your dad didn't even know that he shot him, correct?

A At first. Yeah.

Q And you didn't hear any tire squealing, right?

A I don't remember hearing it.

Q And you would have heard that, correct? Because you were close enough?

A I would think I was probably a couple --

Q You would think --

A -- houses away.

Q -- you would hear that? Is that the answer?

A I don't remember. I want to say.

Q You were close enough to hear squealing tires, correct?

A I don't know.

Q But you didn't hear anything; is that accurate?

A I don't remember if I did or not.

Q Okay. Do you remember writing that?

A I had read it, but I don't remember writing that.

Q Do you remember writing that you would have heard that -- something like that?

A Yeah. No. I don't remember that. But --

Q And you remembered that when your father pulled in it was Daniel Peek who ran off the porch?

A My dad got out of his car and Danny was coming off the porch.

Q Do you remember writing that? Do you remember that when your father pulled in it was Daniel Peek who ran off the porch?

A Well --

Q There's video, right?

A Yeah.

Q Okay. And from what you saw it was not to be friendly, right? Daniel Peek, I mean.

A Well, no.

Q Okay. And, in fact, you said it was to beat your dad?

A That's what's on the screenshot. Yeah.

Q Okay. What else is on the screenshot is Danny's son ran out of the house and started beating on your dad as well, correct?

A Yeah. After he heard a gunshot.

Q Your dad was in jail for about ten days; is that right?

A I have no idea. I didn't really pay attention.

Q You didn't care?

A Right now, no, I don't. But back then, I don't remember.

Q There's actually one person in Daniel Peek's family who spoke out against him, correct?

A There was one person that had said that if

Danny wouldn't have acted invincible he wouldn't have died.

Q Okay.

A And at the time I agreed.

Q Okay. And people from the Peek family shut him up pretty quick; didn't they?

A Not word for word like that. But they argued with him. They didn't agree with him.

Q But, in fact, Kaitlynn, you wanted to go with your dad every Sunday to see your brother and his fiance and your niece, correct?

A No, I didn't want to. But I liked to have --

Q You --

A -- the kids --

Q -- just wrote that?

A Yeah.

Q Okay.

A I have -- I don't remember most of those messages.

Q I --

A And so --

Q I understand that you're saying that but you -- but you do know that. Again, you're not

claiming somebody has hacked you?

A No. I'm just saying I don't remember.

Q And the last couple of months before this, your dad -- I'm sorry, Daniel Peek, had been trying to fight with your dad because your dad wanted a divorce, correct?

A From what I thought.

Q Okay. And so you in turn would make up reasons why you couldn't go over to your dad's, right?

A Sometimes to avoid altercations.

Q You essentially lied to your father; is that correct?

A I lied to him a lot. Yeah.

Q I'm sick?

A I'm always sick. And so that really wasn't a lie.

Q Willy is sick? I can't --

A It's not --

Q -- come over.

A -- really not a lie either. He's sick right now, and so am I.

Q Okay. Many different lies that you made up, correct?

A I've lied to him a lot. Yeah.

Q Okay. And a lot of times you would wait until you were home alone to go with your dad?

A Sometimes. Yeah.

Q And so Daniel Peek was gone?

A Well, everyone was. They'd be at work or something.

Q Fair enough.

A I would let my mom know I was leaving.

Q Okay.

A To be honest with you.

Q And so everyone from your home, it says it here. And so -- but I think -- I think, Kaitlynn, you could see how it's fair to believe that you felt you had to wait until Daniel Peek was gone?

A Reading through the messages, yeah. I understand why it would be. But there's a lot of messages.

Q There's a lot of messages, right?

A Yeah, there was.

Q A lot of writing from you, right?

A From me and Lisa both. Yeah.

Q Well, I'm not asking about Lisa. I'm asking

about you?

A Yes.

Q And, again, I want to get back to that exact Sunday. You were waiting for Daniel to go -- Daniel Peek to go shower?

A I figured while Danny goes to take a shower I'll leave. There wasn't any kind of like --

Q And so you waited until Daniel Peek went to go shower?

A Well, no. When I had woken up, he was already getting ready to go take a shower.

Q And so you don't remember writing that you waited until Daniel Peek was about to shower to text your dad to come over?

A That's not how I meant it. But, yeah, I read that. There's no way I meant it like that.

Q I know.

A I --

Q And so none of these messages you meant?

A Huh? (What?)

Q Is that what you're trying to tell us?

A I don't remember them. I just --

Q Daniel Peek noticed you with a diaper bag?

A Yeah.

Q He got pissed off?

A Yes.

Q Because he knew your dad was coming over?

A Yes.

Q He didn't get pissed off because you had a diaper bag, right?

A Yes.

Q Okay. He knew that meant you were going with your dad, correct?

A Yeah.

Q And so then he went and waited on the porch?

A It also said how -- wait. I had left before Danny had tried to say, to go get picked up at the corner, in those messages.

Q I wished I could answer questions. But I can't. It's not allowed in the rules of evidence. Could you please just answer my question. They're going to have a chance to come up and speak with you afterwards. Okay?

A Uh-huh.

Q Fair enough?

A (Nods her head.)

Q And so once he saw you with the diaper bag and realized your dad was coming over --

A Uh-huh.

Q -- he went and waited on the porch, correct?

A After a little bit, yeah, he was on the porch.

Q And so Dan went and waited on the porch? Yes?

A Yes.

Q Okay. And later -- and, again, you had a chance to read all these?

A I did.

Q Later, your mother was actually -- Mary Morgan, your mother, was actually trying to convince you that didn't happen, correct?

A I don't remember that. But that is what is stated. Yeah.

Q Stated by you?

A Yeah. I guess so.

Q And, in fact, you thought that your mother was trying to make you think that you were crazy that that happened?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q Your mom even tried to make it out like you were lying that he went and waited out on the porch, correct?

MR. ANDREWS: Objection.

THE COURT: Let me see counsel.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

BY MR. HENDERSON:

Q You texted that your mother was even making it out like you were lying about him going out onto the porch, correct?

A I don't remember. But --

Q Do you remember --

A -- that's what it said.

Q I'm sorry?

A That is what it said. Yeah.

Q Okay. And you texted that, at one point, Daniel Peek was staring or glaring at you watching

you get Little Willy's stuff together, correct?
A That's what it said. Yeah. And --
Q Okay.
A -- I don't --
Q And you texted that Daniel Peek started running his mouth to you, correct?
A That is -- yeah.
Q And telling you, you better get your ass down the street, correct?
A Uh-huh.
Q Your mom let him talk to you that way?
A Well, no.
Q What do you mean no?
A She didn't, like, just let him. He didn't really -- he didn't talk like that all the time. he wasn't really like that with me at all, really.
Q And so it was just certain times when he made you grab all -- the diaper bag, and the booster seat, and a two year old in the summer heat and walk down to a corner of a shitty neighborhood? Not all the time but just that time?
A I was already holding my things.
Q And that's why he got mad, right?

A Yeah. He got upset with it. Yeah. Because --

Q And it wasn't because you were holding your things, correct?

A No.

Q It was because your dad was coming over?

A Yes.

Q Okay. And that's exactly why he went out and waited on the porch is what you texted? Correct?

A (Nods her head.)

Q Right?

A Yes.

Q And your mom said nothing about this, correct?

A I -- I don't know what?

Q She didn't say Dan --

MR. ANDREWS: Objection, hearsay.

THE COURT: Sustained.

MR. HENDERSON: It's not hearsay.

BY MR. HENDERSON:

Q Hypothetically, your mother could have said, Dan, act like an adult. Come on. He's just coming to pick her up. He's done this a ton of times before

just let her get in the car, right?

A I don't know. I was already walking away.

Q Hypothetically, she could have said that, correct?

A I guess so.

Q Okay. And she didn't?

MR. ANDREWS: Objection.

THE WITNESS: Not that I know of.

THE COURT: Overruled.

BY MR. HENDERSON:

Q And you're getting ready, and you're beginning to walk and you texted Daniel Peek who was on the porch with his pit bull, correct?

A Oh. He was -- when I looked back I saw him on the porch with the dog. Yeah.

Q Okay.

A We had built a gate on the porch not that long ago.

Q Understood. And so Daniel Peek is on the porch, waiting outside, knowing that your dad is coming over, with his pit bull, correct?

A Sure.

Q And at one point you texted that you wanted

to let the detectives know that your mom's story from that day kept changing, correct?

A That is what it said. Yeah.

Q And, in fact, you texted that you were actually at one point trying to record her, correct?

A Uh-huh.

Q But that you didn't want her to catch you, right?

A Well, yeah. I had been convinced that my mom was lying to me. I --

Q Okay. You even went so far -- you texted that you even went so far as to try to find applications that wouldn't play back right away, correct?

A Apps. Yeah. But --

Q Apps.

A -- it's stated.

Q I'm sorry. Apps.

A Yeah. Apps.

Q Okay. And, in fact, you texted that he actually got off the porch and was pacing up and down the street with the dog, correct?

A Yeah. At one point, I saw him walking with

the dog. Yeah.

Q Okay. While your dad is --

A As it is stated.

Q While your dad is on his way over?

A After I already told my dad that I'd be down the street.

Q While your dad is on his way over you texted that Daniel Peek is out there walking his pit bull up and down the street, correct?

A This is to Lisa?

Q Yes.

A I didn't see that anywhere when I read through it.

Q Would you like to see it?

A Yes.

Q Okay.

MR. HENDERSON: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. HENDERSON: Thank you. Okay. Your Honor, may I approach?

THE COURT: I said yes.

MR. HENDERSON: Okay. Thank you.

BY MR. HENDERSON:

Q Kaitlynn, can I just have you -- I'm just going to have you -- don't -- don't read it out loud. Just read it to --

A Oh, okay. Oh, yeah. I -- I'm sorry.

Q It's okay. No problem. Do you want to --

A I did --.

Q -- talk about now?

A -- skip. Yes. I'm sorry.

Q All right. And so you did text that he was walking up and down the street with the pit bull, correct?

A That's what's stated. Yeah.

Q And you felt like he was doing that to intimidate your father, correct?

A It's what I thought. Yeah.

Q Okay. And you texted that you told the detectives this, right?

A I don't know. Well, I did -- I'm sorry. Yeah.

Q And you texted that you believed the only person intending to hurt anyone that day was Daniel Peek, correct?

A At that time. Yeah.

Q Do you know if Daniel Peek's phone was taken into evidence?

A Oh, I have no idea.

Q Was yours?

A No.

Q Was Mary's? Your mother's?

A No. I don't know.

Q How about Dan Peek, Jr.'s?

A I don't know.

Q Well, I'm going to have to say that's not necessarily true, right? Because you texted --

A Yeah. It's stated.

Q You texted that on the day of the incident your mother, Mary Morgan, took Daniel Peek's phone, correct?

A That's what is stated. Yeah.

Q Uh-huh.

A But I don't remember that.

Q And that was before the police -- any police arrived, correct?

A In the messages? No that's after.

Q What's after?

A Those are from August. I was talking about stuff that was going on way after.

Q No. No. But you were talking about the date in question, the date of the incident, correct?

A Well, yeah. But not just that whole time.

Q I mean, excuse me. I guess my point is, you could -- you could text something on August 2nd about July 31st --

A Well --

Q -- correct?

A -- yes.

Q Okay. And so I guess my point is your mom had taken Daniel Peek's phone before the police arrived, correct?

A I don't know.

Q Do you remember texting that you told the detectives that your mom and dad fought a lot over your dad?

A Wait. Who fought?

Q I'm sorry.

A Oh.

Q Do you remember --

A I thought you said mom and dad.

Q I misspoke.

A I'm sorry.

Q My apologies. Kaitlynn, I misspoke.

A Yeah. Yeah --

Q My apologies.

A -- I read it.

(WHEREUPON, the court reporter interrupted the proceedings.)

THE WITNESS: I'm sorry.

MR. HENDERSON: I misspoke, actually. My apologies.

BY MR. HENDERSON:

Q You texted that you tried to tell the detectives that your mom and Daniel Peek fought a lot over your dad, correct?

A That's what I thought.

Q And on the date of the incident the police told you -- you texted that the police said they had all they need and then they sent you on your way, right?

A I can't remember what that was about. But, yeah, that is what is stated. I think that's when they wanted the screenshot that was already up here.

Q Okay. And you actually texted that you started to panic when you realized your mom had Daniel Peek's phone and not the detectives, correct?

A That's because I didn't --

Q No. No. No.

A Yeah, that is what is stated.

Q Okay. And you started to panic -- you texted, because you knew your mom would delete messages that may help your father, correct?

A Correct.

Q And, in fact, you actually tried to tell the detectives that day about Daniel Peek's behavior before that? Before the incident, correct?

A Uh-huh.

Q But you texted that you were able to see the detectives only started to write anything down --

A About the day. Yes.

Q -- when you started talking about that specific day, correct?

A Yes.

Q Does that indicate that they didn't care of anything about before the incident?

A I don't know --

Q You just saw they started --

A -- what that was.

Q -- to actually take notes when you talked about only that day --

A Yeah.

Q -- correct? In fact, you texted that the morning after the incident the detective said this is a cut-and-dried case, right?

A Yeah.

Q Okay. In fact, they never found a second shell casing; did they?

A Is that in the paper?

Q I'm sorry?

A Is that in the papers? The screenshots?

Q No. I'm asking you if that --

A I have no idea.

Q Well, you actually went out and looked for the second shell casing for them; didn't you?

A Well, no, I was outside with them when they were at the house. Wait. Yeah, I was outside with the detectives while they were at the house and I was looking around in the driveway where I thought it would be.

Q But you texted that they told you to call them if you found it?

A Oh, yeah. That I --

Q And you texted that you tried looking for it for them, correct?

A That's stated. Yes.

Q And so you are doing their job for them?

A I don't know.

Q You're doing their job?

MR. ANDREWS: Objection.

THE COURT: Sustained.

THE WITNESS: Is this some --

THE COURT: Just hold on. Wait until he asks you a question.

THE WITNESS: I'm sorry.

BY MR. HENDERSON:

Q And you texted that at one point you decided that you were going to try to record things at the house and send them to detectives, correct?

A That's stated.

Q And you texted that after the incident you even felt like you had to, quote, sneak around the house to just try to find the detectives numbers to

give them information, correct?

A Well, yeah. That's --

Q Okay. And you texted that you felt you had to sneak around to not raise suspicions from anyone else at the house, correct?

A It's stated. Yes.

Q Including your own mother, correct?

A Uh-huh.

Q And you also texted that your dad actually picked you up a handful of times after that infamous phone call in June, correct?

A Uh-huh.

Q And that the big issue like this never arose until the day of the incident, correct?

A Uh-huh.

Q You texted that you couldn't figure out why, if it was that phone call six weeks earlier. An issue didn't happen before when he came over, correct?

A That's what's stated. Yes.

Q Daniel Peek was drunk when he called your father back, correct?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q Did Mr. Peek drink a lot?

MR. ANDREWS: Objection.

THE COURT: Rephrase your question.

BY MR. HENDERSON:

Q Was Mr. Peek an alcoholic?

MR. ANDREWS: Objection.

THE COURT: She doesn't know. If she knows.

MR. HENDERSON: She lived with him.

BY MR. HENDERSON:

Q You lived with him Mr. Peek?

THE COURT: You can't diagnose an alcoholic.

MR. HENDERSON: I'm sorry?

THE COURT: An alcoholic has to admit to themselves that they're alcoholic. You can't be diagnosed.

MR. HENDERSON: Okay. Okay.

BY MR. HENDERSON:

Q My first question was, did Mr. Peek drink a lot of alcohol? Did he drink alcohol a lot?

A Usually on weekends or occasions.

Q Okay. And you texted that you considered Daniel Peek in quotes, a jealous fuck, correct?

A That's what is stated. Yeah.

Q And you texted that you even tried to talk to him about it. Sort of in a therapeutic way, right?

A That's stated. And I kind of remember a conversation with Danny, you know.

Q But that he wouldn't listen to you?

A That's stated.

Q Right?

A Yeah.

Q And you texted that you actually tried talking to your mom about it as well, correct?

A It's stated.

Q Right?

A It's stated. Yeah.

Q And you texted that you thought your mom should have stood up for herself, correct?

A It's stated. Yes.

Q You texted that you couldn't understand why he was taking her phone and calling back random numbers, correct?

A Yes.

Q And you texted that when you tried to say some of this stuff to your mom it just pissed her off, right?

A That is stated. Yeah.

Q And you texted that you felt that she was blaming you for the day of the incident for even inviting your dad over, correct?

A Uh-huh.

Q To even have the gall to invite your dad over to go on a family day, right?

A That is stated in the text. Yes. In that text.

Q And you texted that you asked your mom if she would be willing to speak with John's previous lawyers and she just looked at you and gave you dirty looks, correct?

A Yes. That is stated. Yes.

Q Okay. And you texted that this whole situation is giving you a lot of depression and anxiety, correct?

A Well, I -- I have been -- like, my whole life -- to a lot of different counseling. And so --

Q You --

A -- but it has been really bad since the events. Yes.

Q Okay. I -- we don't -- I'm not trying to get into all that? I'm just saying --

A Well --

Q -- the day of the incident.

A Yes.

Q It gave you a lot of depression and --

A Yes.

Q -- anxiety for all that to happen? Which I think is understandable --

A Yes.

Q -- right? We covered the fact that you texted that you would go over to your brothers on the weekends quite a bit with your dad --

A Yeah.

Q -- correct? We covered that, right?

A Yeah.

Q We covered the fact that you texted that, after a while you had to make up reasons why you couldn't go with your dad's, correct?

A Well, yeah. We've gone over some many times.

Q All right. We covered the fact that this was

actually -- this was to prevent your dad from coming to the house, correct?

MR. ANDREWS: Objection, Your Honor. These questions -- these matters have been covered. We don't need to do it again.

THE COURT: I don't think the jury needs to hear everything twice.

MR. HENDERSON: I'm sorry, Judge?

THE COURT: I don't think the jury needs to hear everything twice. The objection is sustained.

MR. HENDERSON: Yeah. I wasn't -- I just wasn't sure. That's why I was asking. Okay.

THE COURT: I don't think it's for the witness to tell you what you've asked her. And so move on.

MR. HENDERSON: Point taken, Judge.

BY MR. HENDERSON:

Q And you -- your mother knew obviously about your dad's health conditions, correct?

A Well, yeah.

Q And Daniel Peek knew about your dad's health

conditions, right?

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. HENDERSON: Your Honor, could we have a sidebar?

THE COURT: Sure.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

BY MR. HENDERSON:

Q All right. Do you know if Danny Peek knew about your dad's health conditions?

A I'm not a hundred percent sure but I believe so.

Q One more time.

A I'm not a hundred percent sure.

Q Okay. And you actually stated that you could even from where you were -- here (indicating), you could hear Daniel Peek hitting your dad, correct?

A I remember saying that. Yeah.

Q Okay.

A I don't remember it. But I remember that was the initial. Yes.

Q Like fist on flesh?

A Like the hitting sounds.

Q Okay.

A Yes.

Q Okay. And you actually stated that mom started cheating on dad with Danny, correct?

MR. ANDREWS: Objection.

THE COURT: Rephrase your question.

BY MR. HENDERSON:

Q Your mother started -- you were aware that your mother started cheating on your father with Danny, correct?

MR. ANDREWS: Objection as to relevance, Your Honor.

THE COURT: Sustained.

MR. HENDERSON: Your Honor, if I could just have a moment? I may --

THE COURT: Of course.

MR. HENDERSON: I may actually be able to wrap this up?

THE COURT: Sure.

MR. HENDERSON: Judge, just a few more questions, if I may?

THE COURT: Sure.

BY MR. HENDERSON:

Q How old are you, Kaitlynn?

A Huh? (What?)

Q How old are you?

A Twenty-three.

Q Twenty-three?

A Yes.

Q How old were you when you met Danny Peek?

A I don't know.

Q I'm not going to hold you to an exact date. 20? 19?

A I don't know.

Q Were you over the age of 18?

A Yeah.

Q Okay. Are you currently staying with your mom?

A Yes.

Q Don't have a job?

A No.

Q Don't have a driver's license?

A No.

Q You rely on your mom for food and shelter?

A Not food but shelter. Yeah.

Q Okay. And you are relying on your mom for other basic needs other than just shelter; is that accurate?

A Yeah.

Q Okay. As well as many of your son's basic needs; is that accurate?

MR. ANDREWS: Objection. As to relevancy.

THE COURT: Sustained.

MR. HENDERSON: Judge, could --

THE COURT: Well, ask the question then.

BY MR. HENDERSON:

Q As well as many of your son's basic needs, correct?

MR. ANDREWS: Objection.

THE COURT: Let me see counsel.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as

follows:)

BY MR. HENDERSON:

Q And so, Kaitylynn you rely on your mom for a lot of things?

A Yes.

Q You rely on your mom for a lot of things?

A Yes.

Q Correct? That would be accurate to say?

A Yeah. I already answered that.

Q Okay. You would agree that peer groups are very important to individuals your age?

A To what? I'm sorry?

Q Peer groups? Friends?

A Peers? Oh, yeah.

Q You are actually dating one of the Peeks'; Is that correct?

A No. He was a Hellman.

Q And so -- but he's --

A Well, he's -- yeah. He was in the family.

Q Okay. Are you aware that during -- remember when we talked about the interview that you gave when you were in the room with the police department?

A Wait. What? Oh, yeah. No.

Q Okay. Are you aware that during that time you called him Danny 16 times?

A Well, yeah. I referred to his name.

Q Okay. Are you aware that during the text messages with Megan you called Megan -- or I'm sorry. You called him Danny eleven times?

A Yeah. That's his name.

Q During those texts?

A Yeah.

Q Okay. Are you aware with the text messages with Lisa you called him Danny 33 times; is that --

A That --

Q -- correct?

A Yeah.

Q Are you aware that the first time you ever called him stepfather was yesterday in court in front of these folks?

A Well, I called him my stepdad a lot actually. That is what I was introduced.

Q You didn't in any text messages, right?

A Well, no. Because they knew who he was. I don't -- I don't know.

Q You didn't in any text messages?

A Uh-huh.

Q You didn't do it in an interview with the detectives, correct? Right?

A Yeah.

Q And so are you aware that for the first time anybody in this situation has heard you call him stepdad was yesterday on the stand and when -- while his family is here?

A I --

Q Are you aware of that?

A Sure.

MR. HENDERSON: Okay. Just a moment, Your Honor?

THE COURT: Yes.

THE WITNESS: I don't know what he's asking me. What the fuck.

MR. HENDERSON: No further questions. Thank you.

THE COURT: Thank you. Redirect?

MR. FENING: Yes, Your Honor.

THE COURT: Go ahead.

MR. FENING: Okay. Thank you.

REDIRECT EXAMINATION

BY MR. FENING:

Q Kaitlynn, when you were -- one thing in the interview with the police.

A Uh-huh.

Q How long after the incident was that?

A I'm sorry?

Q When you went down to the Detective Bureau and had an interview with the police. How long --

A About the day?

Q Yes.

A That was the same day. It was after he had been taken. Or after my dad was taken into the -- arrested. I'm sorry.

Q That's okay. And so it was -- but that --

A The same day.

Q -- was right after --

A Yes. I'm sorry.

Q I'm sorry. You had a chance to review the defense exhibits?

A Yeah.

Q Were these conversations taken place after you had given the interview to the detectives?

A Yes.
Q Okay. To a lot of defense's question your answer was, that is stated?
A Yeah.
Q Can you just -- can you explain what you mean by that?
A Well, that's what's in the papers. I don't really remember those conversations.
Q Okay. What were you feeling at the time, right when this incident happened?
A I don't really remember. Fear, shock, stress. I don't --
Q And the days after, what kind of emotions were you feeling?
A Confused, stressed.
Q Did you have a lot of people reaching out to you?
A Yeah. I think so.
Q I --
A I'm sorry. There were a few that I could remember and they were friends from online.
Q Okay.
A Yeah.

Q Okay. Towards the end of your cross examination there was a mention of somebody that you were dating?

A Yeah. Ronnie.

Q All right. Who is Ronnie?

A Danny's cousin is Ronnie's mom.

Q Okay. When did you start dating Ronnie?

A Ah.

Q I don't need --

A Ooh.

Q -- an exact date. I mean --

A It wasn't --

Q -- relative to --

A -- that long.

Q -- when this --

A -- after that I -- I can't really remember. But we were together for a year.

Q Okay.

A We had --

Q Not that long after what?

MR. HENDERSON: Objection.

THE COURT: Overruled.

THE WITNESS: It wasn't -- it was a

few months after Danny was killed. It --

BY MR. FENING:

Q Okay. And so you started dating a member of --

A He --

Q -- the Peek family after --

A Well, yeah.

Q -- Danny Peek was killed?

A (Nods her head.)

Q What's your relationship like with Danny's family? That might seem redundant. I'm sorry but --

A Not bad. I don't -- I love that they are -- they have taken me and my mom in as their family. There wasn't -- I'm not sure how to answer that. I'm sorry.

Q You were asked a question about having to bite your tongue around Danny's family?

A Yeah.

Q Why did you feel that you had to do that?

A I'm not sure. I don't remember. I had -- I don't remember.

Q Did you feel like you were stuck in the middle in this situation?

A Well, yeah. I said that a lot throughout this whole thing. But at -- at the time I don't remember that.

Q Okay. Was it an easy situation to deal with being caught between two families?

A No.

Q You were asked quite a bit about text messages?

A Oh, yeah.

Q That you had a chance to review today. The Defendant's Exhibit A, is with Megan Owens. And Defendant's Exhibit B is with --

A Lisa.

Q -- Lisa Markijohn.

(WHEREUPON, Defendant's Exhibit No. B was identified for the record.)

BY MR. FENING:

Q I'm not sure if this was covered. Who are Megan and Lisa?

A Megan is my dad's girlfriend and Lisa is my brother's girlfriend. They are on my dad's side.

Q Okay. And so they are both on your --

A Well --

Q -- dad's side of the --

A Yeah.

(WHEREUPON, the court reporter interrupted the proceedings.)

THE WITNESS: I'm sorry.

MR. FENING: I'm sorry.

BY MR. FENING:

Q Both Lisa and Megan are -- for lack of a better word -- on your dad's side?

A Yes.

MR. HENDERSON: Objection.

THE COURT: Overruled.

BY MR. FENING:

Q Were you feeling pressured in these conversations to pick a side?

MR. HENDERSON: Asked and answered.

THE COURT: Overruled.

THE WITNESS: While I was reading through them, I don't remember for the -- the first half of those pages I had flipped through I don't remember those. But as I got towards the end, I do remember a few. And, yeah, I did.

MR. FENING: Kaitlynn, I'm going to hand you what's been marked as Defendant's Exhibit B. We are on page 36.

THE COURT: This is?

BY MR. FENING:

Q This is the conversation between Lisa and Kaitlynn. There is an incoming text, larger block. Could you read that for the jury?

A The blue one?

Q Yes.

A Okay.

MR. HENDERSON: Objection.

THE COURT: Overruled.

THE WITNESS: Please do. We need your help.

MR. HENDERSON: Objection. Your Honor, this is hearsay. Can we approach, Your Honor?

THE COURT: She wrote it. Did she write it?

MR. FENING: This is what she received, Your Honor.

THE COURT: Oh. Then she can't.

THE WITNESS: Oh.

THE COURT: It's sustained.

MR. HENDERSON: Your Honor, can we approach?

THE COURT: Yes.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

MR. FENING: Should I continue on, Your Honor?

THE COURT: Yes.

THE WITNESS: I closed it. What page?

BY MR. FENING:

Q It's on page 36.

A Reading the blue?

Q Yes.

A It says, please do. We need your help so he -- and so -- you could see your dad on the other side of the glass one day. If we're not able to get this dropped it is very likely your dad will spend the rest of his life in jail and will die in there. And

I'm sorry I have to say that but it's important that we do what we can to get the charges dropped to manslaughter at least.

Q Okay. Again, who said that?

A My brother's girlfriend, Lisa.

Q Lisa?

A Yeah. Lisa.

Q Okay. Can I have that back, please. There was also -- on cross examination you were asked about referring to Danny as a, quote, jealous fuck. Do you recall if that is what you said? Or was that said to you?

A I don't remember. I -- point me there.

Q Is that a conversation --

A I'm sorry.

Q -- between you and Lisa on page 38?

MR. HENDERSON: Objection.

THE COURT: Overruled.

MR. FENING: I guess that --

THE WITNESS: Oh.

THE COURT: Let her refresh her memory.

THE WITNESS: Oh. That's Lisa saying that.

BY MR. FENING:

Q Thank you.

A I thought I said it.

Q Quite a few times on cross examination you would answer a question and then say at the time. Would you like to clarify what you mean by when you say at the time?

A I don't agree with however I felt at the time now. And I'm sorry.

Q Continue.

A From the messages it sounded like I truly believed in my dad and believed what he would tell me.

Q Are you scared of any repercussions from the Peek family in this matter?

A No.

Q Are you scared of any repercussions from your mom?

A No.

Q Are you scared of repercussions from anybody involved in this case?

A At this point. No.

Q There are some messages in here that indicate that Danny may have threatened your dad?

A Uh-huh.
Q Or did on the day of this incident, that there may have been -- that Danny was angry and threatening. Did you convey any of those threats to your dad?
A No.
Q What did you tell your dad that day?
A That -- wait.
Q On the day --
A Oh, yeah.
Q -- that Danny was killed, what did you say to your dad?
A I had messaged that I wouldn't be at the house, basically. It was -- is it still here? Yes.
Q Just if you remember what --
A I can't remember.
Q -- it doesn't have to be the exact wording. Just in general, what you said to your dad?
A Just that, LOL, now there's a problem. And so I'm walking down the street -- the road with William --
Q Okay.
A -- Willy.

Q And that -- you didn't elaborate on that at all; did you?

A What?

Q All you said to him --

A No.

Q -- was --

A I just said I was going down the street.

(WHEREUPON, the court reporter interrupted the proceedings.)

THE WITNESS: I'm sorry.

MR. FENING: I'm sorry.

BY MR. FENING:

Q Why did you -- why did you want to go to the end of the street?

A I figured Danny was mad, why make it worse.

Q Were you trying to win anything?

A I just didn't want them to fight.

Q Okay. And what was your dad's response to saying you were going to the corner?

A Well, I didn't see it until like way later. It said I'm going to house. Wait there.

MR. FENING: No further questions.

THE COURT: Any redirect or recross?

RECROSS EXAMINATION

BY MR. HENDERSON:

Q You were just asked on redirect examination whether or not if there was any repercussions that you felt were from your mom, correct?

A Yes.

Q And you were just asked on redirect whether or not you felt that if there was any repercussions from the Peek family, correct?

A Uh-huh.

Q Do you remember sitting down and talking with me, talking with my partner, Justin Weatherly --

A Uh-huh.

Q -- do you remember that? Do you remember that?

A Vaguely. But, yes.

Q Okay. And so just to make clear. I want to make this a hundred percent crystal clear. You did not feel any repercussions at all from mom?

A No, I didn't.

Q You've already said you lied?

A And I lied to you guys --

Q Sometimes.

A -- too. Yeah.
Q You lied to us, too?
A Well, yeah. You threatened to subpoena me. I'm sorry.
Q And so I -- that's so not true. I can't answer that. And so you lied? You're saying that you lied to everybody here?
A To your side. Yeah.
Q Okay. And so you lied to us?
A Yeah. Why wouldn't I?
Q You lied to your mother? Right? Correct?
A In the beginning. Yeah.
Q You lied to your father, correct?
A Pretty much my whole life. Yeah.
Q Okay. Who else have you lied to?
A I don't know.
Q You lied to folks in the jury? I mean I caught you in lies yesterday; didn't I?
THE COURT: Rephrase that.
BY MR. HENDERSON:
Q You stood and you came in here yesterday and held your hand up; didn't you?
A To take an oath. Yes.

Q And that oath was to tell the truth, right?
A Yes.
Q And then I had to confront you with things that you had lied about on the stand; didn't I? Do you remember yesterday?
A I remember saying I don't know, and I don't think so to pretty much everything that you asked me.
Q Okay. But there was also lies that I caught you in, correct?

MR. FENING: Objection, Your Honor.

THE WITNESS: I don't know --

MR. HENDERSON: Okay.

THE WITNESS: -- what?

THE COURT: Sustained.

MR. HENDERSON: Judge, could we just play a brief portion --

THE COURT: No.

MR. HENDERSON: -- of the audio recording.

THE COURT: No.

MR. HENDERSON: I'm sorry?

THE COURT: No.

MR. HENDERSON: Sidebar please.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: Ladies and gentlemen, at this time we are going to break for lunch.

Please do not discuss this case amongst yourselves or with anyone else. Please don't permit anyone to discuss it with you or in your presence. Please do not form any opinions on this matter until it's given to you for your deliberations.

The Court will reconvene in approximately one hour. Thank you.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom:)

THE BAILIFF: This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, the Court recessed for lunch at 12:00 p.m., February 23rd, 2024, and reopened at 1:27 p.m., February 23rd, 2024,

and the proceedings continued as follows:)

THE BAILIFF: All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: You may continue.

MR. HENDERSON: Are you ready, Judge?

THE COURT: Yes. Go ahead.

BY MR. HENDERSON:

Q All right. Kaitlynn, how are you? Just a couple more questions. All right?

A (Nods her head.)

Q Do you remember meeting with us? Myself, as well as Justin Weatherly? Correct?

A Yeah.

Q Okay. And do you remember that was roughly around March 28th of 2023?

A Yeah. I don't remember when that was.

Q Okay. And do you remember us discussing

questions with regards to whether or not you were afraid of repercussions from your mother?

A Oh, yeah, I remember that.

Q Okay. And do you remember detailing the fact, that you were not only afraid of repercussions from your mother but you were also afraid of repercussions from all of Danny's family members.

A That's not how I meant it.

Q Okay.

A I'm not -- I don't remember. But, like, I'm talking to myself now. I'm sorry.

Q Would it refresh your recollection if I showed you a transcript of that?

A No, you don't have to. But --

Q Okay. And so when you were asked a question of, are you afraid of repercussions from your mother? Do you remember stating I'm afraid of repercussions from more than just my mom?

A I don't remember. But --

Q Okay. Would it help if I showed you a transcript of that? In order, to help you refresh your recollection?

A No. It's just written on the paper in front

of you.

Q I'm sorry?

A It's written on the paper in front of you and you are reading off of it. And so just --

Q And so you are agreeing, that is your answer?

A Sure.

Q Okay. And do you remember being asked the question who else are you afraid of repercussions?

A No. I don't remember like the conversation. But like --

Q Okay. Again, would it help if I approached you and showed you?

A No.

Q Do you remember the answer to that question being, yes, all of Danny's family?

A I don't.

Q Again, would it help if I approached you and allowed you to read it to refresh your recollection?

A No.

Q You made -- at one point during, I think, it was redirect you accused my business partner of saying that you were going to go to jail if we subpoenaed you. And you --

A That's not what I said earlier.
Q Okay. Can you clarify for me?
A I said, he threatened me, and I didn't say it was him specifically.
Q Okay. And so who -- who threatened you?
A It was him and you were there.
Q Okay. Okay. And so do you remember being asked a question -- do you remember being asked the question, what if I told -- what if you told them that if you get a subpoena from us, the Court is going to tell you, you don't have a choice, there's nothing you can do about it unless you want to go to jail. Would that help you?
A The tone was not that kind.
Q You don't remember anything else? But you remember --
A I remember being threatened with a subpoena by you guys telling me I'd go to jail if I didn't testify on my father's behalf.
Q Kaitlynn, did you receive a subpoena from us?
A No.
Q Okay. Did you receive --
A Because my dad promised me --

THE COURT: Hold on. Finish your answer.

BY MR. HENDERSON:

Q Did you receive a subpoena from us?

A No.

Q Okay. Did you receive a subpoena from the prosecutors?

A I did.

Q Okay. And that's why you're here today?

A Yeah.

Q And so you don't remember my partner saying would that help you -- in indicating would that help to explain it to your friends and to other people? Do you remember that?

A No. I remember being threatened at my dad's house.

Q Okay. And so, again, since you don't remember would you mind if I approach you and refresh your recollection with the actual transcript?

A No. It's just -- it's stuff on the paper.

Q All right. Kaitlynn, you're actually still communicating, calling, texting daily with your father up until Tuesday when this trial began; is that

correct?

A There was a period where I had stopped contact with him for about a month. And then it started again. Yeah, I've been talking to him.

Q Okay. And so you were talking with your father daily through text and/or FaceTime and/or calls?

A Well, no.

Q Up until Tuesday when this trial started?

A Just messenger.

Q Okay. And so you were contacting him in some form of contact?

A Yes.

Q Whether it be text messages?

A Yes.

Q Okay.

A It's Facebook messenger.

Q Up until Tuesday when this trial started; is that correct?

A And I stopped answering him.

Q Including, telling him, Daddy, I love you. Is that correct?

A Yeah. I told my dad I loved him all the time.

Q Okay.

MR. HENDERSON: Thank you. No further questions.

THE COURT: Any redirect?

MR. FENING: Briefly.

* * * * *

FURTHER REDIRECT EXAMINATION

BY MR. FENING:

Q Kaitlynn, Attorney Henderson just went over a meeting that you had with him and his team on -- in March of '23. And so just short of a year ago. At that time, you indicated that you were fearful of repercussions. As you sit here today, February of '24, are you afraid of repercussions from anyone in this case?

A No.

Q Okay.

A That's what I meant earlier. I got confused. I thought he meant what we talked about before break.

Q Okay.

A Because he had mentioned it. And so I thought he meant right now.

Q Okay. And when you first started testifying when you first got up onto the stand --

A Uh-huh.

Q -- the Judge swore you in and had you take an oath?

A Uh-huh.

Q Have you testified truthfully today and

yesterday?

A Yeah.

Q Okay.

MR. FENING: Thank you.

THE COURT: Anything further from the Defense?

MR. HENDERSON: I just have one thing.

* * * * *

FURTHER RECROSS EXAMINATION

BY MR. HENDERSON:

Q Kaitlynn, you just testified before that you lied throughout this trial, right?

A No. That's not --

Q Is --

A -- what I said earlier.

MR. ANDREWS: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I'm sorry.

MR. HENDERSON: Thank you.

THE COURT: Anything else?

MR. FENING: Nothing further, Your Honor. Thank you.

THE COURT: You may step down. Thank you.

THE WITNESS: Sure.

THE COURT: You may call your next witness.

MR. FENING: The State calls Officer David Hilliard.

THE COURT: Please raise your right hand.

WHEREUPON, the STATE called

OFFICER DAVID HILLIARD,

who, being first duly sworn, testified as follows:

THE WITNESS: Yes.

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. FENING:

Q Good afternoon, sir?

A Hi.

Q Pull that mic up close to you so you could speak loudly please. Could you state your name and spell your last name for the record.

A David Hilliard, H-I-L-L-I-A-R-D.

Q Okay. Where do you work?

A For the City of Youngstown, Youngstown Police Department.

Q What's your position with them?

A I'm an officer.

Q How long have you been with the Youngstown

Police Department?

A Just almost seven years now.

Q All right. Prior to working with the YPD, have you worked anywhere else?

A I have. I worked for the Village of Lisbon from 2005 to 2018.

Q And so overall then, how long have you been a police officer?

A Almost 20 years.

Q All right. What type of training did you -- and education did you get prior to becoming an officer?

A Well, you had to go through the basic OPOTA training that is required for any officer to become a police officer.

Q What is OPOTA?

A It's the Ohio Basic Police Academy Training.

Q Okay. Do you need to go through any continuing education?

A Every year we get continuing education that is provided to us that's put out from the Attorney General's Office that we have to do.

Q Okay. Take you back to July 31st of 2022. On that date were you working as a Youngstown Police

Department officer?

A Yes.

Q Okay. Do you recall being dispatched to an incident at 1417 East Florida Avenue?

A Yes.

Q Okay. Is the -- is that address located in Mahoning County?

A Yes, it is.

Q All right. Do you recall what the call was in reference to?

A We received a call for 1417 East Florida for a shooting.

Q Okay. Do you recall approximately what time you received that call?

A I don't really remember what time it was. I know it was during the morning hours.

Q The morning hours. Okay. What did you do when you were called out?

A Well, the call came out and several officers were sent. I initially responded like I do for every call of service that we get. And I believe I was the first person on the scene.

Q Okay. What did you observe when you were

the -- when you arrived?

A When I arrived on scene I seen a white male gentleman standing outside the car with his hands in the air. The dispatch gave us a description as we were responding to the call of the shooter that they had received information about. He matched the description that was given. And so I immediately approached him and his hands were in the air. I asked him to put his hands behind his back and he complied. I had cuffed him up with my handcuffs, and I immediately started searching his person. He had a holster on the side of his waistband I believe. Maybe a cell phone, his wallet, and I emptied all his contents out of his pockets, and then walked him back to my cruiser.

Q Were you able to identify the individual that was -- that you encountered?

A Not at that time. But I did later on during the course of my call there.

Q All right. What was his name?

A John Morgan.

Q All right. Is he in the courtroom today?

A Yes.

Q Can you just identify him and what he's wearing?

A He's the gentleman sitting there at the table with the blue suit on, light blue shirt, and blue tie.

MR. FENING: All right. Let the record reflect the officer identified the defendant.

THE COURT: It will.

MR. FENING: Thank you.

BY MR. FENING:

Q You indicated that you secured the defendant's firearm when you arrived on scene, correct?

A I did.

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q I'll hand you what's been marked as State's Exhibit 47.

(WHEREUPON, State's Exhibit No. 47 was identified for the record.)

BY MR. FENING:

Q Do you recognize what that is, sir?

A Yes. This would be the firearm that was used in the shooting.

Q Okay. And after you secured the firearm you placed Mr. Morgan in handcuffs. Did you do anything else on scene that day?

A Well, after I secured Mr. Morgan in my cruiser and secured the firearm in my cruiser, I started assessing the scene and started talking to witnesses that were there and gathering the information.

Q Okay. And so in this case -- in a case like this, are further officers called out or different personnel?

A Yes. I can't remember how many other officers were initially sent. But there were several officers initially sent when the call came in. Once we started assessing the scene then our supervising officer will call in the detectives from the crime lab.

Q Okay. Are you in charge of conducting that investigation or is that left to the detectives?

A That's left to the detectives.

Q All right. Once the detectives arrived on scene, what do you do?

A We started talking to witnesses, getting information for the report. And then this particular

case here, it was the beat that I was working that day. And so it was my initial report to do. And so I gathered as much information that I could to do my report and for the detectives who took over to investigate the case.

Q Okay. You've indicated you secured the firearm in your vehicle?

A Yes.

Q What happens with it from there?

A And so I secured it in my vehicle. And so that way nobody else could have any contact with that firearm. Once it was secured in my vehicle the crime lab arrived on the scene, I had let him know. It was Officer Miller that I let him know that the firearm was secured in my vehicle. He came and then collected the firearm and processed it.

Q Okay. And so on the box there is some writing. Is that your writing or would that be crime labs?

A That would be crime labs.

Q Okay. Thank you.

MR. FENING: Nothing further, Your Honor.

THE COURT: Cross?

MR. HENDERSON: Yes, Your Honor. Thank you.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Good afternoon, Officer Hilliard, how are you?

A Good.

Q Good. My name is Brandon Henderson. I'm just going to ask you some questions. And if I don't talk loud enough just let me know. Okay?

A Okay.

Q It's a big courtroom. I'm not used to it. If the question is not correct just feel free to tell me to rephrase it. Okay?

A Okay.

Q All right. And so one of the questions I had, how long have been a police officer? You answered that about 20 years --

A Yes.

Q -- right? And before here at the Youngstown Police Department, I didn't hear your answer. You said you worked where?

A I worked for the Village of Lisbon. It's in Columbiana County.

Q Okay. From Lisbon. And you moved up here

or?

A Yeah. I took appointment up here and I've been here ever since.

Q Okay. And training through OPOTA that's -- every officer has to do that?

A Correct.

Q Okay. And is that essentially what people would call the police academy here?

A Yes.

Q All right. Okay. And have you done any further training throughout your career?

A Like I said we do continuing training every year that's, you know, requested by the training office. And so everyone in the state of Ohio has to do continuing education hours every year on different topics and different subjects.

Q Understandable. Understandable. Okay. What are you -- what's your -- what are your current duties?

A My current duties, I work for the day shift on Youngstown City Police Department right now. I patrol the assigned beat that I'm assigned that day, answer any calls whether it be for a dog or whether it be a homicide.

Q Okay. And so you go anywhere from dog up until -- up to homicide?

A Yes.

Q Okay. And so why all the duties? Do you -- do you do traffic duty? Or no?

A I mean you're allowed to do traffic enforcement when you can, when it's necessary.

Q Sure.

A And we can do that. Yes.

Q Sure. Okay. Understand. Understandable. And so now -- and so there's no real standard part of your job, right? Because it sounds like your -- I don't mean -- I'm not trying to denigrate you. You're sort of like a jack of all trades. You show up and you do a lot of different things and you --

A Well, unfortunately, this line of work you get called for a lot of interesting intriguing calls. And you would think that officers normally wouldn't respond to all calls. But we do. And so you respond to calls that might seem very minute and we respond to calls that are very dangerous and high risk, I guess.

Q Sure. Sure. In this situation you -- were you the first responder on scene?

A I believe I was. I can't remember. It's been just about two years. And so --

Q Sure.

A -- I can't remember exactly. I do believe I was one of the first officers that was on scene. Yes, sir.

Q Understand. Were you -- did you have a chance to review your police report that you wrote?

A Yes.

Q Okay. And part of OPOTA or possibly some continuing education is -- that you're taught to write police reports in that training, correct?

A Correct.

Q All right. And you agree with me that those are very important, right?

A Yes.

Q And that's because, you know -- you know that discovery is going to come to us as defense attorneys and we're going to read your report, right?

A Absolutely.

Q And it's also going to be relied upon by the prosecutors, correct?

A Correct.

Q And then if we're here in court it may come up again?
A Absolutely.
Q With the stuff that's written in your report?
A Yes.
Q Okay. And -- I mean they are technically an official record of what occurred that day from your point of view?
A Correct.
Q And from your investigation and observation?
A Correct.
Q Okay. And I presume -- and, again, this was 19 months ago. And so I'm not taking this away from you. I presume once you get closer to trial you start to refresh your memory with those things, correct?
A Yes.
Q That's because when you wrote it at the time it was a lot more fresh in your memory than right now before you get up on the stand?
A Correct.
Q Okay. And so -- we're obviously dealing with very important issues in this case; you'd agree with that?

A Yes.
Q Serious charges?
A Yes.
Q Murder?
A Yes.
Q About as serious as you can get, right?
A Absolutely.
Q Felonious assault, very serious?
A Yes.
Q And do you usually work murder cases? I know you said that there is some times that you're -- that you are --
A And so like I said, when a call like that comes in, typically any officer who is working in the city that day will get sent to that because that's the highest priority call there is.
Q Okay. You are on the road, and you get a dispatch or whatever you guys call it, and then you hear it and you respond to it?
A Yes.
Q Okay. And this is what happened that particular day?
A Yes.

Q You wrote the report in this case. Can you tell me -- can you tell me when you wrote that report?

A As soon as we cleared the scene, then -- and the defendant was brought down to the Detective Bureau, and I started doing my report that day.

Q And so is it typically the same -- on the same shift?

A Yes.

Q Sometimes the next day? Or --

A No. You don't leave until the report is done.

Q Gotcha. Okay. And the report that you wrote in this case is accurate, right?

A Yes. There's --

Q And so --

A Everything that was in that report is what happened that day.

Q Anything that you like to change about that report?

A No.

Q Okay. And a -- and so -- and so just a couple of questions I had for you. And your report

just consists of just three pages, right? Is that accurate?

A I believe it's only one-page and not even a half.

Q One-page and not even a half? And then there's a third page that says a supplement assigned to Vitullo?

A Yes.

Q And you wrote that as well, sir?

A No.

Q Oh. You didn't write that?

A No.

Q And so just two pages?

A Yes.

Q And who is Vitullo?

A That would be one of the detectives with the Youngstown Police Department.

Q And what does it mean that it was assigned to him?

A And so he's the investigating officer on that case.

Q Okay. The Chief, the head guy?

A No. He's the Sergeant in the Detective

Bureau who was assigned to the case.

Q I see. But -- and I guess -- and part of my question is with regards to this case he's sort of the head honcho on this case? Is that an accurate way to put it?

A I mean, if you -- yeah, sure.

Q Okay.

A I'm not the one that assigns the case to him. And so I guess --

Q I understand that but the individual that it's assigned to, they are the individual responsible for the case?

A Yes.

Q Is that accurate?

A Yes.

Q Okay. And so -- and so you and a bunch of other officers get over at 1417 East Florida for this report of this shooting, right?

A Yes.

Q When you get there -- and I believe you wrote some of this or you -- or you said some of this on direct examination. When you got there, John, my client, as soon as you guys got there he threw his

hands in the air, correct?

A Yes.

Q Okay. Didn't give you any grief?

A No. He complied with me. I told him to put his hands behind his back and he complied. He didn't even try to resist walking back to my cruiser. I said, let's go. He walked back to my cruiser and that is what happened.

Q Very, very cooperative?

A Yes.

Q Soft spoken?

A Honestly, I don't remember. It was like I said, it was almost two years ago.

Q Sure. Sure. But I guess just -- okay. But he did what you asked him to do --

A Yes.

Q -- right? Okay. And you claimed that at that point you cuffed him? He had his hands in the air when you approached him?

A Yes.

Q You ask him --

A I ask him to put his hands --

Q -- ask him to --

A -- behind his back.

(WHEREUPON, the court reporter interrupted the proceedings.)

THE COURT: Let him finish his question.

THE WITNESS: Okay.

BY MR. HENDERSON:

Q You approach him, and ask him to turn around, he does so, that's the basic sort of gist --

A Yes.

Q -- of that?

A Yes.

Q Okay.

A Yes.

Q And then so when he did that, again, he was a hundred percent cooperative with you?

A Yes.

Q Gave you no grief, right?

A Yes.

Q Okay. And he allowed himself to be handcuffed without any pulling, struggling, anything?

A Correct.

Q And you said that you emptied the contents of his pocket?

A Yes.
Q And so you -- you're aware that he just been in sort of a -- you're aware that he was just in -- in sort of a melee?
A Yeah. I mean there was some kind of an altercation he was involved in. Yes.
Q Okay. And yet he still had his cell phone, his wallet, and his keys in his pocket; is that accurate?
A I can't remember if the keys were in there. I knew his cell phone was in there, I believe his wallet was in there, and then the gray holster, which is in this evidence box with the firearm was also in his waistband.
Q The holster?
A Yes. The holster --
Q Okay.
A -- was.
Q And so essentially what you're saying is that he was engaged in this melee with his cell phone and a wallet in his shorts?
A Yes.
Q Okay. You don't go to a fight like that,

right?

MR. ANDREWS: Objection.

THE WITNESS: I don't know how someone goes to the fight, sir.

THE COURT: Sustained. Don't answer.

THE WITNESS: Okay.

MR. HENDERSON: Understood.

THE COURT: Sustained.

MR. HENDERSON: Understood.

BY MR. HENDERSON:

Q All right. And so you emptied the contents of his pocket, correct?

A Correct.

Q And all that. And you place them in your -- and you secured them in your vehicle?

A When I emptied the contents of his pocket, I actually placed his property on the ground by the car. I walked him back to my cruiser, secured him, and then went up and grabbed his personal information: His wallet, his cell phone, the keys, and the firearm, and then secured those in my car.

Q Okay. Handcuffed?

A Yes.

Q Emptied the contents of his pockets?
A Yes.
Q Placed them on the ground?
A Yes.
Q Securing him in the cruiser?
A Yes.
Q Correct?
A Yes.
Q He was under arrest at that point?
A He was being detained at that point.
Q Being detained at that point. All right. And, again, throughout this entire time he didn't -- never once complained or anything? Is that --
A No.
Q -- right? All right. And then you went over, I believe, you said after you secured him in the cruiser, you went over and you secured the firearm?
A Yes.
Q Okay. The firearm was on the roof of his vehicle?
A Correct.
Q And the firearm was -- the magazine was out?
A Correct.

Q There's one bullet sitting next to it presumably the bullet that was in the chamber?
A Correct.
Q Okay. And so he had -- he had -- some of his weapon to the point that it was nonusable?
A Correct.
Q Knowing that you folks would be showing up --
A Correct.
Q -- correct? Okay. And additionally this is stuff that 911 -- all right. You are aware that he called 911?
A I don't know who called 911.
Q Okay. All right. Are you -- are you aware of -- typically if 911 would give instructions as to, you know, discharge your firearm and stuff?
A I'm sure they would have.
Q Okay. And so if they did so he complied with those instructions --
A Yes.
Q -- right? I'm sure you see a lot of different individuals and different situations that you have been through. Does it surprise you that he didn't flee the scene?

MR. ANDREWS: Objection.

THE COURT: Overruled. You can answer.

THE WITNESS: Actually, it did.

BY MR. HENDERSON:

Q Yeah.

A Because, typically, when there's a shooting in the city the offender typically isn't there.

Q Gotcha. And he never dumped his gun? Meaning, that he never tried to hide the evidence?

A No.

Q Okay. And, in fact, he did the exact opposite. He made it -- he put it in a safe position?

A Yes.

Q As he was instructed to do so?

A Yes.

Q And you are aware there's a dash cam? He had a dash cam in his car?

A I was made aware of it. Yes.

Q All right. And you are aware of that dash cam contains an SD card that contains the gigabytes or whatever you call it?

A Yes.

Q Okay. And you are aware that evidence was

still present?
A Yes.
Q He never took that SD card out and ate it or --
A No.
Q -- anything? Okay. Never destroyed any evidence, correct?
A Not that I am aware of. No.
Q Okay. He was not yelling?
A No. I don't recall him ever yelling.
Q He wasn't being verbally loud towards anybody?
A Not that I recall.
Q He wasn't agitated towards anybody?
A Not that I recall.
Q You then, as you stated, began to assess the scene?
A Yes.
Q This was before any forensic lab or crime photographers or anybody was there?
A Yes.
Q Okay. And during that time you guys were walking around the property?

A Yes.
Q Is that accurate to say that?
A Yes.
Q Have you seen the dash cam video?
A I have not.
Q You -- were you walking up past John's car into the yard?
A I'm sure at some point I was. Yes.
Q Okay. And are you aware of other folks were as well?
A Yes.
Q All right. That included whom? Who did you meet with that day? When you said you were talking to some folks?
A I met with John's ex-wife, Mary. And I had spoke with his daughter. I also was talking to other officers that were at the scene.
Q Okay. And you're aware that obviously preserving a crime scene is very important?
A Yes.
Q And all these people were walking all over the crime scene, correct?
A We didn't know where exactly -- the actual

part of the crime scene was at.

Q No. I understand that. But isn't that kind of why you keep people away from the crime scene --

A Well --

Q -- until they show up --

A -- the people that were involved with the incident, we contained them into that location. And so that way they could be talked to by officers and where they could be talked to by detectives. And if they were, in fact, involved in the actual incident themselves. We don't let them outside the crime scene because they are part of that scene.

Q Mary mentioned a couple different things. Mary Morgan who is John's -- you are aware they are still legally married?

A Ah, no. I did not --

Q Okay.

A -- know that.

Q And you mentioned Mary Morgan and you mentioned Daniel Peek?

A Yes.

Q A junior?

A Yes.

Q Correct? And you never separated them as witnesses?

A I never spoke to Daniel. I spoke to Mary. She was second one I was talking to.

Q Okay. And do you remember seeing them talking together?

A No.

Q Did you -- did you ask to have her cell phone?

A Did I ask that? I don't recall asking for Mary's cell phone.

Q Did you get her cell phone?

A No.

Q How about Dan Peek, Jr.'s cell phone?

A No.

Q How about Danny Peek, Sr.'s cell phone?

A No.

Q And you were aware that John was coming there to pick up his daughter and his grandchild?

A That's what I was told. Yes.

Q You understood that it was -- this was a two-on-one situation?

A That's what -- that's what -- actually, John

told me when I talked to him at the rear of my car.

Q You were aware that there was two people beating on John?

A That's what he told me.

Q Okay. My client was in flip flops?

A He might have been, sir. I don't remember, honestly.

Q Do you watch UFC?

A What is that?

Q Do you watch UFC?

A Not very much.

Q Boxing?

A A little bit.

Q Have you ever seen them wearing flip flops while they're fighting?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q It's not a very nice neighborhood?

A I don't -- I don't live there, and so I can't tell you that.

Q I'm sorry?

A I don't live in that neighborhood. And so I

can't attest to whether it's nice or whether it's bad.
Q Understood. And so until your superior got there you were the one who was responsible for the crime scene; is that an accurate statement?
A Yes.
Q Okay. And you -- and I don't -- I don't mean this in a rude way. But you would -- John is overweight; is that accurate to say?
A I mean, I don't know what he weighs.
Q I'm sorry.
A I'm not sure what he weighs and I'm not a person that can determine whether if someone is overweight or not.
Q You don't -- you don't understand body mass index or anything?
A Oh, I do. Yes. But people's body mass index are very different.
Q Okay. Are you aware of any health conditions he has?
A Nope.
Q Was he ever asked about any health conditions to your knowledge?
A I never asked about any health conditions.

I'm not sure whether anybody else had or not.

Q I appreciate your time. Thank you, Officer?

A Okay.

THE COURT: Any redirect?

MR. FENING: Nothing further.

THE COURT: You may step down. Thank you.

You may call your next witness.

MR. ANDREWS: The State would call Officer Robert Giovanni.

THE COURT: Please raise your right hand.

* * * * *

WHEREUPON, the State called

OFFICER ROBERT GIOVANNI,

who, being first duly sworn, testified as follows:

THE WITNESS: I do.

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Good afternoon.

A Good afternoon.

Q Please state your full name and spell your last name for the record.

A Robert Giovanni, G-I-O-V-A-N-N-I.

Q And where are you employed?

A The City of Youngstown.

Q What department?

A Youngstown Police Department.

Q How long have you been a police officer?

A I'm in my 23rd year.

Q What is your current rank?

A Patrolman.

Q What was your training before you became a police officer?

A I completed my bachelor's in criminal justice with the Youngstown State University, and I completed OPOTA, which is the Ohio Peace Officer Training.

Q How long have you been with the Youngstown Police Department?

A Twenty-three years.

Q Okay. What are your duties as a patrolman?

A I'm assigned a uniform patrol, I'm assigned a beat to work in the City of Youngstown. During my day, I do uniform patrol, respond to calls for service, and criminal activity, community policing.

Q I'm going to ask you to move the microphone just a little closer.

A Sure. I'm sorry.

Q That's all right. Were you on duty the -- I guess, the day shift of October 31st -- not October July 31st, 2022?

A Yes.

Q Okay. What was your beat that day?

A 206.

Q Which is?
A Roughly, it's between Gibson and Market Street from Boardman to downtown on the South side of Youngstown.
Q And so the South side of Youngstown?
A Yes.
Q Was that your normal beat?
A Yes. I've been working that beat for about six years now.
Q Okay. You're still there now?
A Yes.
Q All right. Were you called to 1417 East Florida?
A Yes.
Q What was the nature of that call?
A A shooting.
Q All right. If you recall, were you the first officer to arrive?
A I was not.
Q Okay. Were you one of the first officers?
A Yes. I was the second.
Q Okay. And we just heard from officer -- Patrolman Hilliard. Was he the first one?

A Yes.

Q Okay. What did you do once you got to the scene?

A As I was approaching, I saw Officer Hilliard securing a male in handcuffs and placing him in the rear of his cruiser. I went to him to make sure that he was okay. At that point in time he said the gun is on the car, he's going to secure the gun. I found out that there was a victim behind the house in the yard. And so I went around to the back of the house and went to the victim.

Q All right. When you observed the victim -- do you know who the victim was?

A No.

Q Okay. Were there other people there?

A Yes.

Q Who was there?

A His girlfriend.

Q Okay. Were there any ambulance personnel there?

A Not at that time?

Q Okay. What were your initial observations when you saw the victim?

A I observed a male without a shirt on his back. She was trying to perform life-saving measures on him. I can tell that he wasn't in a survivable state at that time.

Q Okay. Were you able -- strike that. What did you do after that?

A She was trying to save him. I gave her some pointers about putting her hand on the wound and holding it there. And very shortly after that the paramedics arrived and took over medical treatment.

Q Okay. When you said the wound, where was -- first of all, do you know whether that was an entrance or an exit wound?

A No, I do not.

Q Okay. Where was the wound that you observed?

A On the torso.

Q Okay. All right. Once the EMT's arrived, what did you do then?

A I stood by while they were doing the treatment, I assisted them with getting the gurney through the yard. They did more of a -- a snatch and go. Got him into the ambulance and transported. After that time other officers arrived, filled in the

sergeant of what was going on, we secured the scene in the area, and just began looking for any general evidence.

Q Okay. When you say, a snatch and go. Are there times when you've been at a scene where EMT's are doing the best they can to treat --

A Yes.

Q -- the victim? Okay. A snatch and go, is that just -- they want to get him to the hospital as soon as possible?

A Right. But there's really not much that they can do at that point in time. If there's any chance it's quicker to just get them to the hospital.

Q Okay. Did you -- once they -- did you come to find out who the victim was? His name? Did you find out his name?

A Yes.

Q And what was that?

A Mr. Peek.

Q Okay. Once Mr. Peek was removed, did you notice anything where he was laying?

A I don't recall at this time.

Q Okay. Did -- from your observations, did you

observe any type of weapon on Mr. Peek?
A No.
Q When you say secure the scene, what do you mean?
A Well, we put up police tape, make sure people aren't coming and going from the scene. We hold the area, obviously where he was, where the vehicle was out front. And, you know, we just prohibited access to it and make sure no witnesses leave.
Q Okay. Have you responded to many shootings?
A Hundreds.
Q Okay. And in Youngstown when there's a shooting does the crowd usually gather?
A Yes.
Q Okay. Do you recall if there was a crowd at this point?
A No. There wasn't a big crowd.
Q Okay. All right. Is it your duty as a patrolman to collect evidence?
A Yes.
Q Okay. At a homicide scene, do you collect evidence or just try to find evidence and point it out to someone?

A Generally. Major crimes, we try to assist in finding it, marking it, protecting it until the detectives and the crime scene unit is there.

Q Okay. Was that the case here?

A Yes.

Q Oh. If it was a minor crime maybe the crime lab doesn't get called out and you would just collect the evidence yourself?

A Correct.

Q Okay. All right. Are you the investigating officer?

A I am not.

Q Okay. Did you talk to any possible witnesses?

A I did.

Q In a scene like this, do you do an in-depth interview or do you just try to get the basics?

A Just cursory information and cursory statement.

Q And then what do you do with that?

A I notify the detective what it is and then we do a supplemental report to the actual incident report that's done by the investigating officer.

Q Okay. And in this case was Detective/Sergeant Vitullo the lead investigator?

A The detectives usually come in, at least, three. And sometimes we know right off the bat who is the lead investigator. Sometimes we don't know until at the end. But, yes, he was one of the responding --

Q Okay.

A -- detectives.

Q All right. And do you -- when both crime lab and the detectives appear at the scene, do you fill them in with whatever information you have?

A Yes.

Q Would you point out any possible evidence that you found?

A Yes.

Q And then once you have done that then it's what? You said you secured the crime scene, then is it -- if it is a big crowd, is it crowd control?

A Yes.

Q Okay. In general, though, does that end your duties as far as this case? Once the scene is clear?

A Once the scene is clear and we're all cleaned up, that's it for my part.

Q And then you go back. Do you write a report?
A Yes.
Q Okay. Did you in this case?
A Yes.
Q Have you reviewed that?
A Yes.
Q And is it fair to say that your report is approximately one paragraph?
A Correct.
Q And did you do anything else involving this case once you cleared the scene?
A No.
Q Okay.

MR. ANDREWS: Nothing further, Your Honor.

THE COURT: Cross?

MR. HENDERSON: Yes, ma'am. Thank you.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Officer Hilliard, how are you?

A Officer Giovanni.

Q I'm sorry.

A That's okay.

Q He was just up there. Officer Giovanni, my apologies. My name is Brandon Henderson, if I don't speak loud enough or if I misphrase a question just let me know and I'll be more than happy to ask it again. Okay?

A Okay.

Q And so 23 years on patrol, right?

A Majority of it was on patrol.

Q And the majority of your duties is what? Is it traffic? Is it --

A No. We do uniform patrol.

Q One more time?

A We do uniform patrol. It's a mixture of everything.

Q Gotcha.

A Our primary function is calls for service.

Q Gotcha. And so you are out on the road and a

call comes in for a domestic violence or a robbery -- or if you're close you then respond; is that --

A Correct.

Q -- kind of accurate? Okay. And you -- the prosecutor asked you if your supplement was roughly just a paragraph long, right?

A Correct.

MR. HENDERSON: And, Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. HENDERSON:

Q This is yours? That's your supplemental?

A Yes.

Q Okay. And so there wasn't really a larger report written by you, correct? That wasn't necessarily your job to -- to go back and write this long report with all this detail, right?

A No. It was just a supplement of the other report.

Q Sure. And your job is essentially -- is more, like you said, just to go assist, do your best to help. I believe, at one point you stated that you were helping Ms. Mary Morgan maybe try to do some CPR; is

that accurate?

A I did not perform CPR.

Q All right.

A But I instructed.

Q Correct.

A Correct.

Q And then also, you know, assist with EMT, as far as getting the gurney into the ambulance; is that accurate?

A Correct.

Q Okay. And you spoke with -- looks like maybe one witness?

A Yes.

Q Okay. And other than that, your job was really just kind of to assist. Which I'm presuming is why this is only a paragraph? Would that be accurate? And I'm not trying to be a jerk, but is that -- is that reality here?

A Yes.

Q Okay. Now, did you -- excuse me. Did you interact with my client, John, at all?

A He attempted to speak to me several times when I was on the road, but I didn't engage him in

conversation.

Q Okay. Did you -- you would agree with me that he was not being hostile, correct?

A No.

Q You would agree with me that he was not -- you would agree with me that he was not being loud or obnoxious, right?

A No.

Q He was not being aggressive, correct?

A No.

Q In fact, when you arrived he had already had his hands in the air, correct?

A Or that had happened prior to my arrival.

Q Gotcha. Understood. And so -- okay. Okay. But you are -- obviously, you are aware that he stayed on the scene, correct? He didn't flee?

A Correct.

Q Right? And you are aware that he discharged his firearm, right?

A Yes.

Q Well, he did -- I guess he disassemble it, I mean. Right? You are aware of that?

A That also. Yes.

Q That also, right? Okay. And so he did put it on the -- on the roof of his vehicle; is that an accurate statement?

A Yes.

Q Okay. And he removed the magazine, right?

A That's what the report says. I did not recover the firearm.

Q No. But didn't -- didn't you see it or no?

A I did.

Q Okay. And you saw that he had removed the magazine?

A Yes.

MR. ANDREWS: Objection.

THE COURT: Overruled.

THE WITNESS: I saw that the magazine was removed.

BY MR. HENDERSON:

Q You saw that he dissembled it -- and so he made it unusable, right?

A I did not see him do that.

Q Correct. But in the state it was in it was unusable, correct?

A Correct.

Q Okay. And any interaction that you saw with him, you saw that he was a cooperative individual?
A Yes.
Q Okay. Are you familiar with this neighborhood?
A With the neighborhood where this occurred?
Q That's right.
A Yes.
Q Is it not a very nice neighborhood?
A It's not bad.
Q Okay. In between?
A Yeah.
Q People -- I know you said a huge crowd hadn't gathered. But there was people that were walking kind of all around the house? Is that accurate to say?
A Yes. There were other people present.
Q Sure. And other people walking. And so if you're looking at the house, there's a side yard to the right and there's a side yard to the left, correct?
A And so the left is -- actually the driveway of another house.
Q There's a driveway where my client's car was, correct?

A Correct.
Q And up to right is a porch; is that accurate to say?
A Yes.
Q And then just to the left there's a little patch of grass that goes towards the backyard --
A Correct.
Q -- is that accurate? And people were milling around in that area; is that accurate to say?
A When we got there. Yes. The people from the house were still there.
Q Okay. And do you know who Mary Morgan is?
A I didn't prior to. But, yes.
Q Okay. And do you know who Daniel Peek Jr. is?
A Not prior. But, yes.
Q Okay. And you folks -- you saw them collaborating, talking to each other?
A Not at the beginning. No.
Q Okay. But --
A Actually, I don't remember them collaborating at all. I mean there was a lot -- we had them stay around the front porch steps and on the front porch

when we were getting everything secure.

Q Okay. Together, though?

A Yes. Everybody was together after the ambulance had left.

Q I guess my -- I guess my point is there was no separation of possible witnesses; is that accurate to say?

A Correct.

Q Okay. You said you've been in a hundred -- you've been to a hundred shootings over the years?

A Yes.

Q And so you are pretty familiar with -- with this type of environment?

A Yes.

Q Are you aware of any of the surroundings of this case or any of the -- any of the facts in this case at all? Or any -- are you aware of --

A I not sure. Are you asking, did I investigate afterwards?

Q Sure. Did you investigate afterwards at all, afterwards?

A No.

Q Okay. Were you aware of any of the facts

as they occurred or what was alleged that day?
A I'm -- could you be more specific?
Q Sure. Are you aware that this was self-defense?
A No, I'm not aware --
MR. ANDREWS: Objection.
THE WITNESS: -- it was self-defense.
THE COURT: Sustained. Don't answer that.
BY MR. HENDERSON:
Q Are you aware that there was two men beating on one man?
A Yes. I was told that that day.
Q Okay. That was told to you by Mary Morgan?
MR. ANDREWS: Objection.
THE COURT: Overruled. You can answer, if you know.
THE WITNESS: By her, from Daniel Peek Jr., the witness I spoke to across the street.
MR. HENDERSON: Just a moment, Your Honor.
THE COURT: Sure.

MR. HENDERSON: Thank you. No further questions. Thank you.

THE COURT: You may step down. Thank you. Oh. Any redirect?

MR. ANDREWS: One moment, Your Honor. Just a couple questions.

REDIRECT EXAMINATION

BY MR. ANDREWS:

Q You said that the south side of Youngstown that's your normal beat?

A Yes.

Q Okay. Is it fair to say there are portions of the south side of Youngstown which are quite dangerous?

A Yes.

Q Okay. Would this be one of them?

A No.

Q Okay. Thank you.

THE COURT: Any recross?

* * * * *

RECROSS EXAMINATION

BY MR. HENDERSON:

Q You still do get shootings and drive-by shootings in that neighborhood, correct?

A Yes.

Q Okay.

MR. HENDERSON: No further questions. Thank you.

THE COURT: Anything else?

MR. ANDREWS: No, Judge.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

THE COURT: You may call --

MR. ANDREWS: Your Honor, may we approach?

THE COURT: Yes.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: Ladies and gentlemen, at

this time we're going to take our morning break.

Please do not discuss this case amongst yourselves or with anyone else. Please don't permit anyone to discuss it with you or in your presence. Do not form any opinions on this matter until it's given to you for your deliberations.

We will reconvene in approximately ten minutes. Thank you.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom:)

THE BAILIFF: Honorable Court of Common Pleas is now in recess.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

MR. ANDREWS: Your Honor, with the next

witness we intend on showing the dash cam video. I think there's an objection to part of the video being shown and heard.

MR. WEATHERLY: Your Honor, for the record, Attorney Justin Weatherly on behalf of Mr. Morgan. Your Honor, we're not objecting to any of the video itself. The portion of the video -- it is not just video, it's video that comes with audio. Most of which is from the interior of the vehicle. Much of the video isn't in the actual incident but the -- Mr. Morgan's approach to the house where the incident occurred. During which time he's listening to music. The music in question is a rap song where some of the lyrics could be offensive and/or prejudicial. Specifically, there's a lyric that could be heard where in the -- the rapper indicates that he's got an itchy trigger finger on his Glock. And we certainly wouldn't want that to unfairly prejudice Mr. Morgan considering the type of case that we have. And so we would object to

that audio being play.

THE COURT: Do you want to respond?

MR. ANDREWS: Your Honor, first of all, the State did intend on showing a much longer portion of the video. Which there's a time when the defendant is cut off and he says some expletives towards the driver. And the State has agreed not to play that. We are asking to play the video from the time he turns into the neighborhood, making the turn from Shirley onto Humbolt. As far as the music -- it's music that someone is listening to, it's not -- I mean, I listen to music that some people it would be questionable. Doesn't mean that I'm going to go out and kill somebody. Certainly, when listening to that music we're not going to try to say that he's planning on committing a murder. It's -- It's just basic rap. I don't typically -- I don't believe that it is prejudicial. I don't believe that the jury would see it that way.

THE COURT: I'm going to overrule the

objection and allow it in. I want it to be seen in its entirety.

MR. ANDREWS: The entire video?

THE COURT: How long is the entire video?

MR. WEATHERLY: Two minutes, forty seconds.

THE COURT: Play the entire video. If I'm going -- if we're going to do it we're going to do the whole thing.

MR. ANDREWS: Okay.

THE BAILIFF: All rise. The Honorable Court of Common Pleas is now in recess. All right. I'm lining them up, don't leave.

All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas in now in session. The Honorable Maureen Sweeney presiding. You may be seated.

MR. FENING: Your Honor, the State calls Officer Greg Miller.

THE COURT: Please raise your right hand.

*** * * * ***

WHEREUPON, the State called

OFFICER GREG MILLER,

who, being first duly sworn, testified as follows:

THE WITNESS: Yes.

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. FENING:

Q Good morning. Or Good afternoon, sir.

A Good afternoon.

Q Could you state your name and spell your last for the record.

A Officer Greg Miller, M-I-L-L-E-R.

Q Do me a favor pull the microphone closer towards your face. Where are you employed?

A The City of Youngstown, Youngstown Police Department.

Q What is your position at the Youngstown Police Department?

A I'm a patrolman.

Q Okay. Are you assigned to a specific unit?

A I am currently assigned to the Crime Scenes Unit.

Q What are your responsibilities in the Crime Scenes Unit?

A We're responsible for documenting any scenes, of any major incidents or crimes that we get called out to. That could be photographs, we're responsible for collecting DNA, collecting the evidence, doing fingerprints. We bring the items back to our office and then collect them into evidence. And then after the detective decides we're responsible for bagging and tagging them and maybe taking them to BCI for submission for -- to be examined there.

Q How long have you been with YPD?

A A little over 25 years now.

Q All right. Prior to YPD, have you been with any other departments?

A No. I'm right out of college and the police academy.

Q Okay. And so that led me to the next question. Prior education and training for your current position?

A I graduated from YSU with a degree in criminal justice. Right after that, I went to the police academy, the Ohio Peace Officer Training Academy; I got my certificate there. And then shortly after that, I was hired with the Youngstown Police.

Q All right. Have you always been with the crime lab?

A I was assigned to the road and other units.

Q Oh.

A I've been with -- I've been with the crime lab now -- for about 12 years now.

Q Twelve years. Did you have any sort of specialized training to conduct your position at the crime lab?

A OPATA offers a two week course for a crime scene technicians. To show you how to do the photographing and how to collect the DNA and those things. Yes.

Q Okay. And then -- I think it's on a continuing basis; do you do any training?

A Yes.

Q How often?

A Every year we have to do our officer

in-service training and then computer training and that stuff.

Q If you had to guess, how many crime scenes have you responded to as a crime lab technician.

A Myself? I mean, with the number of homicides we have. I know being on call. I know a couple years ago it was an average about 12 homicides a year, plus other -- felonious assaults, burglaries, robberies, and all that. And so I couldn't even image what the numbers are?

Q It's in the hundreds?

A Probably.

Q Okay. On July 31st, 2022, were you working as a crime detective with the YPD?

A I was on call.

Q You were on call? Okay. Do you recall getting called out to the scene on 1417 East Florida?

A Yeah. It would been the weekend and so one of us would have been on call. It was my turn on call. I received the call that we were needed on East Florida and I arrived there.

Q Okay. Do you get called out to every scene of every crime that happens in the city?

A On the major ones.

Q Okay. When you -- just in general, when you approach any crime scene what kind of procedure do you have?

A In this instance we would of -- or I would have sought out the -- either officers in charge or the supervisor in charge of the scene. Walked up to them and asked them what was going on? What they had? And they would advise me what the scene was. And after I get an idea of what was -- where the location was and what was found I would start taking photographs.

Q Okay. And what were the basics of the summary that you received when you got to the scene?

A I was advised that there was some kind of an incident. Individuals had gotten into an altercation and a shooting had occurred. And I believe the individual that was shot was already transported to the hospital.

Q Okay. And so when you got there he was already gone?

A Correct.

Q You do a preliminary walk through of the scene?

A Well, the supervisor on scene -- as they are pointing things out to me, yes, I would get an initial walk through.

Q Would that be the assigned detective or is it a separate supervisor on scene?

A Usually it's the patrol division supervisor. Sometimes it could be the detective that shows up. But sometimes I get there before them. It all depends.

Q All right. Do you recall in this case if there was a detective on scene at the time that you arrived?

A I don't know who got there first. That, I don't know.

Q Okay. How do you determine what evidence to collect while you're on scene?

A Well, after we get an overall of the scene of what's going on and the detectives show up we would confer with each other to say, certain things are obvious, spent shell casings, weapons, and things of that nature. And other things, they might say, no, that may not be involved. Or no we want to take that. And so --

Q Okay. What kind of documentation do you do

as part of on your job?

A Any work that we would do, we would do what we call a crime lab sheet. We would write down the incident number, the incident location, what type of crime it is, and what we do. And so whether we take photographs, collect evidence, take DNA, anything that -- we would write down on that paper. And then eventually it gets typed into a sheet.

Q Okay. Did you do that in this case?

A Yes.

Q Would it help you with this report to assist in your testimony today?

A Yes, it would.

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q I'm handing you what's been marked as State Exhibit 53.

(WHEREUPON State's Exhibit No. 53 was identified for the record.)

BY MR. FENING:

Q Take a look at that. Do you recognize that, sir?

A Yes. This would be a typed copy of our lab sheet.

Q Okay. On the top of the report it looks like there's some identifying information on this case. Is there a report number indicated? Or I guess it would be an incident number?

A Yeah. And so for every case that we do we go by the incident number and location. And with this incident number it says, 22Y034140.

Q Okay. How do you determine the case name? Because there's a name on here --

A Ah.

Q How do you determine that?

A You mean the name at the top?

Q Yeah.

A And so in this case that would -- usually it's the victim's name.

Q Okay. Who was that in this case?

A Daniel Peek.

Q All right. Gotcha. Is there a date on your report?

A And so the time of the crime -- the date of the crime would be 7-31 of 2022.

Q Okay. And approximately at what time?

A And so they have the initial report that would come off of the initial police report, the time of the crime would be 1216 hours.

Q Okay. And do you know what time you arrived on scene?

A I have listed that I started my report and started doing work at 12:57 hours.

Q Okay. On the first day that you -- or on that day when you arrived, what did you do when you started processing the scene?

A Once I did a walk through and got an idea of what all was involved I would have started taking photographs.

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q I'm handing you what's been marked as State's Exhibit 4 through 19.

(WHEREUPON, State's Exhibit Nos. 4-19 were identified for the record.)

MR. FENING: Would you just take a look at those to yourself for a moment and let me

know when you're done.

MR. HENDERSON: Judge?

THE COURT: Yes.

MR. HENDERSON: I'm sorry to interrupt. But do you mind me moving the screen over this way?

THE COURT: No.

MR. HENDERSON: Just so I can see.

THE COURT: Go ahead.

MR. HENDERSON: Because of the screen. Thank you.

THE WITNESS: Yes.

BY MR. FENING:

Q Do you recognize those?

A Those are photographs that I took.

Q Okay. And is it fair and accurate depiction of the photos that you took that day?

A Yes.

Q Okay.

MR. FENING: Permission to publish, Your Honor?

THE COURT: Any objection?

MR. HENDERSON: No.

THE COURT: Did you say no?

MR. HENDERSON: Yes.

BY MR. HENDERSON:

Q Okay. Beginning with State's Exhibit 4, could you identify what this picture is?

A It's overall of the scene from the front of the house.

Q Okay. What is the address of this home?

A I believe it was 1417.

Q Okay. State's Exhibit 5?

A A photograph of the Dodge Charger in the driveway from the passenger side.

Q As part of your briefing, were you -- what relevance did this vehicle have?

A I was advised that from the patrol officers that that was the vehicle that the suspect arrived in.

Q Okay. Exhibit 6?

A 6 would be a photograph a little bit east of the house, the driveway, and the house next door to it. There's a piece of yellow paper in the middle of that driveway. Patrol located a spent shell casing.

Q Okay. And so is that typical that they would place some sort of object to identify where there

might be relevant evidence?
A Yeah. They would lay something nearby so that somebody doesn't step on it or kick it inadvertently.
Q Okay. Thank you. State's Exhibit 7?
A Would be a photograph from the house east from the yard facing westbound with the driveway and the vehicle and the house in view.
Q Okay. And State's 8?
A A close-up of that yellow piece of paper with the spent shell casing.
Q Okay. And so that would be the one that was looking at the house to the left of --
A Correct.
Q -- the suspect's house?
A Correct.
Q Okay. State's 9?
A In the front of the house, in front of that Dodge car, those are the steps going up to the front porch. There was a cigarette lighter and I believe a pack of cigarettes. When I showed up we weren't sure what relevance that was in the photograph.
Q Okay. And State's 10?

A This is a photograph of -- I'm in the backyard between the two houses now facing out towards the street.

Q State's 11?

A 11, from about the same area from the back of the house, facing the rear yard westbound.

Q Okay. And so would this be the backyard of the 1417 address?

A Correct.

Q Okay. State's 12.

A In that same area that I'm standing going up the grass strip right onto the driveway towards the back of the house there was drops and a trail of blood.

Q Okay. State's 13?

A A little closer view of that driveway and some of the drops of blood.

Q State's 14?

A Here I am right behind the house of 1417 facing westbound. Same view as -- as previously just a little bit further westbound.

Q State's 15.

A At this point I'm in the yard west of 1417 facing eastbound.

Q Okay. Are you able to identify what -- was there like some debris on the ground?

A I was advised that the victim of the case ran up the driveway.

MR. HENDERSON: Objection.

THE COURT: Sustained.

MR. FENING: I'll withdraw that, Your Honor.

BY MR. FENING:

Q State's 16.

A That is the yard west of the house with a black shirt, I believe, it was in a puddle of blood in the grass with the EMT's items around it.

Q State's 17?

A A little closer view of that puddle of blood and that clothing.

Q State's 18?

A This is a photograph of the pistol, the magazine from the pistol, and the live round. I believe Officer Hilliard recovered that and for safety purposes put it in his vehicle to secure it.

Q All right. And State's 19?

A A close-up of the serial number of that

pistol.

Q Okay. Why do you take close-ups of the serial number on that firearm?

A For identification purposes.

Q Okay. Now, these photos do you -- and -- all right. I'm sorry. Let me start again. In addition to taking the photos, do you collect the physical evidence on scene?

A I do.

Q I believe in front of you there is States 47. There should be a box there?

A Four, seven. Yes.

Q Yes. Are you familiar with what that is?

A This would be an evidence collection gun box. It has the case number, my writing, and the contents as a 9-millimeter Glock.

Q Okay. Do you place the item in that box? I guess what's the chain of custody from when -- you said Officer Hilliard collected the firearm?

A After I photographed it I would have placed into either the box or a paper bag and secured it in my cruiser. And then it would have been transported downtown. And then if I didn't do it in the box then

on the scene, I would have done it back at the station.

Q Okay. If you could open the box. What are the contents of the box?

A There is manila envelopes that contain shell casings, there is a zip-tied pistol, a magazine, and the holster.

Q Okay. What are the shell casings there and those items in the box?

A And so one of the manila envelopes contained a single live casing or a live round. And that would probably be in one of -- the picture next to the pistol. And so that would have been one that would've been from the --

Q Are you saying the photograph from State's Exhibit 18?

A Yes. The pistol and the magazine. Usually, that is the one that comes from the Glock -- the chamber. And so there was a live round in the chamber.

Q Okay.

A There's another envelope that the items have kind of like spilled out. But it's got a number seven on it. And these would have been the live rounds that would come from the magazine itself.

Q Okay. And the firearm that is contained in that box is the same firearm that you seized on the scene?

A It does have the serial -- the same serial number in the photograph. Yes.

Q Okay. Thank you.

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q I'm handing you what's been marked as State's 48.

(WHEREUPON, State's Exhibit No. 48 was identified for the record.)

BY MR. FENING:

Q Do you recognize that?

A This large manila envelope has the same incident number, with the victim's name and the address, and it states that it contains a spent shell casing of a 9-millimeter. And I have it as the next door driveway.

Q Okay. And so that would be where the yellow placard was that we observed?

A Correct.

Q The yellow of whatever it was. The identifier? And State's Exhibit 8, displayed on the screen, is that the casing contained in that envelope?

A Yes.

Q Thank you. All right. And all of these items, the two that I just gave you, as well as the photos; those were collected at that scene on that scene that day?

A Correct.

Q All right. Did you assist in any follow-up investigation in this matter?

A Yes. On multiple occasions Sergeant Vitullo said I was needed to do other things.

Q Okay. When was -- after July 31st, when was the next time that you assisted in this matter?

A I believe that day I also did something at the station I took photographs. But then also -- I think, it was the 3rd. On the 3rd, we did a search warrant at the tow yard.

Q All right. And so it would be the 3rd of August?

A Correct.

Q Okay. And so you accompanied Sergeant -- Detective/Sergeant Vitullo to the tow yard?

A Yes.

Q What was the purpose of that?

A I believe he had a search warrant to go through the vehicle.

MR. FENING: May I approach?

THE COURT: Yes.

BY MR. FENING:

Q I'm going to hand you what's been marked as State's Exhibit 27, 28, and 29.

(WHEREUPON, State's Exhibit Nos. 27-29 were identified for the record.)

BY MR. FENING:

Q Do you recognize those, sir?

A Yes, sir.

MR. FENING: Permission to publish, Your Honor?

THE COURT: Any objection?

MR. HENDERSON: No.

MR. FENING: All right.

BY MR. FENING:

Q What is State's Exhibit 27?

THE COURT: Is there no -- no objection?

MR. HENDERSON: No objection, Your Honor.

THE COURT: Thank you.

THE WITNESS: 27, we are at the tow yard, it's just an overall of the outside of the Charger from the driveway on the floor.

BY MR. FENING:

Q Okay. Thank you. And State's 28?

A 28, would be an overall view of the inside of the vehicle, the passenger side.

Q What was the relevance of this photo?

A While going through the vehicle there was some items in the glove box. They were placed on the seat. And since they were out in the open, I photographed them. And in -- amongst those items there was a dashboard camera.

Q Okay. State's 29?

A That would be a close-up of that dashboard camera.

MR. FENING: May I approach, Your Honor.

THE COURT: Yes.

BY MR. FENING:

Q I'm handing you what's been marked as State's Exhibit 49.

(WHEREUPON, State's Exhibit No. 49 was identified for the record.)

BY MR. FENING:

Q Do you recognize that, sir?

A Yeah. Yes. It is an evidence bag with the incident number and, you know, the dashboard camera in the photograph.

Q That's the dashboard camera that's contained in the picture right there?

A Correct.

Q Okay. There was also -- is there anything else in this bag aside from the dashboard camera?

A There's a separate manila envelope. I'm not sure if there's anything in here at all right now. But --

Q Would it help you if you open the bag and take the envelope out?

A It would help.

Q Okay. Here you go.

A Oh, there it is. Yes. Yeah, I feel it.

Inside that manila envelope there's a little micro SD card.

Q Okay. And was that taken from the dash cam?

A This would have been inside the dash cam.

Q Okay. After you discovered that flash drive, did you do anything with it?

A We would have -- when we figured out -- I'm sorry. When we were done with the vehicle, we would have went back to the station, and I would have logged evidence. At some point upon returning to the station, I advised Sergeant Vitullo there was a memory card in there and that there was files on it.

Q Okay. And were you able to view the video files that were contained on that drive?

A We were.

Q Okay.

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q I handed you what's been marked as State's Exhibit 61.

(WHEREUPON, State's Exhibit No. 61 was identified for the record.)

BY MR. FENING:

Q Will you identify what that is.

A It is a DVD, and it says video of John Morgan with an incident number on it.

MR. FENING: Permission to publish, Your Honor?

THE COURT: Yes.

MR. FENING: I'm going to display on the screen the video from what we marked as State's Exhibit 61.

MR. ANDREWS: Your Honor, may we turn the lights down?

THE COURT: Sure.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

BY MR. FENING:

Q Do you recognize the footage of this video?

A I don't believe I viewed the entire video. But, yes, that is a clip from the dash cam.

MR. FENING: Okay. I'm going to go ahead and play it.

(WHEREUPON, the video was played, after

which the video was stopped and the proceedings were had.)

BY MR. FENING:

Q After this video was extracted, did you assist in any other part of this investigation?

A I know I would have been the one to go to Cuyahoga County to get the evidence from the autopsy. But after watching this video, I know I would have given Sergeant Vitullo a copy of it.

Q Okay. And did you, at any time after this, did you return with Sergeant Vitullo to the crime scene?

A Yeah. I believe we returned to see if we could find where that spent round went into the yard. It may have been the 4th. Yes. On the 4th.

MR. FENING: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FENING:

Q I'm going to hand you what's been marked as State's Exhibit 30, 31, and 50.

A Okay.

(WHEREUPON, State's Exhibit No. 30, 31, 50, were identified for the record.)

BY MR. FENING:

Q Take a look at those. Do you recognize those, sir?

A Yes.

Q And what are those?

A 30 and 31 are photographs from the 4th. The front yard next to that porch area where the first shot was fired into. We were able to find where the dirt was nicked and recovered a spent projectile. And then Number 50 is that spent projectile.

Q Do the photos in 30, and 31 fairly and accurately depict the scene as you returned to it on August -- I'm sorry -- August 4th?

A Yes. After we dug around in the grass to find where the hole was we were able to feel where the projectile penetrated and was able to dig out the dirt a little bit more and that's what that photograph is.

Q Okay. And Exhibit 31?

A It's a little hard to tell in between the blade of grass but there is that projectile in the dirt.

Q Okay. And State's Exhibit 50 was?

A The manila envelope with the spent

projectile.

Q Okay. And is that the projectile there?

A Correct.

Q And then, finally -- I think we got into this a little bit -- did you collect evidence from Cuyahoga County Coroner's Office?

A Yes. Several days later on the 10th, I went to Cleveland and got the items from the autopsy.

Q Thank you.

MR. FENING: Nothing further, Your Honor.

THE COURT: Cross?

MR. HENDERSON: Yes, Your Honor. Thank you.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Do I call you a lab technician or officer? What do I call you?

A Officer.

Q Okay. Officer Miller, how are you today?

A Good. How about you?

Q Good. Thanks. My name is Brandon Henderson. Okay? I don't think we've ever met?

A No, sir.

Q If I talk too slow, too loud, too fast, or anything. If I misphrase a question just let me know, and I'll be more than happy to rephrase it. Okay?

A Okay.

Q Fair enough? All right. And so I know that we walked through quite a few of photos. And at the beginning of the investigation with the prosecution, you stated that I believe the crime lab is photos, correct?

A Correct.

Q DNA?

A If needed. Yes.

Q Fingerprints?

A If possible. Yes.
Q Okay. Didn't really need DNA or fingerprints here?
A No.
Q It isn't -- it's not a who-done-it, right?
A That's correct. Yeah.
Q And so your job mostly was just to collect photos, correct?
A Just to document the scene and collect evidence.
Q Okay. And so the crime lab, does that encompass other forms of evidence other than photos, DNA, fingerprints?
A Like?
Q I don't know.
A It depends on a case-by-case basis. Could be.
Q And so what else would there be? You've been doing this for a long time. Tell me what you know. What other stuff would you see?
A We would get called out at car scenes and so that's car crashes.
Q Okay.

A We get called out on rape scenes and so rape dependent.

Q Okay. And so there could be semen? But that's DNA obviously?

A Yes.

Q Car crash. Video. What about cell phones?

A If there's a cell phone and we have it, we will collect it. But we don't process it. We don't --

Q You don't do the phone dump?

A No.

Q Okay. And so if there was a cell phone you would have collected it?

A If it was there and I was told to collect it. Yes.

Q That's your -- it's part of your job?

A If it was there. Yes.

Q Okay. And so whose cell phone do you have in this case?

A I don't believe that I obtained a cell phone.

Q One more time.

A I don't believe I obtained a cell phone.

Q Okay. And so there was no cell phones on scene.

A I did not recover one.
Q Was that -- is that something that you would be told? You just said it's something as long as you're -- if your were told to do it, you would take the cell phones?
A If it would have been left on the hood of a car or if it would have been left on the scene unattended and then I would have collected it. Yes.
Q Okay. And so if it would have been laying around somewhere you would have grabbed it?
A Yes.
Q But other than that you didn't ask anyone for their cell phones or anything?
A I was not advised of it.
Q But you would agree with me that nowadays a lot of crimes are either solved and/or individuals exonerated based upon the cell phone evidence, correct?
A Yes.
Q Okay. And so you essentially go out to the scene and you take the photos that we just saw. Later you download the -- or you find the SD card, right? That was you?
A Yes.

Q Okay. You called it a micro SD card?
A Yes.
Q How big is that?
A It's very small. It's smaller than a dime.
Q Smaller than what?
A A dime.
Q Okay. Yeah, okay. And so maybe we're talking -- we're not even talking an inch, right?
A No.
Q I'm sorry. I didn't hear you.
A No.
Q All right. Maybe half an inch?
A Maybe. Yes.
Q It would have been pretty easy to destroy that evidence, I guess, is my question to you?
A It's easy to destroy a lot of evidence. Yes, sir.
Q Sure, no, I understand that. That's specifically, right? That's not even an inch? I mean, somebody could have pushed out that SD -- pulled that SD card out and swallowed it? They could have broke it? They could have done anything to it, correct?
A If given a chance to. Yes, sir.

Q It was perfectly intact; wasn't it?
A Yes, sir.
Q Okay. You're certainly not here to discuss with us what you believe was in John Morgan's head that day, correct?
A Correct.
Q Okay. Because you don't know, right?
A Correct.
Q And you're not here necessarily to testify to us the activities in the video, correct?
A No.
Q Or any incidents or activity that lead up to any of the incidents in the video; is that accurate?
A Correct.
Q When you arrived on scene there were a bunch of people there?
A Yes.
Q Okay. And they are all walking around the yard; is that right?
A Within reason. Yes.
Q Okay. Did you get any photographs of any shoeprints?
A No.

Q Okay. And so your job is to photograph things but you couldn't get any photographs of shoeprints, correct?

A It was dry, there was no mud and so there was no reason to see any footprints. Yes, sir.

Q Well, not only that. But people were just trampling around, right?

A Yes, sir.

Q Okay. But wouldn't it be nice to be able to -- we saw Daniel Peek turn and run, correct?

A Correct.

Q Wouldn't it be nice to have his shoeprints?

A It's not part of the crime and necessary to prove that an incident happened. No.

Q Say that one more time.

A It's not part of -- necessary to show that the incident happened.

Q No. I understand that. There's a lot of things that aren't part to show that an incident happened, correct?

A Correct.

Q However, as part of your investigation you collect it, because you want to try to determine how

things happened, correct?

A We didn't need footprints because we had a blood trail.

Q Well -- but you don't know how long a stride is, correct?

A Correct.

Q Okay. And so you don't know how quickly Mr. Peek was able to disappear, correct?

A Correct.

MR. HENDERSON: Can I have one moment, Your Honor?

THE COURT: Of course.

MR. HENDERSON: I appreciate that. Thank you. Nothing further. Thank you.

THE COURT: Thank you. Any redirect?

MR. FENING: Very briefly.

* * * * *

REDIRECT EXAMINATION

BY MR. FENING:

Q To defense counsel's last point. With the shoeprints. Did you observe any shoeprints, footprints --

A It was dry.

Q -- on the scene?

A The grass was not wet and so there was no tendency to have footprints. So, no.

Q Okay.

MR. FENING: Thank you.

MR. HENDERSON: I'm sorry. I didn't hear the answer.

THE WITNESS: No.

MR. HENDERSON: Okay.

THE COURT: Any recross?

MR. HENDERSON: Just one.

* * * * *

RECROSS EXAMINATION

BY MR. HENDERSON:

Q You weren't looking, though; were you?

A I was up and down that grass. I was looking for any evidence and other spent shell casing or anything, and I did not see anything. No.

Q Did you specifically look for footprints? Yes or no?

A I looked for anything out of the ordinary and did not see anything. No.

Q Okay. And so you did not look for footprints?

A Not specifically. No.

Q Okay. Thank you.

MR. FENING: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

Was that your last witness for the day?

MR. ANDREWS: Yes, Your Honor. Our next witness will, I believe, will be quite lengthy. And so --

THE COURT: Okay.

MR. ANDREWS: -- it's probably best to break.

THE COURT: Ladies and gentlemen of the jury, we are going to adjourn for the day today.

Please do not discuss the case amongst yourselves or with anyone else. Please don't permit anyone to discuss it with you or in your presence. Please don't form any opinions on this matter until it's given to you for your deliberations.

We will reconvene 9:00 tomorrow morning hopefully. Thank you.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom:)

THE BAILIFF: This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, the Court recessed at 3:29 p.m., February 23rd, 2024, and reopened at 9:11 a.m., February 24th, 2024, and the proceedings continued as follows:)

THE BAILIFF: All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: Good morning, ladies and gentlemen, at this time the State may call its next witness.

MR. ANDREWS: Your Honor, before the parties have stipulated -- before the State calls any witnesses -- the parties have stipulated to the authenticity of two 911 calls and the State is going to play those at this time.

THE COURT: Okay.

MR. ANDREWS: The first one is State's Exhibit 59, which is the 911 call from the defendant. And the second one is State's Exhibit 58, which is the 911 call from Mary Morgan.

THE COURT: Okay.

(WHEREUPON, State's Exhibit No. 58, 59 were identified for the record.)

*** * * * ***

(WHEREUPON, the videos were played, after which the videos were stopped, and the proceedings continued as follows.)

MR. FENING: The State calls Daniel Peek, Jr.

THE COURT: Please raise your right hand.

*** * * * ***

WHEREUPON, the State called

DANIEL PEEK, JR.,

who, being first duly sworn, testified as follows:

THE WITNESS: I do.

THE COURT: Have a seat, you have to speak loudly and clearly and right into that microphone.

THE WITNESS: Okay.

MR. FENING: If you want to pull that microphone. Just pull it right up to you.

THE WITNESS: Okay.

DIRECT EXAMINATION

BY MR. FENING:

Q Good morning. Could you state your name and spell your last name for the record.

A Daniel, P-E-E-K.

Q And where do you live?

A 167 West Glenaven Avenue --

Q Can you --

A Youngstown --

Q -- speak up louder?

A -- Ohio.

Q It's a big courtroom.

A Oh, okay. My bad. 167 West Glenaven Avenue.

THE COURT: A lot louder. You can pull it -- right into the microphone.

THE BAILIFF: You literally have to put it (indicating).

THE WITNESS: 167 West Glenaven Avenue.

BY MR. FENING:

Q All right. How old are you?

A Nineteen.

Q Who -- are you familiar with Daniel Peek?

A Yeah.

Q Danny?

A Yeah. He's my dad.

Q Okay. Take you back to July 31st, 2022; do you remember that day?

A Yes.

Q Okay. How old were you at that time?

A Seventeen.

Q Okay.

THE BAILIFF: We can barely hear you.

THE WITNESS: Oh. Is it still not close enough?

THE COURT: No.

THE BAILIFF: Literally.

THE COURT: Right into it.

THE WITNESS: Gotcha.

THE BAILIFF: There.

MR. FENING: Okay.

THE WITNESS: Oh, there. I just got it.

MR. FENING: That works.

THE BAILIFF: Better?

THE WITNESS: Yeah. I was 17.

BY MR. FENING:

Q Okay. And where were you at that day?

A At my Dad's house.

Q And where did your dad live?

A On Florida Street. I don't know the exact numbers.

Q You said on East Florida?

A Yeah.

Q Okay. And what were you doing that day?

A I was just watching a movie. Not a movie, a

TV show.

Q Okay.

A I'm sorry. I'm not close enough.

Q Do you remember an incident that happened that day?

A Yes, I do.

Q Okay. Could you just describe what happened?

A John Morgan came to our house and -- with a gun. Oh, am I still not close enough?

Q Just try to speak louder --

A Oh.

Q -- if you can.

A I'm sorry. I said John Morgan came to our house with a gun.

Q Okay. And you're inside at this time?

A Yes.

Q Okay. Did you know that he came over?

A When he pulled in I heard a gunshot. Yes.

Q Okay. And so you didn't know who had pulled in?

MR. HENDERSON: Objection.

BY MR. FENING:

Q Did you know who pulled into the driveway?

A At the --

Q At the time you were sitting there?

A At the time I was sitting there, I did not know who exactly who pulled in.

Q Okay. Did you end up going outside?

A Yes, I did.

Q Why did you go outside?

A Because I heard a gunshot. And it was right out -- I mean it was, like, right outside next to me.

Q Okay.

MR. HENDERSON: I hate to interrupt. I'm just really having a hard time hearing him or understanding what he's saying. I just don't want the miss anything. That's all.

MR. FENING: I'm sorry. You're going to have to --

THE WITNESS: I'm sorry.

BY MR. FENING:

Q You're going to have to pretty much yell, I guess.

A Okay. I'll try.

Q All right. And talk a little slower maybe

that'll help?
A All right.
Q Where was your dad at this time?
A He was outside on the porch.
Q Okay. And so when you go outside, what do you see?
A Him and John Morgan fighting.
Q Okay. And what do you do at this time?
A I go and help my dad.
Q Okay.
A Because he has a gun and he's double his size.
Q How long do you think you were fighting with the two?
A I'm unsure. It was like -- I don't know. It was within a couple seconds. It was maybe ten seconds max.
Q Okay. What happened after that?
A My dad told me to, go. I wasn't sure why, but I just trusted him and I ran.
Q Where did you run?
A I ran to the back of the house.
Q Okay. Did you hear anything after that

point?
A I don't recall.
Q Okay. What was the next thing that you observed?
A The next thing I observed was my dad saying -- like, I think, I'm shot. I don't know the exact wording but he said something -- like, I'm shot.
Q Okay. And did you see where your dad ended up running?
A He ran into the field to the right of our house. Not right -- he ran in front and then he walked to the field. I'm not sure. I know that he went to the field, though.
Q And this is -- did you say the front or behind the house?
A Behind the house.
Q Did you see the gun? I think you said you heard a gunshot but did you see the gun?
A I did not.
Q Okay. After your dad runs into the backyard, what do you do?
A Like when you -- when -- is the mic working?

Q I don't think it's working.

(WHEREUPON, a small discussion was had among Court, bailiff, and counsel.)

BY MR. FENING:

Q Daniel, I'm going to show you what has been marked as State's Exhibit 61.

MR. FENING: Your Honor, permission to publish this exhibit? It's been previously identified?

THE COURT: Any objection?

MR. HENDERSON: I'm sorry, what is it?

MR. FENING: The dash cam video.

MR. HENDERSON: Okay.

BY MR. FENING:

Q All right. For the record, this is starting at a minute and ten seconds in the video on Exhibit 61. Just let it play.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. FENING: Okay. Stop and pause the video at two minutes and three seconds.

BY MR. FENING:

Q Danny, looking at this screen, can you identify the individual that's on the screen.

A That's my dad.

Q That's your --

A That's my dad.

Q Okay. And --

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

BY MR. FENING:

Q Was that you that came off the porch and started fighting there?

A Yes.

Q Okay. And then I believe you had testified earlier that -- obviously, as you can see in the video you start running?

A Yes. Because my dad said, go.

Q Okay. There was another person that came off the porch, a female? Who was that?

A Mary.

Q Who is Mary?

A My dad's girlfriend.

MR. FENING: I have no further questions. Thank you, Dan.

THE COURT: Cross?

MR. HENDERSON: Yes, Judge. Thank you.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Hi, how are you?

A I'm all right.

Q Okay. I'm sorry you have to be here today?

A That's all right.

Q How would you like to be called? Dan? Daniel?

A Daniel.

Q I'm sorry?

A Daniel.

Q Daniel. Okay. I got it. Daniel, my name is Brandon Henderson. I don't believe we've ever met, right?

A We haven't.

Q Okay.

A No, we haven't.

Q Okay. And I'm going to just ask you a couple of questions. Okay? And I don't think we have to be up here too long. But there's just some things that I want to cover. If I talk too fast, or if I'm not loud enough, let me know. Okay?

A Okay.

Q And I'll be more than happen to rephrase it.
A Okay. Sounds good.
Q Okay. And so you're almost 18 at the time of the incident; is that correct?
A Ah, not really. This was July and so...
Q And your birthday is in December, right?
A Yeah. And so, like, six months before I turn 18.
Q Okay. And you -- had you spent the night at your dad's house the night before?
A Yeah. I spent the night. Yep.
Q Okay. And then that morning you guys all woke up, correct?
A Correct.
Q You, your father, Mary Morgan, and Kaitlynn Morgan, correct?
A I'm sorry, can you repeat that?
Q And so the next morning upon waking up there was five people in the house, correct?
A There was Mary, Kaitlynn and her son, and me and my dad.
Q Correct.
A Yeah. Five people was there.

Q Okay. And at some point, you were of -- at some point, you learned that Mary's ex, John, was coming over; is that correct?
A I figured that --
Q No. No.
A I --
Q I don't want to know what you heard. Please, that's -- my question is, at some point you found out that he came over, correct? I'm not asking you what anybody told you or anything. That's all.
A At some point I had found out. Yeah. Because he came to the house that's how I found out. I wasn't sure if he was coming or not.
Q But I --
A But I knew there was a chance he was coming.
Q I'm sorry. Maybe the mic -- maybe it was a bad question on my part. But before he came over, were you aware that he was coming over?
A I was not completely aware, because he was not supposed to come over. There was a chance that he was coming over, though. But I was not a hundred percent. Because Kaitlynn was supposed to meet him at the corner.

Q And so you heard your dad saying -- essentially -- you know, tell the little girl to grab her shit and get down to the corner?

MR. ANDREWS: Objection. Hearsay.

THE COURT: Sustained. It's sustained.

THE WITNESS: He did not say --

THE COURT: No. No. Don't answer it.

THE WITNESS: All right.

BY MR. HENDERSON:

Q Your Dad had Kaitlynn walk down to the corner; is that correct?

A I'm sure it could have been Kaitlynn's mother, because she didn't want him at the house either. Because they previously had -- previously, like, whatever the stuff that's happened. Like, he came to our house a while back for no reason.

Q Okay.

A But, no. Kaitlynn -- but no.

Q And so you --

A He did --

Q -- you are saying --

A -- not tell her to pick up her shit and go to the corner.

Q You are saying one of them made her go to the corner? Yes or no?
A Yes.
Q Okay. You gave an interview in this case?
A Interview? Or a -- or is it called a statement? It's called a statement.
Q Sure.
A Yeah. A statement from the police.
Q I --
A Is that it?
Q Yeah. And so that same day afterwards, you went to the police department; is that correct?
A That is correct.
Q You gave a statement?
A Yes.
Q You were aware that that statement was being recorded, correct?
A Correct.
Q Audio?
A Yes.
Q And also video?
A I did not know that.
Q You didn't know there was video as well?

A I did not.
Q Okay. And that that statement was very quick, correct?
A Yes.
Q Roughly, six and a half minutes. Does that sound about right?
A I don't really recall. Like, I don't have a time frame. I think it could be. Yeah.
Q Okay. Did you have a chance to review that video before today?
A I have not.
Q And so in the past -- and I know it's been a while for you. In the past 19 months you haven't reviewed that video at all?
A No.
Q Okay. How about the video that you were just shown?
A I -- I don't know. I just saw it once. But I never --
Q Okay.
A I saw it once, but I never heard the actual video -- I just saw, at least, the video.
Q I'm sorry. Say it again?

A I said I saw the video --

Q The mic keeps going out on him.

(WHEREUPON, a small discussion was had among Court, bailiff, and counsel off the record, after which the proceedings continued as follows:)

THE WITNESS: I saw the video previously, but I never heard the audio.

BY MR. HENDERSON:

Q Okay. And so --

A So it was a video without the audio.

Q Okay. And so you've seen this video, correct?

A The one of the incident? Yes.

Q Okay. And who have you spoken with before today about this case?

A Well, I have -- there's probably been a lot of people -- like, because he shot a gun. Like, about the case of the courtroom or?

Q Well, just about this incident in general. Who have you spoken with it about this?

A My family.

Q Okay. And you spoken with the prosecutors, I

presume?
A Yes.
Q Okay. And have you spoken to Mary Morgan?
A I have.
Q And are you folks still getting along?
A Yes, we are.
Q Okay. And on top of Mary Morgan, you said there's -- she's not technically family but you said other family; is that right?
A Yes.
Q Okay.
A Yes.
Q And what other family would that be?
A My mom, my brother.
Q Your mom and brother?
A Yeah. Just my family. I'm not entirely sure if it's exactly everybody. Because it's been like a -- it's been affecting my life a bunch.
Q Because --
A And so --
Q Because what?
A I said because of it affecting my life a bunch. And so I said it's been a while ago, in 19

months a lot of people know.

Q Understood. Yeah, I'm not blaming you, I'm just asking you.

A Yeah.

Q That's all.

A I've told a lot of people.

Q Okay. And so you talked to a lot of people about this?

A Correct. Correct.

Q But the people you spoke to first about it was actually Mary, right? At the scene?

A Correct.

Q Okay. And then after that police officers arrived on scene, correct?

A Correct.

Q And they did not make it a point to separate you and Mary, right?

A No.

Q And so you guys still had a chance to speak about the situation, correct?

A Correct.

Q Now, at that point, did they grab your cell phone?

A I'm unsure. I don't believe so. No.
Q You believe they did or you didn't believe --
A Oh? Did they take my cell phone?
Q Yes.
A Oh, I'm sorry. I thought you said, did you have my cell phone. No, they never took my cell phone.
Q Okay. Did they ever take Mary's cell phone?
A I do not know. Because it's her phone.
Q Do you remember if they took your father's cell phone?
A I ain't sure.
Q You're uncertain?
A Yeah. I'm uncertain. I believe so, though.
Q And so when you were running, you said that your don't dad said, go?
A Correct.
Q And that was roughly four to five seconds before your dad started running, correct?
A I'm unsure. I was not facing him.
Q Okay. You seen the video, right?
A I saw it. Yeah, I saw the video.
Q And you would -- I think you would agree with me, you guys were clearly getting the best of John?

A Yes.

Q Right? And so for what reason did your dad tell you to go?

MR. ANDREWS: Objection.

THE COURT: Sustained.

THE WITNESS: He was --

MR. HENDERSON: You don't --

THE COURT: Don't answer.

MR. HENDERSON: -- have to answer.

THE WITNESS: Oh, I'm sorry.

BY MR. HENDERSON:

Q At some point you're punching John, correct?

A Correct. Correct.

Q You're kicking John?

A I don't recall kicking him, but I may have kicked him.

Q Okay.

A I'm unsure.

Q Okay. And you're on his back at some point, correct?

A It happened so fast. I'm unsure. But the -- just in the video it was so fast. I'm unsure. I could have been.

Q That's my point. It's hard; isn't it? It happened so fast, right?
A Yes.
Q It's extremely chaotic?
A Yes.
Q Very hectic, right?
A Yeah. Where are you going with this, though?
Q I'm sorry?
A I said, where are you trying to go with this, though?
Q Well, the problem is that I'm not allowed to answer your questions. And so I'm --
A Gotcha.
Q But I'm just -- I think hopefully you'll see where I'm going with this. This was a very traumatic, confusing, just melee, hectic situation; is that right?
A Correct. Correct.
Q And that's why a lot of it you don't remember, correct?
A I remember quite a bit. It just was so fast.
Q Well, quite a bit isn't everything, right?
A Not completely everything. No.
Q Sort of like you don't have pieces to a

puzzle, right?

A When the fight happened?

Q (Nods his head.)

A When the fight happened. Yes. Because it was a fast moment, like, in the fight. Because you know you really don't know what you're doing. You're just trying to defend -- like it's not just that -- I'm sorry. It's like -- it doesn't -- I'm sorry. It's just -- it was super fast like during the fight. And so, you know. Yeah.

Q Yeah. It happened really fast, right? And so --

A Correct.

Q And so as a result of that -- and not just you, but I mean as a result of chaotic situations, people tend to not remember everything, right?

A Yes.

Q And so even after the situation, I'm sure you thought about it, right?

A I have.

Q And even after the situation I'm sure you were trying to put pieces together of what happened, correct?

A Correct.
Q But you couldn't, right?
A What do you mean? Can you repeat the question?
Q Well, I mean, you couldn't put all the pieces together just because it did happen so fast, right?
A The actual fight. Yes.
Q You said yes?
A Of the actual fight. I didn't know if -- I didn't recall every single punch and every single kick. Like, if I kicked or not? I didn't recall that.
Q I understand.
A That's not something you think about.
Q I understand that. Again, my point is. Because it happened so fast -- even later when you're thinking about it -- you're not going to be able to remember everything that occurred, correct?
A Correct. But, yeah. I believe it's just -- I'm not going to remember every single thing that you did or every little small detail.
Q And I --
A Every small detail.

Q I agree with that. I agree with that. You were asked on -- by the prosecution that your dad -- that your dad had told you to go. And that you ran to the back of the house, right?

A Correct.

Q And then you were asked, what do you recall hearing after that? And your answer was, I don't recall hearing anything after that point. Correct?

A I didn't recall anything. I can't recall anything. Like after the fight I recall hearing, I'm shot. That's about the only thing I recall hearing.

Q Say that one more time.

A I said I don't remember hearing. Like I don't recall hearing anything like after the fight. Like, when I ran. But the last thing I recall hearing is, I'm shot.

Q From -- from your father obviously?

A Yeah.

Q Okay. But when he said go you followed his instruction?

A Correct.

Q And you ran?

A Yes.

Q Towards the backyard?
A Yes.
Q And you don't remember hearing anything, correct?
A Besides, I'm shot. Like a couple -- like, ten seconds after.
Q And, again, that could be because of the fact that it just happened so fast you don't remember hearing anything, right?
A Or it could be because I was a good distance away from them.
Q Uh-huh. Okay. But I mean, we see -- we see you running towards the backyard, right?
A Yes.
Q Okay. And, again, just to make clear. You don't remember hearing anything?
A No.
Q Until, I'm shot?
A Yes.
Q Now, I know you said you didn't kick -- or you don't remember kicking, correct?
A Correct.
Q And do you remember the first thing that you

did when you were coming off the porch?
A The first thing who did?
Q You?
A Oh. The first thing that I did?
Q Yeah.
A I do not recall. I think I punched him. I'm unsure.
Q And so, again, this is another situation where it's hard to recall because it was so chaotic, right?
A And because it seemed like the punches I was throwing and the kicks weren't really that relevant to me.
Q I'm sorry?
A I said, the exact punches and where I thought it wasn't important to me. In my mind, I didn't comprehend that stuff that you recall is important. I don't really care that I punched him or anything like that. It was I just cared about the big thing that happened.
Q Understood.
A That's just how my mind works. Yes.
Q Understood.

A That's not important to me.
Q Understood. And so you're saying when you came down the steps -- how many steps are on the porch?
A I'm not sure of the exact number.
Q Okay. But there is steps on the porch?
A Yes.
Q Okay. And so you come down the porch, and you don't recall what happened at that point, correct?
A When I came down the steps?
Q Yeah.
A I recall fighting him.
Q Understood. Do you recall stomping on the back of his neck?
A I do not recall. And I don't think I did.
Q You don't think you stomped on his neck?
A I do not.
Q Didn't you just see the video?
A It was like a blur in the video. It's like five, six seconds long.
Q Okay. It just -- it just seems like a general theme in this. Is that you don't recall a lot of it?
MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q I've asked you a lot of questions here today, correct?

A Yes.

Q And, again, this was a very traumatic situation. You would agree with that?

A Yes.

Q Do you believe that that is partially the reason why you don't remember some of these details?

A Partially. But mostly because I'm focusing on the big issue at the time. Not every single tiny thing that I did.

Q Okay. Now, your dad -- you did verify that your dad was actually outside on the porch, correct?

A Correct.

Q And your dad and John were not getting along; is that right?

A Correct.

Q But your dad knew that John was coming over to pick up Kaitlynn; is that right?

A He did not know. He didn't. He thought he might have came, but did not know for certain because

Kaitlynn was supposed to be at the corner. He wasn't supposed to come to the house.

Q Okay. And so your dad didn't know that John was coming by?

A No. Not absolutely certain.

Q All right. And so you didn't hear your dad talking with Kaitlynn at all that day?

A I did not --

Q Okay.

A -- hear anything like that. Like, about the incident. No. I don't recall hearing him talking to her. He might have, but I was just on the couch watching TV.

Q Okay. And -- and so when you come off the porch, what's the first thing that you remember doing?

A I just answered that question.

Q No, I'm not sure. I'm not sure you did. I think you said you don't recall. You just remember fighting him.

A That's what I recall doing. Yeah.

Q Okay.

A I did say that.

Q Do you remember if that was a punch? Do you

remember if that was like a specific type of -- I mean, there's a lot of different ways to fight, right?

A I don't recall every single punch or kick --

MR. ANDREWS: Your Honor, this was asked and answered.

THE COURT: Sustained.

BY MR. HENDERSON:

Q Do you remember if you ever had your arms around John's neck?

A I just told you everything I recall happening.

Q Okay. And so you remember coming off the porch and fighting?

A Yes.

Q And then you remember hearing, I'm shot?

A Yes.

Q And that's all you recall?

A That's not all I recall. I recall him laying in the field, and I recall seeing him with the gunshot wound and bleeding out.

Q Okay. After the event you went and picked up something in the front yard. Do you remember that?

A Yes. I recall picking up something.

Q Okay. What did you pick up?
A I'm not even sure. Maybe, a phone. Or, yeah, it might have been a phone. I'm unsure.
Q It might have been a phone?
A Yes.
Q But you had your phone on you, correct?
A Are you talking about -- I'm sorry, can you like -- what are you talking about? Like what time?
Q You said after the whole incident -- I asked you after the whole incident you came in the front yard and you picked something up. And you said it may have been a phone, correct?
A Correct.
Q That was your dad's phone; wasn't it?
A That I'm unsure.
Q I'm sorry?
A I'm unsure.
Q Okay. Are you sure that your dad's phone fell out of his pocket during the fight?
A I don't know if his phone fell out of his pocket.
Q But you do remember coming through the house, coming back down the porch, looking down, picking

something up off the ground that you think is a phone, and then running away. Do you remember that?

A Like after everything was -- like when everything that happened?

Q Yes.

A Like, when the cops came and everything.

Q The cops we're not there yet?

A Then I do not recall.

Q Okay. With me showing you a video would that help you refresh your recollection?

A Yes.

Q Okay.

MR. HENDERSON: Judge, may I?

THE COURT: Yes.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued.)

MR. HENDERSON: Yeah. We'll mark this as Exhibit B -- or D.

(WHEREUPON, Defendant's Exhibit No. D was identified for the record.)

(WHEREUPON, the video was played, after which the video was stopped, and the

proceedings continued as follows:)

MR. HENDERSON: All right. And so Daniel, are you able to see this?

THE COURT: You might want to turn the lights off it's very blurry.

MR. HENDERSON: Thank you, Judge.

BY MR. HENDERSON:

Q Are you able to see this?

A Yes.

Q All right. And hopefully everybody else can. Who is that there?

A That looks like me.

Q And who else?

A I'm not sure who that is. It could be -- I'm unsure. It's blurry.

Q Does it look -- do you need to get closer maybe to take a look?

A Well, it's only the back side of the person, you know. I can't tell who it is.

Q Does it look a little like Kaitlynn?

A Yeah. It looks a tiny bit like Kaitlynn.

Q Okay. And this is after the incident where your father ran to the backyard, correct?

A Yes.
Q And this is you coming out of the front of the house, correct?
A Yes.
Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

BY MR. HENDERSON:

Q Okay. Daniel, now that I played that video, does that help you refresh your recollection?
A Yes.
Q Okay. And --
A Yeah. I'm pretty sure that was my phone. Because after I picked up my phone I recall calling my mom.
Q You're pretty sure it was your phone?
A Yes.
Q But not a hundred percent sure it was your phone?
A I'm not a thousand percent sure. But I'm pretty sure it was my phone.
Q Okay. Where was your dad's phone at this

point?

A I don't know where his phone is.

Q You don't know?

A I don't know where his phone is. I don't keep track of his stuff.

Q But you're aware that Mary had his phone, correct?

A I am not aware.

MR. HENDERSON: Your Honor, can I just have a second?

THE COURT: Sure.

MR. HENDERSON: And I might just be able to wrap this it up here. Thank you.

Daniel, I appreciate your time. Thank you.

THE COURT: Redirect?

MR. FENING: Yes, Your Honor.

* * * * *

REDIRECT EXAMINATION

BY MR. FENING:

Q Danny, you just watched the video. After you watched the video, I believe, your answer was that you -- as going back in the video you were calling your mom?

A Yes.

Q Why were you calling your mom?

A Because I was scared and I was telling her what had happened.

Q Okay. You had answered on cross that your dad knew that John was coming to pick up Kaitlynn?

A Yes.

Q But he didn't think he was going to come to the house?

A I'm unsure what his thought process was. But --

Q Okay. Was John supposed to come to the house?

A He was not supposed to come to the house.

MR. HENDERSON: Objection.

THE COURT: Overruled.

BY MR. FENING:

Q And do you remember watching the video of this. At the time that your dad is shot, you were both running away from John, correct?

A Yes.

Q All right.

MR. FENING: Thank you.

MR. HENDERSON: Your Honor, I object to the last question. It's leading.

THE COURT: Overruled. Any recross?

MR. HENDERSON: Yes.

* * * * *

RECROSS EXAMINATION

BY MR. HENDERSON:

Q Dan, you didn't see your dad get shot; did you?

A I didn't see like the bullet enter him, but I seen that he was shot.

Q Right. And so when I was talking to you before you said -- what you remember is that you remember coming off the porch, correct.

A Yes.

Q Fighting?

A Yes.

Q Very chaotic situation?

A Yes.

Q And then hearing, I'm shot. Right?

A Yes.

Q That's what you remember?

A Yes.

Q Thank you.

THE COURT: Okay. Any redirect?

MR. FENING: No, Your Honor. Thank you.

THE COURT: You may step down. Thank you. You are done.

THE WITNESS: Okay.

THE COURT: The State may call its next witness.

MR. ANDREWS: The State will call Mary Morgan.

THE COURT: Please raise your right hand.

* * * * *

WHEREUPON, the State called

MARY FRANCES MORGAN,

who, being first duly sworn, testified as follows:

THE WITNESS: Yes.

THE COURT: You may be seated. These microphones are really acting weird. And so, I mean, like it's better to hold it right to your face. Okay?

THE WITNESS: Okay.

THE BAILIFF: Try that one. Go ahead

and talk in it real quick.

THE WITNESS: Hello.

THE BAILIFF: You got it.

THE COURT: There you go.

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Please state your full name for the record.

A Mary Frances Morgan.

Q You got to talk into the microphone?

A Mary Francis Morgan.

Q Okay. Thank you. How old are you, Mary?

A Fifty. Fifty.

Q All right. Do you know a person by the name of John Morgan?

A Yes.

Q Your --

A Yes. It's not working.

THE BAILIFF: Did you hit a button?

THE WITNESS: No.

THE BAILIFF: Hit it.

THE WITNESS: (Taps mic.)

THE BAILIFF: Like, literally.

MR. ANDREWS: It might be easier to keep

it in the stand and just lean right into it.

THE BAILIFF: Well, we got water dumped.

THE WITNESS: Oh.

THE BAILIFF: Thank you. Before we lose another one. Better?

THE WITNESS: Yes.

THE BAILIFF: All right.

THE WITNESS: Okay. Can you hear me now?

THE COURT: Perfect.

BY MR. ANDREWS:

Q All right. The question was, do you know a person by the name of John Morgan?

A Yes.

Q How do you know him?

A Well, technically, he's my husband.

Q There we go. We missed the first part of that. You can talk --

A Technically he's still --

Q -- right into it.

A -- my husband.

Q Okay. When -- how long were you married?

A Married? Or just together in general?

Q Together?
A About 25 years --
Q Okay.
A -- ish.
Q And as of this time, are you still legally married?
A Yes.
Q Do you have any children?
A Yes.
Q You, yourself?
A I have my son, myself, and then we share a daughter.
Q Okay. What's you're son's name?
A William Granger.
Q And he -- he is not John's son?
A No.
Q Okay. And you have a daughter, what's her name?
A Kaitlynn Morgan.
Q And is she John's daughter?
A Yes.
Q How old was William when you got together with John?

A Around two.
Q Okay. Does William have a relationship with his natural father?
A No.
Q Did John -- you and John raise him as you and John's son?
A Yeah.
Q Okay. Did you know a person by the name of Danny Peek?
A Yes.
Q How did you know Danny?
A He was my boyfriend.
Q When did you and John -- and, again, I know you -- I know you're still married. When did you and John separate?
A About July 2019.
Q Okay. And on July 31st of 2021; where did you live?
A In Youngstown on Florida Avenue.
Q Who did you live with?
A Daniel Peek.
Q And you described him as your boyfriend?
A Yes.

Q Did he have children?
A Yes, he did.
Q How many?
A He's got his two biological sons and his stepdaughter that he raised from when she was a baby.
Q Okay. And we just heard from Daniel, Jr. He's one of Danny's sons?
A Yes.
Q Okay. Who lived with you at the residence on Florida at that time?
A At that time, Kaitlynn and my grandson.
Q Okay. And what's your grandson's name?
A William Row.
Q Okay. Danny did not live there? Oh, I'm sorry. Daniel?
A No.
Q Okay.
A They come stay several days at a time. But, yeah.
Q All right. When you and John split up, how was your relationship with him immediately after that?
A After the split up?
Q Yes.

A It was not good.
Q It was what?
A It wasn't good.
Q Okay. Over time did -- I guess wounds heal?
A I mean, apparently not.
Q Okay. Did you have much of a relationship with John after you split up?
A No.
Q Okay. Kaitlynn was -- in July of 2021, how old was Kaitlynn?
A She just turned 21 getting ready to turn 22 in July.
Q Okay. And so she was an adult?
A Yes.
Q Okay. Was there any need for you and John to have any relationship then?
A No.
Q Okay. Did you speak with him often?
A No.
Q Did he -- when did Kaitlynn move in with you?
A February 4th, 2022.
Q I'm sorry. I think I said '21, I meant '22. Why did she come live with you?

A Because he kicked her out.
Q Who is he?
A John.
Q Okay. Does Kaitlynn still live with you?
A Yes.
Q And Willy?
A Yes.
Q After John kicked her out, did she still see John occasionally?
A After a while she did. Yeah.
Q All right. Was there somewhat of a pattern? Was there like a certain day she would see him?
A Usually Sundays.
Q Usually Sundays?
A Yes.
Q Would John come pick her up?
A He wasn't supposed to, but I think he did. A lot of times it was his girlfriend.
Q Okay. Did you have any relationship with his girlfriend?
A No.
Q We are going to talk about a -- well, was there a phone call between John and Danny?

A Yes.
Q And that -- would that have occurred a month or two before July 31st?
A Yes.
Q Okay. Were you present when that phone call happened?
A Yes.
Q Okay. How did it start?
A He was trying to call my phone. And he --
Q Use names.
A Oh.
Q When you say --
A Oh. I'm sorry. John's calling my phone and texting my phone saying, please call me. And I didn't have the number saved anymore. And so I was like move on. And Danny saw it. And he's like, do you mind if I call it back to see who it is. And I said, I don't care. And so he called him back.
Q Okay. Did there develop an argument between --
A Yes.
Q -- Danny and John?
A Yes.

Q Okay. Were there threats made?
A Yes.
Q Were there threats made from Danny towards John?
A Yes.
Q Were there threats made from John towards Danny?
A Yes.
Q Okay. Mutual combat basically?
A Yeah.
Q Were you -- was this on speaker phone?
A Yes.
Q Okay. Speak into that mic.
A Yes.
Q Okay. And so you heard both ends of the conversation?

MR. HENDERSON: Objection.

THE WITNESS: Yes.

THE COURT: Sustained.

BY MR. ANDREWS:

Q Did you hear -- were you able to hear what John was saying?
A Yes.

Q And were you able to hear what Danny was saying?
A Yes.
Q After that phone conversation, when was the next time you saw John?
A July 31st.
Q And where was that?
A In my driveway.
Q All right. Let's talk about July 31st. That morning, that was a Sunday?
A Yes.
Q Okay. That morning when people woke up, who was at your house?
A Myself, Danny, his son Daniel, Kaitlynn, and my grandson, William.
Q All right. Was there anything unusual when you woke up Sunday morning?
A No.
Q Okay. What did you -- did you have any plans for that day?
A We were talking about what we were going to do for the day. We didn't really have anything set.
Q Okay.

MR. HENDERSON: Judge, I hate to be a pest. I'm sorry. It's getting to where I'm not being able to hear her again.

MR. ANDREWS: Just pull that -- even if it's uncomfortable just speak right into that mic.

THE WITNESS: Okay.

MR. ANDREWS: It may sound -- seem weird. But --

THE WITNESS: Okay.

BY MR. ANDREWS:

Q Okay. Let's go back. Did you have any plans for that day?

A No. And we were really just talking about it that morning.

Q All right. Did there come a time when you learned that Kaitlynn was going to go with John?

A Yes.

Q How did you learn that?

A She came out on the front porch where we were sitting and said that her dad was going to come pick her up so she could go to her brothers.

Q Okay. And so who was out on the front porch?

A Me and Danny.
Q All right. And then Kaitlynn comes out and that's what she told you?
A Yeah.
Q Okay. Was there a response to that?
A Oh, yeah.
Q Okay.
A We both -- Danny and I both got very angry about it. And told her she needed to -- she knew that we did not want him at the house.
Q Okay. You told her -- what did you say again?
A That we did not want John coming to the house.
Q Did you say she knew that?
A She knew that. I told her. She knew that.
Q Had you told her that before?
A Yes. A few times.
Q Okay. Was there another arrangement made?
A Usually, she would -- like, I said I either have John's girlfriend, my son, or one other person pick her up and take her over. But today -- that day. No.

Q Okay. When you -- when you and Danny told her that?

A Yeah.

Q Did she make another arrangement?

A That she was going to walk to the corner and let him pick her up. That's all I know.

Q Okay. How did you know that's what she was going to do?

A She told me.

Q Okay. And so she told you she --

A She was going to walk to the corner.

Q Okay. Did she tell you whether or not she had informed her father of that?

A No.

Q All right. Did she walk to the corner?

A Yes.

Q With Willy?

A With my grandson.

Q All right. When that happened, what is your understanding of what is going to transpire?

A What do you mean?

Q What did you think with -- you told her, you do not want John there? She --

A I figured he would drive to the corner where she was standing to pick her up.

Q Okay. And so were you expecting John to come to the house?

A Not at all.

Q Was there a plan to run down to the corner?

A No.

Q Okay. And so you were just going to sit on the porch?

MR. HENDERSON: Objection.

THE COURT: Sustained.

BY MR. ANDREWS:

Q When she walked down the street what was -- what did you think was going to happen?

A I really wasn't sure. I went in the house.

Q Okay. What did you do in the house?

A I went to the kitchen and got ready to start doing dishes.

Q Okay. Now, we've been to your house -- the outside. We understand where the front porch is. The front porch -- the door on the front porch.

A Yes.

Q If you go in that door what room do you go

into?
A The living room.
Q Okay. Is that where a TV would -- the television --
A Yes.
Q -- would be?
A Yes.
Q Okay. Where is the kitchen in relation to the living room?
A There's the dining room and then the kitchen.
Q Okay.
A The dining room is then dividing the living room and then off the dining room is the kitchen.
Q And so you go into the kitchen?
A Uh-huh.
Q Is there a window in the kitchen?
A There's a window in the kitchen.
Q Okay. Where does that window look?
A To the side. The great big side, empty lot.
Q Okay. And so you're looking -- from the kitchen if you were to look outside you would be looking?
A To the side yard.

Q To the side. Okay. When you went inside where was Danny?

A He was over on the sidewalk walking the dog.

Q Did you say dogs?

A One dog.

Q One dog. Okay. What was he doing?

A Just walking around in the side yard like he does every morning.

Q Okay. And so that's something --

A Yeah.

Q -- that he --

A -- that's nothing unusually.

Q Okay. And so you're in the kitchen, he's walking the dog. And I mean -- and Kaitlynn is down the street?

A Down the street.

Q Do you recall where Daniel was?

A In the living room on the couch.

Q Okay. What is the next thing that you notice?

A Danny was back on the porch sitting. Maybe a few minutes and I heard a tire squeal. And I look through the dining room window. And I can see through

the dining room window onto the front porch.

Q Okay. And so you look through the dining room window onto the front porch? Okay. You hear -- this is because of the tires --

A The tires squealing.

Q Okay. And what do you see when you look on the porch?

A I saw Danny stand up.

Q Okay. And --

A Then I heard, Mother Fucker brought a gun to my house.

Q Okay. I'm sorry. Say that again?

A All right.

Q It is okay to say it?

A Okay. Then I heard, Mother Fucker brought a gun to my house.

Q Who said that?

A Danny.

Q Okay. What do you hear then? Or what do you hear, see, do, what is the next thing that --

A I heard a gunshot.

Q After -- is that after Danny says that?

A Yes.

Q Okay.
A And --
Q Does -- okay. Go ahead.
A And I went through the dining room going into the living room, and Daniel and I just kind of both look. And we was, is that a gun? And we both started running outside.
Q When you heard the gun, the gunshot, could you tell where it was coming from?
A We knew it was close. I couldn't tell exactly. But we knew it was right there.
Q Okay. And so it's not a couple blocks over?
A No.
Q Or anything like that?
A No.
Q Okay. Now, what's going through your head? You hear Danny make that statement?
A Uh-huh.
Q And then you hear a gunshot; what are you thinking?
A That John shot his gun at my house.
Q Okay. And so what do you do then?
A I started to run out of the house.

Q Okay. You go into the dining room or into the living room?
A I go through the dining room to go through the living room --
Q Okay. Where --
A -- to go out the front door.
Q Where is Danny then? Daniel at that time?
A He was running in the living room and he was running out the front door.
Q Okay. Who runs out the front door first?
A Daniel.
Q Okay. When you're still in your house, can you see what's going on?
A No.
Q Okay. And so what do you do? You're in your living room, what do you do?
A I'm walking out.
Q Walking out where?
A Out onto the front porch.
Q What do you see or hear when you're there?
A When I got out, I saw Danny and Daniel running. And John standing next to the driveway pointing the gun to the back.

Q Okay. Now, we've shown the video. And we've seen -- or Daniel testified that there was a fight. He and Danny were fighting with John. Did you see that?
A I did not.
Q Okay. And so when you go out onto the porch -- again, what? What do you see?
A I see Danny and Daniel jump -- get up and running.
Q Okay. Where -- if you recall, where is Daniel running?
A He ran towards the neighbor's house. And from there I saw Danny. I don't know which direction Danny went from there.
Q Okay. All right. Is anything being said that you recall?
A John started screaming at me that it is all my fault, he was just here to pick up his daughter.
Q Is that when -- as soon as you get outside?
A As I got off the porch and he pulled the trigger.
Q Okay. I'm talking about when you -- when you get out on the porch?
A Yes.

Q You see Danny and Daniel running?
A Yes.
Q Are you hearing any -- or are any words being exchanged?
A No.
Q Okay. Do you see John?
A Yes.
Q What is he doing?
A Standing in the driveway holding the gun.
Q Okay.
A Pointing to the back of the house.
Q Pointing to the back of the house?
A Towards the back.
Q Okay. The same direction --
A Yeah.
Q -- as they are running?
A Yeah.
Q Okay. You see him holding the gun. What do you see or hear next?
A I heard the gun.
Q Okay. You mean the gun being fired?
A Yeah.
Q Okay. How many times?

A I heard it once.
Q Okay. Did you hear anything else?
A I heard Danny say, I'm shot.
Q Okay. Where were you then?
A I was on the passenger side of my car starting to run down the driveway.
Q Okay.
A On that side of the driveway.
Q Do you say anything to John or does John say anything to you?
A That's when he says --

MR. HENDERSON: Objection.

THE COURT: Overruled.

THE WITNESS: That's when he said this is all your fault. I was just here to pick up my daughter.

BY MR. ANDREWS:
Q Do you say anything back to John?
A No. I just started to run after Danny, because I heard he said he was shot.
Q And where -- in what direction are you running?
A To the back.

Q Okay. And, again, we've seen your house. Once you get to the back of your house, what do you see? Or what happened?

A Danny ran to the right side of the house, to the side yard.

Q Okay.

A And I was following him.

Q And so at first Danny is running to the backyard?

A Yes.

Q Okay. Would he have turned then?

A Yeah.

Q To his left or his right?

A To his right.

Q To his right? Okay. And he runs -- you said across the backyard.

A Yeah.

Q And what do you do?

A I'm following him.

Q Are you paying attention to what John's doing at this time?

A No.

Q Are you paying attention to what Daniel is

doing at this time?
A No.
Q Who is your attention on?
A Danny.
Q Okay. What do you do? Or what does Danny do?
A He dropped to his knees and started praying.
Q What do you do?
A I was right behind him and I saw the hole in the back and I was trying to tell him to cover the hole in his back.
Q Now, Danny wasn't wearing a shirt; was he?
A No.
Q Did he have a shirt on him?
A It was tucked in his waistband.
Q Okay. Did you do anything with that shirt?
A (Shakes her head.)
Q Okay. And so Danny is on his knees praying?
A Yeah.
Q What happens next?
A He fell to the side, he rolled over, and that's when I saw the hole coming out of his chest. And I started CPR, calling 911, trying to cover the

wound, I'm trying CPR, screaming at 911 to hurry up and get here.

Q We played that. You're 911 call. All right. Eventually, the police get there?

A Yeah.

Q And then soon after that the EMT's come?

A Yes.

Q Did the EMT's take Danny in the ambulance?

A Yes.

Q What did you do then?

A I started to walk up front and the police directed us -- Danny and I back to the porch.

Q Did you see John again?

A No.

Q Okay. When you walked up front, do you know where John was?

A He was in a police car. I don't know which one.

Q Okay. You knew he was in the police car?

A (Nods her head.)

Q Okay. Mary, you -- did you come to find out that this was recorded on John's dash cam?

A No. Not until later.

Q Okay. That's all right. At a later time, did you find out?

A Yes.

Q Okay. Have you seen the video?

A No.

MR. ANDREWS: Your Honor, at this time, we are going to play a short portion of State's Exhibit 49, which is the dash cam video. Okay. That's it.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop.

BY MR. ANDREWS:

Q All right. Mary, can you tell us what this is? Can you see that from here?

A Sort of. Yeah.

Q What is this?

A My house.

Q That's your house? That's 1417 East Florida?

A Yes.

Q Okay. There's a vehicle -- this is a dash cam?

A Yes.
Q Okay. The vehicle right in front of it, whose vehicle is that?
A That is mine.
Q Okay. And then the one that would be your neighbor's vehicle over on the side at your neighbor's house, correct?
A Yes.
Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

BY MR. ANDREWS:
Q Who is the person we are seeing right now?
A That's Danny.
Q Danny or Daniel, Sr.?
A Daniel, Sr.

MR. ANDREWS: Okay. Go back some.

(WHEREUPON, the video was played, after which the video was stopped and the proceedings continued as follows:)

MR. ANDREWS: Stop.

BY MR. ANDREWS:

Q All right. Who's the person over on the very left side?

A John Morgan.

Q Okay. And can you see his hand?

A Yes.

Q Can you see what's in his hand?

A Yes.

Q What is that?

A A gun.

Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop.

BY MR. ANDREWS:

Q There's a person that just came down the porch?

A Yes.

Q Who is that?

A Daniel.

Q Daniel --

A Jr.

Q Daniel, Jr. Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop.

Q There's a person coming down the porch now. Who is that?

A That is me.

Q Okay.

MR. ANDREWS: Go a little farther.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop.

BY MR. ANDREWS:

Q All right. Who is that right now running to the back of the house?

A That is Daniel.

Q Daniel? Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after

which the video was stopped and the proceedings continued as follows:)

BY MR. ANDREWS:

Q Okay. Now, who is running to the back of the house?

A Danny.

Q All right. The person you have identified as John what is he -- does he have something in his hand now?

A Yes, he does.

Q What's that?

A Yes, he does.

Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: All right.

BY MR. ANDREWS:

Q You said he was saying things. This is all your fault?

A Yes.

Q When did that occur?

A As I was walking back and he starts walking to my car.

Q Okay.

MR. ANDREWS: Just play the video.

(WHEREUPON, the video was stopped, after which the video was stopped, and the proceedings continued as follows:)

BY MR. ANDREWS:

Q And this is when you're going back to see what happened to Danny?

A Yes.

Q Or Danny? Okay. All right.

MR. ANDREWS: You can turn the lights back on. Thank you.

BY MR. ANDREWS:

Q Do you know what -- well, you were with John for quite a long time, correct?

A Yes.

Q Okay. What was -- what was his occupation?

A He did a few things over the years.

Q Like what?

A Blacktop sealing, working on cars, painting tower substations.

Q Okay. And he's had some health issues?
A Yes.
Q Do you know after those health issues, did he continue to work?
A Yes.
Q After he had these health issues, did he just become inactive or was he still an active person?
A He was still active.
Q Okay. What type of things would he do?
A He go riding on his motorcycle, he'll go riding on the four wheelers.
Q He was still able to do those things?
A Yeah.
Q I'm going to --

MR. ANDREWS: May I approach, Your Honor?

THE COURT: Yes.

MR. ANDREWS: I'm handing you what's been marked for purposes of identification, as State's Exhibit No. 1.

(WHEREUPON, State's Exhibit No. 1 was identified for the record.)

BY MR. ANDREWS:

Q Can you identify what that is?

A That is Daniel Peek, Sr.

Q Okay. That's a picture of Danny?

A Yes, it is.

MR. ANDREWS: Permission to publish, Your Honor?

THE COURT: Any objection?

MR. HENDERSON: No objection. Thank you.

THE COURT: Go ahead.

BY MR. ANDREWS:

Q Okay. The person you've identified as John Morgan, is he present in the courtroom today?

A Yes, he is.

Q Could you point to him and state what he's wearing?

A Over there wearing a gray shirt and tie.

MR. ANDREWS: May the record indicate that the witness has identified the defendant?

THE COURT: It will.

MR. ANDREWS: One moment. I have

nothing further, Your Honor.

THE COURT: Cross?

MR. ANDREWS: Your Honor, may we approach?

THE COURT: Yes.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

MR. HENDERSON: Judge, you ready?

THE COURT: Yes.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Mary, my name is Brandon Henderson. I'm going to ask you some questions. Okay? All right?

A Okay.

Q If you could speak loudly, I would appreciate it. It's really hard to hear you. And I promise I'll do the same? Okay?

A Okay.

Q If I speak too fast and if I do not ask an intelligible question, you let me know and I'll rephrase it. Okay?

A Okay.

Q All right. You give an interview in the case; did you not?

A Yes.

Q All right. In that interview you sat with Detective Vitullo; is that right?

A Yes.

Q And who else?

A Another officer and I don't know his name.

Q I'm having a hard time hearing you.

A There was another officer and I don't

remember his name.

Q Okay. There was another detective in the room?

A Yes.

Q Okay. And during that interview you are aware it was audio recorded?

A Yes.

Q You are aware it was being video recorded?

A Yes.

Q Okay. And so when -- you are aware that John was coming over, correct?

A After my daughter told me. Yes. But she was supposed to go to the corner.

Q I'm sorry?

A He wasn't supposed to come to the house at all he was supposed to the corner.

Q But John didn't know that? Is that right?

A As far as I know I have no idea.

Q Okay. You don't know?

A I would assume my daughter told him.

Q And he would come over often actually? Right?

A No.

Q Well, he would come over and pick up Kaitlynn, correct?
A No.
Q He wouldn't?
A No.
Q Okay. And so in your statement, you don't remember saying, well, but he only just pulls in. Meaning, he pulls into the driveway; is that correct?
A He didn't do it often. He only did it a few times.
Q Okay. And so he only did it a few times; is that what your testimony is today?
A Yes.
Q Okay. And those few times he did it, he pulled into the driveway? Is that your testimony?
A Yes.
Q Okay. And so if somebody else said that he never pulled in the driveway they would they be lying; is that true?
A After a certain point he never pulled in the driveway.
Q One more time.
A After a certain point. No. He was never

pulling in the driveway anymore.
Q Okay. And so he was or wasn't pulling in the driveway?
A For awhile he was.
Q Okay. Do you remember saying, well no, he'll pull in to pick her up?
A He did.
Q In that --
A Yes.
Q -- audio recorded statement? Do you remember that?
A Yes.
Q Okay. John and Daniel Peek never had any physical confrontation --
A No.
Q -- correct? When John pulled into the driveway to pick up Kaitlynn?
A Yes.
Q There's no problems; was there? Before this date?
A Before the day? No.
Q I'm sorry?
A No.

Q Okay. John never got out of the vehicle?
A No.
Q Didn't approach your doorway and start pounding on the door?
A No.
Q Didn't try to harass you guys?
A Not at the house. No.
Q Okay. Didn't try to create trouble at all, correct?
A Not while he was there picking her up. No.
Q Okay. All right. And so you made it seem -- on direct examination you were talking with the prosecutor's, and you were essentially saying that both you and Danny -- Daniel Peek were making a decision together to have your daughter walk down to the corner?
A Yes.
Q Okay. And so your daughter has a what? A two year old at the time?
A At the time he was two. Yes.
Q She has a car seat?
A Yes.
Q She has a diaper bag?
A Yes.

Q What else?
A That's it.
Q That's it. Just an infant, a diaper bag, and a car seat?
A Yes.
Q Walk down to the corner?
A Yes.
Q And you're okay with that as a mother?
A Not really. No.
Q Okay.
A But I don't want him --
Q Okay.
A -- at the house.
Q Why didn't you say to Danny -- hey, Danny, chill out? You could have said that, right?
A I was angry, too, and I didn't want him at the house.
Q You're not the one who's blowing a gasket, right?
A No.
Q Daniel Peek was, correct?
A Yes.
Q That's what you said in your audio recording,

correct?
A Yes.
Q You said when he found out that John was coming over Daniel Peek was blowing a gasket?
A Yeah.
Q But, yet, he went and waited on the front porch?
A He didn't go --
Q Correct?
A -- wait on the front porch. He sat on the front porch with the dog.
Q Okay.
A After he took him for a walk like he did every morning.
Q Knowing that John is coming over?
A Okay. How was he knowing --
Q Blowing a gasket?
A -- when John was supposed to go to the corner.
Q And blowing a gasket?
A Okay.
Q With his shirt off?
A Yes.

Q Okay. And you state, Danny gets worked up? Right?

A Yes.

Q Okay. Now, you're still legally married to John, correct?

A Yes.

Q Okay. You're aware that he has possessions, correct?

A Yes.

Q A home?

A Yes.

Q A motorcycle?

A Yes.

Q A car?

A Yeah.

Q Other possessions, too?

A Yes.

Q Worth quite a bit of money, correct?

A Yeah.

Q Okay. Your son William Granger?

A Yeah.

Q He has a niece; is that correct?

A My son?

Q William Granger?
A Has a niece?
Q I'm sorry. My apologies. Has a daughter, correct?
A Yes.
Q Okay. What's her name?
A Aries.
Q And you spend a lot of time with her?
A No. I haven't up until recently.
Q Not until recently?
A Uh-huh.
Q Not until the case started coming around?
A Yeah.
Q That's not John's biological son, correct?
A No.
Q But John took him in as his own; is that right?
A Yeah.
Q You said over time wounds could heal between you and John, correct?
A I never said that.
Q You said that on direct examination.
A I didn't say that.

MR. ANDREWS: Objection.

THE WITNESS: No.

MR. ANDREWS: She did not --

THE WITNESS: I didn't say anything.

MR. ANDREWS: -- say that.

THE COURT: No, she didn't. Sustained. That's not what she said.

MR. HENDERSON: My apologies.

BY MR. HENDERSON:

Q You said wounds do not heal, correct?

A Yeah.

Q Okay. But you guys learned to live cordially. Meaning, you guys didn't call and fight with each other, correct?

A No. I left him totally alone. Every once in a while he would call.

Q I can't hear you.

A I left him totally alone and every once in a while he would call.

Q Okay. He moved on and he had a girlfriend, correct?

A Yes.

Q All right. And he actually was calling you

in this phone call six weeks before the incident to try to get information for a divorce, correct?

A Yeah.

Q He was trying to get a formal divorce from you; is that right?

A Yeah.

Q Okay. And you had told your daughter that you had blocked his phone number, correct?

A On my other phone I did. That was a new phone.

Q Okay. And so on the --

A It was --

Q -- new phone --

A -- a new company.

Q On the new phone you didn't block his phone number?

A No. I didn't think of it.

Q All right. And you said -- I don't want to mischaracterize things. You said that Dan came up to you and said, hey, do you mind if I call back?

A Yes.

Q That's what Daniel Peek said to you?

A Yes.

Q The man is blowing gaskets, right?
A This is before that. And so that has nothing to do with it.
Q A man that you say gets worked up, correct?
A That was before that.
Q All right. And so he changed?
A He was angry. He doesn't get set off that much.
Q Daniel Peek believed you were cheating on somebody with -- from Facebook, correct? That you were going to buy a gem from; is that right?
A That I what?
Q That you were going to buy a gem from?
A Oh, yeah.
Q Okay.
A He didn't think I was cheating.
Q Okay.
A He was curious why.
Q Understood. And he's curious why somebody is calling your phone?
A Yes.
Q And then he comes to you and says, hey, would you mind, please sweetheart, if I call your phone?

A Yeah.
Q Okay. And so he used your phone?
A Yeah.
Q And calls John?
A Yes. He just hit call back.
Q And then you're saying that, knowing it's John; is that what you are trying to tell me?
A No. I didn't have his number saved, and that's why I didn't recognize it.
Q You were together 23 years?
A Exactly. And his name was saved under -- his phone number was saved under his name, not the number. I didn't look at the number.
Q And so is there certain people that you have in your life that you know their phone number?
A Actually, no.
Q Nobody?
A No. 911 that's about it.
Q Not even with somebody that you've been with for 23 years?
A No.
Q Okay. Now, you say that you heard tires squealing?

A Yes.
Q And what you're indicating there is that John is driving like madman?
A Like I said, I heard tires squealing. For all I know he was stopping.
Q Okay. You know there's a video? Obviously, they played it --
A Yes.
Q -- quite a few times for you, right?
A That was the first I've seen it.
Q And so --
A But, yes.
Q Yes. And so if there's no tires squealing in that video, you're not telling the truth, correct?

MR. ANDREWS: Objection.

THE WITNESS: It did sound like tires squealing.

MR. HENDERSON: I'm sorry?

THE COURT: Overruled.

THE WITNESS: It did sound like tires squealing.

MR. HENDERSON: Okay.

BY MR. HENDERSON:

Q People will be able to see and hear the video, right?

A Yes. That's what I'm saying. It's what I just heard.

Q Understood. If there is no tires squealing in the video then you are not telling the truth about that day, correct?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q Now, when you said -- and I couldn't hear you. And I apologize. I was trying. But there are certain things I couldn't hear. You said, he said, Mother Fucker something?

A Mother fucker brought a gun to my house.

Q Mother Fucker brought a gun to my house?

A Yes.

Q That's what Daniel said?

A Yes.

Q Daniel Peek?

A Yes.

Q And where were you when you heard him say

that?

A In the house in the kitchen.

Q And you knew -- excuse me, you knew that John had carried a firearm, correct?

A Yeah.

Q And you knew that was, because two to two and a half years prior he was shot at?

A That is not the reason why. He always carried a gun from the time he got his carry and conceal. Except, when he was riding his motorcycle.

Q Okay. And so --

A And so --

Q -- I'm glad you said that. But there's been no other situation with John with guns, correct?

A No.

Q Okay.

A Not that I'm --

Q When did he --

A -- aware of.

Q -- get his CCW? Back in '05?

A I believe so. I don't know exactly.

Q Okay.

A I don't know.

Q And so since '05, he's been a responsible gun owner.

A I guess.

Q Is that what you're saying?

A I guess.

Q Okay. You mentioned that you walked off the porch -- or, I'm sorry, you walked out onto the porch, right?

A Uh-huh.

Q Is that correct?

A Yes.

Q And the first thing you see is Daniel and Danny running?

A Yes.

Q Okay. You didn't see John getting punched in the face and the ear?

A I really didn't notice it. No.

Q You didn't notice that part?

A No.

Q Okay. Did you see him getting yanked by his shirt backwards?

A No.

Q And tossed around?

A No.
Q You didn't see that part either?
A No.
Q The part that you saw is the narrative that you want to tell which is his shooting, correct?
A Yes.
Q Okay. Are you aware that your daughter felt that she had to sneak around the house in order to invite her dad over at times when Danny might not get mad?
A Well, yeah, he wasn't supposed to come over. Just to pick her up and leave and that's it at one point. And then she left, because he was not supposed to come over at all.
Q Okay. And so it was okay with you when you --
A No, it wasn't okay. I wasn't made aware until recently.
Q But it was okay with you for her to walk down to a corner carrying a bunch of stuff with an infant?
A Okay. Yeah.
Q In the summer heat?
A It was only supposed to be a few minutes.

Q In that neighborhood, right?

A Yeah.

Q Hypothetically, could you have said, come on, act like an adult. Just he's pulling in the driveway nothing has happened before. Just let him pick her up. Hypothetically, could you have said that?

A Could I? Yes. If I wasn't angry about it either.

Q And you actually said in your statement -- or in your interview, it didn't need to be this way?

A It didn't.

Q You're correct. I agree with you on that. It didn't need to be that way because there were several options that could have occurred before John came over, right?

A There really were. Yes.

Q For instance, a guy who is blowing a gasket, didn't need to be outside on a porch or walking a dog?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q All right. You know that John carries a firearm? Like we established, correct?

A Yes. Yes.
Q And you know Danny is blowing a gasket, correct?
A Yes.
Q And you know Danny is outside, correct?
A Yes.
Q Is that true?
A Yes.
Q With a pit bull, correct?
A Yeah.
Q With his shirt off?
A Yeah.
Q And, again -- hypothetically, you could have just said, hey, Danny why don't come in the house, just let him pick her up, right?
A I could have. Yes. Or I could just let him cool off like he was trying to do.
Q And so that the answer to the question is yes, you could have stepped in as a mother and said, hey, please --
A Yeah.
Q -- come into the house, Danny? You called -- you called something a warning shot, correct?

A That's what I heard.

Q Yeah. Because you know John's not going to kill somebody in cold blood, right?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q And so, Mary, are you able to tell me what was -- or, I'm sorry. Are you able to tell me how many times John was punched in the face?

A No.

Q Are you able to tell me how many times he was stomped on in the head?

A No.

Q Are you able to tell me how many times he was kicked in the face?

A No.

Q Are you able to tell me what was going through his mind when he pulled the trigger?

A To kill someone.

Q And so you're able to read his mind?

A No.

Q Have you ever been disoriented by smacking your head off something?

A Sure.
Q Do you agree with me that certain situations could be very chaotic?
A Oh, yeah. Obviously.
Q Would you agree with me that sometimes there's a difference between thinking and acting?
A Oh, yeah.
MR. ANDREWS: Objection. She's not an expert.
MR. HENDERSON: I'm not asking an expert question.
THE COURT: She can answer. Overruled.
THE WITNESS: Yeah.
BY MR. HENDERSON:
Q There's a difference between thinking of something, right?
A Of course.
Q Than acting --
A Of course.
Q -- right? There's, I think, something called instinct, right?
A Sure.
Q Either flight or fight, right?

A Yes.
Q Did you get counseling over this?
A Did I? No.
Q I'm sorry.
A No.
Q You were offered counseling that day, correct?
A No.
Q The detective didn't offer you guys counseling?
A I didn't. No.
Q You don't remember it in the interview?
A He may have. I don't know.
Q Okay. But you never remembered?
A Honestly, Kaitlynn was the first thing on my mind that day.
Q I'm not talking about that day. I'm saying since that day, have you received counseling?
A No.
Q In the audio recording of your interview, you said this was a front yard brawl. Oh, no. I'm sorry. That was not you. My apologies. My apologies. Danny was a very athletic individual, correct?

A Yeah.
Q I'm sorry?
A Yes.
Q He played a lot of volleyball, right?
A Yeah.
Q Other sports?
A Yeah. He liked to play basketball with his sons.
Q Forty-six years old?
A Yeah.
Q He was still very agile, correct?
A Yeah.
Q Muscular?
A Sure.
Q Roofer?
A Yes.
Q He worked out a lot?
A No. Not really a lot.
Q Well, didn't he form the garage into a --
A He was doing it. Yes.
Q Okay. Weights, and benches, and that type of stuff; is that correct?
A Yes.

Q And he was a fast man, correct?

A Yes.

MR. HENDERSON: Your Honor, could I just have a moment?

THE COURT: Yes.

MR. HENDERSON: Thank you.

(WHEREUPON, Mr. Henderson consults with Mr. Weatherly off the record.)

BY MR. HENDERSON:

Q Mary, just a few more questions. John had health conditions, correct?

A I'm sorry?

Q I'm sorry. John had health conditions, correct?

A Sure.

Q Okay. And what were those?

A He had a bad back, and he had a heart attack at age 32.

Q Heart attack at 32?

A Yes.

Q And wasn't he diagnosed with advanced heart disease?

A I don't think right away he was.

Q Well, right away meaning what? At 32?
A Yeah.
Q Okay. But he is now?
A I honestly have no idea.
Q Okay. Fair enough. And so he had a heart attack at the age of 32. And you're aware that he had a stent put into his coronary artery, correct?
A At that time. Yes.
Q Okay. And you are aware that he had an enlarged left aorta, correct?
A I don't remember that.
Q A bad heart?
A Okay.
Q Is that fair to say?
A Sure.
Q Okay. And he had back issues; is that right?
A Yeah.
Q Could you tell me a little bit about those?
A He had some slip discs and had surgery.
Q And he had to take quite a bit of medication for these medical --
A For --
Q -- ailments?

A -- awhile. Yes.
Q I'm sorry?
A For awhile. Yes. He didn't like taking medication.
Q During the time he was with you, would he take medicine for his heart and his back; is that accurate?
A Yes.
Q Okay. And you talked about him working while -- after his heart attack?
A Yes.
Q Okay. But he was still on Social Security Disability, right?
A Yes.
Q And part of that was that he was giving permission to work part-time; is that accurate?
A Yes.
Q Okay. Now, you're aware at one point we talked about your son, William?
A Yes.
Q Okay. You said that now that the trial is rolling around, you guys are starting to get closer? Do you remember that?

A Yes.
Q Okay. Do you remember at one point, when William wanted to -- John had a previous attorney, correct?
A I believe so.
Q All right. And do you remember being asked to go speak with that previous attorney?
A Me?
Q You.
A No.
Q Do you remember William wanting Kaitlynn to go and speak with that previous attorney?
A Since this started. Yes.
Q And do you remember getting upset about that and saying she might as well pack her shit and get --
A Absolutely.
Q -- out of my house?
A Absolutely.
Q Okay. And so you did not want her to cooperate with his --
A No. That was not the case at all. I wanted her to cooperate. I just don't want her living with me if she had something to do with this.

Q Understood. And so the option for Kaitlynn was if you decide --

A No.

Q Hold on. Let me finish this. Let me finish my question if that's okay. The option for Kaitlynn was, you can go talk to your father's attorney. Possibly assist in his defense. If you do so pack your shit up and get out of my house, correct?

A Yes.

Q Or?

A That was a text --

Q Or?

A -- and not a conversation.

Q Or you could be on our team and you could live under my roof, right?

A That was not the conversation at all.

Q Well, let me ask you this. Does Kaitlynn rely on you for financial support?

A Yeah.

Q Okay. A roof over her head?

A Yeah.

Q Food?

A Yeah. Well, no.

Q Well, what does she rely on you for financially?

A Pretty much everything but food. She gets her own food stamps and medical.

Q Pretty much everything but that, right?

A Yeah.

Q Well, she doesn't have a car, though? Does she?

A No.

Q Okay. And so she has to rely on you for other things? Other intangibles; is that accurate to say?

A Yes. And everything else.

Q Okay. And it is not just Kaitlynn, right?

A No, it's not.

Q She has an infant, right?

A A toddler. Yes.

Q Now, he's a toddler. And he needs things?

A Yes.

Q Whether it's a doctor's appointment when he's sick or anything like that, right?

A Yes.

Q And so she relies on you for a lot?

A Absolutely.

Q And so you essentially forced Kaitlynn to choose sides?

A No, I didn't.

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. HENDERSON: I have no further questions. Thank you.

THE COURT: Redirect?

* * * * *

REDIRECT EXAMINATION

BY MR. ANDREWS:

Q All right. We'll start from the end. You were asked about a text between you and your son?

A Yes.

Q Okay. What was your emotional state in the day that this happened -- after this happened?

A There was so many emotions.

Q Okay. And did that continue for awhile?

A It still continues.

Q All right. Was there a time when you thought maybe your daughter was involved?

A Yes.

Q Okay. Do you believe that now?

A I do not.

Q Okay. Do you believe that was a rational thought?

A Not at all.

Q Okay. You had lost your boyfriend?

A (Nods her head.)

Q And it's clear from the evidence, your ex-husband was coming to pick up your daughter. And so you had -- you said there's a lot of things running

through your head?

MR. HENDERSON: Objection.

THE COURT: Sustained.

MR. ANDREWS: All right.

BY MR. ANDREWS:

Q Have you ever told Kaitlynn or discouraged her or anything from coming forward to what defense counsel, prosecutors, police, anybody --

A Absolutely, not.

Q -- to tell the truth?

A Absolutely not.

Q Now, you made the statement as far as she could move out?

A Yes.

Q Was that during the time when you thought -- Okay, maybe, she was involved in this?

A Yes.

Q Okay. And, again, you don't feel that way at this point?

A No.

Q Do you support her, take care of her and William?

A Yes, I do.

Q Do you do it just to get her on -- like they say, your side?
A No. I've been doing this for a long time.
Q Okay.
A Way before all this happened.
Q Okay. And hypothetically, if Kaitlynn came in and testified to the truth. And the truth supported her father, would you kick her out of the house?
A That's a difficult question.
Q Okay. If she came in and told the truth?
A No. As long as she sticks to her truth, I can respect her for that. But --
Q Okay. All right. And you were asked -- I asked you and then they asked you questions about John's health conditions?
A Yes.
Q Okay. He continued to work after the heart attack, correct?
A A couple years after.
Q Okay.
A And then he started working again.
Q And after the fact?
A Yes.

Q Well, you saw the video?
A Yes.
Q You saw John get -- did you see John get out of the car?
A Yes.
Q Did you see him advance towards Danny with a gun in his hand?
A Yes.
Q Did you see him swing his arm --
A Yes.
Q -- with a gun?
A Yes.
Q Did you see him take Danny to the ground?
A Yes.
Q Okay.
A Yes.
Q Okay. Once the fighting was over, did you see him get back up on his feet?
A Well, he was on his knees.
Q What's that?
A He was on his knees.
Q Okay. Did you see him have any difficulty doing any of those things?

A No.

Q Okay. You were asked a lot of questions about, could you have done this to stop it? Could you have done that? When Kaitlynn walked down the street, what did you think was going to happen?

A I honestly thought --

MR. HENDERSON: Objection.

THE WITNESS: -- John was just driving --

MR. HENDERSON: Objection.

THE COURT: Overruled.

MR. ANDREWS: You can answer.

THE WITNESS: I honestly thought John would just see her standing on the corner, drive to the corner and pick them up.

BY MR. ANDREWS:

Q Okay. And so you didn't tell Danny to come into the house because --

MR. HENDERSON: Objection.

MR. ANDREWS: This is his question.

THE COURT: Yeah. Sustained. I mean overruled.

BY MR. ANDREWS:

Q And so you didn't ask Danny to come in the house because you didn't think John was coming to the house?

A Right.

Q And that phone call that happened a month or two before.

A Yes.

Q You testified Danny made threats to John?

A Yes.

Q But John was also making threats to Danny?

A Yes.

Q All right. When you told Kaitlynn you didn't want John coming there, were you only afraid of what Danny was going to do to John?

A No.

Q What else?

A John has a short fuse.

Q Okay. And so what John would do to Danny?

A That's what he said. He was going to beat up Danny at one point. I really don't know. I just try to keep it from --

Q Okay.

A -- happening ever. But --
Q In the middle, keeping them both --
A Away.
Q Okay.
A There was no need for them to.
Q Did John ever talk about fighting?
A Yeah.
Q What did he --
A Sort of.
Q What's that?
A Sort of.
Q What did he say?

MR. HENDERSON: Objection.

THE COURT: Overruled.

BY MR. ANDREWS:

Q Go ahead.
A He had said that he would beat Danny's ass.

MR. HENDERSON: Objection. Judge, can we approach please?

THE COURT: Yes.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter,

after which the proceedings continued as follows:)

THE COURT: I'll ask Counsel to rephrase his question.

MR. ANDREWS: Thank you.

BY MR. ANDREWS:

Q The -- during this -- the phone call that we've been talking about?

A Yes.

Q Okay. What threats at that -- well, you said John made threats towards Danny?

A Yes.

Q Do you recall what those threats were?

A He told me he would beat his ass --

MR. HENDERSON: I'm sorry.

THE WITNESS: -- if he wanted to.

MR. HENDERSON: I can't hear you.

THE COURT: They didn't hear you.

THE WITNESS: He told me he'll beat his ass if he wanted to.

MR. ANDREWS: Okay.

BY MR. ANDREWS:

Q Had you made Danny aware -- strike that. Let

me start over. You said John carried guns all the time?

A Yes.

Q Carried a gun all the time?

A Yes.

Q Had you made Danny aware of that?

A Yes.

Q I guess I don't know if it's an issue or not. But when this happened your pit bull was out on the front porch?

A Yeah.

Q Okay. And Danny doesn't wear -- wasn't wearing a shirt?

A No.

Q Is that -- when Danny takes off his shirt does that mean there's going to be a fight?

A He didn't have a shirt on for the day.

Q What's that?

A He didn't even have a shirt on at all that day.

Q Oh. And so Danny does go around without a shirt?

A Yeah.

Q Not just when he's --

A No.

Q -- in a fighting mood or whatever?

A Yeah. When he plays volleyball, when he plays basketball.

Q Okay.

A Yeah. It's hot.

Q And, again -- strike that. You were asked how many -- if you were able to tell how many times Danny punched or kicked -- or Daniel punched or kicked John?

A Yeah.

Q And you are not able to answer that?

A No.

Q Okay. Do you know how many times John shot Danny in the back as he's running away from him?

A One time.

MR. ANDREWS: Thank you.

THE COURT: Any recross?

MR. HENDERSON: Sure. Thank you.

* * * * *

RECROSS EXAMINATION

BY MR. HENDERSON:

Q It was a very unlucky shot for both parties; wouldn't you say?

A Uh-huh.

Q You said that you were keeping them both -- you were trying -- your indication you were giving, you were trying to be a peacekeeper in the middle of them keeping them both away, correct?

A Yes.

Q Is that right?

A Yes.

Q But, yet, you let Danny call John back, correct?

A I didn't remember his number.

Q I understand that.

A Yeah.

Q But once --

A I let him use my phone a lot.

Q I understand. You said it was on the speaker, right?

A When he -- I was on the call with him.

Q Okay. And so you know -- but you know John's

voice, right?
A Yeah. After he already made the call and John answered.
Q Okay. And so wouldn't it behoove you to say -- again, step in as an adult and say, Danny, we're adults here. Danny was intoxicated, correct?
A I don't believe so.
Q I'm sorry?
A I don't think so.
Q You don't think so?
A I don't think he was. No.
Q Okay. You don't remember him running outside and screaming at night with all the neighbors?
A Yeah.
Q You do remember that?
A Yeah. I was sitting there on the back porch while he was pacing up and down in the driveway as he was talking to him on the phone.
Q While Danny was screaming and yelling outside?
A Yeah.
Q Okay.
A It wasn't nobody --

Q And, again, you're --
A -- screaming really.
Q -- this peacekeeper trying to keep them away?
A Uh-huh.
Q You didn't have -- you didn't take the correct initiative or have guts to go up to Daniel Peek and say, Dan, give me my phone back. Quit acting like a raving lunatic?
A No. I wouldn't say I didn't have the guts. I just didn't. Because he was asking John to leave us alone.
Q You just said he was screaming and yelling?
A Yeah.
Q Okay. And actually, as we discussed before, John was trying to get information about a divorce, correct?
A And -- yes, he was. Yeah.
Q Okay. And part of that was getting an address, correct?
A Yes.
Q And so, at one point, Danny said, why don't you come over here and we'll fight right now. Correct?
A We will square up man to man. Settle this

man to man.

Q And John said, okay. Well, what's your address? I'll come over?

A And he told him he knew exactly where it was.

Q And so -- okay. But John needed the address for divorce information, correct?

A He had the address.

Q Okay. And so that -- this leads me to a great question then. John had the address, because he had picked Kaitlynn up before --

A Yes.

Q -- and pulled into the driveway, right?

A Yes.

Q Okay. And so Dan challenged John to a fight, correct? John knew where it was?

A Yes.

Q John didn't come over that night; did he?

A No.

Q John did not accept that invitation to fight --

A No.

Q -- correct?

A No.

Q Okay. Danny was aware of John's heart condition, correct?

A I believe so. I'm -- I try not to talk about John that much really.

Q John was -- during this incident, John was breathing heavy, right?

A Probably.

Q He was on his knees?

A Yeah.

Q Definitely, was not getting the best of anybody, right?

A Didn't look like it. No.

Q You were asked a question, if you saw him swing at Daniel? At Daniel Peek --

A Uh-huh.

Q -- correct? And, I think, the prosecutor made a motion like this; is that right?

A Yes, he did.

Q Okay. And you also saw John throw the gun away, correct?

A I didn't really notice him throw the gun away.

Q What?

A I didn't really notice the gun be thrown away.

Q Okay. And you said there were so many emotions after this --

A Uh-huh.

Q -- right? And that was in relation to, you know, the conversation was revolving around your daughter --

A Yeah.

Q -- and being upset and whatnot. You actually thought your daughter was involved?

A Inadvertently, yes.

Q In trying to get Danny --

A Yes.

Q -- offed?

A No.

Q Oh, okay.

A Not offed. No.

Q All right. I'm trying to --

A No. She would never --

Q -- understanding it.

A -- she would never.

Q I'm sorry?

A She would never --
Q Okay.
A -- wish anybody dead.
Q But you're sitting here accusing your daughter of being involved in what then? A plot to what?
A Possibly just to say anything that would make her dad mad to come get her.
Q Okay. But she's --
A And move back in. She --
Q But she's still living at your household?
A Yeah. Because her and I actually had a conversation and we talked things out.
Q And you had stated that he didn't start working until a couple years after the heart attack --
A Yeah.
Q -- is that accurate?
A Yeah. He did on and off things but nothing really else.
Q Getting back to the whole Kaity thing. You realize that was -- you actually blamed Kaity, right?
A Honestly, yes. Her and I had a conversation where I did blame her. But we worked --

Q But you --
A We talked it out. I don't. I really don't.
Q You blamed Kaity for having her dad come pick her up and go to a family day with your son?
A Okay. Yeah.
Q Well, that's -- that's what you're doing --
A No. That's not.
Q -- right?
A That's not -- no.
Q You say --
A I wasn't blaming her for wanting to go visit her brother.
Q Say that again.
A I wasn't blaming her for wanting to go visit her brother.
Q But you're saying that you were blaming her for Danny Peek's death. That's what you indicated, correct?
A And if he would have picked her up at the corner and went to dinner that never would have happened.
Q But he had always pulled in --
A That has nothing to do --

Q He had always pulled into the driveway --

A -- with that.

Q -- correct?

(WHEREUPON, the court reporter interrupted the proceedings.)

THE COURT: Okay. You guys are talking at the same time.

MR. HENDERSON: My apologies.

THE COURT: Ask a question.

BY MR. HENDERSON:

Q He had always pulled into the driveway, correct?

A Not always. No. If he did it was only right there and we didn't know about it.

Q And so when you said that he pulled in -- in your interview -- into the driveway. And you didn't qualify, not always. You should have qualified that in the interview. Is that what you are saying?

A I should have.

Q Okay.

A I wasn't straight minded at the time.

Q And not only did you blame Kaity, but you actually told her it was her fault, correct?

A No.

Q You never told her that?

A I never said it was her fault.

MR. HENDERSON: One moment, Your Honor?

THE COURT: Yes.

MR. HENDERSON: Thank you.

THE COURT: Any redirect?

MR. ANDREWS: Just a few.

* * * * *

FURTHER REDIRECT EXAMINATION

BY MR. ANDREWS:

Q I believe you were asked, did you see the -- when watching the video.

A Uh-huh.

Q Did you see John throw the gun away? And you said you don't recall --

A I didn't notice that.

Q Did you see John drop the gun after he pistol-whipped Danny in the back of the head?

A I honestly didn't notice.

MR. HENDERSON: Objection.

MR. ANDREWS: Okay. I will withdraw that.

THE COURT: Anything else from the Defense?

MR. HENDERSON: Oh, I'm sorry. No. No.

THE COURT: You may step down. Thank you.

THE WITNESS: All right.

THE COURT: Ladies and gentlemen, at this time we're going to take a break.

Please do not discuss this case amongst yourselves or with anyone else. Please don't permit anyone to discuss it with you or in your presence. Please do not form any opinions on this matter until it's given to you for your deliberations.

We will reconvene in approximately ten minutes. Thank you.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

THE BAILIFF: All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of

Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: State may call its next witness.

MR. FENING: The State calls Dr. Daniel Sullivan.

THE COURT: Please raise your right hand.

* * * * *

WHEREUPON, the State called

DR. DANIEL SULLIVAN,

who, being first duly sworn, testified as follows:

THE WITNESS: I do.

THE COURT: Please have a seat.

DIRECT EXAMINATION

BY MR. FENING:

Q Sir, could you pull that microphone kind of right up to you and talk loud up here.

A Yep.

Q There's an echo. All right. State your name and spell your last for the record.

A Daniel Sullivan. Last name, S-U-L-L-I-V-A-N.

Q Where are you employed?

A I'm employed for the Cuyahoga County Medical Examiner's Office.

Q What's your position there?

A I'm a forensic pathologist and deputy medical examiner.

Q All right. What is your educational background?

A When do you want me to start?

Q Let's start with college?

A College?

Q Yeah.

A Okay. I attended Tulane University, received a bachelor's of science and a bachelor's of arts. And I then went to Tulane University for medical school. I got my medical degree while I was there and I took courses and graduated -- graduate courses in anthropology and got a master's in anthropology as well. After graduating from medical school, I did training at the University of California of San Francisco. And anatomic pathology residency in neuropathology fellowship. And then I went to Cuyahoga County Medical Examiner's Office where I did a fellowship in forensic pathology.

Q How long have you been a forensic pathologist?

A Including fellowship, about a year and eight months.

Q Okay. How long prior to going to Cuyahoga

County Coroner's Office, were you with anyone else?

A No. I was not employed by any other medical examiner's office.

Q Okay. Can you in just layman's terms explain what a forensic pathology is?

A Sure. A forensic pathologist is a medical doctor responsible for determining a cause and manner of death of a decedent, a dead person.

Q Okay. Can you explain the difference between cause and manner?

A Sure. Cause is a -- cause of death is an injury or disease that in the normal course of events brings about death of that which would not have occurred. The manner of death more explains how of a death? There's five manners that we typically use as forensic pathologists: Homicide, suicide, natural, accidental, and undetermined.

Q Okay. And what is an autopsy?

A An autopsy is a -- is an examination of the body both external and internal. It involves dissecting out organs and looking at the body holistically in terms -- to determine the cause of manner of death.

Q Okay. How many autopsies have you performed over your career?

A Including in residency over 400 at this point.

Q You said over 400?

A Over 400.

Q Okay.

MR. FENING: Can you hear him?

MR. HENDERSON: Yeah.

MR. FENING: Okay.

BY MR. FENING:

Q How many times have you testified?

A I've testified twice at trial in Cuyahoga County, and once for grand jury.

Q Okay. Obviously, you said you're a Cuyahoga County Coroner. How are you involved in a Mahoning County case?

A And so Mahoning County contracts out to Cuyahoga County Medical Examiner's Office to perform autopsies.

Q Why doesn't Mahoning County do their own?

A That's a very good question. They do not have a forensic pathologist employed.

Q Okay. That's where you come in?
A Yes, sir.
Q All right. Would you go through the general procedures that you use while conducting an autopsy?
A Sure. My autopsy begins with a review of the information given to us. In this case, by Mahoning County. And then I proceed to do a -- I'm sorry. I get radiographs and photographs done of the body. I do an external examination that looks over the body, looks for any injuries, any natural disease that might be externally on the body. That is followed by an internal examination where the body is cut, organs are evaluated in the body and then removed, cut again. Microscopic sections might be taken of organs, those microscopic sections after the autopsy as well. And I also take samples for toxicology.
Q Okay. As you're going through this process, do you document your findings?
A Yes.
MR. FENING: May I approach, Your Honor?
THE COURT: Yes.
BY MR. FENING:
Q I'm going to hand you what has been marked as

State's Exhibit 56. Take a moment and look through that.

(WHEREUPON, State's Exhibit No. 56 was identified for the record.)

BY MR. FENING:

Q Do you recognize that?

A Yes, I do.

Q And what do you recognize that to be?

A And so this is a packet containing multiple files including the death certificate or the certificate of death, a history of the case, the coroner's finding from Mahoning County Coroner. And then my autopsy and my autopsy report -- I'm sorry -- and the toxicology report.

Q Okay. And who is the decedent in this matter?

A The decedent is Daniel Alan Peek.

Q Okay. When you get someone in to do an autopsy, do you -- I know you have a pretty thorough process -- do you take measurements of the decedent?

A Yes.

Q Okay. Did you do that in this matter?

A Yes.

Q All right. Are you able to tell us what those were with regard to Mr. Peek?

A Let me just consult my autopsy report here. The body weighed 167 pounds and he is 70 inches tall.

Q 70 inches is 5'10; is that right?

A 5'10. Yes.

Q Is there a date of death in the report?

A I believe so. The date pronounced deceased is on the death certificate as July 31st, 2022.

Q Okay. And when did you perform your autopsy?

A That's a good question. I performed my autopsy soon there after. I believe the 30 -- August 1st, I believe.

Q August 1st of 2022?

A Of 2022. Yes.

Q Okay.

MR. FENING: May I approach, Your Honor?

THE COURT: Yeah. Yes.

MR. FENING: I'm going to hand you what is marked State's Exhibit 32 through 46.

(WHEREUPON, State's Exhibit No. 32-46 were identified for the record.)

BY MR. FENING:

Q Look through those to yourself for a moment and let me know when you are done.

A Yeah.

Q You good? All right. Do you recognize those photos, sir?

A Ah, yes. They are the photographs that were taken during the autopsy of Danny Peek.

Q Okay. On each of those photos there looks to be a ruler that's on the picture?

A Yes.

Q That has a number on the ruler?

A Yes.

Q Can you explain what that is.

A And so the ruler is used for standardizing photographs in our office. And the number is the case number that Cuyahoga County uses to -- as an individual marker for each case.

Q Okay. And is there -- what is the ID that's indicated on the barcode?

A OU-22-262.

Q Okay. And is that -- are you able to identify these photos as the photos related to this

report and case?

A Yes.

Q Okay. Thank you. And do the injuries there contained in those photographs correspond with your report as well?

A Yes.

Q All right. There's quite a bit of photos that are taken for these autopsies. Why is that?

A They are taken to document any -- anything that I as a pathologist feels is important or necessary for the case. We document injuries, we usually have what's called a mugshot to just have the appearance of the decedent. And overall photographs to document anything that might not necessarily -- that might be referenced in the -- anything that might be referenced in the case.

Q Okay. Is it correct that your report indicates there was a single gunshot wound in this case?

A Yes.

Q Can you go through with the jury -- I guess explain what your findings were in relation to that gunshot wound?

A Sure. Let me reference my autopsy report. Okay. And so there was one gunshot wound to the thorax, the entrance. And the thorax being the chest. It was on the back right portion of the chest and then sequentially perforated the chest cavity, the right lung, the breast bone, the sternum, and then exited the body.

Q Okay. And are you able to tell exactly where the bullet entered the body?

A Oh, yes. The bullet entered the body in the posterior right thorax of the back right chest, 19 and a half inches below the top of the head and 5 inches right of the midline to the back.

Q And what is midline?

A Oh, the midline? The middle of the body. And so the midline would be the line that runs down the body and splits it into left and right.

Q Okay. And so this was five inches to the right?

A Five inches to the right.

Q Okay. Now, what was the path of the projectile in this matter?

A The path was posterior, anterior. And so

back to front. Right to left and upwards.

Q Okay. And what injuries did this cause?

A And so there were multiple injuries. Injuries to the skin soft tissues of the right back and left front of the chest. A laceration, a tear of the right seventh intercostal soft tissues, which means the tissues in between the seventh and eighth ribs. There is a collapses of the right lung, two lacerations, tears of the lower lobe of the right lung. Two tears of the upper lobe of the right lung. And a defect of the body of the sternum where it fractured as it was coming out.

Q Okay. And where did the bullet exit the body?

A The bullet exited the body on the front left upper chest. And there was about 15 inches below the top of the head and 1 inch left of the anterior midline. There was also a 2 1/2-inch diameter contusion or a bruise around the exit wound.

Q Did you observe through the autopsy any other injuries to this decedent?

A Yes. There was two other injuries. A contusion -- and so a bruise on the right lower leg on

the front side of the right lower leg. And the left knee contained multiple abrasions and contusions.

Q Okay. Dr. Sullivan, what is toxicology?

A Toxicology is the study of drugs. In general, a study of drugs.

Q Okay. Was toxicology testing done in this case?

A Yes.

Q Were there any -- what were the findings of that testing?

A Sure. Let me take a look at the toxicology report. And so there were multiple drugs that were picked up in the toxicology report. Nicotine and cotinine. And cotinine is a byproduct of nicotine, tobacco smoke. There's Caffeine, Chlorpheniramine, which is an antihistamine. Delta-9-THC, which is the active metabolite of marijuana. And an inactive metabolite of marijuana Delta-9-THCCOOH. And that's it.

Q And that's it. Okay. Getting back to the photographs that I handed you, do those fairly and accurately depict the injuries that we have been just discussing?

A Yes.

MR. FENING: Permission to publish, Your Honor?

THE COURT: Any objection?

MR. HENDERSON: No, Your Honor.

THE COURT: Go ahead.

BY MR. FENING:

Q Okay. I'm going to walk through these exhibits with you?

A Sure.

Q Looking at exhibit -- State's Exhibit 32, what is this?

A This is a picture of the decedents face. Typically, what we call a mugshot in our office.

Q Okay. What is State's Exhibit 33? These need rotated a little bit. All right. State's 33?

A Oh. This is a picture of the right chest of the decedent. His right shoulder, his left ribs, and his head is to the left of the image. And where there is a ruler there is the entrance wound that I described earlier on the right posterior chest.

Q Okay. Doctor, do you throughout your testimony, you referenced the entrance was on the right

rear chest; is that like in the medical terminology, the chest? In like layman's term is that on his back?

A In layman's term it's on his back. Yes.

Q Okay. Thank you. All right. And, now, State's 34?

A This is a close-up of the entrance wound.

Q State's 35?

A This is even closer of the entrance wound.

Q All right. State's 36?

A State's 36, is a picture of the front of the chest with the exit wound just above the photograph marker there.

Q Okay. State's 37?

A That is a close-up of the exit wound.

Q And State's 38?

A That is even closer close-up of the exit wound.

Q All right. And so these last six photos that we viewed, is that how the body appears once you -- when you receive it?

A Yeah. And so all of these pictures were taken before I washed the body. And so this is as it was received by the office.

Q Okay. And then you -- your office goes through and cleans the body?

A Yes.

Q All right. And State's 39?

A And so this is a picture of the entrance wound on the decedent's right back after me and my autopsy technician washed the body.

Q Okay. Skipping ahead. I want to go to State's Exhibit 41, what is this?

A This is a close-up of the entrance wound after being washed.

Q How do you determine whether there's an entrance or exit wound?

A Sure. There are different ways to determine that. Principally, when a bullet enters the body, it tends to punch out pieces of tissue as it enters. The roundness of a wound indicates that is more likely an entrance than an exit wound.

Q Okay. Moving on to State's 42?

A This is the front of the decedent's chest with the exit wound cleaned.

Q Okay. And State's 44?

A That is a close-up of the exit wound.

Q And how do you determine if it's an exit wound?

A And so exit wounds, as the bullet goes through the body and exits the body, it tends to tumble and have more of an irregular shape upon exiting the tissue. Additionally, approximately, you can typically push skin back together and reapproximate the wound into a clean surface. You can't do that with an entrance wound because there's always a little punched out piece of tissue. And so in this case, I was able to approximate this wound back together and shown that it was more likely an exit wound.

Q Okay. And State's 45?

A This is a picture of the right lung with a probe going through it denoting the path of the bullet.

Q And so is this a probe something you do as part of your -- I guess the yellow probe or the orange probe?

A Yes. Yes. The orange.

Q And that's something you do as part of your autopsy?

A Yes.

Q And what is that used for?

A That is used to denote the trajectory of a projectile. It allows different lesions or different areas of trauma to be lined up together.

Q Okay. And, finally, State's 46?

A State's 46 is a close-up of one of the wounds of the lung.

Q That's the decedent's lung?

A Yeah.

Q Okay. Thank you. After you conducted your autopsy were you able to reach an opinion with regard to cause of death?

A Yes.

Q And what was that?

A It was gunshot wound of the thorax.

Q Okay. And was there a -- the Mahoning County Coroner was there. Was there an opinion reached regarding the manner of death?

A I did not reach an opinion. But the Mahoning Coroner did reach an opinion on that.

Q And what was that?

A Homicide.

Q Do you agree with that opinion?

A Yes.

Q Okay.

MR. FENING: Nothing further, Your Honor.

THE COURT: Cross?

MR. HENDERSON: Thank you, Judge.

THE COURT: Uh-huh.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Thanks for coming all this way East. My name is Brandon Henderson, and I'm just going to ask you a couple of questions. Okay?

A Okay.

Q Essentially, Daniel Peek was shot in the back?

A (Nods his head.)

Q Bullet came out the front.

A Yes.

Q And it was from an upwards position? Is that --

A The trajectory was upwards.

Q Okay.

A Relative to the body.

Q Correct. You said you document anything that you feel is important and necessary?

A Yes.

Q Okay. And you're the one that generated this autopsy report?

A Yes.

Q You said you done over 400 autopsies. That's

a lot?

A Yes.

Q Yeah. What types?

A Many different types of autopsies ranging in different manner of death.

Q I'm sorry? I couldn't --

A That's all right. Many different types of autopsies ranging in types of manner of death.

Q And so with law, I typically let that go and stick with a certain area of law. With autopsies, I presume, you see a lot of different types of deaths; is that an accurate statement?

A That is accurate.

Q Okay. And with regards to the homicides, what type do you see? Like, this one is a gunshot, for instance?

A Sure. I seen the gamut of different types of homicides, sharp force injury, blunt force injury, and gunshot wounds of individuals.

Q Beating injuries?

A Yes.

Q Okay. Would that be part of blunt force?

A That would be part of blunt force.

Q Okay. And so blunt force injuries now is what we would say is a beating --
A Yeah.
Q -- of an individual?
A Yes.
Q And you say gunshots, knives, stuff like that?
A Uh-huh.
Q And suicide probably as well?
A I have seen some suicides. Yes.
Q Okay. All right. And so you physically examine the body?
A Yes.
Q And note all the injuries to the body?
A Yes.
Q Meticulous with your job, I presume?
A I try to be.
Q Very comprehensive in recording all of the decease's injuries.
A I try to. Yes.
Q And it's sort of a -- so to speak, a head-to-toe exam?
A Yes.

Q And you detail all these findings, as you described them on direct examination, correct?
A Correct.
Q Okay. And nothing in your autopsy that notes any injuries to Daniel Peek's head?
A Not that I'm aware of. No.
Q Nothing in your autopsy report that notes any injuries to his face?
A No.
Q To his right cheek?
A No.
Q To his left cheek?
A No.
Q To his neck?
A No.
Q Any part of his neck?
A No.
Q Okay. To his jaw?
A No.
Q Nothing to his forehead?
A No.
Q Nothing to his ears?
A No.

Q Nothing to his entire head, in general?
A In general? No.
Q Okay. Nothing to his feet?
A No.
Q Nothing to his arms?
A Let's see. No. Not to his arms.
Q What about his hands?
A No.
Q Any broken bones or fractures?
A There were fractures. There was a fracture in the sternum from the gunshot.
Q Okay. And on direct examination you noted a square purple contusion on the anterior distal right lower leg?
A Yes.
Q That is essentially -- it just means the shin, right?
A The shin area. Yes.
Q Is that accurate?
A The -- the lower shin.
Q And it was, I think, a relatively small wound? Not a huge wound?
A It was quite small. Quarter inch by quarter

inch.

Q Okay. Could that come from -- in that area of the leg, did that come from kicking something?

A It's possible.

Q Okay. Could you come from kicking someone's head?

A Kicking someone's head? I'm -- it's possible, but I would expect a larger contusion then.

Q A larger contusion?

A If the shin was kicking someone's head, I would expect there to be a larger contusion. But it's -- it's certainly possible.

Q Understood. A lot of muscle and bone in that area?

A Yes.

Q You don't know the person who shot Daniel Peek?

A No, I do not.

Q Okay. You don't know the circumstances surrounding that shot?

A No, I do not.

Q You don't know if it was done in self-defense?

A No, I'm not aware.
Q I know also you stated that Mr. Peek tested positive for Delta-9?
A Yes.
Q Okay. Am I accurate with regard to the fact that is an inebriating substance?
A Yes.
Q Am I accurate with the fact that you can destroy reality -- or ultimate reality?
A It's possible. Yes.
Q Am I accurate with the fact that it can severely interfere with brain chemistry?
A It can.
Q Okay. And that users of the Delta-9-THC, can often feel out of control?
A It's possible. Yes.
Q Okay.
A Yes.
Q And it certainly can make it hard to solve problems in a rational way and even think clearly; is that accurate?
A That's accurate.
Q Okay. And, finally, Delta-9-THC, would be

something that you would consider and be associated with an impaired judgment as well as decision-making; is that accurate?

A I can't speak to the behaviors of the decedent under the substance.

Q Understood. But, typically, Delta-9-THC, would be known to impair judgment and impair decision-making?

A Sure.

Q All right.

MR. HENDERSON: I have no further questions. Thank you.

THE COURT: Any redirect?

MR. FENING: Briefly, Your Honor. Thank you.

* * * * *

REDIRECT EXAMINATION

BY MR. FENING:

Q Just a couple points I want to touch on. You were asked a question about the trajectory. You said it was an upward trajectory?

A Yes.

Q You don't know when you receive a body -- you don't get like a police report?

A Typically, from out of county. No, we don't.

Q Okay. And so you don't know the position of the decedent when he was struck with the bullet?

A I do not.

Q Okay. And so just because it is an upward trajectory it doesn't necessarily mean that --

MR. HENDERSON: Objection.

THE COURT: Let me hear the question first.

BY MR. FENING:

Q Just because it isn't --

THE COURT: And don't lead.

Q -- the path of the bullet is an upward trajectory. Does that necessarily mean that he's shooting upwards at something?

A No.

Q Okay. Thank you. And then the -- I think it was the final point you touched on would be the toxicology screen of the Delta-9-THC. Do you -- are you aware how long that remains in the body?

A It's variable on how, you know, the person is -- how much the person took and what kind of other chemicals that are in the body.

Q Okay. Is it necessarily -- because it showed up on a toxicology screen, are you able to determine whether the decedent was under the influence at the time he was killed?

A What I can say to that, is that Delta-9-THC is present in the body. And as a result, he would be under some influence based on the drug concentration that is present in his body.

MR. FENING: All right. Nothing further.

THE COURT: Any redirect -- recross?

* * * * *

RECROSS EXAMINATION

BY MR. HENDERSON:

Q Doctor, do you believe that people that die of heart attacks or no?

A I have done autopsies of people that died of natural disease due to cardiac issues.

Q Okay. And so sometimes in autopsies --

MR. HENDERSON: Well, you know what? I withdraw. Nothing further. Thank you.

THE COURT: Thank you. You may step down, Doctor.

Ladies and gentlemen of the jury, at this time, we're going to take our lunch break.

Please do not discuss this case amongst yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form any opinions on this matter until it's given to you for your deliberations.

We will reconvene in approximately one hour. Thank you.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, the Court recessed for lunch at 12:07 p.m., February 23rd, 2024, and reopened at 1:17 p.m., February 23rd, 2024, and the proceedings continued as follows:)

THE BAILIFF: All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: The State may call its next witness.

MR. ANDREWS: The State will call Detective/Sergeant Anthony Vitullo.

*** * * * ***

WHEREUPON, the State called

DET/SGT ANTHONY VITULLO,

who, being first duly sworn, testified as follows:

THE WITNESS: Yes, Your Honor.

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Good afternoon.

A Good afternoon.

Q Please state your full name and spell your last name for the record?

A Anthony Vitullo, the spelling of my last name is V-I-T-U-L-L-O.

Q And where are you employed?

A Youngstown Police Department.

Q What's your position there?

A Detective/Sergeant.

Q What was your training before you became a police officer?

A I went to the Ohio Peace Officer Academy.
Q All right. And what's your current rank?
A Detective/Sergeant.
Q What are your -- what is your current assignment?
A I am assigned to the Detective Division to investigate cases from homicide, down to simple assaults, and some property crimes.
Q How long have you been a police officer?
A With the Youngstown Police Department, a little over 26 years.
Q Okay. How long have you been with the Detective Bureau?
A Since 2016.
Q Okay. Prior to that what were your assignments?
A I did patrol when I got hired, I was assigned to the U.S. Marshals Task Force for a few years. And when I got promoted, I was a patrol supervisor up until I got put to the detective division.
Q Okay. Do you undergo periodic updates in your training --
A I do.

Q -- in being a detective?
A I do.
Q What are your normal work hours?
A 7:00 to 3:00, Monday through Friday.
Q Okay. I should have asked you this. On July 31st of '22, we're you in the current -- in the same position you are in now?
A I was.
Q Okay. That was a Sunday afternoon, correct?
A Correct.
Q I think you said your normal work hours are 7:00 to 3:00, Monday through Friday?
A That's correct.
Q What about crimes that happen in the off-hours?
A We work a rotation. I have a partner, Sergeant Barber. And every fourth week starting Monday morning at 8:00 we go on call until the following Monday at 8:00 a.m.
Q All right. And you are responsible to respond to anything at that time that happened in the off-hours?
A Correct.

Q And so turning your attention to July 31st of '22. Do you recall what you were doing that morning?

A I was working an overtime detail for the Youngstown Metropolitan Housing Authority.

Q And so would you have been in uniform?

A I was.

Q All right. You received a call to go somewhere?

A Yeah. Like around -- it was around 12:30, 12:28, my Lieutenant called and said to respond to East Florida.

Q Okay. 1417?

A 1417.

Q Okay. And what city is that?

A Youngstown.

Q County?

A Mahoning.

Q State?

A Ohio.

Q Okay. As a Detective/Sergeant in the Detective Bureau, are you normally the first officer to arrive on scene?

A Not when we're called out. No.

Q Okay. And so the initial call, who would be ordered -- who would respond?

A The patrol division and the patrol supervisor.

Q The patrol supervisor once they assess the situation then what do they do?

A They call into the Captain's office and they make the call to us.

Q Okay. And so that's how you get called out to a scene?

A Correct.

Q What are your duties as a detective with the Detective Bureau?

A Investigate crimes, oversee scenes when we get there.

Q All right. And if you are -- you said you were paired up with Detective/Sergeant Barber?

A That's correct.

Q Would one of you be the lead and one of you assisting?

A Yeah. We work -- for lack of a better term, as a round robin. I'm up for this homicide. If we get another one, he's up for the next one.

Q Okay. And the scene at 1417 East Florida, were you the lead detective?

A I was.

Q In general, is it your duty to collect evidence?

A No. The crime lab collects it.

Q Okay. Is it your duty to secure the scene?

A The patrol division would usually secure the scene.

Q All right. But you're the officer in charge?

A Technically, yes. There is our Lieutenant that comes out with us or our Captain. But it becomes my case.

Q All right. And so the early afternoon hours of July 31, '22, you get called to East Florida. Before you arrive, what are you aware of?

A That a shooting took place at that residence.

Q When you arrived at the scene, what do you do?

A When I arrive at the scene, I see the patrol supervisor which is Detective/Sergeant Marciano. He briefs me on the scene. On that particular day, I learned that it was a residence of Mary Morgan, that

her boyfriend was shot, that her ex, John Morgan, was the shooter. And that he stayed on scene and was currently detained in the cruiser as was the firearm.

Q Okay. Was Mr. Peek at the scene?

A No, he was not.

Q Okay. At that time we're you aware of his condition?

A I knew it was grave. And I believe when I was on scene we learned that he had passed away.

Q When you arrived, though, you wouldn't have been aware of that quite yet?

A No, I don't believe I was.

Q Okay. Once you're briefed by Marciano, what do you do then?

A Well, we then look for evidence. The patrol division had found a shell casing next door at 1421 in the driveway. We've learned that there was possibly two shots or more and so we searched for other casings but we could not find it. I was taken to the rear yard where Mr. Peek had collapsed in the backyard. There was a pool of blood and a black shirt near it. We -- me and Detective/Sergeant Barber, once the scene was secured, the evidence was pointed out that was found.

I went and talked to one of the neighbors, as did Detective/Sergeant Barber, and we did a little quick canvas of anyone that may have seen anything.

Q Okay. And did you learn information from the neighbor you talked to?

A We did.

Q Okay. Did Detective/Sergeant Barber learn information from the neighbor he talked to?

A He did.

Q Okay. Who did you -- what did you do next?

A Once we determined what evidence was going to be collected, crime lab Officer Miller did a gunshot residue test on John Morgan, who was in the back of the car. And we then had patrol transport the witnesses to the fourth floor. That's where we do our interviews. And we also had John Morgan brought down to the fourth floor.

Q And what did -- everyone is transported to the police station. What do you do next?

A We then start our interviews. We started with Mary Morgan, we then did Danny Peek, Jr.

Q Hold on. Hold on.

A Okay.

Q When you do an interview explain the set up of how you do that?

A It's a room -- it's a small room, and there's a table in between. And I sit facing the person I'm interviewing and Detective/Sergeant Barber will sit -- what we call second chair -- and he'll sit next to me.

Q Okay. Anybody else in the room?

A No.

Q Are these interviews recorded?

A They are.

Q Video and audio?

A Yes.

Q Okay. All right. And the first person you talked to was Mary Morgan?

A That's correct.

Q Did you gain information from her?

A We did.

Q Who did you talk to next?

A Daniel Peek, Jr.

Q And he would be in relationship to?

A The son of Daniel, Sr.

Q Who do you talk to next?

A Kaitlynn Morgan.

Q And who is that?
A That is the daughter of Mary and John.
Q And who do you interview next?
A John Morgan.
Q And is that the same room that you interviewed the other three people?
A There's two rooms. And so it could go back and forth.
Q Okay. You have two interview rooms. You're not positive which one you used?
A Correct.
Q Okay. Same set up?
A Same set up in both rooms.
Q Both audio and video recordings?
A Correct.
Q All right. When you start your interview with the defendant, what is the first thing you do?
A I read him his Miranda rights.
Q Okay. And did you go over the -- is there a form that goes along with that?
A There's a form that we use. Yes.
Q Did you have him read the Miranda?
A No. I read it to him.

Q Okay. Did you ask him if he understood it?
A Yes.
Q How did he respond?
A He said he did. I believe he said he did.
Q Okay.
A I believe I asked him.
Q Did you ask him if he waived his rights?
A Not specifically like that. No.
Q Okay.
A There is a waiver portion we read to them at the bottom and then we have them sign it.
Q Okay. Did he sign it?
A He did.
Q Did he indicate to you that he did not understand anything?
A He did not.
Q All right. What do you ask him then?
A I asked him, if he on this date used alcohol or drugs.
Q And what was his response?
A He replied, no, he did not.
Q All right. I'm going to skip forward a little bit in this interview. Did you -- did he talk

about a telephone call between he and Mary Morgan, and also Daniel Peek and that it had occurred a few weeks before?

A He did.

Q Did he explain that to you?

A He did.

Q And what did he tell you?

A He told me that he -- his girlfriend wanted him to file for a divorce. And so he had texted Mary Morgan's phone. He then got a phone call back from Daniel Peek, who was upset. He said, as he talked to him he was having fun with him because the more he talked and the more he messed with him the madder Daniel Peek got. He said that Daniel had said to him -- he needed the address, it's what he was looking for. And Daniel had said to him, why don't you come over and we'll fight. And he kind of chuckled, because he said, oh, where do you live? And Daniel gave him the address. And he kind of was like, yeah, I got. You know, I got what I needed. And then he was telling us how, you know, he was back and forth having fun with him. And I said, did you tell him that you were still having a relationship with Mary? And he said, yeah.

He said, I told him, we're kind of like boyfriend-in-laws now because we're fucking the same women.

Q These were the defendant's word?

A Correct.

Q Okay. Did he say why he was saying those things?

A He was getting a rise out of Danny.

Q Okay. Did he -- did he talk at all about his daughter Kaitlynn?

A He did.

Q Did he talk about visiting with her?

A He did. And he said, on Sundays they normally go to his son's house in Canfield. And he normally picks her up at the house. But for the last couple weeks Kaitlynn had told him about COVID virus that they had. And this was the first Sunday in a couple weeks that they didn't have to isolate. He acknowledged that Kaitlynn had sent him a text stating to pick her up down at the bottom of the street. And he said, he responded that, no, he was going to go to the house.

Q Okay. And I just want to make sure we're

clear. And so he said it was a normal -- fairly normal thing to pick her up on Sundays?

A Correct.

Q Okay. And then you talked about the text from Kaitlynn. Was that something that occurred on July 31st?

A It was.

Q Okay. And I'm sorry, did -- what did you say he told you Kaitlynn's text was?

A That something had happened at the house and she was going to walk down the street to pick her up there.

Q And what was his response?

A That he replied that he was going to go to the house to meet him there.

Q All right. Did he explain to you what happened at 1417 East Florida?

A He did.

Q What did he tell you?

A He said he went over to pick up Kaitlynn, and then he pulled in the driveway. And as he did, Daniel came running off the porch. And he said he got out of the car, and he drew his gun and it went off. He said

he was kind of like in a shock at that point. He said, Daniel hesitated and then punched him in the face, knocking him to the ground. And he said, at some point he lost the gun but he didn't know how.

Q Okay. I'm going to stop you there. All right. And just so I understand this. The defendant tells you he gets out of his car?

A Correct.

Q And what about his gun?

A He sees Daniel coming off the porch, and said Daniel raised his arm, he pulls his gun out and he said it went off.

Q Okay. And so his gun goes off. And then, what does he tell you happens?

A Daniel punched him in the face.

Q Okay. And what happens then?

A He said somehow the gun -- he lost the gun. And I said, and so at this point the fight starts? And he said, it wasn't really a fight it was more of an ass kicking.

Q Okay. Go ahead. And what does he say?

A And he says that at one point during the fight someone gets on his back. He didn't know who it

was. And said Daniel was -- or Danny, Sr. was kicking him. He said, he was on the ground, he seen the gun.

Q All right. I'm going to stop you there. All right. He tells you after the gun goes off, Danny hits him?

A That's correct.

Q Okay. Does he mention that he pistol-whipped Danny?

A No.

MR. HENDERSON: Objection.

THE COURT: Overruled.

BY MR. ANDREWS:

Q And he says -- when does he tell you the gun comes out of his hand?

A He says during the fight. Somehow the gun came out of his hand.

Q Okay. All right. And then you went on to say?

A That the fight started and he told me he never hit Danny.

Q Okay.

A And Dan was kicking him and his son was on his back. He heard Mary say, get off of him. He heard

Danny say to somebody -- he didn't know who -- to go back into the house. He said he was on his belly at that point and he saw his gun. He grabbed it and he kind of demonstrated how he rolled over and just shot.

Q Okay. And so he tells you he's on his belly, rolls over -- sees the gun, rolls over and gets it and shoots?

A Correct.

Q Okay.

A He said the gun jammed after he shot. But he demonstrated how he kept pulling the trigger.

Q Okay. Just to make sure we understand. According to the defendant's story, he gets out the gun and the gun goes off one time?

A Correct.

Q Okay. There's the fight. He rolls over and sees it? Or he drops his gun at some time during the fight, he rolls over and sees his gun, picks it up. Is he able to fire a second shot or does the gun jam?

A He believed it was just the one shot. And then he was like --

Q Well --

A -- it could have been two or three but he

wasn't sure.

Q Not counting when the gun -- he says, the gun went off when he got out the car. How many times did he say he fired?

A He was pretty sure it was two total.

Q Okay. Two total?

A Correct.

Q Okay. All right. The second shot, what does he tell you again? As far as where he's shooting?

A He says he rolls over and he starts shooting. And he said, he -- at first he said, he didn't know where he shot. But I said, did you shoot in the direction of Danny? And he said, yes. He said, I was -- he admitted he was trying to shoot him. He said, at first, I thought I was shooting up at him.

Q Okay. Did you go over this statement with him a second time?

A We actually went through it three times.

Q Okay. And we -- meaning you, and Detective/Sergeant Barber?

A Correct.

Q Okay. Did he give you more or less the same story?

A More or less. Yes.
Q Okay. Did he ever admit that he hit Danny with the gun?
A No.
Q Okay. Did he ever admit that -- strike that. Did he tell you each time that the gun accidentally went off when he got out of the car?
A Yes.
Q Did he tell you all three times that he was shooting at Danny?
A At least two of the times. The first time he went over the story it was kind of quick.
Q Okay. All right. Did he tell you why he shot at Danny?
A Because he was getting beat up.
Q And, again, did he tell you what his intention to -- was to do when he fired that gun?
A To shoot Danny.
Q Did -- am I correct, he was in the interview room for about 40 minutes?
A Approximately, yeah.
Q Okay. But the interview itself was only a little over 20 minutes?

A Yes.
Q Okay. During that time, did he make you aware of any health conditions?
A No.
Q Can you describe what his demeanor was?
A Just as a matter fact as if we are talking here.
Q Okay. Showing any remorse?
A No.
Q Any emotions?
A No. Other than when he talked about the phone call.
Q Okay. And what was that emotion?
A He chuckled about how he con or trick Danny to give him the address.
Q Okay. All right. Now, when you observed the defendant, did you notice any injuries?
A He had, I believe, on his right side a little bit of redness, and he had some scratches on his knees that he showed us.
Q Okay. Did you take pictures of those?
A I did.
MR. ANDREWS: May I approach?

THE COURT: Yes.

BY MR. ANDREWS:

Q I'm handing you what has been marked for purposes of identification as State's Exhibits 20 through 26.

(WHEREUPON, State's Exhibit Nos. 20-26 were identified for the record.)

BY MR. ANDREWS:

Q Could you just take a look at those as a group and then tell me when you're done reviewing them.

A They are pictures of John Morgan in the interview room.

Q Okay. Are they clear and accurate depictions of -- well, who took those photographs?

A I did.

Q And are they clear and accurate depictions of how the defendant looked when you interviewed him on July 31st of 2022?

A They are.

MR. ANDREWS: Permission to publish?

THE COURT: Any objection.

MR. HENDERSON: No objection. Thank you.

THE COURT: Go ahead.

BY MR. ANDREWS:

Q Having you look at what's been marked for purposes of identification as State's Exhibit 20. Can you tell us what that is?

A Just a frontal shot of John Morgan.

Q Okay. Exhibit 21?

A That would be the right side of his face with where the red mark was.

Q Okay. 22?

A I believe that's his left hand.

Q And do you see anything of note on there?

A There's a small cut on the right -- or on the middle finger and knuckle.

Q Okay. Exhibit 23?

A His right hand.

Q And do you notice anything on that?

A No.

Q Exhibit 24?

A That would be his back.

Q Okay. Anything there?

A Possibly some redness. Yeah. It's hard to see.

Q Exhibit 25?
A This is his lower back.
Q Okay. Anything there?
A Maybe some redness.
Q And Exhibit 26?
A That would be both his knees.
Q Okay. And anything you observed there?
A Yes. He had some scrapes on both of his knees.
Q All right. And at the same time, did -- are you aware at this time of Danny Peek's condition?
A I was made aware of it at the scene. Yes.
Q Okay. All right. And he had a bullet hole from his back, went out his chest and killed him, correct?
A Correct.
Q And those are the defendant's injuries?
A I'm sorry? I didn't hear the question.
Q And those were the extent of the defendant's injuries?
A Correct.
Q Once you concluded the interview, what did you do at that time?

A Danny was taken to the County Jail and charged with murder. I'm sorry, John Morgan was taken to the County Jail and charged with murder.

Q Okay. Now, you've been in the courtroom. You heard Patrolman Hilliard and Giovanni testify?

A I did.

Q They made reports?

A They did.

Q Did you review those reports?

A I did.

Q Okay. Now, the following day, August 1st; do you do anything at that time?

A Yes. August 1, I sign the warrant from the prosecutor's office for the murder. And then I went back to the scene at 1417 East Florida and we canvassed for anymore shell casings because we were only able to find one. And we also spoke to several neighbors, knocked on their doors. And we noticed one had a camera. That I had no response, and so I left a card at that residence.

Q Okay. Were you able to find -- as of this time, of anyone -- any of the neighbors had Ring cams or security cameras?

A I believe it was 1410, where I left the card where we noticed the camera.
Q Okay. Now, the next day August 2nd, what did you do on that day?
A August 2nd, I listened to some jail calls that were made by John Morgan.
Q All right. And did you gain any information from that?
A I did.
Q Okay. What was the nature of the phone call?
A He had called a female, I believe, her name was Megan Owens. And they were discussing -- I think he just been arraigned. It's about 2:00 -- a little after 2:00 in the afternoon. And the topic came up by her that someone in the neighborhood has to have a camera or a Ring camera to show something. And his response was, I don't think it matters. He said, I think I was wrong.
Q All right. Can you speak up a little higher?
A He said, I don't believe it matters. And he paused and he said -- it was kind of hard to hear at that point -- I think he said, I think I was wrong. I didn't have to shoot the second time. Something to

that effect.

Q All right.

A She then said, were they beating you at that time? And he responded, he didn't know.

Q Okay. Now, throughout your investigation, do you get phone calls, tips, things of that nature?

A Not always. But sometimes. Sure.

Q Okay. And if you get -- did you get any here?

A I believe we got one that said, we learned there was another camera possibly in the neighborhood.

Q Okay. If you get called -- like, Youngstown Police has a tip line, correct?

A Yes.

Q Okay. And I think you could also send emails?

A That I'm not real sure of.

Q Okay.

A We have a Facebook page.

Q Okay. And if you get any information, do you follow up on that? Do you blow it off? Or what do you do?

A We follow up.

Q Okay. All right. And so any new information you got you would follow it up, right?

A Yes.

Q Was there any new information that you received that lead to anything?

A No.

Q Now, the following day August 3rd, did you do anything then that morning?

A I did. I wrote a search warrant for John Morgan's car.

Q I'm handing you what's been marked for purposes --

MR. ANDREWS: Oh. May I approach, Your Honor.

THE COURT: Yes.

BY MR. ANDREWS:

Q Handing you what's been marked for purposes for identification is State's Exhibit 54.

(WHEREUPON, State's Exhibit No. 54 was identified for the record.)

BY MR. ANDREWS:

Q Could you tell me what that is?

A That is a search warrant for John Morgan's

2012, Dodge Charger.

Q Okay. And briefly explain when you get a search warrant, what do you do with it?

A We -- when we get a search warrant we go before a judge, we present the facts to as we know them, they decide whether or not the warrant is -- would be granted. And if they grant the warrant and we go to where -- in this case where the automobile was and we execute the warrant.

Q Okay. In that search warrant, do you state what you're looking for in the vehicle?

A I do.

Q And what are you looking for?

A Well, I was mainly looking for the missing second 9-millimeter shell casing. And so that is what the warrant says. Looking for a 9-millimeter shell casing or instrumentalities of the crimes described above.

Q Okay. And that instrumentality -- that's more or less a catch-all?

A Yes.

Q Anything else that might be --

A Related to the crime, correct.

Q Okay. Once you got the search warrant, what did you do?

A Myself, Detective/Sergeant Barber, and crime lab Officer Miller went to Schultz Towing, which is located at 30 Strausbaugh in Youngstown, Ohio.

Q Okay. And did you search the vehicle?

A We did.

Q Did you find any casings?

A We did not.

Q Did you find anything else of interest?

A We found what appeared to be a camera, a dash cam.

Q Okay. And what did you do with that dash cam?

A We seized it.

Q All right. And did then Officer Miller testify there were photographs taken, correct?

A Correct.

Q Okay. He -- Officer Miller, would have been the one that actually seized it, correct?

A That's correct.

Q Did you get anything from that dash cam?

A We did.

Q What did you get?

A Video of the incident.

Q That wasn't included in what you were looking for in a search warrant?

A Not specifically. No.

Q Okay. Explain how you come in there's -- okay. You seize the camera?

A Correct.

Q How do you get the video?

A Officer Miller, they have a computer room. And he went to the back and he has a -- he took the microchip out, and he has the tech or the equipment to put that chip in the computer and then make a copy for us.

Q Okay. And did you then have the opportunity to watch that footage?

A I did.

Q All right. We've already -- it's already been introduced as State's Exhibit 61. Did you then download that onto --

A I would have put it onto my computer and then put it onto a disc.

MR. ANDREWS: Your Honor, at this time,

we would like to publish Exhibit 61, again?

THE COURT: Okay.

(WHEREUPON, the video was on the TV screen, and the proceedings continued as follows:)

BY MR. ANDREWS:

Q All right. Just looking at this, what do you see right now? Does that appear to be the footage that was taken from the defendant's vehicle?

A It is.

Q Okay.

(WHEREUPON, the video was played after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Stop it there.

BY MR. ANDREWS:

Q Officer -- or Detective/Sergeant, can you see that from where you are?

A I can.

Q Okay. Can you tell where this -- first off, whose vehicle are we in?

A John Morgan's.

Q And can you tell where the vehicle pulled

into?

A 1417 East Florida.

Q All right. And as far as the vehicles are concerned, were they both -- we see his vehicle, the vehicle parked in front of it. Is that how the scene was when you arrived?

A Yes.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Actually, stop. Your Honor, could I ask Detective/Sergeant to come down?

THE COURT: Sure.

MR. ANDREWS: Maybe, if you could just sit in that chair. And speak loudly so that the court reporter can hear.

BY MR. ANDREWS:

Q All right. We see a person on the porch. Could you tell us who that person is?

A That is Daniel Peek, Sr.

Q Okay. All right.

MR. ANDREWS: Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop. Can you just go back a tiny bit. All right. Just, like, go back two slides?

MR. FENING: Forward?

MR. ANDREWS: Yeah. No. Forward.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay.

BY MR. ANDREWS:

Q Who is that person in the blue shirt?

A That is John Morgan.

Q Okay. And what did you just observe?

A John Morgan pulled a gun and fired it to the ground.

Q Okay. As a result of watching this video, do you go back to the scene to check for more evidence?

A We do.

Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay.

BY MR. ANDREWS:

Q What did you just observe there?

A I saw Daniel take a turn. More or less, his back was turned to him --

(WHEREUPON, the court reporter interrupted the proceedings.)

THE WITNESS: Daniel Peek, more or less turned his back to John. And John pistol-whips --

MR. HENDERSON: Your Honor, I'm going to object. Mischaracterization of evidence.

THE COURT: Sustained. Use a different phrase. Use different wording.

THE WITNESS: He appears to be making a striking motion to Daniel. And at that time, the gun dislodged from his hand.

MR. HENDERSON: Again, I'm going to object based upon mischaracterization of

evidence.

THE COURT: Overruled.

BY MR. ANDREWS:

Q Were you able to tell from that where the gun went approximately?

A It appeared to go somewhere in this area, the rear bumper of this (indicating) car.

Q Okay. All right. And what are we observing right now?

A John Morgan on Daniel Peek's back.

Q All right.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: All right.

BY MR. ANDREWS:

Q We see a third person now. Who is that?

A That's Daniel Peek, Jr.

Q All right. And what are we observing now?

A Daniel Peek, Jr. come off the porch and starts joining the fight.

MR. ANDREWS: Okay.

(WHEREUPON, the video was played, after which the video stopped, and the proceedings continued as follows:)

MR. ANDREWS: All right. Stop.

BY MR. ANDREWS:

Q All right. Regarding, Danny Peek, Jr. What do you see now?

A He turns and starts to run.

Q And now we see a fourth person?

A That is Mary Morgan.

Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: All right. Stop.

BY MR. ANDREWS:

Q What did we just see there?

A Daniel Peek grabbed the defendant by the shirt and pulled him to the ground where the gun was.

Q All right. And now what is Danny Peek doing now?

A He's starting to run.

Q In what direction?

A Towards the back of the house.

Q And do we see -- I'm sorry, that's Danny Peek. Do we see Daniel Peek now?

A No.

Q Okay. Where is the defendant at this point?

A On his knees straight in front of the car.

Q And Mary Morgan?

A Standing above him.

Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Stop. Go back a couple frames. One more. Oh, no, go forward just to --

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Okay. That's it.

BY MR. ANDREWS:

Q Okay. What do we see now?

A John pointing the gun at Daniel --

Q Okay.

A -- and firing.

Q Okay. And where is Daniel at this point?

A About a car distance from the bumper of the car.

Q And what part of Daniel's body do -- of Danny's body do you see?

A The left side.

Q Okay. Front or back?

A Back.

Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

BY MR. ANDREWS:

Q What was that sound we just heard?

A A gunshot.

Q By who?

A John Morgan.

Q Okay. And, now, do we see Danny anywhere?

A No, we don't.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

BY MR. ANDREWS:

Q Okay. And what do we see? What is John Morgan doing?

A Talking to someone.

Q Okay.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

BY MR. ANDREWS:

Q Thank you. Okay. Now, after you -- when you watched that. Okay. Do you watch this the day it was seized, the 3rd?

A The 4th.

Q Or the 4th. I'm sorry.

A We obtained it on the 3rd.

Q Okay.

A But watched it in more detail on the 4th.

Q Did you just watch that one time?

A No.

Q Approximately, how many times have you watched that video?

A It's honestly -- it's hard to say. I don't know, 15.

Q Okay. Now, when you observe that -- when the defendant got out of his car, did you see the gun accidentally go off?

A No.

Q Did you see the initial contact being Danny Peek hitting the defendant?

A No.

Q Did you see while Danny Peek was hitting the defendant he dropped the gun?

A No. He dropped the gun when he made the striking motion.

Q Okay. Did you see -- well, you stated you saw the defendant fire the gun?

A Correct.

Q Did you see Danny Peek or Daniel Peek, Jr, still fighting with the defendant when he fired that gun?

A No.

Q Now -- okay. You said you secured the dash cam on August 3rd. You actually watched it on August 4th?

A In detail, correct.
Q Okay. What did -- after you watched that in detail, what did you do then?
A Well, we were missing a second shell casing. And when you watched the video you can see that he fired the shot in the ground. The casing went towards the house, the bushes, the front yard more or less. And so we went back to the scene and did an extensive search, attempted to find that shell casing but we were unsuccessful.
Q Did you find a projectile?
A Yes. It was --
Q And do you know where it was at?
A It was in the -- right along the side of the driveway. More or less, in front of the front porch into the ground.
Q Would this have been consistent with the first shot that was fired?
A Yes.
Q And you -- but you did not -- you were not able to find the shell casing?
A That's correct.
Q Now, moving ahead to August 8th. Did you

talk to another possible witness at that time?

A Yes. We originally -- Detective/Sergeant Barber originally talked to him at the scene the day it happened. And he is an out-of-town residence. He had left before he was able to be brought down. And so he made contact with us and he came down on the 8th and provided a statement.

Q And his name?

A Mr. Dunne.

Q Was there any new information that he was able to give you?

A No.

Q Okay. On August 25th of the '22, did you have a conversation with someone from the Cuyahoga County Coroner -- or Medical Examiner's Office?

A I did. I talked to Dr. Sullivan on the phone.

Q And did he give you the results -- verbally give you the results of his autopsy?

A He did. It was a gunshot wound to the back.

MR. ANDREWS: One moment, Your Honor.

THE COURT: Sure.

BY MR. ANDREWS:

Q I asked you when you were interviewing the defendant, you said he did not tell you any of his medical conditions?

A No. That's correct.

Q Did he ask for any medical treatment?

A No, he did not.

Q Okay.

MR. ANDREWS: Nothing further.

THE COURT: Cross?

MR. HENDERSON: Yes, Judge. Thank you.

* * * * *

CROSS EXAMINATION

BY MR. HENDERSON:

Q Detective/Sergeant, you've heard my whole spill before?

A I'm sorry?

Q You've heard my whole spill before, right?

A I have.

Q Yeah. If you need me to repeat just let me know. Okay?

A Okay.

Q Are you a more of a one in ten type of guy?

A I don't know. Am I more of what?

Q Give me your analysis of your investigation of a scale of one to ten?

A What?

MR. ANDREWS: Objection.

THE COURT: Yeah. Rephrase your question. I don't --

MR. HENDERSON: I'm sorry?

THE COURT: Rephrase your question.

BY MR. HENDERSON:

Q I would like to know how you feel your investigation was on a scale from one to ten? Can you

tell me?

MR. ANDREWS: Object. This isn't a rating period. That's for the jury to decide.

MR. HENDERSON: What's the objection for?

MR. ANDREWS: That's for the jury to decide.

MR. HENDERSON: What's the objection for? What am I doing wrong?

THE COURT: I'm going to allow it. Overruled.

BY MR. HENDERSON:

Q Okay.

A I mean it wasn't perfect because nothing is perfect.

Q No, I understand it. But from one to ten?

A An eight.

Q An eight. You're giving yourself an eight. The best piece of evidence you have is something that my client delivered directly to you, correct?

A Well, I had to get a search warrant to find it.

Q The best piece of evidence you have is John Morgan's dash cam?
A That I had to get a search warrant.
Q Is that correct?
A That is correct.
Q Okay. And that's -- you have that?
A I do.
Q Because he did not destroy evidence; is that correct?
A That's correct.
Q Okay. And so you got an eight, right? Okay. How many phones did you get?
A None.
Q And so you did not get Danny Peek, Sr.'s phone?
A I did not.
Q Did you ever ask for it?
A I did not.
Q Okay. And so hypothetical, if he's texting his buddy, this guy is coming over right now he's a dead man. You would have never found that out? Or you actually will never know, right?
A That's correct.

Q Okay. And what about Mary Morgan, did you ever get her phone?
A I did not.
Q Did you ever ask for it?
A I did not.
Q Okay. How about Peek, Jr.'s phone, did you ever ask for that?
A I did not.
Q Phones are so consistently utilized in cases like this nowadays; is that not correct?
A In certain cases. Yes.
Q In certain cases, what? Cell phones are used almost in all types of cases nowadays, correct?
A In certain cases they can be beneficial. Yes.
Q Okay. And you're telling me you didn't even take the time to ask for them?
A That's correct.
Q Okay. Are we still at eight? Or are we --
A Sure.
Q Okay. And so you went over once to somebody that had a camera; is that right?
A We went over to two different cameras. And

both did not have any footage of the incident.
Q Okay. You went over -- I'm sorry, you -- say this again. You went over to two different locations?
A 1410 was one of them.
Q Okay. And they had cameras?
A They did have a camera.
Q And you left a card?
A I did.
Q Did they call you?
A They did?
Q Okay. And said?
A That they reviewed the camera and there was no footage.
Q Okay. And the other place?
A Also the same, there was no footage.
Q Okay. And so there's no cameras other than my clients?
A That's correct.
Q And so we're still with the best piece of evidence being something that my client left in order to call 911 first, right?
A Yes.
Q Okay. And, again -- by the way, he also

dislodged his firearm before that as well, correct?
A That's correct.
Q You see the size of that SD card. You were sitting here in court?
A Correct.
Q There's a million ways he could have gotten rid of that, correct?
A Yes.
Q He could have stuck it in his mouth and used the restroom in jail, correct?
A Correct.
Q Okay. Or he could have smashed it? He could have done anything, right?
A Right.
Q But he didn't?
A No, he did not.
Q You are also intimating that he's going through an interview with you and he's lying; is that what you were trying to indicate on direct?
A I just gave what he gave us.
Q Understood. But the indication was that my client was lying; is that right?
A I don't believe I was trying to say he was

lying.

Q Okay. We just heard from Peek Jr. today --

A Correct.

Q -- right? How chaotic situations can be very -- missing pieces of puzzles, correct?

A That's correct.

Q And we heard that he remembers coming off the porch, getting into a fight, and hearing, I'm shot. Correct?

A More or less.

Q That's what he heard from this chaotic situation, right?

A That's correct.

Q You didn't hear the prosecutor calling him a liar; did you?

A No.

Q All right. And so --

MR. ANDREWS: Objection. The prosecutor didn't call anyone a liar.

THE COURT: Sustained.

BY MR. HENDERSON:

Q And so my client leaves the best piece of evidence you have for you. You have him, what? An

hour and a half later in an interrogation room?

A Yes.

Q And you're going to sit here and try to say that he's lying to you, when he knows --

MR. ANDREWS: Objection. He did not say he was lying.

MR. HENDERSON: He knows he has a dash cam in his car?

THE COURT: Sustained.

MR. ANDREWS: Why don't you ask him the question.

MR. HENDERSON: I am asking him.

BY MR. HENDERSON:

Q He knows he has a dash cam in his car, correct?

A I would assume he would. It's his dash cam.

Q Okay. And so you would also assume then that he's not trying to lie to you, correct?

MR. ANDREWS: Objection.

THE COURT: Overruled.

THE WITNESS: I don't know what he was trying to do.

MR. HENDERSON: Okay.

BY MR. HENDERSON:

Q Do you -- do you guys have a policy within the Youngstown Police Department with regards to shooting?

A As far as what? That's a vague question.

Q Well, as far as if there's -- have you been engaged in a shooting on patrol or -- in 26 years --

A Me --

Q Yes.

A -- personally shooting?

Q Yes.

A Or just at a crime scene where a shooting occurred?

Q Have you been -- 26 years, right?

A Correct.

Q Have you been engaged in a shooting?

A I have not.

Q You, yourself?

A I have not.

Q Have you unholstered your weapon and shot it?

A I have not.

Q Okay. However, you're aware or not -- I don't know, I'm asking. Is there a policy that if an

officer is engaged in a shooting, they are giving twenty four hours before they have to make a statement; is that correct?

A I believe so. Yes.

Q Okay. My guy was in an interview room an hour and a half, two hours later, correct?

A Correct.

Q A small room, right?

A Correct.

Q Sitting right across from you?

A Correct.

Q Small table in the middle?

A Correct.

Q No windows?

A No windows.

Q Being interrogated?

A Questioned. Yes.

Q Questioned? He had handcuffs. He was handcuffed to a table; was he not?

A He was.

Q Couldn't find a second shell casing?

A That's correct.

Q You let people trample all over the grass

through there, right?

A There were people walking through the grass. Yes.

Q Okay. You didn't zone that off?

A It was zoned off eventually.

Q Eventually, after everybody trampled all over the crime scene?

A Well, yes.

Q Okay. And you ever -- you're the -- the buck stops with you, right? You're the lead guy on this, correct?

A That's correct.

Q And so you reviewed all the evidence in this case?

A That's correct.

Q Did you ever see the video of Daniel Peek, Jr. picking something up off the ground?

A I did.

Q Okay. And so you went to him after that and you said, Daniel Peek Jr., what did you just pick up off the ground? Right?

A I did not.

Q They were talking on direct examination --

the prosecution was talking about if you get information, do you follow up with that information if people call in?

A Correct.

Q But it doesn't sound you go and get a lot of information yourself, correct?

A We did go back a couple times.

Q Well, you didn't get a shell casing, right?

A Well, shell casings are not always easy to find.

Q Okay. But you didn't get them?

A We didn't get it.

Q Okay.

A No.

Q You didn't follow up with Peek, Jr. and find out what he was picking up?

A That's correct.

Q And you didn't get any phones, correct?

A That's correct.

Q And so as far as proactive initiative to engage in an investigation here it doesn't sound like there's a lot? Would you agree with that?

A There's not a lot. But, I mean, it

necessarily didn't need to be.

Q You had your mind made up?

A Well, after the video it was pretty clear what happened.

Q Well, no, you had your mind made up way before the video, correct?

A No.

Q You didn't have the video until days later?

A That's correct.

Q Okay. He was arrested that very day, correct?

A Correct.

Q Okay. You interviewed Mary first, you said?

A That's correct.

Q After that was Peek, Jr.?

A That's correct.

Q After that it was Kaitlynn?

A That's correct.

Q After that it was my client?

A That's correct.

Q And so the first person was Mary?

A Correct.

Q Okay. And during Mary's statements, when you

were talking with her. You say you know it's our job to -- you know, to hold someone accountable, correct?

A I don't remember saying that.

Q Would you like me to refresh your memory with that?

A Yes.

Q Sure. Okay.

MR. HENDERSON: Your Honor?

THE COURT: What?

MR. HENDERSON: Can we approach, please?

THE COURT: Yes.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: Ladies and gentlemen of the jury, at this time we're going to take a ten-minute break.

Please don't discuss this case amongst yourselves or with anyone else. Please don't permit anyone to discuss it with you or in your presence. Do not form any opinions on

this matter until it's given to you for your deliberations.

We will reconvene approximately in ten minutes.

THE BAILIFF: All rise.

(WHEREUPON, the jury left the courtroom.)

THE BAILIFF: This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

THE BAILIFF: All rise for the jury.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE BAILIFF: This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: Thank you. You may continue.

MR. HENDERSON: Thank you.

BY MR. HENDERSON:

Q Sir, you had a chance to refresh your recollection?

A I did.

Q And has your recollection been refreshed?

A It has.

Q And did you say -- you know, we have a job to do, to hold someone accountable?

A I do.

Q And the only person that you could have been talking about at that point would have been John Morgan, correct?

A Correct.

Q And so the very first interview that you do that day was with Mary as we have established?

A Correct.

Q And, again, you made your mind up? You said, we now have to find somebody accountable for this, correct?

A Correct.

Q And the only person that could be is John Morgan, right?

A Well, she was our first interview.

Q That's what I'm saying?
A Yeah.
Q You made your mind in the first interview before even interviewing John, correct? You said, we have to hold somebody accountable before you even interviewed him, right?
A Well, somebody was shot. Yes.
Q I understand that. But that doesn't -- just because somebody died, doesn't mean that somebody is guilty of something, correct? You would agree with that?
A That's correct.
Q Not every case somebody has to be accountable for, correct? There is self-defense, there is other ways. There are other reasons why people are not guilty, correct?
A That's correct.
Q But in that situation, the very first interview you did that day. You said, we're going to hold somebody accountable?
A Correct.
Q Now, we were talking about evidence and investigation. I'm sorry for getting upset. I'll try

to relax a little bit here. You -- I know that we saw some pictures of John at the very beginning, correct? That you took?

A Correct.

Q Right after you interviewed him, which is roughly an hour and a half to two hours after, correct?

A Correct.

Q Did you ever go follow up and take any other photographs?

A I did not personally. No.

Q You understand that bruising, welts, lacerations; these types of things have a maturation process, right?

A Yes.

Q Okay. And so you, yourself, did not. Do you know if anybody from your team did?

A Pictures of John?

Q Pictures of injuries of John. Yes.

A No one did. No.

Q Okay. And so do you think it's fair to say that in an investigation if you make up your mind that you're going to be holding somebody accountable that you tend to look at things through the prism of fitting

that narrative? Would that be an accurate statement?
A Could you ask that again?
Q Sure. When you have already made up your mind about something. Okay. As far as an investigation goes. Don't you tend to try to fit things in order to fit that theory or that narrative?
A In an investigation you try to follow the evidence. And not focus -- we have -- we follow the evidence.
Q Well, I understand that. But you had already made up your mind when you talked to the first witness --
A Well --
Q Correct?
A -- she was upset.
Q All right.
A I was telling her it was a tough situation. And that is our job. Yes.
Q I understand. You've been doing this a long time. And you're -- there's plenty of other words that you could have used, correct?
A Plenty of other words that I could have used?
Q Plenty of other word instead of we're going

go find -- essentially him (indicating) accountable, right?

A Sure.

Q Okay. Did you ever ask him in his interview if he was scared for his life?

A I don't think scared for his life, but I did ask him where they still beating you at the time.

Q And he told you, yes, they were still beating him?

A He did. Yes.

Q And you asked him, why did you shoot?

A I did.

Q And he said, so they would stop beating me?

A Correct.

Q Okay. Now, again, we've established that his piece of evidence is the one we keep seeing, right?

A That's correct.

Q And so when he's saying things in there, like, my gun jammed. Right?

A Right.

Q We know that's not true, correct?

A At the time we interviewed him?

Q No. No. No. We know because we've seen the

video, right?
A His gun did not initially jam. No. He was able to fire.
Q Correct. But his gun didn't jam at all?
A I didn't -- that I don't know. He -- according to him --
Q Was he --
A -- it did.
Q No. No. I know. But you can see the video. You can see that it did not jam?
A It appears that he's still trying to pull the trigger in the video.
Q Okay. He told you that he remembers clearly a gun -- do you know what a smoke stack is?
A Yes.
Q Okay. It's when -- I'm sorry. Go ahead.
A It's when the casing gets lodged in the slide.
Q Okay. And he said, he remembered in his interview seeing it sticking up?
A Correct.
Q Meaning, his gun was jammed, correct?
A Correct.

Q That was not the case on the video, right?
A I can't see the stoke pipe itself. But it does appear in his interview he said, he tried to keep shooting.
Q My point is, he is saying a lot of things that just clearly are not on the video, right?
A I can't say that's clearly not on the video. No.
Q I'm sorry?
A I cannot say it's clear on the video that his gun jammed. No.
Q No. No. I'm just saying there's other things that due to the chaotic nature of what had just occurred and him being interviewed in a small room with and no windows, and there's two detectives, handcuffed to a table. He's saying things just -- he's trying to put together the puzzle for you?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:
Q Would you agree that he was not trying to be elusive with you?
A He was not trying to be elusive?

Q Correct?

A I can't say that he was trying to be. He told his version of events.

Q Okay. And, again, knowing what he had done, knowing that this was going to be seen on a dash cam, he is trying to give you his best version of events from what he remembers from the situation, correct?

MR. ANDREWS: Objection. How does he know what is in --

THE COURT: Sustained.

MR. HENDERSON: Yes. I'll rephrase. Thank you.

BY MR. HENDERSON:

Q He's saying things in his interview that are just not consistent with what's on the video, correct?

A Some things. Yes.

Q Okay. Now, you escorted him out of that interview room; is that correct?

A That's correct.

Q And you told him, when you guys were -- I believe, you guys had to get in an elevator?

A I personally did not. But the officers that transported him did.

Q But wasn't there a time when you were with John, and you or one of the other officers informed him that Mr. Peek was dead and he literally collapsed?

A I told him that Mr. Peek was dead and he was being charged with murder. I don't remember him collapsing.

Q Okay. Now, we do know a lot of things and I don't -- we don't have to make a huge deal out of this, but he did stay on the scene, correct?

A He did.

Q He didn't flee, right?

A That's correct.

Q Cooperated with all the officers?

A Correct.

Q Didn't destroy evidence?

A Correct.

Q Disassembled his firearm when he was told to?

A Correct.

Q Talked to 911?

A Correct.

Q Called this on himself?

A That's correct.

Q He called 911 -- when asked of him to disable

his firearm, he said, I'm not putting this down, I don't know where these guys are. Correct?

A That's correct.

Q Showing that he is still in fear, correct?

A Correct.

Q Okay. Once he was told that Mr. Peek was dead. He said, oh, I'm sorry, I need to disassembled his firearm; is that correct?

A He disassembled his firearm. Yes.

Q The officer showed up, has his hands in the air, and he's cooperative the entire time?

A From what I was told. Yes.

Q He comes back, he is given Miranda warnings, and cooperatively speaks with you?

A Correct.

Q Okay. Now, at any point, you continue to kind of discuss this whole investigation aspect. At any point, did you attempt to get anyone involved who has experience with accident reconstruction?

A No, I did not.

Q Okay. You would agree with me in a situation like this, that certain things like angles or measurements or times would be important, correct?

A Could be.
Q Okay. Well, how long did it take -- how long did John touch a weapon before he fired it?
A How long? Moments.
Q I'm sorry?
A Moments.
Q Are you aware that it was actually like less than a second?
A Okay.
Q And have you -- you said you watched this video 15 times?
A Yes.
Q Did you sit there with a stop watch?
A No, I did not.
Q Okay. All right. Something like that might be important?
A Okay.
Q Well, it is not okay. I'm asking you, is it or not?
A Could it be important? I guess. Have I ever done it. No.
Q If somebody waits ten seconds, and they watch some guy runway, and they jump to their feet, and they

line them up and they shoot them. That's a lot different than less than a second, correct?

A If you're saying less than a second? Yes. He picked the gun up, he turned, he was on his knees, and came up and fired.

Q Okay. Did you ever slow the video down?

A Not to take timings. No.

Q Okay. And so we don't have times?

A Correct.

Q That's something an accident reconstructionist could have done?

A It's something -- I can't answer that. I don't know. It's never been done in my experience.

Q But you have resources at YPD; don't you?

A We do have accident reconstructionists. Yes.

Q Okay. Did you ever consult with this individual?

A I did not. No.

Q Okay. Angles could be important in a situation like this, correct?

A Yes.

Q Okay. Measurements could be important in this situation, correct?

A Yes.
Q How far away was Danny Peek when he was shot?
A It appeared to be about a car length.
Q Okay. And so we don't know?
A Well, we just watched the video he looks like a car length.
Q No. No. I know. But isn't that what an accident reconstructionist does? Is figure out measurements and times and stuff?
A I can't -- I'm not an accident reconstructionist. And so I can't speak to that.
Q And so we have no measurements?
A No, we don't.
Q Are you aware that distance and speed with someone is determined by the length of an individual's stride as well as how many strides they take within a certain time period?
A I have no idea what it is.
Q Okay. How many strides did Daniel Peek take between the time he through John on top of his own weapon and he was hit. How many strides did Danny Peek take?
A I don't know.

Q Okay. And so, again, that's something else we could have done and we didn't?
A I suppose.
Q Okay.
A Yes. It's not something in my experience that we have ever done.
Q But, I mean, Detective, with all this -- you know, and you saying we're going to hold somebody accountable, it really -- I mean -- and all this other stuff that wasn't done, it -- you could understand why I would think it makes it look like (indicating) you did it, right? John, you did it?
A Well, he confessed that he did it.
Q Well, he confessed that he shot?
A He did.
Q Correct?
A Correct.
Q And, again, you never asked him if he feared for his life?
A No.
Q You never asked him if he feared -- was in fear of serious physical injury?
A I just asked him if he -- when he shot was he

still being assaulted.
Q I understand. But you never asked him if he was in fear of his life or in fear of serious physical injury, correct?
A That's correct.
Q Typically, you fire a warning shot to deescalate of a situation; is that accurate?
A We are not allowed to fire warning shots.
Q Okay. Would you agree that a warning shot is intentionally a harmless shot?
A Any shot could potentially not be harmless.
Q Okay. But -- all right. You see him shoot into the ground, correct?
A That's correct.
Q Okay. If John wanted to, he could have just pointed it straight at Danny and shot him, correct?
A I can't speak for what John could have done.
Q Dan was right here, right?
A Yes.
Q John could have just done this, right?
A Sure.
Q Instead of this?
A Sure.

Q Okay. And he chose not to do that?
A From what the video depicts, he chose to shoot into the ground.
Q Yes. Okay. And so he chose essentially to fire a harmless shot?
A I can't say what John was thinking. This is going to be a deescalation shot.
Q Now, you are --
A I can't speak to that.
Q You are aware per the video that it was John and Danny Peek?
A Yes.
Q Just those two, correct?
A Correct.
Q At that point, when John fires into the ground a warning shot, there's no other witnesses, correct?
A Correct.
Q Okay. My point is, he could have shot Daniel Peek right then, correct?
A He could've. And if I can go back to your last question there were other witnesses.
Q Who?

A Mr. Dunne.

Q Are we calling Mr. Dunne?

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q All right. Dan could have ran at that time, correct?

A He could have but he did turn his back. What his intentions were I don't know.

Q I'm saying he could have run; is that accurate? Yes or no?

A Yes.

Q He chose not to, correct?

A Correct.

Q It was only after kicking, punching, stomping, beating, that he chose to run; is that correct?

A I don't know why he chose to run. I could assume he chose to run when he saw John near the gun. But I can't speak --

Q John already --

A -- for the guy.

Q -- had a gun?

A Correct.
Q When they first initially met he already had a gun and he didn't run, right?
A Correct.
Q And so he only chose to run after knocking him around in the head, kicking him, stomping him, punching him, right?
A He did chose to run. Yes.
Q Have you -- you've been doing this a long time, Detective/Sergeant. Are you familiar or have you taken courses with regards to shooting positions, accuracy, marksmanship, any of those types of things?
A Not any that -- I qualify once a year, but I've never taken any type of marksman classes or anything. No.
Q I didn't hear you. I'm sorry.
A We qualify once a year. I've never taken other than the training we get. Never a marksman classes or anything --
Q Okay.
A -- outside the department.
Q Okay.
A No.

Q And you didn't -- okay. With that being said, you didn't see John on the ground when he shot though, correct?
A Correct.
Q Okay. And you saw him on one knee?
A One or two knees at least.
Q And you saw him shoot right after he got punched right in the face, correct?
A Yeah. He shot after he was getting punched. Yes.
Q And then he was easily pulled back by his shirt by Mr. Peek, correct? Thrown down to the ground?
A He was pulled back by his shirt. Yes.
Q Clearly not proper shooting technique that you guys learned at the academy; is that right?
A Is what not proper?
Q Shooting on one knee?
A Usually, we shoot prone on our knees.
Q Okay. Is it proper shooting technique to use one hand?
A No. But we do train with one hand and our weak hand.
Q I know you do.

A Yes.
Q Does John?
A I can't answer that.
Q Okay. And were you in a situation in training where you were kicked and punched in the face and then shot with one arm --
A No.
Q -- on one knee?
A No.
Q At a moving target?
A No.
Q You are aware that body positioning are vital to actually hitting a target, correct?
A I'm not an expert on firearms. I can't answer that.
Q Okay. But you do want to have a good grip on the weapon?
A Yes.
Q I would think?
A Yes.
Q Just as common sense. Okay. John did none of these things, right?
A No.

Q He never -- you never saw him stand up; did you?
A No.
Q You never saw him sight up Mr. Peek?
A I think that's up for interpretation on the video.
Q Okay. You never saw him use the two handed hold? Just, literally, pointed and just (indicating). One hand, right?
A Correct.
Q Okay. And from what we recovered, John didn't have one of the red -- like a laser dot to help him improve accuracy?
A Correct. He did not.
Q Or a scope?
A Correct. He did not.
Q And in watching the video you could see him breathing extremely heavy afterwards?
A He was breathing. Yes.
Q Did you see him breathing heavy?
A Heavier than normal. Yes.
Q Are you aware if John has gone to the range or anything like that or practiced marksmanship at all?

A That I do not know.
Q Okay. Did you contact any ranges within a 15-mile radius or anything to figure out any of that?
A No, I did not.
Q And so we're clear, that he's in a very unstable shooting position, correct?
A That's up for interpretation. I'm not an expert.
Q Well, are you taught in any course -- as a police officer -- or any training to shoot from one knee? With one arm, are you taught to do that? Is that proper shooting technique?
A That's not proper shooting technique.
Q Okay. But all those things are crucial elements of accuracy; aren't they?
A Yes. But we do train with one arm.
Q And so you would agree with me that when building a home, you have to have a good foundation first, right?
A Now, that one I would agree with. Yes.
Q And that's what we're kind of talking about here. Same concept. You want to have these foundational things in order to be able to have

accuracy, right?
A That's a question I can't answer.
Q You keep --
A You may be more accurate --
Q You keep mentioning --
A -- than me blindfolded.
Q That you --
A I can't answer. You may be more accurate than me with a blindfold on. I can't answer to John's shooting skills.
Q No. No. I understand that. But there's certain fundamental foundational values for accuracy in marksmanship, correct?
A Correct.
Q Okay. And John had none of those?
A It didn't appear to. No.
Q Balance is extremely important in shooting?
A Yes.
Q Okay. How good is your balance when you try to walk with your eyes closed?
A It wouldn't be good.
Q Have you been kicked in the face before?
A That I can't say I have. No.

Q Have you been punched in the eardrum?
A I fell down a set of steps and fell on my ear.
Q And so you saw stars?
A I can't say that I saw stars.
Q All right. Inner ear is important for balance; is that not accurate?
A I'm not a doctor. But I believe so. Yes.
Q And you see right before he gets thrown down, he gets hit right directly in the ear?
A He gets punched in the side of the face.
Q You are aware that there's three types of stances to be considered when using and shooting a handgun; is that accurate?
A I can't -- I don't know that.
Q Have you heard of the assessment stance?
A I'm not familiar with it.
Q The Weaver stance?
A Not familiar with it?
Q The fighting stance.
A Not familiar with it.
Q Do you have any idea if he serviced his gun regularly?

A No, I do not.
Q Or if he cleaned it frequently?
A No, I do not.
Q And so we've talked about lack of steady position. Are you aware that fundamental of marksmanship accuracy is breath control?
A I know that is part of the -- of marksmanship is breath control.
Q Inhaling and exhaling to increase stability?
A Yes.
Q John really wasn't able to do that? Would you agree with that?
A I could assume that he wasn't. Yes.
Q And the fourth fundamental of markmanship accuracy is trigger squeeze. Have you heard of that?
A Trigger control. Yes.
Q Applying the correct amount of pressure to ensure against stability and accuracy?
A It helps. Yes.
Q And we know with John that's not really present in the video. He kind of squeezes around and shoots?
A That's what the video showed. Yes.

Q Do you know who Jeff Cooper is?
A Jeff Cooper?
Q Yeah.
A No, I don't.
Q Have you ever heard of a famous quote with regards to shooting? It says you should always shoot with two hands?
A No, I have not.
Q Do you want to know who it's by?
A Do I want to know who it's by?
Q Sure.

MR. ANDREWS: Objection, Your Honor.

THE COURT: Sustained.

MR. ANDREWS: We've been over this.

BY MR. HENDERSON:

Q I would like to talk to you a little bit about element of surprise. You would agree with me that Dan, Jr. -- and I'm not blaming him for what he did -- I'm just saying, you would agree with me that was a huge element of surprise, correct?
A I guess someone could take it as that.
Q Well, if you're in a physical confrontation and another individual out of nowhere stomps on your

head, that would be very surprising, correct?
A Yes.
Q Okay. That could really catch somebody off guard, right?
A Correct.
Q And you would agree with me that some of the greatest military General's that -- as well as military accomplishments in general have focused on the element of surprise, right?
A Sure.
Q That's because it's so effective, correct?
A Correct.
Q And that happened in this case, right?
A Daniel Peek joined the fight. I can't say it was a predetermined element of surprise. I think he went out to defend his father.
Q I'm not -- I'm not saying -- Again, I'm not trying to blame Jr. Okay? All I'm saying is him jumping John -- you would agree with me that John didn't know that he was going to come off those steps and stomp on his head, correct?
A Correct.
Q Okay. And of course John has absolutely no

clue who this individual is?
A He told us so. Yes.
Q I'm sorry?
A He told us he did not know who was on his back. Yes.
Q Okay. He has no idea this is a trained fighter, right?
A If he doesn't know who it is, then he could not know that, correct.
Q He doesn't know if the individual has a weapon?
A Correct.
Q He doesn't know if there is a third or fourth person who is going to jump in?
A Correct.
Q Now, in that situation -- and I'm not saying -- in that situation, you now, have two-on-one, correct?
A That's correct.
Q And in this situation both Daniel Peek, Sr, as well as Daniel Peek, Jr. had two arms and two hands, correct?
A Correct.

Q Had two legs and two feet, correct?
A Correct.
Q Had two eyes?
A As far as I know. Yes.
Q And so we now are talking about a situation where John has thrown away his gun, he has no idea where it is, and now we've got four eyes that are able to look for this gun; is that correct?
MR. ANDREWS: Objection. As to John not knowing where his gun is.
THE COURT: Sustained.
BY MR. HENDERSON:
Q Is it your testimony that John knew where his gun was?
A I don't know if John knew where his gun was.
Q My point is, that you're doubling the amount of people -- or I'm sorry -- eyes that are able to locate a weapon; is that an accurate way to put it?
A There -- yes, there are four eyes to two.
Q Well, and the four eyes weren't getting kicked in the face and hit either, correct?
A Correct.
Q In fact, Dan Peek, Jr. said he wasn't hit at

all; right? He had no injuries.
A Correct.
Q Two people also makes it hard for an individual to cover-up their vitals, right?
A Yes.
Q Leaves open many areas that are extremely sensitive? Being thrown, which in the video you see Dan, Jr.'s forearm around John's throat; is that correct?
A It appears to be. Yes.
Q And another vital area? Face, head, neck?
A Yes.
Q Ear, which we've discussed?
A Yes.
Q Okay. And so this is -- this is obviously -- I'm not -- Jr. comes and just escalates the situation, correct?
A Escalates it in what way?
Q Well, it's now two-on-one instead of one-on-one?
A Okay.
Q Is that accurate?
A That's accurate.

Q Okay. And so we heard Peek, Jr. testify and he essentially said he walked off the porch, he fought, and then he heard, I'm shot by his father, correct?

A I believe he heard the word go first. And then he heard his father say he was shot.

Q Fair enough. But he couldn't remember a lot of other details?

A Correct.

Q And part of the reason was because he -- in questioning, it's because it was so chaotic and so quick and hectic; is that accurate to say?

A He agreed with that. Yes.

Q Okay. And he wasn't even hit in the face or anything, right?

A Correct.

Q And so you could imagine that that would be much more disoriented for somebody else that was hit in the face, correct?

A The assumption is. Yes.

Q You have no -- in that position, you have no idea how far these people are going to go, right? You have no idea if --

A Would you clarify that?

Q You have no idea if they're going to keep kicking and punching?

MR. ANDREWS: Objection. Calls for speculation.

THE COURT: Sustained.

BY MR. HENDERSON:

Q You heard Mary state that Daniel Peek, Sr. was extremely agile?

A I did.

Q Very athletic?

A Correct.

Q Very fast or quick or speedy or whatever? I can't remember what term. Is that accurate?

A Correct.

Q You heard that he was a roofer?

A Correct.

Q That he stayed in shape?

A Correct.

Q And that he was very strong.

A She said --

Q Did --

A -- he worked out.

Q I'm sorry?

A She said he worked out?

Q You ever ask John for a polygraph?

A No, I did not.

MR. ANDREWS: Objection.

THE COURT: Sustained.

BY MR. HENDERSON:

Q You were aware that -- as John was on his way over that day that Mr. Peek was blowing a gasket?

A That is told to me. Yes.

Q That means obviously upset and angered?

A Correct.

Q I'm trying to get through this, Detective. I promise. You did talk a little bit about the 911 -- or I'm sorry, the jail phone call. You already talked about the 911 call, right?

A You and I?

Q How he stated that he wasn't going to put his weapon down because that he thought they might come back?

A Yes, he did.

Q You are aware that John was involved in an altercation, roughly -- I guess, three years prior to this where he was shot at?

A I was.
Q You were actually the detective on that?
A I was.
Q And in that situation John was traveling in his vehicle, correct?
A That's correct.
Q Seatbelt on?
A I don't know that.
MR. ANDREWS: Objection as to the relevance?
THE COURT: Sustained.
MR. HENDERSON: Judge may we approach please?
THE COURT: No. Keep on moving.
BY MR. HENDERSON:
Q People who have traumatic experiences when they're in the same physical locations could feel overwhelmed or feel like they're in vulnerable positions; would you agree with that?
A Could you reask that?
Q Sure. Hypothetically, if somebody is in a certain type of room, with a certain type of picture. And they are then in another possibly traumatic

situation with the same type of room with the same type of picture that could trigger a memory and have him feel vulnerable; is that accurate?

MR. ANDREWS: Your Honor, I don't know if the detective is qualified to answer this question.

MR. HENDERSON: Well, I asked him.

THE COURT: You can answer if you can.

THE WITNESS: I'm sure things could trigger people.

BY MR. HENDERSON:

Q Sure. And when John pulled into the driveway that day, he was in the exact same position with his seatbelt on as he was before, correct? When he was shot before -- or shot at before?

A I don't think it is the same scenario. No.

Q I'm not saying it's the same scenario. What I'm saying is, that could be a vulnerable position for somebody, correct?

A If he were -- I guess if he was getting shot at again. Yes.

Q Well, it would -- you're locked in. You're locked into a position. And so you feel like you need

to leave that position. Does that make sense?

A It does. But I think you are asking me to speak for John. And I can't.

Q Well, I was trying to ask you about the -- that you were the detective on?

A I was.

Q Okay.

MR. HENDERSON: All right. Your Honor, could I just have a moment?

THE COURT: Yes.

MR. HENDERSON: I think I can be able to wrap it up here.

THE COURT: Yes.

MR. HENDERSON: Just a couple more.

BY MR. HENDERSON:

Q Because I know you guys went through the interview on direct as well. Or the video where John was interviewed. I don't remember who the other detectives name was.

A Detective/Sergeant Barber.

Q I'm sorry?

A Detective/Sergeant Barber.

Q Okay. And do you remember him saying, Dan

was kicking me, I seen the gun, I grabbed it --

MR. ANDREWS: Objection. As to what the defendant said. He can testify to what he said.

THE COURT: Overruled.

BY MR. HENDERSON:

Q I seen the gun, I grabbed it, and I pulled the trigger?

A Yes.

Q Okay. He said the next thing I know I'm standing next to my car calling 911?

A That's correct.

Q He said then I got kicked and punched, you know, I'm seeing--

MR. ANDREWS: Objection.

THE COURT: Let him ask the question first.

BY MR. HENDERSON:

Q You know I'm seeing stars, I wasn't knocked out or anything, but he was hitting very hard. Do you remember that?

A I do.

Q Do you remember him saying --

MR. ANDREWS: Objection. May we approach?

THE COURT: Yes.

(WHEREUPON, a discussion was had among Court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

BY MR. HENDERSON:

Q Never once during John's interview did he ever concede to seeing Danny when he shot him, correct?

A I don't believe he did. No.

Q I see my gun, I grab the gun, I roll over, and I pull the trigger, correct?

A Correct.

Q Okay. Do you remember asking him when you squeezed, did you know where you were pointing?

A Yes.

Q Do you remember him answering, not really. I mean, no, I just -- to be honest, I just wanted them to get the hell away from me and leave me alone?

A Yes.

Q I was on the ground, I grabbed the gun, I

rolled over. You asked, do you remember asking him, why were you trying to shoot at that point?

A Yes.

Q And he said so they stop beating me?

A Correct.

MR. HENDERSON: Just a brief moment, Your Honor.

(Mr. Henderson consults with Mr. Weatherly off the record.)

MR. HENDERSON: Thank you. Thank you. I appreciate it. No further questions?

THE WITNESS: Okay.

THE COURT: Redirect?

MR. ANDREWS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. ANDREWS:

Q All right. You were asked the best piece of evidence was the dash cam video?

A Correct.

Q And do you remember -- all right. The defendant is arrested at the scene, taken down to the station, you interview three people and then you interview him?

A Correct.

Q Do you remember the point in the interview when the defendant told you he had a dash cam?

A He did not.

Q He never told you?

A He did not.

Q Well, I thought he was a stand up --

MR. HENDERSON: Objection, Your Honor.

THE COURT: Sustained.

BY MR. ANDREWS:

Q You were asked about phones. When you collect phones, what's the purpose of cell phones?

A A lot of times it's to either produce a suspect or eliminate one.

Q And in what way?
A Double the suspect or -- well, you could use the tracking, you may interview somebody down the road who says I was on this side of town. And it couldn't be me. And their phone would tell you -- that they were always carrying, puts them at the scene of the crime. Or it can exonerate somebody by saying this wasn't -- I wasn't there.
Q How many shooters did you have here?
A Just one.
Q And before you even got there he had told the police he shot someone? Told 911 that?
A Correct.
Q And so didn't need this as -- it was said before, this isn't a case of who-done-it?
A That's correct.
Q Did John ever tell you that Danny said, if you come over I'm going to kick your ass?
A Not on that particular day. No.
Q Okay. You were asked, how do you know Danny didn't text someone and say John's coming over he's a dead man. You remember being asked that question?
A I was.

Q Okay. Who is the dead man?
A Daniel Peek, Sr.
Q Who had the gun?
A John Morgan.
Q All right. Now, we went through all the things, the great things that the defendant did. He stayed there, he called 911, he unloaded his gun, he did all this stuff. Do we just get a pass for that?
A No.
Q Because we did all those good things?
A No.
Q Okay. You were asked about your interrogation. Your interview with the defendant which lasted about 20 minutes. Would you characterize that as an interrogation?
A No. Just getting his version of events.
Q Okay. Have you done -- have interrogated people before?
A I have.
Q Raised your voice?
A I have.
Q Okay. And did that happen here?
A No.

Q You were asked about -- you told Mary your job is to hold someone accountable?

A Correct.

Q Were you out to hold John accountable? Or were out to hold whoever killed Danny Peek accountable?

A It was whoever killed Daniel Peek.

Q Okay. And at that time, who did your evidence point towards?

A John Morgan.

Q Okay. Had you watched -- had John -- hypothetically, had John's video or dash cam video showed Mr. Dunne come running across the street and shoot Danny Peek, would John still be here today?

A No.

Q Okay. You follow -- you said you follow the evidence?

A Correct.

Q Had the evidence lead anywhere else, would you have gone after whoever the evidence pointed at?

A Yes.

Q You were talking about John's injuries. About bruising that develops later. Did John ever

request you to come and take more photographs?
A No.
Q Did the jail contact you and say, wow, this guy looks really bad we need photographs?
A No.
Q When you said that it's your job to hold someone accountable. Your job is to gather the evidence, correct?
A Correct.
Q And in this case you said you went -- you got -- you went and filed charges?
A Correct.
Q And so you're the one that made the determination he should be charged with murder?
A Initially, we charged him with murder. The following day, I go and speak to the prosecutor.
Q Okay. And that's the City Prosecutor not the County Prosecutor?
A That's correct.
Q Okay. And murder charges were filed?
A Correct.
Q Did you -- are you a juror?
A No.

Q Did you find him guilty?
A No.
Q You determined to file charges, correct?
A Correct.
Q We went through a lot of things about shooting, aiming, training, all that stuff. Have you ever -- you watch the olympics at all? The winter olympics?
A Very rarely.
Q Okay. In the olympics they have the biathlon, it's skiing and shooting?
A I'm familiar with that. Yes.
Q Okay. They shoot from three positions. One, is the prone, where they're laying down. And one is where they're standing. And the third is on their knee. Are you aware of that?
A I can't say specifically.
Q Oh, okay. All right. You were asked about the grip that the defendant had on the gun. Or whether he had a good grip on it. When he shot the -- when he fired the shot that killed Danny Peek, did the gun fly out of his hand?
A No.

Q Okay. Did he hold the gun still?
A Yes.
Q And I believe you said when asked if the gun was jammed, what did you say?
A I couldn't tell if it was or not. He told us he tried to keep shooting.
Q Okay.
MR. HENDERSON: Objection.
Nonresponsive.
THE COURT: Overruled.
BY MR. ANDREWS:
Q Okay. Well, as far as the questions you were asked -- all the questions about his aim, his position, all that stuff. Did the defendant tell you who he intended to shoot?
A He did.
Q And who was that?
A Danny Peek.
Q Did he shoot Danny Peek in the back?
A He did.
Q If you recall in the video, I believe, you've already testified Danny Peek was running away, and I think you said he was at least a car length away from

the defendant when the shot was fired?
A Correct.
Q When you observed the defendant shooting, did it appear that he was aiming at someone?
A It did.
Q Not just flying up with his arm and firing a shot?
A Correct.
Q There's a whole bunch of things they are saying that you -- you could have done and didn't do. Did you ask the defendant what he had for dinner the night before?
A No.
Q Did you ask whether he sleeps on his stomach, his side, or his back?
A No.
Q Okay.

MR. HENDERSON: Judge?

THE COURT: If you're objecting, I'm overruling it.

MR. HENDERSON: Okay.

BY MR. ANDREWS:
Q Do you train -- you said, when you get

qualified once a year with a firearm?
A That's correct.
Q Okay. And is that a process where you have to go shoot at targets and go through safety --
A Yes.
Q Okay. Are you a -- an excellent marksman?
A I like to think so.
Q Okay. Are you a better shooter than other people?
A I am.
Q Are other people better than you?
A Yes.
Q Okay. Isn't it fair to say some people are just better at shooting than others?
A Yes.
Q Hypothetically, an excellent marksman even if he's -- he could be falling down with one arm -- as opposed to someone who is not an excellent marksman -- has two hands on the gun standing and aiming --

MR. HENDERSON: Your Honor, objection. Speculation.

THE COURT: Sustained.

BY MR. ANDREWS:

Q Some people are just better shots than others, correct?

A Correct.

Q You were asked about element of surprise. When someone pulls into your driveway and gets out of their car and fires a shot into the ground could that be an element of surprise?

A Yes.

Q If someone were to pistol-whip someone with -- who has there back to them would that be a surprise to them?

MR. HENDERSON: Objection. Mischaracterization of evidence.

THE COURT: Rephrase your question please.

BY MR. ANDREWS:

Q If someone were to strike someone in the back of the head?

MR. HENDERSON: Objection. Mischaracterization of evidence.

THE COURT: Overruled.

BY MR. ANDREWS:

Q If someone were to strike someone in the back of the head with a gun while the person being struck has their back to the person would that be an element of surprise?

A Yes.

Q If someone were running away over a car length away and they get shot in the back would that be an element of surprise?

A Yes.

Q You were asked about polygraphs. Are polygraphs admissible in court?

MR. HENDERSON: Objection.

THE COURT: Overruled.

THE WITNESS: Are they admissible in court? No.

BY MR. ANDREWS:

Q I believe you testified John told you, I just wanted them to get away from me so they stopped beating me. That's the reason he shot?

A Correct.

Q When we watched that video. When he shot Danny Peek was anybody beating him?

A No.
Q Who was the closest person to him?
A I believe Mary Morgan.
Q Okay. Not Daniel Peek?
A Correct.
Q Or Danny Peek, Jr.?
A Correct.
Q Or Danny Peek?
A Correct.
Q And, again, we watched that video. And when you went over this -- when that shot was fired, you could basically see a small portion -- the left side of Danny Peek, correct?
A Correct.
Q And it was his backside?
A Correct.
Q Again, you were asked, the best piece of evidence is the defendant's dash cam, correct?
A Correct.
Q Would you agree with that?
A Yes.
Q Okay.

MR. ANDREWS: Nothing further.

THE COURT: Any recross?

MR. HENDERSON: Yes, Your Honor.

Thank you.

RECROSS EXAMINATION

BY MR. HENDERSON:

Q In the recording in this interview, he told you he didn't have a dash cam. You were asked that, right?

A Yes.

Q Isn't it your job to ask the questions?

A It is.

Q Okay. Did you think maybe he was a little bit rattled during this entire situation?

A I'm assuming he could be. But he talked calmly to us.

Q He just shot somebody?

A Yes.

Q Okay. And then he's -- again, in an interrogation room with handcuffs with you guys, correct?

A Correct.

Q Okay. And you had his vehicle; did you not?

A We did.

Q It was impounded by you guys?
A Correct.
Q He was not getting out of incarceration then; was he?
A He was not. At least, until the following day.
Q I'm sorry?
A He was not getting out of incarceration, at least, until the following day. Until he got a bond.
Q He did not get a bond the following day, correct?
A I believe he did.
Q No. And I'm glad you brought that up. What was his bond? A million dollars?
A It was either a million or 500,000.
Q Well, it was a million?
A Okay.
Q And so that brings me back to this call from the jail. Because you guys had talked about that on direct examination. And he said --

MR. ANDREWS: Objection. We did talk about bond on direct not redirect.

MR. HENDERSON: He's bringing up bond.

THE COURT: You're beyond the scope.

BY MR. HENDERSON:

Q If somebody who -- if somebody is giving a million dollar bond, can you see how perhaps they may believe people think I've done something wrong?

MR. ANDREWS: Objection as to relevance of bond.

MR. HENDERSON: I -- I didn't bring it up. You brought it up. I'm just reacting to.

THE COURT: I'm going to allow it.

BY MR. HENDERSON:

Q Certain people aren't hip to the system; would you agree with that?

A Yes.

Q And you deal with a lot of people that are repeat folks?

A Yes.

Q They know the system, right?

A Yes.

Q Other people aren't?

A Correct.

Q Correct?

A Correct.

Q And so if somebody is given a million dollar bond, do you think maybe it's possible they may think to themselves. Man, I wonder if I did something wrong?

MR. ANDREWS: Objection. That calls for speculation.

THE COURT: Sustained.

BY MR. HENDERSON:

Q Do you remember, Megan, his girlfriend on the 911 call asking him, but do you who you shot at? And he said, no, I didn't. I just shot.

MR. ANDREWS: Objection. It's beyond the scope of redirect.

THE COURT: Sustained.

MR. HENDERSON: Okay.

BY MR. HENDERSON:

Q He asked you if 20 minutes was an interrogation?

A He did.

Q Is there like a time limit on an interrogation?

A No.

Q Okay. I'm glad you brought that up. Because we have a murder case here, right?
A Correct.
Q Very serious?
A Correct.
Q And you interviewed Dan, Jr. for about 5 minutes and 46 seconds, correct?
A Yes.
Q And you interviewed Mary Morgan for roughly 17 minutes, correct?
A Correct.
Q You interviewed Kaitlynn for about 13 minutes, correct?
A I agree with that. Yes.
Q And then John for about 20 or so but not all of it was substance, correct?
A Correct.
Q And so we got about 52 to 55 minutes of interview on a murder charge?
A Correct.
Q And you had all the answers you needed to charge him with murder after that time period?
A I believe I had probable cause in this case.

Q Well, you had probable cause according to you. When you first interviewed Mary, because you said, we're going to hold him accountable, right?

A I believe it's our job to hold someone accountable.

Q Who was that person?

A John.

Q Okay. And so you already -- again, we've been through this. Now, you were asked about, did the jail ever call you? Did people from the jail ever call you and say, we need photographs?

A No.

Q Of John?

A No.

Q Does that sound ridiculous to you?

A It's never happened.

Q Thank you. Is it hard to sometimes get meds in jail?

A I don't know.

Q Is it hard to sometimes get any medical treatment in jail?

A I've never worked in the a jail.

Q Do you think --

A Well, I take --

Q You don't see it as a very high likelihood that the jail --

A I don't.

(WHEREUPON, the court reporter interrupted the proceedings.)

MR. HENDERSON: I'm sorry. I'm sorry.

THE WITNESS: When I was a reserve I did a little time at the jail. I want to say I worked in the jail. That was in the early '90s.

BY MR. HENDERSON:

Q Okay. And so it's a bit disingenuous to say that the jail is going to call and ask for photographs?

A Like I said, I never had the jail call me --

Q And --

A -- for photographs.

Q -- was it up to John to collect evidence?

A No.

Q This is not the olympics; is it?

A No.

Q This is a murder case?

A Correct.

Q Are you aware if John was in the olympics for sharp shooting?

A I have no knowledge of it.

Q I'm sorry?

A I have no knowledge of it.

Q Thank you, Detective.

A You're welcome.

THE COURT: Any redirect?

MR. ANDREWS: I just want to clear one thing up.

* * * * *

FURTHER REDIRECT EXAMINATION

BY MR. ANDREWS:

Q I think when you were asked -- and maybe I misunderstood. I think the question that was asked was, you didn't ask John if he had a dash cam? Did you ask him?

A I did not.

Q Did you have any reason to believe that he did have a dash cam?

A I did not.

Q Did John tell you he had a dash cam?

A He did not.

MR. ANDREWS: Okay. Thank you.

THE COURT: Any recross?

MR. HENDERSON: Yes.

* * * * *

FURTHER RECROSS EXAMINATION

BY MR. HENDERSON:

Q Yeah. You're asking him questions, right?

A Correct.

Q You had his vehicle in impound, correct?

A Correct.

Q Okay.

MR. HENDERSON: No further questions.

THE COURT: Anything --

BY MR. HENDERSON:

Q And if we got the dash cam --

MR. HENDERSON: Oh, I'm sorry. I withdraw that.

* * * * *

FURTHER REDIRECT EXAMINATION

BY MR. ANDREWS:

Q You interviewed him, I think, we've said an hour and a half, two hours after the incident occurred correct?

A Roughly, yes.

Q Did you have a search warrant to search his vehicle at that time?

A No.

Q Thank you.

THE COURT: Any recross?

MR. HENDERSON: No recross, Your Honor. Thank you.

THE COURT: You may step down, Detective. Thank you.

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen of the jury, at this time we are going adjourn for the day.

Please do not discuss this case amongst yourselves or with anyone else. Please don't permit anyone to discuss it with you or in your presence. Please do not form any opinion on this matter until it's given to you for your deliberations.

We will reconvene at 9:00 Monday morning Thank you.

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, the jury left the courtroom, and the proceedings continued as follows:)

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

THE COURT: Okay. Do you want to do exhibits or what do we want to do?

MR. ANDREWS: Your Honor, it's going to take us maybe five minutes just to get all

the exhibits in order.

THE COURT: Okay. Well, then let the bailiff know when you're ready.

MR. ANDREWS: Okay.

THE BAILIFF: All rise. We are now in recess.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in session. The Honorable Maureen Sweeney presiding. You may be seated.

MR. ANDREWS: One second, Your Honor.

THE COURT: Of course.

THE BAILIFF: Just for the record, they told me that they were ready.

(WHEREUPON, a small discussion was held off the record:)

MR. ANDREWS: Okay. Your Honor, at this time, we would move to admit our exhibits. I don't believe there are any objections. The State would move to admit

Exhibits 1 to 39. The State did not use Exhibit 40. The State would move to admit Exhibits 41 and 42. We did not submit Exhibit 43. The State would move to admit Exhibits 44 through 50. The State never submitted 51 or 52. We did submit 53, but we will withdraw that. We would move to admit 54. We never submitted 55 we would move to submit or admit Exhibit 56. We did not submit 57. 58 and 59 were stipulated to. We did not submit Exhibits 60. We move to admit Exhibit 61. And we did not submit Exhibits 62 through 65?

THE COURT: Defense, Counsel, are you submitting those without objection?

MR. WEATHERLY: Correct, Your Honor.

THE COURT: Then they'll be admitted Thank you.

MR. ANDREWS: Your Honor, with that the State will probably rest.

THE COURT: Okay. Is there a motion?

MR. WEATHERLY: At this time, Your Honor, the Defense will move for a Rule 29 motion for acquittal. In viewing the evidence in the light most favorable to the prosecution, we do feel the State failed to present sufficient evidence to sustain a conviction for aggravated murder charge or for felonious assault.

THE COURT: Response?

MR. ANDREWS: The State would tell you that we did in a light most favorable to the State meet the proper prima facia case as to each and every element for each count.

THE COURT: The motion is overruled. We are off the record now.

THE BAILIFF: All rise. This Honorable Court of Common Pleas is now in recess.

(WHEREUPON, the Court recessed at 3:52 p.m., February 23rd, 2024.)

(WHEREUPON, the Court reopened at 9:15 a.m., February 26, 2024, and the proceedings continued as follows:)

THE COURT: Welcome, ladies and gentlemen. The state has rested its case. At this time we'll hear from the defense. You may call your first witness.

MR. WEATHERLY: Thank you, Your Honor. At this time, Your Honor, may it please the court, we would call as our first witness Mr. William Granger.

THE COURT: Please raise your right hand.

WHEREUPON, the Defendant called

WILLIAM GRANGER,

who, being first duly sworn testified as follows:

THE COURT: Have a seat. Speak loudly, clearly, and right into that microphone.

THE WITNESS: Okay.

DIRECT EXAMINATION

BY MR. WEATHERLY:

Q Good morning, William. How are you today?

A Good. How are you?

Q Good, thanks. So what I'd like you to do is get as close to the microphone as you can. Speak directly into it loud and clear so everyone can hear you, okay?

A All right.

Q Can you hear me okay?

A Yes, sir.

Q That's good. Thank you. If I happen to ask a question that you don't understand or you don't hear

it clearly, don't -- don't guess as to what I'm asking you. Just ask me to repeat it. I'm happy to do it for you, okay?

A Yes, sir.

Q All right. Go ahead and just state your name and spell your last name for the record, please.

A William Granger. Last name G-R-A-N-G-E-R.

Q All right. Perfect. Just speak right into the microphone just like you did right there, okay?

A Yes, sir.

Q All right. William, how old are you?

A Twenty-nine.

Q And where do you live, sir?

A I live in Canfield now.

Q Canfield? Where's that?

A West of Austintown, I believe it would be.

Q Okay. About how far away from here?

A Thirty minutes.

Q How long have you lived there, sir?

A Four or five years now.

Q Four or five years? How about before then? Where did you live before then?

A Campbell.

Q I'm sorry?
A In Campbell.
Q In Campbell.
A Uh-huh.
Q Okay. Are you born and raised there or --
A Yes.
Q -- are you from somewhere else?
A No, Campbell.
Q Campbell originally? Okay. Did you go to high school there?
A Yes, sir.
Q Which one?
A Campbell Memorial.
Q When did you graduate?
A 2012.
Q Did you go to any college or anything after that?
A I did not.
Q All right. Are you working?
A I am.
Q Where?
A I work with my fiancée's brother, and I service windows and doors.

Q How long have you been doing that?
A Two years now.
Q What did you do before that?
A Installed, construction, did general construction before that, installed windows and doors, and then worked into servicing.
Q So have you been doing sort of that sort of thing since -- since graduation from high school pretty much?
A Pretty much. Yeah, I did painting with Seacor. I actually painted with my dad, worked with him for five, six years, and then it was after that I started doing the construction.
Q Okay. What's that work like?
A The construction?
Q No, what you're doing now.
A Now I fix windows. I fix windows and doors, pretty simple. If there's glass broken, I go and swap it out, or if somebody's lock isn't working, I go and adjust it. Pretty simple work now.
Q Do you stay pretty busy?
A Yes, I do.
Q You mentioned that you live with your

fiancée. Who's that?
A Lisa Markijohn.
Q Okay. And how long have you guys been engaged?
A Three months, four months we've been engaged now.
Q Congratulations.
A Thank you.
Q Any kids?
A Yes, we have one and one on the way.
Q Congratulations on that as well. And how old's the little one?
A Three.
Q Three?
A Three-and-a-half.
Q Three-and-a-half. Boy or girl?
A Girl.
Q I'm sure she keeps you busy, right?
A Uh-huh. That's for sure.
Q And then how long have you and Lisa been together?
A Five years.
Q How did you meet her?

A Facebook.
Q Facebook?
A Yes.
Q Where's she from?
A She is from Canfield, Ellsworth area, where we are -- where we're living now. She actually grew up in the house that we live in right now for the first year of her life.
Q No kidding? All right. So let me ask you this, who's your mom?
A Mary Morgan.
Q Mary Morgan as in the Mary Morgan that testified in this trial?
A Uh-huh.
Q How about your dad, who's he?
A John Morgan.
Q So when you say John Morgan is your dad, is he your biological father?
A No.
Q Who's your biological father?
A I do not know.
Q Who was it that was responsible for raising you as a child?

A My mother and father, John Morgan and Mary Morgan.

Q All right. So how long have you known John?

A As long as I can remember.

Q Where did you grow up? You said Campbell?

A Campbell.

Q Was that -- was that in John's house or Mary's house?

A Yeah, it was both. We all lived together.

Q Okay. At this stage in your life who would you say that you have a closer relationship with, Mary or John?

A John.

Q Why is that?

A He's the one that makes the effort to be there anymore with my children and me personally. I speak with him a lot more than my mother, Mary. I honestly don't know much about her anymore. That's -- ever since me and Lisa got together, mother kind of drifted away. So it's been me and my dad.

Q How often would you say you talk to John?

A Daily.

Q Daily?

A Daily.
Q How long has that been going on?
A As long as I can remember. I mean, ever since I moved out. When I first moved out and bought a house, he would show up to my house randomly.
Q Is that a positive thing or was it a negative thing?
A No, it was a positive thing --
Q Okay.
A -- to a point. Sometimes I'd be sleeping and he'd wake me up in the morning, but that's okay.
Q Okay. All right. How about your daughter? What's your daughter's name again?
A Aries Nicole.
Q Aries? Does John have a role in her life at all?
A Absolutely.
Q How so?
A They're very close. You know, she's always asking to go to Papa's. He always asks if I can have her call him. Whenever we can make time -- because obviously I work, and then sometimes I do go out of town. So whenever I can make time, we'll go over there

and take the 30-minute drive and go hang out at his house for the day or he'll come to my house.

Q Okay. Do you know who Kaitlynn Morgan is?

A Yes, I do.

Q Who is that?

A That is my sister.

Q And who are her parents?

A John Morgan and Mary Morgan.

Q How much younger than you is Kaitlynn?

A Six years.

Q So did you -- did you grow up with Kaitlynn?

A Uh-huh. I did.

Q And do you know if Kaitlynn has any children?

A She does.

Q Who is that?

A That would be Little Willy.

Q Little Will?

A Uh-huh.

Q And I notice that his name is the same as your name.

A Uh-huh.

Q Is that a coincidence?

A No.

Q So is it safe to say you got a pretty good relationship with Kaitlynn?
A Not quite.
Q Why not?
A A little bit closer than me and my mother, but same situation, we don't talk as much. She -- she tends to be distant.
Q Is that a more recent development or is that something that's been that way your whole life?
A That's more recent. You know, she's always constantly bothering -- not bothering me, but she would always be texting my phone or calling me, but then over the last few years, that's declined.
Q So let's backtrack. And so before the last few years, what was your relationship like with Kaitlynn?
A Pretty close.
Q Pretty close?
A Uh-huh.
Q Did that include the birth of her child?
A Yeah.
Q Did you have a role in Little Will?
A Not a whole lot, but when I could. The same

situation, I was working. When I could, I'd go see them. We would go to my dad's house, and we'd get together.

Q And when did this relationship with Kaitlynn begin to deteriorate?

A Shortly after my mother and Danny got together. Not right away. It took a little bit before she would start making excuses as to why she couldn't come hang out or do anything with us.

Q All right. So did you move to Canfield before Mary and Dan got together?

A Yes.

Q Was that move to Canfield, did that play any part in the estrangement between you and Kaitlynn?

A I don't believe so. I always said that shouldn't play a part.

Q Did she -- did she still text you and call you during that time?

A Yes.

Q How about getting together, did you guys get together at all?

A Not as often, no.

Q Is that because of the distance?

A Yeah. She didn't -- obviously she doesn't drive, and then I had to -- you know, I was working 30 minutes one way. It would make it a little difficult.

Q All right. Tell me a little bit about John. What's his health like?

A Not too good.

Q Why do you say that?

A He has heart problems, back problems ever since I can, you know. When I was -- teenage years, I believe is when he had his back surgery. So I've always noticed health issues. So that would impede him from doing things.

Q I guess I was going to ask you, how does -- how does it affect his daily life?

A Oh, it makes it rough. Mornings I notice they're a lot slower getting started; middle of the day starts to slow down significantly more. Definitely could see the energy drawing away from him.

Q And is that -- is that something that has sort of come about over time or is that always how he's been?

A It's progressively gotten worse. Of course, health, it declines. But teenage years, like I said,

he had his back surgery, and pretty much from then on it was downhill.

Q What about his heart, are you aware of anything going on with that?

A I am.

Q What's that?

A I can't remember the exact problem with it. I always call it heart disease. I don't believe it is exactly heart disease. I know he had an enlarged heart. He had heart issues and I believe is now stemming out into his lungs.

Q And, again, how do you see that affecting him in his daily life?

A It drains his energy away. He's like just sitting there in air conditioning and, you know, just breathing. He's winded doing nothing.

Q He's winded doing nothing.

A Uh-huh.

Q So fair to say he's not quite as active as he used to be?

A Yeah.

Q Does that affect his ability to help care for your daughter or for Little Will?

A I wouldn't say it does. I mean, once they get running around a little bit maybe, but he does pretty good with them. He's babysat Aries a few times, a couple times.

Q Okay. Did you ever become aware of John being the victim of a shooting?

A Uh-huh.

Q Do you remember when that was?

A Not exactly. About three -- two, three years ago, I believe, three.

Q What do you know about that?

A He was driving through the east side of Youngstown on Wilson, and somebody pulled off of Jackson Street, and I believe they started to shoot the back of his vehicle, drove down the side of him, shot the side of the vehicle, and then proceeded to get in front and shoot backwards into the front of his vehicle.

Q Was John shot at all?

A No.

Q Do you know if they ever caught the person that -- that fired the gun at him?

A I do not.

Q Do you know how, if at all, that affected John?

MR. ANDREWS: Objection. That calls for speculation.

THE COURT: Sustained.

Q Did John behave any differently after that shooting to your observation?

A He didn't go to work for a little bit afterwards --

Q I'm sorry, I didn't --

A He didn't go nowhere for a little bit afterwards. He was a little bit more weary about getting into vehicles and going places.

Q Do you know whether or not he owned a gun prior to that shooting?

A I do, yes.

Q He did?

A Uh-huh.

Q Do you know whether or not he carried a gun prior to that shooting?

A Yes.

Q He did?

A (Nodding head.)

Q How often did he carry that gun?
A Pretty often. There was instances where he wouldn't carry it if he was going out with somebody or something like that or just going down the street to see a friend, which I believe he was doing that day, but not a hundred percent of the time did he carry it.
Q Were you ever aware as to whether or not John installed a dashboard camera in his car?
A It was not there before the drive-by shooting. I do not know exactly when it was put in his car, but I do know it was afterwards.
Q Okay. All right. So let's go back to Kaitlynn here for a hot second. Was there any effort made on your part to try and maintain a relationship with her?
A Yeah.
Q And how did you do that?
A I would call her, text her, you know, trying to get together here and there but...
Q When you say, "get together," how did you do that?
A Typically it would be to come to my house. For the most part it was a lot easier. You know, my

dad would pick her up, and then they would come over, you know, on weekends, specifically Sunday, for family dinner. And then if I couldn't -- if they couldn't come over, we would try to go to my dad's house and I would pick her up on the way there, which that didn't happen as often. They typically came to my house.

Q How often would you say that occurred?

A Every weekend.

Q Basically every weekend?

A Basically every weekend. Every so often she would not come over but he would still come over, but for the most part she was there.

Q When they would come to your house, how would Kaitlynn get there?

A My dad would pick her up, John.

Q Did you ever drive to Campbell to get Kaitlynn and drive her back to your house?

A No.

Q So -- and just correct me if I'm wrong, the only time you would ever pick her up would be that rare occasion where you would have dinner at John's as opposed to dinner at your house.

A Yes.

Q And that was something that was far more rare than everyone coming to your house in Canfield, correct?

A That is correct.

Q I just wanted to clarify that.

A Uh-huh.

Q So -- and I just want to clarify how often this occurred. Was it something that was every once in a while? Was it -- was it kind of regular but not so regular or was it almost very regular?

A It was very regular, very regular.

Q Did there ever come a time when it -- when it stopped occurring for any reason?

A It was after a phone call that my dad and Danny had had together, and then that's when Kaitlynn started making more excuses and started to not want to come over as much.

Q Okay. So to your knowledge what sort of interaction did John have with Danny during the time that Mary and Dan were dating?

A More messing with each other. I mean, they didn't have a friendly relationship. At the beginning it didn't seem too much, and then it just progressively

got worse. My dad would try calling just to like talk to Kaitlynn or specifically the phone call incidence where the court papers and it was a big headache.

Q So this phone call, it's been mentioned before. About how long before the shooting incident did that phone call occur, do you know?

A I want to say about six weeks. I'm not a hundred percent sure.

Q And then how long were Dan and Mary dating prior to that phone call, are you aware?

A A couple years.

Q A couple years?

A Yeah.

Q Okay. During that couple-year time period, do you know how often John was able to interact with Danny?

A I do not, (shaking head).

Q Okay. Did John ever start a relationship of his own during that time period?

A He did.

Q With whom?

A That would be Megan.

Q And about how long were they together prior

to that phone call?

A They weren't -- or prior to that phone call? Probably about a year.

Q About a year?

A About a year or so, (nodding head).

Q Did you ever observe John behaving in a jealous manner towards Dan because of him -- his relationship with Mary?

A No.

Q Is there anything that you saw of his behavior or observed of John which led you to believe he was -- had any animosity towards Dan as a result of his relationship with Mary?

A No.

Q Never heard him make any comments or anything like that?

A No.

Q You were not there when the phone call occurred; is that correct?

A I was not.

Q And you obviously were not there when the shooting occurred as well, correct?

A Correct.

Q But there was a change from normal behavior prior to and subsequent to that phone call; is that accurate?

A Yeah.

Q And that change was Kaitlynn's appearance at your house.

A Correct.

MR. WEATHERLY: One moment, Your Honor?

THE COURT: Sure.

MR. WEATHERLY: No further questions, Your Honor.

THE COURT: Thank you. Cross.

* * * * *

CROSS EXAMINATION

BY MR. ANDREWS:

Q Good morning, Mr. Granger. My name's Rob Andrews. I'm with the prosecutor's office. I'm just going to ask you a couple questions, okay?

A All right.

Q You said when -- the phone call which we've talked about, you know what we're talking about.

A I do.

Q You said you weren't there?

A I was not.

Q Okay. And you learned about that, I assume, from your father?

A My father, and then my fiancée actually talked to Kaitlynn about it.

Q And you said you weren't there when the shooting occurred.

A I was not.

Q Kaitlynn was there.

A She was.

MR. ANDREWS: Thank you. Nothing further.

MR. WEATHERLY: Nothing based on that,

Your Honor.

THE COURT: You may step down. Thank you. Call your next witness.

MR. WEATHERLY: Thank you, Your Honor. At this time the defense would call Lisa Markijohn.

THE COURT: Please raise your right hand.

WHEREUPON, the Defendant called

LISA MARKIJOHN,

who, being first duly sworn testified as follows:

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. WEATHERLY:

Q Good morning, Lisa. How are you today?

A I'm good. How are you?

Q Good, thank you. We've spoken before, correct?

A Yes.

Q I'm going to ask you some questions, and when you answer them, I'd appreciate it if you could direct them right into that microphone --

A Okay.

Q -- just as you've been doing. That way everybody can hear you, okay?

A Okay.

Q And then if I ask a question and you don't

understand it for any reason, don't take a guess. Just ask me to repeat it, okay?

A Okay.

Q So let's just start with your name. Just state your first name and spell your last name for the record, please.

A My name is Lisa. My last name is Markijohn, M-A-R-K-I-J-O-H-N.

Q All right. And, Lisa, how old are you?

A I'm 28.

Q Where do you live?

A In Canfield off Palmyra Road.

Q Have you always lived there?

A Yeah, I grew -- I grew up across the street at my mom's house.

Q And are you in a relationship with anyone?

A I'm engaged to William Granger.

Q And how long have you two been engaged?

A We've been engaged almost two months, and we've been together for five years.

Q And how did you meet him?

A He added me on Facebook actually, and I accepted his friend request, and we met on

St. Patrick's day, and it was history after that.

Q Whose idea was it to meet?

A Originally it was his, but I wanted free drinks on St. Patrick's day, so it was initially my idea to get together that day.

Q Okay. And how did the relationship develop from there?

A It was pretty fast. Like I said, we connected right away. We just knew from the get-go.

Q So you didn't go to high school or anything with William?

A Nope, I didn't know him until he added me on Facebook.

Q Did you have like a mutual friend or something?

A We found out later that my bestfriend that was supposed to go to college with me actually knew him, and we had mutual friends, but we had never met or knew of each other before that.

Q Okay. So where did you go to high school?

A I graduated from Western Reserve.

Q Oh, okay. And did you go to any school afterwards or no?

A I did my freshman year of college at Ohio University. I took some time off, and then I went for a semester at Kent State Salem.

Q Are you working now at all?

A I am. I work for my brother. I do administrative work for his business and whatever else he makes me do.

Q Is he an older brother?

A He is. I have two older brothers.

Q All right. What kind of business is it?

A We build and maintenance extrusion presses, so it's kind of cool.

Q I don't know much about -- I have no idea what that is.

A I don't either. It's cool, but that's all I know.

Q Okay. All right.

A I do payroll and invoicing; so, yeah.

Q So you're more in the office than you are in the factory.

A Yes.

Q So you said it moved pretty fast when you met -- when you met William.

A Uh-huh.

Q Did that involve you introducing each other to your families?

A Yeah. We first took our mother's out to Olive Garden to meet each other, and then he actually met my entire family at my birthday party a week after we met. I didn't know my whole family was going to be there, so that was a surprise. And then within the first month we went to his parents' house, and we had a cookout, and that's where I met his mom, his dad, and his sister.

Q So he met your family first?

A Yes.

Q All right. And then what did they think of him?

A They adored him from the get-go, but that's to be expected 'cause I didn't have the best relationship prior to that, so.

Q So your prior relationship was not quite as good as the one with William?

A No.

Q And you and William, you have a child together; is that correct?

A Yeah, we have one, and then we have one on the way.

Q Congratulations.

A Thank you.

Q How you feeling?

A I'm okay.

Q I'm sure this is probably the last place you want to be.

A Yeah, the hormones get the best of you sometimes at the worst times.

Q I'll try to be gentle with you.

A Okay.

Q Did you ever have an opportunity to meet William's family?

A Yeah, we went to that cookout.

Q What cookout?

A We went to his house, and his dad cooked on the grill. We all sat outside on the picnic table. It was me, Mary, Kaity, and John.

Q When was that?

A About a month after we started dating. So like April of 2018.

Q Okay. Were John and Mary still together at

that time?

A Yes.

Q And did -- I mean, are they together now, John and Mary?

A No.

Q Are you aware of how that relationship ended?

A Yes.

Q How did that happen?

A To my knowledge Mary had a boyfriend, and Kaity accidentally slipped up to John, and John confronted Mary, and not long after that Mary moved out and moved in with her new boyfriend.

Q Okay. And when did that all happen, do you know?

A It was before I was pregnant, so it would have been the end of 2019.

Q Okay. So not long after you met John and Mary, they split up.

A Right.

Q Do you know whether or not they're still legally married?

A I believe so.

Q Okay. So after the split, who do you think

that you and William spent more time with, was it John or was it Mary?

A It was John, but that was never our -- it was not on our terms. We extended invites to Mary, but she just didn't show up or was sick or something.

Q Okay. So you mentioned that Mary got a new boyfriend. Would that be Dan?

A Yes.

Q Did you or William ever develop a relationship with Dan?

A Not anything close or serious. We went over to their house where the incident occurred once prior -- I think my daughter was about seven months old. That was really the first and only time that we actually had a one-on-one meet and greet with him.

Q Okay. Describe your relationship with John, if you could, please.

A John is my father-in-law. He's very present in our lives. Anything that we ever need -- any time we need something, he's always there for us, and obviously to my daughter he's Papa. His grandchildren are his world.

Q What do you think of him?

A My first impression of John was actually that he was a shy -- shy teddy bear. He really wasn't that talkative to me. It took him a long time to warm up. He would -- him and his son, Will, always tell inappropriate jokes, but he wouldn't do that when I was around. So once I started cracking inappropriate jokes, he really started opening up, and now we have a really great bond.

Q And you've known him for about five years now?

A Yes.

Q Let me ask you this, are you aware whether or not William has a sister?

A I do. I'm aware.

Q And what is her name?

A Kaitlynn.

Q What is your relationship like with her?

A It's -- I mean, we talk. We haven't talked in a while, but every time she comes around with her Little Willy, you know, we're good.

Q So -- so has your relationship with Kaitlynn always been consistent or was there a time where the relationship changed in any way?

A I would say the one time it changed, after the incident occurred. There was at one point that she blocked all of us, me, Will, John, everybody. And ever since then I don't think we're friends on Facebook, but we've seen each other since then for dinners and get-togethers.

Q When did that occur, do you know?

A It was probably within the first six months after the incident. It was just random. She just blocked us. I think it was because she thought we were trying to take her to talk to the detective -- or I'm sorry, the attorney, but that was never stated. It was just we were in the middle of a conversation, next day we were blocked.

Q So when you say, "the incident," you're talking about the shooting?

A Yes.

Q Tell me a little bit about John. Are you aware of whether or not he has any health conditions?

A Yes. He has a terrible heart -- a terrible heart, high blood pressure. He has other things. I know that he takes at least five pills every morning and night, but I don't know exactly what they're all

for.

Q Have you had the opportunity to view or observe how those health conditions affect him in his daily life?

A Yeah. He gets shortness of breath really quickly. He hates going up the stairs, which I do too at this point. So, yeah, he can't do a lot of things without losing his breath.

Q Okay. Do his health conditions seem to be improving over time?

A I don't know. To my knowledge I don't know. I have seen him short of breath in the past month, so I would say no.

Q Okay. Do you know whether or not John was ever the victim of a violent crime?

A I do. I do know that.

Q What do you know about that?

A All I know is that he was involved in a drive-by shooting. His car was shot up. That's basically all I know.

Q You said you met him originally about five years ago. Did that shooting occur after you met him?

A No, I believe it happened before.

Q Okay. And do you know whether or not John carried a gun?

A Yes, I did know that, and I was told it was because since that drive-by shooting --

MR. ANDREWS: Objection.

THE COURT: Sustained.

Q Okay. You know, we want to try to avoid any testimony where you're saying what somebody else said.

A Okay.

Q Okay? So just talk about what you know --

A Okay.

Q -- what you've seen in your personal experiences, okay?

A Okay.

Q Have you ever seen John pull that gun out on anybody?

A No.

Q Have you ever seen John behave aggressively towards anyone with that gun?

A No.

Q Have you ever seen John behave aggressively towards anyone period?

A No.

Q How would you describe John as a person?

MR. ANDREWS: Your Honor, if I could object. This is -- I think we're getting into character with the witness.

THE COURT: I'm going to allow it, but don't go too far.

Q Go ahead.

A Can you remind me of the question? I'm sorry.

Q I just -- I would like you to describe your impression of him, what you think of John.

A John is a -- to my impression John is a very good guy. Like I said, he's very attentive. He's consistent in our lives. He helps us when we need him. He cares a lot about us. Any time -- like he's always asking and making sure, you know, if we have everything for the baby and whatnot. This is a whole surprise for me, so.

Q Would you consider him an aggressive individual?

A No.

Q Have you ever observed him to be an aggressive individual?

A No, he's usually shied away from any confrontation.

Q So I want to go back to Kaitlynn for a little bit.

A Okay.

Q Did you -- you said she blocked you on Facebook, right?

A (Nodding head.) Uh-huh.

Q Before she blocked you, did you used to communicate with her?

A Yes.

Q How would you communicate with her primarily?

A Through Facebook.

Q Did you ever have her phone number?

A I think so, but I just always used Facebook with her.

Q Did you ever communicate with her other than Facebook?

A I don't think so.

Q You never sent or received any text messages from her?

A No.

Q So any messages you would have received, they

would have been through Facebook?
A Yeah, Facebook Messenger.
Q Did Kaitlynn ever used to come over to your house?
A Yes. We used to have Sunday dinners. John would come over all the time -- mostly every Sunday John would come over. Kaity did not come over every time. There were times where she was sick or she said she had COVID or whatever, she had to clean; but, yes, she was over our house multiple times.
Q Did you ever observe John to have any animosity towards Dan?
A Not besides the normal you're sleeping with my wife, but that's about it. You know, he was upset of the whole situation, that they were separated, or why she left him, but that was about it.
Q You never heard him making threats or anything towards Dan?
A No, I did not.
Q So how regular -- let me ask you this: Were you aware of an incident that occurred prior to the shooting between John and Dan?
A If you're talking about a phone call, I

did -- I was aware of that.

Q Okay. And you were not present during that phone call.

A No.

Q And you also were not present during the shooting incident.

A Correct.

Q Prior to that phone call, how regular a visitor was Kaity and Will for Sunday dinner?

A Pretty regular. Like I said, it wasn't -- she didn't come over every Sunday, but I would say at least once a month. I know that we took some time off because we were busy ourselves, but she was -- she was over there with Little Willy.

Q And how would she get there?

A John would pick her up.

Q Would you or William ever pick her up to go to your house?

A No, John -- it doesn't make sense 'cause he -- the house is -- no.

Q Did the frequency that Kaitlynn came over change after that phone call?

A Yes.

Q And what happened after that phone call?
A After that phone call we did have a family get-together and -- well, actually I don't know if we actually had one before I think the incident happened.
Q Is that when she started coming up with reasons to not attend Sunday dinner?
A I think so, but I think prior to that she'd make up excuses not to come over 'cause she would be all for it and then the day of she would either not answer us or just say that she was sick or she had cleaning to do.
Q Now, you say you communicated with Kaitlynn, right?
A Yes.
Q And it was via Facebook Messenger?
A Yes.
Q And did you ever keep a record of those messages?
A I never deleted them from Facebook.
Q Did there come a time when you were asked to provide those?
A Yes.
Q All right. And who did you provide those to?

A I believe Brandon.

Q And how did you know to do that?

A I screenshotted them, and I believe I emailed them to him.

MR. WEATHERLY: Your Honor, I'm going to ask the witness to observe what's been previously marked as Defense Exhibit B just to determine the authenticity of these.

THE COURT: (Nodding head.)

MR. WEATHERLY: May I approach?

THE COURT: Yes.

Q Lisa, if you could, could you look through those and tell me what you see. Don't read anything. Just tell me what they are.

A These are all text messages -- or I'm sorry, Facebook messages between me and Kaitlynn Morgan. I'm on the right-hand side, and she's on the left.

Q Are those -- are those in fact the screenshots that you took?

A Yes, they're from my phone.

Q And the person that you're communicating with in those screenshots, that's Kaitlynn Morgan, correct?

A Yes.

Q Do you mind if I have those back, please.

Is there any reason to believe that the person sending you the messages is not Kaitlynn Morgan?

A No.

Q So are you aware that Kaitlynn's previously testified in this case?

A Yes.

Q She testified -- she indicated that she did not -- I'm going to take you back. Did you and her ever have a conversation about that phone call that occurred prior to the shooting?

A Yes.

Q In her testimony she indicated she never heard Danny threaten John on that phone call. Do you have any reason to believe that that might not be accurate?

A Yes.

MR. WEATHERLY: Your Honor, at this time I'd like to approach the witness with what's previously been marked as Defense Exhibit B, page 3.

THE COURT: Okay.

Q Miss Markijohn, what do you see in front of

you?

A A screenshot between Kaity and I.

Q And what does that screenshot from Kaitlynn say?

A It says: I did, I told them everything Danny said and did after he realized dad was coming to get me. I told them everything from the last two months after dad tried to phone mom for a divorce -- for the divorce info, and Dan called daddy back and was threatening daddy and how daddy said how him and mom were still banging just to make Danny more mad after already threatening him, how Danny has talked so much crap about all of us. I told them everything I could remember from the last three years. What I could see from where I was, it was self-defense from Danny beating on daddy but that I still stayed a little back, that daddy called the police on himself, disarmed himself, and stepped away with his hands already up and at his head before the cops already got there, that daddy was breathing heavy and I was scared he was about to have another heart attack. I told them everything that I knew a hundred percent.

Q Thank you. And, again, that was the message

that was sent to you by Kaitlynn?

A Yes, it was.

Q Kaitlynn also previously testified that she did not believe that she saw Daniel, or Danny, Dan Peek, Sr., attack John. Do you have any reason to believe whether or not that statement is accurate?

A Whether it was accurate? No, I don't think it was accurate.

MR. WEATHERLY: Your Honor, at this time permission to approach the witness with what's previously been marked as Defense Exhibit B, page 24?

THE COURT: Yes.

Q Miss Markijohn, what are we looking at there?

A This is another screenshot between Kaity and I.

Q Would you mind reading that to the jury, please.

A Kaity says: I'm trying. I haven't cried in front of Little Willy yet so I guess that's good. He doesn't understand any of this so he's my little ray of sunshine in this disaster. Like I have no one here that's coming over to my house to ask why a million

dollars, why is no one trying to understand that Danny was attacking him and then his 17-year-old son ran out kicking him, that he's disabled and how else was he to protect himself, that he always carried not just this one time, that he didn't know he shot him, but at the same time I'm trying to stay hopeful and yesterday talking to you, our Aunt, Shane who's basically an uncle, Brandy is on our dad's side, and then our dad's friends were sending me friend requests. And then when you said we would -- we could communicate with him really like made the day for I was so happy, I cried. I'm kind of just all over. I don't think I've smoked this many cigarettes this quickly before.

Q Miss Markijohn, Kaitlynn also previously testified that she never actually witnessed Dan hitting John, and that she did not believe that Dan started the fight. Do you have any reason to believe whether or not that statement is accurate?

A Yes, I do.

Q You actually believe --

A Or, yes, I believe it's inaccurate. I'm sorry.

MR. WEATHERLY: Your Honor, at this time

permission to approach the witness with what's been previously marked as Defendant's Exhibit B, page 25 and 26.

THE COURT: Go ahead.

MR. WEATHERLY: Thank you, Your Honor.

Q Miss Markijohn, what is it you have in front of you right now?

A Another screenshot between Kaity and I.

Q And could you please read that to the jury.

A He never -- Kaity says: He never immediately shot. I saw him spent out and he never drew his gun until after being beaten on by two people. The gun never left his holster until after they started hitting him. I could see it. And people are saying he threw the gun or threw it in the car. He never went past the front of the car. And after he shot, he immediately called the police because he didn't know if he shot him. I refuse to believe he meant to or listen to the, oh, it was premeditated. It wasn't there -- it wasn't. There's no way it was. And what's driving me crazy is, yeah, I'm one of three witnesses and I'm the only one saying there was one -- there was on two shots and that wasn't until after they were attacking my dad. My dad

never started the physical fight. They're saying the -- they're saying the tires screeched, but I never heard it. I would have heard it, and it wasn't speeding around the corners. He pulled in and got out, but it was Danny that ran off the porch to beat on my dad. And my mom said Danny's son ran out of the house and started beating on -- ran out of the house and started beating on my dad too.

Continue or that's it?

Q That's fine.

A Okay.

Q Miss Markijohn, Kaitlynn also previously testified that she did not purposely wait until Dan was in the shower to have John come over and pick her up in order to avoid Dan. Do you have any reason to believe whether or not that statement's accurate?

A No.

MR. WEATHERLY: Your Honor, at this time I would ask permission to approach the witness with what's previously been marked as Defense Exhibit B, page 30.

THE COURT: That's fine.

MR. WEATHERLY: Thank you, Your Honor.

Q Miss Markijohn, what are we looking at here?
A This would be another screenshot between Kaity and I.
Q Could you read that to the jury.
A I was trying to go with him every Sunday, but then the last couple months because of Danny trying to fight with my dad just because he wanted a fucking divorce so I'd make up reasons why I can't go or I wait til I was home alone to go. And then Sunday I waited til Dan was about to take a shower and wouldn't know, but then he noticed I came down with a diaper bag so then he went and waited on the porch.
Q Thank you. Miss Markijohn, Kaitlynn also previously testified that both Mary and Dan were on the porch already before John pulled up instead of John -- instead of Dan actually going onto the porch once he found out that John was coming over. Do you have any reason to believe whether or not that statement's accurate?
A It's -- no.
MR. WEATHERLY: Your Honor, permission to approach the witness with what's been previously marked as Defendant's Exhibit B,

page 31.

THE COURT: Yes.

Q Miss Markijohn, what are we looking at there?

A This would be another screenshot between Kaity and I.

Q Would you please read that to the jury.

A Danny didn't come out on the porch until after I was getting ready, and he wasn't sitting with the dog on the porch until after I was already walking.

Q Miss Markijohn, Kaitlynn testified previously that she did not believe that Dan was waiting for John to arrive once he found out he was coming over. Do you have any reason to believe whether or not that statement is true?

A I don't.

MR. WEATHERLY: Your Honor, permission to approach the witness with what's been previously marked as Defense Exhibit B, page 32.

THE COURT: That's fine.

Q Miss Markijohn, what are you looking at there?

A This is another screenshot between Kaity and

I.

Q Could you please read that to the jury.

A Kaity says: Danny and mom were on the porch when me and Willy got up and came down and then they both went in. Danny went to shower but then -- then saw me with stuff to leave for the day. And I was trying to record without any apps and didn't want to get caught and it turned sour.

Q And can you read what you wrote?

A I respond: Do you believe Danny was waiting for your dad to show up or am I reading that wrong -- the wrong way? Kaity says: But, yeah, I didn't think of any apps. I'm gonna try finding something that won't play back until I play it. And I know he was because that's when he went to get the dog and then paced up and down the street before going to sit back on the porch with the dog. I told the detectives I watched Danny walk up and down the street, too, waiting for my dad. I didn't know he went to wait on the porch again.

Q Now, Lisa, it has been alleged in prior testimony that you attempted to apply pressure to Kaitlynn to try and assist her father. Do you believe

that to be true?

A No.

MR. WEATHERLY: Your Honor, permission to approach the witness with what's been previously marked as Defense Exhibit B, page 36.

Q Miss Markijohn, what are we looking at there?

A This is another screenshot between Kaity and I.

Q And you are communicating with Kaity in that screenshot; is that correct?

A Yep.

Q And correct me if I'm wrong, but in that particular screenshot you talk about Kaitlynn talking to detectives and maybe even trying to reduce the charges to a manslaughter. Is that --

A Yes.

Q -- a fair assessment of what that says?

A Yes.

Q What -- what is your intention sending that -- sending that message?

A Honestly, my intention was just to tell Kaity to tell everybody else what she was telling me. I know

the situation she was in. I didn't want her to be manipulated or forced to say anything that she didn't see.

Q You're not trying to get her -- I'm sorry.

A That's all that was.

Q Were you trying to get Kaity to lie on her father's behalf?

A Absolutely not. I told her to tell the whole truth, whatever John did, what Danny did, both of them.

Q Miss Markijohn, Kaitlynn had previously testified that Danny was not drunk on that infamous phone call between him and John. Do you have any reason to believe whether or not that's true?

A No.

MR. WEATHERLY: Your Honor, permission to approach the witness with what's previously been marked as Defense Exhibit B, page 56.

THE COURT: That's fine.

Q Miss Markijohn, what are you looking at there?

A Another screenshot between Kaity and I.

Q Lisa, could you please read that to the jury?

A Yeah, Danny was drunk when he called my dad, and then my dad said he called again after saying I got yours and I got you. I gotta reread it again.

Q Based on the text messages that you received from Kaitlynn, did she give you the impression that John started the fight on the day that the shooting occurred?

A No. Based off of what she told me, I was under the impression that Danny started it.

Q Based on the text message you received from Kaitlynn, do you believe Kaitlynn indicated to you whether or not John was acting in self-defense?

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. WEATHERLY: One moment, Your Honor?

THE COURT: Sure.

Q Lisa, again, you were not there on the date of the incident, correct?

A Correct.

Q And you're not a lawyer either, are you?

A No.

Q I want to make sure that the jury knows, you know, why you're here today. Would you consider

yourself a friend or a family member of John Morgan?

A Absolutely.

Q And is it fair to say you don't want any harm to come to him?

A Absolutely. (Nodding head.)

Q Is it also fair to say that even though you weren't there, it's not your belief that he committed a crime?

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. WEATHERLY: One moment, Your Honor?

THE COURT: Sure.

MR. WEATHERLY: No further questions, Your Honor.

THE COURT: Cross.

MR. ANDREWS: Thank you, Your Honor.

* * * * *

CROSS EXAMINATION

BY MR. ANDREWS:

Q Good morning, Lisa. My name's Rob Andrews.

A Good morning.

Q I'm with the prosecutor's office. I'm going to ask you a few questions.

A Okay.

Q And also congratulations.

A Thank you.

Q Do you know if it's a boy or a girl?

A Another girl.

Q Been there, done that. Good luck.

A Yeah.

Q Okay. All right. You are engaged to William Granger.

A Correct.

Q And we heard -- you're aware he testified right before you.

A Yes.

Q Are you aware that there was a video from John's dash cam?

A Yes.

Q When did you become aware of that?

A Not long after. I don't know if it was that same day or if it was the next day. I mean, I was aware that he had a dash cam.

Q Okay.

A I did know that prior. He always had it. But it was finicky sometimes here and there so we weren't sure if it actually worked.

Q Okay. Do you recall how you found that out?

A Found what out?

Q That there was a video on the dash cam.

A It may have been John. He may -- someone may have -- he may have found out. I honestly don't remember for sure who told me that there was an actual video.

Q Okay.

A It may have even been the original attorney back then.

Q Okay. Are you aware that this -- as they referred to it, the incident, the shooting, that occurred on July 31st of 2022.

A (Nodding head.)

Q Are you aware of that?

A Yes, I am.

Q Are you aware that the dash cam video was not discovered -- was not observed by the Youngstown Police Department until August 4th?

A I -- I don't know when they watched it.

Q Okay. If I tell you that, you don't know anything other than that --

A No, I don't know anything --

Q Very good.

A -- about that.

Q Okay. And I believe you testified you were not there when the shooting occurred.

A I was not there, (shaking head).

Q Kaitlynn was there.

A Correct.

Q Are you -- did she make you aware that she didn't see everything?

A Yes.

Q Now, I'm going to show you our copy of what's been marked Defense Exhibit B. I just want you to take a look at it and make sure that that's the same thing that the defense showed you.

A Yeah.

Q Okay. And those -- you already testified to

those are Facebook messages between you and Kaitlynn Morgan, correct?

A Yes, they are.

Q Okay. There was a time when -- well, it's already been testified to. John was in jail for a little bit, wasn't he?

A Yes.

Q Before he posted bond? And while he was in jail, did you send him a picture of his granddaughter?

A Yes.

Q And did you encourage Kaitlynn to do the same?

A Yes.

Q Do you know whether or not she did that?

A She did. I sent it to John for her.

Q So Kaitlynn sent it to you, and then you forwarded it to John?

A Yes, because we had -- Will and I were the ones that had the account set up to contact him in the jail.

Q Okay. And she did that after you encouraged her to do so.

A Yes.

Q Do you recall a conversation that you had again with Kaitlynn through the Facebook Messenger where you're talking about the security footage from the neighbors across the street?

A I think so, (nodding head).

Q Do you recall what you said then?

A Probably something that, you know, asking if there was security -- if people have security photos -- cameras outside, to see if there was anything to -- you know, if they saw anything, but it's been a year-and-a-half --

Q You don't remember -- okay.

A -- so I don't know exactly what I said but...

Q Okay. Well, let me ask you. That's a good -- so you said it's been over a year-and-a-half.

A Yes.

Q You don't remember all the messages you sent --

A No.

Q -- or received?

A Absolutely not.

Q Okay. Do you remember all the messages you sent or received a month ago?

A Probably not.

Q Are you -- do you send a lot of messages through social media, whether Facebook, texting?

A Back in the day, yes. Nowadays not so much.

Q Okay. So it's fair to say maybe if you're doing that a lot a few days out, you might not even remember what you said yesterday.

A It's possible.

Q Okay. All right. If I showed you a photograph or -- I'm not as techie as --

A That's okay.

Q A still photo of the text -- or the Facebook message you sent to Kaitlynn, would that help your recollection as to what you said?

A Uh-huh.

MR. ANDREWS: May I approach, Your Honor?

THE COURT: Yes.

Q I'm going to show you what's been marked for purposes of identification as State's -- or I'm sorry, Defense Exhibit B, page 18. I'm going to ask you to look at the -- or if you can read what that second message you sent is.

A Okay. This is a message between Kaity and I. And I -- the second message I said was: Did they get the cameras? I mean they might just -- they might just prove what the neighbor witness said. Hopefully not, but we have to accept it if it does.

Q Do you know what that neighbor message said?

A The only one that I can recall is some of -- the neighbor said that he was speeding around the block when he approached the house and immediately got out of his car.

Q Now, in Facebook messaging -- I'm sure you understand this better than I do -- occasionally a date pops up between --

A Yes.

Q And is it fair to say that's when maybe you haven't been talking for a little bit and then it just -- it's the next day it goes to that?

A Yeah.

Q Okay. Do you recall a statement talking about what happened, what you had heard happened, being a different story than what you had heard from Danny and his side?

A I don't understand your question.

Q I don't either.
A Okay.
Q I apologize for that. Okay. You had -- you had an idea of what happened from what people were saying to you.
A Mostly Kaity, yes.
Q Okay. Did you come to find out that there was another side that was being said?
A Oh, yeah, there's two sides to every story.
Q Okay. I'm going to show you what's been marked for purposes of identification again Defense Exhibit B, pages 23 and 24. If you could look at page 23 first, and it's difficult to see. Do you see a date there?
A Yes.
Q And what is that date?
A August 3rd, 2022, 10:32 a.m.
Q Now, if you could go to the next page. Could you read to the jury what you said then?
A On the second page?
Q Yes.
A I said: Well they're saying your dad was speeding around and peeled into the driveway and

immediately shot, missed Danny. Danny went and started fighting with your dad. Your dad picked up his gun again. They ran and he shot him in the back. If that's how it happened, then unfortunately self-defense is thrown out. And the fact that he shot him in the back hurts the situation.

Q And, again, that's -- that was on August 3rd.

A Correct.

Q Which, for the record, would be before August 4th, correct?

A To my knowledge, yes.

Q All right. And then when the defense -- they were asking you questions, it was the second to last question they asked you about -- or message that they asked you about, and you said you told Kaitlynn to tell the truth. I'm going to show you what's been marked for purposes of identification as Defense Exhibit B, page 36, and could you read the large -- what you said, the large message towards the bottom.

A Please do. We need your help so we can see your dad on the other side of the glass one day. If we're not able to get this dropped, it is very likely

your dad will spend the rest of his life in jail and will die in there. And I'm sorry I have to say that but it's so important that we do what we can to get the charges dropped to manslaughter at least.

Q Again, you weren't there when the shooting happened, correct?

A Correct.

Q Kaitlynn was.

A Correct.

Q You don't know what she saw or what she didn't saw, correct?

A Not -- besides what she's told me, no.

Q And you don't know when she saw the video, the dash cam video, do you?

A No.

MR. ANDREWS: One second, Your Honor. Nothing further.

THE COURT: Redirect.

* * * * *

REDIRECT EXAMINATION

BY MR. WEATHERLY:

Q So, Miss Markijohn, I just want to clarify, who is the person from whom you were getting the majority of your information regarding this shooting?

A Kaity.

Q Was she the only person that you were getting information from?

A I think the next person that I got information from would have been the attorney that Will and I met for the arraignment and that we -- I don't remember exactly how long, but I know we had a very short time to find somebody to represent him.

Q Okay. And, again, you weren't there.

A No.

Q And this message that the state referenced when you talk about how self-defense may not apply --

A Right.

Q -- that was -- that was written on August 3rd; is that correct?

A I believe that was the date, (nodding head).

Q So how close in proximity to the actual shooting is that?

A Well, the shooting happened July 31st. So three days later.

Q So had all of the information regarding what happened come out at that time?

A No.

Q Had you been fully briefed and apprised of all the facts and circumstances of what happened --

A No.

Q -- when you sent that message? Did you have a complete understanding and knowledge of every detail what occurred that day when you sent that message?

A No.

Q Let me ask you this: Have you ever had to think your way through an issue before?

A Yes.

Q Usually when you think, you do it in your head, right?

A Correct.

Q Sometimes do you also think out loud?

A Uh-huh. (Nodding head.)

Q When you're thinking out loud, do you ever express what it is that you're thinking?

A Sometimes, (nodding head).

Q When you sent the message about -- the state referenced on page 24 about whether or not self-defense applies, is that because you knew at the time that John was not acting in self-defense?

A No. I said that because of the information that I heard from Danny being shot in the back. That's --

Q Did you get additional information after you sent that message?

A I don't know if it was after or before but just the video. I hadn't seen -- I don't think I had seen the video yet though.

Q Okay.

A Again, it was a year-and-a-half ago so I don't exactly remember the date.

Q Is it possible that this message is an example of you thinking through a situation out loud?

A Yeah, talking to Kaity about it.

Q Again, did you have all the facts when you sent that message?

A No.

Q I asked you on direct whether or not you're a lawyer. You said no, right?

A Right.
Q Have you ever read what the law is with regards to self-defense?
A No.
Q Are you an expert in that field?
A No.
Q You also mentioned later in your text messages, the state referenced, about trying to get it down to a manslaughter.
A (Nodding head.)
Q Do you know what the legal definition of manslaughter is?
A No.
Q Do you even know what manslaughter entails?
A Not really. I just thought it was you still killed somebody but without the intent, but I have no idea.
Q Again, possibly an example of you thinking out loud and expressing it in message form?
A Right. Yes.
Q Did you even know enough when you sent the message regarding the manslaughter about what happened that day?

A No.

Q I mean, even if you did, did you know what legal application to apply?

A Absolutely not.

Q You mentioned in that message wanting to see John on the other side of the glass some day.

A Right.

Q Do you recall stating that?

A I do.

Q In all of these messages that you're sending back and forth with Kaitlynn, is that what was going through your mind, just wanting to see John home?

A Yeah, the majority of it. Most of it was actually -- most of it I was thinking of my daughter. That's her bestfriend. So that's based -- as a mother's perspective that's really what was going through my head the whole time.

MR. WEATHERLY: One moment, Your Honor?

THE COURT: Sure.

Q And, again, because you had previously stated you don't know the legal definition of self-defense or the legal definition of manslaughter or what facts need to be present, do you have any idea whether or not

someone being shot in the back negates or supports a self-defense theory?

A No.

MR. WEATHERLY: No further questions, Your Honor.

MR. ANDREWS: Nothing further.

THE COURT: You may step down. Thank you. Call your next witness.

MR. WEATHERLY: At this time the defense would call Ms. Megan Owens, Your Honor.

Your Honor, may we please have a side-bar?

THE COURT: Sure.

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: Ladies and gentlemen of the jury, at this time we're going to take our morning break. Please do not discuss the case amongst yourselves or with anyone else. Please do not permit anyone to discuss it

with you or in your presence. Please do not form any opinion on this matter until it's been given to you for your deliberations. We'll reconvene in approximately 15 minutes. Thank you.

(WHEREUPON, a brief recess was had, after which the jury returned to the courtroom, and the proceedings continued as follows:)

THE COURT: Please raise your right hand.

WHEREUPON, the Defendant called

MEGAN OWENS,

who, being first duly sworn testified as follows:

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. WEATHERLY:

Q Good morning, Megan. How are you?

A Good morning. Good. How are you?

Q Doing well, thank you. So I'm going to ask you a few questions. If you could please lean forward and direct your comments into the microphone as much as humanly possible, that'll make it easier for everyone to hear you, okay?

A Uh-huh.

Q If for any reason you don't understand the question I'm asking you, if I phrased it poorly or spoke too quickly, just let me know. Don't guess as to what we're going to get at. Just ask me to ask it again.

A Okay.
Q Okay?
A Uh-huh.
Q Let's start with the easy stuff. Can you go ahead and state your name, and spell your last name for the record, please?
A My name is Megan Owens, O-W-E-N-S.
Q Lean a little bit forward into that mic so we can hear it resonate, all right?
A Okay.
Q Megan, how old are you?
A Forty.
Q And where do you live?
A Trumbull County.
Q Where in Trumbull County?
A Girard.
Q And how long have you been there?
A My whole life.
Q Do you live alone?
A With my children.
Q All right. How many children do you have?
A I have two girls, 18 and 20.
Q And do they live with you there in Girard?

A Uh-huh. Yes.
Q Are they still in school?
A My oldest is in college, and my youngest is still in high school.
Q Which high school does she go to?
A She goes to JFK in Warren.
Q And the oldest one, which college?
A YSU.
Q YSU?
A Uh-huh.
Q That's great. She set to graduate any time soon?
A A year-and-a-half.
Q Has she picked a major yet?
A Criminal justice.
Q Wow. When did she decide that?
A When she was a senior in high school.
Q Okay. So a while ago?
A Yes.
Q Okay. Is the younger one planning on going to -- going to college as well?
A Yeah, OU.
Q Are you looking forward to being an empty

nester?
A No. No.
Q Why not?
A 'Cause I devoted my whole life to my kids, so. I'm going to be bored. A lot of working. I work a lot, so. I'm just going to miss them.
Q How is your relationship with your girls?
A Very well.
Q Did you guys manage to get through the teenage years without too much turmoil?
A Yes.
Q Was it difficult?
A It was. At times it was. Boyfriends are involved, sports, but we made it.
Q Okay. Let me ask you this: Did anyone else live in the house with you and your girls as you were raising them?
A My parents, and then my disabled brother.
Q Okay. How about -- how about their dad, was he ever --
A No.
Q -- part of the picture?
A Uh-uh.

Q So pretty much a single mom for the most part?

A Yeah.

Q What -- how did you support -- how did you support your girls growing up?

A I worked very hard.

Q And what do you do?

A I am a caseworker for a local nonprofit working with addicts.

Q And what does that job entail?

A A lot of treatment planning, finding resources for my clients, long hours.

Q How long have you been doing that?

A This is my seventh year.

Q And what did -- what did you do before that?

A I was a program coordinator for the developmentally disabled out in Trumbull County.

Q How long did you do that for?

A Two years.

Q Is there a specialized degree or something that you need in order to do those things?

A I have my bachelor's degree in human services.

Q When did you get that?
A 2011.
Q Okay. So a while ago.
A Uh-huh.
Q Before -- so you -- so you were -- let me get this straight. You were raising your girls and putting yourself through school; is that right?
A Correct.
Q What was that like?
A It was tough.
Q Were you also working and going to school?
A Uh-huh. Worked full time; went to school full time.
Q So you worked full time; went to school full time; and had two girls that you were raising by yourself.
A (Nodding head.) Yes.
Q And then because that wasn't difficult enough, you also had your disabled brother move in; is that right?
A Correct.
Q And you helped take care of him?
A Yes.

Q It sounds like you had a lot on your plate for quite some time.
A (Nodding head.)
Q I'm not -- I'm not trying to get into any too personal issues. Is there any reason that the father of your girls was not in the picture?
A He was an addict, so. He just didn't want to be a father.
Q Okay. So let me ask you this: Do you know who John Morgan is?
A I do. That is my boyfriend.
Q Is he sitting in the courtroom today?
A He is.
Q Where is he sitting?
A (Indicating), over there.
Q What's he wearing today?
A Blue suit, navy suit.
Q Did you help pick that out for him?
A I did. (Nodding head.)
Q When did you meet John?
A Five years ago.
Q How did you meet him?
A I joined a dating Facebook app, and we kind

of clicked talking, and then he asked me out a couple weeks later, and we actually met at Mill Creek Park for a walk.

Q What is it that drew you to John?

A He was attractive, sweet, kind, gentle when I first met him, so.

Q And how did things progress after you guys went on that initial walk?

A Good. I mean, we took it slow 'cause it's been a minute. I haven't been in any kind of serious relationship in a long time. So we kind of took it slow. We did walks, went to dinner, but, I mean, it was a while, for a few months.

Q Have you ever become engaged in an exclusive relationship with John?

A Yes.

Q About how long did that take after you met him?

A Make six months to a year.

Q So a while?

A Yeah.

Q Did you ever -- did you ever introduce him to your girls or the rest of your family?

A I did.
Q When did that happen?
A I'm going to say seven, eight months into talking to him.
Q All right. From what you can tell, how does he get along with your girls?
A Very well.
Q Have you ever witnessed them express any animosity towards John or your relationship with him?
A Not at all.
Q In your opinion do you think they approve of your relationship with John?
A Yes.
Q Why do you say that?
A They tell me.
Q Do they get to spend a lot of time with him?
A Yes. This summer especially they did.
Q Okay. And from what you can tell, what you've observed, is that something that they went to do on their own or do you make them do it?
A No, not at all. They do it on their own.
Q Okay. And how about you, were you ever introduced to John's family at all?

A Yes.
Q Who in John's family did you get to meet?
A His daughter, his son, sister, some cousins, uncle.
Q And over the years have you been able to develop a relationship with those folks?
A Uh-huh.
Q Who, if any, would you say you have the closest relationship with other than John?
A I'd say his sister Lisa or his son and future daughter-in-law.
Q And how do you communicate with them?
A Phone.
Q On the phone?
A Uh-huh.
Q You talk to them?
A Yeah.
Q Do you ever see them in person?
A Yes.
Q How often do you get to do that?
A Probably once a week.
Q Okay. Was John in a relationship when you met him?

A Can you repeat the question?
Q Was John in a romantic relationship with anyone else when you met him on Facebook?
A No.
Q Was he in any kind of relationship whatsoever when you met him on Facebook?
A No.
Q Was he married?
A He was married.
Q Is he still today?
A Yes.
Q To whom?
A Mary.
Q You mean Mary Morgan?
A Yes.
Q When did you learn of Mary Morgan's existence?
A Instantly. Right away.
Q So he told you -- he was upfront about the fact that he was still legally married to her?
A Yes.
Q What did you think about that?
A I mean, I trusted him. I was confused for a

minute, but then he said that they were separated, so I trusted him.

Q Did you know or have any information regarding whether or not Mary was in another relationship at that time?

A Yes.

Q When did you learn that?

A About a month into talking to John.

Q And what, if anything -- what, if anything, did you know about that relationship at the time?

A I just -- I just know that Mary got into the relationship with Dan. I don't know when. I don't know how long it was, but I know she was seeing somebody else.

Q Did you know at that time whether or not she was living with Dan?

A No.

Q Did you ever learn that information?

A Later. She moved in with Dan a couple months after we found out that they were dating.

Q Okay. Did you have any relationship at all with Mary Morgan?

A No.

Q Do you have her phone number?
A I did.
Q Did you ever message her or call her?
A No.
Q Did you ever exchange messages with her on any social media applications?
A I sent her a message on Facebook two months, three months into talking to John to confirm that the both of them were going their separate ways. She never responded. Nothing ever came of it.
Q Okay. And was that around the time that you found out that she was in a relationship with Dan?
A Yes.
Q So never had any communication with Mary.
A Uh-uh.
Q How about Mary's daughter, Kaitlynn, any relationship with her whatsoever?
A Yes. Kaitlynn lived with John for a while.
Q When was that, do you know?
A When I first met him, Kaity was living there.
Q Do you know when she would have moved out?
A I want to say it was -- I don't remember.
Q Was it before or after she had Little Will?

A It was after.
Q Do you know why she moved out?
A I do not.
Q Do you know where she moved when she moved out?
A She moved in with Mary and Dan.
Q About how old was Will, the little one, at the time, do you know?
A I think he was two, two-and-a-half.
Q Okay. Do you know how long Dan and Mary had been together prior to that move?
A Two years.
Q So a while?
A Yeah, about two years.
Q Okay. And what was your relationship like with Kaitlynn?
A It was good.
Q Even after she moved out?
A Well, there really wasn't a relationship. I barely saw or talked to her. She communicated with her father but not me.
Q Oh. So did you have her phone number?
A I did.

Q Did you call her on the phone or text her or communicate with her on social media apps?
A I would.
Q Would that be a more common form of communication than speaking face-to-face?
A Yes.
Q Why is that?
A Because she never came to -- very seldomly would she get with John where I would see her. If she was at John's, I wasn't there, so. I never got to see her in person.
Q Did your work have anything to do with that?
A It did.
Q So were you working a lot at that time?
A Yes.
Q But how would you describe -- even though you didn't get to see her that often, how would you describe your relationship with Kaitlynn at that time?
A Decent.
Q Was there any animosity between you two?
A Not that I was aware of, no.
Q Did you observe her or witness her to be upset that you were in a relationship with John?

A No.

Q How about John, did you ever witness him display any animosity towards Mary after you started dating him?

A No.

Q Did you ever witness John display any animosity towards Dan for being in a relationship with his estranged wife?

A No.

Q Talk to me about John a little bit. How's his health?

A Poor.

Q Why would you say that?

A So one of our conversations when we first met, he told me how sick he was. He had a heart attack in his early thirties; he had high blood pressure; high cholesterol; a couple back surgeries. I noticed -- the more I hung out with him, I could see some of that stuff. He had a hard time walking from the kitchen to the mail or doing his dishes standing up took a lot out of him.

Q As you've been with him over the years, have you seen that health situation improve or has it

continued to deteriorate?

A It's declined.

Q How so?

A Just he sweats a lot more now, and I think the older he gets, it just seems to get worse.

Q All right. Have you seen those health issues affect him in his daily life?

A Yes.

Q How so?

A He has a hard time getting dressed. He has a hard time going to the bathroom, sitting on the toilet. Getting in and out of a car is extremely difficult for him.

Q How about his nature? So when you met him, did he have -- how would you describe his nature as a human being when you first met him?

A Gentle, dorky, but kind, compassionate, loving.

Q And did these health problems have any effect on his nature at all or his personality?

A No.

Q Have you ever seen him behave aggressively towards other folks?

A No.
Q Towards you?
A No.
Q Towards your daughters?
A No.
Q Are you aware as to whether or not John was ever the victim of a violent offense?
A I was told about it.
Q Were you dating him at the time?
A I was not.
Q So this would have occurred prior to you meeting him on Facebook?
A Yes.
Q So when you met him, were you aware as to whether or not he carried a firearm?
A When I met him? Yes.
Q And how did you learn that information?
A He had it with him.
Q Did that prior violent offense have anything to do with why he carried that firearm to your knowledge?
A From my understanding it did. He never -- since then he never left the house -- after that

incident happened he never left the house without it.
Q Okay. Did you ever have an opportunity to ride in John's car while you were dating him?
A Yes.
Q Did you observe whether or not he had a dashboard camera installed in that car?
A Yes.
Q Did you know why?
A Because of the incident.
Q Do you know whether or not the persons who shot at John were ever apprehended?
A No, they were not.
Q Okay. So how much communication did you witness while you were dating John between he and Mary?
A Maybe a handful, if that.
Q How about Kaitlynn, how much communication did you witness between John and Kaitlynn when you were dating John?
A Almost every day.
Q And from your observation, what was their relationship like, John and Kaitlynn?
A Good.
Q And how about John and Little Will, what did

you see there?
A A loving grandpa with his grandson who adored him.
Q So let me -- let me ask you this: Did John get to spend much time with Kaitlynn to your knowledge?
A Before or after?
Q Just -- let's talk about before any phone calls or incidents.
A Yes.
Q Let's go way back in the record books here.
A Yes.
Q And what sort of time did they spend together? What did they do?
A Hanging out; watching TV; playing outside, depending on the weather; grocery shopping.
Q Was there any time that John also got to spend with his son, Will?
A Yes.
Q And when did that occur?
A I think that was always a thing, but I knew that they always did Sunday family dinners at Will and Lisa's house so the kids can get together and the grandkids can play.

Q Was that a regular occurrence or rare occurrence?

A No, it was regular.

Q How regular?

A Every Sunday.

Q How would that occur? How would John get to William's house?

A He drove.

Q How would Kaitlynn get to William's house?

A John would pick Kaity up, and then they'd go to Will's.

Q Did you ever become aware of any limitations on John in picking Kaitlynn up to take her to William's house? Was that information that you had?

A No.

Q Were you ever made aware of any restrictions that John had as far as whether or not he was able to pull in the driveway or anything like that?

A No.

Q Did you ever hear or learn or were you ever informed of any problems at all in John picking up Kaitlynn to go to Will's?

A No.

Q Is there any other way for Kaitlynn to get to Will's other than John that you're aware of?
A No.
Q So as your relationship with John progressed -- well, let's backtrack a little bit. Do you live with John?
A No.
Q Even though you don't live with John, are there occasions where he spends the night with you and/or you spend the night with him?
A I typically spend the night with him.
Q And when did that start occurring?
A Maybe a year into the relationship.
Q Okay. So by the time you get to summer of 2022, was this a somewhat regular occurrence?
A Yes.
Q So let's take you to summer 2022. What month is your birthday?
A June.
Q June. All right. And what month comes after June?
A July.
Q Is there anything special you wanted for your

birthday in June of 2022?

A A divorce.

Q Whose divorce?

A Mary and John's.

Q Did you convey that to John?

A I did.

Q To your knowledge why were they not divorced at that time?

MR. ANDREWS: Objection.

A I'm not sure.

THE COURT: Overruled.

Q Had you ever previously asked John to get a formal divorce prior to that wish for your birthday?

A A few times I believe I mentioned it.

Q Okay. Did you know what needed to be done to make that happen?

A No. Neither of us did.

Q Did you or John do any investigation to figure out how to make that happen?

A I did.

Q You did?

A I did.

Q And what did you learn?

A It was simple. You print off the paperwork -- well, that's what I did. I printed off the paperwork from the website, handed it to John. I think it was the night of my birthday or a couple days before my birthday, and he looked at them briefly, and then put them on the kitchen table, and that was it, and I let it go.

Q Did he ever make any attempt to actually fill out that paperwork?

A He did. A couple days later I had asked him if he filled it out yet, and he said no, but he said he needed help with it. So I told him to get the paperwork so I can help him. We looked at it. There was a question that he needed answered from Mary so he made the phone call to her. She did not answer. He even texted her and said, hey, I need you to call, it's kind of important. No answer; no response. And then shortly after he received a phone call.

Q All right. So just to make sure we get all these details here, so you asked for a divorce for your birthday, right?

A Uh-huh. Yes.

Q You then went as far as printing out the

paperwork to effectuate said divorce, correct?
A I did.
Q You then asked John to execute the paperwork to effectuate that divorce, correct?
A I did.
Q Which he did to the best of his abilities, but he was missing certain pieces of information in order to complete the papers; is that right?
A Correct.
Q And the information he needed, he needed to get from Mary; is that correct?
A Yes.
Q And as a result you witnessed him call and text Mary for purposes of getting that information that he needed to finalize a divorce.
A Correct.
Q Is that correct?
A Yes.
Q So you saw him call Mary, right?
A Uh-huh.
Q And you said that she did not answer.
A Yes, she did not answer.
Q And so he followed that up with a text; is

that correct?

A Correct.

Q And, again, was there a response to that text?

A No.

Q Did John's phone ring after that text?

A Yes.

Q Who called John?

A Dan Peek.

Q How did you know that?

A He eventually said who he was. When John answered the phone, Dan's first words were, who the F --

MR. ANDREWS: Objection.

A -- is this?

THE COURT: Sustained.

MR. WEATHERLY: Your Honor, a side-bar?

THE COURT: Yeah.

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

Q So the phone rings, and you're able to determine who it is that is calling John; is that correct?
A Yes.
Q And was it Mary?
A No.
Q Or was it Dan?
A It was.
Q And what was -- were you able to hear the conversation that occurred?
A Yeah, John had it on speaker phone.
Q So you heard what John said, and you heard what Dan said?
A Yes.
Q What was Dan's tone of voice as you listened to the call?
A Very escalated, screaming, talking loud.
Q Was he talking loud just so that John could hear him or was there any aggression that you could determine in his voice?
A There was aggression. It was an upset talking, almost hostile.
Q And did John respond in kind to the hostile

tone?

A Did he respond how? I'm sorry.

Q Did John respond in kind with a hostile tone?

A No.

Q What was John's demeanor during that call?

A Immature, childish.

Q Without going into what John said, what was he doing?

A Say childlike things to get a rise out of Dan.

Q What made you believe he was trying to get a rise out of Dan?

A Some of the stuff he was saying.

Q What about expressions on his face, did they indicate what -- what he was doing?

A Yes.

Q How so?

A He was laughing.

Q So he thought it was funny?

A Yes.

Q Now, were any of the things that he was saying, were any of them threats of physical violence towards Dan?

A No.

Q What about Dan to John --

A Yes.

Q -- any of those? So you heard Dan make physical threats towards John, but John was mostly just trying to get a rise out of Dan?

A Correct.

Q What piece of information was John trying to get from Mary that you needed for the paperwork?

A The new address, the address where they lived.

Q To your knowledge was that the reason for the call?

A Yes.

Q Okay. Was John ever able to elicit that information from Dan?

A Yes.

Q If you know, how did that happen?

A Dan was asking John to come over so he could bury him by kicking -- beating him basically, and John said I don't know where you live, give me your address. So then Dan blurted out the address, and then John hung up.

Q So he sort of tricked Dan --
A Yes.
Q -- into giving him the address.
A Yes.
Q Did John appear proud of himself?
A He did.
Q Do you -- based on what you heard in the conversation, do you think Dan thought the call was quite as funny?
A No.
Q So prior to that phone call, you had mentioned during direct testimony that Sunday dinner with John and Kaitlynn was a regular thing; is that accurate?
A Yes.
Q Did that phone call change anything?
A It did.
Q How so?
A They still planned family dinners, always included Kaity, but Kaity always made an excuse not to go or she couldn't go, she was sick, or stuff like that.
Q To your knowledge were there any Sunday

dinners after that phone call?

A Between John and his son, yes, but I don't think Kaity ever went.

Q What was John and Kaitlynn's relationship like after that phone call?

A The same.

Q Did it ever change?

A (Shaking head.) No, not till recently.

Q Okay. So speaking of Kaitlynn, are you aware that she testified previously in this case?

A Yes.

Q When she testified, she indicated that Dan did not make her go to the end of the street for John to pick her up on the date of the shooting. Now, before I ask you a question, I want to ask you a couple things. Did you communicate with Kaitlynn in any way other than verbally speaking?

A Through text messages and a Facebook Messenger.

Q Okay. Were you ever asked by anyone to produce a record of your communication with Kaitlynn?

A No.

Q Did you ever take any screenshots of messages

between you and Kaitlynn?
A Yes.
Q And why did you do that?
A Because she was trying to -- okay. So I had asked her the day everything happened what happened, and I believe the messages were the truth of what actually happened on that day.
Q So we'll get into that. I'm just trying to establish what it is that I have in my hand.
A Okay.
Q Okay.

MR. WEATHERLY: Your Honor, permission to approach the witness with what's been previously marked as Defense Exhibit A.

THE COURT: Yes.

Q Megan, if you could do me a favor, just -- don't read anything, just tell me what it is that you're looking at that's in your hand.
A It's a conversation between me and Kaity.
Q And how is Kaity identified?
A Her name, Kaitlynn Morgan.
Q And how did you obtain these messages?
A They were on my Facebook account.

Q And do you have access to that account on your phone?

A Yes.

Q Are you able to take screenshots of messages on your Facebook account with your phone?

A Yes.

Q Is that how these messages were reproduced?

A Yes.

Q Did you tamper with these messages in any way?

A No.

Q Do you have any reason to believe that the messages from the person identified as Kaitlynn Morgan came from anyone other than Kaitlynn Morgan?

A No.

Q All right. May I have those back, please?

A (Complying.)

Q Thank you. So, again -- and I know I said this before -- Kaitlynn did testify in this case, and she stated during her testimony that Dan did not -- how is it that Kaitlynn went to Willy's house for Sunday dinner? How did that happen?

A How did it happen?

Q Yeah, how did she get there?
A John.
Q So would she go over to John's house and then they would go together?
A No, John picked her up, and then John would go to Willie's.
Q Where did John pick her up from?
A Mary and Dan's house.
Q Mary and Dan's house. Okay. On July 31st, 2022, are you aware as to whether or not there was a Sunday dinner scheduled?
A There was.
Q Are you aware of whether or not Kaitlynn planned to attend?
A She did.
Q Are you aware of how Kaitlynn planned to get to Will's?
A John was going to pick her up.
Q Okay. And, again, prior to July 31st, 2022, were you aware of any restrictions on John on how he could or could not pick Kaitlynn up for Sunday dinner?
A No.
Q Now, you communicated with Kaitlynn

subsequent to the incident that we're here for today, correct?

A Yes.

Q And during your communication with Kaitlynn, she tried to describe what happened and how it happened.

A Correct.

Q And, again, she testified in this case previously to do the same thing. During her testimony she stated emphatically that Danny did not make her go to the end of the block to get picked up by John. Do you have any reason to believe whether or not that statement is accurate?

A It is not. I have text messages.

MR. WEATHERLY: Your Honor, at this time I would request permission to approach the witness with what's been previously marked as Defense Exhibit A, page 1.

THE COURT: Okay.

Q Megan, if you could, could you please read the last message on that page from Kaitlynn.

A The last message?

Q Yeah. So there's -- first of all, which

messages on this page are yours, what color?

A The bluish purple.

Q All right. And which messages are Kaitlynn's?

A All white.

Q All right.

A This one?

Q Yes, if you could please read that message for the jury.

A Danny got mad and made me take Willy down the street --

Q I'm sorry, Megan. Please slow down --

A Sorry.

Q -- and try again.

A Danny got mad and made me take Willy down the street, and when I tried telling my dad, he went to the house anyway, and then Danny attacked him, so my dad shot at him.

Q Does that message indicate to you that Kaitlynn went to the end of the street voluntarily or at the behest of Dan?

A At the behest of Dan.

Q Kaitlynn also previously testified that she

had no opinion as to whether or not -- or didn't believe that John was acting in self-defense, and indicated that other than the phone call, Danny was not threatening John. Do you have any reason as to whether or not to believe whether or not that statement is accurate?

A No.

MR. WEATHERLY: Your Honor, permission to approach the witness with what's been previously marked as Defense Exhibit A, page 3.

THE COURT: Go ahead.

Q Megan, could you please tell the jury what you're looking at?

A It's a message between me and Kaity.

Q Could you please read the top two messages from Kaitlynn?

A It was, and I told the officer from what I saw, it was him defending himself, but I alone and barely seeing it I don't think is enough.

I told the officers that too, that Danny has been threatening my dad.

Q Does that message in your opinion convince a

belief from Kaitlynn as to what happened?

A Yes.

Q Does it also describe the fact that Danny had continued to threaten John since the phone call?

A Yes.

Q Kaitlynn was asked specifically on direct testimony whether or not she had to quote, unquote, bite her tongue, when she was surrounded by Dan's family after the shooting because of how she felt about them and how they were describing him. She said specifically that she did not have to bite her tongue around Dan's family. Do you have any reason to believe whether or not that statement is accurate?

A It is not.

MR. WEATHERLY: Your Honor, at this time I would request permission to approach the witness with what's been previously marked as Defense Exhibit A, page 5.

THE COURT: Go ahead.

Q Megan, what is it you're looking at right now?

A This is a message between me and Kaity.

Q Could you please read the top message?

A These people, friends and family of Danny, are saying how great he was, et cetera, and I'm just biting my tongue sitting here. He's threatened my mom, threatened my dad, talked shit about my brother and me, talked shit about everyone, acting like he was some badass that could beat the shit out of anyone. I witnessed how this man talked and acted. God knows he did not deserve to die, but he was not a great man at all. He was hateful, racist, and mean.

Q And, again, that message is from whom?

A Kaitlynn Morgan.

Q Do you have any reason to believe she was lying to you when she sent you that message?

A No.

Q Megan, after this incident occurred, when was the first time you communicated with John?

A When he was arrested and booked.

Q How did you communicate with him?

A He called me.

Q Where was he when he called you?

A Oh. He was in jail.

Q And when he was in jail, did you guys talk?

A We did.

Q Did you have any conversations about what caused him to be in jail?

A We did. I could tell he was -- during the first phone call he was kind of confused. He didn't know what was going on. I tried asking him what happened and he sounded disoriented.

Q Was he able to accurately and coherently and specifically describe each and everything that occurred during that day?

A No.

Q So prior to your testimony there was a detective on the stand, and he indicated that as part of that phone call John indicated that he thought he was in the wrong. Do you recall John mentioning that on the phone call?

A I do remember that.

Q Was that the end of the conversation between you and he or did you continue to talk to John?

A No, I continued to talk, asked him questions on why he felt that way.

Q Do you remember specifically what it was that John said after he indicated that he thought he might be in the wrong?

MR. ANDREWS: Objection. That's hearsay.

MR. WEATHERLY: Your Honor, may we approach?

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

Q So, Megan, do you recall everything that was said when John indicated that he thought he might be in the wrong, like every single word verbatim?

A No.

Q Would it refresh your recollection if I was able to show you a written copy of the remainder of that conversation?

A It would.

Q Could you just read for the jury who's saying what --

THE COURT: Let her refresh her recollection first.

MR. WEATHERLY: Oh, I'm sorry. I'm sorry.

MR. ANDREWS: Can we have that marked as an exhibit?

MR. WEATHERLY: Your Honor, for purposes of identification, I'm handing the witness what we'll be marking as Defense Exhibit E, which is a transcript of the jail phone call.

THE COURT: Okay.

(WHEREUPON, Defendant's Exhibit E was identified for the record.)

Q Megan, do you see the portion of the conversation where John indicates that he thinks he might be in the wrong?

A Yes.

Q Does he make any further statements clarifying or adding context to why he made that statement?

A He didn't remember.

Q How do you -- how do you know that?

A From how he sounded on the phone, and then describing what happened, I knew he was disoriented.

Q Did you specifically ask him if he remembered?

A Yes.

Q And did he say that he did?
A No, he said he didn't remember.
Q Is John the type of person that would feel sorry about something he did even if it wasn't something that he did wrong --
A Yes.
MR. ANDREWS: Objection.
A -- he would.
THE COURT: Overruled. You can answer.
A Yes, he would.
Q Do you think it's possible that that might be what's going on here?
A Yes.
MR. ANDREWS: Objection. That calls for speculation.
A Remorse.
THE COURT: Sustained.
Q Based on your observations of John while he is on that phone call with you and you hearing him say that he thinks in the wrong and you knowing that someone died, how did you interpret that statement from John?
MR. ANDREWS: Objection.

THE COURT: Sustained. Don't answer.

Q Is John a violent person?

A Not at all.

Q Why do you say that?

A 'Cause I know him. He has not once indicated any kind of violence or anger or anything towards me, my kids, his friends, his family.

Q Do you recall a situation when you were sitting on the porch with John? Have you ever sat on the porch with John?

A Oh, yeah. Yes.

Q Ever see insects on that porch?

A Yes.

Q What did you do when you saw it?

A I asked John -- it was a stink bug, and I'm deathly afraid of stink bugs, so I asked John to remove it. And John -- I actually asked John to kill it, and he would not kill it. So he grabbed a piece of wood that he had on the floor and scooped it up and removed it from me, and when I asked why he couldn't kill it, he said, I cannot be responsible for killing another creature of God's.

MR. WEATHERLY: May I have a moment,

Your Honor?

THE COURT: Yes.

Q You've had an opportunity to speak with John since this incident occurred; is that right?

A Yes.

Q Have you received any information at all in all of this time that led you to believe that John ever knew who he was shooting at?

A No.

MR. WEATHERLY: One moment, Your Honor?

THE COURT: Sure.

MR. WEATHERLY: No further questions, Your Honor.

THE COURT: Cross.

* * * * *

CROSS EXAMINATION

BY MR. ANDREWS:

Q Good morning, Megan. How are you today?

A Good. How are you?

Q Good. I'm Rob Andrews with the prosecutor's office. Just a few questions.

We've spent a lot of time talking about the divorce. Has John got the divorce yet?

A No.

Q The phone call between -- you know what phone call I'm talking about.

A (Nodding head.)

Q Between Danny and John. One second. Sorry, my technology is not good. Was this a FaceTime?

A No.

Q Okay. So you -- you were with John?

A Yes.

Q You weren't with Danny?

A Correct.

Q So Danny couldn't have seen John.

A Correct.

Q So when John's sitting there laughing about it, joking, trying to rile Danny up, Danny doesn't see

John's facial expressions or anything like that, does he?

A No.

Q One of the conversations you had with Kaitlynn on Facebook you testified to talking about when John -- she said John was defending himself. Do you remember that question?

A Yes.

Q Okay. And Kaitlynn said -- didn't she start that with but, "what I saw," and also say, "barely seeing it?" Do you recall saying that?

A I said that? No.

Q That's what -- that's what Kaitlynn relayed to you.

A Correct.

Q "From what I saw." "And barely seeing it." Have you seen the dash cam video?

A I have.

Q Okay. You saw John get out of the car, fire that gun?

A I have.

Q Then as Danny, he is running away, you see John shoot him, correct?

MR. WEATHERLY: Objection.

THE COURT: Overruled.

A I can answer?

THE COURT: Go ahead.

A John was on the ground when he shot.

Q Okay. But you saw him shooting Danny?

A I saw -- no, I saw him shooting at something.

Q Okay. In fact, Danny was completely out of the picture by the time John fired, correct?

MR. WEATHERLY: Objection.

THE COURT: Sustained.

A No.

MR. ANDREWS: Nothing further.

THE COURT: Any redirect?

MR. WEATHERLY: Nothing further on that, Your Honor.

THE COURT: You may step down. Thank you.

MR. WEATHERLY: Your Honor, could we have a side-bar?

THE COURT: Yeah.

(WHEREUPON, a discussion was had among court and counsel off the record and out of

the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: Ladies and gentlemen of the jury, at this time we're going to break for lunch. Please do not discuss this case amongst yourselves or with anyone else. Please do not permit anyone to discuss it with you or in your presence. Please do not form any opinions on this matter until it's given to you for your deliberations. We'll reconvene at approximately 1 o'clock. Thank you.

(WHEREUPON, a luncheon recess was had, after which the proceedings continued as follows out of the presence of the jury:)

MR. WEATHERLY: Thank you, Your Honor. Your Honor, at this time I'd just like to place on the record the conversation that we had at side-bar regarding the testimony of the last witness, Megan Owens, if you recall the conversations with regards to a jail phone call which was brought up during the

detective's testimony during which time Mr. Morgan indicated that he thought he was wrong or thought he was in the wrong. At that time defense counsel wanted to bring up the remaining portion of that particular conversation, which included: I don't think it matters. I think I'm wrong. Megan's response: You think you're wrong? John's response: Yeah. Megan's response: Do you remember anything? John's response: No. Megan's response: No? John's response: I do but -- sighs -- I don't -- I don't think -- I don't know. Like I said, I think the point is the second time I shot I didn't have to. I don't know. Megan's response: Were they still beating you at this point? John's response: I don't know. I -- it -- there was somebody on my back, and they were getting them off, and I seen my gun, and I grabbed it, and I shot him.

It was at this point that Your Honor indicated that we could go no further in that conversation. My objection is that the next

two sentences were not admitted into evidence, which would be the next question from Megan: But did you know who you shot at? John's response: No, I didn't, I just shot. I was on my -- like I said, I didn't even look. I just pointed the gun and shot. I don't even know how the fuck I hit him.

So that was my objection for the record, Your Honor. Thank you.

THE COURT: Anything else?

MR. WEATHERLY: No, Your Honor.

THE COURT: You ready to go?

MR. WEATHERLY: Yes, Your Honor.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE COURT: You may call your next witness.

MR. WEATHERLY: Your Honor, at this time the defense would call Mr. Tim Dimoff.

THE COURT: Please raise your right hand.

WHEREUPON, the Defendant called

TIMOTHY DIMOFF,

who, being first duly sworn testified as follows:

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. WEATHERLY:

Q Good afternoon, Mr. Dimoff. Can you hear me okay?

A Yes, sir.

Q So please do me a favor and when you respond to questions, just get as close to that microphone as you can. Speak clearly into the microphone so that everybody can hear you, okay?

A Yes.

Q And if for any reason I do ask you a question and I don't phrase it properly or I speak too quickly and you don't understand what I'm asking, just ask me to rephrase it and I'll be happy to do it for you, okay?

A Okay.

Q Tim, could you please state your first name and spell your last name for the record.

A Yes, it's Timothy Dimoff, D-I-M-O-F-F.

Q Tim, what do you do currently for a living?

A Currently I am founder and owner of a company called SACS Consulting, Investigative and Security Services. We do quite a bit. I'll break it down. We do extensive security services; that is, temporary security, emergency security, and regular security services both armed and unarmed. Our company is made up of about 80, 85 ex-Military and retired law enforcement personnel. We also do investigations from simple personal domestics to internal cooperate undercover surveillance, A to Z as far as the investigations go, financial white crime, blue crime type things. We do cold cases. We investigate missing persons, major criminal cases. We work with police departments on both cold and active cases, and the list goes on in investigations. So we have security; we have investigations. We do physical security analysis for schools and churches and businesses that pertains to active shooter. We're nationally recognized in all

these areas, but we do an extensive amount of active shooter prevention through physical security analysis, and we do a lot of training in that area.

We also do a lot of human resource training. So it's going to be your typical HR, human resource, topics, such as harassment, sexual harassment, discrimination, termination, hiring, firing, all the legal issues that deal with employment.

We also do training. We do training with law enforcement, with private security, carrying concealed weapons, those types of things.

I'm also recognized as a national court expert in the field of law enforcement procedures, which would include use of force, any type of tool or weapon that the police would use, any type of procedure such as surveillance types, undercover operations, police chase situations, use of any -- from Taser to pepper spray to a firearm.

I also train retired law enforcement on their annual firearms training. Anybody that's in law enforcement can take training once a year, and they can maintain a special carry concealed weapon permit that allows them to carry across the country. We also can

provide the basic state of Ohio carry concealed weapon type training also.

I do a lot of consulting with companies, churches, schools, businesses, and obviously I do a lot of testimony. Been testifying as a use of force police procedure, security procedure for close to 30 years now.

Q So, Mr. Dimoff, how long has this company been in existence?

A This company's been in existence since officially 1989, and full go 1993 on. So we're -- let's see, that's 40 years.

Q And what role do you have in this company?

A My role, I was founder. I'm president, CEO. I'm still very active with the training. I'm active with the consulting. Pretty much I do get involved in a lot, but I have some great Military and ex-law enforcement people, but I do a lot of consulting. I do -- the expert testimony is solely my responsibility. And guide and manage my personnel and my company.

Q So, Mr. Dimoff, how did you start out as a professional? What was your first job?

A Yeah, my first job was with Akron, Ohio

Police Department. Came out of college. I was the youngest in the academy class fresh out of college. I was actually about three, four months out of college. I took various police tests, and I did well on the Akron, Ohio police test, and something I always wanted to be growing up was to get in law enforcement and be able to help people. So fresh out of college after a sociology/criminology degree I joined the Akron Police Department.

Q What was your duties as an Akron Police Officer?

A My duties, first you go through a little over 500 hours of training in the academy, and then out of the academy you do go into patrol. I did go into patrol for about two years. I was very interested in more training, you know, moving up and different experiences. So after two years in patrol I applied for a specialized unit, was hand picked. There was only six people chosen out of 530, and I was blessed enough to be one of those, and it was a newly created high crimes unit that dealt with the higher level type crimes.

After that I went into -- I stayed in high

crimes, but I also then got into SWAT team and went into the SWAT and worked in SWAT for seven years. And five years of the SWAT I got extra training. It involved both physical, self-defense, use of force, psychological, because as I always kind of jokingly say, I got drafted into being what they call first entry.

Now, the way they explained that to me is you get to go into the barricade and armed subject's house or business or wherever. You get to go in alone and you go through a door or a window or down a chimney. Somehow you get in there, and you get to confront that individual and hopefully convince that individual to put their weapons down and to come on out. So I was -- I did that for five years.

And then after that I went to undercover narcotics multi-jurisdictional. I went deep undercover for five years and came out of narcotics and took over one of the narcotics units and then also did high crime units.

And basically the last segment of my life -- of my career, I should say, with the Akron Police then, I went to what they call the Federal Task Force. So I

became part of the Federal Task Force working with the FBI, ATF, DEA, Homeland Security, all the federal agencies, and I became a member of that for a couple years.

Getting ready to be promoted, got injured, was in rehab for about a year. Came back, worked some light duty, and decided time to move on. And I enjoyed my career and was blessed with a good career, but I decided to move on. Still young enough to start a new company, and that's the company that I have today.

Q How many years total were you in law enforcement?

A A total of working full time, and then after I came off the Akron and Federal Task Force, I still was working with some smaller departments helping them out, so it was about 20 years in law enforcement.

Q Do you still consider yourself a brother in blue?

A Absolutely. When you have that kind of training, that kind of experience, and you go through some of the traumas and the close calls and the different things that you do in working together, it creates a brotherhood, sisterhood, and I still consider

myself a brother in blue, and I still enjoy -- I'm lucky I get to still work with police departments.

Q While in law enforcement active, did you ever have the occasion to use your service weapon?

A I never fired my service weapon, but I had to pull my weapon out numerous times, and I also had 167 one-on-one armed confrontations against people with weapons, knives, clubs, crowbars, whatever. And so I have quite an unfortunate experience with aggressive behavior.

Q Were you ever injured during any of those altercations?

A Yeah, I had 11 injuries to me, various parts of my body in the course of one year of rehab.

Q And during your time in active law enforcement, did you ever experience any blunt force trauma to the head or neck area?

A Yes, I did. I had a couple occasions where confrontations resulted in physical fights, being kicked, punched, those types of encounters unfortunately.

Q Since retiring from law enforcement, did you -- were you required to obtain any sort of licenses

or permits or degrees in order to operate your business?

A Yeah, under the state of Ohio I applied for and actually had to take another test and, you know, and study and all that, but I have a state of Ohio license for security, for investigations, and for owning a security investigation company.

Q And are many of the other members of your company, are they also so licensed?

A Yeah, all members of our company, all our Military law enforcement, former law enforcement, and our other laymen people all are licensed under the state of Ohio under our umbrella, my company's umbrella.

Q Where is your company located?

A It's located in Akron, Ohio.

Q Does your company only operate locally?

A No, we operate on a national basis now. We've expanded where we're now providing services, and we have partnerships throughout the United States, and we basically cover all 50 states.

Q Since retiring from law enforcement and going into private practice, so to speak, have you engaged in

further activities that involve the use of a service weapon or the use of an armed conflict?

A Yeah, all of our people are all certified trained with a firearm. They go through annual training. There's initial training. We train our people on various things, such as Tasers, pepper spray, and self-defense. Also deescalation, verbal deescalation, is important also. So there's still -- we maintain quite a bit of extensive training.

Q Does your company -- is your company responsible for the training of any active law enforcement or were they ever responsible for the training of active law enforcement officers?

A When I retired from the Akron Police -- excuse me. When I retired from the Akron Police and while I was -- I should digress for a second. While I was on the Akron Police Department, I failed to mention I also became a certified instructor by the state of Ohio, and I did training with the Akron Police, and that was like part time when we would have periodic training updates for all the Akron Police Officers. So I was certified at the time I was a police officer by the state of Ohio, Ohio Police Officers Training

Academy, to do training in firearms, use of force, different uses of tools that the officers carry.

Once I retired, I applied for and received a state of Ohio school commander certification, and basically my school commander certification I opened up a police training academy, which included running and certifying people that wanted to get into the police department. We actually -- I had 85 instructors, and we put on the state of Ohio certification for anybody to take this course, and it lasted several months, and they could apply to any police department in the state of Ohio. So for five years after I got off the police department, I was a state of Ohio certified school commander for basic academy.

Now, also we did advanced training with police officers. So we were helping police officers across the state of Ohio catch up on training that they couldn't get somewhere else or they were in a smaller department, they didn't have a training division, they would come to us. So we did quite a bit of extensive training with that.

Q So, Mr. Dimoff, I know we've gone through sort of extensively your experience both while in law

enforcement and subsequent to law enforcement. The reason being, you mentioned something along the way in that you have been called as an expert to testify previously in what you termed use of force cases. What is a use of force case?

A Well, a use of force case is basically officers are equipped -- and we don't call them weapons. We call them tools. But they have a Taser; pepper spray; they have a firearm; they could have a baton; or expandable night stick or baton. They have different tools at their disposal to use. And there's a use of force continuum that is used on a national basis, and basically it outlines, you know, when do you use different tools, how do you use them, when should you, when should you not, you know, what justifies using the different tools, and different escalation of use of force. So it covers quite a -- quite a bit and encompasses everything that a police officer carries.

Q So when an officer uses a tool such as a baton or a firearm, pepper spray, Taser, what have you, even I guess a tool would be their own fists or their own arms, correct?

A Correct.

Q When an officer uses that tool, are you sometimes then asked to determine whether or not that officer made a reasonable use of that particular tool?

A And that's exactly what I get asked and I've been asked for over 30 years now. This officer used pepper spray, Mace, this officer --

THE COURT: Can I see counsel?

A -- used his firearm --

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

Q When -- so who is it that would ask you to identify what was and what was not a reasonable use of force? What type of entity would contact you?

A I can be contacted by a variety, but it's -- it's either going to -- going to be an attorney that's representing the police department, police officer, or attorney that's representing a potential victim of the incident, or an attorney that's representing the person that's being accused of the use of force violation.

Q So what is it about use of force cases, we'll

call them, that allows you the ability to come in and make such a determination? Is there any factor that assists in that?

A Well, I think you have to look at a couple things. Number one, I was a police officer; number two, I was a certified trainer on the police department; three, I was a certified school commander trainer after off the police department. I've been certified across the board in many of those areas. I've experienced it. I've had to use those tools myself. I stay updated on laws and trends and use of the tools. So it's a wide spread, but I think a person that does such a use of force is someone that has been there, has used it, is certified in it, and stays -- stays on top of the knowledge.

Q What types of things do you generally review in making a determination of a reasonable use of force?

A Well, on the use of force, it could be several areas I would look at. If it was a police department, I look at what is their policy, what is their written policy, for use of force or procedures. Security company, it would be the same thing, what are their policies. I look at the background of the

individuals that are involved, both sides, objectively, you know; the potential victim, what's their background, what's their history in the case in relationship with the person that maybe they got into a physical altercation with; what's the background and what's the history of the person that used the use of force in the incident. So you really need to objectively look at the backgrounds of that. And then the last thing is what's the history between the two. Did they know each other before; have they had prior altercations; et cetera. And then also sometimes we will look at an interview or read statements of people that were witnesses or know -- know both subjects, trying to learn as much as you can about the subjects, about what happened, about circumstances, and really develop a strong objective. I don't even make a determination of whether I think it's justified or not until I understand all that knowledge, all that background. It's so important.

Q So do you also review, say, police reports?

A Oh, absolutely, police reports, incident reports, medical records, coroner reports, photos, videos, all that.

Q And in use of force cases because they generally involve officers, are you -- do you oftentimes have access to videos?

A Absolutely. You know, I think that in order to make a more fair objective and more detailed analysis, the more data, including written, video, pictures, that I can have I can make a stronger, better, objective decision on -- on the use of force.

Q Now, obviously use of force cases involve officers generally.

A (Nodding head.)

Q How would a use of force determination that you make, how would that in any way be related to a claim of self-defense from a non-officer?

A Well, there's a lot of similarities in -- in the standards for use of force situations, and whether you're a police officer or whether you're a civilian, those standards pretty much apply across the board and -- you know, and are objectively looked at, and all the circumstances, all the initial review or investigation that I just rattled off here about five minutes ago, all those would fall in the same thing as with officer. Whether it's an officer or a civilian,

you have basically the same standards of decision and care.

Q When someone reaches out to you and asks you to participate in either a self-defense or a use of force type of case, what, if anything, do you do before agreeing to do so?

A Any time I get asked about a use of force, the first thing I tell the attorney on either side is I'm not sure I'm going to be able to be strong for your -- for your case. I really need to understand this case because if I don't agree with it, if I don't agree with, say, your client who was the victim or your client who was the aggressor or whatever, if I don't agree with it, I'm -- I'm going to objectively tell you. But the only way I can determine that initially is I need to review all the documents, the videos, pictures. I need to get a good understanding of exactly what happened. And then, and only then, I can then say, yes, I'd be glad to testify; or, no, I do not want to testify for you.

Q And as far as this case is concerned, how were you contacted?

A Well, I was contacted by you, and you

contacted me and said I've got a case; I'd like you to review it; and I'd like to know if potentially you would be interested in helping us for his -- for the client. But first you asked me to review it and give my true basic objective opinion on what I think of this case and whether your client, you know, was in the right or wrong or used proper or improper use of force.

Q Are you being paid for your testimony here today?

A Yes. I'm being paid for my time, and my time is what I ask for payment. I don't get and don't believe -- and I tell people you're not paying me for my opinion. You're paying me for my time to come to an objective conclusion.

Q Did you agree to accept payment for your time on this case prior to reviewing the evidence on this case?

A After -- after reviewing everything and having all the documents and the footage, that, and only then, was where I came back to you and I said I -- I would be interested in working your case.

Q So you -- just to clarify, you actually went ahead and reviewed much of the evidence in this case,

if not all of it, before you even decided whether or not you would agree to allow us to pay you; is that right?

A That's correct, I asked for payment for my time.

Q Not until after you had a chance to review --

A And I don't make a decision until after the review.

Q Could you please tell the court what it is that you did review in trying to make a determination as to whether or not there was a reasonable use of force in this case?

A Yeah. There was a lot of documents, police reports, the video. The video, I reviewed that video probably 30 -- maybe more than 30 times, broke it down frame by frame. So the video was important. The police reports; there were statements, witness statements. There were text messages that were sent by family members, and documentation, I believe a coroner's report, and police reports.

Q How about John's health, were you made privy to John's health conditions in making your determination on reasonable use of force?

A Yes. I was made fully aware of, and that, once again, goes back to my original premise that I need to understand all parties involved and what's -- you know, what pertains to them, what could be pertinent to the case with them, and their background. And, yes, I was made aware of John's medical background.

Q Were you made aware of John's previous incident regarding being the victim of a shooting?

A Yeah, two-and-a-half years before this incident that we're here today on, two-and-a-half years before, randomly someone shot --

THE COURT: That was a yes or no answer -- that was a yes or no question.

MR. WEATHERLY: My apologies.

Q So if I ask you a yes or no question, just respond to it with yes or no, and then if I want you to expand on it, I'll go ahead and ask you to do that. Okay?

A Sure.

Q So you were made aware of a shooting.

A Yes, I was.

Q And were you -- you mentioned of the things

that you reviewed, you reviewed text messages from other family members of -- of the people that are involved; is that correct?

A Correct.

Q Okay. Why was it important to be made aware of John's health, the prior violent episode that John was involved in, as well as the messages between the family members? Why did you feel it was important to review that information in making a determination?

A Well, when -- when you have that kind of information and my experience has been other cases that I've examined, experts included, didn't look into sometimes some of the details that I feel is important. And the reason being is any time you have a altercation, a use of force, or an altercation, or a confrontation, a disagreement between people, and it escalates, you know, knowing the background of both individuals, knowing their histories independently, and also knowing the circumstances that -- that they're living in and that causes to bring them together, can be a crucial piece of evidence, a crucial piece of determination, on what caused it, how it could have been prevented, and -- and what each person, both the

victim and the other person, are dealing with. It makes a big difference in knowing the backgrounds because those backgrounds and those experiences really can help determine why things happen, if they should have happened, and the justification of those things happening.

Q So, Mr. Dimoff, you indicated that you did review the dashboard camera several times, correct?

A Yes.

Q What can you tell the jury about the value and sometimes the detriment of having a video recording of a traumatic event such as that?

A Yeah, in the recent history -- and I'll say the recent history is like with the onset of body cams that we all now are familiar with, police officers across the United States in many departments, not all, are required body cams, and also now people are carrying cell phones, and people have Ring Doorbells capturing video. So there's a tremendous amount in the last half a dozen years or so of lots of camera footage, and when we initially -- and I say we as -- I'm talking as a country as law enforcement. When we initially started using body cams and started using

cell phone footage and Ring footage and other footage, everybody automatically assumed --

THE COURT: Let me see counsel.

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

Q So, Mr. Dimoff, let's just focus on -- on the attributes of a video recording and what it can and sometimes can't tell us. Just specifically on that, if you could, please.

A Okay. Basically the camera has a wider, let's say, lens or eye, and it can capture a lot more. The camera can show a lot more at the scene of the incident than the person that -- persons that are involved. So the persons that are involved have a much more narrow vision of what they see, and it doesn't in many cases equal the vision of the camera, and that can cause some problems.

Secondly, the camera doesn't have any ability of what we call sensory, sensory ability, and that means the emotions, the adrenaline, the feelings, the

fear, you know, any emotion. So the camera can't -- it can't relate the sensory, which is important.

Q So --

A And lastly, lights and darkness can be seen better or worse by camera.

Q So safe to say sometimes a camera can see things that a person who's on camera maybe they can't see, right?

A That's correct.

Q But also sometimes the person who's being depicted on the camera, they can see things that the camera can't.

A That's correct.

Q And also, as you said, the camera can't interpret feelings, correct?

A Yes.

Q A camera can't describe what a person is going through while they're being depicted by that camera, correct?

A Correct.

Q And in addition to -- let me strike that. I'll ask you a question. Do you also review interviews from folks after a traumatic incident? I think you

said you did; is that right?

A That's correct.

Q Okay. Why is it important to hear people describe what they went through during that traumatic event in rendering a determination of a reasonable use of force?

A Well, when you're talking use of force, the person's perception of the aggression is very important. Do they perceive that aggression as deadly or not; do they perceive it as life-threatening or not. So those -- those perceptions by the person is very important, and it actually ties into the use of force guidelines that are established on whether you should or shouldn't or could or could [sic] or that it is proper.

Q So in short, it's important to try to get into the mind of the person who used the force as well as the mind of the person who experienced the use of force; is that accurate?

A Yes.

Q Okay. So now I know, Mr. Dimoff, you have had an opportunity to review this body cam footage, but what I'd like is for you to describe what it is that

you're seeing and what you're interpreting as we go through this video.

First and foremost, what do you know of John's mindset as he is traveling towards this house? And by that -- by that I mean based on your review of the evidence, do you believe that John was expecting to walk into a fight when he drove to the house that day?

A As far as him driving down the street, I don't think his mindset is at the point --

Q I want you to focus your answers on simply the evidence that you reviewed and whether that evidence led you to believe whether or not John knew he was going to be getting into a fight when he drove to the house that day.

A At that point on the screen, I don't. I don't see any way -- I don't see John -- or I don't see any perception.

Q So there's -- there's no evidence that you reviewed which would support that John had any knowledge that he was going to be getting into a fight at this time?

A Not at that point.

Q Now, conversely, is there any evidence that

you reviewed which led you to believe that Dan was waiting to get into a fight with John at this time?

MR. ANDREWS: Objection.

THE COURT: Sustained.

(WHEREUPON, the video was played.)

MR. WEATHERLY: Pause it.

(WHEREUPON, the video was stopped, after which the proceedings continued as follows:)

Q So, Mr. Dimoff, at this point, for the record, this is John approaching the house where the altercation occurs; is that correct?

A That's correct.

Q Just so I know, did you have an opportunity to have a conversation with John prior to your testimony today regarding what happened?

A Yes, I did have a conversation with John.

Q All right. Was there any -- was there anything that you noted in your review of this case that is not being picked up by the camera at this point in the video as far as what's going on at the house?

A Well, it was my understanding that Dan is on the porch, and as he sees the car coming towards the house, Dan's out on the porch and he starts to

immediately run across the porch.

Q And that would be towards the staircase that we see him go down later in the video; is that correct?

A Yeah, he's running towards the stairs where the driveway is where he knows John's going to pull in.

Q Okay.

(WHEREUPON, the video was played.)

MR. WEATHERLY: Pause it.

(WHEREUPON, the video was stopped, after which the proceedings continued as follows:)

Q So it's been alleged that John pulls into the driveway somewhat quickly. Does Dan's actions prior to John pulling into the driveway, is it your impression that that would have any effect on the speed with which John might pull in that driveway and why?

A Well, I think it could definitely have an effect on it. He sees him running across the porch, and, you know, as he pulls in, he sees him at the end of the porch.

(WHEREUPON, the video was played.)

MR. WEATHERLY: Pause it.

(WHEREUPON, the video was stopped, after which the proceedings continued as follows:)

Q Mr. Dimoff, what is it you're seeing here?
A I'm seeing Dan coming down the porch as John is finishing pulling into the driveway.
Q And what is your interpretation of Dan's mannerisms at this point in the video?
A My interpretation immediately seeing him coming down the porch the way he's dressed, acting -- no shirt on, I interpret that as an aggressive demeanor.
Q Does the evidence that you reviewed prior, that occurred prior to this incident, such as the phone call between Dan and John and some of the text messages afterwards, does that color your interpretation of what you're seeing here at all, and if so, how?
A Well, it doesn't color to the fact that he appears physically aggressively looking to me, but the prior knowledge of their conversations and the threats that Dan makes to John on more than one occasion tells me the mindset of Dan is that he does not like John, they don't get along, he's made several threats, and some of those threats have been to the extent where Dan says I -- you know, I'm going to kill you, you know. And --

Q So let me -- let me ask you this: Having had also knowledge of John's health conditions and his prior victimization from other folks in the community, does that color your impression on what could be potentially going through his mind at the time, and don't tell me what's going through his mind because obviously we don't know, but does that -- does that help give you an idea of what he might be thinking at this time? Just yes or no.

A Well, with John's medical conditions, you know, I believe the last thing he wants is any kind of physical confrontation. He's got some serious medical issues. So his mindset would have to be in the neighborhood of I don't want any problems.

Q So, Mr. Dimoff, we're going to slow it down a little bit so that I could pause it with a little more accuracy. And we're going to -- we're going to play it forward.

(WHEREUPON, the video was played.)

MR. WEATHERLY: Pause it.

(WHEREUPON, the video was stopped, after which the proceedings continued as follows:)

Q All right. So what do you see John do first

of all when he gets out of the car?

A I see John get out of the car, and obviously he pulls his gun out, and he fires a warning shot into the ground.

Q Why -- what is the purpose of firing the shot into the ground or as you termed it, firing a warning shot?

MR. ANDREWS: Objection.

THE COURT: Sustained.

Q Why would someone fire a warning shot?

A Generally a warning shot is basically a nice way of saying, hey, stay back; don't be aggressive; don't come near me; I don't want anything to do with you; I don't want to fight you; I don't want any confrontation; let's end this right now; chill out; I don't want anything to happen; and I don't want to shoot you.

Q Now, are officers of the law, in full uniform, are they trained to fire warning shots?

A No, they're not trained to fire warning shots.

Q What might they do in lieu of firing a warning shot?

A Well, they do a couple other things. They'll move their bodies backwards, sideways. They'll go and use maybe an alternative tool, such as a Taser or pepper spray, depending on what the other subject is doing or has, and they also will verbalize a lot more and -- basically.

Q So do officers have the authority to issue verbal commands?

A Absolutely verbal commands.

Q And that is not something to your knowledge -- it is not a power that private citizens possess, correct?

A Pardon?

Q Issuing a verbal command, such as get down on the ground, put your hands behind your back, something along those lines, that's not something that a private citizen has the authority to do; is that accurate?

A That is accurate.

Q So that would be one tool that a uniformed officer had that John did not have at this time, right?

A Correct.

Q So, Mr. Dimoff, as you -- you had an opportunity to review the charges in this case,

correct?

A That is correct.

Q And you are aware -- or are you aware that one of the charges is a felonious assault?

A Yes.

Q And are you aware that that particular felonious assault is described in the indictment as a quote, unquote, pistol whipping?

A Correct.

Q Could you please describe for the jury the definition of a pistol whip?

A Well, any time in my law enforcement career we charge someone or the guy involved in the charge for a pistol whipping, it involves a person holding the gun in their hand like a hammer, for lack of better description, but holding the gun firmly, and then beating the person several times or pounding down and using the butt of the gun, the strong part of the gun or the back side of the gun, and basically repeatedly hitting them and slapping them, and really using it as sort of a hammer. And in my career that's the only time we've ever charged anybody with that.

Q So I'm going to play the portion of the video

during which it's alleged that John commits this act, and, again, we're going to be playing it a little bit slower.

(WHEREUPON, the video was played.)

MR. WEATHERLY: Okay. Pause.

(WHEREUPON, the video was stopped, after which the proceedings continued as follows:)

Q You've had a chance to review that now --

A That's correct.

Q -- multiple times. Are you seeing John Morgan inflict a pistol whip upon Dan Peek in that video?

MR. ANDREWS: Objection.

THE COURT: Can I see counsel?

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

Q Mr. Dimoff, I'm going to withdraw that question. Let me ask you this. Again, you've had an opportunity to review this at regular speed and slowed down, right?

A Yes.

Q Do you see John Morgan's handgun make contact with Daniel Peek?

A Only Daniel Peek's hair, not his body.

Q Okay. Now, let's spin back a little bit, and we're going to see it one more time.

(WHEREUPON, the video was played, after which it was stopped, and the proceedings continued as follows:)

Q All right. Do you also see the -- do you see what happens to the handgun after John's gun makes contact with Daniel Peek's hair?

A Yes.

Q What happens to the gun?

A The gun gets thrown to the left of John behind that vehicle in the driveway.

Q Based on your review of the video, do you believe that the contact that John's gun made with Daniel Peek's hair was significant enough to dislodge the gun from John's hand?

A No.

Q What then is your interpretation of this video as to how John lost possession of the gun?

A Well, I think he had no intention of any kind of pistol whipping. I think he had an intention to get near him and throw the gun off to the side to engage him in a physical manner to try and control the situation.

Q So your answer is you believe that based on this video, it shows John voluntarily throwing the gun to the ground as opposed to it being dislodged due to contact; is that correct?

A That's correct.

Q Now, once John loses possession of the firearm, do you see him attempt to strike Daniel Peek?

A No.

(WHEREUPON, the video was played.)

MR. WEATHERLY: Stop it. Stop it.

(WHEREUPON, the video was stopped, after which the proceedings continued as follows:)

Q All right. What do you see John doing if he's not attempting to strike Daniel Peek?

A Yeah, I -- I think he's trying to use his body mass to grab him and control him and maybe take him down to the ground, but, you know, to -- to basically calm him down. You know, physically grab him

and take him down to suppress him from any further fighting of John's strikes.

Q Is that something that you would recommend someone doing who is in the adverse physical condition that John is in but has a superior size and weight factor?

A I think he doesn't have a lot of options in using his body weight, and kind of a bear hug and take him down and control him was probably a smart move.

Q Now, let me ask you this, Mr. Dimoff: Do we see anyone else in this video that was not originally part of this video?

A Well, very quickly we have Dan's son coming down the steps.

Q Can you please convey to the jury the difference between being in an altercation with one person where it's one on one and being in an altercation with two people where it's two on one?

A Obviously if you're trying to figure out how to survive with one person and then all of a sudden another person shows up and that other person starts to get involved and now it's two on one on you, that really escalates your fear and your adrenaline and, you

know, and your concerns for your safety, and -- all the way up to, you know, you're worried about getting hurt seriously or killed.

Q Does the addition of another human being in the fight adverse to you, does that increase the danger level for the person involved in the fight who is unaccompanied?

A Absolutely. Any time another person or persons gets involved, that escalates the force continuum. By that I mean that escalates, doubles and triples, the threat and obviously can very easily increase the fear, the adrenaline, the survival instinct, of the person being attacked.

Q Would that be anywhere equivalent to a person utilizing a weapon? So perhaps I should rephrase it.

When you go from the fight where it's just one person versus another person and they're both unarmed and that fight, as you say, escalates to a fight between one person and two people who are both unarmed, is that a similar or different threat level to, say, instead of a second person joining in, that one person picks up a baseball bat? How would you interpret that?

A Well, when you add people to the fight against you, that's actually technically increasing the threat level to you, and that actually increases your justification for you increasing your response.

Q What factor, if any, does it play that Dan Peek, Jr., appears to be coming up behind John?

A Well, if -- if he sees him or doesn't see him, the fact that Dan does start to come down them steps, he's starting to make noise, he's potentially probably saying stuff to John, and he's pouring gasoline on the fire, in simple terms.

Q Is it a more dangerous situation if John or whomever is involved in the altercation does or does not know that there's going to be a third person entering the fight?

A Well, as soon as he has knowledge that another person is entering and contribute -- is going to contribute to the altercation, it's absolutely going to increase the fear.

Q So we're going to continue to play a little bit slow so we can see the next frame.

(WHEREUPON, the video was played.)

MR. WEATHERLY: Stop it.

(WHEREUPON, the video was stopped, after which the proceedings continued as follows:)

Q What's the first thing you see Daniel Peek, Jr., do?

A He's raising his foot in preparation to do a very aggressive stomp hit; not a kick, a big difference. He's preparing to stomp on John.

Q What part of -- and I believe that the part of the video we just saw, he completes -- completes that stomp; is that correct?

A Yeah, he uses the bottom of his foot, and specifically the heel, he has a big heel there, and you can see it in the -- in the video.

Q What part of John's body does he connect with his heel, can you see?

A Well, when the film goes forward a little bit, he's hitting him in the head area.

Q You yourself, you've been hit in the head area, right?

A Absolutely.

Q What sort of repercussions can such a physical contact cause?

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. WEATHERLY: Well, I'm not -- I'm not asking him what John felt.

THE COURT: That's not what I'm saying. He's not a doctor. He can't diagnose.

Q What did you experience when you got hit in the head?

A Well, when I had a couple occasions unfortunately, it's not a good experience. Dizziness, confusion, scared, fear. I lost the ability to really understand what was around me, what was going on, who was where, what, and how, confusion, and fear, and adrenaline flow, and a huge I want to survive.

Q Was your vision affected?

A On -- on one occasion, yes.

Q How was it affected?

A Blurred.

Q After you were hit in the head and you were asked to recount the events of the hit in the head, were you able to do so accurately?

A The only thing I was accurately able to do was give them details of the events up to the point before I got hit in the head. I couldn't accurately

tell them what -- what was going on after I got hit in the head. That's -- that's where I lost my ability to be accurate.

Q Was your balance affected when you were struck in the head?

A I -- I wasn't -- I wasn't able to get up. I didn't get up.

Q Were you able to think straight?

A Unfortunately I would say no. It's not only think straight, I couldn't think clearly. I couldn't recall those events, you know.

Q Were you disoriented as to your surroundings?

A Yes.

Q How many blows to the head did it take for you to experience all that?

MR. ANDREWS: Objection, he doesn't remember.

THE COURT: Sustained.

Q Were you ever told or did any witnesses ever tell you how many times you got hit in the head?

A Well, on one occasion it was one time, and that was good enough. To be honest with you, I was pretty well confused and delirious. Other times I got

hit a couple times in the head.

Q We're going to move it forward, and as we do, if you could please describe to the jury what you're seeing.

(WHEREUPON, the video was played, after which it was stopped, and the proceedings continued as follows:)

A Well, after he got stomped in the head by Dan's son, both of them are wrestling with him, and at periodic times they're punching and still kicking -- kicking him. Sometimes they're kicking him with the front of their foot, and sometimes they're kicking with the bottom, but it's a combination of punches and kicks.

Q Were you able to observe Dan Peek, Jr., putting his arm around John's neck?

A Yeah, he choked him and pulled him back.

Q And was John being struck by Dan Peek, Sr., while that was happening?

A Yeah, what Dan's son was doing was trying to restrain -- from the visual of the picture here, it appears Dan's son was choking him around his neck pulling him back, and then the father, Dan, then was

able to punch and kick John.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q What else do you see in that video?

A Well, they continue to punch and kick, and then they're pulling -- Dan, the father, is pulling John's shirt and pulling him more across the back of that SUV there. So the aggression continues by both with Dan pulling the shirt, which he subsequently starts to pull John off balance to the left.

Q Fair to say that John was struck multiple additional times after being stomped in the back of the head by Dan Peek, Jr.?

A This whole sequence John is hit profusely several times, fists, legs, kicks, punch, stomps. It's an ongoing. Plus wrestling him; plus pulling his shirt; knocking him off center or off balance; dragging him off to the left. It continues.

Q All right. And then we know what happens next in the video, correct?

A Yes.

Q So it's been alleged by the state that Dan

runs away, and John picks up his firearm and then shoots him in the back, and that because of the distance between Dan and John at the time the shot is fired, that it was a calculated and cold-blooded murder. Is that your interpretation of what you see on this video?

A Absolutely not.

Q Why?

A Nobody's going to go through that kind of head trauma and have any clear understanding of what -- what's going on, what they're doing --

MR. ANDREWS: Objection.

THE COURT: Sustained.

A When you get multiple kicks and stomps to the head and punches, and you're dragged over there, and you're in fear, and your adrenaline's running --

MR. ANDREWS: Objection.

THE COURT: Sustained.

Q Is it -- is it possible that the injuries inflicted upon John in any way affected his ability to mentally or physically function at that time?

MR. ANDREWS: Objection.

THE COURT: Sustained.

A With everything that --

THE COURT: It's sustained. Don't answer, please.

A Oh. Sorry.

Q When you -- when you -- first of all, have you ever been -- have you ever experienced a beating like that before?

A I've been in some pretty violent altercations, and, yes, I -- I've been kicked and stomped and be --

Q When that happened to you, did that affect your ability to function physically and mentally?

A Absolutely it affected.

Q When you review other videos involving officers use of force, do you ever see officers in those other cases experience physical abuse of this nature? Have you ever seen that before?

A Yes.

Q When you witnessed such physical abuse towards the officer, did you in those situations factor that abuse into your determination of whether or not a reasonable force was used in those cases?

MR. ANDREWS: Objection.

THE COURT: Can I see counsel, please?

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: The objection's overruled.

Q So, again, Mr. Dimoff, you have reviewed how -- many videos of officers who are alleged to have committed an unreasonable use of force; is that -- is that accurate?

A Yes.

Q When you review those videos, do some of them contain footage of the officer who used the force suffering some form of physical or blunt force trauma?

A Yes.

Q When you see officers suffering that sort of trauma, do you factor that trauma into your decision when you are trying to determine whether or not an officer was reasonable in using force?

A Absolutely you should.

Q Why?

A Because what the officer has endured does

affect the level of the attack. It raises the level of attack to a more serious or deadly attack which justifies the officer who is then, according to the use of force continuum, allowed to increase his response to that aggressive behavior that is now at a higher level.

Q Do you expect that an officer who has suffered trauma, do you expect that officer to react and respond to a physical confrontation the same exact way as an officer who has not suffered a physical trauma?

A No. You'll see distinct differences in those cases due to the fact that one has full mental cap, capabilities, and the other one has been damaged or has less cognitive or ability.

Q Can you describe to the jury the differences that you've seen in your experience in those two situations?

A Well, in those two situations what you see is the perception of the injured person, person being attacked. If they're injured and they've suffered stomps and hits to the head, once again, their vision in many times can be blurry or not clear --

MR. ANDREWS: Objection --

THE COURT: Sustained.

MR. ANDREWS: -- medical opinion.

Q I think perhaps it was poor phrasing on my part, so I apologize.

When you're -- when you're watching a video, dash cam or body cam and you see an officer behave after he has suffered physical trauma, in what way, if at all, does -- do that officer's mannerisms differ from an officer that has not suffered physical trauma based on your experience in reviewing such videos?

A Their physical appearance and actions will exemplify -- exemplify being stunned, confused. I've seen them where they're searching around with their hands trying to find their weapon or whatever. So it's -- it's that -- it's the look of confusion. It's the look of fear and scared and scrambling and not in control.

Q And how do you experience that yourself? What kind of fear was going through your mind when you were in such a position?

A My fear was that that person's going to take advantage of me; they're going to attack me; they're going to kill me, you know; and it was an undercover

narcotics situation gone bad; but it's -- it's -- you start to fear for survival. You -- you start to want to get control and you can't. So it just escalates very fast and -- and multiplies. And, as I said, your adrenaline really starts to rush, and you start to just do things to try to survive.

Q Now, again, you've had an opportunity to review a lot of evidence and information on this case, correct?

A Yes.

Q And that would include the interview that John gave after this incident. Do you -- did you have a chance to review that?

A Yes.

Q Do his responses to questions in that interview indicate to you that he had a full compliment of his faculties during this incident?

MR. ANDREWS: Objection.

THE COURT: Sustained.

Q So, Mr. Dimoff, I'm just going to get to the point here. You have reviewed how many cases of potential reasonable force over the years, how many?

A Over fifty to a hundred.

Q And in some of those cases the person using the force suffered trauma, and in some cases they did not, correct?
A Correct.
Q In all of those cases you try to review as much information and evidence as possible, correct?
A Correct.
Q And you do that because they all factor in your final determination of whether or not you see a reasonable use of force, correct?
A Correct.
Q Have you testified previously that an officer was reasonable in that officer's use of force?
A Yes.
Q Have you testified previously that an officer was not reasonable in that officer's use of force?
A Yes.
Q So you've done both sides.
A I've testified for and against police officers; for and against police departments. And objectively it depends on the circumstances and judging everybody following the rules. Unfortunately for me, police officers are like any other profession; very

few, but some of them did not follow the right guidelines.

Q And in those situations you did not hesitate to call those officers out for their misconduct; is that not correct?

A That's correct.

Q Based on your review of all the evidence in this case, knowing what you know about John, Dan, everything that was said before and after, and of course your review of this video, in your expert estimation was John's use of his firearm in this case a reasonable use of force?

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. WEATHERLY: Side-bar, Your Honor?

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

MR. WEATHERLY: May I have a moment, Your Honor?

THE COURT: Yes.

Q Mr. Dimoff, I'm going to go back to these reasonable use of force cases that you've testified to so many times. Do officers provide their own voluntary statements when it comes to those reasonable force cases or do they not say anything?

A Well, they -- they eventually give a statement.

Q Are they required to give a statement immediately after they're involved in that reasonable -- in that use of force?

A No, they're allowed to have time, a day or two or whatever, if -- if they want.

Q So if they are engaged in use of force, they are given time? What's that time for?

A Well, you've just experienced, once again, an adrenaline rush, a fear of -- been through physically, mentally, emotionally some pretty traumatic stuff, and it's best to give time for that to settle down and then be able to calmly and clearly provide a statement.

Q Generally speaking how long are officers given before they're required to give a statement?

A It varies a little bit, but I'd say in many cases they're given a couple days, a day or two, or

three.

Q Twenty-four to forty-eight hours?

A Correct.

Q If you know, how long after this incident occurred did John give a statement to police?

A Probably as soon as the police got there they probably pulled him off to the side and put him in a cruiser and -- very -- very soon after the incident.

Q So it's your testimony that you don't believe John was afforded that cooling off period for 24 to 48 hours officers are typically given; is that right?

A Yeah, with what he's been through, he was not afforded that opportunity.

Q Okay. So you have offered your expert opinion in these reasonable use of force cases on dozens, over 50 you said, occasions, correct?

A Correct.

Q And in this case have you had the opportunity to review the similar -- a similar amount of evidence as you would in those cases?

A Yes.

Q And would that include police reports, videos, text messages, recorded interviews, the whole

nine yards?

A Yes.

Q So I'm going to ask you to do the same thing that you do in those other cases involving officers. I'm going to ask you to form an opinion in your expert opinion as to whether or not based on your review of all of this evidence, whether or not you believe or you opine that John Morgan engaged in a reasonable use of force when he shot and killed Daniel Peek?

A Yes.

Q Why do you come to that conclusion?

A When I reviewed the background of all the parties involved, obviously we knew there was a strong dislike, hatred, and threat to kill and hurt someone seriously, Dan towards John. Secondly, we see the video, and we see John just take a tremendous amount of physical pounding with foot, heels, hands, grabs, repeatedly, and those hits are focused on his head, his face, his head area, and they continue for quite some time, and it's, once again, repetitive. Then all of a sudden you're down on the ground and grabs his gun, and with all the beating and kicking and stomping, in my opinion I don't believe he could understand, comprehend

what was going on and was in a total adrenaline rush and survivor mode. He picks the gun up and he fires it. I don't even know if he even knew where Dan was or his perception could have been totally blurred that he thought Dan was two feet away from him and not whatever he was. So with the repetitive beating he is in no mental state to be able to totally understand what he's dealing with, and what he's dealing with gets exacerbated ten times worse than what it is, and he's in survivor mode and he's taken a brutal beating, and therefore I can't even begin to comprehend or concede how he can be held accountable for that.

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. WEATHERLY: One moment, Your Honor? No further questions, Your Honor.

THE COURT: Ladies and gentlemen, at this time we're going to take our afternoon break. Please do not discuss the case amongst yourselves or with anyone else. Please do not permit anyone to discuss it with you or in your presence. Please do not form any opinion on this matter until it's

been given to you for your deliberations. We'll reconvene in approximately ten minutes. Thank you.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

THE COURT: Cross.

MR. FENING: Thank you, Your Honor.

* * * * *

CROSS EXAMINATION

BY MR. FENING:

Q Good afternoon, Mr. Dimoff. My name's Patrick Fening. I'm with the prosecutor's office. Just a few questions for you.

A Okay.

Q So if I heard your testimony correct, you do the case evaluation at no cost?

A No. I'll briefly look at it, and then if I determine that I'll move forward on it, then I'll engage them in a cost.

Q Okay. So you only get paid to agree with whoever is hiring with you on a case?

A Pardon?

Q You get paid if you agree with the person who's hiring you.

A Yes.

Q All right. In this matter the defense has retained your services. They're paying for you, right?

A Correct.

Q What is your rate?

A The rate is 400 an hour.

Q What's that?

A Four hundred an hour.
Q An hour. I went through the list of documents you received and you reviewed in this matter. I believe your testimony was that you like to learn as much as you can about the subjects and have as much evidence as possible; is that correct?
A That's correct.
Q Okay. In your review of this case, preparation for testimony, did you speak with Officer Hilliard of YPD?
A No, I did not.
Q Did you speak with Officer Giovanni?
A No.
Q How about Detective Barber?
A No.
Q Detective Vitullo?
A No.
Q Did you speak with anybody from YPD?
A No.
Q How about the 911 dispatcher?
A No.
Q You and I have not spoke before.
A No, we haven't.

Q Did you speak with co-counsel, Attorney Andrews?
A I'm sorry?
Q Prosecutor Andrews.
A No, I have not.
Q How about Attorney Yacovone, he would be the grand jury prosecutor who indicted it?
A No.
Q Did you speak with anybody at the prosecutor's office?
A No, I have not.
Q How about did you have a conversation with Kaitlynn Morgan?
A With who?
Q Kaitlynn Morgan.
A I did not talk to her. There were texts or stuff from her, but I did not talk to her.
Q You reviewed her conversation with somebody else.
A Correct.
Q But you didn't talk to her.
A Correct.
Q All right. Did you speak with Daniel Peek,

Jr.?

A Jr.?

Q Yes.

A No.

Q How about Mary Morgan?

A No.

Q Did you speak with any of the neighbors involved?

A No.

Q Did you go to the crime scene yourself?

A No.

Q Okay. Did you speak with John Morgan?

A Yes.

Q Did you speak with the defense attorneys?

A Yes.

Q Okay. So if I'm hearing you correctly, you get the documents, you get the video, speak with the defendant, defense attorneys, get the check, and then you render your opinion?

A Well, I did talk -- or did review police reports; I did review text messages from some of those people you mentioned.

Q So just generally documents.

A Yes.

Q All right. And -- 'cause basically what you were saying is that the video alone doesn't get into John's mind about what happened that day.

A The video?

Q Yes.

A No, it does not.

Q That is the same video that depicts Daniel Peek being shot in the back.

A That is correct.

MR. FENING: Thank you.

THE COURT: Any redirect?

MR. WEATHERLY: Just briefly, Your Honor.

* * * * *

REDIRECT EXAMINATION

BY MR. WEATHERLY:

Q Mr. Dimoff, you were asked on cross examination whether or not you reviewed several officers with the Youngstown Police Department, and you indicated that you did not; is that accurate?

A That I did not have conversation with them, correct.

Q Were any of those officers witness to the events that caused the death of Daniel Peek in this case?

A No.

Q Did you have an opportunity to review the contents of those officers labor, meaning police reports that they authored and interviews that they conducted and recorded and the like?

A Yes, I did.

Q You were asked whether or not you interviewed Kaitlynn. You did not, correct?

A That's correct.

Q But did you review her recorded interview?

A Yes.

Q Did you review her statements to other folks

through the use of text messages and Facebook messages?
A Yes.
Q The reason you do that, as you stated on direct examination, is because of the limitations of the video; is that correct?
A That is correct.
Q Did those other things that you reviewed, witness statements, recorded interviews, police reports, text messages, interviews, everything, did those pieces of information provide to you the necessary context you needed to render your opinion in this matter?
A Absolutely it did.

MR. WEATHERLY: Thank you, Your Honor.

THE COURT: Any recross?

MR. FENING: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

MR. WEATHERLY: Your Honor, may we

please approach?

THE COURT: Yes.

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

THE COURT: Ladies and gentlemen of the jury, at this time we're going to adjourn for the day. Please do not discuss this case amongst yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form any opinions on this matter until it's been given to you for your deliberations. We'll reconvene at 9 o'clock tomorrow morning. Thank you.

(WHEREUPON, the Court recessed at 3:04 p.m., February 26, 2024, and reopened at 9:10 a.m., February 27, 2024, and the proceedings continued as follows:)

THE COURT: Do you want to call your next witness?

MR. HENDERSON: Your Honor, the defense calls Mr. John Morgan.

THE COURT: Please raise your right hand.

WHEREUPON, the Defendant called

JOHN MORGAN,

who, being first duly sworn testified as follows:

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. HENDERSON:

Q Good morning, John.

A Good morning.

Q How are you today?

A I'm okay.

Q Nervous?

A Yes.

Q You've been waiting for a while for this day

in court; is that accurate?
A Yes.
Q Okay. And I just want to, you know, let the folks of the jury know you and I obviously have met before. I'm your attorney, right?
A Yes.
Q Okay. And, John, I want to start a little bit with regards to who you are, your background, stuff like that. Is that okay?
A Yep.
Q Okay. So, John, where did you grow up?
A Campbell, Ohio.
Q What's that?
A Campbell, Ohio.
Q Okay. And, yeah, please, you know, as you've been able to hear them back there, but a lot of times people aren't able to hear. So just make sure you're talking into the mic. All right?
A Uh-huh.
Q We want -- we want everybody to hear what you have to say today. All right?
A All right.
Q Campbell, Ohio, that is a suburb of

Youngstown; is that accurate?
A Yes.
Q And growing up in Campbell, Ohio, where did you go to school?
A Campbell school, Campbell Memorial High School.
Q And then that was high school as well?
A Yeah. Yeah.
Q Okay. And did you at some point graduate from high school?
A Yes.
Q And so from what I understand -- and we don't have to get into it a lot -- you had a little bit of a -- a little bit of a rough childhood, is that fair to say, with regards to your folks and stuff like that?
A Yes.
Q Okay. And at what age were you -- at what age were you on your own?
A Eighteen I was on my own, 18. You know, since I've been an adult I've been on my own.
Q And at 18 what were you doing to support yourself?
A Right out of school I started doing home

security and surveillance, installation for a company, SOS Security, out of Canfield.

Q John, if you could just talk a little slower, all right?

A Yes. For SOS Security, a company out of Canfield, Ohio. I worked for them for a few years. After that I got into bridge painting, industrial painting.

Q What does that entail?

A Sandblasting, painting, rigging, climbing, working, you know, high in the air.

Q Okay. So you were -- why did you leave the home security position?

A Home security I -- you know, my paycheck was about 400, 450 bucks every two weeks. Bridge painting was about 7, $800 every week.

Q Okay. And was that something you were particularly interested in, or did it give you the freedom you wanted, or tell me -- tell me what --

A It just was, you know, just financially better for -- that's the only thing.

Q Okay.

A It was a very, very rough job. It's hard.

It's labor intensive, dangerous, travel a lot, so.

Q And so what exactly did that job -- and we don't need to go into it too far, what exactly did that job consist of? Was it crawling up and --

A Yeah. I mean, everything from rigging, you know, cables, setting a pit or, you know, you sit on a piece of scaffolding, a piece of scaffolding, and you sandblast all the steel, and then you paint it.

Q Okay. All right. And that was at what age?

A That would have been early twenties.

Q Okay.

A Probably, you know, 21.

Q And were you married at that time?

A No, I wasn't married.

Q Were you in relationships at that time?

A Yes.

Q Younger 20 relationships, meaning maybe some girlfriends or stuff like that or what, were they serious relationships?

A I was already in a relationship with Mary Morgan.

Q Oh. Okay. Okay. So at that time -- at what age did you get in a relationship with Mary Morgan?

A I believe I was 19, 19 or 20.
Q Okay. So that was young.
A Yeah. Yeah.
Q And how did you folks meet?
A Through a common friend.
Q They didn't have the -- the -- whatever you --
A Yeah, no social media or nothing back --
Q Okay. So you guys met through a mutual friend. And were you guys -- was it sort of an immediate hit-off or was there a couple dates before things progressed or how did -- how did that occur?
A No, we -- we kind of -- you know, we didn't know each other very long before we moved in. She -- she -- she lived in Struthers; I lived in Campbell; and she was getting -- losing her -- her home. She lived in an apartment, and she was being evicted, and I knew her for two weeks before she moved in with me.
Q Okay.
A Well, I knew her maybe a month, but we'd been dating for two weeks.
Q Okay. And at that point were you -- were you financially stable to the point where you kind of had

your own apartment or you had your own home or --
A Yeah. I wouldn't say stable, but, you know, I was -- you know, I was making it.
Q Okay. And did this -- did this -- did this job consist of heading out of town?
A Yes.
Q Okay. And tell me a little bit about that.
A We traveled. Like, you know, jobs are -- doing bridges, I work mostly in Ohio and Western Pennsylvania, usually a few hours away from home. We would stay in motels during the duration of the job. Usually the job was a few weeks.
Q So a few weeks you'd be away from home --
A Yes.
Q -- a few weeks you'd come home.
A Yep.
Q Is that an accurate statement.
A Yeah, that's accurate.
Q Okay. And how long did you stay with this company?
A Again, that one was till my -- my daughter was about three years old. So it probably was about three or four years.

Q Were you able to move up in the company?
A Yeah, I started as just general labor. They call it a vacuumer. It's like the worst job you can ever imagine having, and I did -- I learned to sandblast and to paint, and, you know, moved up, and that's -- actually I got a heavy pay increase between those two jobs.
Q I think that it's fair to say you take pride in the fact that you're a hard worker?
A Oh, yes, very much.
Q And have you been that way your whole life?
A Yes, my entire life.
Q I know that when you met Mary Morgan, she had a younger -- she had a little one, right?
A Yeah, William, (nodding head).
Q And we saw William yesterday.
A Yes.
Q Right?
A Uh-huh.
Q And that was a two year old -- William was a two year old --
A Yeah. Yeah. He was two years old when we met. I mean, you know, a two year old and I was young,

you know, I was 19. We hit it off immediately. We were buddies, you know, right away, and, you know, that was something totally new to me. I'm young, and I had, you know, a child, and he was a lot of fun. A lot of responsibility. It was a lot of work and -- but, you know, I mean, any parent knows, it's very rewarding raising a child.

Q That didn't scare you away from -- from the relationship?

A No, no, not at all.

Q Okay. Now, do you feel as if you were the type right away you kind of took Willy on as -- as -- as your own?

A Yeah. Yeah.

Q And what was going on with Willie's biological father during that time period?

A I -- I never met him. I -- I -- I don't know who -- anything at all about him really.

Q Do you know if William has ever met him?

A I -- no. Since I've met him, no, he has not, since he's been two years old.

Q One more time.

A Since he was two years old, no. You know,

prior to that I don't -- I can't say for sure.
Q Now, are you aware if William looks at you as -- as his father?
A Yeah. Yeah. He always -- always has.
Q Okay. And so you and Mary are living together for a while.
A (Nodding head.)
Q It's you and William and Mary, right?
A Yes.
Q And then you're -- you're bringing home the bacon, so to speak.
A Yeah.
Q Is that accurate to say?
A Yeah.
Q And then is Mary working at that time?
A She -- I mean, we -- we generally were both working most of the time.
Q Okay. Okay. So both of you were working to provide the support for the family.
A Yes.
Q And then how long after was -- we also had a chance to meet Kaitlynn, correct?
A Yeah. Kaitlynn was born in 2000.

Q Okay. And forgive me, math is not my issue -- you know, thing, but how long after William, how much younger?

A William was six years old when Kaitlynn was born.

Q Okay.

A Kaitlynn was born in '94.

Q Okay. So Kaitlynn -- Kaitlynn's a newborn.

A Yeah.

Q Were you guys trying, was this a happy accident, what --

A No, Mary had like an implant birth control, and she had it removed. And, I mean, we didn't like try try, I mean, but we knew it was going to happen.

Q And so you -- is it accurate to say that you folks were trying to grow the family?

A Yes.

Q Okay. And you felt that you guys were getting into a financially stable position where you could, you know, bring another, you know --

A (Nodding head.) Yeah. Yeah.

Q -- a little -- little person into your life.

A Yeah.

Q Is that accurate?

A Uh-huh.

Q And so when Kaitlynn was born, you know, how did things change, if at all?

A Well, when -- when Kaitlynn was born, I was still traveling a lot for work and -- with the bridge painting, and that also was the reason I stopped doing that, is, you know, when Kaitlynn was a toddler, I'd come home, she'd be shy. She didn't know me.

Q Okay.

A So I actually lucked into another job, heavy equipment -- well, I started as a laborer for a paving and excavating company, Commisso Paving & Excavating. Started as a laborer; worked there a couple -- probably a year-and-a-half as a laborer. My second season working with them, the paver operator found a better job or he left, he quit, and, you know, I said to the owner Donnie, I've been following this paver for two years, give me a chance; you know, I've been watching. I -- and I got on it, and I could run it. I was able to do it.

Q Okay. So a level of progression there.

A Yeah.

Q Okay. And how long were you at that position?

A That one, let's see. That turned into another -- you know, like I said, I lucked into it. It turned into a civilian employee on the Air Force Base in Vienna.

Q Could you talk into --

A I lucked -- I said that, you know, I lucked into that position because they -- they got -- you know, signed a contract, and I was a civilian employee on the Air Force Base in Vienna. And, you know, it's the union. It's very well paying, very -- you know, easy hours. I'm always home. I'm -- you know. So that was very, you know, very nice. And I did that about maybe six years, six -- I did that up until I -- until my heart attack, so I don't --

Q And it was good money?

A Yes. Yes.

Q Okay. And so with that you were able to support, you know, the newest member of the family as well, Kaitlynn?

A Oh, yeah. Yeah.

Q So all the four of you were living together,

correct?

A Yes.

Q And you had mentioned -- so you had -- you had always -- ever since the age of 18 or maybe earlier. Were you working earlier than 18?

A Yeah. Yeah. Ever since -- when I was 15, 16, I used to work for -- over the summer I'd work for landscaping companies. They'd generally hire anybody and pay cash. So if you needed a job, you'd -- you just had to work. So then I had money.

Q Sure. Sure. So it sounds like from the age of 15 up until what -- what -- what -- how old were you when you had your heart attack?

A I was 31 when I had the heart attack.

Q Okay. So from 18 to 31.

A Uh-huh.

Q Thirteen years, right?

A Yeah. Yeah.

Q You had been working hard.

A (Nodding head.)

Q How many hours a week were you working?

A Forty. Plus, you know, with overtime, I would take any they gave me.

Q Sure. Sure. It had to be rough to be out of town with your family.

A Oh, no, this was still in town.

Q Okay. I gotcha.

A This was Commisso Paving.

Q Gotcha. Okay.

A Out of town -- I personally consider I'm always on the clock because I don't get to come home until the job's done.

Q Okay. And where were you when you had your heart attack?

A I was at home. I -- I -- one day, you know, for -- for -- for -- I was actually having it for three days. I didn't know what was going -- I didn't know.

Q John, could you just talk a little slower and -- we just want to make sure that you're heard.

A Yeah. I -- the heart attack, I was having it for three days. It was just this pain in the center of my chest. If I would cough or exhale really hard, the pain would go away. And, you know, on the third day I woke up and it was un -- it was severe. And I'd get out of bed, and the more I moved, the worse -- it just kept getting worse and worse. It was like my neck felt

like it was in a clamp. My arm hurt. My chest hurt. It was very severe. And as I'm coming down the steps, I got weaker and started to fall, and Mary was right there. She -- she helped me and called 911.

Q Okay. Took you to St. Elizabeth's --

A St. Elizabeth's Hospital.

Q Okay. And diagnosed you with obviously the heart attack but also -- what else? Anything else?

A Yeah, I had advanced coronary artery disease, which, you know, was the start of my health issue -- well, with me realizing I had health issues. I really didn't go to the doctor too much before that. I didn't -- I probably was not healthy for a long time, I just didn't know.

And also the -- you know, with the coronary artery disease, it's a -- it's a combination of poor health on my own part, you know, eating and not exercising, and I used to smoke, along with genetic -- genetics. It's hereditary. And what it does, like the inside of all my arteries are coarse, I guess is the way to explain it. It allows the -- you know, I have high cholesterol. It's plaque. It's in my bloodstream, and it allows it to attach to arteries and

build up until it clogs, and I had a hundred percent blockage. And I have other -- there's multiple blockages. There's still -- there's one that are below a certain percentage, so they just wait for them to get worse before they do anything, I guess.

Also the disease affects my brain. You know, I'm extremely high risk for a stroke. I -- well, I did have an issue with that. Also --

Q Can I -- can I stop you there. You said you did have an issue with that. And, again, can I just have you talk into the microphone. I don't know if you're able to move forward.

A I'm probably too tall.

Q Are you able to move the mic forward?

A Yeah. I don't want to break it.

Q So I know you mentioned that -- that you did have an issue with a stroke as well?

A Yes.

Q All right. Tell me a little bit about that.

A That -- that happened two-and-a-half months after this, why I'm here.

Q Two-and-a-half months after this incident?

A (Nodding head.) Yes.

Q And you were taken to the hospital?
A Actually it happened at my doctor's office. I was at a just doctor's appointment, and she noticed it and called an ambulance, my -- my primary physician, primary care physician.
Q Okay. And then -- so that -- I mean, we don't know, but that might have been something that was there during the incident but we're not certain?
A Yeah, there's -- we -- we don't know why or what I mean. It just -- it turned out -- I'm not even exactly sure what happened. It wasn't exactly a stroke. It was something with pressure and swelling in an artery. I don't even really understand.
Q You said in an artery, like --
A Like an artery inside my brain, something like it. I also have problems with blood pressure, so high blood pressure and, you know.
Q I know we've heard a lot -- or not a lot, but at least a little bit about some back problems?
A Yes.
Q And with these back problems, when did you start experiencing those?
A The back problems actually stem from an

injury in my early twenties. I fell off a ladder and injured my -- my lower spine. Actually all five where there's L1 through -- to S1, all five discs are herniated. Then I had surgery. They had to -- it was causing a -- I was falling down. I would just be walking and just fall. And they had to -- like because the nerve was pinched, and they had to fix it so it wasn't making my foot trip me.

Q Now, let me ask you, John, how does the issue with the heart affect your daily life?

A I mean, as far as what, like energy or stress or --

Q Everything.

A Everything. Yeah, it causes anxiety bad. It was way worse when I -- I was 31 when I had the heart attack, and my anxiety was -- the anxiety was so like severe. All I -- all day all I thought of was, man, I'm 31 years, I'm already dying, out of just constant fear of -- of my heart. And on top of that, it -- due to, you know, damage sustained during the heart attack, you know, my heart muscle was damaged because of lack of oxygen, so now my heart doesn't, you know -- as I understand it, it's kind of like dead muscle tissue

still attached to it.

Q Okay. And is there other things -- so, for instance, going up the stairs --

A Uh-huh.

Q -- tell me a little bit about that. Is that something --

A Okay. Another issue related to the coronary artery disease -- I don't how to say it -- it's atherosclerosis. Basically it's the heart disease but in my lungs. I have this plaque buildup in the arteries in my lungs, and my left lung is partially collapsed from lack of blood. The bottom portion of my left lung, it just shriveled up, no blood flow. So that -- also that goes with COPD. So there's -- so I do have problems getting oxygen when I -- you know, exercising or get excited or anything. So I almost instantly have breathing issues, you know, hard to catch my breath.

Q Would you say it's a pretty significant impact on your life once that occurred?

A Yes.

Q Okay. And how about with regards to the back, was that a pretty significant impact on your life

once that occurred?

A Yes, but I didn't -- you know, that's just pain. Like my doctor -- pain never killed anyone, so I just roll with it. You know, I have good days and bad days. It is what it is. I keep -- I don't let that stop me.

Q Okay. Okay. Now, I know that after the heart attack you were actually advised to not work for a while, and so I think there was a year or two --

A Yeah, it was two -- two years I had to -- I had to go to physical therapy to, you know, exercise and rebuild my -- my cardiovascular system; you know, lungs and heart; so, yeah.

Q And then at some point were you cleared to go back to work?

A Yes.

Q Okay. And --

A Well, light -- you know, light duty and part time, so --

Q I'm sorry?

A Light -- light-duty work.

Q Gotcha. And so once you were cleared to go back to work, did you go back to work?

A Yes, I did.
Q So you've been working your whole life. Heart attack, you're told you can't work.
A (Nodding head.)
Q As soon as you're told you can work, you go back to work.
A Yes.
Q To support the family.
A Yes.
Q Is that the way you were taught or is that just sort of --
A No, I was just -- I really -- I mean, I don't know, it's just the right thing to do. I -- I mean, that's just -- that's what I wanted, to have a family and take care of it, and --
Q Sure.
A -- that's my vision of -- or my idea of what -- what it's supposed to be like, I guess.
Q Sure. Sure. Okay. Now, you're back to work. This is -- you're now around, I don't know, what, 28, 29?
A No, I would have been 33.
Q 33, okay.

A It was about, yeah.
Q And at the age of 33 you then are doing what type of work?
A Driving, driving, transporting, you know, like supplies and equipment. Not really equipment but...
Q Okay. And, you know, let's -- let's fast forward a little bit. You continue to work but you continue to only be able to do it in sort of a part-time capacity; is that accurate?
A Yes.
Q Due to the heart condition?
A Yes.
Q From what I understand, there's also, I believe, like a stent in your artery; is that accurate?
A Yes.
Q Okay. I believe due to that heart condition there's also an enlarged -- and --
A Enlarged left --
Q -- I'm not a medical doctor --
A Enlarged left atria.
Q One more time.
A Enlarged left atria.

Q Okay. And what effect does that have?
A The left side of my heart is the side that -- it like -- it squeezes -- it doesn't work efficiently, so it has to work harder. And -- and what it does is it causes the -- the heart muscle to grow, and, you know, like it gets too big. I'm not real, you know -- I do enough -- I learn enough about it to -- but I'm not a doctor.
Q Certainly. Certainly. But is it something where your resting heart rate is probably --
A Yeah, my resting heart rate is usually around 80 beats per minute. There's also an issue when I exercise. Any time my heart rate gets above, you know, 105, it gets stuck there for sometimes long periods of time. I'll start sweating. I start -- even my friends, they make fun of me. They say, man, if Morgan thinks too hard, he sweats, so.
Q What's that?
A My friends, they say if Morgan thinks too hard, he sweats --
Q Yeah.
A -- so.
Q Yeah. Okay. So now as you're getting older,

you know, the family's growing up, you know, Kaitlynn's getting older, William's getting older, and then at one point you're -- you're -- you're back to where you're -- you're doing some travel --

A Yes.

Q -- every once in a while for work.

A Yeah.

Q Is that accurate?

A Yes.

Q And let's -- let's try to get a little bit closer to the date in question, okay?

A Okay.

Q And I'm going to start by starting this story with regards to at some point you had been advised -- at some point you had realized that Mary had stepped out of the marriage; is that accurate?

A Yes.

Q Okay. And you were out of -- where were you when that --

A I was in Jacksonville, Florida.

Q Okay. And -- and from my understanding, you asked Mary if she would, you know, not be at the house when you got home?

A I don't remember exactly how it went. Basically, you know, my daughter snitched her out.

Q I'm sorry?

A My daughter called me and told me that -- you know, what was going on. I -- I called Mary. We talked about it, and, you know, when I -- when I got home, she was gone. She never ever came back.

Q Okay. And I'm presuming, and I don't want to presume, but was this -- was this hurtful?

A It was devastating.

Q I'm sorry?

A It was devastating.

Q Yeah. And at first were you bitter?

A I would say hurt, you know. Honestly, I -- for a long -- a month I begged her to come home. I wanted her to come back; come home; you know, we could work this out.

Q Now, in all fairness, you know, was there a point where there was a little bit of bitterness, like a text or anything like that, where you -- where you were upset?

A I don't -- I don't remember. I don't believe so.

Q Okay. All right. And so we're getting now into the position where she's now living with who we know as Daniel Peek.

A Yes.

Q Is that correct?

A That's correct.

Q Did you ever have a problem with Daniel Peek?

A No.

Q How come?

A I mean, the truth is, to me he didn't even exist. I don't know him; I never met him. He's just -- you know, I didn't blame him for anything ever. He's just some guy that picked up a woman in a bar. I always -- you know, I always looked at it as Mary knew better than to do what she did.

Q Okay. And so did you and Dan -- Daniel Peek ever have any interactions?

A No.

Q Okay. Now, Kaitlynn was living with you for a while; is that accurate?

A Yes.

Q At some point from my understanding Kaitlynn left and lived with mom; is that accurate?

A Yes.

Q What was the reason for that?

A There was a -- okay. Kaitlynn, her -- my grandson's father and Kaitlynn were -- were definitely not meant for each other, and they -- they constantly fought. And the kid was -- well, my house got raided one day. I'm sit -- I'm just in my house, and there's ten cop cars in front of my house. The police are coming in. They're looking for him and his friend. And this wasn't the first time the police had been there pertaining to him. Also, you know, items had been stolen from my house which, you know, I'm pretty sure it was him. And I just -- I couldn't take it no more and she -- and I tried telling her, come on, Kaity, leave -- leave this guy alone; you -- you know, you can do better, you know. And she just -- you know, she was hung up on him and she couldn't let go. And what happened was she used to go stay with Mary on the weekends. One weekend she went over, and when she called for me to pick her up, I said, Kait, why don't you stay there for a couple weeks, you know, I need a break, I need to -- you know, it was just so much like drama involved.

Q Okay. Okay. And did she end up staying there?
A Yes, she did.
Q All right. And at this point does she have Little Willy or no?
A Yes.
Q Okay. And at this point does big -- does your son, Big William --
A Yes.
Q -- have Aries, or not yet?
A No. Oh, wait, Aries -- I'm trying to think. Oh, no, no, no. When -- when me and Mary split up, Aries wasn't born yet.
Q Okay. All right. And how far -- and so -- so is it accurate to say that Mary was already with Daniel when Kaitlynn went to go live with Mary?
A Yes.
Q Okay. And I guess this is where we start to get into some of the weekend family events.
A Uh-huh.
Q Okay. Can we talk about that?
A Yeah.
Q All right. So tell me kind of how that

started. Was it -- was it something that you spearheaded or --

A Just like -- like -- well, my son moved out. I didn't want him to move out, and like he said, I'd just randomly show up at his house. I missed him. We had a lot of fun together growing up. And it's -- you know, I -- like, you know, Megan used the words empty nester. I guess maybe that wasn't explained to me. You know, 'cause now, you know, Mary's gone, Kaity's staying with Mary, I live in the house alone, and quite boring.

Q True. Okay. That makes sense. And you mentioned Megan, and I know we met her yesterday, but can you just reiterate who exactly that is to you?

A Megan's my girlfriend.

Q Okay. And so at the time we're talking about when the family weekend dinners were going on, you were -- you were dating Megan.

A Yes.

Q But it sounds like she works an awful lot.

A Yes, she does.

Q Yeah. So was she able to come to some of these family dinners or was it more just you --

A It was more just us. She did -- she did attend a few.

Q Okay. Okay. So tell me the normal -- tell me the normal way that the family dinner would occur on a Sunday or Saturday or whatever it was.

A Sat -- yeah, whatever day. I would go over. I would drive, pick up Kaity, and then drive to William's house, and we'd spend the day together, you know, dinner. William has a large fenced in yard. The kids can just run wild. The neighbor has donkeys. Kaity used to go play with the donkeys. It's just a -- and to me I just -- I don't like nothing more than seeing them all together.

Q Sure. Sure. And -- and it sounded like from some of the testimony yesterday -- did you have a pretty close relationship with -- with the little -- the grandchildren?

A Oh, yes, I did.

Q Okay. And why do you think you had such a special relationship with them?

A I -- I -- it's something that I didn't experience as a child, like close family, and, you know, it's -- it's very -- you know, it's important to

me to -- for us to get together, and it's -- I mean, it's just -- it's fun. It just seems like, you know, the thing to do.

Q It almost seems like it's -- it's, you know, something that you literally were just looking forward to every week.

A I'm sorry?

Q It almost seems like it was the thing you were looking -- looking forward to every week.

A Oh, yeah, yeah, every week that was the highlight -- really that was -- 'cause I'm bored all week long. I -- you know, I only work part time so I don't -- I'm not always working. I'm just sitting at home unless I --

Q And it sounds like they had a lot of affinity towards you, towards Papa.

A Oh, yeah. Yeah. They -- you know, Little Willy, he's my -- he's my little bestfriend. He -- a wild little character. He's fun, very energetic. And, you know, Aries -- again, Aries, she loves me to death. She's -- she's a -- she's shy like Kaity used to be, and she's -- but -- and that's -- that's why like she always came up to me; she always loved me. But she's

real shy. Around other people, she don't want. So I, you know, feel -- I don't know.

Q It sounds like you -- tell me, is it true that you had a nice relationship also with Megan's, your new girlfriend's --

A Yeah.

Q -- children?

A Yeah, Megan has two wonderful daughters, and they're both -- they're -- they're older. They're -- well, when I met her, they were teenagers. And, you know, once -- once we got to know each other better and got comfortable, they, you know, they -- teenagers can be entertaining and funny, and they're very -- I mean, she -- she -- she couldn't have done a better job parenting them. They're -- they're, you know, very, very good kids.

Q It sounds like they're good -- they're good kids.

Okay. So let's -- let's talk about moving forward a little bit. And, you know, at some point -- at some point there's a wish by Megan, right --

A Yeah.

Q -- for a divorce?

A Yes.
Q An actual formal -- now you guys were separated --
A Yes.
Q -- is that accurate?
A Yes.
Q Okay. And at some point Mary -- or I'm sorry, Megan wanted a formal divorce.
A Yes.
Q So tell me about that because I know we've heard about this phone call. We haven't --
A Yes.
Q -- necessarily heard it from your point of view.
A Yeah, is wasn't --
Q Just tell me what occurred.
A Okay. It wasn't just -- I mean, Megan, you know, wanted the divorce, but it wasn't just Megan. You know, we -- we both wanted to discuss furthering our relationship, I guess, I don't know, which if I'm still married, can't happen, so. You know, let me -- time to get on this divorce, get it done.
She -- she brought the paperwork. She helped

me fill it out, and I needed information. I had to mail it to Mary for her to fill out her portion, and that's when I called Mary, and she didn't answer. So I texted, I said, hey, can you give me a call, it's kind of important. And that's -- and then a little while later the phone rings. I think, you know -- Mary comes up as the caller. I answer, but it wasn't -- it wasn't her. It was Dan.

Q How did Dan sound?

A Drunk, upset. And at first, you know, who's this? And I said, I don't know, you called me, who's this? And he said, you called my girl's phone. I said, no, I called my wife's phone. You know, I'm just being a jackass. And, you know, he got -- you know, he got upset, and it got -- you know, I -- I -- I kept just -- the more upset he got, the more I poked the bear.

Q The more what?

A The more I poked the bear.

Q Are you proud of that?

A No, I'm not.

Q Do you feel like it was immature, rude?

A Yeah, it was very --

Q How would you classify the way you acted?
A It was very immature, but at the -- you know, at the time I wasn't -- I didn't -- you know, it was just a guy on the other end of the phone. I didn't -- I didn't expect anything to ever, you know, come of it.
Q Did you think he would even remember?
A No, I -- like I said, I -- you know, I thought he was drunk and I'm fighting with a drunk guy. I don't think -- he probably wouldn't be jealous. He probably won't even remember this tomorrow, so.
Q At this point was there any threats made towards you by Dan?
A Yes.
Q Okay. Such as.
A He told me he was gonna kill me. He threatened -- he threatened -- he said he wanted to fight. He says, you know, come over here and I'll kick your ass right now. And I said, no, I'm not going there; you come here. He said -- you know, he said, no, I know you have cameras; I'm not coming there. I said -- you know, I said, I don't know where you live, I can't come there. He said, you know where I live. You know, I've been there to pick up Kaitlynn. And I

says, you know what, it's nighttime. I can't remember. What's your address? And he told me the address. And I laughed. You know, that's all I needed.

Q Now, you said there was -- correct me if I'm wrong, but I believe you said there was an invite to go over there to fight him?

A Yes.

Q Did you accept that invite?

A Oh, no. No, I didn't.

Q Okay. And we've heard about the fact that you are a gun owner.

A Yes.

Q And that you have been a gun owner since '05?

A Yes.

Q And that you have carried your weapon intermittently from '05 because you had your CCW, correct?

A Yes.

Q Now, forgive me, is a CCW something you have to recertify?

A No, you don't recertify. You -- initially you go and take a -- it was a two-day class, eight hours a day for two days. There's -- the first day is

like a written part, and then the second day you have to shoot targets and different, you know -- basically -- I mean, the main thing is -- is proper gun handling, you know.

Q Okay. And that was back in '05.

A Yes, 2005.

Q And you had never issues with -- did you ever have any issues with anybody else where you had pull -- where you thought you had to pull out your weapon?

A No. No, I did not.

Q And, in fact, did you ever even wear your weapon often?

A No. No. It -- I don't know, any -- it's uncomfortable. It's kind of hard to carry a concealed gun around. It's not -- especially in the summertime, you're wearing light clothing, and wintertime I probably would have carried it more often than summertime.

Q But at some point you started to sort of carry it religiously --

A Yes.

Q -- is that accurate?

A Yes. After the incident that was discussed

on Wilson Avenue.

Q Can you talk a little louder, John.

A Yeah, I was just out. I -- I bought -- you know, I just bought a car, and I went for a ride. I was going to my buddy's shop, a mechanic. I was going to my buddy's mechanic shop to, you know, hang out with him, show him -- it was an Avalanche. And on my way there, a car sped up, and I -- you know, I seen him in the mirror coming, and they were just passing me, I thought. So I edged over towards the curb a little to let -- let them go around. And I'm not looking in the mirror anymore. I'm just driving, and all of a sudden the -- the glass exploded right next to my head, and I don't know why -- or why. I look over and the man --

Q What do you mean the glass exploded?

A The window, the door glass, the window. It was -- it was --

Q The driver's side --

A The driver's side window, yes.

Q Okay.

A And it exploded. And I -- I look over, and the man is from me to her. He's standing out of the passenger's side window of the vehicle pointing his gun

shooting, and, I mean, he literally was this far away, (indicating). And I don't know how I'm here, to be honest with you. And like I said, they shot and shot and shot. And I remember thinking, man, is it ever going to end? And they shot -- they shot the tire out, and I lost control of the vehicle and went off the road and stopped. And at this point they -- they kept speeding, they kept shooting. And I -- I got -- I had my seatbelt on, and I -- I literally broke the chair and the center console to -- to get down far enough to hide or to protect -- you know, protect myself. And I thought it stopped. I sit back up. And as I'm sitting there, the last bullet hit the windshield and stopped in the glass right in front of my face and I...

Q There must have been an angel on your shoulder that day, huh?

A Yes.

Q Yeah. So no major injuries.

A No, no major injuries. One, I was -- it was -- it was wintertime. I was wearing a Carhartt. You know, they're a canvas coat. One bullet did come through the door and hit me, and it never went through my coat. It just bruised my side. There was a whole

bunch of bullets stuck in -- you could see them in the plastic of the door. All the windows were shot out. Everything -- I mean, there was -- there was just bullet holes in the fenders, the doors, the hood. They were in the headrest. There was two bullet holes in the headrest behind my head, and there was one in the ceiling above my head.

Q All right. And so -- and so I believe at some point you were actually taken to the hospital because they were concerned about --

A Yes.

Q -- your heart condition?

A Yeah.

Q That maybe you were going to have a heart attack.

A The ambulance driver -- or the ambulance, the EMS people, they -- they had me in the ambulance. You know, I called 911. The police came. They put me in the ambulance, and they refused to let me back out of the ambulance. And I -- and I remember the -- the EMS, he was telling me, he said, I can't let --

MR. ANDREWS: Objection.

A -- you go to the hospital --

THE COURT: Sustained.

A Oh.

Q Yeah, with -- with that --

A Okay.

Q -- you don't need to get into what they said, but are you aware if you were taken to St. Elizabeth's for a heart --

A A -- they were suspecting I was having cardiac arrest. My blood pressure was 200 over 170. I was panicking; I had chest pain.

Q Okay. So let's -- let's stop there. I believe we've covered that sufficiently. Thank you, John, for sharing that with us.

So then after that is it fair to say that's when you started carrying a firearm religiously?

A Yeah. Okay. After that happened, I was in the hospital. One of the -- actually it was the first police officer to come to the scene. He came to the hospital and talked, and I don't -- I don't know if he came -- because he didn't really question me -- or they asked me what happened at the scene. He really didn't ask me -- at the hospital I -- I get the feeling he was just coming to check on me like. And he told

me, he says --

MR. ANDREWS: Objection.

THE COURT: Sustained.

A Okay. I'm sorry.

Q Yeah, yeah. Yeah, John --

A But --

Q -- please just kind of in general just --

A I was --

Q Refrain from what other people --

A Okay. At -- at that time I was advised maybe to get my CCW and buy a dash camera.

Q Okay. So did you buy a dash --

A I bought a dash camera, and I already had my CCW. I went -- like I said, I bought a holster and a small pistol that was a lot easier to carry.

Q And at that point did you install the dash cam?

A Yes.

Q Okay. And thus the reason for the dash camera that we have in this case; is that --

A Yeah.

Q -- fair to say?

A Yeah.

Q Okay. So, John, were you after that carrying your gun religiously on a daily basis when you left the home?

A Yes.

Q Okay.

A Yeah. Right after the incident I -- I didn't leave my home for two months.

Q Yeah. Yeah. But no matter where you went after that --

A No matter where I went after that I -- I always had it with me.

Q Okay. And so we've discussed -- we've discussed the fact that you had this -- this not so nice phone call with -- with Daniel Peek.

A Yes.

Q Accurate? And then what happened after that with regards to family visits? Was there any change in that sort of pattern?

A Yeah. Well, I didn't realize it at that time, but, you know, Kaitlynn -- we'd make plans. We'd have everything set up. Sunday I'd call or text her and say, hey, you know, when you gonna be ready? And she'd say, ah -- she would always have an excuse. I'm

sick; Willy's sick; we have to go somewhere. Just -- just making excuses. We had COVID, and that bought her three weeks.

Q This was six weeks to two months --

A Yes.

Q -- before the incident?

A Yes.

Q Was there times in between the phone call and the date of the incident where you did pick up Kaitlynn?

A We -- we -- I can't say for sure. I believe that I did.

Q Okay.

A And -- (nodding head).

Q Okay. So you at some point -- at some point plans are made to have a family dinner again on July 31st of 2022; is that accurate?

A Yes.

Q Who makes those plans?

A Like we do collectively as a family. You know, we'd work it out. I'll talk to William and Lisa and Kaity, and we work out what day or time works out for us.

Q Okay. And the plan was to -- was the plan to go pick Kaitlynn up?

A Yeah, the plan was to pick Kaitlynn up and go to William's as usual.

Q Okay. So kind of walk me through that. Do you -- do you get a text? Did you get a call? Did you call her? How --

A With Kaitlynn it's always -- everything is Messenger. So, yeah, I got like a text through the Messenger.

Q Okay. And -- and at some point you get in your vehicle -- you were excited.

A Oh, yes.

Q Okay. Tell me why.

A This weekend we had plans -- we were going to have chili dogs, and I remember, you know, I can't wait to see these little babies try to eat chili dogs, this is going to be funny. And just, you know, I'm excited. I just -- I love getting them together.

Q Okay. So she at some point -- you're at some point given the indication to go pick her up; is that accurate?

A Yeah, she texted me and said I'm ready.

Q Okay. So --

MR. HENDERSON: Your Honor, if we could just get set up just to show a little bit of video.

THE COURT: Sure.

MR. HENDERSON: Just a couple -- couple seconds.

So, Your Honor, we will be --

Q Now, John, while she's -- while we're working on getting this up, what was the normal procedure for you when you went over to pick up Kaitlynn?

A I would just drive over and pick her up.

Q Okay.

A There was no special --

Q Did you pull in the driveway?

A Yeah, yeah. I normally pulled in the driveway unless -- sometimes Mary or Dan's car would be in the driveway and I couldn't, I had to stay on the road.

Q Okay.

A But, you know, I always pulled in the driveway because I don't want the baby and my daughter in the street, you know, safer.

Q Sure. And then would -- would you go up to the door, were they --

A No, no. I'd just pull up and Kaity came out.

Q Okay. And what would she usually come out with?

A Her car seat, the diaper bag, William, her bag, any -- you know, that's pretty much it.

Q Okay. So a handful, especially with a baby --

A Yeah, yeah.

Q -- is that accurate to say? Okay. So I believe --

MR. HENDERSON: Your Honor, can we -- would you mind if we turned the lights down?

THE COURT: No.

MR. HENDERSON: Sure. Thank you.

Q And, John, I'm going to show you what's previously been marked Defense Exhibit E, video number 122.

MR. ANDREWS: Excuse me. One moment, Your Honor.

(WHEREUPON, a discussion was had among counsel off the record and out of the hearing

of the jury and court reporter, after which the proceedings continued as follows:)

MR. HENDERSON: So we will be showing -- can you turn up the volume a little bit?

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q And, John, could you explain to us what this is? Explain it to the folks of the jury. I'll try to get out of the way here.

A That's the -- when I'm leaving my house to go pick Kaitlynn.

Q Okay. Now, down here at the bottom -- and I don't want to confuse folks -- this says 7/1/22. Was it just not resetting the dash cam to the right date or how -- how was that --

A No, I -- I didn't set the -- the date on there.

Q Okay. So your testimony is, this day, this is the day you were going over to pick up --

A Yeah, this is the day.

Q And where are we right now?

A In my driveway.

Q Okay. And you're backing out at this point?
A Yes.
Q Okay.
(WHEREUPON, the video was played, and the proceedings continued as follows.)
Q So do you always -- now we heard a little --
MR. HENDERSON: Can you pause it for a second? Go back a second.
Q We heard a little bing there.
(WHEREUPON, the video was stopped, and the proceedings continued as follows:)
Q What is -- what is that bing?
A That's my dash cam turning on --
Q Okay. So you're able to --
A -- like the noise it makes when I -- huh?
Q Is it fair to say you're able to audibly hear when your dash cam --
A Yes.
Q Okay.
(WHEREUPON, the video was played, and the proceedings continued as follows.)
Q And, John, is this the way you normally travel to go pick her up?

A Yes.

Q Is it pretty much the same way every time?

A Yeah, every time the same way.

MR. HENDERSON: Go ahead and pause it.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

MR. HENDERSON: And, Your Honor, let the record reflect I'm going to be showing the witness what has previously been marked Defense Exhibit E, video number 124.

(WHEREUPON, a discussion was had among counsel off the record and out of the hearing of the jury and court reporter, after which the video was played and then stopped, and the proceedings continued as follows:)

Q Now, John, I just want -- we're going -- we're going to hear something on here other than your taste in music, but we're going to hear something on here, okay, and I'd like you to -- we're going to pause it at that point. Is that all right?

A Okay.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. HENDERSON: Pause it.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Did you hear that, John?

A That's the sound of my phone receiving a text.

Q I'm sorry?

A That's the sound of my phone receiving a text.

Q All right. Was that the text from Kaitlynn that day?

A Yes.

Q And that was the text that said what?

A Something like go to the corn -- or like, LOL, or go to the corner, there's an issue now, LOL.

Q Okay. And what does LOL mean to you?

A Laugh out loud.

Q Okay. At this point were you thinking there was a huge issue or were you --

A No, I was confused as to why she would say that.

Q Okay. What -- did the LOL add any significance to that?

A I mean, it -- I mean, it didn't sound serious.

Q Okay. And let's keep playing this, if we could.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Now, John, you heard a phone start ringing?

A Yes.

Q What was that?

A Me trying to call Kaitlynn.

Q Okay. So -- so we heard your explanation that that ding was the text from Kaitlynn. We heard what the text -- the content of the text. Did you hear yourself on that audio say anything?

A No.

Q So hypothetically you didn't say, what the hell?

A No, no, no.

Q Or, you know, what's going on over there or anything like that?

A No, it wasn't -- I had no reason to be like upset or anything. I just was curious why she would

text that.

Q Okay. And is it fair to say that you also texted back?

A Yes.

Q Okay. And do you remember what you texted back?

A I told her just wait at the house, I'd be there.

Q Okay. And what was your assumption of what was going -- what she was doing at that point?

A I was -- I don't know. I didn't know what she was doing.

Q Okay. And is that part of the reason why you called her?

A Yes.

Q Okay. So --

MR. HENDERSON: Can you play just a couple seconds?

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. And, again, John, who was this a phone call to?

A To Kaitlynn, my daughter.
Q Okay. And for what reason?
A To clarify the text message.
Q Okay. And clearly she didn't answer; is that --
A No.
Q -- an accurate statement?
A Yeah, she didn't answer.
Q So what did you go about doing at that point? What was -- what did you have in your mind that you were going to do?
A I would just keep driving over.
Q Okay. And do what?
A Pick her up.
Q Now, as you got the text and as you call her, you know, once it went to voice mail, we see that there's about 19 seconds left on this video, correct?
A Yes.
Q Now, you're aware, are you not, the next video is the one where the incident occurs?
A Yeah.
Q Okay. And so how -- you know this area well; is that accurate?

A Yes.

Q You've traveled this many times.

A Yes.

Q So how far away, you know, roughly at this point are you from the home where Kaitlynn resides?

A Three minutes.

Q Okay. Maybe even less?

A Yeah, maybe less.

Q Okay. Now, John --

MR. HENDERSON: Judge, let the record reflect we're going to be playing what's marked as Exhibit E by the defense, and I believe also the prosecution marked it as an exhibit at some point, video --

MR. ANDREWS: Your Honor, just for the record, State's Exhibit --

(WHEREUPON, the court reporter interrupted the proceedings.)

MR. ANDREWS: For the record this is also State's Exhibit 61.

MR. HENDERSON: Thank you.

(WHEREUPON, the video was played, after which the video was stopped, and the

proceedings continued as follows:)

Q Okay. John, can you tell me what's going on here? Obviously you're driving over, but can you tell me a little bit about what's going -- just what you see here.

A Well, I'm just driving up the road, traffic.

Q Okay. And what do you see in front of you?

A The -- that white truck.

Q Okay. And what do you see to the left of you?

A Another white truck.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Did you hear yourself say something there?

A Yes.

Q What did you say?

A Are you fuckin' kidding me?

Q And why did you say that?

A They're -- in my opinion there was not enough room for him to squeeze in there, and there was no traffic behind me, and I was just like, you know, come

on, dude, there's room behind me, why did you have to squeeze -- you're not getting anywhere faster.

Q Okay. And did you -- did you happen to see where this individual was before or after or what type of driving this individual was engaging in?

A I'm -- I'm sorry?

Q Did you happen to see where this individual was before or after or what of -- or what type of driving he was engaging in?

A (Shaking head.) I don't -- he was just driving.

Q I'm sorry?

A He was just driving. I didn't --

Q Did you consider it rude? Did you consider it --

A Oh, yeah, yeah. Yeah, like I said, in my opinion he didn't have room to squeeze in there, you know. I mean, kind of a inconsiderate driver.

Q Okay. So we then kind of continue to play this just for a little bit.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q But even though you kind of had this little, you know, I don't want to call it an outburst, but you had a little issue with his inconsideration, correct?
A I mean -- yeah. I mean, it really wasn't an issue.
Q But it seems like you're still -- you're not revving up on --
A Oh, no. No.
Q -- on his butt, right?
A No, no. I even backed off with the two second rule.
Q Okay. So you were giving him plenty of space --
A Yes.
Q -- from what it looks like; is that accurate?
A Yeah, yeah. When I drive, I mean -- you know, when they pass an object, count to two seconds before I pass it. That's -- that's how far you're supposed to be behind the vehicle in front of you.
Q Fair enough. So I guess the point -- one of the points I'd like to make is you received a text message from your daughter, correct?
A Yes.

Q And there's -- you don't say anything at all.
A No.
Q You express zero anger or you're not upset or anything; is that accurate?
A Yes, that's accurate.
Q However, we have a man that cuts you off and you do express some dislike.
A Yeah.
Q Is that accurate?
A Yeah.
Q Okay. Now, John, I'd like to fast-forward a little bit and get into the date of the incident. Is that okay with you?
A Yeah.
Q All right. So I know we've seen this quite a few times, so I'm just -- if it's okay with you, I'm just going to go to sort of the time you get here in the driveway, okay?
A Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. HENDERSON: Now actually -- can we

turn the lights back on? Are you guys able to see better with the lights on? Lights on, lights off?

JUROR: It doesn't matter?

MR. HENDERSON: It doesn't matter?

Okay. As I'm getting older, I'm trying to like -- my eyes are like...

Q All right. So, John, as you're driving down the street here, are you -- are you starting to notice anything as you're driving down the street?

A Yes.

Q Okay. And what are you noticing?

A I noticed Dan on the porch.

Q Okay. And is that something you had experienced before?

A No.

Q Was he normally outside?

A Sometimes. I mean, they -- I mean, there was plenty of times I went over they barbecued; they have Cornhole set up in the backyard; they're playing that.

Q And during those times was there any issues, confrontations?

A No, nothing. Nobody really even looked at

me.

Q Did they ever come to your car?

A No.

Q Did you ever get -- go out of your car and say, hey, guys, can I get in a game of Cornhole?

A No.

Q All right. And it was more just waiting for your daughter and Willy?

A Yes.

Q So as you're pulling down, did this seem a little bit odd to you?

A Yes.

Q All right. So as we move forward here -- and I know it's difficult to see in the video.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q As -- as we were moving forward there, was there any action that Mr. Peek was taking as you're approaching the driveway?

A Yes.

Q What action would that be?

A He appeared to be -- he's moving fast,

aggressively. He was clearly angered.
Q How did you know that?
A Just his -- the way he was carrying himself. The way he's carrying himself. He's -- you know, he's putting his arms up and just menacing like. I don't know how to describe it.
Q Would you -- would you consider it out of behavior compared to what you've normally seen?
A Yes. Yes. I've never seen any aggression from anybody over there.
Q I'm sorry?
A I said I've never seen any aggression from anyone over there.
Q So at this point we're pulling in the driveway, right?
A Yes.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Now, here we are. Now what's happening?
A As I'm pulling in, he -- he's starting to come down off the porch.
Q Well, are you able to see him right there,

(indicating)?

A I did -- yeah, I see him.

Q Okay.

A He's -- you know, he's coming over towards me.

Q Okay. And you're thinking to yourself what?

A I really didn't know. I -- you know, what now? What's going on?

Q Okay. And as we move forward just a little bit more --

(WHEREUPON, the video was played, and the proceedings continued as follows:)

Q As we move forward a little bit more, you pull in now, and you're here, and tell me about what you see here?

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

A Well, at the time I didn't realize, but he's closing a gate that's on the porch.

Q Say this again, John. Please talk into the mic.

A At the time I didn't realize, but he was closing a gate that's on the porch to keep the dog up

there.

Q What do you mean you didn't realize it at the time? You've been over there a million times.

A I've never seen that gate before. I don't think it was there.

Q Do you -- are you trying to say that they maybe had just put this gate in?

A Possibly. I just -- I'd never seen it before.

Q Okay. So in what position is Dan right now?

A He has his back to me.

Q And what in your mind -- what is going through your mind at this point?

A I don't even really remember. It was -- I mean, he's -- he's coming at me. He clearly wants to talk to me or, you know -- he clearly wants to interact with me.

Q He's coming off the porch for something.

A Yeah.

Q Okay. Did the fact that he turned around have any impact on you or your thinking?

A Yes.

Q Okay. Can you tell me that?

A Well, I mean, very shortly there -- as I exited the car, I could see what I now know was a gate, but it just -- I didn't know what it was. It was just a board. It was just a board. I -- I have no clue. I didn't know what it was at the time.

Q Okay. So --

A I just seen something in his hand like a piece of wood or a board.

Q Okay. You now know that's a gate.

A Yes.

Q Okay. So you were mistaken --

A Yes.

Q -- is that a fair -- obviously.

A Yes.

Q And now, John, I'd like to talk to you a little bit about this because you pulled in that driveway a little bit fast, didn't you?

A Yes.

Q How come?

A 'Cause I wanted to get, you know, my seat belt off and get out of the car.

Q Why?

A I -- I -- you know, in a vulnerable position,

you know. I was already -- I'm in a vulnerable position. I mean, I already have, you know, the shooting. I was -- you know, I'm uncomfortable.

Q And did you feel at this point there was a level of aggression shown?

A Yeah. Yeah, there was.

Q All right. So let's -- let's fast-forward just a little bit. Did -- by the way, did you have any idea at this point what he was coming to talk to you about or --

A I think at this point I was kind of starting to put two and two together --

Q Okay.

A -- you know.

Q And -- and let me ask you this: I know you said that you pulled in the driveway a little bit fast.

A Yes.

Q Okay. If you think there's a level of aggression from Dan, why didn't you just pull out?

A I didn't know where my daughter and grandson were.

Q Say that one more time.

A I didn't know where my daughter and grandson

were.

Q Okay. And what does that mean? Does that mean you were -- tell me what that means.

A I mean, well, this -- this guy's coming at me aggressively. I -- I don't see Kaitlynn or William, and, you know, I don't know where they're at. So I'm not just going to leave and leave them there. I don't know if they're in danger. I don't know.

Q Okay. And do you know him to have ever exhibited erratic behavior in the past?

A Yeah, just --

Q Okay. So was that part of what went into your assessment?

A Yeah. Yeah. Yeah.

Q And -- okay. So let me ask you this: If you would have seen where Kaitlynn was, if she was -- now --

A Yeah.

Q -- hindsight 2020 --

A Yeah, had I seen Kaitlynn --

MR. ANDREWS: Objection.

THE COURT: Sustained. Can I see counsel?

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

Q I don't remember where we were. Did you know where Kaitlynn was at the time?

A No.

Q Okay. If you had seen Kaitlynn, would you have stopped and picked her up?

MR. ANDREWS: Objection.

THE COURT: Sustained.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Now, what do you see going on here?

A At this point, yeah, I'm pretty clear he's not coming to talk to me. He's taking his chains off. He's shouting, swearing. He's taking his chains off. He's shouting and swearing. He's, you know, he's very -- he's hostile at this point.

Q Okay. And what are you doing?

A Yeah, I'm getting out of the car -- or I'm

probably all the way out at that point.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. HENDERSON: I'm sorry, I screwed that up. All right, stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q So what does it look like he's doing here?

A Preparing to attack me.

Q Okay. Do you see him doing anything with --

A Yeah, he's like taking jewelry off.

Q Okay.

A You know.

Q Are you out of the vehicle at this point, do you know?

A Yes.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. Now, what just happened there?

A I fired a shot.

Q Okay. Where did you fire a shot?

A Into the ground.

Q What kind -- what kind of shot was that?
A A warning shot.
Q What was -- what -- what was it meant for?
A In my head I just shot a gun and he was going to run away.
Q One more time.
A I mean, I just shot the gun and he was going to run away.
Q Okay. And did that happen?
A No, it didn't.
Q Did it deter him?
A No, it didn't.
Q Did it make him run?
A No.
Q Was there anybody else around at this point?
A No.
Q If you had wanted to, could you have intentionally shot him at this point?
A Yes, I could have.
Q Now, I'm going to play this fast first, okay, and then we're going to go back and slow it down, all right?
A (Nodding head.)

Q Are you ready, John?

A Yeah.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Did you see that?

A Yes.

Q Okay. What did you do there?

A Okay. I mean, at this point, you know, he didn't flee.

Q (Indicating.)

A He didn't flee; he didn't run. It's not like I could just press pause and figure out what to do here. I just -- now at this point like it's gonna be a fight, we're gonna fight. And I swung and hit him. As I did, as -- you know, as I'm swinging, you see the gun, it was in my hand. And, I mean, to break down frame by frame, you see I relax my wrist, arch back a little bit, and let it go, and throw the gun to the side.

Q Okay. Is it your testimony here in court today that you intentionally threw the weapon?

A Yes, I intentionally.

Q Okay. So did you ever have any -- did you ever purposely try to hit Mr. Peek with the weapon?
A No, I did not.
Q Do you feel like you were in a way doing the opposite of that --
A Yeah.
Q -- by throwing the gun away?
A Yeah, actually -- as I said, as -- as it's happening, I realize I can't hit -- I can't hit this man with a steel gun that's -- you know, he's unarmed. He doesn't have a weapon. You know, I now realize that that wasn't a board in his hand, it was a gate.
Q Okay. And -- please.
A And, you know, he didn't have a weapon, and I -- I didn't need a weapon, you know. This is a fight now, not -- lethal force wasn't required.
Q Would it be accurate to say you felt this was going to be a man on man, one on one?
A Yes, it's just man on man.
Q Let's have it.
A Let's have it out, see what happens.
Q Okay. And we're going to just slow this down a little bit, John. I'd just like to replay it just

one more time. We don't have to go through it a million times, okay?

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Now, this depiction right here of what we have paused --

A Uh-huh.

Q -- is this sort of what you mean by, you know, your wrist starting to come back?

A Yeah. Yeah. You could see my finger is off the trigger. I'm already loosening my grip.

Q Okay. All right. And tell me -- yell -- yell pause when you feel like you release it, okay?

A Okay.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

A Pause.

(WHEREUPON, the video was stopped and the proceedings continued as follows:)

Q Yeah. Okay. So this happened very fast.

A Yes.

Q Okay. Now, as you're doing that, you've

explained what you -- what -- a little bit about your process. This would be a one on one, man on man. The gun's thrown away at this point. Now, explain to me what's going on and what you see here.

A All right. I -- like I said, there's just -- very, very fast. It's not like I can just hit pause and figure out what to do. I just -- in my head I could jump on him and use my weight, he ain't gonna be able to get up, and Mary's gonna come out, the neighbors come out, and somebody's gonna call the police and...

Q Okay. So what position is he in at this point?

A He's -- he's slightly turned away from me.

Q Okay. And did you feel that was an advantageous position for you?

A Yeah. Yeah. That's -- you know, he turned away from me, I can hug him and fall, you know, crush to the ground, and, I mean, I'm a big guy. I'm hard to pick up.

Q Yeah. Okay. All right. So we're just -- we're just going to play this a little bit more and you can just tell me what happens.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Now, is this what you meant by trying to accomplish your goal of get him to the ground --

A Yeah.

Q -- using your weight?

A Yeah, I figure I'm on top of him, he'll be stuck.

Q And how much did you weigh at that time?

A Approximately 300 pounds.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Now, we see your plan sort of go awry, is that accurate to say?

A Yes.

Q What happens here? Explain to me what's happening in this?

A As -- you know, as we went down, he was able to roll and kind of get out of the bear hug.

Q Okay. All right. What position are you in at this point to your knowledge?

A I'm just, you know, laying on my side -- you know, falling to my side to the ground.

Q All right.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q At this point tell me what's -- what you see.

A I see someone else -- well, now I know it's Daniel, Jr. -- coming down the steps.

Q Okay. And what -- what position do you see Mr. Peek, Sr.?

A He's on -- appears to be getting on top of me.

Q Okay. Was he able to get away from the grip that you -- or the weight that you put on him?

A Yes.

Q Okay. At this point do you still believe this is just going to be a -- we're going to have at it and whoever bests each other is what it is?

A Yes. Yes.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the

proceedings continued as follows:)

Q Okay. Tell me what happens or what you see right here?

A At that point I felt a hefty blow to the back of my head.

Q Okay. And who was that by?

A Daniel, Jr.

Q And can you tell me if -- what position Daniel, Sr.'s, in?

A He's above me looking down at me, facing down at me.

Q And from what you described as a hefty blow, what would you describe that as? Was it like a kick, a stomp, a --

A A kick.

Q Okay. And do you remember feeling anything at that point?

A Pain.

Q Okay. And was there any other physical issues that occurred as a result of that?

A I mean, I seen stars.

Q Okay. Okay. Do you remember your -- do you remember your head ringing at all?

A Oh, yeah. Yeah.
Q Okay.
A Yeah. I mean, it's -- it's very -- it's hard for me to describe.
Q I understand, but we have to get through this --
A Yeah.
Q -- okay? So if you could just, please, describe it for me what -- what -- what exactly you're seeing and how -- what effect it had on you, I'd appreciate it.
A Yeah, I mean, it was, you know, a solid hit. I seen, you know, a flash; stars; it goes dark. I'm, you know, I'm confused. You know, now I know, you know, there's two people on me now, and, you know, I'm just -- I don't know what to do. I'm just like, ut-oh.
Q You said there was two people on you now.
A Yes.
Q Was that a surprise to you?
A Yes.
Q And did you know if a third was coming?
A No, I didn't know a third or anyone else. All I know is I was getting beat.

Q Did you know who this person -- the second person was?

A No, I did not know who the second person was.

Q Did you know if they had formal martial arts or UFC or training fighting?

A No, I knew nothing at all about --

Q Did you know if they had a weapon?

A No, I did not.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Tell me what -- oh, I don't know what happened.

MR. HENDERSON: Thank you.

Q Okay. John, can you just explain to me what's going on here from what you see?

A I'm being choked.

Q Okay. Does that mean -- by whom?

A Daniel, Jr.

Q Okay. And where is Daniel, Jr.?

A Behind me.

Q And how -- would you classify him as on your back or --

A Yeah, he was -- he was hanging off of me.
Q Okay. Do you -- do you -- from -- from -- I know you said you had just gotten kicked or stomped or whatever it was. Do you -- do you even remember this?
A No, I don't remember the whole -- after the first solid hit, it's very cloudy, if at all.
Q Do you remember pieces?
A Little pieces, yes.
Q Okay. Is this a piece that you remember or --
A I don't know. I don't --
Q Yeah, that's fair enough. And if you don't know, you just answer I don't know. So we'll move on a little bit.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q And now what's happening?
A They're forcing me to the ground.
Q Okay. Did you feel you had the ability at that point to get up?
A No. I was trying. I couldn't pick back up.
Q Okay. Do you remember trying?

A Yeah, I do remember trying to stand up.
Q Okay. Did you -- did you feel like you were in a bit of a survival mode at this point?
A Yes. Yeah.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. Now where are you, John?
A I'm on the ground.
Q Okay. And Dan Peek, Jr., is where?
A Above my head, like --
Q And Dan Peek, Sr., is where?
A Above me.
Q Okay. When you watch this back as we're doing now, and I know you've done that before, do you remember all these moments?
A No. At the time, no, I don't remember. I mean, I remember watching the video, but I don't remember everything that happened.
Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q What just happened there?

A He stomped on my head.

MR. HENDERSON: I'm sorry, I'm trying to do the best I can.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. What was that right there?

A That's the stomp.

Q By Sr.?

A Yeah, by Sr. a stomp to my head.

Q One more time.

A A stomp to my head.

Q Like a --

A You know, his -- he stomped on my head like with, you know, his foot.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q And now do you see what Mr. Peek, Jr., is doing?

A Yes.

Q What's he doing?
A Punching.
Q Punching where?
A In my -- my head.
Q Anywhere else?
A I -- I can't say.
Q Okay. Fair enough.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q And then what's -- what's -- what -- what's -- what do you see here?
A I see Mr. Peek, Sr., --
Q Okay. Are you --
A -- winding up to punch me.
Q Okay.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q And what happens?
A He, I mean, just -- he punched me square, you know, in the face.
Q And is it -- and what's Mr. Peek, Jr., doing

at this point?

A I can't really see.

Q Do you need to come down? I don't want to break it.

A I -- I can't see.

Q Can you see if he's on top of you?

A Oh, yeah, he -- I could see him there. I'm still -- I don't know what he's doing.

Q Okay. Fair enough.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

A Oh, he --

Q And then --

A He's punching me.

Q I'm sorry?

A He's punching me in the head.

Q Right. And did you see -- did you see Dan -- okay.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

Q I'm trying, I swear. Okay. That -- we already saw that direct hit from Sr. And here's --

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Is that -- is that -- is it accurate to say there was another one from Sr.?

A Yes.

Q Okay. And in the meantime, what's Peek, Jr., doing?

A Repeatedly punching me.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q And now what's going on right here, John?

A He's like putting me in a headlock choking me.

Q Who -- when you say he --

A Daniel, Jr.

Q Okay. What part of his body is on what part of your body?

A His left arm was around my neck, and he appears to be climbing up on me.

Q Okay. And what does Mr. Peek, Sr., have ahold of with his left arm?

A My shirt.

Q And what does Mr. Peek, Sr., have ahold of with his right hand?

A It looks like my head or my hair out of the back, maybe.

Q Okay.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

Q Now, a swing and a miss.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Now, at one point -- do you remember testimony by Daniel Peek, Jr.?

A Yes, I remember.

Q Do you remember him saying that at one point his father told him -- told him to go?

A Yes.

Q Okay. Do you see in this situation Mr. Peek, Sr., starting -- or I'm sorry, Mr. Peek, Jr., starting to go?

A Yeah, he's going.

Q Okay. And this is at 2:18?

A Yes.

Q All right. And what is Sr. doing?
A He's holding me, holding on to my shirt.
Q Okay.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q Now, what is Peek, Jr., doing at this point?
A He appears running away.
Q Would that be consistent with go?
A Yes.
Q And what does it appear Mr. Peek, Sr., is -- is in the process of doing?
A I mean, he appears to still be beating me.
Q Okay.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q Does this help?
A Yeah. He just -- he just punched me.
Q And that's at what time?
A 2 -- is that 2:18?
Q It is. Now, do you see your body there?
A Yes.

Q How would you describe the way your body is -- is moved as a result of that strike?

A I -- I mean, I -- I -- a lot. My neck moved, my head kind of.

Q Talk to me.

A It kind of looks like whiplash. You know, my -- my body went one way before my head started going.

Q Okay. And where -- where did he hit you?

A In the ear, (indicating), side of my head area.

Q And what did he hit you with?

A His fist.

Q Closed fist, opened --

A Closed fist. Closed fist.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. Now he hits you as you just described in the area you described. Now what's he doing?

A Dragging me backwards.

Q Do you remember at all right now?

A No.

Q When he hit you right in the side of the ear/face, wherever, did you feel any physical repercussions as a result of that?

A Yeah. I mean, he clocked me, ringing.

Q Say again.

A Ringing --

Q Okay.

A -- a loud ringing, disoriented, blurred vision.

Q Okay. And that's at what time?

THE COURT: Mr. Henderson.

MR. HENDERSON: Yes.

THE COURT: It's more than time to take the morning break.

MR. HENDERSON: Yes, ma'am.

THE COURT: Ladies and gentlemen of the jury, at this time we're going to take our morning break. Please do not discuss this case amongst yourselves or with anyone else. Please do not permit anyone to discuss it with you or in your presence. Please do not form any opinions on this matter until it's

been given to you for your deliberations. We'll reconvene in approximately ten minutes.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

MR. HENDERSON: Judge, may I?

THE COURT: Yes.

MR. HENDERSON: Thank you.

Q John, how are you again?

A I'm good.

Q (Indicating.)

A I'm good.

Q We saw before Danny, Jr., running away, correct?

A Yes.

Q Are you aware why he was -- strike that. Are you aware that he actually was running away?

A No.

Q How did you -- what were you wearing on your feet when you went over that day?

A Flip flops.

Q I'm sorry?

A Flip flops.

Q Okay. And -- okay. I want to talk specifically about this point right here, okay? At this point did you have full mental capabilities?
A No.
Q At this point did you know where you were?
A No.
Q At this point did you know where your weapon was?
A No.
Q Okay. What's -- describe for us what's happening here?
A Daniel Peek, Sr., is dragging me backwards by my shirt.
Q I'm sorry?
A Daniel Peek, Sr., is dragging me backwards by my shirt.
Q Okay. And other than the firearm, did you have any other tools -- you heard Mr. Dimoff speak about tools yesterday?
A Yes.
Q Did you have any pepper spray?
A No, I did not.
Q Did you have a pocket knife?

A No, I did not.
Q Baton?
A No.
Q A Taser?
A No.
Q Okay. Did you feel in control at this point?
A No.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q Now, what's happening at this point?
A I'm falling backwards.
Q And by whom's will?
A Daniel, Daniel, Sr.
Q Okay.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q Now you're on the ground, correct?
A Yes.
Q Okay. And at this point are you aware of where your weapon is?
A I do -- I remember falling on something and

then grabbing it, and it was my weapon.

Q Okay.

A I don't know if at that point I -- I knew or not.

Q Okay. Are you saying right here at this point you're not aware if -- if -- if you knew where your gun was?

A No, I'm not aware.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q How about now?

A In the video it looks like maybe I seen something.

Q Okay. And --

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q How about now?

A I just seem to be, you know, getting back up or turning.

Q Say that one more time for us.

A I appear to be getting back up.
Q Okay. And what time does it say there?
A The time?
Q Yeah.
A 2:21.
(WHEREUPON, the video was played, and the proceedings continued as follows:)
Q Now, at this point what are you doing?
A I appear to be turning.
(WHEREUPON, the video was stopped, and the proceedings continued as follows:)
Q And what happened right there?
A I shot the gun.
Q Say that for me again, please.
A I'm sorry?
Q Could you tell -- can you say that again, please?
A I -- I fired the gun.
Q Okay. And what time does that say there, (indicating)?
A 2:22.
Q Okay. Now, at this point did you know you had hit Mr. Peek?

A No, I did not.
Q In fact, later you made a 911 call; is that correct?
A Yes, I did.
Q And that was actually one of the first things you did right after this; is that accurate?
A Yes.
Q Did you have access to your vehicle at that point?
A My vehicle?
Q Yes.
A Yes. Yes.
Q Did you have access to your dash camera at that point?
A Yes, I did.
Q Did you ever -- did you ever touch the dash camera?
A No, I didn't.
Q Did you ever attempt to try to conceal evidence?
A No, I did not.
Q Did you ever attempt to try to hide your weapon?

A No, I did not.

Q What is the first thing you did after you discharged your firearm?

A I got back up; I talked to Mary; and then I called 911.

Q Okay. And you called 911 essentially because you had just discharged your firearm.

A Yes.

Q Did you put down your weapon after discussing with 911?

A Yes, I did.

Q Did you want to?

A At first I -- you know, I was afraid. I didn't want to put it down.

Q Is that heard in the 911 call from you?

A Yes, I believe it is.

Q And why were you afraid?

A I didn't know where they went.

Q Okay. I'd like to just move this forward just a little bit, and tell me what your reaction is here. I'd like you to specifically look at your head, okay?

(WHEREUPON, the video was played, after

which the video was stopped, and the proceedings continued as follows:)

Q What's going on there?

A I appear to be regaining -- like getting my bearings and check around me and make sure no one's coming behind me.

Q Okay. Now, what direction is your head turned?

A To the right.

Q Is it accurate to say that after raising your weapon, (indicating), there was no other shots?

A No, there was not.

Q Okay. And then right after that you jerk your head to the right; is that accurate?

A Yes.

Q Why did you do that?

A Just to check if someone was coming behind me.

Q Behind you?

A The side of me. You know, from an angle I couldn't see.

Q Okay. And after you jerk your head to the right --

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q So are you -- it just -- are you checking around?

A Yeah, I'm like just scanning the area, it appears.

Q Okay. And then what do you do now?

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

A I'm getting up off the ground.

Q But what -- what are you doing with your --

A (Indicating.)

Q What are you doing with your head?

A I'm looking back, looking at the front of the vehicle, and the direction --

Q Why?

A -- that Daniel went. To see if they're coming back.

Q Okay.

(WHEREUPON, the video was played, after which the video was stopped, and the

proceedings continued as follows:)

Q Now, John, in that situation at 2:21, did you even know who you shot at?

A No, I did not.

Q Do you even -- do you even remember what you were feeling in your head at that point?

A No, I -- I just wanted the beating to stop. That's all I remember.

Q I was going to ask you why did you -- why did you shoot?

A To make the beating stop.

Q Okay.

A Save myself, I guess.

Q Now, in all fairness, in this video we do see that Daniel Peek got quite a few feet away, correct?

A Yes.

Q Were you aware of that at the time?

A No, I was not.

Q Do you even remember shooting?

A I -- I don't know if I -- I mean, I -- I don't -- this is a fog. I remember shooting. I don't remember -- you know, I didn't shoot at anything. I just shot.

Q Do you -- do you ever remember even seeing Dan?

A No, I do not.

Q After that -- after that punch to the ear/whatever, cheekbone --

A Temple.

Q -- temple, were you able to think straight?

A No, I was not.

Q What was going on in your head?

A Panic, ringing, fear.

Q Louder.

A Panic; you know, there was the ringing; fear.

Q Were you in fear of your life?

A Yes, I was.

Q Were you in fear of possibly being beat unconscious?

A Yes, I was.

Q Were you in fear of serious physical harm?

A Yes, I was.

MR. ANDREWS: Objection, leading.

THE COURT: Sustained.

Q From your perspective -- well, let me ask you this: On that day did you go over there looking for

trouble?

A No, I did not.

Q On that day did you go over looking for a fight?

A No.

Q What did you go over that day to do?

A I went to pick up my daughter and grandson as, you know, I've done many times before.

Q From your perspective who started that fight?

A Dan.

Q I'm sorry?

A Dan.

Q And from your perspective was that fight escalated at some point?

A Yes.

Q When?

A When the second person, Dan, Jr., started in.

Q Could you say that louder, please.

A When -- when Dan, Jr., started in and then jumped in.

MR. HENDERSON: Your Honor, one moment, please?

THE COURT: Sure.

MR. HENDERSON: Thank you.

Q John, let me cover just one other thing. We heard before a jail call where -- I don't know if we heard a jail call, but some stuff with regards to a discussion that you had in jail with Megan Owens; is that accurate?

A Yes.

Q And at some point you said you think you're in the wrong.

A Yes.

Q Why is that?

A I just came from my arraignment hearing, and they told me I had a million dollar bond.

Q (Indicating.)

A They told me I had a million dollar bond. And, you know, I had never been to jail before. I never -- I -- I'm not familiar with what's -- I don't know what's going on. I -- I'm in jail; they told me a million dollar bond. I mean, I just started thinking I'm -- I'm in prison, a million dollars, you know, this is bad.

Q Did you -- did you start to convince yourself maybe you did something wrong?

A I was trying -- you know, I kept thinking through trying to remember what happened, and, you know, like I said, all -- what -- everything that I was seeing made me think I did something wrong, you know.

Q Okay.

MR. HENDERSON: Thank you, John. Judge, just a moment?

THE COURT: (Nodding head.)

MR. HENDERSON: Thank you.

Q John, at the end of the day does this affect you?

A I'm sorry?

Q At the end of the day does this still affect you?

A Yes, it does.

Q Why?

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. HENDERSON: Thank you, John. No other questions.

THE COURT: Cross?

* * * * *

CROSS EXAMINATION

BY MR. ANDREWS:

Q Okay, John. I'm Rob Andrews. We've never met, but you know who I am, right?

A Yeah.

Q All right. I'm going to ask you a few questions, not 45 minutes worth, but just a few questions about matters that occurred before July 31st.

You said -- okay. You've talked, and we've heard from several people, about the incident where you were shot at.

A Yes.

Q It was after that that you got your carrying conceal, correct?

A No. No, I got my carrying conceal license in 2005.

Q It was after that that you started carrying it regularly.

A Yes.

Q Okay. And you -- you explained a little the training you go through to get your CCW license.

A Yeah.

Q Are you trained to never aim at something unless you intend -- intend to shoot at it?

A Yes. Yes.

Q Okay. And after this incident you bought a dash cam.

A Yes.

Q Is that something that you have on pretty much all the time?

A Yes.

Q Why?

A In case something happens and record it; the license plate number; maybe if there's an accident, I can be a witness or...

Q Okay. You were shot at; there wasn't enough evidence to find the person.

A Right.

Q So with a dash cam you've got the best evidence right there on your dash cam, correct?

A Yeah.

Q Okay.

MR. HENDERSON: Objection, legal conclusion.

THE COURT: Overruled.

Q And the dash cam was on on July 31st, 2022.
A Yes.
Q And you were interviewed by Detective Sergeant Vitullo.
A Yes.
Q And you didn't tell him about the dash cam, did you?
A No, I didn't.
Q Okay. You talked about these -- the meetings you -- Sunday dinner, whatever you want -- Sunday, Saturday dinners, you would go pick Kaitlynn up, go to your son's house.
A (Nodding head.)
Q Okay. How many times do you think you picked her up at Danny and Mary's house?
A I couldn't say. A bunch.
Q Two, five, ten?
A More than ten.
Q More than ten. Okay. So you didn't know the address but you knew -- you know somebody --
A Yeah, I knew where --
Q You knew how to get to their house.
A -- the house was, yeah.

Q All right. So you'd been there at least ten times.

A Yes.

Q Okay. (Indicating), I don't know if you can -- do you know what that is right there?

A The camera?

Q No.

A Flag?

Q No, I'm going to ask you -- actually, let's do this.

MR. ANDREWS: May I approach, Your Honor?

THE COURT: Yes.

Q Showing you what's been marked -- already identified as State's Exhibit No. 4, can you look at that and look just to the left of the flag up along the roofline, the porch --

A Yeah. Yeah.

Q What do you see?

A The address.

Q The address.

A Yeah.

Q Okay. So you could have just got that

address when you went over and picked up Kaitlynn; you didn't need to make that phone call, correct?

A Yes. Correct. I mean, yeah.

Q Okay. And it's been testified by two -- a few people that phone call Danny was mad.

A (Nodding head.)

Q You have to answer out loud.

A Oh. Yes. Yes, he was.

Q And you actually tried to get him more mad.

A Yes.

Q Okay. And, in fact, what was the statement you made that he and Mary -- or that you and him had in common regarding Mary?

MR. HENDERSON: Your Honor, I object.

THE COURT: Overruled.

A We were boyfriend-in-laws.

Q And -- and why is that?

A Because we both been with the same woman.

Q You can -- you can say what you said. I mean, don't -- I know it's a bad word, but go ahead.

A Because we're both fucking the same woman.

Q All right. So the shooting happens; you stay there; you're taken into custody; taken to the

Youngstown Police Department --

A Yes.

Q -- correct?

A Yeah.

Q And you're interviewed by Detective Sergeant Vitullo and Detective Sergeant Barber.

A Yes.

MR. ANDREWS: All right. Now, just for purposes of the record, this is State's Exhibit 61. This is the video. All right. Just go forward -- forward slowly.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Stop right there.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q All right. And this is slowed down, of course. So as you characterize this, he comes running off the porch, correct?

A Yes.

Q With his hands in the air.

A Yes.

MR. ANDREWS: Go forward.

(WHEREUPON, the video was played, and the proceedings continued as follows.)

Q Tell me -- tell me about when you're getting out of your car?

A I'm already out of the car.

Q What's that?

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

A I'm already out of the car.

Q Then let's go back.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

Q Tell us to stop when you're getting -- when you think you're --

A That's me -- that's me getting out of the car.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q What's that?

A That was me getting out of the car.

Q Okay. Right now. You're already out of the car?

A Yes.

Q Now, you tell Officer -- or Detective Vitullo you grabbed your gun.

MR. ANDREWS: All right, go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. HENDERSON: I'm sorry, was there a question there?

MR. ANDREWS: No.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Tell -- tell us when your gun goes off. Tell us to stop when your gun goes off, okay?

A Okay.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

A Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Okay. So that gun went off when you're pulling it out of the holster, right?

A No, I shot it --

Q No. No, it didn't. That's -- but that's what you told Vitullo, correct?

A I don't...

Q Okay. All right. Now, we're going to start it again. You tell us to stop when he starts kicking your ass.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

A Oh, stop. I'm sorry.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Okay. All right. So you tell Vitullo he stopped for a second, and then he kicked my ass for a little bit. Explain what -- what did he stop?

A I don't understand what you're --

Q You told -- you told Detective Vitullo, he stopped for a second, and then he kicked my ass.

MR. HENDERSON: Your Honor, I'm going to object --

Q He stopped what?

MR. HENDERSON: I'm going to object to hearsay.

THE COURT: Sustained -- no, it's overruled.

Q What did he stop?

A I don't recall what I told him.

Q Okay. All right. You also said -- let me read the whole statement. He stopped for a second; he kicked my ass for a little bit; the gun went off.

MR. HENDERSON: Your Honor, he --

Q Is this when the gun went off?

MR. HENDERSON: Your Honor, he just testified he doesn't remember what he stated.

THE COURT: Overruled.

Q Is this when the gun went off?

A It doesn't appear so, but I -- I do not recall.

Q Okay. You told Detective Vitullo: I was on the ground. He was fighting me, and the gun fell out of my hand somehow.

MR. ANDREWS: Let's go back.

(WHEREUPON, the video was played, after which the video was stopped and the proceedings continued as follows:)

MR. ANDREWS: A little more. Okay. Play it again.

(WHEREUPON, the video was played, after which the video was stopped, and the

proceedings continued as follows:)

Q Okay. Is that when the gun fell out of your hand?

A That's when I threw the gun.

Q Well, you told him -- okay. You threw the gun, and the gun fell out of your hand. That's when he was fighting you. Did it look like he was fighting you?

A I mean, he wasn't coming to talk to me.

Q Was he fighting you?

A I -- I --

Q Okay. At that time --

MR. HENDERSON: Judge, can he --

Q -- were there any --

MR. HENDERSON: Judge, can my client finish -- finish his answer, please?

Q Go ahead. Please give us your answer.

A I interpreted as him -- he was fighting me. He -- he wanted to fight.

Q Okay. Up until this time we've seen him adjusting his chain or taking his chain off.

A (Nodding head.)

Q We've seen you pull a gun out, fire it in the

ground, point it at his head. He turns around, and then you swing the gun at him. Has he done any kind of fighting?

A I mean, again, I perceived it as a threat. I thought he was, you know -- I was just trying to defend myself.

Q Okay.

A I mean, you weren't there. This happened very fast.

THE COURT: Wait for a question, please.

THE WITNESS: I'm sorry.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Just move it ahead -- okay. Now -- let it go. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Okay. I grabbed the gun. I started pulling the trigger -- pulling the trigger. It went off I believe one time and jammed. Is that correct?

A I don't believe so. Watching the video the gun doesn't appear to jam.

Q Okay. Did you fire a shot there?
A Yes, I did.
Q Okay.
MR. ANDREWS: Go very slowly.
(WHEREUPON, the video was played, and the proceedings continued as follows:)
Q Okay. Watch right here. What did you do right there?
(WHEREUPON, the video was stopped, and the proceedings continued as follows:)
A I picked the gun back up. I --
Q And you pulled the trigger a second time.
A No, I did not. It didn't go off.
Q No.
MR. ANDREWS: Okay. Let's go back to him coming off the porch. Okay. Go ahead and play that.
(WHEREUPON, the video was played, and the proceedings continued as follows:)
MR. ANDREWS: Okay. Stop.
(WHEREUPON, the video was stopped, and the proceedings continued as follows:)
Q You went through this a second time. I was

still in the car when he came down. He grabbed -- he grabbed something too. I don't believe he hit me with it.

A (Nodding head.)

Q Do you see -- is it grabbing his chain?

A No, no. I said to Brandon earlier, there's a -- the gate, I thought that was, you know, a weapon, it was a board. It's just, you know, later I realize it --

Q Thank you.

MR. HENDERSON: Your Honor, can he finish his answer, please?

MR. ANDREWS: He did.

MR. HENDERSON: He did not.

MR. ANDREWS: Then he's starting to give a narrative.

MR. HENDERSON: No, he's starting to explain to you the answer --

THE COURT: Okay.

MR. HENDERSON: -- to the question that you asked.

THE COURT: Moving on. Ask another question.

MR. ANDREWS: Okay. Go ahead and play it.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Go ahead. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Now, again, this is the second time he's questioning you, and you told him: I grabbed my gun. All of a sudden it went off. Is that what happened there?

A No, it looks like I shot it. I shot a warning shot.

Q Okay.

MR. ANDREWS: Continue.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q You then tell Detective Vitullo: He punched me. I fell to the ground. I no longer had the gun. I dropped it somehow.

Okay. There you go dropping or tossing the gun again. Has he -- he thrown any punches?

A No.

Q Okay.

MR. ANDREWS: Go forward to the shooting. Go back just a couple frames. Okay. That's good. Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Go back. Go back.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop it right there.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q What is Daniel Peek doing right now?

A He appears to be running away.

Q Okay. Have you shot at him?

A No.

MR. ANDREWS: Okay. Play it again.

(WHEREUPON, the video was played, after

which the video was stopped, and the proceedings continued as follows:)

Q Is that -- is that you shooting?

A That is me shooting.

Q I rolled over and pulled the trigger, then he started running away. Is that what happened?

A No, it's not.

Q You heard Detective Vitullo testify, correct?

A Yes.

Q When asked -- when he asked you were you shooting at him, do you remember what you said?

A I do not recall.

Q Yes, I was --

MR. HENDERSON: Objection. He answered the question.

THE COURT: Attorney Andrews, if you want to refresh his memory, you know how to do that.

MR. ANDREWS: Okay.

Q Did you tell Detective Vitullo and Detective Barber -- Barber: My intention was to shoot him?

A I don't remember saying that.

Q You don't -- you don't recall that? Okay.

All right. Let's -- let's go through that again. July 31st, 2022, you -- we've heard from several witnesses you had a heart attack, you had a bad -- heart disease, had a bad back. As your attorney said, you wouldn't last two punches. Okay? That's correct?

A Yeah, I agree with that.

Q Okay. And that day you hadn't forgotten that, right?

A I hadn't forgotten --

Q Your physical condition.

A Oh, no.

Q Okay. You knew what your physical condition was.

A Yes.

Q You remember the phone call to Danny that had occurred, we're estimating, maybe six weeks, two months prior.

A Yes, I remember that.

Q And I believe it was your testimony that you think you possibly have been there since that phone call?

A I -- I can't say for sure.
Q Okay. Maybe, maybe not.
A Maybe, maybe not.
Q Okay. From -- after that phone call had anything else happened between you and Danny?
A No.
Q I believe you told the detectives you didn't think it was an issue.
A I'm sorry?
Q Did you tell the detectives I didn't think it was an issue?
A I didn't tell them what?
Q Did you tell the detectives that you didn't think that phone call was an issue?
A I -- I may have.
Q Did -- did you believe it was an issue at that time?
A No.
Q Okay.

MR. ANDREWS: May I approach, Your Honor?

THE COURT: Yes.

Q Handing you what's been marked for purposes

of identification as State's Exhibit 2. That's already been identified. It's a text between you and Kaitlynn, correct?

A Yeah, it's a text between me and Kaitlynn.

Q And that text is from July 31st, 2022, correct?

A I -- I don't know. There's no date stamp of it. I don't --

Q You got to -- on direct --

A Oh, yeah. Okay. Yeah. Yeah. Well, now there's a problem.

Q Okay. All right. That -- I believe the blue -- the blue is Kaitlynn talking, and the black is you, correct? The blue -- the blue bubble -- inside the blue bubble would be Kaitlynn, correct?

A Yes.

Q Okay. Can you read the bottom blue line.

A LOL -- LOL, now there's a problem, so I'm walking down the road with Willy.

Q Okay. So that's Kaitlynn telling you there's a problem and she's walking down the road with Willy.

A Yeah.

Q So you know she's not going to be at the

house, she's going to be down the street, correct?
A No, I mean, I texted right back.
Q Well, yes, you did text right back.
A I'm going to the house. Wait there.
Q Okay. All right.
MR. ANDREWS: Exhibit 3.
Q This is what's been marked for purposes -- or has been identified as State's Exhibit 3. Are you familiar with what that is?
A An ariel photo of the neighborhood, of Mary's neighborhood, Mary and Dan's neighborhood.
Q Okay. All right. What road would this be?
A Shirley Road.
Q All right. Is this the road that you came down?
A Yes.
Q What -- what street is this?
A Florida.
Q Florida?
A (Nodding head.)
Q Okay. So this would be -- well, would this be Danny and Mary's house?
A Yeah.

Q Okay. So right here would be the intersection of Shirley and Florida.
A Yes.
Q Is that the way you came?
A No.
Q Okay. Did you turn on Humbolt?
A Yes, I did.
Q Took a right on Humbolt, came down to Hunter, take a left on Hunter?
A Yes.
Q And then a left on Florida.
A Yep.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Actually stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Your Honor, can I have the defendant come down?

THE COURT: Yes.

MR. ANDREWS: Okay.

Q Actually, so we're not in the way, I'm going to have you stand right here. All right.

Now, what I want you to do is, as the video plays, I want you to look down this sidewalk.

A Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Can you tell me what you see?

A I see what -- I mean, I know that's a person on the sidewalk.

Q Okay. All right. I'm going to have you stay right there.

MR. ANDREWS: Go to 151.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Slow down. Slow down. Now go back a little.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q I'm going to have you -- all right. This is Florida, correct?

A Yeah.

Q This street down here would be Shirley?
A Yeah.
Q Okay. I want you to look down at that intersection as this -- this plays and tell me what you see.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

A That's a person -- it's a person and a baby, probably Kaity.
Q Okay. All right. You can go back to your seat.
A (Complying.)
Q So you're -- the reason you're going there is to pick up Kaitlynn and Willy.
A Yes.
Q Okay. And we see Kaitlynn and Willy crossing the street.
A I do now. I never seen that before.
Q Because she tells you she's going down -- she's walking down the street --
A Yeah.
Q -- right? She texted you and told you --

A (Nodding head.)
Q -- she's walking down the street.
A Yes.
Q But yet you don't look for her down the street.
A Actually I never one time turned from Shirley to Florida. I always go down Humbolt every single time I've ever went there so that my passenger side of my car is to the front of their house when I can't pull in the driveway so the baby and my daughter don't have to go in the road.
Q Okay.
A So if she did walk to the corner, she should have been at the other corner --
Q Has she --
A -- as far as I would be.
Q Has she ever told you I'm walking down the street?
A That one time, that's it.
Q Okay. So this time, wouldn't you be looking?
A I just drove past the corner where I normal -- and she knows which way I go.
Q All right. Clearly there's a person and a

baby -- or a very small child crossing the street, correct?

MR. HENDERSON: Asked and answered.

Q But you're pissed off, aren't you?

A No.

Q Your whole attention is on what's going on at this house. You ignore what's down the street.

A My attention, I was looking for my daughter and grandson.

Q Okay. But yet you see -- you see him on the porch.

A Well, yeah. I was about turning in -- that's where I'm going. That's what I'm looking at.

Q Okay.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q All right. You're there to pick up your daughter and your grandson.

A Yes.

Q Your daughter has told you there's a problem,

I'm walking down the street, correct? Correct?
A Yeah.
Q Okay. You've had a argument with this gentleman right here a month-and-a-half ago.
A Yes.
Q You have a bad heart, a bad back.
A Yes.
Q You carry your gun for protection.
A Yes.
Q Well, as your expert says, he doesn't have his shirt on, so he must be fighting.
A I mean, he also said you can't get the context from the video if --

(WHEREUPON, the court reporter interrupted the proceedings.)

THE COURT: Please repeat your answer.

A He also said there's no like emotional context from the video.
Q Okay. All right. Your belief is he's pissed off; he's being aggressive.
A Yes.
Q Okay. Now, we saw -- you were showed a video right at the beginning when you were leaving your

house.

A Yes.

Q And you backed out of your driveway.

A Yeah.

Q So your car does go in reverse.

A Yes.

Q So you could have pulled out.

A I could have, but I don't --

Q Okay. You could have, correct?

A But I don't know where my daughter is. I'm not going to leave her there.

Q She told you, I'm walking down the street.

A And she said LOL.

Q Do you -- do you have locks on your doors?

A Yeah.

Q Okay. You could have locked your doors.

A Uh-huh.

MR. ANDREWS: Okay. Play it slowly.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Go ahead. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Okay. You fired the warning shot.
A Yes.
Q Then what do you do?
A Pointed the gun at -- at Dan.
Q At Danny. Danny's standing -- it looks like he has a cigarette in his mouth?
A I don't know.
Q Okay. All right. And I think you testified you wanted him to turn or run -- and run away.
A Yeah.
Q Okay.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Okay. What did Danny do there?
A He turned.
Q He turned away.
A (Nodding head.)

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Now, go back just a little. Stop. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Okay. Now, you were asked before when you were struck in the head, I think it was the last one, how your body reacted. Correct?

A Yes.

Q Okay. I want you to look at this, and when you strike Danny with the gun, tell -- tell us how he reacted.

A I never struck Danny with the gun.

MR. ANDREWS: Okay. All right.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q What happened -- how did his head react when you hit him with the gun?

A I think I hit -- his hair moved.

Q His hair moved?

A Yeah.

Q You didn't see his neck jerk -- his head jerk forward?

A I -- I -- I don't know. I can't see past me.
Q Okay. All right.
MR. ANDREWS: Go back just a little. Go ahead.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q Okay. And you see the gun fly.
A Yes.
Q And your testimony is --
A I threw the gun.
Q -- you threw the gun.
A Yes.
Q You threw the gun through Danny's hair.
A I described it to my attorney what -- how it --
Q Okay. You didn't hit him?
A (Shaking head.) No.
Q You didn't -- you weren't trying to hit him?
A I described I -- as I was swinging, I realize I still had the gun, and I backed off and relaxed my wrist. I mean, I made an effort to stop --
Q Okay.

A -- is what I'm saying.

Q And it's your intention -- or your testimony you see he doesn't have a gun now or any kind of weapon so we're going to go at it one on one.

A Yes.

Q Even though two punches, you're done, you still are going to go at it one on one with your -- all your medical conditions?

A You can ask any of my children, I'll definitely give my life for them.

Q What's that?

A You can ask -- these are my children. I'll give my life for them. My health is obviously a consideration. I don't know where my daughter is. I'm very --

Q Okay. At this time you have got -- Danny came -- comes down the porch, as you say, aggressively without a shirt on adjusting his chain. You get out of the car with your gun, fire a warning shot, point it at his head. Who's in control of this situation?

A Like I said, everything happened so fast. You don't understand --

Q No, we're not going with that.

A Well, that's what happened.

Q Okay. Who's in control of the situation, you or Danny?

MR. HENDERSON: Judge, he answered the question.

THE COURT: He did not.

A I cannot answer who was in control. I --

Q Okay. All right. You've got the gun; you fired the warning shot; it's pointing -- pointing at his head; he's turned his back on you; and you don't know who's in charge; who's in control? If you don't know, you don't know. Okay.

So you decide I'm going to toss my gun --

A Yeah.

Q -- right?

A Uh-huh. (Nodding head.)

Q And you're just going to go at it man-to-man.

A Yes.

Q You toss the gun two, maybe three feet, correct?

A Yes.

Q Okay. You don't throw it out in the backyard, into the bushes, over the side. You just --

and you -- and you throw it like this, (indicating)?
A Yeah. Again, this is a chaotic situation. I mean, the entire event happened over less than a minute.
Q Yes.
A Each -- each individual thing happened in a second.
Q Okay.
A I -- I couldn't hit pause and try to decide what to do next. It's just I reacted and it happened. I was -- you know, I was --
Q You've answered.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

Q Okay. You've testified your decision now --

MR. ANDREWS: Okay. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q -- is to put your weight on Danny --
A (Nodding head.)
Q -- you said.
A Yeah, bear hug.

Q You're probably twice his size, fair?
A Yeah. Yeah.
Q Okay. And you're just going to hold him, hope somebody hears, police get called, or anything like that.
A Yes.
Q When you pulled into the driveway and he came out so aggressive and you're -- you're afraid for your life, you're afraid for Kaitlynn's life, you're afraid of a lot of things, you have the bad health, what -- what did 911 say when you called them and asked for the police?
A What do you -- what did they say?
Q Yeah.
A They said what's your emergency, and I really -- I -- I don't recall the phone call. I just remember I know I called 911.
Q Before this happened.
A No, after.
Q Oh. Oh, wait. So you're -- you're in fear for your life and Kaitlynn's, you have a gun, but he's not wearing a shirt, why didn't you call the police?
A What --

Q Couldn't the police have come and --

A I -- I don't understand. I did call the police.

Q Why didn't you call the police? Why do you have to get out with your -- with your gun when he doesn't have one?

A I -- the thought must have never crossed my mind.

Q Okay.

MR. ANDREWS: All right. Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

Q Okay. Danny gets up -- or Danny's up, you're starting to get up, okay, and now this third person we now know as Danny, Jr., comes out.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

A Yes.

Q And as you said, this all happened so fast, right?

A Yes.

Q When you saw Danny up on the porch, did you see Daniel, Jr.?

A No, I did not.

Q Do you know where he came from?

A No, I do not.

Q Okay. So -- but this is after you fired a shot.

A Yes, it is.

Q Okay. So he hears a gunshot, comes outside, and sees this guy on top of his father.

MR. HENDERSON: Objection.

THE COURT: Overruled.

Q Okay?

A Yeah.

Q Okay. And then he starts hitting and kicking you.

A Yes.

Q Okay. Who brought the gun?

A I did.

Q Who fired it?

A I did.

Q Doesn't it make sense that Danny, Daniel, was trying to protect his father?

MR. HENDERSON: Objection.

MR. ANDREWS: Withdrawn.

THE COURT: Overruled.

MR. ANDREWS: Go ahead. Go back.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

MR. ANDREWS: Actually go back. Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. Now, you --

MR. ANDREWS: Go back. Just a little more.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. You describe this as they're both punching you, kicking you, in your head, correct?

A Yes.

Q What -- what do you see of your body?

A I can't really tell. My shoulder.

Q Okay. If I tell you basically your right arm --

A Uh-huh.
Q -- does that make sense?
A Yes.
Q Okay. We can't see your head, can we?
A No.
Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q All right. What are we seeing now as far as Daniel, Jr.?
A He's -- he's leaving, running away.

MR. ANDREWS: Okay. Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q All right. You're not trying to tell us you intentionally threw your gun right there 'cause you knew you were going to end up there, are you?
A No.

Q You were just throwing it to get rid of it --

A Yeah --

Q -- so you could fight man to man.

A -- I didn't need a lethal weapon.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Okay. Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q What's Danny doing right now?

A He's running away.

Q And what are you doing?

A Grabbing the gun and getting up.

Q Okay.

MR. ANDREWS: One more. Stop. One more.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. What are you doing right now?

A Pointing the gun.

Q Okay. Pointing the gun. And what do --

what -- what do you see on Danny?
A I see his back.
Q Okay. Does -- at this time do you think Danny might give you a mule kick from there?
MR. HENDERSON: Objection.
THE COURT: Overruled.
A I don't remember what I thought right there.
Q Okay. Just looking at that, at this instance, is Danny posing any threat to you?
A It doesn't -- no.
Q Okay.
MR. ANDREWS: Go ahead.
(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)
Q Okay. There's the shot. Do we see -- do we see -- you've seen this video before.
A Yes.
Q Do we see Danny again?
A No.
MR. ANDREWS: Okay.
(WHEREUPON, the video was played, after which the video was stopped, and the

proceedings continued as follows:)

Q What are you doing now?

A I pick my arm up and aimed the gun.

Q And now you're saying you didn't attempt to fire another shot?

A No, I did not.

Q But before you said you -- you did but it jammed.

A I -- I don't recall saying that.

MR. ANDREWS: Go ahead. Play a little more.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q Okay. Now you're -- now you're looking around to make sure you're safe.

A Yeah.

Q Okay. I mean, you were asked on direct you immediately turn to your right to see if there was any more threat.

A Yes.

Q Okay.

MR. ANDREWS: Go ahead.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q And is this where you're talking to Mary?

A Yeah, I was yelling. I don't -- I don't recall what I said.

Q Telling her it was her fault?

A I don't know.

Q Okay.

MR. ANDREWS: Go ahead. Play it.

(WHEREUPON, the video was played, after which the video was stopped, and the proceedings continued as follows:)

Q All right. You talked about that initial, as you referred to it, stomp when Daniel -- Danny -- Daniel, Jr.'s, coming off the porch, okay?

A Okay.

Q And you remember it made your -- I think you said you saw stars, heard ringing, things like that.

A Yes.

Q Okay. You talked about some of the punches and kicks that were being thrown at you.

A Yes.

Q You talked about when you're lying -- or we -- we can't see your -- we can only see your arm, how they're punching and kicking your head, and you remember, again, that last punch that Danny threw hit you inside of the face, and it just -- for lack of a better word, you're incoherent.

A Yeah.

Q Okay. When you roll over, pick up the gun, even though you told Detective Vitullo what happened, you're saying now you don't really remember.

A Yeah.

Q Okay. And -- yeah, because your attorney asked you when that was on 2:21, is when you fired the shot.

A (Nodding head.)

Q And that's -- you don't remember that.

A No.

Q Okay. At 2:22 you're looking over here to see where other people, but you remember that.

A I was describing what I'm watching on the video. I didn't say I remember.

Q That isn't what you said. You said you remembered. There's a lot of stuff you don't remember,

but -- when it's convenient, but there's a lot of stuff you do remember.

MR. HENDERSON: Your Honor, I'm going to object. Badgering the witness.

THE COURT: Is there a question in there?

MR. ANDREWS: Okay.

Q You remember the stars, you remember the ringing, but you don't remember shooting.

A I'm still today trying to piece this all together myself.

Q Okay. All right. And you got the dash cam because that would be the best evidence, correct?

A Yeah.

Q Okay. And here's the dash cam.

A Yes.

Q And you're -- you're -- had you been hit when you were throwing the gun through Danny's hair?

A No, I wasn't.

Q Okay. You remember that.

A Yeah, that was --

Q Okay. And you want us to believe that you were throwing the gun.

A I don't understand what you mean.

Q You weren't hitting Danny or trying to hit Danny with that gun. You were throwing the gun. Your only defense, you're throwing that away. That's what you want us to believe.

A I pulled the weapon when I thought he had a board in his hand, and he turned around and this altercation started, I quickly realized he did not have a weapon and then I don't need a weapon. I mean, I really don't know --

Q Okay. You were --

MR. HENDERSON: Your Honor, can he finish his question -- or his answer?

THE COURT: Let him finish it.

A I don't know like the proper etiquette for this situation. I've never been in a fight at all. This is all, I mean, like startling to me. It's new to me. I don't know how to explain it.

Q Okay. You went there to pick up your daughter and your grandson.

A Yes.

Q She told you she wasn't going to be there, correct?

A Yeah.

Q You were alerted that Danny's on the porch and he was acting aggressive -- or not you were alerted. That was your assessment.

A Yes.

Q You didn't leave.

A No.

Q You didn't call the police.

A No.

Q You got out of your car --

MR. HENDERSON: Judge, we've been through this. Asked and answered several times.

THE COURT: It's cross examination. We're letting it go. You're overruled.

MR. ANDREWS: Could I have a moment, Your Honor? Nothing further, Your Honor.

THE COURT: Any redirect?

MR. HENDERSON: Yes, Your Honor. Thank you.

* * * * *

REDIRECT EXAMINATION

BY MR. HENDERSON:

Q You've been asked quite a few times about this text that your daughter sent where it says, LOL, walking down to the corner. Okay?

A Yeah.

Q You texted her back and said just wait at the house, right?

A Yes.

Q After that did you hear back from her?

A No, I did not.

Q Okay. So where did you believe she was?

A At the house.

Q Okay. And when they were going through this experiment with this whole sidewalk -- right?

A Yeah.

Q In your life -- how old are you?

A Forty-seven.

Q Have you seen sidewalks in your life?

A Yes.

Q Have you seen people on sidewalks in your life?

A Yes.

Q Okay. When they were going through this experiment where you really had to get up close in order to try to identify who the individuals on the sidewalk were, what speed were they playing that at?

A Very slow.

Q Okay. And you said you always take the same way?

A Yes, I do.

Q Was -- where those individuals were, if they were Kaitlynn and Willy, where those individuals were, is that typically the way you would go?

A No, I would not have went that way.

Q Okay. You were asked why you didn't tell Detective Vitullo -- well, let me ask you this: Do you remember Detective Vitullo testifying that the policy for the YPD is if they discharge a firearm, you have 24 hours before they have to answer questions?

A Yes.

Q Okay. Do you remember Timmy Dimoff, a verbose individual but seems very good at what he does, do you remember him testifying that they had 24, 48 hours?

A Yes.

Q Okay. You were in there, what, an hour-and-a-half later?
A Yes.
Q Okay. And then you were then asked a question why didn't you tell Detective Vitullo about your dash cam, right?
A Yes.
Q After an hour-and-a-half of -- of right after this incident, correct?
A Yeah.
Q Now, you were also asked, you know, why -- this address situation and whether or not you knew -- you said it was a flag and you said -- whatever, right?
A Yeah.
Q All right. You were actually shown a picture to identify the address; is that accurate?
A Yes.
Q Okay. Do you make a habit of remembering addresses?
A I'm sorry?
Q Do you make a habit of remembering addresses?
A No, I do not.
Q You were asked could you have just gotten the

address when you went to pick up Kaitlynn?
A Yes.
Q Okay. Is it your job to tiptoe around Daniel's jealously issues?
A No, it's not.
Q All right. Now, we've agreed that you were pushing Daniel's buttons on that phone call, correct?
A Yes.
Q Are pushing someone's -- someone's buttons on par with death threats?
A No, I don't believe so.
Q And Daniel was issuing death threats to you; was he not?
A Yes, he was.
Q Who was hit first in this case, John?
A I was.
Q The first -- what was the first hit to you?
A I believe it was the kick to the back of the head.
Q Okay. By Dan Peek, Jr.
A Yes.
Q Okay. What was the first physical contact you had with either of them?

A I don't remember any --
Q Would it -- would it -- would it be accurate to say you, (indicating) --
A Oh, yeah, the bear hug. Yeah.
Q Okay. Did that -- did that fail miserably?
A Yes.
Q Okay. But you didn't punch him in the mouth.
A No, I didn't.
Q Did you hit him on the side of the head?
A No, I didn't.
Q You keep getting asked all these questions. We've got a lot of questions from the interview as well that are favorable. Now, you keep getting -- do you remember 19 months ago what you answered after an hour-and-a-half of an incident like this, a traumatic incident like this?
A No, I don't.
Q You mentioned that this happened very fast.
A Yes, it did.
Q There was two individuals that testified in this courtroom that were part of that incident; is that accurate to say?
A Yes.

Q Who are those individuals?

A Danny, Jr., and Kaitlynn.

Q Well, no, that were actually part of it, I'm sorry, part of the actual -- part of the incident.

A Part of the fight?

Q Yes.

A Me and Dan, Jr.

Q Okay. And you both are saying very similar things; is that accurate?

A Yeah.

Q That it was so quick that it's hard to remember.

A Yes.

Q You shot once?

A I'm sorry?

Q You shot once?

A Yes.

Q Did you shoot a second time?

A Well, the first shot -- I don't understand what you're asking.

Q I'm sorry. The shot -- the shot -- the second shot --

A Second.

Q -- in the video. It was one shot --
A Yes.
Q -- is that accurate, or did you shoot a second time?
A Yeah, I just shot once.
Q Okay. You were asked if you stated that you rolled over, pulled the trigger, and then he started running away.
A Yes.
Q And was that your perception when you were telling them what happened?
A Yes.
Q Is it accurate to state that you knew that there was a dash cam in your vehicle?
A Yes.
Q Did you know that they had your vehicle?
A Yes.
Q Did you know if they had your dash cam?
A Yes.
Q So is it accurate to say that your perception after being beaten about the skull was that you rolled over and pulled the trigger and that's when he started running?

A Yes.
Q They talked a couple times about you can only survive two punches.
A Yeah.
Q And about your physical condition.
A Yes.
Q But isn't this exactly why you testified that you tried to throw away the lethal object.
A Yes.
Q And jump on his back.
A Yes.
Q And use your weight.
A Yes.
Q You testified that you have locks on your vehicle.
A Yes.
Q Did those locks stop the drive-by shooting?
A No, they did not.
Q So if somebody has a weapon, locks won't stop that?
A No, they won't.
Q You -- you were asked if you called 911 in that situation?

A Yes.
Q With this quick -- with as quick as this went, you were asked if you just stopped and, excuse me for a second, Daniel Peek, I'm going to call 911?
A Yes.
Q You were also asked at one point that he turned, which you agreed to, right?
A Yep.
Q I think we all do. But did he run?
A No, he didn't.
Q Did he go back up on the porch to the house?
A No, he didn't.
Q After you texted Kaitlynn right back, did you actually also follow that up with a phone call?
A Yes.
Q And what happened with that?
A She didn't answer.
Q So what was going through your head at that point?
A Nothing really. Just keep going about what I'm doing. Just go pick her up.
Q I'm sorry, I can't hear you, John.
A Just to keep going and pick her up, you know.

Nothing changed really.

Q And do you remember the prosecutor alleging that, you know, that we couldn't totally see your entire head on the ground?

A Yes.

Q I believe the indication may have been that perhaps they were not striking you?

A Maybe.

Q Did they -- from the video, was it your impression that they were striking in your direction?

A Yes.

Q Towards, (indicating)?

A Towards -- towards my head.

Q Now, it's interesting to me because Danny, Daniel Peek, Sr., told his son to run, correct?

A Yes.

Q And right after that he pulled you straight towards your gun, correct?

A Yes.

Q And in the video do you ever remember seeing Daniel Peek looking to see if you noticed the gun?

A Yeah, in the video.

Q So from the review of the video, about three

or four seconds before Daniel Peek, Jr., is told to go --

A Yeah.

Q -- you were then pulled by Daniel Peek, Sr., towards your gun.

A Yes.

Q Do you remember seeing Daniel Peek at the time that you fired your weapon?

A No, I do not.

Q Does this video reflect what was going through your head during that incident?

A No, it doesn't.

Q Is perception sometimes different than reality?

MR. ANDREWS: Objection.

THE COURT: Sustained.

MR. HENDERSON: I withdraw. Thank you.

THE COURT: Any recross?

RECROSS EXAMINATION

BY MR. ANDREWS:

Q All right. You were asked again about the police sometimes 24, 48 hours after an incident they were interviewed. You were interviewed an hour, hour-and-a-half later, correct?

A Yes.

Q Were you forced to give that interview at that time?

A No.

Q Did you ask, can I come -- can I clear my head; can I come back later?

A No, I didn't know that was an option. No.

Q You were asked about death threats, Danny made you death threats. Correct?

A Yes.

Q And with all those other factors we've talked about, you still went over there.

A Yes.

Q You were asked --

MR. ANDREWS: All right. Play it.

(WHEREUPON, the video was played, after which it was stopped, and the proceedings

continued as follows:)

MR. ANDREWS: Okay. Go back to where that started.

(WHEREUPON, the video was played, after which it was stopped, and the proceedings continued as follows:)

Q Okay. We see you getting out of the car and firing the shot.

A Yes.

Q We see you pointing a gun at Danny.

A Yes.

Q We see Danny turning away from you.

A Yes.

Q We see you reach out with your left hand, pull him back around -- or maybe not pull, but you put your left hand on his left chest and basically turn him back towards you, correct?

A It appears so.

Q Okay. We see you swing -- I'll give you the benefit of the doubt. We see you swinging the gun in the direction of Danny and then throwing the gun, correct?

A Yes.

Q And then we see you jump on top of Danny.
A Yes.
Q Then you receive the first blow, correct?
A Yes.
Q After all that's happened.
A Yes.
Q Did Danny have a gun?
A No.

MR. ANDREWS: Okay. Go to the shooting.

Q All right. I'm going to ask you to come down again. You can stand right here. I'm going to sit over here to get out of the way.

MR. ANDREWS: All right. Play it slowly.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Okay, stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q All right. I want you to look at the gun.
A Okay.
Q Not -- not -- I want you to see what happens with the gun.

MR. ANDREWS: Can you still see? All right. Go ahead.

(WHEREUPON, the video was played, and the proceedings continued as follows:)

MR. ANDREWS: Stop.

(WHEREUPON, the video was stopped, and the proceedings continued as follows:)

Q Okay. Did you see how the gun fired? I mean, did you see what the gun did when you fired?

A I don't understand what you --

Q Okay. I want you to watch the --

A Yeah, I seen it, but I don't understand what you're asking me.

Q Okay. I'm not asking -- did you see that?

A Yeah.

Q Okay. Now watch this.

(WHEREUPON, the video was played, after which it was stopped, and the proceedings continued as follows:)

Q Okay. Do you see the gun there? Do you see the slide?

A Kind of, yeah. It doesn't appear to be -- I don't know, look right.

Q What's that?

A It doesn't look right.

Q Does it appear that you are attempting to shoot a second time?

A No, it just appears that I pulled the gun back up. I didn't --

Q Okay.

A I can't -- I mean, I can't see my fingers. I don't --

Q All right. You can go ahead and --

A (Complying.)

MR. ANDREWS: May we approach, Your Honor?

THE COURT: Yes.

(WHEREUPON, a discussion was had among court and counsel off the record and out of the hearing of the jury and court reporter, after which the proceedings continued as follows:)

MR. ANDREWS: Nothing further.

THE COURT: Any redirect?

MR. HENDERSON: One moment, Judge.

* * * * *

FURTHER REDIRECT EXAMINATION

BY MR. HENDERSON:

Q John, again, were you in fear of your life?

A I -- I didn't hear you.

Q Were you in fear of your life?

A Yes, I was.

Q Were you in fear to being beaten to the point of serious physical harm?

A Yes, I was.

MR. HENDERSON: No further questions. Thank you.

THE COURT: Any cross?

FURTHER RECROSS EXAMINATION

BY MR. ANDREWS:

Q When you fired the warning shot and pointed the gun at Danny --

MR. HENDERSON: Objection, outside the scope.

THE COURT: Let him finish the question, then I'll rule.

MR. HENDERSON: Yes, ma'am.

Q Swung the gun and Danny -- through Danny's hair and threw it to the ground and then jumped on him, were you in fear for your life?

A Yes. I was in fear for my life the whole time.

Q Even though he had not done anything.

A Again, my interpretation is he was gonna do something.

Q Okay. And when Danny's running away with his back to you, were you in fear for your life at that time?

A I mean, I -- like I said, it's still blurry, but, yes, yes, I still was in fear of my life.

Q Did Danny turn and face you with a gun?

A No, not on the video but...

MR. ANDREWS: Thank you.

THE COURT: Anything else?

MR. HENDERSON: Judge, nothing further. Thank you.

THE COURT: You may step down. Thank you.

Ladies and gentlemen of the jury, at this time we're going to take our lunch break. Please do not discuss this case amongst yourselves or with anyone else. Please do not permit anyone to discuss it with you or in your presence. Do not form any opinions on this matter until it's been given to you for your deliberations. We'll reconvene in approximately one hour. Thank you.

(WHEREUPON, a brief recess was had, after which the proceedings continued as follows:)

THE COURT: Okay. Exhibits.

MR. WEATHERLY: So, Your Honor, at this time we would move to admit Exhibit A, which

would be the text messages from Kaitlynn to Megan Owens.

THE COURT: Didn't you just do some of those pages and not all of them?

MR. WEATHERLY: Well, we disclosed the entire thread and we only went through certain pages, you are correct, Your Honor. So we can -- we can pick out the certain pages that were used or we can admit the entire thread.

MR. ANDREWS: Your Honor, the state would object. They were testified to, went over with witnesses. I don't think the texts themselves do need to be admitted. If they are, then I would ask that only the ones that were used in court be admitted.

THE COURT: That's what I'm going to do, only the ones that you used in court that were identified.

MR. WEATHERLY: In that case, Your Honor, I would move the same for Exhibit B, just the texts that were identified as to Lisa Markijohn.

THE COURT: Fine.

MR. ANDREWS: Same. We would have the same objection.

THE COURT: That's fine. We're going to do it that way.

MR. WEATHERLY: And, Judge, Exhibit C would be the excerpt, the transcription excerpt, from the recorded interview of Kaitlynn Morgan.

MR. ANDREWS: And, again, this one already is condensed. It's only the part that was used in court, but for the same reasons the state would object.

THE COURT: I'm going to let that in, too.

MR. WEATHERLY: And D, Your Honor, would be the -- the portion of the transcript of the jail phone call that was discussed at side-bar.

(WHEREUPON, a discussion was had among counsel off the record and out of the hearing of the court reporter, after which the proceedings continued as follows:)

MR. ANDREWS: Your Honor --

THE COURT: Yes.

MR. ANDREWS: -- the state would have the same objection.

THE COURT: I'm going to let it in.

MR. WEATHERLY: I'm sorry, Your Honor?

THE COURT: I'm going to let it in, just the part that was testified to.

MR. WEATHERLY: That's D. E, Your Honor, I believe was the defense's elongated version of the dashboard camera.

MR. ANDREWS: And that we would not object to any portions that were shown. I don't believe the entire video was shown, so we would ask that only the portions that were shown in court be admitted.

THE COURT: We'll do that, too, only the portions shown.

MR. WEATHERLY: And then, Your Honor, I think there were two E's, so I'm going to check with the court reporter real quick.

(WHEREUPON, a discussion was had among counsel and the court reporter off the

record, after which the proceedings continued as follows:)

MR. WEATHERLY: So, Your Honor, what I referred to yesterday as E, being the video, is now D, and that would be the extent of the exhibits that we would move to admit.

THE COURT: Okay. So the video's coming in that was shown?

MR. WEATHERLY: Right, just the portions that were played, Your Honor.

THE COURT: All right. Is there a motion?

MR. WEATHERLY: Your Honor, at this time we renew our Rule 29 motion for acquittal. We would argue that even in viewing the light most favorable to the defense -- or favorable to the prosecution, they have failed to prove the case, and that this dishonorable court should dismiss the case before it goes to the jury.

MR. ANDREWS: For the same argument made before I believe the court should overrule that motion.

THE COURT: It's overruled.

MR. ANDREWS: Your Honor, at this time -- well, did you rest?

MR. WEATHERLY: So at this time, Your Honor, the defense would rest.

THE COURT: Okay.

MR. ANDREWS: And the state has no rebuttal.

THE COURT: Okay. So we'll bring the jury in and do closing.

MR. WEATHERLY: Thank you, Your Honor.

(WHEREUPON, the jury returned to the courtroom, and the proceedings continued as follows:)

THE COURT: Ladies and gentlemen of the jury, the defense has rested their case. You're now going to hear closing arguments. Closing arguments of counsel are brief summaries of what they believed the evidence showed. Closing arguments are not evidence. The state proceeds first.

MR. FENING: Thank you. May it please the court, counsel, ladies and gentlemen of the jury.

We live in a society. It's -- for society to function there must be order. That order is derived from laws, and one of the oldest, most basic fundamental laws of society is thou shalt not kill. Now, there are rare exceptions to that rule, not in this case, not for John Morgan.

When we began about a week ago in opening statements, we laid out our case for you. We told you what the evidence would show. Over the next several days we put on witness after witness, statement after statement, and exhibit after exhibit to prove our case beyond a reasonable doubt. We have performed our duties, and now it is your time for you to perform your duty. You have listened to all that testimony. You've heard facts. You've seen evidence. You've seen the video which the defense in their own words says is the best evidence in this case.

Now it's time to apply the law as well as your common sense in your deliberations.

And back to the counts in the indictment, many of these elements are not in dispute.

For all the counts, we start with on or about July 31st, 2022. I think you probably heard a hundred times by now that that is when this event occurred.

In Mahoning County, Ohio, you've heard testimony that 1417 East Florida is located in Youngstown, Ohio, which is in Mahoning County.

The defendant, John Morgan, purposely caused the death of Daniel Peek. We know it's John Morgan by the video, by his own admission, by witnesses' testimony, through the detectives. Now where -- those elements are all basically agreed to.

When we get into purposely caused is where I believe the sides differ. This is where you look at his intent. You look at the circumstances surrounding the incident.

You remember watching the video. He's on the ground. He grabs the gun, he looks up, he sees Danny Peek running away, he points the gun at him, pulls the trigger. Importantly for the element of purposely, he admitted to the detectives that he tried to keep shooting. He attempted to continue firing.

The final element, caused the death of Daniel Peek, Jr. -- excuse me, Danny Peek, Sr., you heard from the coroner, the forensic pathologist, who said that Danny Peek died from a homicide, which is caused -- the death caused by another; died from a single gunshot wound to the back.

Moving on to Count Two, same -- the first three are the same. When we get to the third element, caused, they no longer have that element of purposely. In this count it is caused the death of Danny Peek, Sr., as a proximate cause of committing felonious assault.

We have to look now to a secondary set of elements for felonious assault. In this,

same -- same first three, knowingly caused or attempted to cause physical harm to Danny Peek, Sr., by means of a deadly weapon.

Knowingly, what does that mean? He fired a shot at the defendant. You heard testimony that he intended to shoot the defendant -- or the victim, excuse me, knowing that injury would likely follow. I think that's common sense you shoot a gun at somebody, you can know that injury will likely follow.

Caused or attempted to cause physical harm, we just went through that.

By means of a deadly weapon, obviously you've seen with your own eyes he used a firearm in this incident.

On to Count Three, the second felonious assault: On or about July 31st, 2022, in Mahoning County, Ohio, the defendant knowingly caused or attempted to cause physical harm to Danny Peek, Sr., with a deadly weapon. This, as you heard, is the element -- or the offense with a pistol whip.

Now, the defendant's expert gets up there, and I believe he defined pistol whip as repeatedly striking someone with a gun trying to hurt them. Looking up the definition of a pistol whip in Webster's Dictionary, it is to hit or beat someone with a pistol. You heard the defendant testify today at the time that he fired that initial shot, he didn't flee, meaning Danny didn't flee. I was swinging on him with the gun in my hand. That meets the elements for this offense.

Now, on all three of these counts there is a firearm specification: The defendant had a firearm on or about his person while committing the offense; displayed, brandished, or used the weapon. Basically John Morgan used the gun to commit this offense. We all saw him.

Now finally, let's talk about self-defense. When Mr. Andrews was up here initially in opening statement, we went through these three elements. We only need

to prove one of these beyond a reasonable doubt. However, we submit that we have proved all three of them. Self-defense does not apply if the defendant is at fault for creating the situation if he had no reasonable grounds to believe imminent or immediate death -- danger of death or great bodily harm, or he did not use reasonable force.

(WHEREUPON, the video was played, after which it was stopped, and the proceedings continued as follows:)

MR. FENING: John drove to Danny's house, got out of the car with a firearm, discharged the firearm, struck Danny in the head with the firearm, and took him to the ground. John was at fault for creating the situation that gave rise to Daniel Peek, Sr.'s, death.

Part two, the defendant did not have reasonable grounds to believe and an honest belief, even if mistaken, that he was in great imminent or immediate danger of death

or great bodily harm.

You watched Danny Peek, Jr., run away. You just watched Danny Peek, Sr., running away. Whatever danger was in the defendant's mind that was coming to him was running away from him. There's nothing reasonable about shooting someone in the back as they are running away from you.

Ladies and gentlemen, we have proven our case beyond a reasonable doubt. You all know exactly what happened there that day. When you're in deliberations, just ask yourself, what makes sense here? Use your common sense. Don't be distracted. What happened here was John got pissed off. He knew he wasn't supposed to be at that house. He went there anyway. He went there to settle the score.

* * * * *

MR. HENDERSON: Judge, counsel, ladies and gentlemen of the jury.

This is the first chance I have to speak with all of you. And, you know, obviously we get a chance to look over at you folks every once in a while, and it's been very clear that every single one of you has taken this very seriously, and we appreciate it. This is a very serious charge, and so any time you get a jury that pays attention, that is listening to all the evidence, and, again, takes it very seriously, is always much appreciated. This is a huge part of our legal system, and so I think for all of us we would say, you know, thank you very much for -- for doing that.

I'd be remiss if I didn't start with the fact that, yes, we have said that it's the best piece of evidence in their case, and that's because they failed to collect any. We talked to the detective yesterday on the stand, and he gave himself an eight. We then discussed a lot about what he failed to do.

He failed to collect phones. He failed to ask for resources with regards to an evidence reconstructionist that could have totally reconstructed this scene. Any time you have a dash cam like this where it's literally on camera, you could put together a computer-generated simulation. This will give you things such as times; this will give you things such as angles; this will give you things such as how long his stride was. There's a lot of different things that could be done with that. Now we're just meant to guess.

So I've actually done it, and kind of gone through and played the video, and get your little iPhone out and hit start and hit stop, and that's the best we can do at this point. I went anywhere from .72 up to like 1.07 or something of -- from the time he was able to put his hand on that weapon till the time he shot. We're literally right in the middle of somewhere around .8 seconds or a little bit more. And I'll tell you right

now, you know, God help any of us if we're in a situation ever where we're beat around like John was and we're put in that position and in .8 seconds we're supposed to make some type of rational decision. It's just not possible. You're asking the absolute impossible. Their mental intent that they need to show in this case is intentional and knowingly.

Now, I'd like to talk about that a little bit. Essentially what they're saying is, hey, guys, we're going to charge him with murder, which is intentional. Now, you know, we don't think we have enough faith in that intentional, so as a result we're just going to throw everything else up at the wall and see what sticks, and we're also going to charge him with felony murder, which has the same penalties but it has a lower degree of mental intent. So it's not intentional now. It's only knowingly. Okay? It's kind of like going up to Susie and asking her to the prom: Hey, Susie, would you like to go to

the prom? No, I'm going to go with Justin. Justin's much better looking than me, I get it, okay. I then go on and ask Kathy, and Kathy says, I'm not playing second fiddle. But this is exactly what they're doing. Exactly what they're doing is saying, if you guys don't find that that's available, then please move on to a second best option. And to me that's a bit disingenuous. We have a vital right as abiding citizens of the United States to legally -- legally protect ourselves, and any time we're confronted with a life-threatening, serious situation that could be, like I said, either life-threatening and/or serious physical harm, we are allowed to use self-defense.

In this position I'd like to start where all stories start, at the beginning. And this story starts at the beginning through -- we're going to start with John Morgan and Mary Morgan.

John Morgan takes in William Granger as his son, takes him in as his own. He's a

hard-working man; goes to work every day for his family; brings home payroll; supports that family; and is good to them. That's all he's wanted. That's always what he's wanted because he never had it when he was a child. And at some point after going through a couple jobs, it sounds like he continuously evolved. This is a man who enjoys evolving. He unfortunately had a medical condition that caused him to have a heart attack at a very young age. Part of it genetic; part of the way he lived. At the end of the day he had a heart attack that took him out of work for a couple years. As soon as he was available, he went straight back to work to help his family and to bring home the money to support the family. They then had a second child, Kaitlynn, who you met.

Now, after that we get into a situation where John, after working for quite a few years and unfortunately having to go out of town quite a bit in order to support the family, finds out that Mary has stepped out

of the relationship. As a result of Mary stepping out of the relationship, John and Mary both make a decision that they no longer like to be together. And so what happens is John's in Florida working for the family, to support the family, and when he gets home, Mary's gone, and she's left, and she's gone, and she's with Daniel Peek at this point. It happens in life, and John dealt with it. He was hurt. He didn't take it lightly. It hurt him a lot, but he moved on. He evolved. And he met a new lady, a wonderful individual, by the name of Megan, who he is still dating, and looking to get forward -- looking forward to getting married one day. That's a bit of the impetus to this, is they were looking towards a more serious relationship, and at one point Megan decided that she would like John to actually get a formal, legal divorce.

So John makes a phone call to his ex-wife, as we all know, and we all know how that went. It went horribly. The guy makes

a call back. He feels like he has the control over this female. He feels like, as a jealous individual -- we already heard about the fact that he thought she was cheating on somebody with Facebook and all these other things. And he feels like he has the right to grab that phone and make the phone call back to the individual that called his girl. So he finds out it's John. And of course John, as we know, acted like a jerk. He did. He was pushing buttons. I don't think he ever tried to hide that fact. I don't think he tried to shy away from that fact, but that's a lot different than somebody threatening your life, which is what Danny did. Dan was drunk; he was hammered; and he was threatening John's life. Should John have been pushing his buttons, absolutely not, but John got what he needed, which was the address to the house that he needed to fill out the paperwork. He was asked to come over and engage in a fist fight to which he did not engage in. Okay?

So now we're put in a position here where we have Count One, murder, which is -- they have to show intentional. They have to show literally in .8 seconds, after being kicked in the head, after being punched in the face, after being punched in the side of the face -- and if you guys don't believe this -- I half joke, but, you know, I told the joke -- go back in the jury room and knock yourself around in the head, have each other kick around your skull like a soccer ball, 'cause that's exactly what happened to John, and see if you're able to actually make a rational decision at that point. You'll see it's just not possible, especially in .8 seconds. You're asking him to make a mental, intentional decision, either intent or knowingly. When you are ringing, when you are blurry, when your head is seeing stars, you cannot make a knowing decision, nor can you make an intentional decision. It's just not possible. It's as if I were to throw something at you, you wouldn't think, you

would just react. There's a difference between thinking and acting. It's just true. And I'd like to show you a little bit of that.

(WHEREUPON, a video was played, after which it was stopped, and the proceedings continued as follows:)

MR. HENDERSON: That was a position right there in a UFC fight. In that UFC fight the individual got hit pretty hard, and his head was ringing, and he was seeing stars. And you know what he did? He started attacking the referee. He didn't do that intentionally. He didn't start attacking that referee knowingly. He just did it. That was acting versus thinking, and he had a lot more than .8 seconds there.

(WHEREUPON, a video was played, after which it was stopped, and the proceedings continued as follows:)

MR. HENDERSON: So, again, you can see there obviously, it was a nice ref. It looked like he probably had some previous

training as well. He was able to sort of contain the guy, but as you can see, this individual was in such a state due to being hit and due to the fact that he was ringing and he was buzzing and he was beat about the head to the point where he, again, started attacking the referee. And these are obviously sports so the guy's not going to be charged with anything, right? Everybody agreed to be involved in this sport -- sporting activity, but it just goes to show you how perception is different than reality. This man literally perceives the referee as the individual he was supposed to be beating and fighting. Why? Because when you're beat around like that, you're knocked around like that, you cannot make knowing or intentional decisions. It's just impossible.

(WHEREUPON, a video was played, after which it was stopped, and the proceedings continued as follows:)

MR. HENDERSON: This guy was out of it to a point not where he fought a referee and

not where he knowingly or intentionally left the rink in a nice way, but he left the rink. He did that because his brain was not in the right frame of mind. He could not knowingly or intentionally think for himself after being involved in this.

My point is -- let's -- could we flip to the photos.

Look at that punch right there. That punch was at 2:18. That punch is on his -- on the side of his cheekbone; that punch is on his ear; that punch is a little bit on his temple. This is literally two-and-a-half seconds or so before he is on his hands and knees and turns around and fires a weapon. That -- this is a strong man. Look at his arms. Even Mary Morgan said how agile, how fast, how strong he was, that he worked out. That punch rocked John. You could tell. His whole body crumbled to the side. There's no way after this that John could ever make a knowing or intentional reaction. And so right after this John gets -- starts to get

pulled around. Does this look like a man who's in control here? Does this look like a man who knows what he's doing, or does this look like a man that at this point is in survival mode? He literally has no idea what's going on.

So, folks, when we talk about this, Count One, being murder, it has to be intentional. It literally has to be an intentional act: I am intending to kill this person.

Felony murder's a little bit different, and that's the part where they say, well, hey, guys, if Count One, intentional's not good enough for you, can you please think about Count Two. All right? And the fact of the matter is if that's not good enough for you, that's where we go, to Count two, which is felony murder.

Felony murder essentially is a situation -- and it's -- and it's very confusing. You're going to get it in your jury instructions, and there's a lot of legal

gobbledygook that -- that goes into it. It's a confusing charge, but essentially what it means is it's a rule that allows someone to be charged with first degree murder for a killing that happens during a dangerous felony, Okay? However, the prosecution does still bare the burden of proof of showing the underlying felony. In this situation they have used the underlying felony of felonious assault, that John shot the weapon and caused -- and knowingly caused physical harm to Daniel Peek. That is their burden to prove. So I guess, again, we have to ask ourselves the real question, is was it knowingly. That is the question here. It's very simple. We've heard all this evidence from all these people. We've heard Kaitlynn come up here and lie. We've heard Kaitlynn come up here and say a lot of things. We've heard a lot of testimony here. I'm not going to go back through all of it. I'll go through some of it. But the real question is did he knowingly or intentionally do any of

these things in that .8 seconds. I would submit to you it's just absolutely impossible after the way he was beat. I would submit to you that he was in fear for his life. I would submit to you that he was in fear of serious physical harm.

You saw John take the stand. This is not a man who runs around getting in trouble. This is not a man who gets in trouble with law enforcement. This is a man who takes care of his family. This is a man who works. This is a humble man. This is a good man. This is a nice man. This is a kind man. He's a very compassionate individual.

So, again, in .8 seconds, after being knocked around like that, can somebody knowingly or intentionally do something or are they just acting -- are they just acting off of instinct, adrenaline, confusion, fear, disorientation.

This is a traumatic situation for anybody, and, you know, quite frankly, there's not any winners here. No matter what

happens to John, you know, if he's found guilty, if he's found not guilty, he's still not going to be a winner. He's -- he's very hurt over the fact that he took a life, even if it was -- even if he didn't do it illegally. I've grown very close to him, and him and I have had a lot of conversations, and he really takes that very seriously.

This is a melee, and it all happened so fast that he didn't have time to even think, and that's just the reality. The only other person that got on this stand that can even understand a bit is Daniel Peek, Jr. I'm not sure if he's here today, but he's the only other one that can kind of understand because he was involved in that melee, too. And you know what his testimony was? His testimony, folks: I ran off the porch; I got in a fight; I heard my dad yell, go; and then I heard my dad yell, oh, I was shot. And I asked him -- I tried to ask him for a little bit more clarification. Well, what do you mean by I got -- I fought? Did you hit; did

you punch; did you kick; did you stomp; did you -- and he couldn't remember. That's the only other person involved in this melee that understands what it was like that day, and a lot of the terminology that he was using, clearly they're totally juxtaposed here. Obviously one is on one side; one's on the other side. One's fighting for his life here on -- on charges of murder. The other is obviously wants to come and support his father and his family. But the one thing they have in common is the fact that they both agree that this just happened so fast; blink of an eye, (indicating); that's it; .8 of a second.

And if that's not good enough, if none of these two are good enough, they're going to try to convince you of a third charge. Throw that against the wall, too. That's called felonious assault as well, which again, as I've discussed with you guys, is knowingly causing or attempt to cause serious physical harm to another. But the mental

intent, again, has to be there, knowingly, knowingly. If they didn't knowingly do it, then it's not enough to find him guilty beyond a reasonable doubt.

And so that third count is a felonious assault where it's called pistol whipping. You folks have seen this video, and I challenge you to watch it again and again and again, and you'll see -- watch it fast, watch it slow -- we have nothing to hide. Quite frankly, we took on this case, and I love having a case where in my mind there's always an advantage, an inherent advantage, when you have the truth on your side. John did not knowingly try to hit Mr. Daniel Peek with that weapon that day. I think he got overwhelmed with the situation that was going on, and you can see if you play that video, that he threw that gun.

We talked to the coroner. The coroner -- this is a Glock, okay? This isn't a piece of plastic. This is a piece of steel. You hit somebody with a piece of

steel like that, there's going to be injuries. There wasn't a laceration; there wasn't a bruise; there was no cut; there wasn't a scrape; nothing on Daniel Peek's cheek, neck, head; nothing. And you'll see when you replay that a couple times, that John voluntarily let go of that weapon. You know why? Because he was trying to make this a non-lethal situation. He realized that this was going to -- if he wanted to shoot Dan, he could have shot him. There was no witnesses there. If he wanted to shoot Dan, he was right there, he just could have shot him, (indicating). He didn't have to wait. There was literally no witnesses at that point. But instead he determined I shot a warning shot. This man didn't move. He stood right there. Now, granted, I'll give you this, he turned a little bit, but he still had his hands clenched, he still had his chest puffed, he was still in the kind of, (indicating), something was going to go down.

THE COURT: Attorney Henderson.

MR. HENDERSON: I'm sorry? I'm sorry?

THE COURT: That's 30 minutes.

MR. HENDERSON: Okay. Can I just wrap up in like two minutes?

THE COURT: Sure.

MR. HENDERSON: Thank you.

Ladies and gentlemen, you have to find John guilty beyond a reasonable doubt. I didn't go over all the evidence with all the witnesses 'cause you guys have heard it a million times, and I could tell you probably got sick of me going through it a million times, as well as the prosecution. We all went -- we all went through it a lot. I'm going to give you just a final analogy and then I'll sit down.

One of my favorite law professors, his name is James McElhaney, he gave me a wonderful definition for reasonable doubt. And the way that he put this was, if you have a cat and a mouse, and you walk over to a box, you put the cat in the box, you put the

mouse in the box, close it up, tie it up with a bow, you and your buddy go away, have some lunch. Come back after lunch, open up the box, the cat's still there but mouse is gone. Well, you know beyond a reasonable doubt that that cat ate that mouse. Now, let's do the same thing. Cat in the box, mouse in the box, close it up, tie it up, go away for some lunch. Have a nice lunch with your friends, come back, open up the box, and the cat's there and the mouse is not there, but this time you look over in the corner of the box and you see a little hole, a little mouse-size hole, and that is reasonable doubt. And I ask you folks to look at all the holes in this case. Look at the lack of investigation in this case. Look at John's credibility in this case versus everybody else's in this case; to think about what it would be like to be hit and beat like that and be able to make a rational decision in .8 of one second.

Please find John not guilty on all

charges. He deserves it. Thank you.

THE COURT: Thank you.

MR. FENING: Ladies and gentlemen, before I sat down I said don't get distracted. Counsel gets up, he's talking about John's childhood, that's a distraction. He's talking about John's marital issues, that's a distraction. He's talking about the phone call, that's a distraction. He's playing UFC fights, that's a distraction. Bring up the character traits of John, that's a distraction. I would ask that you ignore all that fluff. We are here about John Morgan killing Daniel Peek. We're here for the events that occurred on July 31st, 2022. We're not here to talk about the heart attack, Mary, Megan, a phone call six weeks to two months prior. We're not here to talk about a UFC fight.

You've heard them play up this John was brutally beaten. Did you hear any evidence of any injuries to John Morgan aside from he had a couple scrapes on his knees; his face

was a little puffy. He never asked for -- to go to the hospital; never asked for an ambulance; but he was beaten so badly that he couldn't think straight. However, you also heard that after the event happened, he called 911. You listened to the 911 call. He did all the right things as far as he didn't destroy the dash cam, he didn't take off, he didn't throw the gun away. He did everything he was supposed to do. He had the clarity of his mental state to do all of those things, but just 30 seconds prior he had no idea what was going on; he just reacted.

You heard some comments about John and Daniel Peek, Jr., being the only two who can recount the fight. Daniel Peek, Jr., is sitting up here 19 months approximately after he watched his father get murdered in front of him. You think that might be the event that stands out in his mind on that day, watching his dad die in the backyard? Counsel wants you to think that just because

Danny Peek, Jr., cannot recount every punch, every kick, every minute detail of what happened that day, that he's not credible. He watched his dad die in front of him, and if anything, when this whole event started, Danny Peek, Jr's., inside watching TV. He hears a gunshot, goes to look outside, and sees his dad tangled up on the ground with someone. Daniel Peek, Sr., and Jr. were defending themselves at that point. That wasn't an escalation. You don't escalate over firing a gun. There's no escalation over that.

You've heard -- we've gone back and forth about this pistol whip. I believe the defense just asked you just to watch the video. I think we've probably watched that video 30, 40 times. Lost count. What you see is Daniel Peek, Sr., turn his back to the defendant. The defendant grabs him around the waist with the gun in his hand and swings it at his head, and they want you to believe that that -- he was just tossing it to the

side and it just happened to brush his hair. You can see the victim's head buckle when he's hit with the gun, but the coroner said that there's no evidence of trauma there. Daniel Peek died minutes after being hit in the head. The blood stops pumping. There's not going to be a bruise, there's not going to be swelling 'cause he's dead.

Think back to the statements that were relayed to you from the defendant immediately after this happened. That's when everything's freshest in his mind. He says, I tried to keep shooting. I thought I was shooting upward. He's asked, do you know how many times you fired? I think twice. I was trying to shoot more. I pointed the gun and shot it. My intentions were to shoot him.

You heard him get up there today on cross examination when he is asked, oh, so you pulled in the driveway and you're all of a sudden in fear for your life because Danny Peek is on his own front porch, but John's fearful for his life. Does he call 911 then?

His answer, the thought never crossed my mind.

You've heard a lot about how this investigation was, how Detective Vitullo was forced to grade himself on this like we're in elementary school. They're grasping at straws. Did they search every phone; were the phones there? No. Did they do an accident reconstruction? No. The whole point of that is to distract you from the best piece of evidence in this case, which is the video. You have a front row seat to John Morgan murdering Danny Peek. There's no lack of evidence here. The police don't have to conduct every test possibly available to them. The defense just wants you to believe and wants you to imagine that you all watch enough Law & Order, CSI, crime shows where they perform everything that they possibly can and there's every bit of evidence. We have a video of him doing what we are accusing him of doing.

Furthermore, on that point, I believe it

was said that we are throwing everything at the wall with this indictment. The grand jury chooses what charges to bring against John Morgan. We don't just get to say what happened. They are the ones who issued the indictment.

Mere possibilities and what-ifs are not a valid basis for reasonable doubt. A reasonable doubt is a doubt that you can gain from the evidence, not from what I say, not from what any of the other attorneys say. They make an assertion the police could have done more is not enough to create that reasonable doubt. If you firmly believe the witnesses that have testified here and the evidence produced, there's no lack of evidence. We've proven our case beyond a reasonable doubt.

As I've said before, just use your common sense. Ask yourself some questions and does it make sense. John is so afraid of the threats that Danny made to him that he ignores a text from his daughter telling him

she's not going to be at the house and goes out of his way to go to that house. He says he's just there to pick up his daughter. You saw on the video she's at the end of the street. He had tunnel vision on Danny Peek and pulled into the driveway. You know what happened from there.

You've heard multiple times about the shooting that John was involved in where he was the victim in a drive-by shooting. You've heard how the perpetrator of that event was never caught because of a lack of evidence. He didn't have the license plate, didn't catch the make and model of the car, et cetera. And that's why he gets the dash cam, so that in the future if he's ever involved in another incident, the evidence is right there; they have everything they need. But when it comes to be that John is the perpetrator, then you can't trust what the video says. Does that make sense? No, it does not.

Ladies and gentlemen, when you get back

there, I want you to think back on all the witnesses that have testified and the evidence that you have seen, ask yourself these questions. You will find that we have proven every element of every offense beyond a reasonable doubt. Self-defense does not apply in this situation, and, therefore, I would ask that you find John Morgan guilty of all three counts as well as the specifications. Thank you.

THE COURT: Thank you.

Members of the jury, you have heard the evidence and the arguments of counsel and my preliminary instructions in which I told you the court and the jury have separate functions. You decide the disputed facts, and the court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it's given to you. You are not permitted to change the law, or to apply your own conception of what you think the law should be.

The case before you began with the filing of an indictment. The indictment informs the indictment that he has been charged with a crime. The fact that it was filed may not be considered for any purpose. The plea of not guilty is a denial of the charges and puts in issue all the essential elements of the crimes.

At the beginning of this trial, I instructed you on what is evidence, direct and circumstantial, and that you are the sole judges of the facts, the credibility of the witnesses and the weight of the evidence.

Please be reminded that evidence is the testimony received from the witnesses, the exhibits admitted during the trial, and the facts which the court requires you to accept as true.

Direct evidence is the testimony given by a witness who has seen or heard the facts to which he or she testifies. It includes exhibits admitted into evidence during the trial.

Circumstantial evidence is proof of facts or circumstances by direct evidence from which you may reasonably infer other related or connected facts which naturally and logically follow, according to the common experiences of human kind.

To infer, or to make an inference, is to reach a reasonable conclusion of the fact which you may, but are not required to, make from other facts which you find have been established by direct evidence. Whether an inference is made rests entirely with you.

You may infer a fact or facts only from other facts or circumstances that have been proven by the greater weight of the evidence, but you may not make inferences from a speculative or remote basis that have not been established by the greater weight of the evidence.

However, the evidence does not include any statements of counsel made during the trial, unless such statement was an admission or agreement admitting certain facts. The

opening statements and the closing arguments of counsel are designed to assist you, but they are not evidence.

The opening and closing arguments, which you have just heard, are provided by law for the purpose of aiding the jury in its analysis of the evidence, giving the jury the benefit of such deductions and reasonable inferences made by counsel as may logically appeal to the wisdom and judgment of the jury, and these arguments are not evidence.

Evidence does not include any statements that were stricken by the court or which you were instructed to disregard. Such statements are not evidence and must be treated as though you never heard them.

You must not speculate as to why an objection was sustained to any question or what the answer to such question might have been because these are questions of law and rests solely on the court. You must never assume or speculate on the truth of any suggestion or insinuation included in a

question put to a witness by counsel, unless it was confirmed by the witnesses.

To determine the credibility of the witnesses, you will apply the tests of truthfulness which you are accustomed to apply in your daily lives.

You may consider the appearance of each witness on the stand; the manner of testifying; the reasonableness of the testimony; the opportunity each witness had to see, hear and know the things concerning which he testified; accuracy of memory; frankness or lack of it; intelligence, interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Applying these tests, you will assign to each witness such weight as you deem proper.

Exhibits and testimony related to them have been introduced. You'll determine what weight exhibits should be given in light of all the evidence.

You are not required to believe the

testimony of any witness simply because he or she was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your province to determine what testimony is worthy of belief and what testimony is not worthy of belief.

The defendant is presumed innocent unless his guilt is established beyond a reasonable doubt. The defendant must be acquitted unless the state produces evidence which convinces you beyond a reasonable doubt of every essential element of the crime charged in the indictment.

Reasonable doubt is doubt -- is present when, after you have carefully considered and compared all the evidence, you cannot say you are firmly convinced of the truth of the charge. Reasonable doubt is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything related to human affairs or depending on moral evidence is open to some possible or imaginary doubt. Proof beyond a reasonable

doubt is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs.

Ladies and gentlemen of the jury, you may not discuss or consider the subject of punishment. Your duty is confined to the determination of the guilt or innocence of the defendant. In the event you find the defendant guilty, the duty to determine the punishment is placed, by law, upon the court.

Count One: Murder. The defendant is indicted for murder. In order to find the defendant guilty of murder, you must find that on or about July 31st, 2022, in Mahoning County, state of Ohio, that the defendant did purposely cause the death of Daniel A. Peek, Sr.

The offense charged took place on or about the 9th -- the 31st day of July 2022. It is not necessary that the state prove that the offense was committed on the exact day it was charged in the indictment. It is

sufficient to prove that the offense took place on a date reasonably near the date claimed.

The offense charged took place in Mahoning County, Ohio. The right of this court to try the defendant depends upon proof that the offense was committed in this county.

A person acts purposely when it is his specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to cause the death of Daniel A. Peek, Sr. Purpose is a decision of the mind to do an act with a conscious objective of producing a specific result. To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing. The purpose with which a person does an act is known only to him, unless he expresses it to others or indicates it by his conduct. The purpose with which a person acts is

determined from the manner in which it is done, the means and weapons used and all the other facts and circumstance in evidence.

If a wound is inflicted upon a person with a deadly weapon in a manner calculated to destroy life, the purpose to cause the death may be, but is not required to be, inferred from the use of the weapon. The inference, if made, is not conclusive.

Proof of motive is not required. The presence or absence of motive is one of the circumstances bearing upon purpose.

Cause is an essential element of the offense. Cause is an act which directly produces the death of another, and without which it would not have occurred.

Self-defense: The defendant is allowed to use deadly force in self-defense. Evidence was presented that could support a finding that the defendant used deadly force in self-defense. In order to prove that the defendant did not act in self-defense, the state must prove beyond a reasonable doubt at

least one of the following:

The defendant was at fault in creating the situation giving rise to the shooting death of Daniel A. Peek, Sr.; or the defendant did not have reasonable grounds to believe and an honest belief, even if mistaken, that he was in imminent or immediate danger of death or great bodily harm; or the defendant did not use reasonable force.

At fault: The defendant did not act in self-defense if the state proved beyond a reasonable doubt that the defendant was at fault in creating the situation, incident or argument that resulted in the death of Daniel A. Peek, Sr. The defendant was at fault when it is proven beyond a reasonable doubt that he was the initial aggressor, and the state proved beyond a reasonable doubt that Daniel A. Peek, Sr., and/or Daniel Peek, Jr., did not escalate the situation, incident or argument to deadly force in self-defense; or the state proved beyond a reasonable doubt

that the defendant provoked Daniel A. Peek, Sr., and/or Daniel Peek, Jr., into using force.

Deadly force means any force that carries with it a substantial risk that it will proximately result in the death of a person.

Substantial risk means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

In deciding whether the defendant had reasonable grounds to believe and an honest belief that he was in imminent or immediate danger of being killed or receiving great bodily harm, you must put yourself in the position of the defendant, with his characteristics, his knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him at the time. You must consider the conduct of Daniel A. Peek, Sr., and/or Daniel Peek, Jr., and

decide his acts or words caused the defendant to reasonably and honestly believe that the defendant was about to be killed or receive great bodily harm.

Words alone do not justify the use of force. Resort to deadly force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

If you find that the state proved beyond a reasonable doubt all the essential elements of murder and that the state proved beyond a reasonable doubt that the defendant did not act in self-defense, you must separately decide whether the defendant proved by a greater weight of the evidence that he knowingly acted while under the influence of sudden passion of in -- passion of in a sudden fit of rage -- or in a sudden fit of rage, either of which was brought on by serious provocation of Daniel A. Peek, Sr., and that was reasonably sufficient to incite the defendant into using deadly force.

However, if you find that the state failed to prove beyond a reasonable doubt all the essential elements of murder or if you find that the state failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, your verdict must be not guilty and you will not make this determination.

Sudden passion or sudden fit of rage: You must determine whether or not, at the time of the offense, the defendant acted knowingly while under the influence of sudden passion or a sudden fit of rage, either of which was brought on by serious provocation occasioned by Daniel A. Peek, Sr. that was reasonably sufficient to incite the defendant into using deadly force.

A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result. A person has knowledge of circumstances when he is aware that such circumstances probably exist. Since you cannot look into the mind

of another, knowledge is -- knowledge is determined from all the facts and circumstances in evidence you will determine from all these facts and circumstances whether they existed at the time in the mind of the defendant, an awareness of the probability that he was causing or attempting to cause physical harm to another.

Cause has been previously defined for you.

Under the influence of sudden passion or sudden fit of rage means there is a serious provocation occasioned by Daniel A. Peek, Sr., that is reasonably sufficient to incite a person into using deadly force; it is an act done in the heat of blood without time to reflect or for passions to cool.

For provocation to be reasonably sufficient to bring on a sudden passion or sudden fit of rage, you must decide that the provocation was sufficient to arouse the passions of an ordinary person beyond the power of his control.

When deciding whether this defendant was actually under the influence of a sudden passion or a sudden fit of rage, you must consider the emotional and mental state of the defendant, and the conditions and circumstances that surrounded him at the time of the act.

If you find that the state proved beyond a reasonable doubt all the essential elements of murder, that the state proved beyond a reasonable doubt that the defendant did not act in self-defense and you find that the defendant failed to prove by a greater weight of the evidence that he acted while under the influence of sudden passion or fit of rage -- sudden fit of rage, either of which was brought on by serious provocation occasioned by Daniel A. Peek, Sr., that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of murder.

If you find that the state proved beyond a reasonable doubt all the essential elements

of murder, that the state proved beyond a reasonable doubt that the defendant did not act in self-defense and you find that the defendant proved by a greater weight of the evidence that he knowingly acted while under the influence of sudden passion or sudden fit of rage, either of which was brought on by serious provocation occasioned by Daniel A. Peek, Sr., that was reasonably sufficient to find -- to incite the defendant into using deadly force, then you must find the defendant guilty of voluntary manslaughter.

If you find the defendant guilty of murder, you must separately decide whether the state proved beyond a reasonable doubt if the defendant, while committing the murder, displayed, brandished, indicated he possessed or used a firearm to facilitate the murder.

If you find that the defendant guilty of voluntary manslaughter, you must separately decide whether the state proved beyond a reasonable doubt if the defendant, while committing the voluntary manslaughter,

displayed, brandished, indicated he possessed or used a firearm to facilitate the voluntary manslaughter. If your verdict is not guilty, you will not make this determination.

Firearm means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. Firearm includes an unloaded firearm and any firearm which is inoperable, or can be readily rendered operable.

When deciding whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, you may rely on circumstantial evidence, including, but not limited to, the statements, representations and actions of the individual exercising control over the firearm.

Deadly weapon means any instrument, device or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried or used as a

weapon.

On or about his person or under his control means that the firearm was either carried on the defendant's person or was so near as to be conveniently accessible and within his immediate reach.

Brandish means to wave or exhibit in a menacing or challenging manner.

Count Two: Murder. The defendant is indicted for murder. In order to find the defendant guilty of murder, you must find that on or about July 31st, 2022, in Mahoning County, state of Ohio, that the defendant did cause the death of Daniel A. Peek, Sr., as a proximate result of the defendant committing or attempting to commit felonious assault, an offense of violence that is a felony of the second degree.

Cause has been previously defined for you.

Before you can find the defendant was committing felonious assault, you must find that on or about July 31st, 2022, Mahoning

County, state of Ohio, that the defendant did knowingly cause or attempt to cause physical harm to Daniel A. Peek, Sr., by means of a deadly weapon.

A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result. A person has knowledge of circumstances when he is aware that such circumstances probably exist. Since you cannot look into the mind of another, knowledge is determined from all of the facts and circumstances in evidence. You will determine from all these facts and circumstances whether there existed at the time in the mind of the defendant, an awareness of the probability that he was causing physical harm to Daniel A. Peek, Sr.

Cause and deadly weapon have been previously defined for you.

Physical harm means -- physical harm to persons means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

Proximate cause is an act or failure to act that in the natural and continuous sequence directly produced the injury or death and without which it would not have occurred. There may be one or more proximate cause. The fact that some other cause combined with the act of the defendant in producing an injury does not relieve him from liability, unless it is shown such other cause would have produced the injury independent of the defendant's actions.

The instructions for self-defense have been previously given to you.

If you find that the state proved beyond a reasonable doubt all the essential elements of murder and that the state proved beyond a reasonable doubt that the defendant did not act in self-defense, your verdict must be guilty as charged. You must separately decide whether the state proved beyond a reasonable doubt if the defendant, while committing the murder, displayed, brandished, indicated he possessed or used a firearm to

facilitate the murder. If you find that the state failed to prove beyond a reasonable doubt any of the essential elements of murder or if you find that the state failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, your verdict must be not guilty and you will not make this determination.

The elements of firearm specification have been previously defined for you.

Felonious assault: The defendant has been indicted for felonious assault. In order to find the defendant guilty of felonious assault, you must find that on or about July 31st, 2022, in Mahoning County, state of Ohio, that the defendant did knowingly cause or attempt to cause physical harm to Daniel A. Peek, Sr., by means of a deadly weapon.

Knowledge, cause, physical harm, and deadly weapon have been previously defined.

If you find that the state proved beyond a reasonable doubt all the essential elements

of felonious assault and that the state proved beyond a reasonable doubt that the defendant did not act in self-defense, your verdict must be guilty as charged. You must separately decide whether the state proved beyond a reasonable doubt if the defendant, while committing felonious assault, displayed, brandished, indicated he possessed or used a firearm to facilitate the felonious assault. If you find that the state failed to prove beyond a reasonable doubt any of the essential elements of felonious assault or if you find that the state failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, your verdict must be not guilty and you will not make this determination.

The elements of firearm specification have been previously defined.

If you find that the state proved beyond a reasonable all the essential elements of any one or more of the offenses charged in the separate counts of the indictment, your

verdict must be guilty as to such offense or offenses according to your findings. If you find that the state failed to prove beyond a reasonable doubt any of the essential elements of any one or more of the offenses charged in the separate counts of the indictment, your verdict must be not guilty as to such offense or offenses according to your findings. The charges set forth in each count of the indictment constitute a separate and distinct matter. You must consider each count and the evidence applicable to each count separately and you must state your finding as to each count uninfluenced by your verdict as to any other count. The defendant may be found guilty or not guilty of any one or all of the offenses charged.

The court has given you the instructions on the law applicable to this case. I will now instruct you on how to conduct your deliberations and prepare your verdict.

You must not be influenced by any consideration of sympathy or prejudice. It

is your duty to carefully weigh the evidence, to decide all disputed questions of fact, to apply the instructions of the court to your findings, and to render your verdict accordingly. In fulfilling your duty, your efforts must be to arrive at a just verdict. Consider all the evidence, use your common sense and make your findings with intelligence and impartiality, and without bias, sympathy or prejudice, so that the state and the defendant will feel that the case was fairly and impartially tried.

If, during the course of this trial, I said or did anything which you consider an indication of my view of the facts, you are instructed to disregard it. The judge must be, and sincerely desires to be, impartial in presiding over this and every other trial before a jury and without a jury. The court does not have the right and does not desire to invade the province of the jury by indicating in any way a preference between the state and the defendant and the court has

not done so at any time.

Your initial conduct upon entering the jury room is a matter of importance. It is not wise to immediately express a determination to insist upon a certain verdict, because if your sense of pride is aroused, you may hesitate to change your position even if you later decide you are wrong.

Consult with one another, consider each others views and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself, but you should do so only after discussion of the case with your fellow jurors. Do not hesitate to change an opinion if you find that it is wrong. However, you should not surrender honest convictions in order to be congenial or to reach a verdict solely because of the opinion of other jurors.

When you go to the jury room, your first

function will be to select one of you to serve as a foreman or forewoman. The person you select to preside over your deliberations does not have any greater power nor does that person's vote have any more importance than others. He or she serves the purpose of helping to conduct your deliberations in an orderly manner and to give each of you the opportunity to express your opinion. One additional duty of the foreman or forewoman is to see that the verdict forms and any exhibits are returned to the court after you reached a verdict.

If, during your deliberations, questions arise concerning my instructions, the law, or evidence, I may, under certain circumstances, furnish answers to them. Any such questions should be reduced to writing by the foreman or forewoman indicating specifically what is requested, notify the bailiff and deliver the question to the bailiff. The ultimate aim of all jury instructions is to help the jury. A written copy of the general charge should

assist the jury in its function and avoid most, if not all, questions during deliberations. Therefore, I will place in your possession the court's final instructions of law for your use.

The court will also place in your possession the exhibits and the verdict forms. The foreman or forewoman will obtain possession of these records, including the verdict, and return them to the courtroom. Until your verdict is announced in open court, you are not to disclose to anyone the status of your deliberations or the nature of your verdict.

This being a criminal case, before it can be said that you've reached a verdict, it is necessary for all 12 members of the jury to agree upon a verdict and sign the verdict form in ink. You will have with you in the jury room the following forms of verdicts. No inferences are to be drawn by the order in which I read these.

Verdict form Count One: Murder. We,

the jury, find the defendant, John Eugene Morgan, asterisk and blank, of murder, in violation of Ohio Revised Code 2903.02(A)(D). The asterisk reads, insert in ink guilty or not guilty. There's a line for a date and 12 lines for signature.

Specification to Count One: Murder. We, the jury, find the defendant, John Eugene Morgan, asterisk and blank, had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing the murder. The asterisk reads, insert in ink did or did not. There's a line for a date and 12 lines for signature.

Verdict form Count One: Lesser included offense of voluntary manslaughter. We, the jury, find the defendant, John Eugene Morgan, asterisk and blank, of voluntary manslaughter, a violation of Ohio Revised Code 2903.03(A)(C). It reads, insert in ink guilty or not guilty. There's a line for a date and 12 lines for signature.

Specification to Count One: Lesser

included offense of voluntary manslaughter. We, the jury, find the defendant, John Eugene Morgan, asterisk and blank, had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing the voluntary manslaughter. The asterisk reads, insert in ink did or did not. There's a line for a date and 12 lines for signature.

Verdict form Count Two: Murder. We, the jury, find the defendant, John Eugene Morgan, asterisk and blank, of murder, in violation of Ohio Revised Code 2903.02(B)(D). The asterisk reads, insert in ink guilty or not guilty. There's a line for a date and 12 lines for signature.

Specification to Count Two: Murder. We, the jury, find the defendant, John Eugene Morgan, asterisk and blank, had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing the murder. The asterisk reads, insert in ink did or did not. There's a line

for a date and 12 lines for signature.

Verdict form Count Three: Felonious assault. We, the jury, find the defendant, John Eugene Morgan, asterisk and blank, of felonious assault, a violation of Ohio Revised Code 2903.11(A)(2)(D)(1)(a). The asterisk reads, insert in ink guilty or not guilty. There's a line for a date and 12 lines for signature.

Specification to Count Three: Felonious assault. We, the jury, find the defendant, John Eugene Morgan, asterisk and blank, had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing the felonious assault. The asterisk reads, insert in ink did or did not. There's a line for a date and 12 lines for signature.

Now I ask all 12 members of the jury, are you physically able to proceed with the deliberations in this case?

THE JURORS: (Nodding heads.)

THE COURT: That being the case, the

jurors who were selected as alternates are not permitted to participate in the jury's deliberations unless one of the jurors is unable to complete his or his service due to illness or other misfortune. The alternate jurors will remain in the courthouse under the supervision of the bailiff but will not accompany the jury to the jury room or participate in deliberations unless the court -- unless directed by the court. The alternate jurors continue to be part of the jury panel and while the jury's deliberating until the jury has reached a verdict. The alternate jurors cannot discuss the case with anyone or disclose to anyone how they would have voted. After the jury returns its verdict and the verdict is announced in open court, the alternate jurors will be released from all restrictions.

On behalf of the public and the parties, the court expresses appreciation for your services and the service of all of the jurors performing this important public function.

Now, ladies and gentlemen, you will retire to the jury room to deliberate. The bailiff will shortly place in your possession the exhibits, the verdict forms and instructions.

When all 12 have agreed on a verdict, complete the form which corresponds with your decision and then notify the bailiff by ringing the bell.

Anything further from the state?

MR. ANDREWS: No, Your Honor. Thank you.

THE COURT: Anything further from the defense?

MR. HENDERSON: Nothing, Your Honor. Thank you.

THE COURT: Thank you.

(WHEREUPON, the jury left the courtroom at 3:23 p.m., after which there was a discussion off the record and the proceedings continued as follows:)

MR. WEATHERLY: Your Honor, may it please the court. At this time I would first

waive the presence of the defendant for purposes of placing this bit on the record. At this time I would withdraw my prior motion to admit Exhibits C and D.

THE COURT: Okay. You have no objection?

MR. ANDREWS: No, Your Honor.

THE COURT: Okay. They're withdrawn.

MR. WEATHERLY: Thank you, Your Honor.

MR. ANDREWS: Thank you.

THE COURT: Thank you.

REPORTER'S NOTE

Defendant's Exhibit A, facebook messages, was sent to the jury.

Defendant's Exhibit B, text messages, was sent to the jury.

Defendant's Exhibit C, excerpt of recorded interview, was withdrawn.

Defendant's Exhibit D, the transcript of the jail phone call, was withdrawn.

The dash cam video referred throughout the transcript interchangeably as Defendant's Exhibits D and E by counsel was ultimately marked as Defendant's Exhibit E, which was sent to the jury.

State's Exhibits were marked and offered into evidence as specified in the record.

(WHEREUPON, the following took place in the bailiffs office in the presence of the Court, bailiff, counsel and court reporter at 4:20 p.m.)

THE COURT: Are you waiving your client's appearance?

MR. HENDERSON: Yes.

(WHEREUPON, the Court, bailiff and court reporter entered the jury room, and the following proceedings were had in the presence of counsel:)

THE COURT: Okay. Ladies and gentlemen, I have a question: Can we have the --

THE BAILIFF: Means.

THE COURT: -- means to play the video.

Yes. She just brought it back. If you need help, let the bailiff know. She will get somebody to help you set it up.

* * * * *

(WHEREUPON, at 4:30 p.m. the Court, bailiff and court reporter entered the jury room, and the following proceedings were had in the presence of counsel:)

THE COURT: Ladies and gentlemen of the jury, it's my understanding that you want to adjourn for the day. That is absolutely fine. Do not discuss the case amongst yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form any further opinions on this matter until all 12 of you are back in this room and continue your deliberations.

The room will be locked so don't worry if you leave anything out. Nobody's going to touch anything.

And you guys, you get to decide what time you want to come back, so. We're here from 8 o'clock on. So it's up to you guys.

JUROR: 8:00's good.

JUROR: 9:00?

JUROR: 9:00.

JUROR: You want 9:00?

JUROR: 9:00.

JUROR: 8:30, in between.

THE COURT: So when all 12 of you are

gathered in this room by 9 o'clock tomorrow, you can restart your deliberations.

JUROR: Thank you.

THE COURT: Okay. Have a nice evening.

JUROR: You too.

(WHEREUPON, the Court recessed at 4:33 p.m., February 27, 2024.)

* * * * *

(WHEREUPON, at 9:00 a.m., February 28, 2024, the jury returned to the courtroom, and the proceedings continued as follows in the presence of counsel:)

THE COURT: Ladies and gentlemen, I have several questions. The first one is, are there missing pages to the text messages between Kaitlynn and Megan; for example, pages 2 and 4?

You have all the pages that were admitted into evidence.

Can we get a magnifying glass?

There is not a magnifying glass in this courthouse. However, if there's something on the TV -- which we're going to let you watch

the television in here, if there's something on the television that you need magnified, my court administrator will be in here with his phone and he can use his phone to blow it up for you.

Are we able to have the TV -- well, I just said we're either going to -- let me read it into the record. Are we able to have the TV brought in to hook up the laptop to? This would allow the jurors to view the video as well as enlarge the screen.

We thought it would be easier for you, since that room's so small, to watch it in here, and we can push it closer to you.

Can we get at least 12 highlighters?

Yes.

Can someone show us how to play the video very slowly?

That's why the court administrator will be here.

JUROR: I already have it figured out.

THE COURT: Okay. Can we get a copy of the defense expert witness testimony of the

Akron police officer?

No.

(WHEREUPON, the Court, bailiff, and court reporter, and counsel exited the courtroom.)

* * * * *

(WHEREUPON, the following took place in the bailiff's office in the presence of the Court, bailiff, counsel, and court reporter at 10:30 a.m.)

THE COURT: Are you waiving your client's appearance?

MR. HENDERSON: Yes.

(WHEREUPON, the Court, bailiff, and court reporter entered the jury room, and the following proceedings were had in the presence of counsel:)

THE COURT: Ladies and gentlemen, I have a question. It says, can we have four more copies of the State of Ohio versus John E. Morgan jury charge?

Yes. She's making the copies now.

THE BAILIFF: Presently. As we speak. I'll be right back with the copies.

(WHEREUPON, the Court, bailiff, and court reporter exited the jury room.)

* * * * *

(WHEREUPON, the following took place in the hallway of the Court at 11:24 a.m.)

THE COURT: They're waiving their client's appearance.

(WHEREUPON, the Court, bailiff, and court reporter entered the jury room, and the following proceedings were had in the presence of counsel:)

THE COURT: I have a question from you guys. It says, is the felonious assault charge related to only the pistol whip at the beginning or overall for the whole altercation? The charge does not specify.

The mention of felonious assault in Count Two relates to the shooting. The felonious assault charge in Count Three relates to the alleged pistol whip.

JUROR: Okay.

JUROR: Thank you.

JUROR: Thank you.

(WHEREUPON, the Court, bailiff and court reporter exited the jury room.)

* * * * *

(The following took place in the hallway of the court at 11:30 a.m.)

THE COURT: Are you waiving your client's appearance?

MR. HENDERSON: Yes, Judge.

(WHEREUPON, the Court, bailiff and court reporter entered the jury room, and the following proceedings were had in the presence of counsel:)

THE COURT: Ladies and gentlemen, I do have a question. It says, can we have the definition of voluntary manslaughter specific to its -- the revised code?

The instructions that you are requesting are included in the instructions in Count One.

THE BAILIFF: Lunch.

THE COURT: Oh. You want to eat? It's

my understanding at this time you, ladies and gentlemen, would like to break for lunch. That is absolutely fine. Do not discuss the case among yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form any opinion on this matter until all 12 of you are back in this room and you continue your deliberations. I don't know how long you want. It doesn't matter to me.

JUROR: Half hour.

JUROR: Thirty minutes maybe.

THE COURT: Whenever the 12 of you -- whenever you all get back here, okay?

JUROR: Yes, ma'am.

THE COURT: Thank you.

JUROR: Thank you.

(WHEREUPON, the Court, bailiff, and court reporter exited the jury room.)

* * * * *

(WHEREUPON, the jury returned to the courtroom at 2:20 p.m., and the proceedings continued as follows:)

THE COURT: Ladies and gentlemen of the jury, it's my understanding you've reached a verdict in this matter; is that correct?

JUROR NO. 12: Yes.

THE COURT: Would the foreperson please hand the verdict forms to my bailiff.

JUROR NO. 12: (Complying.)

THE COURT: Verdict form Count One: Murder. We, the jury, find the defendant, John Eugene Morgan, not guilty of murder, in violation of Ohio Revised Code 2903.02(A)(D). It's dated today's date and signed by all 12 jurors.

Specification to Count One: Murder. We, the jury, find the defendant, John Eugene Morgan, not guilty had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing the murder.

Verdict form Count One: Lesser included offense of voluntary manslaughter. We, the jury, find the defendant, John Eugene Morgan, guilty of voluntary manslaughter, in

violation of Ohio Revised Code 2903.03(A)(C). It's dated today's date and signed by all 12 jurors.

Specification to Count One: Lesser included of voluntary -- murder [sic]. We, the jury, find the defendant, John Eugene Morgan, guilty had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing the voluntary manslaughter. It's dated today's date and signed by all 12 jurors.

Verdict form Count Two: Murder. We, the jury, find the defendant, John Eugene Morgan, guilty of murder, in violation of Ohio Revised Code 2903.02(B)(D). It's dated today's date and signed by all 12 jurors.

Specification to Count Two: Murder. We, the jury, find the defendant, John Eugene Morgan, guilty had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing the murder. It's dated today's date and signed by all 12 jurors.

Verdict Count Three: Felonious assault. We, the jury, find the defendant, John Eugene Morgan, guilty of felonious assault, in violation of Ohio Revised Code 2903.11(A)(2)(D)(1)(a). It's dated today's date and signed by all 12 jurors.

Specification to Count Three: Felonious assault. We, the jury, find the defendant, John Eugene Morgan, guilty had a firearm as set forth in the specification, in violation of Ohio Revised Code 2941.145(A), while committing felonious assault. It's dated today's date and signed by all 12 jurors.

Would the defendants like the jury polled?

MR. HENDERSON: Yes, please.

THE COURT: Juror No. 1, is that your verdict as I read it?

JUROR NO. 1: Yes.

THE COURT: Juror No. 2, is that your verdict as I read it?

JUROR NO. 2: Yes.

THE COURT: Juror No. 3, is that your

verdict as I read it?

JUROR NO. 3: Yes.

THE COURT: Juror No. 4, is that your verdict as I read it?

JUROR NO. 4: Yes.

THE COURT: Juror No. 5, is that your verdict as I read it?

JUROR NO. 5: Yes.

THE COURT: Juror No. 6, is that your verdict as I read it?

JUROR NO. 6: Yes.

THE COURT: Juror No. 7, is that your verdict as I read it?

JUROR NO. 7: Yes.

THE COURT: Juror No. 8, is that your verdict as I read it?

JUROR NO. 8: Yes.

THE COURT: Juror No. 9, is that your verdict as I read it?

JUROR NO. 9: Yes.

THE COURT: Juror No. 10, is that your verdict as I read it?

JUROR NO. 10: Yes.

THE COURT: Juror No. 11, is that your verdict as I read it?

JUROR NO. 11: Yes.

THE COURT: Juror No. 12, is that your verdict as I read it?

JUROR NO. 12: Yes.

THE COURT: Okay. That will conclude your service in this matter. The defendant's bond is revoked. If you will return to the jury room, I will dismiss you from there. Thank you.

(WHEREUPON, the Court adjourned on February 28, 2024.)

*** * * * ***

REPORTER'S CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of all evidence introduced and proceedings had in the trial of the within-named case as shown by my stenographic notes taken by me during the trial and at the time the evidence was being introduced.

_____
WENDY BLAIR
OFFICIAL COURT REPORTER

_____
DIANE M. KERCHOFER, RPR
OFFICIAL COURT REPORTER

DATE:_____

REPORTER'S NOTE

THE EXHIBITS IN THIS CASE, BEING TOO CUMBERSOME TO ATTACH TO THIS TRANSCRIPT OF RECORD ON APPEAL ARE HEREBY, UNDER SEPARATE COVER, TRANSMITTED TO THE CLERK OF COURTS AND ARE TO BE CONSIDERED AS A PART OF THIS TRANSCRIPT OF RECORD ON APPEAL AS IF THE SAME WERE PHYSICALLY ATTACHED THERETO.

STATE OF OHIO	)	IN THE COURT OF COMMON PLEAS
	) ss.	
COUNTY OF MAHONING	)	**CASE NO. 22 CR 438** **24 MA 40**
STATE OF OHIO	)	
	)	
Plaintiff	)	**DOCUMENTARY EVIDENCE**
	)	
-vs-	)	
	)	
JOHN E. MORGAN	)	
	)	
Defendant	)	

DOCUMENTARY EXHIBITS ENCLOSED

State's Exhibit Nos.: 1 through 39, 41, 42, 44, 45, 46, 54, 56

Defendant's Exhibits: A, B, C, D

STATE OF OHIO) IN THE COURT OF COMMON PLEAS

) ss.

COUNTY OF MAHONING) **CASE NO. 22 CR 438**
24 MA 40

STATE OF OHIO)
)
Plaintiff)
)
-vs-)
)
JOHN E. MORGAN)
)
Defendant)

PHYSICAL EXHIBITS ENCLOSED

State's Exhibits Nos: 48, 49, 50, 58, 59, 61

Defendant's Exhibit: E