

1 Q Is that a yes?

2 A Yes.

3 Q Thank you.

4 How did you come to live at 3325 East Victor?

5 A It was my pop's place. He passed away and I took over
6 the lease.

7 Q When you took over the lease, did you have any other
8 individuals living with you at that house?

9 A Yes, I did.

10 Q And who were those people?

Brian Mangens

11 A Justin Malter and Mr. Wimberly here.

12 Q How long did you know Mr. Wimberly at the time of
13 September 22, 2013? How long had you known him?

14 A Maybe six to eight months, somewhere around there.

15 Q How long had you known Justin Malter?

16 A Close to four years.

17 Q Where did you and Justin meet?

18 A At high school.

19 Q Prior to September 22, 2013, how long had you lived at
20 3325 East Victor?

21 A I had lived there, maybe, two to three years before I
22 moved out. My father still lived there.

23 Q Did you live there with your father?

24 A Yes. And I moved out and he still lived there.

25 Q I'm sorry?

1 A When I moved out he lived there as well.

2 Q And when he passed away you moved back in?

3 A Yes.

4 Q Were you and Mr. Justin Malter friends?

5 A Yeah. Yes.

6 Q And what about you and Mr. Wimberly?

7 A Yes.

8 Q How did you meet Mr. Wimberly?

9 A I had met him through a man that I met at a place where

10 I was working at. I had met him through a fellow named

11 Brian Magers [ph].

12 Q So you had a mutual friend?

13 A Yes.

14 Q And at the time that you were living there on September

15 22nd, did you have a job?

16 A Yes. Oh, at the time of the incident?

17 Q Yes, sir.

18 A No, I did not.

19 Q Were you on unemployment?

20 A Yes, I was.

21 Q Did Justin Malter have a job?

22 A Yes, he did.

23 Q Do you know where he was working?

24 A It was either at the Anchor or a place called Empire

25 Catering. I am not for sure on which one.

- 1 did too.
- 2 Q Where did Justin Malter sleep?
- 3 A He kind of slept back here in the -- I guess it would
- 4 be a dining room (indicating).
- 5 Q Okay. So you turned the dining room into a bedroom?
- 6 A Yeah.
- 7 Q Where did Mr. Wimberly sleep?
- 8 A He slept back here in this room (indicating).
- 9 Q That's at the bottom of that diagram?
- 10 A Yeah.
- 11 Q You can have a seat, sir.
- 12 (Witness complied with request.)
- 13 Q September 21st you're at your home. In the evening
- 14 hours, who is all at your home?
- 15 A It was Justin Malter and myself.
- 16 Q At some point in time did Andrew Langston come over?
- 17 A Yes.
- 18 Q Approximately what time was that?
- 19 A It was, maybe, about 10:00 when he first came over.
- 20 10:00 in the evening.
- 21 Q And at that time was it just you, Justin and Andrew?
- 22 A Yes. And Matt as well.
- 23 Q Matt was there?
- 24 A Yes.
- 25 Q Did anyone else arrive with Mr. Wimberly?
- I was at
work until 2:00am
"John Barleycorn's"*

1 A I believe his girlfriend.

2 Q Do you recall her name?

3 A Libby.

4 Q Libby?

5 A If I'm not mistaken.

6 Q Do you know anyone by the name of Lelle?

7 A Yeah. That's sounds more along the lines of who his

8 girlfriend is.

9 Q Okay. So at some point in time it's you, Justin,

10 Andrew, Mr. Wimberly and his girlfriend. Anybody else

11 that you can recall?

12 A Not that I remember, no.

13 Q And at this point in time, what's going on at your

14 house?

15 A Not a whole lot. I mean, we were just kind of hanging

16 out.

17 Q Why did Andrew come over? Do you know?

18 A He had come over to party.

19 Q Were there drugs in the house?

20 A Yes.

21 Q Okay. Marijuana?

22 A Yes.

23 Q At some point in time did you observe any -- what's

24 commonly referred to as acid?

25 A I had seen Andrew with it, but I didn't see him take

1 it. I mean, I knew that he had it. He showed it to
2 me.

3 MR. DWYER: Can I have 21, please?

4 (Exhibit displayed.)

5 MR. DWYER: Thank you.

6 Q Jonmark, we're looking at State's Exhibit 21 on the
7 screen. Is this the front door to your house?

8 A Yes, it is.

9 Q And is that your bed that we talked about in State's
10 Exhibit 19 in the diagram?

11 A Yes, it is.

12 Q When everyone was hanging out, was everyone basically
13 in the living room?

14 A Yes.

15 Q If we go on to State's Exhibit 22, this is, again,
16 another picture of your bed; correct?

17 A Yes.

18 Q And in 23 the room that we're looking at to the left of
19 the Douglas Design District banner, that's the dining
20 room where Justin slept?

21 A That is correct.

22 Q This is your living room table in 24. And this is --
23 State's Exhibit 25, this is an end table. There's what
24 appears to be a bong sitting on that end table;
25 correct?

- 1 A Yes.
- 2 Q Now, this end table, is this near your bed?
- 3 A Yes. Just a few feet away.
- 4 Q Okay. So if we go back to State's Exhibit 22, it's to
5 the left of that orange sort of leather chair; is that
6 right?
- 7 A Yes.
- 8 Q All right. At some point in time, does Andrew leave
9 the house?
- 10 A Yes.
- 11 Q Do you know where he went? Did he go to the store?
12 Did he go to --
- 13 A I believe that they had went down to the corner store
14 to get some cigarettes.
- 15 Q Okay. When you say corner store, where are you talking
16 about?
- 17 A It's at Douglas and Waterman. It used to be a Valero.
18 I think it's Phillips 66 now.
- 19 Q It's a gas station?
- 20 A Yeah.
- 21 Q And it is across from like a Dillons?
- 22 A No. It's right across the street from an insurance
23 building and right next to the ear, nose and throat
24 specialist right there on Hillside.
- 25 Q So it's south of Douglas?

1 A He was just talking about I found it.

2 Q Did you know what "it" was?

3 A I assumed it was God or Jesus or something, but I
4 really don't know.

5 Q And where was Andrew at this time?

6 A Andrew hadn't come over quite yet. It was -- Matt had
7 been there maybe about 15 minutes before Andrew came
8 in.

9 Q And when you say Andrew came in, did Andrew come in the
10 front door, the kitchen door, or do you know?

11 A The kitchen door.

12 Q Did you see him come in the kitchen door?

13 A No, because I can't see the kitchen door from the
14 living room.

15 Q You just know he didn't come in through the front door?

16 A Yes.

17 Q And before Andrew comes in during this -- did you say
18 it was ten, 15 minutes?

19 A Yes.

20 Q What was Mr. Wimberly doing and saying at this time?

21 A He was just talking crazy. I mean he --

22 Q When you say talking crazy, are you talking about
23 finding "it", finding Jesus?

24 A Yes. And it was here. And just a bunch of nonsense.

25 Q Before Andrew shows up, is Mr. Wimberly acting angry?

1 A No, he is not.

2 Q Was he acting aggressive?

3 A No, he is not.

4 Q Was he threatening you or Justin?

5 A No, sir.

6 Q When Andrew comes in, is it fair to say you saw him
7 come through the dining room area?

8 A Yes.

9 Q And that's the door we are talking about in 23;
10 correct?

11 A Yes, sir.

12 Q What happens when Andrew walks in the room?

13 A Just the whole atmosphere changed. Mr. Wimberly
14 changed. Just his whole facial expression, his body
15 language, everything. He just -- he zoned in on Andrew
16 and all he said was, I'm going to kill that mother
17 .fucker.

18 Q You say his expression changed. Tell the jury what you
19 saw.

20 A He just -- he was just sitting there, you know, kind of
21 out of it and looks at him and kind of -- just 100
22 percent focused on Andrew.

23 Q Is he staring?

24 A Yes. Glaring.

25 Q Glaring. All right. Says I'm going to kill the mother

1 black handle.

2 Q When you say seven inches, you're including the handle?

3 A Yes.

4 Q And did you see Mr. Wimberly pull it out?

5 A Yes, I did.

6 Q And where was it? Where did he produce it from?

7 A His pocket.

8 Q In the context of what we're talking about, does he say
9 it before -- does he pull -- excuse me. Does he
10 produce the knife prior to him saying I'm going to kill
11 that mother fucker or after?

12 A After.

13 Q When you see this knife, do you do anything?

14 A I had asked Mr. Wimberly -- I was like, you know,
15 what's going on? Why are you doing this? I had tried
16 to diffuse the situation and I didn't get anywhere.
17 And Justin Malter, he is better to talking to people
18 than I am, and he actually convinced Matt to drop his
19 knife and calm down a little bit.

20 Q Did Mr. Wimberly drop the knife?

21 A Yes, he did.

22 Q And where did he drop it? Just on the floor or --

23 A Just on the floor at his feet.

24 Q When the knife was dropped, what did you do?

25 A I picked it up and I closed the blade and I sat it on

1 the night stand next to my bed.

2 Q All right. So when we're talking about the night
3 stand, is it the table next to your bed with a lamp on
4 it?

5 A Yes.

6 Q Now, when you're sitting on the bed next to Mr.
7 Wimberly, is Mr. Wimberly sitting closer to the table
8 or are you?

9 A I'm sitting closest to the table. He would be to my
10 left.

11 Q Okay. So he's down on this end of the bed somewhat
12 (indicating)?

13 A Yes, sir.

14 Q Okay. Thank you.

15 After you picked up the knife and closed the blade
16 and set it on the table, what happens at that point?

17 A Matt had actually calmed down for a few minutes and
18 then, you know, we were just kind of, you know, okay,
19 you know, the situation is diffused. And it was just
20 seconds -- I mean, Matt, he had got that face -- that
21 look on his face again, and he reached back over and
22 picked up his knife.

23 Q Does he open the knife at this time?

24 A Yes, sir.

25 Q So you said he got that face. When you say he got that

1 Q At some point in time you make a second call to 911; is
2 that right?

3 A Yes, sir.

4 Q When do you make that call?

5 A It was, maybe, even as long as 20 minutes to a half an
6 hour after I had called the police the first time.

7 Q Did you have a watch with you?

8 A No.

9 Q Were you looking at the clock when you were calling?

10 A No. This is just estimates. It was the night of that
11 Old Town shooting that they had, and, you know, they
12 couldn't send an officer. I mean --

13 Q Did you know that at the time?

14 A No, I did not. I didn't know that until afterwards.

15 MR. WHITE: Your Honor, I will ask that that
16 answer be stricken from the record. why?

17 THE COURT: Sustained.

18 Q (BY MR. DWYER) When you called 911 the second time,
19 where are you at when you make the call?

20 A I was in the kitchen again.

21 Q So you had gone out, you screamed for help. You come
22 back into the kitchen and you pick up -- is it Andrew's
23 phone again?

24 A Yes, sir.

25 Q And you made a second call to 911?

I
remember
this.
It was
near
Barley
corn

1 A Yes, sir.

2 Q When that's going on, what are Andrew and Mr. Wimberly
3 doing?

4 A I remember Mr. Wimberly had had his hands over his head
5 and he was rocking back and forth on his elbows and
6 knees, just kind of grunting. Andrew -- I remember at
7 one point in time, he had started to go into a seizure
8 and he was starting to shake and stuff, so I ran over
9 there and I grabbed his head and turned it to the side.

10 Q And was this before or after that second call?

11 A I believe it was after.

12 Q At some point in time does Andrew make it to the screen
13 door?

14 A Yes, but not on his own.

15 Q Okay. Tell me what happens between that second phone
16 call and the seizure, what you call a seizure, to the
17 time where Andrew somehow gets to that screen door.
18 What's happening?

19 A Well, I had continued to hit Mr. Wimberly as he kept
20 trying to go towards Andrew. And every time he would
21 try to go towards Andrew I would always hit him to get
22 him off. And eventually my bat broke, so I went into
23 the other room and I grabbed an old police baton that
24 my dad had.

25 Q And you came back to the room, I take it?

Four or Five cops
for little old me?

Read effects of NBOMe 25I
Info. Pages

1 the officers?

2 A Yes, I did.

3 Q Do you recall how long the officers were there in order
4 to separate -- how long it took them to separate Mr.
5 Wimberly and Andrew?

6 A It took quite a long time. Because the first officer
7 that showed up, he was trying to get them off and he
8 just -- he couldn't, and then more and more officers
9 started showing up. And eventually Matt still had
10 ahold of Andrew and there was maybe four or five cops
11 trying to separate them. It just wasn't happening.

12 And finally they had jostled Andrew free and I remember
13 I grabbed him by the feet, and I pulled him out of just
14 like a whole mix of people to get him away.

15 Q Okay. I'm going to move to State's Exhibit 8 here, and
16 I know it's kind of a blurry picture. Does this
17 picture -- can you tell in this picture -- can you tell
18 the jury where Andrew's body was when you pulled him
19 away?

20 A I was probably where those pools of blood are.

21 Q Was that in the center of the picture, the pools that
22 have kind of run to the bottom of the picture?

23 A Yeah. And maybe in between that pool of blood and
24 these two right here (indicating.)

25 Q When you say that pool of blood, you're talking about

1 the one just next to the black and let's say gray --

2 A Yes.

3 Q Do ambulances show up?

4 A Yes, sir.

5 Q Where is Justin -- did you ever see Justin Malter
6 again?

7 A Yes. He comes back after the police and the ambulances
8 had arrived.

9 Q Does he show up on while the ambulances are still
10 there?

11 A Yes, sir.

12 Q As the officers -- do you know what happened to Mr.
13 Wimberly when the ambulances show up? Was he loaded
14 into an ambulance?

15 A Yes, sir.

16 Q What did you do after he was loaded into an ambulance?

17 A I remember it was chilly out and all I had on was some
18 slippers and my jeans, and I asked the officers if I
19 could go back inside and grab a shirt.

20 Q Did they let you get a shirt or jacket or anything?

21 A Yes, sir.

22 Q How are you feeling at this point in time?

23 A I was -- I was not feeling too hot.

24 Q What do you mean by that? Were you excited, were you
25 anxious, scared?

1 A I was definitely having some anxiety. I was just - I
2 remember I was just -- I was so just shook up about
3 the whole thing. I couldn't even believe it happened.

4 Q Did you speak to some officers about what had happened?

5 A Yes, sir.

6 Q Do you recall how many officers you told this story to?

7 A Two or three.

8 MR. DWYER: May I have just a moment, Your
9 Honor?

10 THE COURT: Sure.

11 (Mr. Dwyer conferred with Mr.

12 Breitenbach.)

13 Q Jonmark, that's all the question I have. Mr. White may
14 have some questions for you; okay?

15 A Okay.

16 THE COURT: Cross?

17 MR. WHITE: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. WHITE:

20 Q Jonmark, good afternoon.

21 A Good afternoon, sir.

22 Q How are you?

23 A Oh, I've been better.

24 Q If there is a question of mine that you don't
25 understand, would you let me know?

1 A Yes, sir.

2 Q All right. Fair enough.

3 On September 21, 2013, you were residing at 3325
4 East Victor Place; is that correct?

5 A Yes, sir.

6 Q Now, at that time, late in the evening of that day, you
7 just told this jury that you, Justin Malter, Andrew,
8 Matt Wimberly and ^{Leah} Lelle were the only people in that
9 residence; is that correct?

10 A Yes, sir.

11 Q No one else was there?

12 A Not that I can recall.

13 Q Do you recall a person by the name of Nathan?

14 A No, sir.

15 Q You don't recall a Nathan?

16 A No, sir.

17 Q Do you recall a cousin of Lelle?

18 A Was it a boy or a girl?

19 Q You don't recall any other people other than what you
20 told this jury as being in the residence; is that
21 correct?

22 A Yes, sir. I don't recall anybody else except the
23 people I mentioned.

24 Q Okay. You stated that you -- on September 22, 2013,
25 you had told this story to two or three different

*Andrea, yes she was there.
We all came in her car.*

1 Q Okay. Did you tell that officer that Matt said I'm
2 going to kill this mother fucker?

3 A I do believe so.

4 Q If he didn't report that, would he be in error?

5 A Yes.

6 Q Because you told him about that?

7 A I believe I told him that.

8 Q If he has in quotes your words, which were I'm going to
9 stab him, would you object to that?

10 MR. DWYER: Judge, I am going to object. It
11 assumes facts not in evidence.

12 MR. WHITE: It is in evidence. It is in
13 Officer Adams' report.

14 THE COURT: Overruled.

15 Q (BY MR. WHITE) Okay. So you're saying that you told
16 Officer Adams that Matt said he was going to kill him?

17 A Yes.

18 Q Okay. Did you tell that to Officer Nixon?

19 A I believe so, yeah.

20 Q If Officer Nixon states that you didn't say that, could
21 Officer Nixon be mistaken?

22 A I would think so, because I've told the same story
23 to --

24 Q The same story. Okay. Isn't it true that Matt
25 Wimberly didn't even get to the residence till around

1 12:30 on 9-22 of 2013?

2 A I don't know. I was most likely asleep then.

3 Q So you haven't told any officers that the first time
4 that you had seen Matt Wimberly was on September 22,
5 2013, when he came home from doing a deal with John
6 Barleycorns at about 12:30 in the morning? That's
7 inaccurate?

8 A Well, if I told him that, I don't recall it because
9 it's been so long now. I can't remember every word
10 that I said that we spoke.

11 Q I understand. But if you made that statement on
12 September 22, 2013, right after this incident happened,
13 do you think that your memory would be better then or
14 better now?

15 A Well, of course my memory would have been better then.

16 Q And you made a statement a second time approximately
17 three hours later to Officer Nixon. Do you think your
18 memory would be better then or better now?

19 A I don't know that I can answer that question.

20 Q And you have a third interview approximately September
21 22nd -- excuse me, the 26th. Do you think that your
22 memory would be better then or better now?

23 A I mean, I don't know because I can't even remember that
24 far back. I mean, as far as like what was said to the
25 officers. I know I told them the story of what

1 Q So what happens at that point?

2 A Matt's whole demeanor changes and he zones in on Andrew
3 and almost immediately he says I am going and kill that
4 mother fucker.

5 Q Okay. Why didn't you tell that to Officer Nixon?

6 A I probably spaced it. I mean, I was so frazzled and
7 worked up at the time. I mean, Jesus, after what I'd
8 just gone through. You know, if I missed a couple of
9 things, I apologize for that.

10 Q Well, I'm going to kill someone versus I'm going to
11 stab someone is a big, key difference, don't you think?

12 A Well, I mean, don't they all end at the same place?

13 Q No. Do you remember being asked specifically by
14 Officer Nixon did he use the words I'm going to kill
15 him, and you said no.

16 A He said I'm going to kill that mother fucker.

17 Q You don't remember Officer Nixon asking you that
18 specific question? If he used any other verbiage like
19 to kill him and you said no.

20 A That's -- I am not disputing if that's what I said.
21 However, I don't remember him asking me that question.

22 Q If it's on an interview, you wouldn't dispute the
23 interview, would you?

24 A No.

25 Q Okay. So Andrew comes back and he's there for how

1 long?

2 A He was there -- it really wasn't all that long. Less
3 than 20 minutes.

4 Q Okay. So that puts us to around 4:10; is that correct?

5 A Sounds about right.

6 Q 3:30 and 20 minutes, that's 3:40, another 20 minutes,
7 that's 4:10; is that correct?

8 A That sounds about right give or take five or ten
9 minutes.

10 Q And during that 20-minute period you're saying that
11 Matt is sitting there staring at Andrew telling him he
12 was going to kill the mother fucker; right?

13 A Yes, sir.

14 Q And Andrew stands there for 20 minutes and doesn't say
15 one word; is that correct?

16 A No. He was like, what are you talking about? You
17 know, he was just as confused as Justin and I.

18 Q Do you remember telling Officer Nixon that Andrew just
19 stood there and didn't say one word?

20 A I don't remember that.

21 Q If it's in the transcript, would you object to that?
22 Would you think that that's inaccurate?

23 A Well, I mean, from what I can recall, Andrew, it
24 doesn't sound like he wouldn't say anything. I mean, I
25 might have just said that. I mean, you know, gosh, I

1 MR. DWYER: Objection, beyond the scope and
2 relevance.

3 THE COURT: Overruled.

4 A Yes.

5 Q (BY MR. WHITE) Okay. So Andrew didn't first arrive at
6 10:00 p.m., he was there at noon; is that correct?

7 A Yeah.

8 Q What was he doing there at noon?

9 A I imagine we were just hanging out. That was quite a
10 long time ago.

11 Q What were you doing?

12 A I don't know. I mean, we might have cooked something
13 and ate it, we might have walked down to the park, we
14 might have watched a movie, played some video games. I
15 don't know.

16 Q Okay. What happened from noon until 10:00 p.m. between
17 you and Andrew?

18 A I know that Andrew had left. I don't know where he
19 went.

20 Q When did he leave?

21 A I don't know. I just know that he wasn't there.

22 Q And so how long was he there?

23 A I don't know. I don't remember. That was a long time
24 ago.

25 Q Is that when he showed you the acid?

- 1 A No.
- 2 Q When did he show you the acid?
- 3 A He had showed me the acid that night.
- 4 Q You had said that when Matt came back to the house that
5 he was knocking on the front door; do you remember
6 that?
- 7 A Yes.
- 8 Q Okay. And if I'm correct, did you state that Matt came
9 in the front door or the kitchen door?
- 10 A I believe that I let him in the front door.
- 11 Q Okay.
- 12 A I know that Andrew came in the kitchen, though.
- 13 Q Okay. Now, Matt lived there; right?
- 14 A Yes.
- 15 Q Was the front door locked?
- 16 A Yes.
- 17 Q Was the kitchen door locked?
- 18 A I don't think it was. Actually, I -- now that I
19 remember, it wasn't because I remember telling him to
20 go use the kitchen door.
- 21 Q All right. Do you remember telling the officers that
22 Matthew came in the kitchen door?
- 23 A No.
- 24 Q Okay. So when Matt first arrives he's telling you he
25 found Jesus, it's here, come walk with me.

1 A Yeah. I'm sorry. Can you repeat the question?

2 Q All right. When Matt first arrives you said that he
3 said I found Jesus, it's here, come walk with me.

4 A Yeah. He was saying all that. I found it. It's here.

5 Q Okay. Did that seem strange?

6 A Yeah.

7 Q And it wasn't until he saw Andrew that Matt becomes
8 agitated; is that correct?

9 A Yes, sir.

10 Q Is it at all possible that Matt was not in your front
11 room for 20, 30 minutes, it was more like five minutes?

12 A It's possible, yeah.

13 Q Is it possible that Andrew, when he came back, came
14 back virtually simultaneously with Matt? Is that
15 possible?

16 A Sure.

17 Q Okay. Is it possible that Andrew just didn't stay
18 there 20 minutes or so in your front room, that it was
19 more like, maybe, five minutes or less? Is that
20 possible?

21 A No, because I know that he stayed longer than five
22 minutes.

23 Q Okay. You were not in fear of Andrew getting hurt; is
24 that correct?

25 A No -- well, not until he had picked up the knife again

1 and then I was in fear for Andrew's life.

2 Q Why not take the knife away from Matt?

3 A That's what I did, and then he reached over and picked

4 it back up.

5 Q Well, you put it on the night table.

6 A Yes.

7 Q You're saying that he is saying that he was going to

8 kill Andrew; correct?

9 A Yeah.

10 Q Why not take the knife completely away from Matt?

11 Unarm him. Take it completely away from him.

12 A Well, because I just didn't think about that. You

13 know, I figured I'll sit it on the nightstand until the

14 morning and then I'll give it back to him when he

15 sobers up.

16 Q All right. Okay. Do you remember telling one of the

17 officers that you could clearly tell that Matt was

18 under the influence?

19 A Yes.

20 Q Okay. The officers arrive and Matt and Andrew are half

21 in the kitchen and half out of the kitchen; do you

22 remember that?

23 A Yes.

24 Q Officer Adams arrives?

25 A Yes.

This was never conclusively established at trial as the D.A. was trying to argue their way No proof I was on anything

1 Q You didn't intend to kill Matt?

2 A No.

3 Q You're swinging a bat multiple times --

4 MR. DWYER: Judge, I'm going to object as
5 argumentative, beyond the scope and relevance.

6 MR. WHITE: This is not irrelevant. There is
7 a point here.

8 THE COURT: Overruled.

9 Q (BY MR. WHITE) You're swinging a bat multiple times;
10 correct?

11 A Yes, sir.

12 Q You are not intending to kill him; correct?

13 A I didn't want to kill him, no.

14 Q Right.

15 A However, I believe that if he would have died, that
16 would have been a consequence of his own actions.

17 Q If who would have died?

18 A Mr. Wimberly.

19 Q It would have been the consequence of his own actions?

20 A Yes, sir.

21 Q Because he was on acid that he got from Andrew
22 Langston?

23 A Yes, sir.

24 MR. WHITE: No further questions.

25 THE COURT: Why don't we take a short recess

1 before we do redirect and recross.

2 Members of the jury, it's approaching 3:30, so
3 it's time to take our afternoon recess. Why don't we
4 take about ten minutes. If you'd be excused into the
5 jury room, we'll come get you when we are ready to
6 resume.

7 (A recess was taken, after which the
8 following proceedings were had.)

9 THE COURT: We are back on the record. The
10 record should reflect we have got parties and counsel
11 in the courtroom and the jury has joined us.

12 Prior to the afternoon recess, Mr. Dwyer, you were
13 about to begin your redirect.

14 MR. DWYER: Thank you, sir.

15 REDIRECT EXAMINATION

16 BY MR. DWYER:

17 Q Mr. Herrscher, how old were you at that time?

18 A I was 19 -- 18.

19 Q You were 18 years old?

20 A Yes, sir.

21 Q This happened some 18 months ago?

22 A Yes, sir.

23 Q You had smoked some marijuana that night?

24 A Yes.

25 Q When Mr. Wimberly came to the house, you had been

1 listened to the interview -- well, at any time, but
2 particularly contemporaneous to his statement to
3 Detective Hall.

4 THE COURT: Okay. All right. Well, if
5 that's the stipulation of the parties.

6 MR. WHITE: Thank you.

7 Q (BY MR. WHITE) Now, Jonmark, did you go over your
8 interview with Officer Nixon with Detective Hall?

9 A I don't think so. I was only in Officer Hall's office
10 maybe -- I mean it was less than 20 minutes. I came
11 all the way down from Newton for something that took
12 less than half an hour.

13 Q Okay.

14 A So I don't believe so, no.

15 Q Twenty pages of interviews, that's quite a long time;
16 don't you think? With officer Nixon.

17 A It depends on how fast you read, I suppose.

18 Q Forty pages of an interview with Detective Hall, that's
19 kind of a long time; correct?

20 A (Nodded head up and down.)

21 Q So in reviewing this, do you still state that Matt came
22 home at 10:00 p.m.?

23 A Yes.

24 Q Not at 12:30?

25 A No. Not at 12:30.

*Once again
I was at John Barley corns
working until 2:00am*

1 Q That Andrew was there at noon, 10:00 and 11:00 and not
2 at 12:30 and 3:30? I am just trying to get it
3 straight. Is the timeline that you first see Matt at
4 12:30 a.m. on 9-22-2013, not at 10:00 p.m. on
5 9-21-2013? Which is correct? Neither

6 A I just -- I mean, I remember like the sequence of
7 events as far as actually what happened. It was 18
8 months ago. I can't remember the exact times when it's
9 18 months later. Look, I can tell you how the events
10 unfolded that night. But I can only give you, you
11 know, the best of my knowledge as to what times these
12 things happened.

13 Q And that's fair.

14 Let me ask you this: When Matt's moving on the
15 ground you felt it was necessary to hit him; is that
16 correct?

17 A For some of -- when he was moving closer to Andrew I
18 sure did, yeah.

19 MR. WHITE: No further questions.

20 THE COURT: Further questions for Mr.

21 Herrscher?

22 MR. WHITE: No. Not by the State.

23 THE COURT: Okay. Sir, you can step down.

24 THE WITNESS: Okay. Thank you.

25 MR. BREITENBACH: Your Honor, we'll call