

1 Mr. Arabia.

2 MR. ARABIA: Thank you, Your Honor.

3 The decedent, John Sprague, was stinking
4 drunk. John Sprague was an angry, out of control
5 maniac. And John Sprague walked onto Avery Church's
6 property and whacked him on the side of the head
7 hard enough to make him feel dizzy and make his ears
8 ring. Avery defended himself. That's what's the
9 evidence is going to show because that's what
10 happened.

11 Now, going to back to February 15, Avery
12 was invited over to his sister Nita's house because
13 she was concerned because Waylon, her son, Avery's
14 nephew, had shot and killed some dogs and dumped the
15 dogs bodies on the owner's property. She was a
16 little worried about that. She invited Avery over.

17 So Avery went over and he's wearing his
18 pistol on his hip, which did he all the time. And
19 there's a little party going on. Nita, his sister
20 is there, also Bert, his brother-in-law. The
21 decedent, John Sprague. Waylon, his nephew; his
22 grandnephews Dylan and Cody. And Seamus, who was a
23 friend of Waylon's spending the weekend with the
24 decedent, John Sprague.

25 Avery voiced his disapproval of the

1 drunkenness that was going on and also the situation
2 with the dogs and an argument did occur.

3 However, Avery did not pull his gun on
4 Bert, and those are going to be Bert's words, not
5 mine. There was an argument. Avery was chased out
6 of the place by Bert and the decedent, John Sprague,
7 and maybe some of the boys.

8 And after that argument, one person felt
9 afraid enough to call the police, and that person
10 was Avery. He called the police. He spoke to
11 Deputy Harvey. And he expressed his concerns both
12 about the dog incident and about the incident that
13 happened at the house. And said that he was afraid
14 that Bert, the decedent and others were going to
15 beat him up.

16 And at that point, Deputy Harvey said two
17 basic things. No. 1, he said to Avery, maybe it's a
18 good idea to stay away from the house. And Avery
19 kept that promise; he never went back.

20 The second thing was that someone from the
21 sheriff's office was going to go over to Bert's
22 place and look into this, see what was up. And the
23 sheriff's office broke its promise they never
24 followed up. They never went over there.

25 Now, moving to Sunday afternoon. Avery's

1 at home, he's minding his own business. He goes
2 outside. He sees that -- the four teenage boys
3 again that's Waylon, his nephew; his grandnephews
4 Cody and Dylan, and then Seamus the friend of
5 Waylon's who was spending the weekend with the
6 decedent, are out across the street collecting some
7 tree scraps. And he goes over to them. And the
8 evidence will show that -- in a manner kind of like
9 a relative giving advice to a nephew, he again
10 started to express his concern about the situation
11 with the dogs. And possible retaliation by the
12 owners of the dogs.

13 Waylon and Seamus took exception to this
14 and another argument started. And there's another
15 allegation that he aimed his gun at Seamus and the
16 evidence is going to show that that's not true. And
17 there's an allegation that he discharged his firearm
18 in a manner that would have endangered the boys.
19 That's also false. And there are going to be some
20 other bizarre, obviously false claims that will go
21 along with that. And again, none of them called the
22 police after this incident. As far as that incident
23 and the one on Friday, those only became something,
24 they were turned into something after what happened
25 next.

1 And now the boys leave that area. They
2 run into Bert Lucas, Avery's brother-in-law and the
3 decedent John Sprague on the road. They stop,
4 there's a conversation. Seamus says something to
5 the decedent, John Sprague, and he speeds off. He's
6 driving the truck. He's well over double the legal
7 limit for alcohol and he's driving a truck. He
8 blows through a stop sign. He refused to let Bert
9 out of the truck even when Bert asked. And he
10 ignored Bert's advice not to go up to Avery's place.

11 Now, Avery is at home cooking a spaghetti
12 dinner. And he has no idea that this drunken
13 maniac, who was over double the legal limit, blowing
14 through the stop sign, not letting Bert out and so
15 forth is on the way.

16 Now, Avery, a 58-year-old man with a bad
17 hip -- well, the thing that he feared when he called
18 the police about 41 hours earlier is now about to
19 happen. The decedent goes up to one of his doors
20 apparently to try to get in. Avery comes out of
21 another door and they meet. The decedent said
22 something about Avery's head. Avery says go away,
23 get out of here several times. And then the
24 decedent whacks him on the side of the head. He
25 also punched him in the jaw or chin area.

1 Now, Bert Lucas is down at the road in the
2 truck. And he had looked away. When he looked
3 back, what he saw, he had the decedents's back to
4 him, and then Avery would have been on the other
5 side. What he saw was Avery's arm up like this and
6 the decedent's fist like this.

7 Now at this point, Avery does have some
8 options. He can let the decedent, drunken maniac
9 hit him until he falls down and then he gets his
10 face stomped in by the guy's shoe. Or he can let
11 the drunken maniac take his gun. And you have to
12 figure that someone who attacks a person with a
13 pistol at some point they might try that. So he
14 waits for the drunken maniac to grab the gun and
15 shoot him. Or he can wait and let himself get hit
16 enough times to satisfy the same government whose
17 police department had failed him. Those were his
18 choices.

19 Or he could defend himself. And that's
20 what he did. He fired one shot in self defense.
21 Now, another unfortunate aspect of this case is that
22 Detective Boruchowitz failed miserably in his search
23 for the truth. He failed to gather evidence which
24 is now lost forever that would have shown just how
25 hard Avery got hit in the head. He failed to follow

1 up with witnesses who told him things that were
2 untruthful. And he even failed to make sure that
3 his written reports were accurate.

4 Now, after you listen to all the evidence
5 in the case you will realize that John Sprague was
6 stinking drunk, he was angry and out of control, and
7 he walked onto Avery's property and hit him in the
8 side of the head hard enough for Avery to feel dizzy
9 and for his ears to ring. Avery defended himself.

10 THE COURT: Thank you, Mr. Arabia.

11 Mr. Friel, the State may proceed with its
12 case in chief.

13 MR. FRIEL: Your Honor, we're going to
14 call Deputy Lynn.

15 THE COURT: Ladies and gentlemen, just so
16 you know, we're trying to get the courtroom warmed
17 up a little bit. They lowered the temperature when
18 we had all the folks in here yesterday because it
19 was too hoot and we're trying to get a balance. If
20 it's too uncomfortable let me know and we'll
21 continue. We're working on it.

22 Good morning.

23 THE WITNESS: Morning. How are you doing?

24 THE COURT: Please stand, raise your right
25 hand and be sworn in by the clerk.