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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Scott Sprouse, Circuit Court Judge

JORGE RODRIQUEZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001507

APPENDIX

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¹ It appears the date on this volume of the trial transcript is a Scrivenor's error.

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME I

6 vs.

CASE NO. 2020-GS-42-04184

7 JORGE ALBERT RODRIGUEZ,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE J. MARK HAYES, II

11 DATE: October 11, 2022

12 TIME: 9:35 AM

13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
15 Spartanburg, SC 29306

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 SPENSER SMITH, ASSISTANT SOLICITOR

22 ATTORNEYS FOR THE DEFENDANT
23 RICKY K. HARRIS, ESQ.
24
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I N D E X

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DIRECT CROSS REDIRECT RECROSS

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WITNESS/EXAMINATION

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DEPUTY RAPP

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BY MR. SMITH

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BY MR. HARRIS

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DEPUTY ROJAS

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BY MR. SMITH

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BY MR. HARRIS

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E X H I B I T S

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FOR I.D. IN EVD.

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STATE EXH. 2, Projectile

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STATE EXH. 3, Projectile

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1 THE COURT: Are y'all ready?

2 MR. SMITH: We were looking at some photos. I
3 don't know if you want to start. I was trying to get some of
4 these things premarked. He has some objections to some of
5 them.

6 THE COURT: Have y'all reached a point that you
7 know which ones you got objections to?

8 MR. SMITH: From the first set, not blood on any of
9 those. I don't anticipate the other ones being controversial.

10 MR. HARRIS: I believe, Your Honor, I've identified
11 several photos that I would object to. We're substituting a
12 black-and-white photo for one of the color ones. I believe
13 he's trying to generate another black and white, and we will
14 have a set that I do not have an objection to.

15 THE COURT: I'm going to step down for a couple
16 minutes and then I'll come back, see if y'all are finished.

17 MR. SMITH: Thank you, Your Honor.

18 (A recess transpired from 9:38 a.m. until 9:53
19 a.m.)

20 (STATE EXH. 1, Cartridge, was marked for
21 identification.)

22 (STATE EXH. 2, Projectile, was marked for
23 identification.)

24 (STATE EXH. 3, Projectile, was marked for
25 identification.)

1 (STATE EXH. 4, Cartridge, was marked for
2 identification.)

3 (STATE EXH. 7, Photograph, was marked for
4 identification.)

5 (STATE EXH. 8, Photograph, was marked for
6 identification.)

7 (STATE EXH. 9, Photograph, was marked for
8 identification.)

9 (STATE EXH. 10, Photograph, was marked for
10 identification.)

11 (STATE EXH. 11, Photograph, was marked for
12 identification.)

13 (STATE EXH. 12, Photograph, was marked for
14 identification.)

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1 MR. SMITH: There are two pictures of the victim to
2 show where he was shot. They're in black and white. I have
3 colored copies. If they do come in, I would like to make
4 colored copies court exhibits for any appeals.

5 THE COURT: Okay.

6 MR. SMITH: The State's argument for admissibility
7 would be we have to prove attempted murder. As Your Honor is
8 familiar with, attempted murder is difficult on the State.
9 They have to show a specific intention to kill.

10 We think that the location of the bullet is
11 relevant while perhaps somebody could testify to it, there's no
12 additional prejudice that's done to the Defendant by putting in
13 a picture of it to strengthen the State's case. His intention
14 was to kill him when he hit him in the head when he shot him.

15 THE COURT: Yes, sir.

16 MR. HARRIS: If it please The Court, Your Honor. I
17 have indicated to the Solicitor that I would object to the two
18 photos that purport to show a head wound. Of course, the
19 pictures themselves are extreme close-ups.

20 The alleged victim -- part of having now heard the
21 State's rationale for introduction of the photos, I'm bound to
22 point out that I've been told in pretrial discussions that the
23 State does not intend to call any medical witnesses to describe
24 entrance wounds or exit wounds or location or trajectory of
25 projectile or any of those things that are common to proving

1 the manner of infliction of an injury.

2 And I am not aware of any witness in the case --
3 there being only one eyewitness -- that can make any statement
4 or hasn't so far about whether a gun was pointed, the proximity
5 of a gun to the alleged victim and what manner of shooting it
6 was.

7 If we take the Solicitor's argument at face value,
8 it suggests that there's no such thing as accidentally shooting
9 somebody even in the head or inadvertently shooting somebody in
10 the head or shooting somebody, not intending that but some
11 other body part. We just think it is not proof beyond
12 speculation absent any kind of corroboration from a witness.

13 The photographs themselves are speculation. If
14 it's intended to show the manner of injury or that somebody
15 pointed a gun at somebody's head and shot them, there won't be
16 any evidence in this case about that so far as I know. I mean,
17 certainly the State is not in any way hindered in saying that
18 the man was shot in the head.

19 I dare say that there were at least two-thirds or
20 more of the witnesses listed by the State in voir dire
21 yesterday that could say that. That will say they saw it. I
22 don't think the State would be hindered in proving that there
23 was a gunshot wound to the head. They hindered themselves by
24 not presenting any scientific or medical witnesses. That's
25 their business.

1 THE COURT: Educate me, Mr. Smith. What aspect of
2 attempted murder requires you to want to prove it by showing
3 these photographs?

4 MR. SMITH: It's to show the location of the wound.
5 It's a shot in the head, which we're going to argue through his
6 actions that it can be inferred he was attempting to murder
7 him. We don't have the witness available. He can't testify
8 about his injuries or really show us his injuries. He's not
9 here.

10 We've tried to sanitize it as much as possible. He
11 did get shot in the head. The arguments about accident or
12 whatever, those are great arguments for Mr. Harris to make on
13 opening and closing, but has little to do with the
14 admissibility of the evidence.

15 THE COURT: Based upon the arguments that have been
16 presented, I would have to consider the State is the prevailing
17 party and will allow these two pictures to be in based upon the
18 arguments that have been presented to me. Have they been
19 numbered already?

20 MR. SMITH: We did not do those yet, Your Honor.
21 They told us to put in the originals as court exhibits.

22 THE COURT: Did you mean the colored photographs?

23 MR. SMITH: Yes, Your Honor. They mentioned that
24 at the Solicitor's conference.

25 THE COURT: I didn't attend the Solicitor's

1 conference. I don't know what they said.

2 MR. HARRIS: I wasn't invited.

3 MR. SMITH: They usually invite you to the judge's
4 panel.

5 THE COURT: We're not that important, obviously.

6 MR. HARRIS: They know things we don't.

7 MR. SMITH: It might be difficult for you to make a
8 ruling without seeing the other evidence. These are five
9 pictures of the scene, which we also would be trying to get in
10 through the first witness. Mr. Harris says they're duplicative
11 of some of the other items he has agreed to.

12 I think it's important to show the jury as closely
13 as possible what the living room looks like. They are
14 different angles of the couch. And I think it's important
15 context for the jury.

16 Every time I talk to jurors after a trial they want
17 more. Just from my own perspective, I think the duplicative
18 argument holds little. We don't know what the jury wants, what
19 they might be looking at. A different angle of something could
20 be important to them. I don't get to read their minds.

21 I want them to have as clear of a picture as
22 possible. I don't think it does any prejudice by putting extra
23 angles in to the defense. We have done black and white on some
24 of the ones that are more graphic. Mr. Harris and I have
25 agreed on those already. I have the ones that we've agreed on,

1 if you would like to see them.

2 THE COURT: Let me hear what Mr. Harris has to say
3 about these.

4 MR. HARRIS: Your Honor, I've indicated to the
5 Solicitor I do object to multiple photographs of the very same
6 thing. Not only because it's cumulative to another picture
7 that I have indicated no objection to, because the cumulative
8 nature of it becomes at some point prejudicial when the
9 photographs are that graphic.

10 It's not necessary to prove any point to a jury,
11 and I will imagine that many jurors in many cases would like to
12 have evidence that they don't get because the Rules of Evidence
13 don't permit it. And I think that's where we are.

14 You know, the desire to show different angles of
15 what? What about it is illuminating beyond the picture that I
16 have indicated I have no objection to, to show the living room.

17 THE COURT: I haven't seen the other photographs.

18 MR. SMITH: These are the ones he's agreed to.

19 THE COURT: Give me just a second, let me take a
20 look at the ones y'all have agreed to.

21 (A pause transpired).

22 THE COURT: Okay. Anything else besides the
23 cumulative argument?

24 MR. HARRIS: I guess more formally stated, they're
25 cumulative. The cumulative nature of it, given the pictures

1 are graphic, is unduly prejudicial. I think it's an attempt on
2 the State to put blood picture after blood picture after blood
3 picture in front of the jury, hoping that will change their
4 minds about something or give them an idea about something.

5 We've heard nothing from the State to say what is
6 relevant about the photographs other than there's a lot of
7 angles of the living room. We've already agreed to one picture
8 that fully shows the living room.

9 MR. SMITH: Your Honor, I'm somewhat hamstrung.
10 The Defendant has not given a statement. He's entitled to not.
11 I don't know exactly where the defense is heading.

12 There is some testimony from Judith Rodriguez about
13 where the people were standing when the gunshot was done. I
14 think the blood on the couch, the blood back on the wall, the
15 location of the ear buds, all of that corroborates Judith's
16 statement about where Bryant was standing when the action
17 occurred.

18 In her interview with police, she actually
19 describes him as falling back, hitting the couch, sliding off
20 the couch onto the ground where he was at when law enforcement
21 arrives.

22 And we were seeking to add credibility to her
23 testimony, the testimony we believe is the truth about what
24 happened.

25 The location about the fireplace, that is where

1 Mr. Jorge Rodriguez is alleged to have been standing when he
2 fired the shot at Bryant, at kind of the L area of the couch.
3 The different angles, it's a large room. We're just trying to
4 have a clear picture of the entire room. It's hard to do that
5 without putting in multiple pictures. Thank you, Your Honor.

6 MR. HARRIS: Your Honor, if the Solicitor believes
7 that photographs are necessary to corroborate one witness's
8 testimony, perhaps we should see what that witness's testimony
9 is going to be if that witness testifies today or tomorrow
10 before we admit the photographs.

11 THE COURT: Thank you for that.

12 What we'll do, sort of agree with Mr. Harris. It's
13 sort of difficult for me to say not to let them in or let them
14 in based upon just the arguments. I'll wait to hear what the
15 testimony of the witnesses or witness is and the need for the
16 photographs.

17 Just in reviewing them sitting up here, I culled
18 out three of the photographs that do look to be rather
19 repetitive of what is shown in the photographs that have been
20 agreed to. And two of the photographs I just don't know 'cause
21 I don't know the importance of it. I don't know why you wanted
22 them.

23 So just for y'all's knowledge, the two that I just
24 don't know about are these two that sort of show the couch
25 area.

1 And then the three that I pulled out are the ones
2 that sort of show the same area on the couch with the pillows
3 because these items -- again, I'm speculating as to the
4 importance of them -- seem to be reflected in the other
5 photographs that y'all have agreed to.

6 So I won't make any ruling on any of these
7 photographs. Where I'm headed now, if you want to use them and
8 the State decides to use them at the time with a witness, I'll
9 be alerted and defense can state an objection at that time. We
10 won't have to go into any lengthy discussions unless y'all come
11 up with other substantive reasons why I should admit it or not
12 admit it.

13 MR. SMITH: These two of the couch, we don't have
14 any picture of the full couch in what was allowed in. This is
15 essentially --

16 THE COURT: That's why I said those I don't have
17 any view whatsoever. I need to hear from the witness. I did
18 not see that they were duplicative of what was in the other
19 one. I don't know what they're being used for.

20 MR. SMITH: Yes, sir. Thank you.

21 I think that would get us through a number of
22 witnesses.

23 THE COURT: Lawyers approach just a moment.
24 Anything else before we bring the jury in?

25 MR. HARRIS: No.

1 THE COURT: Lawyers approach.

2 (A pause transpired).

3 THE COURT: Hearing nothing else, let's bring the
4 jury in.

5 (The jury entered the courtroom at 10:11 a.m.)

6 THE COURT: Ladies and gentlemen, first of all,
7 thank you for your patience while we got started this morning.
8 As I told you yesterday, there are times when I've got to do
9 things outside of your presence. Instead of bringing you in
10 and out, in and out, we try to take care of as many things as
11 we can at one time while you're sitting in the back.

12 And I apologize for keeping you in the back so long
13 this morning. We were able to clear up several matters that I
14 hope makes this trial go more efficiently and more quickly.

15 Please accept my forgiveness for keeping you in the
16 back so long. Thank you again for showing up on time.

17 Ladies and gentlemen, we are now ready to begin the
18 trial of the case of the State versus Jorge Albert Rodriguez.
19 Before we begin the trial, the clerk of court, she has to
20 administer an oath to you. If you would please stand and raise
21 your right hand.

22 JURY MEMBERS
23 being first duly sworn.

24 THE COURT: Thank you very much. You may be
25 seated.

1 Ladies and gentlemen, before we begin this trial, I
2 want to tell you that this trial probably will be different
3 from what you might expect. Many people do not have the chance
4 to attend an actual court session as you're doing now and may
5 think from watching television or movies or reading books that
6 trials are always full of high drama, intense action, and
7 riveting circumstances.

8 Now, while all of these things may be true at
9 times, ladies and gentlemen, this trial is not for
10 entertainment. It is a fundamental part of our democracy. And
11 a trial is often slow, deliberate, and repetitive; just the
12 opposite of what you may have seen on television or in a movie
13 or read about in a book.

14 This courtroom is a place of honor dedicated to the
15 protection and preservation of citizens' rights through what
16 many have called the greatest justice system ever created.

17 The attorneys appearing before you are advocates
18 for the parties that they represent. First and foremost, they
19 are officers of The Court; sworn to uphold the integrity and
20 fairness of our judicial system. You should expect them to be
21 professional, competent, and ethical in the representation of
22 their client's interest.

23 But remember that you have taken an oath to try
24 this case and reach a fair and just and proper verdict. And
25 you are also expected to be professional, reasonable, and

1 ethical.

2 I thank you for accepting the important
3 responsibility of jury service and for your contribution today
4 to our justice system.

5 What I will now say is intended to serve as an
6 introduction to this trial. These remarks are not a charge on
7 the law in this case. I will instruct you on the law
8 applicable to this case at the end of the trial before you
9 retire to consider your verdict. This is merely an explanation
10 of the procedures that we will follow in the trial of this case
11 so that you may better understand what is happening.

12 Now, the Defendant in this case is charged by way
13 of indictment filed in This Court with the crimes of attempted
14 murder, and possession of a weapon during the commission of a
15 violent crime. The elements of those charges I will explain to
16 you later.

17 This indictment is simply a charge by which the
18 case is brought to The Court. It is not in any sense evidence
19 of any of the allegations contained in it. The Defendant has
20 pled not guilty to this indictment.

21 The State, therefore, has the burden of proving
22 each of the elements of the indictment beyond a reasonable
23 doubt. It will be your duty, ladies and gentlemen, to decide
24 whether or not the State has met that burden.

25 Your purpose, as jurors, is to find and determine

1 the facts of this case. You are the sole judge of the facts of
2 this case.

3 If at any time I make any comment regarding the
4 facts, you must disregard my comments. You are to determine
5 the facts from the testimony that you hear and any other
6 evidence that is introduced in This Court.

7 It is up to you to determine the inferences which
8 you may feel may properly be drawn from the evidence that is
9 presented. It is especially important that you perform your
10 duty of determining the facts diligently and conscientiously
11 because ordinarily there's no way to correct an erroneous
12 determination of a fact that is made by a jury.

13 On the other hand and with equal emphasis, the same
14 law that makes you the judge of the facts make me the judge of
15 the law in this case. The law as given by The Court is the
16 only law that you may consider. You must accept and follow it
17 even though you may disagree with it. I cannot tell you what
18 the facts are. You cannot disagree with me about what the law
19 is or what the law should be.

20 Your job is to take the law as I give it to you and
21 apply it to the facts as you find them from the testimony of
22 the witnesses and any other evidence that is introduced.

23 After doing that, you will render your verdict, a
24 true and just verdict under the solemn oath that you just took
25 as jurors.

1 Now, as I've already explained to you, until I
2 advise you to begin your deliberations, you must not discuss
3 the case with anyone including your fellow jurors, friends,
4 family members, and anyone involved in this case. That
5 prohibition against having any discussion includes any
6 face-to-face discussions, by telephone, e-mail, text, blog, or
7 any other types of communication.

8 In fact, while you're in this courtroom, and in the
9 jury deliberation room, you may not use a computer, cell phone,
10 or other electronic device capable of any type of research
11 while you are in your deliberations or in this courtroom. You
12 cannot use those items.

13 Of course, during breaks and the evenings you can
14 use those items. You cannot use those items in an effort to
15 obtain information or to conduct any research involving
16 anything involving this case.

17 Ladies and gentlemen, as I've already told you, you
18 will come and go from the courthouse. You'll frequently see
19 attorneys or parties or witnesses that may be involved in this
20 case. You cannot have any contact with any type of those
21 people. Likewise, ladies and gentlemen, if you see those
22 individuals and they do not even say hello to you or
23 acknowledge you, they're not trying to be rude to you. They,
24 too, are following my instructions. They cannot have any
25 conversations or communications with you.

1 Ladies and gentlemen, I do not anticipate any type
2 of news coverage of this case. In the event that there is, you
3 cannot read, listen to, or watch any of those types of reports.
4 This includes anything that might be on the newspaper,
5 internet, radio, or television.

6 Ladies and gentlemen, you must not consider
7 anything you may have read or heard about this case outside of
8 this courtroom whether before or during the trial.

9 Ladies and gentlemen, after the case is submitted
10 to you, you must discuss it only in the jury room with your
11 fellow jurors.

12 The attorneys and the parties in this case have
13 been advised they cannot talk to you at all. Again, if you see
14 any of them around the courthouse, do not be concerned that
15 they're not speaking to you. They're simply following my
16 instructions.

17 Ladies and gentlemen, it is important that you keep
18 an open mind and not decide any issue in the case until all of
19 the evidence has been presented, the parties have made their
20 closing arguments to you, and I have instructed you on the law
21 that you will apply in this case.

22 It is your solemn responsibility to assure that
23 your verdict is based solely and only on the evidence that is
24 presented to you in this trial and on the law as I instruct you
25 during and at the close of this trial.

1 Ladies and gentlemen, in just a moment the
2 Solicitor will make what is called an opening statement in
3 which the Solicitor will explain to you the issues in this case
4 or at least what the Solicitor thinks the issues are in the
5 case. The attorney for the Defendant may also make an opening
6 statement although he is not required to do so. What the
7 attorneys tell you during their opening statement is not
8 evidence in this case. It is only their contention as to what
9 the issues are in the case.

10 The evidence in this case will be presented to you
11 by testimony as sworn witnesses from this witness stand and any
12 exhibits that may be presented during the course of this trial.

13 As I've already mentioned, from time to time during
14 this trial you may hear one of the attorneys say something
15 like, Your Honor, I believe we have a question of law or a
16 matter of law to discuss with you. Or they may say, Your
17 Honor, may we approach the bench. Or sometimes I myself may
18 find it necessary to exclude you from the courtroom for a short
19 time while the attorneys and I discuss what are called matters
20 of law.

21 The reason for this is because you are the judges
22 of the facts in this case and sometimes, when I'm discussing
23 matters of law with the attorneys, it is necessary for me to
24 make some comment about the facts in a case in connection with
25 ruling on whether or not a particular law may or may not apply.

1 I'm not supposed to tell you what the facts are so
2 I will exclude you from the courtroom while these discussions
3 take place between me and the attorneys so that you will not be
4 influenced by anything that I say in making those rulings.

5 Ladies and gentlemen, in determining what the true
6 facts are in this case, you must decide whether or not the
7 testimony of a witness is believable. It will be my
8 responsibility to rule as a matter of law as to whether certain
9 testimony is admissible at all or not. Once the testimony is
10 admitted, whether or not you believe it is solely for you to
11 determine.

12 And in determining whether to believe a witness,
13 you have the right to consider the interest of any witness, the
14 bias of any witness, the prejudice of any witness, the
15 opportunity for the witness to have seen the matters and things
16 about which the witness may testify and the way the witness
17 acts on the witness stand. You have a right to consider
18 anything that is in the record that will help you evaluate the
19 testimony of the witness.

20 That means that it is your duty to pay close
21 attention to the witnesses, to observe the witnesses, to listen
22 to the witnesses and to pay close attention to the attorneys
23 and to The Court. Do not let your thoughts wander but give
24 strict attention to the testimony in this case so that, at the
25 end of all the testimony, after the arguments of Counsel and

1 the charge on the law, you will then be in a position to
2 determine what the true facts are and to apply the law to those
3 facts and, thus, render a true and just verdict.

4 It is your added duty, madam foreperson, to preside
5 in the jury room and to be the jury spokesperson here in this
6 court if that becomes necessary. It will also be your duty to
7 write the verdict in this case. I will give you further
8 instructions on that at the conclusion of this case.

9 Now, ladies and gentlemen, in order to preserve
10 everyone's rights, I will give the parties an opportunity to
11 object to anything I've said during the preliminary
12 instructions.

13 Does the State have any objections?

14 MR. SMITH: No, Your Honor.

15 THE COURT: Does the defense?

16 MR. HARRIS: No, Your Honor.

17 THE COURT: Thank you, gentlemen. At this time we
18 will receive the opening statements from the attorneys.

19 MR. SMITH: Thank you, Your Honor. May it please
20 The Court.

21 I know the judge says the case is not necessarily
22 emotional. This case is very, very emotional. I anticipate it
23 will be difficult for some of the witnesses to testify to what
24 they saw. Part of the reason of that is it happened on
25 Christmas. And part of the reason is that everybody involved

1 in it are family. They're all family members. I don't know if
2 you've inferred from when the Judge read the indictment, Bryant
3 Rodriguez, the victim in this case, is the brother of Jorge
4 Rodriguez.

5 And the only other person other than those two that
6 was the room was their mother. The mother is the only
7 eyewitness other than Mr. Bryant Rodriguez and Jorge Rodriguez.

8 Bryant Rodriguez to this day is not in a condition
9 where he's going to be able to come in and testify. In fact,
10 he's not even in the courtroom here today. His mother takes
11 care of him.

12 This happened back on Christmas of 2019. He's
13 still in a condition that he can't work. He pretty much cannot
14 speak or communicate. For whatever reason, he's not here
15 today.

16 I want to talk about Judith Rodriguez. She's going
17 to be critical in this. She is ultimately the only eyewitness
18 that we have. I'm very sympathetic to Ms. Rodriguez. She's
19 sitting there in the blazer behind Jorge. She's in an
20 impossible situation, probably as bad of a situation as you
21 could imagine. Maybe there's worse things but not much.

22 On the night of this incident, it happened around
23 2:00 sometime in the morning. The Sheriff's Office gets called
24 out to Colfax Drive, which is in Boiling Springs area,
25 Spartanburg County. It's a very, very nice house in a nice

1 community. And the only people that are there when the police
2 arrive is Judith, who is hysterical and completely covered in
3 her son's blood. And Bryant, who's basically unresponsive on
4 the ground. He's trying to get up. He's not communicating.
5 He's shot in the head.

6 Judith that night is not able to give them any
7 indication about what happened. The police are basically at a
8 standstill. She doesn't indicate like it was a home invasion
9 or burglary or that there was multiple suspects or one suspect
10 or pretty much nothing. She's solely concerned about her son
11 and hoping that he survives.

12 She ends up contacting law enforcement later. This
13 happened at like 2:00 in the morning. At some point after
14 being in the hospital, she becomes tired and asked if she can
15 take a nap and recharge her batteries.

16 She ended up making contact with law enforcement
17 again. They came out to her house. That's when she told them
18 it was her son Jorge that had shot Bryant.

19 She essentially said they were in some sort of
20 verbal argument. Bryant was saying things he should not have
21 said, things that would be hurtful to somebody and make you
22 very angry. They're not the type of things that justify
23 pulling a gun out and shooting somebody in the head.

24 Based off of that, law enforcement got warrants on
25 Jorge Rodriguez based off of her statement. They began

1 searching for him. They didn't find him until December 26th.
2 At that point, he was at a location in Greer on Dutchman Court
3 with a guy named Wilson Gomez, who's a friend of his. And
4 you'll hear from Wilson about what Jorge's demeanor was like
5 during that time before the police apprehended him.

6 The gun that we believe was used in this case was
7 found at an address in Chesnee on Old Furnace Road, which is
8 the home where Mr. Rodriguez's girlfriend lives. It's found
9 kind of on the property. It's a farm. They have multiple
10 acres. It's inside of a tire, kind of in the back area where
11 they have almost like a boxing ring set up.

12 According to Wilson Gomez, Mr. Rodriguez did admit
13 that he had shot his brother but that it was an accident, was
14 the story that we got from Mr. Rodriguez.

15 I don't know exactly what Judith is going to
16 testify to today. She's given multiple statements. I know
17 she's in a terrible position. I think, as you listen to her
18 testimony, I would submit that Ms. Rodriguez has decided to
19 circle the wagons around Jorge and try to save him from what
20 might be coming to him if he's convicted of this crime. She's
21 trying to preserve what she can of her family.

22 In her view, she's already lost Bryant in many
23 ways. He's probably never going to be the person he was before
24 this incident. She doesn't want to lose her other son.

25 Nick Rodriguez is here, the third brother. He was

1 actually at the house earlier that night. He was not a witness
2 to this. And as you can imagine, this has totally ripped their
3 family apart. And I don't take any pleasure in doing what
4 we're probably going to have to do with Judith to get to the
5 truth.

6 Bryant doesn't get to speak for himself. He can't.
7 He's not even here to get to see what happens at this trial.
8 It's my job and the police's job to speak for him and to get
9 justice for him.

10 MR. HARRIS: I object, Your Honor.

11 THE COURT: Ladies and gentlemen, at this time I'll
12 need for you to retire back to the jury deliberation room. I
13 need to remind you of my two ongoing instructions: Don't have
14 any discussions among yourselves about anything involving the
15 case. We'll get you back in just shortly.

16 (Jury exited the courtroom at 10:30 a.m.)

17 MR. HARRIS: Your Honor, I do have a very serious
18 objection to the last statements of the Solicitor. I am being
19 begged by my client that he be allowed to go to the men's room.
20 He has been saying that to me now for 20 minutes. Would you
21 permit that?

22 THE COURT: All right. Go across the hallway, sir.
23 We'll take a short recess for about two minutes.
24 Come back and we'll receive Mr. Harris' statement on his
25 objection.

1 (A recess transpired from 10:34 a.m. until 10:37
2 a.m.)

3 THE COURT: Yes, sir.

4 MR. HARRIS: I have made an objection to the last
5 statements of the Assistant Solicitor's opening statement to
6 the jury. The statement, after having already said in his
7 opening statement, probably impermissibly, I did not object
8 then about the condition of the victim.

9 The Solicitor went further and too far by saying
10 that it was up to the Solicitor and law enforcement or words to
11 that effect to speak for the victim.

12 That kind of personification to the jury, that what
13 we say you can believe Bryant Rodriguez would say if he was
14 able to say is wholly inappropriate. It clearly invites the
15 jury to consider evidence of which there will be none.

16 And it's particularly egregious and disappointing
17 since the State has no way of knowing what Bryant Rodriguez
18 would say in this courtroom were he able to come here. There
19 are no statements made by him that can be found in discovery.
20 He has not, to my knowledge, made any statements beyond what
21 I've discovered yesterday, which was apparently he may have
22 said something, although maybe not knowingly what he was
23 saying, we don't know that. We have no medical evidence. That
24 apparently he told the Solicitor and the investigator for the
25 Solicitor's Office last Friday that this was an accident.

1 Now, is the Solicitor going to speak for Bryant
2 Rodriguez to the jury, get on the stand and say: I was told or
3 put his investigator on the stand, I was told -- actually, he
4 said we're going to stand in the shoes of the victim. He says
5 it's an accident. No. I don't think so.

6 This is particularly problematic. It is highly
7 prejudicial. There's no way to cure it. There's no argument
8 that can be made. There's no showing that could be made of
9 what Bryant Rodriguez would say. His inability to speak is
10 actually irrelevant in terms of evidence to be received by the
11 jury.

12 What value evidentiary-wise is it that a witness is
13 unable to appear in court? I'm not aware that there is any
14 evidentiary value to it unless some party raises in a material
15 way the absence of the witness, which has not been done. This
16 is the opening statement by the State.

17 So we have placed in front of the jury at the very
18 start of the trial: I don't have a witness. And the reason I
19 don't have a witness is because he's not able to testify; in
20 other words, he's not competent under the Rules of Evidence to
21 testify but that weighs in my favor. We're going to speak for
22 him.

23 I'm going to ask for a mistrial. I do not -- I
24 understand why it might have been said. I don't understand why
25 it was said, because it's highly inappropriate. I mean, it's

1 more than highly inappropriate.

2 THE COURT: Thank you, sir. Yes, sir.

3 MR. SMITH: Your Honor, all the points that he made
4 could be covered through questions that Mr. Rodriguez has not
5 given a statement to police. If he wants to call my
6 investigator, I can provide him that. Mr. Rodriguez made a
7 couple different statements when we met with him. All this has
8 been provided and certainly could come out throughout the case.

9 As Your Honor instructed, the opening arguments are
10 not evidence. And we would think that, if it needs to be
11 stricken, that would be fine but a mistrial would be an extreme
12 remedy at this stage of the case because there certainly will
13 be witnesses that will testify that Mr. Rodriguez has not given
14 a statement to law enforcement or, I guess, anybody that I'm
15 aware as to exactly what happened.

16 THE COURT: Which Mr. Rodriguez?

17 MR. SMITH: Bryant. More speaking in the context
18 of, like, in a murder case where the victim is not present.
19 And I think it's the job of the State and the police to present
20 what happened to that person when they might not be able to do
21 it themselves. Certainly we can strike any implication that,
22 you know, that he's told me what happened and that I'm speaking
23 for him or something. That was not what -- that was not my
24 intention.

25 THE COURT: Any reply?

1 MR. HARRIS: Your Honor, I say intention. I mean,
2 I mean, it was said to the jury: We are going to speak for
3 him.

4 That is not the role of the Solicitor. The role of
5 the Solicitor is to present admissible evidence to a jury to
6 prove the elements of the crime. I would not believe it would
7 be objectionable in my view for there to be any evidence about
8 whether the victim has made a statement. If there is no
9 statement, that's like commenting on, you know, what would be
10 the context? We asked him, but he couldn't talk.

11 All of this, in my view, is designed to create some
12 kind of inference to the jury that Bryant Rodriguez would give
13 incriminating evidence against the Defendant when we don't know
14 that. In fact, the only thing that's been said is it was an
15 accident but the competency of the speaker of that statement is
16 in question. I don't know a way to cure it.

17 I mean, now we will go through the entire trial
18 with the focus being on the inability of the victim to speak,
19 not even knowing what the victim would say were he able to. I
20 can't confront that under the Sixth Amendment.

21 THE COURT: All right. Thank you for the
22 arguments. I did instruct the jury prior to the start of the
23 opening statements that the arguments of Counsel were not
24 evidence in the case. And I intend to instruct the jury at the
25 end of the case, if it makes it that far, they should disregard

1 any argument that is made by any lawyer that is not consistent
2 with the evidence that has been presented to them or the law
3 that I will instruct them in the case.

4 I think I preconditioned the jury to not accept the
5 Solicitor's statements as being statements of fact. I do share
6 the defense's concern that, when a Solicitor makes the
7 statement, we're going to speak for the victim, it's the same
8 as if it had been a case where, unlike this case, where
9 unfortunately the victim didn't survive. The victim had
10 deceased. I think it would be improper for the Solicitor to
11 stand up in front of the jury and say: We will speak for the
12 deceased in this case.

13 I intend to instruct the jury that they should
14 disregard any remark or comment that's been made by the
15 Solicitor that indicates they will be speaking for the alleged
16 victim in the case.

17 We will proceed on. You're noted, Mr. Harris, for
18 the record. Any further deviation from appropriate arguments
19 or presentation will be noted to The Court in assessing whether
20 any future motions for mistrial should be granted. Let's bring
21 the jury back in.

22 (The jury entered the courtroom at 10:43 a.m.)

23 THE COURT: Ladies and gentlemen of the jury, an
24 objection has been made to a portion of the Solicitor's
25 argument. I need for you to listen to me. I instruct you and

1 charge you, you should disregard any remark or comment that was
2 made by the Solicitor during his opening statement that the
3 State intends to speak for the victim in this case.

4 At this time, Solicitor wants to continue with
5 their further opening statements.

6 MR. SMITH: Thank you, Your Honor.

7 One of the things that you learn in law school is
8 that everything comes down to reasonableness. You have to
9 spend three years there just talking about what's reasonable.
10 We actually ask you-all to determine what's reasonable.

11 Maybe y'all didn't go to law school.
12 Reasonableness, I think, is important in this case, and what
13 people do after something. I'm sure y'all have heard the
14 story, the saying that the cover up is worse than the crime.
15 In this case, I'm not sure that a cover up is worse than the
16 crime because the crime is terrible. The cover up is
17 destructive of the intention.

18 We have to prove that he was intending to murder
19 him when he pulled the trigger. It was not by accident, not a
20 justifiable reason. He was trying to murder him without
21 justification and hatred in his heart.

22 What he did after shooting him was leave the house
23 without checking on him. Left his mother there alone, 2:00 in
24 the morning with his brother, who might die with a gunshot
25 wound in the head. He disposes the weapon in a location where

1 he was hoping it wouldn't be found. He basically went out of
2 the county, to Greer, Greer City, 30-something minutes away
3 from the crime scene and hung out with a friend until he was
4 apprehended by law enforcement. Did not turn himself in. Did
5 not stay at the scene.

6 I want you to ask yourselves at the end, if this
7 was an accident, if there was some reason that it happened, is
8 that reasonable? Is that what somebody would do in a similar
9 situation, or is that more indicative of somebody that maybe
10 made a mistake that they instantly regret in a heat of anger
11 towards somebody? And that you're trying to cover it up.

12 We think that's what occurred in this case and will
13 ask for a guilty verdict. Thank you.

14 MR. HARRIS: Thank you, Your Honor. May it please
15 The Court.

16 THE COURT: Yes, sir.

17 MR. HARRIS: Solicitor. Ladies and gentlemen of
18 the jury. This is a case where Jorge Rodriguez -- the accused
19 person sitting over there beside me and his mother -- was
20 verbally provoked and violently threatened unfortunately by
21 their own family member.

22 If we want to know about the facts, those are the
23 facts. What the Solicitor just said lastly is very interesting
24 to your further consideration of this case. Because if it's
25 true that Jorge Rodriguez was acting out of anger, whatever the

1 words the Assistant Solicitor used, this is not an attempted
2 murder case 'cause there would be no required intent to kill
3 with malice aforethought.

4 I suggest to you the Assistant Solicitor knows now.
5 He has known. He will know throughout the trial that he won't
6 be able to prove attempted murder.

7 I think it's clear what the State's motives are
8 here, what the Assistant Solicitor's motives are, which is to
9 force this case into an attempted murder box, because he
10 doesn't personally like what happened.

11 We're supposed to be objective. That's our role.
12 We're supposed to present admissible evidence. Not all
13 evidence is admissible. His Honor has already told you as
14 much.

15 His Honor is the judge of the law in the case. You
16 are the judges of the facts of the case. Not all evidence is
17 admissible. Only admissible evidence can be considered by you.

18 I would say partly although an opening statement
19 doesn't contain evidence because lawyers are not sworn
20 witnesses and can't give evidence and should not give evidence.
21 Acting as his Honor has done in his role as the judge of the
22 law, why he gave you the instructions to disregard the portion
23 that was not permitted, portion of the Assistant Solicitor's
24 statement that's not permitted by the law. What other things
25 might be expected from the State? Attempts. But we're going

1 to stick with the facts.

2 There probably will be many witnesses that will
3 come before you. Swear to tell the truth. Normally with a
4 hand on the Bible, which is the solemn thing. That we all
5 should understand. They will testify.

6 And what they are permitted to testify to you is
7 admissible evidence. That doesn't mean, as Your Honor has
8 already said, that it has to be believed by you. You're the
9 judges of the facts of the case. Therefore, you're the judges
10 of whether anything the witness says is believable.

11 But the witnesses will come before you. They will
12 testify. And you will judge them.

13 We already know the built-in bias of the law
14 enforcement witnesses because that's been revealed in the
15 opening statement by the Assistant Solicitor. That's a strike
16 or more against them from the start.

17 On the other hand, in fairness, based on everything
18 I know about the case, those witnesses don't know much about
19 what happened. Actually, I'd say those law enforcement
20 witnesses don't know anything about what happened, as you will
21 see. They came after everything had happened. Everyone will
22 see how they testify. We already know they are biased.

23 In a case, in any criminal case as His Honor has
24 told you, the State has the burden of proving each and every
25 element. We call that -- those are the aspects of the crime;

1 each and every element of the crime beyond a reasonable doubt.
2 If they fail to prove even one thing that they're required to
3 prove, a jury's verdict must be by your oath not guilty.

4 What does the State have to prove in this case?
5 They have to prove an attempt to kill accompanied by the intent
6 to kill. And intent in this courtroom has a special meaning.
7 His Honor will explain it to you at the end of the trial
8 because he's the judge of the law.

9 Intent means specific intent. The form, thought:
10 I'm going to kill you. And that intent must be accompanied not
11 only by the act of doing something in furtherance of it but
12 with what we call in the law malice aforethought, which has a
13 specific meaning of its own that will be explained to you at
14 the end of the case.

15 So at the end of the case, based on the admissible
16 evidence and the properly made statements, if you find that the
17 State has, for instance, failed to prove malice aforethought,
18 your verdict must be not guilty.

19 If the State has failed to prove beyond a
20 reasonable doubt specific intent to kill, your verdict must be
21 not guilty.

22 Letting that sink in for a little bit.

23 It is true Judith Rodriguez Nodine is the lady
24 that's seated behind Jorge Rodriguez. Her son -- across the
25 courtroom from her other son, Nicholas -- was in her home on

1 Christmas Eve into the early morning hours of Christmas morning
2 2019.

3 I believe the evidence will show that various
4 members of her family had come to visit her on that occasion
5 throughout the evening. She had made some food for them. She
6 offered them beverages, some alcoholic beverages. They were
7 drinking. That will come out. They were trying to have
8 Christmas, as many people do.

9 And at various times, different of them came. I
10 think the evidence probably will show that Nicholas and his
11 friend came and stayed for a while. They didn't see anything.
12 Then perhaps later, Bryant, the alleged victim in this case,
13 came and stayed for a while and was given food and brought his
14 own drinks.

15 I believe the evidence will show to you that he
16 brought two or more 40-ounce bottles of beer for his own
17 consumption. 40-ounce bottles of beer.

18 I believe the evidence will show -- and the
19 Solicitor didn't mention this -- but I believe the evidence
20 will show that, in the aftermath of this, two 40-ounce bottles
21 of beer were found strewn under the sofa, a sectional couch in
22 the living room where this is alleged to have occurred.

23 One of those 40-ounce bottles the evidence will
24 show was used as a weapon by Bryant, the victim, against his
25 mother. And the Defendant, when a heated argument broke out

1 over what the evidence will show indisputably -- I think
2 probably but we will see what the witnesses say -- that when
3 Jorge Rodriguez came over that night, his brother Bryant was
4 already there. Was drunk. Intoxicated. And started saying
5 vile and vicious things about Jorge Rodriguez, his girlfriend,
6 and their child.

7 And this wasn't done in any kidding way, I believe
8 the evidence will show. This was done by the alleged victim in
9 this case to his brother intentionally, maliciously, viciously,
10 and with the intention not only of hurting feelings, arousing
11 passions but incitement to violence.

12 So Judith Rodriguez Nodine will come before you, I
13 anticipate, as a witness in the case to try to tell you what
14 happened on one of the worse days of her life. She will tell
15 the truth. She is supposed to tell the truth. She will swear
16 to tell the truth. And the truth will be painful, but it has
17 to be told because we're here in an attempted murder trial.
18 The truth needs to be told so that you can evaluate the
19 evidence in the case and render a fair and just verdict.

20 I leave you with this, ladies and gentlemen of the
21 jury. What happened to this family on that night is tragic,
22 but it's not a crime. Thank you.

23 THE COURT: Is the State ready to call their first
24 witness?

25 MR. SMITH: Yes. State calls Deputy Nathan Rapp.

DEPUTY RAPP DIR BY MR. SMITH

1 THE COURT: Come up here and let the clerk of court
2 swear you in.

3 DEPUTY NATHAN RAPP
4 being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q. Please state your name and rank for the jury.

8 A. Master Deputy Nathan Lee Rapp.

9 Q. Where are you employed?

10 A. Spartanburg County Sheriff's Office.

11 Q. How long have you been there?

12 A. I began with the Sheriff's Office here January of
13 2019.

14 Q. Do you have any previous law enforcement
15 experience?

16 A. I do.

17 Q. Where is that?

18 A. Oklahoma.

19 Q. How many years total in law enforcement?

20 A. I started in law enforcement in '98.

21 Q. Were you on uniform patrol back in Christmas of
22 2019?

23 A. I was.

24 Q. What's your job as a uniform patrol officer for the
25 Sheriff's Office?

DEPUTY RAPP DIR BY MR. SMITH

1 A. Respond to active calls.

2 Q. Did you get a call to 129 Colfax Drive that early
3 morning hours of Christmas?

4 A. I did.

5 Q. What was the nature of that call? What did you
6 understand you were responding to?

7 A. From what dispatch gave us, responding to a subject
8 that had been shot at the location.

9 THE COURT: Officer, let me get you to do
10 something. Slide up closer to the microphone. The lady behind
11 you has to be able to hear you as well as the last juror over
12 there. Thank you, sir.

13 MR. SMITH: Does he need to repeat?

14 BY MR. SMITH:

15 Q. I think I asked you what you do as uniform deputy.

16 A. Respond to active calls.

17 Q. You were responding, I believe you said, to a
18 shooting?

19 A. The call given by dispatch to me was report of a
20 subject shot at 129 Colfax.

21 Q. Did you know if the person who shot them was still
22 on scene? Was that communicated to you?

23 A. Negative. I was not.

24 Q. When you arrived, what are your concerns when you
25 arrive on the scene given that type of a call?

DEPUTY RAPP DIR BY MR. SMITH

1 A. Whether whoever the suspect is still on scene,
2 whether they're still going to be aggressive, whether they're
3 going to be aggressive to law enforcement.

4 Q. Can you describe the type of house and neighborhood
5 this is located in.

6 A. Nice neighborhood. Nice house.

7 Q. As you approached the house, did you see anything
8 out of the ordinary on the exterior of the house?

9 A. No, I did not. You could tell there was lights on
10 inside. The garage door was down. The front door was closed.
11 There was no cars in the driveway.

12 Q. Were you the first person to respond?

13 A. I was.

14 Q. Is this in Spartanburg County?

15 A. It is.

16 Q. Do you know about what time you responded?

17 A. I believe the call came out about 2:00.

18 Q. So having seen nothing out of the ordinary on the
19 outside, what did you do from that point?

20 A. I then approached the front door.

21 Q. Did you knock?

22 A. I first observed what I could inside the glass on
23 the door, on the sides of the door.

24 Q. What did you see?

25 A. I was able to see a female subject inside that

DEPUTY RAPP DIR BY MR. SMITH

1 appeared to have blood on her. She looked panicky and there
2 appeared to be another subject laying on the floor in front of
3 her.

4 Q. What did you do at that point?

5 A. I then attempted to enter the residence. The front
6 door was locked, could not make entry, so I had to knock loudly
7 on the door to try to get the female's attention to come to the
8 door.

9 Q. Could you tell what type of room it was that you
10 were looking into where you saw the male and female?

11 A. It looked like a living area where a family would
12 be to sit and watch TV or gather.

13 Q. Did she come to the door when you spoke?

14 A. She did eventually come to the door, yes.

15 Q. What was her demeanor when you first made contact
16 with her?

17 A. She was in an extreme heightened state, emotional
18 state.

19 Q. Crying?

20 A. Crying, hysterical.

21 Q. Was she able to tell you anything about what
22 occurred?

23 A. She was not. No. My concern was getting to the
24 subject laying on the ground. I was attempting to get to him
25 to render aid.

DEPUTY RAPP DIR BY MR. SMITH

1 Q. Did you ask if the shooter was still around? Did
2 you try to engage her?

3 MR. HARRIS: Object to leading, Your Honor.

4 THE COURT: I'm going to allow this part right now.

5 THE WITNESS: I'll be honest, I don't remember.

6 BY MR. SMITH:

7 Q. Were you concerned that the person could still have
8 been --

9 A. I was. I was looking around as I entered the
10 house, but I needed to get to that subject.

11 Q. Your primary concern was rendering aid?

12 A. Yes. I knew I had backup. They could deal with
13 that.

14 Q. I'm going to show you some exhibits labeled 13, 14,
15 15, 16, and 17, ask if you can tell me what these are.

16 A. That's the residence at 129 Colfax.

17 THE COURT: As you're identifying them, will you
18 read the number off the bottom.

19 THE WITNESS: I will. Number 14.

20 Number 13 is going to be the fireplace in the
21 living room.

22 Number 15 is going to be entering into the living
23 room where the Christmas tree is.

24 16 is going to be the area where the victim was
25 laying in front of the couch.

DEPUTY RAPP DIR BY MR. SMITH

1 17 is going to be underneath the couch.

2 MR. SMITH: Your Honor, at this time we move
3 State's exhibits 13 through 17 into evidence.

4 MR. HARRIS: No objection.

5 THE COURT: Without objection. Thank you, sir.

6 (STATE EXH. 13, Photograph, was marked for
7 identification and entered into evidence.)

8 (STATE EXH. 14, Photograph, was marked for
9 identification and entered into evidence.)

10 (STATE EXH. 15, Photograph, was marked for
11 identification and entered into evidence.)

12 (STATE EXH. 16, Photograph, was marked for
13 identification and entered into evidence.)

14 (STATE EXH. 17, Photograph, was marked for
15 identification and entered into evidence.)

16 MR. SMITH: Permission to publish them.

17 THE COURT: All right.

18 BY MR. SMITH

19 Q. This is State's Exhibit 14. This is the exterior
20 of 129 Colfax. Is that right?

21 A. Yes.

22 Q. This is State's Exhibit 13. Can you describe what
23 this is, what this picture is.

24 A. It's going to be the fireplace in the living room,
25 opposite end of where the couch is.

DEPUTY RAPP DIR BY MR. SMITH

1 Q. If you went to the left of this picture, that's
2 where the couch is?

3 A. If you're standing, looking at it, to the left
4 there's a beginning of or to the left there's beginning of
5 L-shaped couch that goes on the left and to front view. And to
6 the right is going to be the fireplace.

7 Q. Is this -- you can see like an ottoman-type
8 attachment?

9 A. Yes.

10 Q. This is State's Exhibit 15. Can you describe the
11 orientation of this picture.

12 A. That's coming into the house and to the living
13 room.

14 Q. This is the way you entered into --

15 A. Yes.

16 Q. This is State's Exhibit 16. Can you describe where
17 the victim was when you arrived.

18 A. If you'll look in front of the couch cushions, the
19 pools of blood there, he was laying there.

20 Q. Do you know if he was on his stomach or his back?

21 A. He was on his back.

22 Q. Were you able to observe what was causing his
23 injury?

24 A. It's what appeared to be bullet wound entrance on
25 the left side, kind of above the eyebrow, the temple area.

DEPUTY RAPP DIR BY MR. SMITH

1 Q. How did you determine that?

2 A. I've seen many of them.

3 Q. Was there blood actively coming out?

4 A. There was blood actively coming out. It looked
5 like a bullet wound entrance. I'm not an expert. In my
6 experience, that's what it looked like.

7 Q. This is State's 17. This is, I believe you said,
8 just a view under the couch where Mr. Rodriguez was located?

9 A. Yes.

10 Q. Did you attempt to communicate with Mr. Rodriguez?

11 A. I did. I attempted to calm him down. He was
12 conscious. He was trying to get up. I was attempting to calm
13 him down, speak to him, ask him what happened. He appeared to
14 be unable to speak.

15 I had to actively calm him, keep him down. I was
16 afraid of him getting up and hurting himself worse or something
17 to that effect. Trying to keep him calm until EMS got there
18 and could begin treating him.

19 Q. Ultimately EMS arrived?

20 A. They did arrive. He was still very confused. He
21 didn't know what was going on. I had to assist EMS getting him
22 on to the gurney and keeping him restrained while they got him
23 to the gurney and out to the ambulance.

24 Q. Did you notice any other wounds on him?

25 A. I did not. I did not observe any exit wounds or

DEPUTY RAPP DIR BY MR. SMITH

1 anything like that.

2 Q. Were you -- did you pay attention to any other
3 things in the living room like items that might have been
4 there?

5 A. I mainly -- the only thing I could observe was that
6 immediate area. I did see the pooling of blood on the couch
7 and what appeared to be some splatter on the wall behind the
8 couch.

9 (STATE EXH. 20, Photograph, was marked for
10 identification.)

11 (STATE EXH. 21, Photograph, was marked for
12 identification.)

13 (STATE EXH. 22, Photograph, was marked for
14 identification.)

15 BY MR. SMITH:

16 Q. I'm going to show you -- these have been marked for
17 identification as 20, 21, 22, State's exhibits, and ask if you
18 can describe what these are.

19 A. 20 is going to be a picture of the L-shaped couch
20 where the victim was.

21 Q. What about the other two?

22 A. 21 is going to be the opposite side of the couch
23 where the L-shape ends. Just kind of continuation.

24 Q. If you combine the two of them --

25 A. If you combine, you would have the full picture.

DEPUTY RAPP DIR BY MR. SMITH

1 22 is going to be the couch in front of where the
2 victim was lying. You can see the blood on the pillows.
3 They're kind of pool of blood on the couch and splatter on the
4 wall behind it.

5 Q. Is that the splatter what you were referring to?

6 A. It is.

7 Q. Are they fairly and accurately representing what
8 you saw that evening?

9 A. It does.

10 MR. SMITH: Your Honor, we would move State's 21
11 through 23 into evidence.

12 MR. HARRIS: I object to them on grounds previously
13 stated, Your Honor.

14 THE COURT: Let me see the pictures again.

15 (A pause transpired).

16 THE COURT: Ladies and gentlemen, it sounds like
17 I'll take up another matter outside your presence with the
18 attorneys; ask you to retire back to the jury deliberation. Do
19 not have discussion about anything involving the case. We'll
20 get you back just shortly.

21 (The jury exited the courtroom at 11:14 a.m.)

22 THE COURT: I didn't want to make my decision
23 openly in the presence of the jury because I have to make some
24 comments about the facts. Thus far, I'm going to have to agree
25 with the defense. I didn't want -- he's identified these. If

DEPUTY RAPP DIR BY MR. SMITH

1 you want to try to get them in through some other witness.
2 Right now the prejudicial effect of these outweighs the
3 probative value of them. Right now, all I heard, this shows a
4 lot of blood.

5 I've not heard any reason as to why we need to have
6 multiple pictures of the same things over from different
7 angles. He's identified them as being reflective of what he
8 saw. If the State wants to link that up later to have another
9 analysis of the probative value outweighs the prejudicial
10 effect, I'll be more than happy to revisit that.

11 At this time, I will not allow those in. Right now
12 they just show the bloodstain from where he got shot. I think
13 I've made my ruling.

14 MR. SMITH: Can I try to provide some context?

15 THE COURT: I've made my ruling. That means you're
16 arguing with what I've said.

17 MR. SMITH: We weren't addressed on the issue to
18 try to explain it. I'll try to get in through another. We
19 think the scene is critical given what the defense has now said
20 is the defense.

21 THE COURT: It might be critical. So far you have
22 not made that critical observation to The Court. And I have
23 made my ruling. Right now all these pictures show, from what
24 this witness has testified, it shows a lot of blood. I don't
25 understand the critical nature. You might want to try to get

DEPUTY RAPP CROSS BY MR. HARRIS

1 that in through another witness; okay.

2 MR. SMITH: Sure.

3 THE COURT: Let's bring the jury back in.

4 (The jury entered the courtroom at 11:16 a.m.)

5 THE COURT: State ready to proceed?

6 MR. SMITH: Yes, Your Honor.

7 BY MR. SMITH:

8 Q. Did other deputies end up arriving to support you?

9 A. Yeah. While I was attempting to render aid to the
10 victim, other deputies arrived. They got the female subject
11 that was in a heightened state, removed her from the room so
12 she wasn't having to observe what was going on to clear the
13 house, make sure nobody else was there.

14 Q. To your knowledge, did they find anybody else?

15 A. No, they did not.

16 Q. Did you ever get anything out of Ms. Rodriguez
17 about what had happened?

18 A. No, I never spoke to her after that. There was
19 other deputies.

20 MR. SMITH: Please answer any questions Mr. Harris
21 has.

22 CROSS-EXAMINATION

23 BY MR. HARRIS:

24 Q. Thank you, Deputy. Just to be clear, you received
25 some type of radio communication saying there had been an

DEPUTY RAPP CROSS BY MR. HARRIS

1 incident at this location and to respond; is that correct?

2 A. Yes, that's correct.

3 Q. And is it correct that the communication that you
4 received contained no detail about what had actually occurred?

5 A. No, it did not. Just there was a victim of a
6 shooting at that location.

7 Q. A person was shot at that address; you need to go?

8 A. Yes.

9 Q. When you arrived at the front door that you say was
10 locked and you banged loudly on, that's all you knew; is that
11 correct?

12 A. At the time -- by the time I was knocking, I could
13 see through the glass on the door. And I could see the
14 subjects inside the house.

15 Q. There were people in there. You had been told on
16 the radio somebody in there had been shot; is that right?

17 A. Yes.

18 Q. That's what you knew at that moment; is that
19 correct?

20 A. Yes.

21 Q. Isn't it correct that, from your entire involvement
22 with going in the house, being the first one in and the things
23 you've described, when you left, you knew no more than there
24 was a person lying on the floor with a gunshot wound to the
25 head; is that correct?

DEPUTY RAPP CROSS BY MR. HARRIS

1 A. At that time that's all I knew.

2 Q. As you've described, this was -- I believe you put
3 the time at around 2:00 a.m.?

4 A. I believe the call came in around 2:00 a.m.

5 Q. It took you how long to arrive?

6 A. I would have to look. It shouldn't have taken me
7 more than a few minutes to arrive. I patrol that area, Boiling
8 Springs area. It wouldn't take me more than two or three
9 minutes.

10 Q. You're there shortly. You're on location shortly,
11 just minutes after 2:00 a.m. on December 25, 2019; is that
12 correct?

13 A. Yes.

14 Q. It's correct that present in the home was Judith
15 Rodriguez. You've testified to; is that correct?

16 A. Yes. That was the female subject that I observed.

17 Q. Do you know Judith Rodriguez?

18 A. I do not.

19 Q. Do you recognize her in the courtroom today?

20 A. I believe that's her sitting there. I didn't
21 commit her face to memory at the time. That wasn't my concern.

22 Q. You had no familiarity with her prior or since?

23 A. Not prior or since.

24 Q. You've been in the courtroom and heard what's going
25 on here today; is that right?

DEPUTY RAPP CROSS BY MR. HARRIS

1 A. Yes.

2 Q. You've heard us refer to her as Ms. Rodriguez?

3 A. (Witness moves head up and down).

4 Q. You described her state emotionally, mentally as
5 being hysterical?

6 A. Yes.

7 Q. When you say hysterical, would you agree for the
8 most part incoherent?

9 A. I don't know incoherent. I can tell you the
10 actions she was taking as I entered the house. She was
11 grabbing on me. She was yelling at me. She was grabbing on me
12 in such a way that was pertinent to me from getting to the
13 victim to render aid. I had to push her off several times.

14 As other deputies arrived, I had to get them to get
15 her off of me so that I could render aid. She was preventing
16 me from rendering aid.

17 Q. Was she doing that because she herself was trying
18 to attend to her son?

19 A. I wouldn't know that.

20 Q. Did you see her trying to minister to her son?

21 A. What I could observe through the window, she was
22 standing over him.

23 Q. You were telling her to get away so you could see
24 what was going on; is that right?

25 A. When I first observed her, she was standing over

DEPUTY RAPP CROSS BY MR. HARRIS

1 him from the windows. When I knocked, she came to me. As I
2 entered the house, I began moving forward towards the victim.
3 She was grabbing at me, preventing me, trying to prevent me
4 from walking forward to him. As I got to him, she was pulling
5 me back.

6 Q. Do you know why she was doing that?

7 A. I would have no idea why she was doing that.

8 Q. Do you have an opinion about why she was doing
9 that?

10 A. (Witness moves head from side to side.)

11 Q. Was she just incoherent, hysterical?

12 A. She was heightened state. I can't testify to her
13 feelings. I can tell you what was happening.

14 Q. I understand. You're saying you assisted emergency
15 medical personnel in placing the man on the stretcher or
16 gurney --

17 A. I did.

18 Q. -- and being taken away from the house?

19 A. I did.

20 Q. Do you know if he was conscious when he was taken
21 from the house?

22 A. He was still attempting to get up. That's why I
23 had to assist them to get him strapped down.

24 Q. Would you describe his demeanor as agitated?

25 A. He was incoherent.

DEPUTY RAPP CROSS BY MR. HARRIS

1 Q. He was incoherent?

2 A. He couldn't speak. He was just trying to get up
3 and move. Very confused.

4 MR. HARRIS: Thank you. No further questions.

5 THE COURT: Any redirect limited to what he went
6 into?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Thank you, sir. You may step down.
9 Watch your step as you're stepping down.

10 State ready to call their next witness?

11 MR. SMITH: State calls Deputy Christopher Rojas.

12 THE COURT: Come right up here and let the clerk
13 swear you in.

14 MR. SMITH: Can he be excused?

15 THE COURT: Any reason why the witness may be
16 excused?

17 MR. HARRIS: No objection.

18 THE COURT: Sir, you may be excused. Thank you for
19 coming.

20 (The witness exited the stand.)

21 DEPUTY CHRISTOPHER ROJAS
22 being first duly sworn, testified as follows:

23 THE COURT: Sir, watch your step. Have a seat in
24 the chair and pull the chair up to the microphone, if you
25 would.

DEPUTY ROJAS DIR BY MR. SMITH

1 DIRECT EXAMINATION

2 BY MR. SMITH:

3 Q. Please state your name and rank for the jury.

4 A. Deputy First Class Christopher Rojas.

5 Q. Where are you employed now?

6 A. Spartanburg County Sheriff's Office.

7 Q. What do you do with the Sheriff's Office now?

8 A. I'm currently assigned to narcotics unit.

9 Q. What were you doing back in Christmas of 2019 with
10 the Sheriff's Office?

11 A. At the time I was assigned to uniform patrol.

12 Q. How long have you been with the Sheriff's Office?

13 A. Just over four years.

14 Q. Is that your total law enforcement experience?

15 A. Yes, sir.

16 Q. Were you asked to respond to a call at 129 Colfax
17 Drive in Spartanburg County?

18 A. Due to the nature of the call, I assigned myself to
19 the call and responded.

20 Q. Was it a slow night?

21 A. I believe so.

22 Q. Do you know how long it took you to get there after
23 the call?

24 A. I think it took me five minutes.

25 Q. You were not the first deputy that arrived?

DEPUTY ROJAS DIR BY MR. SMITH

1 A. No, sir.

2 Q. What did you see when you arrived on the scene?

3 A. When I walked into the door, I saw Deputy Rapp
4 trying to render aid to a male subject laying on the floor. I
5 also saw a female covered in blood on her clothes, pulling on
6 him, trying to grab him. That's what I saw.

7 Q. What did you do to try to assist Deputy Rapp?

8 A. I was trying to grab the female, trying to pull her
9 away from him so he could render aid. She was just very
10 distraught and hysterical.

11 Q. Were you able to conclude that was her son, or did
12 you figure out the relationship between the two?

13 A. At that time, no.

14 Q. Did she say anything to you about how he had been
15 shot or who may have shot him or anything connected to what had
16 happened there?

17 A. No. She didn't say anything to me. She just kind
18 of, in her own excited utterance, kind of stated: Why did they
19 have to kill him? Why couldn't they kill me, something to that
20 effect.

21 Q. You said they. Is that what you said?

22 A. Yes.

23 Q. I think you have it quoted in your incident report;
24 is that correct? Why did they have to kill my son, why
25 couldn't they kill me?

DEPUTY ROJAS DIR BY MR. SMITH

1 A. That's correct.

2 Q. Do you speak Spanish?

3 A. I do.

4 Q. Was she speaking some in Spanish as well?

5 A. She was.

6 Q. Do you know if that was a statement she made in
7 English or Spanish?

8 A. I couldn't remember.

9 Q. Were you able to conclude anything else from your
10 interaction with her about what may have happened to her son?

11 A. No, sir.

12 Q. Did you do a sweep of the house when you got there?

13 A. I did. As soon as other deputies responded, got on
14 scene, I cleared the house with the other deputy.

15 Q. What is clearing the house?

16 A. Making sure the scene is clear, nobody else is
17 inside the house, any other victims or suspects.

18 Q. Did you go upstairs?

19 A. I did.

20 Q. Through all the rooms there?

21 A. Yes, sir.

22 Q. Did you go downstairs, do you know? Like, do they
23 have a basement area?

24 A. I don't think there was a basement. I can't
25 remember.

DEPUTY ROJAS DIR BY MR. SMITH

1 Q. Did you find anybody in that search?

2 A. No, sir.

3 Q. Did you find anything out of the ordinary anywhere
4 that you did search, things that looked out of place?

5 A. No, sir.

6 Q. No drawers that had been ransacked or anything like
7 that?

8 A. No.

9 Q. Do you remember, was most of the lights on or off
10 in the upstairs area?

11 A. When I went upstairs, most of the lights were on.

12 Q. Could you tell if it looked like anybody else lived
13 up there?

14 A. I think there was one bedroom that was occupied by
15 somebody.

16 Q. Ultimately, y'all made the decision to put the
17 mother in handcuffs and out to a car; is that correct?

18 A. That is correct.

19 Q. What was the purpose of that?

20 A. She just was kind of hindering the investigation,
21 due to her heightened state. She kept yelling and screaming,
22 trying to get back to her son at the time and just kind of
23 hindering us from providing first aid.

24 Q. Were you the one that took her out to your patrol
25 car?

DEPUTY ROJAS CROSS BY MR. HARRIS

1 A. Yes, sir.

2 Q. You stayed with her, I guess until EMS had done
3 what they did, and then you allowed her to return back to her
4 residence?

5 A. I was advised by an investigator to take her to the
6 Sheriff's Office.

7 Q. At any point in your interaction with her did she
8 indicate to you anything about what happened or who may have
9 been involved or any of the circumstances?

10 A. No, sir.

11 MR. SMITH: Thank you. Please answer any questions
12 Mr. Harris has.

13 CROSS-EXAMINATION

14 BY MR. HARRIS:

15 Q. Did you take any steps to preserve the integrity of
16 the scene?

17 A. No, sir. I just stayed with Ms. Rodriguez while on
18 scene.

19 Q. You, I guess, received some type of radio call,
20 communication to go to the location because of a shooting?

21 A. Yes, sir.

22 Q. That's all you knew; correct?

23 A. Correct.

24 MR. HARRIS: Thank you. No further questions.

25 THE COURT: Any redirect limited to what he went

DEPUTY ROJAS CROSS BY MR. HARRIS

1 into?

2 MR. SMITH: No, Your Honor. May he be excused?

3 THE COURT: Any reason why he may be excused?

4 MR. HARRIS: No, Your Honor.

5 THE COURT: Sir, watch your step as you're stepping
6 down. You may be excused. Thank you for coming.

7 (The witness exited the stand.)

8 THE COURT: State may call your next witness.

9 MR. SMITH: May we approach just briefly?

10 (Off-the-record discussion.)

11 THE COURT: Ladies and gentlemen, talked to the
12 lawyers about scheduling. Given the hour that it is and
13 anticipation of what's coming up, we're going to go ahead and
14 take a lunch break now. I need to remind you, while you're at
15 your lunch break, not to have any discussions among yourselves
16 or with anyone else about anything involving this case.

17 You've already started receiving testimony in this
18 case, probably heard locations and maybe your curiosity is
19 peaked. Do not accidentally drive by and try to find anything
20 or a location or try to do any type of independent research or
21 investigation involving this case.

22 Again, the decision that you have to make in this
23 case has to be based solely on the evidence that is presented
24 during the course of this trial and the law that I will
25 instruct you at the end of this case.

DEPUTY ROJAS CROSS BY MR. HARRIS

1 I do want to thank you for your time and your
2 patience. I know there's been some going back and forth, back
3 to the jury deliberation room. Those things are required so
4 that we are sure you receive proper evidence in this case.

5 I have some matters I have to take up. I don't
6 want you to come back. Give you a little bit of time for
7 lunch. Ask you to please be back in the jury deliberation by
8 about 1:45 this afternoon. We will try to resume the
9 presentation of more testimony as soon as you get back.

10 At this time, you may go with the bailiff, and he
11 will take you back to the jury deliberation.

12 (The jury exited the courtroom at 11:33 a.m.)

13 THE COURT: We'll step down. Thank you very much.

14 (A luncheon recess transpired from 11:33 a.m. until
15 2:02 p.m.)

16 THE COURT: Let's bring the jury in.

17 (The jury entered the courtroom at 2:02 p.m.)

18 THE COURT: State ready to call their next witness?

19 MR. SMITH: Yes, Your Honor. State calls Judith
20 Nodine Rodriguez.

21 THE COURT: Ma'am, come right up here. Let the
22 clerk of court swear you in.

23 JUDITH RODRIGUEZ NODINE
24 being first duly sworn, testified as follows:

25 THE COURT: Ma'am, be careful when you step up.

JUDITH NODINE DIR BY MR. SMITH

1 Step up and have a seat in the chair.

2 And if you would, pull the chair up to the
3 microphone. If you have to adjust the microphone, please do it
4 gently 'cause it does come out. It's old.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION

7 BY MR. SMITH:

8 Q. Will you please state your name for the jury.

9 A. Judith E. Rodriguez Nodine.

10 Q. How many children do you have?

11 A. Three boys.

12 Q. What order were they born in?

13 A. The year?

14 Q. Who's the oldest, who's the middle, who's the
15 youngest?

16 A. Nicholas Rodriguez is my oldest one. Sitting right
17 there. Bryant Rodriguez, my middle one. And Jorge Rodriguez
18 sitting in there.

19 Q. Jorge is the baby of the family?

20 A. Yes.

21 Q. Do they have the same father?

22 A. Yes, they do.

23 Q. All three of them do.

24 What is the relationship like between your sons
25 before this incident happened? What was the relationship?

JUDITH NODINE DIR BY MR. SMITH

1 A. We had a relationship as best friends. As a
2 mother, mentor. Had a great relationship.

3 Q. Are you talking about yourself with your sons?

4 A. All four.

5 Q. Between the sons, what was the relationship between
6 Jorge and Bryant?

7 A. They were fine. Of course, they always been ups
8 and downs between brothers. But never nothing major.

9 Q. You wouldn't describe like they hated each other?

10 A. No. No. Disagreements.

11 Q. Had they ever had like physical altercations that
12 you've witnessed before this?

13 A. Oh, yeah, when they were teenagers, of course, like
14 everybody else.

15 Q. Nothing that required you to call the police or
16 anything like that?

17 A. One time I did call the police when they were in
18 high school. They started fighting, and I started to separate
19 them, between the three of them. They were fighting. And I am
20 single mom. I divorced the father of my kids when --

21 (A pause transpired.)

22 THE WITNESS: When they were small. Because he
23 used to physically and mentally abuse me and also my kids. So
24 I divorced him -- sorry -- when they were babies.

25 I managed to be the mother and the father for my

JUDITH NODINE DIR BY MR. SMITH

1 three kids, financially and emotionally. Be there for them.
2 So, at that time, I didn't even have an education. I started
3 working as a cleaner. Going to school at night. It took me
4 eight years to graduate from mechanical engineering. And be a
5 mom. Bad for them. They were kids. There were always fights,
6 of course, between the three of them.

7 At the age of teenagers, they were my three
8 musketeers. We went to the gym together. We went to the
9 movies until high school. Things got out of control. And I
10 couldn't handle it. And I did call the police and asked the
11 police to help me control my kids, which the police arrived at
12 my house.

13 I was living at 773 Shadow Dance Lane in Boiling
14 Springs by that time. And the officer was very nice. He
15 actually approached them with advices and making them realize
16 the mother that I was for them and for them to be good persons
17 in life. So he started talking to them and advising them. He
18 got to the point where they calmed down, and I really
19 appreciated the help and support that he gave us that day. So
20 it's been tough, yes, with three boys.

21 BY MR. SMITH:

22 Q. At the time, going back to like the Christmas
23 season of 2019, Jorge was living in the house with you; is that
24 right?

25 A. That is correct. All three of them, they were

JUDITH NODINE DIR BY MR. SMITH

1 already living on their own. The first one who moved out from
2 the house was Nicholas, as he is the oldest one.

3 He graduate also from a degree of mechanical
4 engineer. He moved out with a girlfriend.

5 The second one was Jorge, who also graduated with
6 honors for electronic engineering. Bryant, unfortunately, has
7 been the one who has given me the most trouble. He didn't want
8 to study. He was too deep into alcohol. He was an alcoholic.
9 Losing the job, getting in trouble. Getting charged. He has
10 three charges of DUI.

11 MR. SMITH: Your Honor, she's not answering the
12 question that's asked.

13 BY MR. SMITH:

14 Q. The question was: Did Jorge live in the house with
15 you at the time?

16 A. I request Jorge to come back home and may accompany
17 me. He sold his house and moved back and lived with me.

18 Q. At your request?

19 A. At my request, yes.

20 Q. Who else was living in the house with you?

21 A. Nobody else.

22 Q. Was Bryant allowed to come over to the house if
23 Jorge was there, or would you be worried about that?

24 A. No. As a matter of fact, I brought a picture of
25 that year for my birthday. My 45 years birthday, where I have

JUDITH NODINE DIR BY MR. SMITH

1 my three kids. My family together.

2 Q. So you would not be worried if Bryant just showed
3 up --

4 A. No.

5 Q. -- about what would happen between Jorge and him?

6 A. No. And I would like to show the pictures, if it's
7 okay, Your Honor.

8 MR. SMITH: I don't have a problem. I haven't seen
9 it.

10 THE COURT: Due process requires that he ask the
11 question and you have to answer them. If that's something that
12 Mr. Harris -- if Mr. Smith doesn't let you do it, if Mr. Harris
13 wants you to do it, that will be fine. If neither of those
14 lawyers want you to do it, I can't let you do it. Just let
15 them ask you the questions; okay?

16 THE WITNESS: Okay, Your Honor.

17 BY MR. SMITH:

18 Q. Basically, you're saying everything was relatively
19 happy. And that's the reason you want to show the picture that
20 things were going well?

21 A. Yes.

22 Q. I want to go to the date Christmas Eve. What did
23 you do on Christmas Eve of 2019?

24 A. That year I made the decision of passing Christmas
25 at my native country Honduras. But then when I arrived, I just

JUDITH NODINE DIR BY MR. SMITH

1 stayed actually four days. And then I decided to return back
2 to U.S. to pass Nicholas' birthday or stay with Nicholas.
3 'Cause Nicholas, his birthday is the 23rd. So I arrived on the
4 22nd. And on the 23rd I took my Christmas tree, celebrate
5 Nicholas' birthday.

6 On the 24th I got off early and started preparing
7 meals. Because we celebrate Christmas on the 24th. That
8 evening, Nicholas arrived with his fiance and her two kids,
9 just to give me a hug and ask me to take -- to prepare some
10 portions of the meal so he can take that with him to his fiance
11 mother's house. So Nicholas stayed there just, I would say,
12 about 30 minutes. Jorge ate dinner. But he left with a
13 girlfriend to pass Christmas at his now fiance.

14 Q. Were Jorge and Nicholas there at the same time or
15 they missed each other?

16 A. I don't recall exactly if they were. Jorge
17 could've been upstairs or there. I cannot recall.

18 Q. Jorge ate and then went over to his now fiance's
19 place. What happened from that point forward?

20 A. I was preparing the meal. I called Bryant, and I
21 asked him to come over. My intention that night was to have a
22 meal with all my three boys.

23 Q. Did he agree to come over when you talked with him?

24 A. Yes.

25 Q. Where was he living back then?

JUDITH NODINE DIR BY MR. SMITH

1 A. Bryant?

2 Q. Yes.

3 A. In Inman.

4 Q. Did he end up showing up at the house?

5 A. Yes, after I insist. Jorge left, like I said. And
6 then I started calling Bryant again. And he told me, no, I
7 don't want to go. I don't feel like it.

8 And I beg him. I beg him so much, and I insisted
9 so much that he came. When he arrived, he arrived already with
10 alcohol in his system. He brought with him his own beers. And
11 I told him again, Bryant, you have to buy all this big old
12 nasty beers 'cause they were big ones. And he just laughed at
13 me and said: Mom, it's Christmas.

14 Q. You were upset that he brought that much alcohol;
15 is that fair?

16 A. I wasn't so much upset 'cause I told him, is that
17 all that he's drinking. We started making videos. Calling my
18 niece in Honduras and wishing her Merry Christmas. We ate
19 dinner again. I ate with him. We started watching a movie.
20 Bryant was continuing drinking.

21 Q. Do you know when he showed up at your house around?

22 A. It was about close to 9:00.

23 Q. When he showed up, were Jorge and Nicholas gone, or
24 it was just you and him?

25 A. No, they were gone already.

JUDITH NODINE DIR BY MR. SMITH

1 Q. When Bryant showed up, it was just you and him in
2 the house?

3 A. Yes.

4 Q. You said you start to watch a movie. He was
5 drinking. What happened at that point?

6 A. I was also drinking. I was drinking wine. And we
7 were watching movies. I fall asleep, all that I recall. Then
8 after that I start hearing Bryant yelling and cussing out
9 Jorge, who was coming home.

10 Q. When you said you fell asleep, did you fall asleep
11 in your bedroom or in the living room area?

12 A. In the living room area.

13 Q. The place where you are seeing some of the pictures
14 from? Sorry to interrupt you. Continue.

15 A. I fall asleep. And then I woke up when I heard the
16 screaming, the yelling, the screaming from Bryant. I saw Jorge
17 going up the stairs. 'Cause Jorge's bedroom was upstairs. And
18 Bryant was standing, and he was going towards the stairs and
19 continued cussing out Jorge.

20 And Jorge told him: Bryant, I don't want to fight
21 you.

22 And he was continuing yelling at Jorge, saying:
23 Oh, why, because I'm going to beat you, because I'm bigger than
24 you?

25 He was very angry, Bryant. And I tried to stop

JUDITH NODINE DIR BY MR. SMITH

1 him. And when I tried to stop him, he pushed me and throw me
2 on the floor and continued yelling at Jorge.

3 Q. Is this in the living room now? You said Jorge --

4 A. It was near the Christmas tree. And then when
5 Jorge saw that he pushed me and throw me on the floor, Jorge
6 came downstairs. And then he was like yelling at Bryant, why
7 he push me. And then they started confronting each other.

8 I tried to separate them several times. I was not
9 able to manage that situation. Bryant even was yelling at
10 Jorge that the girlfriend was -- I mean, he was just saying
11 unkind things. And he actually also said to Jorge --

12 MR. SMITH: Your Honor, I have not asked her a
13 question.

14 THE COURT: You need to ask her a question and
15 interrupt the narrative. If not, then I'm not sure it's right
16 for you to stop the narrative when it doesn't go your way;
17 okay.

18 MR. SMITH: I didn't ask her what he said.

19 THE COURT: Ask questions to cut the narrative off.

20 MR. SMITH: Thank you, Your Honor.

21 BY MR. SMITH:

22 Q. You said that Jorge was upstairs. You were shoved
23 to the ground. That got Jorge down back into the living room
24 area. And then the two of them are starting to try to
25 physically fight. And you're trying to get in between them?

JUDITH NODINE DIR BY MR. SMITH

1 A. Yes, I tried to separate them.

2 Q. And you were not able to?

3 A. No.

4 Q. Not what was said, but what happened? What did you
5 witness? What did you see?

6 A. He wanted to -- I attempt to separate them. Bryant
7 grabbed a bottle of the beer and tried to hit me. And that's
8 when Jorge reacted. And I just heard the shot.

9 And when I heard the shot, I probably could not
10 look back. I looked at Jorge and I looked at Bryant. And I
11 just saw Bryant making three steps back, fall. And I grabbed
12 him, and I started seeing blood coming out of Bryant.

13 But at that moment I started searching him for
14 where the blood was coming from. And I couldn't find the hole,
15 until I saw the hole was here in the head. At the same time I
16 look at Jorge. And Jorge was like with the gun in his hand
17 saying: What I have done? What I have done? I'm sorry, mom.
18 I'm sorry.

19 And he continued grabbing his head with the gun and
20 then he just ran out. I still have that vision of my son going
21 on the floor and the other one with such a fear in his eyes,
22 the scare and panic.

23 Then Jorge left the house, and I was holding
24 Bryant's head on my chest. I was looking for my cell phone.
25 And I dialed 911 to call for help.

JUDITH NODINE DIR BY MR. SMITH

1 Q. Did you say -- did you ask Jorge not to leave, or
2 did you say anything to him?

3 A. No. I just looked at Jorge. And I was looking at
4 Bryant. It was everything was so fast.

5 Q. Did he say where he was going?

6 A. No. It was so fast. He just, when I looked at
7 Bryant, I looked at Jorge, where is the gun. His gun in the
8 hands, and going like this (indicating) and saying: What I
9 have done, what I have done (indicating). I'm sorry. I'm
10 sorry. I'm sorry, mom. And then he left.

11 Q. Do you know Jorge to carry a gun in your home when
12 he's there?

13 A. Yes, he had a permit when he was 21. The State of
14 South Carolina gave him a permit to carry a gun at the age of
15 21, which for me is completely unacceptable.

16 Q. I agree with you.

17 MR. HARRIS: Your Honor, I have to object.

18 THE COURT: I'll sustain the objection. Go ahead.

19 BY MR. SMITH:

20 Q. Did you know that he carried a gun? Did he
21 routinely carry a gun on his person in your home?

22 A. He had a permit to carry a gun. State of South
23 Carolina gave a permit to a 21 young guy.

24 Q. I understand. The question is: Did he routinely
25 carry a gun on his person in your home? Did you know him to

JUDITH NODINE DIR BY MR. SMITH

1 come down for breakfast with a gun on his waistband?

2 A. No. No walking around the house with gun.

3 Q. Have you ever seen him with a gun on his waistband
4 in your house?

5 A. That I recall, no.

6 Q. Do you know where he kept that gun normally?

7 A. Yeah. I actually bought him a safe. He had a
8 safe.

9 Q. Normally that gun was kept in the safe as far as
10 you know?

11 A. As far as I know.

12 Q. And that safe, is that in the basement of the
13 house, or where is that located?

14 A. In the basement.

15 Q. Previously, have you ever seen Jorge -- I don't
16 know if you've seen if he had it in his waistband. Have you
17 ever been aware he was carrying a gun in your home other than
18 maybe he went shooting and brought it back?

19 A. I don't recall.

20 Q. When law enforcement arrived, obviously, you were
21 extremely upset; is that fair?

22 A. Of course.

23 Q. Do you know how much you had drank up until that?
24 Would you describe yourself as drunk or just had some wine or
25 what?

JUDITH NODINE DIR BY MR. SMITH

1 A. Wine. I only drink wine.

2 Q. Would you describe yourself as drunk, or had you
3 just had a glass or two?

4 A. I had probably four glasses since 6:00, 7:00 at
5 night.

6 Q. Do you routinely drink wine? You're not like you
7 only drink on holidays or something like that?

8 A. No. If I have a good Italian meal, I drink wine,
9 yes.

10 Q. When law enforcement arrived, did you tell them
11 what you just told the jury?

12 A. One more time.

13 Q. When law enforcement arrived, did you tell them
14 that Jorge had shot your son but in defense of you? Did you
15 tell them that?

16 A. No. All I was caring is about my son laying on the
17 floor. Like the officer that testified, the first one, he said
18 that I grabbed him. Yes, I did. I recall that. I remember
19 he's knocking on the door. I opened the door. And the first
20 thing I did was grab him. And I ask him: Where is the
21 ambulance? Where is the ambulance? All I was caring about is
22 my son laying on the floor.

23 Q. Do you remember they took you out to the car and
24 eventually you were transported to the Sheriff's Office; is
25 that right?

JUDITH NODINE DIR BY MR. SMITH

1 A. Yes, I remember.

2 Q. Once you got to the Sheriff's Office, did you tell
3 them what you're telling the jury today?

4 A. When they arrest me -- because they arrest me --
5 they didn't allow me to go with my son inside the ambulance.
6 'Cause for them, I was interrupting the investigation. And I
7 understand I was out of control. So they arrest me, and they
8 took me.

9 All I can recall is that I was yelling at everyone
10 and begging everyone to let me be with my son. But they didn't
11 care. They just wanted a statement from me right away. And
12 all I was caring is to be with my son in the hospital.

13 Q. But you did recount the events of the night to them
14 while at the Sheriff's Office; correct?

15 A. Once again.

16 Q. You talked about the events of Christmas Eve, the
17 early morning hours of Christmas with the Sheriff's Office --
18 with the investigators at the Sheriff's Office; right?

19 A. I don't recall that. What I recall is that I told
20 them to let me go see my son. And then after that, that I will
21 talk, but I needed to see my son and be with my son. That was
22 my first priority.

23 Q. And your first interview with law enforcement, do
24 you remember telling them that you had gone to bed but didn't
25 know the exact time and that you had awoken to a thump and gone

JUDITH NODINE DIR BY MR. SMITH

1 out and found Bryant laying on the floor. Do you remember
2 that?

3 A. Yes. I remember that.

4 Q. Why did you tell them that?

5 A. I didn't want to waste more time. I wanted to be
6 with Bryant.

7 Q. How do you think lying to them --

8 MR. HARRIS: Object, Your Honor.

9 THE COURT: You want to rephrase the question.

10 BY MR. SMITH:

11 Q. Was the statement you gave to them the truth? That
12 you were asleep in bed and you heard a thump, found Bryant,
13 nobody else was in the house. Is that true?

14 A. At that moment I was confused. I was traumatized.
15 I didn't even know what was going on. My mind went completely
16 blank.

17 Q. Is that the truth what you told them initially?
18 That nobody else was at this house and you heard a thump and
19 found Bryant shot?

20 A. Yes.

21 Q. That's the truth?

22 A. No. I don't understand your question.

23 Q. The first time that you gave a statement about how
24 this shooting happened, you told them that you had gone to bed.
25 Nobody else was in the house. You heard a thump. And then you

JUDITH NODINE DIR BY MR. SMITH

1 came out and found your son shot. Is that the truth?

2 A. No, it's not the truth.

3 Q. Why did you tell them not the truth when they were
4 trying to figure out what had happened?

5 A. There were so many questions asking. There were so
6 many police. So many pressure and all -- like I said, all I
7 wanted was to run away from there and be with my son.

8 Q. Did you tell them that Jorge had come by the house
9 when you first talked with them?

10 A. No. I didn't make a statement. I was just asking
11 to be with my son.

12 Q. You don't remember telling them about your
13 ex-husband coming over and Nicholas coming over? This
14 conversation you basically recounted. Everything you recounted
15 on the stand today. Do you remember that?

16 A. My ex-husband didn't come over that Christmas.

17 Q. Do you remember telling them -- so you don't think
18 you told them that your ex-husband had come over around 7:30
19 and had a glass of wine with dinner?

20 A. That I don't recall.

21 Q. Do you recall telling them that you had called
22 Bryant? Bryant arrived on his moped, about the beers, and you
23 calling him a hobo because he had the big beers. Do you
24 remember telling them that?

25 A. But this was after they allowed me to go see

JUDITH NODINE DIR BY MR. SMITH

1 Bryant.

2 Q. This is the first time, when you first get brought
3 to the Sheriff's Office. When you're still in bloody clothes
4 and you talked with them about the events of that night.

5 A. I don't recall that. I was traumatized. What I
6 can recall exactly what I say to them was, after I saw my son,
7 after I went to the hospital, they took me to the hospital.
8 They let me stay there for a couple of hours until my son
9 surgery finished. Then I was feeling exhausted. And I request
10 them to allow me to take my medication. And went to bed.

11 Q. It's very early in the morning at that time, I
12 assume. Maybe the sun is even out at that time probably?

13 A. Yeah. I don't know what time was.

14 Q. Did you attempt to communicate with Jorge at any
15 point after the shooting to before he was arrested?

16 A. Yes, I did.

17 Q. Tell me about that. Did you call him or did he
18 call you?

19 A. I don't remember.

20 Q. Y'all did speak?

21 A. Yes.

22 Q. Was that like in the early morning of Christmas, or
23 do you know when you spoke in relation to the event?

24 A. I think it was like the next day or the same day he
25 got arrested.

JUDITH NODINE DIR BY MR. SMITH

1 Q. I think he got arrested on the 26th, so the next
2 day. What did you speak with him about? This is before he got
3 arrested?

4 A. This is before he got arrested.

5 Q. What did y'all speak about?

6 A. He was crying. And he was asking me for
7 forgiveness. He was apologizing. He told me he didn't mean to
8 hurt his brother. And for me to please help him.

9 Q. When you talked with him, did you know that the
10 police were looking for him or no?

11 A. Yes. Because the detective told me that in case he
12 contact me.

13 Q. Did you ask him to turn himself in?

14 A. Yes. I did.

15 Q. What did he say to that?

16 A. He said yes. That he was going to turn himself in.
17 But he was completely saying: I'm sorry, it was an accident, I
18 didn't mean to hurt my brother. I was just trying to scare him
19 because he wanted to hit you.

20 And then he asked me to help him get a lawyer for
21 him.

22 Q. You had your initial interview the early morning
23 hours. After you got done with that, you were able to go see
24 your son. And I think you said you took your medication and
25 took a nap, I guess, and woke up later on -- would it still be

JUDITH NODINE DIR BY MR. SMITH

1 Christmas you wake up again?

2 A. (Witness moves head up and down.)

3 Q. Did you talk to your son Nick about what had
4 happened? Did you inform him what had happened?

5 A. Yes.

6 Q. Did Nick think that Jorge had done it?

7 MR. HARRIS: Objection.

8 THE COURT: I'll sustain the objection.

9 BY MR. SMITH:

10 Q. What did you say to Nicholas?

11 A. Nicholas came home very angry. And he asked me
12 what happened. And I was still out of control, my mind. And I
13 just told him Jorge -- Jorge and Bryant were fighting. I
14 couldn't do nothing. I didn't handle the situation. And I
15 told him about help me, help me get a lawyer for Jorge.

16 Q. Did you tell him that Bryant had attacked you with
17 a beer bottle?

18 A. No.

19 Q. Why not?

20 A. In that moment I didn't feel like talking. In that
21 moment I didn't feel like nothing.

22 Q. How did it come to be that you ended up reaching
23 out to law enforcement for another interview? How did that
24 happen? Did you call them? You did another interview with law
25 enforcement at your house.

JUDITH NODINE DIR BY MR. SMITH

1 A. No, was the same day when I took the nap.

2 Q. Right. Once you wake up from the nap, how did the
3 investigators end up at your house to take another statement
4 from you? Did you call them?

5 A. No.

6 Q. No?

7 A. No. In the station, like I said, I didn't give
8 them a statement. I promised them to give them a statement
9 after I saw my son in the hospital.

10 Q. Right.

11 A. And after the hospital, that's where they took me
12 back home, let me get some rest. And then when I woke up,
13 that's when I gave them the statement because they were
14 accusing me of shooting my own son.

15 Q. So you did not contact law enforcement and say you
16 were ready to tell the truth?

17 A. No. They were waiting for me to wake up from my,
18 my rest, nap or medication.

19 Q. Do you recall that interview better than the other
20 one that we talked about?

21 A. Yes, of course. The first one was not even an
22 interview. Was not even --

23 Q. Did you tell them in that interview that Bryant had
24 attacked you with a beer bottle?

25 A. No.

JUDITH NODINE DIR BY MR. SMITH

1 Q. Why not?

2 A. All I said was the same. Jorge came home. Bryant
3 started attacking Jorge. Bryant -- I was trying to separate
4 them. That was the only short version I could say. My mind
5 was not capable of coping and give detail by detail of what
6 really happened.

7 Q. So you did not tell them about -- that Bryant had
8 attacked you?

9 A. I don't recall.

10 Q. In that interview you did tell them that Jorge had
11 shot Bryant; is that correct?

12 A. Yes. After I took my nap, 'cause like I said, they
13 wanted me in jail and accuse me of attempted murder because I
14 was the only one at home when the police arrived.

15 Q. Don't you think they're just trying to figure out
16 what happened?

17 MR. HARRIS: I object to the question, Your Honor.
18 Ascribes motive.

19 THE COURT: I'll sustain the objection. Rephrase
20 it.

21 BY MR. SMITH:

22 Q. Were they just asking you what happened?

23 A. They were keep asking me what happened. Everybody
24 was keep asking me what happened. I was keep asking them: How
25 was my son?

JUDITH NODINE DIR BY MR. SMITH

1 Q. Do you recall -- I want to get some exhibits.

2 In your living room you have a large sectional
3 sofa; is that correct?

4 A. Yes.

5 (STATE EXH. 23, Photograph, was marked for
6 identification.)

7 (STATE EXH. 24, Photograph, was marked for
8 identification.)

9 BY MR. SMITH:

10 Q. I am going to show you State's Exhibits 23 and 24.
11 What do these show?

12 A. That's the place where Bryant was laying.

13 Q. That's inside your house? In your living room?

14 A. Yes.

15 MR. SMITH: Your Honor, at this time we would move
16 State's 23 and 24 into evidence.

17 MR. HARRIS: No objection.

18 THE COURT: Without objection, 23 and 24.

19 (STATE EXH. 23, Photograph, was entered into
20 evidence.)

21 (STATE EXH. 24, Photograph, was entered into
22 evidence.)

23 BY MR. SMITH:

24 Q. This is State's Exhibit 24, and this is State's
25 Exhibit 23. Where was Jorge standing? And if you can't tell

JUDITH NODINE DIR BY MR. SMITH

1 me off of this picture, I have some others. I have State's
2 Exhibit 13 as well. Where is Jorge standing, if you know, when
3 he shot Bryant?

4 A. They both were everywhere in the living room
5 because they were fighting.

6 Q. Do you know where he was standing when he shot him?

7 A. Right there in the living room. A specific area,
8 of course, I don't recall because they were moving from one
9 place to another place. And I was in the middle of both of
10 them.

11 Q. So you don't know where he was?

12 A. Bryant was toward the other side there, and Jorge
13 was towards the fireplace.

14 Q. In State's Exhibit 13, Jorge is -- I don't want to
15 speak for you, but he's --

16 A. Yes. He's in that area. That picture.

17 Q. Probably not standing on the black part; out here I
18 assume?

19 A. Yeah, on the carpet. That area.

20 Q. The carpet in front of the fireplace on State's
21 Exhibit 13. Where was Bryant standing?

22 A. About ten feet from the, maybe six or seven feet
23 from the couch.

24 Q. Towards the fireplace?

25 A. Towards the fireplace.

JUDITH NODINE DIR BY MR. SMITH

1 Q. Where were you when he charged at you with the beer
2 bottle?

3 A. In the middle of both of them.

4 Q. Did the bullet go past you?

5 A. I wish that the bullet hit me in the head. So I
6 guess, yes, because it didn't hit me in the head. It hit my
7 son, my other son.

8 Q. You weren't pushed out of the way. You're saying
9 you're roughly between the two of them when the shot happened?

10 A. Yeah, I was -- all I recall is I was trying to
11 separate them. And I saw Bryant's beer bottle tried to hit me.
12 Then I heard the shot. And then I started staring and staring
13 at Bryant because he was walking backwards. He did three steps
14 back, and then he rolls his eyes up and he fall.

15 Q. Did he fall onto the couch and then slide off of
16 it?

17 A. Yes.

18 Q. Did you see him hit the wall at all?

19 A. No. No. He did three steps backwards and then he
20 just went (indicating). Exactly where that white pillow is.

21 Q. You're talking about this one?

22 A. The one on the bottom.

23 Q. This?

24 A. Yes. That area. And then he slide down.

25 Q. This looks -- I don't know. That pillow probably

JUDITH NODINE DIR BY MR. SMITH

1 didn't look like that before the night. It looks like it's got
2 some substance on it?

3 A. I don't know.

4 Q. You don't have like a pillow that's stained from a
5 wine or something like that?

6 A. No.

7 Q. He falls and hits this pillow that's flushed with
8 the couch. And then he slides off to where the blood is; is
9 that correct?

10 A. Correct.

11 Q. Do you know how close Bryant was to you before he
12 was shot? I mean, he gets shot in the act of swinging at you?

13 A. Yes.

14 Q. How close was he to you?

15 A. Very close. That space is not that big.

16 Q. Do you know about where you were on this State's
17 Exhibit 23 or where Bryant was? You said six to seven feet
18 from that other picture. Does this picture help tell you where
19 people were?

20 A. Yeah. I was more close to Bryant than to Jorge.

21 Q. Closer to Bryant than to Jorge?

22 A. 'Cause I was trying to hold more -- Bryant was
23 aggressive.

24 Q. You say that at the moment he shot Bryant is like a
25 foot away from you? Is that what you said and thought?

JUDITH NODINE DIR BY MR. SMITH

1 A. Maybe less.

2 Q. Jorge is behind you?

3 A. Yes.

4 Q. Did you ever see the gun prior to just hearing the
5 shot? That was your first knowledge that there was a gun
6 involved?

7 A. At that moment you say or before?

8 Q. Not like in all time. Like, that evening, did you
9 know that Jorge had a gun? Had you seen the gun at all?

10 A. No, because Jorge just came home and then he went
11 upstairs. Everything was so fast.

12 Q. The first you hear about it is hearing the gunshot.
13 That's the first time you saw it?

14 A. Yeah.

15 Q. When you saw it, you said having it up against his
16 head?

17 A. Yes.

18 Q. I think your testimony for why you didn't tell them
19 about him swinging the beer bottle is that you were still too
20 emotional. Is that what you said?

21 A. Yes. And, I mean, it wasn't the first time that
22 Bryant tried to hit me. He always been very aggressive. He's
23 been pushing me from the stairs.

24 Q. That's not what I asked you. Thank you.

25 Do you remember telling the police about your

JUDITH NODINE DIR BY MR. SMITH

1 conversation with Jorge during that interview when you called
2 him on the phone?

3 A. I remember that the detective who was in charge of
4 the case, I don't recall his face or his name, but I remember
5 he was talking to me and asking me to, in the case Jorge talk
6 to me, to ask him to surrender himself.

7 Q. This is about you told them about you had already
8 called Jorge when they came and talked with you. Do you
9 remember that?

10 A. No.

11 Q. Do you remember telling them: I called him, Jorge,
12 and asked him: What did you do?

13 He said: What do you mean what did I do?

14 I told him that I remember.

15 He said: What do you remember? What are you
16 talking about? And he hung up on me. Do you recall that?

17 A. No, I don't recall that.

18 Q. Do you remember telling them that Bryant was in the
19 middle right here. Jorge is over by the fireplace, basically,
20 saying that he was at the L of the couch? That Bryant was by
21 the L of the couch?

22 MR. HARRIS: Your Honor, I'm going to have to
23 object to the Solicitor interpreting what the question or what
24 the answer was on whatever identification he has referenced.

25 THE COURT: Do you want to show her, if you're

JUDITH NODINE DIR BY MR. SMITH

1 going to --

2 MR. SMITH: I could just rephrase it, Your Honor.

3 THE COURT: Okay. Rephrase it.

4 BY MR. SMITH:

5 Q. You don't recall that conversation. You do recall
6 another conversation where you asked him to turn himself in.

7 Do you know if he did?

8 A. If he did what?

9 Q. Turned himself in.

10 A. He turned himself in. Actually don't know if it
11 was the same detective or was another one, he came to me and
12 told me: Don't worry about it, we got him, and we got him
13 safe.

14 Q. That's all you know. You don't know exactly how.
15 You weren't present when he got arrested?

16 A. No.

17 Q. Do you know where his girlfriend was living at the
18 time?

19 A. At my house.

20 Q. She was living at your house?

21 A. Yes.

22 Q. Do you know where her parents lived?

23 A. Now I know. Before I didn't.

24 Q. That's fine. Do you know Wilson Gomez?

25 A. Yes.

JUDITH NODINE DIR BY MR. SMITH

1 Q. How do you know him?

2 A. He's a relative from Jorge's fiancée's, from Anisa.
3 And he worked for me for, like, two months in the company.

4 Q. Is he a friend of Jorge's?

5 A. I don't know if he's so close friends or not. All
6 I can say is he's relative to Jorge's fiancée.

7 Q. Did Jorge ever come visit Bryant in the hospital,
8 to your knowledge?

9 MR. HARRIS: Objection.

10 THE COURT: Lawyers want to approach.

11 (Off-the-record discussion.)

12 THE COURT: I'll sustain the objection.

13 BY MR. SMITH:

14 Q. Do you know that the interviews you had with law
15 enforcement were recorded?

16 A. I don't remember.

17 Q. Is your testimony not that you were lying to law
18 enforcement by not telling them the truth, just that you were
19 confused?

20 A. In what matters I was not telling the truth?

21 Q. Did you ever mention to any law enforcement that he
22 attacked you with a beer bottle ever?

23 A. That was -- I skipped that comment.

24 Q. Why?

25 A. 'Cause it's embarrassing to know that kids that

JUDITH NODINE DIR BY MR. SMITH

1 acted -- I raised could raise a hand to me. That's not been
2 the first time that Bryant has did that to me.

3 Q. You invited him to your house; correct?

4 A. He's my son. I will give my life for all of them.
5 For each of them.

6 Q. You left out because it was embarrassing?

7 A. I didn't -- didn't come up to my mind to even say
8 it. I'm used to it. I'm his mom.

9 Q. My point is: You don't think that's an important
10 detail in the investigation of this case?

11 A. Like I said, that moment my statement to them was
12 they were fighting. I tried to separate them several times.
13 And that's when I heard the shot. Jorge shot him. That's all
14 I give my statement to them. I don't gave detail or specific.

15 Q. The statement that you gave after your nap, you're
16 saying that you did not initiate that. They came and talked
17 with you. You didn't call them and say that you wanted to
18 talk?

19 A. They were waiting on me to. They were waiting on
20 me for my rest.

21 Q. Sure. I know that they said they were going to
22 talk to you later. Who initiated having that second
23 conversation? You or them?

24 A. When I woke up, I -- actually my son Nicholas was
25 the one told me: Mom, you need to now tell them it was Jorge

JUDITH NODINE CROSS BY MR. HARRIS

1 who shot Bryant otherwise you're going to -- you're going to be
2 put in jail.

3 Q. That's 'cause you had told Bryant -- or excuse me.
4 You had told Nicholas that Jorge had done it?

5 A. Yes.

6 Q. So then he encouraged you to call law enforcement
7 and say what had happened?

8 A. Yes.

9 MR. SMITH: Thank you. Please answer any questions
10 Mr. Harris might have.

11 CROSS-EXAMINATION

12 BY MR. HARRIS:

13 Q. Please tell me how you prefer to be addressed by
14 Rodriguez Nodine or Ms. Nodine?

15 A. Ms. Nodine is fine.

16 Q. You're the mother of three children; correct?

17 A. Yes.

18 Q. Three boys?

19 A. That's correct.

20 Q. At the time these events transpired, three men;
21 correct?

22 A. (Witness moves head up and down.)

23 Q. From the time those boys were born until December
24 24th, 25th, 2019, you, more than anyone else in the world
25 raised them from babies to boys to men; is that correct?

JUDITH NODINE CROSS BY MR. HARRIS

1 A. That is correct.

2 Q. And to this day, those men are your children?

3 A. Yes.

4 Q. You love them. You care for them. You care about
5 their well-being; correct?

6 A. That is correct.

7 Q. Answer out loud.

8 A. That is correct.

9 Q. I'm sure you would agree, your family means more to
10 you than anything?

11 A. Yes.

12 Q. And has for all of your adult life; is that right?

13 A. That is correct.

14 Q. As a parent, you recognize that today you are here
15 in a public courtroom in front of strangers talking about the
16 most intimate details of your family's life; correct?

17 A. That is correct.

18 Q. Likewise, when the police came to your home, in the
19 early morning hours of December 25, 2019, they were there
20 asking you about the most intimate details of what had
21 transpired within your family; is that right?

22 A. That is right.

23 Q. You have stated and it has been stated by other
24 witnesses that your emotional state and your state of mind when
25 you answered the door that night was one of hysteria, it's been

JUDITH NODINE CROSS BY MR. HARRIS

1 described. Would you agree with that?

2 A. I agree.

3 Q. You would agree that you were making no sense?

4 A. Completely.

5 Q. The things, the actions that have been ascribed to
6 you in terms of hindering the investigation, was it ever your
7 intention to hinder any police work going on?

8 A. No.

9 Q. Was it your intention to do everything you could to
10 beg for an ambulance for your son?

11 A. I did beg for an ambulance immediately.

12 Q. Even in a hysterical state that you were, would it
13 be fair to say that ever how it came across to anybody, that
14 you wanted to see an EMS person or persons instead of a police
15 officer at that time?

16 A. Correct, yes.

17 Q. And that, would you agree, explains how it seemed
18 that you didn't want them to do things 'cause you wanted
19 trained medical people to do things; is that right?

20 A. That is correct.

21 Q. They put you in handcuffs. The police put you in
22 handcuffs; correct?

23 A. Yes, they didn't even allow me after they came
24 inside my house, they didn't even allow me to look, to stay
25 close to my son.

JUDITH NODINE CROSS BY MR. HARRIS

1 Q. Ma'am, thank you. I understand. I understand how
2 upsetting. Listen to my question. I'm not being
3 disrespectful. I'm not intending to be.

4 During the course of time when the several police
5 officers came to your house, they wound up putting you in
6 handcuffs; is that right?

7 A. That is correct.

8 Q. And taking you out of your home; is that correct?

9 A. Yes.

10 Q. And placing you in a police car and detaining you
11 there; is that correct?

12 A. Correct.

13 Q. From there they took you to the police station; is
14 that right?

15 A. Yes.

16 Q. They didn't ask you if you wanted to go to the
17 police station, did they?

18 A. No, they didn't.

19 Q. They took you to the police station?

20 A. They took me.

21 Q. Would you say that the amount of time that went by
22 from the time the knock on the door came until you were being
23 driven to the police station was as much as 30 minutes?

24 A. It was more.

25 Q. They took you to the police station. Of course,

JUDITH NODINE CROSS BY MR. HARRIS

1 you have stated in your testimony that all you wanted to know
2 was how was your son and to see your son; is that right?

3 A. That is right.

4 Q. They tried to get by questioning or interviewing
5 you, ever what words they would use for it, details about what
6 happened?

7 A. Correct.

8 Q. Am I correct that you weren't focused on chapter
9 and verse about what happened even if you could recall it; is
10 that right?

11 A. That is right.

12 Q. Because your focus was on the welfare of your son?

13 A. Exactly.

14 Q. Fair to say that wasn't the police's focus?

15 A. No, not at all.

16 Q. You were eventually allowed to go to the hospital
17 as you've stated; correct?

18 A. Yes, after hours and hours.

19 Q. But you were allowed to go?

20 A. Yes.

21 Q. And your son had some treatment, surgery of some
22 kind; is that right?

23 A. That is correct.

24 Q. And then you were allowed to go back to your home
25 to rest?

JUDITH NODINE CROSS BY MR. HARRIS

1 A. Under their custody, yes.

2 Q. They sent people out to talk to you, to look at
3 various things in the house; is that right?

4 A. Correct.

5 Q. You were allowed to get some type of sleep; is that
6 right?

7 A. That is right.

8 Q. I don't guess, given all what happened, it was very
9 restful sleep?

10 A. Yes.

11 Q. Nevertheless they came to your home to take another
12 statement; is that right?

13 A. Yes.

14 Q. You told them some more of what you could remember;
15 is that right?

16 A. Yes.

17 Q. From the first to whatever hysterical statement you
18 may have made to the police station, to your house when you
19 made a statement, in all of those circumstances, is it correct
20 that you're having to talk about the most intimate details
21 about you and two of your sons; is that right?

22 A. That is correct.

23 Q. As a parent, is it your instinct not to want to say
24 painful and embarrassing things about your children?

25 A. Correct.

JUDITH NODINE CROSS BY MR. HARRIS

1 Q. You have to answer out loud.

2 A. Correct.

3 Q. And to say all of these things that you've said
4 amounts to saying painful and embarrassing things about your
5 children; is that right?

6 A. That is right.

7 Q. It's painful and embarrassing to have to say that
8 your son Bryant was drunk and out of control that night?

9 A. Yes.

10 Q. It's painful and embarrassing to have to admit that
11 your son Bryant physically attacked you that night; correct?

12 A. Correct.

13 Q. Physically attacked you by throwing you on the
14 floor?

15 A. Yes.

16 Q. Physically attacked you by attempting to hit you
17 with a 40-ounce beer bottle?

18 A. Yes.

19 Q. For that matter, utterly refusing to agree to do
20 what you were asking him to do, which was: Stop going at your
21 brother like this; is that correct?

22 A. Correct.

23 Q. Likewise, it's painful and embarrassing to have to
24 say that, as a result of your one son's actions, Bryant, your
25 other son wound up shooting a gun?

JUDITH NODINE CROSS BY MR. HARRIS

1 A. Yes.

2 Q. I dare say, would you agree with me, ma'am, there
3 is hardly any more embarrassing things you could say about your
4 flesh and blood?

5 A. Correct.

6 Q. Could this be why you may not have been so willing
7 in the first 24, 48 hours of all this ordeal to say all these
8 things that you've now sworn to tell the truth to on that
9 Bible?

10 A. That is right.

11 Q. Now, the Christmas gathering that you had, you made
12 food for the family; fair to say?

13 A. Yes, I did.

14 Q. I'm going to have to give you credit. Did you have
15 favorite things that you made for Christmas?

16 A. Yes, I cooked their favorite food.

17 Q. What was it?

18 A. Pork leg.

19 Q. Pork?

20 A. Leg of a pork, baked, and some rice mixed with
21 chicken. Potato salad. That was practically the most that
22 they like to eat for that occasion.

23 Q. Their favorite things?

24 A. Yes.

25 Q. It's not painful and embarrassing to describe a

JUDITH NODINE CROSS BY MR. HARRIS

1 favorite holiday meal?

2 A. No.

3 Q. Your son Nicholas, you described, came over with
4 his fiance and children. They all came to basically get plates
5 to take home?

6 A. Exactly, yes.

7 Q. Jorge had been home. This was his home at that
8 time; right?

9 A. Correct.

10 Q. Jorge had been home. Jorge had eaten all the
11 things you described. And gone to visit his girlfriend at the
12 time, now fiance; is that right?

13 A. Yes.

14 Q. That's the young woman Anisa --

15 A. Anisa.

16 Q. -- that you described.

17 You were home alone. You had the food. The only
18 child you hadn't seen at that point on Christmas Eve was
19 Bryant; is that right?

20 A. Correct.

21 Q. Is it correct you knew Bryant had been down in the
22 dumps over his personal circumstances?

23 A. Correct.

24 Q. He didn't have a job; right?

25 A. No, he didn't.

JUDITH NODINE CROSS BY MR. HARRIS

1 Q. He didn't have any money for Christmas and that
2 bothered him; is that right?

3 A. No.

4 Q. Was he bothered by that or not? The money on
5 Christmas.

6 A. I always helped him financially.

7 Q. You described, unfortunately, Bryant as being an
8 alcoholic?

9 A. Yes.

10 Q. He had not stopped drinking on this particular
11 night; is that correct?

12 A. Correct.

13 Q. I appreciate the uncomfortableness. Do I take your
14 previous testimony to mean that, when Bryant finally did come
15 to your house, he was drunk?

16 A. Yes.

17 Q. Was he just affected by the alcohol or grossly
18 affected by the alcohol?

19 A. I don't understand that.

20 Q. Was he wasted?

21 A. Yes.

22 Q. Grossly affected by the alcohol yet he brought, in
23 a backpack, his own --

24 A. Yes.

25 Q. -- 40-ounce bottles of beer; is that right?

JUDITH NODINE CROSS BY MR. HARRIS

1 A. That is correct.

2 Q. It was just you and Bryant there during the
3 evening, into the early morning hours of what would be
4 Christmas Day; is that right?

5 A. Yes.

6 Q. Bryant was drinking all that time; is that right?

7 A. Yes.

8 Q. Is it correct that the 40-ounce beer bottle seemed
9 a little out of place to you on a special occasion and you
10 insisted on pouring one of the beers into a glass; is that
11 right?

12 A. Yes.

13 Q. It was late, early morning hours. You described
14 that you fell asleep watching videos?

15 A. Yes, TV.

16 Q. You were awakened by Jorge coming back home to find
17 his brother still there, drunk?

18 A. Yes.

19 Q. Is it correct that Bryant started belittling and
20 badgering and insulting Jorge?

21 A. That is correct.

22 Q. As the mother, knowing your son the way you said
23 you know him, when Bryant drank and drank that much, was his
24 behavior mean and violent?

25 A. Yes. All the time.

JUDITH NODINE CROSS BY MR. HARRIS

1 Q. Some people drink and they act a certain way.
2 Unfortunately, some people drink and they turn really ugly; is
3 that right?

4 A. That is correct.

5 Q. And, unfortunately -- I know, again, I'm asking you
6 to say these kind of things. Unfortunately, that was the type
7 of drunk that your son Bryant was then, at least, mean and
8 ugly; correct?

9 A. Correct.

10 Q. And violent?

11 A. Very violent.

12 Q. Can you specifically say what types of things were
13 said by Bryant to Jorge?

14 MR. SMITH: Objection, Your Honor.

15 THE COURT: Sustain the objection.

16 MR. HARRIS: Your Honor, may I be heard on that?

17 THE COURT: Ladies and gentlemen, I need for you to
18 retire back to the jury assembly room -- I mean, jury
19 deliberation room. We will get you back shortly. Don't have
20 any discussions among yourselves about anything involving the
21 case. Get you back just shortly.

22 (The jury exited the courtroom at 3:24 p.m.)

23 THE COURT: Yes, sir.

24 MR. HARRIS: Thank you, Your Honor. The
25 question put to the witness was to elicit from information I

JUDITH NODINE CROSS BY MR. HARRIS

1 had been made aware of some of the specific statements directed
2 to the Defendant by the victim.

3 These statements were basically saying that he
4 had sex -- that the victim had sex with the Defendant's
5 girlfriend. That the baby that she had was his and not the
6 Defendant's. And things of that type. Things that were some
7 of the most provocative statements you can imagine to make.

8 I take the position, if that is the objection, that
9 if hearsay is the objection, I take the position it's not
10 hearsay at all. Those things are certainly not offered for the
11 truth of the matter asserted. We're not trying to establish
12 that there was an affair going on between the victim and the
13 Defendant's girlfriend and paternity of the child. Simply that
14 those statements were made in the heat of those circumstances
15 as being highly provocative.

16 We take the position they're not hearsay at all.
17 If they were hearsay, we would take the position that Rule 803,
18 (1) and (2), present sense impression, excited utterances,
19 would apply as exceptions. We just don't believe it's hearsay.

20 Certainly the Solicitor and the defense has both
21 asked this witness several times. And the witness has answered
22 that there were -- I think she described as cussing him out,
23 saying all kind of ugly things and so forth.

24 My intention was, Your Honor, just to ask the
25 witness does she remember specific things that were said. And

JUDITH NODINE CROSS BY MR. HARRIS

1 she may recall other things that were said; specifically about
2 those things. About the girlfriend and the baby.

3 MR. SMITH: Your Honor, this might be somewhat
4 moot. I might not have a problem with him asking. We're
5 planning on playing, based off her answers, playing one of her
6 prior statements to Investigator Norris because of prior
7 inconsistent statements. She does mention what he's asking
8 about in it. I was going to play in its entirety. I don't
9 have any problem doing that. I don't know that would resolve
10 the issue. Certainly he can ask about it, if it's coming in
11 anyway. I don't know if it's a good time to address that or
12 not. We were planning on, probably with the next witness,
13 introducing the statement that she does say what was said.

14 THE COURT: Okay. Now he doesn't have any problem
15 with you asking it.

16 MR. SMITH: Presuming we're going to be able to get
17 that in.

18 MR. HARRIS: Your Honor, if they attempt to offer
19 as evidence a recording of a statement made by the witness to
20 prove prior inconsistent statement, I would object until the
21 witness is confronted with the statement, it would be extrinsic
22 evidence of prior inconsistent statement. Simply having it as
23 a stand-alone piece of evidence would be inappropriate. I dare
24 say, if they want to confront this witness who made the
25 statement with that, fine. I don't believe it would be proper

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1 impeachment to have a later witness to say: Here's what she
2 told us.

3 THE COURT: We'll go ahead and address the recorded
4 statement. How do you intend to get the recorded statement?
5 Get it through her?

6 MR. SMITH: I was going to put it in through the
7 officer. I asked her specific things from her statement. She
8 either said she didn't recall them, she flat out denied a few
9 of them. She testified substantially differently than this
10 entire statement. There are portions that are consistent but,
11 I mean, I can list the specific things.

12 THE COURT: Right now we're just doing the
13 mechanics, not the substance.

14 MR. SMITH: I was planning on calling Investigator
15 Norris and introducing probably not the first one where she's
16 covered in blood because I do think that one is a bit more
17 hysterical. Specifically, first off, we have the recording of
18 the phone call which she calls them and tells them to come to
19 the house, which she said she didn't do.

20 We also have a recording where she talks about the
21 phone conversation she had with Jorge she says she has no
22 recollection of.

23 The positioning of the people inside the house, who
24 was present, that's consistent. The position of the people,
25 the prior phone conversation they had, that statement would

JUDITH NODINE CROSS BY MR. HARRIS

1 cover a lot of what he's attempting to get in.

2 MR. HARRIS: Your Honor, my reference is to Rule
3 613, Rules of Evidence, which govern the use of prior
4 inconsistent statements. Not to read the Rule, it's my
5 understanding of it is that, when examining a witness, a
6 witness can be asked about prior statements made by the
7 witness, whether written or not. I would agree recorded or
8 not. And the witness need not be shown the statement
9 necessarily. It's contents needs to be disclosed. It has been
10 disclosed to me.

11 If the witness denies making the statement, then
12 the examiner may confront the witness with the circumstances of
13 the prior statements and the inconsistencies contained within
14 the statement with the witness. Not simply have a witness say:
15 I didn't make that statement. I don't think I said that. I
16 don't remember that.

17 Then have the witness come down from the stand and
18 be finished and then put another witness up to say: Here's her
19 statement. It's not -- prior statements are not intended to be
20 admissible against a nonparty, which this witness is not a
21 party, against a nonparty unless the inconsistencies are
22 demonstrated through this Rule, through the method prescribed
23 by this Rule.

24 THE COURT: I think mechanically he's right. If
25 you're going to publish the statement, you have to do it

JUDITH NODINE CROSS BY MR. HARRIS

1 through this witness.

2 MR. SMITH: I can do that. I just didn't know
3 if -- she doesn't control the recording device and didn't do it
4 herself. At least call the investigator to establish, go back
5 into it with her.

6 THE COURT: I mean, if you're going to publish a
7 statement, my view of the Rule is probably consistent with
8 Mr. Harris. You got to get the substance of the statement in
9 through this witness by having her somehow admit it; I don't
10 remember. Somehow get this witness -- she has -- a witness, to
11 use a prior inconsistent statement, a witness has the
12 opportunity to be asked about it and has the opportunity not
13 only have the statement that you want to say is inconsistent
14 published to the witness, also the witness has the opportunity
15 to use the direct and cross to explain.

16 MR. SMITH: Okay.

17 MR. HARRIS: I will say --

18 THE COURT: Unless he agrees to it. He could agree
19 to it.

20 MR. HARRIS: I would say that I wouldn't require
21 foundation and authentication of the recording because, as a
22 rule, I've been provided a copy. He can play parts of it and
23 say: You didn't say that or you don't remember saying that.
24 That's the way I've seen it.

25 THE WITNESS: May I say something, Your Honor?

JUDITH NODINE CROSS BY MR. HARRIS

1 THE COURT: Don't say anything.

2 THE WITNESS: Okay.

3 THE COURT: I'm not trying to be rude. This
4 conversation is with us right now.

5 Are we clear on that then? He gets to ask --
6 Mr. Harris gets to ask the question he was going to ask because
7 you're going to bring it up later.

8 MR. SMITH: If I'm only playing portions of it; I
9 was planning on playing in its entirety to resolve this. If
10 I'm playing 30-second clip, and then another 30-second clip, I
11 think the questions that they're making have made her entire,
12 her demeanor becomes relevant.

13 She's saying she's emotionally overwhelmed, so the
14 tone of her voice, which we really can't get out any other way
15 than an actual recording of it. Most of his line of
16 questioning is developing reasons for why she didn't tell the
17 truth. And so I think that we should be able to present large
18 portions of it to give the context just so the jury has the
19 full understanding of what happened.

20 THE COURT: I appreciate you saying that. That's
21 not what the Rule provides. If we're going to use prior
22 inconsistent statements, we use them consistent with what the
23 Rules provide. She is not accused of a crime that's on trial
24 here. Prior inconsistent statements are different when it's
25 just a witness and not a party.

JUDITH NODINE CROSS BY MR. HARRIS

1 MR. SMITH: Yes, Your Honor. I suppose I will
2 cover all of the portions I think have been inconsistent rather
3 than skip around.

4 THE COURT: The State has the burden of proof. You
5 may do as you see fit to establish the burden, provided they're
6 within the Rules. Anything else, Mr. Harris?

7 MR. HARRIS: I can resume with the witness.

8 THE COURT: Right now you can resume asking the
9 question with the witness.

10 We are going to take a break. We've been at it,
11 one witness, since little bit after 3:00. Let the jury take a
12 break. I have to take a break.

13 Ma'am, you're in the process of giving testimony.
14 I'm going to let you step down. You can't have any discussions
15 with anyone about the substance of your testimony; okay.
16 Doesn't mean you can't cry on my shoulder or something; you
17 can't talk to anybody about the substance of your testimony.

18 You can step down. Watch your step as you're
19 stepping down. We're going to step down for a few moments.

20 THE COURT: Let me see the lawyers for a moment.

21 (A recess transpired from 3:34 p.m. until 3:48
22 p.m.)

23 THE COURT: Let's bring the jury back in.

24 (The jury entered the courtroom at 3:48 p.m.)

25 THE COURT: Yes, sir, Mr. Harris.

JUDITH NODINE CROSS BY MR. HARRIS

1 MR. HARRIS: Thank you, Your Honor.

2 BY MR. HARRIS:

3 Q. Ms. Nodine, we left off, I was asking you
4 specifically about some of the things that you heard Bryant say
5 to Jorge. Is it true -- is it true that among the things that
6 was said was that Bryant stated to Jorge that he had slept with
7 Jorge's girlfriend?

8 A. Yes.

9 Q. When this was said, it wasn't said in any matter of
10 fact way, was it?

11 A. Bryant was out of control.

12 Q. Bryant, also in the out-of-control manner you
13 described said: I slept with that girlfriend and that baby is
14 mine; is that right?

15 A. Yes.

16 Q. Jorge -- well, you, his mother, did you understand
17 that, that was referring to the young lady Anisa?

18 A. Correct.

19 Q. At that time was Anisa pregnant, or did she have a
20 child?

21 A. She was, I believe, four months pregnant.

22 Q. She was carrying a child?

23 A. Yes.

24 Q. Did you understand this was what Bryant was trying
25 to throw up to Jorge, that the child that his girlfriend was

JUDITH NODINE CROSS BY MR. HARRIS

1 carrying was actually Bryant's child?

2 A. Yes, because I think he told all this to Jorge
3 because Jorge was trying to avoid him, fight. Jorge actually
4 told Bryant that he didn't want to fight him. And Bryant just
5 said all that stuff just to initiate more and encourage more
6 the argumentation and continue arguing with Jorge.

7 Q. Would it be correct to say that it would've been
8 hardly anything Bryant knew that he could say to Jorge that
9 would cause more controversy and upset than that, about the
10 girlfriend and the child?

11 A. No.

12 Q. That was sure to -- Bryant could be sure that would
13 keep the controversy and the confrontation alive?

14 A. Correct. Yes.

15 Q. Bryant was not going to stop until he got his way;
16 correct?

17 A. Correct.

18 Q. In other words, Bryant was not going to stop until
19 a fight of whatever manner took place?

20 A. Correct, because that's -- that has been his way
21 always.

22 Q. There wasn't going to be any peacekeeping on your
23 part despite your efforts; is that right?

24 A. Right.

25 Q. Do I understand your description of events to be

JUDITH NODINE CROSS BY MR. HARRIS

1 that actually your efforts to get between them and to keep the
2 peace actually made Bryant even more inflamed and mad?

3 A. That is correct.

4 Q. At one point you described that he shoved you out
5 of the way. Pushed you down?

6 A. More than once.

7 Q. And you've described that, just before a shot was
8 fired, you were in between the two of them. And Bryant was
9 wielding a 40-ounce beer bottle, you believe, in an effort to
10 hit you; is that right?

11 A. Yes.

12 Q. You had said, though, at that time you were
13 essentially between the two, still trying to do what you could
14 to keep the peace; is that right?

15 A. That's right.

16 Q. I ask you today, can you be certain that Bryant was
17 trying to hit you with the beer bottle or trying to go through
18 you to hit Jorge with the beer bottle?

19 A. I think he was trying to hit me on the head.

20 Q. He was trying to get you out of the way?

21 A. Yes.

22 Q. Whatever confrontation Bryant wanted, he could have
23 that without you?

24 A. Correct.

25 Q. Is it correct that you didn't actually see the shot

JUDITH NODINE CROSS BY MR. HARRIS

1 fired from the gun?

2 A. No.

3 Q. You know what I mean by that? You're seeing
4 something and you see something --

5 A. No.

6 Q. -- come from a gun. You didn't see it. You heard
7 it, and you saw Bryant take three steps back?

8 A. Correct. Yes.

9 Q. I take it you cannot say to this jury whether there
10 was any pointing of the gun or any such?

11 A. No.

12 Q. When all of this occurred, obviously, we know as
13 well it's established, you were hysterical. This was an
14 extremely traumatic thing?

15 A. Yes.

16 Q. Would it be your -- you've been asked about Jorge
17 in the aftermath of it. Would you say he was traumatized?

18 A. Yes. Yes, completely.

19 Q. And you attribute some statements to him that he
20 didn't mean the actual result; this wasn't intentional?

21 A. Correct.

22 Q. No intent to harm?

23 A. No.

24 Q. What do you take by those statements?

25 A. He just reacted when he saw that Bryant was going

JUDITH NODINE REDIR BY MR. SMITH

1 to hit me with the bottle.

2 Q. He was trying to protect his mother?

3 A. Yes.

4 MR. HARRIS: Thank you. No further questions.

5 THE COURT: Any redirect limited to what he went
6 into?

7 MR. SMITH: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SMITH:

10 Q. Your statement to Mr. Harris was the reason you did
11 not mention Bryant trying to hit Jorge with the bottle is
12 because it's embarrassing; is that fair?

13 A. Yes.

14 Q. Do you remember sharing other embarrassing details
15 with the police? Could you tell the police about what Bryant
16 had said to Jorge?

17 A. Yes, as I remember. As I recall.

18 Q. Did you find that embarrassing that your son had
19 sex with your other son's girlfriend and maybe conceived a
20 child? Did you find that to be embarrassing?

21 A. No, because that's not true. That isn't true.
22 Bryant was just trying to put more wood into the fire that
23 night.

24 Q. You don't think it's embarrassing that your son was
25 acting that way, that he would say that to your other son? You

JUDITH NODINE REDIR BY MR. SMITH

1 don't think that's embarrassing?

2 A. No, I don't think so because it wasn't true. It's
3 not going on in the family.

4 Q. Back to the -- the conversation in which you
5 finally admit that Jorge shot him, which I think is the third
6 interaction you had with law enforcement, who initiated that?

7 A. When you say first, second, third reaction.

8 Q. The post-nap.

9 A. Like I say, I cannot -- I don't recall really
10 having me, like he's taking the testimony and me consciously
11 saying everything that happened. I was completely traumatized.

12 Q. This is the one after the nap.

13 A. Okay, after the nap.

14 Q. After the nap, did you initiate that, or did law
15 enforcement initiate that after you talked with Nick and told
16 Nick?

17 A. What I can recall is that I opened my door and they
18 were still police, they were escorting me. There were still
19 police outside my bedroom. What I recall is that I either told
20 the police or detective was there or if I call him. I don't
21 know. I did stand up and say: I'm ready.

22 Q. Would it help if you heard the phone call to
23 refresh your memory?

24 A. You can go ahead. I don't have no problem.

25 Q. Will you recognize your voice?

JUDITH NODINE REDIR BY MR. SMITH

1 A. Of course.

2 MR. SMITH: Your Honor, at this time we just intend
3 to play a brief portion. It's about a two-minute phone call.
4 Are we okay?

5 MR. HARRIS: If I'm understanding that, the
6 question put to the witness was: Did you initiate contact with
7 the police to arrange a statement after you took a nap.

8 Under 613, so long as the State establishes the
9 time and place of the making of the statement that they're
10 examining the witness about, to whom it was made, that so much
11 of that statement as would speak to that question can be
12 played. Two minutes, I don't know.

13 THE COURT: Lawyers approach.

14 MR. SMITH: I can just play the end portion.

15 THE COURT: Okay. Play the end portion.

16 (Audio recording played. Not transcribed.)

17 BY MR. SMITH:

18 Q. Did you invite them to come to your house after
19 hearing that? Do you remember that?

20 A. I don't recall if I called. Like I said, all I
21 remember is I woke up. And discussing with Nicholas. And said
22 okay, I will testify. And I opened the door, and there were
23 police outside the door. I don't know if he was there or I had
24 to call him. The fact is that I did stand up and say: I'm
25 ready. I gave my testimony.

JUDITH NODINE REDIR BY MR. SMITH

1 Q. When you spoke with them when you were ready, you
2 did not mention the beer bottle and Bryant attacking you?

3 A. No. I just told -- all they wanted to know who was
4 the shooter. This was the police question all the time. What
5 happened? Who shot your son? Was it you? Who was it?

6 Q. What happened is not asking who did it. That would
7 be what occurred; correct?

8 A. The police was more interested to know who shot my
9 son. And that's the answer I gave them. I didn't gave them
10 details about my son tried to hit me with the bottle or he's
11 been abusive to me. I didn't give them any details.

12 Q. Why not? Why not?

13 A. Because that was not their concern. Their concern
14 was who shot my son.

15 Q. You think they had no concern for what led up to
16 the shooting?

17 MR. HARRIS: Your Honor, I object to trying to get
18 this witness to say what motive of the police are.

19 THE COURT: You want to rephrase the question. I
20 sort of agree with Mr. Harris on the nature of the question.
21 BY MR. SMITH:

22 Q. You believed that they didn't care what had
23 happened or what led up to it; is that your testimony?

24 MR. HARRIS: This is saying the same thing.

25 THE COURT: I think that's a more appropriate

JUDITH NODINE REDIR BY MR. SMITH

1 question. Go ahead. You can answer it, if you can.

2 THE WITNESS: No, it was not their business. This
3 was a family thing going. The behavior of my son was my
4 problem. But I did talk to you, and I did told you that my son
5 tried to hit me with the bottle. Do you remember?

6 BY MR. SMITH:

7 Q. I get to ask the questions.

8 A. No. You were aware. I did talk to you. And I did
9 told you I didn't told the police. I did talk to you and told
10 you.

11 Q. You're talking about last Friday?

12 A. No. Last year. Over the phone.

13 Q. We talked about this phone conversation. You said
14 you had a conversation with Jorge where you asked him to turn
15 himself in. Do you remember another phone conversation that
16 you told law enforcement about with Jorge?

17 A. Yeah. I did have one conversation with him but
18 wasn't really conversation. It was just a hello. And I told
19 him: What you have done. He was still crying and confused.
20 He was like: What did I do, mom? That's all I can recall.

21 Q. Then he hung up on you?

22 A. I don't know if he hang up on me or he lost signal.
23 I don't know.

24 Q. Do you remember telling the police that he hung up
25 on you?

JUDITH NODINE REDIR BY MR. SMITH

1 A. I remember telling the detective that my son
2 contacted me.

3 Q. That he hung up on you?

4 A. I don't know.

5 Q. It was you called him and asked what he did;
6 correct?

7 A. I don't remember if I called him or he called me.

8 MR. SMITH: Your Honor, at this time I'll play a
9 portion from the interview starting at 16 minutes.

10 THE COURT: Do you know how long?

11 MR. SMITH: A minute, maybe. 30 seconds.

12 THE COURT: All right.

13 (Audio recording played. Not transcribed.)

14 BY MR. SMITH:

15 Q. Do you remember that?

16 A. Yes.

17 Q. You did tell them he hung up on you?

18 A. Maybe it's not the same words that I'm using right
19 now as I was on that day.

20 Q. You said that you called him to ask him what he had
21 done; right?

22 A. Like I said, I don't recall me calling him or he
23 calling me, but yes. That was exactly what I just said. That
24 I asked him what he do.

25 Q. What did you mean by that? What were you trying to

JUDITH NODINE REDIR BY MR. SMITH

1 figure out? You know what he did; right? He was protecting
2 you; right?

3 A. Yes, but you don't understand my situation, the
4 situation I was. The traumatized. Until today I still suffer
5 from PTSD. I still not recall.

6 Q. Do you remember telling law enforcement that Jorge
7 had been drinking, too?

8 A. I don't recall that. I didn't know if Jorge was
9 drinking or not because he wasn't at home. Maybe at Anisa,
10 maybe not. I don't know. But for sure I wasn't -- because
11 Jorge was not at home. So I couldn't know he was drinking or
12 not.

13 Q. You're saying you had fallen asleep, and you woke
14 up to them arguing; right? That was your testimony today?

15 A. Yes.

16 Q. Do you remember telling them that Jorge had
17 actually called his girlfriend during this confrontation to
18 check and see if what Bryant had said was true?

19 A. Say one more time.

20 Q. Did Jorge call his girlfriend during the argument
21 to try to find out if Bryant had been having sex with her? Do
22 you remember telling him that?

23 A. Yes. Yes.

24 Q. How long did this whole argument go on in total
25 from when you got woke up to when Jorge shot him?

JUDITH NODINE REDIR BY MR. SMITH

1 A. For me it was forever. I cannot tell exactly how
2 many seconds or minutes. For me it took forever.

3 Q. Did Jorge talk to his girlfriend. She answered?

4 A. Yeah. When Bryant said that, Jorge called his
5 girlfriend and said: My brother saying that you are sleeping
6 with him and that's not my baby. It's his baby.

7 And I could hear where she was like: What are you
8 talking about, Jorge? You know how Bryant is. He's probably
9 drunk.

10 Q. You don't remember seeing Jorge --

11 MR. HARRIS: Your Honor, the witness was cut off.

12 MR. SMITH: I'm sorry. I thought she was done.

13 THE COURT: Go ahead and finish, ma'am, if you have
14 anything else to say.

15 BY MR. SMITH:

16 Q. Do you remember telling law enforcement that Jorge
17 was drinking as well?

18 A. Like I said, I don't recall. Maybe I did.

19 MR. SMITH: Your Honor, I would like to play a
20 portion of her interview at four minutes and 12 seconds.
21 Should be brief.

22 (Audio played. Not transcribed.)

23 BY MR. SMITH:

24 Q. Does that refresh your memory?

25 A. I never -- I said I didn't recall. Maybe I did. I

JUDITH NODINE REDIR BY MR. SMITH

1 didn't deny it.

2 Q. Right. You're saying basically, as soon as you
3 wake up, they're in a fight. When did you see them drinking in
4 that scenario?

5 A. No. I assumed in that time that he was drinking
6 'cause it was at Christmas.

7 Q. You mean maybe not at your house but the impression
8 you got, maybe Jorge had been drinking elsewhere?

9 A. Yeah.

10 Q. Do you remember telling them in that interview
11 that: Bryant wanted to punch him, referring to Jorge, and I
12 just tried to hold him back. And then I tried to hold Jorge
13 back and Jorge shot him. Do you remember that?

14 A. Yes, I remember that. That was my short statement
15 to them.

16 Q. It's 18 minutes long. Do you know that? It's
17 recorded. It's 18-minute long statement. Are you saying
18 that's short?

19 A. Short means I went to the point that they were
20 interested in knowing who shot my son.

21 Q. You said that you also tried to hold Jorge back.
22 That's when Jorge shot him?

23 A. I always said that I was in the middle of both of
24 them. They were fighting, bouncing from one corner to the
25 other corner in the living room.

JUDITH NODINE REDIR BY MR. SMITH

1 Q. I believe today you said that you were concerned
2 with Bryant. He was the one that was violent?

3 A. Yes.

4 Q. So you weren't trying to hold Jorge back?

5 A. I was trying to -- I was trying to separate both of
6 them. Jorge didn't want to fight him. He actually asked him
7 to respect my mom's house.

8 Q. Does Jorge have a car?

9 A. Yes.

10 Q. He could have left?

11 MR. HARRIS: Objection.

12 THE COURT: I'll allow the question.

13 BY MR. SMITH:

14 Q. He can drive a car. Could he have left if he
15 wanted to?

16 A. Yes. I agree with you. And if I shouldn't have
17 invited Bryant to have Christmas with me, I would not be
18 sitting here.

19 Q. You said that -- it sounds like you blame yourself
20 for that in this interview?

21 A. I've been blaming myself. Even my son Nicholas has
22 been blaming me, accusing me of being a bad mother. He hate me
23 today. Because I supported Jorge with a lawyer. He don't even
24 talk to me since the incident. He hate me. He send me nasty
25 messages that I attempted to kill myself and end up in the

JUDITH NODINE REDIR BY MR. SMITH

1 hospital. With no hope to survive. I'm the victim in here.
2 My whole family support.

3 Q. You stated you would do anything for your children;
4 correct?

5 A. That is correct.

6 Q. Would you lie to protect them?

7 A. Not standing in here.

8 Q. Not in court, is that what you're saying?

9 A. No. Even if they don't want to know a thing about
10 me, they're still my kids.

11 MR. SMITH: That's all I have, Your Honor.

12 THE COURT: Any redirect? Anything new that he
13 brought up?

14 MR. HARRIS: No, Your Honor.

15 THE COURT: Ma'am, you may step down. Watch your
16 step as you're stepping down.

17 (The witness exited the stand.)

18 THE COURT: Lawyers approach a moment.

19 (Off-the-record discussion).

20 MR. SMITH: Will you let Investigator Hayes come
21 in.

22 (Deputy Hayes enters the courtroom.)

23 THE COURT: Ma'am, come right up here. Place your
24 hand on the Bible. Let the clerk of court swear you in.

25 DEPUTY SAMANTHA HAYES

DEPUTY HAYES DIR BY MR. SMITH

1 being first duly sworn, testified as follows:

2 THE COURT: Thank you, ma'am. Just step up. Watch
3 your step as you're stepping up. Have a seat in the chair,
4 pull the chair up to the microphone. Be careful moving the
5 microphone. Sometimes it comes out of the socket.

6 DIRECT EXAMINATION

7 BY MR. SMITH:

8 Q. Will you please state your name and where you're
9 employed.

10 A. Samantha Hayes. Spartanburg County Sheriff's
11 Office.

12 Q. What do you do for the Sheriff's Office?

13 A. Currently I'm a school resource officer.

14 Q. What did you do back on Christmas of 2019?

15 A. I was a crime scene investigator.

16 Q. What does a crime scene investigator do?

17 A. We document by photos and collecting evidence at
18 crime scenes.

19 Q. What's your experience in law enforcement? How
20 long have you been a law enforcement officer?

21 A. Sixteen years.

22 Q. I can't believe that. Do you have a copy of your
23 report?

24 I'll take one.

25 What was your involvement in this case?

DEPUTY HAYES DIR BY MR. SMITH

1 A. I was called to an address to recover a gun.

2 Q. Were you involved in the search for the weapon?

3 A. I was not. I arrived after the search had been
4 completed.

5 Q. Did you document, I guess, the property in general
6 and then specifically where it was found?

7 A. Yes, sir.

8 Q. What was the address that you were sent out to?

9 A. 3748 Old Furnace Road in Chesnee within Spartanburg
10 County.

11 MR. SMITH: I'm going to show you -- I'm going to
12 get these marked.

13 (STATE EXH. 25, Photograph, was marked for
14 identification.)

15 (STATE EXH. 26, Photograph, was marked for
16 identification.)

17 (STATE EXH. 27, Photograph, was marked for
18 identification.)

19 (STATE EXH. 28, Photograph, was marked for
20 identification.)

21 (STATE EXH. 29, Photograph, was marked for
22 identification.)

23 (STATE EXH. 30, Photograph, was marked for
24 identification.)

25 (STATE EXH. 31, Photograph, was marked for

DEPUTY HAYES DIR BY MR. SMITH

1 identification.)

2 (STATE EXH. 32, Photograph, was marked for
3 identification.)

4 BY MR. SMITH:

5 Q. I'll hand them to you in a stack and ask you to
6 identify what they are. Not specifically what each one is,
7 what are they generally.

8 What are they?

9 A. This is a photo that I took of the driveway leading
10 into the property.

11 Q. I'm just asking you generally. Are they all
12 pictures of the property that day? Then we can show them to
13 the jury and look at them simultaneously.

14 A. Yes, sir, they are all photos that I took.

15 MR. SMITH: At this time we would move State's
16 Exhibits 25 through 32 into evidence.

17 MR. HARRIS: No objection.

18 THE COURT: Without objection they will be
19 admitted.

20 (STATE EXH. 25, Photograph, was entered into
21 evidence.)

22 (STATE EXH. 26, Photograph, was entered into
23 evidence.)

24 (STATE EXH. 27, Photograph, was entered into
25 evidence.)

DEPUTY HAYES DIR BY MR. SMITH

1 (STATE EXH. 28, Photograph, was entered into
2 evidence.)

3 (STATE EXH. 29, Photograph, was entered into
4 evidence.)

5 (STATE EXH. 30, Photograph, was entered into
6 evidence.)

7 (STATE EXH. 31, Photograph, was entered into
8 evidence.)

9 (STATE EXH. 32, Photograph, was entered into
10 evidence.)

11 BY MR. SMITH:

12 Q. Is this a rural area of Spartanburg?

13 A. It is. The property was pretty big. It was a
14 little further off the roadway. It's pretty rural on Old
15 Furnace. There's other houses in the area. It wasn't remote.
16 I would say it's rural, yes, sir.

17 Q. This is State's Exhibit 25. This is what you're
18 describing as the driveway of the residence, I'm assuming?

19 A. Yes, sir.

20 Q. This is State's 26. Is this all part of the same
21 property?

22 A. Yes, sir. To my understanding, that was all part
23 of the same property. Couple of acres.

24 Q. This is State's 27. What is in this picture?

25 A. This was the residence structure to the right.

DEPUTY HAYES DIR BY MR. SMITH

1 There's some trees, a little bit more of the property off to
2 the left there.

3 That is when you came down the drive, coming
4 from -- if you had turned into the property, down a long
5 driveway from Old Furnace Road, from Old Furnace, if you came
6 down the long drive, that would be off to the right upon going
7 down the driveway.

8 Q. This is State's 28. What is this?

9 A. If you continued beyond where that driveway ended
10 with the residential structure to the right, it was slightly to
11 the left at the end of that driveway.

12 Q. Is this a closer picture of what's under the tree
13 in State's 27; is that right?

14 A. Yes, sir.

15 Q. This looks like a boxing area?

16 A. It had like a concrete type area. And some other
17 miscellaneous items.

18 Q. This is State's Exhibit 29. It is probably
19 difficult for the jury to see. What's in this picture?

20 A. There were miscellaneous tires around that area.

21 Q. I don't know if you can see it from here, is the
22 gun inside one of these tires?

23 A. It's in one of them. I think it's in that one
24 towards the rest.

25 Q. This is State's 30. This one is not marked. Skip

DEPUTY HAYES DIR BY MR. SMITH

1 it. This is State's 30. That's the handgun that you
2 recovered?

3 A. Yes, sir.

4 Q. Was it loaded?

5 A. It was not loaded.

6 Q. This is State's 31. Is that you? You ejected the
7 magazine?

8 A. Yes, sir.

9 Q. Nothing in the chamber as well?

10 A. The chamber was empty, and the magazine was empty
11 as well.

12 Q. This is State's 32. Is that the other side of the
13 gun?

14 A. Yes, sir. I probably took pictures of all the
15 sides of it.

16 Q. Took a lot of pictures. What is this number?

17 A. That's the serial number.

18 Q. For people that might not be big into guns, what is
19 a serial number, if you know?

20 A. It identified that specific gun from the
21 manufacturer.

22 Q. This is State's Exhibit 6. Will you take a look at
23 that and tell me what it is.

24 A. May I touch?

25 Q. Yes.

DEPUTY HAYES CROSS BY MR. HARRIS

1 A. This is the gun that I photographed and recovered.

2 Q. How do you know that?

3 A. Because of the serial number.

4 Q. Y'all make indication on the gun box that shows
5 where it was located, who found it?

6 A. Yes, sir. It has the location of the recovery
7 address, who it was recovered by, date and time.

8 Q. Can you tell me what type of firearm it is.

9 A. .40 caliber Glock handgun.

10 Q. Did you have any other involvement in this case
11 other than photographing and collecting this weapon?

12 A. No, sir, that was my only involvement.

13 MR. SMITH: Your Honor, at this time we would move
14 State's Exhibit 6 into evidence.

15 THE COURT: Any objection to State's 6?

16 MR. HARRIS: No objection.

17 THE COURT: Without objection.

18 (STATE EXH. 6, Gun, was marked for identification
19 and entered into evidence.)

20 MR. SMITH: Please answer any questions Mr. Harris
21 has.

22 CROSS-EXAMINATION

23 BY MR. HARRIS:

24 Q. May I ask what is your proper title? Are you
25 detective or investigator, officer?

DEPUTY HAYES CROSS BY MR. HARRIS

1 A. Master Deputy.

2 Q. Thank you. I appreciate that.

3 Master Deputy Hayes, you described that you were
4 called upon to go to the location you described and to recover
5 a handgun; is that right?

6 A. Yes, sir.

7 Q. And that's what you did?

8 A. Yes, sir.

9 Q. Do I understand that you, in fact, did do some
10 other things? You checked the gun through a national registry;
11 is that right?

12 A. No, sir. That was done by our evidence
13 technicians. They do that. Or they do a more thorough search,
14 I should say. Running NCIC, that's something where I probably
15 did just to verify if it was stolen or not. Somebody else
16 physically ran it at the Sheriff's Office.

17 Q. I've been previously provided one page supplemental
18 report bearing your name. Have you had any opportunity to look
19 at it before court?

20 A. (Witness moves head from side to side.)

21 THE COURT: That's a no?

22 THE WITNESS: No, sir.

23 BY MR. HARRIS:

24 Q. Let me show it to you. Does that appear to be
25 statement part of the case file from you?

DEPUTY HAYES CROSS BY MR. HARRIS

1 A. Yes, sir.

2 Q. I note that you say that you took several photos of
3 the handgun. You testified about that; is that right?

4 A. Yes, sir.

5 Q. You said you inspected the gun more closely to
6 reveal it was .40 caliber Glock handgun with serial number;
7 correct?

8 A. Correct.

9 Q. You checked it, and it was -- the magazine was
10 inserted into the handgun, empty Glock brand magazine with no
11 round in chamber; is that right?

12 A. Yes, sir.

13 Q. Last full paragraph of your report states: I
14 recovered the handgun and accompanied magazine in single gun
15 box. Once back at SCSO, Spartanburg County Sheriff's Office,
16 once back at your office, serial number from the handgun was
17 ran with it coming back as clear.

18 A. Yes, sir.

19 Q. The purpose of running that through some kind of
20 central registry is to determine if the gun is stolen, if
21 there's some other -- something else at issue with the gun; is
22 that right?

23 A. Correct.

24 Q. There was no issue with this gun?

25 A. Not that I'm aware of. It came back clear.

DEPUTY HAYES CROSS BY MR. HARRIS

1 Q. That would indicate the gun was likely lawfully
2 possessed?

3 A. It would only indicate that it was not stolen. It
4 wasn't reported stolen.

5 Q. You certainly have no evidence to present here
6 today the gun was otherwise than lawfully owned?

7 A. I can only testify that it was ran and it came up
8 as not reported stolen.

9 Q. Clear is the word you used in your report?

10 A. It's going to be synonymous with not stolen.

11 Q. Do you have any information as to whether or not
12 this item of evidence then -- you took this as evidence; is
13 that right?

14 A. Yes, sir.

15 Q. Do you have any information to present to this jury
16 that this item of evidence was forensically examined or tested?

17 A. That typically falls upon the lead detective to
18 request any specific testing be done through SLED or otherwise.
19 I recover it. They make a determination whether or not testing
20 is done and what the results are.

21 Q. Not quite my question. Let me ask you again. Do
22 you have any information to present in your testimony today
23 that this gun was forensically examined or tested?

24 A. No, sir.

25 MR. HARRIS: Thank you. No further questions.

DEPUTY HAYES CROSS BY MR. HARRIS

1 THE COURT: Any redirect limited to what he went
2 into?

3 MR. SMITH: No, Your Honor.

4 THE COURT: Thank you, ma'am. You can step down.
5 Watch your step as you're stepping down.

6 Any reason why this witness not be excused?

7 MR. SMITH: No, Your Honor.

8 MR. HARRIS: No.

9 THE COURT: Thank you. Ma'am, you may be excused.
10 Lawyers approach.

11 (The witness exited the stand.)

12 (Off-the-record discussion.)

13 THE COURT: Ladies and gentlemen, thank you very
14 much for your patience and your attention while the lawyers
15 presented the testimony to you. We will take an evening break.
16 Ask that you be back in the jury deliberation room by 9:30 in
17 the morning. We'll do our best to be on time ourselves to
18 resume presentation of the testimony.

19 Trial has started. You've heard a lot of
20 testimony, and you're going to see family and friends. They're
21 going to ask what did you do, what kind of trial is it, what's
22 it about. Very politely remind them you have been instructed
23 you cannot have any discussion with anyone about anything
24 involving the case. You let them know after the case is over,
25 you can talk to them until they're blue in the face. Until the

DEPUTY HAYES CROSS BY MR. HARRIS

1 case is concluded, you cannot have any discussions with anyone
2 about anything involving the case.

3 My second instruction to you: Do not do any type
4 of independent research or investigation on your own as to any
5 matter that's involved in the case or any person that is
6 involved in this case. If you see a witness -- well, I think I
7 know that person, let me Google them or checkout their Facebook
8 page. Don't do anything of that nature. Because the decisions
9 that you make in this case has to be based on the information
10 and evidence that you received during the course of this trial.

11 Do not do any type of homework as well.

12 Again, ladies and gentlemen, thank you very much
13 for your time and your patience. I am going to let you go with
14 the bailiff. He's going to take you out.

15 (The jury exited the courtroom at 4:34 p.m.)

16 THE COURT: Anything before we step down? See
17 y'all at 9:30 in the morning.

18 MR. HARRIS: I'm going to put these in, black and
19 white, we have marked as State's.

20 THE COURT: I want the colors as Court's Exhibits.

21 MR. SMITH: Yes, Your Honor.

22 (COURT EXH. 1, Photograph, was marked for
23 identification.)

24 (COURT EXH. 2, Photograph, was marked for
25 identification.)

DEPUTY HAYES CROSS BY MR. HARRIS

1 (COURT EXH. 3, Photograph, was marked for
2 identification.)

3 (COURT EXH. 4, Photograph, was marked for
4 identification.)

5 (The hearing was adjourned at 4:34 p.m.)

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME II

6 vs.

CASE NO. 2020-GS-42-04184

7 JORGE ALBERT RODRIGUEZ,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE J. MARK HAYES, II

11 DATE: October 12, 2022

12 TIME: 9:30 AM

13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
15 Spartanburg, SC 29306

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 SPENSER SMITH, ASSISTANT SOLICITOR

22 ATTORNEYS FOR THE DEFENDANT
23 RICKY K. HARRIS, ESQ.
24
25

STATE vs. JORGE RODRIGUEZ

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25	STATE EXH. 45, Photograph	164	202

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1	STATE EXH. 46, Photograph	164	198
2	STATE EXH. 47, Photograph	164	194
3	STATE EXH. 48, Photograph	164	194
4	STATE EXH. 49, Photograph	164	194
5	STATE EXH. 50, Photograph	164	194
6	STATE EXH. 51, Photograph	164	194
7	STATE EXH. 52, Photograph	164	194
8	STATE EXH. 53, Photograph	165	198
9	STATE EXH. 54, Photograph	165	198
10	STATE EXH. 55, Photograph	165	198
11	STATE EXH. 56, Bottle	214	213
12	STATE EXH. 57, Bottle	215	213
13	STATE EXH. 58, CD-Rom	251	251
14	STATE EXH. 59, CD-Rom	252	252
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1 THE COURT: Is there anything else from the State
2 or defense before we bring the jury in?

3 MR. SMITH: Your Honor, we did have one matter. We
4 had requested, when we met with Ms. Rodriguez Nodine last week,
5 we had asked if she would bring Bryant to court. Bryant
6 indicated he had wanted to come. She indicated to us she was
7 going to bring him. So far she's not.

8 My investigator spoke with her last night. And he
9 can testify to Your Honor. She gave multiple different reasons
10 for why he couldn't come. She didn't have any documentation
11 for it. She had a conversation with Bryant last night with his
12 brother on a three-way. He indicated to me two different times
13 he wanted to come to court.

14 She has power of attorney over him or she says she
15 does. I don't know how we should proceed with that. We
16 certainly think he has a right to be here. I thought maybe The
17 Court could assist us in how to resolve this matter.

18 THE COURT: Any comment?

19 MR. HARRIS: May I inquire as to whether the State
20 has issued a subpoena for the attendance?

21 MR. SMITH: We did not. He wasn't going to
22 testify.

23 MR. HARRIS: That's the way we compel people to
24 attend court.

25 MR. SMITH: I'm not compelling him. I'm saying he

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1 wants to come. He's not capable of driving. His caretaker is
2 not allowing him to come.

3 THE COURT: I don't think The Court can get
4 involved unless there is some act, unless the State has invoked
5 the action and the powers of The Court to do something. I
6 can't just say, okay, you have a right to be here, so you need
7 to come. I think the State has to do something affirmatively
8 and then ask The Court then to use its powers to enforce that
9 mechanism.

10 What you say may be true. What you say -- and I
11 hope it is true. You're an officer of The Court. I cannot do
12 something just to get somebody here. I don't know what the
13 conversations are between he and his mother. I don't know what
14 the conversations are between he and his brother. I don't know
15 what influences are keeping him from being in this courtroom.
16 I hear what you're saying.

17 Until the State does something that gives The Court
18 the power, I don't think there is anything I can do to say,
19 okay, ma'am, you have to get your son here. If the State
20 issues a subpoena -- ma'am, you might want to sit down.

21 If the State issues a subpoena, then that gives The
22 Court that mechanism in which The Court can say, okay, you
23 can't ignore it. That is a court document. You have to comply
24 with that subpoena. Then I think invokes my ability to
25 exercise my powers to enforce that subpoena to get that.

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1 MR. SMITH: Since she has power of attorney, can we
2 subpoena her?

3 THE COURT: That is something you have to decide.
4 I am not in a position to give legal advice like that sitting
5 from the bench. I would be reprimanded by the Supreme Court if
6 I did.

7 MR. SMITH: Thank you, Your Honor.

8 We have some pictures that are problematic.

9 THE COURT: I mean, especially, Mr. Smith, if he's
10 not going to testify.

11 MR. SMITH: My only concern was he has a right
12 under our Constitution to be present.

13 THE COURT: He does.

14 MR. SMITH: And he has expressed that he wants to.
15 And she has expressed she would bring him to us and has not.
16 So we think that she's interfering with his right to be
17 present.

18 THE COURT: Okay. Until the State does something,
19 I cannot do anything to help someone who's Constitutional
20 rights are being interfered with or being interfered with, as you
21 state to me, until the State does something affirmatively.

22 MR. SMITH: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. SMITH: We had a number of pictures Mr. Harris
25 has some objections to them, if you want to address them.

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1 We're going to call the ID officer, one of the first two
2 witnesses.

3 MR. HARRIS: Your Honor, I have been shown by the
4 Assistant Solicitor a group of photographs. They all appear to
5 be photographs taken of the interior of the home and -- except
6 I believe, there's one that shows the exterior of the home.

7 I didn't count them. There are several photographs
8 that would appear to mark what I assume witnesses will identify
9 as shell casings or signs of a gun being fired in the house.
10 Assuming a witness properly identifies and lays the foundation
11 for the evidentiary value of those photographs, I don't object
12 to them. I just don't know what's going to be said by the
13 witness.

14 Most of the photographs are -- well, many of the
15 photographs appear to be of the upstairs portion of the home.
16 It appears to be a bedroom, a closet, perhaps other areas.
17 I've never been to the home. That's what it appears to me.

18 I would object to those photographs at face value
19 on relevance grounds. It has been said in evidence that a gun
20 box, what has been described as a gun box has been located in
21 the upstairs portion of the home. And that gun box, I assume,
22 the State will try to match to the gun that has been now placed
23 into evidence.

24 But I believe --

25 THE COURT: All right, gentleman. Let me interrupt

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1 for one moment. I told you yesterday we needed to try to do
2 our best to get started on time because I told the jury we're
3 going to try to get started. I'm going to hear these
4 arguments. I want you to understand that I am not pleased
5 these arguments are just now being presented to me. Let's go
6 ahead.

7 MR. HARRIS: That's basically it. I don't object
8 with proper foundation to evidence marking and photographs that
9 would demonstrate that. I object to the other photographs on
10 relevance grounds and to the extent that the other photographs
11 are intended to identify the gun, I think the State already has
12 done that. And the gun has been marked in evidence as an
13 exhibit.

14 THE COURT: Your position.

15 MR. SMITH: Your Honor, our position is that, when
16 the gun was retrieved is important. Ms. Rodriguez Nodine
17 testified that Jorge did go upstairs before the shot was done.
18 And there are -- all the items are not presented in order to
19 slur him for possessing ammunition or something like that.
20 There's nothing -- he has no reason he can't.

21 They're simply to show he has gun paraphernalia,
22 not only in his safe downstairs, but in his bedroom, both in
23 his nightstand and his dresser drawers and inferring that the
24 gun that was used in this could've been retrieved from
25 upstairs.

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1 The gun box that was recovered out of the safe,
2 just has a serial number that matches the gun that was
3 recovered on the Old Furnace Road location. We're just linking
4 that gun that was recovered to Old Furnace to Mr. Rodriguez.
5 It was recovered from a safe that his mother did not have
6 access to that was essentially in his control.

7 And the pictures of the bedroom are just to show,
8 rather than just start with a picture of a close-up of a
9 nightstand, drawer contents, just to show the layout of the
10 room where the dresser is, where the nightstands are. I think
11 we should get a bit of leeway on that. I don't think it does
12 any damage to the defense.

13 THE COURT: I need to see the photographs.

14 MR. SMITH: Yes, sir. The first one is what we
15 assert is the victim's moped.

16 THE COURT: Doesn't haven't any number. Do you
17 have any problem with the one that shows the moped?

18 MR. HARRIS: Not necessarily. I didn't know what
19 it was.

20 MR. SMITH: Just to show he drove there, not
21 dropped off by somebody. His intoxication level has been made
22 an issue. Also, his vehicle would've been seen from the
23 driveway so Jorge would've known that his brother was there
24 when he arrived on the scene.

25 THE COURT: Mr. Harris, do you have any particular

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1 objection to what's been marked as State's 7? This is the one
2 that has number three on it.

3 MR. HARRIS: The photographs with the evidence
4 marking, I don't have an objection to assuming a witness will
5 lay a proper foundation for the relevancy of the photographs.

6 THE COURT: Looking at what's been marked as
7 State's 7, 8, 9, 10, 11, 12, those would be the ones that you
8 say they need to lay a proper foundation, then you won't have
9 any objection?

10 MR. HARRIS: That's correct.

11 THE COURT: Tell me again, Mr. Harris. I've looked
12 at all the other photographs. These are unmarked photographs.
13 What is your problem with these? Let me tell you what I did
14 when I looked through them, trying to anticipate that I'm going
15 to have to do the analysis of the prejudicial effect versus
16 probative value.

17 I was taking a look as I did with the other
18 photographs that showed blood, tried to eliminate things that
19 would raise inappropriate considerations by the jury, passion,
20 prejudice, by viewing photographs that I believe our Supreme
21 Court has warned us not to allow into evidence that invokes
22 some type of emotional response. I did not get any type of
23 emotional response from viewing these photographs. Tell me,
24 again, what is your problem with these.

25 MR. HARRIS: As a first matter, Your Honor, purely

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1 on ground of relevance, the pictures of the messy bedroom or
2 closet, whatever it is, I would say hold no evidentiary value.

3 Now there are other photographs that look to be a
4 messy drawer, that has a lot of things in it including what
5 looks to me like ammunition. Unless the State can link
6 scattered bullets in a messy drawer to any issue in this case,
7 I would say relevance again.

8 It's not necessarily prejudice other than the State
9 has already said to us this morning that they intend to do what
10 I would say make a far reach to try to have some speculative
11 evidence about when was it that the Defendant armed himself.
12 There is no evidence of it. There's not going to be any
13 evidence of it, according to what I know about the case.

14 Because the mere fact that there is scattered
15 ammunition in the drawer which, obviously, wasn't used in this
16 case, I can't see what the evidentiary value of it is other
17 than to try to portray, despite what they say, other than to
18 try to portray the Defendant as a gun fanatic or reckless with
19 a gun or reckless with ammunition. I honestly can't conjure on
20 the other side what I said.

21 THE COURT: Why do you want this stuff in? These
22 pictures? All of these pictures? Some of them do seem to
23 be -- other than I would assume that someone is going to
24 identify these are pictures that were made at the time they did
25 the investigation. Other than some relevancy due to the fact

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1 these pictures were made in a relatively close in time, as this
2 is part of the house, this is his bedroom, I'm really sort of
3 stretched to see why you want all of these pictures in.

4 MR. SMITH: The ones generally of the room?

5 THE COURT: Yes.

6 MR. SMITH: They're the same caliber and make of
7 the gun that was used. One of them is of a magazine that would
8 have fit into the Glock that we believe was used. Generally,
9 it would be to show that he keeps gun paraphernalia upstairs
10 and certainly a jury could infer, based off what Judith said,
11 there was an argument going on, he was trying to escape. He
12 went upstairs.

13 He could have retrieved the firearm because of the
14 type of stuff that he stores in his bedroom. It would -- a
15 jury could certainly infer he would've kept a gun in the
16 nightstand. He has magazines for it. He has weapon -- he has
17 ammunition for it both fired and unfired, and it's all of the
18 same caliber and brand as the gunshot that was fired in the
19 living room.

20 As far as relevance, it's only -- any juror could
21 make a fact more likely than not -- it's not an incredibly high
22 bar. We believe that those items a jury could infer means that
23 he stored a firearm in his bedroom. There's a gun box as well
24 that would've fit that gun.

25 THE COURT: I understand one of the difficulties

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1 with the State's case is that the State, I would assume as it
2 progressed so far, has to rely upon the testimony of the mother
3 in order to establish its case. You're going to have to take
4 parts of the mother's testimony. And it sounds like parts of
5 the testimony you're attempting to bolster it with these
6 photographs while other parts you're going to try to impeach
7 the testimony of the mother.

8 MR. SMITH: We certainly think we did impeach her.
9 I know that in the judge's instructions of the jury they can
10 believe all of what one witness says, some of it, or none of
11 it. I think that's a common occurrence in court.

12 THE COURT: I'm not saying that it is not. What my
13 concern is improper bolstering of a witness.

14 MR. SMITH: I don't think using evidence to
15 corroborate a statement is bolstering like a child sex case
16 where family comes in and says they're testifying truthfully or
17 something. If the Defendant had confessed, we would be able to
18 put it in evidence.

19 THE COURT: He didn't confess. That's the problem.
20 We have a nonparty. We have a witness.

21 MR. SMITH: I don't understand why we would not be
22 able to use evidence to support a story. I mean, that's what
23 we do. That's how we try to infer who's telling the truth is
24 the context of evidence.

25 THE COURT: My job is to see that proper evidence

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1 gets presented to the jury, not just any evidence; okay.

2 MR. SMITH: Yes, Your Honor.

3 THE COURT: Is there a reason for this particular
4 evidence? Y'all want to take a look at it.

5 MR. SMITH: Just to show there was a picture of a
6 gun magazine recovered.

7 MR. HARRIS: Well, there's also a personal note
8 about the baby.

9 THE COURT: There is.

10 MR. HARRIS: That's the part I can read.

11 MR. SMITH: I can cut that out.

12 MR. HARRIS: If you want or don't want me to be in
13 baby's life, then you should've just told me.

14 Otherwise, I'd say I appreciate the difficulty the
15 State has. The witness statement was the Defendant went
16 upstairs. She didn't say where. She didn't say for what
17 purpose. She didn't say how long he was there. Nothing.
18 That's it.

19 Then we have these photographs of ammunition, I
20 would say primarily is what I see, and a box that wasn't used
21 in this case. They have the gun and, I assume, those other
22 photographs that are subject to foundation would provide them
23 to say this was the gun, and these bullets matched that
24 although there's no formal forensics in this case.

25 I just strain to understand how showing -- we know

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1 the man had a concealed weapons permit. That's been
2 established in the testimony. Showing that he had other
3 ammunition that he did not use in this case doesn't prove any
4 issue in this case. That's my problem with it. That note
5 should not be shown to the jury.

6 THE COURT: What is the State's factual theory as
7 to what happened? Mr. Harris makes a point. Because the
8 witness -- the mother was sort of -- I say this generally and
9 kindly, based upon the impeachment testimony that she was sort
10 of all over the place as to what happened.

11 MR. SMITH: Yes.

12 THE COURT: Which of those factual theories is the
13 State going to rely on?

14 MR. SMITH: I think to some extent we're not going
15 to be able to pinpoint one. That he could've gotten the gun
16 then when he went upstairs.

17 And the other theory we would have potentially he
18 had it in the car with him and he saw that his brother was
19 there and he armed himself and went inside with the gun then.
20 We're somewhat limited by the eyewitness and the evidence that
21 we have.

22 For the relevance bar, I think that's basically the
23 argument. It's just, you know, evidence that would make -- a
24 jury could infer one fact to be more likely than the other.
25 The location of the gun box and magazines and bullets could

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1 infer that, since there's everything else but a gun up there,
2 that he commonly keeps a gun in his bedroom and accessed it and
3 then went downstairs and shot his brother.

4 THE COURT: One of my concerns is that -- I
5 understand the State's difficulty in presenting this case. You
6 have to rely upon what you're given through the testimony that
7 was witnessed. Saying that, I would not want the jury to make
8 the improper inference of that simply because a man -- let's
9 take it outside of the gun -- keeps a messy bedroom at a
10 particular time then, therefore, he is a messy person.

11 I would not want the jury to make the improper
12 inference that this person must be a crazy gun-loving person
13 that's radical, is going to shoot whenever he wants to because
14 he has a lot of ammunition that legally he is entitled to have
15 when that is not the inference that the State needs to make in
16 this case.

17 The State needs, in my assessment, needs to prove
18 that he fired the gun. He had the gun. He shot his brother.
19 And then what was the intent behind that. What I fear for
20 appellate review, PCR, anything that's collaterally going to
21 come out in this case, the State may be overpresenting the
22 evidence.

23 Then it can be attacked later in the event the jury
24 finds him -- in the event that the jury finds the State has met
25 its burden beyond a reasonable doubt, then there's going to be

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1 arguments made I should not have let this information in
2 because there is a low threshold of the relevance to what
3 actually the jury, how they could view it.

4 I'm concerned if I hear arguments later: Take a
5 look at this, it's all over the place, he loves these guns, he
6 runs around and shoots people all the time. And because he
7 does something that these pictures can infer, that inference is
8 not what the State needs the jury to be convinced in order to
9 find him guilty beyond a reasonable doubt. That being said,
10 that's my concern.

11 On the one that has the marking of number 7, I've
12 done it before. We're going to need to take out the reference
13 to the note. I think that's just wrought --

14 MR. SMITH: We can probably skip the picture and he
15 can testify to what he recovered.

16 THE COURT: Will you let me finish. It's wrought
17 with problems. If you're going to use it, you need to take it
18 out. Take out the note. Cut it or whatever, if you want to
19 use it. I think it does meet the threshold of relevance. It's
20 going to be the State's determination whether they want to use
21 that one.

22 The ones -- the photographs that I'm looking at
23 that shows -- it looks like my description might be something
24 different -- a box that has a label on it, is that the box that
25 the gun was in or would've been in?

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1 MR. SMITH: Yes, Your Honor. Well, that is the box
2 that goes with the gun that was recovered. I don't know
3 necessarily. I don't think the gun was in that based off of
4 where that box is found inside of a locked safe. We're not
5 alleging that he went and retrieved it from the safe. I don't
6 think there's any evidence to support that. We think the gun
7 was elsewhere in the house or in his car.

8 THE COURT: Why do you want to get these
9 photographs in if you're saying it's not in the box or in the
10 safe?

11 MR. SMITH: We're proving that gun is in his
12 possession. That gun box is in his possession. Matches the
13 serial number of the gun found on his girlfriend's property.
14 Despite the fact they apparently admitted he shot him. I think
15 we still are allowed to prove our case and draw that link
16 between the gun and Mr. Rodriguez. The gun was recovered with
17 Mr. Rodriguez.

18 THE COURT: If you're contending that it wasn't in
19 the safe, why do you want a picture of the safe?

20 MR. SMITH: Just to show where it was recovered
21 from.

22 THE COURT: I thought the gun was recovered --

23 MR. SMITH: The gun box is recovered inside of that
24 safe. The gun was recovered in the tire out in Chesnee.

25 THE COURT: You want a picture of a safe that

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1 contained a box that you contend the gun was not in the box nor
2 was it in the safe in order to establish ownership?

3 MR. SMITH: Linking the recovery of the gun to
4 Jorge Rodriguez to prove that he owns the gun that ended up in
5 a tire in Chesnee after he shot his brother with it. In
6 general, I tried to not just put in a picture of a zoomed-in --
7 this is the item recovered. Like we're in this room. We're
8 going to this desk. When you open this drawer, there's a gun
9 or something like that to show the jury the full context rather
10 than just a zoomed-in picture of an item.

11 THE COURT: I'm concerned, as Mr. Harris argued,
12 sometimes evidence can be admitted that can be viewed
13 improperly and leads to consequences we don't anticipate during
14 the course of the trial. That's why I have the job of having
15 to weigh the evidence to see whether or not its probative value
16 outweighs its prejudicial effect. That's the reason for my
17 questions.

18 MR. SMITH: Yes, Your Honor. We're not inferring
19 that owning a safe or owning ammunition -- a lot of people own
20 safes. Most people have long guns like that would have a gun
21 safe. Most people do, I would imagine.

22 THE COURT: What is this for?

23 MR. SMITH: That is the type of ammunition that was
24 used in the shooting and that is found next to the gun box
25 inside the safe.

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1 THE COURT: Am I correct this is the inside of the
2 safe?

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: This is inside of a drawer?

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: Is this the same drawer or is this a
7 different drawer?

8 MR. SMITH: He's saying it's the same drawer, Your
9 Honor.

10 THE COURT: The reason you want the inside of the
11 drawer admitted is for what?

12 MR. SMITH: We're just trying to show that he
13 could've stored his gun up there and that he retrieved that gun
14 when he went upstairs after the argument had started. Because
15 he has everything else that would be used with the firearm in
16 his nightstand.

17 THE COURT: For some reason -- I don't know whether
18 I did it. This one was separated out from these.

19 MR. SMITH: I printed in the order as they were in
20 the police file. There was two pictures of his room, and they
21 were kind of disjointed. That one was more zoomed out. It's
22 somewhat more duplicative. I might take the other ones out and
23 put that one in.

24 THE COURT: Provided a foundation can be laid, the
25 group of photographs that I will say I put the paperclip on,

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1 these are the ones of the scene I would allow them in.

2 I think Mr. Harris doesn't have a specific
3 objection. These are photographs of the scene.

4 MR. HARRIS: The one with evidence tag.

5 THE COURT: The ones that show his bedroom type
6 things. The closets --

7 MR. SMITH: The gun box.

8 THE COURT: Gun box.

9 MR. HARRIS: I would say, Your Honor, so everybody
10 will know, part of my concern with whoever, whatever witnesses
11 attempt to lay the foundation for any of these photographs, the
12 difficulty with the one we would call the ballistic evidence.
13 I think they're the shell casings, things like that. Based on
14 the qualifications of whatever witness is presented, these
15 items, none of these items have been in the normal manner
16 forensically tested. There's no tool mark analysis, firearms
17 analysis. Nothing that forensic links these things. That's
18 just, in general, part of the problem I have.

19 For lack of a better word, all of this is in the
20 realm of speculation. Because they don't know. You have a
21 witness that says, there's this drawer and here are these
22 bullets. This is the same thing.

23 Well, they haven't taken the steps to establish
24 that. They haven't forensically examined the ammunition that
25 was actually fired in the actual occurrence that we're here

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1 about. There's probably going to be substantial objections
2 made to witness testimony unless I hear something more than I
3 have seen in discovery, that would establish these people are
4 qualified to say those things, if I'm understanding what the
5 State is trying to have the witness do. That's why I say
6 foundation.

7 THE COURT: I haven't gotten to that. I just said
8 provided foundation is laid. Y'all can take up the issue of
9 foundation later. I think right now we're just trying to get
10 this trial moving. I'm just now seeing these photographs. I'm
11 trying to get us to where we're actually doing something for
12 the trial.

13 These photographs I have paperclipped, provided
14 there's a foundation laid, whatever it is, you can object. You
15 can cross-examine the witness, however you want to do it. I
16 think I generally would allow these in if the proper foundation
17 were laid.

18 The ones that -- my terminology, not yours -- that
19 appear to be more germane to the issues in this case are the
20 ones that deal with the gun and the ballistics and the safe and
21 the box. I think provided, again, we get the proper foundation
22 is laid for them, I think the State is allowed to go into this.

23 I don't know what the witness is going to say. I
24 don't know if he or she is going to equivocate. I don't know.
25 Provided that the proper foundation is laid, I have a far more

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1 comfort level of saying these are relevant and that the
2 probative value of these are more significant than the other
3 photographs that are up here that seem to be generalized
4 photographs of the bedroom. That's my assessment of it right
5 now.

6 MR. HARRIS: I understand, Your Honor.

7 THE COURT: All right.

8 MR. SMITH: These you said could come in.?

9 THE COURT: And Mr. Harris sending red flags is
10 aware of that foundation. Those I have a more comfort level of
11 saying they are. If I get into the probative-prejudicial
12 analysis, seen a far more probative value of those photographs.

13 (STATE EXH. 34, Photograph, was marked for
14 identification.)

15 (STATE EXH. 35, Photograph, was marked for
16 identification.)

17 (STATE EXH. 36, Photograph, was marked for
18 identification.)

19 (STATE EXH. 37, Photograph, was marked for
20 identification.)

21 (STATE EXH. 38, Photograph, was marked for
22 identification.)

23 (STATE EXH. 39, Photograph, was marked for
24 identification.)

25 (STATE EXH. 40, Photograph, was marked for

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1 identification.)
2 (STATE EXH. 41, Photograph, was marked for
3 identification.)
4 (STATE EXH. 42, Photograph, was marked for
5 identification.)
6 (STATE EXH. 43, Photograph, was marked for
7 identification.)
8 (STATE EXH. 44, Photograph, was marked for
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22 (STATE EXH. 51, Photograph, was marked for
23 identification.)
24 (STATE EXH. 52, Photograph, was marked for
25 identification.)

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1 (STATE EXH. 53, Photograph, was marked for
2 identification.)

3 (STATE EXH. 54, Photograph, was marked for
4 identification.)

5 (STATE EXH. 55, Photograph, was marked for
6 identification.)

7 MR. SMITH: To use the word of the week, candidly
8 speaking, we played two portions of this video. How would you
9 like us to get that into the record where it could be reviewed
10 and that the jury --

11 THE COURT: You mean the audio?

12 MR. SMITH: Yes, the portion we played. I have the
13 minutes that we did it. I don't know if you would allow us to
14 introduce as State's exhibits. If they were to be played, that
15 we would play a portion of them.

16 THE COURT: Mr. Harris.

17 MR. HARRIS: Your Honor, if I'm understanding,
18 during the witness' testimony which, of course, has been
19 recorded verbatim, I'm assuming the court reporter has captured
20 the audio portions that were played and the witness' responses
21 and that is the record.

22 THE COURT: Right now that's the record of it. So
23 unless you come up with another way to get it in, I'm not at
24 liberty just to say get it into evidence.

25 MR. SMITH: I just didn't know like, when we play

STATE vs. JORGE RODRIGUEZ

1 an interview with the police if the court reporter is writing
2 down everything that's said during the interview.

3 THE COURT REPORTER: It's difficult for an audio
4 recording to understand.

5 THE COURT: If we get to the point where the jury
6 is interested in hearing the audio again, we'll reconvene this
7 subject. Like Mr. Harris has noted, it's not in evidence yet.
8 If you have some other way of getting it into evidence.

9 MR. SMITH: I can do the person that conducted the
10 interview. Obviously, the entirety of the interview did not
11 come in. I didn't know if we could have him establish it and
12 make these a court exhibit and put a note on it about the times
13 that were played. I'm just concerned if the jury wants to hear
14 it or if I want to play it again, how can we functionally
15 accomplish that?

16 MR. HARRIS: I did not invoke the Defendant's right
17 under evidence Rule 613 to require the entire extrinsic
18 evidence that served as issues disclosed or offered. Only
19 those portions that were played is of record.

20 THE COURT: So you're saying only those portions
21 that were played can be played again?

22 MR. HARRIS: That's my position.

23 THE COURT: Go ahead and mark those. If it comes
24 up, we'll have them.

25 MR. SMITH: Yes, sir. That's all I have, Your

STATE vs. JORGE RODRIGUEZ

1 Honor.

2 THE COURT: Anything else?

3 MR. HARRIS: No, Your Honor.

4 (The jury entered the courtroom at 10:19 a.m.)

5 THE COURT: Madam forelady, ladies and gentlemen of
6 the jury, thank you very much for showing up on time. Thank
7 you for being prompt and thank you for your patience while we
8 worked in this courtroom this morning.

9 We have done a lot of work in here to try to help
10 speed this case along in an efficient and proper manner. I beg
11 your forgiveness for just now bringing you out into the
12 courtroom. We have been working diligently while you were
13 waiting.

14 We are now at the point where we can resume taking
15 of the testimony of the case. If the State is ready to call
16 their next witness.

17 MR. SMITH: The State calls Wilson Gomez.

18 THE COURT: Come up here, place your hand on the
19 Bible and let the clerk swear you in.

20 WILSON GOMEZ

21 being first duly sworn, testified as follows:

22 THE COURT: Sir, step up, have a seat in the chair.
23 Pull the chair up to the microphone: If you have to adjust the
24 microphone, do it gently. Sometimes it comes out of its
25 socket. It's old.

WILSON GOMEZ DIR BY MR. SMITH

1 DIRECT EXAMINATION

2 BY MR. SMITH:

3 Q. Will you please state your name.

4 A. Wilson Gomez, Jr.

5 Q. Do you know Jorge Rodriguez?

6 A. I do.

7 Q. How do you know him?

8 A. He's my niece's boyfriend.

9 Q. Who is your niece?

10 A. Anisa.

11 Q. Are they engaged now?

12 A. No.

13 Q. Do they have children together?

14 A. Yes, sir.

15 Q. Do you know him in any other way other than that?

16 Do y'all have a friend-type relationship?

17 A. Yeah. I worked for his mom.

18 Q. Currently?

19 A. No. I used to work for his mom for, like, two
20 years.

21 Q. What type of work was that?

22 A. Like auto industry. BMW.

23 Q. Where were you living back in the Christmastime of
24 2019?

25 A. 726 Dutchman Court.

WILSON GOMEZ DIR BY MR. SMITH

1 Q. Would Jorge Rodriguez have had your phone number?
2 Y'all were acquainted to that level?

3 A. Yes, sir.

4 Q. Did he call you on Christmas of 2019?

5 A. Yes, sir.

6 Q. What did he say?

7 A. He just said that he needed to speak with somebody.
8 That he was, you know -- he had done something that he needed
9 to speak with somebody. I said: Okay, come to my house, you
10 know, if you need to speak with somebody.

11 So he came over to my house.

12 Q. Did he make any other comments about hurting
13 himself or anything like that?

14 MR. HARRIS: Objection; leading.

15 THE COURT: I'll sustain the objection. Rephrase
16 the question.

17 BY MR. SMITH:

18 Q. Did he make any other comment to you on the phone?

19 A. No.

20 Q. Do you recall telling me and my investigator about
21 45 minutes ago that he did make another comment on the phone?

22 A. What do you mean?

23 Q. Do you recall talking with me and this guy with
24 glasses right outside the courtroom about 45 minutes ago, an
25 hour ago?

WILSON GOMEZ DIR BY MR. SMITH

1 A. Uh-huh.

2 Q. Do you remember telling us he said he was thinking
3 about driving his vehicle 100 miles an hour into something?

4 A. Yeah, and I told him not to do that.

5 Q. He did make another comment to you on the phone;
6 right?

7 A. Yes.

8 THE COURT: Mr. Gomez, let me get you to do
9 something. Slide your chair closer to the microphone. Just as
10 a reminder, shakes and nods of head, she cannot write down. Be
11 sure you give verbal responses.

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you.

14 BY MR. SMITH:

15 Q. Did you forget you told me that, or are you
16 concealing that you told me that? You're on the stand now.

17 A. No, I understand now.

18 Q. Why did you not say that when I asked another
19 comment? Did you forget about it?

20 A. Yeah.

21 Q. From 45 minutes ago you forgot; is that right?

22 A. Yeah.

23 Q. Do you have some sort of brain issue to cause that?

24 A. No, I don't.

25 MR. HARRIS: Your Honor, I object. That's in the

WILSON GOMEZ DIR BY MR. SMITH

1 nature of harassing the witness: Do you have a brain injury?

2 THE COURT: Move on, Mr. Smith.

3 BY MR. SMITH:

4 Q. What happened? Did he arrive at your residence?

5 A. Yes, he did.

6 Q. What car did he arrive in?

7 A. White Mercedes.

8 Q. What was his demeanor when he arrived there?

9 A. He was nervous.

10 Q. What made you think that he was nervous?

11 A. I mean, he just told me that he needed to speak
12 with somebody, that he was in trouble.

13 Q. Did he end up telling you what this was about?
14 What he was saying had happened?

15 A. Yeah. He told me that he had got into an argument
16 with his brother.

17 Q. What else did he say?

18 A. He was saying that he had got in an argument with
19 his brother, and he accidentally pulled out his gun, not
20 directly shoot him. It just discharged. It was fired.

21 Q. Your understanding was it was an accident --

22 A. Yeah.

23 Q. -- during a fight?

24 A. Yeah.

25 Q. What did y'all do on Christmas? Just kind of chat?

WILSON GOMEZ DIR BY MR. SMITH

1 A. Yeah, we was just talking. I was just trying to
2 make sure that he was all right, that he wasn't going to do
3 anything, you know, to hurt himself. I told him just stay
4 over. He stayed in the garage. I had a couch in the garage,
5 he can spend the night there.

6 Q. Did you see if he had a firearm or anything on him?

7 A. No.

8 Q. Did he tell you about what he had done with the
9 firearm?

10 A. Yeah.

11 Q. What did he tell you?

12 A. He just told me that he had dropped it off in, it
13 was Old Furnace residence.

14 Q. Is it a place called The Farm?

15 A. The Farm, yeah.

16 Q. Where is The Farm? Is that somebody connected to
17 your family?

18 A. It's my wife's family.

19 Q. Is it Anisa's parents?

20 A. Yes, the whole family.

21 Q. The mother of his child's parents' house is the Old
22 Furnace location?

23 A. Uh-huh.

24 Q. Nothing happened. Did he contact any of his family
25 members that you witnessed while he was at your house?

WILSON GOMEZ DIR BY MR. SMITH

1 A. No, he didn't.

2 Q. Did you see him on his phone at all?

3 A. No, I didn't.

4 Q. Do you know if his phone was on or off?

5 A. No.

6 Q. Did you ask the condition of his brother?

7 A. No. I didn't.

8 Q. Were you concerned about what he had told you?

9 A. Yeah, I mean, I'm concerned. He's like a son to
10 me, you know. That's why I told him to come to the house
11 'cause I didn't want nothing to happen to him.

12 Q. Were you worried about his mental state? Is that
13 fair?

14 A. I wasn't worried. I wasn't worried. I know Jorge.
15 He's not like that.

16 Q. He said he needed help. Were you concerned for
17 him? Whatever you heard in his voice?

18 A. He said he needed to talk to somebody. So I told
19 him: Yeah, I'm here for you. Come to the house.

20 Q. So you go to bed inside your house. He stays out
21 in the garage that evening?

22 A. Yes, sir.

23 Q. What happens the next day?

24 A. The next day we woke up, ate breakfast. And my
25 grand babies, my whole family was there. We went outside in

WILSON GOMEZ DIR BY MR. SMITH

1 the front yard. We were in the sun just chilling. My grand
2 babies were out there. And I went to go inside to grab a
3 drink. And then when I come back outside, there was all kinds
4 of cops everywhere. You know, I guess they came and got Jorge.
5 So I was like, you know.

6 Q. Jorge was already gone?

7 A. They was already at the home, putting him in
8 handcuffs.

9 Q. And then did you end up talking to an investigator?

10 A. Yeah.

11 Q. This guy?

12 A. Yes.

13 Q. His name is Investigator Norris. What did you tell
14 him, or did you tell him the same thing?

15 A. I told him that he just came. He needed to speak
16 with me that night, so I told him to come over. That's what I
17 did.

18 Q. Did you tell him about where the gun might be?

19 A. Yeah, he asked me. And I told him.

20 Q. Did you tell him the same thing you testified to
21 here today? He had told you it was an accident during a fight?

22 A. Yes, sir.

23 Q. Where did he park his car at your house? In a
24 normal place?

25 A. On the right beside the driveway. It's like a

WILSON GOMEZ DIR BY MR. SMITH

1 grass on the right side.

2 Q. Was it visible from the road? If you drive past
3 your house, you would see it?

4 A. You'll see it.

5 MR. SMITH: Please answer any questions Mr. Harris
6 has.

7 MR. HARRIS: I have no questions, Your Honor.

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

9 Watch your step down as you're stepping down. You may go back.

10 Any reason why the witness can't be excused?

11 MR. SMITH: None from the State.

12 MR. HARRIS: No, Your Honor.

13 THE COURT: Sir, you may be excused as well, if you
14 want.

15 State ready to call next witness?

16 (The witness exited the stand.)

17 MR. SMITH: State calls Deputy Thomas McAbee.

18 THE COURT: Come right up here. Let the clerk of
19 court swear you in.

20 DEPUTY THOMAS McABEE

21 being first duly sworn, testified as follows:

22 THE COURT: Watch your step as you're stepping up.
23 Have a seat in the chair. Pull the chair up to the microphone.
24 If you need to move the microphone, do it gently so it doesn't
25 break off.

DEPUTY McABEE DIR BY MR. SMITH

1 DIRECT EXAMINATION

2 BY MR. SMITH:

3 Q. Will you please state your name and rank for the
4 jury.

5 A. Name is Tom McAbee, deputy with Spartanburg County
6 Sheriff's Office.

7 Q. What is your current position with the Sheriff's
8 Office?

9 A. Current position with the Sheriff's Office is with
10 the uniform traffic unit.

11 Q. Is that just enforcing traffic laws in Spartanburg
12 County generally?

13 A. Yes, sir, it is.

14 Q. What were you doing with the Sheriff's Office back
15 in Christmastime of 2019?

16 A. I worked with the criminal investigative division
17 as a forensic investigator; worked for crime scene
18 investigation.

19 Q. What does a crime scene investigator do generally?

20 A. Generally a crime scene investigator arrives on the
21 scene, assess the scene there during any kind of violent crime,
22 take interior and exterior photographs and any kind of evidence
23 that needs to be collected. We will collect evidence. Pretty
24 much photographing and documenting the scene as we see it.

25 Q. Do you do any training and experience to work in ID

DEPUTY MCABEE DIR BY MR. SMITH

1 position?

2 A. No, sir. We go in, we learn there within the
3 department, and we're trained to do it.

4 Q. Are you assigned to work with somebody for a period
5 of time?

6 A. Yes, sir, we are.

7 Q. And you would do fingerprints, collect swabs of
8 DNA, all the stuff from like the CSI show?

9 A. Yes.

10 Q. What's your total experience in law enforcement?
11 How long?

12 A. Approximately 16 years now.

13 Q. Is that all in Spartanburg County?

14 A. No, sir, it's not.

15 Q. Do you have any other special training other than
16 just having gone to the police academy?

17 A. Of course. Traffic enforcement is something that
18 I'm trained in as well.

19 Q. Like DUI detection?

20 A. Yes, sir, DUI detection.

21 Q. Were you asked to respond to a call on the early
22 morning hours of Christmas of 2019?

23 A. Yes, sir.

24 Q. What did you do first in this case?

25 A. Initially we got a call at the home address. If

DEPUTY MCABEE DIR BY MR. SMITH

1 you don't mind, I would like to take a look at the report so
2 just making sure I'm fair and accurate. I don't want to lie.

3 MR. HARRIS: Could you identify -- Your Honor,
4 could we have the witness identify the report?

5 THE WITNESS: It's the initial incident report.
6 It's my forensic report.

7 MR. HARRIS: I have no objection to the witness
8 refreshing his recollection.

9 THE COURT: Yes, sir.

10 THE WITNESS: Absolutely. When the call originally
11 came out, I was going to go to the home but, upon learning
12 about the search warrant that was going to be needed for the
13 home, I went to the hospital first where the victim -- I come
14 to understand the victim had been transported there.

15 BY MR. SMITH:

16 Q. Because the search warrant was in progress, you
17 decided to do something else --

18 A. Yes.

19 Q. -- productive?

20 Did you make contact with Bryant Rodriguez at
21 Spartanburg Regional?

22 A. I did.

23 Q. Can you describe what you saw when you found him.

24 A. When I arrived at the hospital, he was located in
25 the emergency room. When they bring him in, they have a couple

DEPUTY MCABEE DIR BY MR. SMITH

1 trauma bays. Mr. Rodriguez was in trauma bay one, and the
2 medical staff was treating him for his injuries. And while
3 there, I was trying to take photographs without interrupting
4 the treatment whatsoever of what could be seen at that time,
5 what could be observed from the hallway.

6 Q. Were you able to observe where his injury was?

7 A. I could observe some but there was bandaging. And
8 I could not observe the exact location because it was bandaged.
9 I knew there was trauma to the head.

10 (STATE EXH. 18, Photograph, was marked for
11 identification.)

12 (STATE EXH. 19, Photograph, was marked for
13 identification.)

14 BY MR. SMITH:

15 Q. I'm going to show you what's been marked as State's
16 Exhibit 18 and 19 and ask you if you can identify what they
17 are.

18 A. Number 18 is trauma to what appears to be the left
19 side of the head.

20 Q. Don't show them to the jury yet, please.

21 A. To the left side of the head. And that's closer
22 photograph of what I saw to the left side of the head.

23 Q. These are pictures that you took of Mr. Bryant
24 Rodriguez while at Regional?

25 A. Yes, sir, it was. Yes, sir, it was. And in the

DEPUTY MCABEE DIR BY MR. SMITH

1 second photograph, there is another picture of Mr. Rodriguez
2 and where it was bandaged.

3 MR. SMITH: Your Honor, at this time we move
4 State's 18 and 19 into evidence.

5 MR. HARRIS: Object on previously stated grounds.

6 THE COURT: I do recall those other grounds. I'm
7 going to allow them in as State's 18 and 19.

8 (STATE EXH. 18, Photograph, was received into
9 evidence.)

10 (STATE EXH. 19, Photograph, was received into
11 evidence.

12 MR. SMITH: Permission to publish to the jury.
13 BY MR. SMITH:

14 Q. This is State's 18. Is this the eyebrow?

15 A. Yes, sir, it is.

16 Q. I believe you said it's on the left side of his
17 head?

18 A. Yes, sir.

19 Q. This is State's Exhibit 19. Did you notice any
20 other injuries on him?

21 A. I didn't observe any at that time.

22 Q. You collected his clothes. Was that also part of
23 your investigation?

24 A. Yes, sir, I did.

25 Q. Did you end up responding back to the Sheriff's

DEPUTY MCABEE DIR BY MR. SMITH

1 Office?

2 A. I did, yes, sir.

3 Q. What was the purpose of going to the Sheriff's
4 Office?

5 A. The purpose in going back to the Sheriff's Office
6 was because I was advised that Ms. Nodine was there and being
7 spoken with. And she had clothing that needed to be collected.
8 She also needed to be photographed.

9 I responded to the Sheriff's Office investigative
10 wing upstairs to take care of those photographs and collect
11 those items for evidence.

12 Q. Can you describe how she appeared.

13 A. She had -- I know that she did have dried red fluid
14 substance on her clothing, on her hands. I mean, it was
15 obvious that it was on her. And I was having to be very
16 careful about taking those off due to what I saw. She pretty
17 much had that red, dried fluid substance on her hands and her
18 fingernails.

19 Q. Did you notice or were you made aware of any
20 injuries that she had?

21 A. I didn't observe any injuries.

22 Q. You didn't see her actively bleeding or anything
23 like that?

24 A. No, sir.

25 Q. What did you do after collecting Ms. Nodine's

DEPUTY MCABEE DIR BY MR. SMITH

1 clothes and photographing her?

2 A. I'm going to take a look at my report.

3 Q. Yes, sir.

4 A. I completed what's known as a gunshot residue kit
5 on her hands at that time. And changed clothes again. I
6 collected the clothing items that she had on for evidence. I
7 swabbed her right shoe, hoodie, and the clothing for DNA. And
8 those swabs that we swabbed the items for DNA, they were
9 collected and placed into evidence.

10 Q. You obviously were not a witness to this incident.
11 You have no independent knowledge of what happened; correct?

12 A. No, sir.

13 Q. Do you speak with investigators to kind of try to
14 determine what type of evidence you should be focused on or
15 collecting?

16 A. Yes, sir.

17 Q. Is it safe -- in the initial stages, y'all cast a
18 very wide net and just try to collect everything that you
19 conceivably can, particularly when you don't know what has
20 occurred?

21 A. That is correct.

22 Q. I guess at this point they didn't know if
23 Ms. Nodine was potentially the suspect; is that fair?

24 A. That's fair.

25 Q. Did you end up responding back to the incident

DEPUTY MCABEE DIR BY MR. SMITH

1 location, Colfax Drive?

2 A. Yes, sir, I did.

3 Q. At that point the search warrant had been signed by
4 a judge, and you were ready to go process the scene?

5 A. Yes, sir.

6 Q. I believe you said you began by taking exterior
7 photos -- I think one of your pictures is already in evidence
8 of the outside. Would you describe this as a big, nice house?

9 A. It was. It was a very large house in my opinion.
10 It was a large house.

11 Q. I'm going to show you State's Exhibit 35, ask if
12 you can identify what that is.

13 A. This would be an exterior photo outside of the
14 house. And this appears to be -- there was a moped of some
15 type. Just a photograph taken outside.

16 MR. SMITH: Your Honor, at this time move State's
17 35 into evidence.

18 MR. HARRIS: I would object on relevance grounds.
19 Witness says it's a photograph taken outside of a moped.

20 THE COURT: I'm going to allow it in for now. You
21 might want to make better foundation.

22 MR. SMITH: Yes, sir. It's admitted?

23 THE COURT: It's admitted for now.

24 MR. SMITH: Thank you, Your Honor.

25 (STATE EXH. 35, Photograph, was entered into

DEPUTY MCABEE DIR BY MR. SMITH

1 evidence.)

2 BY MR. SMITH:

3 Q. When you're taking pictures, you're documenting all
4 the vehicles present?

5 A. Yes, sir. Normally if there's anything kind of --
6 anything on the outside, anytime you're taking exterior photos
7 or interior photos, you're wanting to document, take pictures
8 of everything as you see it when you arrive on scene.

9 Q. Do you know whose moped that is?

10 A. No.

11 Q. You were simply documenting for the investigation?

12 A. Yes, sir.

13 Q. When you entered the home, what do you come into
14 when you enter the house?

15 A. When I entered the house, I remember walking in and
16 just seeing the living room. Just obviously seeing where an
17 incident had occurred there in the living room.

18 Q. There was what maybe you thought to be blood and
19 medical equipment?

20 A. There was. There was red substance, fluid
21 substance on the floor of the living room. You could see it in
22 various areas of the living room.

23 Q. Is that where you initially began focusing on?

24 A. Yes, sir.

25 Q. What were you able to observe that you thought was

DEPUTY MCABEE DIR BY MR. SMITH

1 potentially relevant to this case inside of the living room?

2 A. Going in, I noticed where the blood -- I would say
3 red fluid substance. That's what I testified to, that's what I
4 call it. Red fluid substance was on the floor. I could see it
5 on the couch, some of that stuff on the wall. One of the
6 things that I noticed that stuck out to me was there was a
7 cartridge casing that was on the floor of the living room that
8 was close to a fireplace. That's one thing I noticed. One of
9 the first things I noticed.

10 After we go around, we're looking around the room.
11 I'm taking the photographs as I see it before I collect
12 anything. Because you want to take a picture of everything as
13 it is before you want to collect evidence.

14 There was a projectile that we saw. It was a piece
15 of projectile that was located in the living room floor, which
16 was behind the couch. As you walk in, there's a large window
17 behind this couch. Located a projectile fragment there. Also
18 saw some, again, dry red substance that was on the wall.

19 There was also another projectile piece that was
20 found in the right corner of that window sill that was there.
21 That was seen.

22 And in the living room there were two beer bottles
23 that were found in the living room floor, in the living room
24 area. And had one that was on one step of the staircase which
25 led, obviously, to an upstairs area.

DEPUTY MCABEE DIR BY MR. SMITH

1 And after looking at all that, photographing it as
2 I saw it, I made sure to go ahead and collect the casing, the
3 projectile pieces that I saw, and two beer bottles that were in
4 the living room.

5 Q. When you were talking about the things that were on
6 the stairs, one of those items was a beer bottle. Is that what
7 you were referring to?

8 A. Yes, sir.

9 Q. And one was on the floor by the couch; is that
10 right?

11 A. Uh-huh.

12 Q. I'm going to show you State's 7 through 12 and ask
13 if you can identify what they are.

14 A. This is the fired cartridge casing that I observed.

15 Q. You don't have to go over it individually. Tell me
16 what the group of them are. Then we'll show them to the jury.

17 A. Got you. These appear to be the photographs taken
18 in the living room.

19 Q. Do they show evidence placards that you've put up?

20 A. Yes, sir, they do.

21 Q. You assigned it a number inside your department?

22 A. Yes, sir, I do.

23 MR. SMITH: Your Honor, at this time we move 7
24 through 12 into evidence.

25 MR. HARRIS: May I see them?

DEPUTY MCABEE DIR BY MR. SMITH

1 THE COURT: You want to get them in?

2 MR. SMITH: Yes.

3 MR. HARRIS: No objection.

4 THE COURT: Without objection, State's 7 through
5 12.

6 (STATE EXH. 7, Photograph, was entered into
7 evidence.)

8 (STATE EXH. 8, Photograph, was entered into
9 evidence.)

10 (STATE EXH. 9, Photograph, was entered into
11 evidence.)

12 (STATE EXH. 10, Photograph was entered into
13 evidence.)

14 (STATE EXH. 11, Photograph, was entered into
15 evidence.)

16 (STATE EXH. 12, Photograph, was entered into
17 evidence.)

18 BY MR. SMITH:

19 Q. This is State's Exhibit 12. What's in this
20 picture?

21 A. That would be the fired cartridge casing that I
22 found as described inside the living room and fireplace.

23 Q. State's 11; is that just a close up of the same?

24 A. Yes, sir.

25 Q. This exhibit was previously put in. This is

DEPUTY McABEE DIR BY MR. SMITH

1 States's Exhibit 13. That's the same area; right? The couch
2 is the left of this picture.

3 A. Yes, sir, it is.

4 Q. This is State's Exhibit 10. This is the couch --

5 THE COURT: You need to give a verbal response.

6 BY MR. SMITH:

7 Q. -- on the left side?

8 A. Yes, sir, that would be the couch that was in the
9 living room, directly in front of the living room.

10 Q. This is already in as well. State's Exhibit 23.
11 The picture on State's Exhibit 10 is of this area behind this
12 couch in between that window?

13 A. That's correct, yes, sir.

14 Q. This is State's Exhibit 8. Does this show both of
15 the items you collected?

16 A. Yes, sir, it does.

17 Q. Two is?

18 A. That is a projectile, piece of a projectile.

19 Q. That's State's Exhibit 9. That's close up of;
20 correct?

21 A. Yes, sir.

22 Q. And this is State's Exhibit 7. Is this the item
23 that you collected?

24 A. Yes, sir, it was.

25 Q. Do you know what that is above that?

DEPUTY MCABEE DIR BY MR. SMITH

1 A. Appears to be damage from a fired projectile.

2 Q. Like a defect from a potential projectile?

3 A. Yes, sir.

4 Q. You collected those three items?

5 A. Yes, sir.

6 Q. I'm going to show you State's 1 through 3 and ask
7 if you can identify what they are.

8 A. This is going to be the fired .40 caliber
9 Winchester cartridge casing found on the living room floor.
10 This is the projectile that was found on the living room floor
11 behind the couch. And this was the projectile that was found
12 on the window sill in the living room.

13 MR. SMITH: Your Honor, at this time we move
14 State's 1 through 3 into evidence.

15 MR. HARRIS: No objection.

16 (STATE EXH. 1, Cartridge, was entered into
17 evidence.)

18 (STATE EXH. 2, Projectile, was entered into
19 evidence.)

20 (STATE EXH. 3, Projectile, was entered into
21 evidence.)

22 THE COURT: Officer, one more time. Can you
23 identified -- can you tell me the number you were identifying.
24 One is State's 1. This State's 2, 3.

25 THE WITNESS: Yes, sir, Your Honor. State's

DEPUTY MCABEE DIR BY MR. SMITH

1 Exhibit 1, that's going to be the fired cartridge casing from
2 the living room floor in front of the fireplace.

3 Exhibit 2 will be the projectile that was found in
4 the living room floor behind the couch.

5 State's Exhibit 3 will be the projectile that was
6 found on the widow sill in the living room.

7 THE COURT: Thank you, sir.

8 BY MR. SMITH:

9 Q. State's exhibits is the same as the Sheriff's
10 Office number in this case?

11 A. Yes, sir.

12 Q. I'll let you hold on to this one. What caliber was
13 the shell casing that you found on the --

14 A. The shell casing?

15 Q. -- by the fireplace?

16 A. It was a .40 caliber shell casing.

17 Q. What about the brand?

18 A. It was a Winchester Smith & Wesson cartridge
19 casing.

20 Q. How do you know that?

21 A. What you do is you take a look, basically, at the
22 head stamped, bottom of the casing. You're able to look at it
23 and tell what brand it is, what caliber it is. That's how
24 you're able to.

25 Q. It has markings on the metal?

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1 A. It does. An impression.

2 Q. Is that essentially -- I know you took other photos
3 of the living room. Is that all the evidence you collected
4 from the living room?

5 A. Yes, sir.

6 Q. Did you continue searching the residence?

7 A. Yes, sir, we did.

8 Q. Tell me about that. Where did you go from the
9 living room?

10 A. From the living room, due to the fact we were
11 looking for possible firearm that was used in the incident, we
12 began to go upstairs to take a look for any possible item that
13 may have been used in the crime. A possible firearm. Once we
14 got up there, one of the areas we went into was a bedroom
15 upstairs.

16 Q. What did you find in that bedroom that was of note
17 to you?

18 A. In that bedroom -- let's see. There was a
19 Springfield gun box that was in a closet in that bedroom. It
20 was, I guess, on the top shelf in that closet. Saw that.

21 There was a .40 caliber Winchester Smith & Wesson
22 round that was in the top left dresser drawer in that bedroom.

23 Q. When you say round, you mean unfired bullet?

24 A. Yes, sir. It would be an unfired round.

25 Also in that same drawer I found a fired cartridge

DEPUTY MCABEE DIR BY MR. SMITH

1 casing, .40 caliber cartridge casing that was in the same
2 drawer.

3 Next to the bed in that bedroom there's a
4 nightstand that was to our left, if you're facing the bed. On
5 the nightstand, on the bottom, there is a drawer that comes
6 out, located a Glock magazine for a .40 caliber, possibly fit a
7 .40 caliber.

8 And on top of that very same nightstand there was
9 also a Springfield magazine that would go for Springfield
10 handgun that I located there as well.

11 Q. You photographed all of these items?

12 A. I did, yes, sir.

13 Q. The round and the casing that you found in the
14 nightstand, are they the same brands and caliber as the one
15 that you had collected outside of the fireplace?

16 MR. HARRIS: Your Honor, I would object unless the
17 witness is qualified to answer in the area of ballistics
18 projectile matching.

19 THE COURT: I'm going to allow him to go forward.
20 He's not being offered as an expert. You can cross-examine him
21 as to that.

22 MR. HARRIS: Thank you, Your Honor.

23 THE WITNESS: .40 caliber Winchester Smith & Wesson
24 that was unfired along with a fired .40 caliber Winchester
25 Smith & Wesson casing in that same drawer.

DEPUTY MCABEE DIR BY MR. SMITH

1 BY MR. SMITH:

2 Q. We're not presenting you as an expert. You're just
3 literally reading what is on the ammunition; correct?

4 A. Absolutely. If it's there on the scene, it's
5 photographed and collected, if needed.

6 Q. Just in going through the bedroom, did you have a
7 belief this was a male or female's room?

8 A. It would be easier to say to presume it was a
9 male's room.

10 Q. You went through the closets and stuff like that?

11 A. Yes, sir.

12 Q. At this time did you know whose room it was?

13 A. No, sir, I did not.

14 Q. I'm going to show you 47 through 52 and ask if you
15 can identify what they are.

16 A. I can.

17 Q. What are they pictures of?

18 A. These would be the pictures of the bedroom that we
19 entered in and photographed the interior of all the way around.
20 This would be the bedroom in which those items were collected.

21 Q. Talking about the Springfield gun box, is that
22 depicted as well?

23 A. Yes, sir.

24 MR. SMITH: Your Honor, at this time move State's
25 47 and 52 into evidence.

DEPUTY MCABEE DIR BY MR. SMITH

1 MR. HARRIS: I object on same grounds previously
2 stated.

3 THE COURT: I'm going to allow them into evidence
4 at this time. That will be 47 to 52.

5 MR. SMITH: Thank you, Your Honor.

6 (STATE EXH. 47, Photograph, was entered into
7 evidence.)

8 (STATE EXH. 48, Photograph, was entered into
9 evidence.)

10 (STATE EXH. 49, Photograph, was entered into
11 evidence.)

12 (STATE EXH. 50, Photograph, was entered into
13 evidence.)

14 (STATE EXH. 51, Photograph, was entered into
15 evidence.)

16 (STATE EXH. 52, Photograph, was entered into
17 evidence.)

18 BY MR. SMITH:

19 Q. This is State's 47. What is this a picture of?

20 A. That would be a picture of the bedroom from the
21 outside looking in.

22 Q. And this is State's 48.

23 A. That photograph, as soon as you step into the room,
24 that is what you would see.

25 Q. I believe you referred to the nightstand on the

DEPUTY MCABEE DIR BY MR. SMITH

1 left is where you recovered items?

2 A. Yes, sir.

3 Q. Is that what you're talking about, this one kind of
4 dead center of the picture?

5 A. Yes, sir, that would be that left nightstand.

6 Q. Do you know what this red item is?

7 A. I don't. I can't recall.

8 Q. This is State's 49. What is this a picture of?

9 A. That would be a picture of the closet. It was a
10 walk-in closet in that bedroom. And that was, as you can see,
11 it had a ton of clothing in it. Mostly men's clothing.

12 Q. This is State's 50. Is that the gun box that you
13 found?

14 A. Yes, sir, it is.

15 Q. Springfield Armory?

16 A. It is.

17 Q. This is State's 51; just a closer up of that?

18 A. Yes, sir.

19 Q. State's 52, is that a picture of the gun box?

20 A. Yes, sir, it is.

21 Q. Did you open it?

22 A. I cannot remember if I opened it or not.

23 Q. Do you think you would have to see if there was a
24 gun inside?

25 A. I would have.

DEPUTY MCABEE DIR BY MR. SMITH

1 Q. Did you collect -- in your entire time at this
2 house, did you collect any pistols, handguns?

3 A. No, sir, I did not. Wait. No handguns were
4 collected. I want to make that clear. No handguns were taken.

5 Q. I'm going to show you State's 53 through 55 and
6 State's 43 and 46 and ask you if you can identify what they
7 are.

8 A. Yes, sir.

9 Q. What are they pictures of?

10 A. These are photographs that were taken in the
11 bedroom. Photographs of the area of that nightstand next to
12 the bed where the drawer was and items that were located in
13 that drawer, items located on that nightstand and also the
14 dresser that's in that bedroom. Drawer in that -- one of the
15 drawers in that dresser.

16 Q. This is State's Exhibit 48 that you're looking at.
17 Is this the dresser you're referring to?

18 A. Yes, sir, it is.

19 Q. I guess to the left when you walk into the bedroom?

20 A. It is. When you walk into the bedroom from that
21 view that you're seeing, from the view that you're seeing, when
22 you walk in, just as soon as you walk in, that dresser is to
23 the immediate left. That dresser and then, of course, the
24 nightstand left of the bed.

25 MR. SMITH: Your Honor, at this time we would move

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1 53 through 55 and 43 and 46 into evidence.

2 MR. HARRIS: I'll need to look at them briefly.

3 MR. SMITH: Yes.

4 MR. HARRIS: May we approach, Your Honor.

5 (Off-the-record discussion.)

6 BY MR. SMITH:

7 Q. One point of clarification. Were these drawers
8 opened when you entered, or did you open them to look inside of
9 them?

10 A. I do not recall them being opened.

11 Q. The pictures that you have are not necessarily the
12 condition that they were in when you entered the room. They
13 are after you have opened things and tried to search?

14 A. Correct. During the search, what we do, we go in.
15 You take a look. And if there's anything of evidentiary value
16 that I see, I don't touch it until it's placard and ready to
17 go.

18 Q. Kind of hard to tell in this picture, in 48. It
19 doesn't look like the drawers are open in the dresser?

20 A. That's correct.

21 Q. These pictures that we're showing are not the
22 condition that you entered. They are simply the contents of
23 both nightstands and a dresser that you searched?

24 A. Correct. Once we go into a room, if we're taking
25 overall photographs, it's not uncommon for those drawers, as

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1 you can see in this photograph, to be closed. And it's not
2 until we begin searching to look for items of evidence that we
3 then begin start with placards. I don't want to forget or none
4 of us want to forget what it is we're collecting and where it's
5 at.

6 MR. SMITH: Your Honor, at this time we would move
7 53 through 55 and 43 and 46 into evidence.

8 MR. HARRIS: Previously stated objections.

9 THE COURT: I believe I did state I'm going to
10 allow those into evidence.

11 MR. SMITH: Thank you, Your Honor.

12 (STATE EXH. 53, Photograph, was entered into
13 evidence.)

14 (STATE EXH. 54, Photograph, was entered into
15 evidence.)

16 (STATE EXH. 55, Photograph, was entered into
17 evidence.)

18 (STATE EXH. 43, Photograph, was entered into
19 evidence.)

20 (STATE EXH. 46, Photograph, was entered into
21 evidence.)

22 BY MR. SMITH:

23 Q. This is State's 53. Is this the nightstand to the
24 left?

25 A. It is. That's the nightstand next to the bed.

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1 Q. It looks like that's a six. This is 54, zoomed in
2 of that picture?

3 A. Yes, sir.

4 Q. What is item six? What did you collect out of the
5 nightstand?

6 A. Item number six, that is an empty Glock .40
7 magazine that would go in a handgun.

8 Q. This is State's 55. Hard to see. Try to get a
9 sweet spot. Is that the --

10 A. That would be the bottom of the magazine, of the
11 Glock magazine found.

12 Q. It says Glock on the bottom; is that correct?
13 That's how you know that?

14 A. Correct, yes, sir.

15 Q. And then 43 and 46, are they from the dresser; is
16 that correct? This is 43.

17 A. Yes, sir, that is correct.

18 Q. What is evidence item number 9 that you collected?

19 A. Evidence item number nine, I believe, was a fired
20 cartridge casing, .40 caliber fired cartridge casing.

21 Q. Right in front of your evidence placard, that
22 brass?

23 A. Yes, sir.

24 Q. And this is State's Exhibit 46. What is item
25 number eight that you collected?

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1 A. Item number eight, I believe that was placard four
2 for photograph purposes, I believe. I'm not sure that anything
3 was collected for that.

4 Q. Did you find anything else of note inside the
5 bedroom other than what we've covered?

6 A. I did, yes, sir. There was a .40 caliber
7 Winchester Smith & Wesson round that was in that top left
8 dresser drawer along with the fired shell casing. That would
9 be it.

10 Q. You found one unfired and one fired; correct?

11 A. Yes, sir, correct.

12 Q. I'm going to show you State's Exhibit 4 and ask if
13 you can tell me what that is.

14 A. State's Exhibit 4, this is going to be the unfired
15 Winchester .40 caliber round, top left drawer in the dresser in
16 that bedroom.

17 MR. SMITH: Your Honor, at this time we move
18 State's Exhibit 4 into evidence.

19 MR. HARRIS: No objection.

20 THE COURT: Without objection.

21 (STATE EXH. 4, Cartridge, was entered into
22 evidence.)

23 BY MR. SMITH:

24 Q. Did you ultimately end up dealing with a gun safe
25 that was found in the house?

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1 A. Yes, sir, I did.

2 Q. Did you have access to that from the homeowner?
3 Was the homeowner present when the search warrant was
4 happening?

5 A. No, sir.

6 Q. Did you have any way of getting into that safe
7 through like a combination?

8 A. No, sir. No, sir, did not.

9 Q. Y'all ended up making entry into that safe?

10 A. Yes, sir, we did.

11 Q. Just sticking to firearm-related things that you
12 found in there, what did you find?

13 A. Found a black CXV Core 15-223 rifle. Had two rifle
14 magazines, they were located inside of it. Some vials of
15 unknown fluid. There were boxes of Winchester .40 caliber
16 rounds. They were also inside and observed. Saw also empty
17 black Glock handgun case. It was located in the safe. Had a
18 red label on it. And it showed Glock .22 Gen4. Had serial
19 number to it. And it was photographed.

20 Q. I'll hand you 42 and 44, 45, 36, 37, 38, 39 and 40
21 and ask if you can tell me what they are.

22 A. Yes, sir.

23 Q. What are these pictures of?

24 A. These are pictures of the safe that was located
25 down in the basement area of the home. And the contents that

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1 were inside of them, inside that safe.

2 Q. Other than the fact the safe has been ripped apart,
3 they fairly and accurately represented what you found inside of
4 that safe?

5 A. Yes, sir.

6 Q. One of them is the condition before the safe was
7 entered?

8 A. Before the safe was entered, it looked to be in
9 fine condition. Really good condition.

10 MR. SMITH: Your Honor, at this time we would move
11 42, 44, 45, and 36 through 40 into evidence.

12 MR. HARRIS: I object. Previously stated grounds.
13 These appear to be pictures primarily of the safe and contents.

14 THE COURT: I'm going to allow them to be admitted.

15 MR. SMITH: Thank you, Your Honor.

16 (STATE EXH. 42, Photograph, was entered into
17 evidence.)

18 (STATE EXH. 44, Photograph, was entered into
19 evidence.)

20 (STATE EXH. 45, Photograph, was entered into
21 evidence.)

22 (STATE EXH. 36, Photograph, was entered into
23 evidence.)

24 (STATE EXH. 37, Photograph, was entered into
25 evidence.)

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1 (STATE EXH. 38, Photograph, was entered into
2 evidence.)

3 (STATE EXH. 39, Photograph, was entered into
4 evidence.)

5 (STATE EXH. 40, Photograph, was entered into
6 evidence.)

7 BY MR. SMITH:

8 Q. This is State's 42. What is this a picture of?

9 A. That would be a picture of a standing safe.

10 Q. This is State's 44. What is this a picture of?

11 A. That's a photograph of the safe once it was forced
12 open. Those were the contents inside the safe.

13 Q. 45, what is that a picture of?

14 A. Photograph of the box of Winchester .40 caliber
15 bullets.

16 Q. All of that you're concluding it's .40 Smith &
17 Wesson and Winchester?

18 MR. HARRIS: Objection.

19 THE COURT: Sustain; rephrase.

20 BY MR. SMITH:

21 Q. How did you conclude these were .40 caliber Smith &
22 Wesson?

23 A. Just by photographing and looking on the box.

24 Q. This is State's 36. What is this a picture of?

25 A. That is a picture of the Glock box, handgun box

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1 that was inside the safe.

2 Q. Do you know what this VAHV796 is?

3 A. In my experience, 16 years of law enforcement, that
4 would indicate to me that is a serial number to a gun that
5 would be sold with that box.

6 Q. 37, what is that a picture of?

7 A. That is a picture of the actual Glock box, handgun
8 box opened.

9 Q. Essentially empty?

10 A. Yes, sir, it's empty.

11 Q. 38, 39 and 40 are those just exterior pictures of
12 the gun box?

13 A. Yes, sir, they are.

14 Q. Did that conclude your involvement? I know you
15 might've photographed other rooms. As far as things that you
16 collected and were relevant to this case, that's the evidence
17 that was collected from the scene?

18 A. Yes, sir, that's correct.

19 Q. You ended up taking swabs off the firearm in this
20 case; right?

21 A. Yes, sir.

22 Q. Do you recall what the serial number was for that
23 firearm that you swabbed?

24 A. I do.

25 Q. What is that?

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1 A. Serial number VAHV796.

2 Q. The one that you ended up swabbing has the same
3 number or serial number as this box; is that correct?

4 A. Yes, sir. Yes, sir.

5 Q. Was it the same type of firearm as well?

6 A. Yes, sir, it was.

7 Q. By that, I mean it's a .40 caliber Glock?

8 A. Correct. Glock 22, .40 caliber.

9 MR. SMITH: Please answer any questions Mr. Harris
10 may have.

11 THE COURT: Ladies and gentlemen, if you would,
12 just stand up and stretch your legs just for a moment while
13 Mr. Harris gets ready.

14 MR. HARRIS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. HARRIS:

17 Q. You have your report you made reference to
18 throughout; is that right?

19 A. Yes, sir.

20 Q. It describes your activities and observing and
21 photographing and ultimately collecting items of evidence for
22 purposes of evidence or potential evidence in this case; is
23 that right?

24 A. Yes, sir.

25 Q. Among the things that you note in your report that

DEPUTY McABEE CROSS BY MR. HARRIS

1 you collected was a single fired .40 caliber Winchester S&W,
2 Smith & Wesson. Is that what that stands for, S&W?

3 A. Yes, sir.

4 Q. .40 caliber Smith & Wesson casing in the living
5 room floor in front of the fireplace; is that correct?

6 A. Yes, sir.

7 Q. You observed, you photographed, and ultimately
8 collected that item?

9 A. Yes, sir.

10 Q. Is it correct that item, what you described as a
11 fired .40 caliber casing, what is now marked as State's Exhibit
12 Number 1?

13 A. Yes, sir.

14 Q. You then state that you collected -- you observed
15 what you described as a small projectile piece located on the
16 living room floor behind the couch, just under the living room
17 window; is that correct?

18 A. That would be correct from memory, yes, sir.

19 Q. Refer to your report if you need to refresh your
20 recollection. I'm on page 2 of the report that I have, the
21 third paragraph.

22 A. That would be correct.

23 Q. For clarity, you stated that you, in addition to
24 what you described as the fired casing, which is now State's
25 Number 1, you observed, photographed, and collected a small

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1 projectile piece, which was located on the living room floor
2 behind the couch, just under the living room window; is that
3 correct?

4 A. Yes, sir.

5 Q. Is it correct that what you've described as a
6 projectile piece is now State's Exhibit Number 2?

7 A. On the floor, yes, sir. Yes, sir.

8 Q. So the projectile piece on the living room floor is
9 now State's Exhibit Number 2; correct?

10 A. Correct, yes, sir.

11 Q. You go on to say that a dry red substance was
12 observed around the area of the window stool where another
13 projectile piece was located in the right corner of that window
14 stool; is that correct?

15 A. Yes, sir, that's correct.

16 Q. You observed that, photographed it, and you
17 collected it?

18 A. Yes, sir.

19 Q. Is it correct that is now what is State's Exhibit
20 Number 3?

21 A. Yes, sir.

22 Q. So in terms of in the living room, you found
23 evidence -- when you say a casing, that is a part of a round of
24 ammunition; is that correct?

25 A. Yes, sir.

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1 Q. The casing which you say is stamped with
2 identifying information, is what is struck by the firing
3 mechanism of a gun to propel the round of ammunition from the
4 gun; is that right?

5 A. Yes, sir.

6 Q. A projectile is the bullet part of the round; is
7 that correct?

8 A. Correct, yes, sir.

9 Q. In this case you didn't find a whole bullet but
10 rather two fragments; correct?

11 A. Yes, sir.

12 Q. Indicating one shot fired, if you have that kind of
13 expertise?

14 A. Only what I can see, yes, sir.

15 Q. You also go on to state that, in the same portion
16 of your report, we're still in the living room, that you
17 observed broken glass throughout the living room. You say:
18 Throughout the living room.

19 You described that around the area of the red
20 substance, the couch and the fireplace, all had broken glass.
21 Do I understand your report to mean -- to say that?

22 A. Yes, sir.

23 Q. So the areas that we've seen variously in the
24 photographs, you would agree do show the living room floor,
25 around the area of the red substance, the couch, and the

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1 fireplace?

2 A. Yes, sir.

3 Q. We've looked at these photographs. We'll see those
4 areas that you're referring to?

5 A. Yes, sir.

6 Q. And you're indicating what you observed was broken
7 glass in all of those areas?

8 A. In portions, yes, sir.

9 Q. You state throughout the living room floor, around
10 the area of the red substance, the couch and the fireplace?

11 A. Yes, sir, it does.

12 Q. You also go on to say that you observed two Bud
13 Light beer bottles, and you state that they were in the living
14 room. Two Bud Light beer bottles were also observed in the
15 living room?

16 A. Yes, sir.

17 Q. And you observed those things, you photographed
18 those things, and you collected those things; is that right?

19 A. Correct, yes, sir.

20 Q. You don't describe the specificity. Do you recall
21 these were 40-ounce beer bottles?

22 A. I can't remember.

23 Q. Don't remember?

24 A. No, sir.

25 Q. When you do the investigative activity that you

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1 described that you did at this location, is it correct when you
2 collect items like cartridge casing, bullet fragment, Bud Light
3 bottles, that you assign each of those things an evidence item
4 number?

5 A. Yes, sir, that would be correct.

6 Q. That's the only way you really can keep up with it;
7 is that right?

8 A. Yes, sir.

9 Q. Is it correct in this case that you assigned or
10 somebody assigned evidence item numbers to the two beer
11 bottles?

12 A. I believe so, yes, sir.

13 Q. I've been provided before the trial of the case, I
14 think, what purports to be a listing of all the items you've
15 collected. And among that listing -- and I can show you this
16 if you would like to see it, is an evidence item number 22,
17 which is B-R-O glass bottle, Bud Light zero.

18 A. And that's number 22?

19 Q. That's according to the list that I've been
20 provided.

21 A. These would be the Bud Light beer bottles from the
22 living room, yes, sir.

23 Q. What does B-R-O glass bottle mean?

24 Would you like to see this? Let me show it to you.
25 This is the listing I've been given under item 22. Do you see

DEPUTY McABEE CROSS BY MR. HARRIS

1 it? It's near the top.

2 A. B-R-O.

3 Q. Do you know what B-R-O is supposed to mean?

4 A. I would think this means broken. I don't think
5 it's broken. I would say that it's brown. I didn't --

6 Q. At least as far as you can testify about it?

7 A. Yes, sir.

8 Q. When the item that you collected was assigned an
9 item number is the way you keep up with things in the Sheriff's
10 Office; right?

11 A. Correct, yes, sir.

12 Q. You describe what you're assigning an item number
13 to in some fashion?

14 A. Yes, sir.

15 Q. The B-R-O glass bottle Bud Light could mean brown.
16 Or it could mean broken; you just don't know?

17 A. No, sir. I would venture to guess brown.

18 Q. So the other bottle was assigned a consecutive item
19 23, evidence item number 23. Same description; right?

20 A. Yes, sir.

21 Q. Isn't it correct that you saw those things, you
22 photographed those things, and you collected those things?

23 A. Yes, sir.

24 Q. We don't have that. We don't have those two
25 bottles as an evidence item here today. As far as you've been

DEPUTY McABEE CROSS BY MR. HARRIS

1 asked about; is that right?

2 A. As far as I know.

3 Q. The physical bottles?

4 A. Yes, sir. As far as I know.

5 Q. You did some further -- it appears to be -- some
6 further examination of those bottles at a later time; is that
7 right?

8 A. Yes, sir, that's correct.

9 Q. As a matter of fact, I've been provided information
10 that says on December 27, 2019, you processed both Bud light
11 beer bottles at the SCSO, Spartanburg County Sheriff's Office;
12 is that correct?

13 A. Is it okay if I get my report?

14 Q. Sure. Let me know when you're ready.

15 A. Yes, sir.

16 Q. 12-27-19, this is your report: I processed both
17 Bud Light beer bottles at the Spartanburg County Sheriff's
18 Office crime lab for latent prints. The latent prints meaning
19 fingerprints or handprints or palm prints?

20 A. Yes, sir.

21 Q. You state on the first collected bottle, which is
22 evidence item number 22, that's the B-R-O --

23 A. Yes, sir.

24 Q. -- bottle. I located three prints. Those prints
25 were labeled, photographed, lifted, and collected?

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1 A. Yes, sir.

2 Q. You go further to say: A few hours later -- which
3 actually turned into the next day, December 28, 2019 -- I
4 processed the second collected bottle, evidence item number 23,
5 for latent prints. I located seven prints. These prints were
6 labeled, photographed, lifted, and collected; is that correct?

7 A. Yes, sir.

8 Q. Bottles were placed back into evidence. And I
9 guess you entered, meaning you made some kind of documentation
10 that you had put them back into some secure evidence area?

11 A. Yes, sir.

12 Q. That you were going to submit the prints for
13 identification and testing?

14 A. Yes, sir.

15 Q. AFIS is a database; is that right?

16 A. Yes, sir.

17 Q. And you entered photographs. You say: Photographs
18 taken were entered into Spellman. What are these photographs
19 you're referring to in this report about the prints?

20 A. Photographs taken would've been -- I don't have the
21 photographs with me at this time. Photographs -- if I'm taking
22 any kind of fingerprints from anything collected on scene, it
23 would be of the actual item that was collected, where the
24 prints are collected. And the print tape labeled prior to me
25 putting that actual piece of tape on the back of a card backing

DEPUTY McABEE CROSS BY MR. HARRIS

1 to show the evidence once powder has been on it to lift the
2 fingerprint.

3 Q. All of those things are saved?

4 A. Yes, sir.

5 Q. For documentation purposes?

6 A. Yes, sir.

7 Q. And do you know, just asking if you know, do you
8 know whether or not the prints that you collected were
9 submitted for processing?

10 A. My understanding, yes, sir.

11 Q. Do you know the results?

12 A. I do not, no, sir. I can't testify to that.

13 Q. The photographs that you described, they haven't
14 been shown to you today; is that right, on the stand?

15 A. No, sir.

16 Q. The bottles have not been brought in for you to
17 identify --

18 A. No, sir. Not that I've seen, no, sir.

19 Q. -- on the stand?

20 A. No, sir.

21 MR. HARRIS: Thank you. Nothing further.

22 THE COURT: Any redirect limited to what he went
23 into?

24 MR. SMITH: Yes, sir. Get these marked.

25 (STATE EXH. 56, Bottle, was marked for

DEP. MCABEE REDIR BY MR. SMITH

1 identification.)

2 (STATE EXH. 57, Bottle, was marked for
3 identification.)

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q. Can you identify what State's Exhibit 56 and 57
7 are?

8 A. Yes, sir. Item 56 is Bud Light beer bottle. It
9 was collected to be processed for a later date. That was from
10 the living room.

11 Exhibit 57 is a Bud Light beer bottle that was to
12 be processed for latent prints and also from the living room.

13 Q. Do you know which one was on the stairs and which
14 one was underneath the ottoman? I think you said is where it
15 was recovered.

16 A. I do. State's Exhibit 56 would be the beer bottle
17 that was found on the living room stairs. And 57 would've been
18 the beer bottle under the couch on the living room floor.

19 MR. SMITH: Your Honor, at this time we move 56 and
20 57 into evidence.

21 MR. HARRIS: I think I have to actually see the
22 evidence items.

23 (Witness opening evidence bags).

24 MR. SMITH: We ask to move State's 56 and 57 into
25 evidence.

DEP. MCABEE REDIR BY MR. SMITH

1 MR. HARRIS: No objection.

2 THE COURT: Without objection.

3 (STATE EXH. 56, Bottle, was entered into evidence.)

4 (STATE EXH. 57, Bottle, was entered into evidence.)

5 BY MR. SMITH:

6 Q. Can you tell the jury whether they're broken or
7 not.

8 A. Item 56 is not broken. Item number 57 is not
9 broken.

10 Q. Have they been opened?

11 A. They have been opened.

12 Q. At this point there's no liquid in them anymore?

13 A. No, sir, no liquids.

14 Q. Do you remember if there was when you collected
15 them?

16 A. I can't recall honestly. I can't. They were there
17 on the floor.

18 Q. How would you collect something that is open and
19 has liquid? What would you do out of curiosity?

20 A. You would literally dump out the contents. You
21 make sure it's clear. If you want to process it, if there's
22 any moisture to it or if it's damp, it's literally like taking
23 dirt and water, putting it on something, smearing mud on it.
24 You wouldn't get any prints.

25 Q. Condensation would be an issue?

DEPUTY MCABEE RECROSS BY MR. HARRIS

1 A. Correct, any kind of moisture.

2 Q. You would have to let it dry and do the processing?

3 A. Yes, sir.

4 MR. SMITH: I don't have anything further. Thank
5 you.

6 THE COURT: Any redirect?

7 RECROSS-EXAMINATION

8 BY MR. HARRIS:

9 Q. Having now looked at the bottles, you stated they
10 are not broken, would you say they are brown in color?

11 A. Yes, sir.

12 Q. You would say they're brown in color?

13 A. Yes, sir.

14 MR. HARRIS: Thank you. Nothing further.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. SMITH:

17 Q. Did you generate that B-R-O? I think he's reading
18 something off of Spellman. Is that an entry that you
19 generated?

20 A. It's hard to say right now. If I entered it into
21 Spellman, normally what they do, they want a description of
22 certain items that you enter, quantity, what the item is.
23 Sometimes they do ask for the color. So if I'm entering it
24 into Spellman, the item, each individual item we collect, we
25 put in Spellman. A color is often given. We have to enter the

DEPUTY MCABEE REDIR BY MR. SMITH

1 color.

2 Q. You don't know independently if you created that
3 B-R-O?

4 A. No, sir, I do not.

5 Q. These are unbroken bottles and they're Bud Light.
6 One point of clarification. He asked if they are large.
7 They're not like 12-ounce bottles; correct?

8 A. No, sir, these were larger. That's what they would
9 call 40. 40-ounce bottles.

10 MR. SMITH: I don't have anything further.

11 MR. HARRIS: Nothing else, Your Honor.

12 THE COURT: Ladies and gentlemen, we're going to
13 take a short recess. Remind you of my two ongoing
14 instructions. No discussions among yourselves about anything
15 involving the case, and we'll get you back just shortly. You
16 may go with the bailiff.

17 (The jury exited the courtroom at 11:41 a.m.)

18 THE COURT: Thank you, sir. You may step down.
19 Watch your step as you're stepping.

20 Any reason why the witness cannot be excused?

21 MR. SMITH: No, Your Honor.

22 MR. HARRIS: No, Your Honor.

23 THE COURT: Thank you, sir. You may be excused as
24 well.

25 (The witness exited the stand.)

DEPUTY HORTON DIR BY MR. SMITH

1 THE COURT: Lawyers approach a moment.

2 (Off-the-record discussion.)

3 (A recess transpired from 11:43 a.m. until 11:54

4 a.m.)

5 THE COURT: Anything before we bring the jury back

6 in?

7 MR. SMITH: No.

8 MR. HARRIS: No.

9 (The jury entered the courtroom at 11:55 a.m.)

10 THE COURT: State ready to call their next witness?

11 MR. SMITH: Yes, Your Honor. State calls

12 Investigator Justin Horton.

13 THE COURT: Come right up here and let the clerk of

14 court swear you in.

15 INV. JUSTIN HORTON

16 being first duly sworn, testified as follows:

17 THE COURT: Sir, be careful. Step up and have a

18 seat in the chair and please pull the chair up to the

19 microphone. If you have to move the microphone, do it gently.

20 It's very old and breaks.

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q. Will you please state your name and rank for the

24 jury.

25 A. Investigator Justin Horton, Spartanburg County

DEPUTY HORTON DIR BY MR. SMITH

1 Sheriff's Office.

2 Q. How long have you been with Spartanburg County?

3 A. Fifteen years.

4 Q. How long have you been an investigator with
5 Spartanburg County?

6 A. Ten of those years.

7 Q. Were you working in violent crimes back in
8 Christmas of 2019?

9 A. Yes, sir, I was.

10 Q. As an investigator, can you explain what your role
11 is versus uniformed patrol officer.

12 A. As an investigator, you are responding to the scene
13 after the fact of the incident, which the uniform patrol guys
14 receive a call for service through the dispatch. Being
15 assigned violent crimes and homicide, obviously, once deputies
16 respond on the scenes to those type of incidents, then they
17 would request our assistance to further the investigation.

18 Q. You get involved in cases that, perhaps, uniform
19 patrol cannot handle themselves? More complicated matters?

20 A. Being more complicated and more time. They're more
21 call oriented to where they have to answer the calls for
22 service to the community where we have more time to look
23 into -- investigate cases further than what they can take.

24 Q. This happened around 2:00 in the morning on
25 Christmas Day. Were you on-call? Is that how it works?

DEPUTY HORTON DIR BY MR. SMITH

1 A. Yes, sir. Usually investigators are assigned to
2 on-call. For after hours you would receive a call from the
3 road supervisor, giving you a synopsis of what happened and
4 telling you where they needed your assistance.

5 Q. You just drew the short straw this evening I guess?

6 A. Yes, on Christmas.

7 Q. What did you do initially in this case?

8 A. So I received a phone call from, at that time, for
9 Sergeant Walsh about the shooting at 129 Colfax Drive in
10 Boiling Springs. Sergeant Walsh gave me a brief synopsis of
11 what they had received through the 911 call or what they had
12 encountered once they got on scene.

13 At that time I got the address and responded down
14 to the scene. At that time I was informed that they had a
15 gunshot victim who was being transported to the hospital of
16 Spartanburg Regional. I responded out to the scene at that
17 time to make further contact with the deputies on the scene.

18 Q. When you got there, who else was in the home other
19 than law enforcement people?

20 A. Other than law enforcement, just Ms. Judith. She
21 was the only one present at the residence.

22 Q. Did you speak with her?

23 A. At that time I believe, if I recall, she was in one
24 of the vehicles. Spoke with her briefly. She was still,
25 obviously, rightfully so, distraught, had said some similar

DEPUTY HORTON DIR BY MR. SMITH

1 things she had told deputies before, about she thought she
2 heard a noise and heard this. She didn't know who shot him or
3 if he did it or whatnot. At that time she was going to be
4 transported to the Sheriff's Office to speak with Sergeant
5 Norris back there. And I was securing the scene and getting
6 ready to get a search warrant for the residence.

7 Q. After speaking with her, you did not have an
8 understanding of what had happened?

9 A. No. After speaking with her for the brief seconds
10 before she was transported to the Sheriff's Office, I didn't
11 gain any further knowledge than what the deputies had advised
12 me prior to my arrival.

13 Q. Did you end up going inside the residence?

14 A. Yes. Usually what we'll do, once the residence is
15 secure -- secure means that put up crime scene, don't allow any
16 people in or out, crime scene log established, who comes and
17 goes from the crime scene.

18 Got a visual look of a scene to see what we were
19 working with. Looked at the scene. Speaking with the
20 deputies. And then once that information was gathered enough,
21 to go type a search warrant. I went back to the Sheriff's
22 Office and typed a search warrant for the residence.

23 Q. Can you talk generally how you approach a case like
24 this. How do you start get going in a direction? How do you
25 process?

DEPUTY HORTON DIR BY MR. SMITH

1 A. Obviously, the crime in which we're investigating
2 is obvious in the realm of, in this particular case, we have a
3 victim with a gunshot wound. It's our responsibility to
4 determine the cause or who or how and why was this inflicted,
5 self-inflicted or this harm caused at the hands of another, how
6 do we need to go about finding the information to get that.

7 Obviously, with it being -- with the information
8 that we have or the lack of information that we have at this
9 time, we don't know who shot him. So with that being said, we
10 have to recover the evidence in which we have already visually
11 seen from being called for service out there.

12 In order to do that, we have to obtain a search
13 warrant. And the search warrant that we wrote for the
14 residence would be to collect items relevant to this
15 investigation, i.e. the spent shell casings, any type of
16 firearm, blood splatter photographs, you know, DNA for
17 something that would help identify, one, the person that did it
18 and then also, two, to score prosecution at a later time.

19 Q. You made contact with Judith. She gets sent to the
20 Sheriff's Office. Do you know who ends up talking with her at
21 the Sheriff's Office?

22 A. Yes, sir. Sergeant Norris is the one that met her
23 down there and spoke with her.

24 Q. Are you and Sergeant Norris in ongoing
25 communication as this is going on?

DEPUTY HORTON DIR BY MR. SMITH

1 A. The way that -- at least at that time, the
2 investigation within the violent crime division, the person
3 on-call gets the initial phone call. Once they determine what
4 type of crime it is, obviously a crime that's going to take
5 more than one person to do, what we call the backup, that team
6 will come in. Then we'll work together to accomplish the task.

7 At that time I was speaking with Sergeant Norris.
8 He met her at the Sheriff's Office to get her statement or try
9 to get further information about what happened. And at that
10 time, he and I were talking back and forth on the phone.

11 Also, at the same time, I went back to our office,
12 which is in the same area that he was speaking with her, to
13 conduct -- to type the search warrant.

14 Q. Did Sergeant Norris relay any information from that
15 interview that was useful to you?

16 A. That somebody else did shoot her -- I apologize --
17 shoot him. I would have to go back and look to exactly what
18 Sergeant Norris had said. At first I remember documenting that
19 she didn't tell him anything; that he was shot was the initial
20 statement. She wanted to go see her son, those type of things.

21 Did not provide him with who shot Bryant. And then
22 at that time, as Deputy McAbee stated, he also responded to the
23 Sheriff's Office to photograph her. And at that time we
24 allowed her to go to the hospital to meet.

25 Q. During that conversation, you did not get the name

DEPUTY HORTON DIR BY MR. SMITH

1 Jorge Rodriguez?

2 A. No, sir. No, sir.

3 Q. So y'all let her go to the hospital; is that
4 correct?

5 A. Yes, sir.

6 Q. And you begin the search warrant. And I believe,
7 did you find some safes inside the house?

8 A. Yes, sir.

9 Q. Other than the one we've looked at?

10 A. Yes. Obviously, at the time of day and with it
11 being a holiday, I had to meet the judge that was on-call to
12 obtain a search warrant. So I went and met the judge, got the
13 search warrant issued and then responded back to the residence
14 where the search warrant was turned over to Doug McAbee. He
15 would complete the return, complete the search warrant.

16 During searching that residence, I think we found
17 actually couple safes. And in doing so and, obviously, out of
18 the respect of the homeowners and the family, our intention is
19 not to dismantle anybody's personal property; if there's going
20 to be a key or combination or something along those lines can
21 be given to gain access. Obviously, we're looking in those
22 things because we're searching for things that could commit a
23 crime, which is a firearm.

24 Obviously, these safes did hold a handgun. These
25 safes could hold other ammunition that would match up to the

DEPUTY HORTON DIR BY MR. SMITH

1 spent casings that were recovered, you know, in the floor
2 within the living room.

3 So at that time, I went back to the hospital and
4 met with Ms. Judith to try to see if she could provide us with
5 the combinations to the safe. At that time she wasn't
6 comfortable with giving those combinations. She was willing to
7 come back to the residence and unlock the one that she did know
8 the combinations to or had a key for.

9 Q. Did she open all of them other than the one that we
10 previously testified about? That the fire department had to
11 open?

12 A. Yes. She opened the one. I believe there was one
13 in her room that she opened and another one that she was able
14 to have access to.

15 Q. Is it that she refused to open or she didn't know
16 how to open the other one?

17 A. To my knowledge and my recollection she didn't have
18 the ability to open it.

19 Q. She was being generally cooperative?

20 A. Yes, yes, she was being cooperative.

21 Q. In your paragraph where you talk about searching
22 the residence, did you become or did you have a suspicion that
23 there was another individual that had lived in this residence?

24 MR. HARRIS: Objection; leading.

25 THE COURT: You want to rephrase the question.

DEPUTY HORTON DIR BY MR. SMITH

1 BY MR. SMITH:

2 Q. Did you search throughout the entire house?

3 A. Yes.

4 Q. Did you find a bedroom that appeared occupied to
5 you?

6 A. Yes. The bedroom upstairs appeared to be occupied
7 by a male subject based on the clothing, based on other things
8 in the residence. I believe there was an open Christmas
9 present on the bed.

10 Q. I'm going to show you State's 48.

11 A. Yes, sir.

12 Q. Is that, that red item, is that the Christmas
13 present?

14 A. Yes, sir.

15 Q. Did it have a name on it? Were you able to figure
16 out whose room this might be?

17 A. I believe it had Jorge's name on it.

18 Q. Had Judith mentioned to you that Jorge lived there
19 when you spoke with her?

20 A. No.

21 Q. Was Jorge -- he was not at the scene?

22 A. No.

23 Q. Did you pass this information along to Sergeant
24 Norris?

25 A. Yeah. Sergeant Norris and I both were working

DEPUTY HORTON DIR BY MR. SMITH

1 together in the same location at this point.

2 Q. At some point did Judith ask to take a nap,
3 basically?

4 A. Yes. So obviously she has a larger residence.
5 During the search we had brought her back to open up the safe.
6 We had searched her room. There's nothing in her room of any
7 evidentiary value for this investigation. And she obviously
8 had a traumatic event that had happened and was tired. So we
9 allowed her at that time, we had no objection to her laying
10 down and resting while we completed gathering all of the
11 evidence that we needed for the case.

12 Q. Did you ask her at that time about where Jorge was?

13 A. I had asked her prior to before she came back to
14 the residence to open up the safes and about Jorge and about,
15 you know, was he the one that did it. She denied it at that
16 point.

17 Q. Once Judith goes to sleep, what did you do to
18 continue to investigate the case?

19 A. She had spoken with us earlier, spoken to Sergeant
20 Norris. As we completed the search warrant and all the
21 information that we were going to gather from the residence
22 within, we attempted to canvass the neighborhood, that being
23 speaking with neighbors, looking for surveillance cameras,
24 people's surveillance cameras outside. Was able to locate
25 several.

DEPUTY HORTON DIR BY MR. SMITH

1 Speaking with those homeowners, couple of them
2 obviously didn't pick up any kind of information that was
3 useful or it was on a time delay. It was too late. We did
4 have one of the neighbors in the neighborhood, their cameras
5 did pick up a white vehicle leaving the road, coming from the
6 direction of the residence in question.

7 And that was a white sedan-style vehicle, which was
8 consistent with Jorge's vehicle that he was later apprehended
9 in.

10 Q. Did you talk to a man named Bosch John Orlack?

11 A. Yes. His name was provided by the mother, Judith,
12 in regards to one of the ex-husbands, I believe, is how she
13 labeled that relationship. He was the one that was said to
14 come over and eat dinner and had a few drinks. We located him
15 to corroborate that portion of the story. Spoke with him at
16 his residence.

17 He did state that he went over, they ate supper.
18 Had a few drinks of wine. Stayed for a little while and then
19 he left. I believe he had stated there was no one at the
20 residence while he was home. Also spoke with Nicholas over the
21 telephone.

22 Q. That's her other son?

23 A. Yes. From my understanding he's the oldest of the
24 three. He responded --

25 MR. HARRIS: Objection to hearsay.

DEPUTY HORTON DIR BY MR. SMITH

1 THE COURT: Sustain the objection.

2 BY MR. SMITH:

3 Q. You spoke with Nicholas?

4 A. Yes, spoke with him on the telephone. He came to
5 the Sheriff's Office and provided -- yes, he had been at the
6 residence.

7 MR. HARRIS: Object to hearsay.

8 THE COURT: I'll sustain the objection.

9 MR. SMITH: He's going to testify. You don't have
10 to say what he said.

11 THE WITNESS: I spoke with him about his
12 involvement.

13 BY MR. SMITH:

14 Q. He provided information to y'all?

15 A. Yes.

16 Q. Did you attempt to contact Jorge Rodriguez?

17 A. I did. I attempted to contact him. It appeared
18 the telephone had been turned off.

19 Q. What gave you that indication?

20 A. Called his cell phone number that we had or was
21 provided to us through the investigation. And I believe it
22 went straight to voice mail.

23 Q. That could be the phone is dead, too; is that
24 correct?

25 A. It could be dead. Just cut off or just in an area

DEPUTY HORTON DIR BY MR. SMITH

1 where there's no service. So just based on face value, I would
2 say it was turned off.

3 Q. You were unable to speak with him?

4 A. Yes, sir.

5 Q. He did not call you back?

6 A. No, sir, he did not attempt to contact us.

7 Q. This is all occurring on Christmas; correct?

8 A. Yes.

9 Q. This is still the same day?

10 A. Yes. Yes, sir, this is all the same day.

11 Q. Were you later contacted by Judith?

12 A. I believe she contacted Sergeant Norris. We were
13 at the Sheriff's Office working on paperwork, working on typing
14 up reports and things along those lines. And she contacted us.

15 What you would say, I'm paraphrasing: I'm up now,
16 I want to tell you guys what happened.

17 And so at that time while Sergeant Norris was
18 speaking with her, he advised we was going to come back out to
19 the residence and let her provide a statement. Now she wanted
20 to be more truthful.

21 Q. You-all ended up responding out to 128 Colfax?

22 A. Yes. We went out to the residence to speak with
23 her, made contact with her and went into the kitchen area. Sat
24 at the breakfast table and allowed her to tell us again a
25 little bit better detail of what happened.

DEPUTY HORTON DIR BY MR. SMITH

1 Q. Can you describe what her demeanor was at this time
2 as opposed to your earlier interaction with her?

3 A. Yes. Obviously she had some time to rest and to
4 collect her thoughts. Still upset, obviously, due to the
5 nature of what had happened and her son being shot. But she
6 was able to carry on an intelligent conversation, was able to
7 communicate with us and understood everything that we were
8 saying. We understood everything she was saying.

9 Q. Was she able to give you details of who came to and
10 from the house?

11 A. Yes. She was able to give us a pretty good time
12 line when Nicholas and them came over, when her ex-husband came
13 over, when Bryant had arrived and what he arrived in and, you
14 know, things that she said to him about conversations that they
15 had. It was fairly detailed.

16 Q. She didn't have any random gaps in her recollection
17 of the previous night? She gave you a full accounting?

18 A. It appeared based off the information that we had
19 known at the time, information that she was giving was pretty
20 accurate timeline from, I would say, roughly, guesstimating,
21 you know, later afternoon to obviously the early morning hours
22 when EMS arrived or 911 was called.

23 Q. What did you do immediately after speaking to her?

24 A. After she gave her recorded statement --

25 Q. Yes.

DEPUTY HORTON DIR BY MR. SMITH

1 A. -- to us at the residence and kind of gave us, she
2 gave us a layout where people were standing. This person did
3 this and this is how the crime unfolded. After that
4 information was given to us, we went and provided that
5 statement and that information to the judge and warrants were
6 issued for the Defendant.

7 Q. You're in the residence. Did y'all actually go
8 into the living room and talk about the dynamics of how it
9 occurred?

10 A. I know that everybody has seen the pictures. When
11 you're coming in, you have the living room, foyer area. To the
12 right where the kitchen area is, we were sitting at kind of
13 like a breakfast table, smaller table.

14 As she's describing how this incident unfolded, at
15 that time we get up and go into the living room towards where
16 she can point out who was standing where and what was going on.
17 And at that time she was able to say Bryant was here. Jorge
18 was here. I was in this area, kind of role played it out.

19 Q. As opposed to the courtroom, looking at pictures,
20 she's literally in the scene and had full opportunity to
21 describe to you what had occurred?

22 A. Yes.

23 Q. Did she mention being attacked by a beer bottle?

24 A. No.

25 Q. At that time did she mention to you if she had

DEPUTY HORTON DIR BY MR. SMITH

1 talked to Jorge or not?

2 A. I think she did state -- I would have to go back
3 and look. I think she did state that she had called him and
4 told him, you know: Hey, I know what you've done. That he was
5 acting like he didn't know what had happened. Goes on to hang
6 up the telephone on her saying, you know, just kind of distance
7 himself from that incident.

8 Q. At that time he was not wanted. It's not like she
9 told you?

10 A. No, there wasn't any -- at that time until after we
11 left the residence, after she initiated contact with us and she
12 provided her, I guess, more official truthful statement,
13 warrants weren't issue until after that fact.

14 Q. That conversation was about 18 minutes long at the
15 house?

16 A. Roughly.

17 Q. Immediate thing you did after talking with her was
18 getting attempted murder warrant?

19 A. Yes, sir.

20 Q. Once you have the warrant, what do you do from that
21 point forward as far as --

22 A. We got the warrant signed. And then, due to the
23 nature of the crime, being attempted murder, at this point,
24 obviously, we still don't know if it's going to be escalated up
25 to murder based off the severity of the wounds. We began to

DEPUTY HORTON DIR BY MR. SMITH

1 ping the Defendant's phone in order to try to locate and
2 apprehend him. Sergeant Norris contacted his cell phone
3 provider of his cellular device. And we submitted paperwork to
4 start that process and started receiving those pings in order
5 to attempt to locate him.

6 Q. Is this something that you can do once warrants are
7 signed for somebody?

8 A. There's different rules and regulations for
9 different things. Obviously with this type of case, yes, it
10 helps to be able to get an emergency ping of his phone based
11 off the warrant that was issued for him and potential danger to
12 society.

13 Q. Where did you start getting pings?

14 A. Once we started getting them, we have to go back
15 and really look at them. They were around the Pelham Medical
16 Center area, which is off Highway 14, at the
17 Greenville/Spartanburg County line in Greer city.

18 Q. So did y'all begin to concentrate your search in
19 that area?

20 A. Yes. The way the pings, they come in, obviously,
21 through your e-mail or whatever system is set up. And then we
22 will map them on a Google Earth, for say. Let's use that for
23 an instance.

24 MR. HARRIS: Your Honor, may we approach?

25 THE COURT: Yes, sir.

DEPUTY HORTON DIR BY MR. SMITH

1 (Off-the-record discussion.)

2 BY MR. SMITH:

3 Q. You had -- did you have a vehicle that could be
4 connected, a description of the vehicle that could be connected
5 to Mr. Rodriguez?

6 A. Yes.

7 Q. Did you begin to concentrate your search in the
8 area that the pings had come?

9 A. Yes.

10 Q. Were y'all eventually able to locate that vehicle?

11 A. Yes.

12 Q. Where was that vehicle located?

13 A. It was located at the address -- give me two
14 seconds to look back through. It was located at the address in
15 Greer.

16 Q. Maybe the second paragraph of December 26th entry.

17 A. Yes, sir. That's 726 Dutchman Court, Greer, South
18 Carolina, in the city limits of Greer.

19 Q. Not you specifically, some officer found what they
20 thought was the vehicle?

21 A. Yes.

22 Q. What do y'all do at that point?

23 A. At that point, we -- it is a subdivision area, if I
24 recall correctly. That was a cul-de-sac area of that road. We
25 met back up at the playground park area for this subdivision

DEPUTY HORTON DIR BY MR. SMITH

1 and requested additional units to go attempt to apprehend him.

2 Q. This was in the City of Greer as well. Did you
3 contact them?

4 A. Yes. Two Greer city officers responded to the
5 scene. A couple of our road deputies and warrant officer guys
6 responded with us. And Greer had access to a drone within
7 their unit. The drone was deployed to watch the residence
8 while we waited on other backup units to get there.

9 In doing so, while the drone was deployed, we did
10 see some movement and activity outside the residence at that
11 time. Units moved in and took Jorge into custody.

12 Q. That happened without incident?

13 A. Without incident.

14 Q. This was on December 26th?

15 A. Yes, sir.

16 (STATE EXH. 33, Photograph, was marked for
17 identification.)

18 BY MR. SMITH:

19 Q. I'm going to show you State's 33, ask if you could
20 tell me what this is.

21 A. It is a MapQuest or Google map of directions from
22 the incident location to the 726 Dutchman Court where he was
23 apprehended at.

24 MR. SMITH: Your Honor, at this time we move
25 State's 33 into evidence.

DEPUTY HORTON DIR BY MR. SMITH

1 MR. HARRIS: No objection.

2 THE COURT: Without objection.

3 (STATE EXH. 33, Photograph, was entered into
4 evidence.)

5 BY MR. SMITH:

6 Q. Do you know roughly what the distance between these
7 locations are?

8 A. No. I would say it's a good 25, 20 miles, 30
9 miles. That's just a guesstimate.

10 THE COURT: I'm sorry. I didn't hear the response.

11 THE WITNESS: I was guesstimating when I say 20, 30
12 miles away.

13 THE COURT: Thank you.

14 THE WITNESS: It's not down the street. It's on
15 the opposite side of the county.

16 BY MR. SMITH:

17 Q. Did you talk with Wilson Gomez?

18 A. I personally did not.

19 Q. Did you-all figure that was his house? Did you
20 know that?

21 A. I'm not sure exactly. Not at that initial time.
22 We did not have the connection between them or at least I did
23 not.

24 Q. Did y'all generate a lead about where the weapon
25 may be as a result of that?

DEPUTY HORTON DIR BY MR. SMITH

1 A. Yes. Through the apprehension, that was where that
2 information was gathered. I think it was provided to Sergeant
3 Norris at the time of Jorge's arrest.

4 Q. You have a note about -- did an investigator get
5 sent out to that location?

6 A. I believe Investigator Bennett got sent out to 3748
7 Old Furnace Road in Chesnee in an attempt to locate that
8 firearm.

9 Q. And the firearm was located?

10 A. Yes.

11 Q. Samantha Hayes, I think, testified about collecting
12 that. I'm going to show you State's Exhibit 34, ask if you can
13 identify what this is.

14 A. Yes. That's another map direction from the
15 incident location to the location in which the firearm was
16 recovered.

17 MR. SMITH: Your Honor, at this time we move
18 State's Exhibit 34 into evidence.

19 MR. HARRIS: No objection.

20 THE COURT: Without objection.

21 (STATE EXH. 34, Photograph, was entered into
22 evidence.)

23 BY MR. SMITH:

24 Q. I know this is -- is this in the opposite direction
25 of where the Greer address is?

DEPUTY HORTON CROSS BY MR. HARRIS

1 A. Yes.

2 Q. This is what? Northeast of the incident location?

3 A. Yes.

4 Q. And Greer is southwest?

5 A. If we took the actual incident location is like the
6 zero, it's going to be northeast where the gun was recovered
7 at. Then I would say southwest, the opposite direction would
8 be where he was later apprehended.

9 Q. Did that conclude your involvement in this case?

10 A. Yes.

11 MR. SMITH: Please answer any questions Mr. Harris
12 may have.

13 CROSS-EXAMINATION

14 BY MR. HARRIS:

15 Q. Is it correct that, at the beginning stages of your
16 involvement here as you've stated, you were the on-call
17 investigator on this particular date and time?

18 A. Yes, sir.

19 Q. You were aware that a search warrant was fairly
20 quickly generated to conduct a search of the Colfax residence?

21 A. Yes, sir, I talked to him.

22 Q. That was you?

23 A. Yes, sir, that was me.

24 Q. You're aware, as a result of the search warrant
25 that was obtained and the search you had authorized, what was

DEPUTY HORTON CROSS BY MR. HARRIS

1 generated among other things was State's Exhibit 57 and State's
2 Exhibit 56?

3 A. Yes, sir.

4 Q. Two beer bottles?

5 A. Yes, sir.

6 Q. Have you seen these beer bottles?

7 A. Not here today.

8 Q. You've seen them before?

9 A. At the scene, yes, sir.

10 Q. I just ask you to open -- it's already been
11 unsealed -- State's Exhibit 57. And let's see that bottle. If
12 you can identify it. Pull it out.

13 A. I would prefer not to with it being covered in
14 fingerprint dust and other objects without having gloves.

15 THE COURT: We have gloves.

16 MR. HARRIS: We'll get you some.

17 BY MR. HARRIS:

18 Q. I wasn't meaning to try to put you in harm's way.

19 A. No, no. You're good.

20 Q. The bottle itself, is the bottle you've seen at
21 some point during your investigation?

22 A. Yes, sir.

23 Q. The bottle itself does not have any, would you
24 agree, does not appear to have any identifying labels or
25 stickers or anything that have to do with the investigation?

DEPUTY HORTON CROSS BY MR. HARRIS

1 A. As in I'm not --

2 Q. Evidence tags, evidence item number.

3 A. Well, the way that standard operating procedure
4 would be, I don't know they would put anything on the actual
5 physical thing.

6 Q. I am not saying it should be. I'm just asking you.

7 A. No, sir.

8 Q. That's obviously a 40-ounce empty bottle of Bud
9 Light?

10 A. Yes, sir.

11 Q. Two of those were found in the living room?

12 A. I believe there was, if I recall correctly, I would
13 have to go back and look through the pictures. I believe one
14 was found in the living room near where the body of the victim
15 was lying. And I think the other one was actually over by the
16 stairs, if I recall correctly.

17 Q. Those are things that Officer McAbee testified to?

18 A. Yes.

19 Q. He was the main one collecting these items?

20 A. Yes.

21 MR. HARRIS: Thank you, sir. No further questions.

22 THE COURT: Any redirect limited to what he went
23 into?

24 MR. SMITH: No, sir.

25 THE COURT: While you got the gloves on, would you

DEPUTY HORTON CROSS BY MR. HARRIS

1 put it back in the bag.

2 THE WITNESS: Yes, sir.

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

4 Watch your step as you're stepping.

5 (The witness exited the stand.)

6 THE COURT: Ladies and gentlemen, we're going to
7 take a lunch break now. Thank you for your attention. Thank
8 you for your efforts this morning. Again, the two ongoing
9 instructions: Do not do any type of independent research or
10 investigation in anything involving the trial. Also, do not
11 have any discussions among yourselves or with anyone else
12 involved in the case.

13 Taking a look at the clock on the wall, it's 12:30.
14 I'm going to ask that you be back in the jury deliberation room
15 by 2:00. And we will resume with the trial of the case. You
16 may go with the bailiff. Thank you very much.

17 (The jury exited the courtroom at 12:30 p.m.)

18 THE COURT: Anything before we step down?

19 MR. SMITH: No, Your Honor.

20 MR. HARRIS: No, Your Honor.

21 THE COURT: Thank you very much. See you at 2:00
22 p.m.

23 (A luncheon recess transpired from 12:30 p.m. until
24 2:00 p.m.)

25 (The jury entered the courtroom at 2:00 p.m.)

DEP PAUL NORRIS DIR BY MR. SMITH

1 THE COURT: Is the State ready to call their next
2 witness?

3 MR. SMITH: Yes, Your Honor. The State calls
4 Investigator Paul Norris.

5 THE COURT: Just come right up here. Let the clerk
6 of court swear you in.

7 THE CLERK: Place your left hand on the Bible,
8 raise your right.

9 INVESTIGATOR PAUL NORRIS
10 being first duly sworn, testified as follows:

11 THE COURT: Watch your step. Step up and have a
12 seat in the chair and pull the chair up to the microphone, if
13 you would.

14 DIRECT EXAMINATION

15 BY MR. SMITH:

16 Q. Will you please state your name and rank for the
17 jury.

18 A. Paul Norris. I'm supervisor with Spartanburg
19 County Sheriff's Office. I'm a sergeant.

20 Q. Are you the sergeant for violent crimes at this
21 point?

22 A. Yes, I'm the first sergeant over the lieutenant.

23 Q. What was your role with the Sheriff's Office
24 December 25, 2019?

25 A. I was the on-call supervisor.

DEP PAUL NORRIS DIR BY MR. SMITH

1 Q. Are there essentially two people on-call for
2 violent crime?

3 A. At the time we had three on-call supervisors.

4 Q. And then Investigator Horton is a supervisor?

5 A. He's the on-call investigator. We have on-call
6 investigators. They go out and respond to whatever it may be.
7 If they need us, they will give us a call.

8 Q. How did you find out about this incident on
9 Christmas of 2019?

10 A. I had received a call from Investigator Horton in
11 reference to a shooting that occurred.

12 Q. Were you able to glean any information? Any
13 further information from him during that call?

14 A. He wanted to obtain a search warrant for the
15 residence. He had an individual, Ms. Nodine, coming to the
16 office. He was wanting me to talk to her while he was trying
17 to get a search warrant for the residence.

18 Q. People had entered into the residence prior to the
19 search warrant; right?

20 A. Yes. So the officers -- originally, officers that
21 had responded, they had done a protective sweep. I was told at
22 this point there was no firearm located in the residence.

23 Q. Were you looking for a firearm? Why were you
24 looking?

25 A. The individual -- they responded to a shooting --

DEP PAUL NORRIS DIR BY MR. SMITH

1 an individual, was told, had been shot in the head.

2 Q. There was no firearm in the vicinity of the victim?

3 A. That's correct.

4 Q. Was there some information this could've been
5 self-inflicted?

6 A. It's possible at that point in time. We didn't
7 know.

8 Q. While Investigator Horton was working on the search
9 warrant, what did you do?

10 A. Ms. Rodriguez, Ms. Nodine was already there. Went
11 ahead and started the interview process. She was upset,
12 obviously, with what had occurred. I tried to get her to calm
13 down a little bit so I can try to talk to her, get her to
14 explain to me what had happened.

15 At this point in time she's the only eyewitness
16 that we had. Not knowing if she's involved or not, I read her
17 Miranda. On the Miranda form that we have, we had went
18 through that, made sure she understood what her Miranda rights
19 were. She stated she did.

20 Q. Not without getting into the specifics of what she
21 said, after you concluded your interview with her, where did
22 you stand in terms of potential suspects or what had happened?
23 What did you have to go on from after that first interview?

24 A. Not a lot actually. I mean, going through, there
25 was some other individuals she had mentioned that had come in

DEP PAUL NORRIS DIR BY MR. SMITH

1 and out of the house that night from the original statement she
2 had given. So we knew at that point in time really wasn't sure
3 what we were still dealing with.

4 Q. Did she mention her son Jorge Rodriguez at all?

5 A. She did.

6 Q. In what way?

7 A. In reference to coming by the house and eating at
8 some point with his girlfriend, I believe, and then leaving.

9 Q. Jorge Rodriguez?

10 A. Yes.

11 Q. Not Nicholas?

12 A. Actually she mentioned about Nicholas as well.

13 Q. You're saying she told you Jorge had come by the
14 house with his girlfriend and then left?

15 A. I will refer back to my report.

16 Q. Yes, please.

17 A. Yeah, at the very bottom of my first paragraph,
18 first page, it says: The final time I reviewed the story with
19 Ms. Rodriguez, she stated her son Jorge and his girlfriend had
20 come by.

21 Q. All right. At the conclusion of the interview, did
22 you know who had shot Bryant Rodriguez?

23 A. No, sir.

24 Q. Did she mention the beer bottles that we saw? Did
25 she mention those to you as being connected with Bryant?

DEP PAUL NORRIS DIR BY MR. SMITH

1 A. She did make a comment that he had brought a larger
2 beer bottle with him. And she thought it was more like, looked
3 like homeless or hobo or something of that nature. She asked
4 him to pour it into a glass.

5 Q. Did she mention anything about it later being used
6 as a weapon?

7 A. No, she did not.

8 Q. What was her demeanor during this interview?

9 A. Obviously, she was very upset with what had
10 happened. She was crying. Wanted to go see her son. I was
11 just trying to get her to calm down, to understand we needed to
12 try to get through this so we have an understanding of what
13 we're looking at and what we're looking for.

14 Q. I know some of the testimony -- obviously, she did
15 not enjoy this. Can you just explain why you had to talk to
16 her and not allow her to go to the hospital in this situation?

17 A. Yeah, well at the time, we had an individual who's
18 been shot in the head. We don't know who, if this is
19 self-inflicted or someone else has done it. We only have one
20 witness that we can talk to; that was her.

21 So we had -- I had to bring her to the office so we
22 can at least get an understanding of what had happened at the
23 house.

24 Q. It wasn't to deprive her of seeing her son?

25 A. No. No. She was the only person that we could

DEP PAUL NORRIS DIR BY MR. SMITH

1 talk to at that point in time. Obviously we couldn't talk to
2 the victim.

3 Q. She was able -- was she able in this interview to
4 recount details about the night?

5 A. Yes. She did. And then she added some things as
6 we reviewed the story over a couple times.

7 Q. Did you come away with any sort of impression about
8 if she was withholding information from you?

9 A. It felt like that she wasn't giving me the complete
10 details of what had happened.

11 Q. Did she ever indicate to you that she had witnessed
12 the shooting?

13 A. In the first interview, no.

14 Q. You were in the house while the search warrant was
15 being conducted; is that correct?

16 A. Correct.

17 Q. And we're not going to go back over the items. You
18 and McAbee, I guess, consult about what should be collected and
19 what to photograph?

20 A. Yes.

21 Q. I don't know if you were involved. At some point
22 you were in the search warrant. At some point Ms. Nodine asked
23 if she could go to bed; is that right?

24 A. Yes, that's correct.

25 Q. Y'all allowed her to do that?

DEP PAUL NORRIS DIR BY MR. SMITH

1 A. Yes, sir.

2 Q. Do you have any idea what time of Christmas that
3 was when y'all were doing the search warrant?

4 A. Early. We were there early. And I don't know what
5 time we actually left. I don't know. I don't remember the
6 exact time.

7 Q. Early in the morning I guess?

8 A. Yes.

9 Q. Did you leave -- did you give Ms. -- did you give
10 her some contact information to call you?

11 A. Yeah, I provided her with my information, my
12 contact and cell phone.

13 Q. Did you ultimately end up hearing again from her?

14 A. Later that same day, I do not know exactly what
15 time it was, she did call.

16 Q. After speaking with her on the phone, what did you
17 do?

18 A. She basically told me that she needed to tell me
19 what she had seen or what had happened. And I asked her a few
20 questions. And I asked her -- I asked her if we were to come
21 to the house. She said yes. Myself and Investigator Norton
22 were already still at the office so we left and went to her
23 house.

24 Q. Did you record your conversation with her on the
25 phone?

DEP PAUL NORRIS DIR BY MR. SMITH

1 A. We did.

2 (STATE EXH. 58, CD-Rom, was marked for
3 identification.)

4 BY MR. SMITH:

5 Q. I'm going to show you State's Exhibit 59 and ask
6 you if you can identify what that is.

7 A. That's a CD. It's a CD with a recording. Audio
8 recording.

9 Q. Is it of the phone conversation that you had with
10 her?

11 A. Yes, sir, it is.

12 MR. SMITH: Your Honor, at this time we would move
13 this into evidence, only the portion that was played previously
14 in court.

15 MR. HARRIS: As to only those portions.

16 THE COURT: Tell me the number again.

17 THE WITNESS: Your Honor, it's exhibit 58.

18 THE COURT: Thank you.

19 MR. SMITH: I believe we played pretty much just
20 the last, about 30 seconds; 20, 30 seconds of that phone call.

21 THE COURT: Thank you.

22 (STATE EXH. 58, CD-Rom, was entered into evidence.)

23 BY MR. SMITH:

24 Q. You did respond to her house with Investigator
25 Horton?

DEP PAUL NORRIS DIR BY MR. SMITH

1 A. Yes, we did.

2 Q. Did you record that conversation as well?

3 A. Yes, sir, it was.

4 (STATE EXH. 59, CD-Rom, was marked for
5 identification.)

6 BY MR. SMITH:

7 Q. I'm going to show you State's Exhibit 59 and ask if
8 you can identify that.

9 A. It's a CD audio recording of the interview of
10 Ms. Rodriguez.

11 MR. SMITH: Your Honor, at this time we move
12 State's Exhibit 59 into evidence. Only pertaining to the
13 portions that were played to the jury, which are at four
14 minutes and 12 seconds and 16 minutes into the recording.

15 MR. HARRIS: Only to those portions. No objection.

16 THE COURT: Only to those portions will be
17 admitted. Thank you, sir.

18 (STATE EXH. 59, CD-Rom, was entered into evidence.)

19 BY MR. SMITH:

20 Q. I don't want to rehash everything that happened
21 with Investigator Horton. You ultimately did go into the
22 living room and she demonstrated to you what had happened?

23 A. That's correct.

24 Q. After this, did you and Investigator Horton talk
25 about how to proceed after the interview?

DEP PAUL NORRIS DIR BY MR. SMITH

1 A. We did. And then he went and spoke with the
2 magistrate and obtained two arrest warrants.

3 THE COURT: Officer, let me get you to do
4 something. You're trailing off on your responses, and it's
5 difficult to hear on this side. Try to move up to the
6 microphone. Thank you.

7 BY MR. SMITH:

8 Q. Did she initially tell you that Jorge lived in the
9 house with her?

10 A. No. She told me no one else lived in the house.

11 Q. Did you go into a bedroom believing that might not
12 have been the truth?

13 A. Yes. Upstairs bedroom.

14 Q. What led you to believe somebody else lived there?

15 A. The clothing items, for one. There's men's
16 clothing and there was a bed, appeared to be like it had been
17 recently slept in. And there was a present on the bed, an
18 unwrapped one, I think it was. And it was to Jorge.

19 Q. What did you do after discovering that?

20 A. I called her and asked her did anyone else live in
21 the house. She told me no one else did. I asked her did Jorge
22 live in the house. She said, yes, he did.

23 Q. Was she able to offer -- did she explain to you why
24 she did not mention this before?

25 A. She did not at that time.

DEPUTY NORRIS CROSS BY MR. HARRIS

1 Q. After you had the conversation with her at her
2 house, you get the warrants and rehash how y'all got out there.
3 Did you respond to that Dutchman Court address as well?

4 A. I did.

5 Q. Did you speak with Wilson Gomez?

6 A. I did speak with Mr. Gomez.

7 Q. Did he agree to speak to you --

8 A. He did.

9 Q. -- about what he knew?

10 A. He did. He was outside.

11 Q. Based off of the conversation you had with Wilson,
12 what did you direct officers to do?

13 A. I had another investigator, Investigator Bennett,
14 go to the location off Old Furnace Road to look for a firearm.

15 Q. Can you describe Wilson's demeanor towards you.

16 A. Just calm. Very polite.

17 Q. Cooperative?

18 A. Yes.

19 Q. Evasive at all?

20 A. Not at all.

21 MR. SMITH: Please answer any questions Mr. Harris
22 has.

23 CROSS-EXAMINATION

24 BY MR. HARRIS:

25 Q. Investigator Norris, is it correct that when first

DEPUTY NORRIS CROSS BY MR. HARRIS

1 responders arrived on the scene, your deputies in particular,
2 Nodine was hysterical?

3 A. Yes, it is my understanding.

4 Q. I mean, just as distraught and upset as maybe a
5 person can get?

6 A. That's my understanding.

7 Q. What actually happened to her was that she was
8 placed in handcuffs, put in a police car and ultimately taken
9 to the Sheriff's Office; is that right?

10 A. She came to the office. I'm not sure how; if she
11 was in handcuffs when she got there or not. She did come to
12 the office.

13 Q. Still, clearly upset at what had occurred in her
14 house?

15 A. Yes. It's approximately an hour time. When I
16 first got the phone call, when Investigator Horton -- from the
17 time I was able to arrive, it was over an hour from our
18 conversation. She was still upset.

19 Q. During the time that you may have spoken with her,
20 or the other investigator spoke with her, she was still in an
21 emotional state?

22 A. She was crying, yes.

23 Q. I'm sorry?

24 A. She was crying off and on and trying to talk to me.

25 Q. Eventually she was allowed to go back to her home

DEPUTY NORRIS CROSS BY MR. HARRIS

1 and try to get some rest; is that right?

2 A. Yes.

3 Q. When she went back there, had all of the people,
4 the law enforcement presence withdrawn from the house?

5 A. Yes. There was myself, Investigator Horton,
6 Investigator McAbee, and another officer, probably stationed
7 out in front of the house.

8 Q. Although Ms. Nodine was permitted to return to the
9 home, there was still significant law enforcement presence on
10 the property?

11 A. At least four of us.

12 Q. So when you say Ms. Nodine may have contacted you
13 after some period then to say that she was ready to talk to you
14 again, you didn't have to go far to talk to her?

15 A. Well, I was at the office when she called. I
16 wasn't in her house.

17 Q. There were police officers there?

18 A. No. When she called, we had already cleared the
19 scene. There was no one in her house when she called at that
20 time.

21 Q. Y'all just left when she was sleeping?

22 A. We had already closed down the search warrant and
23 left the residence.

24 Q. Speaking of when you did have this second 18-minute
25 interaction with her, she was in a better state but still

DEPUTY NORRIS CROSS BY MR. HARRIS

1 upset?

2 A. Yes, she was still emotional.

3 Q. You indicate in your report on December 25, 2019 at
4 approximately 6:00 a.m., entry was made into 129 Colfax Drive,
5 Boiling Springs in reference to execute a search warrant; is
6 that correct?

7 A. Yes.

8 Q. The bulk of the search, the formal, I guess, search
9 for evidence began at 6:00 a.m. on Christmas morning?

10 A. Thereabouts, yes, sir.

11 Q. You describe in some detail some of the things that
12 were -- I take it that you saw there?

13 A. Yes, sir, that's correct.

14 Q. In your report you're talking about things you
15 personally saw?

16 A. Walking through, yes, sir.

17 Q. Is it correct that you state -- if you need to look
18 at your report, the one I have at least, this is on the second
19 page in about the middle of the middle paragraph. If you need
20 time.

21 A. I'm with you. Go ahead.

22 Q. You indicate that walking into the living room --
23 and now that we've seen a lot of photographs of that by now;
24 right?

25 A. Yes, sir.

DEPUTY NORRIS CROSS BY MR. HARRIS

1 Q. Walking into the living room I noticed several
2 unopened Christmas presents under the Christmas tree; is that
3 correct?

4 A. Yes, sir.

5 Q. Just while we're on that subject, skip down to the
6 bottom of the page where you state: Searching upstairs, we
7 noticed someone was staying at the top left bedroom. That's
8 where you believe Jorge Rodriguez was staying?

9 A. Yes, sir.

10 Q. There was clothing items, the bed had been recently
11 slept in, and there was an open Christmas present to Jorge on
12 the bed; is that correct?

13 A. Yes, sir.

14 Q. So unopened presents under the tree and an opened
15 present to Jorge in what you identify as his room?

16 A. Yes, sir.

17 Q. Obviously, that present had to get up there
18 somehow. Do you know how?

19 A. I do not.

20 Q. Unless it never -- it was always upstairs. It had
21 to get from under the tree, upstairs, would you say?

22 A. There or it was given to him some other place, yes.

23 Q. Going back to your walk around the living room
24 area, you state that: Continuing into the living room, there's
25 a large pool of what appear to be blood in front of the couch,

DEPUTY NORRIS CROSS BY MR. HARRIS

1 medical debris laying around, et cetera. You state:
2 Continuing searching the living room, there was a spent shell
3 casing near the fireplace was located -- it says in lying. I
4 believe you must've said located lying in?

5 A. Yes.

6 Q. Located lying in front of the fireplace. You also
7 indicate at that location in front of the fireplace, you saw
8 the base of what looked like a wine glass?

9 A. That's correct.

10 Q. That was broken?

11 A. Correct.

12 Q. Walking behind the couch, I could see broken glass
13 that had come from the wine glass scattered on the floor.
14 You're still talking about debris from a broken wine glass --

15 A. That's correct.

16 Q. -- is what you were seeing in these locations?

17 Going further, next paragraph, you state:

18 Searching under the couch, there were several broken pieces of
19 glass; also an empty Bud Light bottle, which was the type
20 Ms. Rodriguez stated her son Bryant had brought to the house
21 with him; is that right?

22 A. Yes, sir.

23 Q. So fair to say then your inspection of the living
24 room area yielded the shell casing, which has been identified
25 as State's Exhibit Number 1 now, a wine glass in pieces;

DEPUTY NORRIS CROSS BY MR. HARRIS

1 correct?

2 A. Yes, sir.

3 Q. And the base separated from the glass part itself,
4 the container part itself. And glass scattered around the
5 living room and under the couch, is that right, along with this
6 empty Bud Light bottle?

7 A. Yes, sir.

8 Q. Did you focus at all -- let me put it this way.

9 You didn't really attempt to find out why there was
10 a broken wine glass, did you?

11 A. I don't remember the second interview, we discussed
12 it with her or not. I remember she telling us that she had
13 been drinking wine that evening.

14 Q. So you don't really know what happened; right?
15 This early stage, this first part of Christmas day.

16 A. No.

17 Q. You don't really know what happened. That's why
18 you're there to try to find out what happened?

19 A. That's correct.

20 Q. And part of the finding out of what happened is to
21 do this searching of the living room; correct?

22 And you see things that you think are notable at
23 least --

24 A. Yes.

25 Q. -- potentially important; correct?

DEPUTY NORRIS CROSS BY MR. HARRIS

1 A. (Witness moves head up and down.)

2 Q. Those are things you specifically note in your
3 report, I assume; is that right?

4 A. Yes.

5 Q. The things you note in the report, spent shell
6 casing; correct?

7 A. Right.

8 Q. Red stain appeared to be blood; correct?

9 A. Correct.

10 Q. And broken glass; correct?

11 A. Correct.

12 Q. And the bottle, the beer bottle?

13 A. Correct.

14 Q. You follow it up in your investigation on the stain
15 in the carpet, obviously; correct?

16 A. Correct.

17 Q. And you followed up about the State's Exhibit
18 Number 1; correct?

19 A. Correct.

20 Q. You didn't follow-up in any meaningful way on the
21 broken glass and the beer bottle?

22 A. Well, at that point in time we're not told anything
23 in reference to the beer bottle other than it was brought there
24 by her son Bryant.

25 Q. You knew a little more than that, didn't you?

DEPUTY NORRIS CROSS BY MR. HARRIS

1 A. At the time we were inside the house with a search
2 warrant?

3 Q. You had been told that Bryant, who was the man that
4 was shot, had brought these large beers to the house that
5 night?

6 A. Yes, that's correct.

7 Q. Is that correct?

8 A. That's correct.

9 Q. They were in his possession; correct?

10 A. Correct.

11 Q. And you knew that you found one of them under a
12 couch; correct?

13 A. Correct.

14 Q. Would you agree not where one normally would put
15 their empty beer bottle?

16 A. Not typically, no.

17 Q. There's a reason that beer bottle is under that
18 couch, isn't it?

19 A. There is a reason.

20 Q. You didn't check that out. You didn't even ask the
21 question?

22 A. Well, at the time we didn't know whether -- he
23 brought it there. That's all we knew.

24 Q. That wasn't my question, sir. Thank you.

25 You didn't ask anybody: Why is this beer bottle

DEPUTY NORRIS CROSS BY MR. HARRIS

1 under this couch? Can you explain that.

2 A. No, not at this time other than she just told us he
3 brought the beer bottle.

4 Q. Nor did you make any real effort to find out what
5 the significance of the broken glass was all over the living
6 room and under the couch with the beer bottle?

7 A. Again, I can't recall if we reviewed it with her on
8 the scene or not.

9 Q. You got broken glass and an empty beer bottle in
10 places they ought not be when you're investigating a crime
11 scene. And you didn't think it important enough to try to
12 figure out why did that happen like that? Why is this place
13 like that?

14 A. No.

15 Q. The court reporter can't see a shrug.

16 A. No, we didn't know at the time what had happened
17 with that.

18 Q. Crime investigation basic would tell you, maybe
19 you'll agree, often when those kinds of things, those objects
20 that are normally in the possession of somebody or are found
21 lying on the floor in a place that you wouldn't think ought to
22 be or in a damaged condition that, that is potentially
23 indicative of a struggle; correct?

24 A. It's possible.

25 Q. Possible. Yeah. So you investigate the

DEPUTY NORRIS CROSS BY MR. HARRIS

1 possibilities; correct?

2 A. Correct.

3 Q. I mean not in this case you didn't but you would?

4 A. Well, based on our first interview with only
5 witness we could talk, none of that information was provided.
6 And she was given more opportunity to provide that information.

7 Q. I'm talking -- we read your report. I'm talking
8 about what you saw with your own eyes.

9 A. Correct. This is after we've already talked to her
10 originally.

11 Q. No. Sometimes things don't match up, do they?

12 A. That's correct. That's the reason we interview
13 people.

14 Q. And look with your own eyes?

15 A. Yes.

16 Q. Take photographs, put evidence cards on things.
17 Bring them to court although, you know, we haven't seen the
18 broken glass in court. Have you?

19 A. No, sir.

20 Q. Would you agree it's at least a possibility that
21 the evidence of broken glass all over the living room, in
22 particular, the evidence of broken glass under the couch and
23 the beer bottle under the couch is indicative of some type of
24 struggle?

25 A. It is a possibility, yes.

DEPUTY NORRIS CROSS BY MR. HARRIS

1 Q. And if one person was holding a beer bottle and
2 another person was holding a wine glass, and those people got
3 into a physical confrontation, those things could wind up under
4 the couch?

5 A. It's a possibility, yes.

6 Q. More than just the sun may be hot. There's a
7 reason those things were seen by you and found there; correct?

8 A. There's other ways it could've gotten under there.
9 It could've been kicked by medical personnel that showed up or
10 other officers that showed up. It's always that possibility,
11 too.

12 Q. Well, so if that happened and you tried to account
13 for it in that way, we would hear a witness come to the witness
14 stand and say, in my haste, in the chaos of the circumstances:
15 I broke a wine glass. I didn't mean to. I stepped on it;
16 right? There would be a witness for that, if that happened?

17 A. Sometimes, yes.

18 Q. Or you know, if there was a beer bottle that was
19 sitting on a table or up on the floor, whatever it may be, and
20 somebody inadvertently, not meaning to contaminate a crime
21 scene or alter it but inadvertently kicked something over or
22 moved something out of the way so they could get more important
23 things done, we would have a witness for that, wouldn't we?

24 A. Yes.

25 Q. As a matter of fact, if EMS people -- we're told

DEP. NORRIS REDIR BY MR. SMITH

1 came there, obviously. If EMS people could shed any light on
2 why these things were out of place, broken, they could come to
3 court and testify about that; correct?

4 A. They could. And a lot of times things get moved
5 and they don't tell us either.

6 Q. I understand. If you get them up here and call
7 them as witnesses, you can say, you know: Did y'all do
8 anything? If they say they didn't, well and good.

9 We have to search for that other alternative
10 explanation for why these things would be broken and out of
11 place like this, steps away from where something really tragic
12 happened; right?

13 A. Sure.

14 MR. HARRIS: Thank you. Nothing further.

15 THE COURT: Any redirect limited to what he went
16 into?

17 MR. SMITH: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. SMITH:

20 Q. Let me show you State's Exhibit 56 and 57. What
21 are these?

22 A. State's 56 is a Bud light beer bottle that's
23 located near the living room stairs.

24 Q. They were collected; right?

25 A. Correct.

DEP. NORRIS REDIR BY MR. SMITH

1 Q. And they were processed; right?

2 A. Correct.

3 Q. You didn't ignore them and throw them in the trash?

4 A. No, we did not, correct.

5 Q. They were preserved and they were tested?

6 A. That's correct.

7 Q. When you were walking through the house, do you
8 have the first clue about what happened in this case?

9 A. I did not, no, sir.

10 Q. You are noting things that you think could be
11 relevant; right?

12 A. Yes.

13 Q. You could be totally wrong; right?

14 A. Absolutely.

15 Q. It could be you find out later that beer bottle I
16 thought was important has been there for five years. We just
17 keep it on the stairs because a family member liked to drink on
18 the stairs or something. I mean, you don't know?

19 A. No.

20 Q. You're just looking for things that might mean
21 something?

22 A. That's correct. Also, based on if we've already
23 talked to her, just trying to find if anything matches up with
24 what she already told us.

25 Q. In your write-up, you did not do a summary of your

DEP. NORRIS REDIR BY MR. SMITH

1 conversation at Ms. Rodriguez's house; right?

2 A. No, I did not.

3 Q. Investigator Horton did?

4 A. Yes.

5 Q. Can I show you his report to perhaps refresh your
6 memory?

7 MR. HARRIS: I object to refreshing the witness'
8 memory with somebody else's document.

9 THE COURT: Can you lay a foundation for how that
10 would be used to refresh his memory.

11 MR. SMITH: Because he was present for the
12 conversation. The two of them are there together, and it's
13 audio recorded as well.

14 MR. HARRIS: If I understand the Solicitor, this
15 witness -- I'm not certain that he's clearly said he doesn't
16 have any personal recollection. If he doesn't --

17 THE COURT: I'm not going to allow it unless you
18 lay a better foundation.

19 BY MR. SMITH:

20 Q. Do you have any independent recollection if Judith
21 told you anything about the wine glass?

22 A. I do remember that she had been drinking wine that
23 night and she had been in the living room with a glass of wine
24 at one point. I don't recall exactly the conversation how the
25 wine glass may have gotten broken.

DEP. NORRIS REDIR BY MR. SMITH

1 Q. Did she ever mention the beer bottle as being used
2 as a weapon?

3 A. No, she did not.

4 Q. Did she mention the wine glass being used as a
5 weapon?

6 A. No, she did not.

7 Q. Was there a distinction in color between the beer
8 bottle and the wine glass? How were you able to attribute the
9 shattered glass to the wine glass?

10 A. I mean, it's obviously you could see a base of a
11 wine, one of those stemmed wine glasses. And then, of course,
12 the beer bottle -- it's clear glass. The beer bottle as you've
13 seen already is brown.

14 Q. They have a different color?

15 A. Yes.

16 Q. The beer bottles were in tact?

17 A. Yes.

18 Q. Are you clairvoyant?

19 A. No.

20 Q. Can you figure out what happened without anybody
21 telling you?

22 MR. HARRIS: Your Honor, I object to the question.

23 THE COURT: I'll allow it. Go ahead.

24 BY MR. SMITH:

25 Q. You did not witness this crime; right?

DEP. NORRIS REDIR BY MR. SMITH

1 A. That's correct, I did not.

2 Q. You can picture out things that are of note to you;
3 right? I mean, that you think are of note?

4 A. Yes. It's very helpful if we have a witness or
5 someone that helps piece the puzzle together based on what
6 they're telling us.

7 Q. If it had been mentioned to you that a beer bottle
8 was swung at somebody's head right before the shooting, would
9 that have changed your analysis of how you proceeded in this
10 case?

11 A. Sure.

12 Q. How would it have changed?

13 A. Of course, we would want to talk to -- if she
14 would've told us what happened and Jorge is the one or she had
15 been struck by or tried to be struck by a beer bottle.

16 Q. When you say what happened, what she testified to?

17 A. What she testified to in court.

18 Q. Not what she told you?

19 A. Definitely want to talk to Jorge.

20 Q. Would you have immediately signed an attempted
21 murder warrant?

22 A. No. We would want to talk to Jorge before any of
23 that ever occurred.

24 MR. HARRIS: Your Honor, need to take up --

25 THE COURT: Ladies and gentlemen, I need you to

DEP. NORRIS REDIR BY MR. SMITH

1 retire back to the jury deliberation room. Don't have any
2 discussions among yourself about anything involving the case.
3 We'll get you back just shortly.

4 (The jury exited the courtroom at 2:37 p.m.)

5 THE COURT: Yes, sir.

6 MR. HARRIS: Your Honor, the last question and
7 answer between the witness and the Solicitor, in fairness, I
8 don't know the Solicitor knew what the witness might say by
9 asking what would you have done if somebody told you about
10 somebody attacking a person with a beer bottle.

11 The witness has said we would've asked Jorge, the
12 Defendant, in this case, which I fear would imply to the jury
13 that the Defendant would have some obligation to speak, to
14 answer those questions or refuse to, which would be an infamous
15 comment on his right to remain silent as well. I fear that the
16 witness has raised by his answer the specter of commenting on
17 the Defendant's right to silence.

18 That being the case, for protection of my client's
19 rights, I would have to ask for a mistrial. At least I would
20 have to ask for The Court to consider some instruction.

21 THE COURT: Yes, sir.

22 MR. SMITH: I don't think it went that far. He was
23 just simply saying what his desire would've been to do and just
24 in the Doyle cases, there is a distinction between the
25 Defendant actively asserting his right and having been read and

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1 informed of his rights versus this, in which law enforcement
2 had never even made contact. He simply said he would have
3 tried to contact him.

4 The real harm in most of the cases unfavorable to
5 the State are specifically when they have been advised of those
6 rights, have exercised those rights actively and then the State
7 attempts to comment on them. That is not what has just
8 occurred with that testimony.

9 THE COURT: Any reply?

10 MR. HARRIS: No. I understand the Solicitor's
11 position. I just feel like it introduces the specter of
12 calling in question whether Mr. Rodriguez was questioned or
13 anything else. In fact, I think there was no questioning of
14 him. There's certainly no statement.

15 THE COURT: Okay. Thank you very much for the
16 positions. I don't believe it's reached that point. I think
17 your objection was timely enough that it prevented it from
18 causing, crossing over that line to where a more severe
19 sanction of a mistrial would be necessary.

20 I think Mr. Smith understands your position. And
21 so as long as it doesn't go any further with this to develop
22 the idea of questioning or gets into the 5th Amendment area.

23 I do not believe this witness' statement -- the
24 statement that has been made by the witness at this juncture
25 deserves or requires a mistrial as the remedy.

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1 I think the appropriate remedy at this juncture is
2 just to advise the State to be cautious about how you use this
3 information, especially if you use the information in a way in
4 a closing argument and you highlight that as being some type
5 of -- I just think if you highlight that, then it's going to
6 either cross that line or come up to that line to where the
7 appropriate remedy would be a mistrial. As long as the witness
8 understands that he shouldn't go there with anything else. I
9 think you've covered your points.

10 MR. SMITH: While they're out, can I ask him one
11 more question before they come back in just to make sure we
12 avoid --

13 THE COURT: Sure. You can proffer it.

14 MR. SMITH: Instead of what you did in this case
15 after speaking with Judith at her house, Horton went and
16 immediately got attempted murder warrant; correct?

17 THE WITNESS: Correct.

18 MR. SMITH: If she had told you what she told --
19 what she said in court, would that have been the action you
20 take or would you have continued to investigate?

21 THE WITNESS: We would continue to, yes.

22 MR. SMITH: Without getting into any specifics, you
23 would've not immediately sought a warrant?

24 THE WITNESS: That's correct.

25 MR. SMITH: Is that all right, Your Honor?

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1 MR. HARRIS: They have been talking the whole case
2 about the, you know, procedural part which actually probably I
3 should've probably spoken up about it. I understand the State
4 wants to try to make a jury argument consciousness of guilt,
5 not saying -- although he didn't attempt to evade arrest. If
6 it's confined to that and they don't talk about the warrant
7 process or anything like that, I wouldn't see an objection.

8 THE COURT: Confine it to that.

9 MR. SMITH: Yes, sir.

10 THE COURT: Bring the jury back in.

11 So the State's clear, don't bring up the fact about
12 interviewing the Defendant.

13 MR. SMITH: We're not. I've told them not to, and
14 I don't want to.

15 (The jury entered the courtroom at 2:44 p.m.)

16 THE COURT: Thank you, ladies and gentlemen. Is
17 the State ready?

18 MR. SMITH: Yes, Your Honor.

19 BY MR. SMITH:

20 Q. Investigator Norris, if Judith Rodriguez had given
21 you the version of events that she gave from the stand, would
22 you and Investigator Horton have immediately gone and sought
23 warrants or continued to investigate the case?

24 A. Continue to investigate the case.

25 MR. SMITH: I don't have anything further.

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1 MR. HARRIS: Nothing further, Your Honor.

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

3 Watch your step as you're stepping down.

4 Does the witness need to be excused?

5 MR. SMITH: I think he's staying for the long haul.

6 THE COURT: Sir, you may be excused if you need to.

7 You can stay with us.

8 THE WITNESS: Yes, sir.

9 (The witness exited the stand.)

10 THE COURT: Yes, sir.

11 MR. SMITH: We would call Nicholas Rodriguez.

12 THE COURT: Sir, if you would just come right up
13 here and let the clerk of court swear you in.

14 NICHOLAS RODRIGUEZ

15 being first duly sworn, testified as follows:

16 THE COURT: Sir, watch your step as you're stepping
17 up. Step up and have a seat in the chair. Pull the chair up
18 to the microphone. If you need to move the microphone, do it
19 very gently. It can come out.

20 DIRECT EXAMINATION

21 BY MR. SMITH:

22 Q. Will you please state your name.

23 A. Nicholas Rodriguez Calderon.

24 Q. Is Jorge Rodriguez your brother?

25 A. Yes, sir.

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1 Q. And Bryant Rodriguez is also your brother?

2 A. Yes, sir.

3 Q. And your mother is Judith Nodine Rodriguez?

4 A. Yes, sir.

5 Q. What do you do for work, Nicholas?

6 A. Work in the automotive industry. Mechanical
7 engineer in the interior automotive, quality.

8 Q. There was some testimony you have a family?

9 A. Yes, sir.

10 Q. Do you have a wife?

11 A. Spouse.

12 Q. Y'all have children together?

13 A. Yes, sir, three.

14 Q. Can you talk some about your upbringing in this
15 family, starting early on like who did you stay with?

16 A. Growing up as a child, my brother Bryant and I grew
17 up with my grandparents in Honduras. We did not grow up with
18 my mother as she mentioned previous yesterday. Also, my
19 brother Bryant is from a different father. Me and Jorge have
20 the same father. But Bryant is from a different father. Not
21 sure why she mentioned that we was all three with the same
22 father.

23 MR. HARRIS: Your Honor, I'm going to have to
24 object to the witness editorializing his answers to compare
25 what he's saying to another witness. That's not what the

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1 question calls for.

2 THE COURT: If you would.

3 MR. SMITH: You need to answer the questions. Not
4 comment on what other people have said. You're free to
5 disagree, if you want to.

6 THE WITNESS: Yes, sir.

7 BY MR. SMITH:

8 Q. Were you born in the United States?

9 A. No, sir. In Honduras.

10 Q. Are you saying from birth until what age did you
11 live in Honduras?

12 A. Until like nine or ten.

13 Q. Would your mother visit you during those times?

14 A. Rarely. It was just Christmastime.

15 Q. Was she living in the United States?

16 A. Yes, sir.

17 Q. How much age difference is there between Jorge and
18 you're the oldest; right?

19 A. Yes, sir.

20 Q. Between Bryant and Jorge?

21 A. A year difference.

22 Q. Where was Jorge when y'all were in Honduras?

23 A. In New York.

24 Q. With Judith?

25 A. With Judith.

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1 Q. Do you know -- maybe not, you were a child. Do you
2 know the reason why you stayed in Honduras, and he was in the
3 United States?

4 A. She was incapable at the time to take care of me
5 and my brother Bryant, as well as my biological father didn't
6 want Bryant around 'cause he was a slum from a different dad.

7 Q. Your mom testified she, basically, bettered herself
8 substantially in the United States. I think she said she
9 started cleaning and spent eight years in school. Did you mean
10 like financially she was not capable of managing three children
11 with having to work and school?

12 A. Yes, sir. She was in New York. Then when she
13 moved to South Carolina with my uncles, she started to get more
14 stable.

15 Q. You're saying that you would've been ten and Bryant
16 would've been nine when y'all came to the United States?

17 A. Yes, sir, around that age.

18 Q. For all those years you're saying that you only saw
19 your mother on holidays?

20 A. Barely.

21 Q. What was your relationship like with Bryant before
22 this incident?

23 A. We talked once in a while. We would communicate
24 once in a while, try to hang out with me. Most of the time I
25 was too busy with work or my children. They play sports and

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1 stuff.

2 Q. Not somebody you didn't go hang out with him
3 multiple times a week or something?

4 A. Not really. Once in a blue moon we talk or see
5 each other.

6 Q. What do you know about Bryant's employment history,
7 particularly leading up to this event?

8 A. He was very responsible. He has his life together.
9 He had his own house. He was not a bum. He worked. He pays
10 his own bills. He was independent person. He even had a child
11 that unfortunately he won't be able to raise or be a part of
12 his life.

13 Q. Was he involved in his life before?

14 A. He was trying to.

15 Q. Do you know where he was living when this happened?

16 A. He was living in Inman at his own house that he
17 owned.

18 Q. Did he have a roommate?

19 A. Yes, sir.

20 Q. Do you know what type of vehicle he was driving at
21 the time?

22 A. At the time my brother, he had a moped. That's how
23 he got from point A to point B due to some issues, you know,
24 with DUI in the past. He was supposed to get his license back
25 in 2020, that year after the accident. He was saving up to buy

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1 his own car. He was saving enough.

2 MR. HARRIS: Your Honor, I object to the witness
3 narrating outside.

4 THE COURT: I sustain the objection.

5 BY MR. SMITH:

6 Q. Did you see the picture of the bike in the
7 driveway?

8 A. Yes, sir.

9 Q. Is that your brother's bike?

10 A. Yes, sir. It was a moped. Looked like a bike but
11 it was just a moped.

12 Q. This is State's 35. That's his bike?

13 A. Yes, sir.

14 Q. Moped. It looks like a bike?

15 A. Yeah. The engine was a small engine.

16 Q. From your observations, and the time that you were
17 with your mother and Bryant and Jorge, did you sense that there
18 was any sort of favoritism between the siblings?

19 MR. HARRIS: Objection.

20 THE COURT: Lawyers approach.

21 (Off-the-record discussion.)

22 THE COURT: Ladies and gentlemen, got to take up an
23 issue outside of your presence again.

24 Footnote: This big building we're building back
25 here, it's going to have technology in it. And I'm informed

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1 it's going to have technology set up so that when you're
2 actually doing trials, you don't have to get a jury to walk
3 back and forth, in and out of the courtroom.

4 There are going to be technology things that we can
5 use that we can silence you and keep you away from the
6 conversations we have over here. It makes trials go more
7 efficiently. It won't be so burdensome to have you walking in
8 and out. I apologize.

9 Come back in a year and maybe we'll be in the new
10 building. At this time, I'm going to ask you not to have any
11 discussions among yourselves involving the case. We'll get you
12 back shortly.

13 (The jury exited the courtroom at 2:59 p.m.)

14 THE COURT: We've had some discussions at the bench
15 about the objection. None of that was on the record. We got a
16 little bit lengthy with the discussion. I wanted to put it on
17 the record. Yes, sir, Mr. Harris.

18 MR. HARRIS: The question, as I recall, put to the
19 witness last was, was he aware of or did he experience
20 favoritism being demonstrated by Ms. Nodine toward the three of
21 her children or among the three of her children.

22 I objected. I fail to see really any relevance to
23 an issue in this case. The type of question it is invites the
24 witness not to make a factual answer, not to state a fact that
25 can be tested or not tested on cross-examination or is even

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1 capable of understanding whether it's the truth or what the
2 motivation is. It's a highly subjective opinion from the child
3 of another witness.

4 What I fear is going on is that, in the context of
5 the events that are the subject of the indictment in terms of
6 the testimony of the only witness, which is Ms. Nodine,
7 properly admitted were evidence of prior incidents of conduct
8 between Ms. Nodine and her son Bryant not involving this
9 witness.

10 There was testimony concerning his alcoholism.
11 This witness may have a different understanding or opinion
12 about that. But for him to say I don't think he was, is not
13 proper because that is directly putting two witnesses opposed
14 to each other. Pitting the witnesses. Your momma said this,
15 do you say that? Your momma said that, do you say that?
16 Classic pitting.

17 I think further what it's about is trying to supply
18 testimony in the nature of what I objected to during the
19 State's opening statement. They've been prohibited. The State
20 has been prohibited from, quote, speaking for the victim. Now
21 they're going to get his brother to speak for his brother. Bad
22 situation in my opinion.

23 I've objected to that. I will object to any line
24 of questioning that seeks to do those things, pit the witnesses
25 and speak for a witness that is not competent to testify.

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1 THE COURT: Yes, sir.

2 MR. SMITH: I don't think I've asked him to speak
3 anything about what his brother said. As far as pitting the
4 witnesses, the question was not, your mom said she was the mom
5 of the year, is that true. That's pitting the witness.

6 She's testified. He has a different version of
7 events. I don't think that the first person to testify
8 controls the ballgame and nobody else can testify differently
9 to that person for the rest of the trial.

10 I mean, he's essentially saying she's allowed to
11 say he's alcoholic, he's not allowed to disagree? She already
12 said he's alcoholic. That's her opinion. That's her limited
13 experience as he said.

14 It is relevant. As Mr. Harris has told me in the
15 past this case largely goes down to Judith Nodine Rodriguez as
16 she is the only eyewitness that's going to be able to testify
17 about what happened. Her bias and motivations for testifying
18 the way she did are the case in many, many ways. They might
19 not deal with specifically who fired the gun.

20 He's not a fact witness. But in our opening
21 argument we started establishing there was essentially a bias
22 against Bryant in favor of Jorge. And we think he should be
23 able to testify. He can answer that question without even
24 getting into it. The answer would either be yes or not. If he
25 says yes, what did you witness that gave you that perception

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1 that there was bias, not just asking him to open up the family
2 history.

3 We think relevancy is a low bar. I don't think --
4 I think this is extremely relevant. She gave information that
5 was negative, that Bryant was extremely violent and very
6 violent when he drank, that he was alcoholic, didn't have a
7 job. Clearly character evidence designed to besmirch Bryant
8 Rodriguez.

9 And if he has different personal knowledge of some
10 of these events, it bears on Judith's credibility. And the
11 jury is the one that should determine who's being truthful when
12 they testify on the stand. That's exactly their role.

13 And we're just trying to provide them the full
14 picture because they have one from a witness we think is
15 biased. Maybe he's biased as well. That's the jury's decision
16 to make.

17 MR. HARRIS: Your Honor, I would respond it's clear
18 to me partly what the State's motivation is. As a matter of
19 the Rules of Evidence, the State takes the position that
20 certain things said by the witness Judith Nodine attacked the
21 character of the alleged victim in the case. So the State
22 feels that they should be able to use this witness, who is the
23 other son of Ms. Nodine, to attack the character, not of a
24 party but of another witness.

25 And I believe the Rules say -- and I can find the

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1 reference to it. I believe the Rules say, if you're attacking
2 the character of a witness, there's only two avenues to do it;
3 conviction of a crime that qualifies under the Rule, or their
4 general reputation in the community for truthfulness or
5 untruthfulness are the only methods of attacking the character
6 of the fact witness.

7 Rules do speak to -- and that's why it was
8 admissible during Ms. Nodine's testimony. Rules do permit the
9 pertinent character traits of a victim to be placed into
10 evidence, not necessarily for the purpose of attacking
11 character but to explain the events that occurred; prior
12 difficulties between the parties and the propensity for
13 violence. That's why those things were offered.

14 Many of the things that Ms. Nodine said of this
15 nature were not necessarily in response to direct questions,
16 just spontaneously uttered when both sides questioned her. I
17 don't believe it's proper. I don't think the Rules permit this
18 kind of thing, if I'm understanding what the State's intent is.

19 THE COURT: Thank you y'all very much for that.

20 I do not believe this line of questioning is
21 proper. If it is -- I do agree with Mr. Harris on the point I
22 was trying to look up the rules as he was speaking. If it's
23 the State's intent to attack the credibility of someone who has
24 testified in the course of this trial, then I do believe the
25 Rules are limited, the Rules of Evidence are limited in how you

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1 do that. I agree with Mr. Harris on that point.

2 As I expressed at the bench, I do also believe that
3 this line of questioning where one witness is going, is
4 attacking the credibility of another witness not the accused,
5 not the victim but a witness, who has been called to testify,
6 that lurches or reaches into an area where we're going to be
7 asking the jury to decide questions of fact that go way beyond
8 what they need to be focused on, which is what happened on this
9 night of Christmas Eve or Christmas night. Then also engage
10 whether or not they believe the source of the information that
11 the State has.

12 I understand from where I sit, I view this as an
13 unusual case for the State because they're having to rely
14 upon -- they don't have an eyewitness that's necessarily --
15 that they view is completely favorable for them. And
16 regrettably the victim cannot testify.

17 And the Defendant, we don't know whether he's going
18 to testify yet. The State is hamstrung at presenting what the
19 Defendant would know because of the Fifth Amendment to the
20 Constitution. These are the cards the State has been dealt
21 with.

22 I do believe that if we go down this line, we are
23 then going to hear all of the dirty laundry between this
24 family, whatever that laundry is. And that jury then is going
25 to be so distracted from the issues that they actually need to

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1 decide in this case that it is going to be prejudicial to their
2 ability to perform their job that they're going to do in this
3 trial.

4 I'm not going to allow that type of questioning
5 that I heard. That's my ruling.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: Thank you. Anything else?

8 MR. HARRIS: Not from the defense, Your Honor.

9 MR. SMITH: No, we're ready.

10 THE COURT: Let's bring the jury back in.

11 Stop them before he comes back in. I want to
12 clarify something.

13 So I'm only speaking of the witness. I am not
14 speaking of the alleged victim in this case; all right?
15 Reputation, character, those things I have not expressed any
16 ruling on as to if the State intends to establish that through
17 the Rules. My ruling did not go that far.

18 MR. SMITH: Yes, Your Honor. Thank you.

19 THE COURT: Bring the jury in.

20 (The jury entered the courtroom at 3:11 p.m.)

21 THE COURT: Yes, sir, Mr. Smith.

22 BY MR. SMITH:

23 Q. I know you indicated your brother had some issues
24 with alcohol. That's why he was on the moped. Have you
25 ever -- do you drink yourself?

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1 A. Rarely.

2 Q. Have you ever been around Bryant when he's been
3 drinking?

4 A. Yes, sir.

5 Q. Many times?

6 A. Yes, sir.

7 Q. Did you know him to be -- how would you describe
8 him as a drinker?

9 A. He was the chilliest drinker.

10 Q. Did he drink frequently?

11 A. He drank like every time whenever he got off work,
12 he probably drink one or two or three beers.

13 Q. So you're saying like a daily-type thing?

14 A. Yes, sir. But like I mentioned, he was very calm,
15 very chill. He just minding his own. He usually just stayed
16 at home, never really go out.

17 Q. I think you told me before that -- did he run his
18 mouth sometimes if he had been drinking? Did he egg people on?

19 A. Sometimes. Whenever he was provoked.

20 Q. Do you know what the relationship between Jorge --
21 what did you witness leading up to the relationship between
22 Jorge and Bryant? How was that?

23 A. Jorge never liked Bryant due to the fact that he
24 was a son from a different dad. He never claimed him as a
25 brother. And I always told him: Dude, that's your brother.

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1 How can you say that?

2 MR. HARRIS: Your Honor, I object to the witness
3 going beyond the requirements of answering the question to
4 editorialize.

5 THE COURT: You might want to caution the witness.

6 BY MR. SMITH:

7 Q. Just answer the question.

8 A. Yes, sir.

9 Q. Do you know -- so did they -- would they fight in
10 the past? Had you ever witnessed that verbally or physically?

11 A. Verbally they will argue.

12 Q. At the time of Christmas 2019, would you have
13 thought it would be a good idea for them to be around each
14 other?

15 A. No, sir. I even -- no, sir.

16 Q. On Christmas Eve, did you go to your mother's
17 house?

18 A. Yes, sir.

19 Q. Who did you go with?

20 A. I went with my spouse and my kids.

21 Q. What was the purpose of going there?

22 A. Was visiting her and dropping off some Christmas
23 gifts as well as picking up some food.

24 Q. Did you have at this time, Christmas Eve 2019, did
25 you have okay relationship with your mother? How would you

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1 describe it?

2 A. Yes, sir, we had okay relationship. I was actually
3 trying to get her to come with us to spend Christmas Eve so she
4 would not be by herself. When we got there she was by herself.
5 She mentioned that, no, she didn't want to. She had insisted
6 for Bryant to come and visit her. That way she would not spend
7 Christmas Eve by herself due to the fact that Jorge was not
8 going to be there, and he was not going to show up.

9 Q. You and your mom were on good terms?

10 A. Yes, sir.

11 Q. Felt free to visit?

12 A. Yes, sir.

13 Q. You said, when you got there to her house, she was
14 alone?

15 A. She was alone plus she was acting kind of funny,
16 slurring her words.

17 Q. Do you know your mom to drink alcohol?

18 A. Yes, sir, wine.

19 Q. Have you ever seen her -- she liked wine?

20 A. (Witness moves his head up and down.)

21 Q. Have you ever seen her under the influence?

22 A. Yes, sir.

23 Q. The night that you saw her Christmas Eve, did you
24 believe that she was under the influence of alcohol?

25 A. Yes, sir. Whenever we went to the kitchen and

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1 picked up the rice, there was an empty bottle of wine. And I
2 confronted her, asking her if she had drink the whole wine by
3 herself.

4 Q. While you were there with her, did y'all have a
5 good time?

6 A. Yes, sir.

7 Q. You ate food, exchanged gifts. She decided to stay
8 and you went back home?

9 A. Yes, sir.

10 Q. Do you recall when you found out what had happened
11 to your brother, to Bryant?

12 A. I found out the next morning.

13 Q. Early Christmas morning?

14 A. Yes, sir. Investigator Justin called me and just
15 told me that there was an incident at the house, that my
16 brother Bryant was shot.

17 Q. What was your first thought?

18 A. As soon as he told me, I said --

19 MR. HARRIS: Your Honor.

20 THE WITNESS: Jorge shot him.

21 MR. HARRIS: I object to the question.

22 THE COURT: The question was, if I recall it
23 correctly, what was your first thought?

24 MR. HARRIS: Which calls for the witness not to
25 answer factually, to give some type of impression or opinion

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1 about having received a phone call, which is not relevant
2 evidence.

3 THE COURT: Might want to rephrase the question.
4 If you can't, I am going to sustain it.

5 BY MR. SMITH:

6 Q. What did you tell Investigator Horton?

7 A. Did Jorge shoot my brother Bryant in the head?

8 Q. After you get off the phone with Investigator
9 Horton, did you end up contacting your mother?

10 A. Yes, because Detective Horton said that he didn't
11 know if Jorge did it or not. He was not present in there. And
12 that Judith had mentioned some stranger broke into the house
13 and shot Bryant and left.

14 Q. Where were you living at this time?

15 A. 304 Belcher Road.

16 Q. In Spartanburg?

17 A. Boiling Springs.

18 Q. After you got off the phone with Investigator
19 Horton, what did you do?

20 A. Called my mother.

21 Q. And to just generally ask her what was going on?

22 MR. HARRIS: Objection; leading.

23 THE COURT: I'll allow that question.

24 THE WITNESS: Yes, sir.

25 BY MR. SMITH:

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1 Q. Did she tell you what had happened?

2 A. She tried to tell me the same story the detective
3 had, some stranger broke into the house, shot Bryant and left.
4 And I told her: Mom, that's bullshit. You need to tell me the
5 truth. Did Jorge shoot Bryant?

6 No, Jorge was not there.

7 And I told her, Jorge didn't shoot him, then you
8 shot him. Why you shot him? Why do you shoot Bryant?

9 She said: How can you say that? How can you say
10 that I shot Bryant? I'm his mother. I would never do that.

11 And I told her --

12 Mr. HARRIS: Your Honor, I object.

13 THE COURT: Lawyers want to approach.

14 (Off-the-record discussion.)

15 THE COURT: I'll sustain the objection.

16 BY MR. SMITH:

17 Q. I need you to say things you said. You spoke with
18 your mother?

19 A. Yes, sir. I told her just to tell the truth and to
20 be honest. That she needed to confess what happened. If not,
21 she was going to be also accountable of the consequences and
22 be -- what's the word I'm trying to look for -- associated with
23 the crime.

24 Q. So do you know about what time of day this was?

25 A. It was like around 9:00 or 10:00 in the morning.

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1 Q. Do you know if she -- there's been talk about her
2 going to sleep and waking back up. Do you know if she had done
3 that? I know you weren't around.

4 A. Whenever I called her she was just barely waking
5 up.

6 Q. How did the conversation end?

7 A. She did confess that they --

8 Q. Don't say what she said.

9 A. That Jorge had shot Bryant in the head and left.

10 Q. You encouraged her to tell law enforcement whatever
11 had happened?

12 A. Yes, sir.

13 Q. Do you know if she ended up doing that?

14 A. Yes, sir.

15 Q. Your brother has not been in the courtroom this
16 week; is that right?

17 A. Yes, sir.

18 MR. HARRIS: Object.

19 THE COURT: I'll allow the question. I don't know
20 where he's going with it.

21 BY MR. SMITH:

22 Q. What is the current condition of your brother?

23 MR. HARRIS: I object.

24 THE COURT: I'll allow him just to give that
25 answer.

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1 THE WITNESS: Can you repeat that question again,
2 please.

3 BY MR. SMITH:

4 Q. What's the current condition of your brother,
5 physically and mentally?

6 A. He's very disabled. He can barely talk. He can
7 barely comprehend. He understands a few things, can pronounce
8 a few words.

9 Q. Physically, he's not in a wheelchair or anything
10 like that?

11 A. No, sir.

12 Q. Would you say he's largely physically okay?

13 A. He's physically okay but mentally not.

14 Q. Is it fair to say he just lacks the ability to
15 communicate back to you?

16 A. Yes, sir, but he can understand. Comprehend.

17 Q. Do you know where he lives?

18 A. Yes, sir, with my mother.

19 Q. Has she taken care of him since this incident? Has
20 she been with him?

21 A. Yes, sir.

22 Q. Do you still have a relationship with your mother
23 after all of this?

24 A. No, sir.

25 Q. Do you have a relationship with Jorge after this?

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1 A. No, sir.

2 Q. There was some testimony about Jorge being an
3 electrical engineer, some sort of engineer. What do you
4 understand his education to be?

5 A. His education was certified electrician.
6 Spartanburg Community College.

7 Q. Do you know him to have been an honor student?

8 A. He probably made it just once.

9 MR. SMITH: Please answer any questions Mr. Harris
10 has.

11 MR. HARRIS: No questions.

12 THE COURT: Thank you, sir. You may step down.
13 Watch your step as you're stepping down.

14 Any reason why the witness cannot be excused if he
15 wants to?

16 MR. SMITH: No, Your Honor.

17 MR. HARRIS: No.

18 THE COURT: Thank you. You may be excused if you
19 wish to as well. Thank you for coming.

20 (The witness exited the stand.)

21 MR. SMITH: Your Honor, at this time we would like
22 to recall Judith Nodine very briefly.

23 THE COURT: Ma'am, if you will come back up here.
24 Just need to remind you that you remain under oath; okay?

25 MS. NODINE: Yes.

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1 THE COURT: Watch your step as you're stepping up

2 MR. HARRIS: Bench conference.

3 THE COURT: Yes, sir.

4 (Off-the-record discussion.)

5 JUDITH NODINE

6 being previously duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SMITH:

9 Q. Do you know how the wine glass got broken in this
10 case?

11 A. No, I cannot recall. I don't know. That's when
12 they started arguing. I don't recall how it got broke.

13 Q. Did you have it in your hand?

14 A. No.

15 Q. Do you remember telling Investigator Norris the
16 wine glass was behind -- I don't remember where I was when they
17 started fighting and I don't remember throwing the glass, in
18 the interview that you did at your house.

19 A. No, I don't recall that.

20 MR. SMITH: I would like to play a portion of
21 State's 59, Your Honor.

22 This is from four minutes and 12 seconds off of
23 State's 59, I think I said.

24 (Audio recording was played. Not transcribed.)

25 BY MR. SMITH:

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1 Q. You don't know how it got broken. You had it. It
2 was yours?

3 A. Yes.

4 Q. But the police did ask you about it; right?

5 A. Yes, it's recorded.

6 MR. SMITH: I don't have anything further.

7 MR. HARRIS: Thank you, Your Honor. No questions.

8 THE COURT: Thank you, ma'am. You may step down.
9 Watch your step as you're stepping down.

10 (The witness exited the stand.)

11 MR. SMITH: Your Honor, that would be the State's
12 case.

13 THE COURT: Ladies and gentlemen, we've reached one
14 of those points in the trial where I have to excuse you on my
15 own, not for anything the lawyers want to talk to me about. I
16 now have to talk to the lawyers about something.

17 I want to remind you not to have any discussions
18 among yourselves about anything involved in the case. Retire
19 back to the jury deliberation room. We'll get you back just
20 shortly. I have to take up a matter with the lawyers.

21 (The jury exited the courtroom at 3:30 p.m.)

22 THE COURT: Do you need a break, short recess?
23 Let's take a short recess for a while. We've been at it for a
24 while. Come back in about five minutes.

25 (A recess transpired from 3:31 p.m. until 3:42

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1 p.m.)

2 THE COURT: Are you ready, Mr. Harris?

3 MR. HARRIS: Yes, Your Honor.

4 THE COURT: Yes, sir.

5 MR. HARRIS: Your Honor, the State having rested
6 its case, I at this time, make on behalf of the Defendant a
7 motion for directed verdict of acquittal.

8 Your Honor, of course, the indictment charges the
9 Defendant with statutory crime of attempted murder. The
10 statute requires and case law interpreting the statute requires
11 that the State proves a specific intent to kill, accompanied by
12 malice aforethought.

13 My reading of State v. King, 422 South Carolina
14 47-810, Southeast 2d. 18, 2017 decision of the Supreme Court of
15 South Carolina, my reading of that confirms that the attempted
16 murder statute creates a specific intent crime. And although
17 the statute says in the body of it that the crime involves
18 expressed or implied malice, my reading of King says that's a
19 specific intent crime cannot be proved by proving implied
20 malice.

21 The malice must be a specific intent to kill,
22 accompanied by malice aforethought. And that malice must be
23 expressed malice. I don't think the State proved that in this
24 case.

25 What the State has proven is that there was a

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1 family altercation between the Defendant, the Defendant's
2 brother, and the mother of those two individuals, Judith
3 Nodine. An ever escalating argument ensued. The argument was
4 started by the alleged victim; that very provocative words and
5 actions were undertaken by the alleged victim, leading to
6 Ms. Nodine trying to break up the ensuing confrontation.

7 During the course of which she has testified that
8 the alleged victim attacked her by throwing her to the floor
9 and attacked her or attempted to attack her with a 40-ounce
10 beer bottle, whereupon a shot rang out.

11 And there's no description in the record of even
12 the Defendant holding a gun before the shot was fired. Not the
13 manner of which there's no evidence in the record that the
14 Defendant uttered words that would leave one to believe that he
15 had an intent to kill. There's no other evidence of that.

16 So we feel like the State's evidence has failed
17 entirely to prove the specific intent to kill under those
18 chaotic circumstances. There's been no evidence of prior
19 planning. The State struggles even to identify when the
20 Defendant became armed. Although he had apparently
21 unchallenged testimony on the record of a concealed weapons
22 permit.

23 So there's no words or other conduct to prove
24 expressed malice or malice aforethought or even the specific
25 intention to kill.

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1 There are other cases, and I can provide citations
2 given a little time, that indicate that in any specific intent
3 crime, when there is evidence that would tend to lessen the
4 crime, meaning a confrontation, sudden heat of provocation, any
5 of those things, that malice aforethought cannot be said to be
6 found in those circumstances.

7 For all those reasons, Your Honor, we take the
8 position under the statute and under King, in particular, that
9 the State simply failed in its proof here for attempted murder.

10 THE COURT: May I ask you a question?

11 MR. HARRIS: Yes, sir.

12 THE COURT: I ask you a question of your
13 interpretation of State versus King. The statute does provide
14 that malice may be inferred or expressed, okay. I think State
15 versus King, court highlighted their challenge with the way the
16 statute was written. Because I do agree with your
17 interpretation of State versus King that, in fact, the court
18 very clearly said that: This is not going to be in South
19 Carolina due to the fact we have the statute, attempted murder
20 is not going to be a general intent crime. It's going to be a
21 specific intent crime. There has to be that showing of
22 specific intent.

23 I scratched my head over your statement about State
24 versus King establishes the proposition that malice cannot be,
25 I believe your words were, inferred.

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1 MR. HARRIS: Implied.

2 THE COURT: Implied. Because I don't view -- the
3 reason I scratched my head, I don't view State versus King as
4 being that the State is prohibited from establishing the
5 specific intent for purposes of attempted murder through
6 circumstantial evidence.

7 Are we on different pages, or are you arguing
8 something different than I'm expressing to you? Where is the
9 error of my thinking?

10 MR. HARRIS: Your Honor, I'm going through King.
11 I'm looking at King. It appears at least on Southeastern
12 Reporter version of the report, 810, appears to be 810
13 Southeast 2d. 23. The court quotes language I think expresses
14 the internal conflict with the statute. Attempted murder can
15 be committed only when the accused's acts are accompanied by
16 expressed malice, malice in fact. One cannot attempt to kill
17 another with implied malice because there is, quote, no such
18 criminal offense as an attempt to achieve an unintended result.

19 THE COURT: Right.

20 MR. HARRIS: And another portion -- I apologize to
21 The Court. I can't lay my hands on it. I think in another
22 portion of the opinion they express the same idea by saying:
23 We recognize it is counter-intuitive to ignore a portion of a
24 statute. But our case law, as this court is developing it
25 under the statute for attempted murder, the way I read it,

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1 leaves them no choice but to require expressed malice and to
2 say that implied malice is not sufficient to make out the
3 offense.

4 THE COURT: Okay. Thank you for that.

5 MR. SMITH: Your Honor, just starting off case
6 law-wise, we would look at State v. Taylor. I think it's
7 probably the most recent case, although it's not been taken up
8 by the Supreme Court yet, that addresses this issue. That was
9 a case where the woman had tossed her child, her newborn child
10 into a dumpster. They were arguing through her attempts to
11 cover it up and through evasive answers to law enforcement, the
12 jury could be able to imply malice. At the very end of State
13 v. Taylor --

14 THE COURT: Is State versus Taylor, an attempted
15 murder case?

16 MR. SMITH: Yes. Thankfully the baby was found by
17 some people before it died.

18 They say, as we already noted, we understand
19 implied malice as prohibited in King to mean malice applied by
20 law, not malice found by jury based on circumstances.

21 Again, neither King nor any other case holds intent
22 to kill cannot be shown through circumstantial evidence as
23 Taylor seems to insist.

24 Shans, which is another case that the applicant --
25 the appellant was mentioning in that case actually deals with

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1 State v. Belcher, which I think was before my time. That is
2 when there used to be a charge that the use of a deadly weapon
3 implied malice. I think it's been removed from all the judges'
4 charge book. Not given because I do think that does flirt with
5 the judge commenting on the facts.

6 The State is still allowed to present the use of a
7 deadly weapon as evidence, that the jury could infer shows
8 malice not that -- essentially, under Belcher, the judge
9 would've been saying, if they used a deadly weapon, malice must
10 exist. We are not asking for any such charge like that should
11 the case go forward as attempted murder.

12 This case is arguing that the actions of the
13 Defendant taken can be used to show malice in this case. And
14 we would ask Your Honor to consider that case in reaching your
15 decision and in terms of whatever jury charge we do end up with
16 in this case.

17 As far as factually, Your Honor, and one of the
18 things like I said in Taylor that they argued, and it's
19 actually the final paragraph, Taylor argues the court should
20 not allow the solicitor during closing arguments that the jury
21 could find malice based on Taylor's attempt to cover up the
22 crime.

23 The solicitor told the jury it inferred malice from
24 her effort to cover up the crime and her intentional denials to
25 police in the face of evidence against her. Nothing suggests

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1 this argument was improper. Indeed, Our Supreme Court has
2 emphasized the parties are free to argue the existence or
3 non-existence of malice based off the evidence.

4 In light of that, Your Honor, there are two
5 conflicting stories about what happened. And we think those
6 could show that neither one of them is true and that it was
7 malice that occurred. Wilson Gomez testified that
8 Mr. Rodriguez told him this was --

9 THE COURT: Let me interrupt you one second. If I
10 can ask a question. Hopefully, you'll help me out.

11 MR. SMITH: Yes, sir.

12 THE COURT: I still read State versus King as
13 establishing whether inferred or expressed, State versus King
14 establishes that, under the statute, it requires a specific
15 intent crime.

16 MR. SMITH: Yes, sir. King is like a pistol whip
17 where the gun discharges -- if I recall right, it's a cab
18 driver gets robbed. In the process of pistol whipping, the gun
19 goes off and shoots him.

20 THE COURT: In what you're fixing to do, what I
21 anticipate what you're about to do is to review the evidence
22 that you view in the light that's most favorable to the State
23 that you want me to take a look at. When you do that, I'm
24 going to encourage you to take a look at that evidence. Argue
25 it to me as to what then gives you that specific intent element

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1 of the statute.

2 MR. SMITH: One, I think it is instructive is the
3 way that Ms. Rodriguez describes this on the stand. She is
4 actually standing between two parties, she's a foot away from
5 Bryant Rodriguez, if I remember. Based off the distance of
6 that, Jorge could not have been a terribly considerate distance
7 away. The shot that hit him in the head had to pass around her
8 and hit him in the head.

9 Our contention would be that only somebody who was
10 specifically trying to kill Bryant Rodriguez could have done
11 that. Otherwise, they would've either hit Ms. Nodine
12 Rodriguez.

13 And the location of the fact it hit him in the head
14 is indicative of an intention to kill him rather than, like in
15 State v. King, where the intention was like, if a gun was out
16 and they had gotten into a fistfight, wrestling match, and the
17 gun had gone off and shot him. That is not what happened in
18 this case. There was distance between them.

19 And the aim that would've been necessary to
20 accomplish the shot, we think shows there was a specific intent
21 to kill him at that time.

22 And there are a number of different stories about
23 how it went down. The one that Ms. Rodriguez tells to law
24 enforcement after she had the nap is essentially that there was
25 a fight, and she was trying to break it up and then Jorge got

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1 shot -- excuse me. Bryant got shot.

2 She did not see Jorge shoot. She said when she
3 turned around, he has his gun up on his head, holding his head.
4 And she said they were the only two other people inside the
5 house. We do think it is apparent he did fire the shot.

6 And then the aim that would have been required to
7 accomplish the shot, we believe the jury should have the option
8 of convicting him of attempted murder.

9 As far as specific intent to kill, I think that
10 would be the State's argument. We do have arguments as to
11 malice as well.

12 THE COURT: You want to tell me what those are. I
13 think the State's most difficult burden is on that specific
14 intent element. You can give me malice as well.

15 MR. SMITH: I don't disagree.

16 THE COURT: Give me the malice.

17 MR. SMITH: I'll take what I can get. As far as
18 malice, there is some testimony that there was bad blood
19 between the two of these, the two brothers that are involved in
20 the shooting.

21 Nicholas said he thought it would've been a bad
22 idea for them to be together. I think you can infer from
23 Judith's testimony the same thing. She did not think that
24 Jorge was going to come home that night. I think you can infer
25 she did not -- probably did not think that would've been a good

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1 idea.

2 We do have that the victim's moped is out in the
3 driveway. And I think there are only -- I think there's only
4 two options, I might be wrong, about where this gun came from.
5 It was either on his person, on the car or in the car and that
6 would mean that he saw the moped and chose to go into the house
7 with a gun. I'm not saying he's not allowed to do that. He
8 saw that his brother was going to be there and picked up a gun.

9 Or at the opportunity that Judith talks about where
10 Bryant has started to verbally harass him, he goes upstairs and
11 retrieves a gun from his bedroom.

12 Another thing I think that goes both to the malice
13 and maybe specific intent to kill, Your Honor, is the way that
14 this is described is not some sudden thing. It is not, he
15 makes the accusation. They both start brawling.

16 Judith testifies that Jorge actually, I guess,
17 takes the time out from the fight to call his girlfriend to ask
18 her if she's been sleeping with his brother.

19 I don't know if Bryant is yelling in the background
20 during that. There was some period, apparently, where he was
21 able to have a conversation with her; potentially cool off.

22 Judith also did mention he did have a car. He
23 could've left. He could have gone to his room. He did not.

24 At some point -- we don't know and that's just the
25 limitation of the State. At some point he decided to go down

JUDITH NODINE DIR BY MR. SMITH

1 in the living room and continue on with the verbal altercation
2 knowing that he had a gun on him.

3 And we think the jury could infer malice from that.
4 We are talking about a family on Christmas Eve. Christmas is a
5 bit of an unusual -- and everybody is different. Some people
6 carry guns 24/7. It is an unusual circumstance. I think the
7 jury could infer that he had some malicious intent with arming
8 based on the history between the two.

9 And then, Your Honor, we believe the conflict
10 between what Wilson Gomez says about what Jorge Rodriguez told
11 him about, which was this was an accident while fighting is
12 totally inconsistent with Judith Rodriguez's testimony that it
13 was a defense of others, which I would consider to be an
14 intentional act; one that would be justified by law that is
15 done intentionally; meaning he shot him to save his mother.
16 Those two can both not be true.

17 We would think that the jury could infer that it's
18 neither one of those and that they could, based on other facts
19 between the bad blood and the other points I mentioned, to
20 indicate that he had malice and an intention to kill when he
21 shot him.

22 Let me look at my notes.

23 Mr. Harris didn't raise this. In his opening he
24 somewhat implied that one cannot be angry and act with malice.
25 I don't think that's true. I would say most people that act

JUDITH NODINE DIR BY MR. SMITH

1 with malice are angry. I think you can be angered and provoked
2 to a level that malice goes away and like -- we don't really
3 have this, but a manslaughter-type case, I think would be
4 analogous to where somebody has died.

5 Just the mere fact that he was angry does not mean
6 that he cannot act with malice. Most people that kill somebody
7 have -- they're angry with them when they do it. Thank you,
8 Your Honor.

9 THE COURT: Thank you, sir.

10 MR. SMITH: Your Honor, if you believe that the
11 State has not offered any evidence to support either the
12 specific intent to kill or the malice aforethought, we would
13 ask that the case be submitted to the jury as an assault and
14 battery, high and aggravated, if that is The Court's decision
15 rather than an outright dismissal of the case.

16 THE COURT: Any reply?

17 MR. HARRIS: Yes, Your Honor. Thank you. Looking
18 at the King case, language describing specific intent to kill,
19 what is meant by that? They note that the statute is not
20 descriptive of that phrase. They say further: Attempted
21 murder would require the specific intent to kill. And specific
22 intent means the Defendant consciously intended the completion
23 of acts comprising the attempted offense.

24 Again, I take that to mean, and contrary to what
25 the Solicitor seems to believe, that it must be proved that the

JUDITH NODINE DIR BY MR. SMITH

1 Defendant -- and I would put it in terms of the facts of this
2 case -- that the Defendant formed the idea that he would use a
3 gun to take the life of Bryant Rodriguez.

4 And that in furtherance of that formed intent, took
5 out a gun, pointed a gun. This, of course, is leaving out
6 expressed malice, which does not exist in this case in our
7 opinion on the facts. Took out a gun, aimed a gun with the
8 formed intention in his mind to execute a killing by shooting
9 somebody in a manner designed to kill instead of wound.

10 That's part of the failure of the State's case in
11 the context of the chaos and the confrontation, the lack of
12 evidence concerning the actual seeing the shooting. I will say
13 that the State's -- I don't know if it rises to the level of a
14 theory. It's kind of a thought that, because they speculate
15 that Judith Rodriguez would've been in the line of fire, that
16 the Defendant must have -- they have no proof of this. They
17 haven't seen any of this. Nobody saw any of this.

18 That it must have been that the Defendant purposely
19 aimed a shot at the victim's head. There's no evidence of that
20 whatsoever. That is the type of speculation that measures
21 whether the State has made a prima facie case or simply has
22 offered evidence that raises mere speculative evidence. It's
23 not evidence. It's just their interpretation of the evidence.

24 Essentially what the Assistant Solicitor just
25 described to The Court as evidentiary support for intent to

JUDITH NODINE DIR BY MR. SMITH

1 kill and malice is just that; speculation. It's not evidence.

2 Put another way, as I've often heard it put,
3 particularly in light of the passage of the attempted murder
4 statute, you can't assume that anytime a gun is fired, even
5 when a gun is fired on purpose, not accidentally, you cannot
6 assume as an evidentiary matter that the shooter intended the
7 result as the language in King says, which is the killing; the
8 completion of the act of killing. You can't assume that the
9 mere firing of a weapon was intended to kill as opposed to
10 scare or wound.

11 In the defense of others here, there is no
12 evidence -- the State having its burden -- to show in what
13 manner it was that the gun was fired. The evidence suggests it
14 was a single shot and a fragmented bullet. So certainly no
15 unloading of a gun or any such thing as that.

16 The Defendant's reaction that is described in the
17 record is one of being distraught, not of somebody that: I
18 meant to kill him and I killed him. That's specific intent to
19 kill.

20 The Defendant's demeanor is what have I done, like
21 I didn't intend to do this. I didn't intend to do this, what
22 has happened. Same thing.

23 In the other statements in the aftermath, he was
24 distraught, suicidal. He didn't intend that to happen. The
25 witness described him saying it was an accident. He didn't

JUDITH NODINE DIR BY MR. SMITH

1 intend the completion of the act.

2 I think that's where the intention in the case lies
3 on intent to kill. It can't be he must've intended to kill
4 him. They have to prove that he, in fact, did intend to kill
5 him as opposed to anything else to the exclusion, if you will,
6 of any other explanation.

7 Otherwise, specific intent gets watered down to
8 general intent. And that's the concern as it dovetails with
9 allowing implied malice to supply the form of malice involved
10 in this specific intent of the crime because it tends to reduce
11 mens rea as the King case puts it. It tends to reduce the type
12 of act and state of mind of the actor that's required by the
13 statute.

14 THE COURT: Thank you. I'm going to make a ruling.
15 I'm going to consider my ruling. You said you could give me
16 the cases on this thing that you argued which was implied
17 malice.

18 MR. HARRIS: Yes, Your Honor. There is a string of
19 cases. I've also told the Solicitor I would like to provide
20 The Court the amicus brief in the Taylor case, which is still
21 undecided because it's the best explanation I can find.

22 THE COURT: Thank you. I'm going to make a ruling.
23 I'm going to condition it on y'all can give me additional law
24 on this idea of implied malice.

25 I've listened. I tried to listen attentively to

JUDITH NODINE DIR BY MR. SMITH

1 the witnesses as they presented their testimony. And I'm
2 familiar with State versus King. I've addressed it a lot. You
3 haven't noticed my name at the end of the opinion?

4 I've got some familiarity with it. I understand
5 it. I think I understand what King was trying to address.

6 I've looked at State versus King. I've looked at
7 some other cases while this case will be going. I tried to get
8 prepared for this argument.

9 My decision is going to be not to grant the
10 directed verdict motion at this time. I have to, as part of
11 any directed verdict motion, I have to view the evidence in a
12 light that -- I have to accept the evidence as the State has
13 presented it to me. I have to view that evidence as presented
14 from the State to me as if it were true. And I have to view
15 the inferences from that evidence in the light that is most
16 favorable to the State for purposes of this motion.

17 I cannot engage in weighing of the evidence. I
18 cannot look at the credibility of the evidence because those
19 are things that the jury would be asked to do. I have to
20 look -- the standard of review I have to apply in this case has
21 to be looking at the evidence in the light that is most
22 favorable to the State.

23 When you do that, on the specific intent that I
24 think King establishes, that has to be shown, I think the State
25 has met that burden. Both of you and Mr. Smith says he thought

JUDITH NODINE DIR BY MR. SMITH

1 his hardest argument was the malice part. You argued to me it
2 should not be implied malice. I don't really agree with y'all.

3 I'm willing to take a look at what you got because
4 I still think the important part legally of this case is to
5 get -- for the State to get to the statutory requirement as
6 announced by King, which is to prove a specific intent. I
7 still view that as being a substantial hurdle for the State in
8 this case.

9 I do not read King as saying that malice can only
10 be or malice can only be established through expressed malice.
11 I read King as not saying -- I read King saying, yeah, we got a
12 problem with the way the statute is written by the legislature.
13 It seems to be in conflict. The Supreme Court didn't kick the
14 statute out. They still had the statute there. They addressed
15 the statute in a way that they said we're going to read the
16 statute as being you got to have a specific intent for the
17 attempted murder.

18 I think you can still -- it's a challenge for State
19 to get to that specific intent. I still believe they can do it
20 through circumstantial evidence. I believe they can do it
21 through what I view as the implied malice. That implied malice
22 has to reach the standard as articulated by King, which is to
23 prove a specific intent, which is a high standard. And I think
24 King announced that.

25 I'm going to deny the motion right now. If y'all

JUDITH NODINE DIR BY MR. SMITH

1 want to give me some more law to take a look at, I'll be more
2 than happy to digest that law later. I appreciate your
3 arguments. Thank you very much.

4 MR. SMITH: I sent State v. Taylor to your law
5 clerk. It will be coming from Jennifer Jordan because we share
6 Westlaw account.

7 THE COURT: We don't have Westlaw. If you have
8 Westlaw case, you're going to need to --

9 MR. SMITH: If I email it to you, it will come as
10 an attachment.

11 THE COURT: It will come through y'all's?

12 MR. SMITH: It should. I have done it with law
13 enforcement people in the past. I sent it to Mr. Harris as
14 well.

15 THE COURT: I've decided the motion. We're not
16 going to resume any more testimony at this time. I would like
17 to bring the forelady out and dismiss the jury for the night.
18 And let's continue talking about any other issue.

19 (The jury foreperson brought in at 4:13 p.m.)

20 THE COURT: Ms. Smith, you can stay right there.
21 Ms. Smith, I want you to do something for me. You are the
22 foreperson for the jury.

23 Thank them for their efforts today. Thank them for
24 their attention. We are continuing to work. We're not going
25 to bring y'all back in today.

JUDITH NODINE DIR BY MR. SMITH

1 But I am going to ask, if you would, to remind the
2 jury about two instructions; don't discuss it with anyone or
3 among themselves. Nothing involved in the case. Don't do any
4 independent research or investigation.

5 Have the jury please return back to the jury
6 deliberations room by 10:00 in the morning. Can you do that
7 for me?

8 THE FOREPERSON: Sure.

9 THE COURT: Then you may tell them they can go
10 home. Thank you very much.

11 (The jury foreperson exited the courtroom at 4:14
12 p.m.)

13 THE COURT: With that being done, that means it's
14 now the State -- I mean the defense. Are you in a position of
15 knowing whether or not you're going to present any witnesses or
16 whether the Defendant is going to testify?

17 MR. HARRIS: Your Honor, I have discussed the
18 Defendant's right to testify. Of course, or not testify. I do
19 not believe that anything -- that the last of those
20 conversations took place at lunch today. I do not view the
21 witnesses this afternoon to make a significant difference, at
22 least in the advice I would give to my client. He indicated to
23 me at lunch that he would not take the stand.

24 If I can have two minutes, just to see if anything
25 this afternoon changed. If we can step out. We'll be right

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1 back.

2 THE COURT: Yes, you can step out. We'll step out
3 as well. I don't want to make these people look at me. Let us
4 know when you come back in.

5 MR. HARRIS: We will go in what Mr. Smith calls the
6 deal room.

7 (A recess transpired from 4:15 p.m. until 4:21
8 p.m.)

9 THE COURT: Yes, sir, Mr. Harris.

10 MR. HARRIS: After consultation with the Defendant,
11 State having rested, The Court having ruled on the directed
12 verdict motion, would advise The Court the defense would rest.
13 We will do so formally in front of the jury, if necessary, in
14 the morning.

15 THE COURT: I'm going to review with your client
16 his right to testify.

17 MR. HARRIS: Yes, sir.

18 THE COURT: Give me a second.

19 (A pause transpired).

20 THE COURT: Mr. Rodriguez, I'm going to ask you, if
21 you would, to please stand and raise your right hand. Let the
22 clerk of court swear you in.

23 JORGE RODRIGUEZ
24 being first duly sworn, testified as follows:

25 THE COURT: Mr. Rodriguez, I need to remind you

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1 like I have with all the witnesses that we're making a
2 recording of everything that happens here. Whenever you speak,
3 answer my questions, please speak up loud enough so the court
4 reporter and I can hear you.

5 Mr. Rodriguez, likewise, if ever during this
6 process where we have this conversation, if you can't hear me,
7 you immediately let me know, and I'll speak up as well.

8 MR. RODRIGUEZ: Yes, Your Honor.

9 THE COURT: Mr. Rodriguez, at this time I'm going
10 to explain to you certain of your rights. If you do not
11 understand anything that I say, please let me know. If you
12 want me to explain anything in more detail, please let me know.
13 Do you understand that?

14 MR. RODRIGUEZ: Yes, Your Honor.

15 THE COURT: We have reached the stage of the trial
16 where you may present your defense. You have the right to
17 claim the protections given to you by the Fifth Amendment to
18 the Constitution of the United States. Now, this Amendment
19 provides in part that no person shall be compelled in any
20 criminal case to be a witness against himself. This means that
21 you cannot be required to testify in this case.

22 You have the right to testify on your own behalf.
23 However, no one can make you testify. This is a personal
24 right, and no one can waive this right except you.

25 If you decide to testify, you will be subject to

JUDITH NODINE DIR BY MR. SMITH

1 the same rules that govern other witnesses. And you may be
2 examined and cross-examined on any relevant issue in this case.

3 In addition, if you have any convictions involving
4 dishonesty or false statement or for crimes punishable by
5 imprisonment for more than one year and This Court determines
6 that the probative value of admitting this evidence outweighs
7 its prejudicial effect to you, then the Solicitor will be able
8 to introduce your record to attack your credibility.

9 If you decide to testify, this decision on your
10 part must be freely, voluntarily, and intellectually made with
11 knowledge of the protections given to you by the Fifth
12 Amendment and the consequences of your decision to testify.

13 If you decide not to testify, I will instruct the
14 jury that they cannot give the fact that you did not testify
15 any consideration whatsoever and that there is to be absolutely
16 no prejudice to you because you did not testify.

17 It is left entirely up to you whether or not you
18 testify in this case.

19 You may talk to your attorney. You may talk to
20 your family, your friends, or anyone else. The final decision
21 will be left entirely up to you. Mr. Rodriguez, do you
22 understand what I have just explained to you?

23 MR. RODRIGUEZ: Yes, Your Honor.

24 THE COURT: Do you have any questions about what I
25 have just explained to you?

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1 MR. RODRIGUEZ: No, Your Honor.

2 THE COURT: Have you discussed with your lawyer
3 whether you should or should not testify in this case?

4 MR. RODRIGUEZ: Yes, Your Honor.

5 THE COURT: Do you wish to talk further with your
6 lawyer anymore at this time?

7 MR. RODRIGUEZ: No, Your Honor.

8 THE COURT: Mr. Rodriguez, do you wish to testify
9 or not to testify in this case?

10 MR. RODRIGUEZ: No, Your Honor. I don't wish to
11 testify.

12 THE COURT: Mr. Rodriguez, this decision by you not
13 to testify, has anybody perhaps come to you, threatened you in
14 any way, or have they made you any promises in order to get you
15 to make the decision not to testify in this case?

16 MR. RODRIGUEZ: No, Your Honor.

17 THE COURT: Mr. Rodriguez, am I correct to conclude
18 that your decision not to testify in this case, that it is a
19 free and voluntary decision by you?

20 MR. RODRIGUEZ: Yes, Your Honor.

21 THE COURT: Thank you, Mr. Rodriguez. Stay in
22 touch with your lawyer as I know you will. We will have you
23 now as not testifying in this case. Let him know if you change
24 your mind; okay?

25 MR. RODRIGUEZ: Yes, Your Honor.

JUDITH NODINE DIR BY MR. SMITH

1 THE COURT: You may be seated.

2 May I see the lawyers for a minute.

3 (Off-the-record discussion.)

4 (The hearing was adjourned at 4:31 p.m.)

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JUDITH NODINE DIR BY MR. SMITH

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to, nor
counsel for, any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 21st day of July, 2024 at Spartanburg, Spartanburg
County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME III

6 vs.

CASE NO. 2020-GS-42-04184

7 JORGE ALBERT RODRIGUEZ,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE J. MARK HAYES, II

11 DATE: October 13, 2013

12 TIME: 10:30 AM

13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
15 Spartanburg, SC 29306

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 SPENSER SMITH, ESQ.

22 ATTORNEYS FOR THE DEFENDANT
23 RICKY K. HARRIS, ESQ.
24
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FOR I.D. IN EVD.

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COURT EXH. 5, Case citations

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STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 (The following proceedings were had outside the
2 presence of the jury.)

3 THE COURT: We're going fast this morning. I don't
4 have the jury charge to give you yet but, hopefully, will have
5 them shortly.

6 Thank you very much for giving me the information
7 that y'all sent to me. I've read with great interest the
8 Taylor case as well as the brief that was filed by the South
9 Carolina Association of Criminal Defense Lawyers.

10 I still believe that, as the way the law stands
11 today, based on the King case, that a specific intent as
12 defined by the Legislature for attempted murder can still be
13 proven through expressed or implied malice.

14 I read with great interest the arguments made in
15 the brief, and they have some merit to the arguments that are
16 in there.

17 So I tried to craft a charge as the way that I
18 believe the -- that a jury can establish, by reviewing the
19 facts, a specific intent to murder someone for purposes of the
20 attempted murder statute without it being an expressed
21 statement, I'm going to kill you, or a letter saying, I'm going
22 to kill you, or somehow expressed.

23 I think the law as it still stands does allow for a
24 jury to consider facts from which they can find
25 circumstantially the specific intent to kill that is meant by

1 the Legislature.

2 I wanted to make those comments to y'all. I have
3 taken with great interest the information that was submitted,
4 and we can make the brief as well as the Taylor case that I
5 think both sides were relying on, we can make those copies part
6 of the record of this case.

7 (COURT EXH. 5, Case citations, was received into
8 evidence.)

9 THE COURT: We're just going slow this morning. I
10 apologize. The jury -- I've been told all of the jury members
11 are here. Hopefully, in just a moment, we'll be able to give
12 you exact copies of the charges that I intend to use and then
13 receive any comments and suggestions from those. I wanted to
14 maybe speed the process along by at least sharing those
15 comments with you.

16 I'll step down, will be back shortly.

17 (A recess transpired from 10:33 a.m. until 10:52
18 a.m.)

19 MR. SMITH: Your Honor, I've read through it.

20 THE COURT: All right. Any comments, suggestions?

21 MR. SMITH: Your Honor, I think the assault and
22 battery high and aggravated needs some significant changes. I
23 think it's charging the old ABHAN, not the statutory ABHAN.

24 I also think this line on the second paragraph
25 about it includes all the elements of attempted murder except

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 malice aforethought. It also does not require a specific
2 intent to kill either. I don't know if we need to say -- I
3 don't know if we should say nothing about that. It is a
4 specific statutory offense.

5 And the rest of the language about the aggravation,
6 it is before my time. I think that is all related to the
7 common law ABHAN.

8 I have a demonstrative for the jury of the statute.
9 We would ask that a person commits assault and battery of a
10 high and aggravated nature, if they unlawfully injure another
11 and/or great bodily injury to another person results or the act
12 is commonly likely to produce great bodily injury or death.
13 And define great bodily injury as bodily injury which causes
14 substantial risk of death or which causes serious permanent
15 disfigurement or protracted loss or impairment of the function
16 of the bodily member or organ.

17 THE COURT: Do you have that to give to me or just
18 use that?

19 MR. SMITH: I was going to use that.

20 600 is the final part of the Code section. I'm
21 blanking on the other.

22 THE COURT: Would it again be 16?

23 MR. SMITH: Probably 16-160(c)(1)(C) maybe.

24 16-3-600(b)(1). Great bodily injury is defined in
25 (a)(1).

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1 THE COURT: 16-3-600?

2 MR. SMITH: (b) (1).

3 THE COURT: (a) (1) is the definition of great
4 bodily injury?

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: Mr. Harris, do you have any problem
7 with me substituting my proposed charge or just reading
8 16-3-600 (b) (1) and then (a) (1)?

9 MR. HARRIS: I do not, Your Honor. I believe that
10 coupled with the statutory instruction, I would request that
11 The Court use the Defendant's requested charge number three,
12 which we have labeled assault and battery of a high and
13 aggravated nature intent; provided by e-mail last night.

14 We do recognize that there is a difference in the
15 degree of intent required as between attempted murder, which is
16 a heightened degree of a specific intent to kill as opposed to
17 what is often described as the general intent to kill
18 requirement under the assault and battery statute.

19 And the purpose of the language that we have
20 proposed in Defendant's request number 3 is our suggested --
21 Defendant's suggested language as to the intent element. It's
22 not included in the body of the charge but The Court may recall
23 a part of the Amicus brief that we're relying on suggests that
24 a court make some effort to expressly distinguish to a jury the
25 difference between what the intent required to prove attempted

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 murder and the intent to require to prove A&B.

2 THE COURT: Mine is not labeled his charge three.
3 Mine is just labeled -- mine is Defendant's request charge
4 number 3. Do you have a copy of that?

5 MR. SMITH: Yes, Your Honor, he sent it to me.

6 THE COURT: What if I charge the statute and then
7 follow-up charging the statute with Mr. Harris' definition for
8 criminal intent for assault and battery, high and aggravated
9 nature?

10 MR. SMITH: It's fine to me. I know in other
11 trials I've done, there's some charge like every crime in South
12 Carolina requires a criminal intent. I don't know if that's a
13 generic that one you have.

14 THE COURT: I don't have that one.

15 Then I'll charge the statute, and then I'll charge
16 Mr. Harris' charge number 3. And I'll substitute that for what
17 I prepared for assault and battery, high and aggravated nature.

18 MR. SMITH: I don't have a problem of your examples
19 of assault and battery. I would still say those should be
20 read. I thought those were fine.

21 I think you have, if you rear back to hit somebody,
22 I have no problem with that to aid them in the interpretation
23 of the statute.

24 THE COURT: To start with, an assault occurs when a
25 person unlawfully attempts or offers to commit a violent

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1 injury. And then go through. The next page would be at the
2 end of the first full paragraph with the word: Then that is a
3 battery. I'll charge those words.

4 MR. SMITH: And eliminate the aggravated.

5 THE COURT: Yeah.

6 MR. SMITH: I think that is correct, Your Honor.
7 The second paragraph, are you just eliminating that as well?
8 It will just say, if you don't find attempted murder, you must
9 determine --

10 THE COURT: I was still going to do: If you find
11 the State has not proven the Defendant's guilty of attempted
12 murder, you must then determine whether the State has met its
13 burden, the Defendant is guilty of assault and battery, high
14 and aggravated nature. And then go into the statutory.

15 MR. SMITH: Eliminating that second paragraph.

16 THE COURT: Right.

17 MR. SMITH: Yes, I'm fine with that, Your Honor.

18 THE COURT: Otherwise they're left going what?
19 Because we never talked about assault and battery, high and
20 aggravated nature in the course of this trial in front of them.
21 I think that gives them a reason why they're looking at it.

22 MR. SMITH: Go from the first paragraph to the
23 fourth paragraph.

24 THE COURT: First paragraph to the fourth paragraph
25 to the next page that ends with the word: A battery.

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 MR. SMITH: Plus the statute.

2 THE COURT: Plus the statute. And Mr. Harris'
3 definition.

4 MR. SMITH: I think that's fair.

5 THE COURT: What else?

6 MR. SMITH: Did you have anything, Ricky?

7 MR. HARRIS: Yes. Your Honor, may I address The
8 Court's proposed attempted murder charge?

9 THE COURT: In addition to what you've already
10 addressed?

11 MR. HARRIS: I guess I need to formally state for
12 the record that I do continue to take the position that
13 attempted -- an attempted murder instruction should not include
14 instructions for a finding of inferred or implied malice. And
15 I have made those arguments in connection with a directed
16 verdict motion and identical argument that I made for that.

17 And for the record, I will formally request The
18 Court instruct the jury in accord with the Defendant's request
19 for charge number two, which is our formulation of the elements
20 of attempted murder.

21 THE COURT: To the extent that I've not done so,
22 that's denied. To the extent I did so, that's granted. That
23 would be part of the record.

24 MR. HARRIS: Thank you, Your Honor.

25 THE COURT: I did take a section out of the brief

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1 as well as a section out of the opinion in the Taylor case,
2 inserted that into my charge that I originally prepared. I did
3 take part of your argument and then incorporated it into a
4 sentence of mine.

5 MR. HARRIS: Thank you, Your Honor.

6 Your Honor as to The Court's proposed instruction
7 on the defense of others, I have no objection to what is
8 proposed, but I would request that The Court include language
9 that conforms to the law of self-defense, which would be that
10 the person being defended has no duty to retreat if injured in
11 her own home or on her own premises.

12 THE COURT: Where would you suggest that I put
13 that?

14 MR. HARRIS: At the very end I think would be fine.
15 Just add it at the end.

16 MR. SMITH: I have no issue with that, Your Honor.

17 THE COURT: I actually thought I had that in there.
18 Thank you for pointing that out that I didn't have it in there.

19 MR. SMITH: I think you have it in the self-defense
20 section.

21 THE COURT: I'll take your charge number one, I
22 will take the part of your charge that begins with the word
23 forth. I'll take out the word forth. And just begin what I
24 say with: The other party, meaning the Defendant, had no
25 probable means of avoiding the danger of losing her own life or

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1 sustaining serious bodily injury other than to act as was done
2 in this particular instance. If however, the other party,
3 meaning the Defendant, was on her own premises, she had no duty
4 to retreat. End it with that.

5 MR. HARRIS: Yes, Your Honor. Thank you.

6 THE COURT: Thank you for the suggestions.

7 MR. SMITH: Your Honor, I have one more. The State
8 does not think self-defense should be charged to the jury. The
9 Defendant hasn't testified. He hasn't stated he was in
10 reasonable fear. He hasn't given evidence of all of the
11 elements of self-defense.

12 We do think that, although it's the State's
13 witness, Judith Rodriguez, certainly although I think her
14 testimony about, that she was in fear of great bodily injury or
15 death is going to have to be through inference. I don't
16 believe she actually said those words.

17 We would think that is okay to present to the jury
18 based off of the statements that she made but not as to
19 self-defense of Mr. Rodriguez himself.

20 MR. HARRIS: Your Honor, it's our understanding
21 that the law of self-defense, unlike many years ago, is not
22 considered an affirmative defense. The Defendant does not have
23 to prove self-defense, himself taking the stand. The State has
24 to disprove the elements of self-defense if self-defense is
25 raised by the record -- by the evidence in the record.

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1 And we take the position that it is. Both the
2 Defendant and Judith Nodine were involved in a violent -- being
3 violently confronted by words and actions by the victim. We
4 believe self-defense may not provide the evidence in the
5 record.

6 THE COURT: Thank y'all for that. I can't disagree
7 with the State. This is an unusual case when it comes to
8 self-defense.

9 I think clearly part of an argument is going to be
10 the defense of others based upon the testimony that This Court
11 has received and that defense has incorporated in the defense
12 of self-defense under the law as I understand it.

13 I'm going to charge it. I wish I could take it out
14 because it makes the charge extremely long. I think it's
15 appropriately charged.

16 Anything else? Here is the proposed verdict form
17 if y'all want to take a look at that.

18 (A pause transpired.)

19 MR. HARRIS: It seems in order.

20 MR. SMITH: I don't know if you want instructions
21 like: If guilty, stop. Or are you going to tell them?

22 THE COURT: I'll tell them.

23 MR. SMITH: Obviously, if both of these are not
24 guilty, this one must be.

25 THE COURT: I tell them that.

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1 MR. SMITH: My only concern.

2 THE COURT: I don't recall putting it on the
3 verdict form. Sometimes lawyers put it up on the screen.
4 Y'all don't have to do that.

5 How long do you think?

6 MR. HARRIS: For closing. We're going to rest.

7 THE COURT: Right. You get to rest in front of
8 them.

9 MR. HARRIS: We'll take the final argument. And I
10 imagine if I can keep it to 20 minutes, that will be
11 beneficial.

12 MR. SMITH: I was thinking that 20, 30 minutes; two
13 pages of notes.

14 MR. HARRIS: That's what I'm hoping.

15 THE COURT: If y'all went real long, I would give
16 bathroom break before I give the charge. We'll shoot for that.

17 (A pause transpired).

18 THE COURT: When we come back, I'll call on the
19 defense. They will rest. And then I will tell them closing
20 arguments. Y'all go, and then I go.

21 MR. SMITH: Yes, sir.

22 MR. HARRIS: Yes, sir.

23 THE COURT: Bring the jury in.

24 (The jury entered the courtroom at 11:18 a.m.)

25 THE COURT: Is the defense ready to proceed?

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1 MR. HARRIS: We are, Your Honor.

2 THE COURT: Yes, sir.

3 MR. HARRIS: At this time the defense rests.

4 THE COURT: Thank you, sir.

5 Ladies and gentlemen, with that, the parties -- I
6 need to instruct you that the parties have now presented the
7 evidence in this case. And it is now time for the attorneys to
8 make what is known as closing arguments.

9 Now, the arguments of the attorneys, they are not
10 evidence in this case. Their statements and arguments to you,
11 they're meant to help you understand the evidence and apply the
12 law to the evidence. You should disregard any remark,
13 statement, or argument which is not supported by the evidence
14 presented during the trial or the law that I will explain to
15 you after the arguments are presented to you.

16 At this time we will receive the closing arguments
17 from the attorneys.

18 MR. SMITH: Thank you, Your Honor.

19 Morning. I would like to start by going over the
20 law. You've had to listen to all the evidence without knowing
21 what the law is.

22 Let me put these up on the projector. The
23 Defendant is charged with attempted murder. These are the
24 elements of attempted murder: A person with an intent to kill;
25 that's the first element. You must have an intent to kill when

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1 you act. Attempt to kill another.

2 Then you must do an act that tries to kill another.

3 And that while he's doing that act, it is accompanied both
4 beforehand, immediately beforehand, and during with malice.

5 And that malice can either be expressed or implied.

6 The Judge is going to tell you about expressed
7 malice, implied malice, and inferred malice. It doesn't mean
8 that we have to have the specific word of I want to kill you
9 and shoot you, because we don't have that in this case. You
10 probably don't have that in many cases.

11 The circumstances beforehand, ill will between the
12 two parties, and just the action themselves. You are free to
13 infer that he was acting with malice, and he had a specific
14 intent to kill. You can glean that from the circumstances
15 rather than outright intention as stated beforehand.

16 The specific intent to kill, the State's argument
17 is certainly that shooting somebody in the head is intent to
18 kill them. I think you-all understand that. Handguns, when
19 you point them and shoot them at other people are designed to
20 kill people. That's what they're used for.

21 In this case, I think the intention is even more
22 clear because of the circumstances. If you believe Judith's
23 version of how events went, where she's a foot away from Bryant
24 and Jorge is five feet back, she's standing in between them, at
25 that sudden moment, where he apparently swings the beer bottle

1 and he's able to lean around and shoot -- we don't think that's
2 the version of events that happened -- there would be no doubt
3 that there would have been a specific intent to kill that
4 person to pull off a shot like that.

5 The Judge is going to instruct you more on malice.
6 It can be shown by a total and reckless indifference for life.
7 In this case after shooting his brother in the head and his
8 mother was screaming by his side, he leaves. Apparently never
9 checked on him until he's arrested.

10 I don't know how you can show more disregard for
11 life. His own brother is lying basically in the living room
12 floor bleeding out of his head and he leaves and goes and
13 disposes of a gun and hides out in Greer with Mr. Gomez. We
14 think that we've met these elements.

15 We're going to go more into the facts here; just to
16 have the context for the rest of the closing. You are going to
17 have an option of convicting of what's known as assault and
18 battery of a high and aggravated nature. Assault and battery
19 of a high and aggravated nature requires both an assault and a
20 battery. Assault is the apprehension of being hit, put in fear
21 by somebody swinging at you.

22 And then the battery is connecting. There has to
23 be assault and battery that unlawfully injures another. We
24 know he was injured.

25 And the great bodily injury to another person

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1 results or the act was accomplished by means likely to produce.
2 We think both A and B are met.

3 Bryant is still disabled to this day. He cannot
4 speak in the manner that he used to before. He cannot work
5 like he used to before. He is under the care of his mother
6 almost three years after the fact.

7 We think it speaks for itself. He suffered great
8 bodily injury. Certainly shooting somebody is a manner that
9 could cause that. We think it did cause that in this
10 situation.

11 The main differences between this and attempted
12 murder would be there is no specific intent to kill. If you
13 find yourself struggling about whether you think his intention
14 was to harm him but not kill him or whatever you think his
15 intention was, it doesn't matter. He just has to do this
16 willfully. It doesn't have to be that he's planning on killing
17 him or planning on seriously hurting him, just that he does it
18 intentionally. Which we believe we've shown that he did.

19 Great bodily injury is defined as an injury which
20 causes a substantial risk of death or which causes serious,
21 permanent disfigurement, protracted loss, or impairment of a
22 function of a body member or organ. Obviously, you saw the
23 condition that Bryant was in at the hospital, and you've heard
24 about his injuries. We certainly think that's been met.

25 This also does not -- the other difference other

1 than the specific intent to kill, this does not require malice.
2 It just requires an intent. It doesn't have to be acting
3 maliciously as you would have in the attempted murder statute,
4 which is part of the statutory language. Those are the two
5 options you'll have as far as a guilty verdict.

6 And then, of course, there's a Count 2 of the
7 indictment, possession of a weapon during a violent crime.
8 What the Judge is going to tell you, first, consider attempted
9 murder. If you have an issue with one of the elements of that,
10 go to assault and battery, high and aggravated nature.

11 If you convict of either one of those and you
12 believe that he possessed a gun when he did the crime, then
13 he's guilty of possession of a weapon during a violent crime.
14 Both attempted murder and assault and battery of a high and
15 aggravated nature are violent crimes.

16 If you convict him of either one of those, your
17 verdict on Count 2 should be guilty if you believe that he
18 possessed the weapon. That's the law.

19 I'm going to get down into the facts. I'm going to
20 start with Judith. I think she's the most important person in
21 this case. Judith did not tell law enforcement about Jorge.
22 She gave a number of different explanations for what happened
23 in this case; suicide, possibly like a stranger coming in.

24 She did not mention that Jorge lived in the house.
25 She eventually, after she's had the nap, she says basically the

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1 information that law enforcement used to charge Mr. Rodriguez
2 after sitting in the living room and actually going through the
3 crime scene. They went through that. None of those
4 interactions with law enforcement did she ever give the version
5 of events that she gave in court about Bryant trying to hit her
6 in the head with a beer bottle.

7 By my count, she gave four different reasons on the
8 stand when asked. She was asked repeatedly throughout the
9 testimony about why she didn't give that information. She said
10 that she was emotionally shot; she said that the police weren't
11 interested; that they would've ignored it, I suppose. She said
12 it was a family affair, and she didn't think it was an
13 important detail to tell, and she said that it was
14 embarrassing. All four of those came out in her testimony.

15 I submit that none of those are the reason that she
16 did what she did. It's because it's not what happened.

17 Her initial statements can be explained because
18 she's trying to protect Jorge; also, she was emotionally shot.
19 Nobody is going to dispute that. Every person that testified
20 described her condition as being totally out of it. She never
21 said any indication about what happened at the initial
22 interaction.

23 She had an opportunity at the scene. She had an
24 opportunity when she was in the back of the patrol car with
25 Rojas. She had an opportunity at the Sheriff's Office when she

1 was interviewed by Paul Norris. She had an opportunity when
2 she was at the hospital. I believe a deputy stayed with her.
3 She had an opportunity to do it after the nap. It was actually
4 after the nap that she gave what we believe is the real version
5 of events.

6 There was an argument between these brothers that
7 have issues with each other and they both had been drinking.
8 And that the argument was escalating; it lead to heading
9 towards a fight. There was no beer bottle swung at her head or
10 anything. Simply Jorge snapped, pulled out a gun and shot his
11 brother in the head. And he left.

12 That's what we think happened. Not disputing that
13 there was -- tensions were high. That is not justifiable, just
14 being in a verbal argument or the anticipation of a fistfight,
15 it is not a sufficient reason to shoot somebody in the head.

16 I want to talk about her bias. The judge is going
17 to talk to you about bias and how to interpret witnesses.
18 Y'all are all adults. You know how to do that in life.

19 I think it was clear through her testimony, through
20 some of the subtle things she said that there is a favoritism
21 for Jorge over Bryant. She made a point to point out that
22 Jorge is a, you know, an honor student. And Bryant is
23 troubled. While Bryant lives outside of the home and Jorge
24 lives in the home. You can question that however you would
25 like.

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1 I think it's important to look at some of what I
2 consider to be extraneous details or side details of the story
3 that she's overselling and that shows her bias. She makes
4 Bryant out to be a violent alcoholic who will attack his mother
5 anytime he drinks or something like that. That was the
6 impression I got from the testimony.

7 If you recall her own testimony, she is calling
8 Bryant and telling him to come because she wants to hang out
9 with him. And he was actually reluctant to come because,
10 possibly because Jorge lives there. I don't know.

11 She insists and insists, and he shows up. She says
12 he shows up intoxicated yet she invites him into the house. He
13 shows up with two 40-ounce beers, yet she invites him into the
14 house. He's apparently a violent drunk who's going to assault
15 her, but she's comfortable letting him into the house. She's
16 overselling Bryant's violent behavior.

17 Apparently until Jorge gets there, they sit there
18 and have a good time. They're watching movies, they're
19 drinking. She makes fun of him about the 40s. Otherwise, it
20 sounds like they're having a good time. That doesn't make
21 sense.

22 It also doesn't make sense when he drove a moped
23 from Inman, gets there at 9:00. I think she's overselling how
24 intoxicated he is. Mr. Harris wants to make a big deal out of
25 the two 40-ounce beer bottles, like it's a full bottle of

1 liquor or something.

2 She says he's there until 9:00. Gets shot at 2:00.
3 That's five hours. Two 40s is like six beers, six-and-a-half
4 beers or something like that. It's like a beer an hour, not
5 anything crazy for somebody that we know drinks regularly, has
6 beers after work.

7 It's not the type of thing that would get him into
8 a condition where he would try to smash his mother with a beer
9 bottle. He's not even mad at his mother. Why would he do
10 that? Don't know.

11 As I said, Judith has multiple opportunities to
12 tell law enforcement, but the most coherent time she's had to
13 reflect, think about the consequences of what she was telling
14 law enforcement and what might happen to her children, both to
15 Bryant and to Jorge, is when she invites them to her house and
16 she recounts what happened.

17 She does not talk about the beer bottles. She is
18 an intelligent lady. She's an impressive lady. She apparently
19 went up from cleaning houses, working part time or working and
20 going to school part time for eight years and is now an
21 engineer. She lives in a beautiful house. She's not stupid.

22 She knows that what she told them that day in the
23 living room was going to get Jorge charged with this crime.
24 And she knew that she was not telling them that Bryant was
25 attacking her. She knows that. That's why she's emotional.

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1 She's emotional because of Bryant, too. She's
2 emotional because she knows that Jorge is going to be charged
3 as a result of this because she knows what happened was wrong.

4 The phone call. I'm going to play it here shortly.
5 The phone call that she has, that she did not recall on the
6 stand but she talks about in the recording, I think, is
7 critical in this case to understand Judith and what might be
8 going on with her testimony.

9 If you recall, she says that she called Jorge and
10 said, you know: What did you do? What did you do?

11 And he says: What are you talking about? I don't
12 know what you're talking about.

13 And she says: I remember, Jorge. What did you do?

14 And he hangs up on her. Okay. This is before he's
15 charged. He's not wanted. She doesn't say: Jorge, come home.
16 You know, I know that you were trying to defend me. It's going
17 to be okay. I'll tell the police you were trying to defend me.
18 She doesn't say that.

19 She says: What did you do?

20 She's accusing him. She's asking him: Why did you
21 shoot him?

22 That makes no sense in a world where she gets up on
23 the stand and says: I know why he shot him; because he was
24 defending me. That's not what she told him. She's accusing
25 him.

1 She forgot that call and maybe she forgot it
2 because she doesn't remember it. Maybe she forgot it because
3 she doesn't want to remember it because it's not helpful to
4 their case.

5 She did testify about another phone call after he's
6 been charged in which she called him and encouraged him to turn
7 himself in. He did not. I think that speaks volumes about
8 what's going on in Jorge Rodriguez's head about what he thinks
9 happened. He doesn't want to come turn himself in. They're
10 going to have to find him.

11 I'll play this. You can hear the emotion in her
12 voice. This is State's Exhibit 59 from the 16-minute part.

13 (Audio played. Not transcribed).

14 MR. SMITH: She said she started to remember.
15 Probably because she was drunk. Maybe 'cause she was
16 traumatized, but I think she was drunk.

17 She started to remember and she called Jorge to
18 hear what he said happened.

19 He didn't say: Mom, I was protecting you. He
20 didn't say: Mom, he was going to hurt me, he was going to hurt
21 you, he was out of control.

22 He tells her he doesn't know what she's talking
23 about and hangs up on her. I guess the next time they talk is
24 after he's been arrested.

25 One other detail and this is somewhat -- we're

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1 limited by the witnesses that we have. I don't know when Jorge
2 Rodriguez armed himself. But I do know what Judith said, and
3 he lives in the house with her. Judith says he does not
4 normally carry a gun around the house. He doesn't come down
5 for breakfast with a Glock in his waistband. I think she said
6 she had seen him with it a few weeks before when he comes back
7 into the house.

8 I have two suggestions for you of when that gun may
9 have been grabbed. Obviously, we know that Bryant is there
10 when Jorge arrives. And Bryant had arrived on his moped.
11 There's a picture of it in evidence. Jorge pulls into the
12 driveway. He would've known that Bryant was there. He could
13 have grabbed a gun at that point and armed himself with it.

14 Alternatively, he could've gotten it from his
15 bedroom when he goes upstairs. Judith talks about him going
16 upstairs after Bryant has kind of started in on him.

17 The pictures that we put in of his bedroom is not
18 to say that there is anything wrong with having ammunition.
19 Nobody's accusing him of anything wrong with how he possessed
20 the gun; it's how he used the gun is the problem in this case.

21 They were put in there to show you he has a lot of
22 gun paraphernalia in his nightstand. Very likely would've had
23 a gun in his nightstand or in his room somewhere else. He had
24 bullets both fired and unfired, magazines, gun boxes.

25 Either one I believe shows malice; that he is

1 either willfully entering his mom's house with a firearm after
2 he sees his brother's there. Doesn't go -- maybe put it
3 upstairs. I don't know.

4 Or during an argument he retreats to his room where
5 maybe he could've locked himself in there and told him to go
6 away. Maybe he could've grabbed the gun and told him: Dude,
7 leave me alone. I don't know. But he didn't.

8 He ends up going back downstairs. They get into a
9 further argument. He knows he's armed at some point. At some
10 point in this argument he knows he has a gun. Bryant probably
11 doesn't know he has a gun.

12 He chose to continue to engage and ended up using
13 the gun and shooting Bryant in the head. Either one of these
14 to me are indicative of malice.

15 One thing that's important about malice, it does
16 not have to be a plan. He did not have to wake up on Christmas
17 Eve and say: I'm going to kill my brother or try to kill my
18 brother at 2:00 on Christmas. Doesn't have to be like that.
19 It can be like that in the moment he pulls from a waistband or
20 wherever it was held and shoots. Malice can be generated in
21 that time frame.

22 It does not have to be a plot or anything like
23 that. It can come quickly. And the fact that he's angry does
24 not mean that he's not acting with malice as I thought
25 Mr. Harris suggested in opening. You can definitely be angry

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1 and acting with malice.

2 If a spouse shoots, you key the car, you're angry.
3 You are still acting maliciously. But that's malice,
4 regardless of the fact that you're angry.

5 Another thing I thought was interesting, she says
6 that Jorge had been drinking. It was a bit unclear because she
7 basically says she comes to and there's already an argument
8 obviously. No drinking in that scenario. I guess she implied
9 that there was something about his behavior that made her think
10 that he was drinking. I think it's interesting.

11 In the version she's trying to paint is Bryant is
12 this drunk, who's violent, trying to egg him on, and Jorge is
13 just trying to be left alone.

14 One thing I think is interesting, when Bryant is
15 apparently running his mouth, which he is apparently apt to do
16 from his brother. I believe it, especially if he drinks.
17 Likes to rib people. Likes to poke people. Lot of brothers
18 like to do that to each other.

19 He calls his girlfriend at 2:00 in the morning on
20 Christmas to, I guess, see if she's been sleeping with the
21 brother. There's a couple things I think interesting about
22 that. I think it shows that he's probably drunk. I don't
23 think a sober person would do that. I think they would think
24 better of it; maybe they can talk about it in the morning or
25 something, not immediately take the words of a drunk person who

1 you don't like and accuse the mother of your children of
2 cheating.

3 So I think that speaks to kind of his state of mind
4 what was going on. I also think it speaks to this was not some
5 sudden thing where he makes this accusation and he snaps and
6 grabs the gun and whatever.

7 He has time to go call her and think about it,
8 probably thinking about what he's going to do about it, getting
9 more and more angry as the verbal stuff gets heightened and
10 heightened and heightened. He has a gun. He eventually pulls
11 it and shoots.

12 So we believe Judith has clear bias towards Jorge.
13 If you recall, Nicholas' testimony in comparison to hers, she
14 presents like they were this happy family, raised together in
15 the United States. They all have the same dad.

16 Well, Nicholas says that's not the case. I think
17 there's some facts or some circumstances about how she talks
18 about him that could indicate he might be from another man.

19 I also think it's important, apparently, Nick and
20 Bryant lived in Honduras until they're nine or ten while she
21 had Jorge with her. Think about what that might do for a
22 mother's connection to that child versus the other ones that
23 are in Honduras.

24 I'm not blaming her. I understand she was -- she's
25 a single mother; at that time, was not wealthy. I'm not

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1 blaming her for what she did. There's no doubt that could
2 create a connection with Jorge that is perhaps absent with the
3 others.

4 But factually her story, I think, doesn't pass the
5 smell test. As she describes it, they are -- she's one foot
6 away from Bryant. They're within a jab range. You talk with
7 law enforcement, you ever watch law enforcement videos, people
8 with knives, they can charge you. People can close a lot of
9 distance in the time that it takes to pull a firearm. Even if
10 you have a round ready to go and the safety off and everything
11 and you have it in a side holster, which there's no evidence to
12 know how the gun was being held. Since nobody saw it, it
13 probably wasn't out in the open.

14 Apparently, Jorge is able to see somewhat through
15 Bryant. And although they're a foot apart, he's able to see:
16 Oh, my God, he's about to hit her.

17 He doesn't. We know she's not hurt. She's not
18 hurt. And we don't have any evidence that Jorge is hurt
19 either. Nobody gets hit other than Bryant being shot in the
20 head.

21 If Bryant tried to hit her with a beer bottle from
22 a foot away, there's no way Jorge got a gun out, pulled it,
23 aimed it, managed to miss his mother and shoot him in the head
24 like that. That cannot be how it went down. It's not
25 possible.

1 The distance and the time that it would take for
2 him to hit her with the bottle, it is faster than the fastest
3 drawing officer or whoever, gun expert that you could have.

4 Keep in mind intoxicated, apparently. Not holding
5 a gun.

6 If you want to kind of believe that, you know, that
7 he had to have a round chambered. Certainly didn't have the
8 ability to cock back or turn on the safety or anything like
9 that. He has a gun, walking around in his mom's house that is
10 ready to go like he's a police officer on duty at 2:00 in the
11 morning on Christmas. It's not how it happened.

12 There was more distance between them. You can look
13 at where the blood is. I know Judith said she fell back three
14 steps. She didn't tell that to law enforcement. That's to
15 help -- the assault is happening here, to explain why the blood
16 is all the way over here. The bottle is over here.

17 I don't know. They might try to make a big deal of
18 the beer bottle. They kind of did about the testimony. The
19 truth is I don't know.

20 Jorge could've kicked it running out. Judith
21 could've kicked it running around the house, running to get the
22 phone. I don't know.

23 Y'all can try to figure out whatever weight you
24 want to give to the position of that bottle. I don't think it
25 means anything. I think practically it just can't have gone

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1 down how Judith says.

2 Switching to the second phase; what he did after.

3 I know I talked in opening about I'm going to ask you to infer
4 his actions after. I cannot get inside his mind. I don't know
5 and y'all can't get inside his mind either. We can only go off
6 of the actions both before and I believe after to show what was
7 going through his mind when he shot him. And he leaves.
8 Basically immediately.

9 Judith is just running to grab -- he goes to the
10 area in Chesnee, which I think you have the State's exhibit.
11 It's like a ten-minute drive. He dumps the gun in a very
12 bizarre place. He has gun boxes. He's a CWP holder. I don't
13 know why he would put it there for any other reason than he
14 doesn't want that gun to be connected to him.

15 Is it the best hiding spot ever at his girlfriend's
16 parents' place? No. There's no explanation for it being there
17 other than he tried to hide it. I'm not saying he's the best
18 evader of police, but that was his intention. There's no other
19 reason.

20 Mr. Harris actually did a good job of pointing out
21 that he is a CWP holder. I guess inferring he doesn't have --
22 he has the ability to possess a weapon. It's not a crime for
23 him to possess a weapon, so he has no reason to dispose of it.

24 We also know it's not stolen. It's not stolen,
25 he's not prohibited from having it. Why the heck is it in a

1 tire out in Chesnee when they want you to believe that he was
2 acting lawfully? Maybe y'all can answer that. I think it's
3 because he doesn't want it to be found.

4 He goes to Wilson Gomez's. I think Wilson Gomez,
5 although he's a very short bit of testimony, I think he's very,
6 very important. Wilson Gomez is on Jorge Rodriguez's side. He
7 actually sat with him. I don't know if y'all noticed. I think
8 his family is sitting with him now on their side.

9 Wilson gets a phone call that I think he said he
10 had done something terrible, something like that. You be the
11 judge of it. Something terrible has happened.

12 And then he's apparently considering killing
13 himself. What I thought was interesting, he didn't want to
14 offer that, even though he had literally told me and my
15 investigator 45 minutes before that was the case. It had to be
16 drawn out of him. He didn't have a good explanation for why.
17 I think he was trying to protect him. He knows it's harmful.
18 His reaction doesn't make sense if they're trying to establish
19 this is what happened.

20 And then what does he say when he gets there? He's
21 intoxicated, I guess, when he gets there. And he tells him it
22 was an accident during a fight.

23 Well, an accident during a fight is not the same as
24 shooting somebody to save your mother from being hit. Those
25 are two different things.

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1 An accident during a fight, I suppose, would be
2 that they're wrestling around and he has a gun either on him or
3 in his hand or something like that and it discharges without
4 his intent. Of course, it hit him right here. With apparently
5 his mom right in front of him.

6 But the problem is that Judith is saying one thing
7 and Jorge said another. They're inconsistent because neither
8 are true. The truth is he shot him. Maybe he did regret it
9 after. Maybe that's why he was thinking of killing himself.
10 He might've seen blood gushing out of his brother's head and
11 said: Oh, my God, what have I done?

12 That doesn't change what was in his mind at the
13 moment when he pulled the trigger, aimed at someone's head. He
14 was trying to kill him. Regret after the fact does not mean
15 he's not acting maliciously.

16 If he did have regret after the fact when Judith
17 called him before he was charged, he would've showed back up.
18 But he didn't. He hung up on her.

19 He continued to hide out at Wilson Gomez's place,
20 sleeping in a garage couch. I don't know if he had a bedroom.
21 Sleeping in a garage couch until he's caught the next day.

22 I would submit that none of his actions that he did
23 after that are consistent with the version of events proposed
24 by Judith. They are totally consistent with somebody who has
25 committed a crime and trying to avoid detection by law

1 enforcement.

2 You're going to have some other options.

3 Interestingly enough you're going to have either call this an
4 accident or defense of others or self-defense. Even the
5 charges to you are inconsistent. You'll have to square that
6 away.

7 We don't think this is an accident. I think if you
8 look at the location of the bullet and the reaction after, it's
9 beyond a reasonable doubt this is not an accident. The defense
10 of others, I think, is where the bulk of their testimony came
11 from.

12 From Judith, I guess the self-defense is generally
13 he's being boisterous and making threats and trying to fight.

14 There are elements of self-defense, as the Judge
15 will read you. You have to be in -- basically, his decision
16 would be, if Judith could've defended herself with deadly
17 force, then Jorge could use deadly force. That's kind of what
18 the defense of others is. If he was in her shoes or if she had
19 a gun, she could have pulled it out and shot.

20 The State, we only have to disprove one of the
21 elements of that crime -- or of that defense, excuse me.

22 We don't think she was in imminent fear of great
23 bodily injury or death. As I recall the testimony -- it's your
24 job to interpret the facts. I don't remember her saying that
25 she was in fear of great bodily injury or death.

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1 She said he tried to swing the bottle at her, but I
2 don't believe she actually said that. Just the facts I've gone
3 over are all speaking again to whether this is a defense of
4 others. We think the fact that story was generated after
5 multiple contacts with law enforcement, understanding now that
6 her son has been charged and is facing trial for attempted
7 murder, that is why she's testifying the way she is. Not
8 because it's the truth. And we would ask you to dismiss those,
9 ignore those defenses and find him guilty.

10 I'll talk about reasonable doubt briefly then I'll
11 be done. The Judge is going to tell you that reasonable doubt
12 is the type of evidence that leaves you firmly convinced of
13 something. Also describes it as hesitating to act. I just
14 want to talk about that briefly.

15 If y'all get back and have a discussion about this
16 case, I don't want you to infer that means that you hesitated
17 to act. This is not an easy decision. It should be taken with
18 extreme care. As jurors, I'm sure that you will.

19 It doesn't mean that, if y'all have a disagreement
20 for 30 minutes or something, y'all must all find him not
21 guilty. We want you to talk about it. I'm sure Mr. Harris
22 does to. We want you to talk about the evidence and weigh out
23 whatever concern you have.

24 At the end of the discussions, if you're firmly
25 convinced, that would mean that you need to return a guilty

1 verdict. And also the Judge will tell you that it is not
2 beyond all doubt. That there are very few things that we can
3 know beyond any doubt. They are a reasonable doubt, something
4 that you are firmly convinced of.

5 Just because you can paint some scenario in your
6 mind that it could have maybe happened, it needs to be a
7 reasonable doubt. Not an exercise to come up with a crazy
8 theory about how it may have occurred.

9 I'm going to ask you to consider the evidence.
10 Like I said, focus on bias. Focus on what the Judge tells you.
11 Use whatever your experience is to try to come to the decision.

12 But both the way that the testimony came in, the
13 way that the investigation developed with Judith makes perfect
14 sense for the situation she's in. She's trying to protect her
15 son, and then she told the truth. That's why we're here; the
16 statement she gave in the living room. And now she's trying to
17 protect her son again because he's been charged.

18 Look at the actions after. They are malicious. He
19 shoots him and leaves him lying there bleeding in the living
20 room with the Christmas tree sitting there. This is not a
21 normal event for any family on Christmas to have done something
22 like this. Particularly over words.

23 We would ask that you return a verdict for
24 attempted murder and possession of a weapon during a violent
25 crime because we believe he's guilty of those. If you have an

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1 issue with the specific intent to kill or the malice, we would
2 ask that you consider the assault and battery of a high and
3 aggravated nature. That simply requires that he assaulted him
4 and battered him in a way that could've caused him to die or
5 caused great bodily injury. That certainly happened.

6 If you do get hung up on attempted murder, please
7 consider the second option. I thank you-all for your
8 attention.

9 MR. HARRIS: Give me a moment, ladies and
10 gentlemen. We'll rearrange the furniture so we can talk.

11 This is a criminal case. You know that. This is a
12 very serious criminal case. I want to begin my remarks to you,
13 ladies and gentlemen, where every criminal case begins and
14 ends. That is with the legal concept that every person accused
15 of a crime in the United States of America, in the State of
16 South Carolina, in Spartanburg County is presumed innocent of
17 what he stands accused of.

18 The presumption of innocence attaches to the
19 Defendant, and that means Jorge Rodriguez in this case, until
20 and unless the State of South Carolina, represented in this
21 case by the Seventh Circuit Solicitor's Office, in particular,
22 the Assistant Solicitor. That presumption of innocence remains
23 with Mr. Rodriguez until and unless you, the jury, find that
24 the State has presented evidence.

25 Let me pause here and say, in accord with what we

1 discussed in my opening statement earlier in the week,
2 evidence. Not speculation. Not the Assistant Solicitor's
3 imagination. But evidence. Facts. Things that you can
4 believe and trust.

5 To what degree? Beyond a reasonable doubt. Beyond
6 a reasonable doubt; the highest burden of proof we have in our
7 judicial system. And that's on purpose. Because it ought to
8 be hard to prove any case for the State.

9 What you've heard the Solicitor say basically --
10 we'll go into it a little bit in a few minutes. Basically we
11 admit that we have no evidence. And that you can't believe the
12 only eyewitness we have. We just think: Hey, you know, he did
13 it.

14 Well, no, this is a more serious enterprise than
15 that. This is a solemn thing that we're doing here in trying
16 to ensure that the system of justice works for everybody.

17 So in order for the system of justice to work,
18 based on your oath, you have to give Mr. Rodriguez the
19 presumption of innocence. And you have to put the State to the
20 stern test of proof beyond a reasonable doubt.

21 Now, how does the State go about proving a case?
22 Or more specifically: How do they go about proving this case?

23 Well, it's their burden to do and what the State
24 did in this case is call witnesses to the witness stand, to
25 swear to tell the truth and to testify for the State. You may

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1 have heard the phrase: The witness for the state, witness for
2 the government.

3 Well, all of the witnesses that were called in this
4 case were witnesses for the State. This is their effort to
5 prove their case. As it's pointed out, the elements of
6 attempted murder, that one, with intent to kill, tries to kill
7 another person, does an act but fails to kill another person
8 with malice aforethought. Those are the things they have to
9 prove.

10 An intent to kill. A specific intent to kill. Not
11 to wound, not to frighten. An intent to kill. With malice
12 aforethought. That's what they have to prove.

13 The State called Judith Rodriguez Nodine to the
14 witness stand as their main witness. And I would suggest to
15 you, as we know now, their only witness. The only one they
16 have.

17 They called Ms. Nodine to the stand and then the
18 Assistant Solicitor comes before this jury just a few minutes
19 ago and argues to you: You can't believe a word she says.
20 She is some kind of -- we're going to talk about parents in a
21 little bit.

22 She is being portrayed by the Assistant Solicitor
23 as some kind of designing, manipulative mother who doesn't care
24 about anybody but her son on trial. We're going to talk about
25 parents in a little bit.

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1 They're stuck with the witness now. And I hate to
2 use sort of a casual phrase like that. This is a formal
3 proceeding. That's their witness.

4 So if they don't want you to believe anything that
5 Judith Nodine said, what does that mean about whether they can
6 meet their burden to prove the elements of attempted murder
7 beyond a reasonable doubt to this jury? That means they have
8 no proof. None.

9 A jury can test the proof in a case by what is
10 said, what the State does present, and you can equally find
11 reasonable doubt or lack of proof by testing what hasn't been
12 shown to you, what hasn't been proved.

13 All right. So they have to prove in an attempted
14 murder case, if you will, what happened, not what in the
15 explanation of the prosecutor thinks must have happened. But
16 they have to prove what actually happened.

17 And what actually happened has to meet all of those
18 elements to make out the attempted murder case. Not only that,
19 in this case, as you'll learn in a few minutes when the judge
20 gives you instructions on the law -- he's the judge of the law.
21 We've established that the first day.

22 They have to disprove self-defense, the defense of
23 others and accident. Let's start with what their proof is
24 about attempted murder.

25 They are suggesting to you to throw out Judith

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1 Nodine, their witness, but they say we have put a witness on
2 the stand that you cannot believe and that is ill motivated.

3 Let's just say that you went along with what the
4 Assistant Solicitor wants you to do, and you just throw out
5 Judith Nodine. Where's the proof of what happened? I see
6 couple of you shake your head. There is no proof. There's no
7 proof. They don't know what happened. They can't tell you
8 what happened. They can't prove what happened.

9 Now, while we're on the subject of what they
10 haven't given you or haven't proved, let's talk about some ways
11 that they could have tried to clear up some of these things
12 that the Assistant Solicitor tosses out as somehow vitally
13 important. Of course it doesn't bare on what happened 'cause
14 they can't prove anything about what happened, if they ask you
15 to throw out Judith Nodine.

16 For an example of this -- you'll think of others in
17 the jury room when you talk about all the evidence or lack of
18 evidence, as I point out. The Assistant Solicitor seems very
19 concerned about the fact that he can't prove -- he admits this
20 part -- he can't prove when it was that Jorge Rodriguez became
21 armed with a gun. He can't. He can't prove that.

22 But he conjures things like either he saw the
23 moped; at that point in time said, I must take my gun in the
24 house and gun down whoever is in there. That borders on
25 ridiculous. He said it with a straight face.

1 Or he went upstairs. Okay. Well, Mr. Jorge
2 Rodriguez has concealed weapons permit holder, issued by the
3 State of South Carolina at this time, at the time these things
4 happened. The Assistant Solicitor said his mother said he
5 didn't walk around the house with a gun. Well, that may be
6 true when he's home and has been home.

7 What does the evidence show? He had gone to his
8 girlfriend or fiancée's house, a person by the name of Anissa
9 and spent time over there. Sounds like hours over at Anissa's
10 house.

11 I think you can safely take that, when a person has
12 a concealed weapons gun permit, it is generally for the purpose
13 of being able to leave your home with your gun. Right. And so
14 most concealed -- do we think that Mr. Jorge Rodriguez took his
15 gun with him to his girlfriend's house as he probably did every
16 time he left the house? Came back to the house where he lives.
17 Now, this is his house. He and his mother. This is his home.
18 Okay.

19 It's not like he doesn't have a right to be there.
20 You know, this is his home. Been to the girlfriend's house.
21 Carried his gun like he always does probably. He came back
22 home, has nothing to do with the moped. He has the gun with
23 him. He carries it with him. He came in the house and all
24 this started happening.

25 So I don't know why the Assistant Solicitor

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1 wouldn't call Anissa to the witness stand. She was listed.
2 Why didn't Anissa get on the witness stand. They can call
3 witnesses. That's how they prove their case; they call the
4 witnesses.

5 Why wasn't Anissa called and said, Anissa, do you
6 know whether or not Jorge, when he came to your house on
7 Christmas Eve had his gun? Does he normally carry his gun when
8 he comes over? That would solve the question, wouldn't it?

9 Well, they don't want that answer, see. This is
10 what I'm saying. They don't want that answer. They don't want
11 you to hear that answer. That doesn't fit in with their effort
12 to prove the case.

13 There are other examples. Now, what I would say,
14 ladies and gentlemen, Judith Nodine is the mother of three
15 children, as you know. She is a parent. She is a parent
16 that's not always had an easy life. She has done the best she
17 can. Assistant Solicitor doesn't think much of her.

18 You know, we can't say you know what parents do,
19 how they act. I think there's some things about parents that
20 we can recognize with common experience. Parents love their
21 children. Parents love their children even when their children
22 do things that they don't approve of or shouldn't do. Parents
23 love their children despite their flaws.

24 You know, the phrase came to my mind during this
25 trial that I've heard all my life: There is nothing quite like

1 a mother's love. A mother's love is not confined to one child
2 as opposed to another child. A mother's love is for all of her
3 children no matter how flawed they may be. I think that's on
4 display in this case.

5 The mother's love for her children, then grown at
6 the time these things happened. Her children didn't
7 necessarily get along with one another. It's very obvious that
8 Nicholas Rodriguez, probably the single one person that came
9 into this courtroom that we can identify from the first 30
10 seconds as having extreme ill will, maybe to the point of
11 hatred in his heart.

12 And so we're going to throw out anybody's testimony
13 based on demeanor, bias, and all those factors His Honor will
14 tell you. It's Nicholas Rodriguez.

15 Judith Rodriguez Nodine wanted to spend Christmas
16 with her children. It didn't matter to her and she was not
17 going to reject them because they drank too much. Because they
18 had mistreated her in the past. I'm talking particularly about
19 Bryant Rodriguez.

20 I don't quite understand the State's position when
21 they say, you know, she invited -- if he's such a bad child,
22 why did she invite him over for Christmas? Why did she let him
23 in if he had been drinking so much before he even got there?
24 On and on.

25 Well, that's what parents do. That's what a mother

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1 does. She doesn't reject her child on those grounds. She
2 doesn't throw them out of their life. She tries to spend time
3 with them, to be an influence upon her. No matter what
4 happens.

5 And parents try to protect their children, not just
6 one child, but all of their children. I think it came out in
7 the testimony, Ms. Nodine, this is probably -- that Christmas
8 was probably the worst thing that ever happened that she's
9 experienced in her life. Probably the second worst thing was
10 being put on the witness stand by the State and their attempt
11 to tear her apart.

12 She obviously has the thoughts and feelings of a
13 mother. Was she coherent when this first happened and then in
14 the aftermath? Seems not. It's understandable.

15 Did she want to say embarrassing and painful things
16 about either Jorge or Bryant? It is apparent she did not.
17 That's a mother's love.

18 Did she have a mistrust of the police? It seems
19 she did. It seems she did. She's probably not the only person
20 in this county that has some mistrust.

21 She did the best she could. It doesn't matter what
22 she said before to the police, who it's apparent she didn't
23 really trust. What matters is when the hand goes on this book
24 in this courtroom. State called her as a witness.

25 I suggest to you, ladies and gentlemen, they have

1 to live with what she said. That doesn't mean they lose their
2 case. That's not the most important thing, whether they win or
3 lose the case. The most important thing is whether the right
4 thing is done by you when justice is done.

5 The evidence that the State did present through the
6 law enforcement witnesses, they want you to ignore, which is a
7 very odd thing indeed. They have pictures and talk about it
8 but then they say ignore it. So what is the evidence?

9 Bryant Rodriguez was probably intoxicated. I don't
10 care if he drove his moped or walked or what. It's pretty
11 clear he was intoxicated when he came to the house. He came to
12 the house with the beer bottles that are in the grocery sacks.
13 Drank. She didn't agree with it. She allowed it.

14 Said she poured contents of one bottle into a glass
15 because she didn't like big old jug of beer. They tried to get
16 along on Christmas.

17 It got late. There was drinking. There's probably
18 too much drinking. Jorge came home. Bryant immediately --
19 there's no other evidence but this -- immediately started in on
20 Bryant. Bryant no more gotten in the door and he started in,
21 saying all kinds of provocative things. The things that have
22 been recited here are probably just some of the things that
23 were said.

24 I mean, Ms. Nodine says it was just a barrage from
25 Bryant. Profanity and accusations and everything else. When

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1 that didn't work, he escalated up to making up the story about
2 Anissa and the baby. Things that he knew would cause trouble.
3 So he's the one that brought all the trouble. Bryant Rodriguez
4 started the trouble.

5 Judith Rodriguez tried to get in the middle of it.
6 And that's what a mother does. Judith Rodriguez tried to keep
7 them from going back and forth. I dare say anybody in Bryant
8 Rodriguez's position probably would have been provoked to anger
9 and more by all of what's going on.

10 Judith Rodriguez described Bryant Rodriguez's
11 behavior as being out of control. Totally out of control.
12 They were in various places around the living room, it's been
13 described.

14 When Judith Nodine's efforts to calm it down didn't
15 work, and she kept on trying to calm it down, at some point
16 Bryant Rodriguez threw her to the floor. It's uncontradicted.
17 Laid hands on her in that manner.

18 But it didn't stop there. Apparently it kept
19 going. It kept going to the point that Bryant Rodriguez had in
20 his hand or picked up one of those 40-ounce beer bottles and
21 menaced his mother with it. That couldn't be allowed to
22 happen.

23 Jorge Rodriguez could not nor anybody in his shoes
24 could not take a chance that Bryant Rodriguez, who had already
25 been abusive to his mother, already that very night laid hands

1 on her in a totally inappropriate manner; threw her to the
2 ground.

3 When somebody is menacing another, particularly
4 when a son sees his mother being menaced by anybody in their
5 own house, what are you supposed to do? You've got to do
6 something. You're justified in defending that person. You
7 don't wait until they get their head bashed in. It's too late
8 then.

9 That's why we have the law of defense of others.
10 So we don't have somebody badly injured, unlawfully badly
11 injured when somebody could've intervened and done something
12 about it.

13 You saw that beer bottle. They didn't want you to
14 see it. They hated taking that bottle out of the bag. They
15 did everything they could. Why do you think that is? They
16 don't want you to see that it is a deadly weapon when used in
17 that manner. But it is. And it was.

18 And I hate to think what would've happened to
19 Judith Rodriguez had Jorge Rodriguez not defended her and
20 defended himself for that matter. He was under constant threat
21 from the minute he walked into the living room. What are you
22 supposed to do?

23 Let's talk about the aftermath, very succinctly I
24 hope. The Solicitor has a real odd way, in my opinion, of
25 thinking about human nature. Fine. It's his business. Here's

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1 what I see. They have to prove malice aforethought. They have
2 no way to prove it.

3 They have to suddenly make you believe that not
4 staying there at the house in the aftermath of this terrible
5 thing, putting a gun on property that's well-known, you're
6 connected to, you're not hiding anything when you take it to
7 where people, everybody in the world knows you've been that
8 very night. And went to seek help in a crisis from a father
9 figure, Mr. Gomez.

10 What did Judith Rodriguez tell you was the
11 immediate aftermath of the shot? She told you. As far as what
12 the evidence does show, that Bryant took three steps back and
13 fell against the couch. Where was most of the broken glass or
14 a lot of broken glass from her wine glass and the beer bottle
15 found? Under the couch where he fell.

16 If he does, in fact, have a beer bottle, if he's
17 menacing his mother with it, and he gets shot by somebody
18 defending her and preventing that from happening, he has a beer
19 bottle in his hand, he's going to drop it. He's going to drop
20 it where he drops. The couch. Those are facts. It's not
21 speculation.

22 I find it very interesting that we had a witness
23 that said he submitted the bottles for fingerprints and he
24 thought that they did fingerprints. They didn't bring the
25 fingerprints in. You know why? I think we all know why. He

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1 didn't want you to know what the fingerprint evidence was.

2 That's a simple question. They didn't have to take
3 fingerprints. No question Bryant was using the beer bottle as
4 a weapon. That's what happened.

5 The immediate aftermath, Jorge Rodriguez is holding
6 his head in some fashion and saying: What did I do? What has
7 been done? That's not some admission I've done the wrong
8 thing.

9 You know, you may have to shoot at somebody to
10 prevent yourself from being badly injured or killed. You may
11 have to shoot somebody to prevent your mother from being badly
12 injured or killed. That doesn't mean that you have to be glad
13 about it. Or happy about it. You would regret it.

14 Most people would be very stunned and upset they
15 had to do such a thing but they did have to do it. Or it
16 would've been Judith Rodriguez in the hospital.

17 Well, he left. He did put the gun at a place he
18 had been that very night. I don't think that means anything.
19 He probably wasn't thinking clearly at all. He was traumatized
20 by this as well.

21 He sought out crisis help from Mr. Gomez.
22 Mr. Gomez calmed him down, said: Look, you need to stay here.

23 If Jorge Rodriguez was trying to avoid anything or
24 evade anything -- he didn't know they had a warrant for his
25 arrest -- would he have told Mr. Gomez where the gun was?

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1 Would he have told Mr. Gomez that he shot his brother, it was
2 an accident? No.

3 Those are not the actions of a person that's trying
4 to hide nor is it the actions of a person that had malice
5 aforethought, to be that regretful, to be nearly suicidal.
6 Those are not the actions of somebody: I'm killing you, I have
7 the idea in my mind. I'm killing you, and I have now shot you
8 and you deserved it. No. We don't spike the football like
9 that. That's what the Solicitor seems to suggest of his
10 actions. No, it's a terrible, tragic thing.

11 Unfortunately, something that had to be done. Why
12 did it have to be done? Because of the extreme behavior of
13 Bryant Rodriguez, unfortunately. That's why it had to be done.

14 Ladies and gentlemen of the jury, I would like for
15 you to remember as to each of these criminal offenses that
16 you'll be considering attempted murder and assault and battery
17 of a high and aggravated nature, remember that to be found
18 guilty of either one of those, you have to find criminal
19 intent, which doesn't exist by the evidence presented to you.
20 Or attempted murder you have to find malice aforethought, which
21 has not been proved.

22 For either you have to find that the shooting was
23 unlawful; unlawful meaning without any just cause or excuse.
24 We know what the just cause and excuse is. To prevent harm to
25 himself and to prevent harm to his mother.

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1 Ladies and gentlemen, this is indeed a tragic
2 thing. But as I said to you earlier in the week, no crime has
3 been proved here. The reason no crime has been proved is
4 because no crime occurred. A terrible, tragic thing happened
5 with these family members.

6 On the other hand, a tragedy was probably avoided,
7 that being how hurt Judith Rodriguez could've been if Bryant
8 Rodriguez continued to remain violently out of control.

9 I ask you for a verdict of not guilty under the law
10 and the evidence, the lack of evidence in this case. I thank
11 you for your time and attention.

12 THE COURT: Ladies and gentlemen, if you would,
13 just stand and stretch your legs for a moment.

14 (A pause transpired.)

15 THE COURT: Thank you very much.

16 Ladies and gentlemen, it's now my responsibility to
17 charge you on the law applicable to this case. Ladies and
18 gentlemen, the indictment charges the Defendant with attempted
19 murder and possession of a weapon during the commission of a
20 violent crime.

21 I remind you the fact that the Defendant was
22 arrested, charged, and indicted in this case is not evidence in
23 this case and cannot be considered by you as evidence of guilt
24 in this case nor does it create any presumption or inference of
25 guilt. This document is simply the formal written instrument

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1 which contains the charges made against the Defendant. It is
2 the formal document by which this case is brought into court.

3 The Defendant has plead not guilty to the
4 indictment and that plea puts the burden on the State to prove
5 the Defendant guilty.

6 A person charged with committing a criminal offense
7 in South Carolina is never required to prove himself innocent.
8 I charge you that it is an important rule of law that the
9 Defendant in a criminal trial, no matter what the seriousness
10 of the charge may be, will always be presumed to be innocent of
11 the crime for which the indictment was issued unless guilt has
12 been proven by evidence satisfying you of that guilt beyond a
13 reasonable doubt.

14 This presumption of innocence does not end when you
15 begin your deliberation, but it accompanies the Defendant
16 throughout the trial until you reach a verdict of guilt based
17 on evidence satisfying you of that guilt beyond a reasonable
18 doubt.

19 The presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the Defendant,
21 which remains with the Defendant until it has been stripped
22 from the Defendant by evidence satisfying you of the
23 Defendant's guilt beyond a reasonable doubt.

24 The presumption of innocence is not mere legal
25 theory. It is not just a legal phrase. It is a substantial

1 right to which every Defendant is entitled unless you, the
2 jury, are satisfied from the evidence of the Defendant's guilt
3 beyond a reasonable doubt.

4 What is reasonable doubt under the law? A
5 reasonable doubt is the kind of doubt that would cause a
6 reasonable person to hesitate to act.

7 The State has the burden of proving the Defendant
8 guilty beyond a reasonable doubt. Some of you may have served
9 on juries in civil cases where you were told it is only
10 necessary to prove that a fact is more likely true than not
11 true, such as by the greater weight of the preponderance of the
12 evidence.

13 In a criminal case, the State's proof must be more
14 powerful than that. It must be beyond a reasonable doubt.
15 Proof beyond a reasonable doubt is proof that leaves you firmly
16 convinced of the Defendant's guilt. There are very few things
17 in this world that we know with absolute certainty. In
18 criminal cases, the law does not require proof that overcomes
19 every possible doubt. If, based on your consideration of the
20 evidence, you are firmly convinced that the Defendant is guilty
21 of the crime charged, you must find the Defendant guilty.

22 If, on the other hand, you think there is a real
23 possibility that the Defendant is not guilty, you must give the
24 Defendant the benefit of the doubt and find him not guilty.

25 Ladies and gentlemen, I remind you that during this

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1 trial you and I have certain duties to perform. As the trial
2 judge, it is my responsibility to preside over the trial of
3 this case, and I also have the duty to rule on the
4 admissibility of evidence offered during this trial.

5 You are to consider only the competent evidence
6 that is before you. If there was any testimony stricken from
7 the record in this case, you must disregard that testimony.
8 You are to consider only the testimony which has been presented
9 from the witness stand and any exhibits that have been made
10 part of the record of this case and any stipulations of
11 Counsel.

12 I have the additional duty to charge you the law
13 applicable to this case. As a presiding judge, I am the sole
14 judge of the law of this case. It is your duty as jurors to
15 accept and apply the law as I now state it to you. If you
16 already have an idea as to what the law is or what the law
17 ought to be and it does not agree with what I now tell you the
18 law is, you must abandon this idea because you are sworn to
19 accept the law and apply the law exactly as I state it to you.

20 In every case tried in this courtroom before a
21 jury, the jury becomes the sole and exclusive judge of the
22 facts in a case. A trial judge cannot intimate, state, comment
23 on or make any statement to a trial jury about the facts in the
24 case since you, the jury, are the sole judge of the facts in
25 this case.

1 You are not to infer from what I have said during
2 the progress of this trial and ruling on the admissibility of
3 evidence or otherwise or anything that I say now during the
4 course of this instruction to you that I have any opinion about
5 the facts in this case. The law does not allow me to have an
6 opinion about the facts in this case. This is a matter solely
7 for you, the jury, to determine.

8 As jurors, it is your duty to determine the effect,
9 the value, weight, and truth of the evidence that has been
10 presented during this trial.

11 Ladies and gentlemen, there are two types of
12 evidence which generally is presented during a trial; direct
13 evidence and circumstantial evidence. Direct evidence proves
14 the existence of a fact and does not require deduction.

15 Circumstantial evidence is a proof of a chain of
16 facts and circumstances indicating the existence of a fact.
17 Crimes may be proven by circumstantial evidence. The law makes
18 no distinction between the weight or value to be given to
19 either direct or circumstantial evidence.

20 However, to the extent that the State relies on
21 circumstantial evidence, all of the circumstances must be
22 consistent with each other and, when taken together, point
23 conclusively to the guilt of the accused beyond a reasonable
24 doubt.

25 If these circumstances merely portray the

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1 Defendant's behavior as suspicious, the proof has failed. The
2 State has the burden of proving the Defendant guilty beyond a
3 reasonable doubt. This burden rests with the State regardless
4 of whether the State relies on direct, circumstantial evidence,
5 or a combination of the two.

6 Ladies and gentlemen, necessarily you determine the
7 credibility of the witnesses who have testified during the
8 course of this trial. Creditability simply means
9 believability. It becomes your duty as jurors to analyze and
10 to evaluate the evidence and determine which evidence convinces
11 you of its truth.

12 In determining the believability of witnesses to
13 have testified in this case, you may believe one witness over
14 several witnesses or several witnesses over one witness. You
15 may believe a part of the testimony of a witness and reject the
16 remaining part of the testimony of that same witness. You may
17 believe the testimony of a witness in its entirety or reject
18 the testimony of a witness in its entirety.

19 You may consider whether any witness has exhibited
20 to you any interest, bias, prejudice, or other motive in this
21 case. You may also consider the appearance and the manner of a
22 witness while on the witness stand.

23 Ladies and gentlemen, I instruct you and emphasize
24 that the fact that the Defendant did not testify in this case
25 is not a factor to be considered by you in any way in your

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1 deliberations and in your consideration on the question of
2 guilt or the innocence of the Defendant. It must not be
3 considered by you in any manner whatsoever.

4 A Defendant has the Constitutional right to remain
5 silent. And the assertion of this right must not be considered
6 by you in your deliberations. I repeat, under your oath as
7 jurors, you are to draw no conclusion whatsoever from the fact
8 that the Defendant in this case did not testify. The fact that
9 the Defendant did not testify should not even be discussed in
10 the jury room.

11 The burden of proof, as I have stated to you, is on
12 the State. The Defendant is not required to prove his
13 innocence. The burden of proof remains on the State to prove
14 guilt beyond a reasonable doubt.

15 In this case the Defendant is charged with
16 attempted murder. In order to prove this crime, the State must
17 prove the Defendant attempted to kill another person with
18 malice aforethought, either expressed or implied. The State
19 must prove beyond a reasonable doubt that the Defendant had the
20 specific intent to kill a person.

21 A specific intent is necessary to convict the
22 Defendant for attempted murder. In other words, you cannot
23 convict the Defendant of attempted murder unless you find that
24 the Defendant had the specific intent to kill the victim.

25 Intent means intending the result which actually

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1 occurs, not accidentally or involuntarily. Intent may be shown
2 by acts and conduct of the Defendant and other circumstances
3 which you may naturally and reasonably infer intent. Intent
4 may be inferred when it is demonstrated that the Defendant
5 voluntarily and willfully commits an act, the natural tendency
6 of which to destroy another's life.

7 Malice is hatred, ill will, or hostility towards
8 another person. It is the intentional doing of a wrongful act
9 without just cause or excuse and with an intent to inflict an
10 injury or under circumstances that the law will infer an evil
11 intent.

12 Malice aforethought does not require that malice
13 exist for any particular time before the act is committed.
14 Malice must exist in the mind of the Defendant before and at
15 the time the act is committed. Therefore, there must be a
16 combination of the previous evil intent and the act.

17 Malice aforethought may be expressed or inferred.
18 These terms, express and infer, do not mean different kinds of
19 malice, but merely the manner in which malice may be shown to
20 exist; that is either by direct evidence or by inference from
21 facts and circumstances which are proved.

22 Expressed malice is shown when a person speaks
23 words which express hatred or ill will for another person or
24 when the person prepared beforehand to do the act, which was
25 later accomplished. For example, lying in wait for a person or

1 any other act of preparation going to show that the deed was
2 within the Defendant's mind would be expressed malice. Malice
3 may be inferred from conduct showing a total disregard for
4 human life.

5 If facts are proved beyond a reasonable doubt
6 sufficient to raise an inference of malice to your
7 satisfaction, the inference would simply be an evidentiary fact
8 to be considered by you, the jury, along with the other
9 evidence in the case. And you may give it the weight you
10 decide that it should receive.

11 The Defendant is also charged in this case with
12 assault and battery of a high and aggravated nature. A person
13 commits the assault and battery of a high and aggravated nature
14 if the person unlawfully injures another person and the great
15 bodily injury to another person results, or the act is
16 accomplished by means likely to produce death or great bodily
17 injury.

18 Great bodily injury means bodily injury which
19 causes a substantial risk of death or which causes serious,
20 permanent disfigurement or protracted loss or impairment of the
21 function of a bodily member or organ.

22 The criminal intent required for assault and
23 battery of a high and aggravated nature is the accused must
24 have acted knowingly to commit those crimes. To act knowingly
25 means to act with knowledge, to act consciously, not

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1 accidentally. It is an intentional act, a willful act.

2 Establishing that an act was done knowingly, may be
3 done by showing acts and conduct of an accused and
4 circumstances from which you may naturally and reasonably infer
5 intent.

6 The Defendant is charged in this case with
7 possession of a weapon during the commission or attempt to
8 commit a violent crime. The State must prove beyond a
9 reasonable doubt that the Defendant was in possession of a
10 firearm or visibly displayed what appeared to be a firearm
11 during the commission of a violent crime.

12 The firearm means a machine gun, automatic rifle,
13 revolver, pistol, or any weapon which will, is designed to or
14 may be readily converted to expel a projectile.

15 In order to find the Defendant guilty of possession
16 of a weapon during the commission of a violent crime, you must
17 first find the Defendant guilty of either committing a violent
18 crime or attempting to commit a violent crime.

19 Attempted murder and assault and battery of a high
20 and aggravated nature are violent crimes. The State must prove
21 beyond a reasonable doubt that the weapon further advanced or
22 helped in the commission of the crime.

23 Ladies and gentlemen, I also charge you that, if
24 you find that the State has not proven the Defendant is guilty
25 of attempted murder, then you must determine whether the State

1 has proved that the Defendant is guilty of assault and battery
2 of a high and aggravated nature. An assault occurs when a
3 person unlawfully attempts or offers to commit a violent
4 injury -- give me one second.

5 Ladies and gentlemen, I'm going to back up. I'm
6 going to recharge you on the law related to assault and battery
7 of a high and aggravated nature. Did my best to prepare the
8 documents, and I skipped a paragraph or two. I'm going to back
9 in. I'm going to recharge you on the assault and battery of a
10 high and aggravated nature.

11 Ladies and gentlemen, if you find that the State
12 has not proven that the Defendant is guilty of attempted
13 murder, then you must determine whether the State has proved
14 that the Defendant is guilty of assault and battery of a high
15 and aggravated nature.

16 A person commits the offense of assault and battery
17 of a high and aggravated nature if the person unlawfully
18 injures another person and great bodily injury to another
19 person results or the act is accomplished by means likely to
20 produce death or great bodily injury.

21 Great bodily injury means bodily injury which
22 causes a substantial risk of death or which causes serious
23 permanent disfigurement or protracts loss or impairment of the
24 function of a bodily member or organ.

25 An assault -- I'm sorry. The criminal intent

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1 required for assault and battery of a high and aggravated
2 nature is that the accused must have acted knowingly to commit
3 those crimes. To act knowingly means to act with knowledge, to
4 act consciously, not accidentally. It is an intentional act, a
5 willful act.

6 Establishing that an act was done knowingly may be
7 done by showing acts and conduct of an accused and
8 circumstances from which you may naturally and reasonably infer
9 intent.

10 An assault occurs when a person unlawfully attempts
11 or offers to commit a violent injury upon another person and
12 has the present ability to complete the attempted injury.

13 An assault is the intentional creation of a
14 reasonable fear of immediate bodily harm. It is not necessary
15 that the attempted injury or harm actually take place. For
16 example, if I walk up to you and when you're within arm's
17 reach, I draw back to hit you, that is an assault.

18 A battery is the unlawful touching of another
19 person by a person who committed the assault. Unlawful
20 touching can be caused by a part of the accused's body or by
21 any object the accused puts in motion.

22 A battery is the completion of the assault by using
23 or applying force to another person however slight, in a rude,
24 angry, or resentful manner without legal justification for
25 doing so. Using my earlier example, if I carry through the

1 assault by hitting you, then that is a battery.

2 Ladies and gentlemen, the Defendant has raised the
3 defense of accident. An act may be excused on the ground of
4 accident if it is shown that the act was unintentional, that
5 the Defendant was acting lawfully and that reasonable care was
6 used by the Defendant.

7 For example, if a person is lawfully armed in
8 self-defense and the gun accidentally discharges, the defense
9 of accident would apply. The burden is on the State to prove
10 beyond a reasonable doubt that the act was not an accident but
11 was caused by the negligence or carelessness on the part of the
12 Defendant by unlawful activity by the Defendant.

13 The Defendant has raised the defense of
14 self-defense. Self-defense is a complete defense and, if it is
15 established, you must find the Defendant not guilty.

16 The State has the burden of disproving self-defense
17 by proof beyond a reasonable doubt. If you have a reasonable
18 doubt of the Defendant's guilt after considering all of the
19 evidence, including the evidence of self-defense, then you must
20 find the Defendant not guilty.

21 On the other hand, if you have no reasonable doubt
22 of the Defendant's guilt after considering all the evidence,
23 including the evidence of self-defense, then you must find the
24 Defendant guilty.

25 The following elements are required to establish

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1 self-defense. First, the Defendant must be without fault in
2 bringing about the difficulty. If the Defendant's conduct was
3 the type which was reasonably calculated to and did provoke a
4 deadly assault, the Defendant would be at fault in bringing on
5 the difficulty and would not be entitled to an acquittal based
6 on self-defense.

7 If the Defendant voluntarily participated in mutual
8 combat for purposes other than protection, the killing of the
9 victim would not be self-defense. This is true even if, during
10 the combat, the Defendant feared death or serious bodily
11 injury.

12 However, if before the killing is committed, the
13 Defendant withdraws and tried in good faith to avoid further
14 conflict and either by words or act makes that fact known to
15 the victim, he would be without fault in bringing on the
16 difficulty. For mutual combat, there must be a mutual intent
17 and willingness to fight. This intent may be shown by acts and
18 conduct of the parties and the circumstances surrounding the
19 combat.

20 In addition, it must be shown that both parties
21 were armed with a deadly weapon. The second element of
22 self-defense is that the Defendant was actually in imminent
23 danger or death or serious bodily injury or that the Defendant
24 actually believed he was in imminent danger of death or serious
25 bodily injury.

1 If the Defendant was actually in imminent danger,
2 it must be shown that the circumstances would have warranted a
3 person of ordinary firmness and courage to strike the fatal
4 blow to prevent death or serious bodily injury.

5 If the Defendant believed he was in imminent danger
6 of death or serious bodily injury, it must be shown that a
7 reasonable, prudent person of ordinary firmness and courage
8 would've had the same belief.

9 In deciding whether the Defendant actually was or
10 believed he was in imminent danger of death or serious bodily
11 injury, you should consider all of the facts and circumstances
12 surrounding the crime, including the physical condition and
13 characteristics of the Defendant and the victim.

14 The Defendant does not have to show that he was
15 actually in danger. It is enough if the Defendant believed he
16 was in imminent danger and a reasonably, prudent person of
17 ordinary firmness and courage would've had the same belief.

18 The Defendant has the right to act on appearances
19 even though the Defendant's belief may have been mistaken. It
20 is for you to decide whether the Defendant's fear of imminent
21 danger of death or serious bodily injury was reasonable and
22 would have been felt by an ordinary person in the same
23 circumstances.

24 Words accompanied by hostile act may, depending on
25 the circumstances, establish self-defense.

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1 Evidence of prior difficulties between the
2 Defendant and the victim may be considered in deciding whether
3 a threat existed, whether the Defendant had a reason to believe
4 the threat existed, and how serious that threat was.

5 The relative sizes, ages, and weight of the
6 Defendant and the victim may be considered in deciding the
7 apparent and actual need for force and self-defense and the
8 amount of force needed.

9 The victim's reputation -- I'm sorry. The
10 reputation of the victim as a violent person may be considered
11 in deciding whether there was a need for force, whether the
12 Defendant had a reason to believe there was a need for force
13 and whether deadly force was reasonably necessary.

14 Prior instances of violence between the victim --
15 prior instances of violence by the victim may be considered in
16 deciding whether the Defendant actually believed he was in
17 imminent danger of death or serious bodily injury or was
18 actually in imminent danger.

19 Threats made by the victim may be considered in
20 determining whether the Defendant actually was or believed he
21 was in imminent danger. The intoxication of the victim may be
22 considered in deciding whether the Defendant's fear of death or
23 bodily injury was reasonable.

24 The final element of self-defense is that the
25 Defendant had no other probable way to avoid the danger or

1 death or serious bodily injury than to act as the Defendant did
2 in this particular incident. If the Defendant was on his own
3 property, the Defendant had no duty to retreat before acting in
4 self-defense.

5 Ladies and gentlemen, under the law of
6 self-defense, the Defendant may take another's life in the
7 defense of others. The right to intervene, to protect another
8 person is subject to the same rights and limitation as the
9 right of self-defense.

10 The Defendant may take the life of a person who
11 assaults a friend, relative, or bystander if that friend,
12 relative, or bystander would've had the right of self-defense.

13 To show that the person being defended had the
14 right of self-defense, it must first be shown that the person
15 being defended and the Defendant were both without fault in
16 bringing on the difficulty.

17 If the conduct of the person defended or the
18 Defendant was the type which was reasonably calculated to and
19 did provoke a deadly assault, the person who would be at fault
20 in bringing on the difficulty would not have the right of
21 self-defense. Therefore, the Defendant would not have the
22 right to use deadly force in defending that person.

23 The defense of another person is excusable if the
24 Defendant has reasonable grounds to believe and in good faith
25 did believe that the person being defended was in imminent

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1 danger of death or serious bodily harm from the victim.

2 In deciding whether the person defended actually
3 was or that the Defendant actually believed the person was in
4 imminent danger of death or serious bodily injury, you should
5 consider all of the facts and circumstances surrounding the
6 crime including the physical condition and characteristics of
7 the parties.

8 Mr. Harris, do you have a copy of that jury charge?

9 MR. HARRIS: I have this one. Do you need that?

10 THE COURT: Yeah. Thank you, Mr. Harris.

11 MR. HARRIS: Yes, sir.

12 THE COURT: The other party being defended had no
13 probable means of avoiding the danger of losing her own life or
14 sustaining serious bodily injury other than to act as was done
15 in this particular instance. If, however, the party being
16 defended was on her own premises, she had no duty to retreat.
17 Those are the elements of the defense of others.

18 Ladies and gentlemen, and madam forelady, I have
19 prepared a jury verdict form for you to use. I need you to
20 understand that on the jury verdict form I have listed the
21 three charges that have been made against the Defendant. And
22 below each charge I listed a finding of not guilty or guilty as
23 to each one of the charges. I've listed not guilty first,
24 guilty second. It has no bearing on your deliberation. I had
25 to put one before the other.

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1 You need to consider all three of the charges and
2 make your determination. Let me correct that. You'll first
3 determine whether or not the Defendant is guilty or not of
4 attempted murder.

5 If you find that he is not guilty of attempted
6 murder, then you will consider the lesser included offense of
7 assault and battery of a high and aggravated nature.

8 If you find the Defendant guilty of either the
9 attempted murder or assault and battery of a high and
10 aggravated nature, then you will consider the third charge,
11 which is possession of a weapon during the commission of a
12 violent crime. If you do not find the Defendant guilty of
13 either the first or second one, you will not consider the third
14 one.

15 Madam Forelady, there is a signature line on the
16 back page for you to sign once the jury has made their
17 decision.

18 Madam Forelady, ladies and gentlemen of the jury, I
19 need to let you know that your verdict must be unanimous. All
20 12 members of the jury must agree on the jury's verdict. Your
21 verdict cannot be based on sympathy, passion, prejudice, or any
22 other consideration that is not supported by the evidence that
23 has been presented to you or the law that I have just reviewed
24 with you.

25 Madam Forelady, you have to do one other thing

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1 besides conduct the deliberations and execute the verdict form.
2 You have to knock on the door and let us know when you're
3 finished. One time we had a jury back there and they did not
4 knock on the door and let us know they were finished. We were
5 back here for hours wondering what are they doing.

6 Take as long as you want. Remember to let us know
7 once you're concluded. Otherwise, we are going to be out here
8 waiting for you the way you waited for us all week long during
9 this trial.

10 Madam Forelady, ladies and gentlemen, I am going to
11 let you retire back to the jury deliberation room. Do not
12 begin your deliberations, however, until we tell you, until the
13 bailiff tells you to begin your deliberation. He will bring
14 you the evidence.

15 At this time I'll let you retire back to the jury
16 room for deliberations. Your lunch should be back there. You
17 can go ahead and eat as well.

18 (The jury exited the courtroom at 1:00 p.m.)

19 THE COURT: Before we address the alternate, any
20 further exceptions to the charge besides what y'all have
21 already listed?

22 MR. SMITH: None from the State, Your Honor.

23 MR. HARRIS: Your Honor, I must reiterate the
24 exception to the attempted murder charge.

25 THE COURT: You're noted for that. Not going to

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1 change my mind on that.

2 What are we going to do with the alternate? I can
3 put him or her in another area and hold her in the event we
4 have somebody that has an emergency or something.

5 MR. SMITH: That would be my preference since I had
6 one with you a while back, that exact same thing happened and
7 ended in a mistrial.

8 MR. HARRIS: I really have no preference or opinion
9 on that. We know that if one juror has to leave, they have to
10 begin all over again.

11 THE COURT: Since you have no opinion, I will take
12 it you don't agree with it. I have to keep him. We'll keep
13 her. Put the alternate in my jury room?

14 THE BAILIFF: In the assembly room?

15 THE COURT: Yeah, that will be fine. Get her lunch
16 and take her lunch.

17 THE BAILIFF: We'll do that.

18 THE COURT: Have y'all reviewed the evidence to be
19 sure we have the right evidence?

20 MR. SMITH: I looked at it yesterday.

21 THE COURT: Do that one more time.

22 (A pause transpired.)

23 MR. SMITH: I believe we are good. Those discs, if
24 they did want to listen to them, can we bring them back in?

25 THE COURT: We'll have to.

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1 MR. SMITH: That was my preference.

2 THE COURT: You have a lot on those discs. I
3 wouldn't want them back there just playing it. They might run
4 across the movies you made at home.

5 He can take the evidence back?

6 MR. HARRIS: I've inspected it. The exhibits are
7 in order.

8 THE COURT: We will stand down. If you go places,
9 make sure you leave my clerk with numbers we can find you.
10 It's not uncommon, as you all may know, the jury may not have a
11 verdict but they may have a question. We need to reassemble
12 for those things. Be sure we can reach everybody.

13 (A recess transpired from 1:05 p.m. until 2:01
14 p.m.)

15 THE COURT: I'm told the jury has a verdict.
16 Anything from the State or defense before we bring the jury in?

17 MR. HARRIS: Nothing from the defense, Your Honor.

18 MR. SMITH: No.

19 THE COURT: Let's bring the jury in.

20 (The jury entered the courtroom at 2:02 p.m.)

21 THE COURT: Madam forelady, I'm told that the jury
22 has reached a verdict; is that correct?

23 THE FOREPERSON: Yes, Your Honor.

24 THE COURT: Please give the verdict form to the
25 bailiff, and he'll bring the verdict form to me. Thank you

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1 very much.

2 (A pause transpired).

3 THE COURT: Madam clerk, publish the verdict.

4 THE CLERK: In the State of South Carolina, in the
5 Court of General Sessions, indictment number 2020-GS-42-4184,
6 the State of South Carolina versus Jorge Rodriguez, as to the
7 charge of attempted murder, we, the jury unanimously find the
8 Defendant not guilty.

9 As to the charge of assault and battery of a high
10 and aggravated nature, we, the jury, unanimously find the
11 Defendant guilty.

12 As to the charge of possession of a weapon during
13 the commission of a violent crime, we, the jury, unanimously
14 find the Defendant guilty. Signed by the foreperson this 13th
15 day of October 2022.

16 Ladies and gentlemen, is this your verdict and
17 still your verdict? If so, please raise your right hand.

18 (The jury complied.)

19 THE CLERK: So say you-all.

20 THE COURT: Anything before I dismiss the jury from
21 the State?

22 MR. SMITH: No, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. HARRIS: No, Your Honor.

25 THE COURT: Ladies and gentlemen, I want to thank

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1 you very much for your service on the jury this week. I know
2 this trial has been long. This trial has tried your patience
3 on the number of times you had to walk back and forth, back and
4 forth out of the courtroom.

5 As you may recall, when we started this week, I
6 believe I told you that you were going to be participating in
7 what many has called the greatest system ever created. I've
8 been doing this job 20 years. I believe that statement to be
9 more true than ever during my career sitting on the bench.

10 I get the opportunity to work with citizens like
11 you, who come from various walks of life that sacrifice their
12 time, their jobs, and their families to exercise or do their
13 civic duty serving as jurors.

14 It has been a unique experience with me to serve
15 with y'all this week. I want to extend to you my sincere
16 professional appreciation on behalf of everybody that works in
17 the court system for your participation this week and the
18 justice system in Spartanburg County.

19 I have told you don't have any discussions with
20 anyone about anything involved in the case. Now you can talk
21 to as many people until you're blue in the face. If anybody
22 approaches and you feel like that they're harassing you or
23 they're bothering you about your jury service, just reach out
24 to the Sheriff's Office or the Clerk of Court, and we will see
25 that type of contact stops. Thank you very much for your

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1 service.

2 You may go with the bailiff. I hope you enjoy your
3 weekend. We are done with all of our trials this week. Thank
4 you very much.

5 Madam foreman, wait in the back; Clerk of Court has
6 to get your signature on one other thing.

7 (The jury exited the courtroom at 2:06 p.m.)

8 THE COURT: We are going to step down for a minute
9 and get the paperwork in order.

10 (A recess transpired from 2:07 p.m. until 2:18
11 p.m.)

12 THE COURT: Are we ready to proceed with the
13 sentencing?

14 MR. SMITH: The State is ready, Your Honor.

15 MR. HARRIS: Yes, Your Honor.

16 THE COURT: Mr. Rodriguez, come right up here.

17 Mr. Rodriguez, if you will please raise your right
18 hand.

19 JORGE RODRIGUEZ

20 being first duly sworn, testified as follows:

21 THE COURT: Thank you, Mr. Rodriguez. Give me just
22 a moment, sir.

23 (A pause transpired).

24 THE COURT: Mr. Rodriguez, I have just a few
25 questions to ask you. I just need to let you know we are

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 making a recording of everything that happens here. This lady
2 over here to my right is a court reporter. She is taking down
3 everything that's said. When you speak, please speak up loud
4 enough so that she and I and everybody can hear you.

5 If ever during this process you can't hear me,
6 immediately let me know and I'll speak up.

7 MR. RODRIGUEZ: Yes, Your Honor.

8 THE COURT: How old are you?

9 MR. RODRIGUEZ: Twenty-nine.

10 THE COURT: How far did you go in school?

11 MR. RODRIGUEZ: Three years.

12 THE COURT: Three years of college?

13 MR. RODRIGUEZ: Three years of college, yes, sir.

14 THE COURT: Did you get a high school diploma
15 before?

16 MR. RODRIGUEZ: Yes, Your Honor.

17 THE COURT: Where did you do the three years of
18 college?

19 MR. RODRIGUEZ: Spartanburg Community College.

20 THE COURT: Presently are you married, single,
21 divorce or widowed?

22 MR. RODRIGUEZ: Well, I have a fiancée.

23 THE COURT: Do you have any children?

24 MR. RODRIGUEZ: One.

25 THE COURT: How old?

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 MR. RODRIGUEZ: Two years.

2 THE COURT: Do you have a job outside the home?

3 MR. RODRIGUEZ: Yes, sir.

4 THE COURT: What do you do?

5 MR. RODRIGUEZ: Shop technician at Inman Mills.

6 Maintenance.

7 THE COURT: Ever served in the military?

8 MR. RODRIGUEZ: No, Your Honor.

9 THE COURT: On these charges, when you got
10 arrested, how long a time were you on bond before you got out
11 of jail? How long a time were you in jail before you made a
12 bond?

13 MR. RODRIGUEZ: How long was I in jail before I was
14 on bond?

15 THE COURT: Yes, sir.

16 MR. RODRIGUEZ: I was in jail for two weeks.

17 THE COURT: About 14 days?

18 MR. RODRIGUEZ: Yes, Your Honor.

19 MR. SMITH: I don't think that's correct. We'll
20 correct it later.

21 THE COURT: Any prior record, Mr. Smith?

22 MR. SMITH: He does not, Your Honor.

23 THE COURT: Is there anything that State has on
24 behalf of the victim in the case?

25 MR. SMITH: I think Nicholas Rodriguez wishes to

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 address The Court.

2 THE COURT: Sir, just come right up here and stand
3 beside the Solicitor.

4 Sir, just to let you know, we are making a
5 recording of everything that happens. When you speak, please
6 speak loud enough so that both the court reporter and I can
7 both hear you.

8 I know you've given us your name. Give us your
9 name one more time.

10 MR. CALDERON: Nicholas Rodriguez Calderon.

11 THE COURT: Yes, sir. More than happy to hear from
12 you. Anything you want me to know?

13 MR. CALDERON: Yes, Your Honor. Bryant, whenever
14 he was before he got shot, he had a very good life. He had a
15 job. Paid some bills. He was trying to be a part of his
16 child's life. Unfortunately, him and his baby momma didn't
17 work out, but he was trying to get to that point that he wanted
18 to be part of his child's life.

19 Ever since this accident happened, he's never been
20 the same. He don't have a chance to even be a part of his
21 kid's life. Physically, mentally, everything was good with
22 him. His life changed dramatically to the point that he can't
23 even go to the store to buy whatever he needs. He can't take
24 care of himself.

25 He has to take medication unless -- if he don't

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 take his medication on time, he could have a seizure and
2 probably choke on his tongue. He can't communicate with no one
3 verbally, talking to each other. Obviously, he loved life. He
4 used to love going to the gym. He can't even work out.

5 He can't speak to somebody, communicate. For
6 whatever reasons the accident occurred, he didn't deserve to
7 get shot in the head, especially by his own brother at
8 Christmas, at his mom's house.

9 Thank God he is alive. It's a miracle. Not
10 everybody survives a shot in the head. God had a purpose for
11 him. It was not his time to go. Luckily, he's still with us,
12 but in different circumstances. I hope maybe one day he could
13 get close to how he used to be. I don't think that's ever
14 going to happen.

15 I don't get to see my brother. I barely talk to
16 him. When I get to see him, I get such a joy. He brings me so
17 much joy just to be around my brother. And unfortunately I
18 can't because of the circumstances of my mother.

19 He was a good kid. He drank. Yes, everybody
20 drinks. Drinking is not a crime when you're at home by
21 yourself after work. He just might have a few beers. That
22 night he didn't want to go. He didn't want to go. He wanted
23 to stay at home.

24 His roommate even told me he didn't want to go due
25 to the fact that it wasn't the first time Jorge had threatened

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 him. He had threatened me before, too, and I told my mother.
2 And I told her to please talk to him and not to be doing that.
3 'Cause if he came to my house, I was going to call the law.

4 She clearly ignored me, that I was just jealous of
5 him. When I was just trying to help him. I was trying to
6 prevent something that could occur at any time. Bryant, he
7 owned no guns. No guns. With Jorge.

8 And I asked mom why you allow him to. You live in
9 a rich neighborhood, a great house. Great neighbors. There's
10 no need for that. Always trying to prevent something. I wish
11 I could.

12 And I'm a brother. He's not the same person no
13 more. He can't depend on himself. He can't even be an
14 independent person. Nobody deserves to get shot, especially by
15 a family member. Your own brother. On Christmas.

16 I do love both of my brothers. And I always, I
17 even talked to Jorge and told him: Jorge, please don't be like
18 that, please get along with Bryant. And he knows it, too. I
19 told him: That's your brother.

20 And he never claimed him. He would be like: No,
21 that's not my brother. We don't have the same dad.

22 I'm like: Dude, we come from the same mother. We
23 all brothers whether we have a different dad or not.

24 Never could get it through him. I do forgive his
25 actions for doing it, but that doesn't justify what he did to

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 my brother. He ruined his life. No one deserves that. That's
2 all I got to say, Your Honor.

3 THE COURT: Thank you, sir.

4 Anything else from the State?

5 MR. SMITH: Your Honor, he doesn't have any prior
6 record. Some of the things that we didn't present at the
7 trial, there was a bunch of what appears to be steroid-type
8 drugs in the safe and both in a work jacket that he had. There
9 was needles. They were all labeled testosterone and things
10 like that. I don't know if that contributed to this.

11 Nicholas has talked to me about Jorge having
12 explosive anger. I can tell you my interaction with Bryant,
13 though brief, it is incredibly sad. I can't say it as well as
14 Nick did. His eyes appear that he can understand everything
15 that's being said to him. But he literally can't talk back to
16 you other than maybe a yes or no.

17 I do not know what goes on in his head. I know
18 that he used to be able to speak. I imagine it has to be the
19 most frustrating thing in the world to have had that, to be
20 able to be aware of everything that's going on around you but
21 not being able to interact with the people that are talking
22 with you.

23 Just in the brief time I was with him you can
24 literally see the frustration in his eyes and on his face when
25 he's trying to talk.

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 And I know his brother Nick has texted me for about
2 three years about this case. He cares so much for his brother
3 and was always on me to make sure we push this and he got
4 justice for him. I'm glad we did. We'll leave it up to you,
5 Your Honor. I have him as having eight days credit from
6 December 26th to January 3rd.

7 THE COURT: Thank you, sir.

8 MR. SMITH: Thank you, Your Honor.

9 THE COURT: Yes, sir, Mr. Harris.

10 MR. HARRIS: Thank you, Your Honor. May it please
11 The Court. Certainly as we all know, we've been here all week.
12 We know that, unfortunately, the occurrence of this completely
13 enmeshed with family.

14 Behind defense's table, mother, who The Court has
15 heard from through testimony; Mr. Gomez, who is like a father
16 figure to Jorge Rodriguez, to other family, friends. We
17 certainly appreciate the extremely emotional nature of what
18 took place, what's taken place this week in this courtroom,
19 what's taking place now in this sentencing.

20 I think those emotions, those feelings of sadness
21 and grief, all the family members I dare say feel equally. I
22 think The Court knows as much about the facts of the case
23 through the trial of the case that I need not go any further
24 with that.

25 The Court has the benefit of Mr. Rodriguez's

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 background, which is no criminal history. He works. He has a
2 good education.

3 You know, growing up as a young lawyer, I used to
4 always hear it said in court during guilty plea proceedings,
5 Judge, he comes from a good family. Well, I think
6 Mr. Rodriguez does come from a good family, a loving family.

7 Like a lot of families, they are not immune from
8 problems. I think it was chaotic turbulence to say the least.
9 Set of events that lead up to this on this particular occasion.

10 Your Honor, I ask that The Court take into
11 consideration the lack of criminal history and all that The
12 Court has gained through the trial in the case, to impose an
13 appropriate sentence on Mr. Rodriguez.

14 THE COURT: Does anyone else want to speak on his
15 behalf before I hear from him?

16 MR. HARRIS: Your Honor, we were rushed in. If The
17 Court would permit me to simply walk over and just say to his
18 mother very briefly.

19 THE COURT: Yes, sir.

20 (A pause transpired.)

21 MR. HARRIS: Your Honor, the mother has asked to
22 address The Court.

23 THE COURT: Ma'am, if you would just come on up
24 here and stand beside the police officer.

25 I need to remind you we are making a recording of

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 everything that happens. Please speak up loud enough so both
2 the court reporter and I can hear you. I know we have your
3 name. Start and give us your full name, if you would.

4 MS. NODINE: Judith Rodriguez Nodine.

5 THE COURT: Yes, ma'am. More than happy to hear
6 from you.

7 MS. NODINE: Your Honor, for me it's a tragedy of
8 what happened that Christmas. I always did my best to raise
9 the three kids the same way. I provided them opportunities
10 under God's umbrella to become a good person in society. It
11 was really tough on me to raise three kids since they were
12 babies regardless of what my oldest son Nicholas said. I was
13 always there for them.

14 I don't have no preference for any one, for any of
15 them. I love my three kids the same way. Just some, they need
16 me more than the other. But I love them the same way.

17 Jorge did his school in high school and college
18 without getting into trouble. He dedicated his-self to start
19 really hard to become someone good for the society.

20 Nicholas had some trouble during high school. Most
21 of the teenagers -- where he had my support to pay lawyers more
22 than once to help him get through that step and continue his
23 education.

24 Bryant, on the other hand, unfortunately since high
25 school, he didn't proceed for an education. Instead, he chose

1 to be with bad people, bad influence that unfortunately carry
2 him to become an alcoholic and irresponsible person regardless
3 of what Nicholas is saying.

4 Unfortunately I have to accept that my son was that
5 way. But even like that I love my three sons the same way.
6 And I never left Bryant, also behind. Bryant has been in jail
7 so many times for his errors. And I have been there for him
8 and encouraged him to start up and become a better person.
9 Unfortunately, he didn't listen to my advice.

10 All I'm trying to say, Your Honor, I took care of
11 my kids, and I love my kids the same way. And for me this was
12 just a tragic, tragic night. A tragic night. And I don't wish
13 this to happen to anyone for what I have been through, what my
14 son Bryant has been through and what Jorge is going through
15 right now.

16 Jorge has a family to care. I'm caring for Bryant,
17 and I will never going to let Bryant down until he full
18 recovery. I'm with Bryant since the moment this incident
19 happened. I've been there for him, working from home, paying a
20 caregiver to be with him, giving him everything he needs, in
21 therapies and expenses, medications, and everything to get him
22 there where he needs to be. Which I don't lose faith that he
23 will be there. He will become independent completely.

24 That's my goal. And all I'm asking to you, Your
25 Honor, is to have consideration for my son Jorge. He never

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 been in a fight. He never been in trouble. This was just a
2 terrible moment when he just tried to defend me. Just an
3 impulse from him to protect me. Which I wish that he couldn't
4 have did it. Just ask you for mercy, Your Honor.

5 THE COURT: Thank you, ma'am.

6 Anything else before I hear from the Defendant?

7 MR. HARRIS: No, Your Honor.

8 THE COURT: Mr. Rodriguez, do you agree with the
9 statements that have been made by Mr. Harris?

10 MR. RODRIGUEZ: Yes, Your Honor.

11 THE COURT: Mr. Rodriguez, is there anything else
12 that you would like to say or want me to know or consider?

13 MR. RODRIGUEZ: I just want to say that I regret
14 everything that happened that night. You know. My intention
15 was not to hurt him, just to scare him, protect my mom. I just
16 wish that my brothers can ask me for forgiveness even though he
17 hates me. Even though my older brother hates me. For the past
18 year, he been harassing me. Ever since I got out of bond, ever
19 since I got out of jail, been on bond, catch me out in public,
20 harassing me. I don't care. I don't hold no grudges towards
21 him. I love them. I love my mother.

22 MR. HARRIS: Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Rodriguez.

24 (A pause transpired).

25 THE COURT: This has been a trial, so I do not have

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

1 to find the plea has been made freely, knowingly, voluntarily
2 by him.

3 On these cases, on the assault and battery of a
4 high and aggravated nature case, that will be a 20-year
5 sentence at the State Department of Correction. I'll suspend
6 that upon the service of ten years, followed by five years of
7 supervision. To run concurrent with the other charge. Credit
8 for 14 days.

9 I've indicated on the sentencing sheet, I think it
10 goes with the sentence, there's not to be any possession of any
11 type of firearms as part of this case. That will run
12 concurrent with the five-year-sentence on the possession of a
13 weapon during the commission of a violent crime, which he will
14 also receive credit for the 14 days.

15 Sir, if you have any questions about the sentence,
16 please speak with your lawyer. I wish you the best of luck,
17 sir.

18 MR. RODRIGUEZ: Thank you, Your Honor.

19 (The hearing was concluded at 2:42 p.m.)
20
21
22
23
24
25

STATE OF SOUTH CAROLINA vs. JORGE RODRIGUEZ

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to, nor
counsel for, any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 22nd day of December, 2023 at Spartanburg,
Spartanburg County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Jorge Alberto Rodriguez, 389273,
Full name and prison number (if any) of Applicant.

V.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2023-CP-42- 01919

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936
2. Name and location of Court which imposed sentence Spartanburg County Court of General Sessions, 180 Magnolia Street, Spartanburg, SC 29306
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) 2020-GS-42-1184: ABHAN; possession of a weapon during the commission of a violent crime
- (b) _____
- (c) _____
- CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX
2023 MAY 26 AM 8:36

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2023 MAY 26 AM 8:36

DATE

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5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 13, 2022: 20 years, suspended to the service of 10 years and 5 years probation; 5 years concurrent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Attorney did not file following trial.
- (b) _____

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SPARTANBURG COUNTY
MAY 26 2023

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- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel
- (b) Belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to properly prepare and investigate prior to trial.
- (b) Failure to properly present a reasonable defense. Applicant will amend with more specific facts in support upon receipt and review of the transcript.
- (c) Failure to timely file a Notice of Appeal following trial.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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CLERK OF COURT
SPARTANBURG COUNTY
AMY M. COX

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(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum.

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CLERK OF COURT
SPRINGFIELD COUNTY
JUDICIAL DEPARTMENT
XOXO W. J. COX

4 FILED

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes.(b) your trial, if any? Yes.(c) your sentencing? Yes.(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Ricky Keith Harris, 145 N. Church Street #34, Spartanburg, SC 29306

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

My current convictions and sentences vacated and/or whatever relief the court deems proper.

20. Are you now under sentence from any other court that you have not challenged?

No.

AMY W. COX
CLERK OF COURT
SPARTANBURG COUNTY
2023 MAY 26 AM 8:37

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STATE OF SOUTH CAROLINA

)

VERIFICATION

)

County of Jasper

)

I, Jorge Alberto Rodriguez, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jorge A. Rodriguez
Jorge A. Rodriguez

SWORN to and subscribed before me this 23rd
 day of May, 2023.

Virginia Robinson (L.S.)
Notary Public

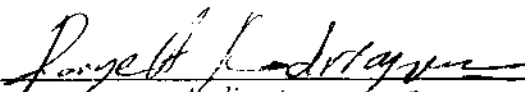
My Commission Expires: April 21, 2031

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 2023 MAY 26 AM 8:37
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

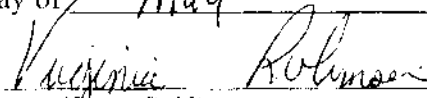
I, Jorge Alberto Rodriguez, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



 Applicant

SWORN or affirmed to and subscribed before me this
23rd day of May, 2023



 Notary Public

My Commission Expires: April 21, 2031

CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

2023 MAY 26 AM 8:37

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Jorge Alberto Rodriguez, #389273,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS FOR
) THE SEVENTH JUDICIAL CIRCUIT
)

) CASE NO. 2023-CP-42-1919
)

) **RETURN AND MOTION FOR A**
) **MORE DEFINITE STATEMENT**
) (Counsel Appointed)
)

2023 JUN 18 AM 10:53
CLERK OF COURT
SPARTANBURG COUNTY
JANICE COX

FILED

In response to Jorge A. Rodriguez's (Applicant) action for post-conviction relief (PCR) filed May 26, 2023,¹ Respondent makes this Return and Motion for a More Definite Statement.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its June 2020 term, the Spartanburg County Grand Jury indicted Applicant for attempted murder and possession of a weapon during the commission of a violent crime (2020-GS-42-4184). Ricky Keith Harris, Esquire, represented Applicant. Seventh Circuit Assistant Solicitor Spenser Holloran Smith prosecuted the case. Applicant proceeded to a jury trial before the Honorable J. Mark Hayes, II, circuit court judge. Applicant was found guilty of the lesser included offense of

¹ Respondent's return was due to be filed within ninety days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime. Judge Hayes sentenced Applicant to a term of twenty years' imprisonment to be suspended upon the service of ten years', followed by five years' of supervision for the assault and battery of a high and aggravated nature and five years' for the possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant did not appeal his sentences.

FACTS GIVING RISE TO THE CONVICTION

On the evening of December 24, 2019, Judith Rodriguez Nodine ("Judith") Invited one of her three sons, Bryant Rodriguez ("Bryant"), over to the home. (R. p. 21). Bryant drove his moped to Judith's home from Inman, South Carolina, Arriving at 9:00pm. (R. p. 21). Bryant and Judith spend the evening watching movies, and drinking alcohol. (R. p. 21). Applicant resided with his mother, Judith, during this time. (R. p. 25). Applicant had been spending the evening with girlfriend at her home on this evening. (R. p. 42). Applicant arrived home while Judith and Bryant were enjoying one another's company in the home. (R. p. 25). Judith testified during Applicant's trial, Applicant appeared to have been drinking prior to arriving home. (R. p. 27).

Judith testified Applicant and Bryant got into an altercation, following Applicant's arrival home. (R. p. 20). Judith recalled Applicant going upstairs to his bedroom after the altercation began. (R. p. 25). Applicant kept a large amount of gun paraphernalia, including ammunition in a nightstand in his bedroom.² (R. p. 25). Applicant returned downstairs where Judith and Bryant were still spending time together. (R. p. 26). The two brothers continued to engage in an altercation upon Applicant's return downstairs. (R. p. 26). At or around 2:00 am on December

² It is unknown at what point Applicant armed himself prior to committing the crime.

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25, 2019, Applicant called his girlfriend. (R. p. 27). Following that call Applicant used his gun to shoot Bryant in the head.³ (R. p. 26).

Applicant then left the home and drove to an area in Chesnee, which is approximately a ten-minute drive from his home. (R. p. 31). Applicant's girlfriend's parents lived in that area and Applicant disposed of the weapon used in the shooting at their home. (R. p. 31). Applicant then called Wilson Gomez ("Gomez") to inform him "something terrible ha[d] happened." (R. p. 32). Applicant told Gomez he was considering taking his own life. (R. p. 32). Applicant then goes to meet Gomez, and is intoxicated when he arrives. (R. p. 32). Applicant informed Gomez that the events which had previously transpired were "an accident during a fight." (R. p. 32). Applicant remained at Gomez's home until he was apprehended by police officers the following day. (R. p. 33). Bryant was left permanently disabled as a result of his injuries. (R. p. 79).

CURRENT APPLICATION

Applicant timely commenced this application on May 26, 2023. Applicant asserts he is being held in custody unlawfully, alleging ineffective assistance of counsel as follows:

1. Ineffective Assistance of Trial Counsel
 - a. "Failure to properly prepare and investigate prior to trial."
 - b. "Failure to properly present a reasonable defense. Applicant will amend with more specific facts in support upon receipt and review of the transcript."
2. "Belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E. 2d 35 (1974)."
- a. "Failure to timely file a Notice of Appeal following trial."

As relief, Applicant requests his "convictions and sentences be vacated and/or whatever relief the court deems proper."

³ Applicant and Judith both contend Applicant shot Bryant in an effort to protect Judith from Bryant. It was the story of these witnesses that Bryant was an aggressive drunk, who was attempting to assault Judith with a beer bottle when Applicant shot him. (R. p. 29).

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Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the sentencing transcript from Applicant's trial, and records of the current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applications for PCR are inherently ingrained in allegations of ineffective assistance of counsel. Accordingly, Respondent addresses this general allegation, and Respondent submits that the record establishes Applicant will not be able to prove any ineffectiveness of counsel.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of that constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the

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applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote

possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial

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The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on

the judgment." Id. at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Finally, the performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Strickland, at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO PREPARE AND INVESTIGATE

Applicant alleges Trial Counsel was ineffective for failing to properly prepare or investigate prior to his trial. However, Applicant has failed to explain what Trial Counsel should have investigated and how the alleged failure prejudiced Applicant. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate

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must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here, Applicant has asserted that Trial Counsel was ineffective for failing to investigate and prepare. While Respondent maintains the record refutes this allegation, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application

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"alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION OF FAILURE TO FILE APPEAL

Applicant's alleges he was denied his right to a direct appeal of his trial and sentence. Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id.

This allegation regarding a belated direct appeal may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428

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S/C?231. 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See Love (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

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CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel.

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHAYLA J. FLORES
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
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Columbia, SC 29211

April 11, 2024

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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2023-CP-42-1919

Jorge Alberto Rodriguez #389273)

Applicant,)

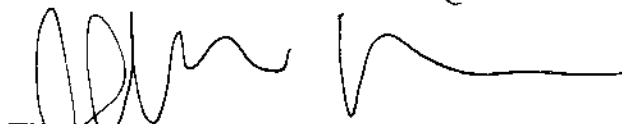
vs)

State of South Carolina,)

Respondent,)

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Rodney W. Richey, Esquire.**Richey & Richey, PA****P.O. Box 10916****Greenville, SC 29603-0916**DATED this 11th day of April 2024.


Jordan Hickman, Legal Assistant
For Respondent

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3

4 JORGE A. RODRIGUEZ,) TRANSCRIPT
5 APPLICANT,) OF
6 VS.) RECORD
7 STATE OF SOUTH CAROLINA,) 2023-CP-42-1919
8 RESPONDENT.)

9

10 February 18th, 2025

11

12 B E F O R E:

13

14 THE HONORABLE R. SCOTT SPROUSE, Judge.

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

16 RODNEY W. RICHEY
17 ESQ.
Attorney for the Applicant

18

19 BRYAN T. HALL
ASSISTANT ATTORNEY GENERAL
20 Attorney for the State

21

22

23 Pamela E. Green
Circuit Court Reporter

24

25

I N D E XWITNESSESPAGE

JORGE RODRIGUEZ

Direct examination by Mr. Richey

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Cross-examination by Mr. Hall

25

RICKY HARRIS

Direct examination by Mr. Richey

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Cross-examination by Mr. Hall

36

Closing by Mr. Hall

49

Closing by Mr. Richey

50

Certificate

53

P R O C E E D I N G S

THE COURT: Yes, sir.

MR. HALL: May it please the Court.

Assistant Attorney General Bryan Hall for the State.

Your Honor, this is the case of Jorge Rodriguez versus State of South Carolina. Docket Number 2023-CP-42-1919.

In June of 2020 the Spartanburg County Grand Jury indicted Mr. Rodriguez for attempted murder, Indictment Number 2020-GS-42-4184, and possession of a weapon during the commission of a violent crime.

On October 13th of 2013, Mr. Rodriguez proceeded to a jury trial before the Honorable J. Mark Hayes, II. Assistant Solicitor Spenser Smith prosecuted the case and Mr. Rodriguez was represented by Ricky Harris. The jury convicted Mr. Rodriguez of assault and battery of a high and aggravated nature, the lesser included offense of attempted murder, as well as possession of a weapon during the commission of a violent crime.

Mr. Rodriguez was sentenced to a concurrent sentence of 20 years suspended to 10 years followed by five years probation for assault and battery of a high and aggravated nature and five years for the weapon charge. Mr. Rodriguez did not appeal and this PCR was filed on May

1 26th of 2023.

2 In his PCR, Mr. Rodriguez is alleging ineffective
3 assistance of counsel for failure to properly prepare and
4 investigate prior to trial, failure to present a
5 reasonable defense, and failure to file a direct appeal
6 after trial. He's seeking a belated appeal pursuant to
7 White v. State.

8 The State has provided Your Honor with the records
9 from this PCR as well as the records from Mr. Rodriguez's
10 trial. Mr. Rodriguez is present and represented by Rodney
11 Richey and the State is ready to proceed.

12 THE COURT: Thank you, Mr. Hall.

13 Mr. Richey.

14 MR. RICHEY: Thank you.

15 We, we, we call Mr. Rodriguez.

16 THE COURT: Okay. Mr. Rodriguez, come around to the
17 witness stand please, sir.

18 JORGE RODRIGUEZ, being first duly
19 sworn, testified as follows:

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. RICHEY:

23 Q. Sir, would you state your name please?

24 A. Jorge Rodriguez.

25 Q. And, Mr. Rodriguez, are you currently in the

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By Mr. Richey

1 Department of Corrections?

2 A. Excuse me?

3 Q. Are you in the Department of Corrections right now?

4 A. Yes, sir.

5 Q. And what are you in there for?

6 A. Assault and battery high and aggravated nature with
7 unlawful carry of a pistol.

8 Q. And, and what county were you convicted in?

9 A. Spartanburg County.

10 Q. And who represented you on those charges?

11 A. Ricky Harris.

12 Q. And did, did you file an application for
13 post-conviction relief alleging that he ineffectively
14 represented you, represented you?

15 A. Yes, sir.

16 Q. Okay. And, during your case, did you have a trial or
17 guilty plea?

18 A. Excuse me?

19 Q. Did you have a trial or a guilty plea?

20 A. Meaning by what?

21 Q. Okay. Did you go to trial on your case?

22 Did you go---

23 A. Yes, sir.

24 Q. ---to a judge---

25 A. Oh, no, I went to a jury trial.

1 Q. Okay. Did you have a jury trial or did you plead
2 guilty?

3 A. No, I did not plead guilty.

4 Q. Okay.

5 A. I---

6 Q. So you had a trial?

7 A. Yes, sir.

8 Q. Okay. And, at this jury trial, you believe that your
9 lawyer didn't effectively represent you during this trial
10 or before this trial, correct?

11 A. Correct.

12 Q. Okay. I'm gonna get to the back end of this first.
13 After, after your trial, you were found guilty of, of
14 aggravated assault, correct?

15 A. Correct.

16 Q. Did you communicate with your lawyer whether you
17 wanted to file an appeal or not?

18 A. Yes, sir.

19 Q. And, and what did you tell him?

20 A. He, he told me that I had 10 days to like, you know,
21 file for a direct appeal.

22 Q. And, and what did you say about that?

23 A. I say go ahead and do it. He was like well, well,
24 you want me to go ahead and do it. Then, you know, he --
25 we had a little altercation about it about negotiation

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By Mr. Richey

1 about the money.

2 Q. Okay. When you say about the money, what does that
3 mean?

4 A. It pretty much he wanted \$20,000 off of me and I
5 didn't have \$20.00 -- \$20,000 right there on the spot. So
6 that's why I guess he didn't, you know, bother to even
7 file for it. So --.

8 Q. So you requested it?

9 A. I did request it and my---

10 Q. And---

11 A. And my mother was actual eye witness as, as well too.
12 But she's not in, in here. But she can also testify on my
13 behalf.

14 MR. HALL: Object and -- I'll withdraw.

15 Q. And, and was that done within the 10 days?

16 A. Yes, sir.

17 Q. Okay. So -- and so -- and you fully expected the
18 case to be appealed?

19 A. Of course.

20 Q. Okay. Let's talk about the actual case now.

21 In this case, did you have an opportunity to discuss
22 the case with Mr. Harris?

23 A. I mean sort of, not really, cause I, I -- and, you
24 know, we had different times scheduled cause I was working
25 night shift at the time --

1 Q. Uh-huh. (Affirmative.)

2 A. -- and he was so busy at the time, you know, working
3 on other cases as well. So, I guess -- you know what I'm
4 saying?

5 He probably thought like if I wouldn't go be putting
6 the time like that, he wasn't gonna be putting the type of
7 effort neither. But, at same time, you know --.

8 Q. Well, no, I mean yeah -- did you discuss your case
9 with your lawyer?

10 A. I mean, yeah, I did discuss it but it's --.

11 Q. Well, when I say discuss it, did y'all sit down and
12 have meaningful conversations?

13 A. Oh, no. We didn't -- really did have like face to
14 face conversation. It was just like pretty much over the
15 phone.

16 Q. Okay. So you didn't have -- so, so you were going to
17 a jury trial for attempted murder, correct?

18 A. Correct.

19 Q. And you, you -- and you're, you're telling me that
20 you didn't have -- that you didn't have meaningful
21 discussions with your lawyer?

22 A. I mean I just told him what really what had happened
23 and then he was just go put everything on, you know,
24 together for me and then, you know --.

25 Q. Okay. Tell me what y'all discussed.

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By Mr. Richey

1 A. Pretty much what we discussed is well, I -- first and
2 formerly, I ain't even told him before, before the whole
3 trial what -- and whatnot had like, you know, occurred
4 that I, I wanted like, you know, house arrest or detention
5 or whatever, you know what I'm saying, on house monitor so
6 I can get some time served and he -- I guess he just
7 ignored that, you know --

8 Q. Okay.

9 A. -- at that part and then --.

10 Q. No, my question is what did y'all talk about about
11 your case, you going to trial?

12 what did y'all talk about?

13 Did y'all talk about y'all gon' do this, y'all gon'
14 do that, or he's gonna -- what did y'all talk about the
15 actual case in trying it?

16 A. Well, well, ain't -- cause we just talked attempted
17 murder. That's it.

18 Q. Okay.

19 A. We didn't talk about assault and battery high and
20 aggravated nature.

21 Is that what you trying to come across?

22 Q. No, I'm just asking you did -- did you, did you go to
23 your lawyer's office before your trial and y'all sit down
24 and y'all discuss this is what's gon' happen at my trial,
25 this is not what's gon' happen?

1 Did y'all have -- you know, they gonna say this, you
2 gonna---

3 A. All he, all he -- before the trial, all he really
4 said was, you know, Spenser got a plea for you and I was
5 like what's the plea. He's like yeah, the plea's gon' be,
6 you know, I get charged with assault and battery of a high
7 and aggravated nature which carry the zero to 10 years.
8 That's what he told me.

9 And then I was just like okay. Well, is there any
10 possible way I can get zero years, you know, or at least
11 house arrest or any -- by any chance and he was just like
12 well, the State -- this is what he say, quote, "well, the
13 State gon' want you to do some time now, Jorge." That's
14 what he, that's what he told me.

15 So, I'm like over here thinking about, you know, you
16 my lawyer. You suppose to be representing me. How you
17 gon' tell like, you know, me something negative like that
18 talking about the State gon' want me to do some time?

19 So that really didn't make no sense to me.

20 Q. Okay. Well, you say when -- some time, what does
21 that mean?

22 A. I don't know. I just know that he said some time. I
23 don't, I don't know how many years is some time. But
24 there's how he pretty much stated it.

25 Q. Okay. And, and the facts of the case, the -- this,

1 this happened on Christmas.

2 Is that correct?

3 A. Yes, sir.

4 Q. And, and this was a, from your position, an
5 accidental shooting of your brother.

6 Is that correct?

7 A. Yes, sir, everything happens, you know, in the blink
8 of an eye.

9 Q. Okay. And, and just briefly explain to us what
10 happened in terms of your brother being intoxicated and
11 all that.

12 A. Well, I came home and then all I heard was like, you
13 know, my mother's screaming bloody mary right there in
14 the, in the kitchen and then there was like -- both of
15 them like, you know, verbally like, you know, arguing with
16 each other and whatnot. But his being more disrespectful,
17 of course, cause, you know, that's my, you know, my mother
18 it's like, you know, son as well too. So, you know---

19 Q. Is that his mother too?

20 A. Yes, sir.

21 Q. Okay.

22 A. Well, so, so I came home and then she -- they was
23 over here like, you know, he was pretty like, you know,
24 verbally abusing Mom Dukes -- I mean my mother. Excuse me
25 about that. Verbally abusing my mother and also as well

1 like pushing her around and whatnot. So, I was, you know,
2 being the other son is pretty much defending her.

3 So, when I was defending her, how you call it, he was
4 like over here like, you know, trying to push me and
5 whatnot and like, you know, verbally abusing me as well.

6 So, he was the one like more intoxicated. All them
7 beers that was at, at that house, he was the one that was
8 drinking them, the beers. I didn't have no beer at all
9 and that's also to the -- the State also failed to like
10 investigate on, you know, blood work as well too and also
11 the State has failed also to investigate on my mother, you
12 know, her medication as well too.

13 She -- she's also prescribed like, you know---

14 Q. well, let me---

15 A. ---depression and---

16 Q. Let me, let me---

17 A. ---and---

18 Q. Let me stop you right -- let me stop you right here.

19 When the say the fake -- the State failed, did you
20 and your lawyer have discussions about the things that
21 you're talking about investigating like, like this into
22 your brother's alcohol in -- did you and your lawyer---

23 A. I mean I did discuss this with my lawyer. But I
24 don't know if he like failed to like do more
25 investigate -- more investigation on, on this topic.

446 Jorge Rodriquez - Direct examination
By Mr. Richey

1 Q. So you discussed that---

2 A. That's what I feel.

3 Q. I'm sorry. Excuse me, sir. Go ahead.

4 A. Yes, sir, I did discuss that with Ricky. I even told
5 Ricky that my brother has charges and I'm -- and I have a
6 clear record. Vermont (phonetic) Rodriguez had domestic
7 violence charges. He had two, two -- I think like two,
8 two second degree domestic violence charges or -- and
9 three DUIs that, you know, pretty much they suspended his
10 license as well too. That's why he was riding a moped.

11 I mean none of that -- none of that got brought up in
12 the court about, you know, his, his charges or, or, you
13 know what I mean, and the compare to my charges, which I
14 had a clean record and also as well. And it says like,
15 you know what I mean, that, you know, my mother probably
16 didn't -- probably knew -- she knew that I was always
17 carrying like concealed cause she knew I had a concealed
18 weapon permit by SLED and which that's also too -- I, I
19 don't see no like, you know, my, you know, it's on public
20 record from SLED or none of that neither that was, you
21 know---

22 Q. Okay.

23 A. ---what I mean, that can be like, you know, fought
24 strongly for the unlawful carry of a pistol.

25 Q. So, hold on.

1 So, it's your position, at the time this occurred,
2 that you had a lawful permit to carry the gun?

3 A. I had a concealed weapon permit.

4 Q. Okay. And did you or your lawyer talk about how that
5 gun that -- how that related to the case in terms of the
6 lawful and unlawful carrying of it?

7 A. I just know that, when I took the classes, they told
8 me --.

9 Q. We're talking about your lawyer.

10 A. Right.

11 Q. Okay. We're talking about your lawyer.

12 We're talking about did your lawyer discuss with you
13 whether the carry was unlawful or lawful or anything to
14 deal with this shooting?

15 A. I guess, during the -- the only -- the only unlawful
16 would be is because, you know, like I say, you know, we
17 got into an altercation and we got into a fight, and then,
18 when we got into the fight, then my -- our mother got in
19 the middle of us. And when my mother got in the middle of
20 us---

21 Q. Uh-huh. (Affirmative).

22 A. ---she had her back towards, you know, away from
23 Bryant.

24 Q. Uh-huh. (Affirmative).

25 A. You know, pretty -- 5-feet away from Bryant.

1 Q. Uh-huh. (Affirmative).

2 A. And she's like, you know, pushing me away from him,
3 and next thing you know, he grabbed the bottle about to
4 beat me over the head with it -- in the back of the head
5 with it. So, I'm just like mom, watch out.

6 And so I wasn't aiming. So it -- that would pretty
7 much be unlawful cause I accidentally shot him in the head
8 when I meant to shoot him in his shoulder, left, left
9 shoulder.

10 Q. And you told your lawyer that, right?

11 A. Of course I did.

12 Q. Okay. When you told your lawyer that, what was his
13 response to that and what was y'all's conversation
14 regarding that with -- in -- within in your trial?

15 A. Well, you know, I mean he, he, he, he was just gon'
16 put the clues in and, and whatnot together for me I guess
17 and the, and the codes and -- to fight for that, you know.
18 But obviously we did win the attempted murder---

19 Q. Uh-huh. (Affirmative).

20 A. ---cause I was found not guilty for attempted murder.

21 Q. Right.

22 A. But then I didn't know there was a -- I know the
23 charge behind it. See my, my theory was I was gon' go to
24 trial for attempted murder in which I did beat the
25 attempted murder. That's what we went with trial for, you

1 know.

2 Q. So---

3 A. But I didn't know there was gon' be another trial
4 behind it. I know the -- another little charge behind it
5 and that was just like blinded me like---

6 Q. So your---

7 A. ---I hadn't gotten over it.

8 Q. So it was testimony that you were -- even -- that
9 your -- the request for the charge, that's not what you
10 thought you were going to trial for?

11 A. Exactly. I thought I was going to trial for just
12 attempted murder and the unlawful carry of a pistol.

13 Q. And so you, you thought---

14 A. And then -- well, excuse me.

15 Q. No.

16 A. Go ahead.

17 Q. You thought you were going up or down on the
18 attempted murder and nothing to do with this aggravated
19 assault?

20 Nothing?

21 A. Correct.

22 Q. So, your lawyer didn't discuss that with you?

23 A. No, all he did was pretty much, before the trial, all
24 he said was that Spenser has a plea for you and I was like
25 what's the plea. He was like well, he say he's gon' throw

450 Jorge Rodriquez - Direct examination
By Mr. Richey

1 away that attempted murder and, and, and charge you with
2 assault and battery high and aggravated nature. well,
3 that carries up to zero to 10 years --

4 Q. Uh-huh. (Affirmative).

5 A. -- and throw away the unlawful carry of a pistol.

6 Q. Uh-huh. (Affirmative).

7 A. And then I was just like well, is there any possible
8 way I can just get zero years and like, you know, pretty
9 much get house arrest by any chance you know. I have a
10 family to feed as well too you know. He was like well,
11 it's not gon' work like that. The State gon' want you to
12 do some time. That was, that was it. That was like a
13 week before the trial.

14 Q. And did he ever dis -- discuss with you what doing
15 some time meant?

16 A. No, he didn't tell me the zero to five. He didn't
17 tell me five year. He didn't tell me the 10 years. So, I
18 was over here like, you know, in my mind, you know, I was
19 like dang, you know, I -- my, my, my daughter just got
20 born and I -- cause I, I, you know, I can't just stay
21 behind bars in 10 years. I -- you know, I can't -- you
22 know, I can't just leave her hanging like that you know.

23 I got to be there as a father figure for her and it's
24 kind of hard for being back here wearing orange support --
25 to support my daughter. You know, I don't want her to go

1 the same, you know, the same situation that I, that I went
2 through, you know, growing up without a father.

3 Q. Uh-huh. (Affirmative).

4 A. But --.

5 Q. And, and, and so I -- what I'm re -- what I'm
6 referred to is the transcript, which is listed Volume 3 of
7 this transcript, and where Mr. Harris is talking about
8 a -- of course, the Court -- request the Court use
9 defendant's request to charge number three, which is
10 labeled assault and battery of a high and aggravated
11 nature/intent. So -- I mean, at the trial, the lawyer's
12 requesting that charge.

13 And so you were in the courtroom, correct?

14 A. I was in the jury trial, correct.

15 Q. Right.

16 And, and so -- and this transcript reflected your
17 lawyer is actually requesting the Court to charge assault
18 and battery of a high and aggravated nature/intent. So,
19 he's saying that, that he's allowing that charge.

20 Did he talk to you about objecting to it or anything?

21 A. (WHEREUPON, the witness nods negatively.)

22 Q. You got to answer yes or no.

23 A. No, sir.

24 Q. So, so, you, you think you're going to trial just on
25 attempted murder?

452 Jorge Rodriquez - Direct examination
By Mr. Richey

1 A. Correct.

2 Q. Then you get, get convicted on another charge that
3 blindsides you.

4 Is that what you're saying?

5 A. Yes, sir, I was pretty much blindsided, yes, sir.

6 Q. And did your lawyer discuss that with you, the, the,
7 the lesser included and all that, the AB---

8 A. No, sir.

9 Q. He did not?

10 A. No.

11 Q. Okay. And so you believe he was ineffective for not
12 doing that?

13 A. Correct.

14 Q. And you believe that you should be granted a new
15 trial based on that, correct?

16 A. Yes, sir.

17 Q. One of the things, correct?

18 A. Yes, sir.

19 Q. Cause, cause had you known that, you would of told
20 him not to do it, correct?

21 A. Correct.

22 Q. Okay.

23 A. Otherwise I would of been more prepared. Like, you
24 know, I got attempted murder and I got assault and battery
25 high and aggravated nature behind that. So, I would of

1 been more prepared to figure out like what's going.

2 Q. Yeah.

3 A. I probably would of -- and asked for more time to
4 prepare myself.

5 Q. And, and if he had of told you he's gon' do this
6 assault, assault and battery aggravated nature, would you
7 had a -- at least understood the plea offer better of why
8 he was---

9 A. Yes, sir, I would of---

10 Q. ---why you were saying that?

11 A. I would of understood the plea offer a little bit
12 more better than just get, you know, 20 years suspend to
13 10 years. You know, I would of been like okay, that sound
14 more reasonable. You know, maybe he -- maybe the judge
15 can give me some slack. They probably like okay, five
16 years cause, you know, I done---

17 Q. Well -- go ahead.

18 A. Go ahead.

19 Q. Go ahead and finish. I'm not interrupting you.

20 A. Cause, cause I done like -- you know, I'm not just
21 sitting back here just, you know, diddling with my fingers
22 or whatnot.

23 Q. Yes, sir.

24 A. You know, I'm actually fighting for my freedom, you
25 know.

454 Jorge Rodriquez - Direct examination
By Mr. Richey

1 Q. Yes, sir.

2 And, and so, so, so that's something that, that you
3 could not of prepared for, right, cause you didn't know it
4 was coming?

5 A. No, sir.

6 Q. Okay. And Mr. Harris, other than in, in -- and so,
7 in the courtroom, you didn't -- you weren't able to pick
8 up on all this, correct?

9 A. No, sir.

10 Q. Okay. And, and then -- and when you talk about
11 investigating the case, I mean do you believe he did not
12 investigate the -- investigate the case properly?

13 I mean it was your mom.

14 Did he talk to your mom and -- about the incident?

15 A. I don't, I don't really think he, he, he contacted my
16 mother.

17 Q. Okay. And she was a witness in the case, was she?

18 A. Yes, sir, she's a -- she's an eye witness---

19 Q. Yeah.

20 A. ---cause she was on my side.

21 Q. Right.

22 And she -- did she testify to your case or the
23 State's case?

24 A. On my side.

25 Q. Okay. And, and so you believe that your -- so he

1 didn't talk to your mom prior to her testimony?

2 A. No, sir, and also too -- yeah, he read my transcript.

3 Q. No.

4 A. The mother of my child could of been an eye witness
5 for this---

6 Q. Yeah.

7 A. ---as well too.

8 Q. Right.

9 A. So that's also -- I'm like confused why didn't she,
10 you know, got on the stand to tell, you know, the State
11 that, you know, I always carry my pistol on me like all
12 the time cause I was con -- you know, licensed to carry
13 that and that was -- that's pretty much what I was
14 training for, you know, in case someone was, you know,
15 life was in danger, I was, you know, trained to use, you
16 know---

17 Q. Okay.

18 A. ---the gun.

19 Q. And so it's your position that he should of pursued
20 some type of self-defense defense, correct?

21 A. Excuse me?

22 Q. Your -- he -- the -- should your lawyer have pursued
23 a defense for you in the case?

24 A. A defense?

25 Q. A defense.

456 Jorge Rodriquez - Direct examination
By Mr. Richey

1 A. Yeah.

2 Q. Okay. And what was that?

3 A. Pretty much like, you know, in --.

4 Q. Was it the defense of others, self-defense?

5 A. Yes, sir, self of others, yes, sir.

6 Q. Okay. And you believe, had he done that, then you
7 could of got a more favorable outcome, correct?

8 A. Yes, sir.

9 Q. Okay. And, and you, you understand, in this case, we
10 discussed, in this case, that you got 10 years on this
11 aggravated assault, correct, assault and battery of a high
12 and aggravated nature---

13 A. Excuse---

14 Q. ---right?

15 A. Excuse me?

16 Q. We -- you -- I discussed with you the sentence you
17 got---

18 A. Uh-huh. (Affirmative).

19 Q. ---right?

20 And, and, and understanding that, you know that
21 there's a potential you'll get more time in this case down
22 the road?

23 You understand that?

24 I'm not saying you gon' get that.

25 A. Yeah.

1 Q. But there's some potential to that.

2 Do you understand that?

3 A. I understand.

4 Q. And, and understanding that, it is your decision that
5 you want to pursue this and make sure you get a new trial
6 and you'll be willing to go back and fight that new trial,
7 correct?

8 A. Of course.

9 Q. And, and, and, and nobody's threatening you or
10 forcing you to do that?

11 This is your own decision that hey, I'm, I'm willing
12 to accept this chance or whatever it is, correct?

13 A. Correct.

14 Q. And, and you are, you are asking this Court to grant
15 you a new trial?

16 A. Yes, sir.

17 Q. And you're asking this Court, based on the testimony
18 that you have outlined about the lawyer not investigating,
19 right?

20 A. (WHEREUPON, the witness nodded affirmatively.)

21 Q. Two, about getting hit with the aggravated assault
22 charge after that, correct?

23 A. (WHEREUPON, the witness nodded affirmatively.)

24 Q. You got to answer yes.

25 A. Yes, sir.

458 Jorge Rodriquez - Direct examination
By Mr. Richey

1 Q. Okay.

2 MR. HALL: Objection. Leading.

3 THE COURT: Just rephrase your question.

4 Q. Okay. The, the issues that you have outlined right
5 now, those are the basis for you wanting a new trial?

6 A. (WHEREUPON, the witness nodded affirmatively.)

7 Q. You got to answer yes or no.

8 A. Yes, sir.

9 Q. Okay. And do you understand what a State versus
10 white appeal is?

11 Is that -- do you understand that?

12 A. Sort of.

13 Q. Okay. But you -- that's what you're asking for, an
14 appeal?

15 A. Yeah, yeah, yeah.

16 Q. Okay. Thank you. Answer the questions the attorney
17 general will have.

18 THE COURT: All right. Mr. Hall.

19 CROSS-EXAMINATION

20 BY MR. HALL:

21 Q. Mr. Rodriguez?

22 A. Yes, sir.

23 Q. Okay. You were indicted for attempted murder.
24 Isn't that right?

25 A. Yeah, I mean -- I was -- I mean I beat the case. I

1 beat the attempted murders.

2 Q. You were charged with attempted murder though, right?

3 A. I mean I was charged with---

4 Q. Okay.

5 A. Yeah, I was.

6 Q. All right. And you were convicted of assault and
7 battery of a high and aggravated nature, correct?

8 A. Correct.

9 Q. Okay. And I just want to question you to ensure that
10 you understand the consequences of if you're successful
11 here on PCR.

12 Do you understand that, if you're successful here,
13 you get a new trial on the assault and battery of a
14 higher -- high and aggravated nature charge, right?

15 A. Yes, sir.

16 Q. Okay. And you understand that assault and battery of
17 a high, high and aggravated nature carries up to 20 years?

18 A. Yes, sir.

19 Q. Okay. And you got sentenced to 20 years suspended to
20 10 years followed by five years probation?

21 A. Yes, sir.

22 Q. So, if you go back, you can get more than the 10
23 years that you're currently serving?

24 You understand that?

25 A. Yes, sir.

460 Jorge Rodriguez - Cross-examination
By Mr. Hall

1 Q. Okay. I want to ask you about the facts in this
2 case, Mr. Rodriguez.

3 Isn't it true that you shot your brother, Bryant
4 Rodriguez, on Christmas?

5 Isn't that right?

6 A. With self-defense.

7 Q. But yes or no first.

8 A. Yes.

9 Q. Okay.

10 A. It was self-defense.

11 Q. Okay. So, it's an undisputed fact in this case that,
12 at some point, you obtained a gun and shot your brother,
13 right?

14 A. Right.

15 Q. Okay.

16 A. Can I say something?

17 Q. No, I'm asking the questions, Mr. Rodriguez.

18 A. Okay.

19 Q. You testified that you discussed the case with your
20 attorney, Mr. Harris.

21 Isn't that right?

22 A. Yes, sir.

23 Q. Okay. And you discussed the case with him over the
24 phone.

25 Is that right?

1 A. Yes, sir.

2 Q. Okay. And during those discussions, you discussed
3 with him the attempted murder charge?

4 A. Only the attempted murder charge, correct.

5 MR. HALL: Okay. Beg the Court's indulgence.

6 (Pause.)

7 Q. I believe you testified on direct that, if counsel
8 had advised you of the ABHAN charge, that you would of
9 considered a plea deal?

10 A. Of course.

11 Q. Okay. But isn't it also your testimony that you shot
12 your brother in self-defense, right?

13 A. Yes.

14 Q. Well, doesn't that seem inconsistent that you would
15 take a plea offer but you're also maintaining that you
16 were justified in shooting him?

17 Isn't that right?

18 Would -- wouldn't you agree that that's inconsistent?

19 A. Well, yeah, it kind of makes, makes it like, you
20 know, it seems like that.

21 MR. HALL: Okay. No further questions, Your Honor.

22 THE COURT: Any redirect?

23 MR. RICHEY: No, Your Honor.

24 We call Mr. Harris.

25 THE COURT: Okay. Thank you, Mr. Rodriguez. You can

462 Ricky Harris - Direct examination
By Mr. Richey

1 step down.

2 RICKY HARRIS, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q. Sir, would you state your name please?

7 A. Ricky Harris.

8 Q. And, Mr. Harris, are you an attorney in Spart -- in
9 Spartanburg?

10 A. Yes, sir.

11 Q. And, and how long have you been practicing law in
12 Spartanburg?

13 A. Forty-one years.

14 Q. And what percentages of your practice have dealt with
15 criminal law?

16 A. For at least the last 30 years, probably 90 percent
17 of my caseload has been criminal defense.

18 Q. And, and, and then do you believe that you have the
19 requisite experience in criminal defense to handle CSC
20 case -- I mean CSC case. I'm sorry. Attempted murder.

21 A. Yes, sir.

22 Q. Okay. And do you recall representing Mr. Rodriguez?

23 A. Yes, sir.

24 Q. And, and was -- it was a case that he retained you to
25 represent him on?

1 A. Yes, sir, he and his family.

2 Q. Okay. And I'm gon' go straight to the issues here.

3 He was convicted at trial, correct, of aggravated
4 assault high and aggravated nature, correct?

5 A. That's correct.

6 Q. And did you discuss with him his right to appeal and
7 what happened with all that?

8 was it -- with the notice?

9 A. Yes, sir.

10 Q. And was, was the case -- was a notice perfected?

11 A. No, I did not file an appeal.

12 Q. Okay. Did he request one from, from you?

13 A. No.

14 Q. He did not?

15 A. He did not.

16 Q. Okay. Did you -- did he discuss it with you?

17 A. I advised Mr. Rodriguez that he had a right to an, an
18 appeal, that he had to file the appeal within 10 days, and
19 that if he wanted to appeal, he needed to tell me that he
20 wanted to appeal and he needed to tell me that in time for
21 me to meet the 10 day deadline.

22 Q. Okay. And, and he didn't contact you within that
23 time?

24 A. He did not.

25 MR. RICHEY: One moment, Your Honor.

1 Q. And, and just a general principle of, of law is that,
2 just a general principle, if, if he wanted to file a
3 notice, that was something that you would have to do or be
4 required to do?

5 A. Had he said he wanted to file an appeal---

6 Q. Yes, sir.

7 A. ---I would have filed an appeal.

8 Q. Okay. And in looking at -- and one of the other big
9 issues in this case, in trying this case, you were able to
10 get a not guilty on this attempted murder.

11 Isn't that correct?

12 A. Well, the jury found him not guilty of---

13 Q. Okay.

14 A. ---attempted murder. I don't know what it had to do
15 with me. I, I would like to think I had something to do
16 with it.

17 Q. Okay. And he got convicted of the aggravated
18 assault, correct?

19 A. He did.

20 Q. Okay. And you heard the testimony.

21 Did you discuss with him that the lesser included was
22 gon' be in a charge and sent to the jury?

23 A. I, I can not say today whether I specifically
24 discussed with Mr. Rodriguez, the forms of the verdict.

25 Q. Yes, sir.

1 A. He certainly knew of the existence of the criminal
2 offense of ABHAN because we discussed it, to some degree,
3 in, in terms of a, a potential negotiation of a plea. But
4 I, I, I don't -- I don't recall if I specifically
5 discussed here are the forms of the verdict with him or
6 not.

7 Q. And, and do -- you were in the courtroom during
8 the -- Mr. Rodriguez testimony.

9 Is that -- that's correct, isn't it?

10 You were in the court---

11 A. I was here---

12 Q. Okay.

13 A. ---just now, yes.

14 Q. And, and, and you, you recall the testimony that he
15 said that he thought he was just going straight up on
16 attempted murder and that was gon' be the only thing he
17 could be convicted of.

18 Is that -- was that a reasonable assumption by him?

19 A. Well, I heard him say that. I don't know what he
20 may -- I don't know what was in his mind---

21 Q. Yes, sir.

22 A. ---at the time.

23 Q. Okay.

24 A. I -- so I, I, I mean I heard him testify about that
25 today. But I -- I'm not sure.

1 Q. And, and---

2 A. We, we never -- let's put it this way.

3 Q. Yeah.

4 A. We never discussed let's pursue an all or nothing
5 verdict.

6 Q. Okay.

7 A. It never even came up---

8 Q. Okay.

9 A. ---at the time we -- and, in my opinion, that would
10 of been reckless not to pursue --

11 Q. Yes, sir.

12 A. -- the lesser included offense in this scene --
13 scenario.

14 Q. Okay. And in terms of a defense, did you -- this --
15 did you understand or did he discuss with you about doing
16 a defense of self-defense or defense of others?

17 A. Well, I discussed with him various defenses. I
18 explained to him that it would be difficult to get a
19 self-defense jury instruction if he did not take the
20 stand. But, based on my dealings with Mr. Rodriguez and
21 what I knew about the evidence in the case, I couldn't
22 recommend that he take the stand.

23 But -- and, and I -- Mr. Richey, I haven't had the
24 benefit of a trial transcript to review prior to this
25 hearing. But my recollection is, is that we did receive,

1 from the Court, instructions on self-defense, defense of
2 others, and accident.

3 Q. And let me ask you this.

4 Did -- do you recall how many times you discussed the
5 case with him or how many times -- do you know?

6 A. Leading up to -- well, in -- the trial -- the case
7 was pending for a long time.

8 Q. Yes, sir.

9 A. And so there were long periods of time where we
10 didn't have any discussions at all.

11 Q. Uh-huh. (Affirmative).

12 A. There were periods of time where Mr. Rodriguez had
13 some traffic violations, speeding tickets as I recall,
14 something like that, that he asked me to handle for him
15 and we discussed those things.

16 Q. Uh-huh. (Affirmative).

17 A. We did discuss the pendency of the case.

18 Q. Uh-huh. (Affirmative).

19 A. The extent of those discussions, mainly about the
20 attempted murder case, had to do with his basically 100
21 percent confidence that his mother would exonerate him.

22 Q. Okay. And so -- okay.

23 A. That was really all he ever wanted to talk about.

24 Q. And do you ever -- do you recall ever talk --
25 speaking with his mom during the case?

1 A. I did speak with his mother. But I refrained from
2 specifically interviewing her about the occurrence of the,
3 of the shooting because my client was insisting to me that
4 she was going to completely exonerate him.

5 Q. Okay.

6 A. And so I didn't want to expose her, on
7 cross-examination, to any kind of inquiry about to what
8 extent her son, Jorge Rodriguez, or her son's lawyer
9 influenced her testimony.

10 Q. Okay. Okay.

11 A. If it was gonna -- my view of it was, if it was
12 gon' -- she was going to testify to whatever she was going
13 to testify to at trial --

14 Q. Uh-huh. (Affirmative).

15 A. -- and it was going to be favorable or not. That --
16 I -- that's my view of it.

17 Q. And at the time he was convicted, he was sentenced
18 and sent to SCDC at, at the -- after the trial, right?

19 Is that right?

20 A. Yeah, he went for sentencing immediately.

21 Q. And so, so once he was actually sentenced and gone to
22 SCDC, he didn't have any discussions with you?

23 A. I -- no, I don't remember any---

24 Q. Okay.

25 A. I read half -- I think he sent a letter to me several

1 months after.

2 Q. Okay. So, so, the time that he would have to ask for
3 this appeal would of been after his trial and all that,
4 right?

5 A. Oh, yes, of course.

6 Q. Okay. Thank you. Answer any questions the State may
7 have.

8 THE COURT: Mr. Hall.

9 CROSS-EXAMINATION

10 BY MR. HALL:

11 Q. How you doing, Mr. Harris?

12 A. Fine. Thank you.

13 Q. Mr. Harris, about how many times did you meet with
14 Mr. Rodriguez during your representation?

15 A. I don't really recall how many times we met
16 personally. He came in to -- he was in the office on
17 several occasions either about the attempted murder case
18 or about his speeding tickets. But the number of times,
19 I, I couldn't say with any accuracy.

20 Now, leading up to the trial when we knew we were
21 going to trial, you know, I met with him. We -- and we,
22 we met before trial each day, during breaks, and
23 afterwards. It was a multi-day trial.

24 Q. And you spoke to him on the phone.

25 Is that right?

1 A. I spoke to him on the phone several occasions.

2 Q. And do you believe that the communications that you
3 had with Mr. Rodriguez were sufficient to be prepared for
4 trial?

5 A. I do, yes.

6 Q. Mr. Harris, did you request and receive discovery in
7 this case?

8 A. I did.

9 Q. Can you tell the Court what evidence the State had
10 against Mr. Rodriguez?

11 A. Well, the eye witnesses to the shooting were, of
12 course, Jorge Rodriguez himself, his brother, who was the
13 victim, and his mother, Judith Rodriguez. His brother,
14 unfortunately, was seriously injured as a result of the
15 shooting so much so that he was rendered practically
16 incapable of communicating. He, at the time of trial, he
17 was so injured that he could not testify at the trial
18 because of his deficits.

19 So, it's -- those were the eye witnesses. After the
20 shooting, Mr. Rodriguez fled the scene. The police were
21 called and there was a substantial, of course, emergency
22 response from police, medical personnel, and what I would
23 say is a typical police investigation ensued involving
24 various officers canvassing the scene, documenting the
25 scene, collecting evidence, that, that -- all of those

1 re -- efforts were -- resulted in reports being written to
2 document what they did.

3 There was, in essence, a manhunt launched for Mr.
4 Rodriguez -- to find Mr. Rodriguez. There was reports of
5 all the efforts that were made in that regard. All of
6 that was provided and reviewed.

7 Eventually Mr. Rodriguez was located at a friend or
8 acquaintance house. I don't remember that gentleman's
9 name right now but, you know, there were reports and
10 statements in that regard.

11 So, that was pretty much the basis of evidence.
12 The -- of course, the, the key piece of evidence was
13 always going to be the mother's testimony.

14 Q. And you testified that the eye witnesses to the
15 shooting were Mr. Rodriguez's mother and Mr. Rodriguez
16 himself.

17 Do you recall there being Mr. Rodriguez's baby's mom
18 being there?

19 A. No.

20 Q. Okay. Do you recall Mr. Rodriguez ever mentioning
21 that to you?

22 A. I, I really don't.

23 Q. Okay.

24 A. I, I, I, I take his testimony to be that he thinks it
25 significant in his defense that he had a concealed weapons

1 permit and I think it -- that was in -- that he carried a
2 gun but --.

3 Q. And you testified that the case will come down to
4 what his mother will testify to.

5 Is that correct?

6 A. Well, that's what it seemed to me. I mean identity
7 was certainly not an issue. Whether motive was an issue
8 or not, you know, there, there could be arguments about
9 that. But I mean, you know, it was two brothers and a
10 mother in the living room in the family home on Christmas
11 and one brother got shot in the head and seriously
12 injured.

13 So, I -- Mr. Rodriguez himself said that his mother
14 was going to exonerate him. So certainly I think, in his
15 mind, he thought she was the key witness. I certainly
16 thought she was the key witness. I thought -- I think the
17 way the case was tried, it turned out to be she was the
18 key witness.

19 Q. Okay. And in preparing for trial, you testified that
20 you interviewed and spoke with his mother or you spoke to
21 her.

22 Is that correct?

23 A. I spoke with her.

24 Q. Okay.

25 A. But I didn't interview her for the reasons I stated

1 earlier.

2 Q. Okay. And that reason being because you didn't want
3 to subject her to cross-examination regarding statements
4 that she had made.

5 Is that correct?

6 A. Well, I -- it was, it was my thought that, regardless
7 of what she said to me in my office or in her home or
8 wherever I might have interviewed her about specifically
9 her testimony, what really mattered was what she was going
10 to say in court. And I didn't want to expose her or make
11 her vulnerable to cross-examination by the State along --
12 you know, well, your son has tried to influence your
13 testimony or your son's attorney has tried to influence
14 your testimony or you spoke with the -- this, this is a
15 common theme in, in trying to impeach witnesses.

16 I didn't want to make her the least bit vulnerable to
17 that. I wanted the jury to hear her story exactly the way
18 she told it fresh in the courtroom. I thought that gave
19 us the best chance.

20 Q. Now, I want to ask you, in preparation -- in
21 preparing for trial, did Mr. Rodriguez ever ask you to
22 conduct an independent investigation in this case?

23 A. Not that I recall.

24 Q. Okay.

25 A. I don't think there's anything to investigate.

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By Mr. Hall

1 Q. Okay. Wouldn't you agree that it would of been
2 unreasonable to investigate in this case considering the
3 facts of this case were, were undisputed that Mr.
4 Rodriguez shot his brother?

5 A. Well I, I, I, I wouldn't characterize unreasonable
6 because reviewing all the discovery and understanding it
7 is a type of investigation that needs to be done. But
8 there -- it was always gon' be a case that came down to
9 what Mrs. Rodriguez said.

10 Q. Okay. And do you recall Mr. Rodriguez ever
11 mentioning to you that he wanted blood work invest --
12 investigated?

13 A. I don't remember that.

14 Q. Okay. Do you ever recall him mentioning that he
15 wanted you to look into his brother's prior domestic
16 violence charge -- charges?

17 A. Not really. I -- he may have said something to me
18 at -- in the trial that his brother had -- was a -- I --
19 you know, maybe had some trouble. I, I think it came out
20 at the trial that there may of been a fair degree of
21 animosity between the brothers.

22 Q. Okay. Mr. Harris, did you engage in plea
23 negotiations with the State in this case?

24 A. I tried to.

25 Q. Okay. Were there any offers before trial?

1 A. Before trial, there were no offers.

2 Q. Okay.

3 A. I, I -- so the position that I was in as Mr.
4 Rodriguez attorney is, he didn't, he didn't want to plead
5 guilty to anything because he didn't think he was guilty.
6 So, I understood that. On the other hand, I understood
7 there was great risk at trial.

8 And so I attempted to get a plea offer, a formal plea
9 offer, from the assistant solicitor. I never received one
10 prior to convening of trial. I kept asking. I told Mr.
11 Rodriguez I'm trying to get a plea offer. It's up to you
12 if you want to take it but none's been made yet.

13 Then I want to think, perhaps after jury selection,
14 perhaps prior to some pretrial motions, somewhere in, in
15 the early stage of the trial proceeding, Mr. Smith and I
16 had a conversation, as I recall it, about hey, are you
17 gonna make a plea offer. He said well, you know, I
18 don't -- I'm not really sure. I don't know. I'll have to
19 talk to whoever he had to talk to.

20 But, you know, he, he got it sort of in the nature of
21 just thinking out loud. Said, you know, if I offered
22 something, it would have to be, you know, 10 years or more
23 is what I recall he said.

24 Q. Okay.

25 A. And so I think I probably relayed that in that -- in

1 those terms, Mr. Rodriguez, is that, that we don't have an
2 actual plea offer. But the solicitor's throwing out 10
3 years for something. I don't even think it was connected
4 to assault and battery of a high and aggravated. It was
5 just, you know, it did -- it needs to be something like 10
6 years and Mr. Rodriguez just out and out rejected that
7 notion.

8 MR. HALL: Beg the Court's indulgence.

9 (Pause.)

10 Q. And I believe you testified on direct that you
11 discussed with Mr. Harris assault and battery of a high,
12 high and aggravated nature and that those discussions
13 occurred while you were attempting to get a plea offer
14 from the solicitor.

15 Is that correct?

16 A. Well, what I recall is saying, you know, the
17 solicitor's throwing out like 10 years. I said, you know,
18 may -- maybe he would make that part of assault and
19 battery of a high and aggravated nature, which is a lesser
20 charge, is I think how -- I'm going on memory. But that,
21 that -- that's probably pretty accurate about how that
22 came up.

23 Q. Okay. Mr. Harris, I want to ask you about your
24 defense for trial.

25 Can you tell the Court about your trial defense and

1 what your strategy was?

2 A. Well, I felt the case came down to, to Judith
3 Rodriguez's testimony. And so, to some degree, I had to
4 keep an open mind about what ultimately my summation to
5 the jury might be, if you will, to -- how to put my
6 client's defense in terms of what she actually said on
7 direct and cross-examination.

8 And, as it turned out, what I decided to pursue was
9 every defense that would result in an acquittal that I
10 possibly could, which was accident, self-defense, and
11 defense of others. And that was all -- all arose out of
12 what I believed my client was saying to me, which is he
13 didn't go there to his mother's house with the intention
14 of killing his brother or attempting to kill his brother,
15 but that his brother was abusive to his mother,
16 threatening to his mother, and tried to attack him with a
17 bottle.

18 And so that's, that's where those defenses came from
19 and that's -- if, if you read what my argument was to the
20 jury, all of that's there asking them to consider all of
21 those things.

22 Q. Okay. And so you requested defense of others and the
23 judge charged it.

24 Is that correct?

25 A. Again, I haven't been able to read the transcript.

1 But I believe that is so. I believe that---

2 Q. Okay.

3 A. ---there, there was an instruction on defense of
4 others.

5 Q. If I told you that the record -- that the transcript
6 reflects that you requested it and the judge charged it,
7 would you dispute that?

8 A. Certainly not.

9 MR. HALL: Okay. And that's, for the record,
10 Transcript Page 48 and 68 of Volume 3 of the transcript.
11 And you requested and the judge charged self-defense.
12 Is that correct?

13 A. I believe so.

14 MR. HALL: Okay. And, for the record, that's at
15 Transcript Page 67, volume 3 of the transcript.

16 And, Mr. Harris, ultimately the jury convicted Mr.
17 Rodriguez of assault and battery of a high and ag -- high
18 and aggravated nature, which is the lesser included of
19 attempted murder.

20 Isn't that right?

21 A. That's correct.

22 Q. Okay. And I believe you testified -- actually I'll
23 rephrase that question.

24 I want to ask you, in your experience working in
25 criminal defense for 30 years, wouldn't you agree that

1 it's reasonable to ask for the lesser included offense?

2 A. I'd say more than reasonable.

3 Q. Because you don't know what a jury's gonna do.

4 Isn't that right?

5 A. Well, I -- it never crossed my mind to object to a
6 lesser included form of the verdict that I -- I mean I, I,
7 I just couldn't -- wouldn't agree with that.

8 Q. And wouldn't you agree that the lesser included
9 reduces a defendant's exposure in terms of sentence?

10 A. It -- well, it---

11 Q. Possibly.

12 A. In terms of exposure, attempted murder carries 20
13 years. ABHAN carries 20 years. But that was the effect
14 of it in this case was to substantially reduce the
15 consequences at sentencing.

16 Q. Okay. And I believe you testified on direct that you
17 believed it would of been reckless not to pursue the
18 lesser included offense?

19 A. Well, I, I, I did say reckless. I don't know if it
20 --.

21 Q. Okay. I want to---

22 A. I, I just -- I, I, I just never would of thought not
23 to pursue lesser included offenses in the form of the
24 verdict in this particular situation giving the jury as
25 many options as I could short of attempted murder. And

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By Mr. Hall

1 so, of course, the complete defenses operate in that way
2 for the juries. So does lesser included offenses as the
3 form of the verdict there.

4 I wanted to give the jury as many opportunities as I
5 could not to find him guilty of attempted murder because I
6 was certain that Judge Hayes would probably sentence him
7 to the full 20 years if he were found guilty as charged.

8 Q. And I believe you testified that attempted murder
9 carries up to, to 20 years. I just want to correct you.

10 If I told you that attempted murder carries up to, up
11 to 30---

12 A. Yeah.

13 Q. ---would you dispute that?

14 A. I'm sorry. I misspoke.

15 Q. And I want to ask you about Mr. Rodriguez's right to
16 appeal in this case.

17 You testified that you advised him of his right to an
18 appeal.

19 Is that right?

20 A. Yes, I did.

21 Q. And you did so before the expiration of the 10 day
22 deadline?

23 A. I did so before the jury verdict and after the jury
24 verdict.

25 Q. Okay. And after you advised him, you told him that

1 he had to reach out to you and let you know whether he
2 wanted to appeal.

3 Is that right?

4 A. Well, I told him he needed to let me know if he
5 wanted to appeal. I told that to his mother as well.

6 Q. Okay. And after telling him, Mr. Rodriguez did not
7 reach out to you and ask for an appeal.

8 Is that right?

9 A. I never heard anything further from him.

10 MR. HALL: Okay. No further questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. RICHEY: No other questions of this witness.

13 THE COURT: Thank you, Mr. Harris.

14 THE WITNESS: Thank you, Your Honor.

15 MR. HALL: May he be excused, Your Honor?

16 THE COURT: Any objection to Mr. Harris---

17 MR. RICHEY: No.

18 THE COURT: ---being excused?

19 MR. RICHEY: None.

20 THE COURT: All right. Mr. Harris, you are excused.

21 THE WITNESS: Thank you, Your Honor.

22 MR. RICHEY: No other witnesses.

23 THE COURT: All right. The applicant's rested.

24 Are there any witnesses for the State?

25 MR. HALL: Nothing from the State, Your Honor. The

1 State rests.

2 THE COURT: Okay. All right. The parties have
3 rested.

4 You may make a brief summation beginning with the
5 State?

6 MR. HALL: Your Honor, as I -- as I'm sure you know,
7 under Strickland, Mr. Rodriguez has to prove deficiency
8 and prejudice.

9 Your Honor, this case is fairly straight to the
10 point. There was no dispute about the fact that Mr.
11 Rodriguez shot his brother. The issue for trial was
12 intent, motive for the shooting, and you heard testimony
13 from Mr. Harren -- Harris regarding his defense strategy
14 arguing to the jury self-defense as well as defense of
15 others based on Mr. Rodriguez's mother's testimony.

16 Mr. Rodriguez is alleging that Mr. Harris didn't
17 do -- didn't conduct some investigations in this case.
18 But Mr. Rodriguez has failed to show some investigation
19 that counsel should of made that would of changed the
20 outcome in this case.

21 In fact, I mean considering Mr. Harris'
22 representation, Mr. Rodriguez got convicted of the lesser
23 in -- included offense and received less time that -- than
24 he was exposed to under the attempted murder charge. And
25 so I think that, in itself, proves that Mr. Harris'

1 representation was, was competent under the Sixth
2 Amendment.

3 But, Your Honor, we would just ask that you deny Mr.
4 Rodriquez's application for PCR based on the testimony
5 presented here today.

6 THE COURT: Okay. Thank you, Mr. Hall.
7 Mr. Richey.

8 MR. RICHEY: Thank you, Your Honor.
9 Please the Court.

10 Your Honor, in terms of there's a real problem in
11 just the mechanics of this, this appeal.

12 Your Honor, he, he testified that he requested
13 counsel to appeal the case and the, the problem with this
14 gets is, once he's taken out of the courtroom, then it
15 becomes really difficult for him to communicate with the
16 lawyer within 10 days. I mean because he's gone to SCDC.
17 He's down in R&E. He's in isolation.

18 So, so, Your Honor, he testified that he asked him to
19 appeal and the difficulties he have after he leaves this
20 courthouse in getting a message to Mr. Harris.

21 The case was a jury trial. Counsel has discussed
22 filing an appeal with him and his position is that he told
23 the lawyer to appeal the case and it wasn't appealed.

24 The second issue that were raised in this case is
25 termed of attempted murder and the assault charge. He --

1 my client testified that he assumed that he was going all
2 or nothing on the thing. Mr. Harris testimony was he
3 didn't discuss the, the verdicts with him and my client
4 testified, had he known that aggravated assault was in
5 there, that he would of pled to the case and got it over
6 with.

7 I understand, from a practical matter, the lesser
8 included charge is just something the lawyer's gon' do.
9 It's the position of him that, had he known, that he could
10 of made a different decision because sometimes clients
11 don't understand exactly what's happening in that
12 scenario.

13 And so it's his position that he was -- I think he
14 used the word caught off guard by this lesser included,
15 that he thought he was just gon' be tried on attempted
16 murder.

17 And I think, Your Honor, in, in terms of the
18 investigation, you know, he, he talked about not talking
19 to his mom, and, and to be frank with the Court, I think
20 Mr. Harris gave him a, a legitimate reason for not talking
21 to the mother. But I do believe, Your Honor, my client,
22 he does believe that, had he went straight up on attempted
23 murder, that he would of got no time and the jury did
24 acquit him of that.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Richey.

2 well, counsel, I, I obviously haven't had an
3 opportunity to look at the transcript yet. So I want to,
4 I want to read that and I'll take this under advisement
5 and be in touch.

6 MR. RICHEY: Thank you, Your Honor.

7 MR. HALL: Thank you, Your Honor.

8 THE COURT: Thank you.

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10 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for 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 trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 18th day of February, 2025.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 19th, 2025



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Jorge Rodriguez, SCDC #389273,	)	Case No. 2023-CP42-01919
	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Jorge Rodriguez (“Applicant”) on May 26, 2023. On February 18, 2025, an evidentiary hearing convened before the Honorable R. Scott Sprouse. Applicant was present and represented by Rodney W. Richey, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as a witness Ricky Harris, Esquire. Respondent did not call any witnesses. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”) serving a ten (10) year sentence.¹ In June 2020, the Spartanburg County Grand Jury indicted Applicant for attempted murder and possession of a weapon during the commission of a violent crime (2020-GS-42-04184). These charges arose from an incident in which Applicant shot his brother, Bryant Rodriguez (“Victim”), in the head following an altercation on December 25, 2019.

¹ Sentenced to twenty (20) years suspended to ten (10) years and five (5) years of probation.

Applicant claimed he shot Victim in self-defense. Victim survived but was left permanently injured from the injuries.

On October 11-13, 2022, Applicant proceeded to a jury trial before the Honorable J. Mark Hayes, II. Ricky Harris, Esquire, (“Counsel”) represented Applicant. Assistant Solicitor Spenser Smith prosecuted the case. The jury convicted Applicant of assault and battery of a high and aggravated nature (“ABHAN”), the lesser-included offense of attempted murder. Judge Hayes sentenced Applicant to twenty (20) years suspended to an active ten (10) year sentence followed by five (5) years of probation. Applicant did not appeal.

CURRENT APPLICATION

Applicant timely commenced this PCR action on May 26, 2023, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

- a. Failure to properly prepare and investigate prior to trial.
- b. Failure to present a reasonable defense.
- c. Failure to file a direct appeal after trial. [Applicant is seeking a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974)].

On April 18, 2024, Respondent filed its Return and moved for a more definite statement on Applicant’s claims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the Spartanburg County Clerk of Court records of the subject conviction; Applicant’s records from SCDC; the trial transcript; and the records of the current PCR action. This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant

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has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCPP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687-88; *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. Applicant must prove prejudice by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, 466 U.S. at 688-89 (stating "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel").

or the range of legitimate decisions regarding how to best represent a criminal defendant.”). Judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689.

Failure to Prepare and Failure to Investigate

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly prepare and investigate the facts surrounding the charges against him. “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “The scope of a reasonable investigation depends on a number of issues, but at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007). Counsel’s duty to investigate is limited to reasonable investigations or a reasonable decision that makes particular investigations unnecessary. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597; *Strickland*, 466 U.S. at 691. In applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation should be evaluated for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses could have been developed if counsel had more fully prepared. *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The

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applicant must further present evidence demonstrating how additional preparation, investigation, and the discoverable matters or defenses would have resulted in a different outcome. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)).

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare. This Court finds *credible* Counsel's testimony that he met with Applicant, spoke with Applicant several times on the phone, and believed the communications were sufficient to be prepared for trial. This court finds *credible* Counsel's testimony that he requested, received, and reviewed discovery in Applicant's case. Further, this Court finds Applicant failed to prove he was prejudiced by failing to demonstrate how additional preparation by Counsel would've resulted in a different outcome. Thus, Applicant failed to meet his burden.

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate the facts of his case. This Court finds *credible* Counsel's testimony that the State's evidence included eye-witness testimony from Applicant and his mother, who was present, and law enforcement reports. This Court finds *credible* Counsel's testimony that in preparation for trial, he spoke to Applicant's mother but refrained from interviewing her because he did not want to expose her to cross-examination [by the state] about Counsel's influence on her testimony. This Court finds Counsel articulated a reasonable strategy in making the decision not to interview Applicant's mother. In accordance with *Strickland*, this Court gives deference to Counsel's judgment. Additionally, this Court finds Applicant failed to prove he was prejudiced by failing to present evidence of discoverable matters that Counsel could have discovered that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

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Failure to Present a Reasonable Defense

This Court finds Applicant failed to prove Counsel was ineffective for failing to present a reasonable defense. This Court finds *credible* Counsel's testimony that he discussed various defenses with Applicant. This Court finds *credible* Counsel's testimony that the issue of Applicant's case was intent. This Court finds *credible* Counsel's testimony that his trial strategy was to argue that Applicant did not go to his mother's house with the intention of killing or attempting to kill his brother. This Court finds *credible* Counsel's testimony that he told Applicant that it would be difficult to pursue a self-defense defense if Applicant did not testify. This Court finds *credible* Counsel's testimony that Applicant thought the fact that he had a concealed weapons permit was significant to his defense. This Court finds *credible* Counsel's testimony that Applicant knew of the lesser-included offense of ABHAN because Counsel discussed it with him. This Court finds *credible* that although he did not discuss an all or nothing verdict with Applicant, Counsel believed it would have been reckless to not pursue the lesser included offense. Further, this Court finds the record reflects that Counsel requested and the trial judge charged the jury on both self-defense and defense of others. (Tr. vol. 3, 48; 68), and the jury convicted Applicant of the lesser-included offense of ABHAN.

This Court finds Counsel's trial strategy and defense presentation was reasonable under professional norms and thus not deficient. This Court finds Counsel exercised reasonable professional judgment in deciding which defense(s) to present at trial, and this Court gives deference to Counsel's judgment. Further, this Court finds Applicant failed to prove prejudice by failing to demonstrate an available defense that Counsel failed to pursue that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

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CLEANING COURT
SPARTANUS COURT

FILED

Failure to File a Direct Appeal

This Court finds Applicant failed to prove Counsel was ineffective for failing to file a direct appeal and finds Applicant is not entitled to a belated appeal. Following a trial, counsel is required to inform a defendant of their right to an appeal. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Absent an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedures of *Anders v. California*, 386 U.S. 738 (1967). *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008). Where the PCR judge determines that Applicant did not knowingly and voluntarily waive his right to a direct appeal from his trial, Applicant may be granted a belated appeal of trial errors. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974); *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

This Court finds Applicant knowingly and voluntarily waived his right to a direct appeal. This Court finds *credible* Counsel's testimony that he explained to Applicant his right to an appeal following trial. This Court finds *credible* Counsel's testimony that he advised Applicant that he had ten (10) days to appeal and must contact Counsel within ten (10) days if he wished to appeal. This Court finds *credible* Counsel's testimony that after being advised, Applicant did not contact him. This Court finds *credible* Counsel's testimony that if Applicant had informed Counsel that he wanted to appeal, Counsel would have filed a notice of appeal. Based on Counsel's *credible* testimony, this Court finds Counsel advised Applicant his right to an appeal and the deadline to appeal. This Court finds Applicant's failure to inform Counsel of his desire to appeal evidences a finding that Applicant knowingly and voluntarily waived his right to a direct appeal. Thus, Applicant failed to meet his burden.

[Space left blank intentionally. Conclusion and signature follow on next page.]

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 7 day of April, 2025.

Waltham, South Carolina


 R. SCOTT SPROUSE
 Presiding Judge
 Seventh Judicial Circuit

FILED
 2025 APR 16 PM 4:19
 CLERK OF COURT
 SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2023-CP-42-01919

Jorge Rodriguez #389273

Applicant,

vs

CERTIFICATE OF SERVICE BY MAIL

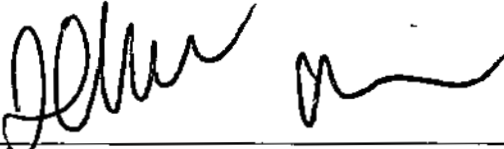
State of South Carolina,

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Wade Richey, Esquire
Richey & Richey, PA
33 Market Point Dr, Greenville, SC 29607
Post Office Box 10916
Greenville, SC 29603-0916

DATED this 14th day of April 2025.

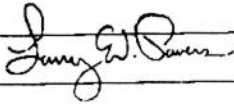


Jordan Hickman, Legal Assistant
For Respondent

FILED
2025 APR 16 PM 4:19
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

COUNT ONE: 2019A4210205426

COUNT TWO: 2019A4210205427

ACTION OF GRAND JURY

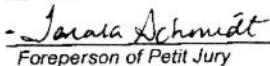
True Bill

JUN 12 2020

Foreperson of Grand Jury
Date:

VERDICT

- guilty AT-BHAN to Weapons



Foreperson of Petit Jury

Date: - October 13, 2022

DOCKET NO.

20-GS-42-4184

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 15 2020

TERM

THE STATE

vs.

Jorge Alberto Rodriguez

Indictment for

ATTEMPTED MURDER AND
POSSESSION OF A WEAPON DURING A
VIOLENT CRIME

SC Code: 16-3-0029; 16-23-490

CDR Code: 3410; 549

Class FEL-A; FEL-F

FILED
2020 JUN 22 AM 11:26
CLERK OF COURT
SPARTANBURG COUNTY
ALY W. COX

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 12 2020 the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE: ATTEMPTED MURDER

That Jorge Alberto Rodriguez, did in Spartanburg County on or about December 25, 2019, with malice aforethought attempt to kill Bryant Rodriguez, by shooting the victim in the head, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

COUNT TWO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That Jorge Alberto Rodriguez, did in Spartanburg County on or about December 25, 2019, possess or visibly display a firearm during the commission of a violent crime, to-wit: ATTEMPTED MURDER, in violation of Code §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.


ASSISTANT SOLICITOR