

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Roger M. Young, Circuit Court Judge

SAMUEL OLALDE GONZALEZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000135

APPENDIX

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Aug 16 2024

S.C. SUPREME COURT

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1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

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5 Case No.: 2016GS270440

6 State of South Carolina,

7 Plaintiff(s),

8 vs.

9 Samuel Gonzalez,

10 Defendant(s) .

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13 **TRIAL TRANSCRIPT**

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17 April 23-25, 2018

18 Ridgeland, South Carolina

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23 BEFORE: The Honorable Brooks Goldsmith

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1 PROCEEDINGS

2 THE COURT: Solicitor.

3 MS. SWANSON: Thank you, Your Honor, may it please
4 the Court. The State is calling indictment number
5 2016-GS-27-440, which is a murder case against Samuel
6 O. Gonzalez. And we have gathered here this morning to
7 handle the pretrial issues.

8 Your Honor, I -- would you like to start with the
9 Denno hearing?

10 THE COURT: Yes. Let me ask Mr. Hughes.
11 You represent the Defendant?

12 MR. HUGHES: I do, Your Honor.

13 THE COURT: Are you prepared to go forward this
14 morning?

15 MR. HUGHES: I am.

16 THE COURT: And do we need to have a certified
17 interpreter?

18 MR. HUGHES: We have one, Your Honor.

19 THE INTERPRETER: Your Honor, we have two. We
20 work as a team. Because it's simultaneous, we take
21 turns. The other one is taking care of some paperwork,
22 but there's two of us here. And we have equipment for
23 him, too.

24 THE COURT: We need to give the oath to the
25 interpreter.

PRE-TRIAL PROCEEDINGS

1 THE INTERPRETER: You can take mine and my
2 colleague when she gets back.

3 THE COURT: All right.

4 (Thereupon, the interpreter was sworn to translate the
5 proceedings from another language to English accurately.)

6 THE COURT: Ready to proceed?

7 MR. HUGHES: Yes, Your Honor.

8 THE COURT: Ms. Swanson.

9 MS. SWANSON: Thank you, Your Honor. The State
10 calls Omar Nieves.

11 Thereupon,

12 OMAR NIEVES

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Good morning.

18 A Morning.

19 Q Tell me what your rank is.

20 A Patrol officer, also, training officer with
21 Hardeeville Police Department.

22 Q And were you working for Hardeeville back on
23 August 8th of 2016?

24 A Yes, I was.

25 Q All right. And did you assist in a Jasper County

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 Sheriff's Office case on that date?

2 A Yes, I did.

3 Q All right. And in what capacity did you assist?

4 A I translated for the investigating officer,
5 detective.

6 Q All right. Initially, did Hardeeville get
7 involved because a crime could have occurred in your
8 jurisdiction?

9 A Yes.

10 Q All right. And what sort of crime was that?

11 A A homicide.

12 Q All right. Where -- did you have the opportunity
13 to speak to Samuel Gonzalez?

14 A Yes, I did.

15 Q All right. And where did you first come into
16 contact with him?

17 A Physical contact or -- I made contact via phone
18 first.

19 Q Okay. And so, you talked to him on the phone
20 first?

21 A Yes.

22 Q And what did he tell you over the phone?

23 A That he had killed his wife and that he was at his
24 house along with two boys and a girl baby, a female, girl
25 baby.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 Q Okay. So three children?

2 A Three children.

3 Q And he had killed his wife?

4 A Yes.

5 Q All right. What did you do after you spoke to him
6 on the phone?

7 A I told him that I needed to talk to him in person.

8 Q All right. And did you respond to the incident
9 location?

10 A Yes, he gave me an address. He wasn't sure of the
11 number, but, eventually, yes.

12 Q Okay. And then when you showed up to the trailer,
13 what did you ask him to do?

14 A I still had contact via phone, so I told him to
15 please come out of the house and make contact with me at the
16 yard.

17 Q Was he detained at that point?

18 A He was detained at that point.

19 Q Okay. Now, prior to transporting him to the
20 sheriff's office for an interview, did you advise him of his
21 Miranda rights?

22 A Yes, he was placed in my vehicle, patrol car, and
23 he was read the Miranda right then.

24 Q In what language did you read those rights to him?

25 A In Spanish.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 Q Are you a native Spanish speaker?

2 A Yes, first language is Spanish.

3 Q All right. Were you able to understand him?

4 A Yes, I was.

5 Q Okay. And was he -- did he seem to be able to
6 understand you?

7 A Yes, he did.

8 Q Okay. And when you advised him of his Miranda
9 rights in Spanish, did you convey that accurately?

10 A Yes.

11 Q Okay. Did he still wish to talk to you after you
12 advised him?

13 A Yes.

14 Q All right. And so, did he make statements in the
15 police car?

16 A Yes, he did.

17 Q And what did he tell you in the police car?

18 A He said that he had an argument with his wife
19 earlier that -- the day prior and that while they were
20 arguing, it got physical and he strangled his wife.

21 Q Okay. Now, eventually, you guys get to Jasper
22 County Sheriff's Office?

23 A Yes.

24 Q All right. And who is the lead investigator from
25 the Sheriff's Office on this case?

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A I believe Detective Crosby was.

2 Q Jeff Crosby?

3 A Yes.

4 Q Okay. So were you interpreting for the Defendant
5 and Jeff Crosby as he questioned the Defendant?

6 A I was interpreting for both, so whatever Detective
7 Crosby said at that time, I interpreted it in Spanish for
8 him and whatever he said in Spanish, I translated to English
9 for the detective.

10 Q Okay. And did you translate what Jeff Crosby was
11 saying and what the Defendant was saying accurately?

12 A Yes, I did.

13 Q Okay. Prior to making any statements in the
14 investigations office, did you again go over Miranda rights
15 with Samuel Gonzalez?

16 A Yes, at that point, I did with the form.

17 Q With the form, okay. I'm going to show you what's
18 been marked as State's 1 for the purpose of this hearing and
19 ask if this is the form that you reviewed with the
20 Defendant?

21 A Yes, it is.

22 Q And did he -- actually, can you go over that form
23 as you did with him?

24 A Retranslate or just --

25 Q Just read it in English and then -- okay, so you

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 read it -- you translated it from English to Spanish, so
2 let's just read it in English so that the interpreter can
3 interpret for the Defendant?

4 A Before we ask you any questions, you must
5 understand your rights. You have the right to remain
6 silent. Anything you say can and will be used against you
7 in a court of law. You have the right to talk to a lawyer
8 for advice before we ask you any questions and to have him
9 or her present with you during the questioning. If you have
10 no money for a lawyer, fees, for lawyer fees, the court will
11 appoint one to represent you without cost to you, if you
12 wish. If you decide to answer questions now without a
13 lawyer present, you will still have the right to stop
14 answering questions at any time. You will have -- you will
15 also have the right to stop answering questions at any time
16 until you talk to a lawyer. Then it says, I have read this
17 statement of my rights and understand what my rights are.

18 Q Okay. And did he acknowledge that he understood
19 those rights?

20 A Affirmative, yes.

21 Q Did he sign the bottom of that form?

22 A Yes, he initialed under every sentence, beside it,
23 and then he signed his name at the bottom.

24 Q All right. And did you sign that form as well?

25 A As a witness, I did. That's my signature.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 Q Okay.

2 MS. SWANSON: The State would move State's 1 into
3 evidence at this time for the purpose of this hearing.

4 MR. HUGHES: No objection.

5 THE COURT: Motion is granted.

6 *(Whereupon, State's Exhibit No(s). 1 marked for*
7 *identification and received in evidence.)*

8 MS. SWANSON: Thank you.

9 BY MS. SWANSON

10 Q Did he ever ask for an attorney?

11 A No, he did not.

12 Q Did he wish to make a statement?

13 A Yes, he did.

14 Q Was he ever promised anything in return for that
15 statement?

16 A No. At the beginning of my rights form, I advised
17 him there was no promises.

18 Q Was he in handcuffs?

19 A No, he was not. The door was open right next to
20 him.

21 Q All right. Was he offered water, use of the
22 restroom?

23 A I did offer him water. He had get some water.
24 And I asked him if he needed to use the bathroom to advise
25 us.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 Q Okay. And about how long did this interview last?

2 A The interview itself?

3 Q Two to three hours max?

4 A Max. That's with him writing the statement. But
5 the interview itself wasn't even an hour, I would say.

6 Q Got you. And you said that he wrote a statement?

7 A Yes.

8 Q Okay. And what language was his statement written
9 in?

10 A Spanish, I believe.

11 Q Okay. I'm going to show you what's been marked as
12 State's 2 for the purpose of this hearing and ask if this is
13 the statement that Samuel Gonzalez wrote?

14 A This is a copy of the statement, yes.

15 Q Copy of the statement, okay. And did you review
16 that statement?

17 A Yes.

18 Q Okay.

19 MS. SWANSON: The State would enter 2 for the
20 purpose of this hearing.

21 MR. HUGHES: No objection.

22 THE COURT: Motion granted.

23 *(Whereupon, State's Exhibit No(s). 2 marked for*
24 *identification and received in evidence.)*

25 MS. SWANSON: Thank you.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 BY MS. SWANSON:

2 Q And was he advised that he did not have to give a
3 written statement?

4 A Affirmative, yes. Several times, I told him that
5 it was totally a voluntary statement.

6 Q Right. So there's actually some English located
7 at the top of this voluntary statement. Did you read that
8 to him and translate to Spanish -- did you read that to him
9 in Spanish? There's a paragraph.

10 A I want to say that I did, but I'm not a hundred
11 percent sure I would have.

12 Q If it's own video, would you agree with it?

13 A Yes, if it was on video, yes.

14 Q Okay. So all of these interactions with the
15 Defendant, his statements to you, your translating, and his
16 written statement is captured on audio and video, is that
17 correct?

18 A Yes, it is.

19 Q Okay. And did you review that video?

20 A I have, yes, some of it.

21 Q Okay. I'm going to show you State's Exhibit 3.
22 And this is what was uploaded on evidence dot com. The
23 video that you reviewed, is that a fair and accurate
24 depiction of the interview?

25 A Yes, it is.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 MS. SWANSON: State would move 3 into evidence at
2 this time.

3 MR. HUGHES: No objection.

4 MS. SWANSON: Thank you.

5 THE COURT: Motion granted.

6 *(Whereupon, State's Exhibit No(s). 3 marked for*
7 *identification and received in evidence.)*

8 MR. HUGHES: Your Honor, just for the record, she
9 is, for the purpose of this hearing, introducing that?

10 MS. SWANSON: For the purpose of this hearing at
11 this time.

12 BY MS. SWANSON:

13 Q All right. So when you speak to him during that
14 interview, just give the Court a summary, if you will, of
15 what the Defendant said.

16 A After we read him his Miranda rights, Detective
17 Crosby questioned what had occurred. And he stated that --
18 again, that he had strangled his wife and that it was all
19 during an outrage of jealousy. His wife saw something in
20 the phone and started arguing earlier in the morning. They
21 went out shopping, they came back home, argument again
22 started when he refused to eat supper, and went on
23 throughout the night when the kids were asleep. She decide
24 that she was going to leave and she wanted to the call her
25 sister and leave. And he didn't want her to take his

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 daughter. So, from the argument, it became physical. He
2 butt-headed her, strangled her until she no longer had life.

3 Q Okay. And so he -- this argument, you said,
4 lasted over the course of a whole day?

5 A Off and on, yes.

6 Q Off and on over the course of a day. And there
7 had been breaks in that, right?

8 A According to him, yes.

9 Q Okay. And what did he do after he killed his
10 wife -- or his -- the mother of his child?

11 A According to him, once he found out -- once he
12 noticed that she no longer had life, he covered her with a
13 blanket and told his kids that -- the kids that she was
14 sleeping.

15 Q That mommy was sleeping?

16 A That mommy was sleeping.

17 Q And then, what did he do? Did he do anything
18 after that prior to --

19 A According to him, he waited until the next morning
20 when he called his coworker and advised him to call the
21 cops, that he wanted to turn himself in.

22 Q Did he have any injuries on him?

23 A He did.

24 Q All right. And what kind of injuries did he have
25 on him?

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A He had small superficial lacerations on the arm.

2 Q Uh-huh. (Indicating affirmatively.)

3 A He had some scratches on the neck.

4 Q Okay. So, like red marks around his neck and
5 lacerations on his arm?

6 A Yes.

7 Q Was he able to tell you how those occurred?

8 A He gave a -- he gave an explanation for them.

9 Q What was that explanation?

10 A The one -- he said that he did it with a knife.
11 That once he came to realize that he took her life, that he
12 wanted to kill himself. He said that he tried to cut
13 himself on the arm, and then he tried to cut himself in the
14 neck and then he tried to hang himself with a rope.

15 Q All right. And he didn't do a very good job, did
16 he?

17 A No, he's still alive.

18 Q In fact, he was checked out at the hospital,
19 right?

20 A Yes.

21 Q Okay. And nothing was wrong with him, he was able
22 to go straight to the jail?

23 A Yes, he went straight to the jail. He was cleared
24 by the hospital.

25 MS. SWANSON: I have nothing further at this time

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 for this witness, Your Honor.

2 MR. HUGHES: Your Honor, before I start, the
3 second interpreter has arrived, if we could have her
4 sworn.

5 THE COURT: Madam Clerk.

6 (Thereupon, the interpreter was sworn to interpret from an
7 alternate language to English accurately.)

8 CROSS EXAMINATION

9 BY MR. HUGHES:

10 Q You get a phone call, you go to the place, you
11 bring him -- I'm sorry, go ahead.

12 A I didn't get a phone call.

13 Q Okay. How did you know to go to the --

14 A Detective Sergeant Aiken was called by Bluffton.

15 Q Okay. But you went to where Mr. Gonzalez was?

16 A Eventually, yes.

17 Q Okay. Were you the first officer there?

18 A We all came together. Right with me was an
19 entourage of Jasper County Sheriff's Office.

20 Q Okay. You said you were talking to him on the
21 phone and had him come out of the house. Was that you?

22 A Yes, that was me.

23 Q Okay. And you read him the Miranda warning?

24 A I advised him of the Miranda warnings in the
25 vehicle, while he was in the vehicle.

CROSS EXAMINATION OF OMAR VIEVES BY MR. HUGHES

1 Q Okay. That wasn't my question?

2 A Did I read them?

3 Q Yes.

4 A I believe so. I have a -- at this point, I don't
5 have it, but I normally carry a Miranda warning in Spanish
6 and English.

7 Q Do you know if you read it to him in Spanish or
8 did you translate it yourself?

9 A I would have read him the Spanish one. He does
10 not speak English.

11 Q You speak Spanish?

12 A Yes, sir.

13 Q Where did you learn Spanish?

14 A Puerto Rico.

15 Q Do you know where Mr. Gonzalez learned Spanish?

16 A Mexico.

17 Q If you don't know, you don't know.

18 A No, don't know.

19 Q Okay. Does he have an accent?

20 A I don't recollect if he did.

21 Q But Puerto Rican Spanish and Mexican Spanish and
22 Spanish Spanish?

23 A It's all Spanish.

24 Q There are no differences at all?

25 A The dialect is different, but the Spanish is the

CROSS EXAMINATION OF OMAR VIEVES BY MR. HUGHES

1 same.

2 Q Okay. You speak English, correct, obviously?

3 A My second language, yes, it is English.

4 Q Do you speak Boston English?

5 A I was raised in -- I lived in Massachusetts, so a
6 lot of people say my accent is from up north, but I'm not
7 sure.

8 Q So my Ridgeland accent is different than a Boston
9 accent?

10 A You could say that.

11 Q Okay. And I would talk different than someone in
12 Boston?

13 A I would not know.

14 Q Do you have the Miranda form, also, in Spanish?

15 A I do, but I was with the Jasper County Sheriff's
16 Office, so I went with whatever they had.

17 Q And you are not court certified to translate,
18 correct?

19 A Not court certified, no.

20 Q Are you certified in any way to translate?

21 A I was in the military service, in the Marine Corp,
22 I trained in South America, Colombia, Panama, Santo Domingo,
23 Mexico. I trained in the military, so I had to take a
24 language, linguist test, which I aced on all three. I could
25 provide you with certification of that.

CROSS EXAMINATION OF OMAR VIEVES BY MR. HUGHES

1 Q Okay. And who translated his statement to
2 English?

3 A I'm not aware of that. I do not know.

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

5 MS. SWANSON: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SWANSON:

8 Q Officer Nieves, we had spoken previously about the
9 different dialects, how maybe someone in Mexico would speak
10 a little differently than someone from Puerto Rico. And you
11 stated that the words are the same. Are we really talking
12 about inflection and like the pace of speaking?

13 A The biggest difference is going to be the speed.
14 Just like, he brought up Boston versus here. Puerto Rico,
15 we talk a little faster, so when I'm talking to -- if I'm
16 talking to somebody from Mexico, all I do is slow down.
17 There are some words that might change, some words that they
18 give a different meaning than we do, but how you form the
19 questions, the sentence stay the same.

20 Q Okay. And if you ever did not understand Samuel
21 Gonzalez's meaning, did you clarify that with him?

22 A Affirmative. On a few occasions during the
23 interview, he said something, which it could have been taken
24 different ways, so, at that point, I stopped and I said,
25 Okay, what you mean with this? So then, he gave me another

REDIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 form and I was like, Okay, now I know exactly where you want
2 to be.

3 Q Again, never at any point in time did he seem not
4 to understand you?

5 A No, he seemed to the understand clear.

6 Q And you were certified to provide translating
7 services for the Marine Corp?

8 A Yes. I was a weapons instructor, so I taught with
9 the United States Marine Corp special training -- special
10 operations training group. We went to South America,
11 Central America giving classes on military tactics, military
12 intel and weapons, which I had to translate the documents,
13 the forms, the manuals and give the class.

14 MS. SWANSON: All right. Thank you, Officer.

15 THE COURT: Any recross?

16 MR. HUGHES: I have no further questions.

17 THE COURT: Thank you. You may step down.

18 MS. SWANSON: The State calls Jeff Crosby.

19 Thereupon,

20 JEFF CROSBY

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SWANSON:

25 Q Good morning, Detective.

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 A Good morning.

2 Q Who were you working for on August 8th of 2016?

3 A Jasper County Sheriff's Office.

4 Q All right. Did you respond to a homicide
5 investigation?

6 A Yes, I did.

7 Q Where did you respond?

8 A [REDACTED] Honey Hill Road.

9 Q All right. As a result of that investigation, did
10 you have the opportunity to interview Samuel Gonzalez?

11 A Yes, I did.

12 Q All right. Who did you do that interview with?

13 A Officer Nieves with the Hardeeville Police
14 Department.

15 Q All right. And why is that?

16 A Because I do not speak Spanish. Officer Nieves is
17 fluent in it.

18 Q Was Officer Nieves translating what he said to you
19 so that you could form questions?

20 A I assume you're talking about the Defendant?

21 Q Correct.

22 A Yes.

23 Q Okay. So you would ask questions, Nieves would
24 relay those questions to the Defendant?

25 A Correct.

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 Q All right. And then he would relay the answer
2 back to you, right?

3 A Correct.

4 Q All right. And then you might form another
5 question, right?

6 A Yes.

7 Q Okay. What did -- and was that recorded on audio
8 and video?

9 A Yes, it was.

10 Q And you've reviewed that?

11 A Yes, I have.

12 Q Was he Mirandised prior to providing those
13 statements?

14 A Yes, he was.

15 Q In Spanish?

16 A Yes.

17 Q Did you sign that Miranda rights form?

18 A Yes, I did.

19 Q And you were present when that happened?

20 A Yes.

21 Q And he also gave a two-page written statement?

22 A That's correct.

23 Q Was that in his native language?

24 A Yes, it was. It was written in Spanish.

25 Q Okay. Did he ever ask to stop the interview?

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 A No, he did not.

2 Q Did he ever ask for an attorney?

3 A No, he did not.

4 Q Did he ever seem unsure about telling you guys
5 what happened?

6 A No, he did not.

7 Q Was he ever promised anything for making the
8 statement?

9 A No, he was not.

10 Q All right. And what did he say in that statement?

11 A That he and his wife had gotten into an
12 altercation because she had found a photo of his ex on
13 his -- I believe it was his Facebook page on his phone.
14 During that altercation, he hit her, knocking her back on
15 the couch, kind of knocking her out. He got on top of her
16 and he strangled her with his hands.

17 Q Okay.

18 MS. SWANSON: Your Honor, I have nothing further
19 at this time for this witness.

20 THE COURT: Mr. Hughes.

21 CROSS EXAMINATION

22 BY MR. HUGHES:

23 Q Where did this interview take place?

24 A The interview that I conducted with him occurred
25 at the Jasper County Sheriff's Office here in Ridgeland.

CROSS EXAMINATION OF JEFF CROSBY OF MR. HUGHES

1 Q And what time of day did this take place?

2 A I would have to look at the Miranda rights form to
3 tell you the exact time.

4 MR. HUGHES: May I approach, Your Honor?

5 THE COURT: You may.

6 THE WITNESS: This happened at 11:40 a.m.

7 BY MR. HUGHES:

8 Q And how much sleep had Mr. Gonzalez had?

9 A I have no idea.

10 Q Did you ask?

11 A No, I didn't.

12 Q You don't read Spanish?

13 A No.

14 Q Who translated this for you, the Defendant's
15 statement?

16 A Officer Nieves. He just read it to me.

17 MS. SWANSON: To avoid any confusion, I had a
18 local interpreter type a translated version of the
19 Spanish statement, which I then turned over to
20 Mr. Hughes, Yiro, I believe his name is. And I think
21 there was some confusion about that. That was in the
22 email. I'm not sure if Mr. Hughes remembers reading
23 that part.

24 MR. HUGHES: I've read the statement.

25 BY MR. HUGHES:

CROSS EXAMINATION OF JEFF CROSBY OF MR. HUGHES

1 Q What was the lighting like in the interview room?

2 A It was well lit. It was a well lit room.

3 Q Door open?

4 A The door was open, even the hallway doors leading
5 to the room were open.

6 Q Was Mr. Gonzalez allowed to go to the bathroom
7 whenever he wanted to?

8 A Yes, sir. If he had asked to use the restroom, we
9 would have let him use the restroom. He asked for something
10 to drink, we got him something to drink.

11 Q Okay. Did he appear intoxicated?

12 A No, he did not.

13 Q Did he appear tired?

14 A No, sir.

15 Q Did he appear nervous?

16 A No, sir. He was upset because of what had taken
17 place.

18 MR. HUGHES: No further questions, Your Honor.

19 MS. SWANSON: I don't have anything further,
20 Judge.

21 THE COURT: You may step down.

22 MS. SWANSON: That would conclude the presentation
23 of witnesses for the Jackson V. Denno hearing. I would
24 submit to Your Honor that these statements are free and
25 voluntary, nothing was promised in return for them, and

JACKSON DENNO ARGUMENT

1 they are admissible.

2 MR. HUGHES: Your Honor, as far as my client's
3 statement to law enforcement, I have no problem with
4 that. My problem is with the translation by Officer
5 Nieves. He is not a court certified, he is not a
6 native to where Mr. Gonzalez is. I would argue that
7 there can be a different interpretation based upon
8 where you grow up for words. For example, I grew up in
9 South Carolina and if I talked to somebody who grew up
10 in New York, there's a good chance we probably wouldn't
11 understand each other half the time.

12 I would also argue against the translated written
13 statement. I know the translator that the State has
14 used; however, he is not present to certify that that
15 is a true and accurate translation, Your Honor. I
16 would object to the translation of the written
17 statement. We have interpreters here and when it comes
18 time, they can read the statement and translate it
19 themselves. So as far as the State's translation, I
20 would object to that.

21 As far as the State's translation to his oral
22 statement, I would also object to that. We have the
23 ability to have someone tell the jury what he said as
24 opposed to what the officer thought he said.

25 MS. SWANSON: Thank you, Your Honor. Let me talk

JACKSON DENNO ARGUMENT

1 about the written statement first. I'm not seeking to
2 introduce any translated written statement. I sought
3 to introduce for the purpose of this hearing the
4 Defendant's statement in his own native language to
5 show that it was free and voluntary. But I don't think
6 it would be proper to submit the written statement of
7 the Defendant in a translated version. Should he
8 change his testimony if he took the stand or something,
9 I could certainly use it for impeachment.

10 As far as not being able to understand someone
11 who's from up north. I mean, I think Your Honor would
12 agree with me that about half of Beaufort County came
13 from up north and we all speak English and we can all
14 understand each other. That was basically Officer
15 Nieves' testimony, that regardless, you know, everyone
16 is speaking Spanish here. The Defendant understood him
17 just fine. The pace of their speaking might differ as
18 does the pace of, you know, someone from up north
19 versus someone from down south. I think we all know we
20 talk a little bit slower down here.

21 The officer is subject to cross examination which
22 Mr. Hughes can certainly do. If he believes that there
23 is something that was mistranslated or misunderstood,
24 Mr. Hughes has the opportunity to cross the officer on
25 that. It is not hearsay. These are statements that

JACKSON DENNO ARGUMENT

1 were made by a party opponent, Mr. Gonzalez. And they
2 are the statements that he made that the officer is
3 testifying to. Now, if I were just seeking to enter
4 the video of the officer translating and not putting
5 the officer on the stand, I would agree with Mr. Hughes
6 that we would have a problem there.

7 Officer Nieves has taken linguistic tests through
8 the Marine Corp. He was certified to aid in
9 translation there and he also testified that he -- you
10 know, if he ever had a question about what Mr. Gonzalez
11 was saying, he sought to clarify that and translated
12 correctly. So I don't think that there's any question
13 about that. But nonetheless, he will be on the stand
14 so that Mr. Hughes can ask him anything he'd like about
15 the translation.

16 MR. HUGHES: Your Honor, I find myself in a
17 strange position of agreeing with Ms. Swanson on most
18 of what she said. I would point out that the
19 difference in our ages means that I remember when we
20 had the southern impaired invasion in the late '60s and
21 early '70s down here, we didn't understand most of what
22 they said. But I find myself in agreement with most of
23 what she said. I would still renew my objection as
24 that being hearsay, but I would understand Your Honor's
25 ruling one way or the other.

JACKSON DENNO ARGUMENT

1 THE COURT: The Court agrees with the position
2 taken by the State in this case and admits the video
3 and statements of the Defendant and find that they've
4 been made knowingly and intelligently and given freely
5 and voluntarily and after receiving all of the
6 appropriate Miranda warnings.

7 Solicitor.

8 MS. SWANSON: Thank you, Your Honor. I think
9 that's the extent of the pretrial that we have, unless
10 Mr. Hughes has anything in addition.

11 MR. HUGHES: Your Honor, I want to put this on the
12 record. Outside of this courthouse, there are over a
13 thousand small plastic flags in three different colors.
14 They have been placed there by a local organization to
15 acknowledge child abuse, sexual assault and domestic
16 violence. There was also last week a sign up
17 explaining what those flags were. The court -- the
18 clerk of court has since then had that sign removed and
19 I thank her for that.

20 I would request that the flags be removed because
21 there is a potential that it would influence a jury,
22 that a jury may know already what the flags are there
23 for. And since this case is primarily a domestic
24 violence case, Your Honor, could improperly and unduly
25 influence a jury.

JACKSON DENNO ARGUMENT

1 THE COURT: Solicitor.

2 MS. SWANSON: Thank you, Your Honor. There is no
3 sign that indicates what these flags are for at this
4 point. So I would submit to the Court -- I mean, it
5 could be for gas lines for all anyone knows, although,
6 there are quite a bit of them.

7 You know, it's something that could easily be
8 taken up in voir dire, should Mr. Hughes wish to submit
9 a specific question to Your Honor to inquire or -- I
10 mean, I hate to draw attention to it, but that would be
11 up to Mr. Hughes as part of the defense strategy. You
12 can't object to it and then complain about not being
13 able to acknowledge it or ask about it.

14 But the State has no reason to believe that it
15 would influence jurors because there's nothing written
16 on these flags. You know, I mean, it's for a number of
17 causes as well.

18 THE COURT: Are these American flags? I haven't
19 seen them.

20 MR. HUGHES: No, Your Honor, they are small,
21 approximately 2-inch square pieces of plastic, they are
22 a solid color, there are three colors, all total of the
23 different flags, they have no writing on them. My
24 biggest worry is that someone has seen them at other
25 courthouses. I know that they are in the Hampton

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1 courthouse. I think they're at the Beaufort
2 courthouse, complete with the signs. I just don't want
3 to run the risk of having a jury that is influenced by
4 an outside source, Your Honor.

5 MS. SWANSON: I would hope that our jury pool is
6 not like a frequent visitor of all these other
7 courthouses because I don't want them as a juror. But,
8 you know, if the Court thinks that inquiring about the
9 flags is something that it needs to do is, then, I
10 suppose. But they are -- they are the type of flag
11 that you would mark a gas line with. They're very
12 small.

13 MR. HUGHES: Your Honor --

14 THE COURT: Deny the motion.

15 MR. HUGHES: I'm sorry?

16 THE COURT: I'm going to deny the motion. The
17 motion is to have them removed; is that correct?

18 MR. HUGHES: Or -- and I believe the clerk of
19 court has already instructed the bailiffs and the
20 guards that if they are asked about it to deny -- to
21 have no knowledge, basically, I don't know what those
22 things are there for.

23 Is that correct, Madam Clerk?

24 THE CLERK: That's correct.

25 MR. HUGHES: Thank you.

JACKSON DENNO ARGUMENT

1 THE COURT: All right. What's next?

2 For the purposes of this hearing, did we put on
3 the record that I have, actually, with the consent of
4 both parties reviewed the disc that was admitted?

5 MS. SWANSON: We did not, Your Honor. But I would
6 note that State's 3 was submitted to Your Honor and
7 reviewed as part of the Jackson V. Denno hearing.

8 MR. HUGHES: As far as I know, Your Honor, that
9 was correct. I believe that the State placed that on
10 the Internet and Your Honor was able to download it.

11 THE COURT: Yes, sir.

12 Anything else?

13 MS. SWANSON: Nothing further.

14 THE COURT: Let me ask a couple of questions. Two
15 alternates?

16 MR. HUGHES: Yes, Your Honor.

17 MS. SWANSON: Yes, please.

18 THE COURT: 2:00. We are adjourned in this case,
19 State vs. Gonzalez, until 2:00.

20 (Lunch recess.)

21 THE COURT: Good afternoon, ladies and gentlemen.
22 Please be seated. My name is Brooks Goldsmith, ladies
23 and gentlemen. I am a retired, nevertheless, working
24 circuit judge. Several years ago, the mandatory
25 retirement rules got me and at that time I was the

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1 resident judge in the Sixth Circuit living in
2 Lancaster, South Carolina. And once they made me
3 retire, my wife and I packed up and moved to Edisto
4 Island, which is where we now live, and I'm now working
5 two or three weeks a month, sort of a semi-retired
6 status. It's my pleasure to be with you for this
7 one-week term of General Sessions court, sometimes
8 referred to as criminal court.

9 The first thing we need to do is to determine your
10 qualifications and your eligibility to serve as jurors.
11 For the most part, most of you will not be required to
12 respond to the questions that I'm getting ready to ask
13 you. I'll ask you if you do -- the first thing I'm
14 going to do before I finish is ask the clerk of court
15 if she would administer to you your oath as jurors.

16 THE CLERK: Will you please stand. Raise your
17 right hand.

18 (Whereupon, the jury was sworn.)

19 THE CLERK: If you took the oath, please be
20 seated.

21 (All jurors were seated.)

22 THE COURT: As I said a moment ago, there are some
23 questions that I'm required by law to ask you. It is
24 possible that as to a couple of the questions, a couple
25 of you may prefer to answer it not in front of everyone

JURY SELECTION

1 in the courtroom. If you do need to respond to a
2 question, I'll ask you to please stand, speak as
3 clearly as you can, take a deep breath, give me your
4 name, juror number and tell me why you stood. If you
5 need to respond, but you feel uncomfortable about
6 responding in front of everyone, just let me know that
7 and at the end of all the questioning, I'll let you can
8 come down front and we can speak about it in a little
9 more private setting. Once again, most of you won't be
10 required to stand or respond to anything.

11 For instance, the first question, is there any
12 member of the jury panel who is not a resident and
13 citizen of Jasper County, South Carolina? If so,
14 please, stand.

15 (No response.)

16 THE COURT: Sometimes people move.

17 Is there any member of the jury panel unable to
18 read, write, speak, or understand the English language?
19 If so, please, stand.

20 Yes, sir, your name and number?

21 JUROR: My name is Omar Laverde Vicuna, 105.

22 THE COURT: Yes, sir.

23 JUROR: My English is very limited. It is okay
24 for my job, but very limited for this type of --

25 THE COURT: What is it you do for a living?

JURY SELECTION

1 JUROR: I work for Premier Landscape. I do
2 maintenance.

3 THE COURT: And your native language would be?

4 JUROR: Spanish.

5 THE COURT: How long have you been in this
6 country?

7 JUROR: I've been in this country for 15, 14
8 years.

9 THE COURT: Have you had any trouble understanding
10 what I've said so far?

11 JUROR: Not right now, but possible when I -- I
12 don't know. I just try to be very honest with you, you
13 know. Sometimes it's difficult for me, but if you
14 think it's okay, I'm okay.

15 THE COURT: Well, I really want you to be able to
16 tell me whether you can understand testimony and
17 questions of witnesses, things such as that. Do you
18 watch television?

19 JUROR: A little bit. A little bit.

20 THE COURT: Do you read magazines?

21 JUROR: Yes, sir, sports.

22 THE COURT: Do you have access to the internet?

23 JUROR: Yes, sir.

24 THE COURT: Do you communicate in English or in
25 Spanish?

JURY SELECTION

1 JUROR: Spanish. Outside of the house, I try to
2 communicate in English, but I try --

3 THE COURT: I'm going to let you stay. Thank you.
4 Sounds to me as though you actually have a pretty good
5 understanding of the English language.

6 JUROR: Okay. Thank you.

7 THE COURT: Better than some that I've known
8 who've lived here all of their lives.

9 Does any member of the jury panel have less than a
10 sixth grade education or its equivalent? If so,
11 please, stand.

12 (No response.)

13 THE COURT: Is there any member of the jury panel
14 unable because of a mental or physical infirmity to
15 render efficient jury service? For example, does any
16 member of the jury panel have a medical condition that
17 would interfere with your ability to serve on jury
18 duty? If so, please, stand.

19 JUROR: I'm not sure if this would apply. I'm
20 Tony Martin, Juror 123. I have a doctor's appointment
21 on Wednesday to have stitches removed. I had a finger
22 severed. They've been in almost a month and they've
23 got to come out. They're getting embedded. I really
24 need to be there, unfortunately.

25 THE COURT: I guess your doctor's not right down

JURY SELECTION

1 the street?

2 JUROR: No, it's in Pooler, Savannah Orthopedics
3 in Pooler. I actually pulled my own finger off and
4 pulled the tendon out of my arm. Yeah. If you wait --
5 the stitches should have been out two weeks ago, but it
6 wasn't healed enough, the tissue he had to stitch it
7 back up with. Like I say, Wednesday is my appointment
8 to have it taken out. I can show it to you if you want
9 to see it.

10 MS. SWANSON: May we inquire as to what time is
11 his appointment?

12 THE COURT: What time of day is your appointment?

13 JUROR: 10:40.

14 THE COURT: A.m.?

15 JUROR: Yes, sir.

16 THE COURT: I guess there's not a chance you could
17 change it to the next day, is it?

18 JUROR: Well, the issue is, this guy here,
19 Dr. Toban, he's the orthopedic surgeon that did the
20 work, and he's only there on Wednesdays, is the only
21 time he's there, so that's when my appointment is,
22 unfortunately. And like I say, I've already got
23 stitches -- some of them are embedded down and they're
24 going to have a hard time getting them out as it is.
25 Any other day than Wednesday, I'm fine.

JURY SELECTION

1 THE COURT: I'll have to let you go. I'll honor
2 your request. I would like to keep you because we've
3 got a shortage of jurors this morning.

4 JUROR: I understand.

5 THE COURT: This afternoon. But I'll excuse you.
6 Thank you for coming.

7 JUROR: Thank you.

8 THE COURT: Anyone else?

9 (No response.)

10 THE COURT: Has any member of the jury panel been
11 convicted by way of a guilty plea or trial in a state
12 or federal court of record of a crime punishable by
13 imprisonment for more than one year and your civil
14 rights have not been restored by way of pardon or
15 amnesty? And punishable by more than one year means
16 that you could have received a sentence of more than
17 one year, regardless of what sentence you may have
18 actually received. If that applies to you, please
19 stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel
22 who is a clerk or deputy clerk of court, a constable, a
23 sheriff, or some other commissioned law enforcement
24 officer or a probate judge, a county commissioner, a
25 magistrate or some other county officer, or are you

JURY SELECTION

1 employed within the walls of any courthouse? If any of
2 that applies to you, please stand.

3 (No response.)

4 THE COURT: Is there any member of the jury panel
5 who has previously served on jury duty in circuit court
6 as opposed to city court or magistrate court or Federal
7 court this calendar year? If so, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury panel
10 who has served as a member of the Jasper County grand
11 jury in the past several years? If so, please stand.

12 (No response.)

13 THE COURT: Ladies and gentlemen, we now move to
14 jury exemptions. State law provides for several
15 exemptions to jury duty. You may qualify, but the
16 legislature has determined that certain individuals or
17 categories of people, you simply do not have to serve
18 and all you have to do is say I choose not to serve and
19 you can walk out the door.

20 For instance, those of you who may be 65 years of
21 age or older certainly may be qualified, but you have
22 an absolute right to say I choose not to serve on jury
23 duty. So if that applies to you and you wish to be
24 exempted, please stand.

25 (No response.)

JURY SELECTION

1 THE COURT: Another exemption concerning prior
2 jury service. No person is required to serve as a
3 juror more often than once every three calendar years.
4 So if you've served on jury duty, once again, in
5 circuit court in the prior two calendar years and you
6 wish to be exempted, please stand.

7 Yes, ma'am, your name and number?

8 JUROR: Say that again, sorry.

9 THE COURT: What is your name and your number?

10 JUROR: Wynter Johnson and I'm not sure.

11 THE CLERK: Ninety-four.

12 THE COURT: No. 94. Yes, ma'am.

13 JUROR: I served July of the year before last, so
14 not quite two years yet.

15 THE COURT: Was that here?

16 JUROR: Yes.

17 THE COURT: Let me see if we can double check you
18 on that. Sometimes, I have jurors who tell me that and
19 we look at it and it's three years ago.

20 THE CLERK: July 20th, 2016.

21 THE COURT: 2016. And are you saying we can't
22 talk you into staying? You're entitled to be excused
23 if you wish to be excused.

24 JUROR: I served last time. I think that I'm
25 going to go this time.

JURY SELECTION

1 THE COURT: Thank you, ma'am. You are excused.

2 Similar exemption, the one I mentioned earlier
3 concerning the grand jury service. If you've served as
4 a member of the grand jury in the last five calendar
5 years, you're entitled to be exempted. So if that
6 applies to you and you wish to be exempted, please
7 stand.

8 (No response.)

9 THE COURT: The next exemption dealing with those
10 who have legal custody of young children. You may be
11 exempted from jury duty if you have a child under the
12 age of seven and you have legal custody of the child
13 and you are the principle primary person responsible
14 for the care of the child and you're unable to make
15 adequate arrangements for someone to care for the child
16 while you are on jury duty. If all of this applies to
17 you and you wish to be exempted, please stand.

18 Okay. Let me see the lady in the white shirt
19 first. Your name and number?

20 JUROR: Allison Hair, Juror No. 69. And I do not
21 have transportation for my children.

22 THE COURT: For your children?

23 JUROR: Yes, sir, to school and back.

24 THE COURT: Does that mean that you're normally
25 responsible for taking them back and forth?

JURY SELECTION

1 JUROR: Yes, sir, both of them. Two different
2 schools.

3 THE COURT: And they are?

4 JUROR: Three and five.

5 THE COURT: I guess you're responsible for taking
6 care of them when they get home?

7 JUROR: Yes, sir.

8 THE COURT: And you wish to be exempted?

9 JUROR: Yes, sir.

10 THE COURT: Thank you, ma'am. You're excused.
11 And the lady closest to me. Yes, ma'am.

12 JUROR: Abigail Nettles, I think it's 129.

13 THE CLERK: One twenty-nine.

14 THE COURT: One twenty-nine?

15 THE CLERK: Yes, sir.

16 JUROR: I just want to know how -- do I have to be
17 here for the entire week? Because I have a
18 six-month-old and it was kind of difficult to get
19 arrangements to get her watched today. My husband
20 couldn't take off of the work. So if it's just today,
21 that's fine, but I don't have arrangements for the rest
22 of the week.

23 THE COURT: Unfortunately, we need jurors who can
24 be here, at least, through Wednesday.

25 JUROR: I would have to call someone. My husband

JURY SELECTION

1 can't take off. She's with her grandmother right now.
2 I'll have to ask her again. I just don't know if she's
3 busy or not.

4 THE COURT: So the grandmother might be able to do
5 it?

6 JUROR: She might be able to do it. I'm just not
7 sure because I didn't know the exact date. I knew
8 today, but didn't know any other day.

9 THE COURT: We might need to ask you to make that
10 call. We are really short on jurors.

11 JUROR: I can make that call.

12 THE COURT: I understand. We'll take a break in a
13 little while. Can you stay with us for a while until
14 we have an opportunity to let you make that phone call?

15 JUROR: Yes, I'm good for today. But I have to
16 make the call to make sure that I can be here for the
17 rest of the week.

18 THE COURT: All right. Thank you, ma'am. Help me
19 remember we need to let you take a break.

20 Yes, ma'am.

21 JUROR: Teneeka Stiney, Juror No. 172.

22 THE COURT: Yes, ma'am.

23 JUROR: I run a home daycare and I don't have like
24 an extra person to help me with the kids.

25 THE COURT: You do it by yourself?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: Are any of the children yours?

3 JUROR: No. It's my job.

4 THE COURT: What's the job?

5 JUROR: I babysit, I do day care. I have someone
6 for today, but I don't know how it's going to work out
7 for the remainder of the week.

8 THE COURT: What happens if you get sick?

9 JUROR: They still bring them. I had the flu and
10 they still brought them.

11 THE COURT: They knew you had the flu?

12 JUROR: Yes.

13 THE COURT: In other words, you've got someone to
14 do it today?

15 JUROR: Yeah. But, I mean, I can try to look and
16 see about Tuesday and Wednesday, I'm not sure. I don't
17 know how they're going to respond to it, but I can ask
18 about it.

19 THE COURT: Can you make a phone call in a little
20 while?

21 JUROR: Uh-huh.

22 THE COURT: Okay. Stay with us for a little
23 while.

24 If you are a caretaker of a person who is 65 years
25 of age or older or a person who is severely disabled,

JURY SELECTION

1 they're unable to take care of themselves, can't be
2 left alone and you are unable to find anyone to take
3 care of them and you wish to be exempted from jury
4 duty, please stand.

5 (No response.)

6 THE COURT: The next exemption involves those of
7 you who may be attending school at this time or working
8 in some capacity with a school. And if this applies to
9 you, we can transfer you to another term that wouldn't
10 interfere with your school duties or responsibilities.
11 But if you are a full time student or work in a school
12 in some capacity and wish to apply for a transfer,
13 please stand.

14 I'll let the lady answer first. Your name and
15 number, please, ma'am?

16 JUROR: Shanice Darien, I'm not sure of the
17 number.

18 THE CLERK: Forty-two.

19 THE COURT: No. 42. Yes, ma'am?

20 JUROR: I work with Right Directions and I'm
21 assigned to different kids during the school day and I
22 help them make sure they get their school work done and
23 behavior modifications and stuff like that. So I don't
24 know if I can get transferred to a time that they're
25 out of school or not.

JURY SELECTION

1 THE COURT: So what would happen if you didn't go
2 back? If you stayed with us, what would happen to the
3 children?

4 JUROR: They would just --

5 THE COURT: Flounder.

6 JUROR: Yes, basically. They wouldn't be left
7 alone. The teachers, of course, would still be there,
8 but they would probably get sent home, depending on the
9 case.

10 THE COURT: Tell me again, what is it you do with
11 them on a daily basis? What are their ages?

12 JUROR: I am with a six-year-old and an
13 11-year-old. And I spend after half the day with one
14 and half the day with the other one.

15 THE COURT: Helping them?

16 JUROR: Just making sure that they're staying on
17 task, they're not disrupting the other kids in class
18 and get their work done and all of that stuff.
19 Basically, like a shadow is what they call it.

20 THE COURT: With a switch?

21 JUROR: Yes.

22 THE COURT: And you'd like to apply for a
23 transfer?

24 JUROR: Yes.

25 THE COURT: To the summer?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: We will excuse you for today and you
3 will receive another notice.

4 JUROR: Okay.

5 THE COURT: Thank you, ma'am.

6 Yes, sir, your name and number?

7 JUROR: I'd rather serve now than later.

8 THE COURT: I got you. I understand.

9 Is there any member of the jury panel who is
10 employed with the Department of Corrections at a
11 penitentiary and would like to be exempt? If so,
12 please, stand.

13 (No response.)

14 THE COURT: Is there any juror who performance
15 services for a business, commercial or agriculture
16 enterprise and you are so essential for the operation
17 of that business or enterprise that if you're required
18 to perform jury duty that the business or enterprise
19 would be required to close or cease functioning? If
20 this applies to you and you wish to be exempted, please
21 stand.

22 (No response.)

23 THE COURT: Ladies and gentlemen, that, actually,
24 concludes the statutory list of qualifications and
25 exemptions from jury duty. It may be, though, that you

JURY SELECTION

1 are qualified and no exemption applies to you, but,
2 nevertheless, this particular week turns out to be a
3 horrible week for you. And under conditions of a
4 hardship, we could consider transferring you to another
5 term. So, if anyone wishes to apply for a hardship
6 transfer, please stand.

7 Yes, sir, your name and number?

8 JUROR: Kerry Paschal, 135.

9 THE COURT: One thirty-five, yes, sir.

10 JUROR: I have to arrange pick up care for my
11 daughter after school for Thursday and Friday. My wife
12 teaches and I have to be able to do that because she
13 has doctor's appointments in the evening that have been
14 preplanned that she has to go for.

15 THE COURT: Did you say that your problem is on
16 Thursday and Friday?

17 JUROR: Yes, sir.

18 THE COURT: But you can stay with us, today,
19 tomorrow and Wednesday?

20 JUROR: Yes.

21 THE COURT: Okay. We'll make sure that you're not
22 pulled on a jury that would require you to be here on
23 Thursday or Friday. Thank you.

24 JUROR: Aaliayah Hill, 76.

25 THE COURT: Seventy-six.

JURY SELECTION

1 JUROR: I have traffic court myself on Wednesday.

2

3 THE COURT: Where do you have to be?

4 JUROR: Somewhere in Ridgeland, I'm not sure.

5 THE COURT: Here in town?

6 JUROR: Uh-huh.

7 THE COURT: Anybody have any pull with the judge?

8 MR. HALL: Your Honor, I might be able to take
9 care of a continuance in that matter.

10 THE COURT: Can you stay with us as long as we get
11 it all squared away with the city?

12 JUROR: Yes.

13 THE COURT: Or the county, whoever it is. Is it a
14 city or a county traffic issue?

15 JUROR: I think it's city.

16 THE COURT: City.

17 Anyone else?

18 THE CLERK: Someone's standing.

19 THE COURT: Oh, I'm sorry, I didn't see you,
20 ma'am.

21 JUROR: I'm debating whether I should stand or
22 not. Cathy Sanderson. I don't recall my juror number,
23 I'm sorry.

24 THE CLERK: One fifty-seven.

25 THE COURT: One five seven. Yes, ma'am, Ms.

JURY SELECTION

1 Sanderson?

2 JUROR: I am teaching a class on Friday. I've
3 already applied the previous two weeks (inaudible) the
4 beginning of March, on Friday. If push came to shove,
5 I would have to find somebody else to teach the class,
6 but it's inconvenient in that I have a relationship
7 with the students that I'm teaching; however, if
8 there's any way that I can not have to be here on
9 Friday, that will be beneficial to me. I don't know if
10 that's something that you can take under consideration.

11 THE COURT: Is there anyone capable of taking your
12 place and teaching the class?

13 JUROR: Yes.

14 THE COURT: Okay, we'll protect you from serving
15 on a jury on Friday, but you can stay with us the rest
16 of the week.

17 JUROR: If I have to. I only have one car, my
18 husband is not going to be very happy.

19 THE COURT: Thank you, ma'am.

20 All right. I find the jury panel qualified.

21 Let me see counsel for a quick side bar.

22 (Off-the-record discussion held.)

23 THE COURT: Ladies and gentlemen, what we're going
24 to do is take a 10-minute break and ask our jurors, No.
25 129 and 72, if they could make those phone calls for

JURY SELECTION

1 us to find out whether it's possible for you to be able
2 to stay through Wednesday.

3 So, let's take a 10-minute recess, ladies and
4 gentlemen, then we'll -- after we find out the answer
5 to those two jurors' situation, we'll know what to do.

6

7 (Whereupon, a brief recess was taken.)

8 THE COURT: Let's come back to the record, ladies
9 and gentlemen.

10 Let me inquire of Juror 129. Were you able to
11 find out any positive information?

12 JUROR: Yes, I've got a baby sitter until
13 Wednesday.

14 THE COURT: So you're good?

15 JUROR: Good.

16 THE COURT: Through Wednesday?

17 JUROR: Yes.

18 THE COURT: Okay.

19 And Juror 172?

20 JUROR: I'm good until Wednesday.

21 THE COURT: Thank you.

22 It's my understanding we have another issue with a
23 juror. Juror 127, Ms. Myers?

24 JUROR: Yes, sir. May I approach the bench?

25 THE COURT: Okay.

JURY SELECTION

1 JUROR: Thank you, Your Honor. How are you?
2 Actually, my husband is the one. He has a doctor's
3 appointment. He's waiting on me in the car. Not
4 today, but I know that it's going to be this week. I
5 had switched my Tuesday, I'm working on Wednesday. And
6 my daughter is due any time. She has my little
7 grandson, so if it happens any time, I have to go take
8 care of my baby.

9 THE COURT: Tell me again about your husband.

10 JUROR: He has a doctor's appointment tomorrow, so
11 I was going to go with him. And he is the one that
12 drives me here. I usually work on Tuesday, I had
13 switched my day to work on Wednesday because he has his
14 appointment tomorrow.

15 THE COURT: Normally -- you do what kind of work?

16 JUROR: I work at the front desk at a finance
17 center, part time.

18 THE COURT: We are scratching and clawing our way
19 to have enough jurors to draw a jury. And if we don't
20 have enough, we have to send all of the jurors back
21 home.

22 JUROR: (inaudible) on Friday.

23 THE COURT: Friday, I'm not worried about. Is
24 there any way we can change your husband's medical
25 appointment?

JURY SELECTION

1 JUROR: I can check and see.

2 THE COURT: I don't know about his condition and
3 you don't need to tell me about his condition. But,
4 you know, I have doctor's appointments and sometimes I
5 just forget about them.

6 JUROR: Okay. It's tomorrow. And I have to be
7 here all day. Maybe he can bring me and go to the
8 appointment by himself. I wanted to go with him, but
9 maybe he can pick me up later. Is it going to be all
10 day tomorrow?

11 THE COURT: Yes, we think so. Here's what we
12 think. We think that we might pick a jury in the next
13 hour or so. We may start the trial, maybe, but come
14 back in the morning, be here all day tomorrow and,
15 hopefully, finish Wednesday.

16 JUROR: Okay. So he can drop me and pick me up
17 later. Okay.

18 THE COURT: If something happens and we finish
19 before he gets here, we can get someone to give you a
20 ride home.

21 JUROR: Otherwise, I can wait, I guess.

22 THE COURT: Are you going to stay with us then?

23 JUROR: Unless my baby, my second grandchild comes
24 tonight.

25 THE COURT: They're going to delay it. I have a

JURY SELECTION

1 feeling.

2 JUROR: Okay.

3 THE COURT: We have 27 remaining.

4 State ready to proceed?

5 MS. SWANSON: The State's ready.

6 THE COURT: Is the Defense ready?

7 MR. HUGHES: The Defense is ready, Your Honor.

8 THE COURT: State ready to call the case?

9 MS. SWANSON: Yes, sir. The State calls Samuel O.
10 Gonzalez. Mr. Gonzalez is charged with murder in the
11 indictment number 2016-GS-27-440.

12 THE COURT: Ladies and gentlemen, as you've just
13 heard, we're about to begin the selection of a jury in
14 the case of Samuel Olalde Gonzalez, who's been charged
15 with the crime of murder. I'm going to ask the
16 solicitor if she would please, for the record, state
17 the deceased's name.

18 MS. SWANSON: Your Honor, the victim's name is
19 Mary Casillas Sotelo.

20 THE COURT: I just wasn't sure I was capable of
21 doing that.

22 I believe the first thing we probably need to do,
23 ladies and gentlemen -- I'm sorry, let me tell you
24 other thing while we're talking about it. The
25 allegations in the indictment alleges that this -- that

JURY SELECTION

1 the killing occurred on or about August the 8th of
2 2016. I believe the first thing we should probably do
3 for the record is have our interpreters sworn.

4 Ladies and gentlemen, it's my understanding that
5 the Defendant in this case is -- speaks Spanish, is not
6 fluent in English. For that reason, the Court has
7 appointed two certified interpreters to assist in this
8 case.

9 Madam clerk, if you would.

10 (Thereupon, the interpreter was sworn to translate
11 the proceedings from another language to English
12 accurately.)

13 THE COURT: In just a few minutes, ladies and
14 gentlemen, I'm going to begin asking you some
15 questions. But before I do that, I'm going to ask the
16 attorneys who are involved in the case if they would
17 stand and identify themselves and any other attorneys
18 that might be assisting in the trial of the case,
19 identify witnesses that potentially could be called in
20 the case.

21 And after that, I'm going to ask you about your
22 relationship with any of the attorneys involved in the
23 case, with any of the witnesses that might be
24 identified to you as well as your relationship, if any,
25 with the Defendant himself and with the deceased.

JURY SELECTION

1 So listen carefully to the names that you hear in
2 the next few minutes because I'm going to ask you
3 questions about that. And we'll begin with the State.

4 Solicitor.

5 MS. SWANSON: Thank you, Your Honor. My name is
6 Hunter Swanson, I'm an assistant solicitor for the 14th
7 circuit. I work for Duffy Stone and have been with the
8 office for about 11 years now.

9 Sitting with me is Brian Holland, who's also an
10 assistant solicitor with the 14th circuit. Jeff
11 Crosby, formerly Jasper County Sheriff's Office, was
12 the lead detective in this case. And John Croft, with
13 Jasper County, has the evidence here with him. We do
14 have several other witnesses that may be called who I
15 will read out at this point. Natasha Aiken, formerly,
16 Hardeeville PD; Vicky Hanley, former, Jasper County
17 Sheriff's Office; Donald Hipp, former Jasper County
18 Sheriff's Office, now, with the 14th circuit
19 Solicitor's office; Gustavo Adolfo-Aguirre Isidro, a
20 resident of Bluffton; Donna Money with SLED; Gary
21 Morris with Jasper County; Omar Nieves with Hardeeville
22 PD; Dr. Angelina Phillips, MUSC pathologist; Lance
23 Puryear, Bluffton PD; Laura Rutland, Bluffton PD;
24 Martin Sauls, Jasper County Corner; Adriana Sotelo, the
25 victim's sister; Adam Thompson, Jasper County Sheriff's

JURY SELECTION

1 Office; Charles Williams, Jasper County; and Elvin
2 Wright, Jasper County.

3 THE COURT: Thank you, Solicitor.

4 Mr. Hughes.

5 MR. HUGHES: Thank you, Your Honor.

6 Good afternoon, my name is Robert Hughes, I'm with
7 the Public Defender's Office. My office is in
8 Ridgeland and I work primarily in Ridgeland.

9 Mr. Gonzalez, stand up, please.

10 This is Samuel Gonzalez. He is the accused in
11 this matter.

12 THE COURT: Thank you, Mr. Hughes.

13 Ladies and gentlemen, my first question is this,
14 is there anybody on the jury who has ever been related
15 by blood or related by marriage to any of the attorneys
16 involved in the case, to the deceased, to the
17 Defendant, or to any of the witnesses that have been
18 identified to you? If so, please, stand.

19 Let me get your name and number? I'm sorry, the
20 gentleman who stood first. Yes, sir.

21 JUROR: My name is Aaliavah Hill.

22 THE COURT: I'm sorry, I misspoke. Your number is
23 what?

24 JUROR: Seventy-six.

25 THE COURT: Yes?

JURY SELECTION

1 JUROR: Natasha Aiken is my second cousin.

2 THE COURT: And I'm going to ask you something
3 that really sounds stupid, I know. How often do you
4 see your second cousin?

5 JUROR: Almost everyday.

6 THE COURT: Everyday? I have second cousins I,
7 seriously, have not seen in several years. Do y'all go
8 to family gatherings?

9 JUROR: Just yesterday.

10 THE COURT: Would you consider yourself to be
11 close to your second cousin?

12 JUROR: Yes.

13 THE COURT: Last time your second cousin visited
14 in your home would have been when?

15 JUROR: Yesterday for my niece's christening.

16 THE COURT: Would that fact or those facts that
17 you just described to us cause you a problem in sitting
18 on the jury?

19 JUROR: No.

20 THE COURT: In other words, you think you could be
21 fair and view the evidence and be fair to both the
22 State and to the Defendant?

23 JUROR: Yes.

24 THE COURT: Despite your relationship with one of
25 the witnesses?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: All right. Thank you, ma'am.

3 And yes, ma'am. Your name and number?

4 JUROR: Juanita Jones, No. 95. Elvin Wright.

5 THE COURT: Mr. Wright is what?

6 JUROR: My cousin.

7 THE COURT: Cousin. First, second, third?

8 JUROR: Second -- third, sorry.

9 THE COURT: How do you determine?

10 JUROR: Right.

11 THE COURT: When is the last time that you spoke
12 with Mr. Wright?

13 JUROR: I don't think -- I haven't seen him
14 lately. It's been a while. But I just wanted you to
15 be aware that we are related.

16 THE COURT: I wanted you to do that. Now, then,
17 he, Mr. Wright, last visited in your home how long ago?

18 JUROR: It's been a while. We just don't visit
19 much.

20 THE COURT: When you say "a while," days, week,
21 months, years?

22 JUROR: It's been a couple of months. We haven't
23 visited each other home.

24 THE COURT: The last time that you might have
25 visited in his home?

JURY SELECTION

1 JUROR: I haven't.

2 THE COURT: Y'all go to family gatherings
3 together?

4 JUROR: No.

5 THE COURT: And how would you normally see
6 Mr. Wright?

7 JUROR: Normally, in passing, maybe in a store.
8 We'll stop and talk and catch up.

9 THE COURT: Do y'all belong to any organizations
10 together, churches, anything such as that?

11 JUROR: No, we are not.

12 THE COURT: Would the fact that Mr. Wright is your
13 cousin, would that interfere with your ability to be a
14 fair and impartial juror in this case?

15 JUROR: Most definitely not.

16 THE COURT: You could be fair to both the State
17 and Defense?

18 JUROR: Exactly.

19 THE COURT: Thank you.

20 JUROR: You are welcome.

21 THE COURT: Has any member of the jury panel --

22 MS. SWANSON: Your Honor, I'm sorry, may we
23 approach?

24 (Off-the-record discussion held.)

25 THE COURT: Has any member of the jury panel ever

JURY SELECTION

1 had a close, personal, or social relationship with any
2 of the attorneys involved in the case, with the
3 deceased, with the Defendant, or with any of the
4 witnesses that have been identified to you? If you
5 have a close relationship with any of those
6 individuals, please stand.

7 Yes, sir, your name and number?

8 JUROR: Lonnie Roberts.

9 THE CLERK: No. 149.

10 JUROR: Friends, Donna Hill, Vicky Hanley and
11 Officer Aiken. Those individuals, I know them from
12 former law enforcement because, again, I was in Jasper
13 County where I met Officer Hanley and one, Officer Hipp
14 and Officer Aiken is -- was Hardeeville PD, where I had
15 a good friend, who also was SRO at Bluffton High School
16 and, usually, we sit around and talk. But other than
17 that, they are just friends.

18 THE COURT: All right. Let me ask you about those
19 friendships. Did you say that most of the friendships
20 you were just describing was a result of what you do
21 for a living?

22 JUROR: Yes, sir. Most of them are sporting
23 events outside probably just speaking, just carrying on
24 a casual conversation.

25 THE COURT: Have any of them ever visited in your

JURY SELECTION

1 home?

2 JUROR: No, sir.

3 THE COURT: Do you recall ever visiting any of
4 them in their homes?

5 JUROR: No, sir.

6 THE COURT: Do you belong to any of the same civic
7 or religious or social organizations together?

8 JUROR: No. No, sir.

9 THE COURT: Would those relationships that you
10 just described interfere with your ability to be a fair
11 and impartial juror in this case?

12 JUROR: No, sir.

13 THE COURT: You think you could listen to
14 testimony and be fair to the State as well as to the
15 Defendant?

16 JUROR: Yes, sir.

17 THE COURT: Okay. Thank you, sir.

18 Let me ask a question of Juror 105, Vicuna Omar
19 Laverde.

20 JUROR: Yes, sir.

21 THE COURT: Someone seems to think that, perhaps,
22 you either knew the Defendant or the deceased.

23 JUROR: No, I don't see nobody here. I know a
24 little bit. Nobody close or friends or nothing like
25 that.

JURY SELECTION

1 COURT REPORTER: I couldn't hear.

2 THE COURT: The court reporter can't hear. You've
3 got to speak up. Just speak loudly.

4 JUROR: I don't know nobody here, any friends.

5 THE COURT: You say you don't have any friends
6 here?

7 JUROR: You can ask again the question, sir?

8 THE COURT: You can understand pretty good, can't
9 you? Did you just say a minute ago you didn't have any
10 friends here? Is that what you said?

11 JUROR: No. I know a little bit of this family
12 here, maybe see one time in the field, that is -- I
13 said I don't know nobody here. Maybe I know one of my
14 friends, but he's not close friends, just a little bit
15 soccer field, but no very close relationship or
16 something like that.

17 THE COURT: All right. In other words, do you
18 believe that you could be a fair and impartial juror in
19 this case?

20 JUROR: Yes, sir.

21 THE COURT: Fair to both the State and to the
22 Defendant?

23 JUROR: I could be, yeah.

24 THE COURT: Thank you very much.

25 JUROR: Thank you.

JURY SELECTION

1 THE COURT: Has any member of the jury panel ever
2 been represented by any of the attorneys involved in
3 this case? If so, please, stand.

4 Your name, please, ma'am?

5 JUROR: Jamie Hernandez.

6 THE CLERK: No. 75.

7 THE COURT: Seventy-five. Yes, ma'am?

8 JUROR: I have a current case going with my
9 ex-husband, we're separated. That is his attorney and
10 they're both on the case. It's a CDV.

11 MS. SWANSON: May the Court inquire as to the
12 husband's name?

13 THE COURT: Yes, ma'am, your husband's name?

14 JUROR: Emil Fernandez.

15 THE COURT: Did you say that Mr. Hughes represents
16 your husband?

17 JUROR: Yes, sir.

18 THE COURT: And the Solicitor's office is
19 prosecuting the case?

20 JUROR: (Nods in the affirmative).

21 THE COURT: Now, Ms. Hernandez, would those facts
22 interfere with your ability to be a fair and impartial
23 juror?

24 JUROR: I can't say for sure. I have issues with
25 some of the things going on.

JURY SELECTION

1 THE COURT: The fact that Mr. Hughes is
2 representing your husband?

3 JUROR: Correct.

4 THE COURT: The fact that he's representing your
5 husband might cause you a problem in being a fair and
6 impartial juror?

7 JUROR: It may. Because I have certain feelings
8 toward them for the case.

9 THE COURT: All right. Thank you, Ms. Hernandez.
10 Has any member of the jury panel formed or
11 expressed an opinion about any issue or any matter
12 involved in this case? If so, please, stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel
15 aware of any bias or any prejudices they may have
16 towards either the State or towards the Defendant in
17 this case? If so, please, stand.

18 (No response.)

19 THE COURT: Is there any members of the jury panel
20 who is a member of or a contributor to any group which
21 has as its primary concern the promotion of law
22 enforcement or victim's rights? Such groups would
23 include, would not be limited to MADD, SADD, CAVE or
24 such similar organizations? If so, please, stand.

25 (No response.)

JURY SELECTION

1 THE COURT: Does any member of the jury panel know
2 of any reason whatsoever why he or she should not serve
3 as a juror in this case, with particular emphasize
4 being placed on your ability to be fair and impartial
5 to both the State and to the Defendant? If so, please,
6 stand.

7 Ma'am, your name and number?

8 JUROR: Cathy Sanderson, 157. I don't know if
9 this applies. You said murder. Is the death penalty
10 involved in this at all?

11 THE COURT: (Nods in the negative.)

12 JUROR: Okay.

13 THE COURT: No, it's not.

14 JUROR: Okay.

15 THE COURT: Additional questions from the State?

16 MS. SWANSON: Nothing from the state.

17 THE COURT: From the Defendant?

18 MR. HUGHES: May we approach?

19 THE COURT: Yes, sir.

20 (Off-the-record discussion held.).

21 THE COURT: Has any member of the jury panel or
22 member of your immediate family ever been the victim of
23 a violent crime? If so, please, stand.

24 Give us your name and juror number. I'm sorry,
25 I've forgotten it already.

JURY SELECTION

1 JUROR: Aaliayah Hill, 76.

2 THE COURT: Yes, ma'am, Ms. Hill?

3 JUROR: Juan Habasham, 30 years for burglary.

4 THE COURT: Let me ask you this. Standing, you're
5 responded to a question had you or any member of your
6 family ever been a crime of violence. Are you talking
7 about yourself being a victim or someone else?

8 JUROR: Someone else, my first cousin.

9 THE COURT: First cousin. Let me see if I got it
10 straight. Your first cousin --

11 JUROR: Juan Habasham.

12 THE COURT: And your first cousin was a victim of
13 --

14 JUROR: Oh, you said victim, I'm sorry.

15 THE COURT: Of what?

16 JUROR: I'm sorry. Oh, no, sorry, sorry.

17 THE COURT: Did you say you misunderstood the
18 question?

19 JUROR: Yes.

20 THE COURT: Oh, okay.

21 Anyone else need to respond to that question?

22 (No response.)

23 THE COURT: Okay.

24 Ready to select a jury?

25 MS. SWANSON: Yes, Your Honor.

JURY SELECTION

1 THE COURT: Mr. Hughes?

2 MR. HUGHES: Yes, Your Honor.

3 THE COURT: Madam Clerk.

4 Ladies and gentlemen, the computer is now deciding
5 whose name is going to be called first. In other
6 words, randomly selecting names, after which, each side
7 has an opportunity to use what we call strikes, which
8 means each side has an opportunity to turn somebody
9 down, to turn a perspective juror down. The attorneys
10 don't get the right to select jurors, they get the
11 right to reject jurors. They only have a certain
12 number of strikes. They don't have to give any reason.
13 It can be because of where you work, where you live,
14 what your spouse does, whether or not you wore a tie to
15 court today or whether you wore jeans, nobody knows.
16 In just a minute, we're going to begin that processes.

17 THE CLERK: As I call your name, will you, please,
18 stand where you are.

19 Juror No. 80, Darriel Hughee.

20 (Darriel Hughee, a black male, stood.)

21 THE CLERK: How says the State?

22 MS. SWANSON: Please present Mr. Hughee.

23 THE CLERK: How says the Defense?

24 MR. HUGHES: Please seat Mr. Hughee.

25 THE CLERK: Come forward, sir. Have a seat in the

JURY SELECTION

1 jury box. Right around here.

2 Juror No. 50, Ralph Drayton, Jr. Mr. Drayton.

3 Somebody shake Mr. Drayton. Mr. Drayton, I need you to
4 stand, please, sir.

5 (Ralph Drayton, Jr., a black male, stood.)

6 THE CLERK: How says the State?

7 MS. SWANSON: Please excuse Mr. Drayton.

8 THE CLERK: Thank you, sir. You can have a seat.

9 Juror No. 62, Christopher Glover.

10 (Christopher Glover, a black male, stood.)

11 THE CLERK: How says the State?

12 MS. SWANSON: Please present Mr. Glover.

13 THE CLERK: How says the Defense?

14 MR. HUGHES: Please seat the juror.

15 THE CLERK: Come forward, sir, and have a seat in
16 the jury box.

17 Juror No. 105, V-I-C-U-N-A Laverde.

18 (Vicuna Laverde, a Hispanic male, stood.)

19 THE CLERK: How says the State?

20 MS. SWANSON: Please present Mr. Laverde.

21 THE CLERK: How says the Defense?

22 MR. HUGHES: Please excuse the juror from the
23 trial of this case.

24 THE CLERK: Thank you, sir. You may have a seat.

25 Juror No. 39, Lucia Crosby.

JURY SELECTION

1 (Lucia Crosby, a white female, stood.)

2 THE CLERK: How says the State?

3 MS. SWANSON: Please present Ms. Crosby.

4 THE CLERK: How says the Defense?

5 MR. HUGHES: Please excuse the juror from the
6 trial of this case.

7 THE CLERK: Thank you, ma'am. You may be seated.

8 Juror No. 3, Cindy A-L-T-A-M-I-R-A-N-O.

9 (Cindy Altamirano, a Hispanic female, stood.)

10 THE CLERK: How says the State?

11 MS. SWANSON: Please present this juror.

12 THE CLERK: How says the Defense?

13 MR. HUGHES: Please seat the juror.

14 THE CLERK: Come forward, ma'am. Have a seat in
15 the jury box.

16 Juror No. 160, Michael Scott.

17 (Michael Scott, a white male, stood.)

18 THE CLERK: How says the State?

19 MS. SWANSON: Please present this juror.

20 THE CLERK: How says the Defense?

21 MR. HUGHES: Please seat the juror.

22 THE CLERK: Come forward, sir, and have a seat in
23 the jury box.

24 Juror No. 197, David Wilson, Jr.

25 (David Wilson, Jr., a black male, stood.)

JURY SELECTION

1 THE CLERK: How says the State?

2 MS. SWANSON: Please present this juror.

3 THE CLERK: How says the Defense?

4 MR. HUGHES: Please seat the juror.

5 THE CLERK: Come forward, sir, and have a seat in
6 the jury box.

7 Juror No. 6, Patricia A-N-Z-A-L-O-N-E.

8 (Patricia Anzalone, a white female, stood.

9 THE CLERK: How says the State?

10 MS. SWANSON: Please present this juror.

11 THE CLERK: How says the Defense?

12 MR. HUGHES: Please excuse the juror from the
13 trial of this case.

14 THE CLERK: Thank you, ma'am. You may be seated.

15 Juror No. 91, Joann Jenkins.

16 (Joann Jenkins, a black male, stood.)

17 THE CLERK: How says the State?

18 MS. SWANSON: Please present this juror.

19 THE CLERK: How says the Defense?

20 MR. HUGHES: Please seat the juror.

21 THE CLERK: Please come forward, ma'am, and have a
22 seat in the jury box.

23 Juror No. 20, Jermaine Bowman.

24 (Jermaine Bowman, a black male, stood.)

25 THE CLERK: How says the State?

JURY SELECTION

1 MS. SWANSON: Please excuse the juror.

2 THE CLERK: You may have a seat, sir.

3 Juror No. 151, Dana Russell.

4 (Dana Russell, a white female, stood.)

5 THE CLERK: How says the State?

6 MS. SWANSON: I'm sorry, what was the number
7 again?

8 THE CLERK: One five one.

9 MS. SWANSON: Please present this juror.

10 THE CLERK: How says the Defense?

11 MR. HUGHES: Please seat the juror.

12 THE CLERK: Please come forward, ma'am, and have a
13 seat in the jury box.

14 Juror No. 2, Jacob Allen.

15 (Jacob Allen, a white male, stood.)

16 THE CLERK: How says the State?

17 MS. SWANSON: Please present this juror.

18 THE CLERK: How says the Defense?

19 MR. HUGHES: Please seat the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 Juror No. 89, Franklin Jackson.

22 (Franklin Jackson, a black male, stood.)

23 THE CLERK: How says the State?

24 MS. SWANSON: Please present the juror.

25 THE CLERK: How says the Defense?

JURY SELECTION

1 MR. HUGHES: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: Thank you, sir. Please have a seat.
4 Juror No. 127, Anna Myers.

5 (Anna Myers, a white female, stood.)

6 THE CLERK: How says the State?

7 MS. SWANSON: Please present the juror.

8 THE CLERK: How says the Defense?

9 MR. HUGHES: Please excuse the juror from the
10 trial of this case.

11 THE CLERK: Thank you, ma'am. Please have a seat.
12 Juror No. 27, Ricky Brundrett.

13 (Ricky Brundrett, a white male, stood.)

14 THE CLERK: How says the State?

15 MS. SWANSON: Please present this juror.

16 THE CLERK: How says the Defense?

17 MR. HUGHES: Please excuse the juror from the
18 trial of this case.

19 THE CLERK: Thank you, sir. Please have a seat.
20 Juror No. 172, Teneeka Stiney.

21 (Teneeka Stiney, a black female, stood.)

22 THE CLERK: How says the State?

23 MS. SWANSON: Please present the juror.

24 THE CLERK: How says the Defense?

25 MR. HUGHES: Please excuse the juror from the

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1 trial of this case.

2 THE CLERK: Thank you, ma'am. Please have a seat.

3 Juror No. 167, Ashley Snellings.

4 (Ashley Snellings, a white female, stood.)

5 THE CLERK: How says the State?

6 MS. SWANSON: Please present this juror.

7 THE CLERK: How says the Defense?

8 MR. HUGHES: Please seat the juror.

9 THE CLERK: Please come forward, ma'am, and have a
10 seat in the jury box.

11 Juror No. 129, Abigail Nettles.

12 (Abigail Nettles, a white female, stood.)

13 THE CLERK: How says the State?

14 MS. SWANSON: Please present this juror.

15 THE CLERK: How says the Defense?

16 MR. HUGHES: Please excuse the juror from the
17 trial of this case.

18 THE CLERK: Thank you. Please have a seat.

19 The strikes are State two, Defense eight.

20 Juror No. 95, Juanita Jones.

21 (Juanita Jones, a black female, stood.)

22 THE CLERK: How says the State?

23 MS. SWANSON: Please present Ms. Jones.

24 THE CLERK: How says the Defense?

25 MR. HUGHES: Please seat the juror.

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1 THE CLERK: Come forward, ma'am, and have a seat
2 in the jury box.

3 Juror No. 76, Aaliayah Hill.

4 (Aaliayah Hill, a black female, stood.)

5 THE CLERK: How says the State?

6 MS. SWANSON: Please present this juror.

7 THE CLERK: How says the Defense?

8 MR. HUGHES: Please seat the juror.

9 THE CLERK: Please come forward, ma'am, and have a
10 seat in the jury box.

11 Juror No. 75, Jamie Hernandez.

12 (Jamie Hernandez, a white female, stood.)

13 THE CLERK: How says the State?

14 MS. SWANSON: Your Honor, the State would move to
15 strike for cause.

16 MR. HUGHES: I think I understand. We have no
17 objection.

18 THE COURT: The Court would agree.

19 THE CLERK: Thank you, ma'am. You may be seated.

20 Juror No. 153, Charles Ruud.

21 (Charles Ruud, a white male, stood.)

22 THE CLERK: How says the State?

23 MS. SWANSON: Please present this juror.

24 THE CLERK: How says the Defense?

25 MR. HUGHES: Please seat the juror.

JURY SELECTION

1 THE CLERK: Please come forward, sir, and have a
2 seat in the jury box.

3 Alternate one.

4 Juror No. 149, Lonnie Roberts, Jr.

5 (Lonnie Roberts, Jr., a black male, stood.)

6 THE CLERK: How says the State?

7 MS. SWANSON: Please present this juror.

8 THE CLERK: How says the Defense?

9 MR. HUGHES: Please seat the juror.

10 THE CLERK: Come forward, sir, and have a seat in
11 the alternate chair.

12 Alternate number two.

13 Juror No. 12, Frederick Barnes, Sr.

14 (Frederick Barnes, Sr., a black male, stood.)

15 THE CLERK: How says the State?

16 MS. SWANSON: Please present this juror.

17 THE CLERK: How says the Defense?

18 MR. HUGHES: Please seat the juror.

19 THE CLERK: Come forward, sir, and have a seat in
20 alternate chair number two.

21 THE COURT: Are there any matters of law the Court
22 needs to consider concerning the composition of the
23 selection of the jury from the State?

24 MS. SWANSON: None from the State.

25 THE COURT: From the Defense?

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1 MR. HUGHES: No, Your Honor.

2 THE COURT: Be at ease for just one second, ladies
3 and gentlemen.

4 (Pause.)

5 THE COURT: Let me address the jurors who remain
6 in the courtroom and not in the jury box. I'm getting
7 ready to let you go for the rest of today and tomorrow.
8 I'll ask you to call tomorrow evening, 6:00 p.m., or
9 after to see if we might need you to come back
10 another -- come back the next day to select another
11 jury. The message should be either, thank you so much,
12 we don't need you anymore, you're excused from jury
13 duty or the message could be, come in Wednesday morning
14 at a certain time. Or, I guess, the message could
15 conceivably could say, please call tomorrow evening
16 after 6:00 p.m. for further instructions. But you're
17 still on jury duty until you're either released by me
18 in the courtroom or the message releases you.

19 Is anybody going to have a problem with that?
20 Does anybody not understand?

21 (No response.)

22 THE COURT: Okay. Hang on one second.

23 (Pause.)

24 THE COURT: There are several jurors that we told,
25 that we promised that we would not require you to be

JURY SELECTION

1 back any more if you had to serve on Thursday or
2 Friday. That would be Juror 129, 172 and 135. Those
3 jurors are excused for the week, except if you are
4 already on the jury. I think somebody is already on
5 the jury. But the other jurors, though, I need for you
6 to call back as indicated.

7 Anybody have any questions or problems with that?

8 Yes, ma'am.

9 JUROR: You said ones that weren't available on
10 Thursday or Friday. I wasn't available Friday.

11 THE CLERK: One fifty-seven.

12 JUROR: One fifty-seven.

13 THE COURT: Oh, I didn't see it. You're right. I
14 forgot you. I had it written down. I forgot you.

15 JUROR: How could you forget me?

16 THE COURT: But of course, you could come back and
17 just sit and watch for the rest of the week for Friday.

18 JUROR: My husband would still be upset about not
19 having a car.

20 THE COURT: Okay. You too, 157.

21 All others call tomorrow, 6:00 p.m. or after. Any
22 questions? Any problems? I see some strange faces
23 that look like they're not sure what I said.

24 Ladies and gentlemen, you are all excused.

25 (Whereupon, the remaining jury panel was excused.)

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1 THE COURT: Ladies and gentlemen, I believe that
2 the State is ready for us to begin and move forward in
3 the trial of the case. Does anybody need a break
4 before we do that?

5 JUROR: I have a question.

6 THE COURT: Got a question.

7 JUROR: Is the thing with my court going to get
8 solved for me?

9 THE CLERK: No. 76.

10 THE COURT: It's on Thursday. They've already
11 checked on it. Your court date is Thursday.

12 JUROR: Okay. Thank you. I thought that it was
13 on Wednesday.

14 THE COURT: Nobody needs a break then?

15 Okay. Madam clerk, please swear our jury.

16 THE CLERK: Please stand and raise your right
17 hand.

18 (Whereupon, jury was sworn.)

19 THE CLERK: If anyone did not take the oath,
20 please, remain standing. If you took the oath, you can
21 have a seat. Thank you.

22 THE COURT: Ladies and gentlemen, before we
23 actually begin, I need to say a few things to you. As
24 you heard earlier, the Defendant in this case is
25 charged with the offense of -- in this indictment with

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1 the offense of murder. The elements of murder will
2 actually be charged to you later in the trial of the
3 case, but I need to tell you this. The fact that the
4 Defendant was arrested, charged and indicted is not
5 evidence. The evidence that you will receive in this
6 case will be from witnesses who take the witness stand,
7 any documents or other things that are admitted in the
8 trial of the case.

9 The Defendant has pled not guilty. That puts the
10 burden upon the State to prove the Defendant's guilt to
11 your satisfaction beyond a reasonable doubt. And it
12 will be your duty, ladies and gentlemen, as jurors to
13 determine whether the State meets its burden of proof.

14 Your purpose as jurors is to find and determine
15 the facts of this case. You are the sole judges of the
16 facts of the case. If at any time, I do anything to
17 cause you to believe that I have an opinion about the
18 facts of the case, put that out of your mind because
19 the law does not permit me to express an opinion about
20 the facts of the case in your presence. You're going
21 to hear this over and over again. You decide what the
22 facts of the case are.

23 I decide what the law is and I make the ruling in
24 this case about evidence. I decide what's admissible
25 or not admissible. I tell you about the law that

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1 applies to the case. I preside over to trial. You
2 decide what the facts are. You decide that based on
3 what you see. You judge the credibility of the
4 witnesses and other evidence presented during the trial
5 of the case.

6 From time to time, you may see the attorneys ask,
7 as you've already seen, if they can approach me. We
8 have a side bar, as you've seen on TV. We whisper
9 things to keep things from you, but we are really
10 saying things that mostly relate to matters of law that
11 I'm required to decide. But in doing that, it may
12 require me to discuss with the attorneys the facts of
13 the case. And as I've already told you, the law
14 doesn't permit me to discuss the facts of the case in
15 your presence.

16 In just a minute, the attorneys will make their
17 opening statements to you, where they will tell you
18 what they think the evidence will show in the case, or
19 not show. Then, the witnesses, typically, take the
20 witness stand. After all is said and done, the
21 attorneys make their closing arguments to you, where
22 they try to convince you to see the case the way they
23 see it. And then, I'll tell you about the law that
24 applies. Once all that's done, you retire to the jury
25 room and begin your deliberations.

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1 Until that occurs, you cannot let anyone discuss
2 this case with you. You can't discuss the case among
3 yourselves. Not even in the jury room until it's all
4 said and done, until it's time to begin deliberating,
5 it's not proper for you to discuss the case in the jury
6 room or elsewhere.

7 Now, having said all of that, ladies and
8 gentlemen, we're going to hear opening statements,
9 beginning with the State.

10 Solicitor.

11 MS. SWANSON: Thank you, Your Honor. May it
12 please the Court.

13 On August 8th of 2016, Samuel Gonzalez became
14 someone else. That night, he became a murderer. He
15 took the life of the mother of his child with his bare
16 hands. Strangling her, his hands around her neck until
17 she went limp, urinated on herself and stopped
18 fighting.

19 Samuel and Mary had just had a baby girl, they had
20 just moved in together. Mary had two other children
21 from a previous relationship and she had been living in
22 Bluffton with her mother. Her fatal mistake was moving
23 in with this man right over here, Mr. Gonzalez. She
24 barely lasted a month in the same household.

25 It was a -- you know, there was a new baby, new

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1 living arrangements, pretty new relationship. Most
2 couples have ups and downs, we all understand that,
3 but, unfortunately, Mary and Samuel were not like most
4 couples. Most couples survive, live to fight another
5 day, the relationship goes on. Well, Samuel made sure
6 that it didn't go on. He took care of that problem.

7 The new residence seemed peaceful enough. They
8 were living on Honey Hill Lane -- or Road, I'm sorry.
9 Small dirt road, rural, just a couple of neighbors, a
10 field with some sheep right across the way. Plenty of,
11 you know, space for the kids to run around, all three
12 of them while Samuel went to work. He worked as a
13 painter.

14 But one Sunday morning, a day-long argument lasted
15 into the night. And it was about 2:00 a.m. that he
16 took her life while her children were sleeping beside
17 her on a mattress next to the couch. That's right, her
18 two boys in the same room as their mother fought for
19 her life.

20 As daylight broke, Samuel was due in for work and
21 his employer called him. That was his habit, he would
22 call him to make sure that the guys were going to be at
23 Zaxby's where he picked them up everyday and then they
24 would go out on the job. So, he calls him and he says,
25 Hey, Samuel, are you coming in today? Oh, I think I

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1 maybe made a big mistake, he tells Gustavo. I think I
2 maybe killed my wife. I might have killed my wife.
3 And Gustova says, Oh, God, you've got to be kidding me.
4 And he calls police to report this.

5 When law enforcement arrived, there was no maybe
6 about it. She was laying on the couch, obvious
7 decomposition, her face bruised, battered, swollen, her
8 tongue hanging out. Which you'll hear about from the
9 pathologist, that's something that happens in cases of
10 strangulation. There was no 911 call from Samuel
11 Gonzalez. There was no attempt to save her life.
12 There was no rendering of any aid. He told the kids,
13 mommy's sleeping, before covering her up.

14 He ended up confessing after a half-hearted,
15 cowardly attempt of taking his own life. You'll see
16 where he tried to hang himself. He's got some bruising
17 around his neck where he tried to hang himself with
18 this little dinky rope. And it didn't work, obviously.
19 And then, he also slashed at his arm. And the
20 investigators discussed those injuries with him.

21 You're going to hear his version of events
22 because, like I said, he does talk to the police and
23 you'll get to decide what makes sense and what doesn't.
24 You're going to also hear from witnesses who responded
25 to the scene. And like I said, the doctor who

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1 conducted the autopsy on Mary and can tell you what
2 exactly led to her death.

3 What you won't hear about is something about legal
4 provocation, all right. Now, that is a term that would
5 mean that maybe the charge would be something less than
6 murder. Legal provocation would maybe be someone
7 pulling a gun on you, okay. Or walking in on your wife
8 with another man in bed with her. You're not going to
9 hear anything like that, because all it was, was an
10 argument and this guy lost total control. He claimed
11 it was the first time they had ever fought. Now, do
12 you really believe that? He kills the mother of his
13 child with his bare hands in front of her other
14 children and it's the first time that they ever fought?

15 So, you've probably guessed, I'm the prosecutor
16 here, so it's my job to present witnesses to you and
17 prove the case beyond a reasonable doubt. I do that
18 through the presentation of witnesses, the entry of
19 evidence. And at the end, in order for you to find
20 Mr. Gonzalez guilty, you must be firmly convinced of
21 his guilt. And I think you're going to see that by the
22 time I speak to you again. This is not a who done it.
23 It's not a how was it accomplished. This is simple a
24 case where a man lost control and unprovoked killed a
25 mother and his live-in girlfriend. There are no

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1 excuses, there was no legal provocation and this is
2 murder. Thank you.

3 THE COURT: Thank you, Solicitor.

4 Mr. Hughes.

5 MR. HUGHES: If it please the Court. Ms. Swanson.

6 Okay, to start off with, yes, I'm wearing Crocs.
7 I have high blood pressure, I take medicine, that
8 causes my legs to swell. And there's a medicine that I
9 can take to relieve that, but, unfortunately, if I take
10 that, I'm not going to be sitting in that chair, I'm
11 going to be in another room in this building.

12 Ms. Swanson is correct about one thing, this case
13 is not a who done it, it's not a what happened. We
14 know that because Mr. Gonzalez told the police what
15 happened. And it all comes down to what y'all think
16 actually caused this to happen. It's not going to be
17 like anything that you've ever seen on television.
18 There's not going to be anybody standing up in the
19 back, no, I did it. No, not going to happen.

20 I will tell you a secret. At times, it's going to
21 get boring. You're going, wait a second, this is a
22 murder trial, how can a murder trial get boring? It
23 can. There are going to be witnesses called that are
24 going to be answering some of the stupidest questions,
25 Hardeeville -- no, I'm sorry, Honey Hill Road, that in

JURY SELECTION

1 Jasper County? Yes, it is. But they have to ask it,
2 it's one of the rules of court. And they're going to
3 be talking about different things and all of that. And
4 occasionally, it is going to get boring. But -- and
5 after lunch tomorrow, don't eat a big lunch, because
6 you're going to be sitting there going, is that guy
7 with a beard and a cross-over ever going to shut up?

8 Pay attention. You need to be comfortable, you
9 need to be awake. And if you need a break, tell the
10 judge. Your job is to listen, to pay attention, watch
11 the people on the stand. We chose y'all. I mean, this
12 is a cut out of Jasper County. I mean, we have
13 everybody. Do not leave your common sense at the door.
14 You don't leave your life experience at the door. Just
15 pay attention. And if you get cold, let us know. If
16 you get hot, let us know. If you get sleepy, let us
17 know. There's going to be coffee and stuff in the
18 back. Y'all are going to get breaks at regular
19 intervals.

20 And when this is over, probably Wednesday morning,
21 maybe tomorrow afternoon, I don't know, it's not going
22 to be a long trial. This isn't going to be two weeks.
23 This is going to be over with before the end of the
24 week, easily. I'm going to come back to you and I'm
25 going to talk. And we're going to be talking about

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1 everything you saw and heard. I'm going to give you my
2 slant of it, but that doesn't matter. What matters is
3 what y'all hear, what y'all see. And that's all I ask
4 of any jury, pay attention, listen, don't be closed
5 minded, just pay attention. And I'll talk to you when
6 we get through with the case. Thank you.

7 THE COURT: Thank you, Mr. Hughes.

8 Solicitor, you may call your first witness.

9 MS. SWANSON: Thank you. The State calls Lance
10 Puryear.

11 Thereupon,

12 LANCE PURYEAR

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Officer, can you please state your name and spell
18 it for the record?

19 A My name is Lance Puryear, (L-A-N-C-E
20 P-U-R-Y-E-A-R.)

21 Q All right. And who do you work for?

22 A I work for the Town of Bluffton Police Department.

23 Q And were you working on August 8th of 2016?

24 A I was.

25 Q All right. And did you respond to a call out at

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 the Publix in Bluffton?

2 A I did.

3 Q Can you tell us about that call that you got?

4 A Yes, I responded to a call from our dispatch --
5 from our dispatchers in regards to a suspicious activity.

6 Q About what time was that?

7 A I believe that was approximately 8:00 to 830 time
8 frame.

9 Q Okay. What type of the call was it?

10 A It was a suspicious activity call.

11 Q All right. And who did you encounter when you
12 responded to that call?

13 A I made contact with Mr., I believe Gustavo, I
14 believe maybe his first name, but I made contact with him in
15 the parking lot of Publix.

16 Q Do you have a copy of your report in front of you?

17 A I do.

18 Q Okay. All right. And did you talk to Gustavo?

19 A I did.

20 Q Were you able to understand him?

21 A I was able to understand him.

22 Q So he spoke English pretty well?

23 A He spoke it fairly well.

24 Q What sort of information did he have?

25 MR. HUGHES: Your Honor, I would object. This is

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 hearsay. We have a third party providing information.
2 So even if the officer understood the information, I
3 think this is hearsay.

4 MS. SWANSON: Your Honor, this is just simply
5 about the call that he was dispatched to, what sort of
6 information this witness had. I can certainly move on,
7 but this is present sense impression.

8 THE COURT: You're asking generally the nature of
9 it?

10 MS. SWANSON: Correct. I'm not asking the
11 suspect's name or anything else about it, but just what
12 type of event did he have information on.

13 THE COURT: Overruled, go ahead.

14 BY MS. SWANSON:

15 Q What type of event or crime did he have
16 information on?

17 A He informed me that one of his --

18 Q Without saying what he said, what sort of
19 information was he trying to convey to you, what was it
20 about?

21 A That someone had been murdered.

22 Q Murdered?

23 A Yes.

24 Q A possible murder. How long did you talk to him?

25 A In the proximity of 10 to 15 minutes.

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 Q Okay. And did you talk to him anywhere else or
2 give him a ride anywhere?

3 A I did. I spoke to him in the parking lot and I
4 gave him a ride to our Bluffton Police Department.

5 Q For what purpose?

6 A So a Jasper County deputy could come interview
7 him.

8 Q Okay. Did you have any other part in this
9 investigation?

10 A No, ma'am.

11 Q All right.

12 MS. SWANSON: That's all the questions I have of
13 this witness at this time.

14 MR. HUGHES: I have no questions.

15 THE COURT: Thank you, sir. You may step down.
16 Call your next witness.

17 MS. SWANSON: I would ask that he be allowed to be
18 excused from the subpoena.

19 MR. HUGHES: No objection.

20 THE COURT: Motion granted.

21 MS. SWANSON: Gustavo Adolfo-Aguirre Isidro.

22 Thereupon,

23 GUSTAVO ADOLFO-AGUIRRE ISIDRO

24 was called as a witness, having been first duly sworn,

25 was examined and testified as follows:

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 DIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q Good afternoon.

4 A Good afternoon.

5 Q Gustavo, come closer to the mike, please. This
6 court reporter has to take down everything that you say. If
7 you can first start by stating your name for the record and
8 spelling it for Ms. Manley?

9 A Okay. Who is the interpreter?

10 Q Oh, the interpreter is over there. Can we try it
11 in English?

12 A It's going to be a little hard for me, but I think
13 that I can do it, yeah.

14 Q Okay.

15 A My name is Gustavo Aguirre. Aguirre is hard to
16 pronounce for American people. So Gustavo is G-U-S-T-A-V-O
17 and Aguirre is A-G-U-I-R-R-E.

18 Q All right. Gustavo, let's talk about Samuel
19 Gonzalez. How did you know him?

20 A He used to work with me.

21 Q And what sort of work did you do and did he do at
22 the time?

23 A In that time, we just painting.

24 Q Painter?

25 A Yeah.

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 Q All right. So, about how long did you work
2 together?

3 A I think it's about eight months, something like
4 that, seven months.

5 Q Did you know that Samuel had a girlfriend?

6 A Yeah.

7 Q Did you know that they had a baby?

8 A Yes.

9 Q Had you ever met the girlfriend?

10 A A little bit, I saw her a couple of times maybe --
11 or yeah, I met in the hospital when the baby born.

12 Q Okay. So you went to the hospital when the baby
13 was born?

14 A Yeah.

15 Q And about how long before her death was that?

16 A About -- I don't get that one, that question.

17 Q How old was the baby when she died?

18 A I'm not sure, maybe can be two months, maybe, I'm
19 not sure honestly.

20 Q Newborn, just a couple months old?

21 A Yeah. Yeah.

22 Q All right. Samuel Gonzalez, do you see the man
23 that you know as Samuel Gonzalez, the one that you used to
24 work with in the courtroom today?

25 A Yeah.

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 Q Can you point him out for me, please?

2 A Yeah, he's right there.

3 Q Okay. Let the record reflect that the witness is
4 pointing to the Defendant.

5 THE COURT: So noted.

6 BY MR. GUSTAVO:

7 Q Gustavo, how would you meet up with Samuel to go
8 to work, can you explain that?

9 A When he started working with me, he have -- he
10 used to live in Bluffton and sometime, I pick him up and
11 sometime, he ride in his car. And later, when he moved with
12 his girlfriend, I live in Beaufort, so everyday so I pick
13 him up at Zaxby's on 170.

14 Q Zaxby's?

15 A Zaxby's, yeah. And his girlfriend bring him to
16 there all the time in the mornings.

17 Q All right. So that was where you would meet and
18 then you would go out onto the job?

19 A Yeah.

20 Q Okay. Now, do you remember calling him on
21 August 8th of 2016?

22 A Yes.

23 Q Okay. And what did you ask him and what did he
24 say in response?

25 A You know, normal, calling and he was working with

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 me. I think he was the only -- well, there's two people
2 working with me at that time, he and one other peoples. I
3 call him, you know, normal, Monday morning. I say, I'm
4 almost there, can I pick you up? And I think -- let me see.
5 I think -- I think he called me first and I don't answer the
6 phone because I was talking with somebody else, so I think I
7 returned the phone call to him. And I said, I'm almost
8 there. And he say, you know, I think I make a big mistake.
9 And, you know, when he tell me that, you know, I not believe
10 it because I know what kind of person he is. And I was, you
11 know, I --

12 Q What sort of big mistake did he tell you he made?

13 A Yeah, he say, I think I killed my girlfriend.

14 Q Did he tell you what happened?

15 A He say that she tried to attack him first and he
16 defend himself.

17 Q And that he defended himself?

18 A Uh-huh. (Indicating affirmatively.)

19 Q Did you eventually call the police?

20 A Yes.

21 Q That same morning?

22 A Yes, like, I think I called the police around 8:30
23 I think, something like that.

24 Q All right. And where did you meet them?

25 A In Publix Buckwalter.

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 Q Okay. Why did you meet them at Publix?

2 A Because I was working in Hampton Lake and the
3 persons I work for, you know, I don't want they to know
4 nothing about, you know, things like this, so I decided to
5 go out of the Plantation. And they say, what is the best
6 place to meet and I told them Publix because Publix is close
7 as -- I think it's the closest place that you can find from
8 Hampton Lake.

9 Q Okay. And did you tell the police what Samuel had
10 told you?

11 A Yeah.

12 Q All right. And did you give them his name and
13 telephone number?

14 A Yes.

15 Q And did you try to tell them where he was living?

16 A Yeah.

17 Q Okay. Did you know exactly where he was living?

18 A No, because I think that he have just like -- I
19 think they just moved to that trailer, like, maybe 15 days,
20 20 days, I'm not sure.

21 Q So they had just moved to the trailer two or three
22 weeks before?

23 A Yes, something like that.

24 Q Was that the first time they were living together
25 that you were aware of?

DIRECT EXAMINATION OF LANCE PURYEAR BY MS. SWANSON

1 A From what I know, I think that is the first time
2 they live together.

3 Q All right. Did Samuel tell you what time he
4 killed the mother of his child?

5 A No, he didn't tell me that.

6 Q Did he say it happened at night or in the morning
7 or did he say at all?

8 A I think that he said something about, like, 2:00,
9 something like that.

10 Q 2:00 a.m. or like in the afternoon?

11 A No, in -- about there, 2:00 a.m.

12 Q Okay. What did you tell Samuel to do?

13 A It's not like what I say. I was not believe it.
14 And he's the one, he wanted me to call the police because he
15 was panicked and he didn't want to do it.

16 Q He was panicked and he didn't want to do it?

17 A Yeah.

18 Q Did you tell him to stay there?

19 A Yeah. I mean, he don't want to go nowhere. He
20 want to stay in the house and wait for the police.

21 MS. SWANSON: Thank you. I have nothing further
22 from this witness at this time.

23 THE COURT: Mr. Hughes.

24 CROSS EXAMINATION

25

CROSS EXAMINATION OF GUSTAVO ADOLFO-AGUIRRE ISIDRO

1 BY MR. HUGHES:

2 Q I'm not going to try to pronounce your name. I'm
3 not that good. You started to say something and she sort of
4 cut you off. What type of person is Samuel?

5 A You ask me the truth or --

6 Q Please, tell the truth.

7 A For the time I know him, he's a great person. I
8 mean, when he tell me, the only reason why I believe him is
9 because his voice is not the same. And when I hear his
10 voice, I know something is not right. But, you know, you
11 ask me about what I know, he's a great person. I mean, I
12 can't believe it, that happened. I don't know how that
13 happened, but he's a -- you know, from my part, he's a great
14 person.

15 Q How long had you known him?

16 A About eight months, maybe -- I think no more than
17 nine months.

18 Q Okay. And y'all worked together doing painting?

19 A Yeah. We work everyday together, you know, for
20 eight months.

21 Q Okay. Was he quick to anger?

22 A I don't understand that one.

23 Q Did he get angry easily?

24 A Not really.

25 Q Ever get into a fight at work?

CROSS EXAMINATION OF GUSTAVO ADOLFO-AGUIRRE ISIDRO

1 A Never.

2 Q Come to work drunk?

3 A No.

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

5 MS. SWANSON: Just briefly.

6 REDIRECT EXAMINATION

7 BY MS. SWANSON:

8 Q Mr. Hughes referred to Samuel as Sammy. Is that
9 how you knew him or did you know him as Samuel?

10 A American people call him Samuel, but I only know
11 Sammy.

12 Q You knew him for less than a year, right?

13 A Yes, eight months, nine months, something like
14 that.

15 Q And you never saw him in his home or in his
16 relationship, did you?

17 A No.

18 Q Okay. You never saw him when he and his
19 girlfriend fought, did you?

20 A What is that?

21 Q You never saw arguments between them, you were
22 never a witness to those?

23 A No, I don't -- I don't see. But he -- sometime he
24 come with some scratches on his hands, yeah.

25 Q Okay. So he had possible defensive wounds?

REDIRECT EXAMINATION OF GUSTAVO ADOLFO-AGUIRRE
ISIDRO BY MS. SWANSON

1 A Yep.

2 Q Do you know what sort of tattoos Sammy has on him?

3 A No, I don't know nothing about it.

4 Q Have you seen the black widow that's on his hand?

5 A I never paid attention to that on his hands.

6 Q Did you know that was to cover up a Nazi symbol?

7 A No, I didn't know.

8 MS. SWANSON: Okay. Thank you. I have nothing
9 further.

10 MR. HUGHES: No further questions.

11 THE COURT: Thank you. You may step down.

12 Solicitor, do you have another witness?

13 MS. SWANSON: Thank you. I do have another one
14 for this afternoon. The State calls Donald Hipp.

15 Thereupon,

16 DONALD HIPPI

17 was called as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SWANSON:

21 Q Good afternoon.

22 A Good afternoon.

23 Q Who do you work for currently?

24 A I work for the 14th Circuit Solicitor's Office.

25 Q Okay. And back in August of 2016, who were you

DIRECT EXAMINATION OF DONALD HIPP BY MS. SWANSON

1 working for and what title did you hold?

2 A I was working for Jasper County Sheriff's Office
3 and I was a major at that time.

4 Q All right. So, were you on duty on August 8th of
5 2016?

6 A Yes, I was.

7 Q All right. And how long had you been with the
8 Sheriff's Office?

9 A A little over 25 years.

10 Q All right. Tell us how that day started for you.

11 A That morning, which is a Monday morning,
12 typically, all investigators are in the office at that time
13 of the day going over what took place over the weekend prior
14 to. That particular morning, about 10:00, 10:30, I received
15 a call from Detective Sergeant Natasha Aiken, who was with
16 Hardeeville Police Department at that time.

17 Q What sort of -- what was it in reference to?

18 A It was in reference to herself, along with Officer
19 Nieves, who's also with Hardeeville Police Department,
20 meeting with a witness at Bluffton, over in Bluffton in
21 reference to a possible homicide that took place in the
22 Hardeeville area. The reason that Hardeeville Police
23 Department respond because they thought it was in their
24 jurisdiction. But once gathering information from the
25 witness, they learned that it was in the county, so they

DIRECT EXAMINATION OF DONALD HIPPI BY MS. SWANSON

1 notified Jasper County Sheriff's Office.

2 Q So as a result of the information that you
3 received from Hardeeville PD, where did you guys respond?

4 A Well, I made contact with all of the investigators
5 that was in the office. We all responded out to Honey Hill
6 Road. Hardeeville had the particulars of the address and
7 everything else, so we met with Officer Nieves near 321 and
8 Honey Hill Road, and he directed us into the address. He
9 hadn't been there prior, he just had the address, the
10 numericals to the residence that we were going to on Honey
11 Hill.

12 Q Officer Nieves is with Hardeeville PD?

13 A Yes, he is.

14 Q In what capacity was he assisting in the
15 investigation?

16 A As a translator. He's fluent in Spanish and he
17 said that the accuser spoke Spanish.

18 Q Okay. What was the address that you all responded
19 to?

20 A I'll have to look at the notes. I think that it
21 was like --

22 MS. SWANSON: If I may, Your Honor, I'll hand the
23 witness his report -- or a report. The Jasper County
24 Sheriff's Office report.

25 THE COURT: Certainly.

DIRECT EXAMINATION OF DONALD HIPPI BY MS. SWANSON

1 BY MS. SWANSON:

2 Q You can refer to this to refresh your memory,
3 please, sir.

4 A [REDACTED] Honey Hill Road.

5 Q All right. And is that within Jasper County?

6 A Yes, it is.

7 Q What time did y'all get to the trailer?

8 A We arrived there approximately, around the hours
9 of probably about 10:45 to pretty close to 11:00. We didn't
10 call it in until we initially knew what we had prior to
11 calling it in to dispatch.

12 Q When you got there, what did you see?

13 A Once we arrived, we pulled up to a mobile home
14 that's located off of Honey Hill Road. There was a SUV that
15 was parked in the yard. And Officer Nieves was talking to
16 the accused on the telephone. And I was there in ear
17 distance and he was translating to him. He spoke it in
18 English to me. And he told the accused to please step on
19 the outside.

20 Q So Officer Nieves, you saw him to ask him to exit
21 the house?

22 A Correct.

23 Q And was Samuel Gonzalez detained at that point?

24 A Mr. Gonzalez was detained at that -- once we
25 cleared him from the house, he stepped down off of the

DIRECT EXAMINATION OF DONALD HIPPI BY MS. SWANSON

1 porch, he was detained and searched at that time.

2 Q He was checked for weapons?

3 A Yes.

4 Q All right. Can you point out who you know to be
5 Samuel Gonzalez, the man that was arrested for the murder of
6 Mary Sotelo?

7 A Sure. He's the gentleman sitting to the right of
8 Mr. Bob Hughes there at the Defendant's table.

9 Q All right. Thank you. Now, did you end up
10 entering the house?

11 A I did.

12 Q What did you see when you entered the house?

13 A Upon entering through the door, the front door, to
14 the right, there's a couch. On that couch, there was a
15 Dallas Cowboy blanket that was spread -- that covered a body
16 and there was a mattress leaned up against the wall to the
17 right of that couch as well.

18 Q Okay. Were there any other people in the
19 residence?

20 A There was. Myself, along with Detective Crosby,
21 Detective Gary Morris, victim -- I think a victim advocate,
22 Vicky Hanley. I think she was a sergeant, SRO, at that
23 time, along with Natasha Aiken entered the residence.
24 Behind that mattress, there were two small kids, I believe
25 the ages two to five.

DIRECT EXAMINATION OF DONALD HIPPI BY MS. SWANSON

1 Q Boys? Girls?

2 A I think two boys.

3 Q Was there another child located in the residence?

4 A There was a child that was in the bedroom in a
5 crib. It was an infant child.

6 Q An infant?

7 A Yes.

8 Q I'm going to show you a series of pictures. And
9 I've shown these previously to the Defense. These are
10 marked State's 4 through 11. And if you can flip through
11 these and tell me if they fairly and accurately depict the
12 scene that you walked into. And then we'll go through them
13 one by one.

14 A (Witness complies.)

15 Q Do those fairly and accurately depict the trailer
16 and the scene that you walked into?

17 A They do.

18 MS. SWANSON: At the time, the State would move
19 photos, which are labeled as State's Exhibits 4 through
20 11, Your Honor. Move them into evidence.

21 THE COURT: Any objection?

22 MR. HUGHES: Can we approach?

23 (Off-the-record discussion held.)

24 MR. HUGHES: No objection.

25 THE COURT: The motion is granted.

DIRECT EXAMINATION OF DONALD HIPPO BY MS. SWANSON

1 MS. SWANSON: Thank you, Your Honor.

2 *(Whereupon, State's Exhibit No(s). 4-10 marked for*
3 *identification and received in evidence.)*

4 BY MS. SWANSON:

5 Q All right. I'm going to go a little bit out of
6 numerical order, but let's start with State's Exhibit 10.

7 And Ms. Bostick, is it possible to turn the
8 other monitor on so that the witness may see? I apologize.

9 This is State's 11. And what are we looking
10 at here?

11 A That's the mobile home that we responded to
12 located off of Honey Hill Road. And that was the SUV that
13 was parked in the front yard.

14 Q All right. I'm publishing State's Exhibit 9.
15 Okay. What are we looking at here?

16 A That's part of the living room as you walk through
17 the front door.

18 Q Okay. So that's the view that you have as you
19 walk through the door of the trailer?

20 A That's correct.

21 Q What are we looking at to the right?

22 A To the right, that's the arm of a couch, that's
23 there with the blue covering right there in the corner, very
24 corner.

25 Q Okay. Publishing State's Exhibit 8. And is this

DIRECT EXAMINATION OF DONALD HIPP BY MS. SWANSON

1 the couch that we were seeing the arm of?

2 A That's correct.

3 Q All right. And tell us what else we're seeing,
4 what is -- is this the mattress that you were talking about?

5 A That's the mattress that the two kids were hiding
6 behind.

7 Q There were two little boys that were cowering
8 behind that mattress?

9 A That's correct.

10 Q Was this the Dallas Cowboys blanket that was
11 covering the victim?

12 A That's correct.

13 Q And I'll show you State's 7, what are we looking
14 at here?

15 A That's a closer-up shot of the Dallas Cowboy
16 blanket with the victim, the deceased still beneath it,
17 under it.

18 Q Okay. Was that blanket eventually collected?

19 A It was.

20 Q And I'm going to show you what's been marked as
21 State's 11. No, I think this should be State's 12. I'm
22 going to show you State's 12 and ask if this is the Dallas
23 Cowboys blanket that was collected from the scene?

24 A This is the evidence bag that the Dallas Cowboy
25 blanket was supposed to be in. Until I open it up --

DIRECT EXAMINATION OF DONALD HIPP BY MS. SWANSON

1 MS. SWANSON: Mr. Hughes, would you like the
2 witness to open it up?

3 MR. HUGHES: No.

4 BY MS. SWANSON:

5 Q As far as you believe, that is the Dallas Cowboys?

6 A Yes, ma'am.

7 Q Okay. The bag does contain that. Thank you.

8 MS. SWANSON: The State would move 12 into
9 evidence at this time.

10 MR. HUGHES: No objection.

11 THE COURT: Motion is granted.

12 *(Whereupon, State's Exhibit No(s). 12 marked for*
13 *identification and received in evidence.)*

14 BY MS. SWANSON:

15 Q All right. And, eventually -- I'm publishing
16 State's 6. Did law enforcement remove that blanket from the
17 victim?

18 A That's correct.

19 Q Okay. And was she -- what are we looking at here?

20 A You're looking at some other covering, some
21 cartoon, Sponge Bob blanket, along with some type of
22 sheet-type covering at the foot there.

23 Q All right. What was her face covered with?

24 A I believe that it was covered with another type
25 pillow-type blanket over her face, if I'm not mistaken.

DIRECT EXAMINATION OF DONALD HIPPI BY MS. SWANSON

1 Q Did you observe the victim's face?

2 A I did.

3 Q All right.

4 MS. SWANSON: State's publishing No. 5.

5 Q And so, is this how you observed her face once you
6 removed the coverings?

7 A That's correct.

8 MS. SWANSON: And then I'm publishing, finally,
9 State's 4.

10 BY MS. SWANSON:

11 Q What is this a picture of?

12 A That's a picture of the master bedroom where the
13 infant was found in the crib, to the right of the bed.

14 Q All right. Was EMS ever called?

15 A No.

16 Q Okay. Was the coroner called?

17 A He was.

18 Q Were you there when the coroner arrived?

19 A No.

20 Q Okay. Where did you end up going?

21 A The accused, the Defendant was taken down to the
22 Sheriff's Office by a marked patrol car. I went to the
23 office to watch the interview itself as it was being
24 conducted by Detective Crosby and Nieves, Officer Nieves.

25 Q All right. And what happened to the children?

DIRECT EXAMINATION OF DONALD HIPPI BY MS. SWANSON

1 A The children was eventually brought down to the
2 Sheriff's Office until we were able to make contact with
3 other family members to take custody of them. We did not
4 place them in DSS care.

5 MS. SWANSON: Thank you. I have anything further
6 at this time. Thank you.

7 THE COURT: Mr. Hughes.

8 CROSS EXAMINATION

9 BY MR. HUGHES:

10 Q How many different names have I called you. I
11 usually major or detective or whatever. What is your title
12 now, Mr. Hipp?

13 A I am an investigator with the 14th Circuit career
14 criminal unit team.

15 Q Okay. I'll call you Investigator Hipp. And at
16 the time, you were with the Jasper County Sheriff's Office
17 that this took place?

18 A Yes, sir.

19 Q And as far as you know, the jury is going to be
20 able to take these pictures back in the room with them so
21 they don't have to depend upon these very strange lights
22 here so that the jury can see everything?

23 A As far as I know.

24 Q Yes. The solicitor described the children as
25 cowering into the -- under the mattress, were they cowering?

CROSS EXAMINATION OF DONALD HIPPI BY MR. HUGHES

1 A What's your terminology of cowering?

2 Q I don't know, she's the one that came up with the
3 word?

4 A I guess they were scared.

5 Q Were they scared because of all the cops in the
6 room?

7 A No, I wouldn't say that. They were hiding before
8 we ever entered the room.

9 Q Okay. The baby was asleep?

10 A The baby was in -- no, it was not asleep.

11 Q Okay. Was it yelling, crying or screaming, or
12 just awake?

13 A The baby was lying in the crib.

14 Q Okay. This was about 10:00, 11:00 in the morning?

15 A Pretty close, yes, sir.

16 Q And let's not wait this long until we see each
17 other again.

18 MR. HUGHES: No further questions, Your Honor?

19 MS. SWANSON: I have nothing further for this
20 witness. We ask that he be released.

21 THE COURT: Okay. Thank you, Investigator. You
22 may step down.

23 Ms. Swanson.

24 MS. SWANSON: That concludes the witnesses that I
25 have for today, Your Honor.

CROSS EXAMINATION OF DONALD HIPPI BY MR. HUGHES

1 THE COURT: Okay. Ladies and gentlemen, we're
2 getting ready to let you go for today. I'll ask you to
3 be back in the morning at 9:30 in the jury room. The
4 bailiff will show you where to go.

5 I'm getting ready to ask you something that's
6 going to be kind of hard to do, though. When you go
7 home, see your family, friends, and loved ones, I'm
8 going to ask you not to discuss this case, what you
9 know about the case, what you have heard or what you
10 think that you might hear. The attorneys and Defendant
11 have selected you as being fair and impartial jurors.
12 And they want to you make a decision in this case based
13 on what you hear and see in the courtroom, not on what
14 somebody tells you outside of the courtroom they think
15 about these kinds of cases.

16 Anybody going to have a problem with that?

17 (No response.)

18 THE COURT: Anybody going to have a problem with
19 being back at 9:30 in the morning?

20 (No response.)

21 THE COURT: Ladies and gentlemen, see you in the
22 morning.

23 (The jury exits the courtroom.)

24 THE COURT: Anything we need to do before we
25 adjourn?

CROSS EXAMINATION OF DONALD HIPPI BY MR. HUGHES

1 MS. SWANSON: Nothing from the State?

2 MR. HUGHES: Nothing for the Defense, Your Honor.

3 THE COURT: Okay. The Court is adjourned until

4 9:30 tomorrow morning.

5 MS. SWANSON: Thank you, Your Honor.

6 (Proceedings continued on 4-24-2018.)

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4-24-2018 PROCEEDINGS

1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

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5 Case No.: 2016GS270440

6 State of South Carolina,

7 Plaintiff(s),

8 vs.

9 Samuel Gonzalez,

10 Defendant(s).

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16 April 23-25, 2018

17 Ridgeland, South Carolina

18

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21

22 BEFORE: The Honorable Brooks Goldsmith

23

24

25

4-24-2018 PROCEEDINGS

1 APPEARANCES

2

3

4 REPRESENTING THE STATE:

5

6 Hunter Swanson, Assistant Solicitor

7 Brian Hollen, Assistant Solicitor

8 14th Judicial Circuit Solicitor's Office

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13

14 REPRESENTING DEFENDANT(S) :

15

16 Robert Hughes, Assistant Public Defender

17 1905 Duke Street, Room 260

18 PO Box 525

19 Beaufort, SC 29901-0525

20 843-255-5000

21

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4-24-2018 PROCEEDINGS

1 4-24-2018 PROCEEDINGS

2 THE COURT: Welcome back, ladies and gentlemen. I
3 believe we're ready to resume with presentation of
4 evidence by the State.

5 Solicitor.

6 MS. SWANSON: Thank you. The State calls Martin
7 Sauls.

8 Thereupon,

9 MARTIN SAULS

10 was called as a witness, having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SWANSON:

14 Q Mr. Sauls, can you please state your name for the
15 record and spell it for the court reporter.

16 A Martin Sauls, (M-A-R-T-I-N S-A-U-L-S).

17 Q And what do you do, Mr. Sauls?

18 A I am the Jasper County coroner.

19 Q Okay. And on August 8th of 2016, did you respond
20 to a trailer out on Honey Hill Road?

21 A Yes, ma'am, I did.

22 Q What did you find when you got there?

23 A Well, law enforcement was there, and they informed
24 me that there was a lady inside who was, indeed, deceased.
25 And they went in with me and I examined her and determined

DIRECT EXAMINATION OF MARTIN SAULS BY MS. SWANSON

1 that there were no signs of life, no respirations, no heart
2 beat, no pupil movement. She was ten seven.

3 Q And ten seven means?

4 A Deceased.

5 Q Deceased.

6 A Out of service.

7 Q All right. How did she leave the scene?

8 A Say it again, I'm sorry?

9 Q How did she leave the scene?

10 A How did I leave the scene?

11 Q How did you transport her from the scene?

12 A Okay. Well, I had one of my coroner's people come
13 and we transported her. We loaded her, placed her in the
14 proper method to transport her, put her on a stretcher and
15 moved her to the coroner's morgue in Ridgeland.

16 Q All right. And was there a mode of death that you
17 suspected in this case?

18 A Well, there were no gunshot wounds, no knife
19 wounds and I did not suspect any kind of drug activity, so,
20 you know, it was always a possibility that she had been
21 strangled.

22 Q Okay. Did you request an autopsy be performed?

23 A Yes, I did.

24 Q Thank you very much, Coroner, I have nothing
25 further.

DIRECT EXAMINATION OF MARTIN SAULS BY MS. SWANSON

1 A Thank you.

2 MR. HUGHES: No questions.

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

4 MS. SWANSON: Thank you.

5 THE COURT: Call your next witness.

6 MS. SWANSON: The State calls Elvin Wright.

7 **Thereupon,**

8 ELVIN WRIGHT

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SWANSON:

13 Q Good morning.

14 A Good morning.

15 Q Elvin, can you state your name and spell it for
16 the record for the court reporter?

17 A Elvin Wright, (E-L-V-I-N W-R-I-G-H-T).

18 Q Okay. What law enforcement agency are you with?

19 A Jasper County Sheriff's Office.

20 Q So you're a Jasper County deputy?

21 A Yes, ma'am.

22 Q Been there for about how long?

23 A Eight years.

24 Q All right. And on August the 8th of 2016, were
25 you out on a call at Honey Hill Road?

DIRECT EXAMINATION OF ELVIN WRIGHT BY MS. SWANSON

1 A Yes, ma'am.

2 Q Can you tell us about that, please?

3 A On this particular morning, we received a call of
4 a possible homicide on Honey Hill Road that had come through
5 Hardeeville Police Department. At that point, it was
6 several of us, mostly detectives, we started to head that
7 way.

8 As we entered the premises, I was somewhere
9 along the last vehicle to enter and we approached a trailer
10 that was at the end of a small dirt road off of Honey Hill
11 Road. At that time, several officers had already entered
12 the home by the time I got there. And I remember seeing a
13 gentleman that was sitting in the back of one of the patrol
14 vehicles and I proceeded to go into the front door of the
15 house.

16 Once I got into the house, immediately on my
17 right-hand side was a, either a couch or a love seat, long
18 chair type. On that couch was a -- what appeared to be a
19 body that was covered up in a Dallas Cowboys blanket.
20 Immediately on the other side of that chair was a mattress
21 from a, looked like what came from a bunk bed. There were
22 two small children, I believe it was two small children
23 behind that mattress sitting on the floor. When we removed
24 the blanket from the object on the chair, it was a body of a
25 female.

DIRECT EXAMINATION OF ELVIN WRIGHT BY MS. SWANSON

1 Q All right. I'm going to show you what has been
2 entered as State's Exhibit 10 and ask if this is the trailer
3 that you responded to?

4 A Yes, ma'am.

5 Q Okay. And then State's 8, is this the couch and
6 the mattress that you were referring to?

7 A Yes, ma'am.

8 Q Okay. Were there any other children located in
9 that residence?

10 A I believe there was a small child, an infant. I
11 never saw that child with my eyes, but I believe there were.
12 That child was picked up by the two female officers that
13 were also on the scene.

14 Q Okay. So there were two female officers on the
15 scene who took care of the children that were found?

16 A Yes, ma'am.

17 Q All right. At some point, were you put in charge
18 of securing a search warrant for the trailer?

19 A Yes, ma'am.

20 Q All right. Tell us about that.

21 A We usually work pretty much as a team when we work
22 scenes like this. At that time, my job was to secure a
23 search warrant which gives us the right to collect any
24 evidence that might be on scene.

25 Q Okay. And so you went and met a judge for that?

DIRECT EXAMINATION OF ELVIN WRIGHT BY MS. SWANSON

1 A Yes, ma'am.

2 Q All right. And so when you obtained that search
3 warrant, how did it get back to the scene?

4 A When I was on my way back to the scene, there was
5 an active shooter call that was right down the road and I
6 was the closest one. So at that time, I proceeded onto the
7 active shooting incident and Detective Thompson met me at
8 that scene to retrieve the search warrant.

9 Q Okay. So back at the residence, who was
10 processing the trailer for any evidence?

11 A When I left, Sergeant Crosby was there, Detective
12 Thompson was there and, also, Detective Morris. When I
13 returned to the scene a little bit later, I met Detective
14 Morris and Detective Thompson and they were already in the
15 process of processing the scene.

16 Q Okay. And when you returned, were they still
17 processing the inside of the residence, or had they moved
18 outside?

19 A Yes, ma'am, they were still on the inside for a
20 short period of time. They were pretty much wrapping up the
21 inside. And then we proceeded on to the outside.

22 Q Okay. Was there anything that you noticed or
23 y'all collected on the outside of the residence?

24 A Yes, ma'am. When facing the front door from one
25 of the exhibits that you showed me.

DIRECT EXAMINATION OF ELVIN WRIGHT BY MS. SWANSON

1 Q Yes, sir, I'm going to actually hand that to you
2 so you can kind of point out to the jury what we're talking
3 about. This is State's Exhibit 10. If you can face the
4 jury and show them.

5 A When facing the front of this trailer, if you was
6 to come out of the front door and turn to your right, off in
7 the field, maybe 100, 150 yards away, there was a tree. In
8 that tree was hanging a yellow, I believe it was a nylon
9 rope that was hanging down from a limb on the tree. There
10 was another part of the rope that may have been cut or maybe
11 popped from the same rope that was hanging from the tree
12 that was on the ground immediately under that limb. We
13 collected that.

14 Q Okay. I'm going to hand you a series of pictures
15 that I've already shown the Defense. This is State's 11,
16 State's 13, State's 14 and State's 15. If you can flip
17 through these and tell us if those are fair and accurate
18 depictions of what you saw outside of that trailer on
19 August 8th?

20 A Yes, ma'am, it is.

21 MR. HUGHES: Your Honor, I thought 11 was used
22 yesterday.

23 MS. SWANSON: I know. There was a little snafu of
24 the numbering, but we have it worked out.

25 MR. HUGHES: You can explain that to me on the

DIRECT EXAMINATION OF ELVIN WRIGHT BY MS. SWANSON

1 break.

2 MS. SWANSON: You're correct, I misspoke. We had
3 done a series of pictures up to 10.

4 MR. HUGHES: I apologize, Your Honor.

5 THE COURT: That's okay.

6 Y'all square?

7 MS. SWANSON: Yes. State would move at this time,
8 11, 13, 14 and 15 into evidence and move to publish.
9 The state would move at this time 11, 13, 14 and 15
10 into evidence and move to publish?

11 MR. HUGHES: No objections.

12 THE COURT: Motion granted.

13 *(Whereupon, State's Exhibit No(s). 11 marked for*
14 *identification and received in evidence.)*

15 *(Whereupon, State's Exhibit No(s). 13-15 marked*
16 *for identification and received in evidence.)*

17 BY MS. SWANSON

18 Q So, Elvin, I am showing the jury State's 11. Is
19 this the tree that you were referring to?

20 A Yes, ma'am.

21 Q And that was located to the left of the trailer if
22 you're facing the trailer?

23 A Yes, ma'am.

24 Q And then as you got closer, this is State's 13?

25 A Yes, ma'am.

DIRECT EXAMINATION OF ELVIN WRIGHT BY MS. SWANSON

1 Q What are we looking at here?

2 A That's the tree and the limb where the rope was
3 hanging from it.

4 Q Okay. Then State's 14 and 15?

5 A Yes, ma'am, that's the lower part of the tree,
6 with the same rope. And then, on the ground was another
7 shorter piece of rope.

8 Q Okay.

9 MS. SWANSON: Beg the Court's indulgence.

10 THE COURT: Certainly.

11 (Pause.)

12 MS. SWANSON: I don't have anything further for
13 this witness at this time. Thank you.

14 THE COURT: Cross examination, Mr. Hughes.

15 MR. HUGHES: Just a few quick ones, Your Honor.

16 CROSS EXAMINATION

17 BY MR. HUGHES:

18 Q Good morning.

19 A Good morning.

20 Q What judge did you get the warrant from?

21 A I don't recall. I would have to look at the
22 warrant and see.

23 Q No problem. But you went all the way from
24 Hardeeville to Ridgeland or did you go to a magistrate in
25 Hardeeville?

CROSS EXAMINATION OF ELVIN WRIGHT BY MR. HUGHES

1 A I would have to look at the warrant, I have done
2 so many search warrants. And we also carry a thumb drive
3 with all the information on it that we need to retrieve a
4 search warrant.

5 Q Okay. And how far was the tree from the trailer?

6 A Just my estimation, and it's not exact, I would
7 say 100, 150 yards.

8 Q Why did you go out there?

9 A When I returned to the scene, like I said,
10 Detective Morris and Detective Thompson were already just
11 about complete with the inside. And to my knowledge, there
12 was some information about a rope possibly being over in
13 that area, so I was just kind of assisting.

14 Q Okay. So this wasn't just walking a complete
15 perimeter around 200 yards from the trailer?

16 A I can't answer that for them, I was just following
17 --

18 Q I mean, for your point. You were told that there
19 was a rope up in a tree somewhere?

20 A I was pretty much following the lead, sir.

21 MR. HUGHES: Okay. No further questions, Your
22 Honor.

23 THE COURT: Thank you, you may step down.

24 MS. SWANSON: The State calls Omar Nieves.

25 Thereupon,

CROSS EXAMINATION OF ELVIN WRIGHT BY MR. HUGHES

1 OMAR NIEVES

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SWANSON:

6 Q Can you state and spell your name for the record
7 for the court reporter, please?

8 A Omar Nieves, (O-M-A-R N-I-E-V-E-S).

9 Q Who do you work for?

10 A The Hardeeville Police Department.

11 Q What is your rank?

12 A I am a patrolman, I'm also the training officer
13 for the Hardeeville Police Department.

14 Q Okay. And I'm going to ask you to do this,
15 because I know you speak fast.

16 A Yes.

17 Q Will you please try and speak slowly so that the
18 court reporter can take everything down and so that the jury
19 can understand you. Where are you originally from?

20 A Puerto Rico.

21 Q What is your first language?

22 A Spanish.

23 Q All right. And so, in what capacity were you
24 assisting Jasper County Sheriff's Office back on the
25 August 8th of 2016?

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A I was translating for the detectives.

2 Q All right. And tell us about your first contact
3 or your first involvement with that call back in August?

4 A I was at the Hardeeville Police Department and
5 Detective Aiken with the Hardeeville Police Department
6 advised she received a call from Bluffton PD stating that
7 there was an individual there with information about a
8 homicide. From the Hardeeville Police Department, we went
9 to Bluffton. We met with the Bluffton Police Department,
10 with officers there. They advised that they had a gentleman
11 there that had some information on a homicide, but it was --
12 there was a language barrier. And then I assisted from
13 there.

14 Q Okay. So are you taught -- are you referring to
15 Gustavo?

16 A Yes, I'm referring to Gustavo.

17 Q Okay. So, did you speak with Gustavo back in
18 August of 2016?

19 A Briefly, yes, I did.

20 Q All right. And eventually, did you guys determine
21 that the possible homicide was not in your jurisdiction?

22 A Eventually. It was in Hardeeville, but it was out
23 of the city limits.

24 Q All right. Were you able to get the name of the
25 suspect and the suspect's phone number from Gustavo?

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A I did. He proceeded to give me the name and he
2 also proceeded to call the subject.

3 Q Did you speak to Samuel Gonzalez?

4 A I did.

5 Q All right. What did he tell you?

6 A He said that he had killed his wife and he wanted
7 to turn himself in.

8 Q All right. What did you do at that point?

9 A I advised him that I needed to talk to him in
10 person, that I needed to -- to tell me where he was at and
11 then I would go there and talk to him.

12 Q So did you try and get directions to the trailer
13 that he was at?

14 A Yes. I asked for directions. That is when it
15 was -- we found out that it wasn't in the city jurisdiction,
16 that it was in Jasper County jurisdiction.

17 Q Okay. Was he able to direct you towards to
18 trailer?

19 A Yes.

20 Q Were you on the phone with him that whole time?

21 A Off and on. If I'm not mistaken, the phone call
22 that -- I lost signal for a while. I called him back and we
23 were able to continue. He was the one that directed me
24 from -- all the way, because he wasn't sure where in the
25 area I was at, so he was -- he didn't have the numerical, so

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 he guided me. When I was passing by, he told me, you're
2 about to pass me, come in. And that's how I found him.

3 Q Okay. And so did you end up responding out to the
4 scene along with Jasper County Sheriff's Office detectives?

5 A Yes. Initially, we -- we came from Bluffton and
6 we met an entourage of Jasper County Sheriff's Office at
7 Deerfield Road. From there, we -- Sergeant Aiken made
8 contact with Jasper County Sheriff's Office deputies and we
9 continued from there to the residence.

10 Q What did you do when you first got to the
11 residence?

12 A When I was approaching the residence, I asked him
13 to step out of the trailer. I know -- he had already said
14 he was in the trailer with his kids, so I wanted to separate
15 him from everything. I was not sure what had happened or
16 what -- what we would have done if he was inside, if he had
17 any weapons, this information. I asked him to step out. He
18 did so. When he did, I told him to put his hands on top of
19 his head and turn around.

20 Q Was he detained at that point?

21 A Yes, I detained him and searched him for weapons
22 and placed him behind my patrol car, back seat.

23 Q Okay. And did you end up entering the residence
24 after the Jasper County Sheriff's Office detectives?

25 A Yes, I did.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 Q And what did you see and observe at that point?

2 A When I -- he already -- as soon as I made contact
3 with him and I was searching him, he told me that his kids
4 were in the living room. He also told me that the body --
5 where the body was. He said that his wife's body was on the
6 sofa in the living room and it was covered by a blanket.

7 From there, I went, placed him in my patrol
8 car, entered the residence and exactly what I saw. To the
9 right-hand side of the door, as soon as you come in, to the
10 right-hand side, there was a sofa there, there was something
11 covered by a blanket. It appeared to be a body.

12 There was a mattress leaning, partially
13 leaning on the wall and there were two kids, boys. And then
14 he had told me that the baby, who was a girl, was in the
15 crib in her room.

16 Q Did the boys say anything to you?

17 A One of the kids, I believe it was the oldest, but
18 I'm not sure, one of the kids told me, "My mommy is
19 sleeping."

20 Q Prior to transporting Samuel Gonzalez -- and,
21 actually, let me have you do this. Can you identify who you
22 detained and interviewed as Samuel Gonzalez? Do you see him
23 in the courtroom today?

24 A Yes, the Defendant.

25 Q Thank you. Prior to taking him over to the Jasper

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 County Sheriff's Office for an interview, did you advise him
2 of his Miranda rights?

3 A Yes. It is a custom for us to read the Miranda
4 rights just in case he says something, which a lot of people
5 do talk in the patrol car. So I read him his Miranda
6 rights.

7 Q Did you read them in Spanish?

8 A I believe, yes, because he spoke -- apparently, he
9 just spoke Spanish.

10 Q Right. So you either read or translated them into
11 Spanish, correct?

12 A Yes.

13 Q Did he seem to understand you?

14 A Yes.

15 Q He speaks Spanish?

16 A Yes, he does.

17 Q Did you understand him?

18 A Yes.

19 Q Okay. Did he ever ask -- did he ever seem
20 confused about what you were asking him or what you guys
21 were talking about?

22 A No, he never told me that he didn't understand me
23 at all. That was never said.

24 Q All right. Did he make statements on the way
25 to --

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A Yes, he did.

2 Q Okay. And what did he say?

3 A He said that he was arguing with his wife the day
4 prior and that during the night, he lost control and
5 strangled her to death.

6 Q Okay. When you guys arrived at the Jasper County
7 Sheriff's Office, you assisted with the interview with Jeff
8 Crosby?

9 A Yes, I assisted Detective Sergeant Crosby later.

10 Q Was that interview recorded?

11 A Video recorded, yes.

12 Q Video and audio?

13 A Yes.

14 Q Were you translating Jeff Crosby's questions?

15 A Yes, I was.

16 Q Were you translating Samuel Gonzalez's answers?

17 A Yes, I was.

18 Q And were those accurate translations?

19 A Yes, they were.

20 Q Did you accurately convey what Samuel Gonzalez was
21 saying when he was talking to law enforcement?

22 A Yes, I did.

23 Q All right. Let me ask you this, in any of those
24 statements or interviews, did he ever tell you that he was
25 defending himself?

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A No. Actually, it was clear that she never
2 attacked him, that she never -- he had some marks and he
3 said that none of them came from -- or from her attacking
4 him. It was all a verbal argument.

5 Q Okay. Did he ever get emotional or cry during any
6 of these interviews or statements?

7 A Not really, he had more of a -- it was more like a
8 casual conversation.

9 Q I'm going to show you what's been previously
10 marked as State's Exhibit 1 and ask for you to describe for
11 the jury what this form is?

12 A This is a written Miranda rights form. The ones
13 that somebody would read to you if you were arrested before
14 we do any questioning.

15 Q Okay. And is that a copy of the form that you
16 read to him at the investigations office?

17 A Yes, it is. It has the date, August 8th, the
18 time, his signature, and mine, as the witness, and signed
19 Crosby.

20 Q Okay.

21 MS. SWANSON: The State would move Exhibit 1 into
22 evidence at this point.

23 MR. HUGHES: No objection.

24 THE COURT: Motion granted.

25 *(Whereupon, State's Exhibit No(s). 1 marked for*

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 *identification and received in evidence.)*

2 MS. SWANSON: Thank you.

3 BY MS. SWANSON

4 Q And if you can -- and we'll do this in English,
5 but you were going over this form in Spanish with the
6 Defendant, right?

7 A Yes, what I did, normally, I've done it before, I
8 will read it in English and then I'll read it in Spanish,
9 and then I'll say it in Spanish.

10 Q So go ahead and read what you read to him. We
11 will read it in the English. That's what we all speak here
12 right now. And please tell us if he acknowledged every one
13 of those rights.

14 A Before we ask you any questions, you must
15 understand your rights. And then he initialed next to that
16 one.

17 You have the right to remain silent. Again,
18 his initials right next.

19 Anything you say can and will be used against
20 you in a court of law. And his initials right there.

21 You have the right to talk to a lawyer for
22 advice before we ask you any questions and to have him or
23 her present with you during questioning. If you have no
24 money for a lawyer fees, the Court will appoint one to
25 represent you without any cost to you, if you wish. If you

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 decide to answer questions now without a lawyer present, you
2 will still have the right to stop answering questions at any
3 time. You also have the right to stop answering questions
4 at any time until you talk with a lawyer.

5 And then the last one -- he initialed them
6 all. And then the last one says, I have read the statements
7 of my rights and understand what my rights are.

8 Q Okay. And he signed that form?

9 A He signed it here.

10 Q Okay. And you signed it as a witness, as did Jeff
11 Crosby?

12 A Yes.

13 Q Okay. Thank you. And after he was advised for a
14 second time of his Miranda rights, did he wish to provide
15 yet another statement?

16 A Yes. After I read him that, he decided to give a
17 statement.

18 Q Okay. And during that interview, at one point,
19 did you and Jeff Crosby ask him if he would provide a
20 written statement?

21 A Yes, we did.

22 Q Did he provide a voluntary written statement?

23 A Yes, after it was clearly advised to him that it
24 was going to be voluntary, he said he would.

25 Q Was that also caught on video?

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A Yes, it was.

2 Q Did it take about an hour for him to complete that
3 statement?

4 A Yes, he took quite a while to complete his written
5 statement, yes.

6 Q And there was no talking or interviewing at that
7 point?

8 A No, once he started writing, he was left alone
9 until he was done.

10 Q Okay. And so, I'm going to hand you what's been
11 marked as State's Exhibit 3 and ask if this is a fair and
12 accurate depiction, if you've reviewed that video?

13 A Yes, I got a copy and yes, it is.

14 Q All right. And is that a fair and accurate
15 depiction of -- the portion that you reviewed, is that a
16 fair and accurate depiction --

17 A Of the interview.

18 Q -- of the interview?

19 A Yes, it is.

20 Q All right. With the exception of the written
21 statement portion cut out?

22 A Yes, the only thing that's missing here is going
23 to be when he was writing the statement.

24 Q Okay. Periods of silence?

25 A Yes.

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 Q Okay. Thank you.

2 MS. SWANSON: The State would move 3 into evidence
3 and request to publish at this time?

4 MR. HUGHES: Your Honor, subject to my objection
5 to Officer Nunez -- Nieves', excuse me, translation. I
6 have no problem with my client's portion or Officer
7 Crosby's, but, again, the officer's translation I
8 object to.

9 THE COURT: The Court notes the objection as
10 previously ruled on and the Court admits it over
11 objection.

12 MS. SWANSON: Thank you, Your Honor.

13 MR. HUGHES: What number?

14 MS. SWANSON: This is 3.

15 *(Whereupon, State's Exhibit No(s). 3 marked for*
16 *identification and received in evidence.)*

17 (CD is published starting at 10:07 a.m.)

18 (Audio paused at 10:12 a.m.)

19 BY MS. SWANSON

20 Q Officer, can you tell us what you were just
21 telling Mr. Gonzalez at that point?

22 A I read him his rights translated. They're not in
23 Spanish, so I had to translate the paper. In two locations,
24 I had to go back and read the paper and kind of situate
25 myself back. And then, the last bit was the portion that

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 you tell them, Do you care to give a statement without your
2 attorney present and do you have an understanding, and he
3 went ahead and say yes.

4 (Audio resumes at 10:12 a.m.)

5 (Audio paused at 10:28 a.m.)

6

7 BY MS. SWANSON

8 Q Officer, that part was hard to hear, you
9 translated, "I tried to fix." Do you recall?

10 A I'm sorry, say that again.

11 Q You stated, "I tried to fix," and then?

12 A That is when he was saying he was trying to fix
13 the stuff, he was trying to fix.

14 Q The stuff?

15 A The argument that they were having, the
16 relationship, because, they were already in -- they had gone
17 to sleep -- according to him, they had gone to sleep during
18 the argument, she went this way, he went this way. And when
19 she took the kids, he wanted to go to her to fix the
20 relationship.

21 Q Okay. Thank you.

22 (Audio resumes at 10:30 a.m.)

23 (Audio paused at 10:39 a.m.)

24 BY MS. SWANSON:

25 Q Did he ever tell you all how he tried to help her?

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 A No. Later on, he says that he called her mom,
2 but, physically, how he did CPR, I don't recollect him ever
3 telling me.

4 Q And there was no call for EMS or anything?

5 A No, he advised -- I asked him later. I believe in
6 that interview, we asked him, why didn't you call 911, and
7 he said that he was scared, so he didn't. He called her
8 mom. But then he called her mom, didn't get in contact with
9 her. Hang up the phone. She calls back and he never
10 answers the phone call at that point.

11 MS. SWANSON: If there's no objection, I'm just
12 going to get to the point where Jeff Crosby and Officer
13 Nieves come back in. There's some dead time.

14 MR. HUGHES: I have no problem with that, Your
15 Honor.

16 THE COURT: Okay. Without objection.

17 (Audio resumes.)

18 (Audio paused at 10:48 a.m.)

19 BY MS. SWANSON:

20 Q Can you tell us what you were just talking with
21 him about there?

22 A He asked me about her family, was her family
23 coming, and I said -- I believe I said, No. I couldn't hear
24 it. He wanted to find out if her family was coming and then
25 he asked, I won't be able to see them. He was talking about

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 her family.

2 (Audio resumes at 10:49 a.m.)

3 (Audio paused at 10:50 a.m.)

4 BY MS. SWANSON:

5 Q Just for clarification, is this the point where he
6 has finished his statement and you are giving him copies of
7 it? The pink copies?

8 A I believe, yes. If that's the portion that we're
9 giving him the pink copies, that's when we give him the
10 copy.

11 Q So we just cut out the portion where he was
12 physically writing.

13 A Yes.

14 (Audio resumes at 11:05 a.m.)

15 (CD stopped at 11:11 a.m.)

16 MS. SWANSON: Your Honor, that's all I have for
17 this witness at this time.

18 MR. HUGHES: Your Honor, since we have been
19 sitting here for an hour, could we have the jury, at
20 least, stand, if we don't take a break at this time, to
21 stretch our legs?

22 THE COURT: We can do that.

23 Ladies and gentlemen, we can stretch our legs, or
24 if you need a break, we can take a break. If anybody
25 wants to take a break. Let's take a 10-minute recess,

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 ladies and gentlemen. I'll ask you to retire to the
2 jury room.

3 (Jury exits the courtroom at 11:10 a.m.)

4 THE COURT: Ms. Swanson, let me ask you a quick
5 question, what's the schedule look like for the rest of
6 the morning?

7 MS. SWANSON: Yes, Your Honor. So, we have the
8 cross-examination of Officer Nieves, Jeff Crosby, the
9 lead investigator, and then my pathologist cannot get
10 here until 12:30. But she should be here at 12:30 and
11 that is my last witness.

12 THE COURT: Okay. Let's take a break.

13 (Short break was taken.)

14 THE COURT: One thing I didn't think about when we
15 were having this discussion in chambers, any chance
16 that we're going to finish with your next -- with your
17 witnesses, other than your expert by 12:00? In other
18 words, is there a chance that we're going to take a
19 break and then come back.

20 MS. SWANSON: Possibly, I suppose it just depends
21 on cross-examination.

22 THE COURT: All right. You ready for the jury?

23 MS. SWANSON: Yes, Your Honor.

24 THE COURT: Bring the jury in.

25 (The jury enters the courtroom.)

DIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 THE COURT: Welcome back, ladies and gentlemen. I
2 believe we're ready to begin the cross-examination of
3 the witness.

4 Mr. Hughes.

5 MR. HUGHES: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. HUGHES:

8 Q Good morning, Officer Sergeant Nieves.

9 A Good morning.

10 Q Hardeeville Police, correct?

11 A Yes, sir.

12 Q And you were Hardeeville Police at the time of
13 this incident?

14 A Yes, I was.

15 Q When you went to the trailer, were you in a
16 Hardeeville Police car?

17 A I believe so, yeah, I believe I was in my patrol
18 car.

19 Q And Hardeeville has body cams?

20 A Yes, they do.

21 Q And the patrol cars have cameras?

22 A Some of them, yes.

23 Q Did yours that day?

24 A I am not sure.

25 Q Okay. And you transported the -- my client to the

CROSS EXAMINATION OF OMAR NIEVES BY MR. HUGHES

1 detective's office?

2 A Yes, I did.

3 Q Okay. Had a conversation with him?

4 A Yes, I did.

5 Q Did not record that conversation on your body
6 camera?

7 A I am -- I'm not sure if I did or did not. I had a
8 body cam and they -- our videos are to where they delete if
9 somebody doesn't pull them. So, the detective at that time
10 was Sergeant Aiken, she was the one that was heading up
11 this. All I was doing was supplemental investigation. So
12 I'm not sure if she pulled my body cam or she did not.

13 Q So there may have been evidence of a conversation
14 that we don't have because it either wasn't recorded or it
15 wasn't downloaded or it wasn't stored properly?

16 A They may have or they may not, I'm not sure. But
17 yes, they may have.

18 Q Now, you are a very good interpreter. As a matter
19 of fact, I've used you -- I think I used you this morning,
20 correct?

21 A Yes, you have.

22 Q But you weren't acting just as an interpreter on
23 that video?

24 A No, I was not. I was interpreting, but initially,
25 I started -- we started with the detective because it was

CROSS EXAMINATION OF OMAR NIEVES BY MR. HUGHES

1 going to be in our jurisdiction, so I started as part of the
2 team that was investigating. And then when it came to the
3 county, we passed it over to them.

4 Q Okay. I'm going to ask you to slow down, because
5 I'm southern and you're Puerto Rican and you speak a lot
6 faster than I do.

7 A I do apologize.

8 Q Now, for that matter, when I was watching the
9 video, I noticed Mr. Gonzalez was leaning on his arm a lot,
10 is that right? I mean, he was on the wall and he was like
11 this a lot. Did you notice that?

12 A I believe so, yes.

13 Q And he appeared to be talking a lot slower than
14 you were?

15 A Yes, yes, he was.

16 Q Okay. So he could have been tired or something?
17 I'm not asking -- I'm just --

18 A It could have been something.

19 Q Now, you're from Puerto Rico, correct?

20 A Yes, I am.

21 Q And he's from another -- I believe he's from
22 Mexico, isn't that correct?

23 A I believe so.

24 Q Now, Spanish is Spanish like English is English.
25 I mean, it's a common language for certain areas, correct?

CROSS EXAMINATION OF OMAR NIEVES BY MR. HUGHES

1 A (No verbal response.)

2 Q But my point is, what I'm trying to ask is, we
3 have slang, we have --

4 A Dialects.

5 Q Dialect. The dialect of Puerto Rico is not the
6 same as the dialect of Mexico, is it?

7 A It depends on what part of Mexico. But Mexico
8 itself also changes, if you've ever been there. You got the
9 coast, you got cities and they all speak Spanish, they all
10 communicate the same way. Some a little faster than others,
11 but they all communicate within the country.

12 Q Right. And I'm trying to think of something I
13 could use that wouldn't be offensive?

14 A You're not going to offend me.

15 Q No, but if -- okay, I'm going to use this as an
16 example. If in South Carolina, I use the word shag, we're
17 talking about the dance. If I use that term in England,
18 we're talking about a sexual relationship. Are you familiar
19 with that?

20 A I have heard of it.

21 Q Okay. The reason why I'm asking that, is it
22 possible that the same word has two different meanings
23 depending on where you are?

24 A A word itself might have a different meaning, but
25 how you put it in the sentence tells you what that specific

CROSS EXAMINATION OF OMAR NIEVES BY MR. HUGHES

1 word means. So I could tell you a few words in Spanish in
2 different countries got a different meaning, but when I
3 place it into a sentence, it don't matter, as long as you
4 speak Spanish, like you speak English, you understand what
5 they're saying, what they're using that specific word in.

6 Q However, if I announce I like to shag, if I'm in
7 South Carolina, somebody is going to put on some beach
8 music, but if I'm in England, some woman is going to slap
9 me, is that correct?

10 A Well, body language. If I'm here and I say I'm
11 undressing myself, then, you're going to give it one, but if
12 you're there -- so we don't go based only on the sentence at
13 that point, then you also going to go -- you look at the
14 person's body language to tell us what it means.

15 Q Okay. Enough, I think, of the language lesson.

16 A Yes.

17 Q Let's talk about that morning. The time line is a
18 little strange. The Hardeeville Police Department gets a
19 call from Bluffton Police Department, correct, about a
20 possible homicide?

21 A I believe so. Sergeant Aiken was the one that
22 dealt with that portion.

23 Q But you go to Bluffton?

24 A Yes, I did.

25 Q To talk to a person who had reported it to

CROSS EXAMINATION OF OMAR NIEVES BY MR. HUGHES

1 Bluffton Police Department?

2 A I believe so, yes.

3 Q Then you discovered that this didn't actually take
4 place in Bluffton, it took place near Hardeeville?

5 A No, when we went there, it was because they
6 already identified that it happened in Hardeeville. So that
7 was already known. It was where in Hardeeville did it
8 happen was the unknown.

9 Q Okay. Could this have been done on the telephone?

10 A Which portion?

11 Q The finding out where it took place?

12 A Well, we already -- on the phone is when we knew
13 that it happened -- before we even got there, we already
14 knew that it happened in Jasper County, that's why we called
15 to Jasper County Sheriff's Office to assist us. So that
16 jurisdiction already was set before we arrived. All of that
17 was done by phone. I'm sorry, if I wasn't clear.

18 Q But you go to Bluffton and then back to just north
19 of Hardeeville, meet up with the Sheriff's Department. And
20 you're on the phone with Mr. Gonzalez?

21 A Off and on, yes.

22 Q Right. And he never refused to answer the phone,
23 he always answered it. Did he ever call you back or did you
24 always call him?

25 A I believe that I called -- I'm not sure, but I

CROSS EXAMINATION OF OMAR NIEVES BY MR. HUGHES

1 believe I always called him.

2 Q As a matter of fact, when you drove past where it
3 was, he said, you're going by, turn in here?

4 A I had him on the phone, so he corrected us when we
5 were passing by.

6 Q And he came out and did everything he was supposed
7 to do?

8 A He did everything that we asked him to do.

9 Q And he was taken into custody?

10 A Yes.

11 Q And placed in the back of your car?

12 A I want to say that it was behind my patrol car,
13 the one we placed him on, if I'm not mistaken. I know I was
14 the one that -- I was the one -- I was on the phone, I got
15 him, I stopped, I was the one that approached him and
16 detained him. But I want to say it was my patrol car.

17 Q How many officers were there, approximately?

18 A That's going to be in Jasper County, they brought
19 in an entourage. I believe the whole detective division was
20 there, to include myself and Sergeant Aiken. I believe the
21 school resource officer showed up.

22 Q And y'all went inside?

23 A I'm not sure who went inside. I know there was
24 officers inside when I got there. I wasn't looking around.
25 I was -- so we detained him, we went inside. The children

CROSS EXAMINATION OF OMAR NIEVES BY MR. HUGHES

1 was the number one priority, since we already know that
2 there were kids there. Take the kids, put them in safety.
3 And then, also, while we doing that, we didn't know if there
4 was just one subject or there were more subject. We were
5 going into an unknown.

6 Q Did the kids speak English?

7 A I didn't have a long conversation with any of the
8 kids. One of them made a statement.

9 Q You can't say what they said?

10 A Yes. Yes. One of them said something to me, but
11 I didn't have a conversation with the kids.

12 Q Do you remember if it was in English or Spanish?
13 If you don't, it's okay.

14 A I translate stuff in my head back and forth. So
15 it could have been in English or it could have been in
16 Spanish and I translated it to English. I'm not sure.

17 Q I mean, being bilingual, you hear both language
18 and you processes them?

19 A I processes, basically, both, yes.

20 Q Would you say that Samuel Gonzalez cooperated?

21 A Yes.

22 MR. HUGHES: No further questions, Your Honor.

23 MS. SWANSON: Just briefly, Your Honor.

24 THE COURT: Certainly.

25 REDIRECT EXAMINATION

REDIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 BY MS. SWANSON:

2 Q Offices Nieves, would you disagree with me if I
3 said that Hardeeville turned in an in-car recording from the
4 transport of Samuel Gonzalez?

5 A I'm sorry, ma'am, that Hardeeville turned it in?

6 Q Right, that your car was equipped with in-car
7 recording device?

8 A I want to say yes, it was. We -- my vehicle --
9 the system is -- a lot of the recording systems we use
10 nowadays is finicky. It works today. Tomorrow, might have
11 an issue. This happened so long ago that I'm not a hundred
12 percent sure, so I don't want to lie. But I believe that I
13 did and it was.

14 Q Right. And, in fact, your Miranda, which was done
15 in Spanish was recorded and caught on that?

16 A I want to say yes.

17 Q And your conversations with him on that in-car
18 audio took place in Spanish?

19 A Yes, yes. He didn't speak English, what I got
20 from the whole contact with him. So everything that was
21 between me and him was in Spanish.

22 Q Okay. What he told you in the car, was that,
23 essentially, the same as what he told y'all in the interview
24 room?

25 A It was, essentially, the same story from the

REDIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 phone, I killed my wife, I strangled my wife. I strangled
2 my wife in the car. He just gave a little more details.
3 And then the same story went to the interview room with a
4 lot more detail. So it was just -- it never changed, it
5 just gathered more intel.

6 Q Okay. You've interpreted for the U.S. government,
7 right?

8 A I -- yes, I am a -- I used to be in the Marine
9 Corp and I was a special operation training -- in a special
10 operating training group. And I used to go overseas, South
11 America, Central America where we trained and gathered intel
12 from different countries as we trained in the military.

13 Q So, have you interpreted and spoken to people in
14 Spanish who are not native to Puerto Rico?

15 A I trained in Mexico, Santo Domingo, Peru, Ecuador,
16 Hawaii, Panama, and probably a few others, but those are the
17 ones that I can mention in the Hispanic or Latino area.
18 Because I also went overseas to Australia, Guam, Singapore,
19 Russia, in that area.

20 Q Okay. And so, again, did you have any trouble
21 understanding Samuel Gonzalez?

22 A No, I did not. And throughout the conversation, I
23 asked him, you know, do you understand? Are we good? And
24 he said yes.

25 Q Okay. And he understood as well. Did he ever

REDIRECT EXAMINATION OF OMAR NIEVES BY MS. SWANSON

1 appear intoxicated or anything like that?

2 A No, no.

3 Q Okay. And he knew what you guys were talking
4 about? He knew what you were questioning him about, right?

5 A Yes, he didn't appear to be lost at any time.

6 Q Right. So the subject of the conversation was
7 known?

8 A Yes.

9 Q Any chance that you misunderstood Samuel Gonzalez
10 when he said that he straddled Mary Cruz and strangled her
11 to death?

12 A No. He not only said it, but he also -- like I
13 said, the body language. So he says it and then he
14 performed it for us.

15 MS. SWANSON: Thank you, nothing further.

16 THE COURT: Any recross?

17 MR. HUGHES: Nothing on recross.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Call your next witness.

21 MS. SWANSON: The State calls Jeff Crosby.

22 Thereupon,

23 JEFF CROSBY

24 was called as a witness, having been first duly sworn,

25 was examined and testified as follows:

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 DIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q Can you please state your name for the record and
4 spell it for the court reporter?

5 A Jeff Crosby, (J-E-F-F C-R-O-S-B-Y).

6 Q And back in August of 2016, where were you
7 working?

8 A The Jasper County Sheriff's Office.

9 Q All right. Were you a detective with the
10 Sheriff's Office?

11 A I was a sergeant in the detective's office at that
12 time.

13 Q All right. Who are you with now?

14 A I am with the Hardeeville Police Department.

15 Q In what capacity?

16 A As an investigator.

17 Q All right. Tell us about the Monday morning when
18 you were dispatched to [REDACTED] Honey Hill Road?

19 A Major Hipp advised all the detectives -- we were
20 all in the office. Every Monday, all of us are in the
21 office from nine to five at that time. He advised us that
22 he had received a call from Sergeant Aiken of the
23 Hardeeville Police Department that a possible homicide
24 occurred somewhere on the south end of Jasper County.
25 Wasn't sure if it happened in the Hardeeville city limits or

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 happened within the county jurisdiction.

2 Q All right. So, eventually, did you figure out
3 that it happened in Jasper County?

4 A Yes, we did. Myself, Major Hipp, Detective
5 Thompson, Detective Wright, we met up with Officer Nieves
6 and Sergeant Aiken of the Hardeeville Police Department at
7 the intersection of the Honey Hill Road and Highway 221 or
8 what is known as Deerfield Road.

9 When we arrived Officer Nieves had the
10 Defendant on the telephone and he gave Officer Nieves
11 directions to the residence and we followed Officer Nieves
12 to the residence off of Honey Hill Road.

13 Q And what happened when you reached the residence?

14 A Reached the residence, the Defendant walked
15 outside and met with Officer Nieves. He was patted down for
16 weapons. He was detained at that point. We were advised
17 there were children in the house, or in the mobile home. We
18 went in to secure the children.

19 Q Did you see those children?

20 A Yes, I did.

21 Q What were they? What were they doing?

22 A When you walk through the front door of the
23 residence, there is a little couch on the right-hand side
24 against the front of the wall. At the end of the couch,
25 there was a mattress leaning up against the wall. And there

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 was two minor children behind that mattress playing on a
2 telephone or ipad, some kind of electronic device.

3 Q Did you say anything to the children?

4 A I asked him to come out from behind the mattress
5 so we could take them outside and talk to them. We escorted
6 them out of the residence at that time. When we walked out
7 of the residence, our school resource officer, Vicky Hanley,
8 was there, also. We released the kids to her. She helped
9 them get dressed and helped them get shoes on.

10 Q What was the purpose of Omar Nieves being there?

11 A He is fluent in Spanish. I do not speak Spanish.
12 He is fluent in Spanish. I have used him multiple times to
13 translate with victims and defendants on cases that I've
14 worked.

15 Q So do y'all not have anybody on Jasper County
16 staff that's fluent in Spanish or not at that time?

17 A Not at that time, we didn't. Officer Nieves, at
18 one time, worked for the sheriff's office and I used him a
19 good deal when he was employed at the Sheriff's Office. And
20 he left the Sheriff's Office and went to Hardeeville.

21 Q You were, obviously, in the courtroom when we
22 watched the video of the interview?

23 A Correct.

24 Q And you were present in that interview room when
25 Nieves went over the rights form?

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 A That's correct.

2 Q Did y'all ever promise the Defendant anything to
3 make a statement?

4 A No, we did not.

5 Q Was that statement voluntary?

6 A Yes, it was.

7 Q Did he seem to understand everything?

8 A He seemed to understand everything, yes.

9 Q In fact, did he seem to want to talk a lot?

10 A I had to ask him questions to get him to the
11 answer those questions, but he pretty much answered
12 truthfully. He didn't seem like he was scared. He wasn't
13 crying, he wasn't upset. Whatever we wanted to know when I
14 asked a question, he answered it when it was translated
15 through Officer Nieves.

16 Q Did he ever tell you, not only in that recorded
17 interview, but any time during the investigation, that he
18 was defending himself against Mary Cruz?

19 A He told me that she had swung at him and he hit
20 her above the right eye and kind of knocked her out. And
21 she fell back on the couch and that's when he got on top of
22 her and strangled her.

23 Q All right. Was there any allegation that she had
24 a weapon that she was trying to use against him?

25 A No.

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 Q Did she make contact when she swung at him?

2 A No, he told me that she did not make contact with
3 him.

4 Q Did he ever become emotional or cry during your
5 contact with him?

6 A No, he did not.

7 Q Now, at the end of the interview, you took
8 pictures of him?

9 A Yes, I did. I photographed the marks on his arm
10 and his neck. And I can't remember if I photographed his
11 tattoos or not.

12 Q Okay. I'm going to show you two pictures, these
13 are State's 16 and 17, and ask you if these are fair and
14 accurate depictions of the photos you took of his injuries?

15 A Yes, they are. On the interview -- the video of
16 the interview, you can see me bring a black bag into the
17 video room. That's, actually, my digital camera that I took
18 these photographs with.

19 MS. SWANSON: The State would move 16 and 17 into
20 evidence and request to publish.

21 MR. HUGHES: No objection.

22 THE COURT: Motion granted.

23 *(Whereupon, State's Exhibit No(s). 16-17 marked*
24 *for identification and received in evidence.)*

25 BY MS. SWANSON

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 Q So, Detective, I'm going to show State's 16. What
2 is this a photo of?

3 A That's a photo of the Defendant's neck.

4 Q And what's on his neck?

5 A It appears to be scratches. In the interview, we
6 learned that it was possibly rope marks where he tried to
7 hang himself.

8 Q So those did not occur at Mary Cruz's hands?

9 A He said that they had not. He told us that he
10 either used a knife on them at one point, and at one point,
11 they were possibly from the rope.

12 Q So he gave you two different stories about how
13 these scratches occurred, right?

14 A As far as I remember, yes.

15 Q And then I'm going to show you State's 17 and ask
16 what these are?

17 A That's a picture of the marks on his left arm and,
18 also, the tattoos on there.

19 Q How did he tell you these injuries occurred?

20 A That he did those with a knife, a kitchen knife
21 that he left in the sink at the house.

22 Q Because he wanted to take his own life?

23 A He wanted to commit suicide. He wanted to kill
24 himself.

25 Q All right. And, actually, at the end of the

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 interview -- and I'm going to refer you back to State's 17,
2 if you can take a look at the Defendant's right hand. What
3 do we see on the Defendant's right hand?

4 A On his right hand, right here by his waist,
5 there's a tattoo of a black widow spider.

6 Q Did you ask him about that tattoo?

7 A Yes, I did. It should have been on the video, but
8 I think that portion was redacted because of the statement
9 that he wrote. He advised me that that tattoo was to cover
10 up a Swastika or the Nazi symbol that he had in the web of
11 his hand right there.

12 Q Thank you. Was he checked out at the hospital
13 after the interview?

14 A Yes, he was. I had him transported to Coastal
15 Carolina to make sure that he was good. Sometimes, when
16 people go into the jail, the jail won't accept them if they
17 have injuries or threaten to commit suicide or things like
18 that. So we have to carry them and have them checked out.

19 Q Was he released that same day?

20 A He was released from the hospital that day, he
21 was.

22 Q What did you eventually arrest him for?

23 A After he was released from the hospital, I
24 officially charged him with murder.

25 Q Thank you. I have nothing further at this time.

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 THE COURT: Cross-examination.

2 MR. HUGHES: No questions, Your Honor.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 MS. SWANSON: May we approach, Your Honor?

6 (A bench conference was held.)

7 THE COURT: Ladies and gentlemen, there's one more
8 witness that we are waiting on. We're trying to make a
9 call to find out how far away that witness is. If the
10 witness is going to be here in a few minutes, we'll
11 just be at ease and wait on the witness. If the
12 witness is going to be a while, we may just go ahead
13 and take a lunch break and come back and hear that
14 witness after lunch. So we'll just be at ease for a
15 few minutes until we find out something.

16 (A short break was taken.)

17 THE COURT: Twenty minutes. Do y'all want to go
18 to lunch, come back, or do you want to sit for 20
19 minutes and wait on the witness? I hear a lot of sits.

20 I'll tell you what, let's take this opportunity
21 for -- we'll sit, let you retire to the jury room and
22 see if you can select a foreperson to represent the
23 jury while we're doing this. It can be anyone except
24 our alternate jurors. If y'all can't select someone,
25 let me know, that's fine, I can do it. I don't want

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 y'all to get in a fuss or a fight over who ought to
2 serve as the foreperson.

3 So let's do that. Let's retire to the jury room
4 and see if you can agree on a foreperson.

5 And we'll be at ease.

6 (The jury exits the courtroom.)

7 MR. HUGHES: Your Honor, I would have a request
8 that when the jury is excused to go to lunch, that they
9 be informed that the attorneys can't -- we can't talk
10 to them to avoid a situation like happened during the
11 last break, plus, I don't want them to think that I'm
12 rude by not talking to them.

13 THE COURT: We'll do that. Help me remember.

14 MR. HUGHES: Thank you, Your Honor.

15 (Lunch recess.)

16 THE COURT: State ready for the jury?

17 MS. SWANSON: State's ready.

18 THE COURT: Defense ready for the jury.

19 MR. HUGHES: Defense is ready.

20 THE COURT: Let's bring our jury in.

21 (Jury enters the courtroom at 12:23 p.m.)

22 THE COURT: Welcome back, ladies and gentlemen.

23 Let me ask you, were you able to select a foreperson to
24 represent the jury?

25 I hate to admit it, I can't remember your name.

DIRECT EXAMINATION OF JEFF CROSBY BY MS. SWANSON

1 THE JUROR: Michael Scott.

2 THE COURT: Oh, there you go. A wise decision the
3 jury has made. Great decision. Thank you for serving.
4 I tell you what I would like for you to do, though, if
5 you don't mind. If you would swap seats with this
6 gentleman, if you don't mind. We'll just try to keep
7 you in that chair for the duration.

8 THE JUROR: All right.

9 THE COURT: And I believe we're ready to resume
10 with presentation of evidence by the State.

11 Solicitor.

12 MS. SWANSON: Thank you, Your Honor. The State
13 calls Dr. Angelina Phillips.

14 Thereupon,

15 ANGELINA PHILLIPS

16 was called as a witness, having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. SWANSON:

20 Q Good afternoon.

21 A Good afternoon.

22 Q Dr. Phillips, will you please state your name for
23 the record and spell it for the court reporter?

24 A Angelina Condura Phillips. Phillips is
25 P-H-I-L-L-I-P-S.

DIRECT EXAMINATION OF ANGELINA PHILLIPS BY MS.
SWANSON

1 Q Can you tell us where you work and what you do
2 there?

3 A I work at MUSC, the Medical University of South
4 Carolina. I'm a forensic pathologist.

5 Q What do forensic pathologists do?

6 A Forensic pathologists perform autopsies, the
7 purpose of which being determine the cause and manner of
8 death.

9 Q Can you tell us about your training and education
10 in that field and what you had to do to become a forensic
11 pathologist?

12 A I completed undergraduate training in anthropology
13 at New York University.

14 THE INTERPRETER: Your Honor, the interpreter is
15 having trouble keeping up with the witness.

16 BY MS. SWANSON

17 Q If you could just slow down.

18 A I'm sorry. I completed my undergraduate degree in
19 anthropology at New York University, then I completed my
20 medical education in medicine. That's in the upstate in New
21 York, also. I did four years of pathology residency in
22 anatomic and clinical pathology, that's basic pathology
23 training in Massachusetts. And then I completed my
24 fellowship in forensic pathology here at MUSC in South
25 Carolina.

DIRECT EXAMINATION OF ANGELINA PHILLIPS BY MS.
SWANSON

1 Q Okay. And have you ever testified in court as an
2 expert in forensic pathology?

3 A Yes.

4 Q All right. How many times?

5 A Before this, two.

6 Q All right. In what counties?

7 A That would be in Berkeley County and Charleston
8 County.

9 MS. SWANSON: Your Honor, at this time, I would
10 offer Dr. Phillips as an expert in forensic pathology?

11 THE COURT: Any objection?

12 MR. HUGHES: No objection.

13 THE COURT: All right. Motion is granted.

14 Ladies and gentlemen, we have just qualified this
15 witness as an expert. Experts are permitted to give
16 their opinion about certain matters within the area of
17 their expertise as opposed to other witnesses who are
18 normally restricted to testifying about what they've
19 experienced or seen with their senses. Exception is
20 made for an expert. And you decide what weight to give
21 the testimony of the expert just like any other witness
22 that testifies in court.

23 You may proceed.

24 MS. SWANSON: Thank you.

25 BY MS. SWANSON:

DIRECT EXAMINATION OF ANGELINA PHILLIPS BY MS.
SWANSON

1 Q Dr. Phillips, did you have the occasion to conduct
2 an autopsy on Mary Casillas Sotelo?

3 A Yes.

4 Q Can you tell us about your findings, please?

5 A So in Ms. Casillas -- if I may refer to my report.

6 Q Yes.

7 A -- we found evidence of strangulation. That
8 includes head and neck, facial congestion. That's
9 congestion with blood. And hemorrhages on her sclera,
10 that's the whites of the eyes. She had petechiae on her
11 conjunctiva, that's the pink parts of the eye, and her
12 tongue was protuberant, it was sticking out, and she had
13 contusions or bruising on her jaw and neck. The anterior
14 neck dissection, which is where we look into the muscles of
15 the neck also had some hemorrhage in the muscles of the neck
16 anteriorly.

17 Q When you're talking about facial and neck
18 congestion, does that just mean swelling?

19 A Some swelling and the red-blue discoloration from
20 the pooling of blood.

21 Q Okay. And so as part of the autopsy, you stated
22 that you did a neck dissection?

23 A Correct.

24 Q And that showed hemorrhaging on the inside of the
25 body?

DIRECT EXAMINATION OF ANGELINA PHILLIPS BY MS.
SWANSON

1 A Correct.

2 Q Would that have occurred if she had been dead at
3 the time?

4 A No.

5 Q Okay. So someone can only hemorrhage when they're
6 still alive?

7 A Correct.

8 Q Okay. And what do you expect to find in cases of
9 strangulation?

10 A In cases of strangulation or asphyxia, which is a
11 lack of oxygen, you are having some compression to the neck
12 which is blocking the vessels and the airway. You would
13 inspect to see changes consistent with that, which would be
14 the congestion in the head and neck.

15 You would expect petechiae, little small
16 hemorrhages in the facial area, around the eyes, around the
17 nose, around the mouth. And you can also see them on the
18 whites and pink parts of the eyes, the sclera and
19 conjunctiva. The tongue would be protuberant. There is
20 also that congestion, looks blue, purple, red and that's a
21 discoloration that you would see from hypoxia or lack of
22 oxygen.

23 And in addition to that, for manual
24 strangulation, you can sometimes see hemorrhage into the
25 skins of contusions, bruising. You can see hemorrhaging

DIRECT EXAMINATION OF ANGELINA PHILLIPS BY MS.
SWANSON

1 into the underlying muscles, as we saw in this case.

2 Occasionally, you will also have fractures of the eyelid
3 bone. In this case, I did not see that.

4 Q But the majority of the things that you would
5 expect to see in a strangulation case, you saw in this case?

6 A Correct.

7 Q I'm going to show you two pictures that are marked
8 as State's 18 and 19. I have previously shown them to the
9 Defense. And ask if these are photos that were taken as
10 part of the autopsy and if they are fair and accurate
11 depictions of the victim as she appeared when you conducted
12 that autopsy?

13 A Yes.

14 Q Okay.

15 MS. SWANSON: The State would move 18 and 19 into
16 evidence at this point?

17 MR. HUGHES: No objection.

18 THE COURT: Motion granted.

19 *(Whereupon, State's Exhibit No(s). 18-19 marked*
20 *for identification and received in evidence.)*

21 BY MS. SWANSON:

22 Q Okay. So I'm going to show you State's 18 and ask
23 what we're looking at here?

24 A That's a picture of her head. And it's
25 highlighting the protuberance of her tongue and the

DIRECT EXAMINATION OF ANGELINA PHILLIPS BY MS.
SWANSON

1 congestion in her head and neck region.

2 Q All right. And there's some blood that's coming
3 from her nostrils. What could that be from?

4 A That could either be from injury or purge fluid,
5 which is bloody fluid coming up from the lungs after you've
6 died.

7 Q Okay. And this is State's 19. What is this a
8 picture of?

9 A That is a picture showing her eyes and
10 highlighting the bilateral hemorrhages on the sclera or the
11 white parts of the eyes.

12 Q So that's the red part that we're seeing?

13 A Yes.

14 Q And that happens when someone is strangled?

15 A Correct.

16 Q Okay. Was a toxicology done on this victim?

17 A Yes.

18 Q Was any alcohol found in her system?

19 A Let me refer to my report. She had no alcohol,
20 only caffeine.

21 Q All right. So no illicit substances, alcohol,
22 drugs, anything like that?

23 A No.

24 Q All right. And let me ask you this, how long does
25 it take to strangle someone manually?

DIRECT EXAMINATION OF ANGELINA PHILLIPS BY MS.
SWANSON

1 A The time can vary, however, it takes about seven
2 to 14 seconds for a person to pass out from the lack of
3 oxygen and three to five minutes for someone to die from
4 that lack of oxygen.

5 Q Okay. So for someone to take their last breath,
6 three to five minutes?

7 A Correct.

8 Q And that person would have to keep strangling
9 until that person died?

10 A Yes.

11 Q And so the cause of death that you concluded was
12 what?

13 A Asphyxia due to manual strangulation.

14 Q And the manner of death?

15 A Homicide.

16 MS. SWANSON: Thank you, nothing further.

17 THE COURT: Cross examination.

18 CROSS EXAMINATION

19 BY MR. HUGHES:

20 Q You didn't just examine her head, correct?

21 A Correct.

22 Q You examined the whole body?

23 A Yes.

24 Q Any old injuries that you noticed?

25 A The other injuries that were on the body were

CROSS EXAMINATION OF ANGELINA PHILLIPS BY MR. HUGHES

1 periorbital hematoma, so blood around the eye on the right
2 and a contusion on the right arm, but I don't know that they
3 were older.

4 Q Scratches, broken bones, things like that?

5 A I did not note any of those.

6 Q Okay. Your other two times that you testified,
7 what were they a victim of?

8 A The first case was a bludgeoning with a crow bar.
9 The second was an elder abuse case.

10 Q Was there any sign of abuse in this -- on this
11 victim?

12 A Signs of abuse in what way?

13 MS. SWANSON: I would object, Your Honor, that
14 would call for speculation. She can testify as to
15 injuries and what things would be consistent with, but
16 I don't think that she can make conclusions about how
17 that happened.

18 MR. HUGHES: She's an expert, Your Honor. Having
19 to explain to her what signs of abuse are is strange,
20 but she has a right to give her opinion.

21 THE COURT: I'll overrule the objection.

22 THE WITNESS: Are you referring to physical abuse?

23 BY MR. HUGHES:

24 Q Bruising, cuts, yes, physical abuse?

25 A The injuries that I have documented in the final

CROSS EXAMINATION OF ANGELINA PHILLIPS BY MR. HUGHES

1 diagnosis were current injuries. As for scarring, I can
2 tell you if she had scars. She had a scar on her right
3 cheek and on her left leg. I couldn't say what those
4 injuries were from. I don't have any signs of old injuries.
5 Those, you know, depending on when they occurred may have
6 already healed. I did not and do not regularly examine the
7 long bones because it deforms the body. Unless fractures
8 are probable, I would not be able to tell you they were
9 there. I didn't see anything specific on the body that
10 would indicate prior.

11 Q Nothing set off alarm bells saying, oh, we've got
12 someone here who has had a history?

13 A No.

14 MR. HUGHES: No further questions, Your Honor.

15 MS. SWANSON: Just one.

16 REDIRECT EXAMINATION

17 BY MS. SWANSON:

18 Q Would you consider strangling someone for a period
19 of three to the five minutes abuse?

20 A It could be in this situation.

21 Q Thank you.

22 RE-CROSS EXAMINATION

23 BY MR. HUGHES:

24 Q You just said that it could be?

25 A Yes.

RECROSS EXAMINATION OF ANGELINA PHILLIPS BY MR.
HUGHES

1 MR. HUGHES: Thank you.

2 THE COURT: Thank you, Doctor. You may step down.

3 THE WITNESS: Thank you.

4 THE COURT: And you may be excused from your
5 subpoena.

6 MS. SWANSON: Your Honor, at this time, the State
7 would rest its case.

8 THE COURT: Ladies and gentlemen, now seems to be
9 a good time for us to take a lunch break. I am also
10 required to discuss some matters of law with the
11 attorneys during the lunch break. Let's try to be back
12 at 2:00.

13 I'll remind you, don't let anybody talk to you
14 about the case. You don't talk to anybody about the
15 case. See you back at 2:00, ladies and gentlemen.

16 MR. HUGHES: Your Honor, what we talked about
17 earlier.

18 THE COURT: Oh, the attorneys have all asked me to
19 say something to you about what might happen should you
20 run into any of the attorneys during the lunch break.
21 They are prohibited from talking to you or being
22 friendly with you just because it may give an improper
23 impression if they were to speak to you.

24 I'm sorry, y'all ready to go to lunch? Thank you.
25 See you back at 2:00.

RECROSS EXAMINATION OF ANGELINA PHILLIPS BY MR.
HUGHES

1 (The jury exits the courtroom at 12:46 p.m.)

2 THE COURT: Any motions?

3 MR. HUGHES: Yes, Your Honor. I renew my motion
4 as to Officer Nieves' aspect of the videotape that I
5 moved prior to court and during -- at the time of the
6 tape. I would, also, at this time move for a directed
7 verdict of not guilty. The State has not met all of
8 the elements specific. Specifically, I don't think
9 they have met any type of malice. I would -- if -- I
10 would have another motion if that motion fails, Your
11 Honor.

12 MS. SWANSON: Thank you, Your Honor. Taking in
13 the light most favorable to the State, there is ample
14 evidence in the record from which a jury could
15 determine guilt on a murder charge, the unlawful
16 killing of another with malice aforethought. As you
17 well know, malice can be formed in an instant. The
18 Defendant stated on several occasions to law
19 enforcement that he was not defending himself, that he
20 straddled the victim. The pathologist just testified
21 that he had to strangle her for a period of three to
22 five minutes for her to stop breathing. He simply
23 told law enforcement he lost control. So, between his
24 statements and the corroborating evidence, there is
25 certainly enough to send a murder charge to the jury.

RECROSS EXAMINATION OF ANGELINA PHILLIPS BY MR.
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1 THE COURT: The Court agrees. And the Court
2 understands both motions and denies both motions.

3 Do you have another one?

4 MR. HUGHES: I have another one, Your Honor. I
5 think I'll do that after I put my case up.

6 THE COURT: Okay.

7 Anything else from either side?

8 Would it be a good time for me to discuss with
9 your client his right to testify?

10 MR. HUGHES: I have talked it over with my client,
11 Your Honor. I have no problem one way or the other,
12 either now or after lunch.

13 THE COURT: Let's do it now.

14 MR. HUGHES: Okay. Come forward.

15 THE COURT: Mr. Gonzalez, at this time, I'm going
16 to explain to you certain of your rights. If you don't
17 understand anything that I say, please, let me know.
18 If you want me to explain anything in more detail,
19 please, let me know. Do you understand what I have
20 said so far?

21 THE INTERPRETER: Yes, Your Honor, yes.

22 THE COURT: We have now reached the stage of your
23 trial where you may present your defense. You have the
24 right to claim the protections given to you by the
25 Fifth Amendment to the Constitution of the United

RECROSS EXAMINATION OF ANGELINA PHILLIPS BY MR.
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1 States. This amendment states in part as follows: No
2 person should be compelled in any criminal case to be a
3 witness against himself. This means that you cannot be
4 required to testify. You have the right to testify on
5 your own behalf, however, no one can make you testify.
6 This is a personal right that you have and no one can
7 waive or give up this right except you.

8 If you decide to testify, you will be subject to
9 the same rules that govern other witnesses. And you
10 may be examined and cross-examined on any relevant
11 issue in this case. In addition, if you have any
12 convictions involving dishonesty or false statements or
13 crimes punishable by imprisonment for more than one
14 year and the Court determines that the probative value
15 of admitting this evidence outweighs its prejudicial
16 effect to you, the solicitor would be able to introduce
17 your record to attack your credibility.

18 If you decide to testify, this decision on your
19 part must be made freely and voluntarily and
20 intelligently with the knowledge of the protections
21 given to you by the Fifth Amendment and the
22 consequences of your decision to testify.

23 If you decide not to testify, I will instruct the
24 jurors that they cannot give that fact, the fact that
25 you did not testify any consideration whatsoever and

RECROSS EXAMINATION OF ANGELINA PHILLIPS BY MR.
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1 that there's to be absolutely no prejudice to you
2 because you did not testify. It is left entirely up to
3 you as to whether or not you testify. You may talk
4 with your attorney, family, friends, or anyone else,
5 but the final decision will be left entirely up to you.

6 Do you understand what I have explained to you?

7 THE INTERPRETER: Yes.

8 THE COURT: Do you have any questions about what I
9 have explained to you?

10 THE INTERPRETER: No.

11 THE COURT: Have you discussed with your lawyer
12 whether or not you should testify?

13 THE INTERPRETER: Yes.

14 THE COURT: Have you decided whether or not you
15 should testify?

16 THE INTERPRETER: I will testify.

17 THE COURT: You wish to testify, is that correct?

18 THE INTERPRETER: Yes.

19 THE COURT: All right. And, of course, you have
20 the right to change your mind between now and the time
21 it comes for you to testify.

22 All right. Thank you.

23 Anything else before we go to lunch?

24 MR. HUGHES: None for the Defense.

25 THE COURT: All right. We will recess until 2:00.

RECROSS EXAMINATION OF ANGELINA PHILLIPS BY MR.
HUGHES

1 (Lunch recess taken at 12:45 p.m.)

2 THE COURT: Ready for the jury?

3 MS. SWANSON: We're ready.

4 MR. HUGHES: The Defense is ready.

5 THE COURT: Let's bring the jury in.

6 (The jury enters the courtroom at 2:04 p.m.)

7 THE COURT: Welcome back, ladies and gentlemen.

8 If you recall, at the break, the State had rested,
9 concluded its presentation of evidence. The Defense's
10 now has the opportunity to present evidence should the
11 Defendant decide to do so. Of course, the Defendant is
12 not required to produce any evidence.

13 Mr. Hughes.

14 MR. HUGHES: Thank you, Your Honor. Your Honor,
15 the Defense calls Samuel Gonzalez.

16 Thereupon,

17 SAMUEL GONZALEZ

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HUGHES:

22 Q Good afternoon, Mr. Gonzalez. Please state your
23 name and spell your last name for the court reporter.

24 A My name is Samuel Gonzalez, (S-A-M-U-E-L
25 G-O-N-Z-A-L-E-Z).

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 Q How old are you, Mr. Gonzalez?

2 A I'm 26 years old.

3 Q Where did you live before now?

4 A In Hardeeville.

5 Q And where are you from?

6 A My country of origin is Mexico.

7 Q Do you have any children?

8 A Yes, I have one daughter.

9 Q How old is she?

10 A She is going on two years old.

11 Q And when's her birthday?

12 A April 30th.

13 Q You know what we're here for, right?

14 A Yes, I do.

15 Q Okay. Do you remember the day what we're here for
16 happened?

17 A Yes.

18 Q Please tell the jury, starting from the morning
19 before, everything that happened that day. And speak in
20 short sentences so that it can be translated.

21 A Okay. It was in the morning, August 8th, 2016. I
22 was looking through my phone in the morning with Mary Cruz.

23 Q I'm sorry, with who?

24 A Mary Cruz.

25 Q Oh, Maria [sic] Cruz?

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 A Yes, that's her name.

2 Q Yes, I just wanted to make sure everybody,
3 including the jury, understands what was going on. Please
4 continue.

5 A So I was trying to show her my pictures from years
6 before to show her what I was like. So then I slid to one
7 side to change to another photograph. And in the pictures
8 appeared a picture of an ex-girlfriend that I had before.
9 And it was a mistake of mine that I hadn't deleted it. She
10 said to me then, Why do you have that picture there? And I
11 gave her an explanation, so I told her. And I told her,
12 Look, look at the date of this picture and tell me if you
13 have a reason to be upset. So that picture was from a long
14 time before I knew Mary Cruz. So we continued talking about
15 that. And so we stayed like that for a little while, her on
16 her side and me on mine.

17 Q What do you mean when you said you stayed like
18 that?

19 A Basically, she was in -- she was silent and I was
20 silent.

21 Q Okay. What happened next?

22 A So then I let her calm down and I went to her to
23 fix things.

24 Q About what time was this?

25 A Maybe 11:00, 10:00 in the morning, I'm not very

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 sure.

2 Q Please continue.

3 A So we continued to be upset with each other. She
4 wouldn't let me make up with her. I tried one way after
5 another to tell her I was sorry.

6 Q What do you mean she wouldn't let you make up with
7 her? What did she say or do?

8 A What I mean is, she didn't want to exchange words
9 with me.

10 Q Okay. And you tried to come to her?

11 A Not at that time, but throughout the day, we would
12 say a couple of words to each other. She would let me talk,
13 but she wouldn't come close to me. And it was a little bit
14 late, so I said, Are we going to go out to eat or are we
15 going to cook something to eat? And no, well, she would
16 just ignore me. And so I said to her, for the children,
17 that it was late then and that the children hadn't had any
18 breakfast.

19 Q About what time was this?

20 A That was about 12:00 or 1:00 in the afternoon.

21 Q Okay, keep going.

22 A Well, she didn't listen to me, so she grabbed her
23 phone and she was on the phone.

24 Q Do you know who she was talking to?

25 A No, because she was in the living room. And what

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 I did was so that she would get -- she would calm down, I
2 went into the bedroom.

3 Q Keep going.

4 A So I don't -- I don't -- I don't know exactly how
5 long she was on the phone. And so I got up and I went back
6 again and I sat next to her on the love seat. And I kept
7 telling her I was sorry for what she had seen on the phone.
8 And at the end of it all, I don't know if it would have been
9 3:00 or 4:00 in the afternoon, we decided to go and drop off
10 the rent and we went back to the house. And we had to go do
11 some shopping to pick up a few things for the house.

12 Q How was she while y'all were out?

13 A We were together, we were out together, but she
14 was short.

15 Q How do you mean?

16 A Could you say like distant, like kept to herself.

17 Q Okay. Thank you. Keep going.

18 A So we -- we got to the store where we were going
19 to go shopping. So I calmly was going up to her to try and
20 fix things calmly one way or another.

21 Q About what time was this?

22 A Maybe 5:00 p.m., 6:00, I'm not sure exactly.

23 Q What do you mean by fix things one way or another?

24 A Because I was telling her to look at the date,
25 that I didn't have contact with that person anymore, that

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 that person was in Mexico, to try and explain things to her
2 whatever way I could.

3 Q Keep going.

4 A So at the store, we got everything we needed. We
5 went home. So we put everything away that we had bought.
6 And I went up to her again said, Please, I don't like for us
7 to be each in our own, separate with one another.

8 Q Keep going.

9 A No, she started cooking, but I went to go take a
10 shower to give her some more time. When I finished
11 showering, I grabbed my daughter. I went up to Mary Cruz
12 and, again, I was telling her I was sorry and there had been
13 too much distance between us throughout the day and I needed
14 to have communication with her. And it was a Sunday and
15 that's the only day that I can spend the whole day with her
16 and the children. And I don't think that things worked out.

17 She started to have dinner with the kids. I
18 stayed in the living room. She asked me if I was going to
19 have dinner and I told her no. And so she got upset. And I
20 said, No, I'm fine, I'm not hungry. And that made her more
21 upset.

22 And then, again, after some more time, I went
23 back up to her again. But, no, she wouldn't stop --
24 interpreter correction, she wouldn't give in. And then we
25 started talking to each other louder with words, stronger

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 words.

2 Q What did y'all say to each other?

3 A I accepted. I also questioned her because before
4 I had a relationship with her, she had a relationship, too.

5 Q And what was her response?

6 A Her response was stronger. She was calling me
7 names.

8 Q What do you mean?

9 A Like insults, too many insults about me.

10 Q Okay. What happened next?

11 A And so, I saw that nothing was going to be
12 resolved. I went to my room to lie down and I fell asleep.

13 Q About what time was this?

14 A Around 10:00, 10:00 or 11:00, I'm not exactly
15 sure.

16 Q Okay. What happened next?

17 A And so, as I was saying, I was sleeping and then
18 the youngest, her youngest child, he came, he said that he
19 wanted to come sleep with me, so I grabbed him and we went
20 to sleep together.

21 Q Okay. Where was this?

22 A In the room.

23 Q What room?

24 A The master bedroom.

25 Q Okay.

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 A And, also, my baby was also sleeping in the room
2 with us. And Mary Cruz stayed in the living room. She
3 stayed on the phone. I don't know what she was saying. And
4 as I said before, I don't know exactly how many hours I was
5 asleep.

6 And then she went -- she came into the room
7 and she started to move me. I woke up and I said -- I said,
8 what, what did she want. And she started saying -- calling
9 me names again. And I said, Let me sleep because I have to
10 go to work the next day and be -- and it didn't, it didn't
11 work.

12 And as I was saying, the boy was sleeping.
13 And so I got up and went to the living room. And I sat down
14 with her to talk. It seems like we were calmer. And we
15 kept talking and then --

16 Q What did y'all talk about?

17 A Again, her -- her previous relationship, she -- we
18 talked about hers and I told her about mine. And because
19 she also had pictures of her partner in her phone and it
20 wasn't just one, there were several.

21 Q Who brought this up, you or her?

22 A As I said, she started saying stronger words to
23 me.

24 Q What do you mean by stronger words?

25 A I don't know if I can say them here.

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 Q You can, please say them.

2 A She was saying that I was a son of a, I don't know
3 what, and why the fuck did I get into a relationship if it
4 wasn't going to work out. And I just said to her, For a
5 little picture that didn't mean anything to me? And I told
6 her that it wasn't anything to me. It was a picture that
7 had been there since before I had met Mary Cruz.

8 And so that's when I said to her, You are
9 fighting with me over this picture and what about the
10 pictures you have? And she said, What, if I have them,
11 what, you're not going to like that? It's -- she said, It's
12 my Facebook. I can do what I want. If you're asking for an
13 explanation from me, why aren't you giving one if you want
14 me to be straight? And so we continued arguing about that
15 same thing. Afterwards, we stopped, we stopped arguing, it
16 was late.

17 So, I wasn't tired anymore. What I did was I
18 sat down there. And she was also sitting, too. And then
19 again later, we talked. We talked peacefully. And I felt
20 like that maybe then we were going to fix things. But I
21 don't remember exactly what else came out that made her
22 explode again.

23 Q Well, could you try to see -- why did she suddenly
24 explode? I mean, do you have any idea?

25 A Well, she had a very strong personality. Anything

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1 that I would say that she misunderstood, she would get mad
2 quickly.

3 Q How did she explode?

4 A The same, she would call me names and she started
5 pushing me. And I told her to calm down. And so, then
6 seeing that she wasn't calming down, I think I had been
7 tolerating a lot already.

8 Q What was she doing?

9 A Like I was saying, she was using strong words with
10 me and pushing me.

11 Q Okay. What was she saying to you?

12 A She told me that she was going to take my
13 daughter, that the next day when I came home from work that
14 she would take my daughter away. That she would never let
15 me see her because she was going to take her away and she
16 didn't give a reason.

17 Q Do you know where she was going to take her?

18 A I don't have a clue.

19 Q Okay. What did you do then?

20 A So I asked her, I said, Please let me sleep with
21 her, at least, tonight. So, or let me take her out and I'll
22 bring her back to you the next morning.

23 Q What happened?

24 A No, she didn't give me permission, I never took my
25 daughter from the house, so -- so I just took what was

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 necessary in case she would let me go out with her.

2 Q What do you mean?

3 A Like a change of clothes, diapers, milk.

4 Q When did you do this?

5 A When she said she was going to take my daughter.

6 Q Okay. And where was this stuff?

7 A They were in the bedroom.

8 Q Okay. Where was she when you were doing this?

9 A She was standing in the door.

10 Q Where was the children?

11 A The children were asleep in the room.

12 Q Okay. What happened next?

13 A And so, she didn't -- she didn't let me, so I put
14 the baby back in her crib.

15 Q What did she do to stop you?

16 A What?

17 Q What did she do to stop you?

18 A No, because when I had the baby, she was pushing
19 me.

20 Q Okay. You have a car there?

21 A Yes, the car was outside.

22 Q Can you drive?

23 A Yes.

24 Q Okay. So why didn't you just leave?

25 A Because we only have one car. And, you know,

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1 those of you that are here that have the privilege of being
2 fathers and you can understand, who is going to want to
3 separate themselves from their child, a first child?

4 Q Okay. I wasn't asking why you didn't -- why you
5 didn't leave yourself, why didn't both of y'all leave?

6 A And because she also said to me, I can call
7 someone -- I can call someone and I can go right now. And
8 it was too late at that time and I had to work the next day.
9 I was just there, but at no time did I get violent with her.

10 Q Okay.

11 A So I didn't think it was necessary for me to leave
12 or for her to leave the house.

13 Q So you were in the bedroom and she was in the
14 doorway, what happened next?

15 A And then, again, we started arguing. And so I
16 asked her for an explanation for the things that she had in
17 her phone. I said, Why do you sometimes hide to answer your
18 phone? And she didn't say anything to me, she stayed quiet.
19 And I said to her, I said, It's not just one time, it's
20 several times that you've done that to me.

21 And then we started again, she -- how do I --
22 she didn't want to understand, also, the things that she was
23 doing wrong. And so we argued again over, as I was saying
24 before, the things that she didn't like about me. And so I
25 also there asked her for explanations. And so then I

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 recognized that I also started to say stronger words.

2 Q How do you mean?

3 A Words like that she didn't know how to value -- I
4 mean, that the past is --

5 The interpreter needs to clarify.

6 I told her that I hadn't -- I mean, had a
7 relationship before. So that she was screwing with me,
8 bothering me.

9 Q Who was?

10 A She was.

11 Q Maria Cruz?

12 A Yes.

13 Q Okay. And you said this to her or she said it to
14 you?

15 A Like I'm saying, I was using stronger words then
16 is what I'm saying.

17 Q Okay. Keep going.

18 A Well, and like I'm saying, then she has a strong
19 personality and she didn't tolerate me saying things to her.

20 Q What did she do?

21 A She hit me a couple of times.

22 Q How did she hit you?

23 A We were facing each other arguing. And so, she
24 hit me and I bent over, I bent over like this. And then I
25 don't know, I don't know what happened to me. I think I

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1 converted into another person. And my reaction was when I
2 got up, and I got up and I hit her by her eyebrow.

3 Q How did you hit her?

4 A With my head.

5 Q Okay. What happened next?

6 A And then, I can't contain myself. I don't know, I
7 can't give an exact explanation of what happened to me.

8 Q Did you want to kill Maria Cruz?

9 UNIDENTIFIED FEMALE: Mary.

10 THE WITNESS: Never.

11 UNIDENTIFIED FEMALE: Mary, not Maria.

12 MR. HUGHES: Sorry, Mary Cruz.

13 I apologize, Your Honor.

14 BY MR. HUGHES

15 Q Did you want to kill Mary Cruz?

16 A Never. I never thought of taking the life of
17 someone away and, much less, take the life away of someone
18 that I love, that I love.

19 Q Do you remember choking her?

20 A Yes.

21 Q Did you want her to die?

22 A At no time. Like I'm telling you, at no time. I
23 think I am a peaceful person and respectful person. I have
24 never liked evil. I have never liked evil.

25 Q Do you know how long it took -- how long you were

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1 choking her?

2 A I can't tell you exactly, but what I heard a
3 little bit ago is really exaggerated to me, three or four
4 minutes. Because three or four minutes, I would have had
5 enough time to snap out of what I was doing.

6 Q I want to clear something up real fast. I have --
7 you called her Mary Cruz. What did you call her while y'all
8 were married?

9 A Well, I should accept that my relationship with
10 her wasn't -- wasn't the best.

11 Q Was her name Mary, is that what you called her?
12 Or Mary Cruz?

13 A Mary Cruz.

14 Q Okay. I just wanted to make sure that I --
15 because I have been corrected. Okay, she hit you. You
16 remember head butting her. Do you remember choking her?

17 A Yes.

18 Q And you don't know how long it took, but you think
19 it was less -- a lot less than three to five minutes?

20 A Well, like I'm saying, the person that gave the
21 explanation about that, that's her job and she's a
22 professional, but I will, before God -- you can't lie in
23 front of God. I will put my truth out there. You cannot
24 lie before God because he knows everything, but I can tell
25 you that it wasn't even 30 -- 30 seconds. It was something

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1 quick.

2 Q Okay. What happened after that?

3 A So I think when I snapped out of it, I felt -- I
4 was feeling a lot of things.

5 Q What were you feeling?

6 A Maybe pain, sadness, guiltiness. It was
7 something -- I didn't recognize myself. So I wanted to help
8 Mary Cruz. I'm not trained -- I don't have a clue how to do
9 first aid.

10 Q Why didn't you call 911?

11 A Like I'm saying, I started to feel so many things
12 that I felt like nothing could be done anymore.

13 Q Did you know where Lowcountry Hospital is?

14 A Yes.

15 Q Why didn't you take her there?

16 A I don't know. I'm telling you, my head was
17 blocked, I don't know.

18 Q What did you do then?

19 A I felt like the worst man for doing -- for doing
20 something like that. I went to the kitchen, I got a knife
21 and I started to scrape my hand -- interpreter correction,
22 my arms. And so I found a rope and, like I'm saying, that's
23 all I -- that's all I felt at that time. I -- it made me
24 feel bad that -- it made me feel bad that I wanted to take
25 my life.

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1 THE COURT: Hold on just one second. The
2 interpreters tell me they need to switch positions.

3 THE INTERPRETER: Yes.

4 MR. HUGHES: Thank you, Your Honor. And that's
5 because one gets tired.

6 THE INTERPRETER: It's called interpreter fatigue.

7 MR. HUGHES: Okay.

8 May I address the interpreter for just one second?

9 THE COURT: Sure.

10 MR. HUGHES: Madam interpreter, if you get
11 fatigued, signal and I'll be glad to take a break and
12 have the other one come up.

13 THE INTERPRETER: It's usually 20 minutes or so.

14 MR. HUGHES: Thank you, your Honor.

15 BY MR. HUGHES:

16 Q You had tried to kill yourself by cutting yourself
17 on the arm?

18 A Not exactly cutting myself. I found a rope.
19 Everything I was feeling, I was -- that's what was making me
20 want to end my life. I felt like I was the one that
21 shouldn't be alive.

22 Q Okay. Just a bit of background. If you don't
23 mind -- if this bothers you in any way, please don't answer
24 it. But what religion are you?

25 THE INTERPRETER: What was the question?

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 BY MR. HUGHES

2 Q What religion?

3 A Before, in my country of origin, I was brought up
4 Catholic.

5 Q Okay. Thank you.

6 A But -- and since I've been locked up, I've been
7 looking for God, I've been wanting to change my life. And
8 I've turned to the true religion of Christianity. It's the
9 best for me.

10 Q Okay. Thank you for answering that truthfully.
11 Okay, you got a knife from the kitchen and scraped your arm.
12 Where did you get the rope from?

13 A That rope was there, it was left over from when we
14 had moved.

15 Q How did you try to hang yourself?

16 A I put the rope in the tree.

17 Q Okay. And then what did you do?

18 A I tied myself and I hung.

19 Q Okay. What happened?

20 A It didn't work, I fell.

21 Q What did you do next?

22 A Then I thought about the children, it was so late.

23 Q About what time was it?

24 A Two in the morning maybe.

25 Q Okay. What did you do next?

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 A I went back in the house. I checked that
2 everything was okay.

3 Q Where were the children?

4 A They were asleep in the room.

5 Q In what room?

6 A In our room, the master.

7 Q Thank you. Keep going.

8 A I started to think about everything that had
9 happened in my head. I never thought about running away.

10 Q Why not?

11 A I thought that I had already done enough damage
12 and I didn't need to leave the kids on top of it.

13 Q Couldn't you have taken the kids with you?

14 A I guess I could have gone to another state or to
15 my country.

16 Q Do you know why you didn't?

17 A I have my heart, I have my conscious, I knew what
18 I did.

19 Q Okay. What happened next?

20 A I was watching out for the kids all night and the
21 next morning when the sun came up, I called the guy that I
22 worked for. I said, Where are you? And he said, I'm on my
23 way. I'm going to go to the normal place where I pick you
24 up.

25 Q Okay.

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 A And I told him, I'm not going to work. He said,
2 Why? I said, I have a problem. I don't know how it
3 happened, but I took my life -- my wife's life away. He
4 didn't believe me. He said, What are you going to do? Call
5 the police, I said, I want to turn myself in. I'm in pain
6 over what I've done.

7 He called the police. And then I ended up
8 talking to the police -- or he ended up calling the police
9 and then he called me back. I -- he said, I called them. I
10 gave them your number. He said, Watch out for that call.
11 So in a few moments, the police called me. And when he
12 called me, he asked for my address and I was on the phone
13 with him.

14 The police got to my house. I was on the
15 phone with him and I was standing in the door when he got
16 there. And he said, Come over to where I am. And I did.
17 He knew why he was coming, but he asked me, What's going on?
18 What happened? I said, I believe that I took the life of my
19 girlfriend and I want to turn myself in.

20 Q Okay. Let's back up a little bit. What did do
21 you with Mary Cruz's body?

22 A She was on the sofa. That morning, the kids were
23 playing around in the living room, so I covered her
24 completely.

25 Q Okay. Why was the mattress in the living room?

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 A She had taken it out there to sleep.

2 Q Okay. Were the kids supposed to sleep on it?

3 A Yes, but as I said, when she took that mattress
4 out, her oldest son was with her, but the younger one
5 followed me and then we slept there.

6 Q Okay. And what time did y'all sleep there?

7 A Like 10:00 -- I'm not sure.

8 Q Was that when -- was Mary Cruz still alive?

9 A Yes.

10 Q Why was it against the wall?

11 A Because as I said, the children would always come
12 out to play there in the mornings, so I put it standing up.

13 Q Okay. Did they play on it or around it?

14 A And that morning, I fed them their breakfast and
15 then let them play with the phone. They were playing there.
16 So there was some space between the mattress and the wall
17 and they just went in that space to play with the phone.

18 Q Like playing in a cave or something?

19 A Yes.

20 Q And your daughter, where was she?

21 A In the crib.

22 Q Okay. It was testified earlier that when law
23 enforcement got there, she was awake, but wasn't crying.
24 Had you been taking care of her?

25 A Yes.

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 Q What did you do?

2 A Feeding her her milk, changing her diapers. I was
3 looking out for her and for the boys.

4 Q You saw the video, is there anything that you want
5 to add or would change as far as what was -- you said during
6 that?

7 A I think only -- it's just that when the police
8 were interviewing me.

9 Q Yes.

10 A I didn't give them all of the detail, the complete
11 detailed version.

12 Q Okay. What didn't you give them?

13 A For example, I didn't cover with them all of the
14 arguing, only some parts.

15 Q Do you know who she was on the phone with that
16 day?

17 A No, I don't know.

18 Q Just a little bit more questioning. What -- how
19 long had you known Mary Cruz?

20 A About a year and five or six months.

21 Q And how long did y'all live together?

22 A I don't remember exactly, but it was about a
23 month.

24 Q Yesterday when she was doing her direct on one
25 of -- on your friend, the solicitor asked him about what was

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 described as defensive wounds. What caused those?

2 A How can I say, she had a very strong personality.

3 Q You have said that a number of times, what do you
4 mean?

5 A She would very easily get angry and be very
6 explosive.

7 Q What would she do?

8 A Any little thing would upset her. And I cared
9 about her, wanted to be around her. We were making a
10 family. It was something I felt I could put up with and it
11 would change over time.

12 Q What would she do when she got upset with you?

13 A She would squeeze -- sometimes she would grab my
14 arms very tightly and squeeze them and sometimes she would
15 shove me.

16 Q Did you ever think about leaving?

17 A You mean end the relationship?

18 Q Yes.

19 A No, I cared about her. I wanted to be with her.
20 I wanted to be with my baby girl.

21 Q Okay. Finally, did you love Mary Cruz?

22 A Yes.

23 Q Did you mean for Mary Cruz to die?

24 A Never.

25 Q At the time that you were choking her, did you

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 think she's going to die?

2 A No.

3 Q Did you want her to die?

4 A No.

5 Q One final question, were you ever scared of Mary
6 Cruz?

7 A Sometimes she would get so angry, but I would
8 always give her time. Sometimes it wasn't easy for her to
9 get control, for her to calm down.

10 Q Okay. Now, the young lady behind me is going to
11 ask you questions. I want you to answer them, I want to you
12 answer them truthfully, okay?

13 A Yes.

14 MR. HUGHES: No further questions, Your Honor.

15 THE COURT: All right.

16 Let's take a short, five-minute recess, ladies and
17 gentlemen.

18 (Whereupon, a brief recess was taken.)

19 THE COURT: Does your client want to retake the
20 stand?

21 MR. HUGHES: I have avoided talking to him at all,
22 Your Honor. So, yes.

23 THE COURT: And let's bring the jury in.

24 (The jury enters the courtroom at 3:34 p.m.)

25 THE COURT: Welcome back, ladies and gentlemen. I

DIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR. HUGHES

1 believe we're ready to begin with the cross-examination
2 of the Defendant.

3 Solicitor.

4 MS. SWANSON: Thank you, Your Honor. May it
5 please the Court.

6 CROSS EXAMINATION

7 BY MS. SWANSON:

8 Q All right, Samuel, we just listened to you testify
9 for about an hour and a half. And it wasn't until the very
10 end of that testimony that you finally told us that,
11 actually, on August 8th of 2016 when you talked to law
12 enforcement, you did not give them all the details, correct?

13 A Could you speak a little louder in the head phone?

14 Q So it wasn't until the end of your testimony that
15 you told us that back in August of 2016, you did not tell
16 police all of the details, correct?

17 A Yes.

18 Q So you did not tell them the whole truth?

19 A What I said was I did not give a detailed version
20 of the dialogue between Mary Cruz and myself.

21 Q Right, like the part where you left out all of
22 your jealousy, correct?

23 A Yes.

24 Q And the pictures that you were upset about in her
25 phone, correct?

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 A Yes.

2 Q Okay. You never told law enforcement about those,
3 right?

4 A I said -- maybe I didn't say it directly, but I
5 said so I started to question her about the other
6 relationships she had of the photographs she had in her
7 phone.

8 Q Right, Samuel. You said that today. You never
9 said it to law enforcement in the video that we watched, did
10 you?

11 A In the video, I'm not very sure, but I don't think
12 I did.

13 Q All right. So Mary Cruz used to live in Bluffton
14 with her mother, right?

15 A I'm not very sure if the place where they lived
16 was Bluffton or Hardeeville, I'm not very sure.

17 Q All right. Well, she used to live with her
18 mother, right?

19 A Yes.

20 Q Not with you?

21 A No.

22 Q And she lived with her two boys from a previous
23 relationship?

24 A Yes.

25 Q And sometimes the father of those two children

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 would come over to see his children, right?

2 A Yes.

3 Q And you didn't like that, did you?

4 A I never opposed it at any time. I gave Mary Cruz
5 all of my trust. And I would even go with her to drop off
6 the kids and we would pick them up.

7 Q Okay. So you gave Mary Cruz all of your trust,
8 yet after flying into a jealous rage on the night of
9 August 8th of 2016, you strangled her to death; does that
10 sound like trust?

11 A No.

12 Q Okay. And, in fact, you pressured her, you pushed
13 her to move in with you, didn't you? You wanted her to move
14 in with you?

15 A Yes, for the same reason, I wanted to be able to
16 live with my daughter to be near her.

17 Q And you could also see what Mary Cruz was up to,
18 maybe how she was raising your child, have her cook dinner
19 for you that you could choose or choose not to eat, right?

20 A Yes.

21 Q Okay. And you were always peaceful and respectful
22 is what you testified?

23 A Yes.

24 Q Until that Sunday night?

25 A Yes.

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 Q Okay. And when you told law enforcement that this
2 13-hour argument that you and Mary Cruz got into, the one
3 that lasted on and on and on and on about, you know, you
4 being jealous, she being jealous, you told law enforcement,
5 you told police that that was the first time y'all had ever
6 argued. But that's not true, is it?

7 A Well, like I said, arguments, never -- for me, it
8 wasn't anything serious.

9 Q So your previous arguments were not serious enough
10 for you to have ever been afraid of Mary Cruz?

11 A What did you say?

12 Q So your arguments that you say that were not
13 serious enough were never anything for you to be afraid of
14 when it came to Mary Cruz?

15 A Is she talking about before all of this happened?

16 Q The night of August 8th of 2016 was not the first
17 time you had argued, was it?

18 A No. Like I tell you, we had argued before, but it
19 wasn't anything -- it wasn't anything serious.

20 Q Correct. But you told police on August 8th that
21 this was the first time you had ever argued, that you guys
22 had no problems, isn't that right?

23 A Yes.

24 Q Okay. So your testimony here today is different,
25 correct?

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 A Yes.

2 Q Because today, all of a sudden, we learn that Mary
3 Cruz had a strong personality, a rapid temper, she was
4 explosive, any little thing would upset her. What Samuel is
5 saying is that he's the victim here, yet he's the one --

6 MR. HUGHES: Your Honor, I don't hear a question.

7 BY MS. SWANSON

8 Q Yet, you're the one that's still with us, correct?

9 MR. HUGHES: Your Honor, I think that she was,
10 basically, talking to the jury instead of asking a
11 question.

12 THE COURT: I think she concluded it with a
13 question. Overruled.

14 MR. HUGHES: Yes.

15 BY MS. SWANSON

16 Q So the first time that you got angry with her, you
17 killed her, that's your testimony?

18 A Because of unfortunate events and because of the
19 harm that I did, I can tell you yes.

20 Q Do you think that you choked her closer to three
21 minutes or for more like five minutes?

22 A Nope, that's exaggerated. As I said, it was
23 something quick.

24 Q All right. And you don't have any medical
25 training, right.

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 THE INTERPRETER: Pardon for the interpreter, what
2 was the question again?

3 Q You don't have any medical training, right?

4 A No.

5 Q In fact, you had no idea how to render aid to the
6 woman that you had just killed, right?

7 A No.

8 Q Do you know how to work a phone?

9 A It depends on what kind of phone it is.

10 Q The phone that you had that you were looking at
11 pictures of your ex-girlfriend on?

12 A Yes.

13 Q Okay. Do you know the numbers 911?

14 A Yes.

15 Q Okay. And you did not call 911?

16 A No.

17 Q At what point did Mary Cruz urinate herself when
18 you were choking her? About how many minutes after you
19 started choking her did she urinate herself?

20 A I don't know, like 10, 15 seconds, at most. I'm
21 not sure.

22 Q Okay. So I guess before she went unconscious
23 because you should remember the pathologist said that it
24 takes seven to 14 seconds for someone to go unconscious.
25 Was that when she was flailing around like you demonstrated

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 in the video, is that right?

2 A Yes.

3 Q Okay. And then she stopped moving?

4 A I think so, I'm not sure.

5 Q Well, you say you're not sure, Samuel, but you did
6 go into quite a bit of detail on your video interview with
7 law enforcement. You tell them that you don't understand
8 what happened or know what happened, but then you describe
9 straddling her and putting your hands around her neck and
10 then she urines herself. Isn't that what you told police?

11 A Yes.

12 Q And you also told police that she never had a
13 weapon, right?

14 A No.

15 Q Is that a correct? Mary Cruz never had a weapon,
16 right?

17 A No.

18 Q Okay. She never had a weapon. And you testified
19 when you took the knife and you scraped your arms that you
20 were not trying to kill yourself, right?

21 A No.

22 Q So what were you trying to do, claim that Mary
23 Cruz attacked you with a knife and that you had to defend
24 yourself and kill her?

25 A At no time -- I have not mentioned at any time

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 that she attacked me with a knife. I recognize that they
2 were from my hands. I don't know what -- where you're
3 trying to go with that?

4 Q What were you trying to do with the knife?

5 A Well, like I'm telling you, everything that I was
6 feeling in my head, desperation, out of desperation, I got
7 the knife.

8 The interpreter needs clarification.

9 Oh, so I saw the rope and that's what came to
10 my mind.

11 Q But you demonstrated that night if you really
12 wanted to kill someone, you could and you couldn't do it to
13 yourself, but you could do it to the mother of your child,
14 right?

15 A Could you repeat that? I didn't understand
16 clearly.

17 Q I'll withdraw the question. It all started at
18 11:00 a.m. that Sunday is what you testified to -- or that
19 morning. You said that you did not like you and Mary Cruz
20 to be separate from each other, right?

21 A Yes.

22 Q And that day, she just wanted to be left alone.
23 You testified that you came to her over and over and over
24 again to provoke discussion about the jealousy, right?

25 A I said that I went up to her to fix things, not to

CROSS EXAMINATION OF SAMUEL GONZALEZ BY MS. SWANSON

1 fight more.

2 Q And the way you fixed things was silencing her
3 forever, correct? She didn't have anything to say after
4 your final encounter with her, did she?

5 A No.

6 MS. SWANSON: Thank you. Nothing further.

7 THE COURT: Redirect, Mr. Hughes.

8 MR. HUGHES: I'll wait for the interpreter to get
9 in place, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. HUGHES:

12 Q When you talked to law enforcement, did they ask
13 you a lot of questions or did they let you just talk?

14 A You mean in the arrest or in the interview?

15 Q That gentleman and the guy doing the translating
16 for you?

17 A They had ask a lot of questions.

18 Q Was this your first argument with Mary Cruz?

19 A As I said, there were others, but it didn't seem
20 so serious.

21 Q Whose fault were those?

22 A It was sometimes she would get upset from
23 something very insignificant and I would just wait it out
24 and wouldn't react because it wasn't something I felt
25 responsible for.

REDIRECT EXAMINATION OF SAMUEL GONZALEZ BY MR.
HUGHES

1 Q What time did you go to bed that night?

2 A Like 10:00 at night.

3 Q Why did you get up?

4 A She wanted to wake me up.

5 Q Okay. Was it to apologize?

6 A Not on her part. She wanted to continue the
7 argument.

8 Q And were you jealous of her?

9 A In that whole argument, that whole discussion,
10 there were some moments, yes.

11 Q Was she jealous of you?

12 A Yep, that's where it all started.

13 MR. HUGHES: No further questions, Your Honor.

14 RE-CROSS EXAMINATION

15 BY MS. SWANSON:

16 Q Samuel, you could have just left, couldn't you?

17 A Yes.

18 Q And you didn't?

19 A No.

20 Q And you could have allowed her to leave, right?

21 A Yes.

22 Q And you told her no, right?

23 A Yes.

24 MS. SWANSON: That's all.

25 THE COURT: You may step down.

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 Call your next witness.

2 MR. HUGHES: The Defense will rest, Your Honor.

3 THE COURT: The Defense rests.

4 Anything in reply?

5 MS. SWANSON: Nothing in reply.

6 THE COURT: Ladies and gentlemen, I have some
7 matters of law that I need to discuss with the
8 attorneys. It may take a while, so what we've decided
9 to do is adjourn for the day, come back in the morning.
10 And we anticipate then the attorneys will make their
11 closing arguments to you and I'll give you the law that
12 applies in the case. Estimated time, hour and a half,
13 something like that, then you'll begin your
14 deliberations.

15 I'm getting ready to let you go. Anybody going to
16 have a problem being back at 9:30 in the morning?

17 Don't talk to anybody about the case, don't let
18 anybody talk to you about the case. See you in the
19 morning, ladies and gentlemen. You're excused.

20 (The jury exits the courtroom at 3:57 p.m.)

21 THE COURT: Any motions?

22 MR. HUGHES: Your Honor, unless the State has
23 some, I would like to postpone my motions until in the
24 morning. I need to check something out. I want to
25 make absolutely sure of something.

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 THE COURT: In other words, you have one or more
2 motions?

3 MR. HUGHES: I'm sorry?

4 THE COURT: You do have one or more motions?

5 MR. HUGHES: Yes, I do, Your Honor. And one, I
6 think I know the law on, but I want to confirm it
7 before I either make a motion or stick my foot in my
8 mouth.

9 THE COURT: All right. Anything else before
10 tomorrow morning?

11 MS. SWANSON: I'm not sure when Your Honor wanted
12 to talk about jury charges. Do you just want to do
13 that in the morning or?

14 THE COURT: I don't know. I think that's what
15 Mr. Hughes is talking about. I don't know.

16 MR. HUGHES: It is, Your Honor.

17 THE COURT: Okay. Let's see if the State has any
18 charges that the State wishes to discuss.

19 MS. SWANSON: Well, I mean, I think the standard
20 is if there is any evidence from which a jury can
21 determine or decide that a lesser included is
22 applicable, then it shall be charged. So, obviously,
23 we're talking about voluntary manslaughter here. And
24 you know, the question is -- or would be for the jury,
25 while it's easy to see in a heat of passion in a

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 relationship sort of situation such as these two, is
2 there sufficient legal provocation? So I do have some
3 proposed jury charges on that as well as a cooling off
4 period should Your Honor be inclined to charge
5 voluntary. I imagine Mr. Hughes is going to ask for a
6 voluntary charge --

7 MR. HUGHES: I'm sorry, Your Honor. That's not a
8 question for imagination. I plan to ask for that, but
9 I just want to make sure I have my ducks in a row.

10 MS. SWANSON: I'm not sure what ducks he's
11 referring to. I mean, the law is fairly clear as to
12 what voluntary is. I'd rather handle this portion now
13 because I need to know what we're going to be arguing
14 tomorrow.

15 THE COURT: It sounds to me as though you are --
16 are or will ask for a voluntary.

17 MR. HUGHES: I will ask for a voluntary, sir, but
18 like I said, I fully plan to. If the State agrees to a
19 voluntary, then I would have no other motion other than
20 to renew my motion as far as the Hardeeville police
21 officer translating. And I would also move for a
22 directed verdict.

23 MS. SWANSON: Thank you. At this time, I would
24 say, just as I said before, that there is ample
25 evidence in the record from which a jury could decide

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 that Mr. Gonzalez is guilty of murder. As I stated, I
2 do believe that, although it's not my stance, a
3 voluntary manslaughter charge would be proper in this
4 scenario given the facts should the jury determine
5 that, you know, a push, a swat, or a shove is
6 sufficient legal provocation. You know, that's not my
7 position, but if there's any evidence, the trial court
8 shall charge the jury on it. So that is the law.

9 I do have State's request to charge that I can
10 hand up to Your Honor as well as hand to Mr. Hughes.
11 And they deal with sufficient legal provocation as well
12 as a cooling off period. And I've cited the cases that
13 they come from and I do have copies of those.

14 MR. HUGHES: Thank you, ma'am.

15 MS. SWANSON: And I'm not sure what your standard
16 is in voluntary, so some of this may, actually, be
17 covered, but it's just something that I thought would
18 be appropriate to discuss at this point. The adultery
19 is sufficient legal provocation. Because there's been
20 testimony about, you know, phones and jealousy and
21 pictures of others, I do believe it's relevant and I
22 would like the jury to understand that any sort of
23 adultery or allegations of such are not a license to
24 kill a spouse. You actually have to find the paramour
25 or partner in some sort of guilty embrace, in bed

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 together, you know, something like that. Your words or
2 an argument do not rise to the level of sufficient
3 legal provocation.

4 THE COURT: Mr. Hughes, anything that you want to
5 say on that subject?

6 MS. SWANSON: And I will hand up that Hernandez
7 case.

8 THE COURT: Okay.

9 MS. SWANSON: State V. Cooley is what I used --
10 I'm sorry, the Hernandez case refers to the other two
11 charges. State V. Cooley is the case on adultery as
12 sufficient legal provocation. So I'm going to hand
13 that one up now.

14 MR. HUGHES: Your Honor, I'm not used to not
15 arguing with the solicitor, but I won't this time. I
16 still might have another motion because there's
17 something in the back of my mind that I have to check
18 out.

19 THE COURT: I'm sure there's a lot in the back of
20 your mind.

21 MR. HUGHES: That's up for debate, Your Honor.
22 There's some that would say there's nothing back there.

23 MS. SWANSON: If we could just maybe have a clue
24 as to what is in the back of Mr. Hughes' mind. I mean,
25 I'm scared to ask, but some sort of heads up would be

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 nice. I just want to be prepared, Your Honor.

2 THE COURT: It's up to you.

3 MR. HUGHES: It's not like I'm trying to play
4 ambush lawyer, I might be completely wrong and I would
5 like to have, at least, about five minutes to talk
6 to -- actually, her husband, who is my coworker to --
7 just to see if I'm on the right track. If I'm not on
8 the right track --

9 THE COURT: Why don't we just take five?

10 MR. HUGHES: Thank you, Your Honor.

11 THE COURT: We'll be at ease for a few moments.

12 (Brief recess.)

13 MR. HUGHES: Your Honor, she's shown me what I
14 believe is your voluntary manslaughter charge, I have
15 no objection to that. Also, Your Honor, I talked to
16 Mr. Deysach of my office and he and I both agree that
17 what I was looking at would require a lot more than I
18 have and I'm not going to go that way as far as a
19 charge.

20 THE COURT: All right. So, now then, we're back
21 to really -- let me ask the State and Defense about my
22 approved, by court administration, charge on voluntary
23 manslaughter. Are you okay with it?

24 MS. SWANSON: Yes, sir. I don't have a problem
25 with it. I just wonder about the -- you know, the

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 jealousy aspect and the possible marital infidelity,
2 you know, could that be tacked on as a -- you know, at
3 the end or -- I don't want the jury to be confused
4 that, you know, jealousy is sufficient legal
5 provocation or pictures of another man.

6 THE COURT: On the cell phone?

7 MS. SWANSON: Right.

8 THE COURT: Are you okay with the proposed charge
9 related to adultery?

10 MR. HUGHES: Yes, sir. And I'm sure that the
11 solicitor will be perfectly capable of doing that in
12 her closing argument as far as the jealousy aspect.

13 THE COURT: All right. It sounds like we've got
14 it figured out then. Anything --

15 Well, no, we don't. We don't have it figured out.
16 I'm assuming that the State has greater facilities
17 available to them to prepare verdict forms.

18 MS. SWANSON: Sure, we can.

19 MR. HUGHES: I would have no objection to them
20 preparing it provided they don't --

21 THE COURT: They'll have to let you review it
22 before it comes this way.

23 Can someone from your office do that for us?

24 MS. SWANSON: Yes, sir. And, typically, with the
25 lesser include, I'll do the language if you find

RECROSS EXAMINATION OF SAMUEL GONZALEZ BY MS.
SWANSON

1 Defendant not guilty of murder, move on to the second
2 question, which would be guilty or not guilty of
3 voluntary manslaughter.

4 THE COURT: Right.

5 MS. SWANSON: Yeah.

6 THE COURT: And I'll explain they can't find him
7 guilty of both.

8 MS. SWANSON: Right.

9 THE COURT: And must address them in that order.

10 All right. 9:30 in the morning. Court is
11 adjourned.

12 MR. HUGHES: Thank you, Your Honor.

13 (Proceedings continue on 4-25-2018.)

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4-25-2018 PROCEEDINGS

1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

3

4

5 Case No.: 2016GS270440

6 State of South Carolina,

7 Plaintiff(s),

8 vs.

9 Samuel Gonzalez,

10 Defendant(s) .

11

12

13 TRIAL TRANSCRIPT

14

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16 April 23-25, 2018

17 Ridgeland, South Carolina

18

19

20

21

22 BEFORE: The Honorable Brooks Goldsmith

23

24

25

4-25-2018 PROCEEDINGS

1 APPEARANCES

2

3

4 REPRESENTING THE STATE:

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4-25-2018 PROCEEDINGS

1 4-25-2018 PROCEEDINGS

2 THE COURT: Mr. Hughes, do you agree with the
3 proposed verdict form?

4 MR. HUGHES: Yes, Your Honor.

5 THE COURT: Let me say one thing. I just cannot
6 recall whether I actually ruled on the two motions that
7 the Defense made at the end of the case. If I did not
8 rule on them, I do take the opportunity now to deny
9 both motions just in case, I wasn't sure.

10 MR. HUGHES: Thank you, Your Honor.

11 THE COURT: Any other requests for charges that we
12 haven't talked about?

13 MS. SWANSON: None from the State.

14 THE COURT: Let me ask you. Ask y'all how y'all
15 feel about this. Relating to interpreters, I could
16 tell the jury that the Defendant testified through the
17 interpreter and tell the jury in the event that some of
18 them have some knowledge of the Spanish language and --
19 let's see, if they have some knowledge of the Spanish
20 language and they think that the testimony of the
21 witness was different than that submitted by the
22 interpreter, they must disregard their own thoughts
23 about what was said and they must accept the
24 interpreter's translation under the law.

25 MR. HUGHES: Actually, Your Honor, thank you for

COLLOQUY

1 doing that. We have one juror with a Hispanic sir
2 name, listed as Hispanic on the juror form. I had
3 considered that on Monday and it slipped my mind until
4 you mentioned it. Thank you, sir.

5 MS. SWANSON: The State has no opposition to that.

6 THE COURT: Well, I guess that we are ready
7 whenever the jury is ready.

8 MS. SWANSON: And Judge, just so that we're all
9 clear, I believe -- I'm going to -- right, I'm going to
10 waive opening, so, Mr. Hughes will go first and then, I
11 will go last.

12 THE COURT: You knew what she was going to say.

13 MR. HUGHES: Oh, I did a pretty good idea and I
14 was not surprised. I have no problem with that.

15 THE COURT: Let me see the attorneys at a sidebar.
16 (Off-the-record discussion held.)

17 THE COURT: All juror present, Clerk?

18 THE BAILIFF: Yes, sir.

19 THE COURT: Let's bring the jury in.

20 (The jury enters the courtroom at 9:35 a.m.)

21 THE COURT: Morning and welcome back, ladies and
22 gentlemen. I believe that we are now ready to receive
23 closing arguments from the Defense.

24 The State is waiving the right to open?

25 MS. SWANSON: That's correct.

COLLOQUY

1 MR. HUGHES: May it please the Court, Ms. Swanson.
2 Good morning.

3 JURORS: Good morning.

4 CLOSING ARGUMENT BY THE DEFENSE

5 MR. HUGHES: I told you this wasn't going to be
6 like anything you ever saw on television. And I also
7 told you it was, at times, going to be boring. We try
8 to make sure y'all are comfortable. And at this point,
9 I give my thoughts on the case, but like I said on
10 Monday, it's your thoughts, you have the life
11 experience, you have the common knowledge and common
12 sense. So listen to me, listen to the solicitor, but
13 make up your mind because this is the one time that
14 y'all will have to make up your mind.

15 The solicitor was right on Monday, this isn't --
16 wasn't going to be a who done it. We know exactly what
17 happened. Mr. Gonzalez told you exactly what happened.
18 So, I'm not here today to say my client didn't do it.
19 My client did it. He killed Mary Cruz. That's never
20 been a question. And there's never been any question
21 on how he did it. So, what in the world are we going
22 to be talking about?

23 What we're talking about are the two possible
24 crimes that happened. He's charged with murder.
25 Murder is the unlawful killing of another with malice

CLOSING ARGUMENT BY THE DEFENSE

1 aforethought. And that malice can occur at any time
2 and can be gone at any time. Then there's something
3 called the lesser included, which means it's the same
4 crime with just a few things gone and the State has
5 said it's a lesser crime. In this case, it's voluntary
6 manslaughter.

7 Voluntary manslaughter requires the malice not be
8 there and that there was significant or sufficient
9 legal provocation for the act. Y'all saw Mr. Gonzalez.
10 Y'all heard him talk. Y'all saw what he did and what
11 he didn't do. My argument is there was no malice when
12 he strangled Mary Cruz.

13 Now, how do I know that -- or why do I think that?
14 I don't know anything. I can't look inside a man's
15 heart and soul and go, okay, that's what's going on.
16 We judge a person by their actions. So, let's talk
17 about that day. There was an argument. He had made
18 the Cardinal sin of having someone else's picture on
19 his phone, an old girlfriend. Deadly to begin with and
20 guaranteed to give you nothing but problems. So she
21 finds it and she goes looking for a fight.

22 And I didn't know her, but it sounded like she
23 overreacted or, at least, in his eyes, she overreacted.
24 Okay, let her cool off. No, she isn't going to cool
25 off. It's lunch time. You're going to feed the kids?

CLOSING ARGUMENT BY THE DEFENSE

1 She's still mad. Okay. Feed the kids. After a while,
2 she's still mad. You know, he tries, you know, let's
3 talk, you know, I'm sorry I had a picture on my phone,
4 I forgot about it. Look, it was taken a number of
5 years ago. That didn't matter, she wanted a fight.

6 Time to go get -- pay the rent and go get some
7 groceries. They go together. Now, he gets a little
8 snippy, too, when they get home. He's tried talking,
9 he's tried giving her time to think, it's suppertime.
10 She cooks supper. I'm not hungry. All over one
11 picture on a phone.

12 Okay, the evening goes through, they talk. He
13 talks to her about her pictures on her phone. But,
14 finally, he says forget this and he goes to bed. She
15 wasn't through mad. She wakes him up, she wants to
16 talk. If there are any words that will scare a man
17 more than we need to talk. Okay, they talk.

18 Then she starts talking about taking the kids. No
19 one can push your buttons faster and easier than your
20 significant other. My wife can say one word to me and
21 it'll push my button. I laugh about it now, but she
22 knows it and I know it. And I'm not as smart, I've got
23 a sentence I can say to her and it'll push her button.
24 But Mary Cruz was going to take his kids, especially
25 that three-month-old little girl, which was his girl.

CLOSING ARGUMENT BY THE DEFENSE

1 Well, at least, let me spend some time with her. No.
2 Come on, I just want to -- I've got stuff, I'll drive
3 around with her and I'll bring her back. No. When you
4 come back tomorrow, your family is going to be gone.
5 She hits him and the world cut off.

6 The next thing he knows, she is on the couch,
7 she's not breathing, she doesn't have a heart beat, her
8 tongue is sticking out, her eyes are bloodshot, there
9 may be some blood coming out of her nose. How long did
10 this take? He says seconds. The forensic pathologist
11 said it frequently takes three to five minutes. And I
12 asked about the word frequently. So that three to five
13 minutes is not set in stone. But he killed Mary Cruz,
14 he strangled her. He didn't really understand why he
15 did it. I don't see malice there, even if the act is
16 usually malicious, there's -- he killed her.

17 And what he does next is the strange thing. He --
18 I want to say he panics, but he doesn't. He wants to
19 end his life, but he can't or won't. He goes to the
20 kitchen, scrapes his arm, doesn't cut it, just scrapes
21 it. And, I mean, that doesn't make sense. I mean, is
22 he trying to create a I was attacked by her, but it
23 just doesn't match. Is he trying to cut his wrist,
24 that doesn't match. I don't know what he was doing,
25 but that's what he did. Then he finds a rope and he

CLOSING ARGUMENT BY THE DEFENSE

1 goes out to a pine tree a hundred and 50 feet away, or
2 a hundred and 50 yards, I don't remember which one.
3 Throws the rope over a limb and tries to hang himself.

4 Now, the solicitor described it as a dinky rope.
5 I have to agree with her, that nylon rope isn't the
6 best, but they just moved there about a month and a
7 half before. I've got a boat, so I have rope. The
8 solicitor has horses, so she has rope. But how many
9 people actually have rope these days?

10 Now, this is when, to me, it gets very strange.
11 He was suicidal, but not suicidal. He has definitely
12 killed Mary Cruz. So what does he do next? There is a
13 silver SUV there, it's 2:00 in the morning, he could
14 have easily loaded his daughter and maybe Mary Cruz's
15 two sons into the SUV and taken off. He wasn't going
16 to be seen for, at least, five hours. Five hours from
17 Hardeeville, take 95 to Jacksonville and then 10
18 across, you're almost into Alabama. By the time
19 anybody really started looking, it'll probably be
20 another five hours, you're probably either in Louisiana
21 or Texas. And before anybody really got where is he?
22 He's back in Mexico. But he doesn't do that. He
23 doesn't run. He doesn't do anything but act like a
24 father.

25 Mary Cruz is covered up so her children won't see

CLOSING ARGUMENT BY THE DEFENSE

1 her. Don't wake mommy, mommy is sleeping. And the
2 boys are fed breakfast. The mattress is up against the
3 wall. The solicitor said they were cowering, but
4 sounds to me like they were playing in their fort with
5 the ipad and the phone. His daughter, born April 30th
6 of that year, is in her crib. She's awake, she's not
7 crying, she's been fed, she's been changed.

8 I've watched that video a number of times. Y'all
9 will be able to watch it again if you want to. I first
10 thought he was tired because she had woke him up to
11 continue the argument, but look at it again. I say
12 it's not tired, it's a man who has resigned himself to
13 his fate. He knows what he did. He took care of his
14 kids afterwards. He called the cops, he talked to
15 them. They're driving by. He goes, no, turn in here.
16 Yeah, I'll walk out. I'll talk to you. He doesn't
17 hide anything. There's no blaming anything.

18 I mean, when he was on the stand talking to you,
19 he could have vilified Mary Cruz, he didn't. As a
20 matter of fact, I wanted to know what she was saying.
21 I wanted y'all to hear what she was saying. He,
22 basically, flat out -- well, he didn't refuse, but it
23 was pulling hen's teeth to get him to tell you anything
24 of what she was saying. He didn't want to use any
25 curse words.

CLOSING ARGUMENT BY THE DEFENSE

1 So, we know what happened. We know when Mary Cruz
2 was killed how it happened and who did it. Judging
3 from his actions afterwards, because we can't see
4 inside a man's heart and soul, there was no malice.
5 And because there was no malice, on the charge of
6 murder, you have to find him not guilty. Malice is a
7 requirement for murder.

8 Now, before you think he gets away with murder,
9 there's the lesser included of voluntary manslaughter.
10 I'm going to take one of these for later. Voluntary
11 manslaughter, the unlawful killing of another without
12 malice, but with sufficient legal provocation. And
13 words alone aren't sufficient provocation. I can't say
14 I'm going to shoot and you can shoot me. No. That's
15 not sufficient legal provocation. I can't call you an
16 SOB and you shoot me. That's not sufficient
17 provocation. Now, I argue that it is, I'm going to
18 take your kids, I'm going to destroy your family, and
19 then hit somebody, that is sufficient legal
20 provocation. That is a moment of blind panic. That is
21 a lifetime of regret. That is not murder. That's
22 voluntary manslaughter. That's my opinion.

23 Like I said before when we started, 12 people, 12
24 lifetimes of experience, 12 prime examples of common
25 sense. And this is your only chance to decide one way

CLOSING ARGUMENT BY THE DEFENSE

1 or the other. If the judge made a mistake on the law,
2 I can appeal, but if y'all make a mistake, there's no
3 appeal. Boy, that sounded harsh, didn't it. No, just
4 look inside, make your decision. This isn't murder,
5 it's voluntary manslaughter. Thank you.

6 THE COURT: Ms. Swanson.

7 CLOSING ARGUMENT BY THE STATE

8 MS. SWANSON: Thank you, Your Honor. May it
9 please the Court.

10 Mr. Hughes just told you that we can only judge a
11 person by their actions. And you know what, I agree
12 with him because that's what you're sitting here doing
13 today. You are judging the actions and the inaction of
14 Samuel Gonzalez. All right. And it's not just the
15 actions, but it's the inaction.

16 On that summer night in 2016, Samuel lost control,
17 all right. He had moved in with the mother of his
18 child, who he explained had a strong personality, that
19 he thought that he could tolerate. Well, it turns out,
20 he couldn't. Relationships are complicated, nobody
21 knows what happens behind closed doors until a woman
22 ends up dead, all right. And that woman was the mother
23 of three children, the mother of one of his children, a
24 newborn baby. A woman in her most vulnerable state,
25 three months postpartum.

CLOSING ARGUMENT BY THE STATE

1 Samuel wanted to talk to you when he took the
2 stand about the privilege of fatherhood. Well, what
3 about the privilege of being a mother that he took away
4 from Mary Cruz? What about the privilege of those
5 three children having a mother to take care of them?
6 He took that away, too. Do you think he values the
7 privilege of being a parent? No.

8 Mr. Hughes talked to you about what's not in
9 dispute. And that's a lot of things because we've
10 proven the who, the what, the when, and the where. And
11 it may seem redundant, but that's something that the
12 State has to prove to you because we bear the burden of
13 proof, all right. But none of that was in dispute.
14 Samuel Gonzalez killed Mary Sotelo. She was the mother
15 of his newborn child. They had just moved in together.
16 He killed her late Sunday night, early Monday morning
17 after this 13-hour, you know, argument, back and forth,
18 back and forth. And he strangled her to death. Not in
19 dispute.

20 There's really just the one thing that the Defense
21 and I do not agree on, and that is sufficient legal
22 provocation, all right. Now, Judge Goldsmith is going
23 to charge you on the law and he's going to tell you the
24 definitions of each of these crimes. And murder is the
25 unlawful killing of another with malice aforethought.

CLOSING ARGUMENT BY THE STATE

1 Malice is evil, all right. It's wickedness. It's the
2 intentional wrongdoing without just cause. It doesn't
3 have to be a premeditated, preplanned thing. Nobody
4 has to lay in wait, all right. It can be formed in
5 seconds before someone kills someone, all right. And
6 the Judge is going to tell you all of that.

7 Now, whatever I say and Mr. Hughes says is not
8 evidence and he is the judge of the law. So under your
9 oath as jurors, you follow the judge that -- you follow
10 the law that he instructs you on, okay.

11 In order for this killing to be the lesser charge
12 of voluntary manslaughter, you would have to find two
13 things, heat of passion and sufficient legal
14 provocation, all right. While the Defense may have an
15 argument for the Defendant acting in the heat of
16 passion, I would point out to you that neither the next
17 morning after Samuel killed his -- the mother of his
18 children did he display any sort of emotion to the
19 police in that interview, all right. Is he a
20 passionate guy? It doesn't seem like it. You saw him
21 take the stand. You saw him look the family of the
22 victim in the eyes while he testified and never show
23 any emotion, never showed any remorse. Words may come
24 out of his mouth, but that's up to you to decide
25 whether or not he's credible. He was very flat and

CLOSING ARGUMENT BY THE STATE

1 seemed incapable of emotion.

2 What made him lose it at 2:00 a.m. when they were
3 arguing about the same things all day, or had he just
4 had enough of the bickering? There is the lengthy back
5 and forth about the picture that was on his phone, you
6 know, woman who had just birthed his child, probably
7 not feeling at her best gets a little upset that he's
8 looking at pictures of another woman on his phone.
9 Understandable, right? And we actually got more
10 insight into their relationship when he took the stand,
11 because, he said a number of times, she wanted to be
12 left alone, she was distant, he didn't want to be
13 separate from her. And he kept going back to her. He
14 kept approaching her to fix things. And the way he was
15 trying to fix things was flip the argument and say
16 well, what's in your phone? And oh, God, you're being
17 stupid for being this upset about this. That's how
18 he's fixing things. Who is provoking who here? She
19 wants to be left alone. He's constantly coming back to
20 her.

21 Samuel told you on the stand, she wouldn't give in
22 and she wouldn't understand what she did wrong. Does
23 that sound like he's taking responsibility for anything
24 or does it sound like he's blaming the victim, the dead
25 woman here? And then he told you that he packed up the

CLOSING ARGUMENT BY THE STATE

1 baby's things. He packed up clothes, he packed up
2 diapers, and he packed up food because he was going to
3 take that baby. What kind of man threatens to take a
4 newborn child from its mother? Mothers are going to
5 protect their children, that's a basic animal instinct.
6 And she wasn't going to let him take that child in
7 their only car. And that's why he killed her, she
8 wasn't going to let that happen. And that's not
9 manslaughter, that's murder.

10 The Judge is going to tell you that sufficient
11 legal provocation is more than words. It's more than
12 just a willingness to engage in a fight. You know,
13 Mary Cruz never had a weapon. You know, there was
14 testimony, if you believe Samuel, that there was some
15 hitting and some shoving, but that also occurred
16 earlier in the day and he didn't snap, all right. He
17 had been to the sleep, he had woken up. Mr. Hughes
18 wants to say, and Samuel wants to say that she came in
19 to wake him up to continue the fight, but the fact is
20 he had grabbed the baby earlier in the night. And
21 babies eat about every three hours, so she was probably
22 going in to feed the baby.

23 He testified that he had never been scared of her.
24 That none of the arguments in the past seemed serious,
25 because, of course, as you heard, he told law

CLOSING ARGUMENT BY THE STATE

1 enforcement, oh, this is the first time that they've
2 had any problems. You know, they had never argued
3 before, but the first time that they get in an
4 argument, you know, he ends up killing her. Does that
5 make any sense?

6 Nothing that was testified to, even if you believe
7 Samuel Gonzalez, rises to the level of sufficient legal
8 provocation. There is a reasonable and ordinary person
9 standard in the law. The law does not recognize if
10 someone is a psychopath or flies off the handle.

11 I challenge you to find that Samuel Gonzalez is
12 this great guy who made a mistake, this great guy who
13 had a symbol of hatred tattooed on his body. The great
14 guy that threatened to take a newborn from its mother.
15 The great guy, who choked the life out of his
16 girlfriend for three to five minutes. The great guy
17 that looked at the victim's family over here and said
18 with a straight face, he has always been peaceful,
19 respectful and never liked evil. Really?

20 So, you're the finders of fact and you get to
21 determine the truth in this case and the credibility of
22 the witnesses. And part of how you do that is judging
23 how they act on the stand, all right. You know,
24 whether or not they were forthcoming with their
25 testimony, whether or not, you know, Samuel wanted to

CLOSING ARGUMENT BY THE STATE

1 the answer my questions. When I simply asked him if he
2 knew how to work a phone, you know, it was like I was
3 getting this dodgy answer, well, it depends on what
4 kind of phone it is. Well, how about the phone that
5 you were looking at pictures of other girls on, you
6 knew how to work that one, right? He knew what 911
7 was, and he didn't call it. And he didn't leave. He
8 didn't try to help her. Yet, he testified, he wanted
9 to help her. That is a lie. What else is a lie?

10 The last witness that you heard from in my case
11 was Dr. Phillips, the pathologist. You know, there's
12 no question this is a clear cut case of strangulation.
13 Mary Cruz's face swollen, tongue protruding, marks
14 around her neck. This takes force and this takes a
15 long time. And I am not going to make you stare at me
16 for five minutes while I time it out to show you
17 exactly how long that takes, but if you're back in the
18 jury room and have any question about that, you can
19 time out three to five minutes and it is a long time.
20 And at any time, he could have taken his hands away
21 from her neck and save her and he chose not to. He had
22 three to five minutes to realize what he was doing,
23 that oh, no, this is a mistake. The unprovoked killing
24 of the mother of your children is not a mistake, it is
25 murder and it is inexcusable. His life was never in

CLOSING ARGUMENT BY THE STATE

1 jeopardy. Not on the night of August 8th or any other
2 time.

3 I'm asking you to hold Samuel Gonzalez
4 responsible, responsible for killing Mary Cruz in cold
5 blood, responsible for murdering Mary Cruz, murdering
6 her because guess what she did, she stood up to him.

7 JURY CHARGE

8 THE COURT: Thank you, Ms. Swanson.

9 Ladies and gentlemen, I remind you that the fact
10 that the Defendant was arrested, charged and indicted
11 in this case is not evidence and cannot be considered
12 by you as evidence. Nor does it create any presumption
13 of inference or guilt. This document is simply the
14 written instrument that contains the charges made
15 against the Defendant. It's the formal document by
16 which the case is brought into court.

17 As you know, the Defendant has pled not guilty to
18 the indictment and that plea puts the burden on the
19 State to prove the Defendant guilty. I tell that you a
20 person charged with a criminal offense in South
21 Carolina is never required to prove himself innocent.
22 I charge you that it is an important rule of law that a
23 defendant in a criminal trial no matter what to the
24 seriousness of the charge may be will always be
25 presumed to be innocent of the crime for which the

JURY CHARGE

1 indictment was issued, unless guilt has been proven by
2 evidence that satisfies you of that guilt beyond a
3 reasonable doubt.

4 The presumption of innocence does not end when you
5 begin your deliberations, but it accompanies the
6 Defendant throughout the trial until you reach a
7 verdict of guilt based on evidence that satisfies you
8 of that guilt beyond a reasonable doubt. The
9 presumption of innocence is like a robe of
10 righteousness placed about the shoulders of the
11 Defendant, which remains with the Defendant until it
12 has been stripped from the Defendant by evidence that
13 satisfies you of the Defendant's guilty beyond a
14 reasonable doubt.

15 Presumption of innocence is not mere legal theory,
16 it is not just a legal phrase, it is a substantial
17 right to which every defendant is entitled, unless you,
18 the jury, are satisfied from the evidence of the
19 Defendant's guilt.

20 Let me restate that, the presumption of innocence
21 is not mere legal theory and it is not just a legal
22 phrase, it is a substantial right to which every
23 defendant is entitled, unless you, the jury, are
24 satisfied from the evidence of the Defendant's guilt
25 beyond a reasonable doubt.

JURY CHARGE

1 A reasonable doubt is a kind of doubt that would
2 cause a reasonable person to hesitate to act. Some of
3 you may have served on jurors -- juries in civil cases
4 where you were told that it was only necessary to prove
5 that a fact was more likely true than not true, such as
6 by the greater weight or preponderance of the evidence.
7 But in criminal cases, the State's proof must be more
8 powerful than that, it must be beyond a reasonable
9 doubt. Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the Defendant's guilt.

11 Of course, there are very few things in this world
12 that we know of with absolute certainty. And in
13 criminal cases, the law does not require proof that
14 overcomes every possible doubt. If based on your
15 consideration of the evidence, you are firmly convinced
16 that the Defendant is guilty of the crime charged, you
17 must find the Defendant guilty. If on the other hand,
18 you think that there's a real possibility that the
19 Defendant is not guilty, you must give the Defendant
20 the benefit of the doubt and find him not guilty.

21 I remind you that during this trial, you and I
22 have had different responsibilities and obligations.
23 My responsibility has been to preside over the trial,
24 rule on the admissibility of the evidence and I am now
25 responsible for telling you about the law that applies

JURY CHARGE

1 in this case.

2 I am the sole judge of the law in this case and it
3 is your duty as jurors to accept and apply the law as I
4 now state it to you. And if you have any idea that the
5 law is different than I tell you or should be
6 different, you must abandon that idea because you are
7 sworn to accept the law and apply the law exactly as I
8 state it to you.

9 In every case in this court tried before a jury,
10 the jury becomes the sole and exclusive judge of the
11 facts of the case. And a trial judge, such as myself,
12 cannot intimate, state, comment on or make any
13 statement to a jury about the facts of a case. You are
14 not to infer from anything that I've said or done
15 during this trial that I have an opinion about the
16 facts of this case.

17 Ladies and gentlemen, necessarily, you must
18 determine the credibility of the witnesses who have
19 testified. This simply means the believability of the
20 witnesses. It becomes your duty as jurors to analyze
21 and to evaluate the evidence and determine which
22 evidence convinces you of its truth. In determining
23 the believability of the witnesses who have testified,
24 you may believe one witness over several, several over
25 one. You may believe part of a testimony of a witness

JURY CHARGE

1 and reject the remaining part of the testimony of that
2 very same witness. You may believe the testimony of a
3 witness in its entirety or reject the testimony of a
4 witness in its entirety. You may consider whether any
5 witness has exhibited to you any interest, any bias,
6 prejudice or motive. You may also consider the
7 appearance and the manner of a witness while on the
8 witness stand.

9 During this trial, you have heard testimony of the
10 Defendant through an interpreter. If any of you have
11 any knowledge of the Spanish language and you disagree
12 with what the interpreter said, you must put that out
13 of your mind, also, because, under the law, you must
14 accept the interpreter's translation of the witness's
15 testimony by the interpreter.

16 As I told you earlier, normally, a person cannot
17 give opinion testimony. Normally, a person testifies
18 that they must -- normally, when a person testifies,
19 they must testify as to what they either saw, heard, or
20 sensed by smell or something of that nature. However,
21 there's an exception made when someone is qualified
22 because of their education or experience. They're
23 permitted to give their opinion in certain areas if the
24 Court qualifies them as an expert. You are to accept
25 the testimony of an expert as you do any other witness.

JURY CHARGE

1 You give it the weight that you determine it is
2 entitled to. You may accept it or reject it.

3 The Defendant is charged with murder. The State
4 must prove beyond a reasonable doubt that the Defendant
5 killed another person with malice aforethought. Malice
6 is hatred, ill will, or hostility towards another
7 person. It is the intentional doing of a wrongful act
8 without just cause or excuse and with an intent to
9 inflict an injury or, under circumstances the law will
10 information, an evil intent.

11 Malice aforethought does not require that malice
12 exists for any particular time before the act is
13 committed, but malice must exist in the mind of the
14 Defendant just before and at the time the act is
15 committed. Therefore, there must be a combination of
16 the previous evil intent and the act.

17 Malice aforethought may be expressed or inferred.
18 The terms expressed or inferred don't mean different
19 kinds, but merely the manner which matters may be shown
20 to exist, that is either by direct evidence and
21 inference of the facts and circumstances which are
22 proven. Expressed malice is shown when a person speaks
23 words which express hatred or ill will towards another,
24 or when the person prepared beforehand to do an act
25 which was later accomplished. Malice may be inferred

JURY CHARGE

1 from conduct showing a total disregard for human life.

2 I tell you that under the law of this state, while
3 adultery may, in some instances, serve as sufficient
4 legal provocation to warrant a voluntary manslaughter
5 charge, the spouse of adultery is not a license to
6 kill. In general, South Carolina has allowed marital
7 infidelity to support a charge of marital voluntary
8 manslaughter only when the killer finds the other
9 spouse and a paramour in a guilty embrace or flagrantly
10 suggestive situation.

11 If you find that the State has failed to prove
12 beyond a reasonable doubt that the Defendant committed
13 murder, you may then consider whether the State has
14 proved beyond a reasonable doubt the Defendant
15 committed voluntary manslaughter. To prove a voluntary
16 manslaughter, the State must prove beyond a reasonable
17 doubt that the Defendant took the life of another in
18 the sudden heat of passion based on sufficient legal
19 provocation. Both heat of passion and sufficient legal
20 provision must be present at the time of the killing to
21 constitute voluntary manslaughter. Sudden heat of
22 passion may, for a time, affect a person's self-control
23 and temporarily disturb a person's reasoning. Sudden
24 heat of passion must be the type that would make an
25 ordinary person unable to coolly reflect on his actions

JURY CHARGE

1 and would produce an uncontrollable impulse to do
2 violence.

3 Sufficient legal provocation must be the type that
4 would make a person of ordinary reason and caution to
5 become enraged and lose control temporarily. The
6 provocation needed for voluntary manslaughter must come
7 from some act of or related to the victim. Words
8 alone, however vulgar or insulting are not enough to be
9 a legal provocation.

10 The exercise of a legal right, no matter how
11 offensive it is to another is never sufficient, never
12 sufficient legal provocation for voluntary
13 manslaughter. If the heat of passion had cooled or if
14 there was enough time between a provocation, if there
15 was one, and the killing for the passion of a
16 reasonable person to cool, the killing would not be
17 voluntary manslaughter. Deciding whether a reasonable
18 person, who had had enough time to cool off, you should
19 consider all of the circumstances surrounding the
20 killing. You may consider the nature of the
21 provocation, if there was any. You also may consider
22 the Defendant's mental and physical state, the
23 circumstances and the relationship between the parties.

24 In just a few moments, ladies and gentlemen, you
25 will retire to the jury room and begin your

JURY CHARGE

1 deliberations. For there to be a verdict in the case,
2 the verdict must be unanimous, meaning all 12 of you
3 must agree. You will be given a verdict form and you
4 will need to, and I charge you that you shall consider
5 first the charge of murder. If you find the
6 Defendant -- if you unanimously find that the Defendant
7 is guilty of murder, then you go no further, you don't
8 consider the voluntary manslaughter charge. If you
9 find that the State has failed to prove that the
10 Defendant is guilty of murder, you would check the not
11 guilty section and proceed next to the question to
12 consider whether or not the Defendant is guilty of
13 voluntary manslaughter.

14 I'll ask our foreperson, if he would, on behalf of
15 the jury, check either guilty or not guilty on this
16 form and sign his name as foreperson.

17 I'll ask all of you, including our two alternates,
18 jurors, to go to the jury room. Do not yet begin
19 deliberating until I send to the jury form the verdict
20 form and the exhibits. Once they are sent to the jury
21 room, that will be the queue for the two alternate
22 jurors to step back in the courtroom and for y'all to
23 begin your deliberations. Once you've reached a
24 unanimous verdict, please knock on the door and let the
25 bailiff know and we'll receive you back in the

JURY CHARGE

1 courtroom.

2 One more time, the Defendant cannot be found
3 guilty of both, voluntary and murder. If you will now
4 please retire to the jury room, ladies and gentlemen.

5 (The jury exits the courtroom at 10:28 a.m.)

6 THE COURT: Exceptions from the State?

7 MS. SWANSON: I'm sorry?

8 THE COURT: Any exceptions from the State?

9 MS. SWANSON: None from the State.

10 THE COURT: Defense?

11 MR. HUGHES: Your Honor, the State's Exhibit No. 3
12 is a video. They do not have the capability of playing
13 it in the back. The jury should be instructed that if
14 they want to see the video, they need to inform us and
15 then the video can be played out here. Other than
16 that, I have no exceptions to the charge.

17 THE COURT: All right. Will y'all look to see if
18 we have the exhibits here?

19 MS. SWANSON: Yes, sir. And just for the record,
20 State's Exhibit 2 is the Defendant's voluntary
21 statement written in Spanish. I only entered that for
22 the pretrial hearing. This was not entered in the
23 case-in-chief. So this will not go back, but
24 everything else was entered.

25 (Alternate jurors dismissed by the judge.)

COLLOQUY

1 THE COURT: All right. We'll be at ease.

2 (Whereupon, a recess was taken awaiting a
3 verdict.)

4 THE COURT: The bailiff indicates that one of the
5 jurors knocked on the door and told the bailiff that
6 the jury would like a stop watch. What says the
7 Plaintiff -- the State?

8 MS. SWANSON: Is there a clock back there, with
9 like a second hand?

10 THE COURT: There's not a clock back there?

11 THE BAILIFF: No.

12 MS. SWANSON: And they can't have phones back
13 there, can they?

14 MR. HUGHES: A watch?

15 UNKNOWN FEMALE: I can volunteer my watch. It has
16 a stop watch on it.

17 THE COURT: What says the Defense? The first
18 question is, do we try -- what's your position on
19 trying to accommodate them, yay or nay?

20 MR. HUGHES: None of the jurors have a watch, Your
21 Honor?

22 THE COURT: I don't know. The deputy says he has
23 a watch. I've got a watch.

24 MR. HUGHES: I don't have wear a watch for trials.

25 THE COURT: Well, let me do it one step at a time.

COLLOQUY

1 What's the State's position on trying to accommodate
2 them?

3 MS. SWANSON: Well, it was a point that I made in
4 my closing and I think that they are entitled, you
5 know, see exactly how long three to five minutes is, if
6 that's what they're doing.

7 THE COURT: Or 30 seconds.

8 MS. SWANSON: I'm sorry?

9 THE COURT: Or 30 seconds?

10 MS. SWANSON: Or seven to 14 seconds, or 30
11 seconds, yes, as the Defendant testified. So the State
12 would agree with accommodating their request.

13 THE BAILIFF: They don't need a stop watch, they
14 reached a verdict.

15 THE COURT: That happens sometimes.

16 So is the State ready to receive the verdict?

17 MS. SWANSON: The State is ready.

18 THE COURT: The Defense ready?

19 MR. HUGHES: Yes, Your Honor.

20 THE COURT: Is the clerk of the court ready?

21 THE BAILIFF: Wanda went to get her.

22 THE COURT: Okay. We will wait just one second.

23 (Pause.)

24 THE COURT: Let's bring the jury in.

25 (The jury enters the courtroom at 10:45 a.m.)

VERDICT

1 THE COURT: Mr. Scott, has the jury reached a
2 verdict?

3 THE FOREMAN: Your Honor, yes, we have.

4 THE COURT: Is it a unanimous verdict?

5 THE FOREMAN: It is a unanimous verdict.

6 THE COURT: All of you agreed?

7 THE FOREMAN: All of us agreed.

8 THE COURT: Did you complete the verdict form?
9 Did you sign it and fill it out?

10 THE FOREMAN: Yes, I did.

11 THE COURT: Will you, please, pass it forward?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Madam Clerk, will you, please, publish
14 it?

15 THE CLERK: State of South Carolina, County
16 Jasper, State of South Carolina vs. Samuel Gonzalez,
17 indictment number 2016-GS-27-440, on the charge of
18 murder, the jury unanimously finds the Defendant,
19 guilty. Signed by the foreperson, Michael A. Scott.

20 MR. HUGHES: Request that the jury be polled, Your
21 Honor.

22 THE COURT: Madam Clerk.

23 THE CLERK: As I call your name, will you please
24 raise your name.

25 Darriel Hughee, was this your verdict?

VERDICT

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR: It's still my verdict.

4 THE CLERK: Thank you.

5 Christopher Glover, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Thank you.

10 Cindy Altamirano, was this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Thank you.

15 Michael Scott, is this your verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Thank you.

20 David Wilson, Jr., was this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Thank you.

25 Joann Jenkins, was this your verdict?

VERDICT

1 JUROR: Definitely.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: Thank you.

5 Dana Russell, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Thank you.

10 Jacob Allen, was this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Thank you.

15 Ashley Snellings, was this your verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Thank you.

20 Juanita Jones, is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Thank you.

25 Aaliayah Hill, is this your verdict?

VERDICT

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: Thank you.

5 Charles Ruud, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Thank you.

10 THE COURT: Thank you, Madam Clerk.

11 Anything else before the jury is discharged from
12 the Defense?

13 MR. HUGHES: No, Your Honor.

14 THE COURT: From the State?

15 MS. SWANSON: Nothing from the State.

16 THE COURT: Ladies and gentlemen, I want to thank
17 you for your service. Let me tell you a couple of
18 things. I previously told you couldn't talk about this
19 case. You are now free to talk to anybody about the
20 case, not just about what happened here, but what
21 happened in the jury room, if you wish to. You have
22 the right, also, not to talk about it. I don't have
23 any reason to think anybody is going to bother you or
24 bug you about your verdict, but in the event someone
25 approaches you and ask for you to talk about it and you

VERDICT

1 don't want to, tell them that you don't want to. If
2 they persist, report them to the Clerk of Court. But I
3 don't have any reason to think that's going to happen,
4 but I tell all of the jurors they have that right.

5 One other thing, I say no one is in a position to
6 argue about your verdict because only the 12 of you saw
7 the witnesses, listened to the evidence and went back
8 in the jury room and talked it over, talked around the
9 table with your fellow jurors to see what they thought
10 that they saw.

11 I'm getting ready to let you go. Of course, you
12 have completed your jury duty obligation for the week
13 and for the year. It's likely the Court will go ahead
14 and impose a sentence in the next few minutes. I'm
15 going to let you, though, leave the jury box. You can
16 stay by sitting in the back of the courtroom somewhere,
17 if you wish. You also have the right to just keep on
18 going and go about your business. It's totally up to
19 you.

20 Anybody have any problems, questions, anything
21 that we can take care of?

22 Checks in the mail?

23 THE CLERK: Yes, sir, in the mail.

24 THE COURT: Ladies and gentlemen, you are excused.
25 Thank you for your service.

VERDICT

1 (The jury exits the courtroom at 10:50 a.m.)

2 MS. SWANSON: Your Honor, I have prepared a
3 sentencing sheet and I will hand that up at this time.
4 The Defense has reviewed it.

5 THE COURT: Any motions?

6 MR. HUGHES: Your Honor, I think this is the first
7 time I've ever seen a 16-minute murder verdict come
8 back. I would move to set aside the verdict in this
9 matter, go with the lesser included because I don't
10 know if the jury had time to deliberate properly as far
11 as a charge of that serious with two days worth of --
12 or a day and a half worth of testimony. I move to set
13 aside the verdict and go with the lesser included, Your
14 Honor.

15 THE COURT: And I assume the State opposes that,
16 Ms. Swanson?

17 MS. SWANSON: Yes, Your Honor. The jury was
18 polled and everyone was resolute in their verdicts. In
19 fact, I think one woman said definitely in response to
20 whether or not that was still her verdict. So, they
21 had made up their minds and they made the right
22 decision. Thank you.

23 THE COURT: The Court agrees that there was
24 clearly sufficient evidence to support the jury's
25 verdict in this case and, therefore, denies the motion.

SENTENCING

1 MR. HUGHES: Thank you, Your Honor.

2 THE COURT: Is there any reason -- excuse me, any
3 other motions?

4 MR. HUGHES: No, Your Honor.

5 THE COURT: Is there any reason the Court should
6 not go ahead now and impose sentence?

7 MR. HUGHES: No, Your Honor.

8 THE COURT: I'll be glad to hear from you,
9 Mr. Hughes.

10 MR. HUGHES: Your Honor, going over the facts
11 would just be repetitive. You've sat through the
12 entire trial. Mr. Gonzalez is a young man. He is in
13 this country illegally. He will be deported upon
14 release of whatever sentence you impose. Based upon
15 even the minimal sentence of murder, his daughter will
16 be a mother by the time he is out of jail. We ask that
17 you impose the minimum sentence of 30 years for murder
18 and put closure to the family, put closure to his
19 family. And hopefully, since he's found a religion
20 that he's comfortable with that he will find mercy.

21 THE COURT: Thank you, Mr. Hughes.

22 Mr. Gonzalez, did you wish to the say anything?

23 THE DEFENDANT: No, everything is said.

24 THE COURT: He said no?

25 THE DEFENDANT: Yes, no.

SENTENCING

1 THE COURT: Solicitor?

2 MS. SWANSON: Thank you, Your Honor, just briefly.
3 Throughout this processes, the Defendant has exhibited
4 no emotion, no remorse. He forever changed the fabric
5 of this family who has sat through this trial. Adriana
6 Sotelo, the sister of the victim, has custody of her
7 three children now. She got a newborn when Samuel
8 Gonzalez killed her sister.

9 This was a brutal domestic homicide and I think
10 that that garners more than the minimum sentence. To
11 avoid putting a family through trial and to get a final
12 resolution, the State did initially offer a negotiated
13 30 years on voluntary manslaughter. That offer was
14 turned down. I do know that Sania Danifer (phonetic)
15 would like to address the Court if Your Honor would
16 hear her.

17 THE COURT: Certainly, I'll be glad to.

18 Yes, ma'am.

19 SANIA DANIFER: Your Honor, first of all, I would
20 like to say thank you for everything. It means a lot
21 to us, you know, if he does get a long sentence
22 because, you know, it has put a really big dent in our
23 family and it has been hard. We have been dealing with
24 the kids with what they saw from Samuel and trying to,
25 you know, bring them back. Trying to erase all of the

SENTENCING

1 bad that they've seen. We're trying to bring our
2 family back. And the longer he gets put away, the
3 happier it'll be, the more justice for her sister, my
4 sister-in-law. And I believe that when she does get --
5 if he does get a long sentence and everything and when
6 he's in prison, she'll finally be able to rest in peace
7 and there will be justice. And our family can start
8 being happier than what we are now. We can start
9 rebuilding everything and start, you know, feeling like
10 she's resting, feeling like she's at peace. Because
11 ever single day since she has been gone, we felt like
12 there was an uneasiness, like she's not happy, like
13 she -- like we feel her, we feel her in our hearts.
14 And every single day since he has -- we have not had
15 him in jail, we have not heard that he's -- you know,
16 his sentence and everything, it's just been uneasy and
17 we felt that. And now, I feel like she can actually
18 rest in peace and that there will be peace in our
19 family and everything will be easier.

20 I just want to thank you for everything that
21 you've done.

22 Hunter, thank you as well. You've done an awesome
23 job. You took the words right out of our mouths. And
24 just, overall, we are really grateful for you, Your
25 Honor, and for you, Hunter as well. Thank you.

SENTENCING

1 THE COURT: Thank you. Anything else?

2 MS. SWANSON: Nothing further.

3 THE COURT: Is this a day for day sentence?

4 MS. SWANSON: That is correct.

5 THE COURT: In other words, whatever sentence your
6 client receives, he would not be eligible for early
7 release or parole.

8 MR. HUGHES: As far as I know, Your Honor. I do
9 not want to speak on behalf of the Federal Immigration
10 people. They are -- sometimes do strange things, but
11 as far as I'm concerned, it's day for day.

12 THE COURT: Mr. Gonzalez, is there anything else
13 now you wish to say before I impose sentence?

14 THE DEFENDANT: I would like to speak to Mary
15 Cruz's family.

16 THE COURT: You have to speak up a little bit.

17 THE DEFENDANT: Okay. Before starting, I want to
18 speak to, I think the sister that is here present and
19 the other family members. I know not everyone is here,
20 but I would like to say that I hope that some day that
21 you can forgive the damage that I've caused to your
22 family. It was never my intention.

23 It's something unexplainable, but I suppose that
24 they want justice. I am not negating anything at any
25 time. And I hope that their family finds peace soon

SENTENCING

1 and I hope that soon they are able to become a whole
2 family again, a nice family that they have always been.

3 And about the daughter that I have with Mary Cruz,
4 I know that she's in good hands and I hope that they
5 take care of her. I don't know so far what my fate
6 will be, but if they think that it would be better to
7 some day not talk about me, that is their decision.
8 And that is all. Thank you.

9 THE COURT: All right. Thank you.

10 MR. HUGHES: Your Honor, I would like to say one
11 thing.

12 THE COURT: Yes, sir, Mr. Hughes.

13 MR. HUGHES: Mr. Gonzalez isn't acting like most
14 of my clients would, most of them would be in tears,
15 most of them would be showing crocodile tears to a
16 jury. I think he has totally accepted whatever fate
17 Your Honor is willing to bestow. I think he is
18 resigned -- I don't want to say resigned to his fate,
19 but that's the best thing I can say. I know that a lot
20 of people wanted the tears, wanted the remorse, but I
21 think he accepts his fate, Your Honor. And I ask you
22 to take that into consideration.

23 THE COURT: All right, Mr. Hughes. Thank you.
24 Your client is how old?

25 MR. HUGHES: Twenty-six?

SENTENCING

1 THE DEFENDANT: Yes.

2 MR. HUGHES: Yes.

3 THE COURT: All right. Mr. Gonzalez, I sentence
4 you to the South Carolina Department of Corrections for
5 a period of 37 years, which, I guess, means that you
6 will be over 60 when you are released. Thank you.

7 The Court will be in recess for five minutes.

8 MR. HUGHES: Thank you, Your Honor.

9 MS. SWANSON: Thank you, Your Honor.

10 (Thereupon, the trial in this was concluded.)

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SENTENCING

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 23rd day of August, 2018.

Mona L. Manley /s/

MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

FORM 5

STATE OF SOUTH CAROLINA)

County of Jasper)Samuel Olalde Gonzalez)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2020-CP 27-398

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
JAN 17 2021
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Jasper
2. Name and location of Court which imposed sentence General Sessions
County of Jasper
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1 25 10
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-25-2015
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty 4-25-2015
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. Appellate Case No. 2018-000807
- iii. Appeal From Jasper County
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed And That was
- ii. I doing the P.C.R.
- iii. _____
- (c) the date of each such result:
- i. Submitted February 1, 2020 Filed March 25, 2020
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) My lawyer Advising Me to Reject a pre-trial Plea
 (b) My lack to understand English well, Bad Advice.
 (c) My lawyer Failure to investigate the case.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) cause of My Mexican/Latino heritage Discrimination.
 (b) My lawyer said he felt I would Gain Honor. Not Plea
 (c) My lawyer Failure to Request jury instructions at trial

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? only Appellate Case No. 2018-000821
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. Appeal from Jasper County Brooks P. Goldsmith
 ii. Circuit Court Judge Unpublished Opinion No. 2020-01084
 iii. Submitted February 1-2020 Filed March 25 2020
 iv. _____

- (b) the name and location of the Court in which each was filed:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. February 1, 2020 Filed March 25, 2020
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No I Don't know my lawyer
Didn't let me No, The only letter I have
was Filed.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. My lawyer Didn't let me know
- ii. what grounds he use on my Appellate
- iii. Case.

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) strickland - it's - washington / Didn't know My lawyer was
 (b) cherry vs state / The County refused to show. set up
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? will be in appeal
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Robert Michael Dudek of Columbia Appellate
 ii. Christopher R. Guel A P.O. Box 21771
Charleston SC 29413
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. as listed in 17
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Reconsideration of sentence/Time if possible
crime was manslaughter and it was involuntary

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Jasper)

VERIFICATION

I, Samuel Olalde Gonzalez, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Samuel Gonzalez

SWORN to and subscribed before me this 8
 day of July, 2020.

Melissa Opitz (L.S.)
 Notary Public

My Commission Expires: 12-1-2025

2020 JUL 17 PM 3:09

JASPER COUNTY
 CLERK

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Samuel Olalde Gonzalez, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Samuel Gonzalez
Applicant

SWORN or affirmed to and subscribed before me this

8 day of July, 2020.

Melissa Ortiz
Notary Public

My Commission Expires: 12-1-2025

JUL 17 2020

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
Samuel Olalde-Gonzalez,
Plaintiff(s),
-vs-
State Of South Carolina,
Defendant(s).

FILED
JASPER COUNTY
CLERK OF COURT

2023 AUG 19 10:11:16

271
IN THE COURT OF COMMON PLEAS
14th JUDICIAL CIRCUIT
CASE NO.: 2020CP2700398
APPOINTMENT OF COUNSEL
(Select one.)

☒ ORDER

☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

☐ Post-Conviction Relief (PCR)/habeas case	☐ Adoption	☐ Juvenile
☐ SVP case	☐ Custody and/or Visitation	☐ Abuse and Neglect
☐ Minor Name Change	☒ Other: Post Convict Rel 500	

It appears Samuel Olalde-Gonzalez, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel has not yet been appointed by the court; therefore, an appointment for counsel is necessary.
- ☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other:

Therefore, it is ordered that hereby is appointed as (Select one.)

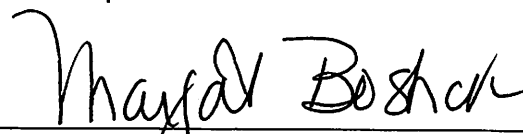
☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED

August 19, 2020


☒ Circuit Judge ☐ Clerk of Court

Plaintiff Attorney:

James Falk	
P.O. Box 1058	
Charleston, SC 29402	

Defendant Attorney:

State Of South Carolina	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.



ALAN WILSON
ATTORNEY GENERAL

December 15, 2020

The Honorable Margaret Bostick
Clerk of Court, Jasper County
Post Office Box 248
Ridgeland, South Carolina 29936-0248

FILED
JASPER COUNTY
CLERK OF COURT
2020 DEC 17 AM 9:30

Re: Samuel Gonzalez, # 376196 v. State of South Carolina
2020-CP-27-0398

Dear Ms. Bostick:

Enclosed please find Respondent's Return and Motion for a More Definite Statement to the Application for Post-Conviction Relief for the above-captioned post-conviction relief case for filing. Please let me know if anything additional is needed.

Sincerely,

s/Megan Harrigan Jameson

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/kw
Enclosure

cc: James K. Falk, Esquire

SCANNED
do 12-17-20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Samuel Gonzalez, SCDC # 376196,	)	Case No. 2020-CP-27-0398
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A MORE
	)	DEFINITE STATEMENT TO THE
State of South Carolina,	)	APPLICATION FOR
	)	POST-CONVICTION RELIEF
Respondent.	)	(Counsel Already Appointed)
	)	
	)	

FILED
 JASPER COUNTY
 CLERK OF COURT
 DEC 17 AM 9:30

In response to the post-conviction relief (PCR) application filed by Applicant Samuel Gonzalez on August 17, 2020, and received by Respondent the State of South Carolina on August 25, 2020, Respondent makes this return:

I. PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections. On August 8, 2016, after a heated argument while their children were home, Applicant struck his common-law Marycruz Sotelo Casillas, knocking her down onto a couch, and then sat atop her and choked her until she died. Applicant gave a statement to law enforcement implicating himself in the death. During its January 2017 term, the Jasper County Grand Jury indicted Applicant for murder (2017-GS-27-0440). On April 23, 2018, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith, circuit court judge. Applicant was represented by Robert Hughes, Esquire. Assistant Solicitors Hunter P. Swanson and Brian Hollen of the Fourteenth Circuit Solicitor's Office prosecuted the case. Following a pre-trial Jackson v. Denno hearing to determine the admissibility of Applicant's statements to law enforcement, Judge Goldsmith ruled the statements were admissible. Following the presentation of evidence, Judge Goldsmith charged the jury on murder and the lesser-included offense of voluntary

manslaughter. Following a short period of deliberation, the jury convicted Applicant of murder as indicted. Applicant, through counsel Hughes, moved for a new trial, arguing the verdict must have been the result of passion or prejudice based on the short amount of time the jury deliberated. Judge Goldsmith denied this motion and sentenced Applicant to thirty-seven years' imprisonment for murder.

Applicant filed a timely notice of appeal and was represented by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who submitted a Brief of Appellant pursuant to Anders v. California, 386 U.S. 738 (1967) and a petition to be relieved as counsel. Following a review pursuant to Anders, the South Carolina Court of Appeals dismissed the appeal. State v. Samuel Gonzalez, Unpub. Op. No. 2020-UP-084 (Ct. App. filed Mar. 25, 2020). The remittitur was returned to the circuit court on May 6, 2020. Thereafter, Applicant initiated the current action with the filing of an application for post-conviction relief on August 17, 2020; Respondent received a copy of the application from the Jasper County Clerk of Court on August 25, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

-Ineffective assistance of counsel for:

-“My lawyer advised me to reject a pretrial plea. My lawyer said he felt I would be goin[g] home, not plea. My lack to understand English as well, bad advice. Cause of my Mexica/Latin heritage birthright.”

-“My lawyer failed to investigate the case.”

-“My lawyer failed to request jury instructions at trial.”

As requested relief, Applicant states he is seeking, “a reconsideration of sentence/time cut if possible. Crime was manslaughter and it was invol[u]ntary.”

Attached herewith and incorporated by reference are the Jasper County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records (including the Anders brief and the record on appeal containing the entire trial transcript), and the records of the current PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant asserts trial counsel was ineffective for a variety of reasons, including improperly advising him to decline a plea offer based on a language barrier, failure to investigate, and failure to request jury instructions. Respondent submits these claims of ineffective assistance of counsel are without merit and refuted by the record.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not

sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a

fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine

whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome

of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Allegation that Counsel Erroneously Advised Applicant Regarding a Plea Offer

As a first ground for relief, Applicant asserts trial counsel was ineffective for improperly advising him to reject a plea offer from the State. The record reflects the State offered Applicant a plea agreement for a negotiated thirty years of imprisonment to the lesser-included offense of voluntary manslaughter, which Applicant rejected. (R. 258). Beyond a general statement that he rejected this plea offer because trial counsel advised him he would “goin[g] home,” Applicant fails to state what purported misadvice he received from counsel.

“The right to effective assistance of counsel extends to the plea bargaining process.” *Simuel v. State*, Op. No. 5774 (S.C. Ct. App. filed Oct. 7, 2020) (Shearouse Adv. Sh. No. 39 at 53) (citing *Lafler v. Cooper*, 566 U.S. 156, 162 (2012)). This includes professionally competent advice as to whether to accept or reject a plea bargain. *Lafler*, 566 U.S. 156. When an applicant alleges his decision to reject a plea offer and proceed to trial was based on deficient advice of counsel, the applicant must establish prejudice by showing: “there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer’s terms would have been less severe than under the judgment and sentence that in fact were imposed.” *Id.* at 64; *Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018).

Here, the record reflects Applicant was aware of a thirty year plea offer and rejected this offer to proceed to trial, where he testified in his defense and received a fair trial. Respondent submits this allegation is without merit. However, the additional testimony is likely needed to resolve Applicant’s allegation, and accordingly, the State requests an evidentiary hearing to fully resolve the issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

Allegation that Counsel Failed to Investigate

Second, Applicant asserts counsel was ineffective for failing to investigate his case. Trial counsel has a professional responsibility to perform a reasonable investigation. “Counsel has a

duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (quoting *Strickland*, 466 U.S. at 691). However, to prevail on such a claim, an applicant must provide more than mere speculation as to what the result of additional investigation would yield. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result).

Here, Applicant wholly fails to state what additional investigation trial counsel should have performed and fails to state what the result of such investigation would be. Accordingly, Respondent moves for Applicant, through his appointed counsel, to amend this allegation to provide sufficient facts to support this claim well in advance of an evidentiary hearing.

Allegation that Counsel Failed to Request Jury Instructions

Third, Applicant asserts counsel was ineffective for failing to request jury instructions. The record reflects the jury was instructed on the lesser-included offense of voluntary manslaughter at trial counsel’s request. Applicant has failed to state what additional jury charges he believes should have been requested, and accordingly, it is impossible for Respondent to address this allegation with any specificity. Accordingly, Respondent moves for Applicant, through his appointed counsel, to amend this allegation to provide sufficient facts to support this claim well in advance of an evidentiary hearing.

IV. MOTION FOR A MORE DEFINITE STATEMENT

Respondent submits Applicant’s claims of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant’s allegations because Applicant has failed to provide specific facts to support each claim. “[M]ere allegations

of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974); *see* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also* Rule 8(a)(2), SCRCP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRCP and the Uniform Post-Conviction Procedure Act.

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated

amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCF; *see also* Rules 15(a)-(b), SCRCF. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCF.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV, and thereafter convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: s/Megan Harrigan Jameson
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 15, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)

Samuel Gonzalez, # 376196

) Case No.: 2020-CP-27-0398
)

) Applicant,
)

) v.
)

) Certificate of Service by Mail
)

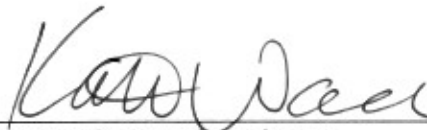
) State of South Carolina
)

) Respondent,
)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement to the Application for Post-Conviction Relief** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James Kristian Falk
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402**

DATED this 15th day of December, 2020.


Katie Wade, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Samuel Olalde-Gonzalez, #376196,	)	Case No.: 2020-CP-27-00398
Applicant,	)	
v.	)	APPLICANT'S AMENDED APPLICATION
State of South Carolina,	)	
Respondent.	)	
	)	

NOW COMES Applicant, Samuel Olalde-Gonzalez, amending his application filed August 17, 2020. In addition to the allegations raised in his initial application, Mr. Olalde-Gonzalez, through PCR Counsel, submits the following:

Amended Application Issues

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”).

Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); see *Dunn v.*

Reeves, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded

“‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v.*

Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed

to act reasonably considering all the circumstances in order to overcome the presumption of

adequate representation). Judicial scrutiny of counsel’s performance remains deferential towards

defense counsel with a presumption that counsel acted competently. *Strickland*, 466 U.S. at 688-

89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 695. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696.

Mr. Olalde-Gonzalez submits that Counsel was constitutionally ineffective based upon the following grounds:

1. Counsel was constitutionally ineffective for forcing Mr. Olalde-Gonzalez into proceeding to trial when he wanted to plead.
2. Counsel was constitutionally ineffective for telling Mr. Olalde-Gonzalez that if he proceeded to trial he would receive less than twenty years' imprisonment.
3. Counsel was constitutionally ineffective for coercing Mr. Olalde-Gonzalez into testifying at trial.
4. Counsel was constitutionally ineffective for failing to discuss trial strategy with Mr. Olalde-Gonzalez.
5. Counsel was constitutionally ineffective for failing to procure a competent translator for attorney-client meetings prior to trial so Mr. Olalde-Gonzalez was fully informed and aware of everything going on in his case.
6. Counsel was constitutionally ineffective for failure to object to the State's lines of questioning concerning Mr. Olalde-Gonzalez's Nazi tattoo.
7. Counsel was constitutionally ineffective for failure to object to the State's lines of questioning concerning the appearance of defensive wounds on Mr. Olalde-Gonzalez.
8. Counsel was constitutionally ineffective for making the trial strategy centered around the concession that Applicant killed the deceased and raising this issue in closing.
9. Counsel was constitutionally ineffective for failure to adequately respond to the State arguing that Mr. Olalde-Gonzalez lacked remorse by highlighting cultural differences between the United States and Mexico regarding men showing emotion.
10. Counsel was constitutionally ineffective for misadvising Mr. Olalde-Gonzalez that if he went to trial he would receive less than twenty years' imprisonment and if he received that amount of time he could get deported before serving out his sentence.

Conclusion

Based upon the above, Mr. Olalde-Gonzalez requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto
Bar No. #104191

For Applicant Samuel Olalde-Gonzalez

November 10, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Samuel Olalde-Gonzalez, #376196	)	Case No.: 2020-CP-27-00398
Applicant,	)	
v.	)	Affidavit of Service by Mail
State of South Carolina,	)	
Respondent.	)	

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: Danielle Dixon, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211


 Attorney for Applicant

November 16, 2023

The Law Office of Chelsey F. Marto

November 10, 2023

The Honorable Margaret Bostick
Jasper County Clerk of Court
Attn: Common Pleas
P.O. Box 248
Ridgeland, SC, 29936-0248

Samuel Olalde-Gonzalez, #376196, v. State of South Carolina – 2020-CP-27-00398

Dear Ms. Bostick,

Attached please find the amended application in the above-captioned case.

If you have any questions or concerns, please do not hesitate to contact my office. My mailing address is PO Box 8795, Columbia, SC, 29201, email is info@chelseymarto.com, and my phone number is (864)-404-5583.

Sincerely,



Chelsey Marto

CC: Danielle Dixon, Esquire
Samuel Olalde-Gonzalez, #376196

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2020-CP-27-00398

Samuel Olalde-Gonzalez,)
))
Plaintiff,)
))
vs.)
))
State of South Carolina,)
))
Defendant.)
-----)

TRANSCRIPT OF HEARING

November 27, 2023
Walterboro, South Carolina

B E F O R E:

The Honorable Roger Young, Judge Presiding

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

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1 P R O C E E D I N G S

2 * * * * *

3 THE COURT: Who's next?

4 MR. SEYMOUR: Your Honor, the State calls
5 Samuel Olalde-Gonzalez.

6 (Swears interpreter.)

7 THE COURT: Raise your right hand. Do you
8 swear or affirm that the translation you're about to
9 give will be true and accurate to the best of your
10 ability?

11 INTERPRETER: I do.

12 THE COURT: Okay.

13 (Swears witness.)

14 * * * * *

15 **SAMUEL OLALDE-GONZALEZ,**
16 **having been duly sworn,**
17 **testifies as follows:**

18 * * * * *

19 THE COURT: Okay, call the witness.

20 Are you calling him first?

21 MS. MARTO: Yes, but the State hasn't read
22 off the procedural history or called the case
23 formally yet. I don't know.

24 THE COURT: Who is this?

25 MS. MARTO: This is Mr. Samuel Gonzalez.

1 THE COURT: Okay.

2 MR. SEYMOUR: So I could read it off, Your
3 Honor.

4 THE COURT: All right, let me -- stop for a
5 second.

6 All right, Mr. Gonzalez, you have a
7 translator there. If you don't understand anything
8 that she says, ask her to stop and repeat it, okay?
9 Things move along a little quickly sometimes, and
10 people have got to slow down, so we just want to
11 make sure you understand; so if you need her to
12 repeat something, just ask her to repeat it, okay?

13 MR. GONZALEZ: Okay.

14 THE COURT: All right, I'm just gonna go
15 ahead and put him in the seat here, because he's
16 going to be your first witness. Just go ahead and
17 have a seat right there.

18 Okay, what does the State want to say?

19 MR. SEYMOUR: May it please the Court?

20 THE COURT: You're Mr. Seymour?

21 MR. SEYMOUR: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SEYMOUR: All right, Your Honor, I'm
24 with the Attorney General's Office representing the
25 State in this case. This is the case of Samuel

1 Olalde-Gonzalez vs. the State of South Carolina,
2 Case Number 2020-CP-27-00398. Your Honor, Mr.
3 Gonzalez is currently serving a 30-year sentence.
4 In January 2017 the applicant was charged with
5 murder on Indictment Number 2017-GS-27-0440. And on
6 -- from April 23rd to April 25th, 2018, the
7 applicant proceeded to a jury trial before the
8 Honorable Brooks Goldsmith. The applicant was
9 represented at trial by Mr. Robert Hughes, and
10 Assistant Solicitors Hunter Swanson and Bryan
11 Holland prosecuted the case. Your Honor, the
12 applicant was found guilty and convicted of murder
13 and sentenced to 37 years imprisonment. A timely
14 notice of appeal was filed, and the applicant was
15 represented by Chief Appellate Defender, Robert M.
16 Dudek, and the Court -- the South Carolina Court of
17 Appeals dismissed the appeal, and the remittitur was
18 sent May 6th of 2020. The applicant then filed a
19 PCR application on August 17th, 2020, the State
20 filed its return, and the applicant subsequently
21 filed an amended application through PCR counsel.
22 In that amended application he alleges ten
23 allegations. Just real briefly, Your Honor, just a
24 quick summary of those. Applicant is alleging
25 ineffectiveness of counsel for proceeding to trial

1 when he wanted to plea. He is alleging that he
2 wanted to -- or he was told that he'd receive less
3 than 20 years imprisonment. He was coerced into
4 testifying at trial. Counsel failed to discuss
5 trial strategy with him. Counsel failed to procure
6 a competent translator. Counsel failed to object to
7 the State's line of questioning about a tattoo.
8 Counsel failed to object to the State's line of
9 questioning about defensive wounds. Counsel made
10 the trial strategy centered around the concession
11 that applicant killed the deceased. Counsel was
12 ineffective for failing to quickly respond to the
13 State's arguments about evidence remorse at trial.
14 And, finally, counsel was ineffective for
15 misadvising him that if he went to trial, he'd
16 receive 20 years -- less than 20 years imprisonment,
17 and that he could get deported before serving ---

18 COURT REPORTER: What was that last bit?
19 The last bit you said?

20 MR. SEYMOUR: Counsel was ineffective for
21 misadvising the applicant that he would -- that if
22 -- that he would receive less than 20 years
23 imprisonment, and that he could get deported before
24 serving out his sentence.

25 THE COURT: All right, he received a

1 sentence of 37 years?

2 MR. SEYMOUR: That's correct, Your Honor.

3 THE COURT: Okay. And he was convicted of
4 murder?

5 MR. SEYMOUR: Yes, Your Honor.

6 BY THE COURT:

7 Q. All right, Mr. Gonzalez, I just want to
8 make sure you understand, you got indicted for
9 murder, which carries a minimum of 37 -- or 30
10 years, with a maximum of life without parole. The
11 judge gave you 37 years. Now, if you are successful
12 today in your -- and get a new trial, then they can
13 go back and try you again for murder and other
14 charges that you have pending, and ask the judge to
15 give you life without parole if you got convicted of
16 murder. The judge can give you exactly the same
17 thing the other judge gave you, or the judge may
18 give you less, but it will be no less than 30; but
19 the judge can also give you life without parole.
20 Just because you went to trial in the first trial
21 and got 37 years doesn't mean that you would get 37
22 years again. You could get life without parole.
23 And I'm sure that's what the State would ask the
24 State -- the judge to give you, is life without
25 parole. Do you understand that?

1 A. Yes, I understand that.

2 Q. Do you still want to go forward today?

3 A. Yes.

4 Q. Okay, how old are you?

5 A. Thirty-two.

6 Q. And how far did you get in school?

7 A. I finished my fourth semester of high
8 school.

9 Q. And what citizen -- what country are
10 you a citizen of?

11 A. Mexico.

12 Q. And did you have a job before you got
13 put in prison?

14 A. Yes.

15 Q. Doing what?

16 A. I was doing repairs, remodeling,
17 carpentry, painting.

18 Q. All right, are you married?

19 A. No, I wasn't married.

20 Q. Do you have children?

21 A. Yes, I have one daughter, she's now 7
22 years old.

23 Q. Okay.

24 THE COURT: All right, well, I explained to
25 him that he could face more time if he were

1 successful than if he got -- were unsuccessful, and
2 he still wants to go forward, then I find that his
3 decision is freely and voluntary and intelligently
4 made. So do you want to ask questions first?

5 MS. MARTO: Yes, Your Honor.

6 THE COURT: Do you want to come up there?

7 **DIRECT EXAMINATION**

8 BY MS. MARTO:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. So you went to trial for a murder,
12 right?

13 A. Yes.

14 Q. And you were represented by Mr. Robert
15 Hughes?

16 A. Correct.

17 Q. And you're alleging that counsel did
18 not represent you effectively at trial, correct?

19 A. Correct.

20 Q. And there are things that you wish
21 counsel hadn't done that he did?

22 A. I wish that he had shared some of his
23 processing that he was going to do because he only
24 spoke to me once.

25 Q. So you and I talked about the

1 allegations you wish to raise today, right?

2 A. Correct.

3 Q. Okay. So did you want to go to trial,
4 or did you want to plea?

5 A. I am aware that every action that we do
6 has its consequences, and from the very beginning I
7 never wanted to go to trial. I accepted that I
8 would have to pay, that I did what I did, and I know
9 it would have consequences.

10 Q. So are you saying that counsel forced
11 you into going to trial?

12 A. I don't know what strategy he had,
13 because he told me if we went to trial, I would
14 definitely get less than 20 years.

15 Q. And did you have a plea offer in this
16 case?

17 A. So about a week or two before my trial
18 he came to me and said the State is offering 30
19 years, and I immediately said, "I will sign," and he
20 said no, not to do that.

21 Q. And did counsel tell you to do that
22 because he said you'd get less than 20 years?

23 A. He told me he had a lot of experience
24 in these type of cases, and he told me that they
25 would give me less than 20 years.

1 Q. Did you want to testify at trial?

2 A. No, the way I felt at that time, the
3 last thing I wanted to do was to face or speak to
4 people.

5 Q. So why did you testify?

6 A. Because the attorney told me that's how
7 I would get less than 20 years, so I agreed to talk.

8 Q. Did counsel discuss trial strategy or
9 the defense with you before trial?

10 A. No. And as you can see during the
11 trial I was never on the defensive. I know that I
12 made a mistake.

13 Q. And did you agree with counsel's
14 strategy to effectively concede that you killed the
15 victim?

16 A. No.

17 Q. Did counsel discuss that before ---

18 THE COURT: Go ahead.

19 BY MS. MARTO:

20 Q. Did counsel discuss that with you
21 beforehand, that decision?

22 A. Can you repeat the question again?

23 Q. Did counsel discuss the decision to
24 basically concede that you killed the victim, and
25 present that at trial? Did he discuss that with you

1 prior to the trial?

2 A. I'm not sure what you're asking me.
3 Are you asking me whether the counsel asked me or
4 told me to say that I killed her, the victim?

5 Q. No, I'm asking did counsel basically
6 tell you beforehand that the defense at trial would
7 be to say, "Yeah, he killed her, but he didn't out
8 of malice."

9 A. I'm very confused with that question.

10 Q. Okay, but y'all didn't discuss anything
11 regarding trial strategy or defense prior to trial?

12 MR. SEYMOUR: Objection, Your Honor.
13 Leading.

14 THE COURT: We're having difficulty with
15 the translation.

16 BY MS. MARTO:

17 Q. Moving on to the next issue, did you
18 use a translator while speaking with counsel?

19 A. The only time that he came to see me,
20 which was one or two weeks before the trial, I don't
21 know if the person that he brought with him was a
22 certified interpreter, because the questions were
23 being turned around very -- it was very confusing.

24 Q. You were confused during the
25 conversation?

1 A. Yes, and the windows where we were, the
2 voices didn't come through very clear.

3 Q. Now, did counsel ever give you advice
4 concerning immigration consequences?

5 INTERPRETER: Say it again?

6 BY MS. MARTO:

7 Q. Did counsel ever tell you the
8 immigration consequences involved in going to trial?

9 A. He told me that if we went to trial
10 that -- and I was sentenced, that Immigration would
11 come to get me before my sentence was over.

12 Q. Did that influence your decision to go
13 to trial?

14 A. Well, yes, because I felt like that was
15 maybe another door opened for a way out of this
16 whole situation.

17 Q. Now, do you recall questioning
18 concerning the Nazi tattoos on your arm?

19 A. Yes, I remember.

20 Q. Okay, and just for the record I will
21 highlight that. It's on pages 102 and 161. Now,
22 did you wish counsel objected to those questions?

23 A. I wish that he had intervened, or at
24 the very least had asked me how I got it, why I got
25 it, how long ago I got it, because to be completely

1 honest I was in primary school. I was ten years old
2 when I got it, and the neighborhood I lived in was
3 in the hood in Mexico, and so everyone there did it,
4 so I just wanted to do it to see how it felt to have
5 a tattoo, and didn't even know what it meant; but
6 when I found out what it meant, then I covered it.

7 Q. And then do you recall looking at page
8 101 to 102, lines 25 to 1, do you recall the
9 question about you having potential defensive
10 wounds?

11 A. Yes, I remember.

12 Q. And do you wish counsel had objected to
13 that?

14 A. Yes.

15 Q. And do you recall what the State, I
16 guess, said during sentencing about the way you were
17 acting?

18 A. Are you talking about them saying that
19 I never showed remorse?

20 Q. Yes, sir.

21 A. Yes, I remember.

22 Q. Do you wish counsel did something to
23 kind of counter that?

24 A. So, yes, I -- I wish he had brought up
25 that I come from a different culture, and in my

1 culture garring (Ph) is not for men. I do feel
2 sorry -- I felt sorry, I immediately regret it, what
3 I'd done, but he never intervened. He never
4 expressed anything like that, and I wish he had
5 expressed a difference in culture.

6 Q. And do you think that that would have
7 changed the sentence you received?

8 A. So, yes, because from the beginning I
9 felt bad that this happened, what I did, and I
10 called who was my boss at the time, and I called him
11 and said, "Please call the police, I want to show
12 and explain what I did, and knew what I did was
13 wrong." And maybe he should have explained that I
14 showed remorse, and that I was sad about it.

15 MS. MARTO: No further questions, Your
16 Honor.

17 THE COURT: Cross?

18 MR. SEYMOUR: Yes, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. SEYMOUR:

21 Q. Mr. Gonzalez, how are you doing today?

22 A. I'm okay, thank you.

23 Q. You just testified that you had told
24 your boss that you had killed your girlfriend, is
25 that correct?

1 A. I only told him what had happened. I
2 understand now what you mean that I testified, but
3 whatever.

4 Q. No, I'm only talking about you told Mr.
5 Gustavo Isadori (Ph), I believe that's his last
6 name, what you had done, correct?

7 INTERPRETER: I didn't catch the name. I'm
8 sorry.

9 MR. SEYMOUR: Sorry.

10 BY MR. SEYMOUR:

11 Q. You told Mr. Gustavo what you had done,
12 correct?

13 A. Not exactly, but, yes, what had
14 happened.

15 Q. Okay, and then you spoke to a police
16 officer about what had happened, correct?

17 A. Correct.

18 Q. And then police arrest -- detained and
19 arrested you once they arrived to your home,
20 correct?

21 A. When the police came to my house and I
22 told them what had happened, he didn't put the
23 handcuffs on me, but he did tell me that I was being
24 arrested.

25 Q. You were arrested after that, right?

1 A. Yes.

2 Q. After you were arrested -- you were
3 arrested, you were read your rights, correct?

4 A. Yes.

5 Q. And after that you confessed to police
6 that you had killed your girlfriend, right?

7 A. Yes, I talked to him when he took me to
8 talk to the -- the detective, I talked to him.

9 Q. And you wrote a statement when you
10 talked to police, right?

11 A. I think so.

12 Q. You did not request an attorney at that
13 time, right?

14 A. So I didn't know anything about the
15 laws here, and I didn't know anything. I know now
16 that it would have been better but I didn't know
17 that.

18 Q. But they read you your rights, right?

19 A. I think so.

20 Q. So the police were aware of what you
21 had done, right?

22 A. Yes.

23 Q. They knew that you had killed your
24 girlfriend, right?

25 A. Yes.

1 Q. Now when you went to trial it lasted a
2 few days, that was a big deal for you, right?

3 A. It was only two and a half days maybe.

4 Q. But the trial was still a big deal for
5 you, correct?

6 A. I don't understand what you mean.

7 Q. When you went to trial you were charged
8 with murder, right?

9 A. Yes.

10 Q. There were severe consequences if you
11 were convicted, correct?

12 A. There would be, or are you asking if I
13 was aware of what might happen?

14 Q. If you were convicted at trial, you
15 were going to face a criminal sentence, correct?

16 A. That's what the -- what the attorney
17 had explained before, what we talked about earlier,
18 what he had said, that's why I went.

19 Q. Now, you testified at your own trial,
20 right?

21 A. Correct.

22 Q. Do you remember the Judge asking you a
23 series of questions before you testified?

24 A. I really don't remember.

25 MR. SEYMOUR: Beg the Court's indulgence,

1 Your Honor. No further questions, Your Honor.

2 MS. MARTO: No redirect.

3 THE COURT: Next?

4 MS. MARTO: Judge, we'd like to call Robert
5 Hughes.

6 * * * * *

7 Robert Hughes,

8 Having been duly sworn,

9 testifies as follows:

10 * * * * *

11 DIRECT EXAMINATION

12 BY MS. MARTO:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. You represented Mr. Gonzalez in his
16 underlying criminal matter, correct?

17 A. Yes.

18 Q. Okay, and that's a trial where he was
19 found guilty of murder?

20 A. Correct.

21 Q. Okay. How many times did you meet with
22 him prior to trial?

23 A. Every time I could get a translator
24 down, I do not speak Spanish, it would not have been
25 as often as I would have liked; but we are in Jasper

1 County, translators come out of Beaufort County, so
2 at least two, maybe three times. I would have
3 explained to him why it would have been not as
4 often.

5 Q. Did you perceive any issues with the
6 translator during those meetings?

7 A. I beg your pardon?

8 Q. Did you perceive any issues with the
9 translator during those meetings?

10 A. No, I would have used a court reporter
11 -- a court certified translator.

12 Q. Okay, so you didn't see any issues like
13 with a language barrier in communicating with him?

14 A. No.

15 Q. Did you discuss the trial strategy and
16 defense with him?

17 A. Of course.

18 Q. And what was that defense at trial?

19 A. Basically, since he had confessed to
20 two different people, and put it in writing, that
21 there was no malice, that would be one of the
22 elements that they were required to prove. And
23 other than that I mean you had almost everything
24 else.

25 Q. Okay. So he basically conceded that he

1 killed the girlfriend, correct?

2 A. He admitted it. He told his boss, he
3 told law enforcement, he put it in writing. It's
4 very, very difficult to overcome that. I had to
5 find some element that was not covered.

6 Q. So did you think you chose the best
7 defense?

8 A. I beg your pardon?

9 Q. Do you think you chose the best defense
10 available?

11 A. The only defense would have been self-
12 defense, and that was completely ruled out by him.

13 Q. Now did you discuss with him his
14 options between pleading versus going to trial?

15 A. I didn't want him to go to trial. I
16 mean it would have been ridiculous with a confessed
17 killer to go to trial. When he -- if he ever told
18 me that he wanted to plea, that would have made me
19 extremely happy. I would have been able to make
20 bargains, make deals, work with the Solicitor, but
21 when he goes, "I want a trial," I don't have a
22 choice.

23 Q. So it was his decision to go to trial?

24 A. I beg your pardon?

25 Q. It was his decision to go to trial?

1 A. Of course.

2 Q. Did you ever promise him he'd get less
3 than 20 years if he went to trial?

4 A. No.

5 Q. Did you discuss his decision to
6 testify?

7 A. I -- well, every time I talk to my
8 client, I tell them two things. I tell them they
9 have a right to a trial, and I explain to them
10 exactly what a trial is. I explain to them they
11 have a right to testify or not. And then if they
12 chose not to testify, the Judge would tell a jury
13 they couldn't even think about the fact that they
14 hadn't testified. And I tell them that it is
15 totally their decision. I would make suggestions,
16 but the final decision, excuse me, the final
17 decision would always be theirs, and theirs alone.
18 And then I always make a joke so they relax a little
19 bit, but I always explain to them about testimony.
20 And I point out that they're subject to cross-
21 examination, and that they would have to answer the
22 Solicitor's questions also.

23 Q. Did you ever force him into testifying?

24 A. No. I did not want him testifying. It
25 was -- it's always dangerous when a defendant wants

1 to testify, because we can talk ad nauseam about
2 what they should or shouldn't say. I never tell
3 them what to say, but there are traps that they can
4 fall into, and it scares me every time a defendant
5 wants to testify, and it's always their decision.

6 Q. Now, did you warn Mr. Gonzalez about
7 the immigration consequences of conviction?

8 A. I beg your pardon.

9 Q. Did you warn Mr. Gonzalez about the
10 immigration consequences of the conviction?

11 A. I did not catch what consequences.

12 Q. Immigration.

13 A. Immigration? I basically told him that
14 if it goes to trial and he's found guilty, he's
15 going to be sentenced to 30 plus, because 30 was the
16 minimum, and I always make sure they understand that
17 there is a minimum. Thirty plus, and then after
18 that was over, then INS could be involved. If it
19 was a hung jury, he would come back to jail, and
20 they would do it all over again. If for some reason
21 he was found not guilty, he would be deported.

22 Q. Did you ever promise him he could get
23 deported before serving out his sentence?

24 A. No.

25 Q. Now do you recall at sentencing that

1 the State said he showed lack of remorse over what
2 happened?

3 A. That was the only thing I had.

4 Q. So do you feel like you counted the
5 fact that the State said he showed lack of remorse?

6 A. Yeah, I thought I did, I mean that was
7 all I had.

8 Q. Okay. And you would say that the trial
9 transcript is the best reflection of what happened
10 regardless?

11 A. Of course.

12 Q. Okay. Now, do you recall any
13 questionings about his Nazi tattoos?

14 A. The Nazi tattoos were covered. The
15 only way they would have ever been acknowledged or
16 even known about would have been from him, and that
17 was a statement by party opponent, and I couldn't
18 object, because it wasn't hearsay.

19 Q. Okay. Do you think you could have
20 objected based upon relevance?

21 A. A tattoo that has been covered up is
22 more beneficial, it's no longer an acknowledgement.
23 It's not like some that have swastikas, it is a I
24 had this, it's gone. That's better than I have it
25 here and look at it.

1 Q. Do you recall any questioning about I
2 guess possible defensive wounds?

3 A. No, I don't recall.

4 Q. Okay. Yeah, I'll just read out, this
5 is during the cross-examination of Stalvo, page 101
6 of 125. It say, "Okay, so you had possible
7 defensive wounds?" And it said, "Yeah." Do you
8 think that was I guess admissible testimony?

9 A. He said that he had defensive wounds.

10 Q. A lay witness was asked if he thought
11 Mr. Gonzalez had defense wounds.

12 A. I don't remember that. I would have
13 loved for it to come in, but ---

14 Q. Okay.

15 A. I mean it basically shows that he was
16 attacked.

17 Q. So you think that that question is
18 beneficial to the defense?

19 A. It helped. It would have definitely
20 shown that he had been attacked, and the fact of no
21 remorse would have removed remorse out of it, or of
22 malice.

23 MS. MARTO: No further questions, Your
24 Honor.

25 THE COURT: The State?

1 MR. SEYMOUR: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SEYMOUR:

4 Q. Good morning, Mr. Hughes.

5 A. Good morning.

6 Q. How are you?

7 A. I beg your pardon?

8 Q. How are you?

9 A. I'm doing very well.

10 Q. Good. Now, Mr. Hughes, you were aware
11 that the applicant had -- Mr. Gonzalez had confessed
12 to killing his girlfriend, right?

13 A. I'm all too aware of it. I know he
14 confessed to his employer, he confessed to law
15 enforcement, he confessed in writing.

16 Q. How did you think -- or let me rephrase
17 that. Did you think that the State had a compelling
18 case against Mr. Gonzalez?

19 A. It was very damning.

20 Q. And you had mentioned trial strategy on
21 direct examination. What was it exactly that you
22 were trying to do at trial?

23 A. There are certain elements of murder,
24 premeditation and malice. If I could show that
25 there was no malice, and it was not done in the heat

1 of the moment type deal, but this was -- or it was
2 done in the heat of the moment, this was not malice
3 aforethought, this was just -- they were having an
4 argument, she's suddenly dead. That's -- that would
5 have done away with murder involving voluntary or
6 involuntary.

7 Q. Did you feel that the facts of this
8 case inhibited your trial strategy?

9 A. No, it did not inhibit it, it very,
10 very limited it. There was very little I could do
11 with it, other than hope.

12 Q. Now were you looking for a full
13 acquittal in this case?

14 A. I do that on every trial, there's hope
15 for a full acquittal. I was not expecting one. I
16 was fighting against three confessions. I would
17 have loved to have gotten a lesser included offer.
18 Once he wanted a trial, I had no choice but to hope
19 for a -- an acquittal for lack of malice.

20 Q. Not expecting it?

21 A. No.

22 Q. Now about that confession, did you try
23 to keep that out of trial, his confession?

24 A. I don't remember, I'm sure I would
25 have, but we have a party opponent telling someone

1 that was not law enforcement, that he had done this.
2 We have a post-Miranda statement to law enforcement,
3 we have a post-Miranda written statement, it's
4 extremely hard to keep those out.

5 Q. And you don't recall that there was a
6 Jackson v. Denno hearing?

7 A. I don't recall.

8 Q. Okay. Now, do you recall a police
9 officer taking the stand at trial that had spoken to
10 the applicant in Spanish?

11 A. Yes, there was a gentleman who -- I
12 believe he was from Cuba, I think I may have pointed
13 that, that there was a possible change in the
14 language from Mr. Gonzalez, Mexican, the officer was
15 a former Cuban, and I pointed that out, but his
16 Spanish was a lot better than mine.

17 Q. You don't deny anything that's in the
18 transcript, and the transcript speaks for itself?

19 A. Yes.

20 Q. And that officer was Puerto Rican?

21 A. Sorry?

22 Q. That officer was Puerto Rican?

23 A. As far as I know.

24 Q. Okay. And when -- were you appointed
25 or retained in this case?

1 A. I was appointed. I'm with the Public
2 Defender's Office.

3 Q. And do you recall when you were
4 appointed to Mr. Gonzalez' case?

5 A. Exact date, no. My file has been since
6 destroyed, but it would have been sometime within 30
7 days of him being arrested, a pre-preliminary
8 hearing.

9 Q. And you testified on direct that you
10 had met with Mr. Gonzalez multiple times leading up
11 to trial?

12 A. Oh, yes, my policy was always to meet
13 with everybody monthly, but Mr. Gonzalez was an
14 exception. That involved -- whenever I could get an
15 interpreter there to talk to him, I would have been
16 thoroughly. And if the State had ever made an offer
17 in his case, I would have bent over backwards to get
18 an interpreter there to talk with him.

19 Q. Do you recall the interpreter that met
20 with you and Mr. Gonzales?

21 A. I do not remember his name. I would
22 have gotten a court certified interpreter because my
23 Spanish is extremely limited.

24 Q. And at any point in your conversations
25 with Mr. Gonzalez and the interpreter, did you feel

1 that he didn't understand you at all?

2 A. No, I would -- I -- I do not remember
3 any time that that would have happened. If Mr.
4 Gonzalez had ever asked for any clarification, I
5 would have been happy to have given that.

6 Q. And how many years of -- how many years
7 of experience do you have as an attorney?

8 A. I was sworn in in 2004. I went to work
9 with the Solicitor's Office for about three or four
10 years. After that I worked with Citizens Opposed to
11 Domestic Abuse for a year, and in 2008 I went to
12 work with the Public Defender's Office where I've
13 worked since.

14 Q. So you've had a lot of experience
15 dealing with clients that have been arrested, facing
16 charges?

17 A. Yes.

18 Q. So based on your experience with that,
19 did you ever get an indication that Mr. Gonzalez
20 didn't understand you?

21 A. No. It -- it -- I don't remember him
22 ever looking like, oh, he doesn't understand this.
23 I've seen that with clients' faces, and I make sure
24 that they understand. I want them to know exactly
25 what's going on.

1 Q. And you testified on direct that you
2 informed Mr. Gonzalez of, you know, the rights that
3 he had to, or to not testify at trial?

4 A. Yes.

5 Q. And do you recall the Judge walking
6 through those rights with him at trial?

7 A. Of course. What happens is, after the
8 State rests, the jury goes out, I move for a
9 directed verdict, a force of habit. Then the Judge
10 will ask, "Does your client wish to testify or not?"
11 If the client wishes to testify, the Judge will have
12 him come in front of him, put him under oath, have
13 him -- he will question him, making sure that he
14 understands exactly what his rights are, and that he
15 has a right to testify or not.

16 Q. Okay.

17 A. I don't remember him asking me
18 anything, but once a client says he wants to
19 testify, and it's his decision. Like I tell him,
20 it's always going to be his and his alone.

21 Q. Now do you recall the demeanor of Mr.
22 Gonzalez during your meetings with him?

23 A. Like everyone who's locked up, he is
24 scared at first. I always try to get people to
25 relax, so that I can have a talk with them. I don't

1 remember him being what I would consider
2 inquisitive, you know, and he definitely wasn't a
3 this is the way we're gonna do it type, so he was
4 probably -- and I also don't remember it being one
5 that I would go, oh, I'm gonna have trouble with
6 him. So, basically, he was just a good person and a
7 good client.

8 Q. And you felt you had sufficient time to
9 prepare him for trial?

10 A. Yes.

11 Q. And you informed him you said of the
12 sentence that he would face if he was convicted at
13 trial?

14 A. Oh, of course, I would have done that
15 the first day. You're charged with murder, that
16 carries a sentence of 30 years to life in prison.
17 The State has not asked for the death penalty, so
18 right now the minimum you're going to get is 30.

19 Q. Okay.

20 MR. SEYMOUR: I beg the Court's indulgence.
21 No further questions, Your Honor.

22 MS. MARTO: No redirect, Your Honor.

23 BY THE COURT:

24 Q. Let me make sure I understand. So
25 you're saying the State never made an offer to him,

1 a plea?

2 A. I don't remember an offer, but I've
3 been told that there was an offer of 30 years. If
4 that'd have been the case, I would have loved to
5 have an offer in that case.

6 Q. Okay.

7 MS. MARTO: No further witnesses, Your
8 Honor. No other witnesses, Your Honor.

9 THE COURT: No other witnesses? Anything
10 from the State?

11 MR. SEYMOUR: No further questions, Your
12 Honor.

13 THE COURT: All right, do you want to make
14 an argument?

15 MS. MARTO: We just rest upon everything
16 that Mr. Gonzalez has said, and the allegations that
17 have been raised her.

18 THE COURT: Can you move over here? I
19 really can't hear you.

20 MS. MARTO: My apologies, Your Honor.

21 **CLOSING BY MS. MARTO**

22 BY MS. MARTO:

23 Now I was just saying we just rest upon
24 everything that Mr. Gonzalez has said on the record
25 itself, and request that you grant relief based upon

1 the allegations raised to that.

2 THE COURT: Okay.

3 **CLOSING BY MR. SEYMOUR**

4 MR. SEYMOUR: Your Honor, Mr. Gonzalez has
5 failed to meet his burden. He's failed to show
6 deficiency core prejudice. Your Honor, as you've
7 heard from Mr. Hughes, his testimony, he met with
8 Mr. Gonzalez on multiple occasions. He didn't have
9 any reason to believe he couldn't understand him.
10 He did have a translator at those meetings. He
11 articulated valid strategies for the trial and
12 leading up to trial, and informed Mr. Gonzalez the
13 penalties he would be facing at trial if he was
14 convicted. And, Your Honor, even the Judge in the
15 trial went through the colloquy. So, Your Honor,
16 the State's asking that you deny Mr. Gonzalez' post-
17 conviction relief.

18 **JUDGE'S RULING**

19 THE COURT: All right, well, there was --
20 it didn't sound like ever an offer made that the
21 defense counsel remembers. He said he was told
22 later on that there was one, but he doesn't remember
23 it. And there's no evidence that there was an
24 actual offer made. There's -- everything that the
25 Defendant petitioner here says is grounds for

1 relief, was refuted by trial counsel, and who is
2 experienced in this field. Met with him several
3 times with a translator, and said he would have like
4 to have had a lesser plea, some options for him to
5 plead to, because of the overwhelming evidence of
6 guilt. I find that the petitioner has not met his
7 burden of proof of showing the ineffective
8 assistance of counsel, and, therefore, the petition
9 is denied. All right?

10 (Whereupon, the hearing was concluded.)

11 - - -END OF TRANSCRIPT- - -
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for
Colleton County, South Carolina, on the 27th day of
November, 2023.

I do further certify that I am neither of
kin, counsel nor interest to any party herein.

A handwritten signature in black ink, reading "Cathy L. Young", is written over a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT	
	)		
Samuel Olalde-Gonzalez, #376196,	)		
	)	Case No.: 2020-CP-27-0398	
Applicant,	)		
	)		
v.	)		
	)	ORDER OF DISMISSAL	
State of South Carolina,	)		
	)		
Respondent.	)		

FILED
JASPER COUNTY
CLERK OF COURT
2024 JAN 24 AM 9:13

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Samuel Olalde-Gonzalez (Applicant) on August 7, 2020. On December 17, 2020, Respondent filed its return requesting an evidentiary hearing and a more definite statement. On November 14, 2023, Applicant filed his amended PCR application. On November 27, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Chelsey Marto, Esquire represented Applicant. Staff Attorney Chase Seymour for the South Carolina Attorney General's Office represented Respondent. Applicant was present and testified on his own behalf at the hearing. Assistant Public Defender Robert Hughes (Counsel) also testified. Further, following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-seven-year sentence. In January 2017, the Jasper County Grand Jury indicted Applicant for murder (216-GS-27-00440). From April 23-25, 2018, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith. Applicant was represented by Public Defender Robert

Hughes. Assistant Solicitors Hunter P. Swanson and Brian Hollen prosecuted the case. On April 2, 2018, the jury found Applicant guilty of murder. Judge Goldsmith sentenced Applicant to thirty-seven-years imprisonment.

On April 30, 2018, Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek perfected the appeal through an Anders¹ brief. Following a review pursuant to Anders, the South Carolina Court of Appeals dismissed the appeal. State v. Samuel Gonzalez, Unpub. Op. No. 2020-UP-084 (Ct. App. filed Mar. 25, 2020). The remittitur was sent May 6, 2020.

SUMMARY OF JACKSON V. DENNO HEARING TESTIMONY

Before Applicant's trial, a Jackson v. Denno² hearing was held to determine the admissibility of Applicant's statements to law enforcement. Officer Omar Nieves testified at the hearing that he was the translating officer during the investigation of Marycruz Sotela Casillas's (Victim's) homicide. (R. 8). Although Officer Nieves spoke in a different Spanish dialect than Applicant, he was a certified Spanish translator in the United States Marine Corps, and Applicant appeared to understand him. (R. 19-21).

Officer Nieves testified Applicant spoke to him on the phone and told him that he had killed Victim. After Officer Nieves arrived on the scene, Applicant was placed under arrest, and Officer Nieves read Applicant his Miranda rights in Spanish. (R. 8-9). Applicant told Officer Nieves he killed Victim and repeated this after he was taken to the Jasper County Sheriff's Office and read his rights in Spanish again. (R. 9-10). Applicant then wrote a statement in Spanish to police confessing that he had killed Victim. Applicant was not in handcuffs at the Sheriff's Office and was offered water and the ability to use the restroom. (R. 10-13).

¹ Anders v. California, 368 U.S. 738, 87 S. Ct. 1396; 18 L. Ed. 2d 493 (1967).

² 378 U.S. 376 (1964).

Officer Jeff Crosby testified at the Denno hearing and stated that he was also present during Applicant's interview in the Jasper County Sheriff's Office. (R. 23-24). Officer Crosby confirmed that Applicant was read his rights in Spanish and did not request an attorney during the interview or ask to stop the interview. (R. 24-25). Officer Crosby testified Applicant never seemed unsure about what had occurred, nor was he promised anything in exchange for his statement. (R. 25). Judge Goldsmith determined Applicant's statement to law enforcement was knowingly, intelligently, freely, and voluntarily given and was therefore admissible at trial. (R. 31).

SUMMARY OF TRIAL TESTIMONY

At trial, Gustavo Adolfo-Aguirre Isidro testified that he had worked with Applicant for several months as a painter. (R. 94-95). Isidro picked Applicant up to go to work every day, and on August 8, 2016, Applicant called Isidro before work and said that he had killed Victim. (R. 96-97). Isidro further testified that Applicant told him that Victim had tried to attack Applicant, so Applicant defended himself. (R. 97). Isidro called the police that morning and told them what Applicant had told him. Isidro also told police where Applicant lived and gave police Applicant's phone number. (R. 97-98).

Officer Nieves testified that he was the translating officer for detectives during the investigation and at the scene of the homicide. (R. 128-29). Applicant told Officer Nieves that he killed Victim and wanted to turn himself in. (R. 130). After Officer Nieves arrived at the scene, Applicant was put into custody, and Officer Nieves read Applicant his Miranda rights in Spanish. (R. 132-33). Applicant told Officer Nieves that he and Victim were arguing the day prior, and he lost control that night and strangled her to death. (R. 134). After arriving at the Sheriff's Office, Officer Nieves served as a translator for Officer Crosby. (R. 134). Officer Nieves read Applicant's rights to him again in Spanish once he arrived at the Sheriff's Office. Applicant spoke to the two

officers and wanted to provide a written statement. (R. 134-38). Applicant did not cry or appear upset during the interview. (R. 135; 158).

Officer Crosby also testified that he was one of the responding officers at the scene of the homicide and was present during Applicant's interview at the Sheriff's Office. (R. 156-58). Neither Officer Crosby or Officer Nieves promised Applicant anything to make a statement, and Applicant appeared to understand everything being said. (R. 158). Officer Crosby also testified that Applicant had wanted to kill himself after killing Victim and had attempted to do so by hanging himself and cutting his arms with a knife. (R. 159-60). Applicant was sent to the hospital for an evaluation after the interview and was released the same day. Upon his release, Officer Crosby officially charged Applicant with murder. (R. 161).

Dr. Angelina Phillips testified at trial as an expert witness in the field of forensic pathology. (R. 165-66). Dr. Phillips conducted an autopsy on Victim, which revealed that Victim's injuries were consistent with being strangled to death. (R. 167-169). Dr. Phillips further testified that "it takes about seven to fourteen seconds for a person to pass out from lack of oxygen and three to five minutes for someone to die from that lack of oxygen." (R. 170-71).

Finally, Applicant chose to testify on his own behalf at trial. Much of Applicant's testimony mirrored the testimony that had already been presented by the State. However, Applicant explained that he was truthful with police but had not given them all the details. (R. 200). Applicant testified he told police it was his first argument with Victim, but it was not actually his first time arguing with Victim. (R. 206). Applicant explained that the argument with Victim began because Victim was upset Applicant had a picture of his ex-girlfriend on his phone. (R. 180-81). Applicant also testified the argument continued sporadically throughout the day with Victim insulting Applicant. (R. 181-90). Applicant testified that Victim eventually started hitting him and he reacted by hitting



Victim in the face and strangling her to death. (R. 190-92). Applicant further stated that he did not mean to kill Victim. (R. 202). Applicant testified he did not strangle Victim for three to five minutes and it only took ten to fifteen seconds for Victim to urinate on herself. (R. 193; 208-09). Applicant confirmed he knew how to call police but chose not to after he killed Victim. (R. 207).

ALLEGATIONS

On August 17, 2020, Applicant commenced his PCR action, alleging:

1. Ineffective assistance of counsel
 - a. "My lawyer advised me to reject a pretrial plea. My lawyer said he felt I would be going home, not plea. My lack to understand English as well, bad advice. Cause of my Mexico/Latin heritage birthright."
 - b. "My lawyer failed to investigate the case."
 - c. "My lawyer failed to request jury instructions at trial."

On November 14, 2023, Applicant filed an amendment to his application alleging the following grounds for relief:

1. Ineffective assistance of counsel: "Counsel was constitutionally ineffective for..."
 - a. "forcing [Applicant] into proceeding to trial when he wanted to plead."
 - b. "telling [Applicant] that if he proceeded to trial he would receive less than twenty years' imprisonment."
 - c. "coercing [Applicant] into testifying at trial."
 - d. "failing to discuss trial strategy with [Applicant]."
 - e. "failing to procure a competent translator for attorney-client meetings prior to trial so [Applicant] was fully informed and aware of everything going on in his case."
 - f. "failure to object to the State's lines of questioning concerning [Applicant's] Nazi tattoo."
 - g. "for failure to object to the State's lines of questioning concerning the appearance of defensive wounds on [Applicant]."
 - h. "making the trial strategy centered around the concession that Applicant killed the deceased and raising this issue in closing."
 - i. "failure to adequately respond to the State arguing that [Applicant] lacked remorse by highlighting cultural differences between the United States and Mexico"



- regarding men showing emotion.”
- j. “misadvising [Applicant] that if he went to trial he would receive less than twenty years’ imprisonment and if he received that amount of time he could get deported before serving out his sentence.”

At the hearing, Applicant proceeded only on the allegations in his amended application.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying conviction; Applicant’s records from the South Carolina Department of Corrections; Applicant’s record on appeal; and the record of Applicant’s current PCR action. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. Further, after a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court’s findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance by its “reasonableness under



prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Counsel Forced Applicant to go to Trial/Wanted to Plea

As an initial matter, Applicant contends he was forced by Counsel to proceed to trial when Applicant wanted to plead guilty. This Court finds Applicant has failed to show Counsel was ineffective in this regard.

A defendant has the right to effective assistance of counsel during the plea bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)); Lafler v. Cooper, 566 U.S. 156, 162 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Misadvising a defendant such that he rejects a plea offer and instead proceeds to trial may constitute deficient performance. See, e.g. Lafler, 566 U.S. at 161 (counsel misadvised defendant “that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist.”); Lee v. United States, ___ U.S. ___, 137 S.Ct. 1958 (2017) (counsel misadvised a noncitizen defendant that he would not be deported as a consequence of his guilty plea).

To show prejudice from the improvident rejection of a plea offer based upon the misadvice of counsel, an applicant must show (1) that but for the ineffective advice there is a reasonable

probability the plea offer would have been presented to the court, (2) that the court would have accepted its terms, and (3) that the conviction, sentence, or both would have been less severe under the terms of the plea than was in fact imposed. Lafler, 566 U.S. at 164.

Applicant testified at the evidentiary hearing that he was offered a plea deal for thirty years, but Counsel told him not to take the deal. Counsel testified he did not recall a plea deal being offered and expressed that he wanted a plea deal because of Applicant's confession to killing Victim. Initially, this Court finds **not credible** Applicant's testimony that counsel told him not to take the deal. Despite Counsel's inability to remember a negotiated plea offer, Counsel's actions during trial, as demonstrated by the record, and his testimony at the evidentiary hearing show he acted reasonably under prevailing professional norms. This Court finds **credible** Counsel's testimony. Counsel credibly and repeatedly testified he would have loved a plea offer due to the State's evidence, which refutes Applicant's testimony that Counsel told him not to accept the offer.³ Thus, this Court finds Counsel's performance was reasonable in light of the circumstances, and he performed in accordance with professional standards.

Further, this Court finds Applicant has failed to establish prejudice. Based on the record on appeal, the solicitor made a plea offer that was rejected. (R. 258). This Court finds **credible** Counsel's testimony that he did not want Applicant to proceed to trial. Counsel credibly testified that he would have attempted to negotiate a plea deal if Applicant had expressed to him that Applicant wanted a plea deal. Given the evidence against Applicant and Counsel's testimony that

³ The Record on Appeal shows that the solicitor made a statement during the sentencing portion of trial that Applicant was offered a thirty-year plea deal for voluntary manslaughter, and this offer was rejected. (R. 258). However, other than this statement during the sentencing portion of Applicant's trial, Applicant has failed to put forth any other evidence of a plea offer other than Applicant's testimony at the PCR hearing. Counsel testified that if he had been offered a plea deal, he would have advised Applicant to take it. This Court gives weight to Counsel's credibility given his extensive experience in criminal practice as an attorney, and his testimony that he spoke to Applicant about Applicant's rights before trial. Because this Court finds credible Counsel's testimony, even if an offer was made, it would not be determinative in showing that Applicant was forced to proceed to trial.

he did not want Applicant to proceed to trial, this Court finds **not credible** Applicant's testimony that Counsel rejected a plea offer on Applicant's behalf. Thus, this Court finds that Applicant was not coerced and exercised his right to proceed to trial. Therefore, this Court finds Applicant has failed to show prejudice in this regard.

Counsel Told Applicant he Would Receive Less than Twenty Years if he Went to Trial

Applicant also contends Counsel told him that he would receive less than twenty years if he proceeded to trial. Applicant contends he proceeded to trial under this advice. This Court finds Applicant has failed to show Counsel was ineffective in this regard. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

This Court finds **credible** Counsel's testimony that he never informed Applicant he would receive less than twenty years imprisonment if Applicant proceeded to trial. Likewise, this Court finds **not credible** Applicant's testimony that Counsel told him he would receive less than twenty years if he proceeded to trial. Counsel credibly testified that he informed Applicant he would be facing a minimum of thirty years imprisonment for murder if he was found guilty. Additionally, Counsel requested that the court impose the minimum sentence of thirty years for murder after Applicant had been found guilty. (R. 257). Thus, this Court finds Applicant has failed to show deficiency or prejudice, and this claim is denied.

Applicant was Coerced into Testifying at Trial

Applicant further contends Counsel coerced him into testifying at trial. Applicant contends he did not want to testify on his own behalf, but Counsel told him that was the only way he would get twenty years or less. This Court finds Applicant has failed to show Counsel was ineffective in this regard. "No person ... shall be compelled in any criminal case to be a witness against himself."

U.S. Const. Amend. V. "Every criminal defendant is privileged to testify in his own defense, or to refuse to do so." Rock v. Arkansas, 483 U.S. 44, 53, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (quoting Harris v. New York, 401 U.S. 222, 230, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971)). "The choice of whether to testify in one's own defense ... is an exercise of [] constitutional privilege." Id. A defendant must be aware of the consequences of testifying or not testifying on their own behalf at trial. Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000).

This Court finds **credible** Counsel's testimony that it was Applicant's decision to testify at trial. Counsel credibly testified that he did not promise Applicant he would be sentenced to less than twenty years if he testified at trial. Additionally, Counsel credibly testified he never forced Applicant to testify, and in fact, did not want Applicant to testify at trial. Counsel explained that he believes his clients can fall into traps from the State and does not like any of his clients testifying at trial. Further, Counsel credibly stated that he informs all his clients about their rights to testify or not testify, and the consequences associated with testifying (or not). Counsel also credibly stated that he always suggests to his clients what they should do, but the decision to testify is ultimately that of the client. Finally, at trial, the trial judge entered a colloquy with Applicant before he took the stand and explained Applicant's rights associated with testifying at trial. (R. 176-78). After the colloquy, Applicant chose to testify. (R. 178). Ultimately, it was Applicant's decision to testify. Accordingly, this Court finds Applicant has failed to show Counsel was deficient in this regard.

Likewise, Applicant has failed to show prejudice. Based on the record on appeal, Applicant decided to testify after participating in the judge's colloquy regarding Applicant's right to decide whether to testify. (ROA pp. 176-78). Counsel credibly testified, and the record reflects, that Applicant made the decision to testify at trial. This Court finds **not credible** Applicant's testimony that testifying at trial was the last thing Applicant wanted. Therefore, this Court finds Applicant



has failed to show prejudice in this regard.

Failure to Discuss Trial Strategy

Applicant also contends Counsel was ineffective for failing to discuss trial strategy with him. This Court finds Applicant has failed to show Counsel was ineffective in this regard. This Court finds **credible** Counsel's testimony that he met with Applicant on multiple occasions and discussed Applicant's defense with him. Counsel admitted he wished he could have met with Applicant more but needed to have a translator at each meeting to communicate with Applicant. Counsel testified he could only get translators from Beaufort County. Counsel credibly testified that he met with Applicant at least two or three times before trial. Counsel credibly explained that a translator was always present during the meetings, and Counsel never felt that Applicant did not understand what was going on. Therefore, this Court finds Counsel's performance was not deficient because it was reasonable under prevailing professional norms. Likewise, without more, this Court finds Applicant has failed to show prejudice.

Failure to Procure a Competent Translator for Attorney-Client Meetings

Applicant contends Counsel failed to procure a competent translator during attorney-client meetings. Applicant further contends that because of the translator's inability to effectively communicate, Applicant was confused and unable to be aware of everything going on with his case. This Court finds Applicant has failed to show Counsel was ineffective in this regard. This Court finds **credible** Counsel's testimony that he did not have any concerns about whether Applicant understood him. This Court further finds **not credible** Applicant's testimony that he could not understand the translator used during meetings with Counsel. Counsel credibly testified he used a court-certified Spanish translator during his meetings with Applicant. Moreover, Counsel credibly testified that he had extensive experience representing criminal defendants and could tell



when his clients did *not* understand. Counsel credibly testified that he did not believe there appeared to be any language barrier problems. Therefore, this Court finds that Applicant has failed to show Counsel was ineffective in this regard.

Failure to Object to the State's Questioning About Applicant's Nazi Tattoo

Applicant contends Counsel failed to object to the State's line of questioning regarding his Nazi tattoo.⁴ This Court finds Applicant has failed to show Counsel was ineffective in this regard. Failing to object does not automatically constitute ineffective assistance of counsel. See Millidge v. State, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018). (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); see also id. at 380. ("[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court's finding... if so, an appellate court would necessarily have affirmed the trial court's [ruling]....").

Applicant testified that he wished Counsel had objected in trial or asked Applicant during trial how he got the tattoo. Applicant testified he got the tattoo when he was ten years old in Mexico and did not know what the tattoo meant. He further testified that he got a black widow tattoo to cover up the Nazi symbol once he realized what the Nazi symbol meant.

Counsel testified that he did not object because he felt it would be favorable testimony that Applicant's tattoo was now covered up by another tattoo. Counsel stated he felt that it was better that the tattoo was covered up so that others could not see the Nazi symbol. Counsel explained that he felt Applicant's actions of covering up the Nazi tattoo with another tattoo showed that Applicant had changed. This Court finds **credible** Counsel's foregoing testimony. Further, this Court finds Counsel's performance was reasonable under prevailing professional norms. Likewise, without

⁴ At trial, Officer Crosby testified that Applicant told him his "[black widow] tattoo was to cover up a Swastika or the Nazi symbol that he had in the web of his hand." (R. 161).

more, this Court finds Applicant has failed to establish prejudice.

Failure to Object to the State's Questioning About Applicant's Defensive Wounds

Applicant contends Counsel was ineffective for failing to object to testimony relating to Applicant's defensive wounds. This Court finds Applicant did not prove this claim.

At the PCR hearing, Counsel testified he did not see a basis for objecting. He further testified he believed testimony regarding defensive wounds would be helpful in showing Victim attacked Applicant. Counsel explained he was limited by the State's evidence and Applicant's confession, and he tried to secure the best outcome for Applicant by arguing voluntary manslaughter at trial. Counsel testified that any defensive wounds would have helped to show that the malice element was missing for the murder charge. Based on the foregoing testimony, which this Court finds credible, counsel articulated a valid strategic reason for not objecting to questions regarding Applicant's defensive wounds and was not deficient. Further, based on Applicant's trial testimony that Victim "would very easily get angry and be very explosive" and would occasionally squeeze Applicant's arms and shove him when she got upset, and Victim had pushed and hit him the night he killed her, it is not reasonably likely the outcome would have been different had counsel objected to testimony about defensive wounds on Applicant's arms. (R. 188, 201). In fact, the defensive wounds *corroborated* Applicant's testimony, making it more likely the jury would have believed his story. Thus, Applicant did not prove prejudice, and this claim is denied.

Counsel Centered the Trial Strategy Around Concession that Applicant Killed Victim

Applicant contends Counsel was ineffective by centering the trial strategy around the concession that Applicant killed Victim. "Courts must be wary of second-guessing counsel's trial tactics." Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). When counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found

ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). If counsel articulates a valid strategy, “it is measured under an objective standard of reasonableness.” Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690). “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.” Weldon v. State, 436 S.C. 69, 81, 870 S.E.2d 183, 189 (Ct. App. 2021) (quoting Strickland, 466 U.S. at 689).

This Court finds **credible** Counsel’s testimony that the only valid strategy he could come up with was centered around arguing against the malice element of murder. Counsel testified self-defense was ruled out by Applicant’s confessions to multiple people, including law enforcement. Although Counsel attempted to suppress Applicant’s confession, the court determined it was admissible. (R. 28). Despite Applicant’s confession being admissible, Counsel attempted to discredit Officer Nieves’s translation of Applicant’s confession on cross-examination that the Spanish dialect spoken between Officer Nieves and Applicant was different. (R. 147-48). Due to this evidence, which limited Counsel’s strategy, this Court finds Counsel articulated a valid trial strategy and was not deficient. Further, because the confession was going to be admitted, Applicant cannot demonstrate prejudice from counsel’s decision to use it as part of his strategy.

Failure to Respond to the State’s Argument that Applicant Lacked Remorse

Applicant contends Counsel was ineffective for not highlighting Applicant’s remorse for killing Victim at trial. Applicant contends Counsel should have highlighted the cultural differences between men in Mexico and the United States in how they express emotion. Applicant testified

that men do not cry in the Mexican culture he was raised in, and Applicant knew what he did was wrong and was remorseful for it. Applicant further testified that Counsel's failure to highlight the cultural differences with expressing remorse would have changed his sentence.

This Court finds **credible** Counsel's testimony that he believed he countered the State's argument that Applicant lacked remorse. Counsel elicited testimony from Officer Crosby that Applicant wanted to kill himself after he killed Victim. (R. 160-61). Counsel noted in closing argument that Applicant's emotions expressed during the videotaped interview at the Sheriff's Office was that of "a man who has resigned himself to his fate. He knows what he did." (R. 230). Finally, at sentencing, Counsel explained Applicant was not showing more emotion because "he has totally accepted whatever fate [the court] is willing to bestow" and that "he accepts his fate." (R. 261). Therefore, this Court finds Counsel was not deficient for failing to highlight the Applicant's cultural differences in expressing remorse. Likewise, this court finds it is not reasonably likely such evidence would have been admissible or the outcome would have been different without such evidence. Thus, Applicant failed to show prejudice.

Counsel Misadvised Applicant he Could be Deported Before Serving a his Sentence

Finally, Applicant contends he was misadvised by Counsel that if he went to trial and received less than twenty years at sentencing, he could be deported before serving out his entire sentence. This Court finds **not credible** Applicant's testimony that Counsel's wrongful advice influenced his decision to go to trial. This Court finds **credible** Counsel's testimony that he never told Applicant he would receive less than twenty years imprisonment. Counsel credibly testified he informed Applicant that Applicant would get at least thirty years if sentenced for murder and would be deported after serving whatever sentence the court imposed. Further, Counsel requested that the court impose the minimum sentence of thirty years for murder after Applicant had been



found guilty and informed the court that Applicant would be deported after serving whatever sentence the court imposed. (R. 257). Thus, this Court finds Applicant has failed to show Counsel misadvised him about the sentence would receive and that Applicant could be deported before serving his sentence. Therefore, this Court finds Applicant has failed to show Counsel was deficient in this regard. Further, Applicant has failed to meet his burden of establishing prejudice.

CONCLUSION

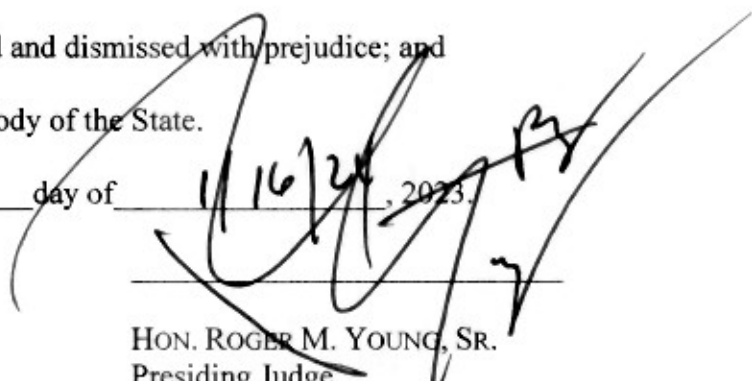
Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

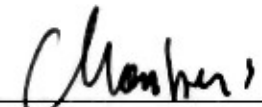
Should Applicant wish to appeal, he must serve and file a notice of appeal within thirty days to secure appellate review. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of denial of PCR. Rule 71.1 (g). SCRCP provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to custody of the State.

AND IT IS SO ORDERED this _____ day of _____, 2023.


 HON. ROGER M. YOUNG, SR.
 Presiding Judge
 Fourteenth Judicial Circuit


 _____, South Carolina.

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WITNESSES

Jeff Crosby--JCSO

DOCKET NO. 2016GS2700440

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

January Term 2017

THE STATE

vs.

Samuel Olalde Gonzalez

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A2710200348

TRUE BILL ✓

NO BILL

FOREMAN

Foreperson of Grand Jury

Date:

VERDICT

At Guilty

Defendant

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

)
)
)

INDICTMENT

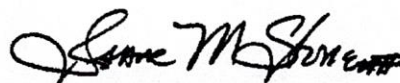
2016GS2700440

At a Court of General Sessions, convened on January 26, 2017, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about August 8, 2016, the Defendant, Samuel Olalde Gonzalez, did, with malice aforethought, kill Marycruz Sotelo Casillas and Marycruz Sotelo Casillas did die as a proximate result of Samuel Olalde Gonzalez's actions, to wit: the defendant strangled the victim to death, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Jasper

STATE

Samuel VS. Gonzalez

INDICTMENT/CASE#: 2016-GS-27-0440

AW#: 2016A2710200348

Date of Offense: 8/21/2016

S.C. Code §: 16-3-18

CDR Code #: 0116

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS
(CSC w/minor 1st or Lewd Act)☐ §17-25-45

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury.

(def.'s initials)

The pleas:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence.☐ Recommendation by the State.

ATTORNEY:

72934

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 37 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	0
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 0
\$56-5-2995 (DUI Assessment)	\$12	\$ 0
\$56-1-286 (DUI Breath Test)	\$25	\$ 0
Proviso 61.6 (Public Def/Probation)	\$500	\$ 0
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25
\$14-1-213 (Drug Court Surcharge)	\$150	\$ 0
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ 0
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 0
3% to County (if paid in installments)	\$	0

TOTAL

\$ 125.00

Clerk of Court/Deputy Clerk

Court Reporter:

MARGA BOSHICK
MONA MONLEYRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date

2159
April 25, 2018