

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROMANE CLARE,

APPELLANT

APPELLATE CASE NO 2023-000230

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF CHARLESTON

4 State of South Carolina,

5 vs. Transcript of Record
6 2019A1010205164,
7 2019A1010205165

8 Romane Clare,

9 Defendant.

10 August 30, 2022
11 Charleston, South Carolina

12 B E F O R E:

13 The HONORABLE BENJAMIN H. CULBERTSON

14 A P P E A R A N C E S:

15 Jessica Baldwin, Solicitor

16 Stephen Bowden, Representing the defendant

17

18

19
20 SHARON G. HARDOON, CSR
21 Official Circuit Court Reporter, III

22

23

24

25

1 THE BAILIFF: All rise.

2 THE COURT: I understand -- before we get
3 started, there was -- the bailiff came and --
4 yesterday -- I don't mind whoever comes into the
5 courtroom as long as there's enough room for the
6 participants. The bailiff has told me that they
7 don't allow that here in Charleston.

8 Is there anybody out there that wants to
9 come in that is unable to come in from either the
10 State or the defense or just the general public?
11 The courtrooms are open to the public. I didn't
12 know if anybody was outside wanting to come in.

13 MS. BALDWIN: Your Honor, there are some
14 additional family members on the State side that
15 would like to come in. I was told by courtroom
16 security, however, that that's not acceptable.

17 THE COURT: Well, and I just want it on
18 the record that that is not the Court's decision,
19 not the State's decision. That's a Charleston
20 County decision by the bailiff, the clerk of the
21 court, or whoever the powers that be down here.

22 Courtrooms are supposed to be open to the
23 public for anybody to come in. But if
24 arrangements haven't been made for that, then
25 that's -- I don't want to put anybody in danger.

1 By the same token, the Constitution says
2 courtrooms are open. So that's something
3 Charleston's going to have to deal with in the
4 future.

5 MS. BALDWIN: Thank you.

6 THE COURT: All right. This is the
7 State of South Carolina vs. Romane Clare. The
8 matter is before the Court on a defendant's motion
9 for immunity from prosecution pursuant to the
10 State Persons and Property Protection Act. This
11 is regarding Indictments 2021-GS-10-00417,
12 2021-GS-10-00418, charging the defendant with
13 murder and possession of a weapon during the
14 commission of a violent crime.

15 Now, I've been given a list of
16 stipulations. These are stipulated facts between
17 the State and the defendant; is that correct?

18 MS. BALDWIN: Facts and exhibits, Your
19 Honor. We may not be introducing -- the State may
20 not be introducing all of those exhibits. I'm not
21 sure if the defense will be introducing all of
22 them. It's dependent upon what the defendant
23 says.

24 THE COURT: Okay. But these are
25 stipulations between the State and defendant?

1 MS. BALDWIN: Yes, sir.

2 THE COURT: All right. Let's go ahead.

3 The stipulations have been reduced to writing. I
4 put them in as Court's Exhibit 1.

5 (Court's Exhibit 1, Stipulations, was marked
6 and entered into evidence.)

7 THE COURT: Let me go ahead and put this on
8 the record.

9 Attorneys for the State and defendant agree
10 to the following admissions for purposes of
11 defendant's motion for immunity from criminal
12 prosecution under SC Code Section 16-11-410 and
13 sequel.

14 Defendant Romane Clare shot Ebony Clare
15 on September 26, 2019 at [REDACTED] Whitney Drive,
16 North Charleston, Charleston County, and that she
17 did die as a result of that shooting.

18 At the time of the incident, Ebony
19 Clare's phone number was [REDACTED]. At the
20 time of the incident, Romane Clare's phone number
21 was [REDACTED] - -- excuse me -- [REDACTED].

22 The cell phone call records from each of
23 those phone numbers, as well as the cell phone
24 mapping data --

25 I guess that's an exhibit you want to put in?

1 MS. BALDWIN: Yes. They're all admitted,
2 Your Honor --

3 THE COURT: Cellebrite cell phone mapping
4 results from Ebony Clare's phone number subject to
5 any hearsay objection by the defense regarding the
6 text messages; the 911 call placed by Ebony Clare
7 on September 26, 2019 as to its authenticity and
8 the foundation; the bank records from defendant's
9 account at Latitude 32 Credit Union, Account No.
10 [REDACTED]; all body-worn camera recordings from
11 officers who responded to [REDACTED] Whitney Drive,
12 North Charleston September 26, 2019, subject to
13 any hearsay objections by the defense regarding
14 the statements by those officers; the body-worn
15 camera recording regarding this case from
16 Officer Horst with the Fort Lauderdale Police
17 Department; all crime scene photos and/or
18 diagrams; all photos taken by Deputy Coroner
19 Shane Bowers of Ebony Clare at the emergency
20 department of MUSC; all autopsy photos; the proper
21 chains of custody were followed regarding all
22 evidence collected regarding this case and no
23 items of evidence were tampered with; the report
24 from SLED Forensic Scientist Chad M. Smith dated
25 December 9, 2021; the reports from SLED Forensic

1 Scientist Sarah G. Goodman dated September 11,
2 2020, January 23rd, 2022, and August 13, 2022; the
3 autopsy final report and toxicology report.

4 All right. These are the State's
5 stipulations?

6 MS. BALDWIN: Yes, sir.

7 THE COURT: And the defendant's stipulations?

8 MR. BOWDEN: That's correct, Your Honor.

9 THE COURT: All right. Ms. Baldwin, anything
10 from the State before we get started?

11 MS. BALDWIN: Just briefly, Your Honor.
12 There is a point of contention between the State
13 and the defense regarding some prior convictions
14 of the defendant, and I would like to cross him on
15 them after he -- when he testifies.

16 He has a 2016 conviction for assault and
17 battery second degree and unlawful carrying of a
18 pistol. This stems out of a 2014 incident where
19 he did shoot the victim in this case in the leg.

20 THE COURT: Okay.

21 MS. BALDWIN: He pleaded guilty to
22 those.

23 THE COURT: Well, this is a non-jury
24 proceeding. If the defendant takes the stand,
25 then he waives any right against

1 self-incrimination, and I think that can be
2 brought up. I'll hear from you, Mr. Baldwin
3 [sic].

4 MR. BOWDEN: Thank you, Your Honor. It's
5 Bowden, but...

6 THE COURT: Oh, I'm sorry.

7 MS. BALDWIN: They're similar.

8 MR. BOWDEN: So I understand this is not
9 a jury proceeding, so the rules around convictions
10 are a bit different. But I think some principles
11 still apply, and the case law consistently
12 recognizes that this is some of the most
13 prejudicial evidence there is because of the issue
14 of -- the propensity issue.

15 And so my concern about crossing him on
16 evidence that may not ultimately be admissible at
17 trial is what comes out of that testimony that may
18 then be used at trial to sort of circumvent
19 whatever ruling comes about then.

20 THE COURT: I understand your concern,
21 but I still think that is a risk when you pursue a
22 motion of this sort.

23 Anything else you want to put on the
24 record?

25 MR. BOWDEN: No.

1 THE COURT: I'm going to overrule any
2 objection. I will allow them to cross-examine
3 him. That doesn't mean now that it is admissible
4 at trial.

5 MS. BALDWIN: I understand.

6 THE COURT: And it doesn't mean that any
7 of the testimony that he gives is admissible at
8 trial should this progress to a trial. But for
9 purposes of this motion hearing, I'm going to
10 allow it. All right?

11 MS. BALDWIN: Yes, Your Honor.

12 THE COURT: Anything further from the
13 State before we get started?

14 MS. BALDWIN: Not at this time.

15 THE COURT: Mr. Bowden, anything from the
16 defense before we get started?

17 MR. BOWDEN: Just I'm going to go maybe
18 slightly out of what might be a conventional
19 order. Without the benefit of an opening
20 statement, it might be just beneficial for you to
21 know that the victim's name in this case is
22 Ebony Myers. You know, we'll get into what
23 Mr. Clare has to say about that. But I'm not
24 calling him first, so I just kind of wanted you to
25 understand what we were talking about.

1 THE COURT: The victim's name is what?

2 MR. BOWDEN: Excuse me. Ebony Clare,
3 Your Honor.

4 MS. BALDWIN: Ebony Clare, Your Honor.

5 MR. BOWDEN: I apologize.

6 THE COURT: All right. You can call your
7 first witness.

8 MR. BOWDEN: Thank you, Your Honor.

9 The defense calls Nedra Myers.

10 Your Honor, do you have a preference if
11 when I have things to mark, we do Court's exhibit
12 or defense exhibit?

13 THE COURT: I don't understand what you
14 mean.

15 MR. BOWDEN: When I have things marked to
16 show a witness and I go get it marked by the court
17 reporter, should I have it marked for -- as
18 Court's Exhibit 1 or Defense Exhibit 1?

19 THE COURT: No, no. The stipulations
20 will be a Court exhibit. Anything you present
21 will be a defense exhibit. Anything the State
22 presents will be a State's exhibit.

23 THE CLERK: Do you swear or affirm the
24 testimony that you will give in court today is the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: You may have a seat.

4 Please state your name for the record and
5 spell your last name.

6 THE WITNESS: Nedra Myers, last name
7 M-y-e-r-s.

8 THE COURT: I apologize, ma'am. Your
9 first name?

10 THE WITNESS: Nedra. Nedra.

11 THE COURT: Can you spell that as well?

12 THE WITNESS: N-e-d-r-a.

13 THE COURT: All right. Thank you,
14 Ms. Myers.

15 WHEREUPON:

16 NEDRA MYERS,
17 after having been sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BOWDEN:

20 Q Ms. Myers, thank you for being here today. I
21 understand this is going to be -- or may be difficult
22 for you. If you ever need me to stop and give you a
23 second, just let me know, okay?

24 All right. I want to start by talking
25 about a diary that the State produced in this

1 case.

2 MR. BOWDEN: I want to mark that as
3 Defense Exhibit 1.

4 (DFT EXH. 1, Diary, was marked for
5 identification.)

6 MR. BOWDEN: Permission to approach the
7 witness, Your Honor?

8 THE COURT: Yes.

9 BY MR. BOWDEN:

10 Q Ms. Myers, I want to show you what I have marked
11 as Defense Exhibit 1. You can hold on to it.

12 Do you recognize that document?

13 A Huh-uh, I don't recall that. I think I saw
14 it -- I think I saw it. I don't know. I don't
15 remember.

16 Q Did you --

17 A At some time. I'm not sure.

18 Q Did you send that document to the Solicitor's
19 Office?

20 A I think I did. I'm not sure. Yeah, I think
21 I did. I think I did.

22 Q Okay. Where did you find those pages?

23 A My daughter gave it to me.

24 Q Your daughter gave it to you when she was alive?

25 A My other daughter gave it to me.

1 Q Oh, I apologize.

2 A It was in the house, I believe. I'm not
3 sure.

4 Q Do you know where those pages were found?

5 A In her house.

6 Q This document starts on Page 3.
7 Do you know where the first two pages are?

8 A What did you say?

9 Q This document starts on Page 3. There's a 3 at
10 the top.

11 A Oh. No.

12 Q You do not know where the first two pages are?

13 A No.

14 Q Do you know when that document was written?

15 A No.

16 Q Do you recognize the handwriting on that page?

17 A Yes. That's my daughter's handwriting.
18 That's Ebony's handwriting.

19 Q Your daughter Ebony Clare?

20 A Yes, sir.

21 Q Do you know where the rest of the diary is?

22 A No, sir.

23 Q Have you made the Solicitor's Office or police
24 aware of any other items that were taken from the
25 house?

1 A Yeah, they came. Any other items? I don't
2 understand.

3 Q So did someone go collect Ebony's personal items
4 from the house?

5 A Not that I know of.

6 Q This document came from the house.

7 A Yes.

8 Q And the police didn't gather it.

9 A Not that I'm aware of. I just, you know --
10 it was just there.

11 Q Someone else gathered it.

12 A I guess. I'm not sure. It was there so
13 yeah, I guess.

14 Q And is that person, Sheena Myers, your other
15 daughter?

16 A Yes.

17 Q Did you read that passage before you sent it to
18 the Solicitor's Office?

19 A I read -- I think I read some of it. I don't
20 remember what I read, but I think I went over
21 it.

22 Q Do you recall anything from that document?

23 A That she was in a lot of hurt and --

24 MS. BALDWIN: Your Honor, I'm going to
25 object as to hearsay.

1 THE COURT: I mean, if that's in the
2 document, it hasn't been introduced into evidence
3 yet, so I sustain the objection.

4 MR. BOWDEN: Your Honor, at this time, I
5 request to move this item of evidence -- or
6 this -- Defense Exhibit 1 into evidence.

7 THE COURT: All right. Any objection?

8 MS. BALDWIN: Yes, Your Honor. It's all
9 hearsay.

10 MR. BOWDEN: It's a then-existing mental,
11 physical, emotional condition. I've got a copy,
12 if you'd like. And it essentially -- it's the
13 writings of the victim in this case, Ebony
14 Clare's --

15 THE COURT: Well, I mean, you have -- I
16 don't think you've authenticated it enough yet.
17 I'm going to sustain objection, but I'm going to
18 allow you to question her more to see if you can't
19 authenticate it a little bit more. All right?

20 MR. BOWDEN: Okay.

21 BY MR. BOWDEN:

22 Q So, Ms. Myers, you testified that you recognize
23 this handwriting.

24 A Yes.

25 Q And it's Ebony Myers's -- or it's Ebony Clare's

1 handwriting.

2 A It looks like her handwriting, yeah.

3 Q And you know that handwriting from having raised
4 her.

5 A Yes.

6 Q And you took a copy of that document and sent it
7 to the Solicitor's Office?

8 A Yes.

9 Q Did you alter it at all?

10 A Did I what?

11 Q Did you alter it at all?

12 A Oh, no. No.

13 Q You sent it to the Solicitor's Office as you
14 received it --

15 A Yes, sir.

16 Q -- having recognized it as a document from
17 Ms. Clare.

18 A (Witness nods head up and down.)

19 MR. BOWDEN: Your Honor, I'd request to
20 move this into evidence, Defense Exhibit 1?

21 THE COURT: All right. Any further
22 objection?

23 MS. BALDWIN: Not more than my previous
24 objection, Your Honor.

25 THE COURT: All right. Defendant's

1 Exhibit 1 admitted into evidence over State's
2 objection.

3 (DFT EXH. 1, Diary, was entered into
4 evidence.)

5 MR. BOWDEN: Thank you.

6 BY MR. BOWDEN:

7 Q Ms. Myers, I believe you were saying that from
8 your recollection of reading this, it describes some
9 struggles that Ms. Clare was going through.

10 A Yeah, she'd been hurting. Her husband was
11 hurting her. He wanted to -- yeah, some struggles
12 she was going through.

13 Q It says -- I'm sorry. You're testifying that this
14 document says that her husband was hurting her?

15 A I'm just reading some of this now.

16 Q Sure. Take your time.

17 A He wanted children and she didn't have
18 children. He -- he -- I don't know.

19 Q So when you say hurt, you certainly didn't mean
20 hurt in a physical sense.

21 A Hurting her, I guess, in every sense.
22 Hurting her.

23 Q Were you aware of Ebony's struggles with mental
24 health prior to reading this document?

25 A No, not mental health.

1 Q Were you aware of Ebony's struggles with drug
2 addiction prior to reading this document?

3 A I'm not aware of the drug addiction. Some
4 alcohol, but not with drugs. I've never seen
5 Ebony use drugs.

6 Q Okay. I want to, kind of, drill down a little bit
7 on that. You said you never saw Ms. Clare use drugs.

8 Had you ever been aware in the past that she
9 had any problem with drugs?

10 A I don't recall Ebony having problems with
11 drugs. Alcohol, but not drugs. I don't recall.

12 Q Did she ever ask you for advice about how to deal
13 with her mental health?

14 A I don't recall. I don't recall. I can't
15 recall Ebony asking me.

16 Q Do you recall reporting Ebony missing in June of
17 2018?

18 A June 2018? I don't recall, sir. I -- June
19 2018. It seemed like there was one time. I don't
20 know when it was. Maybe it was. I don't
21 recall.

22 Q Okay. Do you recall calling the police with
23 Mr. Clare and speaking to a police officer about her
24 being missing?

25 A Oh, I think maybe -- I think maybe I did.

1 Okay. Yeah, we did call the police.

2 Q Okay. I understand you're having trouble
3 remembering that. It's certainly not like it was
4 yesterday.

5 But if an officer wrote in his report that
6 you told him that you had suggested that Ebony go to
7 MUSC the day before, would you disagree with that?

8 A I don't remember that, sir. I don't remember
9 her going to MUSC.

10 Q But if it's in his report, would you have any
11 reason to say he did not say that?

12 A I don't recall me saying that at all.

13 Q Understood. Just one last question.

14 Do you ever recall Ebony getting treatment
15 for drug addiction?

16 A Some years ago, like -- I don't believe it
17 was drugs. I believe it was alcohol.

18 Q Substance abuse.

19 Sometime in the past, she received treatment
20 for substance abuse?

21 A (Witness nods head up and down.)

22 MR. BOWDEN: I don't have any further
23 questions. Thank you, Your Honor.

24 THE COURT: Before we go further, I have
25 to let you-all know, I will allow direct

1 examination, cross-examination, redirect only as
2 to matters addressed on cross that were not
3 addressed on direct. I don't allow recross, okay?

4 MS. BALDWIN: Thank you, Your Honor.

5 THE COURT: All right.

6 Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. BALDWIN:

9 Q Good morning, Ms. Myers.

10 A Good morning.

11 Q I just wanted to ask you, were you traumatized by
12 this incident?

13 A Still traumatized.

14 Q You have a hard time talking about anything
15 related to Ebony now, don't you?

16 A Yeah.

17 Q You have a hard time remembering things.

18 A I do.

19 Q In fact, in our conversations, you've had to write
20 down notes so you'd remember what I was telling you
21 about scheduling; isn't that right?

22 A Yes, ma'am.

23 Q Because you loved Ebony, right?

24 A I miss her every day.

25 Q She was --

1 A She was my firstborn. Ebony was everything
2 to me. She kissed me all the time. I don't get
3 to kiss her no more. I don't get to hug her no
4 more. I want my daughter back. He didn't have to
5 kill my daughter. He didn't have to kill my
6 daughter.

7 MR. BOWDEN: Objection, Your Honor;
8 speculation.

9 THE COURT: Overruled.

10 BY MS. BALDWIN:

11 Q And Ebony was the life of the party, wasn't she?

12 A Yeah. Ebony was the life. She cared about
13 everybody, even him. She cared about everybody.
14 She would take me to my appointments. She would
15 stand by me in any situation. She was always the
16 life of the party for the family.

17 I'm sorry. I'm sorry.

18 Q It's okay. Do you have water up there? Do you
19 need me to get you something to drink?

20 A He didn't have to kill my child.

21 Q Okay.

22 A He didn't have to kill my child. I want my
23 child. He could have sent her back to me.

24 THE COURT: Ma'am, I'll need to just
25 answer the questions, okay? Just listen as the

1 State asks you a question and then answer that.

2 BY MS. BALDWIN:

3 Q Ms. Myers, I just have a few more for you, okay?

4 With that diary, or what the defense is
5 calling her diary pages, you don't know when those
6 pages were written, do you?

7 A No.

8 Q There was no information on those pages as to when
9 they were written?

10 A No.

11 Q Okay. You don't know if it was a diary or just
12 some sort of fantasy novel that was working on or just
13 something -- getting some thoughts out in a moment.

14 A I don't know. I don't know when they were
15 written. I don't know. I don't know.

16 MS. BALDWIN: Court's indulgence?

17 THE WITNESS: I don't know. I don't
18 know.

19 MS. BALDWIN: No further questions.

20 THE COURT: Redirect?

21 MR. BOWDEN: No, Your Honor.

22 THE COURT: All right, ma'am. You may
23 step down. Ma'am, you may step down.

24 All right. The defense can call your next
25 witness.

1 MR. BOWDEN: The defense calls
2 Romane Clare.

3 THE CLERK: Place your left hand on the
4 Bible and raise your right hand.

5 Do you solemnly swear or affirm to tell
6 the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE DEFENDANT: I affirm

9 THE CLERK: You may have a seat. Please
10 state your name for the record and spell your last
11 name.

12 THE DEFENDANT: Romane Clare, C-l-a-r-e.

13 THE COURT: Mr. Clare, before we get
14 started in your testimony, I have to go over
15 certain rights that you have. If you do not
16 understand anything I say, please let me know.
17 And if you want me to explain anything in more
18 detail, please let me know.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, even though this is a
22 motion hearing, you still have the right against
23 self-incrimination. What that means is anything
24 you say here today can be used against you should
25 this matter proceed to trial.

1 We've reached a stage in this motion
2 where you may testify if you want to. You have
3 the right to claim the protections given to you by
4 the Fifth Amendment to the Constitution of the
5 United States, which states in part that no person
6 shall be compelled in any criminal case to be a
7 witness against himself.

8 This means that you cannot be required to
9 testify in this motion hearing. You have the
10 right to testify on your own behalf. However, no
11 one can make you testify. This is a personal
12 right, and no one can waive this right except for
13 you.

14 If you decide to testify, then it will be
15 deemed as a waiver against your right against
16 self-incrimination, and you can be questioned on
17 any relevant issue. You will be subject to the
18 same rules that govern other witnesses. You can
19 be examined and cross-examined on any relevant
20 issue in this case.

21 If you have any convictions involving
22 dishonesty or false statement or for crimes
23 punishable by imprisonment for more than one year
24 and this Court determines that the probative value
25 of admitting this evidence outweighs its

1 prejudicial effect to you, then those questions
2 can be asked by the State.

3 If you decide to testify, this decision
4 on your part must be freely, voluntarily, and
5 intelligently made with the knowledge of the
6 protections given to you by the Fifth Amendment
7 and the consequences of your decision to testify.

8 Do you understand that?

9 THE DEFENDANT: For the most part. Most
10 of it.

11 THE COURT: Okay. Do you have any
12 questions you want to ask me? What you need to
13 know is, you have the right to testify. Nobody
14 can make you testify. Nobody can keep you from
15 testifying if you want to testify.

16 However, if you testify, then you waive
17 your right against self-incrimination and the
18 State and your attorney, and anyone participating
19 in this hearing, can question you on any relevant
20 issue, and you'll be required to answer the
21 question.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Now, do you
25 want -- do you need to talk to your lawyer?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. Let's do this: Let's
3 stand down, take about a five-minute break. Let
4 you-all go over everything. Because it's my
5 position -- I don't know if there's -- my
6 decision, it's just like if he testified at trial,
7 then he's waiving his right and he can be
8 questioned on any relevant issue. Okay?

9 Let's take a five-minute break. Let him
10 stand down to talk to his lawyer.

11 And then when we come back, what I'm
12 going to ask you, Mr. Clare, is if you want to
13 testify in this motion hearing. Okay?

14 THE DEFENDANT: Okay.

15 THE COURT: All right. Let's take a
16 five-minute break.

17 (A break was taken from 10:06 a.m. to 10:14 a.m.)

18 THE BAILIFF: All rise.

19 THE COURT: Thank you very much. Please be
20 seated.

21 All right. Mr. Clare, do you recall your
22 rights as I read them to you before we took a
23 break?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you had an ample

1 opportunity to discuss with your attorney your
2 decision to testify in this case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anybody else you
5 want to talk to regarding whether or not you
6 testify in this motion hearing?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you want to testify in
9 this motion hearing?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is this your decision?

12 THE DEFENDANT: My decision.

13 THE COURT: All right. Is this what you
14 want to do?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Bowden, anything further
17 you want on the record in that regard?

18 MR. BOWDEN: No, Your Honor.

19 THE COURT: Ms. Baldwin, anything further
20 you want on the record in that regard?

21 MS. BALDWIN: No, Your Honor.

22 THE COURT: All right. Mr. Bowden, you
23 may proceed with your questioning.

24 MR. BOWDEN: Thank you, Your Honor.

25 May it please the Court?

1 WHEREUPON:

2 ROMAN CLARE,

3 after having been sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BOWDEN:

6 Q Good morning, Romane. How are you?

7 A All right.

8 Q Mr. Clare, I want to start by talking a bit about
9 your background.

10 Where are you from?

11 A I was born originally in Jamaica.

12 Q What part?

13 A Hanover.

14 Q How would you describe growing up in Jamaica?

15 A It was rough growing up. I grew up dirt
16 poor.

17 Q I'm sorry. Can you speak up a little bit.

18 A It was rough growing up. I grew up in the
19 countryside, dirt poor.

20 Q Okay. Did you have a big family?

21 A Yes, sir.

22 Q How many brothers and sisters?

23 A I got five brothers, two sisters. One
24 died.

25 Q How much school did you complete?

1 A I completed the 9th grade, but I -- like, I
2 read at a 3rd grade level. Write less than
3 that.

4 Q So those things are difficult for you?

5 A Yes, sir.

6 Q Reading is a bit easier than writing?

7 A Correct.

8 Q When did you come to the United States?

9 A I come to the United States on January 3rd,
10 2007.

11 Q I sort of skipped over this, but how much
12 opportunity is there in Hanover?

13 A Not much. Mostly jobs is like in a factory
14 or a resort. Not a lot.

15 Q So how did it make you feel when you found out
16 that you would be able to come to the United States?

17 A I was excited. I was proud and I was happy
18 for the opportunity to come to America and go back
19 to school and, like, work to help take care of my
20 family.

21 Q How many people from Hanover are able to make it
22 to the United States?

23 A Not a lot. Probably -- probably eight
24 percent of a hundred.

25 Q So is getting a visa the opportunity of a

1 lifetime?

2 A Yes, sir.

3 Q What kind of work did you do when you got here?

4 A When I first come to America, I worked, like,
5 washed dishes, line cook, cooked in the
6 restaurant. I worked there for a good while. But
7 I've got to get some money.

8 Q So you started on the bottom.

9 A Correct.

10 Q What job are you doing most recently?

11 A I was running a concrete truck, heavy
12 equipment. I was working for Knight's
13 Construction.

14 Q Do you need a special license for that?

15 A CDL.

16 Q So is that a significantly better job than washing
17 dishes?

18 A Yes, sir.

19 Q Were you living the American dream?

20 A I thought I was.

21 Q And that job allowed you -- did that job allow you
22 to support your family?

23 A Correct. I sent money back to my family like
24 every two weeks. At home, I take care of them.

25 Q You were able to support family here as well.

1 A Yes, sir.

2 Q I want to turn to talking about your relationship
3 with Ebony.

4 How did you first meet her?

5 A I met Ebony in 2013. I was working in a
6 restaurant then. When I get to my complex, my
7 apartment, I saw a young lady was trying to change
8 a tire. And I went over and I helped her change
9 the tire.

10 At the time, I was just trying to have a
11 normal conversation with her, but she wasn't really
12 interested. So I changed the tire. Whenever I
13 finished, she told me thanks, and she go to her
14 apartment and I go to mine.

15 Q Do you know what I mean if I say "damsel in
16 distress"?

17 A I don't know quite what that means. "Damsel
18 in distress?"

19 Q I might be an American expression.

20 How did things progress from her not giving
21 you time of day after you helped her change her tire
22 until you ultimately started dating?

23 A That was 2013. We lived in the complex for a
24 while. I always -- like sometimes I saw her on
25 the top of the balcony, because she lived on the

1 top floor of one of the apartment buildings and I
2 lived on the bottom floor of another.

3 And sometimes I tried to talk to her, but she
4 just give me casual conversation. I decided that I'm
5 going to get a new apartment. And the day when I was
6 moving out, I had a U-Haul packing the stuff from the
7 apartment. People was going over -- like, to look
8 over the room. And when I was leaving, I saw her. I
9 tell her, "You didn't give me no -- pay me no mind, so
10 I'm leaving. I'm leaving."

11 She said, "Oh, you're leaving for real?"

12 I'm like, "Yes."

13 And she told me I could get her number. And
14 she gave me her number. And I never called at the
15 time. But I had some friends in the complex. And
16 I -- I want to say months later, I go back to see my
17 friends. She said, "Oh, you took my number and you
18 didn't use it."

19 And I get the number again and then I call
20 her -- and call her and talked until we went on a date
21 and stuff. We dated for a while.

22 Q Mr. Clare, I'm sorry, I think it's because I've
23 got -- can you try to speak a bit more clearly?

24 A All right.

25 Q You said you went out on a date with her.

1 Did you like her?

2 A Yes. At the time, yes, I did. I have just
3 feelings for her.

4 Q What did you like about her?

5 A Over dating, I realized she's a hard worker
6 and I like her self-confidence. And she was
7 beautiful. I liked that. And like she got goals
8 for her life. And I liked that, too.

9 Q Okay. Did you feel like her goals, kind of, fit
10 with how you saw your future working out?

11 A Right. But at the time, that was like in
12 2014. At the time, I was like a little bit of
13 rolling stone. I mean --

14 Q What do mean by "rolling stone"?

15 A Rolling stone, I mean I was, like, dating
16 other people. Seeing other people.

17 Q So you weren't quite ready to settle down.

18 A No, not at the time.

19 Q When did you decide that maybe she was somebody
20 that could make you settle down, stop being a rolling
21 stone?

22 A In 2015, I mean, I was seeing other people.
23 Me and Ebony was like -- her goals seemed similar.
24 I really was finding a lot of interest in her.
25 And I really just -- she was a good woman and I

1 just want to settle down with her.

2 Q So it's fair to say that even when you were doing
3 other things, she, kind of, kept drawing you back.

4 A Correct.

5 Q What kind of work was Ebony doing at that time?

6 A At that time, she fix hair and -- she was
7 fixing hair and she was working for a disability
8 board and she was going to school, I think, for
9 her CNA license.

10 Q Okay. When did you-all progress to moving in
11 together?

12 A Like, at the end -- because we was dating, we
13 was being around each other a lot, I got my
14 apartment and she got hers. Like I said, I was
15 thinking about settling down with her. We decided
16 that we would save some money and get, like, one
17 apartment and just live together in a serious
18 relationship.

19 Q And things eventually moved forward to you-all
20 getting married?

21 A Correct. Yes, sir.

22 Q How did that happen?

23 A I did want a relationship with her. But at
24 the time, I didn't really want to get married yet.
25 But she told me -- one time she told me she don't

1 want to be a three-year girlfriend. So it's
2 either put a ring on it or bounce.

3 Her mom always talking about, "When are you
4 going to marry my daughter," and stuff like that. And
5 I decided -- I started falling really, really in love
6 with her. And I decided that we would get married.
7 And we arranged to get married.

8 Q After you got married, how did you-all divide
9 household responsibilities?

10 A Who was really strong at whatever duties
11 would be done. Like, for instance, bills --
12 paying bills, like I'm not really good at the
13 computer and stuff like that, and so I would
14 like -- she good at that. I would cook and
15 sometimes -- like both of us cook at times. Help
16 clean the house and stuff like that, you know.
17 But bills online, I like give her the money and
18 she take care of it.

19 Q Okay. Were you-all able to buy a house
20 eventually?

21 A Yes, we did buy a house.

22 MR. BOWDEN: I'd like to mark this as
23 Defense Exhibit 2.

24 (DFT. EXH. 2, Photo, was marked for
25 identification.)

1 MR. BOWDEN: Your Honor, this is one of
2 the crime scene photos that we stipulated to.

3 THE COURT: It's marked as what?

4 MR. BOWDEN: Defense Exhibit 2.

5 THE COURT: Any objection to Defense
6 Exhibit 2?

7 MS. BALDWIN: No objection.

8 THE COURT: All right. Defendant's
9 Exhibit 2 admitted into evidence without
10 objection.

11 (DFT. EXH. 2, Photo, was entered into
12 evidence.)

13 MR. BOWDEN: Of course, this was easy
14 when we practiced it.

15 I'll just show it to him so we can keep
16 moving.

17 BY MR. BOWDEN:

18 Q Mr. Clare, I'm showing you what has been marked as
19 Defense Exhibit 2.

20 THE CLERK: It works now.

21 BY MR. BOWDEN:

22 Q Is that a picture of the house you-all bought?

23 A Yes, sir.

24 Q Whose idea was it to buy that house?

25 A It was mostly Ebony's idea. Like, I

1 wasn't -- I wasn't interested in getting a house
2 until, like, I became a citizen, and I wasn't a
3 citizen. I was a green card holder.

4 But she said we were paying a lot of money on
5 rent and that it would be a good investment. And we
6 got married, and I love her, and I want her to be
7 happy, so I just go with the flow.

8 Q It sounds like we've got a little bit of a pattern
9 of her pushing you to do better things.

10 A Yes, sir. Correct.

11 Q While we're talking about the house, I want to
12 talk about some details that may help everybody
13 understand what we're going to talk about later.

14 MR. BOWDEN: This is Exhibit 3.

15 (DFT. EXH. 3, Photo, was marked for
16 identification.)

17 MR. BOWDEN: Your Honor, this is another
18 crime scene photo. I'd request it be moved into
19 evidence.

20 THE COURT: Any objection to Defendant's
21 Exhibit 3?

22 MS. BALDWIN: No, Your Honor.

23 THE COURT: Defendant's Exhibit 3
24 admitted into evidence without objection.

25 (DFT. EXH. 3, Photo, was entered into

1 evidence.)

2 BY MR. BOWDEN:

3 Q I know there's a bit of a glare here.

4 But this Defense Exhibit 3, can you describe
5 the lot that the house is on?

6 A Yes, sir. It's a corner lot. It's a nice,
7 open space. It's the corner between Whitney and
8 Donovan, I think. This corner, people would like
9 walk through the yard. Like walk around -- just
10 skip the road and walk from like the side across
11 to Whitney. It's an open lot. People like walk
12 through there on a regular basis.

13 Q Was the house in the nicest area?

14 A No, not in the nicest area.

15 Q You mentioned people walking across your property.

16 Did that ever cause any issues?

17 A Yes, sir, it caused some issue. Like, one
18 time there was a guy walking through, and I tell
19 him he's got to walk back on the road. He lift up
20 his shirt and showed me a gun telling me, *I'll be*
21 *walking here before you live here, so you're not*
22 *going to stop me from walking through this.*

23 And people would do that, walk there. I
24 don't try to tell them to walk around. So, I mean,
25 this guy is telling me he walked there before I lived

1 there, so I ain't going to stop him from walking. And
2 I decided -- I mean, I need to put up a fence to block
3 the people from walking through.

4 Q How long before September 26, 2019 did this person
5 threaten you with a gun?

6 A I want to say about a week and a half.

7 Q How did that make you feel?

8 A It made me feel, I guess, intimidated a
9 little bit.

10 Q Was it upsetting?

11 A I mean, it feels like he was trying to come
12 at me, or something like that. But I be like,
13 that's my property. I need to protect it.

14 Q Did it make you feel worried about your
15 surroundings?

16 A Yes.

17 Q Worried about the people in the neighborhood?

18 A Correct.

19 Q Did you have any issues in that area?

20 A Yeah. People, like sometimes they be selling
21 drugs like on the -- on, like, to this side.

22 There's a house over there. Like sometime a mad
23 car park over there. I know they be selling drugs
24 over there. Sometimes they be shooting and stuff
25 like that.

1 Q Okay.

2 A Arguments and stuff like that.

3 MR. BOWDEN: I'll mark that as Defense
4 Exhibit 4, please.

5 (DFT. EXH. 3, Crime scene diagram, was
6 marked for identification.)

7 MR. BOWDEN: Your Honor, I'm about to
8 show Mr. Clare Defense Exhibit 4. It's what we
9 stipulated to as a crime scene diagram.

10 THE COURT: All right. Any objection?

11 MS. BALDWIN: No, Your Honor.

12 THE COURT: Defendant's Exhibit 4
13 admitted into evidence without objection.

14 MR. BOWDEN: Thank you, Your Honor.

15 (DFT. EXH. 4, Crime scene diagram, was
16 entered into evidence.)

17 BY MR. BOWDEN:

18 Q All right. Mr. Clare, I'm showing you what has
19 been marked as Defense Exhibit 4. This is a layout of
20 the house the Solicitor's Office produced.

21 Can you tell us where you would have slept in
22 this house?

23 A That's the bedroom (indicating).

24 Q So the room labeled "master bedroom" on the
25 diagram?

1 A Correct.

2 Q And then what's the room immediately next to that
3 that says, "living room"?

4 A It's where we'd hang out at, in the living
5 room. The room next to the living room?

6 Q Yeah.

7 No. What was in the living room?

8 A In the living room, television, a couch, a
9 little center table, and some tables.

10 Q When you were -- when you would come home and park
11 in your driveway, can you show us what door you would
12 enter the house through?

13 A We went through this door right here
14 (indicating).

15 Q All right. And is it fair if we call that the
16 rear door?

17 A Correct. Drive in, like, right in the
18 driveway. We'd use that door.

19 Q And between that door and -- between the rear door
20 and the living room, what's in that space that's
21 there?

22 A Between -- could you repeat for me?

23 Q Yeah.

24 Can you describe, how would you get from the
25 rear den to the living room?

1 A You come through this door and you just step
2 right there. You'd go down, like, four steps and
3 go down into the living room.

4 Q So it's just a small staircase.

5 A Correct.

6 Q What was the room Flawless Hair Beauty Salon?

7 A Right here. This (indicating).

8 Q What was that room used for?

9 A For -- she would fix hair most of the time.

10 Q Okay. And the one next door to it, hall
11 bathroom?

12 A That's where the master bath -- there's a
13 bigger bathroom in this area. Right there
14 (indicating).

15 Q Who used that bathroom?

16 A Ebony.

17 Q What would -- so besides the obvious, what would
18 she do in there?

19 A At times, she went, like, take showers.
20 She'd take, like, baths. Or sometimes she'd go
21 and, like, put epsom salts, I think it is, and
22 just sit in the tub and listen to music and
23 soak.

24 Q When she would do that, how long would she
25 typically be in there?

1 A Anywhere from an hour to two hours.

2 Q Did you bother her when she was taking those long
3 baths?

4 A No, not if it's not urgent.

5 Q And that's all the way across the house from where
6 you would primarily hang out.

7 A Correct.

8 MR. BOWDEN: Exhibit 5, please.

9 (DFT. EXH. 5, Photo, was marked for
10 identification.)

11 MR. BOWDEN: Your Honor, I'm showing
12 Mr. Clare what's been marked as Defendant's
13 Exhibit 5, another one of the crime scene photos.

14 THE COURT: Any objection?

15 MS. BALDWIN: None, Your Honor.

16 THE COURT: All right. Defendant's
17 Exhibit 5 admitted into evidence without
18 objection.

19 (DFT. EXH. 5, Photo, entered into evidence.)

20 BY MR. BOWDEN:

21 Q All right, Mr. Clare. I'm going to show you what
22 has been marked as Defense Exhibit 5.

23 Can you tell us what we're looking at in this
24 photo?

25 A That's the door leading to the den. There's

1 a couch. And this is the door we entered -- used
2 to come into the house.

3 Q All right. So that's the door that we just
4 referred to as the rear door.

5 A Correct.

6 Q That would lead in from the driveway area.

7 A Yes, sir.

8 Q And we're looking at it from the inside.

9 A From the inside.

10 Q Okay. Do you notice anything about the trim next
11 to the door?

12 A It's separate.

13 Q I'm sorry?

14 A The trim separate. Ripped apart.

15 Q Ripped apart from what?

16 A It ripped apart -- that's when Ebony knocked
17 the door in -- kicking the door in that night.

18 Q We'll get to that.

19 But what are you saying that the trim is
20 separated from?

21 A From the wall. You can see right here.

22 Q Okay. And was that door frame separated from the
23 wall before September 26, 2019?

24 A No, sir.

25 Q All right. Romane, I'd like to turn to something

1 that might be a little bit harder to talk about.

2 How would you describe Ebony's behavior
3 during the marriage?

4 A During the marriage, sometimes she would be
5 like paranoid and accusing me of stuff that I
6 didn't do, fidgety. Sometimes she would be
7 like -- sometimes she's happy and then sometimes
8 she'd just go, like, real sad. I don't know what
9 was her -- what was the issue. Like she would be
10 like -- like she would like -- over time, like
11 sometimes she happy this day. The next day she
12 sad and, like, miserable.

13 Sometimes -- like one time I come in from
14 work, and she and Chanel, her cousin, was there. I
15 come in from work and Chanel was in the kitchen, and
16 she was -- she was washing dishes. And it was weird,
17 like, she was washing the dishes.

18 So I was like, "Where Ebony at?"

19 And she said, "Ebony in the room where she
20 fix hair at."

21 And I was going through the living room to --
22 I was trying to go around there, but I've got to pass
23 through the kitchen and the living room. And there
24 was, like, a book on the table. And I just moved the
25 book. And when I moved the book, it was like a white

1 substance on the book. I went back in to talk to
2 Ebony and come back. I guess Chanel had her move the
3 white substance, whatever it is.

4 And at times, like, she would go take a bath,
5 and I accidentally -- like sometimes I just use the
6 bathroom and I would find like white straws -- or,
7 like, straws with, like, white stuff in there. I
8 didn't -- I wasn't putting my finger on what was going
9 on at the time.

10 But sometime during the marriage, she was
11 like paranoid. Like one time I remember coming from
12 work -- I think I come from work or Eddie's house, and
13 she tell me I have something up in the attic recording
14 her.

15 I was like, "What's up in the attic? Who's
16 recording from the attic?" So I'm like, "Man, you
17 need to show me what was recorded."

18 And then -- so we take a step down and I go
19 up to the attic. When I go into the attic, like, the
20 insulation for, I guess, to keep the heat -- keep the
21 house warm, like all the insulation is just ripped up
22 from the top of the floor. There's nothing there
23 recording. She be paranoid sometime.

24 Q I just want to clarify a couple things you said.
25 So you said deteriorated.

1 Was this paranoia and fidgeting and the other
2 things you described, was that different from when
3 you-all had dated before you got married?

4 A Yes. Like I never noticed -- those signs
5 wasn't there like when we was first -- when we was
6 first dating, I never saw no sign like that. When
7 we get married, yeah, I started to see it.

8 Q Did she deteriorate all at once or did it happen
9 gradually?

10 A It happened gradually.

11 Q And you mentioned a white substance twice. You
12 said white substance and white stuff.

13 A Right.

14 Q What specifically did you see?

15 A I specifically saw cocaine.

16 Q And so it was a white powder.

17 A Powder, yeah.

18 Q You didn't test it, but --

19 A I didn't test it.

20 Q But you thought it was cocaine?

21 A Correct.

22 Q Did you immediately, sort of, put two and two
23 together and say that she was struggling with a
24 cocaine addiction or what was going through your
25 head?

1 A At first, I couldn't put it together. But
2 then I remember like she told me she went to rehab
3 for that. Like she was living in Atlanta and she
4 was -- I guess she was strung out on cocaine and
5 she thought she was going to die one time. I
6 guess she takes some -- I guess it was a bad batch
7 of cocaine.

8 MS. BALDWIN: Objection, Your Honor;
9 relevance.

10 THE COURT: Sustained.

11 BY MR. BOWDEN:

12 Q What was the -- I guess did you talk to anybody
13 about what you saw going on with her?

14 A Yes. I must have talked to her mom because
15 we was -- she was like my mother, too. I told her
16 about it on numerous occasions, that we needed to
17 get her help.

18 Q Was there any other behavior that was out of the
19 ordinary that you didn't talk about before?

20 A Correct. Yeah. Like, for instance, one
21 time -- like I work at Knight -- I was working at
22 Knight's Construction, and, like, I -- sometime I
23 like -- I gotta -- like, I gotta go get the
24 concrete truck to bring it into precast. So,
25 like, sometimes I'll be like going from the

1 concrete truck to like front-end loaders. I'd be
2 busy. So my phone was ringing, but I didn't have
3 the time to answer.

4 And my manager come around -- called me
5 on the radio, because we use radio, CB radio, and
6 he told me --

7 MS. BALDWIN: Objection; hearsay.

8 THE COURT: Sustained.

9 THE DEFENDANT: He told me --

10 THE COURT: You can't say what he said.

11 BY MR. BOWDEN:

12 Q Don't say what he told you.

13 A Okay.

14 Q You can keep talking. You just can't say what he
15 told you.

16 A Okay. He come around with a cell phone and
17 give it to me and said my wife was on the line.
18 And it was Ebony on the line. She was like just
19 cursing --

20 MS. BALDWIN: Objection; hearsay.

21 THE COURT: Sustained.

22 THE DEFENDANT: She was cursing --

23 MS. BALDWIN: Objection.

24 THE COURT: Sustained.

25 BY MR. BOWDEN:

1 Q You can't say what she said. So you had the
2 phone.

3 A Correct.

4 Q You were talking to Ebony.

5 Was the phone up to your ear or was it on
6 speaker phone?

7 A It was -- like, when I hear what was going on
8 on the phone, I put it on speaker. And...

9 Q Did you hear anything that was not her talking to
10 you?

11 MS. BALDWIN: Objection; leading.

12 THE COURT: Overruled. I'll allow
13 that.

14 THE WITNESS: Yeah. I heard like a shot
15 fired, like a gun go off.

16 BY MR. BOWDEN:

17 Q You heard a gunshot?

18 A Correct.

19 Q What did you do?

20 A I -- because my manager was hearing
21 everything. He tell me -- tell me I need to go
22 take care --

23 MS. BALDWIN: Objection; hearsay.

24 THE COURT: Sustained.

25 BY MR. BOWDEN:

1 Q Did you leave work?

2 A I left work that day.

3 Q Did you go try to check on her?

4 A I went home. Tried to check on her. Went
5 home. She wasn't there. I called her mom and
6 tell her what she was saying on the phone.

7 Q As far as you know, she didn't harm herself in
8 that incident.

9 A She didn't harm herself that time.

10 Q Did you ever have to call the police because of
11 her behavior?

12 A Yes, I do. One time she was, like, fussing.
13 Like, we was having an argument, like fussing. I
14 have a friend who lived around the corner. So I
15 said, "I'm going to go by Eddie house until you
16 calm down."

17 And I get -- I leave out of the house, get in
18 the car. As soon as I get in the car, she rushed out
19 of the house with a machete and just start hacking
20 away at the car, started chopping the car, chopping
21 the car, chopping the car. And I backed the car out
22 of the driveway and I did call the police.

23 Q Okay. You mentioned earlier -- you were talking
24 earlier about how you would divide household
25 responsibilities, and one of hers was to pay bills.

1 A Correct.

2 Q Was she keeping up with that task?

3 A One time, the light cut off. One time the
4 water cut off. And like the car insurance. Like,
5 I realized the car didn't have no insurance on it.
6 And she wasn't really keeping up on it.

7 She wasn't like -- money was just -- I would
8 give her money. She was -- she worked for her own
9 money, too. But I'd give her money and, like, she
10 don't know where the money at.

11 Q So by late 2018, had you realized that there was a
12 pretty serious problem here?

13 A Correct.

14 Q Did you do anything to try to help her?

15 A Yes, I did. Because in 20- -- I want to say
16 end of '20, like December or January, like, in the
17 evening -- I forget. I think it was Saturday. I
18 don't know if I was at work. But I come home, and
19 she was there. And I'm like -- and her car wasn't
20 there.

21 So I'm like -- I'm like, "Where your car at?"

22 She's like -- she didn't know where the car
23 was at.

24 I was like, "Where your car at?"

25 She like, "Oh, it's at Ashley."

1 I be like, "What's your car doing at Ashley?"

2 MS. BALDWIN: Objection; hearsay.

3 THE COURT: I'll sustain it.

4 BY MR. BOWDEN:

5 Q What specifically did you do to try to help out?
6 Don't talk about anything that she said, but what did
7 you do to try to help her?

8 A Like, I take her -- eventually, I found that
9 the car, she crashed it. She and a Mexican have
10 an accident, and she drive away from the scene.
11 And, like, if you're familiar with --

12 Q Sorry.

13 What did you do to try to help her, is the
14 question?

15 A Oh, what did I do to try to help her? Like,
16 one incident?

17 Q So she didn't have a car.

18 A Right.

19 Q What did you do to try to --

20 A First I -- like, two weeks later, I
21 eventually get her to take me to the car, but the
22 car was -- like the wheel was broke off.

23 Q We don't need to worry about that. She didn't
24 have a car.

25 A Right.

1 Q You were concerned about her behavior.

2 A Right.

3 Q And so what did you do to try to help her into
4 treatment?

5 A First, I was taking her to work. And I got
6 to -- I worked. She would go to work. I'd go to
7 work and check her. I used to take her back and
8 forth to work. I would take her to work and I'd
9 go to work sometimes. I ended up being late.

10 I tell her, "This is going crazy. You've got
11 to get yourself together. You've got go to rehab,"
12 because she had admitted to me --

13 Q Just --

14 A Okay. Tell her, "You need help, get yourself
15 some help." I tell her -- since her car broke, I
16 told her I'll get her a new car. If she go get
17 some help, I'll get her a new car. And as a
18 result of, like, for her getting herself back
19 together. And -- because I say if she go to
20 treatment, I would get her a vehicle back after
21 she finished. And she tell me --

22 MS. BALDWIN: Objection; hearsay.

23 THE COURT: Sustained.

24 BY MR. BOWDEN:

25 Q Don't say anything she told you. Just say what

1 you did.

2 A Okay. Eventually, I get her a new car.

3 Q Okay. And so you were using that car to try to
4 incentivize her to go get drug treatment.

5 A Right.

6 Q Mr. Clare, you mentioned that you have trouble
7 reading.

8 Did you know how to go through a formal
9 process to force somebody to get drug treatment?

10 A I had no idea what you go through. I don't
11 have, like, an idea what to do to get her
12 treatment. I always -- me and her mom, like I
13 said before, I always tried to get her to help me
14 get her into treatment. But she -- one time she
15 tell me --

16 Q Don't. You don't need to say what anybody told
17 you.

18 A Okay.

19 Q But you were trying what you knew how to do.

20 A Correct.

21 Q Did that work? Did she go get treatment?

22 A She didn't.

23 Q When was all that happening?

24 A That was about 2019.

25 Q Okay. You said that you wanted her to give you

1 the money for the insurance?

2 A Correct.

3 Q Was she giving you that money?

4 A No, she wasn't -- I tell her when -- like,
5 since she -- because we already did -- there was a
6 lapse on our insurance, and I go through -- there
7 was an insurance, right across, I go there and I
8 get insurance and I get a new card for my car and
9 insured her car. I told her she got to help me
10 with the insurance because that's an extra bill,
11 and she said she would -- she would, but she
12 never -- she did like for the first month, I
13 guess, and then she just...

14 Q That incident you described with her cousin where
15 you found the white powder on the table, was that
16 before or after you tried to incentivize her to go to
17 treatment for the car?

18 A That was before.

19 Q Before, okay.

20 So what -- did you -- when she wasn't paying
21 you, did come to the conclusion that she was still
22 using?

23 A Still using.

24 Q Because she was spending money on drugs?

25 A She was -- she couldn't hold no money.

1 Sometimes she'd call me, "I need \$80," "I need
2 \$100."

3 I'm like, "You supposed to be working, too.
4 Where's all the money?"

5 Q When you realized that you might not be able to
6 help her, how did you react?

7 A I was like sad. I was like, kind of, getting
8 withdrawal from the relationship. I was thinking
9 about another avenue.

10 Q Did you want to save the relationship?

11 A I did. I love her. I did want to save it.
12 But all the effort, it's just not helping. She
13 wasn't coming through.

14 Q You said you were withdrawing from the
15 relationship.

16 Were you a model husband during this time?

17 A I was talking to someone. I wouldn't say --
18 I tried my best to save the relationship. I tried
19 my best to make it work, but it wasn't working. I
20 was just -- I was exhausted.

21 Q And her actions, did those make you sad or
22 angry?

23 A Makes me sad. I was like -- because like --
24 I would feel sad because I feel like we were -- we
25 did have something coming, but it just go down the

1 drain. It was like a one-way street.

2 Q So all those dreams that you could see going
3 together, they were starting to go apart?

4 A Yes.

5 Q I want to turn to the night of the shooting, okay?
6 If you need a minute, slow me down.

7 A All right.

8 Q What did you do during the day on September 26,
9 2019?

10 A I went to work. I worked. It was a regular
11 typical day to start off. I went to work. I come
12 home. When I come home from work, everything was
13 there. She was cooking.

14 And then I already eventually -- when I
15 come home -- when I leave work, like, it was typical
16 for me to buy some drinks, buy me a beer, and come
17 home and she was there cooking. I never really feel
18 like eating dinner because we have a big lunch at
19 work.

20 Q Let's slow down a little bit.

21 How many hours did you work that day?

22 A I want to say about 10, 10 and a half.

23 Q Would that have been a pretty typical day?

24 A Typical day, yes.

25 Q Okay. Construction job.

1 How would you typically feel when you came
2 home?

3 A Tired. Very tired.

4 Q You mentioned you would often stop and get a beer
5 on the way home. Is that what you meant by a drink?

6 A Correct.

7 Q What would you do with that beer when you got
8 home?

9 A When I come -- it's like I come home. I
10 smoke weed sometimes. I've got a little garden.
11 Sometimes I would, like, just go wash a bud and
12 roll up a joint, smoke and drink the beer, and
13 then go take a shower. Sometimes I would just sit
14 on my car. Sometimes I would just go in the
15 house. I just feel too tired. Just have a drink
16 and smoke some weed.

17 Q Okay. You said you'd sit on the car. You mean in
18 the driveway?

19 A Correct.

20 Q What kind of beer would you usually drink?

21 A Sometimes Icehouse. Sometimes -- mostly
22 Icehouse sometimes. Coors Light sometimes.

23 Q Coors Light? Is that what you said?

24 A Yes.

25 Q All right. So you got home that night after

1 working a typical shift, about 10 hours.

2 You said Ebony was there and she was cooking
3 dinner?

4 A Yes, sir.

5 Q Do you remember what she was cooking?

6 A I don't remember quite exactly what it is.

7 Q But you didn't feel like eating?

8 A I didn't.

9 Q Mr. Clare, had you been in an argument leading up
10 to that night?

11 A I think a week leading up, we was having like
12 regular -- she -- she, like -- she would, like,
13 text me, like, crazy stuff. She was texting me
14 all -- we would have -- I would say yes, because I
15 wanted her to get the treatment. It wasn't all
16 that. She was -- it wasn't no major argument.
17 But, you know, we'd have a fuss -- regular fuss
18 like a relationship have.

19 Q How was she acting towards you that night?

20 A Cold. I mean, we wasn't fussing, but we
21 wasn't all that -- she wasn't acting no way
22 towards me that night.

23 Q So not aggressive towards one another, just kind
24 of wanted your space?

25 A Right.

1 Q And so you're sitting where -- where were you
2 unwinding that night?

3 A I was in the living room where I showed you
4 earlier.

5 Q Okay. Sitting on the couch?

6 A Sitting on the couch watching TV.

7 Q I want to go back to showing you Defense
8 Exhibit 4.

9 You're saying you were on a couch here in the
10 living room?

11 A Correct.

12 Q What was Ebony doing while you were unwinding on
13 the couch?

14 A At first, she come and sit on the opposite
15 end of the couch and she ate some of the food that
16 she make. I drink a Cup O' Noodles, and then she
17 say she going to go take a bath and come back.

18 Q Okay. When she went to take a bath, was it in the
19 hall bathroom?

20 A Correct.

21 Q Again, on the entire opposite side of the house.

22 A Correct.

23 Q What did you do when she got up to take a bath?

24 A At first I was there. I smoked some of the
25 weed and finished drinking the beer. I get tired.

1 I was tired, so I just fall asleep. I was falling
2 asleep on the couch and I get up and move to the
3 bedroom. From here to the bedroom.

4 Q Do you know about what time that was?

5 A I want to say -- I stayed on the couch for a
6 while. I want to say about after 8:00.

7 Q Okay. When did you wake up?

8 A I wake up to like a bang on the door. I
9 heard, like, a loud banging, like somebody kicking
10 the door out. That's what waked me up.

11 Q How loud?

12 A It was real loud. It was loud. Real loud.
13 Like coming -- like you're coming. That's what
14 wake me up.

15 Q How did that make you feel when you heard that?

16 A I was a little scared. I was scared, like
17 "What the hell is going on?" I jumped up. And,
18 first, I walk up, and I hear the door just
19 thumping, thumping, thumping.

20 And I grabbed the gun from the drawer. Like
21 the bed would be on this side. It was a dresser
22 drawer right there. I grabbed the gun and walked --
23 this was the door that was the banging. And there's a
24 window right there. I tried to look through the
25 window to see what it was. Then I -- trying to look

1 through the window to see who it was, but I couldn't
2 see the door.

3 And the pounding was like -- like all kinds
4 of stuff was flashing in my head, like what the hell
5 was going on. Who's banging on the door like this.
6 And I walked to the step and I said, "Baby, that's
7 you?" I yell like three times to see who it was at
8 the door. But the door just keep kicking, like just
9 banging away. And all -- like stuff was, like, who
10 was that? I was trying to figure out who it was.

11 Q What was going through your head? Why did you
12 feel like you needed to grab a gun?

13 A Because like I said, like the neighborhood
14 where we were living and, like -- when I jump up,
15 I thought that dude who was walking through the
16 yard and I was trying to stop him and tell me he
17 always walked there and I ain't going to stop him,
18 so I -- that flashed through my head.

19 Q That was the person who threatened you with a
20 gun?

21 A Correct.

22 Q So when you approach the door and you yell, "Babe,
23 is that you" three times, did anybody answer you?

24 A Nobody answered me. Just keep -- the banging
25 just keep -- it's happening. It wasn't like say

1 the bang wake me up. It was like seconds to a
2 minute.

3 Q And we're talking about this slowly, but you're
4 saying this happened all very quickly.

5 A Correct.

6 Q Okay. When you woke up, was Ebony in the bed?

7 A No, she wasn't.

8 Q Did you know where she was?

9 A When I wake up and she wasn't there, I
10 figured she was still taking a bath.

11 Q Did you think that you had time to go check and
12 see if she was in the bath?

13 A Eventually, I was trying to go check, but the
14 door was -- seemed -- kicking on the door, I
15 was -- as I looked through the window, I was at
16 the step -- on the step. And I went passed the
17 door, but the door keep banging, and a second
18 later, the door just bang wide open and I seen a
19 shadow coming through the door.

20 Q Did you think that you would have had time to get
21 to that hall bathroom all the way on the other side of
22 the house?

23 A Not all the way to where Ebony at. I didn't
24 have time. The door seemed urgent. Like, it
25 seemed like this door -- I just seen the door. It

1 was urgent.

2 Q What did you think was going to happen if somebody
3 kicked down that door?

4 A I think the person who was trying to kick in
5 the door, they're either trying to rob us or
6 trying to hurt us. So that's what I think, that's
7 what was going through my head, is like --

8 Q Did you think somebody might kill you?

9 A Yes.

10 Q Okay. So you're standing on that top step
11 thinking about whether you had time to get to Ebony,
12 not sure whether the next kick might cause that door
13 to fly open.

14 What happened next?

15 A The door just flied open. And it was dark.
16 There ain't no light that was on. I saw like a
17 shadow, like somebody just -- like catching their
18 balance like they didn't expect the door to give
19 at the time. The door gave.

20 I just raised the gun and I thought I fired
21 one time, but I fired. The gun stopped firing. I
22 heard Ebony. I'm like, "Oh, shit. That's Ebony."
23 And she stumbled back out the door. And I go out the
24 door with her. I'm like -- I'm like, "We need to call
25 911."

1 I asked her if she got hit, and she said yes.
2 I ran back in the house. Got my phone. My phone was
3 broke, like, a couple days earlier. I asked her where
4 her phone is, and her phone was in her bra. I was
5 there with her. And I was there with her, and then I
6 hear like sirens coming. I looked. Two cars was in
7 the driveway.

8 I'm like, "Man, I need to move one of these
9 cars." So I give her the phone and -- like, I give
10 her the phone, like, to move -- to try to move one of
11 them cars so the police and the ambulance could get to
12 her.

13 Q Why did you feel like you needed to move the
14 car?

15 A So they could get space to help her. It was
16 in the way.

17 MR. BOWDEN: Exhibits 6 and 7, please.

18 (DFT. EXH. 6, Photo, was marked for
19 identification.)

20 (DFT. EXH. 7, Photo, was marked for
21 identification.)

22 MR. BOWDEN: Your Honor, I'm going to
23 show Mr. Clare what's been marked as Exhibits 6
24 and 7. These are crime scene photos. I'd ask
25 they be moved into evidence.

1 THE COURT: Any objection to Defendant's
2 Exhibits 6 or 7?

3 MS. BALDWIN: No objection.

4 THE COURT: All right. Defendant's
5 Exhibit 6 and Defendant's Exhibit 7 admitted into
6 evidence without objection.

7 (DFT. EXH. 6, Photo, was admitted into
8 evidence.)

9 (DFT. EXH. 7, Photo, was admitted into
10 evidence.)

11 BY MR. BOWDEN:

12 Q It's not the best quality photo in the world.
13 I'm showing you what's been marked as Defendant's
14 Exhibit 6.

15 Here at the bottom of the photo, can you tell
16 us what that is?

17 A Yes. That's a ditch.

18 Q Is that the one that runs all the way up to your
19 driveway?

20 A Yes.

21 Q Okay. I'm showing you what's been marked as
22 Defense Exhibit 7.

23 It's the ditch continuously running on the
24 other side of the house?

25 A Correct.

1 Q And so if two cars were in the driveway, would
2 somebody have been able to pull into the yard?

3 A No.

4 Q When you started moving the car, what did you
5 see?

6 A When I pulled the car -- pulled the car
7 like -- there's a baseball field right across. I
8 pulled to the grass right across the road. It
9 was, like, two, three minutes. Then I see a
10 police car pull up. It was a police car. I
11 thought it would be the ambulance, but it was a
12 police car pulled up on the scene.

13 Q Okay. Did you expect to see blue lights or
14 ambulance lights?

15 A I expected to see ambulance, because I was
16 trying to get her help.

17 Q Did you stop the car?

18 A The police car?

19 Q No. Your car.

20 A The car that I was in, yeah, I pulled to the
21 grass. It was stopped in the grass.

22 Q Okay. Did you stay on the scene when you saw the
23 police cars?

24 A When the police car pulled up, I started to
25 panic. I feel like I was panicking. I'm like,

1 I'm about to go to jail. Ain't nobody going to
2 believe me, what happened. Like I started
3 thinking all kinds of, like...

4 Q Why did you not think anybody was going to believe
5 you?

6 A Because -- I don't know. I just -- I
7 wouldn't know specifically what -- why anybody
8 wouldn't. I just -- like stuff was just running
9 through my head.

10 Q Were you thinking clearly at this point?

11 A I was panicked. I was panicked. I was
12 panicked. I wasn't thinking clearly. I'm
13 thinking, like, oh, man. I'll probably get hit
14 out there, or something like that. Ain't nobody
15 going to believe me, like, my story.

16 Q You're saying if you stopped and told your story,
17 nobody would believe you?

18 A Right.

19 Q You were scared nobody was going to believe you?

20 A Right.

21 Q Looking back, do you think you would have done
22 things differently if you could do it over?

23 A Looking back, I don't know. Looking back --
24 like, this happened like just -- if they happened
25 to see me that night, I don't think I have a

1 choice. That was probably like some part of it.

2 Q Romane, did you murder your wife?

3 A No, I didn't murder my wife. I loved Ebony.

4 I didn't murder my wife.

5 Q When you pulled the trigger, what were you trying
6 to do?

7 A When I pulled that trigger, I was trying to
8 protect my house, our household, like who was
9 inside the house.

10 Q When you say your household, you mean the people
11 that were inside your house as well?

12 A Correct.

13 MR. BOWDEN: Thank you, Romane. Please
14 answer any questions Ms. Baldwin has.

15 THE COURT: Cross-examination.

16 MS. BALDWIN: Your Honor, actually, could
17 we take a brief restroom break now?

18 THE COURT: All right. We'll take about
19 a ten-minute break and then we'll come back and
20 resume, okay?

21 (A break was taken from 11:20 a.m. to 11:38 a.m.)

22 THE BAILIFF: All rise.

23 THE COURT: Thank you very much. Please
24 be seated.

25 Mr. Clare, take the witness stand. Mr.

1 Clare, you're still under oath.

2 Cross-examination.

3 MS. BALDWIN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. BALDWIN:

6 Q Good morning, Mr. Clare.

7 You testified earlier that you loved Ebony,
8 didn't you?

9 A Yes, I do.

10 Q And you-all were together for how long?

11 A Seven years.

12 Q Okay.

13 A It would be like five years.

14 Q Five years that you were together?

15 A Correct.

16 Q Didn't you say you started dating back in 2013?

17 A No. 2014.

18 Q 2014.

19 Okay. But you guys spent a lot of time
20 together, right?

21 A Correct.

22 Q So you knew what it sounded like when she
23 laughed?

24 A When she laughed, yes.

25 Q And when she cried?

1 A Correct.

2 Q You knew the sound of her step?

3 A No, not --

4 Q You don't know like if you're around somebody

5 quite a bit of time, you kind of know what they sound

6 like when they're walking around a place?

7 A Yeah. I mean, the sounds were different.

8 Q Could you distinguish her step from, say, some

9 other person's? You could say, *oh, that's Ebony*

10 *coming?*

11 A Not really.

12 Q Okay. Even though you spent quite a bit of time

13 with her?

14 A Right.

15 Q And you-all lived together?

16 A We lived together.

17 Q Okay. You knew what she ate?

18 A If I know what she eat?

19 Q Yeah, generally speaking.

20 A Yeah.

21 Q You knew what she liked to drink?

22 A Yes.

23 Q Okay. You know her schedule?

24 A Not a hundred percent.

25 Q You don't know her schedule even though she was

1 your wife?

2 A Like she got schedules all -- like, she'd be

3 sitting down and get a call to do hair.

4 Q But you knew that she would take baths regularly.

5 A Correct.

6 Q And one to two hours in baths.

7 A Yeah.

8 Q You knew her family?

9 A I knew her family, yes.

10 Q Okay. You went to their get-togethers?

11 A Correct.

12 Q So you cared about her very much, right?

13 A Right.

14 Q Okay. So much so that you had an affair on her,

15 right?

16 A She had an affair, too. We're not perfect.

17 Q That's not what I asked you, sir.

18 You had an affair with a Porche? Is that her

19 name?

20 A Porche? No, I didn't have no affair. Just

21 someone I knew.

22 Q What about her friend Cadella Birdsong? You never

23 tried to hit on her at the gas station?

24 A No.

25 Q You didn't do that? Never gave her a fake name

1 and then went back to another place?

2 A Fake name, no.

3 Q Okay. All right. But you tried to get Ebony to
4 go to rehab, correct?

5 A Correct.

6 Q But you were just never successful.

7 A Never successful, right?

8 Q Because you thought that she had a drug problem.

9 A I knew she had a drug problem.

10 Q Okay. Let's go on to your house. How long did
11 you-all live there?

12 A From -- like two years.

13 Q About two years, you said?

14 Okay. So you're familiar with the layout of
15 the house.

16 A Correct.

17 Q Was it a big house? Small house? What do you
18 think?

19 A It was a good size.

20 Q Good size house, okay.

21 Okay. Could you hear people when they were
22 in the other room?

23 A Like, if I was in the other room, like, if
24 I'm in the master bedroom, I can't really hear
25 what's going on on the other side of the house.

1 Q So you didn't know what's going on on the other
2 side of the house ever?

3 A I can't hear it.

4 Q So I'm just going to point to some items on the
5 map. So this is where you slept regularly?

6 A Correct.

7 Q And then this says master bath. So that's where
8 -- is that where you bathed?

9 A Correct.

10 Q And then this place labeled living room --

11 A Living room.

12 Q Okay. And you said there was a TV in there,
13 couches?

14 A Table.

15 Q And then this rear den area, there's a door right
16 here?

17 A Okay.

18 Q And the driveway was sort of right in here?

19 A Correct.

20 Q Okay. You said that's where you parked?

21 A That's where we all parked.

22 Q "We all parked." So you had more than one car.

23 A We had more than one car.

24 Q The night of the incident, where were both cars
25 parked?

1 A In the driveway.

2 Q Can you show me using your finger like you were
3 before?

4 A (Indicating).

5 Q And which car was the car that -- oh, you're
6 showing the two cars there?

7 A Correct.

8 Q Okay. Which one was the car that you said that
9 you moved later?

10 A The one on this side (indicating).

11 Q Okay. And so then you've got the rear den and
12 then you've got the kitchen?

13 A Correct.

14 Q These little marks here, these are all marking
15 windows.

16 A Correct.

17 Q And they're labeled correctly in that diagram,
18 yes?

19 A Yeah.

20 Q It's not like it's marking where a window is not.
21 There's a window in each one of those spots.

22 A You're missing one right here (indicating)?

23 Q Where? I'm sorry.

24 A (Indicating).

25 Q Oh, okay. Thank you for pointing that out.

1 And there are some steps that are right here?

2 A Steps, yes. Here and step there and step --

3 Q And then steps inside. And this door opens from

4 the outdoor steps towards those other steps, correct?

5 A Correct.

6 Q So that door is kind of in the way.

7 A Halfway in the way.

8 Q Okay. So you can see towards the driveway from

9 this room, correct?

10 A Yeah, you can see the driveway.

11 Q And you can see towards the driveway and the front

12 steps and that yard area from this room, correct?

13 A Correct.

14 Q And there's a window in the kitchen, correct?

15 A Yes.

16 Q And you can see outside from the window in the

17 kitchen, right?

18 A Correct.

19 Q Okay. Then you've got a dining room, the front

20 den, and this is the sort of main front door area?

21 A Yes.

22 Q Okay. And then you come through here. There's a

23 little hallway. You've got where Ebony did some hair.

24 Now, had she always been in that room doing

25 hair or did she have her own spot at some point in

1 time?

2 A She had -- most of the time it was typically
3 in that room.

4 Q But she never had her own business outside of the
5 house?

6 A She did have a salon one time.

7 Q Okay. But she had moved it into the house?

8 A She closed the salon down, yeah.

9 Q Okay. You never told her to move it into the
10 house?

11 A I don't remember that.

12 Q Okay. And this was, you said, the bathroom that
13 she used?

14 A Yes.

15 Q Okay. And what about this bedroom here? Was this
16 her bedroom?

17 A That was just a bedroom like guests would use
18 it.

19 Q Your guests would use it?

20 A Right.

21 Q It was mostly her stuff in that bedroom, correct,
22 women's items?

23 A Yeah, I think so.

24 Q Okay. Would it help you if I showed you a
25 picture?

1 A I said I think most of her stuff was in that
2 room.
3 Q Okay. Here there's no female items, right? It's
4 mainly your stuff?
5 A Like in the dresser drawer, like the closet?
6 Q Okay.
7 A She had stuff in the closet, too.
8 Q Okay.
9 A And the dresser drawer.
10 Q There's a window here. Is there another window in
11 this bedroom?
12 A Yeah. A window here {indicating}.
13 Q And then there's another bedroom over here. But
14 was this bedroom being used at the time?
15 A No. It was empty.
16 Q Okay. And as far as exits in the house, so
17 obviously we've got the front door, right?
18 A Front door.
19 Q You've got this door, right?
20 A Correct.
21 Q And then there's another door that leads to the
22 back yard, correct?
23 A Yes.
24 Q Okay. And then there's another exit right here,
25 correct?

1 A Correct.

2 Q So this also leads to the back yard. So that's
3 one, two, three, four doors.

4 A Four doors.

5 Q And several windows, correct?

6 A Correct.

7 Q And then you come around on one side, there's a
8 gate leading out to the street over -- sort of over
9 here, right?

10 A Yes.

11 Q And then over here there's a gate, correct?

12 A No gate.

13 Q No gate? Just -- is it a fence?

14 A Fence.

15 Q A fence. So there you go. You've got it right
16 there. But this leads out to the street and this
17 leads out the street.

18 A Correct.

19 Q And these windows all lead out to the street.

20 A Yes.

21 Q Okay. And they all worked?

22 A A window is a window.

23 Q Okay.

24 All right. So that door that sort of goes
25 into that rear room that swung open you said that

1 you-all used that to come in from the driveway, did
2 that lock at the time? At the time of the incident.
3 The night of the shooting.

4 A I don't remember. It was supposed to be
5 locked.

6 Q Okay.

7 A The one leading to the backyard?

8 Q The one that was in the front yard. I can put up
9 the diagram. The one that sort of faces towards the
10 driveway.

11 A The front --

12 Q I'll show you it again. Putting up Defendant's
13 Exhibit 4 once more. This door (indicating).

14 A It was locked at the time.

15 Q It was locked. So the deadbolt worked.

16 A The deadbolt worked, but I don't think the
17 deadbolt was on that night.

18 Q Okay. The deadbolt wasn't on that night?

19 A I don't know for sure.

20 Q Okay. But you said the door locked at the time.

21 A Yes.

22 Q You didn't have to put any furniture in front of
23 it ever?

24 A No, no furniture.

25 Q Okay. Now, I want to just go back to a little bit

1 more of your's and Ebony's relationship. You said
2 2014 was when you-all started to settle down, you were
3 really dating, right?

4 A 2015.

5 Q That was 2015.

6 Okay. But in 2014, you knew her and you-all
7 were dating, correct?

8 A Correct.

9 Q And in 2014, there was also an incident,
10 correct?

11 A Correct.

12 Q And you were charged with shooting her, correct?

13 A No.

14 Q You weren't charged with shooting her back in
15 2014.

16 A I was charged with something. Not for
17 shooting her. She didn't get no shot. Nobody
18 didn't get shot.

19 Q You weren't charged in 2014 for attempted
20 murder?

21 A Arrested. They say it was for attempted
22 murder. I forget what the charge was.

23 Q Okay. You were -- and that was -- she was the
24 victim in that case, correct?

25 A Correct.

1 Q And you were charged with possession of a firearm
2 during the commission of a violent crime, correct?

3 A They did that.

4 Q So there was a gun involved.

5 A Correct.

6 Q Okay. You were charged with discharging a firearm
7 into a dwelling, correct?

8 A Yes, which it wasn't me. It was Ebony that
9 discharged that firearm.

10 Q You pled guilty to those charges, correct?

11 Well, you pled not to that exact charge,
12 right? You pled guilty to assault and battery second?

13 A Yes.

14 Q Okay. And also to unlawful carrying of a
15 pistol?

16 A I think so. Yeah, I think so.

17 MS. BALDWIN: Okay. Court's indulgence.

18 THE COURT: All right.

19 (STATE EXH. 1, Sentencing sheet, was marked
20 for identification.)

21 (STATE EXH. 2, Sentencing sheet, was marked
22 for identification.)

23 MS. BALDWIN: May I approach the witness?

24 THE COURT: All right.

25 BY MS. BALDWIN:

1 Q I'm going to hand you what's been marked as
2 State's Exhibits 1 and 2. Do you know what these are?
3 You can hold them.

4 A That's where they charged me, I guess.

5 Q Those are the sentencing sheets from your
6 convictions.

7 MR. BOWDEN: Objection, Your Honor.
8 We've stipulated to this coming in. He's answered
9 the question that he was convicted of these
10 crimes. No further questions are necessary.

11 THE COURT: Overruled. I'll allow it.
12 Go ahead.

13 MS. BALDWIN: At this time, Your Honor,
14 I'd just like to admit State's 1 and 2 into
15 evidence.

16 THE COURT: Any objection?

17 MR. BOWDEN: No, Your Honor.

18 THE COURT: State's Exhibit 1 and 2
19 admitted into evidence without objection.

20 (STATE EXH. 1, Sentencing sheet, was entered
21 into evidence.)

22 (STATE EXH. 2, Sentencing sheet, was entered
23 into evidence.)

24 BY MS. BALDWIN:

25 Q So talk to me a little bit about your workday.

1 You worked at Knight's Construction in 2019?

2 A Yes.

3 Q Okay. And what time would you get to work?

4 A Sometimes 6:00. Sometimes 7:00.

5 Q Sometimes 6:00 or sometimes 7:00 in the morning?

6 A In the morning.

7 Q Would you take any breaks?

8 A Yes.

9 Q Could you use your phone?

10 A You could use the phone when you take

11 breaks.

12 Q Okay. And the date of the incident, how long did

13 you work?

14 A I want to say about 9 or 10 hours.

15 Q On direct you said 10 or 10 and a half hours. So

16 what is it?

17 A With breaks, about ten and a half hours.

18 Q Okay. So what time would you have gotten home

19 that night on the 26th of September 2019?

20 A I'd get home about -- I want to say about

21 6:00.

22 Q You got home about six o'clock?

23 A Right.

24 Q And Ebony was home?

25 A Yes.

1 Q And everything was fine between you-all?

2 A I mean, everything -- we wasn't having no --
3 I mean, leading up the week to that, we'd had a
4 little argument. But we didn't have an argument
5 that night.

6 Q No argument that night?

7 A No.

8 Q Everything was good between you-all? No
9 threats?

10 A No threats.

11 Q Was she acting -- you said she was acting kind of
12 aloof, but that's about it?

13 A Right. I mean -- yeah.

14 Q Okay. And if you need me to rephrase the
15 question, just ask me, okay?

16 A All right.

17 Q Where was Ebony when you got home?

18 A She was home.

19 Q She was home. But where in your home?

20 A I think somewhere in the kitchen, or
21 something like that. She was cooking.

22 Q What was she cooking?

23 A I don't quite remember. Chicken something.
24 I don't know.

25 Q Probably chicken and something?

1 A Yeah. I didn't eat no dinner that night.

2 Q Okay. That was about six o'clock in the
3 evening?

4 A Right, when I get home.

5 Q You said on direct sometimes you did one thing,
6 sometimes you did another. Sometimes you smoked some
7 weed and went to the garden. Sometimes you watched
8 TV. Sometimes you didn't do anything.

9 On the evening in question, did you smoke
10 some weed and go to the garden?

11 A I didn't go to the garden that evening.

12 Q Did you sit down and watch TV?

13 A Correct.

14 Q You mentioned you picked up beer on the way
15 home?

16 A Right.

17 Q Where did you stop?

18 A I stopped at the -- I think I stopped by the
19 gas station across the road and by my friend
20 Eddie's house.

21 Q When you say the gas station across the road. Do
22 you know the name of the road.

23 A It's Sunoco, I think.

24 Q What kind of beer was it?

25 A I think it was Icehouse or Coors Light, one

1 of them.

2 Q An Icehouse or a Coors Light?

3 A (Witness nods head up and down.)

4 Q Okay. And you grabbed that beer and then you went
5 home.

6 A Correct.

7 Q You didn't stop to talk to anybody?

8 A I mean, I think I might have stopped by
9 Eddie's house.

10 Q What time did you stop by Eddie's house?

11 A He's in the neighborhood.

12 Q Do you know his last name?

13 A Amato.

14 Q Eddie Amato?

15 A Yes.

16 Q And you talked to Eddie for how long?

17 A Probably about ten minutes.

18 Q Okay. What did you and Eddie talk about?

19 A I don't recall. I don't remember. I mean...

20 Q And you then went home.

21 A Correct.

22 Q And what door did you go through?

23 A This door right here (indicating).

24 Q Okay. And where in the house did you go when you
25 walked in the door?

- 1 A I don't remember my exact step, but I know I
2 went home.
- 3 Q Okay. How did you know -- you said you couldn't
4 hear much. How did you know Ebony was cooking?
- 5 A Because the kitchen's right here.
- 6 Q Okay.
- 7 A And she tell me she was cooking.
- 8 Q She told you she was cooking?
- 9 A Right.
- 10 Q Where did you go after you saw Ebony was cooking
11 or she told you she was cooking?
- 12 A She finished cooking. She go back to the
13 kitchen.
- 14 Q She didn't come into the living room?
- 15 A After she finished cooking, she come to the
16 living room. I said she was on the couch
17 eating.
- 18 Q And did she offer you some?
- 19 A Yes.
- 20 Q And you said you didn't want any.
- 21 A I didn't feel like no dinner at the time.
- 22 Q Okay. Did you call anybody on your way home from
23 work?
- 24 A No, I didn't.
- 25 Q Did you use your phone at all that day?

1 A No.

2 Q You didn't use your phone at all.

3 A My phone broke. I couldn't use my phone.

4 Q Okay. And when you got -- so you went to the
5 living room. Where in the living room were you
6 sitting?

7 A The couch was probably right there
8 (indicating).

9 Q About what time was that when you-all sat down?

10 A I mean, it was after 6:00.

11 Q Okay. You don't know anything more than it was
12 after 6:00?

13 A Right.

14 Q What were you wearing?

15 A My work uniform.

16 Q You stayed in your work uniform the entire time?

17 A No, I take a shower after.

18 Q Okay. When did you take a shower?

19 A After I get home.

20 Q Okay. So you were or were not wearing your work
21 uniform when you were in the living room with Ebony
22 while she was eating and you were not?

23 A I -- when it come to eating, I think I
24 already take a shower and smoking my weed and
25 drinking my beer.

1 Q So you were smoking your weed and drinking your
2 beer after your shower.

3 A Correct.

4 Q What were you wearing after your shower?

5 A Shorts and a T-shirt.

6 Q Shorts and a T-shirt.

7 Okay. And what were you-all watching?

8 A The news. I think it was the news.

9 Q Okay. What channel? Do you remember?

10 A I don't remember, but it was the seven
11 o'clock news we were watching.

12 Q It was the seven o'clock news when you-all were
13 watching TV. And what kind of TV do you-all have?
14 Was it a smart TV?

15 A Smart TV.

16 Q It was a smart TV. How were you-all watching the
17 news if it was a smart TV?

18 A I don't know. We was watching the news.
19 It's TV. You watch TV.

20 Q Okay. And were you-all talking during this?

21 A Occasionally.

22 Q Were you talking about life?

23 A I was just smoking and trying to wind down.
24 I don't remember the topic that we were talking
25 about. I know she had --

1 Q You weren't talking about the house?

2 A No.

3 Q You were about to say something. Go ahead.

4 A Like she asked me if I want food. I say I
5 don't want food. I don't remember all the
6 conversations we had that night, that evening.

7 Q You didn't talk about any money issues with the
8 house?

9 A No, not that night.

10 Q And so you-all talked, and then what happened?
11 She went somewhere else?

12 A She eat. She's going to sit for a minute, I
13 guess. She said she's going to go take a bath.

14 Q She said she was going to take a bath.

15 What was she wearing when you-all were
16 talking?

17 A I can't remember exactly.

18 Q And when she left the room, where did she go?

19 A To the other side of the house, through the
20 kitchen to the other side of the house.

21 Q Did you watch her leave?

22 A I was watching TV. I don't know. How are
23 you going to watch a person leave?

24 Q And you were sitting on the couch and then you
25 fell asleep?

1 A I was falling asleep on the couch, so I moved
2 to the room.

3 Q About what time was that?

4 A I wasn't keeping track of time. It was
5 early.

6 Q Was it light outside or dark outside?

7 A I don't remember. I don't quite remember.

8 Q Did you have to turn on any lights?

9 A I don't remember turning no light on.

10 Q There were no lights on anywhere in the house?

11 A I don't know. I'm talking about the spot
12 where I was.

13 Q Okay. Well, in the spot where you were, was there
14 a light on that table in here?

15 A I think, yes.

16 Q Okay. Was there a light on in here (indicating)?

17 A There's a light. I don't remember if it was
18 on.

19 Q You don't remember if there was a light on in the
20 master bedroom?

21 A Right.

22 Q Okay.

23 A After I fell asleep, I don't remember if the
24 light was on.

25 Q What about a light on in the rear den room?

1 A No light was on in that room.

2 Q What about a light on in the kitchen?

3 A I don't know if no light was on in the

4 kitchen.

5 Q Okay. So you went to bed.

6 A I went to bed, yes.

7 Q Did you change?

8 A I was -- no.

9 Q You didn't change out of your shorts and T-shirt?

10 A No.

11 Q Were there covers on the bed?

12 A There was a blanket on the bed, yes.

13 Q There was a blanket on the bed?

14 What about sheets?

15 A I don't think sheets was on.

16 Q What about pillows?

17 A I don't remember.

18 Q Okay.

19 A I was just in the bed.

20 Q When you went to bed, are you a heavy sleeper?

21 A Yes, sometimes when I'm real tired.

22 Q You were really tired this day?

23 A Right.

24 Q Why were you so tired?

25 A I mean, work. I worked all day.

1 Q Are you normally that tired when you get home from
2 work?

3 A Correct.

4 Q So you're a heavy sleeper more often than not.

5 A More often than not.

6 Q And you woke up?

7 A Woke up.

8 Q Ebony never called you at any point?

9 A Called me like yelling for -- screaming out
10 for me?

11 Q No. Like called you on your cell phone.

12 A Like I said, my phone was broken. I think I
13 leave the phone out in the living room. It was
14 broke.

15 Q It broke? It didn't work at all?

16 A The screen shattered. I don't think it could
17 work.

18 Q You couldn't get any phone calls on there?

19 A I mean, I don't know -- I don't remember if I
20 could get a call, but I know the screen was
21 shattered. I couldn't use the phone.

22 Q When did it break?

23 A I want to say about the Monday or the
24 Tuesday.

25 Q Okay. Monday or Tuesday. This happened on a

1 Thursday, correct?

2 A Correct.

3 Q So it had been broken for a couple days?

4 A Yes.

5 Q You weren't planning on getting a new phone?

6 A On the weekend.

7 Q You hadn't talked to anybody on that phone
8 prior -- or I guess after it broke?

9 A I don't remember.

10 Q Okay.

11 A That phone -- I have the phone. You could
12 see the phone broke.

13 Q But -- so you don't know if she called you or
14 not?

15 A No, I don't know.

16 Q Okay. So the next thing -- you fell asleep and
17 the next thing you know you're hearing banging on the
18 door.

19 A Correct.

20 Q You don't know who's banging on the door; is that
21 correct?

22 A I didn't know who was banking on the door,
23 correct.

24 Q Okay. And so you -- your first response was to
25 get a gun?

1 A I mean, it sounded violent. I mean, like I
2 have people showing me a gun and coming there.
3 I'm trying to protect the house.

4 Q You were trying to protect the house by just
5 grabbing a gun?

6 Actually, let's go back to the gentleman that
7 you talked about a week and a half prior who you said
8 threatened you with a gun?

9 A He lifted his shirt and showed me the gun and
10 told me he always walked there and he ain't going
11 to stop.

12 Q That was the only interaction you had with him?

13 A I just saw him walk past a lot of times.

14 Q Okay. But just that one time he flashed you his
15 gun?

16 A Correct.

17 Q No other times -- no other threats from him?

18 A I mean, like when I was telling him not to
19 walk in the yard. I mean, he always -- they
20 always just walk and say whatever they say. I
21 don't pay them no mind.

22 Q So you don't really pay people that much attention
23 when they're just saying stuff.

24 A Right.

25 Q All right. But then you thought that somebody

1 banging on the door was a threat to you.

2 A Yes.

3 Q Okay. You never reported this gentleman walking
4 through the yard lifting his shirt? You never
5 reported that to the police?

6 A No.

7 Q You did, in fact, report incidents with Ebony to
8 the police, though, you said, right?

9 A Correct.

10 Q She also reported incidents about you to the
11 police, correct?

12 A Correct.

13 Q Most recently in June of 2019, correct?

14 A It might have been. I don't know.

15 Q Okay. If I showed you a report, would that help
16 refresh your recollection?

17 A I don't think so.

18 Q I'm sorry. Could you say that again?

19 A I don't think so.

20 Q If I said June of 2019, would that be accurate?

21 A June of 2019? I mean, it could be right.

22 Q Okay. And in May of 2019, she reported? Or there
23 was a report to the police?

24 A I don't remember.

25 Q Okay. So let's go back. You hear this banging on

1 the door.

2 A U-huh.

3 Q And you said you called out and said, "Is that
4 you, babe?"

5 A Correct, three times.

6 Q Why did you say, "Is that you, babe," when the
7 last thing you knew, she was in the bathroom?

8 A I was just checking. Just checking.

9 Q So you never walked over to the bathroom real
10 quick to say, "Babe, are you in the bathroom?"

11 A The bathroom -- all way the way -- this --
12 the door seems urgent. That would be a long walk
13 all the way over there to the bathroom.

14 Q How long do you think it would take for you to
15 walk if it was urgent?

16 A About a minute.

17 Q A minute to get through there?

18 A Yeah.

19 Q Okay. It's a big house?

20 A It's a lot of space.

21 Q So instead, you decided to grab a gun. And was
22 the gun loaded or unloaded?

23 A It was loaded.

24 Q When did you load it?

25 A Months, from when I get it.

1 Q I'm sorry?

2 A From when I first get it.

3 Q With did you get it?

4 A I can't remember. 2018.

5 Q 2018. So after you were convicted and federally
6 prohibited from having a gun.

7 A Yes.

8 Q Okay. Now -- so you got your gun. And where do
9 you keep the ammunition?

10 A In the bathroom.

11 Q In the bathroom.

12 A I think. I could be wrong, but I think in
13 the bathroom.

14 Q Which bathroom?

15 A This bathroom.

16 Q Okay. You make sure to keep the gun loaded?

17 A It would be nonsense to have a gun and not
18 load it.

19 Q Okay. You've got to fend off anybody that
20 possibly comes in, right?

21 A Right.

22 Q Okay. So you said "Babe, is that you," three
23 times. No response.

24 A No response.

25 Q You looked out the one window.

1 A One window, yes.

2 Q You never said, "Oh, my gosh. Someone is
3 banging," so you didn't exit out of that laundry room
4 exit.

5 A I wasn't thinking of the laundry room. I was
6 trying to see what was going on at the front door
7 where there was banging.

8 Q So your immediate response, go to the door and
9 grab the gun. You didn't try to go out of the other
10 exit to the backyard.

11 A Correct, I didn't try to.

12 Q You didn't try to go, *Oh, my gosh. Somebody is*
13 *coming in the house. I need to make sure Ebony is not*
14 *in the bathroom, get her out, correct?*

15 A I mean, I was heading to see what was going
16 on. There was stuff going through my head at the
17 time.

18 Q And it happened quickly or slowly?

19 A Quickly.

20 Q How many times did the person bang?

21 A I don't know. I don't know exactly how much
22 time, but it was a couple bangs.

23 Q When you say banging, can you describe it?

24 A Like somebody -- like you know when police
25 use a battering ram to bang a door?

1 Q It was like a battering ram.

2 A Right.

3 Q Okay. So was it like this (indicating)? Like
4 that?

5 A No. It was like -- it was like -- it was
6 loud. I can't even make that sound.

7 Q Okay. So you're standing by the door. And you're
8 standing on the steps?

9 A Correct.

10 Q How far away from the door are you?

11 A A couple feet.

12 MS. BALDWIN: At this time, I'd like to
13 admit State's Exhibit 3. It's a crime scene
14 photo.

15 THE COURT: Any objection?

16 MR. BOWDEN: No objection.

17 THE COURT: State's Exhibit 3 admitted into
18 evidence without objection.

19 (STATE EXH. 3, Crime scene photo, was marked
20 and entered into evidence.)

21 BY MS. BALDWIN:

22 Q Mr. Clare, I'm going to put up this photo. This
23 is State's Exhibit 3, and this shows that rear den
24 room, correct?

25 A Correct.

1 Q Okay. Where were you standing when you heard that
2 banging on the door?

3 A I was on, like, the second or the last --
4 second to the last step on the top.

5 Q The second-to-last step on the top?

6 A Right.

7 Q How many steps are there?

8 A About three or four.

9 Q Three or four. So you were -- okay, maybe a foot
10 away?

11 A When the door is closed, it's a couple feet.
12 But if it's wide open like that, it's near...

13 Q And how were you standing?

14 A I remember I was standing on the step.

15 Q You were just standing there?

16 A Standing there with a gun in my hand.

17 Q With the gun in your hand. Were you at the ready?

18 A I don't remember. I don't remember if I was
19 at the ready.

20 Q Do you know what I mean when I say "Were you at
21 the ready?"

22 A Yeah, like (indicating).

23 Q You don't remember how you were standing?

24 A Right.

25 Q You just know you were standing there.

1 A Right.

2 Q Then all of a sudden, the door bursts open.

3 A Right.

4 Q No one answered your pleas as to, "Babe, is that

5 you?"

6 A Right.

7 Q No one threatened you, said, *get out here now?*

8 A No one say nothing. I just saw the shot.

9 Q You just sort of shot? Is that what you said?

10 A Saw the shot. I first seen the door fly wide

11 open. I fly back, like halfway back.

12 Q So you saw the door fly open and then fly halfway

13 back?

14 A Correct.

15 Q You saw someone come in through that door?

16 A Correct.

17 Q And how did they come in through that door?

18 A Like stumbling.

19 Q They kind of stumbled in like this (indicating)?

20 A Like the door just -- the person, like,

21 didn't expect it to give it at the time.

22 Q Were they on the ground?

23 A No.

24 Q They were standing?

25 A Right.

1 Q Okay. And which way were they facing you? As you
2 and I are facing or with their back to you?

3 A I couldn't tell which direction it was
4 facing.

5 Q You couldn't tell which direction?

6 A Right.

7 Q You couldn't see their face?

8 A No.

9 Q You couldn't recognize who it was?

10 A It was dark.

11 Q They weren't wearing a mask, were they?

12 A I can't tell. It was dark.

13 Q Okay. And what -- so you then pulled the trigger.

14 A Yes, I did.

15 Q You pulled it more than one time, correct?

16 A I guess. I didn't have that -- I thought it
17 was one time.

18 Q You, in fact, pulled it five times.

19 A Eventually.

20 Q And it's a revolver, correct, that you had?

21 A It is.

22 Q Okay.

23 A (Witness nods head up and down.)

24 Q And you shot into the person that came in. At
25 what point did you realize that it was Ebony?

1 A When I heard her, like, voice.

2 Q You heard her voice?

3 A Right.

4 Q During which shot did you hear her voice?

5 A After the gun stopped making noise.

6 Q After the gun stopped making noise?

7 A Right.

8 Q You emptied all of your shots into her?

9 A The gun was empty.

10 Q The gun was empty.

11 A Yes.

12 Q Okay.

13 A I thought it was one shot, but it was more

14 than one.

15 Q How were you aiming the gun when you shot her?

16 A I point it when I shoot. Toward your target,

17 whatever.

18 Q You were pointing towards your target?

19 A I saw the shadow, and I pointed toward the

20 shadow and shoot.

21 Q The shadow was above you or below you?

22 A It was out.

23 Q They were only two feet away from you?

24 A It was -- I don't know the distance.

25 Q Approximately two feet?

1 A Could have been more.

2 Q You say you were standing right by that door, two
3 feet away from that door at the most.

4 A But they stumbled in. So they -- I guess, if
5 they were walking, it would be two -- probably
6 two, three feet.

7 Q So they were two or three feet away from you.

8 A Yeah.

9 Q Okay. There was a light on in the living room.

10 A No light was on in the living room. I don't
11 know if the TV was on. No lights was on.

12 Q You said earlier you thought a light was on.

13 MR. BOWDEN: Objection. That's
14 mischaracterizing the evidence.

15 THE COURT: Sustained.

16 BY MS. BALDWIN:

17 Q You're not sure if there was a light on in the
18 kitchen.

19 A I didn't know if the light was on in the
20 living room or the kitchen.

21 Q Okay. And the person, you weren't sure if they
22 were facing towards you or away from you.

23 A Correct.

24 Q And the person that you saw come in, were they
25 tall?

1 A I just saw the shadow. It was --

2 Q The shadow?

3 A It was quick. I didn't have time to see who
4 it was.

5 Q You could see an outline of the person, correct?

6 A I could see a shadow.

7 Q Shadows have outlines, correct?

8 A If you say so.

9 Q Okay. After you emptied the gun, you heard Ebony
10 say something.

11 A Right.

12 Q Okay. And you never -- the gun was always facing
13 towards the shadow, correct?

14 A I don't know.

15 Q You don't know?

16 Were you turning around?

17 A After I heard her voice, I was trying to help
18 her, see if she got hit. I don't even know what I
19 did with the gun.

20 Q You don't even know what you did with the gun?

21 A Right.

22 Q Okay. But you aimed that gun towards that shadow
23 the entire time.

24 A I fired at Ebony, then I was trying to help
25 her.

1 Q And you were never injured, correct?

2 A No, I didn't have no injuries.

3 Q The person who entered, you never saw a weapon,
4 correct?

5 A I couldn't tell if there was -- if the person
6 had a weapon. I couldn't tell.

7 Q The person never screamed, *let me in*, never said
8 they were going to beat you up?

9 A I didn't hear none of that.

10 Q Okay. And you said that Ebony then said her name
11 and you realized it was Ebony at that point?

12 A Correct.

13 Q What was she wearing?

14 A It was dark. I couldn't tell what she was
15 wearing.

16 Q You couldn't see at all what she was wearing.

17 A No.

18 Q Could you see if she was wearing shoes?

19 A I couldn't tell. It was dark, like I said.

20 Q And so she went back out onto the steps?

21 A Right.

22 Q And what did you do?

23 A I went out -- first I tried to get a phone,
24 but my phone was broken. I go back out and ask
25 her where her phone is, and she got her phone.

1 Q So you said she went back out and got her phone?

2 A I said she went out, and I was looking for my
3 phone to try to call 911.

4 Q Okay.

5 A Then I remembered my phone broke.

6 Q You already knew your phone was broken, correct?

7 A At the time, it was sometime after I remember
8 my phone broke.

9 Q Okay. And so you -- Ebony gave you her phone to
10 call 911?

11 A I dialed 911.

12 Q You dialed 911.

13 A Right.

14 Q And you said you asked for an ambulance?

15 A No, I didn't. I don't know if it was
16 coincidental, but as soon as the phone was ringing
17 I heard, like, sirens.

18 Q So you -- did you -- you never spoke to the 911
19 operator?

20 A No.

21 Q You didn't say on direct that you called an
22 ambulance?

23 A I gave it to Ebony.

24 Q You said that Ebony grabbed the phone out of her
25 bra?

1 A Right.

2 MS. BALDWIN: Your Honor, at this time,
3 I'd like to admit State's Exhibit 4.

4 THE COURT: Any objection?

5 MR. BOWDEN: No objection.

6 THE COURT: All right. State's Exhibit 4
7 admitted into evidence without objection.

8 (STATE EXH. 4, Photo, was marked and entered
9 into evidence.)

10 BY MS. BALDWIN:

11 Q So this is State's Exhibit 4. That's showing the
12 side of the house that leads into the rear den and the
13 driveway and the converted garage that's the living
14 room, correct?

15 A Right.

16 Q Okay. So you said Ebony was standing here
17 {indicating), yeah?

18 A No. She was right here (indicating).

19 Q So she stumbled onto that side of the railing.

20 A Correct.

21 Q Of the steps. So that railing had been like that?

22 A No, it wasn't like that.

23 Q That railing wasn't broken before then?

24 A No, it wasn't broken before then.

25 Q So it broke that evening.

1 A Correct.

2 Q Okay. And you called 911?

3 A I dialed 911.

4 Q And you thought an ambulance was coming?

5 A Correct.

6 Q And so you decided to be helpful and move the car

7 for the ambulance.

8 A Right.

9 Q You didn't think the ambulance could have parked

10 on the street?

11 A I wasn't thinking straight that night.

12 Q Okay. And where was Ebony?

13 A Where I said the dot was.

14 Q Okay. But did she go anywhere after that?

15 A She was sitting down.

16 Q She was sitting down?

17 A Right.

18 Q Okay. Was she saying anything to you?

19 A I don't remember.

20 Q Okay. And you then move the car.

21 A Yes, I did.

22 Q And you saw the blue lights.

23 A Yes.

24 Q Let me ask you this: All these pictures we've

25 shown you on the house. You said you were frightened.

1 You guys -- you didn't have an alarm system on the
2 house, correct?

3 A No.

4 Q You said it was a shady neighborhood. You didn't
5 put bars on the windows, did you?

6 A I didn't put no bars on the windows.

7 Q So you moved the car. Where were you parked?

8 A Across the street on the grass.

9 Q Okay. When you saw the blue lights, you went back
10 to Ebony?

11 A No, I didn't.

12 Q You never went back to her. You never tried to
13 tell the police, *oh, my gosh. I accidentally shot my*
14 *wife.*

15 A I was panicking, like I said. Nobody would
16 believe my story.

17 Q You didn't think they'd believe it?

18 A A lot of things was going in my head. Like,
19 oh, I just shot my wife. I was panicking. There
20 was a lot of thoughts.

21 Q And so you were able to drive off.

22 A I did.

23 Q And you drove where?

24 A Somewhere -- I forget where. I didn't know
25 exactly where I was going. I didn't have no

1 direction.

2 Q You didn't have time to grab anything and put it
3 in the car?

4 A No.

5 Q Did you ever go back to that house?

6 A No.

7 Q You never went back to that house. You went to
8 Florida, in fact, right?

9 A Eventually. The next day.

10 Q But before you got to Florida the next day, you
11 went to your bank. You bank at Latitude 32, correct?
12 Or did.

13 A I did.

14 Q Okay. And at 9:30 in the morning the next day,
15 you went and took out some money from the bank,
16 correct?

17 A Yes, I did.

18 MS. BALDWIN: Your Honor, at this time
19 I'd like to admit State's Exhibits 5 and 6.

20 THE COURT: Any objection?

21 MR. BOWDEN: No objection.

22 THE COURT: State's Exhibit 5 and State's
23 Exhibit 6 admitted into evidence without objection.

24 (STATE EXH. 5, Bank withdrawal receipt, was
25 marked and entered into evidence.)

1 (STATE EXH. 6, Bank withdrawal receipt,
2 marked and entered into evidence.)

3 BY MS. BALDWIN:

4 Q Mr. Clare, I'm going to put this up in front of
5 you, two copies. Because this one's a little hard to
6 read, but that is your signature right there, right?

7 A Yes.

8 Q Okay. And it shows a withdrawal of \$450 on
9 September 27th of 2019?

10 A Yeah.

11 Q So the next day at 9:29 a.m., correct?

12 A Correct.

13 Q And you then went and drove down to Florida.

14 A Yeah.

15 Q Okay. And you were subsequently arrested in
16 Florida, correct?

17 A Yes.

18 Q In Fort Lauderdale?

19 A In Fort Lauderdale.

20 Q Okay. And they confiscated your car, correct?

21 A Correct.

22 Q And you didn't pack a bag or anything?

23 A No. The only thing that was in my car -- I
24 bought a bag that day.

25 Q I'm sorry?

1 A I bought a bag that day. I think I might
2 have bought it at Walmart.

3 Q You bought a bag that day?

4 A Right.

5 Q Okay.

6 MS. BALDWIN: At this time, we'd like to
7 admit State's Exhibits 7 and 8 into evidence.

8 THE COURT: Any objection?

9 MR. BOWDEN: No objection.

10 THE COURT: State's Exhibit 7 and
11 State's Exhibit 8 admitted into evidence without
12 objection.

13 (STATE EXH. 7, Photo, was marked and entered
14 into evidence.)

15 (STATE EXH. 8, Photo, was marked and entered
16 into evidence.)

17 BY MS. BALDWIN:

18 Q So Mr. Clare, I'm going to put up State's
19 Exhibit 7. That's the back of the Nissan Murano that
20 you drove to Florida; correct?

21 A Right.

22 Q Okay. And is that the bag that you bought at
23 Walmart?

24 A Correct.

25 Q Okay. And that's -- you also bought a

1 comforter?

2 A I buy that at Dollar General, or something
3 like that. I buy a phone that day.

4 Q You bought a phone, okay.

5 A And I bought a bag and I bought a machete. I
6 bought -- I was planning to go in the woods.

7 Q Okay. But you were actually located at the
8 Days Inn in Fort Lauderdale, correct, in the parking
9 lot?

10 A Parking lot, yeah.

11 Q And so there's that bag there. There's another
12 bag over here, correct?

13 A Correct.

14 BY MS. BALDWIN:

15 Q I'll put up State's Exhibit 8 so we can get a
16 better look at that one.

17 So that bag is -- looks a little bit older,
18 doesn't it?

19 A That's my bag I carry to work.

20 Q Oh, you carry that to work. So you never brought
21 that bag inside that evening.

22 A No.

23 Q It has pictures of your wife in it?

24 A I can't remember exactly what's in it. I
25 know that some paper was in the car to do our

1 tax filing, to do our tax, try to get back this
2 house under control.

3 Q So you never told the officers in Florida that
4 that bag had photos of your wife in it?

5 A I don't remember. I probably did.

6 Q You probably did, okay. But what you didn't do is
7 tell the officers in Florida what happened, right?

8 A I didn't tell them about what happened. I
9 don't remember if I tell them nothing.

10 Q You didn't tell the police in Charleston what
11 happened.

12 A I don't think so.

13 Q In fact, today is the first time that you've told
14 what happened under oath.

15 MR. BOWDEN: Objection, Your Honor. This
16 is commenting on his right to remain silent.

17 THE COURT: Sustained.

18 MS. BALDWIN: Court's indulgence.

19 BY MS. BALDWIN:

20 Q Mr. Clare, just one or two more questions.

21 So let's go back to when you were
22 standing on the stairs and you were hearing that
23 banging. How long were you standing on those
24 stairs?

25 A It was a couple seconds, I guess.

1 Q A couple seconds? A couple seconds that you were
2 standing on the stairs before when?

3 A Before the door fly open.

4 Q Okay. You weren't able to stop shooting at that
5 time.

6 A I don't know. I guess.

7 Q It was a double-action revolver that you had,
8 correct?

9 A It was a revolver.

10 Q Okay.

11 MS. BALDWIN: Court's indulgence.

12 BY MS. BALDWIN:

13 Q And so those shots, you were standing on the
14 stairs when that happened?

15 A I think I was at the top of the step, the
16 last step, I think.

17 Q So you moved towards the door.

18 A Maybe a step.

19 MS. BALDWIN: Okay. That's all I have.

20 THE COURT: All right. Redirect?

21 MR. BOWDEN: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BOWDEN:

24 Q Mr. Clare, the government just asked a lot of
25 questions about where exactly you were standing, how

1 far exactly you were away from the door, exactly how
2 many times you thought you fired.

3 Were those -- when you answered those
4 questions, were you estimating?

5 A Estimating.

6 Q Would you have even put a number to any of those
7 things if the government hadn't repeatedly pressed
8 you?

9 A No.

10 Q So when you said two to three feet away from the
11 shadow that you shot, do you actually know that you
12 were two to three feet away?

13 A No.

14 Q That's just a guess.

15 A Just a guess.

16 Q Could have been further?

17 A Could be.

18 Q When you said that, you know, you shot -- you felt
19 like you shot one time, you're not saying you only
20 thought that you pulled the trigger one time. You're
21 not saying that you only pulled the trigger one time.

22 A I didn't say that.

23 Q You're saying that it happened so quickly --

24 MS. BALDWIN: Objection; leading.

25 THE COURT: Just don't lead.

1 BY MR. BOWDEN:

2 Q What are you saying?

3 A I was estimating. I didn't know exactly how
4 much times I pulled the trigger.

5 Q Was your adrenaline going during this entire
6 incident?

7 A Yeah. My mind was -- it was a rush. Like it
8 was crazy. I mean, I don't know. There was a lot
9 of things going on at once.

10 Q What were you focused on?

11 A I was focused on protecting the household,
12 like I said before.

13 Q Right. You were not taking measurements of how
14 far you were away from certain things.

15 A Right.

16 Q Mr. Clare, were you scared of what was behind that
17 door?

18 A I was.

19 Q And what were you scared of that was on the other
20 side of that door would do to you?

21 A Kill me. Harm me. Hurt Ebony. Hurt me.
22 Hurt whoever was in the house.

23 MR. BOWDEN: Thank you. No further
24 questions, Your Honor.

25 THE COURT: All right. You may step down.

1 All right. Let me see the attorneys for a
2 second.

3 (Off the record.)

4 THE COURT: All right. It's 12:35.
5 We're going to go ahead and break for lunch.
6 Let's take, I guess, an hour and ten minutes.
7 We'll reconvene at 1:45, all right?

8 MR. BOWDEN: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (A break was taken from 12:35 p.m. to 1:50 p.m.)

11 THE BAILIFF: Come to order.

12 THE COURT: Thank you very much. Please
13 be seated.

14 Mr. Bowden, defendant can call your next
15 witness.

16 MR. BOWDEN: Your Honor, State calls
17 Dr. Angelina Phillips. Or defense calls Angelina
18 Phillips.

19 THE COURT: The clerk had told me that we
20 needed to set up our virtual courtroom. I wasn't
21 told about any virtual witnesses. So witnesses
22 need to be here in person to testify, okay?

23 MR. BOWDEN: Okay. I'm not sure he can
24 get here in time. I just have like five questions
25 for her.

1 THE COURT: Well, you're going to need to
2 have him here in person.

3 MR. BOWDEN: Okay.

4 THE CLERK: Can you raise your right
5 hand? Do you swear or affirm the testimony that
6 you will give the Court today is the truth, the
7 whole truth, and nothing but the truth, so help
8 you God?

9 THE WITNESS: Yes.

10 THE CLERK: You may have a seat. Please
11 state your name for the record and spell your last
12 name.

13 THE WITNESS: Angelina Phillips,
14 P-h-i-l-l-i-p-s.

15 THE COURT: I'm sorry. Angela or
16 Angelia?

17 THE WITNESS: Angelina.

18 THE COURT: Could you spell that?

19 THE WITNESS: A-n-g-e-l-i-n-a.

20 THE COURT: Thank you very much,
21 Ms. Phillips.

22 WHEREUPON:

23 ANGELINA PHILLIPS,
24 after having been sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BOWDEN:

2 Q Good afternoon, Dr. Phillips. How are you?

3 A I'm doing well.

4 Q What is your current job?

5 A I'm a forensic pathologist.

6 Q Okay. How long have you been a forensic
7 pathologist?

8 A Going on seven years.

9 Q Can you please describe your training.

10 A I completed undergraduate training at
11 New York University in anthropology. I have a
12 graduate degree in human nutrition from
13 Columbia University in New York. Completed my
14 medical education in Upstate New York before going
15 to do four years of pathology training in
16 Massachusetts, and then coming down to
17 South Carolina for one more year of training in
18 forensic pathology.

19 Q And you're here today because you performed the
20 autopsy on Ebony, correct?

21 A Yes.

22 Q I want to start by talking about essentially what
23 happens when you are doing an autopsy in a case where
24 there's been a shooting.

25 How do you do an autopsy when you find out

1 that somebody has gunshot wounds?

2 A Okay. So in every autopsy that we do at the
3 Medical University of South Carolina, those cases
4 are referred to us by the coroner of the various
5 counties. They provide us with some bit of
6 information, be it gunshot wound or other injury,
7 or any information they know about the history.

8 When we receive those cases, some things
9 happen that happen on every case, which is an external
10 examination. We look at the body as-is. That means
11 as we get it. We take photographs.

12 I document clothing that may be there,
13 medical therapy that may be there. And we collect
14 things for evidence, including fingernail clippings,
15 pulled scalp hair. And then we will proceed to
16 declothe the person if they have clothing on and
17 examine the body for any injuries. The other
18 pertinent thing that happens for a gunshot wound case
19 is x-rays are performed.

20 Q And the x-rays help you figure out whether there's
21 any projectiles still in the body?

22 A Correct.

23 Q You mentioned one thing I want to, sort of, get
24 back to, generally, you know -- what you generally do
25 in a case. But you mentioned clothing, were you

1 provided any clothing in this case?

2 A I did not get any clothing on this case.

3 Q So you weren't able to examine what Ms. Clare was
4 wearing that day.

5 A That is correct.

6 Q And so that would affect whether you noted any
7 stippling.

8 A That would affect stippling and/or soot
9 deposition. I don't always examine the clothing
10 in detail except for looking at that, for gross
11 findings of gunshot residue.

12 Q So, in this case, if there had been stippling on
13 the clothing or burn marks, you wouldn't know that.

14 A Correct.

15 Q When you identify a gunshot wound, what do you
16 want to document about it?

17 A When I identify a gunshot wound, the first
18 thing I do is take a photograph of it. I mark it
19 on my diagram. I determine if it's an entrance or
20 an exit wound. I look for any findings that would
21 give me a clue about the range of fire or any
22 other evidence associated with the gunshot wound.
23 And then, after I've documented all of that, we'll
24 trace the pathway through the body.

25 Q You've got various tools for doing that, like a

1 rod, for example?

2 A Correct.

3 Q Just generally, can one bullet cause multiple
4 gunshot wounds?

5 A Yes.

6 Q How do you determine whether gunshot wounds were
7 caused by the same bullet?

8 A I wouldn't know that for a hundred percent
9 certainty. I can give you a best guess estimate.
10 Sometimes it's because the gunshot wounds are in
11 such proximity that they couldn't be anything else
12 but an entrance and reentry with an exit in
13 between. And sometimes we have to estimate based
14 on the position of the body.

15 Q So for you to document in your report that
16 multiple wounds were caused by the same bullet, it
17 would have to be pretty much obvious.

18 A Yes.

19 Q Okay. In other words, you're not guessing.

20 A Correct.

21 Q When you list gunshot wounds separately in your
22 report, you're not always concluding that they were
23 caused by separate bullets.

24 A Correct.

25 Q All right. I want to talk about the actual

127
1 gunshot wounds in this case. I think the easiest way
2 to do that is to kind of draw while I'm talking to
3 you. So I'm going to put a very crude drawing of a
4 person on the screen here, if that's okay. Very
5 crude.

6 All right. How many gunshot wounds did you
7 document in this case?

8 A I documented six gunshot wounds. That
9 includes the entrances, exits of the gunshot
10 wound.

11 Q There was -- do you have in front of you where the
12 entrances were?

13 A Yes.

14 Q I don't -- this isn't like a pop quiz, so I'll
15 help you out if you can't remember exactly off the top
16 of your head.

17 Can you tell us where the entrance wounds
18 were?

19 A Okay. So I have entrance gunshot wounds
20 documented on the right breast superior. So
21 that's the top of the right breast.

22 Q Okay. When you say "right breast," you're saying
23 Ms. Clare's right.

24 A Correct.

25 Q So if she is laying flat on a table --

1 A It would be her right.

2 Q Okay.

3 A The next gunshot is on the inferior arm under
4 the right breast.

5 MR. FINCH: Objection, Your Honor. As to
6 the markings, if the doctor could make the
7 markings as opposed to the attorney. He's not
8 testifying about his markings.

9 THE COURT: Well, is he marking them in
10 the right spot?

11 THE WITNESS: Relatively speaking, yes.

12 THE COURT: Okay.

13 MR. BOWDEN: And I'm not going for
14 exact.

15 THE COURT: I'll allow it. Go ahead.

16 THE WITNESS: The next gunshot wound is
17 on the right side of the chest. And the next
18 gunshot wound entrance is on the right hip. Then
19 we have a gunshot wound to the right arm on the
20 anterior lateral aspect. So that's the front
21 side. And the last gunshot wound is to the right
22 forearm on the posterior lateral. So back side of
23 the arm, forearm.

24 BY MS. BALDWIN:

25 Q Are these generally accurate?

1 A Yes. Those are the six documented gunshot
2 wounds, not including the exits and reentry
3 injuries.

4 Q Okay, that's what I was about to tackle with you.
5 So which of these gunshot wounds was an exit
6 and reentry?

7 A The gunshot wound to the lower aspect of the
8 right breast --

9 THE COURT: Now, wait a minute. She's
10 starting to render an opinion. I need to check
11 and see, is there any -- you've got to qualify her
12 as an expert. Are there any questions or
13 challenges?

14 MR. BOWDEN: This is in the report that
15 they consented to.

16 THE COURT: But still, you got to qualify
17 her for the testimony.

18 MR. FINCH: There's no objection.

19 THE COURT: All right. I find this
20 witness to be an expert in the field of forensic
21 pathology.

22 All right. You can go ahead, ma'am.

23 THE WITNESS: The second gunshot wound,
24 the one to the inferior aspect of the right
25 breast, exits the lower part of the chest and then

1 reenters adjacent on the abdomen/chest region
2 before going across to exit the body in the back.

3 BY MS. BALDWIN:

4 Q So, again, that's -- you're not saying that all of
5 these other wounds were caused by distinct bullets.
6 You're just saying that that is the one that you can
7 conclude is caused by multiple.

8 A That is the one that I can conclude was
9 caused by one bullet.

10 Q And this order that you put them in, you're not
11 making any conclusion about the gunshots actually
12 hitting her in that order.

13 A Correct.

14 Q Did you form any opinions about the minimum number
15 of bullets that could have caused this many wounds?

16 A The minimum number of bullets that could have
17 caused these wounds would have been five, if we
18 estimate that one of the gunshot wounds to the
19 forearm reentered the body in the torso.

20 Q And the one that entered her forearm, did that hit
21 any bone that would have affected its trajectory?

22 A The one that entered the forearm disrupted
23 the skin subcutaneously. She had muscle, but no
24 bone injuries.

25 Q So what I'd like to talk about now is the

1 trajectory that these bullets were moving on. So
2 we'll just go in this order if you're comfortable with
3 that.

4 What trajectory did gunshot number 1 move
5 through the body?

6 A Gunshot wound number 1 went from front to
7 back and down. It exited on the right side of the
8 lower back.

9 Q Something like that (indicating)? Is that fair?
10 It didn't go into leg, to be clear.

11 A It went towards the back.

12 Q Okay. But does that trajectory --

13 A Yes.

14 Q Okay. What about gunshot wound number 2?

15 A Gunshot wound number 2 exits the lower part
16 of the breast/chest region, reenters the body
17 adjacent to that, and then travels towards the
18 back, down and to the right, exiting on the left
19 lower side of the back.

20 Q Is that fair?

21 A Yes.

22 Q What about gunshot wound number 3?

23 A Number 3 travels through the body from right
24 to left, goes towards the back and down, and we
25 recover a bullet from the subcutaneous tissue on

1 the left side of the abdomen.

2 Q So it was lodged in the body still.

3 A Yes.

4 Q What about gunshot wound number 4?

5 A Number 4 travels across the body from right
6 to left and goes towards the back. And we recover
7 a bullet from the subcutaneous fat of the left
8 buttock.

9 Q And what about gunshot number 5?

10 A Gunshot wound number 5 is to the right arm.
11 That one travels right to left and exits front to
12 back and goes down, exits on the right arm at the
13 axillary crease. It goes in anterior, exits
14 posterior.

15 Q Okay. And does not go back into the body?

16 A Correct.

17 Q Did that -- that gunshot wound, did that hit
18 anything hard like a bone that would have altered its
19 trajectory?

20 A It did not.

21 Q What about gunshot wound number 6?

22 A Gunshot wound number 6 on the forearm goes
23 from right to left, from the back side -- outside
24 aspect of the arm to the back inside aspect of the
25 arm.

1 Q Okay. Do you have any conclusions about where
2 that one ended up?

3 A I couldn't tell you where that one went.

4 Q Okay. So three -- let's say five of these
5 gunshots move through the body on a right-to-left
6 trajectory.

7 A Um-hmm.

8 Q I'm sorry?

9 A Correct.

10 Q And then one of the gunshots moves just down.

11 A Yes.

12 Q Is that consistent with a body turning while these
13 shots are hitting the body?

14 A That's one possible position that the body
15 could be in.

16 MR. BOWDEN: I want to -- could we mark
17 this a Court's exhibit just for the record?

18 THE COURT: Well, if you're going to
19 introduce it as evidence, we'll put it as a
20 defendant's exhibit.

21 MR. FINCH: No objection, Your Honor.

22 THE COURT: This would be defendant's
23 exhibit what?

24 MR. BOWDEN: This would be number 8.

25 THE COURT: All right. Defendant's

1 Exhibit Number 8 admitted into evidence without
2 objection.

3 (DFT. EXH. 8, Chart, was entered into
4 evidence.)

5 BY MR. BOWDEN:

6 Q I'd like to move on to talking about a particular
7 one of these wounds. I'm sorry. I know there's a
8 glare.

9 THE COURT: What exhibit is this?

10 MR. BOWDEN: This is Defendant's Exhibit
11 number 9. I apologize, Your Honor. This is one
12 of the autopsy photos that we stipulated to, and
13 I'd request it be moved into evidence.

14 THE COURT: Any objection?

15 MR. FINCH: No, Your Honor.

16 THE COURT: All right. Defendant's
17 Exhibit 9 admitted into evidence without
18 objection.

19 (DFT. EXH. 9, Autopsy photo, was marked and
20 entered into evidence.)

21 BY MR. BOWDEN:

22 Q Dr. Phillips, I'm showing you what's been marked
23 as Defendant's Exhibit 9. Is this what you listed as
24 gunshot wound number 4 in your report?

25 A Yes.

1 Q This is a wound to -- where is this wound?

2 A This wound is on her right hip region in the
3 crease between the abdomen and the upper thigh.

4 Q Is there anything notable about this gunshot
5 wound?

6 A This gunshot wound is notable for not having
7 any injuries on the surrounding skin. For it to
8 be in the crease and to occur in that location,
9 you would expect to have, if she's positioned
10 upright and the fat is hanging in the natural
11 position, some injury to that skin. So for this
12 gunshot wound to happen, the skin has to be pulled
13 up so that area is exposed.

14 Q And so, in this picture, you're manipulating the
15 area around the gunshot wound to expose it.

16 A Correct.

17 Q So it would have -- she would have had to have
18 been positioned in a way that caused her body to move
19 in the way that you've got it manipulated in this
20 photo.

21 A Yes.

22 Q And so, essentially, bent over to her left in some
23 way.

24 A Yes.

25 Q Is it possible that the bullet that went through

1 her forearm then went into her hip?

2 A It's possible that that happened.

3 Q I want to move on to another particular injury
4 that you noted. I'm marking this as Court's -- or
5 excuse me -- Defendant's Exhibit Number 10. I'd ask
6 that it be moved into evidence as an autopsy picture.

7 THE COURT: Any objection?

8 MR. FINCH: No objection, Your Honor.

9 THE COURT: Defendant's Exhibit 10
10 admitted into evidence without objection.

11 (DFT. EXH. 10, Autopsy photo, was entered
12 into evidence.)

13 BY MR. BOWDEN:

14 Q Dr. Phillips, can you please describe what is
15 shown in Defendant's Exhibit Number 10.

16 A This is a photograph taken at the time of
17 autopsy of an injury on the left thigh. It is
18 showing an abrasion with some areas of contusion,
19 which is a scrape with some areas of bruising.

20 Q Okay. And a bruise like this, what would cause
21 that?

22 A It's part of blunt trauma. So any blunt
23 object coming in contact with the body with enough
24 force can create injuries consistent with blunt
25 trauma. That includes the abrasions, contusions,

1 some scrapes, bruises. You can get, if it's
2 severe enough, lacerations or tears in the skin.

3 In this case, we've got blunt trauma
4 consisting of abrasion, a scrape, and some contusion
5 bruising.

6 Q Is this injury consistent with an adult woman
7 slamming her body into a closed door?

8 A It's possible if it's done with enough
9 force.

10 Q And, finally, I want to talk to you about the
11 toxicology report.

12 MR. BOWDEN: Your Honor, at this time I'd
13 request to move what will be marked as Defendant's
14 Exhibit 11 and Defendant's Exhibit 12 into
15 evidence. They are the final autopsy Report and
16 the toxicology report that we consented to.

17 THE COURT: All right. Any objections to
18 Defendant's Exhibits 11 or 12?

19 MR. FINCH: No, Your Honor.

20 THE COURT: All right. Defendant's Exhibit
21 11 and 12 admitted into evidence without objection.

22 (DFT. EXH. 11, Final autopsy report, was
23 marked and entered into evidence.)

24 (DFT. EXH. 12, Toxicology report, was marked
25 and entered into evidence.)

1 MR. BOWDEN: Just for the record, the
2 autopsy final report is going to be Defendant's
3 Exhibit 11. The toxicology report on Ebony Clare
4 is going to be Defendant's Exhibit 12.

5 BY MR. BOWDEN:

6 Q What is the toxicology report?

7 A The toxicology report is a report generated
8 by a toxicology lab. They perform testing on
9 samples that we submit from autopsy or samples
10 that were collected before the autopsy from the
11 patient in order to determine whether there are
12 any significant toxicological findings in their
13 blood, urine, vitreous, or other fluids.

14 Q To be clear, you didn't perform the toxicology
15 testing in this case?

16 A That is correct.

17 Q But it's noted in your report. The results are
18 noted in your report.

19 A Yes.

20 Q So you reviewed this toxicology report.

21 A Yes.

22 Q What substances does a toxicology report test
23 for?

24 A The substances tested for include common
25 illicit drugs and common prescription drugs that

1 you can overdose on. Any kind of medications used
2 in the hospitals may be picked up. And it can
3 pick up certain other medications and drugs that
4 are new on the illicit drug scene. Sometimes we
5 have to special request certain medications or
6 items, but it can pick up a lot of things.

7 Q A toxicologist isn't just necessarily looking for
8 the actual drug. They also look for byproducts that
9 your body creates from processing a drug?

10 MR. FINCH: Objection, Your Honor.
11 Speculation as to the role of the toxicologist.

12 THE COURT: Sustained.

13 BY MR. BOWDEN:

14 Q What substances were found in Ms. Clare's blood?

15 A The toxicology report lists lidocaine being
16 qualitatively positive, meaning they found
17 evidence of lidocaine in the body, but did not
18 quantify it. Fentanyl at 1.2 nanograms per
19 milliliter. So they quantified the amount of
20 fentanyl. Benzoylecgonine, less than
21 100 nanograms per milliliter. And ethanol.

22 Q Benzyl- -- what is benzoylecgonine?

23 A Benzoylecgonine is a cocaine metabolite.
24 It's a breakdown product of cocaine.

25 Q Is it possible to find benzoylecgonine in a

1 person's body -- in a person's blood without them
2 having consumed cocaine?

3 A No.

4 MR. FINCH: Objection, Your Honor. Outside
5 the field of expertise. She's not a toxicologist.

6 THE COURT: Sustained.

7 BY MR. BOWDEN:

8 Q Are you able to tell from this report if
9 Ebony Clare used cocaine?

10 A Yes.

11 Q How could you tell that?

12 A Because --

13 MR. FINCH: Objection, Your Honor.

14 THE COURT: I'll overrule that. I mean,
15 I'll allow her to testify. Go ahead.

16 THE WITNESS: Because the benzoylecgonine
17 present in the blood is a signifier of cocaine
18 being used.

19 BY MR. BOWDEN:

20 Q What effects can cocaine have on a person?

21 MR. FINCH: Objection, Your Honor.

22 THE COURT: Sustained.

23 MR. BOWDEN: I don't have any further
24 questions. Thank you.

25 THE COURT: Cross-examination.

1 MR. FINCH: Thank you, Your Honor. May it
2 please the Court?

3 CROSS-EXAMINATION

4 BY MR. FINCH:

5 Q Good afternoon, Dr. Phillips.

6 A Good afternoon.

7 Q I have a couple questions, or maybe more than a
8 couple, about your work on the autopsy of Ebony Clare.

9 You testified on direct that all the shots
10 that you documented were essentially coming from right
11 to left, generally up on the body to down; is that
12 correct?

13 A Yes.

14 Q And right to left, up and down, and front to back,
15 essentially; is that correct?

16 A Correct.

17 Q And Mr. Bowden had asked you about the
18 possibilities of different trajectories of bullets.
19 You would agree, though, that there's almost endless
20 possibilities of how bullets may have entered a
21 person. There's no necessarily definitive
22 understanding or explanation unless you were there to
23 observe it; is that correct?

24 A Correct.

25 Q Because the body moves in a myriad of ways,

1 correct?

2 A Yes.

3 Q And you don't know -- the pathologist isn't privy
4 to the direction of the shooter or the position of the
5 shooter or the position of the victim at the time of
6 the shooting, correct?

7 A That is correct.

8 Q However, you can trace the trajectory of the
9 bullet as you did in this case, correct?

10 A Yes.

11 Q And again, front to back, up to down, right to
12 left.

13 A Yes.

14 Q And Mr. Bowden had asked you about specifically an
15 injury to Ebony's forearm.

16 A Yes.

17 Q And that was a through-and-through wound; is that
18 correct?

19 A Correct.

20 Q And he asked you if it was possible whether that
21 through-and-through could have gone through the arm,
22 into the hip, and then terminating on the left side;
23 is that correct?

24 A Correct.

25 Q And you said that's possible, correct?

1 A That is possible, yes.

2 Q And based on your previous testimony, it's just as
3 possible that Ms. Clare had her forearm in front of
4 her and the bullet came in through and then entered
5 the body, correct?

6 A Correct.

7 Q I'm going to ask you about exit wounds. There's a
8 lot of talk about entrance wounds, but there's
9 different kinds of exit wounds, aren't there?

10 A Yes.

11 Q And would you be able to tell by looking at an
12 exit wound if a body was more or less likely to be up
13 against a hard surface?

14 A Yes.

15 Q What are the distinguishing characteristics of an
16 exit wound that would lead a pathologist to believe
17 that the body was up against a hard surface at the
18 time of that bullet exiting?

19 A In general, for an exit wound, it appears as
20 a slit or a tear in the skin as the bullet is
21 exiting the body. When the body is pressed up
22 against a hard surface, as that split or tear in
23 the skin is happening, it creates an abrasion from
24 the skin rubbing on the hard surface that it's
25 pressed up against.

1 So a short exit, which is what we call an
2 exit wound where the body is pressed up against
3 something hard, tends to have features more like an
4 entrance wound and an exit. So they look slit-like, a
5 tear in the skin, and have an abrasion, which is
6 something we generally associate with entrance
7 wounds.

8 Q Did you note any of those injuries to Ms. Clare's
9 body as far as her exit wounds?

10 A Let me verify in my report. I have,
11 predominantly slit-like injuries. I don't see any
12 specifics where I have abrasions, but I may be
13 missing it in the overall report

14 (STATE EXH. 9, Photo, was marked for
15 identification.)

16 MR. FINCH: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes.

19 BY MR. FINCH:

20 Q Dr. Phillips, I'm going to show you what's been
21 marked for exhibit purposes -- identification purposes
22 as State's Exhibit Number 9.

23 Can you identify that photo as a photo of
24 Ms. Clare you took during the autopsy?

25 A Yes.

1 Q Do you note the exit wounds on the bottom right
2 portion -- or the bottom left portion, I'm sorry, of
3 Ms. Clare's body?

4 A Yes.

5 Q Can you identify -- or does that appear as though
6 that's one -- an exit wound that you described
7 earlier?

8 A That is one of the exit wounds described
9 earlier.

10 Q Are there any unusual characteristics about that
11 particular exit wound, particularly as it references
12 the border of the wound?

13 A As described in my report for this exit
14 wound, I have an injury that has an abrasion
15 border around it. So, yes, that is a significant
16 finding.

17 Q That would be one of the shorter wounds?

18 A It's possible that this is a shorter wound.

19 Q The short wound, again, would be some time,
20 perhaps, when a body may have been pressed up against
21 a hard surface.

22 A Correct.

23 Q Again, you don't know what that hard surface could
24 have been.

25 A That's correct.

1 MR. FINCH: Your Honor, at this time, the
2 State would move for the admission of State's 9
3 into evidence.

4 THE COURT: Any objection?

5 MR. BOWDEN: No, Your Honor.

6 THE COURT: State's Exhibit 9 admitted
7 into evidence without objection.

8 (STATE EXH. 9, Photo, was entered into
9 evidence.)

10 (DFT. EXH. 10, Photo, was marked and entered
11 into evidence.)

12 BY MR. FINCH:

13 Q Dr. Phillips, I want to talk to you about some of
14 the bruising that Mr. Bowden drew your attention to.
15 Specifically Defense Exhibit number 10.

16 I will ask for the clerk's assistance.

17 I will hand this to you for your perusal.
18 Again, this is a document that's been moved into
19 evidence by the defense.

20 Any significance to the bruising pattern on
21 the left leg of the victim in this case?

22 A The bruising and abrasion pattern is
23 relatively squared off, but it's not uncommon that
24 we see that kind of shape. We're looking for any
25 patterns. I didn't see any specific patterns in

1 the injury.

2 Q When you say "specific patterns," you might be
3 looking at something like wood grain or ironwork or a
4 carpet pattern, something like that; is that
5 correct?

6 A I would be looking for the shapes of it, any
7 kind of pattern, meaning shoeprint or tire marks,
8 things that leave a very specific type of
9 pattern.

10 Q Okay. In that you find essentially the pattern
11 you're describing as that squared-off region. What do
12 you mean by a squared-off region?

13 A It has sharp somewhat 90-degree angles.

14 Q And would an injury or a squaring off like that be
15 consistent with a body hitting a -- something with a
16 flat surface or a right angle?

17 A Yes.

18 Q Some of those things might include an iron
19 railing.

20 A Correct.

21 Q Or the edge of some concrete or brick steps.

22 A Possible, yes.

23 Q And on that bruising, I'm going to put it up on
24 the overhead.

25 THE COURT: I apologize. What exhibit is

1 this?

2 MR. FINCH: This is Defense 10, Your Honor.

3 THE COURT: Okay.

4 BY MR. FINCH:

5 Q Now, I want to clarify. We are looking at a
6 photograph that you took of the victim posthumously
7 when she's laying down on her back supine, correct?

8 A Yes.

9 Q So this is not necessarily an accurate
10 representation of her body position when standing.

11 A That is correct.

12 Q Because people have different characteristics. In
13 this case, it may be fat that may hang over certain
14 areas.

15 A Yes.

16 Q In fact, we talked about that -- you talked about
17 that with Mr. Bowden with regard to the entry wound on
18 the hip, correct?

19 A Correct.

20 Q Now, addressing this picture, Defense 10, can you
21 indicate where that straight edge you're talking about
22 is, that squared-off portion?

23 A It's along that angle.

24 Q And would you agree that the degree of bruising is
25 more intense at the top where you've got that

1 squared-off portion as opposed to opposite that
2 area?

3 A It appears darker in that area. I couldn't
4 say specifically that it was more intense.

5 Q Is bruising caused by the release of blood below
6 the skin level?

7 A Bruising is caused by the blunt trauma
8 breaking blood vessels underneath the skin, and it
9 can be at any level.

10 Q And, generally, more blood breaking in one area
11 would mean more force than another area that had
12 less?

13 A It can be that way. It can also vary.

14 Q In this, it looks like there's also perhaps some
15 abrasion to the skin, or sometimes people call that
16 road rash, or skin portion like kids get skinned
17 knees, correct?

18 A Yes.

19 Q Now, again, we don't know what Ms. Clare would
20 look like standing up in that position, but is it
21 possible that part of her belly or some fat would have
22 been hanging over that portion while she's standing
23 up?

24 A It's possible.

25 Q Do you recall from your report Ms. Clare's height

1 and weight?

2 A I can verify that for you. Let me look at
3 the report. She was 278 pounds and 68 inches,
4 which is about 5'8".

5 Q That's measurements you do as part of the autopsy?

6 A Yes.

7 Q You measure the body and weigh the body?

8 A Yes.

9 Q There were some other abrasions, also, on
10 Ms. Clare that you photographed as part of your
11 autopsy; is that correct?

12 A Yes.

13 BY MR. FINCH:

14 Q I'm going to show you what's been marked for ID
15 purposes as State's 10 and 11.

16 MR. FINCH: And also at this time, I'd move
17 the Court for admission of those into evidence, I
18 believe without objection.

19 THE COURT: All right. State's
20 Exhibits --

21 MR. FINCH: 10 and 11, Your Honor.

22 THE COURT: Any objection to State's
23 Exhibit 10 and 11?

24 MR. BOWDEN: No objection, Your Honor.

25 THE COURT: State's Exhibits 10 and 11

1 admitted into evidence without objection.

2 (STATE EXH. 10, Photo, was marked and
3 entered into evidence.)

4 (STATE EXH. 11, Photo, was marked and
5 entered into evidence.)

6 BY MR. FINCH:

7 Q Again, those are photographs you took during the
8 autopsy?

9 A Yes.

10 Q I'm going to show you State's 10.

11 And that looks to be a photo of Ms. Clare's
12 left knee; is that correct?

13 A Correct.

14 Q And is the area of interest the abrasion, what
15 looks to be the inside portion by her kneecap?

16 A Yes.

17 Q And, again, is that photo meant to -- it looks
18 like it's meant to document bruising and an abrasion,
19 again something we refer to as, perhaps, a skinned
20 knee?

21 A Correct.

22 Q A skinned knee would be consistent in cases of
23 dragging flesh across a hard surface.

24 A Yes.

25 Q Like concrete?

1 A It could happen over concrete, yes.

2 Q Or brick?

3 A Yes.

4 Q Or carpeting?

5 A Yes.

6 Q I'm going to show you now, this is State's 11.

7 And directing your attention about -- using that

8 scale, about one inch above the H in inches. It looks

9 like an abrasion. Would you agree?

10 A I would agree.

11 Q And that is Miss Clare's right knee, correct?

12 A Yes.

13 Q And again, consistent in some cases with flesh

14 dragging across concrete or brick?

15 A Correct.

16 Q Or carpet?

17 A Yes.

18 Q Some hard surface.

19 A Indeed.

20 Q As part of your report, did you note any other

21 bruising or abrasions to Ms. Clare?

22 A I documented abrasions on the hip, the knee,

23 and the left foot, a very small abrasion on the

24 left foot, and I believe that is it for my

25 abrasions.

1 Q How about the right forearm? Any abrasions
2 there?

3 A I did document one on the right forearm.
4 Thank you.

5 Q Now, when you refer to the hip, again, we're
6 looking -- we're using for reference the defense
7 exhibit I believe that's 10.

8 A The upper thigh.

9 Q The upper thigh. Is that -- looks to be more on
10 the -- I think you called it the anterior portion of
11 the thigh, the front.

12 A The front, yes.

13 Q And below, what would you call that? What's that
14 area? Is that the -- what is that area -- that sort
15 of crease area?

16 A I usually refer to it as the inguinal
17 crease.

18 Q Inguinal crease?

19 A Correct.

20 Q And that's basically the top of the leg?

21 A Yes.

22 Q And, commonly, if you're wearing a bathing suit,
23 it's going to go across that line?

24 A Yes.

25 Q So that would be at the very top of the thigh on

1 the front portion, facing front.

2 A Yes.

3 Q And so to get an abrasion there, something would
4 have to hit squarely into the front of that leg?

5 A The front and a little off to the side, yes.

6 Q A little off to the --

7 A The left side.

8 Q -- the left side. A little bit off to the
9 outside.

10 A Correct.

11 Q Okay. But you noted that squaring to be -- again,
12 you had marks up. It's been erased. But it looked
13 like it was right above where your scale has the six
14 of six inches. Is that roughly where the squaring off
15 would be?

16 A Yes.

17 Q So not on the side of the hip, but still on the
18 front and a little bit to the side, correct?

19 A I believe the picture is giving the illusio
20 of it being flat, but there is a curvature in
21 there. So it's on the side, somewhat to the
22 side.

23 Q Somewhat to the side, but not on the -- what we
24 would refer to commonly as the hip, the side of the
25 hip or the buttock.

1 A Correct.

2 Q But, again, no bruises to her shoulder.

3 A No.

4 Q Just a gunshot wound up to that right shoulder,
5 upper arm?

6 A The arm, yes.

7 Q I believe you testified on direct there would have
8 been at least -- five bullets would have had to cause
9 this, these injuries, correct?

10 A Correct.

11 Q To review, that would have been -- and not going
12 by Mr. Bowden's diagram, but from -- we have a
13 through-and-through in the right shoulder?

14 A Yes.

15 Q Entrance, exit. An entrance and an exit and a
16 potential reentry somewhere else on the body, whether
17 it was the hip or somewhere up on the upper torso.

18 A Correct.

19 Q One shot at the top of the breast?

20 A Yes.

21 Q One shot in the chest?

22 A Yes.

23 Q And one shot in the hip.

24 A Yes. You're missing one shot to the lower
25 aspect of the breast.

1 Q Thank you.

2 So, again, you don't know the sequence of
3 those shots.

4 A I do not.

5 Q You don't know at this stage because you don't
6 have the clothing to compare it to or stippling on the
7 body, you don't know the distance from which those
8 shots were fired.

9 A Correct.

10 Q And you don't know the exact positioning of the
11 victim or the person who fired those shots, do you?

12 A That's correct.

13 Q If the arm or any portion of the body on the
14 victim or anything was unobstructed by clothing, bare
15 to the air, essentially, would you expect to see
16 stippling at a certain range?

17 A If it were a close range, we could see
18 stippling on the skin.

19 Q What do you mean by close range?

20 A Close range can happen anywhere between 1 to
21 12 inches and it depends on the weapon.

22 Q So within a foot depending on the weapon.

23 A Correct.

24 Q Dr. Phillips, did you also analyze the stomach
25 contents of Ms. Clare as part of your autopsy?

1 A I would have documented how much, the volume,
2 of the stomach contents. And when possible, I
3 document if I can tell what it is.

4 Q Did you do that in this case?

5 A In this case, I documented 700 ml,
6 milliliters, of red/brown partially digested food
7 consisting of fragments of what I thought looked
8 like rice and chicken.

9 Q Did you put any sort of time to which that would
10 have been consumed?

11 A I don't usually give a time, but it would
12 have had to have been within a period of time,
13 hours before she died.

14 Q That's based on how things break down in the
15 stomach?

16 A Correct.

17 MR. FINCH: Thank you. That's all the
18 questions I have. Please answer any questions
19 Mr. Bowden may have.

20 THE COURT: Redirect.

21 MR. BOWDEN: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BOWDEN:

24 Q Dr. Phillips, you talked with the government's
25 lawyer about these abrasion borders. You put some

1 significance on one the back -- an exit wound in the
2 back having an abrasion border.

3 A Yes.

4 Q If you look at gunshot wound number 2, this is a
5 bullet that you said entered, exited, and reentered
6 into the chest and abdomen.

7 A Correct.

8 Q That first exit wound before it reentered, that
9 also had an abrasion border?

10 A I believe it did, yes.

11 Q That was just up against her body.

12 A Correct.

13 Q So, needless to say, not a hard surface.

14 A It is technically a hard surface because of
15 the underlying rib.

16 MR. BOWDEN: Okay. No further questions,
17 Your Honor.

18 THE COURT: All right. You may step
19 down.

20 Defense can call your next witness.

21 MR. BOWDEN: Your Honor, I'm just trying
22 to figure where my last witness is. My
23 investigator stepped out.

24 THE COURT: All right. We'll take about
25 a five-minute break and come back.

1 MR. BOWDEN: Thank you.

2 (A break was taken from 2:41 p.m. to 2:55 p.m.)

3 THE BAILIFF: Order in the court. Please
4 rise.

5 THE COURT: Thank you very much. Be
6 seated.

7 Mr. Bowden.

8 MR. BOWDEN: Yes, Judge. Our witness, I
9 believe he's in a courtroom on the second floor.
10 He should be on his way up. The investigator's
11 out in the hallway to grab him.

12 THE COURT: All right.

13 MR. BOWDEN: We can wait, or Ms. Baldwin
14 can call a witness and we can work him in after
15 she's done.

16 THE COURT: We'll wait for him.

17 (Pause in proceedings; off the record.)

18 MS. BALDWIN: Your Honor, may we approach?

19 THE COURT: Yeah.

20 MS. BALDWIN: This is off.

21 (Off the record.)

22 MR. BOWDEN: Your Honor, he's here.

23 THE COURT: All right. You can call your
24 next witness.

25 MR. BOWDEN: The defense calls Blake

1 Fulton.

2 THE CLERK: Can you place your left hand
3 on the Bible and raise your right hand, please.
4 Do you swear or affirm the testimony that you will
5 give the Court today is the truth, the whole
6 truth, and nothing but the truth, so help you God?

7 THE WITNESS: Yes.

8 THE CLERK: Yes, sir. You may have a
9 seat.

10 Can you please state your name for the
11 record and spell your last name.

12 THE WITNESS: Blake Fulton, F-u-l-t-o-n.

13 WHEREUPON:

14 BLAKE FULTON,
15 after having been sworn to tell the truth, testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. BOWDEN:

19 Q Mr. Fulton, thank you so much for being here.

20 Where do you work?

21 A Knight's Precast.

22 Q In 2019, you worked at Knight's as well?

23 A No, sir. I was -- I had left. I stopped
24 working at Knight's November of 2018.

25 Q I apologize. When you were there in 2018, did you

1 supervise Romane Clare?

2 A Yes.

3 Q What was his job?

4 A He was a front-end loader operator.

5 Q What kind of employee was he?

6 A He was a good employee. He would do anything
7 you asked. He'd would be there on time.

8 Hard-working. He checked all the boxes of being a
9 good employee.

10 Q Did he have to leave early sometimes?

11 A Yes.

12 Q Why was he leaving early?

13 A Sometimes he had to pick up his child or he
14 would have to go -- said that he had personal
15 matters.

16 Q Okay. Do you remember any specific instance where
17 Romane had to leave work?

18 A Yes, one occasion.

19 Q Okay. Can you tell us about that?

20 A One time that his wife had called my work
21 phone. I think she couldn't get ahold of him on
22 his phone. And they talked on my phone. I was
23 standing outside the loader. You know, the loader
24 is elevated, so I couldn't hear what they were --
25 they were obviously arguing. I don't know what

1 they were arguing about. And then I heard a loud
2 noise, and he was concerned that she may have shot
3 a gun or shot something. I don't know.

4 MS. BALDWIN: Objection; hearsay.

5 THE COURT: Overruled. I'll allow
6 that.

7 BY MR. BOWDEN:

8 Q And -- sorry, you were saying.

9 A Again, I was a distance of several feet and
10 all the equipment, so I don't really know if that
11 was the case. And he then -- he left immediately.
12 And then I come to find out it was -- you know, I
13 don't know what happened. Nothing happened, but
14 he didn't go into details the next day at work.

15 Q Okay. But the sound was so loud that you were
16 able to hear it?

17 A I did hear it, yes, sir.

18 Q Are you familiar with the sound of a gunshot?

19 A Yes.

20 Q Did it sound like it could have been a gunshot?

21 A It could have been. But again, it was a
22 loader, had other equipment in the background.

23 MR. BOWDEN: Thank you, Mr. Fulton. I
24 appreciate that.

25 THE COURT: Cross-examination?

1 MS. BALDWIN: Just two brief questions,
2 Your Honor.

3 CROSS-EXAMINATION

4 BY MS. BALDWIN:

5 Q So you said you had no idea if it was a gun or
6 not.

7 A No, ma'am.

8 Q He left that day?

9 A Immediately. He was -- as soon as it
10 happened, he was very concerned and left
11 immediately. I finished out his duties for that
12 day.

13 Q You said they were arguing prior to that,
14 correct?

15 A I couldn't hear what they were -- they had a
16 discussion. It was on speaker, but I couldn't
17 hear anything that was going on.

18 MS. BALDWIN: Okay. No further
19 questions.

20 THE COURT: Redirect?

21 MR. BOWDEN: None, Your Honor. Thank you.

22 THE COURT: All right. You may step
23 down.

24 MR. BOWDEN: I have no further witnesses,
25 Your Honor.

1 THE COURT: All right. Anything from the
2 State?

3 MS. BALDWIN: Yes, Your Honor. We do
4 have some witnesses that we can present. At this
5 time, however, we'd like to argue regarding the
6 hearing and state that the defense has not proven
7 that the act applies or self-defense applies by a
8 preponderance of the evidence.

9 I can go through my argument based on the
10 testimony that we've heard so far if you like.

11 THE COURT: All right.

12 MS. BALDWIN: Well, first, obviously we
13 have to address the self-defense factors, Your
14 Honor. I know Your Honor is aware of them, so
15 I'll go through them briefly.

16 He has to be without fault in bringing on
17 the difficulty. The defendant must have actually
18 believe he was in imminent danger of losing his
19 life or sustaining serious bodily injury or was in
20 imminent danger.

21 If the defense is based upon belief of
22 imminent danger, a reasonably prudent person of
23 ordinary firmness and courage would have
24 entertained the same belief, and the defendant had
25 no other probable means of avoiding the danger.

1 I would argue that in this case, based on
2 the defendant's own testimony, he was not without
3 fault in bringing on the difficulty. He went
4 towards the noise that evening. He did not go
5 away from it. He's the one that brought a gun.
6 There's no evidence that any other weapon was used
7 in this incident. There was no threat made during
8 the time of this incident. There wasn't even --
9 there was a vague discussion about how somebody a
10 week and a half prior flashed a gun at him, to
11 which he didn't call the police on.

12 As to him actually believing that he was
13 in imminent danger of losing his life or death or
14 sustaining great bodily injury or death, he was
15 not in actual danger, as I just stated. He merely
16 testified that somebody burst forth through the
17 door when there was just a banging. He said he
18 was scared, but I don't think that that's what
19 it's meant for; this idea that in your own head
20 you hear some banging on the door, and then all of
21 a sudden you immediately jump to somebody is
22 coming to rob you when there's no basis for that.

23 He testified that there were no bars on
24 their door. There was no alarm system in place.
25 He wasn't even sure if that door was locked. He

1 didn't try to lock the door. He didn't try to
2 protect himself at all.

3 He had no injury. The victim in this
4 case was the only one with the injury. I don't
5 think he actually believed he was in danger.

6 Also, there were lights on in the house.
7 We know he waffled a bit on that. He did state
8 that there was a light on in the living room area
9 and that the TV was on at one point in time.

10 The victim was just recently there, he
11 said. He said they talked right before he went to
12 bed. So there was really no reason for him to be
13 fearful at this time. And a reasonably prudent
14 person would not have acted in the way he did.
15 They wouldn't have believed that they were in
16 danger given the situation.

17 Most importantly, he also had many other
18 probably means of avoiding the danger here. We
19 went through, as you heard, many windows in the
20 house, the many exits that there were available to
21 him. He didn't try to exit out of any of those.
22 His first response was to just go and grab a gun.

23 It was not that late at night. It was
24 nine o'clock at night. There was a phone
25 available. He said he was unsure if his phone

1 worked, but he didn't try to even call, even
2 though after shot his wife, he said he did try to
3 go and call 911 on his phone and then realized it
4 didn't work.

5 Once again, he did walk towards that door
6 instead of away. There's no force evident, Your
7 Honor, in this incident besides the door jamb
8 being somewhat broken.

9 So on that, I would say that he hasn't
10 proven by a preponderance of the evidence that he
11 was acting in self-defense.

12 You heard Dr. Phillips testify as to the
13 injuries of the victim as well, about how she was
14 shot right to left, front to back, and down the
15 entire time. That would indicate that the victim
16 was facing him when he was shot -- when she was
17 shot.

18 I don't think that he's proven any
19 elements. The analysis should stop there. But,
20 of course, we do have to go on to the 16-11-440.
21 I would argue that 16-11-440(a) does not apply
22 because of Section B. The victim did have a right
23 to be there regardless of his testimony saying he
24 didn't know who it was at the door, his three
25 calls to, "Babe, is that you?"

1 She did have a right to be in the house.
2 And this is very similar to a domestic situation
3 in *State v. Jones* in that although in *State v.*
4 *Jones* there was other violence alleged and here
5 there isn't, that victim did also have a right to
6 be there. So we would default to 16-11-440(c).

7 And 440(c), I would say that that doesn't
8 apply either. It's very similar to self-defense
9 except without that duty to retreat. So I would
10 go through that argument again. He has to know or
11 have reason belief that an unlawful and forcible
12 entry or act is occurring. And I argue that the
13 defendant knew where the victim was earlier on in
14 the evening. He's saying now he wasn't really
15 sure. He thought she went to take a bath, but he
16 didn't really know. He called out.

17 We know that she was recently there
18 because she did eat food there. There was no --
19 there was never any threat. There were windows
20 for him to see out, to see who was there outside.
21 There -- I'm going to skip through that.

22 I would also argue, Your Honor, that at
23 the time the defendant was engaged in unlawful
24 activity -- and I know the possession of the gun,
25 in and of itself, does not mean automatically that

1 the Protection of Persons and Property Act does
2 not apply. However, I would say here that
3 unlawful possession is the proximate cause. It's
4 directly what led to this shooting.

5 Had that defendant gone, left the house,
6 found some other way to address the situation, had
7 not brought a gun to this for no reason other than
8 he heard some banging on the door, then we would
9 not be here today.

10 I think that's -- I think a lot of the
11 issues and the defendant's credibility kind of
12 lend themselves to the fact that they haven't
13 proven their burden. I don't think that his
14 testimony was credible. He couldn't really say
15 where this person that burst through the door was.
16 He said at first that she stumbled. Then he said,
17 oh, well, they were standing upright. He said, "I
18 don't know. I just shot the gun I thought once,"
19 then maybe five times. There are multiple
20 inconsistencies in how he testified.

21 And then I would also argue that the fact
22 that he then left the house, not just to let an
23 ambulance in the driveway, but fled to Florida
24 12 hours later also indicates some evidence of
25 guilt and the fact that he knew what he did was

1 wrong. He didn't just go and accidentally shoot
2 his wife and then go back -- as happens in so many
3 of these cases, go back to the police and say,
4 *oh, my gosh. I just shot this person*
5 *accidentally. I didn't mean to do it. I'm*
6 *scared. Please, you have to believe me.*

7 Instead, he decided to drive -- hang
8 around Charleston, drive his car to the bank, pull
9 out what money he could, and then start to flee
10 down to Florida.

11 With that, Your Honor, I would say that
12 the defense has not met its burden.

13 THE COURT: All right. Mr. Bowden?

14 MR. BOWDEN: Thank you, Your Honor. May
15 it please the Court?

16 First of all, I think this argument isn't
17 necessarily ripe yet. Certainly, I have the
18 burden of proof in this case. But the State has
19 the burden of production as well that it has never
20 met.

21 The State has to produce probable cause
22 that the shooting was not in self-defense to even
23 charge somebody in the first place. I'll readily
24 admit that Mr. Clare was not there to give his
25 statement. And so, you know, maybe at the time

1 they went and got the warrant, you know, perhaps
2 they didn't have a reason to disprove self-defense
3 at that point, but now it's been raised. So they
4 have a burden of production to establish probable
5 cause that this didn't happen in self-defense.

6 Beyond that, this incident unambiguously
7 falls under the Protections of Persons and
8 Property Act. Mr. Clare was in his home. He
9 owned that home. There is case law directly on
10 point that even if the other person has a right to
11 be in that home, that that doesn't defeat his
12 rights under 440(c). It merely means that there's
13 not a presumption that the act was -- that the
14 shooting was reasonable -- or that the fear was
15 reasonable. Excuse me.

16 And so we -- it continues to fall under
17 the act. He testified that he was in fear. I
18 don't think that the government's view of whether
19 he was actually in fear is at all relevant. He
20 testified that he thought that somebody in the
21 neighborhood where he had experienced a threat
22 with a deadly weapon was coming to rob or kill him
23 or someone else in his household, his wife.
24 That's the subjective fear piece.

25 The objective fear piece or whether the

1 fear was reasonable, he was threatened by a gun
2 just a week and a half before this. He testified
3 that he lived in a neighborhood that he was
4 generally in fear of. There's a drug dealer down
5 the street. He heard sirens, gunshots.

6 All of those things certainly -- if we're
7 taking the directed verdict standard, evidence has
8 absolutely been produced. I would go much further
9 and say that we are meeting our burden of proving
10 that element by a preponderance of the evidence.

11 He clearly was actually in fear. He
12 grabbed a gun. The State's arguing about a duty
13 to retreat. This falls under the Protections of
14 Persons and Property Act. There is no duty to
15 retreat. He's in his home. There is -- the act
16 specifically codified the Castle Doctrine. And
17 that was the entire basis of the Castle Doctrine,
18 is that you have no duty to retreat in a place
19 where you have a right to be.

20 The statute -- or the legislature could
21 not have made that any more clear than by writing
22 this statute the way that they did with the
23 preamble to it. It's absolutely clear what they
24 were doing.

25 So I just think that the State's argument

1 here is misplaced. I think they need to present
2 evidence. And we have more than met the burden to
3 survive this motion.

4 THE COURT: All right. Anything in
5 reply?

6 MS. BALDWIN: Only, Your Honor, I just
7 want to make it clear I was talking about the duty
8 to retreat as it applies to self-defense because
9 the Court does have to make a finding such that he
10 was not acting in self-defense -- or that he was
11 acting in self-defense.

12 Sorry, I'm twisting myself, Your Honor.

13 That he was acting in self-defense, but
14 without the duty to retreat. So first you have to go
15 through the self-defense analysis. If he had a duty
16 to retreat, then you go on to the Protection of
17 Persons and Property Act.

18 So I just wanted to make sure I was clear
19 about what my argument was. And I do want to make
20 sure we're clear about that assault and battery
21 second-degree conviction federally prohibits him
22 from having a weapon. That's what I was referring
23 to when I talked about him acting unlawfully.

24 THE COURT: All right. I'm going to
25 grant the motion for directed verdict.

1 Ms. Baldwin, if I can get you to prepare an
2 order. Basically, this is -- I don't know if the
3 State can disprove self-defense at trial, but I do
4 know at this motion hearing the burden of proof is on
5 the defendant. And the prior conflicts between the
6 defendant and his wife, prior involvement of law
7 enforcement as a result of conflicts between the
8 defendant and his wife.

9 He does not have a duty to retreat from
10 his own home. There was banging at his door.
11 However, once he shot her, he didn't complete a
12 911 call. He heard the police coming, he got in
13 his car, he left, he took money out from the bank,
14 he want to Florida, which convinces me -- or
15 doesn't convince me, but it supports that the
16 defendant has failed to prove, more likely than
17 not, that he was acting in self-defense.

18 It's a preponderance of the evidence that
19 the defendant must carry, and I can't say that he
20 more likely than not was acting in self-defense
21 given his actions after the shooting occurred.
22 Not at the time of the shooting, not what led up
23 to the shooting, but given the hostilities that
24 existed between the defendant and victim, coupled
25 with the fact that after he shot her, he didn't --

1 he said he got her phone, called 911, but he never
2 completed the call. He never said, "I shot her."

3 He heard the police coming. He got in
4 his car. He took off. The next morning he goes
5 to the bank, he draws out money, and he heads to
6 Florida.

7 So based upon that, I find that the
8 defendant has failed to carry the burden of proof.
9 All right?

10 MS. BALDWIN: Thank you, Your Honor.

11 MR. BOWDEN: Thank you, Your Honor.

12 (The hearing was concluded.)

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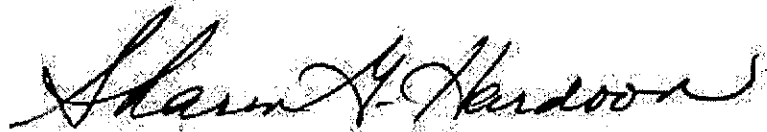
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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions for Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

December 7, 2022



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

VS.

ROMANE CLARE,

DEFENDANT.

FILED

2022 SEP 12

PM 1:24

JULIE J. ARMSTRONG
 CLERK OF COURT

THE COURT OF GENERAL SESSIONS
 NINTH JUDICIAL CIRCUIT

**ORDER DEYING DEFENDANT'S FOR
 IMMUNITY FROM CRIMINAL PROSECUTION
 UNDER §16-11-410 *et. seq.***

Arrest Warrant #2019A1010205164

Arrest Warrant #2019A1010205165

Indictment #2021-GS-10-00417

Indictment #2021-GS-10-00418

On August 30, 2022, this court held a hearing regarding Defendant's Motion for Immunity from Criminal Prosecution under SC Code §16-11-410 *et. seq.* Based upon the stipulations of counsel and after hearing testimony from the defendant and defendant's witnesses, this court finds:

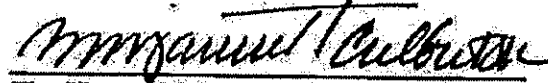
1. The defendant shot and killed the victim (defendant's wife) in this case.
2. Notwithstanding the defendant's allegations that he thought someone was breaking into his house and that he shot his wife by mistake, the undisputed evidence is that the defendant failed to complete any 911 call, fled the scene upon hearing police sirens, withdrew money from his bank account the following day, and drove to Florida where he was ultimately arrested.
3. The defendant and his wife have a history of a violent marriage.
4. The defendant failed to prove self-defense by a preponderance of the evidence and, therefore, is not immune from criminal prosecution under either §16-11-440.

NOW, THEREFORE, it is hereby

ORDERED, that the Defendant's Motion for Immunity from Criminal Prosecution under SC Code §16-11-410 *et. seq.* is DENIED; it is further

1
AKC

ORDERED, that none of the findings hereunder shall have any precedential value at any subsequent hearing or trial in this case.



The Honorable Benjamin H Culbertson
Presiding Judge

Charleston, South Carolina
Dated: September 1, 2022

FILED
2022 SEP 12 PM 1:24
JULIE L ARMSTRONG
CLERK OF COURT
BY 

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

ROMANE CLARE,

Defendant

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

Case No(s):

Warrant No(s): 2019A1010205164;

2019A1010205165

**MOTION TO SUPPRESS ILLEGALLY
OBTAINED EVIDENCE**

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Romane Clare, will move for an Order suppressing a projectile from a wall in Romane Clare's home that the North Charleston Police Department illegally obtained as a result of an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 10 of the South Carolina Constitution.

Respectfully submitted,

Stephen M. Bowden
Attorney for the Defendant

Charleston, South Carolina

Dated: January 26, 2023

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JULE J. ARISTONIS
CLERK OF COURT

2023 JAN 27 AM 10:05

三

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

-vs-

ROMANE CLARE

DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s

2019A1010205164

2019A1010205165

Solicitor: Jessica Baldwin, Bar No.	Defendant's Attorney: Stephen M. Bowden, Bar No. 102195
Address: 101 Meeting Street, 4th Floor	Address: 101 Meeting Street, 5th Floor
Phone: (843) 958-1900	Phone: (843) 958-1850
E-mail: baldwinj@scsolicitor9.org	E-mail: sbowden@charlestoncounty.org
☒ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED	
SECTION I: Hearing Information Nature of Motion: Notice of Motion and Motion to Compel Discovery Estimated Time Needed: 10 Minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of ☐ Solicitor ☒ Attorney for Defendant 1/27/23 Date submitted	

FILED
2023 JAN 27 AM 10:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY MSS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

VS.

ROMANE CLARE,

Defendant

) IN THE COURT OF GENERAL SESSIONS

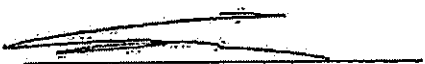
) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s):

) Warrant No(s): 2019A1010205164;
2019A1010205165MOTION TO SUPPRESS ILLEGALLY
OBTAINED EVIDENCE

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Romane Clare, will move for an Order suppressing a projectile from a wall in Romane Clare's home that the North Charleston Police Department illegally obtained as a result of an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 10 of the South Carolina Constitution.

Respectfully submitted,


 Stephen M. Bowden
 Attorney for the Defendant

Charleston, South Carolina

Dated: January 26, 2023

 2023 JAN 31 PM 2:34
 JULIE J. GUNSTRONG
 CLERK OF COURT
 BY KLN

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

-VS-

ROMANE CLARE

DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s

2019A1010205164

2019A1010205165

Solicitor: Jessica Baldwin, Bar No. _____ Address: 101 Meeting Street, 4th Floor Phone: (843) 958-1900 E-mail: baldwinj@scsolicitor9.org	Defendant's Attorney: Stephen M. Bowden, Bar No. 102195 Address: 101 Meeting Street, 5th Floor Phone: (843) 958-1850 E-mail: sbowden@charlestoncounty.org
☒ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED	
SECTION I: Hearing Information Nature of Motion: Motion to Suppress Illegally Obtained Evidence Estimated Time Needed: ~~10 Minutes~~ 1 hour Court Reporter Needed: ☒ YES ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of ☐ Solicitor ☒ Attorney for Defendant	Date submitted 1/27/23

FILED
2023 JAN 27 AM 10:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY MSS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

ROMANE CLARE,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s):
)
) Warrant No(s): 2019A1010205164;
2019A1010205165
)
) MEMORANDUM IN SUPPORT OF
) DEFENDANT'S MOTION TO SUPPRESS
) ILLEGALLY OBTAINED EVIDENCE
)
)
)

Romane Clare ("Romane") respectfully asks this Court to issue an order suppressing an illegally obtained projectile that the State later determined to be a bullet because the North Charleston Police Department did not have either (1) a search warrant to retrieve the projectile from the wall cavity of Romane's home, or (2) valid consent that waived the warrant requirement.

FACTS

On September 26, 2019, in an act of self-defense, Romane shot and killed his wife, Ebony Clare ("Ebony").

By the time North Charleston Police responded to Romane and Ebony's home at [REDACTED] Whitney Drive, North Charleston, Romane had fled the house in a panic over whether anyone would believe him. Exhibit 1 (Transcript of Romane Clare's Testimony at *Duncan* hearing). Police learned from Ebony that Romane had shot her, although she was unable to provide details of the incident prior to her death. Police conducted a search pursuant to a valid search warrant on September 26, 2019 ("initial search").

2023 JAN 31 PM 3:31
JULIE J. ANDERSON
CLERK OF COURT
BY WLN

FILED

During the initial search, police located a hole in the wall at the bottom of a small staircase that led to Romane and Ebony's living room. Police believed this hole to be caused by a bullet, but were unable to open the wall to search for a projectile during the initial search. Police charged Romane with murder and possession of a weapon during the commission of violent crime on September 27, 2019. Among other things, police also found foreclosure documents that clearly identified Romane and Ebony as the owners of the home. Exhibit 2 (Photo taken by CST Kendra Howell).

On September 29, 2019, Ebony's sister, Sheena Myers ("Sheena"), called police to report that she had found a black revolver in the grass outside Romane and Ebony's house. Police believed that Romane had used a revolver in the shooting, so NCPD obtained a search warrant to seize the revolver from the curtilage of Romane's property. The search warrant authorized police to seize "[a] black in color revolver firearm located in the grass near the fence line on the Adonis Ave side of the residence." Exhibit 3 (September 29 search warrant). The September 29 search warrant described the premises to be searched as [REDACTED] Whitney Drive, which is the correct address of Romane and Ebony's home. However, in its description of the premises to be searched it states:

[t]his search is to include all rooms, attics, basements, closets, cabinets, safes, false walls, and any other location that could conceal firearm, clothing, mobile electronics ie cell phone or any and all evidence of the homicide. Also to include any outbuildings or storage areas located on the property and the grounds within the property's borders. The location has been identified as a place where a suspect in a homicide that occurred at Forrest Hills Drive and Suzanne Drive, also to include any vehicles located at the residence at the time the search is executed.

Id. This paragraph (1) is not necessary to allow police to seize the property that the warrant authorizes them to seize, (2) does not accurately explain the location of [REDACTED] Whitney Drive, and

(3) is evidence that the police used boilerplate language and failed to properly edit before submitting the search warrant for a judge's signature.

Patrol officers initially arrived and secured the scene while Crime Scene Technicians were dispatched to collect the revolver. Those officer stood around the revolver, so there was no question in any officer's mind where crime scene technicians would be able to collect it. While waiting for crime scene technicians, Sheena provided her address, which was a different address than [REDACTED] Whitney Drive, and told officers that she had gotten permission from an NCPD detective to come to the property to search for any insurance paperwork that Ebony may have had. Exhibit 4 (Officer Norwood's BWC footage 0:00 - 2:00). Sheena, who did not have a key to the house, informed police that she found the gun while she was looking for an open window that she could climb through to enter the house. *Id.*

According to Crime Scene Technician Kendra Howell ("Howell"), "[u]pon [NCPD's] arrival, [they] observed a black revolver lying in the grass near the gate leading to the back yard." Exhibit 5 (Howell's Report). Therefore, immediately upon arrival, police seized the items that was the subject of the search warrant, so there was no need (or permission) to expand the search any further.

Nevertheless, Howell notes that police continued to search inside Romane's home and "gained permission from family members on scene to cut and remove a portion of the wall in the down stairs den which was previously marked as 'E'." *Id.* During that "consent search," police located a projectile that was lodged in the wall cavity's insulation. *Id.* Police sent the projectile to SLED for forensic testing, which produced a ballistics report that the State will likely seek to introduce at trial against Romane.

ARGUMENT

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath of Affirmation, and particularly describing the place to be searched, and the persons or things to be seized." US Const. Amend. 4. The South Carolina Constitution expands on these protections, providing that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained."

The SC Supreme Court has explained that:

The specific requirement that a search warrant particularly describe the person, place, or thing to be searched is aimed at preventing general warrants—those authorizing a general, exploratory rummaging in a person's belongings. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.

State v. Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560-61 (Ct. App. 2005) (citations and quotations omitted). Evidence seized in violation of the Fourth Amendment is inadmissible in state court. *State v. Gentile*, 373 S.C. 506, 512, 646 S.E.2d 171, 174 (Ct. App. 2007).

It is clear that the September 29 search warrant did not provide authority for police to enter Romane's house. The sole purpose of the search warrant was to allow police to seize a gun from grass within the curtilage of Romane's home. Police secured the scene and confirmed the

location of the revolver before crime scene technicians arrived to collect it. Therefore, even if the remainder of the search warrant allowed police to search other areas of the property for the revolver, that was completely unnecessary because there was absolutely no doubt about where they would find the revolver. Any other interpretation would render superfluous the United States and South Carolina Constitutions' requirements that the warrant particularly describe the thing to be seized and authorize a general warrant.

Further, it is clear from the factual and grammatical errors in the final paragraph of the "premises to be searched" section that the language is simply boilerplate language that the police forgot to edit out. A magistrate would not have been justified in allowing a search of the entire property because the limited reason for the search was to seize a revolver that was laying in the grass outside of the residence.

Next, police suggest that they searched the wall cavity due to consent given by one of Ebony's family members. However, Romane and Ebony owned the home as Joint Tenants with a Right of Survivorship. Therefore, Romane would be the only person who would have actual legal authority to give police valid consent to search his home.

The only question remaining is whether Ebony's family members had apparent authority to give police consent to search the wall cavity.

The South Carolina Supreme Court as explained that:

The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched. *U. S. v. Matlock*, 415 U.S. 164, 39 L. Ed. 2d 242, 94 S. Ct. 988 (1974); *State v. Middleton*, 266 S.C. 251, 258-259, 222 S.E.2d 763, 766 (1976). Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so. *Matlock*, 415 U.S. at 171, note 7. Accord *State v. Cannon*, 336 S.C. 335, 520 S.E.2d 317 (1999) (noting that any person with an equal

right to use or occupy property may consent to its search).

State v. Laux, 344 S.C. 374, 376-77, 544 S.E.2d 276, 277 (2001). Officers are entitled to rely on a third-party's apparent authority over the premises if "the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the premises." *Laux*, 344 S.C. at 377, 544 S.E.2d at 277 (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 188, 111 L.Ed. 2d 148, 110 S. Ct. 2793 (1990)).

In *Laux*, the SC Supreme Court considered whether a temporary resident in Bernard Laux's apartment had apparent authority to consent to a search of his home. *Laux*, 344 S.C. at 376, 544 S.E.2d at 277. The temporary resident had been living with Laux for about a week, had a key, and told police she lived there. *Id.* At a suppression hearing, "she testified that a number of her personal items were in the bedroom and bathroom." *Id.* The Court held that "it was objectively reasonable for officers to conclude [the temporary resident] had apparent authority to consent to the search of the residence." *Id.* at 379.

This case is the polar opposite of the consent search allowed in *Laux*. As an initial matter, it's not clear that police would have been entitled to rely on apparent authority because they had already conducted a search of a residence and seen mortgage foreclosure documents that left no doubt about who had a legal right to the residence. It was also clear from that search that no other individuals lived at [REDACTED] Whitney Drive besides Romane and Ebony. So, there would have been no reason to believe that anyone other than Romane or Ebony would be able to provide legitimate consent to waive Romane's constitutional rights.

Even if the police would have been entitled to rely on apparent authority, no reasonable officer would have believed that Ebony's family had the right to provide consent. Sheena

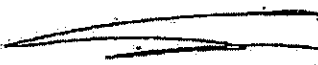
provided a separate address where she lived and told police that she was going to try to enter the house through an open window rather than using a key to open the door. Further, she told police that she had asked an NCPD detective for permission to enter the residence. She did not provide any evidence that she even had a right to be there, much less provide police consent to cut open Romane's wall to dig for evidence in the wall cavity.

Therefore, Ebony's family member's consent was invalid to waive the warrant requirement, and any evidence seized from inside Romane's wall during the September 29 search and any resulting forensic testing must be suppressed.

CONCLUSION

For the foregoing reasons, Romane respectfully requests an order suppressing illegally obtained evidence.

Respectfully Submitted,


Stephen M. Bowden.
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 1/31/23

FILED
2023 JAN 31 PM 3:31
JULIE J. CHRISTENSEN
CLERK OF COURT
BY ELN

EXHIBIT 1

67

1 Q And so if two cars were in the driveway, would
2 somebody have been able to pull into the yard?

3 A No.

4 Q When you started moving the car, what did you
5 see?

6 A When I pulled the car -- pulled the car
7 like -- there's a baseball field right across. I
8 pulled to the grass right across the road. It
9 was, like, two, three minutes. Then I see a
10 police car pull up. It was a police car. I
11 thought it would be the ambulance, but it was a
12 police car pulled up on the scene.

13 Q Okay. Did you expect to see blue lights or
14 ambulance lights?

15 A I expected to see ambulance, because I was
16 trying to get her help.

17 Q Did you stop the car?

18 A The police car?

19 Q No. Your car.

20 A The car that I was in, yeah, I pulled to the
21 grass. It was stopped in the grass.

22 Q Okay. Did you stay on the scene when you saw the
23 police cars?

24 A When the police car pulled up, I started to
25 panic. I feel like I was panicking. I'm like,

1 I'm about to go to jail. Ain't nobody going to
2 believe me, what happened. Like I started
3 thinking all kinds of, like...

4 Q Why did you not think anybody was going to believe
5 you?

6 A Because -- I don't know. I just -- I
7 wouldn't know specifically what -- why anybody
8 wouldn't. I just -- like stuff was just running
9 through my head.

10 Q Were you thinking clearly at this point?

11 A I was panicked. I was panicked. I was
12 panicked. I wasn't thinking clearly. I'm
13 thinking, like, oh, man. I'll probably get hit
14 out there, or something like that. Ain't nobody
15 going to believe me, like, my story.

16 Q You're saying if you stopped and told your story,
17 nobody would believe you?

18 A Right.

19 Q You were scared nobody was going to believe you?

20 A Right.

21 Q Looking back, do you think you would have done
22 things differently if you could do it over?

23 A Looking back, I don't know. Looking back --
24 like, this happened like just -- if they happened
25 to see me that night, I don't think I have a

EXHIBIT 2

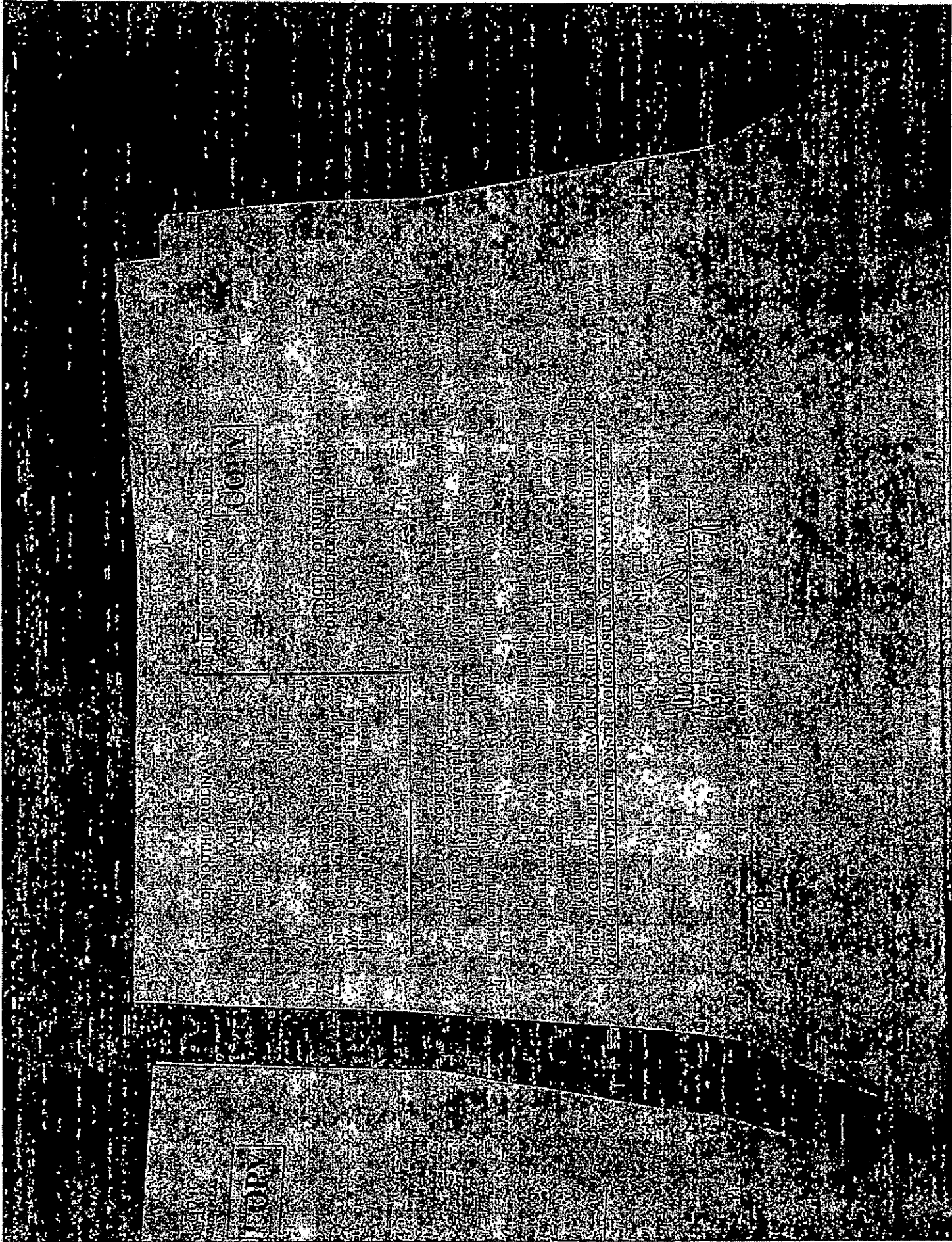


EXHIBIT 3

STATE OF SOUTH CAROLINA

County of Charleston

City of North Charleston

SEARCH WARRANT

OCA: 2019029304

**Location: 4302 Whitney Dr
North Charleston SC, 29415**

OCA# 2019029304

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

Personally appeared before me, one J. Butler
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of
 Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

A black in color revolver firearm located in the grass near the fence line on the Adonis Ave. side of the residence.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The location to be searched is located at [redacted] Whitney Dr. The residence is described as a single family dwelling. The residence is has tan in color siding on the top and red in color brick bottom. The residence has a set of cement steps leading up to a black in color door. The numbers [redacted] in black are located to the right of the door.

When one makes a left onto Mall drive from North Charleston City Hall and get onto I-26 WB for approximately 0.6 mile. Take I-26 W. for approximately 3.1 miles and take the Dorchester Rd. Continue for 1.1 miles until you reach [redacted] Whitney Dr.

This search is to include all rooms, attics, basements, closets, cabinets, safes, false walls, and any other location that could conceal firearm, clothing, mobile electronics ie cell phone or any and all evidence of the homicide. Also to include any outbuildings or storage areas located on the property and the grounds within the property's borders. The location has been identified as a place where a suspect in a homicide that occurred at Forrest Hills Drive and Suzanne Drive, also to include any vehicles located at the residence at the time the search is executed.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On September 26, 2019 at approximately 2103 hours officer with North Charleston Police Department responded to [redacted] Whitney Dr in reference to a shooting. When officers responded, they located a black female identified as Ebony Nicole Clare lying on the driveway suffering from multiple gunshot wounds. While rendering aid, responding officers asked the victim who shot her. The victim responded, "My husband shot me." When asked who her husband was, she said the defendant's name. The defendant fled the scene in a Nissan Murano bearing SC tag [redacted]. The victim was transported to MUSC in critical condition and succumbed to her injuries during surgery. While at the hospital, family members alerted detectives to a prior incident in 2014 where the defendant was charged with attempted murder after firing shots during an argument with her. On September 29, 2019 Charleston County Consolidated Dispatch advised they received a call that they located a fire arm outside of the victim's residence. Based on these facts it is this detective's belief that evidence of the crime of Murder will be found in the residence.

Sworn to and Subscribed before me

This 25th day of September 2019,

Signature of Judge

(L.S.)

Affiant

Address: 2500 City Hall Lane,
 North Charleston, SC 29418
 Phone: 554-5700

OCA# 2019029304

STATE OF SOUTH CAROLINA

SEARCH WARRANT

COUNTY OF CHARLESTON

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF NORTH CHARLESTON.

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

-See Attached Affidavit-

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

-See Attached Affidavit-

This Search Warrant shall not be valid for more than ten days from date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Issuing Judge within ten days from the date of this warrant; such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to prominent place on such premises.

Charles L. ..., S.C.

29 Sept 2019.

Signature of Judge

(L.S.)

EXHIBIT 4

EXHIBIT 5



On September 29, 2019 officers were called back out to [REDACTED] Whitney Drive regarding a firearm being located outside on the property near the gate leading to the backyard. Another search warrant was obtained and executed by Detective Butler.

Upon our arrival, we observed a black revolver lying in the grass near the gate leading to the backyard. The wooden handle grips were off the gun and lying beside it. One was split in two pieces, suggesting that it was dropped or thrown to sustain this damage. The gun and grips were collected and placed in a sterile gun box. There were five spent casings in the cylinder with Winchester .38 SPL+P on the headstamp. This also matched a box of Winchester Super X .38 SPL +P rounds with five missing that were located hidden inside of an Andis clippers box. The box was found under the sink in the master bedroom. All above mentioned items were photographed in detail, collected, and submitted to evidence.

We gained permission from family members on scene to cut and remove a portion of the wall in the down stairs den which was previously marked as "E". We recovered the projectile which was found to have terminated within the insulation inside the wall. Damages sustained to the wall after recovery were photographed as well.

All items collected were then transported back to the FSU to be packaged, labeled, and submitted to evidence. All photos were downloaded to a CD-R as well as the K-drive.

A handwritten signature in black ink, appearing to read "Pfc. K. Howell", written over a horizontal line.

Pfc. K. Howell



User Name: Stephen Bowden

Date and Time: Tuesday, January 31, 2023 11:00:00AM EST

Job Number: 189160764

Document (1)

1. State v. Thompson, 363 S.C. 192

Client/Matter: -None-

Search Terms: fourth amendment and describing the place to be searched

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
Court: State Courts > South Carolina



Neutral

As of: January 31, 2023 4:00 PM Z

State v. Thompson

Court of Appeals of South Carolina

November 1, 2004, Submitted : January 31, 2005, Filed

Opinion No. 3937

Reporter

363 S.C. 192 *; 609 S.E.2d 556 **: 2005 S.C. App. LEXIS 20 ***

The State, Respondent, v. Napoleon Thompson, III,
Appellant:**Subsequent History:** [***]Rehearing denied by State v. Thompson, 2005 S.C. App. LEXIS 80 (S.C. Ct. App., Mar. 17, 2005)

Prior History: Appeal From Cherokee County. J. Derham Cole, Circuit Court Judge.

Disposition: AFFIRMED.

Core Termssearch warrant, probable cause, invalid, crack cocaine, seized, suppression, portions, searched, authorization, intrusion, narcotics, overbroad, valid portion, trial court, circumstances, luggage, seizure, severed, courts, mouth, items seized, particularity, informant, warrants, ongoing, stale**Case Summary****Procedural Posture**

The Cherokee County Circuit Court (South Carolina) convicted defendant of possession of crack cocaine after it denied his motion to suppress. Defendant appealed.

OverviewDefendant challenged the validity of a search warrant executed against him. The appeals court first held that while some portions of the warrant were overbroad, this fact did not render the entire warrant void. First, the warrant did not grant law enforcement unlimited discretion to search defendant wherever or whenever they desired. There was no basis upon which the magistrate could conclude that probable cause existed to search any vehicle defendant was traveling in, orwithin any luggage that he had in his possession. The warrant was properly severable, eliminating those parts rendered invalid from the authorization relating to the search of defendant's person. Second, the information contained within the warrant was not stale, as an informant had observed defendant in possession of crack cocaine within 72 hours prior to his report, the affidavit was sworn on the same day the magistrate issued the warrant, execution occurred the day after the warrant was issued, and the information received from the informant was not an isolated incident. Finally, the search of defendant's mouth was authorized under the law, and his undergarments were searched incident to a lawful arrest.**Outcome**

The judgment was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Miranda Rights > Self-Incrimination Privilege > Custodial Interrogation

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > General Overview

Criminal Law & Procedure > Commencement of Criminal Proceedings > Interrogation > General Overview

HN1 Self-Incrimination Privilege, Custodial Interrogation

The determination of whether an individual is under arrest is measured objectively, and the subjective view of the particular officer is not controlling. The initial determination of custody depends on the objective

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363 S.C. 192, *192; 609 S.E.2d 556, **556; 2005 S.C. App. LEXIS 20, ***1

circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. The test for determining whether an individual is in custody or under arrest is whether, under the totality of the circumstances, the suspect's freedom of action is curtailed to a degree associated with formal arrest.

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > General Overview

HN2 Clearly Erroneous Review, Findings of Fact

In criminal cases, the appellate court sits to review errors of law only. The appeals court is bound by the trial court's factual findings unless they are clearly erroneous. A deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

HN3 Search & Seizure, Scope of Protection

Whether a search violates the parameters of the Fourth Amendment depends upon a number of antecedent determinations, each of which is inherently fact-specific and entails an inquiry into the totality of the circumstances, and the appellate court must affirm if there is any evidence to support the ruling.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > General

Overview

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Issuance by Neutral & Detached Magistrate

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > Particularity Requirement

Criminal Law & Procedure > Search & Seizure > Seizure of Things

Governments > Courts > Judges

HN4 Search & Seizure, Probable Cause

Under both the United States and South Carolina constitutions, search warrants may not be issued except upon probable cause, supported by an oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Following these constitutional requirements, S.C. Code Ann. § 17-13-140 (2003) requires a search warrant be issued only upon affidavit sworn to before the magistrate or other judicial officer and only if the magistrate is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist. The magistrate issuing the search warrant must make a practical, common sense decision whether, given all the circumstances set forth in the affidavit there is a fair probability that contraband or evidence of a crime will be found in a particular place. In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention.

Criminal Law & Procedure > Search & Seizure > Search Warrants > Particularity Requirement

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

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HN5 Search Warrants, Particularity Requirement

The specific requirement that a search warrant particularly describe the person, place, or thing to be sought is aimed at preventing general warrants or those authorizing a general, exploratory rummaging in a person's belongings. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the framers of the Constitution intended to prohibit.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Scope of Search Warrants

HN6 Search & Seizure, Probable Cause

The propriety of warrants authorizing the search of persons is well settled in the law. S.C. Code Ann. § 17-13-140 (2003), which governs the issuance and execution of search warrants, clearly authorizes the search of a person. This section provides that the property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control. Warrants authorizing the search of a person are constitutional provided that a search or seizure of a person must be supported by probable cause particularized with respect to that person.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Scope of Search Warrants

Governments > Legislation > Overbreadth

HN7 Search & Seizure, Warrants

Overbroad portions of a search warrant may be severed from the portions for which probable cause is found to exist, thus permitting the admission of evidence properly obtained. If there is probable cause to issue a search warrant describing particular items to be seized, and such items are found and those items alone constitute the basis of the criminal charge, there is no reason why some additional unsupported language in the search warrant, while to be avoided, should not be severable, particularly where no items seized thereunder are included as a basis for the criminal charge.

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > General Overview

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Good Faith

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Reasonable Reliance Upon Warrant

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > Examination Upon Application

Criminal Law & Procedure > Search & Seizure > Search Warrants > Issuance by Neutral & Detached Magistrate

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HN8[+] Search Warrants, Probable Cause

Admission of evidence will not be barred where the evidence was obtained by officers who manifested objective good faith in relying on a search warrant issued by a detached, neutral magistrate even though the warrant was ultimately found to be invalid. This good faith exception, however, may not be employed to validate a warrant that is based on an affidavit that does not provide the magistrate with a substantial basis for determining the existence of probable cause.

Criminal Law & Procedure > ... > Search
Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search &
Seizure > Search Warrants > General Overview

HN9[+] Search Warrants, Probable Cause

In order for a search warrant affidavit to support probable cause, it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time. An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient.

Criminal Law & Procedure > Search &
Seizure > Search Warrants > Execution of Warrants

Criminal Law & Procedure > Search &
Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Search
Warrants > Probable Cause > General Overview

HN10[+] Search Warrants, Execution of Warrants

There is no fixed standard or formula establishing a maximum allowable interval between the date of events recited in an affidavit and the date of a search warrant. The acceptable length of time between the establishment of probable cause and the execution of the warrant depends on a variety of case-specific factors. While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the criminal activity involved, and the kind of property for which authority to search is sought.

Criminal Law & Procedure > Search &
Seizure > Search Warrants > Execution of Warrants

Criminal Law & Procedure > ... > Controlled
Substances > Continuing Criminal
Enterprises > General Overview

Criminal Law & Procedure > Search &
Seizure > Search Warrants > General Overview

HN11[+] Search Warrants, Execution of Warrants

Narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness of a search warrant.

Criminal Law & Procedure > Search &
Seizure > Search Warrants > Scope of Search
Warrants

Evidence > ... > Scientific Evidence > Bodily
Evidence > Blood & Bodily Fluids

Criminal Law & Procedure > Search &
Seizure > Search Warrants > General Overview

HN12[+] Search Warrants, Scope of Search Warrants

S.C. Code Ann. § 17-13-140 provides for the involuntary submission of non-testimonial identification evidence, and guidelines and procedures exist for obtaining samples of blood and saliva, along with head and pubic hair from suspects who are not under arrest in criminal investigations. The search of a suspect's mouth is appropriate in order to prevent a suspect's attempts to destroy evidence by swallowing it, because he cannot consider the mouth a sacred orifice in which contraband may be irretrievably concealed from the police.

Constitutional Law > ... > Fundamental
Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > General
Overview

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Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Warrantless Searches > Search Incident to Lawful Arrest > General Overview

Criminal Law & Procedure > ... > Warrantless Searches > Search Incident to Lawful Arrest > Extent & Manner of Search

Criminal Law & Procedure > ... > Warrantless Searches > Search Incident to Lawful Arrest > Necessity That Arrest Be Valid

HN13 Search & Seizure, Warrants

In the case of a lawful custodial arrest, the full search of a person does not require a search warrant and is considered reasonable under the Fourth Amendment.

Counsel: Trent Neuell Pruett, of Gaffney, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Sailey W. Elliott, and Assistant Attorney General W. Rutledge Martin, all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

Judges: KITTREDGE, J. HUFF and BEATTY, JJ., concur.

Opinion by: KITTREDGE

Opinion

[**558] [*196] KITTREDGE, J.: Napoleon Thompson appeals his convictions for drug related offenses, arguing evidence was seized under an invalid search warrant. The questions presented are (1) [*559] whether the warrant sufficiently described the person or things to be seized; (2) whether the warrant was issued based on stale information; and (3) whether the warrant authorized an unreasonable bodily intrusion. We affirm.

FACTS

Officer A.B. Phillips of the Blacksburg Police Department was assigned to the Cherokee County Metro Narcotics Task Force. In 2002, Phillips was

investigating possible illegal [*197] drug activities involving [*2] Thompson. After the investigation had been ongoing for several months, Phillips received a tip from a confidential informant that the informant had seen illegal narcotics in Thompson's possession. Based on this information, Phillips prepared an affidavit and obtained a search warrant from a magistrate. The affidavit read:

Affiant's belief is based upon information received from a confidential reliable informant [sic], who has provided information in the past that has proven true and correct and led to the arrest and conviction of those involved in illegal drug trade. This C.R.I. states that he or she has seen a quantity of crack cocaine on the above described person within the past 72 hours. Affiant's [sic] knows this C.R.I. to know crack cocaine when seen by past information received from C.R.I.

The warrant issued described the permitted search as follows:

Description of Premises (Person, Place or Thing) To Be Searched

One, Napoleon [sic] Thompson III, aka Buster, is to be searched. A black male, DOB [REDACTED]-79, DL number [REDACTED], HGT 5-10, WGT 145lbs, address [REDACTED] E. Seven Springs St., Blacksburg SC. The search will include all clothing, shoes, [*3] hats, socks, under garments, jackets, scarfs [sic], bandannas, any vehicle and or any means of transportation that Mr. Napoleon [sic] Thompson III may be traveling in or on, and Mr. Napoleon [sic] Thompson's mouth. The search will also include any types of luggage, small or large in Mr. Thompsons [sic] poss.

Officer Phillips promptly undertook efforts to execute the warrant. The day after the warrant was issued, Phillips received information that Thompson "would be traveling down South Charleston Street [in Blacksburg] with crack cocaine and marijuana in his possession." This information was disseminated to officers in the area, and shortly thereafter, a police officer spotted Thompson's car traveling on South Charleston Street. When Officer Phillips arrived on South Charleston Street, Thompson had parked his car and entered a convenience store. When Thompson returned to his car, he was confronted by the officers. After being informed of the search warrant, Thompson stepped out of his car as instructed [*198] by the officers. Thompson then pulled two small plastic bags out of his pocket, threw

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them in the air, and attempted to flee. Phillips grabbed Thompson before he could ***4] get away and detained him. The plastic bags Thompson had tossed away were recovered by police and held as evidence. Subsequent analysis revealed the bags contained marijuana and crack cocaine.

***5] Thompson was taken to the police department and searched. The only additional evidence the search produced was \$ 2,654 cash found in Thompson's wallet.

***560] Thompson was charged with possession with intent to distribute crack cocaine and possession with intent to distribute crack cocaine within a half mile of a school. Before trial, Thompson moved to suppress the crack cocaine and the marijuana evidence. Thompson claimed the drug evidence was inadmissible because it was obtained under an invalid search warrant. Specifically, Thompson argued the warrant was void because: (1) the warrant impermissibly permitted the search of Thompson's person and was otherwise overbroad with regard to the places and things it authorized law enforcement to search; (2) the affidavit submitted to obtain the warrant recited stale information insufficient to support a finding of probable cause; and (3) the warrant permitted an unreasonable bodily intrusion or strip search of Thompson. The trial court disagreed and denied the motion. Thompson ***199] was ultimately convicted of possession of crack cocaine. This appeal followed.

STANDARD OF REVIEW

Contrary to Phillips' testimony, it is clear that Thompson was under arrest when he was first detained in the convenience store parking lot. HN1***] The determination of whether an individual is under arrest is measured objectively, and the subjective view of the particular officer is not controlling. See Steinbock v. California, 511 U.S. 318, 323, 128 L. Ed. 2d 293, 114 S. Ct. 1526 (1994) (opining that "our decisions make clear that the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned"). When Thompson was detained in the parking lot, following seizure of the suspected contraband, he was so substantially deprived of his freedom of movement as to constitute a full custodial arrest. See Park v. Shiffert, 250 F.3d 843, 850 (4th Cir. 2001) (holding that "the test for determining whether an individual is in custody or under arrest is whether, under the totality of the circumstances, the suspect's freedom of action is curtailed to a degree associated with formal arrest" (internal quotation marks omitted)).

HN2***] In criminal cases, the appellate court sits to review errors ***6] of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). This court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). A deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause. State v. Brockman, 339 S.C. 57, 65-66, 528 S.E.2d 661, 665-666 (2000) (holding that HN3***] whether a search violated the parameters of the Fourth Amendment depends upon "a number of antecedent determinations, each of which is inherently fact-specific" and "entails an inquiry into the totality of the circumstances" and the appellate court must affirm if there is "any evidence" to support the ruling). This appeal presents both factual and legal challenges to the rulings of the trial court concerning the search warrant. Following Brockman, we adhere to the "any evidence" standard of review with respect to the factual findings of the trial court.

LAW/ANALYSIS

I. Permissible Scope of Search Authorized Under the Warrant

We first address ***7] Thompson's claim the warrant failed to describe with sufficient particularity the person, place, or thing to be searched. Though we conclude there is sufficient evidence to support the trial court's finding that some portions of the warrant are overbroad, we further concur with the trial court and find this fact does not render the entire warrant void or require suppression of the evidence seized in this case.

HN4***] Under both the United States and South Carolina constitutions, search warrants may not be issued except "upon probable cause, supported by Oath or affirmation," and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Following these constitutional requirements, South Carolina Code section 17-13-140 ***200] (2003) requires a search warrant be issued "only upon affidavit sworn to before the magistrate [or other judicial officer]" and only if the magistrate "is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist" The magistrate issuing the search warrant must "make a practical, common-sense decision whether, ***8] given all the

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circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983). In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention. *State v. Martin*, 347 S.C. 522, 527, 556 S.E.2d 706, 709 (Ct. App. 2001).

HN5 [↑] The specific requirement that a search warrant particularly describe the person, place, or thing to be searched "is aimed at preventing general warrants--those authorizing 'a general, exploratory rummaging in a person's belongings.'" *State v. Williams*, 297 S.C. 404, 407, 377 S.E.2d 308, 310 (1989) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)). "By limiting the authorization to [*561] search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. [*59] " *Id.* (quoting *Maryland v. Garrison*, 480 U.S. 79, 94 L. Ed. 2d 72, 107 S. Ct. 1013 (1987)).

Thompson claims the warrant issued in the present case veers from the particularity requirement in three respects. First, Thompson argues that, by permitting the search of his "person," the warrant granted law enforcement unlimited discretion to search him wherever or whenever they desired. Specifically, Thompson suggests that warrants may only authorize the search of "places" and "things," not individuals. This argument is without merit.

Though not as common as warrants for the search of places, **HN6** [↑] the propriety of warrants authorizing the search of persons is well settled in the law. *South Carolina Code section 17-13-140*, our state statute governing the issuance [*201] and execution of search warrants, clearly authorizes the search of a person. This section provides that "the property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control." *S.C. Code Ann. § 17-13-140* [*101] (2003) (emphasis added). Indeed, the United States Supreme Court has held that warrants authorizing the search of a person are constitutional provided that "a search or seizure of a person must be supported by probable cause particularized with respect to that

person." *Ybarra v. Illinois*, 444 U.S. 85, 91, 62 L. Ed. 2d 238, 100 S. Ct. 338 (1979). Thus, there is no basis to conclude the search warrant was invalid because it authorized the search of Thompson's "person."

Thompson's second and third exceptions to the particularity of the warrant concern two specific items subject to possible search and seizure under the warrant. Thompson claims the language contained in the warrant authorizing the search of any transportation that he was riding in or on and any type of luggage in his possession was not supported by probable cause. We agree.

As quoted above, Phillips' affidavit stated that his belief Thompson was in possession of contraband was based on information from a confidential informant that Thompson had been seen in the past 72 hours with quantity of crack cocaine on his "person." No further information was provided in the affidavit, and Phillips testified that the only additional [*11] information he provided the magistrate was the fact that Thompson was the subject of an ongoing narcotics investigation.

There is a substantial basis to support the trial court's determination that the warrant was overbroad in its authorization to search Thompson's vehicle or luggage. The information provided to the magistrate only related to seeing crack cocaine on Thompson's person. There was no basis upon which the magistrate could conclude that probable cause existed to search any vehicle Thompson was traveling in or on or any luggage in Thompson's possession.

We now turn to the legal question posed as a result of the finding that the warrant was overly broad with respect to [*202] these specific provisions concerning transportation and luggage. We do not believe this finding renders the search warrant invalid on the whole. A contrary conclusion would mean that the seizure of certain items, even though proper if viewed separately, must be condemned merely because the warrant was defective with respect to other items. Though this question of law has not been directly addressed by South Carolina courts in our modern jurisprudence, we believe one of our supreme court's older precedents [*12] supports the principle of "severability." Moreover, such an approach is widely recognized in *Fourth Amendment* jurisprudence, in both federal and state courts. In essence, **HN7** [↑] overbroad portions of a search warrant may be "severed" from the portions for which probable cause is found to exist, thus permitting the admission of evidence

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properly obtained.

Looking first to our state's law, we do find support for the concept of severability. In *Farmer v. Sellers*, 89 S.C. 492, 72 S.E. 224 [*562] (1911), our supreme court found a warrant, which permitted a search to be conducted by day or night, was valid regardless of a statute prohibiting nighttime searches. In that case, no search was conducted at night, and the court determined "there is therefore no ground to allege that the statute was violated. If courts gave heed to such extremely technical objections, the law would indeed be weak in its struggle with crime." *Id.* at 500, 72 S.E. at 227. The supreme court in *Farmer* thus implicitly recognized the propriety of admitting items seized under valid provisions of a warrant supported by probable cause, despite the fact that the warrant at issue was improper in other [*13] respects.

Other states have applied the concept of severability under circumstances directly analogous to the present case. For example, in *People v. Mangiano*, 75 Misc. 2d 698, 348 N.Y.S.2d 327 (1973), a seminal state court case addressing severability, a New York trial court reviewed the validity of a search warrant authorizing the police to search a suspect's home for illegal narcotics and associated paraphernalia as well as "records, mail, correspondence and communications used in conjunction with the sale or possession of any dangerous drugs." *Id.* at 330. The court found the affidavit submitted to obtain the warrant did not establish sufficient probable cause to justify the seizure of the "records, mail, correspondence [*203] and communications" listed in the warrant. Rather than suppress all of the evidence obtained under the warrant, the court elected to redact the latter phrase from the warrant, thereby preserving from suppression all evidence seized pursuant to the valid portions of the warrant. The court concluded:

There is strong and persuasive authority in other jurisdictions to permit a severance in order to save a warrant or a search. This would seem [*14] to be supported by logic as well. If there was probable cause to issue a search warrant describing particular items to be seized, and such items are found and those items alone constitute the basis of the criminal charge, there is no reason why some additional unsupported language in the search warrant, while to be avoided, should not be severable, particularly where no items seized thereunder are included as a basis for the criminal charge.

Id. at 337; see also, e.g., *State v. Noll*, 116 Wis. 2d 443, 343 N.W.2d 391, 396 (Wis. 1984) (concluding that "in cases involving search warrants which are partially but not wholly defective, those two interests are best accommodated by admitting those items seized pursuant to the valid parts of the warrant and suppressing those items seized under the invalid portion"); *Butler v. State*, 130 Ga. App. 469, 203 S.E.2d 558, 563 (Ga. App. 1973) (holding that "where a search as it was actually conducted is lawful, it is not rendered invalid merely because the warrant pursuant to which it was made was overbroad or founded upon erroneous beliefs") (internal citation omitted); *Aday v. Super. Ct. of Alameda County*, 55 Cal. 2d 789, 362 P.2d 47, 13 Cal. Rptr. 415 (Cal. 1961) [*15] (widely acknowledged as the leading state case adopting the doctrine of severability).

We also note that many federal courts, including the Fourth Circuit Court of Appeals, have recognized and applied the theory of severability. In *United States v. Jacob*, 657 F.2d 49 (4th Cir. 1981), the court examined whether items to be seized under a search warrant met the constitutional particularity requirement. The court noted that the overly broad portions of the warrant describing the items to be seized were severable from those portions that met the particularity requirement.² [*204] *Id.* at 52. Other federal circuits have also recognized and applied the severability concept. See *United States v. George*, 975 F.2d 72, 79 (2d Cir. 1992) (holding that evidence seized pursuant to valid portion of a search warrant may be admissible, even if part of the warrant is severed or redacted for lack of particularity or probable cause); *LeBron v. Vitek*, 751 F.2d 311, 312 (8th Cir. 1985) (holding that the valid portion of a warrant was severable from the invalid, overbroad portion); *United States v. Offices Known as 50 State Distrib. Co.* [*16], 708 F.2d 1371, 1375-76 (9th Cir. 1983), cert. denied, 465 U.S. 1021, [*563] 79 L. Ed. 2d 677, 104 S. Ct. 1271, 104 S. Ct. 1272 (1984) (noting that "if probable cause was lacking as to the search of individuals, that does not operate to render the warrant itself invalid in its entirety as a general warrant. The remedy is not a return of all items seized but selective suppression or return of the items improperly seized"); *United States v. Christine*, 687 F.2d 749, 758 (3rd Cir. 1982) (holding that "redaction of a warrant containing valid severable phrases or clauses is

²The court in that case, however, found the entire warrant met the particularity requirement, defeating the need for severance.

consistent with all five purposes of the warrant requirement"); United States v. Cook, 657 F.2d 730, 735 (5th Cir. 1981) (opining that "we agree with the reasoning of the . . . majority of state courts that have considered this question and hold that in the usual case the district judge should sever the infirm portion of the search warrant from so much of the warrant as passes constitutional muster").

[**17] Furthermore, review of authoritative treatises addressing this subject further indicates the concept of severability has gained broad acceptance:

If a search warrant is issued to search a place for several items, but it is later determined that not all of those items are described with sufficient particularity or that probable cause does not exist as to all of the items described, it is often possible to sever the tainted portion of the warrant from the valid portion so that evidence found in the execution of the latter will be admissible.

2 Wayne R. LaFare et al., *Criminal Procedure* § 3.4(f), at 137 (2d ed. 1999); see also 79 C.J.S. Searches and Seizures § 185 (Supp. 2004) (commenting that "where the description in a search warrant of the items to be seized is in part insufficiently [*205] particular or unsupported by probable cause, the warrant may sometimes be severed so as to preserve the valid portions"); 68 Am. Jur. 2d Searches and Seizures § 168 (2000) (observing that "striking from a warrant those severable phrases and clauses that are invalid for lack of probable cause and preserving those phrases and [***18] clauses that satisfy the Fourth Amendment is consistent with the Fourth Amendment and should be used in order to avoid unnecessary social costs").

In the case at bar, we find the invalid portions of the warrant relating to the search of Thompson's vehicle and luggage are severable from the authorization relating to the search of Thompson's person. Because the portion of the warrant allowing the search of Thompson's person remains valid, and because none of the evidence sought to be suppressed was derived from the overbroad portions of the warrant, we find Thompson's request for suppression of this evidence was properly denied.

In so holding we do not mean to suggest that invalid portions of a warrant will be treated as severable under all circumstances. We are mindful of the danger that warrants might be obtained which are essentially general in character but arguably meet the particularity

requirement in certain respects. We in no manner sanction wholesale seizures pursuant to questionable police practices. Our decision today is narrowly confined to those circumstances where, as here, there exists good faith³—measured objectively—on the part of law enforcement and the valid [***19] portion of the warrant is amply supported by probable cause.

II. Staleness

We next address, and reject, Thompson's claim that the information contained in the affidavit supporting the warrant [*206] was stale, and therefore could not have been the [***20] basis of a finding of probable cause.

HN9 [↑] In order for an affidavit to support probable cause, "it must state facts so closely related to the time of the issuance of [***564] the warrant as to justify a finding of probable cause at that time." State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979) (internal quotation marks omitted). "An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient." *Id.*

HN10 [↑] There is, however, no fixed standard or formula establishing a maximum allowable interval between the date of events recited in an affidavit and the date of a search warrant. United States v. McCall, 740 F.2d 1331, 1336 (4th Cir. 1984). This court has explained that the acceptable length of time between the establishment of probable cause and the execution of the warrant depends on a variety of case-specific factors:

While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the

³ See United States v. Leon, 468 U.S. 897, 922, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984) (adopting the "good faith exception" to the exclusionary rule under which HN8 [↑] admission of evidence will not be barred where the evidence was obtained by officers who "manifested objective good faith" in relying on a search warrant issued by a detached, neutral magistrate even though the warrant was ultimately found to be invalid). This good faith exception, however, may not be employed to validate a warrant that is based on an affidavit that "does not provide the magistrate with a substantial basis for determining the existence of probable cause." State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167, 170 (1990) (quoting Leon, 468 U.S. at 915).

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criminal activity involved, and the kind of property for which authority to search is [***21] sought.

State v. Corns, 310 S.C. 546, 550-51, 426 S.E.2d 324, 326 (Ct. App. 1992) (quoting United States v. Steeves, 525 F.2d 33 (8th Cir.1975)).

The record in this case contains ample support for the trial court's rejection of Thompson's assertion that the circumstances providing probable cause for the search had grown stale by the time the warrant was executed. The affidavit provides that the informant had observed Thompson in possession of crack cocaine within the past 72 hours. The affidavit was sworn on the same day the magistrate issued the warrant, and Officer Phillips executed the warrant the day after it was issued. Additionally, the record reveals that the information received from the informant was not an isolated incident. Phillips testified that he informed the magistrate that Thompson was the subject of an ongoing narcotics investigation conducted during the several months prior to obtaining the warrant.

[*207] Given the continuous nature of the alleged drug activity, we find the record supports the trial court's finding that it was reasonable for the magistrate to conclude that Thompson would be found in possession of illegal substances. [***22] Although isolated sales of narcotics unquestionably occur, it is generally recognized that HN11 [↑] "narcotics conspiracies are the very paradigm of the continuing enterprises for which the courts have relaxed the temporal requirements of non-staleness." United States v. Rowell, 903 F.2d 899, 903 (2d Cir. 1990) (quotation marks and citation omitted); see also Donaldson v. State, 46 Md. App. 521, 420 A.2d 281, 286 (Md. Ct. App. 1980) (noting that the selling of drugs, by its nature, is an ongoing activity). Considering the informant's report of Thompson's drug possession together with Phillips' testimony that Thompson was the subject of an ongoing narcotics investigation did not suggest an isolated incident, but rather described a probable continuing course of illegal drug activity. We concur, therefore, with the trial court that the probable cause predicate, which supported the issuance of the warrant, continued to exist at the time of its execution.

III. Bodily Intrusion

Finally, we address Thompson's argument that the search warrant was invalid because it improperly authorized a bodily intrusion or a strip search.

Specifically, Thompson contends [***23] the warrant's authorization to search his mouth and undergarments rendered the warrant invalid because the warrant did not set forth specific findings required to justify a bodily intrusion as required under In re Snyder, 308 S.C. 192, 417 S.E.2d 572 (1992). We disagree.

In In re Snyder, our supreme court held that HN12 [↑] South Carolina Code section 17-13-140 (search warrant statute) provides for the involuntary submission of nontestimonial identification evidence, and the court set forth guidelines and procedures for obtaining samples of blood and saliva, along with head and pubic hair, from unarrested suspects in criminal investigations. In the present case, the search did not authorize the collection of any bodily fluids, tissue samples, or other such physical evidence for which a bodily intrusion would be required. The warrant in this case merely authorized the search of Thompson's mouth and undergarments in connection with the search of his person for illegal drugs. [***565] [*208] Therefore, the search of these areas did not rise to the level of the type of bodily intrusion contemplated under In re Snyder.

Moreover, our supreme court has held [***24] that the search of a suspect's mouth is appropriate in order to prevent a suspect's attempts to destroy evidence by swallowing it, because "he cannot consider the mouth a 'sacred orifice' in which contraband may be irretrievably concealed from the police." State v. Dupree, 319 S.C. 454, 458, 462 S.E.2d 279, 282 (1995) (quoting State v. Williams, 16 Wn. App. 868, 560 P.2d 1160, 1162 (Wash. App. 1977)). Therefore, the magistrate could properly conclude there was a reasonable probability that the crack cocaine may be found in Thompson's mouth as part of his person.

We also note that when the police searched Thompson's undergarments he had already been placed under arrest and taken to the police department. It is well settled that, HN13 [↑] in the case of a lawful custodial arrest, the full search of a person does not require a search warrant and is considered reasonable under the Fourth Amendment. State v. Ferrell, 274 S.C. 401, 409, 266 S.E.2d 869, 873 (1980). Therefore, the validity of the warrant with regard to the search of Thompson's undergarments was of no consequence because the search conducted was a valid search incident to arrest.

[***25] CONCLUSION

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363 S.C. 192, *208; 609 S.E.2d 556, **565; 2005 S.C. App. LEXIS 20, ***25

We find that: (1) although portions of the search warrant issued were overbroad in certain respects, this fact does not render the warrant wholly invalid; (2) the search warrant was issued and executed in a timely manner; and (3) the warrant did not authorize an unreasonable bodily intrusion. Therefore, the trial court's denial of Thompson's motion to suppress the drug evidence is

AFFIRMED.

HUFF and BEATTY, JJ., concur.

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Stephen Bowden



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Document (1)

1. State v. Gentile, 373 S.C. 506

Client/Matter: -None-

Search Terms: fourth amendment and describing the place to be searched

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by:
Court: State Courts > South Carolina



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As of: January 31, 2023 4:01 PM Z

State v. Gentile

Court of Appeals of South Carolina

April 2, 2007, Submitted; May 8, 2007, Filed

Opinion No. 4244

Reporter

373 S.C. 506 **, 646 S.E.2d 171 **, 2007 S.C. App. LEXIS 96 ***

The State, Respondent, v. Omar Sharif Gentile,
Appellant:

Subsequent History: [***1] As Corrected May 24,
2007.

Rehearing denied by State v. Gentile, 2007 S.C. App. LEXIS 149 (S.C. Ct App., June 28, 2007)

Writ of certiorari denied State v. Gentile, 2008 S.C. LEXIS 225 (S.C., Apr. 4, 2008)

Disposition: REVERSED.

Core Terms

search warrant, marijuana, probable cause, traffic, narcotics, smelled, cocaine, tip, circumstances, suppress, arrest, driver, informant, visitors, oral testimony, investigators, surveillance, verification

Case Summary

Procedural Posture

Defendant's motion to suppress was denied by the Charleston County Circuit Court (South Carolina). Defendant was convicted, after a bench trial, of trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school, and was sentenced. Defendant appealed his convictions and sentences.

Overview

Defendant argued that the search warrant was not supported by probable cause. The appellate court held that the search warrant was invalid under the totality of the circumstances. Although the officers verified the traffic pattern at defendant's home, without additional investigation into the home, the traffic did not establish that narcotics activity was taking place. A single

citizen's tip that she smelled marijuana in the vicinity of defendant's home might not have been communicated to the magistrate. Further, the tip was vague in that there was no indication of how many times the citizen might have smelled marijuana, or that she could readily identify that the odor was emanating from defendant's home. There was no indication that the citizen was knowledgeable about the smell of marijuana, and the officers did not independently verify the tip. Finally, the arrest of one of defendant's visitors did not support a finding of probable cause as the officers did not know whether the visitor purchased the marijuana found on him from defendant. Neither the driver nor his vehicle was searched prior to going to defendant's home, and there was no indoor surveillance.

Outcome

Defendant's convictions and sentences were reversed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Search & Seizure

Criminal Law & Procedure > ... > Standards of Review > Deferential Review > Probable Cause Determinations

HN1 [1] Clearly Erroneous Review, Findings of Fact

In criminal cases, the appellate court sits to review errors of law only. The appellate court is bound by the trial court's factual findings unless they are clearly

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erroneous. A deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

HN2 [] Search & Seizure, Scope of Protection

See U.S. Const. amend. IV.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Exclusionary Rule

HN3 [] Search & Seizure, Exclusionary Rule

In parallel with the protection of the Fourth Amendment, the South Carolina Constitution provides a safeguard against unlawful searches and seizures. S.C. Const. art. I, § 10. Evidence obtained in violation of the Fourth Amendment is inadmissible in both state and federal court.

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > Totality of Circumstances Test

HN4 [] Search & Seizure, Search Warrants

A magistrate may issue a search warrant only upon a finding of probable cause. This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued.

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > Examination of Affiants

Criminal Law & Procedure > ... > Search Warrants > Affirmations & Oaths > General Overview

HN5 [] Affirmations & Oaths, Examination of Affiants

The South Carolina general assembly has imposed stricter requirements than federal law for issuing a search warrant. Both the Fourth Amendment of the United States Constitution and S.C. Const. art. I, § 10 require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Additionally, the South Carolina Code mandates that a search warrant shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record. S.C. Code Ann. § 17-13-140 (1985). Oral testimony may also be used in South Carolina to supplement search warrant affidavits which are facially insufficient to establish probable cause. However, sworn oral testimony, standing alone, does not satisfy the statute.

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

HN6 [] Search Warrants, Probable Cause

In terms of a court's review of the magistrate's decision to issue a search warrant, the duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention.

Counsel: Chief Attorney Joseph L. Savitz, III, Commission of Indigent Defense, of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief

Stephen Bowden

Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Sailey W. Elliott, Assistant Attorney General Shawn L. Reeves, all of Columbia; and Solicitor Ralph E. Hoisington, of Charleston, for Respondent.

Judges: BEATTY, J. HUFF and WILLIAMS, JJ., concur.

Opinion by: BEATTY

Opinion

[*509] [*172]. BEATTY, J.: A circuit court judge, during a bench trial, convicted Omar Gentile of trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school. Gentile asserts the judge erred in denying his motion to suppress the drug evidence on the ground the search warrant was not supported by probable cause. We reverse.¹

FACTS

At approximately 9:45 p.m. on July 10, 2004, officers with the narcotics division of the Charleston Police Department [*510] forcibly executed a search warrant for Gentile's residence in [***2] Charleston. Pursuant to the search, the officers seized one plastic bag containing 24.34 grams of cocaine and \$ 988 in cash from Gentile's person. The officers also discovered six plastic bags containing 2.14 grams of cocaine. Gentile ultimately admitted that the drugs belonged to him. As a result, a Charleston County grand jury indicted Gentile for trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school.

Prior to his bench trial, Gentile filed a written motion to suppress all evidence seized from his residence. In his motion, Gentile argued there was no probable cause to support the issuance of the search warrant. During the trial, the court reviewed the search warrant and accompanying affidavit and heard testimony from the officers involved in the search.

The affidavit in support of the search warrant provided in pertinent part:

[**173] Investigators received [sic] information of narcotic activity at [redacted] Cleveland ST Apartment [redacted]. Investigators conducted periodic surveillance on [redacted] Cleveland ST and observed a black male enter the residence. Black male subject was observed leaving the residence. Subject was stopped by narcotic investigators and recovered [***3] approximately 4.0 grams of marijuana. Subject made no stops from time of leaving residence until stopped by investigators. Based on above information, there is probable cause to believe narcotics (marijuana) and proceeds from narcotic sales to be stored inside [redacted] Cleveland ST Apartment [redacted], Charleston, South Carolina.

Officer George Bradley, the officer who procured the warrant from the magistrate, testified regarding his affidavit as well as the oral testimony he gave to the magistrate. According to Bradley, the Charleston Police Department received citizen complaints regarding suspected narcotics traffic at Gentile's residence. Bradley testified the citizens claimed to have witnessed heavy foot traffic "in and out of the residence, later in the afternoon up until the wee morning hours." As a result of these tips, Bradley and Officer Steven Sierko conducted surveillance of the residence. Bradley testified they observed "several black males entering and leaving the residence, [*511] walking in, being in there less than five minutes." Bradley alerted officers in a nearby unmarked patrol car regarding one particular visitor. Corporal Andre Jenkins followed the visitor's vehicle as it left the [***4] residence and then conducted a traffic stop for an obstructed license plate. Jenkins arrested the driver of the vehicle after he refused to produce his driver's license, and then engaged in a physical altercation. A search of the driver's person revealed two bags of marijuana.

After this arrest, Corporal Jenkins contacted Bradley to inform him that he believed there was probable cause for a search warrant based on the officers' observations regarding the traffic at the residence and the subsequent arrest of one of the visitors. Jenkins also testified that he established his belief on the citizen tips regarding the traffic at the residence as well as the complaint of one citizen who claimed she smelled marijuana in the vicinity of the residence.

Based on the citizen tips, his observations during the surveillance, the arrest of one of the visitors, as well as his experience, Bradley believed narcotics transactions were being conducted at Gentile's residence. Bradley testified he presented this information to the magistrate

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

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who ultimately signed the warrant for the search of Gentile's residence.

At the conclusion of the suppression hearing testimony, Gentile's counsel reiterated his motion [***5] to suppress. He asserted the search warrant was invalid because there was no probable cause. Specifically, he claimed there was no independent verification of what transpired within Gentile's residence. Instead, counsel averred the citizen complaints, the officers' observations, and the arrest were a series of unrelated events that did not support a finding of probable cause. The judge denied the motion, finding the search warrant was properly issued based on the totality of the circumstances. Although the judge recognized that there was no "indication with regards to the reliability of the informant information," he found the officers did not seek a warrant solely on this information. Instead, the judge found significant that the warrant was procured based on the officers' own investigation, through their own observations . . . which through their [***12] experience as narcotics officers for several years have proven to indicate the presence of drug activity."

The judge convicted Gentile of trafficking in cocaine and possession with intent to distribute cocaine within proximity of a school. He sentenced Gentile to twenty-five years imprisonment for the trafficking offense and a concurrent, [***6] ten-year sentence for the other offense. Gentile appeals his convictions and sentences.

STANDARD OF REVIEW

HN1 [***] "In criminal cases, the appellate court sits to review errors of law only." *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). We are bound by the trial court's factual findings unless they are clearly erroneous. *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). "A [***174] deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause." *State v. Thompson*, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Cl. App. 2005).

DISCUSSION

Gentile argues the judge erred in denying his motion to suppress because the search warrant was not supported by probable cause. We agree.

The Fourth Amendment guarantees HN2 [***] "[t]he right of the people to be secure . . . [from] unreasonable searches and seizures." *U.S. Const. amend. IV. HN3* [***] "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); *S.C. Const. art. I, § 10*. Evidence obtained in violation [***7] of the Fourth Amendment is inadmissible in both state and federal court. *Forrester*, 343 S.C. at 643, 541 S.E.2d at 840.

HN4 [***] A magistrate may issue a search warrant only upon a finding of probable cause. *State v. Bellamy*, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). "This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in [***13] the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. King*, 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Cl. App. 2002). "The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued." *State v. Dupree*, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Cl. App. 2003) (citations omitted).

In discussing the specific requirements for issuing a search warrant, our supreme court has explained:

HN5 [***] The General Assembly has imposed [***8] stricter requirements than federal law for issuing a search warrant. Both the Fourth Amendment of the United States Constitution and Article I, § 10 of the South Carolina Constitution require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued. *U.S. Const. amend. IV; S.C. Const. art. I, § 10*. Additionally, the South Carolina Code mandates that a search warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record . . ." *S.C. Code Ann. § 17-13-140* (1985). Oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. See *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997). However, "sworn oral testimony, standing alone, does not satisfy the statute." *State v.*

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McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987).

State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000).

HINE [¶] In terms of a court's review of the magistrate's decision, "[t]he [***9] duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). "In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention." State v. [***14] Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Ct. App. 2005).

Reviewing this case within the above-outlined parameters, we find the affidavit and the supplemental oral testimony were insufficient to provide the magistrate with a substantial basis for which to find probable cause to issue the search warrant for Gentile's residence.

Although we are cognizant that our decision should be based on the totality of the circumstances, for analytical purposes we find it necessary to separately address each piece of evidence presented to the magistrate.

[**175] The narcotics officers' decision to investigate Gentile was precipitated primarily by the receipt of citizen complaints regarding a high volume of traffic at Gentile's residence. Even though the officers verified the pattern of traffic at Gentile's residence, this, without additional investigation into the [***10] residence, was not sufficient to establish that narcotics activity was taking place. See State v. Hunt, 150 N.C. App. 101, 562 S.E.2d 597, 601-02 (N.C. Ct. App. 2002) (reversing trial court's decision denying defendant's motion to suppress drug evidence and stating "[a]ll that the affidavit offers are complaints from citizen's suspicious of drug activity in a nearby house. There is no mention of anyone ever seeing drugs on the premises. The citizens only reported heavy vehicular traffic to the house. The officer verified the traffic. His verification, as the trial court found, was not a conclusion."); Bailey v. People, 15 Cal. Rptr. 2d 17, 19-20, 11 Cal. App. 4th 1107 (Cal. Ct. App. 1992) (finding information from an anonymous informer and an unidentified citizen regarding heavy foot traffic at defendant's residence, without investigation, was insufficient to establish probable cause for the issuance of a search warrant; stating "heavy foot traffic" does not necessarily engender criminal behavior. True, under certain circumstances, such activity might raise suspicions, or be one indicator of possible narcotics

transactions.").

Next, we consider the single citizen claim that she smelled marijuana in the vicinity of Gentile's residence. [***11] Initially, we question whether the magistrate was privy to this information. Based on our review of the record, we are [**515] unable to find where Bradley, the officer who obtained the warrant, testified regarding this information. Instead, the only reference to this tip was through the testimony of Corporal Jenkins. Furthermore, there is no mention in the affidavit regarding this tip. Therefore, it is questionable whether it was communicated to the magistrate.

Even if we conclude that Bradley communicated to the magistrate the citizen's tip, we find it was insufficient to establish probable cause. First, the tip is vague in that there is no indication of how many times the citizen may have smelled marijuana or that she could readily identify that the odor was emanating from Gentile's residence. Secondly, there was no indication that the citizen was knowledgeable about the smell or marijuana. Significantly, there was no independent verification by the narcotics officers regarding this tip.²

Finally, the arrest of one of Gentile's visitors did not support a finding of probable cause to search the residence.³ [**516] [***13] According to [**176] the

² Because the narcotics officers did not verify the citizen tip regarding the odor of marijuana, we find the instant case distinguishable from State v. Ford, 71 N.C. App. 748, 323 S.E.2d 358 (N.C. Ct. App. 1984), a case [***12] relied upon by the State at trial and on appeal. In Ford, the defendant was convicted of trafficking in marijuana based on a search of his residence which revealed 10,000 pounds of marijuana. On appeal, Ford challenged the trial court's denial of his motion to suppress the drug evidence on the ground the supporting affidavit failed to show sufficient probable cause to justify the issuance of the search warrant. Id. at 361. The North Carolina Court of Appeals affirmed the trial court's decision, finding that evidence presented to the magistrate regarding unusual traffic at a residence in conjunction with the surveillance officer's detection of marijuana odors coming from within a mobile home, which was identified as belonging to Ford, was sufficient to constitute probable cause. Id. at 361-62. In the instant case, unlike in Ford, the surveillance officers did not verify the citizen's vague claim regarding the smell of marijuana. Without further investigation by the narcotics officers, we do not believe the citizen's general claim was sufficient to establish probable cause.

³ At trial, the State relied on two cases decided by this court for the proposition that an arrest, which yields the presence of

373 S.C. 506, *516; 646 S.E.2d 171, **176; 2007 S.C. App. LEXIS 96, ***12

testimony and the affidavit, the officers discovered marijuana in the possession of the driver after he left Gentile's residence. The officers, however, had no knowledge of whether the driver purchased the marijuana from Gentile. Neither the driver nor his vehicle was searched prior to going to Gentile's residence. Furthermore, without surveillance within Gentile's residence, there was no verification that the driver in fact purchased marijuana from Gentile. Additionally, it is important to note that the officers' search of Gentile's residence revealed cocaine and not marijuana.

Based on the foregoing, we hold the search warrant was invalid under the totality of the circumstances, and [***15] thus, the circuit court judge erred in admitting the drug evidence.

We find support for our decision in the factually similar opinion of *People v. Titus*, 880 P.2d 148 (Colo. 1994) (en banc). In *Titus*, the defendant was charged with possession of marijuana with intent to distribute or sell and possession of marijuana. The drug evidence was discovered at Titus's residence pursuant to the execution of a search warrant. The Colorado Springs Police Department procured the warrant based on the

narcotics, is sufficient to establish probable cause for the issuance of a search warrant for the location of where the arrestee came from prior to the arrest. See *State v. Keith*, 356 S.C. 219, 225, 588 S.E.2d 145, 148 (Cl. App. 2003) (affirming decision of trial court to admit drug evidence seized pursuant to a search warrant for defendant's residence where the following facts established probable cause: informant's tips regarding drug transactions at the defendant's [***14] home; surveillance by law enforcement; and a traffic stop of the defendant after leaving his residence which revealed the presence of a marijuana "bud" and a pipe in the defendant's vehicle); *State v. Scott*, 303 S.C. 360, 362-63, 400 S.E.2d 784, 785-86 (Cl. App. 1991) (affirming defendant's convictions for trafficking in cocaine and unlawfully transporting drugs in a motor vehicle and finding affidavit in support of search warrant was sufficient to establish probable cause where affidavit was based on information from surveillance officers who followed defendant leaving his residence and ultimately arrested him and searched his vehicle, which revealed the presence of twenty grams of cocaine).

These cases are clearly distinguishable from the instant case. In both *Keith* and *Scott*, the defendant was arrested and searched after leaving his residence. Here, Gentile was not arrested. Instead, the surveillance officers followed and arrested a third party. This person, a visitor at Gentile's residence who had not been searched prior to his arrival, was not a target of their surveillance.

following information: 1). a first-time anonymous informant alleged defendant was engaged in selling marijuana at his residence, there was unusual traffic at defendant's residence, and that she had smelled the odor of burning marijuana coming from the residence; 2). the informant gave police a list of the license plate numbers of those that visited [***17] the defendant's residence; 3). police officers' verification of the license plate numbers and the traffic at the defendant's residence; 4). an attempted controlled buy of narcotics from defendant; and 5). the fact that the defendant was self-employed and operated a telephone repair business out of his home.

Prior to trial, the court granted the defendant's [***16] motion to suppress the drug evidence found at his residence on the ground the affidavit underlying the search warrant did not establish probable cause. *Id.* at 149. The prosecution appealed the decision. On appeal, the Colorado Supreme Court, sitting en banc, affirmed the trial court's ruling. In reaching this decision the court found "the police had no indication, apart from the anonymous informant's suspicions and the police informant's conversation with Titus, that Titus was engaged in criminal activity." *Id.* at 151. In terms of the high volume of traffic at the defendant's residence, the court stated "[t]he fact that a large number of people visit a residence in a one-month period does not establish that illegal activity is taking place." The court also relied on the fact that there was nothing in the affidavit to suggest that "any of the [visiting] vehicles belonged to known drug offenders, or were used in the furtherance of any illegal activity." *Id.* Finally, the court rejected the prosecution's reliance on the anonymous informant's claims that she smelled the odor of burned marijuana coming from the defendant's residence on several occasions. *Id.* at 152. The court found that "[u]nder [***17] no circumstances do [the claims] support the conclusion that Titus was selling marijuana out of his home." *Id.* In reaching this conclusion, the court found significant the fact that:

[t]he affidavit does not state the circumstances under which the informant smelled the odor of burned marijuana. Nor does it disclose how many times she smelled it. Most importantly, however, it does not disclose when these olfactory experiences took place. There is no indication that the police officer attempted to determine whether the informant had smelled marijuana burning recently, or whether the event was remote in time.

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373 S.C. 506, *517; 646 S.E.2d 171, **176; 2007 S.C. App. LEXIS 96, ***17

Id.

As in Titus, we find the warrant to search Gentile's home was not supported by [**177] probable cause. The narcotics [**518] officers' decision to obtain the search warrant was based on citizens' tips regarding high volume traffic at Gentile's residence, which was not necessarily indicative of illegal activity at the residence. Additionally, the citizen claim regarding the smell of marijuana in the vicinity of Gentile's residence was vague and not corroborated by the officers' surveillance. Finally, as previously discussed, the officers' arrest of a visitor to Gentile's residence adds nothing to [***18] the probable cause determination. Without more, we find the evidence in the affidavit and the oral testimony was insufficient to support a finding of probable cause.

Accordingly, Gentile's convictions and sentences are

REVERSED.

HUFF and WILLIAMS, JJ., concur.

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Stephen Bowden



User Name: Stephen Bowden

Date and Time: Tuesday, January 31, 2023 11:02:00AM EST

Job Number: 189160993

Document (1)

1. State v. Laux, 344 S.C. 374

Client/Matter: -None-

A Neutral
As of: January 31, 2023 4:02 PM Z

State v. Laux

Supreme Court of South Carolina

February 6, 2001, Heard ; March 19, 2001, Filed

Opinion No. 25262

Reporter

344 S.C. 374 ; 544 S.E.2d 276 **; 2001 S.C. LEXIS 50 ***

The State, Respondent, v. Bernard Laux, Appellant.

Prior History: [***1] Appeal From Charleston County, Edward B. Cottingham, Circuit Court Judge.

Disposition: AFFIRMED.

Core Terms

apartment, consent to search, apparent authority, bedroom, premises

Case Summary

Procedural Posture

Appellant sought review of the decision of the Charleston County Circuit Court, South Carolina, which denied his motion to suppress evidence and convicted him of murder.

Overview

A temporary resident in appellant's apartment gave consent for police to search the apartment. Ammunition and a holster were found and appellant moved to suppress the evidence contending that the temporary resident did not have authority to consent to the search. The appellate court found that it was reasonable for the officers to assume that the temporary resident had authority to consent to the search because she told the officers that it was her apartment and that she stayed there with appellant, she answered the door in her bedclothes, and female clothing, hair spray, and hair brushes were observed in the bedroom and bathroom. Therefore, the appellate court ruled that the consent to search was valid.

Outcome

The trial court's ruling denying appellant's motion to suppress was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Sufficiency & -- -- -- Voluntariness

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Consent to Search

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Third Party Consent

HN1 Consent to Search, Sufficiency & Voluntariness

The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched.

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Consent to Search

HN2 Warrantless Searches, Consent to Search

Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent to search has the authority to do so.

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344 S.C. 374, *374; 544 S.E.2d 276, **276; 2001 S.C. LEXIS 50, ***1

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > Consent to
Search

HN3 Warrantless Searches, Consent to Search

Whether an individual has actual authority to consent to a search is not necessarily dispositive. A consent to search may be valid if based upon apparent authority. Determinations of consent to enter must be judged against an objective standard: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises?

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > Consent to
Search

Criminal Law & Procedure > Preliminary
Proceedings > Pretrial Motions &
Procedures > Suppression of Evidence

HN4 Warrantless Searches, Consent to Search

Suppression of evidence seized is not warranted if officers had an erroneous but reasonable belief of authority to consent to the search.

Counsel: Assistant Appellate Defender Robert M. Dudek, of South Carolina Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Senior Assistant Attorney General William E. Salter, III, of Columbia, and Solicitor George M. Dubworth, of Anderson, for respondent.

Judges: JUSTICE WALLER, TOAL, C.J., MOORE,
BURNETT and PLECONES, JJ., concur.

Opinion by: WALLER

Opinion

[*375] [*276] JUSTICE WALLER: Appellant, Bernard Laux, was convicted of murder and sentenced to thirty years. We affirm.

FACTS

Laux was charged with the murder of his long-time friend and drinking buddy, Frank Joseph (Butch) Beylotte, III, who allegedly owed Laux \$ 2000.00. Beylotte's body was found on John's Island in the early morning hours of March 4, 1997, having been shot in the head and shoulder, and apparently run over by an automobile.

Beylotte was last seen alive with Laux in the late evening hours of March 3, 1997, at [*2] the Golden Key Club and the Hayloft Lounge in Charleston. The following morning, police went to Laux' apartment to find him. According to the *in camera* testimony of Detective Michael Conkey, he went to Laux' apartment at 11:15 am and was met at the door by Dee Cooke, who answered the door in her night clothes, appearing to have just gotten out of bed. Cooke told Conkey [*277] she lived there with Laux and that it was her apartment. Cooke [*376] consented to police searching the one-bedroom apartment, and signed a waiver to that effect. According to Conkey, he saw female clothing in the bedroom and hair spray and brushes in the bathroom. Conkey did not recall seeing a suitcase on the floor.

Dee Cooke testified *in camera* that she had been living with Laux for about one week, that she had a key to the apartment, and that she had told police she lived there and had consented to the search of the apartment. Although [*3] she was still "living out of [her] suitcase some," she testified that a number of her personal items were in the bedroom and bathroom.

Laux moved to suppress the evidence seized,² contending Cooke was an overnight guest who had no authority to consent to the search. The trial court ruled there was an appropriate consent, either by a person with apparent authority, or by a person temporarily living in the house.

ISSUE

Did Cooke, a temporary resident in Laux'

¹ Conkey also had information from Golden Key employees that Cooke lived in the apartment with Laux.

² Some .357 magnum bullets, a holster, and a few papers were found in the bedroom and kitchen as a result of the search. Laux' 357 revolver was subsequently found stuck inside some cinder blocks outside the Golden Key Club, and a spent bullet shell found at the scene was consistent with having been shot from Laux' weapon.

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apartment, have actual or apparent authority sufficient to consent to a search of the premises, such that the trial court properly denied the motion to suppress?

DISCUSSION

HN1 [↑] The test of whether a third party [***4] has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched. U.S. v. Matlock, 415 U.S. 164, 39 L. Ed. 2d 242, 94 S. Ct. 988 (1974); State v. Middleton, 266 S.C. 251, 258-259, 222 S.E.2d 763, 766 (1976). **HN2** [↑] Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so. Matlock, 415 U.S. at 171, note 7. Accord State v. P*377 Cannon, 336 S.C. 335, 520 S.E.2d 317 (1999) (noting that any person with an equal right to use or occupy property may consent to its search).

HN3 [↑] Whether an individual has actual authority to consent to a search is not, however, necessarily dispositive. In Illinois v. Rodriguez, 497 U.S. 177, 111 L. Ed. 2d 148, 110 S. Ct. 2793 (1990), the United States Supreme Court held a consent to search may be valid if based upon apparent authority. The Court stated, "determinations of consent to enter must be judged [***5] against an objective standard: would the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the premises?" 497 U.S. at 188. See also United States v. Whitfield, 291 U.S. App. D.C. 243, 939 F.2d 1071, 1074 (D.C. Cir. 1991); State v. Williams, 101 Ohio App. 3d 340, 655 N.E.2d 764 (Cl. App. Ohio 1995) (finding Rodriguez applicable to situations in which an officer would have had valid consent to search if the facts were as he reasonably believed them to be).³

³ Although this Court has not directly addressed the issue, we have implicitly upheld a search based upon officers' reasonable belief that the person authorizing the search had the authority to do so. State v. Bailey, 276 S.C. 32, 37, 274 S.E.2d 913, 916 (1981) (where defendant left his pickup truck parked in his uncle's yard, without any instructions or restrictions on its use, and vehicle was unlocked with keys inside, it was "reasonable for the officers to believe . . . the [uncle] had authority to consent to the search."). See also

[***6] Under Rodriguez, we find the officers in this case were clearly justified in their belief that Cooke had authority to consent to [***278] the search. ⁴ [***7] Officer Conkey was told by people at [***378] the Golden Key Club that Cooke was living with Laux. Conkey went to Laux' apartment and was met by Cooke, who answered the door in her bedclothes at 11:15 am, told him this "was her apartment," and that she "stayed there with Mr. Laux." She then orally consented to a search of the apartment, and signed a written consent search waiver of rights form in which she stated she was "the owner or person in charge of the item or premises to be searched." Moreover, Conkey observed female clothing in the bedroom and hair spray and hair brushes in the bathroom. Conkey did not recall seeing a suitcase on the floor of the apartment.⁵

Dee Cooke verified that she had told police she lived in the apartment and had given her consent to the search, and that a number of her personal effects were in the bathroom and bedroom. She also testified that she possessed a key to the apartment. However, she acknowledged that she had only been staying there for about a week, and that she was still "living out of her

State v. Brockman, 329 S.C. 115, 494 S.E.2d 440 (Cl. App. 1998), rev'd on other grounds, 339 S.C. 57, 528 S.E.2d 661 (2000) (recognizing that **HN4** [↑] suppression is not warranted if officers had an erroneous but reasonable belief of authority to consent).

⁴ Accordingly, we need not decide the more difficult question of whether she had actual authority to do so. Compare People v. Lewis, 277 A.D.2d 1010, 716 N.Y.S.2d 204 (N.Y. App. Div. 2000) (defendant's guest who had been living in defendant's residence for approximately one week possessed requisite degree of authority and control over premises to voluntarily consent to police officers' entry) with United States v. White, 40 M.J. 257 (C.M.A. 1994) (roommate who had shared apartment with accused for only two weeks was without actual authority to consent to entry of accused's bedroom); People v. Pickens, 275 Ill. App. 3d 108, 655 N.E.2d 1206, 211 Ill. Dec. 823 (Ill. App. 1995) (overnight guest whom police found sleeping on defendant's sofa, and whom police had no information lived in defendant's residence, had no authority to consent to search of defendant's residence).

⁵ We have viewed photographs of the search scene in which a closed "suitcase" is shown on the floor of the bedroom. The suitcase is small, brown, and leather and somewhat resembles a large attache case. We find nothing in its appearance which would have alerted Conkey's attention to the fact that Cooke was not a permanent resident of the premises.

344 S.C. 374, *378; 544 S.E.2d 276, **278; 2001 S.C. LEXIS 50, ***7

'suitcase some.'

Under these circumstances, we find it was entirely reasonable for Detective Conkey to assume Cooke had authority to consent to the search of the premises. Accord United States v. White, supra (although roommate who had shared apartment with accused for only two weeks was without actual authority to consent to entry of accused's bedroom, officers [***8] nonetheless reasonably relied on roommate's apparent authority to consent); United States v. Ramirez, 115 F. Supp. 2d 401 (S.D.N.Y. 2000) (objectively reasonable for officers to conclude defendant's girlfriend had authority to consent to search of his apartment where she had property at the apartment, had been staying there for at least one week prior to the search, and she opened the door and let officers inside); State v. McCaughey, 127 Idaho 669, 904 P.2d 939 (Idaho 1995) (facts not known to officer at time of search not relevant to question of whether [***9] they reasonably believed defendant's wife could consent to search). See also U.S. v. Kinney, 953 F.2d 863, 866-67 (4th Cir. 1992) (joint resident's consent to search closet valid because officers had reasonable belief in apparent authority because she possessed closet key and opened closet in presence of officers); U.S. v. Thomas, 120 F.3d 564, 571 (5th Cir. 1997), cert. denied 522 U.S. 1061, 118 S. Ct. 721, 139 L. Ed. 2d 660 (1998) (babysitter had apparent authority to consent to search of common areas of apartment, including bedrooms and areas he was permitted to use and given free access [***9] to as a babysitter).

We hold it was objectively reasonable for officers to conclude Cooke had apparent authority to consent to the search of the residence. Accordingly, the trial court's ruling denying Laux' motion to suppress is

AFFIRMED.

TOAL, C.J., MOORE, BURNETT and PLEIGNES, JJ., concur.

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Stephen Bowden

State of South Carolina	)	Court of General Sessions
County of Charleston	)	Ninth Judicial Circuit
	)	
STATE OF SOUTH CAROLINA,	)	Case Numbers:
	)	2021-GS-10-00417
Plaintiff,	)	2021-GS-10-00418
	)	
vs.	)	
	)	GUILTY PLEA
ROMANE CLARE,	)	
	)	TRANSCRIPT OF RECORD
Defendant.	)	
	)	

February 2, 2023
Charleston, South Carolina

B E F O R E:

The Honorable Bentley Price

A P P E A R A N C E S:

MS. JESSICA A. BALDWIN,
Assistant Solicitor,
For the Plaintiff;

MR. STEPHEN BOWDEN,
Attorney at Law,
for the Defendant.

Jamie Bickett
Official Court Reporter

1 (The following proceedings were had in open court.)

2 THE COURT: All right. Y'all ready to proceed?

3 MS. BALDWIN: Yes, sir.

4 MR. BOWDEN: Yes, your Honor.

5 THE COURT: All right. Are you Mr. Romane Clare?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. You're here today to plead
8 guilty to voluntary manslaughter and possession of a weapon
9 during the commission of a violent crime. Is that your
10 understanding of what you're doing here today?

11 THE DEFENDANT: Yes sir.

12 THE COURT: You understand by pleading guilty you're
13 giving up all of all of your constitutional rights: your
14 right to a jury trial, right to confront witnesses at that
15 trial, right to remain silent. Have you discussed all these
16 rights with your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You understand that as of this morning, you
19 were first up for trial. We are ready to try your case.
20 First thing on Monday, we'll have a jury here at 9:30. Do
21 you wish to go forward with your trial on Monday at 9:30?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. You understand this is a
24 negotiated sentence of a range of 25 to 30 years. I cannot
25 alter or amend that. I must stay in that range. I can only

1 accept it or reject it. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. And understanding all of that,
4 do you still wish to plead guilty because you're, in fact,
5 guilty?

6 THE DEFENDANT: I -- repeat?

7 THE COURT: What? I'm sorry.

8 MR. BOWDEN: He said --

9 THE DEFENDANT: Could you repeat that, please?

10 THE COURT: I said knowing -- er, understanding that I
11 can only stay in that range of 25 to 30 years, are you
12 pleading guilty because you're, in fact, guilty?

13 THE DEFENDANT: Correct. Yes, sir.

14 THE COURT: All right. What are the facts?

15 MS. BALDWIN: Thank you, your Honor.

16 This incident occurred on September 26 of 2019 at [REDACTED]
17 Whitney Drive, which is in North Charleston in Charleston
18 County. The defendant and the victim were married at the
19 time. The victim's name is Ebony Clare. At the time of the
20 incident, the home was going into foreclosure.

21 And on the date of the incident, North Charleston did
22 respond to a call from the victim, a 911 call, stating that
23 she had been shot and that her husband was the one who shot
24 her. When police arrived, they found the victim sprawled out
25 outside of her house in the driveway with multiple gunshot

1 wounds, at which time they attempted to render aid to her.
2 She once again told police when they asked her that it was
3 her husband, the defendant, who shot her. The defendant was
4 not on the scene at the time.

5 The victim was then transported to MUSC. Efforts were
6 made to save her, but she did succumb to her injuries. The
7 autopsy later showed that she had been shot at least five
8 times and she had abrasions to her hip, both knees, and one
9 toe.

10 North Charleston's investigation then uncovered two
11 projectiles, among other items of evidence, in the home.
12 Your Honor some of that -- about that at our hearing
13 yesterday. These projectiles were located in two different
14 rooms.

15 The investigation showed that they were shot at two
16 different angles. One went through the wall of the entryway
17 to the home, through the wall, through the back of the
18 refrigerator in the kitchen, and then into the kitchen door.
19 So it went this way. The other projectile was actually at an
20 angle down some stairs into a room in the den. So two
21 completely different angles, your Honor, and that would
22 indicate that obviously the incident took place in two
23 different rooms.

24 The revolver that was used in the incident was later
25 located near a fence outside of the home, with the grip

1 broken of it. It wasn't far from where the victim was
2 located, about 10 feet away from where she was found.

3 While the officers were looking for the defendant, they
4 actually discovered that the day after the incident,
5 approximately 12 hours after the incident, he withdrew his
6 account balance from his bank account at Latitude 32 in West
7 Ashley. He was later located, about two days after the
8 incident, in Florida in Fort Lauderdale. He was subsequently
9 extradited back to South Carolina.

10 He does have -- his convictions of significance are a
11 2016 unlawful carrying of a weapon and an assault and battery
12 second degree. Those stem out of an incident involving the
13 victim, where she found him with another woman. An argument
14 -- physical altercation ensued, and he allegedly shot at her.
15 But he pled guilty to assault and battery second degree.

16 I'm not sure if you want to hear the State's position
17 first or hear from the victim's family. There are several
18 members here. I believe the victim's mother, Nedra Myers,
19 would like to address the Court at the appropriate time.

20 THE COURT: All right. I'd be happy to hear from them.

21 THE WITNESS: Good morning.

22 THE COURT: If she has an impact statement she'd like me
23 to read, I'd be happy to read it.

24 THE WITNESS: Good morning, Judge and members of the
25 court.

1 Tomorrow my daughter would have been 41 years old.
2 Ebony lived a life of bold love. She was a licensed
3 beautician, owner of Flawless Hair Salon, a licensed CDL
4 driver, and a practical nurse, always striving to excel for
5 the betterment of herself and family. She was an auntie, a
6 granddaughter, a sister, and a friend. This year we would be
7 getting ready for the first nephew graduation. I could see
8 the excitement on her face. I will never see the
9 grandchildren that my daughter would have had.

10 My family and I seek justice, and we are her voice
11 because she cannot speak. Romane should truly spend the rest
12 of his life thinking about what he has done and how he has
13 impacted my family, friends, and the community that loved
14 Ebony so much. There's not a day go by that I cannot -- that
15 I don't miss her kiss and hugs. Ebony was my first-born and
16 gave so much of herself to everyone she came in contact with.

17 Thank you, your Honor.

18 THE COURT: Thank you, ma'am.

19 MS. BALDWIN: And I know your Honor does have a range.
20 The State would ask that you sentence Mr. Clare to 30 years
21 based on the fact that there does appear to have been a bit
22 of a chase throughout the home. It wasn't just in one room
23 in the heat of the moment.

24 THE COURT: All right. Anything further from the State?

25 MS. BALDWIN: Not at this time.

1 THE COURT: All right. Yes, sir. What would you like
2 to tell me about Mr. Clare?

3 MR. BOWDEN: Thank you, your Honor. May it please the
4 Court?

5 I'm going to ask for the low end of this range, the
6 25-year sentence. Mr. Clare is 37 years old. If he does the
7 25-year sentence, he will be 55 when he completes that
8 sentence and he will be deported to Jamaica, where he's from.

9 He's been in this country since he was 20 years old. He
10 came here to live the American dream. He worked hard, he
11 owned a home, and he was married. It wasn't always the
12 happiest relationship, your Honor, but I can assure you that
13 he feels this as much as anybody. He will live with this for
14 the rest of his life.

15 He's waiving his self-defense claim by pleading guilty
16 today, a self-defense claim that we felt so strongly about we
17 did a *Duncan* hearing. He is not at all coming to this
18 decision lightly, but he is here to take responsibility. He
19 is here to save the need of a trial.

20 And given, you know, the decision to take
21 responsibility, saving resources, and what we would have to
22 present at his defense at trial would have been painful for
23 everybody and he is avoiding that, and then with the
24 deportation to follow the sentence, the sentence certainly
25 doesn't end when he leaves the SCDC facility. So I would ask

1 that he be given the 25-year sentence and credit for 1,233
2 days.

3 THE COURT: All right. Well, weighing into my decision
4 is that this was unfortunately something that was inevitable.
5 I mean, he'd already shot at her once. And it's unfortunate
6 that this had to happen. But I will give him credit for the
7 fact that he's not putting the family through a trial and
8 he's accepting responsibility for his actions.

9 So I'm going to submit you to the State Department of
10 Corrections for a term of 27 years, give him credit for 1,233
11 days, and allow the other charges to run concurrent. Good
12 luck to you, sir.

13 THE DEFENDANT: Thank you.

14 MS. BALDWIN: Thank you, your Honor.

15 (End of proceedings.)
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CERTIFICATE OF REPORTER

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Court of General Sessions for Charleston County, South Carolina.



Court Reporter
License No. 083-002613

Dated this 4th day
of August, 2023.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Bentley Price Presiding Judge

INDICTMENT NOS.: 2021-GS-10-00417; 2021-GS-10-00418
WARRANT NOS.: 2019A1010205164; 2019A1010205165

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ROMANE CLARE, APPELLANT

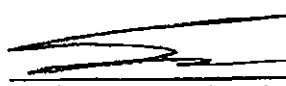
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FEB 14 2023

SC Court of Appeals

NOTICE OF APPEAL

Romane Clare appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Bentley Price following Clare's guilty plea on February 2, 2023. Counsel is not aware of any basis to appeal Clare's guilty plea or sentence. However, Clare had a Duncan hearing on August 30, 2022, where his motion for immunity from prosecution under the South Carolina Protection of Persons and Property Act was denied by the Honorable Benjamin H. Culbertson on the record and in a written order filed September 2, 2022. In addition, the Honorable Bentley Price denied Clare's motion to suppress illegally obtained evidence after a hearing on February 1, 2022.


 Stephen M. Bowden, Appointed Counsel for Romane Clare
 Charleston County Public Defender's Office
 101 Meeting Street, 5th Floor
 Charleston, SC 29401

Other counsel of record are:
 Jessica Baldwin, Assistant Solicitor
 Office of the Solicitor, Ninth Judicial Circuit
 O.T. Wallace County Office Building
 101 Meeting Street, 4th Floor
 Charleston, SC 29401
 (843) 958-1900

JAB/0361458
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2019-029304

ARREST WARRANT NUMBER

2019A1010205164

DATE OF ARREST

10/23/2019

ACTION OF GRAND JURY

TRUE BILL

APR 3 2021

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2021-GS-10-00417

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2021

THE STATE

VS.

ROMANE CLARE
B/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

FILED

5/5/2021 4:22:49 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2021, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about September 26, 2019, the defendant, Romane Clare with malice aforethought did kill and murder Ebony Clare by means of shooting her, and Ebony Clare did die in Charleston County as a proximate result thereof on or about September 27, 2019 in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/Jessica Baldwin
JESSICA BALDWIN
ASSISTANT SOLICITOR

JAB/0361458
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2019-029304

ARREST WARRANT NUMBER
2019A1010205165

DATE OF ARREST

10/23/2019

1: 1a
ACTION OF GRAND JURY
TRUE BILL

APR 31 2021

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2021-GS-10-00418

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
APRIL TERM 2021

THE STATE

VS.

ROMANE CLARE
B/M DOB: [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

FILED

5/5/2021 4:22:50 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2021, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about September 26, 2019, the Defendant, Romane Clare, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Murder; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/Jessica Baldwin
JESSICA BALDWIN
ASSISTANT SOLICITOR

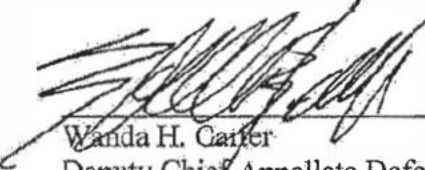
Nov 06 2023

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 6th day of November, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Nov 06 2023
SC Court of Appeals

Appeal from Charleston County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

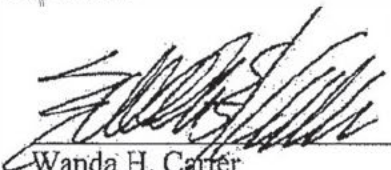
V.

ROMANE CLARE,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Romane Clare, 390157, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC, 29010, this 6th day of November, 2023.


Wanda H. Carter

Deputy Chief Appellate Defender