

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Feb 17 2026
SC Court of Appeals

Appeal from Beaufort County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANCISCO CORTES,

APPELLANT

APPELLATE CASE NO. 2024-002210

RECORD ON APPEAL

KATHRINE H. HUDGINS
Senior Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

J. BENJAMIN APLIN
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3747

ATTORNEY FOR APPELLANT

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Circuit
PO Box 1880
Bluffton, SC 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED DECEMBER 16, 2024 – DECEMBER 18, 2024	1
DEFENSE OBJECTION TO ADMISSION OF JAIL CALLS AND VIDEO.....	74
OPENING STATEMENT BY MS. MOLINA.....	94
OPENING STATEMENT BY MS. GIBBS	95
TESTIMONY	
LINDSAY BURNS	
Direct Examination by Ms. Molina	98
AMANDA MASSKOONI	
Direct Examination by Ms. Molina	99
Cross Examination by Ms. Gibbs	106
OLIVIA ERSKINE	
Direct Examination by Ms. Molina	108
Cross Examination by Ms. Gibbs	113
Redirect Examination by Ms. Molina.....	117
Re-Cross Examination by Ms. Gibbs.....	117
Further Redirect Examination by Ms. Molina	120
JOSHUA SCHEEMAKER	
Direct Examination by Ms. Molina	121
Cross Examination by Ms. Gibbs	127
NATASCIA DRUMMOND	
Direct Examination by Ms. Molina	130
Cross Examination by Ms. Gibbs	133
YAO MING ZHANG	
Direct Examination by Ms. Molina	153
FAQUIN HERNANDEZ CRUZ	
Direct Examination by Ms. Molina	159
Cross Examination by Ms. Gibbs	164
Redirect Examination by Ms. Molina.....	166
Re-Cross Examination by Ms. Gibbs.....	167
ZACHARY RAY	

Direct Examination by Ms. Molina	167
ZACH CUSHMAN	
Direct Examination by Ms. Molina	182
Cross Examination by Ms. Gibbs	191
Redirect Examination by Ms. Molina.....	192
SHEILA ERSKINE	
Direct Examination by Ms. Molina	196
Cross Examination by Ms. Gibbs	204
Redirect Examination by Ms. Molina.....	204
ANDREW CALORE	
Direct Examination by Ms. Molina	205
Cross Examination by Ms. Gibbs	226
Redirect Examination by Ms. Molina.....	237
Re-Cross Examination by Ms. Gibbs.....	241
JASON NORCROSS	
Direct Examination by Ms. Molina	243
JACQUELINE LEGREE	
Direct Examination by Ms. Molina	253
MICHELE EICHENMILLER	
Direct Examination by Ms. Molina	257
Cross Examination by Ms. Gibbs	262
EDWIN AIKEN	
Direct Examination by Ms. Molina	262
THE STATE RESTS	266
MOTION FOR A DIRECTED VERDICT.....	266
RULING DENYING MOTION FOR DIRECTED VERDICT	268
COLLOQUY WITH THE DEFENDANT REGARDING HIS RIGHT TO TESTIFY.....	269
CLOSING ARGUMENT BY MS. MOLINA	304
CLOSING ARGUMENT BY MS. GIBBS	310
CHARGE ON THE LAW	322
VERDICT	336

SENTENCING	343
DEFENDANT’S NOTICE OF MOTION AND MOTION TO SUPPRESS JAIL CALLS	347
INDICTMENTS & SENTENCE SHEETS	358
CERTIFICATE OF COUNSEL	382

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS #1, #2 (911 CALLS); STATE’S EXHIBIT #30 (OFFICER RAY
BODY CAMERA); STATE’S EXHIBITS #31, #32 (OFFICER CUSHMAN BODY
CAMERA); STATE’S EXHIBITS #92, #93, #94, #95, #96 (JAIL CALLS AND VIDEO
VISIT)**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
COUNTY OF BEAUFORT	)	GENERAL SESSIONS
	)	
	)	
STATE OF SOUTH CAROLINA,	)	CASE NOS:
	)	2022-GS-07-00756-760;
	)	2023-GS-07-01862
V.	)	
	)	
FRANCISCO CORTES,	)	
DEFENDANT.	)	<u>TRANSCRIPT OF RECORD</u>
	)	

Monday, December 16, 2024 - Wednesday, December 18, 2024

COMMENCING AT:
 Beaufort County Courthouse
 Beaufort, South Carolina
 Before The Honorable Kristi F. Curtis, Judge

APPEARANCES:

For the State of South Carolina:

Samantha A. Molina, Assistant Solicitor
 Rachel DeAngelis, Assistant Solicitor
 Fourteenth Circuit Solicitor's Office
 Post Office Box 1880
 Bluffton, South Carolina 29910

For the Defendant:

Courtney Gibbs, Assistant Public Defender
 Taylor Diggs, Assistant Public Defender
 Fourteenth Circuit Public Defender's Office
 1905 Duke Street, Suite 210
 POB 525
 Beaufort, SC 29901

Heather R. Landry, CVR
 Official Court Reporter

1 INDEX

2	Voir Dire	6
3	Jury Selection	48
4	<i>*Strike Sheet Attached</i>	
5	Pretrial Motions	55
6	Jury Instruction	86
7	Opening Statement by Sol. Molina	94
8	Opening Statement by Ms. Gibbs	95

9 WITNESS TESTIMONY

10	STATE'S WITNESS: Lindsay Burns	
11	Direct Examination By Sol. Molina	98
12	STATE'S WITNESS: Amanda Masskooni	
13	Direct Examination By Sol. Molina	99
14	Cross-Examination By Ms. Gibbs	106
15	STATE'S WITNESS: Olivia Erskine	
16	Direct Examination By Sol. Molina	108
17	Cross-Examination By Ms. Gibbs	113
18	Redirect Examination By Sol. Molina	117
19	Recross-Examination By Ms. Gibbs	117
20	Further Examination By Sol. Molina	120
21	STATE'S WITNESS: Joshua Scheemaker	
22	Direct Examination By Sol. Molina	121
23	Cross-Examination By Ms. Gibbs	127
24	STATE'S WITNESS: Natascia Drummond	
25	Direct Examination By Sol. Molina	130
	Cross-Examination By Ms. Gibbs	133
	STATE'S WITNESS: Yao Ming Zhang	
	Direct Examination By Sol. Molina	153
	STATE'S WITNESS: Faquin Hernandez Cruz	
	Direct Examination By Sol. Molina	159
	Cross-Examination By Ms. Gibbs	164
	Redirect Examination By Sol. Molina	166
	Recross-Examination By Ms. Gibbs	167

1	STATE'S WITNESS: Zachary Ray	
2	Direct Examination By Sol. Molina	167
3	STATE'S WITNESS: Zach Cushman	
4	Direct Examination By Sol. Molina	182
5	Cross-Examination By Ms. Gibbs	191
6	Redirect Examination By Sol. Molina	192
7	STATE'S WITNESS: Sheila Erskine	
8	Direct Examination By Sol. Molina	196
9	Cross-Examination By Ms. Gibbs	204
10	Redirect Examination By Sol. Molina	204
11	STATE'S WITNESS: Andrew Calore	
12	Direct Examination By Sol. Molina	205
13	Cross-Examination By Ms. Gibbs	226
14	Redirect Examination By Sol. Molina	237
15	Recross-Examination By Ms. Gibbs	241
16	STATE'S WITNESS: Dr. Jason Norcross	
17	Examination By Sol. Molina	243
18	STATE'S WITNESS: Jacqueline Legree	
19	Direct Examination By Sol. Molina	253
20	STATE'S WITNESS: Michele Eichenmiller	
21	Direct Examination By Sol. Molina	257
22	Cross-Examination By Ms. Gibbs	262
23	STATE'S WITNESS: Edwin Aiken	
24	Direct Examination By Sol. Molina	262
25		
	(NO WITNESSES OFFERED BY THE DEFENSE)	
	Directed Verdict Motion	266
	Fifth Amendment Rights	269
	Closing Statement by Sol. Molina	304
	Closing Statement by Ms. Gibbs	310
	Verdict	336
	Sentence of the Court	343
	Certificate	346

1	State's Exhibit No. 22 - Phone	216
2	State's Exhibit No. 23 - Shell Casing Envelope'	261
3	State's Exhibit No. 24-29 - Shell Casings	261
4	State's Exhibit No. 30 - DVD of Body Cam Video	171
5	State's Exhibit No. 31 - Body Cam CD	184
6	State's Exhibit No. 32 - Body Cam CD	184
7	State's Exhibit No. 33-44 - Photographs of Clothes	187
8	State's Exhibit No. 45 - Photograph of Pants	189
9	State's Exhibit No. 46 - Photograph of Pants	189
10	State's Exhibit No. 47-51 - Photos of Injuries	201
11	State's Exhibit No. 52-65 - Crime Scene Photos	210
12	State's Exhibit No. 66-70 - Photographs of Inside	217
13	State's Exhibit No. 71-77 - Photos of Bedroom	220
14	State's Exhibit No. 78-88 - Photos of Bedroom	222
15	State's Exhibit No. 89-91 - Kitchen Photographs	237
16	State's Exhibit No. 92-96 - DVDs of Jail Calls	264

17

18 (NO EXHIBITS OFFERED BY THE DEFENSE)

19

20

21

22

23

24

25

1 (Trial proceedings began Monday, December 16, 2024, at
2 11:43 a.m.)

3 VOIR DIRE

4 THE COURT: Okay. Ladies and gentlemen, we now have
5 some questions to ask you pertaining to the particular case
6 that will be tried first this week. And Ms. Molina, you can
7 call your first case, ma'am.

8 SOLICITOR: The State calls Francisco Cortes charged
9 under indictment number 2023-GS-07-1862 with attempted
10 murder; 2022-GS-07-00756 within attempted murder;
11 2023-GS-07-00757 with assault and battery of a high and
12 aggravated nature; 2022-GS-07-00758 with discharging a
13 firearm at or into a dwelling; 2022-GS-07- 00759 discharging
14 a firearm at or into a dwelling; and 2022-GS-07-00760 with
15 possession of a weapon during a violent crime.

16 THE COURT: If you wouldn't mind handing up the
17 indictments.

18 Okay. Ladies and gentlemen, the State has called the
19 first case which is the State versus a Francisco Cortes. I'm
20 gonna read you the allegations from the indictments. The
21 documents that I have in front of me are indictments. They
22 contain the allegations being made on behalf of the State.
23 These are not evidence of guilt in any way, shape, or form.
24 They're simply the allegations that the State is bringing
25 forward that you'll be considering during the course of this

1 trial.

2 The State alleges that in Beaufort County on or about
3 July 5, 2021, the defendant, Francisco Cortes, did with
4 intent to kill and with malice aforethought attempt to
5 willfully kill Faquin Hernandez Cruz in violation of
6 South Carolina law. The State further alleges that in
7 Beaufort County on or about July 5, 2021, the defendant,
8 Mr. Cortes, did with intent to kill and malice aforethought
9 attempt to willfully kill Olivia Erskine in violation of
10 South Carolina law. The State further alleges that in
11 Beaufort County on or about July 5, 2021, the defendant did
12 injure Yao Ming Zhang by means which were likely to produce
13 death or great bodily injury in violation of South Carolina
14 law.

15 The State further alleges that in Beaufort County on or
16 about July 5, 2021, the defendant, Mr. Cortes, did discharge
17 or cause to be discharged a firearm at or into a dwelling,
18 house, or other building, structure, or enclosure regularly
19 occupied by persons, this being at the address of
20 400 William Hilton Parkway in violation of
21 South Carolina law. The State further alleges a second
22 count that in Beaufort County, South Carolina, on or about
23 July 5, 2021, the defendant, Mr. Cortes, did discharge or
24 cause to be discharged a firearm at or into a dwelling,
25 house, other building, structure, or enclosure regularly

1 occupied by persons, again, at 400 William Hilton Parkway,
2 in violation of South Carolina law.

3 The State alleges that in Beaufort County on or about
4 July 5, 2021, the defendant, Mr. Cortes, did possess a
5 firearm, visibly displayed what appeared to be a firearm or
6 visibly displayed a knife during the commission of a violent
7 crime, and that Mr. Cortez was convicted of committing a
8 violent crime previously. The State further alleges that in
9 Beaufort County on or about February 18, 2020, that the
10 defendant, Mr. Cortes, did present or point a firearm,
11 whether loaded or unloaded, at Andrew Owens, again, all in
12 violation of South Carolina law.

13 Ladies and gentlemen, is there any member of the jury
14 panel who has any personal knowledge of the facts of this
15 case?

16 (No response.)

17 THE COURT: Okay. The State is represented in this
18 matter by Attorney Samantha Molina. Ms. Molina, if you will
19 please introduce yourself to the jury panel and any members
20 of your office who will be assisting.

21 SOL. MOLINA: Good morning. My name is Samantha
22 Molina. I'm an assistant solicitor here in the 14th
23 Circuit. The Fourteenth Circuit is Beaufort, Jasper,
24 Hampton, Allendale, and Colleton County. I prosecute here
25 in Beaufort County. Sitting with me is Rachel DeAngelis,

1 she is also an assistant solicitor, and
2 Sergeant Andrew Calore with Beaufort County Sheriff's
3 Office.

4 THE COURT: Ladies and gentlemen, is there any member
5 of the jury panel who is related by blood or marriage or has
6 a close personal or business relationship with Ms. Molina,
7 Ms. DeAngelis, or Sergeant -- is it Calore?

8 SOL. MOLINA: Calore.

9 THE COURT: Spell that for me.

10 SOL. MOLINA: C-A-L-O-R-E.

11 THE COURT: Again, anyone with a close personal or
12 business relationship or related by blood or marriage?

13 (No response.)

14 THE COURT: Ladies and gentlemen, is there any member
15 of the jury panel who is related by blood or marriage or has
16 a close personal or business relationship with anyone who
17 works for the -- sorry, what circuit are we in?

18 THE CLERK: Fourteenth.

19 THE COURT: Fourteenth?

20 THE CLERK: Yes, ma'am.

21 THE COURT: Fourteenth Judicial Circuit Solicitor's
22 Office?

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 has ever been employed by the Fourteenth Circuit Solicitor's

1 Office or a member of your family has been employed by them
2 either currently or formerly, or do you have a close friend
3 who is employed by the Fourteenth Circuit Solicitor's
4 Office?

5 (No response.)

6 THE COURT: Okay. The defendant in this case is being
7 represented by Attorney Courtney Gibbs. Ms. Gibbs, if I
8 could get you to also introduce yourself, if you'll
9 introduce your client and your cocounsel. And if I can ask
10 Mr. Cortes to lower his mask. Thank you.

11 DEF ATNY: My name is Courtney Gibbs. I'm the
12 Deputy Public Defender for the Fourteenth Circuit Judicial.
13 Sitting with me is Taylor Diggs. This is my client,
14 Francisco Cortes.

15 THE COURT: Thank you. Again, same question. Is there
16 any member of the jury panel related by blood or marriage or
17 has a close personal or business relationship with Attorneys
18 Courtney Gibbs or -- is it Taylor Diggs?

19 MS. GIBBS: Yes.

20 THE COURT: D-I-G-G-S?

21 MS. DIGGS: Yes, ma'am.

22 THE COURT: Again, anyone related by blood marriage or
23 with a close personal or business relationship with either
24 of these attorneys?

25 (No response.)

1 THE COURT: Is there any member of the jury panel who
2 is a current or former client of Ms. Gibbs or Ms. Diggs?

3 (No response.)

4 THE COURT: Is there any member of the jury panel who
5 is related by blood or marriage or a close personal or
6 business -- has a close personal or business relationship
7 with any member of the Fourteenth Circuit Public Defender's
8 Office? Yes, sir?

9 PROSPECTIVE JUROR: May I speak to you privately?

10 THE COURT: Sure. Tell me your jury number?

11 PROSPECTIVE JUROR: 346.

12 THE COURT: Come on up.

13 BAILIFF: Your Honor, 346.

14 PROSPECTIVE JUROR: My husband is a forensic
15 psychiatrist who evaluates criminals. But I'm not
16 sure -- you know, it's local. Not sure of the district.

17 THE COURT: So he has testified previously for various
18 agencies?

19 PROSPECTIVE JUROR: Yeah. He's an expert witness.

20 THE COURT: So that would not disqualify you from
21 serving unless it's something that pertains to this
22 particular case. Or, you know, if he was here as a
23 juror ---

24 PROSPECTIVE JUROR: Right.

25 THE COURT: --- and had worked with different folks who

1 were involved in this case. That might be a
2 disqualification. I don't know that that's gonna be imputed
3 to you and maybe cause for you to be struck as a juror.

4 PROSPECTIVE JUROR: Sure.

5 THE COURT: But if you'll listen closely to the
6 questions so that if you know any of these people yourself,
7 certainly bring that to our attention.

8 PROSPECTIVE JUROR: Okay. I don't believe I will.

9 THE COURT: And, of course, during -- during the course
10 of the trial, I will give all the jurors instruction not to
11 discuss the case with anyone you know after you leave.

12 PROSPECTIVE JUROR: Yeah. Okay.

13 THE COURT: But thank you for giving us that
14 information.

15 PROSPECTIVE JUROR: Yeah. I just wanted to make sure
16 you know.

17 THE COURT: Hang on for just a second. Any questions
18 that you want me to ask Juror 346?

19 MS. GIBBS: No.

20 SOL. MOLINA: No.

21 THE COURT: Is there any member of the jury panel who
22 has a family member or a close friend who is either
23 currently or formerly employed by the Fourteenth Circuit
24 Public Defender's Office?

25 (No response.)

1 THE COURT: Ladies and gentlemen, I'm gonna give you
2 the names of some potential witnesses in this case. There's
3 quite a few potential witnesses. I don't want you to get
4 nervous. Some of these people may testify, some of them may
5 not. We're gonna cover every potential witness because
6 we're not certain at this point exactly who will testify.
7 So I'm gonna give you the names each of these witnesses.
8 I'm gonna ask for each witness are you related by blood or
9 marriage or do you have a close personal or business
10 relationship with any of these potential witnesses.

11 The first names that I'm gonna give you are from the
12 Beaufort County Sheriff's Office: Officers Laine Powell,
13 Allyson Moreira, Andrew Calore, who we've got here in court
14 today, Gabe Adams, and Jason Stuckey. Again, anyone related
15 by blood or marriage or who has a close personal or business
16 relationship?

17 (No response.)

18 THE COURT: I neglected to ask you is there any member
19 of the jury panel related by blood or marriage or with a
20 close personal or business relationship with the defendant,
21 Francisco Cortes?

22 (No response.)

23 THE COURT: Turning back to our potential witnesses.
24 Beaufort County Sheriff's Office employees:
25 Officer John Graham, Officer Eric Angstadt,

1 Officer Zachary Ray, Officer Zach Cushman, or Officer Doug
2 Seifert or Siefert, S-I-E-F-E-R-T. Again, anyone related by
3 blood or marriage or with a close personal or business
4 relationship?

5 (No response.)

6 THE COURT: Is anyone related or with a close personal
7 relationship with Officer Joshua Scheemaker,
8 Jonathan Collier, or Jacob Clouse of the Beaufort County
9 Sheriff's Office; or with James Brown with Hilton Head
10 Island Fire and Rescue; Christopher Darmon, again, with
11 Hilton Head Island Fire and Rescue; Jason Lopko with Hilton
12 Head Regional Hospital; Dr. Jason Norcross with Hilton Head
13 Regional Hospital; Ms. Michelle Eichenmiller with the
14 South Carolina Law Enforcement Division; or
15 Ms. Megan Fletcher with the South Carolina Law Enforcement
16 Division, also known as SLED?

17 Again, anyone related by blood or marriage or with a
18 close personal or business relationship?

19 (No response.)

20 THE COURT: Our next potential witnesses: Eddie Aiken
21 with Beaufort County Detention Center; Amanda Masskooni with
22 Bluffton, South Carolina, or in some capacity for Bluffton;
23 Olivia Erskine or Sheila Erskine; Faquin Hernandez Cruz;
24 Yao Ming Zhang who also goes by Jack; Wei Zhu. And I'm
25 gonna spell this name in case I am doing a terrible job of

1 pronouncing it. That is W-E-I; last name, Z-H-U. The next
2 potential witness, I'm gonna say Xiuhui Chen. First name is
3 X-I-U-H-U-I; last name is C-H-E-N.

4 Anyone related by blood or marriage or with a close
5 personal or business relationship?

6 (No response.)

7 THE COURT: The next potential witness, Qi Yun Chen.
8 The first name is Q-I; Key middle name is Y-U-N; last name
9 is C-H-E-N. Natascia Drummond, Patricia Fripp, or
10 Johnny Fripp. Again, anyone related by marriage or with a
11 close personal or business relationship?

12 (No response.)

13 THE COURT: Our three remaining potential witnesses
14 again -- yes, ma'am?

15 PROSPECTIVE JUROR: 337, with Johnny Fripp. I work
16 with Johnny Fripp.

17 THE COURT: And the only other information I have on
18 Johnny Fripp who is a resident of Hilton Head Island. Does
19 that sound correct?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And you worked together?

22 PROSPECTIVE JUROR: Yes, at Sonesta (ph) Hotel.

23 THE COURT: Okay. And do you think that would prevent
24 you from being a fair and impartial juror in a case where
25 he's a potential witness?

1 PROSPECTIVE JUROR: (Nonverbal response.)

2 THE COURT: Did you work together every day?

3 PROSPECTIVE JUROR: No.

4 THE COURT: And does he have any supervisory authority
5 over you?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Again, do you think that would prevent you
8 from being fair and impartial juror given your relationship
9 with him?

10 PROSPECTIVE JUROR: In essence, when we do work, we
11 communicate, we talk, because with got a family line. We're
12 cousins but not close cousins.

13 THE COURT: Okay. So you're also related to him in
14 some fashion?

15 PROSPECTIVE JUROR: Uh-huh.

16 THE COURT: Okay. I'm gonna go ahead and excuse you so
17 you don't have an awkward Christmas Eve. Thank you so much
18 for being here, ma'am.

19 And our last couple of potential witness: Min Kyaw
20 Swar. And I'm gonna spell that. First name is M-I-N;
21 middle name is K-Y-A-W; last name is S-W-A-R. And Joanna,
22 also goes by Christie, Estrada. Again, anyone related by
23 blood or marriage or with a close personal or business
24 relationship?

25 (No response.)

1 THE COURT: Is there any member of the jury panel who's
2 ever been employed by any civilian or military law
3 enforcement agency? If so, please stand. Yes, sir?

4 PROSPECTIVE JUROR: It was over -- sorry, 250. It was
5 over 30 years ago.

6 THE COURT: Sorry, 250?

7 PROSPECTIVE JUROR: 250.

8 THE COURT: And can I ask what branch?

9 PROSPECTIVE JUROR: Civilian. It was the Los Angeles
10 Sheriff's Department.

11 THE COURT: And you said that was some 30?

12 PROSPECTIVE JUROR: 30. Yes, ma'am. It was in my
13 early 20s.

14 THE COURT: And do you think that anything about that
15 would prevent you from being a fair and impartial juror in
16 this matter?

17 PROSPECTIVE JUROR: No, ma'am. Not at all.

18 THE COURT: Thank you so much for giving us that
19 information.

20 Is there any member of the jury panel related by blood
21 or marriage or you have a close personal or business
22 relationship with someone who is a member of any law
23 enforcement agency?

24 Okay. I'm just gonna -- this usually does generate
25 quite a few. So I'm just gonna start and do across the

1 room. I'm gonna can ask -- if you'll just tell us who the
2 person is, how you are related to them, whether it's a
3 family member or an acquaintance, friend, and what agency
4 they work for.

5 PROSPECTIVE JUROR: Yes, ma'am. Juror 241. My son is
6 a prosecutor for the New York State Attorney General's
7 Office.

8 THE COURT: Okay. Thank you so much. That's all the
9 information I need. And you, ma'am, in the pink sweater.

10 PROSPECTIVE JUROR: My husband is the
11 detective/sergeant in the investigations at Bluffton Police
12 Department.

13 THE COURT: And tell me your number, please, ma'am?

14 PROSPECTIVE JUROR: 282.

15 THE COURT: And let me ask the State: Does this
16 involve the Bluffton Police Department at all?

17 SOL. MOLINA: No, ma'am.

18 THE COURT: Okay. Thank you for that information,
19 ma'am.

20 PROSPECTIVE JUROR: 379. My husband is a retired
21 police officer.

22 THE COURT: And you're 379?

23 PROSPECTIVE JUROR: 379.

24 THE COURT: And what agency did he retire from?

25 PROSPECTIVE JUROR: It was in Pennsylvania.

1 THE COURT: Thank you so much. Yes, sir?

2 PROSPECTIVE JUROR: 399. I have a very close
3 relationship -- we call each other cousins -- was a
4 detective in -- Police Department in New York.

5 THE COURT: Okay. Thank you so much. Yes, sir, on the
6 front row?

7 PROSPECTIVE JUROR: 288. I'm just trying to be real
8 transparent. My engineering and RD work was all with law
9 enforcement agencies. Spent time at different police
10 departments and other agencies.

11 THE COURT: Was that in-state or out-of-state?

12 PROSPECTIVE JUROR: Well, I was working here in
13 South Carolina. I've only did one project in
14 South Carolina.

15 THE COURT: And was that with local agencies?

16 PROSPECTIVE JUROR: It's Columbia, Lexington.

17 THE COURT: Columbia and Lexington?

18 PROSPECTIVE JUROR: Yes, ma'am.

19 THE COURT: Okay. Thank you so much for that
20 information, sir.

21 PROSPECTIVE JUROR: 307. One of my best friends is a
22 shift lieutenant for Bluffton Police Department.

23 THE COURT: Okay. Thank you so much. Yes, ma'am?

24 PROSPECTIVE JUROR: 309. I have a few. My daughter is
25 an ATA in New York. Numerous family members are corrections

1 officers up in New York.

2 THE COURT: In New York?

3 PROSPECTIVE JUROR: Uh-huh.

4 SOL. MOLINA: And when you say ADA -- you probably
5 watch Law and Order -- that's the district attorney --

6 PROSPECTIVE JUROR: Assistant district attorney in
7 Queens County, New York.

8 THE COURT: Thank you so much. Appreciate that
9 information. Yes, sir?

10 PROSPECTIVE JUROR: 366. My brother-in-law is a field
11 officer for the FBI. I have a brother-in-law who is counsel
12 for New York State police. Then I coach on Hilton Head on
13 the football team and one of my player's parents is -- he's
14 a Beaufort County sheriff.

15 THE COURT: Anyone that we've named here as being
16 involved in this case?

17 PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: Thank you, sir.

19 PROSPECTIVE JUROR: 208. My son-in-law is a police
20 officer in -- Township, Ohio.

21 THE COURT: Thank you. And in the front here to the
22 left.

23 PROSPECTIVE JUROR: 223. My husband is on the board --
24 Department of Natural Resources. He's also retired state
25 trooper from Tennessee.

1 THE COURT: Thank you so much for that information.
2 Yes, ma'am?

3 PROSPECTIVE JUROR: 15. And I just found out this
4 morning the business I work for got bought out by
5 South Carolina State . . .

6 THE COURT: By a South Carolina Highway Patrol?

7 PROSPECTIVE JUROR: Highway Patrol. I'm sorry.

8 THE COURT: Thank you so much for that information.

9 PROSPECTIVE JUROR: 260. My uncle is -- public
10 defender for a county -- New Jersey.

11 THE COURT: In New Jersey?

12 PROSPECTIVE JUROR: (Nonverbal response.)

13 THE COURT: Thank you so much. Yes, sir?

14 PROSPECTIVE JUROR: My big brother was a police officer
15 for a police department in Ohio.

16 THE COURT: In Ohio. Tell me your number again, sir?

17 PROSPECTIVE JUROR: 346.

18 THE COURT: 346. Thank you. Yes, ma'am?

19 PROSPECTIVE JUROR: 35. One of our best friends, he is
20 a police officer in New York City. And he's here in
21 Bluffton. He's decided to move down here and he's now a
22 sergeant for the Bluffton Police Department.

23 THE COURT: You convinced him to move down here. Good
24 job. And, again, that's what the Bluffton Police
25 Department?

1 PROSPECTIVE JUROR: Yes. Correct.

2 THE COURT: Thank you so much.

3 Is there any member of the jury panel employed by,
4 related by blood or marriage, or you have a close friend
5 employed by the Attorney General, the Solicitor, or any
6 other prosecuting attorney's office? And some of you have
7 already given us that information. If you had not already
8 given us that information, again, if you're related to or
9 have a close personal or business relationship with any
10 prosecuting attorney's office?

11 (No response.)

12 THE COURT: Is there any member of the jury panel who's
13 employed by or related by blood or marriage or a close
14 friend of any other prospective juror here today?

15 (No response.)

16 THE COURT: Sometimes we get husband/wife. Sometimes
17 we get parent and a child, cousins.

18 Is there any member of the jury panel who has ever been
19 a witness in a trial?

20 (No response.)

21 THE COURT: Anyone has ever been called as a witness?

22 PROSPECTIVE JUROR: 399. Is that civil? Does civil
23 count?

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: Yes, I have.

1 THE COURT: And you're number 399?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: And it was a civil case?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Would any part of that experience prevent
6 you from being a fair and impartial juror in this case?

7 PROSPECTIVE JUROR: I don't think so.

8 THE COURT: And this was a civil case in ---

9 PROSPECTIVE JUROR: New York. White Plains Court,
10 New York.

11 THE COURT: And about how long ago?

12 PROSPECTIVE JUROR: Maybe 18 months, two years ago.

13 THE COURT: Okay. And again, anything about that that
14 you think would keep you from being fair and impartial in
15 this case?

16 PROSPECTIVE JUROR: I don't think so.

17 THE COURT: Okay. Thank you, sir. Yes, ma'am?

18 PROSPECTIVE JUROR: Juror 241 again. I was deposed as
19 a witness in a civil case in New York State. I believe it
20 was New York City, but I wouldn't want to swear to that.
21 And it was more than a decade ago.

22 THE COURT: Someone took your deposition. Did you
23 actually have to testify at trial?

24 PROSPECTIVE JUROR: No, ma'am. I did not.

25 THE COURT: Okay. Thank you so much for that

1 information. Yes, sir?

2 PROSPECTIVE JUROR: 260. My parents lost their home on
3 Thursday. It's -- law. And I believe my dad sued my mother
4 about ten years, so I had to testify.

5 THE COURT: Well, I'm sorry. Anything about that
6 experience that would prevent you from being a fair and
7 impartial juror in this case?

8 PROSPECTIVE JUROR: I do not believe so.

9 THE COURT: Thank you, sir. Yes, sir?

10 PROSPECTIVE JUROR: 164. In Maryland I had to testify
11 in a criminal case.

12 THE COURT: And about how long ago would you say that
13 was?

14 PROSPECTIVE JUROR: It was about 24 years . . .

15 THE COURT: And, sir, anything about that experience
16 that would prevent you from being fair and impartial in this
17 case?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you for that information. Is there
20 any member of the jury panel ---

21 BAILIFF: One standing, Your Honor.

22 THE COURT: I'm sorry. Yes, ma'am?

23 PROSPECTIVE JUROR: Number 140. I testified in a
24 deposition in a child abuse case in Denver, Colorado,
25 about 30 years ago.

1 THE COURT: And would anything about that prevent you
2 from being fair and impartial in this case?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you.

5 Is there any member of the jury panel who has
6 previously served on a jury?

7 Okay. And I'm going to ask you all the same question,
8 whether it was a civil or a criminal case, what was the
9 result, and if you feel that there's anything about that
10 experience that would prevent you from being fair and
11 impartial in this case. So let me start with juror number
12 241.

13 PROSPECTIVE JUROR: Yes, ma'am. I was impaneled on a
14 case for a civil trial in New York State. It went to
15 settlement prior to us actually having to sit or hear any
16 testimony.

17 THE COURT: Anything about that that would prevent you
18 for being fair and impartial in this case?

19 PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Thank you. Yes, sir.

21 PROSPECTIVE JUROR: 169. I served as a juror in
22 Beaufort County, a murder trial. It was found guilty.

23 THE COURT: And again, anything about that that would
24 prevent you from being fair and impartial in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: You said that was about how long ago?

2 PROSPECTIVE JUROR: Roughly 10, 12 years ago.

3 THE COURT: Okay. Thank you, sir. Yes, sir?

4 PROSPECTIVE JUROR: 318. It was a criminal trial,
5 Collin County, Texas. Found guilty.

6 THE COURT: And about how long ago?

7 PROSPECTIVE JUROR: About ten years.

8 THE COURT: Do you recall what the charges were?

9 PROSPECTIVE JUROR: It was assault. I don't remember
10 the details of it.

11 THE COURT: Okay. And I don't know if I've asked you
12 this yet. Anything about that that would keep you ---

13 PROSPECTIVE JUROR: No.

14 THE COURT: --- from being fair and impartial?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Thank you so much, sir. Okay. Yes, ma'am?
17 In the gray sweater.

18 PROSPECTIVE JUROR: Juror 371. It was probably
19 12 years ago in Texas. And I was on the jury for a
20 traffic -- like speeding. And he was guilty.

21 THE COURT: Anything about that that would prevent you
22 from being fair and impartial in this case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Okay. Thank you. Yes, ma'am.

25 PROSPECTIVE JUROR: 379. It was in a civil court.

1 Found in favor of the defendant. Probably 30 years ago.

2 THE COURT: You said 30?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: Anything about that experience that would
5 prevent you from being fair and impartial?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Thank you. Yes, sir.

8 PROSPECTIVE JUROR: 298. I was on a civil trial found
9 for the plaintiff. It was about 20 years ago here in
10 Beaufort County.

11 THE COURT: Here in Beaufort?

12 PROSPECTIVE JUROR: Uh-huh.

13 THE COURT: Do you recall what kind of case it was?

14 PROSPECTIVE JUROR: The homeowner suing a contractor.

15 THE COURT: Okay. Thank you so much. And I don't know
16 if I've asked you this. Would that prevent you from being
17 fair and impartial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you, sir. Yes, ma'am?

20 PROSPECTIVE JUROR: 380. It was many years ago. I
21 think it was civil, and I really don't remember the outcome.

22 THE COURT: Anything about that that would prevent you
23 from being fair and impartial?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Was it in this jurisdiction?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: It was here in Beaufort?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you so much. Front row.

5 PROSPECTIVE JUROR: Yeah, 288. It was in Fayette
6 County, Georgia, about 40 years ago. It was a civil trial.
7 And it was -- couldn't prove, you know, they were liable.
8 So they were -- not sure what the right term was.

9 THE COURT: It was a defense verdict. They did not
10 award any damages?

11 PROSPECTIVE JUROR: Person was not liable for what they
12 were being sued for, whatever.

13 THE COURT: And you said about four years ago in
14 Georgia?

15 PROSPECTIVE JUROR: Forty. No, it was about 40.

16 THE COURT: Forty. Anything about that that would
17 prevent you from being fair and impartial today?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you, sir.

20 PROSPECTIVE JUROR: 307. I was a juror for a civil
21 matter. I believe a drunk driving incident. The defendant
22 was found not guilty.

23 THE COURT: And what jurisdiction?

24 PROSPECTIVE JUROR: Beaufort County.

25 THE COURT: And how long ago?

1 PROSPECTIVE JUROR: Four years.

2 THE COURT: Anything about that that would prevent you
3 from being fair and impartial?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Thank you. Okay. In the white sweater.

6 PROSPECTIVE JUROR: 125. I was on a criminal jury in
7 Florida about 13 or 14 years ago. It was multiple charges,
8 so I honestly don't remember them all. But basically
9 someone was accused of assaulting a police officer and
10 fleeing from the arrest and a couple of other charges
11 related to that. It was a hung jury on maybe one or two and
12 guilty on the other charges.

13 THE COURT: Is there anything about that experience
14 that would keep you from being fair and impartial in this
15 case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you, ma'am. Yes, ma'am, in the black
18 sweater.

19 PROSPECTIVE JUROR: 255. Here in Beaufort County, I
20 think about ten years ago. It was a criminal case. Guilty
21 of a different charge.

22 THE COURT: Anything about that that would keep you
23 from being fair and impartial?

24 PROSPECTIVE JUROR: Not at all.

25 THE COURT: Thank you, ma'am. Yes, sir?

1 PROSPECTIVE JUROR: 275. It was here about two years
2 ago. And it was a theft and fraud, and we found her guilty.

3 THE COURT: Anything about that that would prevent you
4 from being fair and impartial?

5 PROSPECTIVE JUROR: Not at all.

6 THE COURT: Thank you. Yes, ma'am.

7 PROSPECTIVE JUROR: 265. I served on a civil case
8 probably 10, maybe 15 years ago for a workman's comp. I'm
9 not sure of the results. I think it was not guilty.

10 THE COURT: And was this here in Beaufort?

11 PROSPECTIVE JUROR: It was in Beaufort.

12 THE COURT: Anything about that that would prevent you
13 from being fair and impartial?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Okay. Thank you. Yes, sir?

16 PROSPECTIVE JUROR: 250. Twenty-five years or so ago
17 in -- Ohio. A rape and child abuse case. Resulted in a
18 guilty verdict.

19 THE COURT: Sir, is there anything about that that
20 would prevent you from being fair and impartial in this
21 case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Thank you. Yes, ma'am?

24 PROSPECTIVE JUROR: I'm juror number 145. I served on
25 a criminal case in Charlotte, Mecklenburg County, about

1 15 years ago. The defendant was found not guilty.

2 THE COURT: And do you recall what the charges were?

3 PROSPECTIVE JUROR: It was some sort of drug -- I don't
4 know if was dealing, trafficking, but it was drug charges.

5 THE COURT: And again, anything about that that would
6 prevent you from being fair and impartial in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you. Yes, ma'am.

9 PROSPECTIVE JUROR: 15. And about ten years, I was on
10 a medical malpractice jury. And it was here in Beaufort
11 County. I don't think -- however you word it.

12 THE COURT: What was the result of the case?

13 PROSPECTIVE JUROR: The doctor was found not guilty.

14 THE COURT: And you don't think that would prevent you
15 from being fair in this case?

16 PROSPECTIVE JUROR: No, it wouldn't.

17 THE COURT: Thank you. Yes, sir?

18 PROSPECTIVE JUROR: 222. A criminal case here in
19 Beaufort County in 2020. He was found guilty, manslaughter.

20 THE COURT: Anything about that that would prevent you
21 from being fair and impartial?

22 PROSPECTIVE JUROR: (Nonverbal response.)

23 THE COURT: Thank you, sir.

24 PROSPECTIVE JUROR: 346. About 15 years ago, in
25 Los Angeles County -- for a civil.

1 THE COURT: I'm sorry, you were on a jury for?

2 PROSPECTIVE JUROR: On a panel for a civil trial.

3 THE COURT: Okay. Do you remember what kind of case it
4 was?

5 PROSPECTIVE JUROR: It was I think a class-action
6 against -- it was like a larger corporation. People had
7 cancer as a result of the product.

8 THE COURT: And what was the verdict?

9 PROSPECTIVE JUROR: I was dismissed from it.

10 THE COURT: Okay. Anything about that process that
11 would prevent you from being fair and impartial today?

12 PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: Thank you so much.

14 Is there any member of the jury panel who follows on
15 social media either the Fourteenth Circuit Solicitor's
16 Office, the Beaufort County Sheriff's Office, Bluffton
17 Police Department, Beaufort City Police Department, if the
18 Fourteenth Circuit Public Defender's Office has a social
19 media platform? Again, if you follow any of those entities
20 on any social media platform, would you please stand.

21 The only thing I'm gonna ask you is your juror number.

22 PROSPECTIVE JUROR: 61.

23 PROSPECTIVE JUROR: 469.

24 PROSPECTIVE JUROR: 90.

25 PROSPECTIVE JUROR: 68.

1 PROSPECTIVE JUROR: 282.

2 PROSPECTIVE JUROR: 92.

3 PROSPECTIVE JUROR: 399.

4 PROSPECTIVE JUROR: 240.

5 PROSPECTIVE JUROR: 288.

6 PROSPECTIVE JUROR: 56.

7 PROSPECTIVE JUROR: 45.

8 PROSPECTIVE JUROR: 309.

9 PROSPECTIVE JUROR: 255.

10 PROSPECTIVE JUROR: 208.

11 PROSPECTIVE JUROR: 223.

12 PROSPECTIVE JUROR: 238.

13 PROSPECTIVE JUROR: 158.

14 PROSPECTIVE JUROR: 35.

15 THE COURT: Thank you. Is there any member of the jury
16 panel who's ever been a volunteer for the Fourteenth Circuit
17 Solicitor's Office, the Beaufort County Sheriff's Office,
18 the Bluffton Police Department, the Beaufort City Police
19 Department, or any other law enforcement agency or you
20 completed their community watch program?

21 (No response.)

22 THE COURT: Is there any member of the jury panel that
23 you yourself or a member of your immediate family has
24 participated in a citizens police academy or any similar
25 program where the public is allowed to work with train with

1 and ride along with law enforcement officers as part of a
2 citizens training program?

3 PROSPECTIVE JUROR: 298. I did the Beaufort County
4 Sheriff's Police Academy.

5 THE COURT: And about how long ago do you think that
6 was?

7 PROSPECTIVE JUROR: Eight or nine years ago.

8 THE COURT: Okay. Thank you, sir.

9 PROSPECTIVE JUROR: 379. My husband used to teach the
10 class in Pennsylvania.

11 THE COURT: In Pennsylvania?

12 PROSPECTIVE JUROR: Uh-huh.

13 THE COURT: Thank you, ma'am.

14 PROSPECTIVE JUROR: 255. I did the Sheriff's police
15 academy, you know, the citizens one.

16 THE COURT: For what agency?

17 PROSPECTIVE JUROR: The Sheriff's Office.

18 THE COURT: Here in Beaufort?

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: And how long ago?

21 PROSPECTIVE JUROR: My kids were little. 15, 20 years
22 ago.

23 THE COURT: Thank you, ma'am. Yes, ma'am?

24 PROSPECTIVE JUROR: 223. My husband is still teaching
25 law enforcement, South Carolina Department of Natural

1 Resources.

2 THE COURT: Thank you.

3 Okay. Ladies and gentlemen, this usually does
4 require -- I usually have some folks who like to come up and
5 give me this information at the bench, and that's perfectly
6 fine. So my question is whether you yourself or a member of
7 your family has ever been either a victim of a crime of
8 violence or has been charged or convicted or suspected of a
9 crime of violence? So, again, if you're comfortable
10 standing where you are to give me that information, that's
11 fine. I'm gonna ask you a few details about it. If you
12 want to give me that information at the bench, that is fine
13 as well. If you want to give me that information at the
14 bench, just move to this door over here. Again, that
15 involves if were you either the victim or the suspect.

16 BAILIFF: Your Honor, juror number 90.

17 PROSPECTIVE JUROR: My son was a victim of assault and
18 battery. So it hits my heart pretty hard. It was a few
19 years ago. I don't think I would be biased.

20 THE COURT: Was that here in this jurisdiction?

21 PROSPECTIVE JUROR: No, I'm sorry. That was in
22 Pennsylvania, Lancaster County.

23 THE COURT: And how is he doing?

24 PROSPECTIVE JUROR: He's fine. The other person was
25 found guilty.

1 THE COURT: And of some kind of an assault charge?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: And gain, do you think that that would
4 prevent you from being fair and impartial in this case?

5 PROSPECTIVE JUROR: I think I can be fair.

6 THE COURT: Okay. Anything else y'all want me to ask?

7 SOL. MOLINA: No.

8 MS. GIBBS: No.

9 THE COURT: Thank you so much.

10 PROSPECTIVE JUROR: Thank you.

11 BAILIFF: Juror 255, Your Honor.

12 PROSPECTIVE JUROR: My daughter was the a victim of a
13 pedophile.

14 THE COURT: And about how long ago would you say?

15 PROSPECTIVE JUROR: 11, 12 years ago.

16 THE COURT: Was the person charged?

17 PROSPECTIVE JUROR: Yes, and convicted.

18 THE COURT: And was that in this jurisdiction?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Was it prosecuted by the Fourteenth
21 Circuit?

22 PROSPECTIVE JUROR: I assume so, yes.

23 THE COURT: It was prosecuted here ---

24 PROSPECTIVE JUROR: Yes. Mary Jordan was the
25 prosecutor.

1 THE COURT: Okay. And do you think that anything about
2 that would prevent you from being fair and impartial in this
3 case?

4 PROSPECTIVE JUROR: No, I do not.

5 THE COURT: And you said it was how many years ago?

6 PROSPECTIVE JUROR: 11, 12.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: She's 21 now. And she was 12,
9 maybe, when we finally went to court.

10 THE COURT: Okay. Any other questions you'd like me to
11 ask her?

12 SOL. MOLINA: I just didn't hear what she was a victim
13 of.

14 THE COURT: Sexual conduct of a minor.

15 PROSPECTIVE JUROR: Pedophile.

16 THE COURT: Thank you so much.

17 BAILIFF: Your Honor, 69.

18 PROSPECTIVE JUROR: I was involved in like a
19 restraining order type situation. And we just ended
20 up -- the judge said that I should've had a restraining
21 order against the other person. They tried to put one on
22 me. But nothing came of it.

23 THE COURT: Was that here in this county?

24 PROSPECTIVE JUROR: It was a Beaufort, yeah.

25 THE COURT: Like in the Magistrate's Court maybe?

1 PROSPECTIVE JUROR: In the building over -- I guess
2 that's the Magistrate's Court.

3 THE COURT: It wasn't here in the big courthouse?

4 PROSPECTIVE JUROR: No. It wasn't in the big -- it was
5 in the smaller white one.

6 THE COURT: And anything about that that would prevent
7 you from being fair and impartial?

8 PROSPECTIVE JUROR: No. No, not at all. No. I think
9 it was like two or three years ago that happened.

10 THE COURT: Okay. Thank you so much for giving us that
11 information.

12 PROSPECTIVE JUROR: Thank you.

13 BAILIFF: Your Honor, 249.

14 PROSPECTIVE JUROR: I was raped.

15 THE COURT: And was this yourself or was this a family
16 member?

17 PROSPECTIVE JUROR: Me.

18 THE COURT: And, first of all, I'm sorry to have to ask
19 you these questions and put you through this. This was how
20 long ago?

21 PROSPECTIVE JUROR: Ten years. 30 years -- 32 years.

22 THE COURT: In this county?

23 PROSPECTIVE JUROR: No.

24 THE COURT: So it did not involve the
25 prosecuting -- that's what I'm asking, the

1 prosecuting agencies?

2 PROSPECTIVE JUROR: Huh-uh.

3 THE COURT: Do you think that that experience would
4 prevent you from being fair and impartial in this case?

5 PROSPECTIVE JUROR: Huh-uh.

6 THE COURT: Okay. Anything else that y'all want me to
7 ask?

8 MS. GIBBS: No.

9 SOL. MOLINA: (Nonverbal response.)

10 THE COURT: Thank you so much. I'm sorry to have to
11 ask you these questions.

12 BAILIFF: Your Honor, juror 31.

13 PROSPECTIVE JUROR: My best friend, domestic abuse. My
14 best friend went to court for it and to gain custody of her
15 child. And then my mother has gone to court.

16 THE COURT: And these are Beaufort County or another
17 jurisdiction?

18 PROSPECTIVE JUROR: Another jurisdiction.

19 THE COURT: And about how long ago?

20 PROSPECTIVE JUROR: Seven years ago for my friend, and
21 probably 30 years ago for my mother.

22 THE COURT: Do you think that that would prevent you
23 from being fair and impartial?

24 PROSPECTIVE JUROR: I think I would have a hard time
25 being impartial.

1 THE COURT: Okay. I'm gonna go ahead and excuse you
2 from this trial. What I'm gonna ask is -- I think you've
3 been given a number to call back. If you'll call that
4 number back tonight after 6:00 p.m., they'll give you
5 instructions on when to either call back or when to report
6 back. But I'm gonna excuse you on this case. You're juror
7 number 31?

8 PROSPECTIVE JUROR: 31.

9 THE COURT: Okay. Thank you. So 31 is excuse.

10 BAILIFF: Your Honor, juror 325.

11 PROSPECTIVE JUROR: My question is I kinda almost got
12 the same charge, like, 20 years ago, but it was discharging
13 a firearm in dwelling in the city limits. But they ended up
14 putting in my record discharging a firearm within the
15 dwelling. But I'm kinda like in the same situation like
16 20 years ago.

17 THE COURT: And you were found not guilty?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Did it actually go to trial?

20 PROSPECTIVE JUROR: No.

21 THE COURT: It just got dismissed?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And do you feel like that would prevent you
24 from being fair and impartial in this case?

25 PROSPECTIVE JUROR: Yes. Just because you never know

1 what the situation is or what happened. Because my
2 situation -- because my situation with my girlfriend was the
3 same at the time.

4 THE COURT: I appreciate your candor. I'm gonna excuse
5 you from this trial. We may need you on a different trial.
6 So if you'll call your callback number after 6:00 p.m.,
7 there will be instructions on there that will tell you
8 either to report back on a certain date and time or to call
9 back, because we may try another case after this one. I'm
10 not sure.

11 PROSPECTIVE JUROR: No. That's fine.

12 THE COURT: We may need you on the other one. But I'm
13 gonna excuse you on this trial. Thank you, sir. 325 is
14 excused.

15 BAILIFF: Your Honor, juror 240.

16 PROSPECTIVE JUROR: I didn't have to go to the court or
17 anything for it, but it's two. There was one a guy chased
18 through downtown with a gun. I never heard anything about
19 it afterwards. We don't really know. And then the other
20 one was in Hilton Head. Our car got broken into and got
21 robbed.

22 THE COURT: So the first one, that was here in
23 Beaufort?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: About how long ago did you say?

1 PROSPECTIVE JUROR: Over the summer. I'm pretty sure
2 it was Memorial Day.

3 THE COURT: And you don't know that they ever
4 apprehended anyone?

5 PROSPECTIVE JUROR: We know who it is. But we don't
6 know if they ever actually got him because we said we saw
7 the outline of the gun. So they never saw the physical gun.
8 I don't know if they just dismissed or what.

9 THE COURT: And same thing, the car break in, no
10 charges were ever a result ---

11 PROSPECTIVE JUROR: Not that I know of.

12 THE COURT: Do you feel like that would prevent you
13 from being fair and impartial in this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Again, you're number 240?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE COURT: Thank you so much for that information.

18 BAILIFF: Your Honor, juror 274.

19 PROSPECTIVE JUROR: My stepdaughter lived in
20 Charleston. She murdered her boyfriend.

21 THE COURT: I'm sorry. That does not sound like that
22 was a good thing to go through. So is she serving time on
23 that?

24 PROSPECTIVE JUROR: Yes. She took a plea for 17 years.
25 And she has, right now, 4 1/2 years left.

1 THE COURT: And sounds like quite an ordeal that your
2 family has been through.

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Do you feel like anything about that is
5 gonna prevent you from being fair and impartial in this
6 case?

7 PROSPECTIVE JUROR: I don't think so.

8 THE COURT: Do you think that you can listen to the
9 facts, that you can follow my instructions on the law, and
10 that you can give both the State and the defendant a fair
11 trial?

12 PROSPECTIVE JUROR: Yeah.

13 THE COURT: Again, you're number 274?

14 PROSPECTIVE JUROR: Uh-huh.

15 THE COURT: Thank you.

16 BAILIFF: Your Honor, 260.

17 PROSPECTIVE JUROR: I would be remiss if I didn't tell
18 you that last week, actually, someone was arrested for
19 stalking one of my coworkers. And I don't know what the
20 charges are yet. And I don't know if it's a conviction.
21 But that just happened. He was stalking my cube mate and
22 also someone in a different department.

23 THE COURT: So what kind of things was the stalking
24 involving ---

25 PROSPECTIVE JUROR: Leaving -- like leaving Barbie

1 dolls on the side of the road with their initials on it,
2 which has with them two audio recording devices being
3 planted in one of the women's cars. It was pretty bad. And
4 then I think they also found in his area at work momentos
5 that he would take from people's desks.

6 THE COURT: So this is one coworker against another
7 coworker type situation?

8 PROSPECTIVE JUROR: All three people work at the
9 company. This person has since been terminated and
10 arrested. And the two ladies, the one works in my cube
11 space and the one is in a different building.

12 THE COURT: Have you had to give some statements to law
13 enforcement?

14 PROSPECTIVE JUROR: No. I'm not sure, though. Just
15 because I've heard things and I've seen things. So I'm not
16 sure.

17 THE COURT: Okay. As of this moment, nobody from law
18 enforcement has gotten -- have you give a statement or
19 anything like that?

20 PROSPECTIVE JUROR: No. Nothing.

21 THE COURT: Is there anything about that experience
22 that would prevent you from being fair and impartial in this
23 case?

24 PROSPECTIVE JUROR: No. I don't believe so.

25 THE COURT: Do you believe that you can listen to the

1 facts objectively, follow my instructions on the law, give
2 both the State and the defendant a fair trial?

3 PROSPECTIVE JUROR: Of course, yes.

4 THE COURT: Okay. Thank you for that information.

5 BAILIFF: Your Honor, juror 197.

6 PROSPECTIVE JUROR: I have two estranged first cousins
7 currently serving. One is serving for an assault charge.
8 It's been about ten years. Permanent bodily injury. One is
9 deceased. And my sister is involved -- currently, today, I
10 think she's gonna be going to court on domestic violence
11 abuse/assault case.

12 THE COURT: Against her?

13 PROSPECTIVE JUROR: Yes, against her.

14 THE COURT: And is that in this jurisdiction?

15 PROSPECTIVE JUROR: No. Charlotte, North Carolina.

16 THE COURT: Okay. I'm sorry that you've been through
17 that with family members. Is there anything about those
18 experiences that is gonna prevent you from being fair and
19 impartial in this case?

20 PROSPECTIVE JUROR: Not at all.

21 THE COURT: And you believe you can give both sides a
22 fair trial?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. Thank you so much for that
25 information.

1 Is there any member of the jury panel who is fluent in
2 either Spanish or Chinese or both?

3 If I can just get your juror numbers. I really don't
4 have anything to ask you other than maybe just what
5 language.

6 PROSPECTIVE JUROR: 68. I'm fluent in Spanish.

7 THE COURT: 68. Thank you, ma'am.

8 PROSPECTIVE JUROR: 140. Spanish.

9 PROSPECTIVE JUROR: 233. Spanish.

10 PROSPECTIVE JUROR: 275. Spanish.

11 PROSPECTIVE JUROR: 79. Spanish.

12 PROSPECTIVE JUROR: 4. Spanish.

13 THE COURT: Number 4?

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: Just have to commend you. I'm 527 days of
16 my streak of French on Duolingo. Nowhere near fluent.

17 Is there any aspect of this case that we have not
18 specifically addressed in previous questions that would
19 cause any member of the jury panel to believe that you could
20 not be a fair and impartial juror in this case?

21 (No response.)

22 THE COURT: Anything from the State or the Defense for
23 further voir dire?

24 MS. GIBBS: No, Your Honor.

25 SOL. MOLINA: No, Judge.

1 THE COURT: Okay. Ladies and gentlemen, before we go
2 into selecting the jury, I'm gonna let y'all have a break.
3 This is not a terribly long process, but we're gonna be here
4 another probably 30, 45 minutes. So if you'll please feel
5 free to move about in the building. We'll back -- let's
6 just be back about 11:45 in your seats.

7 (The jury pool exits the courtroom at 11:29 a.m.)

8 (Short recess until 11:43 a.m.)

9 THE COURT: Okay. Juror number 68, I just want
10 to -- we had a little bit of additional information about
11 family members that also speak Spanish.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: And thank you for giving us that
14 information. That actually was not part of the questions
15 that we were asking you. It really was pertaining to your
16 knowledge of Spanish and Chinese. But thank you so much.

17 PROSPECTIVE JUROR: Oh, no. It was about my certain
18 family members that were police in Bluffton.

19 THE COURT: Okay. Yes, go right ahead.

20 PROSPECTIVE JUROR: My dad's best friend is a police
21 officer for the Bluffton Department. My cousin's boyfriend
22 is also -- she just went -- a police officer for the
23 Bluffton Department. And my uncle works as a Spanish
24 liaison to help Hispanics in Beaufort, the Bluffton
25 Department.

1 THE COURT: And those are all through the Bluffton
2 Police Department?

3 PROSPECTIVE JUROR: Bluffton, yes.

4 THE COURT: Okay. Thank you so much.

5 Okay. Are we ready from the State to strike?

6 SOL. MOLINA: Yes, Your Honor.

7 THE COURT: And the Defense?

8 MS. GIBBS: Yes, Your Honor.

9 THE COURT: And this is five strikes for the State,
10 five strikes for the defendant is my understanding.

11 SOL. MOLINA: Yes, ma'am.

12 MS. GIBBS: Yes.

13 THE COURT: And we'll select two alternates. For each
14 alternate, it's one strike for the State and two strikes for
15 the Defense. Okay.

16 JURY SELECTION

17 THE CLERK: Jurors, when I call your number, if you'll
18 please to stand. Juror number 200. What say the State?

19 SOL. MOLINA: Please present this juror.

20 THE CLERK: What say the Defense?

21 MS. GIBBS: Please seat this juror.

22 THE CLERK: Juror number 117. What say the State?

23 SOL. MOLINA: Please present this juror.

24 THE CLERK: What say the Defense?

25 MS. GIBBS: Please seat this juror.

1 THE CLERK: Juror number 260. What say the State?
2 SOL. MOLINA: Please present this juror.
3 THE CLERK: What say the Defense?
4 MS. GIBBS: Please excuse this juror.
5 THE CLERK: Juror number 275. What say the State?
6 SOL. MOLINA: Please present this juror.
7 THE CLERK: What say the Defense?
8 MS. GIBBS: Please seat this juror.
9 THE CLERK: Juror number 295. What say the State?
10 SOL. MOLINA: Please present this juror.
11 THE CLERK: What say the Defense?
12 MS. GIBBS: Please seat this juror.
13 THE CLERK: Number 73. What say the State?
14 SOL. MOLINA: Please present this juror.
15 THE CLERK: What say the Defense?
16 MS. GIBBS: Please seat this juror.
17 THE CLERK: Juror number 366. What say the State?
18 SOL. MOLINA: Please present this juror.
19 THE CLERK: What say the Defense?
20 MS. GIBBS: Please seat this juror.
21 THE CLERK: Juror number 183. What say the State?
22 SOL. MOLINA: Please present this juror.
23 THE CLERK: What say the Defense?
24 MS. GIBBS: Please seat this juror.
25 THE CLERK: Juror number 240. What say the State?

1 SOL. MOLINA: Please present this juror.
2 THE CLERK: What say the Defense?
3 MS. GIBBS: Please excuse this juror.
4 THE CLERK: Juror number 306. What say the State?
5 SOL. MOLINA: Please excuse this juror.
6 THE CLERK: Juror number 238. What say the State?
7 SOL. MOLINA: Please present this juror.
8 THE CLERK: What say the Defense?
9 MS. GIBBS: Please seat this juror.
10 THE CLERK: Juror number 250. What say the State?
11 SOL. MOLINA: Please present this juror.
12 THE CLERK: What say the Defense?
13 MS. GIBBS: Please excuse this juror.
14 THE CLERK: Juror number 255. What say the State?
15 SOL. MOLINA: Please excuse this juror.
16 THE CLERK: Juror number 258. What say the State?
17 SOL. MOLINA: Please present this juror.
18 THE CLERK: What say the Defense?
19 MS. GIBBS: Please seat this juror.
20 THE CLERK: Juror number 307. What say the State?
21 SOL. MOLINA: Please present this juror.
22 THE CLERK: What say the Defense?
23 MS. GIBBS: Please seat this juror.
24 THE CLERK: Juror number 392. What say the State?
25 SOL. MOLINA: Please excuse this juror.

1 THE CLERK: Juror number 234. What say the State?
2 SOL. MOLINA: Please present this juror.
3 THE CLERK: What say the Defense?
4 MS. GIBBS: Please excuse this juror.
5 THE CLERK: Juror number 141. What say the State?
6 SOL. MOLINA: Please present this juror.
7 THE CLERK: What say the Defense?
8 MS. GIBBS: Please seat this juror.
9 THE CLERK: Juror number 4. What say the State?
10 SOL. MOLINA: Please present this juror.
11 THE CLERK: What say the Defense?
12 MS. GIBBS: Please seat this juror.
13 THE CLERK: Choosing the first alternate. Juror 265.
14 What say the State?
15 SOL. MOLINA: Please present this juror.
16 THE CLERK: What say the Defense?
17 MS. GIBBS: Please seat this juror.
18 THE CLERK: Juror 107. What say the State?
19 SOL. MOLINA: Please present this juror.
20 THE CLERK: What say the Defense?
21 MS. GIBBS: Please seat this juror.
22 THE COURT: Any motions from the State regarding the
23 impaneling of the jury?
24 SOL. MOLINA: Nothing from the State.
25 THE COURT: Anything from the defendant?

1 MS. GIBBS: Nothing from the Defense.

2 (Jury is impaneled.)

3 THE COURT: Okay. Ladies and gentlemen, if you were
4 not selected on this jury, we're gonna go ahead and dismiss
5 you at this time with a couple of instructions. I think
6 you've been given a callback number. Is the correct,
7 Madam Clerk?

8 THE CLERK: Yes, ma'am. They have a card.

9 THE COURT: Okay. If you will call that number on the
10 card after 6:00 p.m. this evening, we'll update it regularly
11 to tell you either when to call back or when to report back.
12 Depending on how this case goes, we may or may not have
13 another case queued up for a trial after this one. So,
14 again, if you'll continue to check in on the callback
15 number. I do want to thank you so much for being here this
16 morning, and you're free to go back today.

17 (The jury pool exits the courtroom at 11:57 a.m.)

18 THE COURT: Can I ask the attorneys to approach for
19 just a minute to talk about scheduling.

20 (A bench conference was held off the record and out of
21 the hearing of the jury.)

22 THE COURT: Okay. In just a moment, we're gonna
23 dismiss you for lunch. While you're at lunch, we're also
24 going to take up some matters that I need to make a ruling
25 on from a legal standpoint that will help the case go more

1 smoothly, if I can go ahead and make some rulings
2 preliminarily. So we'll have some matters of law we're
3 gonna take up during the lunch break. So I'm gonna ask that
4 you be back at 2:00. I know that's a long break. But I'd
5 rather that you have a two-hour break rather than you
6 sitting back in the jury room waiting on us.

7 It is very normal that when you leave here your friends
8 and family and coworkers are gonna want to know what
9 happened, were you seated on a jury, what's the case about,
10 et cetera. You have just the littlest bit of information
11 right now of what this case is about. Both sides feel like
12 we've got a good jury that are fair and impartial and able
13 to give each side a fair trial. Sometimes when you tell
14 people what kind of trial you're on or just even some of the
15 most basic information, you can unintentionally elicit back
16 from them a response that's gonna impair your ability to be
17 fair and impartial.

18 So while this case is going on, I'm gonna ask you not
19 to discuss it with anyone. At the end of the case, you can
20 discuss it with whoever you want to or you can choose not to
21 discuss it. It will be entirely up to you. But while the
22 case is going on, we ask -- you know, it's not just an ask,
23 it is an order that you not discuss the case with anyone,
24 that you don't do any independent research about the case.
25 That means that you shouldn't be looking stuff up on the

1 Internet, looking stuff up on Facebook. I don't anticipate
2 a lot of media coverage. But if you were to come across
3 something regarding this case via any form of media, it is
4 your responsibility and your duty as jurors to not look at
5 it. Turn the page, turn off the TV, turn off the radio,
6 move onto the next thing on the Internet without reading
7 this.

8 What you should be considering during your
9 deliberations is only what you've heard within the four
10 walls of this courtroom. Our alternate jurors, you are
11 under the same obligations. You're going to hear the same
12 evidence. We're gonna keep you with us throughout this
13 trial. It gives us a lot of comfort -- everybody involved
14 in this case -- your presence here gives everybody comfort
15 that if we need you that we're not gonna go through all of
16 this that we've gone through and then we have a juror who
17 has a health problem or some kind of emergency arises that
18 we just lost all this court time. So having you here,
19 listening to the testimony, paying attention to what's going
20 on gives everybody comfort that if we lose somebody, we've
21 got you two ready to step in. So we appreciate all of you.

22 We will see you back here at 2:00. When you come in,
23 they will give you some instructions about where to go when
24 you come back. They will take you back to the jury room
25 when you come back to the courthouse. Thanks. Have a good

1 lunch.

2 (The jury exits the courtroom at 12:02 p.m.)

3 THE COURT: Okay. We are going to adjourn until 1:00.

4 (Lunch recess. Trial proceedings resumed at 1:08 p.m.)

5 PRETRIAL MOTIONS

6 THE COURT: Okay. We're back on the record to address
7 defendant's pretrial motions. Ms. Gibbs?

8 MS. GIBBS: Yes, Your Honor. Thank you. May it please
9 the Court? The first are pretty standard. This first is
10 motion to sequester the witnesses. I did discuss this a
11 little bit with the Solicitor. I think my biggest concern
12 is when the -- because there are three victims in this case,
13 I would like -- I know the victims have a right to be in
14 here during the trial. My concern is about when one -- one
15 is testifying, I would ask that the others not be in the
16 courtroom until they have given their testimony. Because my
17 concern is that they're going to listen to the others'
18 testimony and might change their testimony after listening
19 to the others' testimony. And that would be my biggest
20 concern.

21 THE COURT: Okay. Yes, ma'am?

22 SOL. MOLINA: I think that would be a violation of the
23 Victim's Bill of Rights. The victims have the right to be
24 present at any proceeding that the defendant himself has the
25 right to be at. Additionally, if that did happen where they

1 changed their stories, she would have the necessary
2 impeachment evidence to thoroughly cross-examine them. So I
3 don't have an objection to the other witnesses, the
4 non-victim, and non-lead officer being sequestered; but I
5 don't -- I think it is a violation of the Bill of Rights for
6 the victims to be sequestered for any part of the trial.

7 THE COURT: I'm looking at the text, Constitution
8 Article 1, Section 24. So this would be subsection 3 that
9 says being informed of and present at any criminal
10 proceeding which are dispositive of the charges where the
11 defendant has the right to be present.

12 So I'm going to require, of course, that all the other
13 witnesses be sequestered. There's three victims?

14 SOL. MOLINA: Yes, ma'am.

15 THE COURT: What are their names?

16 SOL. MOLINA: Faquin Hernandez Cruz. Well, I guess
17 there's technically four for unit 6.

18 MS. GIBBS: True.

19 SOL. MOLINA: For discharging a firearm into a
20 dwelling.

21 MS. GIBBS: Okay. My biggest concern would be for the
22 other three.

23 THE COURT: And the other three are?

24 SOL. MOLINA: There's Faquin Hernandez Cruz,
25 Olivia Erskine, Yao Ming Zhang, a/k/a Jack, and

1 Natascia Drummond. And Natascia is from unit 6 for the
2 discharging of firearm.

3 THE COURT: So I'm gonna respectfully deny your motion
4 with respect to those four individuals, and grant your
5 motion with respect to the sequestration of all the other
6 witnesses.

7 MS. GIBBS: Thank you, Judge. My second motion just is
8 renewing my motion for discovery and Rule 5 and asking the
9 State to disclose any evidence that is favorable or new. I
10 have actually spoken to Ms. Molina about this already, and
11 she has let me know, you know, if there's anything different
12 that the witnesses will be saying. I believe I do have
13 everything in discovery.

14 THE COURT: Is that correct, Ms. Molina?

15 SOL. MOLINA: Yes, ma'am. I believe so.

16 MS. GIBBS: My third is to exclude any and all evidence
17 that will be in violation of the rules governing 404 and
18 Lyle evidence. I believe there won't be -- there won't be
19 an issue. My biggest issue is the -- which goes into my
20 number 4 motion which is to exclude any evidence related to
21 my client being involved in prostitution or being labeled as
22 a pimp in any way. I also have some 404 arguments for some
23 of the content of the jail phone calls, which we'll be
24 discussing in a minute.

25 I'm assuming he did have another pending charge that

1 came up in Jasper County when he was arrested. He was
2 arrested in Jasper County on a burglary a few days after
3 this case -- this incident happened. I don't believe the
4 State intends to get into the fact that he was charged with
5 burglary. So that will be my concern as far as 404 for that
6 case.

7 THE COURT: Does he have any prior convictions that are
8 impeachable?

9 SOL. MOLINA: He does have prior convictions that I
10 think would fall within the rules of impeachment if we want
11 to settle records now. Do you want to settle his record or
12 do you want 404(b) res gestae?

13 THE COURT: Is there anything else that the State
14 intends to introduce in terms of prior bad acts?

15 SOL. MOLINA: I don't -- the State does not intend to
16 get into the facts of the Jasper case. He fled after this
17 incident, hid in Jasper in the ceiling of a church where he
18 was ultimately discovered and arrested. And that was about
19 three weeks after this incident. Three days after. So very
20 close in time. I don't -- not in my case in chief would I
21 ask him or ask a witness about that; but should he take the
22 stand, maybe for impeachment evidence depending on what he
23 said. But that's something that, obviously, if we can
24 handle -- if we get there and then approach if a door
25 appears to be open to determine that.

1 THE COURT: So I don't know anything about the facts of
2 this case other than what I just read in the indictment. So
3 if what I'm understanding you're getting at is that maybe
4 there were some other things leading up to this
5 attempted murder ---

6 SOL. MOLINA: So the 404(b) and what I would call
7 res gestae of the case is the facts of the case, according
8 to victims, is that Olivia was brought there by the
9 defendant. He arranged a sexual encounter between her and
10 Faquin Hernandez Cruz. That during that encounter the -- or
11 Faquin asked for more time and paid Olivia for more time.
12 And she made a call to the defendant, and the defendant said
13 no more time. He then got out of his car and went and
14 banged on the door, fired a set of shots. And then when
15 Olivia tried to open the door, he fired more shots.

16 The prostitution in this case and the sexual encounter
17 in this case furnishes the whole context of the crime. Part
18 of res gestae is that, you know, even it is another bad act,
19 it's context of the crime that the jury needs to understand
20 and is necessary for the full presentation of the case, and
21 so intimately connected.

22 I'll hand Your Honor and the Defense State v. Johnson
23 which is the 2023 res gestae case. And I do have a copy for
24 your law clerk as well. Specifically, the facts of that
25 case are a 13-hour timeline of domestic violence through

1 different counties in South Carolina. And they were
2 permitted to talk about that with a limiting instruction
3 that it was, you know, context. But on page 5, 6 and 8 is
4 where -- sorry, 5 and 6 is where it, you know, discusses
5 the res gestae, specifically at the bottom of page 5, top of
6 page 6. And it also looked at the temporal proximity
7 aspect, and it's an unbroken 13-hour timeline. In this
8 case, we have an unbroken timeline of the entire crime. I
9 mean, they arrived there together. He waits for her. And
10 then after he shoots her, he leaves.

11 It's also necessary for the State, elements of
12 attempted murder, include specific intent to kill and
13 malice. In this case, those facts lead and are evidence of
14 malice and his intent to kill. There's also -- also
15 possible to negate any defenses that he was acting in
16 defense of her. And that will come out probably when we
17 talk about the jail calls where he's telling her that she
18 needs to write an affidavit that says she was being held
19 hostage and he knew about the knife. The victim, Olivia,
20 did tell law enforcement that Faquin grabbed a knife, but
21 she wasn't sure if that was before Faquin saw the gun or
22 after. She said it all happened very quickly.

23 So it is essential to the case and to negate defenses
24 for the context of why they were there, why things happened.
25 I don't know that we could separate them out without giving

1 a completely different version of what happened there.

2 THE COURT: So they arrive together at this location?

3 SOL. MOLINA: Yes.

4 THE COURT: When I say they, Ms. Olivia -- sorry, I
5 forgot the last name.

6 SOL. MOLINA: Erskine.

7 THE COURT: And the defendant?

8 SOL. MOLINA: Yes, ma'am.

9 THE COURT: In his vehicle, her vehicle?

10 SOL. MOLINA: It's ultimately discovered the vehicle is
11 not registered to him, but he is driving. And she says it's
12 his car when talking to the police. When they say what was
13 he driving, she describes the truck they were in.

14 THE COURT: And where is this location? Is it a home?

15 SOL. MOLINA: This is at an apartment of Faquin.

16 MS. GIBBS: And, Judge, I think my biggest concern is I
17 would argue that is a question of fact whether or not he's a
18 pimp. I believe I probably cannot argue against, you know,
19 the witness's -- I think it's a question of fact about, you
20 know, there's been some conflicting testimony about money
21 exchange, him bringing her over. There's been no direct
22 testimony about -- so far statements saying that he was
23 indeed acting as a pimp. Or the in between I think I
24 can -- the witnesses can testify the way they're gonna
25 testify, and the jury can make a decision, you know, what

1 they believe based on their testimony. But my concern would
2 be the Solicitor in opening saying, you know, he's the
3 biggest pimp on Hilton Head, which is my understanding.
4 That's something that came up at a bond hearing when I did
5 not represent him. And I just don't want him to be labeled
6 as a pimp. And, you know, let the jury hear the evidence
7 and let the witnesses testify. And some of it, you know, is
8 conflicting, as I said, and let them make their own
9 determination based on the facts.

10 SOL. MOLINA: I think in closing arguments it would be
11 a fair comment on the facts, should those facts come out,
12 that he was there as her pimp. He's the one that arranges
13 it. She says he took the money. In the surveillance video
14 you see him take out a gun. About 30 minutes before
15 anything even happened, he sat there and waited. The
16 argument/altercation is over whether or not she can stay
17 there longer with a guy that's paid her. In jail calls he
18 references she was there to -- as a prostitute and that she
19 didn't need to tell law enforcement that. That will come
20 out in our jail call pretrial.

21 I don't plan on because I didn't know he was the
22 biggest pimp in Hilton Head. I was not at that prelim
23 either. But I think calling him a pimp is a fair comment on
24 the facts. It's not a point, calling him a pimp,
25 specifically that I'll belabor. But I don't know another

1 word to use. I don't think she wants me to say human
2 trafficker. I don't know another word for a pimp.

3 THE COURT: So what I'll say is, first of all, sounds
4 like the events in that narrow time frame leading up to the
5 shooting are admissible as part of the res gestae. I would
6 grant the motion, at least until closing, to not refer to
7 him as a pimp, and let's see what testimony actually comes
8 out at trial. Because it is a pretty inflammatory name to
9 call him. And so we'll see what facts come out in testimony
10 as to whether or not you can use that in closing. But at
11 this point, let's don't call him a pimp.

12 SOL. MOLINA: Okay.

13 MS. GIBBS: Thank you, Judge. The next up, I did list
14 the Neil v. Biggers. I'm not sure if that is necessary. In
15 this case there was a lineup, an ID done, by -- it's a
16 little different than the norm. I'm not sure if the
17 Solicitor plans introduce that into evidence or not. But
18 basically there is security video at this apartment complex.
19 When they went to Coastal Security to get the video, the
20 security officer, who is basically the records custodian,
21 forwarded this video. She stated that she went to high
22 school with Francisco at some point and that she had seen
23 his mug shot, which I'm assuming is a mug shot from a
24 possession arrest that happened maybe a week or so prior to
25 this incident.

1 And she basically said and when I saw this video, I can
2 look at this video and know that it was him. An officer
3 went and did a photo lineup where she circled his face. And
4 I guess it depends if the State intends to introduce that
5 lineup into evidence, whether or not a Biggers would be
6 necessary.

7 THE COURT: So is this -- this is the separate day. I
8 noticed it was one -- it was a pointing and presenting.
9 That's a separate date from the --

10 MS. GIBBS: Yes. And that actually -- we're not going
11 to trial over the pointing and presenting. That's a totally
12 separate incident. And so -- yeah. This is -- this is
13 related to this attempted murder at his apartment complex,
14 the video from that.

15 THE COURT: Okay. So do you intend to have her
16 identifying him in court?

17 SOL. MOLINA: I do. I do intend to have her do an
18 in-court identification. I don't plan on introducing the
19 lineup unless for some reason it became an issue. But I
20 don't see why I would need to -- it was confirmatory, she
21 knew him. So I don't plan on introducing the lineup. I'll
22 hand up State v. McGee. And this case deals with --
23 discusses Neil v. Biggers in context of non-eyewitnesses and
24 basically ---

25 THE COURT: Let me have you guys give me a little more

1 factual background.

2 SOL. MOLINA: Okay.

3 THE COURT: Because obviously the shooting -- I say
4 obviously. What I know so far is that they arrived
5 together. He shoots into that unit.

6 SOL. MOLINA: Right.

7 THE COURT: I noticed there was a second set of charges
8 was arriving out of a shooting into a second unit.

9 SOL. MOLINA: Yes, ma'am.

10 THE COURT: So tell me how -- because obviously the
11 victim, Olivia Erskine, noticed him.

12 SOL. MOLINA: Right.

13 THE COURT: So tell me about this other person
14 identifying ---

15 SOL. MOLINA: So the other person that's going to
16 identify him -- just making sure I didn't pass -- oh, I
17 didn't pass up my copy to you. Okay.

18 So the other person knows him because she went to high
19 school with him. And she had recently seen a picture of
20 him, the mug shot, a week before. And so when she was
21 called as the records custodian to pull the surveillance
22 tapes. While she was watching it, she recognized him. And
23 when law enforcement came to pick up the surveillance, she
24 said I know that guy Francisco Cortes, I went to high school
25 with him. They then ---

1 THE COURT: These are surveillance tapes of what?

2 SOL. MOLINA: Of the -- the surveillance is of the
3 parking lot. It doesn't ---

4 THE COURT: Of the apartment complex?

5 SOL. MOLINA: Of the apartment complex of the incident
6 location during the time of the incident. And so you see
7 him and Olivia arrive together. You see them get out of the
8 truck. You see -- you see him afterwards run to the truck
9 and speed away. And then there are some portions where
10 you -- of the surveillance where he is just sitting in a
11 truck and then you do see a gun come out.

12 But while reviewing the surveillance, she recognized
13 him, said something to law enforcement. The six-pack lineup
14 was essentially confirmatory. But she's the one that
15 initiated and identified him. And she's not an eyewitness.
16 And so that's why I handed up State v. McGee, specifically
17 page 5 where it talks about the factors in Neil v. Biggers.
18 And they just wouldn't apply in this case because she's not
19 an eyewitness.

20 And so then I would turn to State v. Mitchell which is
21 a case in which an officer who was familiar with the
22 defendant through the community identified him in
23 surveillance footage also. And the Court of Appeals on
24 page 5 -- sorry, that's the issues on page 5 -- that, you
25 know, the jury could for themselves decide if that was the

1 defendant in the pictures. But on page 6 it continues with
2 the court permitting the identification testimony of
3 witnesses based on surveillance photographs under Rule of
4 Evidence 701 continued on that next page. Because while the
5 jury having observed Fripp (ph) for a relative period of
6 time in the court setting may have believed the person --
7 sorry, lost my place -- they're distinguishing it. We found
8 the identification of a familiar person does not require any
9 specialized knowledge, skill, experience, or training as
10 contemplated by Rule 701. So they allowed the pictures
11 because he had first-hand knowledge of the individual, and
12 he was more likely to correctly identify the defendant than
13 the jury who, you know, is going to see surveillance video
14 from further away. And so it's permissible under Rule 701,
15 the opinion testimony of a lay witness.

16 And I didn't plan on putting in the lineup. And for
17 context of how she knows him, she went to high school with
18 him. But I think it's also important for this
19 identification to get out that she had recently seen a
20 picture of him. Obviously, I'm not going to elicit that it
21 was a mug shot, but that she had recently seen a picture of
22 him. So it hasn't been, you know, however many years
23 between high school and this identification. She had
24 recently seen him through a picture.

25 THE COURT: So you would propose that you elicit

1 testimony she had seen a photo but not ---

2 SOL. MOLINA: Not that it was a mug shot and not the
3 details. I mean, not make anything up, you know. She saw
4 it on Facebook or anything like that. But just, you know,
5 "Had you recently seen a picture of him prior to pulling the
6 surveillance? Yes."

7 THE COURT: Okay. Yes, ma'am.

8 MS. GIBBS: Well, a little bit -- well, yes, clearly I
9 would have concerns talking about a mug shot. My concern is
10 a lot of this is, one, my client never went to Bluffton High
11 School. He actually -- and I actually hadn't planned to
12 really get into this. They actually went to middle school
13 together. My client never went to Bluffton High School. So
14 I do have concerns with the reliability of her
15 identification paired with the fact he saw -- she saw a mug
16 shot. And I think that just putting out there that she saw
17 a picture is confusing and unclear. I think the jury should
18 be able to look at video and decide for themselves whether
19 or not they think that looks like him in the video without
20 adding an extra layer of somebody who didn't go to high
21 school with him.

22 You know, it says that we look at mug shots all the
23 time, and I instantly knew that was him. We don't know, you
24 know, his name could've been out there already; you know, be
25 on the lookout or news reports. And the accuracy and the

1 prejudice to my client, I feel like, would be difficult to
2 overcome when the jury could just look at this video for
3 themselves and decide if it clearly is him in the video or
4 not.

5 THE COURT: I mean, is the identity of the person
6 really an issue in the trial?

7 MS. GIBBS: I mean, it's not the biggest issue. But, I
8 mean, I believe everything is an issue.

9 SOL. MOLINA: I think her concerns would go to weight
10 and not admissibility. She could certainly -- if she says
11 she went to high school with her, impeach her with, "Well,
12 didn't you actually go to middle school?" And, in any
13 event, she correctly identified the defendant in the
14 six-pack lineup, which I'm not getting into. You know, so
15 it's not like she said some random person and then she
16 picked the wrong person in the lineup and I'm trying to use
17 it.

18 It falls under the exception 701. It's more probative
19 than prejudicial. She's, you know, was just doing her job,
20 happened to recognize him, said that's Francisco Cortes. It
21 was immediately apparent to her, which it might not be to
22 the jury and they might be sitting there wondering is that
23 really him, you know, three years later. I believe she
24 pulled the records a few hours later that morning, because
25 it happened about 4:00 o'clock in the morning. So I don't

1 believe anything had been posted or released yet about his
2 identity.

3 MS. GIBBS: And I will say -- my client actually just
4 pointed this out -- that when the mug shots are released,
5 they do have -- he says his name was underneath the mug
6 shots when they were released. And so I guess my concern
7 would be exactly what the Solicitor just said is that this
8 is going to give credit to an ID that the jury should be
9 able to look at this video and decide. And there shouldn't
10 be somebody coming in just saying this is the person who
11 committed the crime from looking at a video. And it's
12 someone who did not witness the crime, had nothing to do
13 with it, is making this ID based on a mug shot and based on
14 unreliable did they go to school together and did they
15 really know each other. And I find that it could be
16 prejudicial.

17 SOL. MOLINA: I would just point to State v. Mitchell
18 for that scenario.

19 THE COURT: What's the quality of the video?

20 SOL. MOLINA: The quality of the video, I mean, it's
21 pretty good. It's not high definition, you know, that you
22 can see all the little details.

23 THE COURT: This is at 4:00 a.m. Was there some
24 lighting in the parking lot?

25 SOL. MOLINA: There was some lighting. It was under a

1 light. State v. Mitchell covers those scenarios. A
2 non-eyewitness identifying from surveillance, they have
3 personal knowledge of who it is. The mug shots she's
4 talking about, again, that would have his name under it, was
5 from a week or two beforehand, not from this current
6 incident at that time.

7 Maybe she confused middle school and high school, but
8 she identified him and told police, and then they did that
9 confirmatory lineup. She didn't say it was somebody and
10 then -- she didn't say it was him and then pick the wrong
11 person in the lineup, and now I'm asking her, you know,
12 without introducing the lineup to identify him when she was
13 wrong. She correctly identified him, which I wasn't gonna
14 get into. And she has personal knowledge of who he is,
15 which is contemplated under 701 in State v. Mitchell.

16 THE COURT: So, I mean, normally in a Neil versus
17 Biggers context, we've got -- obtained a lineup in some way.
18 That's the only pertinent -- police show you a photo release
19 of the guy. So I guess, Ms. Gibbs, what you're saying is
20 almost that the scene of the mug shot beforehand now is
21 tainting her identification of him on the video. But that's
22 not a police action. It's just she happens to see him on
23 TV. But I guess that could really cut both ways and say,
24 you know, now she's more familiar with what he looks like or
25 you could say it's now she was thinking of him because she

1 had seen that mug shot of him.

2 But I do think that her previous seeing the mug shot,
3 it's not any like -- the State did not -- they didn't
4 engineer this seeing of the previous mug shot. And I do
5 think that -- especially given the fact of the other
6 witnesses, and including this witness, I'm guessing anyone
7 else who is gonna identify him as one of the victims,
8 they -- well, at least Ms. Erskine would've known him prior
9 to this. I don't know about any of the other witnesses.
10 They may not have known him at all.

11 SOL. MOLINA: They don't know him.

12 THE COURT: Okay. I presume Ms. Erskine is gonna
13 testify. And this person from the video surveillance, what
14 is her name?

15 SOL. MOLINA: Amanda Masskooni.

16 THE COURT: So she knew him previously, and her
17 identifying him was not solely based on the mug shot; it was
18 based on the fact that she said she knew him previously. So
19 I do find that any prejudicial effect is outweighed by the
20 probative value. And, again, that her identification of him
21 is not solely based on the previous mug shot. I do
22 think -- so I'm gonna allow the State to introduce that
23 testimony without referring to the previous photo in any
24 way, the mug shot, are related to another crime.

25 MS. GIBBS: And, Judge, I guess that would leave me to

1 ask that the -- I know the State says they do not intend or
2 do not know whether they're going to introduce the lineup.
3 I would ask that be excluded. That may implicate the
4 Biggers factors a little bit more just because that does
5 involve law enforcement, making a lineup and asking her to
6 identify somebody. And that also -- as well as the lineup
7 has jail mug shots in it, which clearly would be prejudicial
8 to my client as well as under 404. If she is allowed to
9 testify to that knowledge that she recognized him, I would
10 just ask that the actual lineup not be introduced to the
11 jury.

12 THE COURT: And that's granted unless, again, there's
13 something that comes out that you would need that to impeach
14 another witness.

15 MS. GIBBS: Thank you.

16 THE COURT: So in another words, I think she can
17 testify that she was shown a lineup if you want to present
18 that testimony, but not actually show the jury the lineup.

19 SOL. MOLINA: Okay.

20 MS. GIBBS: Thank you, Judge. The next motion is to
21 reveal the deal just because Olivia does have some pending
22 charges in Jasper County. And I believe she does have a
23 pending Beaufort County charge possibly. Or is it just
24 Jasper?

25 SOL. MOLINA: Jasper.

1 MS. GIBBS: Okay. There's some pending Jasper County
2 charges. She does have an attorney who is in our
3 Jasper County office. And it's my understanding there has
4 been no plea deals given or anything of that nature having
5 to do this case or testifying.

6 THE COURT: What's the pending charge in Jasper?

7 SOL. MOLINA: The pending charge is resisting arrest
8 and three counts -- I believe three counts -- of throwing
9 bodily fluids. It is a year after this incident; has
10 nothing to do with this incident. But no deals have been
11 made in that case. It's not assigned to me. Her attorney
12 was there for it. So no deals have been made.

13 THE COURT: When you say her attorney was there for it?

14 SOL. MOLINA: He was just present. She wanted him
15 present, her Jasper attorney, just in case, I guess. But we
16 didn't talk about it, didn't ask her anything about it.

17 THE COURT: So when you were talking and interviewing
18 her, her Jasper attorney was present?

19 SOL. MOLINA: Yes.

20 THE COURT: And, again, she has not been made any deals
21 in exchange for testimony or any offers made at this point?

22 SOL. MOLINA: No. No, ma'am.

23 THE COURT: Okay. Thank you.

24 MS. GIBBS: And my next motion deals with the motion to
25 exclude the jail calls. I did include a written motion

1 along with an exhibit. I do have the case of the State
2 versus Ellison. I'm happy to provide a copy, which I
3 believe y'all might have it.

4 THE COURT: So I was looking at your brief and reading
5 over this case during launch.

6 MS. GIBBS: Yes, Your Honor. Sorry, I'm looking.
7 Basically, Judge, my argument is based -- so Mr. Cortes,
8 just a little bit briefly, he was -- this incident happened
9 July 5th of 2021. He was actually arrested in Jasper
10 County on July 9th of 2021. They placed a hold on him for
11 these Beaufort County charges that he's at trial for today.
12 And they brought him to the Beaufort County jail on
13 April 18, 2022. And he has been there until today,
14 incarcerated at the jail.

15 It's my understanding -- I did receive five jail calls
16 that the State plans to introduce as evidence against my
17 client. The calls were actually accessed by the Solicitor's
18 office. And then it shows in my exhibit that Ms. Molina, I
19 believe last week, started looking at jail calls. I didn't
20 realize this, but they can have access to get into any of
21 the jail calls it seems like. And then after that, decided
22 to subpoena them from the corporal at the jail,
23 Corporal Aiken, who provided the jail calls that we have
24 today.

25 And so basically, based on Ellison, my motion is

1 arguing that there is no legitimate jail security purposes
2 to get these jail calls, that this was just a way for the
3 Solicitor's office and the State to circumvent the search
4 warrant requirement, circumvent his constitutional rights,
5 circumvent the discovery process, and just basically search
6 for evidence against my client to use against him in trial.

7 I believe my client, as stated in my motion, although
8 he is detained, I understand there is some diminished rights
9 that come about because of that. He is not completely
10 disrobed of his constitutional rights. He's presumed
11 innocent. He's in jail enjoying the presumption of
12 innocence. And it's pretty clear that if you're going to,
13 you know, search for something, there is a Fourth Amendment
14 right that there needs to be a warrant, a warrant obtained,
15 unless there's some sort of exigent circumstances. And in
16 this case, I can't point to any exigent circumstances since
17 these calls were received last week, and the timing is --
18 coincides with trial starting this week. So my thought is
19 that the State is just basically, you know, looking for
20 evidence to use against my client.

21 And under Ellison, there's a two-prong analysis the
22 State must satisfy. They must further, in accordance,
23 substantial governmental interest, which in Ellison --
24 Ellison, the consideration. And my understanding in the
25 Beaufort County jail is that the reason for monitoring the

1 jail calls is to make sure -- is for security purposes. A
2 lot of times we'll get these jail calls and it's right when
3 a defendant is arrested, you know, the first couple of days,
4 and their calls are being monitored. And I think I have
5 less of an argument when it's at the very beginning right
6 when they get arrested. And there might be some sort of,
7 you know, security reasons to monitor somebody's calls to
8 make sure that there, you know, isn't anything untoward
9 going on.

10 In this case, these calls were accessed three years
11 after he was arrested. Clearly, there's no safety or
12 emergency or anything of that nature. And like in the
13 Ellison case where -- and it does apply. In the Ellison
14 case, it is jail letters, which I would say is the same sort
15 of communication. If a client -- if someone is incarcerated
16 at the jail, the only way, besides writing letters, that
17 they can communicate with their lawyers and their family and
18 their loved ones is through the jail calls. And I do think,
19 although it is recorded, and it does tell you that these
20 calls are recorded, I don't think my client -- I don't think
21 an inmate is able to consent to waiving their constitutional
22 rights. They don't have a choice of its recorded or not.
23 And so I don't think it's a voluntary waiver of their
24 constitutional rights.

25 And I don't believe that there's been anything to show

1 that there was any reason why the State shouldn't have to
2 get a search warrant or a court order or show or follow the
3 discovery process instead of just, you know, trolling for
4 jail calls hoping to get evidence to use in trial next week
5 and that they should be excluded. And I would also point to
6 the substance of these calls. A lot of it -- and I think
7 I'll get into when we talk about the substance of the calls.
8 If they're allowed in, they do involve hearsay, you know,
9 404 character evidence, and all sorts of issues that come in
10 itself, besides the violation of his constitutional rights.

11 THE COURT: So first question is tell me what the setup
12 is at the detention center? Do they -- some places have got
13 signs that tells you that it's being recorded. It's right
14 near the phone. Some, they have that, and tells you when
15 you go to use the phone that the phone call is being
16 recorded.

17 MS. GIBBS: It's my understanding -- and this is from
18 prior cases -- that actually when you do -- when you go to
19 jail, there is some sort of -- I believe there's a form that
20 does advise you in some way that the jail calls are
21 recorded, but it also on the recording does say that these
22 jail calls are being monitored for security purposes. Which
23 I do think leads to my argument that they're monitored for
24 security and for protection and safety of the jail and
25 inmates as opposed to just seeking evidence. But I think

1 that goes back to my argument that he cannot really consent.
2 Because if you say, okay, I agree, I'll waive these rights,
3 my constitutional rights, you basically just have to give up
4 speaking on the phone or being able to communicate with your
5 lawyer or your family. And so I don't think it's a
6 voluntary consent to waive those rights.

7 THE COURT: But, of course, if you're meeting with your
8 attorney, that is not recorded. I mean, that's private.

9 MS. GIBBS: Right. What we can do for our jail calls,
10 sometimes we can get them not to record our jail calls. I
11 don't know if that means they're not listening, but I do
12 know that there's something that we can get it on a
13 no-record list for our number.

14 My client informed me he did not sign a form. And I'm
15 happy if you wish -- I actually have Corporal Aiken under
16 subpoena because I did not know if it was necessarily to
17 question him about these practices. And I'm happy to get
18 him here to explain that process.

19 THE COURT: Okay. Anything from the State?

20 SOL. MOLINA: It's the State's position that he did not
21 have a legitimate expectation of privacy. It's my
22 understanding as well -- and we can clear this up with
23 Aiken -- but that there are signs posted. The jail, prior
24 to the call starting, it does tell you that they're being
25 recorded. There is a diminished expectation of privacy when

1 somebody's in the detention center. It's not under the law
2 enforcement exception, it's under a consent exception.
3 He consents to the recording and monitoring when he makes
4 the phone call. And that's further evidenced by he
5 acknowledges in some of the calls that he knows he's being
6 recorded. So he doesn't have that legitimate expectation of
7 privacy.

8 Additionally, the calls are made around -- or in public
9 in the detention center. There's other people around. You
10 can hear them in the background. You can hear them yelling
11 to other people. It's only in court now that he says he was
12 expecting privacy and for people not to be listening. He
13 voluntarily makes these calls. In some of the calls he
14 references trying to get ahold of the victim and her not
15 answering and telling her he's gonna call and pick up. It's
16 different from the letters. And I think, you know, in the
17 Ellison case, that was a letter and there might be, you
18 know, a form in the beginning when they're booked that says
19 your mail might be monitored. I'm not sure about that.

20 But the phones do tell you that you're being recorded.
21 The phone calls are around other people. They consent to
22 being recorded when they make a phone call. He acknowledges
23 he knows it's being recorded and people are listening. And
24 so that leads me into there are two calls that are not made
25 on his account, that he makes on another peoples' accounts,

1 and he certainly doesn't have an expectation of privacy in
2 somebody else's account. And so I don't believe he has
3 standing to object to the calls made on other people's
4 accounts. And the calls made on his accounts, he references
5 and says I'm going to call you on somebody else's account,
6 pick it up. So there is no or very -- there is no
7 expectation of privacy in the detention center calls within
8 the exceptions. He consents to them. They're around other
9 people.

10 It's also -- detention center calls are also necessary
11 for his consciousness of guilt, a fact that goes towards
12 malice and intent in this case. After reviewing
13 discovery -- and he's not gonna say that after he reviewed
14 it -- but he does talk about, you know, I've seen the
15 paperwork; I know what you said; you said too much; this is
16 what you need to go and say now. So he is trying to tell
17 the victim what to say and what she shouldn't have said.
18 He's trying to conceal the consciousness of guilt by using
19 other people's accounts. Any prejudice is substantially
20 outweighed by the probative value of these phone calls.
21 He's telling her not to show up to court. She doesn't have
22 to show up. Don't get subpoenaed, don't talk to the
23 Solicitor, it's bad for my case. Specific intent is very
24 important in attempted murder. It's kind of the crux of it.
25 And so this is evidence of his guilt and of his intent.

1 And he consents to it. And he doesn't have an expectation
2 of privacy in others people's calls.

3 MS. GIBBS: And I just think the point is he generally
4 can't consent as he's in jail and doesn't have a choice
5 unless he gives up making phone calls. And then I think,
6 generally, he's unable to waive that consent.

7 THE COURT: So I do think it's a stretch to say he's
8 consented to it. I think it's more along the lines of full
9 knowledge that it's being recorded. He makes the phone
10 calls anyway, which sounds more like a waiver than consent.
11 I do think there's most assuredly a very much reduced
12 expectation of privacy when you're making a phone call in an
13 open area, again, with knowledge that it's being recorded.
14 Certainly, there's no expectation of privacy.

15 But I do you want to hear the phone calls. And I'm
16 gonna look at the Ellison case. Because I do think they
17 make, you know, a good point that certainly the State has a
18 very important interest in monitoring phone calls to make
19 sure they're not plotting something, they're not trying to
20 get contraband into the jail, they're not doing any number
21 of various things. This is different in that it's being
22 reviewed for the purpose of finding something incriminating
23 that he's saying to strictly change this case and not
24 pertaining to any threat to the detention center. But I
25 also think the State's general interest in not having

1 witnesses interfered with and are coached or threatened or
2 anything else during the course of the case proceeding.

3 So I'm gonna listen to -- I guess you got some -- also
4 some concern regarding content?

5 MS. GIBBS: Yes, Your Honor. And I'm not sure would it
6 be better for you to listen to them and then we can discuss
7 what I don't think is appropriate. Would that be easier? I
8 can do it either way.

9 THE COURT: Do you all have that in a format that I can
10 -- what kind of format do you have it?

11 SOL. MOLINA: I can send you the jail calls. I have
12 also redacted what I believed, in fairness, we would agree
13 on. And I sent those redactions to the Defense. I can send
14 you also either the redacted version or the document I made
15 that has the cuts of what came out. And maybe that's better
16 to send you the document of what came out because it's kind
17 of hard to tell sometimes where something has been cut if
18 you listen to the redacted version.

19 MS. GIBBS: And I will say I do agree with what the
20 Solicitor cut out of the originals, but I would still have
21 issues with what remains in the redacted version. So it
22 might be -- I mean, it's not the -- the redactions weren't
23 that lengthy, but it might be better just to send the
24 redacted version, but either way.

25 THE COURT: So you don't have a transcript. You just

1 got the original ---

2 SOL. MOLINA: I just have -- I have the calls
3 themselves and then a document that I made of the redactions
4 with timestamps.

5 THE COURT: Okay.

6 SOL. MOLINA: And I'm just gonna hand up Your Honor
7 State v. Martin. It's unpublished. But it's just a 2017
8 case that has some guidance related to this issue.

9 THE COURT: In my cursory look at the jail calls, there
10 really have not been a lot of argument made substantively.
11 It's more -- it's not the same argument. So, I mean, I
12 think that good for you for making the argument.

13 MS. GIBBS: It is an argument that has been coming up.
14 And I think what I would say is this had been an instance
15 where I've had cases where, you know, the corporal from the
16 jail was listening to the jail call as part of his job and
17 his role for monitoring jail calls for security purposes and
18 flagged a call because he heard something that he thought
19 the Solicitor's office would be interested in and lets them
20 know. I feel like I have less of an argument if that
21 happens. Because it was acquired through security,
22 legitimate security purposes. That's how the call was
23 acquired.

24 But in this case, this is just the Solicitor's office
25 having a password and being able to get on there and

1 request -- you know, look at whatever they want to and find
2 whatever they want. And I think that makes it a different
3 situation. And I feel like I have a better argument than if
4 we had gotten it from the jail and through that route.

5 THE COURT: Well, I'm going to withhold my ruling on
6 that until I had a chance to review them. I'm gonna take a
7 look at that Ellison case as well. And I think there's a
8 few Supreme Court cases that is constructive.

9 MS. GIBBS: Thank you, Judge. And that would be all of
10 my motions. I have a motion to sequester -- I mean a motion
11 to set a record which I believe -- Olivia, I think, is the
12 only --

13 SOL. MOLINA: I think she's the only one that is within
14 the time period, and it's a 2021 giving false information.

15 MS. GIBBS: Yes. So that would be all of my motions.
16 And I guess I would ask to revisit my motions to redact the
17 jail phone calls after you've had the opportunity to listen
18 to them, Your Honor.

19 THE COURT: And you'll just email those to me?

20 SOL. MOLINA: Yes, ma'am. I can email them to you and
21 your clerk. And I'll include the documents so that we're on
22 the same page about what's coming out. Because listening
23 to -- it's all bad stuff, but we've cut that.

24 THE COURT: And we'll talk -- we won't do this right
25 now. But we'll talk about what the State would seek to

1 impeach the defendant with were he to testify at some point.
2 So there are some impeachable offenses?

3 SOL. MOLINA: I believe so.

4 THE COURT: We won't address that now, but we will
5 address that down the road. Just for planning purposes, so
6 we'll bring the jury in. I'll give them the introductory
7 remarks. We'll do opening statements. Do you have a
8 witness or two that you would want to put on today?

9 SOL. MOLINA: Yes. I was gonna try to get through as
10 many as I could. I think that I could probably get through
11 at least three. But we can watch the clock. And I've
12 noticed at least five witnesses to be here this afternoon.
13 So, I mean, if we're rolling pretty quickly, I could
14 probably -- I at least have five.

15 THE COURT: Okay. Anything else before we bring the
16 jury in?

17 MS. GIBBS: No, Your Honor.

18 SOL. MOLINA: No, Your Honor.

19 (Brief pause.)

20 (The jury enters the courtroom at 2:07 p.m.)

21 JURY INSTRUCTION

22 THE COURT: Okay. Ladies and gentlemen, I want to
23 thank you, first of all, for being prompt and being back on
24 time so you can get started with the trial.

25 Ladies and gentlemen, the case we're about to try is

1 the State versus Francisco Cortes. Mr. Cortes is charged
2 with two counts of attempted murder with assault and battery
3 of a high and aggravated nature with discharging a firearm
4 into a dwelling -- he's charged with two counts of
5 that -- and with the offense of possession of a weapon
6 during a violent crime. He has pled not guilty to those
7 offenses. And it will be your job to determine the guilt or
8 innocence of the defendant.

9 Before we begin the trial, I want to tell you that this
10 trial may be very different than what you see on television
11 or in the movies or what you've read about in books where
12 trials are full of riveting action and exciting things
13 happen during the course of a trial. A lot of people don't
14 get the chance to observe a real trial, and it may be very
15 different from what you have seen on television. Sometimes
16 an actual trial may seem to you to be slow, very deliberate.
17 It can seem at times that it would be repetitive. It's not
18 for entertainment purposes. But it is an integral part of
19 our justice system. It's a fundamental part of our
20 democracy. And this court room is a place of honor that's
21 dedicated to the protection and preservation of citizens
22 rights to what many people have called the greatest justice
23 system ever created.

24 The attorneys that are appearing before you are
25 advocates for their clients. But first and foremost,

1 they're officers of the law and officers of the Court. They
2 are sworn to uphold the integrity and fairness of our
3 judicial system and help you in your role as fact finders.
4 You should expect them to be professional, competent, and
5 ethical in the representation of their client's interest.
6 And you will take an oath in just a moment to try this case
7 and reach a verdict based on the testimony and the evidence
8 presented. And you're also expected to be reasonable,
9 professional, and ethical in your duties. So I thank you,
10 first of all, for accepting this very important
11 responsibility.

12 What I'm going to say now is intended to serve as an
13 introduction to the trial of this case. These remarks are
14 not a charge on the law. At the end of the trial, I will
15 instruct you on the law as applicable to this case. This is
16 just an explanation of the procedure that we're gonna follow
17 during the trial so that you can better understand what's
18 happening.

19 Again, we've talked about the fact that the defendant
20 is charged with these offenses by what we call the
21 indictments. The elements of those offenses will be
22 explained to you during the course of the trial and at the
23 end. But the indictment is simply the charge by which this
24 case is brought in front of you. It is not in any sense
25 evidence of the allegations that it contains. The defendant

1 has pled not guilty to this indictment. The State,
2 therefore, has the burden of proving each of the elements of
3 the indictment beyond a reasonable doubt. It's your duty,
4 ladies and gentlemen, to determine whether the State has met
5 that burden.

6 Your purpose as jurors is to find and determine the
7 facts of the case. You are the sole judges of the facts.
8 If at any time I make a comment that you perceive as me
9 commenting on the facts, you should disregard it. It is not
10 my intention to make any comment to you about the facts.
11 That is strictly for you to determine. And you're to
12 determine the facts from the testimony that you hear and any
13 other evidence that's introduced in court. It's up to you
14 to determine the inferences that you feel may be properly
15 drawn of the evidence.

16 It's especially important that you perform your duty of
17 determining the facts diligently and conscientiously.
18 Because ordinarily there is no way to correct an erroneous
19 decision on the facts by jury. If I make an error on the
20 legal rulings and I make a legal error, there is a higher
21 court that can correct that. But there's no court that can
22 correct an erroneous determination of the facts by a jury.

23 The same law that makes you the judge of the facts
24 makes me the judge of the law. And the law as I give it to
25 you is the only law that you can consider. You have to

1 accept that and follow it even if you personally disagree
2 with the law. I cannot tell you what the facts are in the
3 case, and you cannot disagree with me about what the law is
4 or should be. Your job is to take the law as I give it to
5 you and apply it to the facts as you find them from the
6 testimony and other evidence that's presented. After doing
7 that, you'll been in a position to render your verdict.

8 Until I advise you to begin your deliberations, you
9 must not discuss the case with anyone including your fellow
10 jurors. After the case is submitted to you, you must
11 discuss it only in the jury room with all 12 jurors present.
12 The attorneys and parties in this case understand that they
13 cannot have any contact with you. If you were to run into
14 them coming or going from the courthouse and they don't
15 speak to you at all, please don't think that they're being
16 unfriendly. They are just following my instructions to give
17 you a wide berth and to have no contact with you whatsoever.

18 During the trial, as we talked about earlier, do not
19 read, listen to, or watch any news reports about the case.
20 This includes anything that might be in newspapers or on the
21 Internet, radio, television, social media. You must not
22 consider anything you may have read and heard about the case
23 outside of the courtroom, whether that's before or during
24 the trial. It is important that you keep an open mind and
25 not decide any issue in the case until all of the evidence

1 has been presented, the parties have made their closing
2 arguments, and I have given the instruction on the law.

3 It is your solemn responsibility to determine the guilt
4 or innocence of the defendant. And your verdict must be
5 based solely on the evidence as it is presented to you
6 during the trial and on the law as I instruct you during and
7 at the close of the trial. In just a moment the Solicitor
8 will make what's called an opening statement where she will
9 give you a preview of the testimony that you're gonna hear
10 during the trial and tell you what they think are the key
11 issues in this case. The defendant may also, through his
12 attorney, make an opening statement, although he's not
13 required to do so.

14 What the attorneys tell you during the course of this
15 trial is important. But keep in mind that the opening
16 statements or any statements by the attorneys, those are not
17 evidence. The evidence that you will hear during the course
18 of the trial, hence the sworn testimony from this witness
19 stand, any documents that are introduced during the course
20 of the trial. Of course, please pay close attention to the
21 arguments of the attorneys. I don't mean to diminish their
22 importance. It is important, it's just not evidence.

23 From time to time during the trial you may hear one of
24 the lawyers make an objection. They may need to discuss an
25 issue of law with me outside of your presence. If that is

1 necessary, I'll dismiss you briefly from the courtroom while
2 we have that discussion on the legal issues. But since
3 you're the judges of the facts in this case, sometimes we
4 may have to talk about the facts in order for me to make a
5 clear ruling on the law. And, of course, once you have
6 heard a certain piece of evidence, it's difficult to unhear
7 it. So we may dismiss you from the courtroom while we have
8 those discussions.

9 In determining what the facts are in this case, you
10 have to decide whether or not the testimony of the witnesses
11 is believable. It will be my responsibility to rule as a
12 matter of law as to whether certain testimony is admissible.
13 But whether or not you believe it is solely for you to
14 determine. In deciding whether to believe a witness, you
15 have the right to consider the interest of any witness, the
16 bias or prejudice of any witness, the opportunity that the
17 witness had to hear and see things that the witnesses is
18 testifying about, and the way the witness acts on the
19 witness stand, what they're doing while they're testifying.
20 You have the right to consider anything that's in the record
21 that will help you evaluate the testimony of the witnesses.
22 That means it's your duty to pay close attention to the
23 witnesses, to observe them, to listen to them, to pay close
24 attention to the attorneys and to the Court. Please don't
25 let your thoughts wander. But give strict attention to the

1 testimony in the case so at the end of the trial, after all
2 the testimony, the arguments of counsel, and the charge on
3 the law by the Court, you will then be in a position to
4 determine what the facts are, apply the law to those facts,
5 and render your verdict.

6 We will -- at the end, we may take a break at some
7 point during the afternoon or we may not, just depending on
8 how things go. Either at the break or before you leave
9 today, I'm gonna ask if you'll please select a jury
10 foreperson. You do not need any specific training or
11 experience. You don't have to know anything about the laws
12 to be the foreperson. You possess all the skills you need
13 just by your life experience, your good common sense to be
14 the jury foreperson. The duties of the foreperson are to
15 preside over the deliberation. If there is a question that
16 the jury needs to ask me or if there is something that needs
17 to be brought to my attention, you will write out a note on
18 behalf of the jury panel and the bailiffs will bring that to
19 me.

20 Okay. Any exceptions or additions on behalf of the
21 State?

22 SOL. MOLINA: Nothing from the State.

23 MS. GIBBS: None, Your Honor.

24 THE COURT: Go ahead and swear the jury.

25 (The jury was sworn at 2:18 p.m.)

1 THE COURT: We're ready for opening statements.

2 Ms. Molina?

3 SOL. MOLINA: May it please the Court?

4 THE COURT: Yes, ma'am.

5 OPENING STATEMENTS

6 SOL. MOLINA: This case is about control and ownership,
7 and the ways in which the defendant exercises control and
8 ownership over those around us and the consequences of when
9 he feels like he doesn't have that control or ownership. On
10 July 5, 2021, the defendant fired six shots into apartment
11 number 4 at The Oaks apartment complex. Two of those shots
12 went through a partition and a wall into the adjoining
13 apartment, apartment number 6. You'll hear about the reason
14 he fired those shots, that it was the result of an arranged
15 sexual encounter between the victims. You'll hear that one
16 of the victims that was shot was trying to get out when she
17 was shot. And you'll hear the other victim that was shot
18 was asleep in his bed.

19 After firing those shots, you'll hear that defendant
20 fled the scene. He's been charged with two counts of
21 attempted murder, assault and battery of a high and
22 aggravated nature, two counts of discharging a firearm into
23 a dwelling, possession of a weapon during a violent crime.
24 For attempted murder -- and briefly, y'all will be
25 instructed on this later -- but attempted murder requires

1 attempting to kill somebody with the intent to kill them.
2 Two counts of that. ABHAN requires an injury caused, and
3 the way in which that injury was caused could have caused
4 great bodily injury or death. Discharging a firearm into a
5 dwelling, shooting into where people are living, and then he
6 used a firearm.

7 It's my job to prove to y'all those charges beyond a
8 reasonable doubt. It's your job to listen to the witnesses
9 and look at the evidence. At the end of this case, after
10 you've seen all the evidence and heard from the witnesses,
11 I'm gonna come back up here and ask y'all to find the
12 defendant guilty on all counts.

13 MS. GIBBS: Thank you. May it please the Court?

14 Good afternoon. My name is Courtney Gibbs, as I told
15 you, and I represent Francisco Cortes. I appreciate y'all
16 being here. Francisco appreciates y'all being here. This
17 has been a few years we've been waiting for his day in
18 court. He appreciates y'all being here and listening to the
19 evidence. I'm gonna be brief because, as the Judge says,
20 what I say to you is not evidence, and I'll diminish my
21 role. What I tell you is not evidence. My job is to give
22 you a little bit of guidelines of what to think about as
23 you're listening to this case and what -- or really what it
24 comes down to is what the witnesses say when they get on
25 that stand, what you believe and what you don't believe.

1 And then the Judge's job is to instruct you on the law.

2 And as you heard, we're here for something extremely
3 serious. He's charged with almost one of the most serious
4 charges you can be charged with, attempted murder. He's
5 charged with attempting to kill two people. And this is
6 extremely serious. Two people were shot. It's extremely
7 serious, and we take it seriously. And the State, they have
8 to prove beyond a reasonable doubt that he acted with a
9 specific intent to kill. And law enforcement, when they
10 respond to the scene, it was a very chaotic scene, as you'll
11 hear and you'll see. You'll listen to testimony of what the
12 officers saw when they arrived. And what I want you to
13 consider is how quick law enforcement rushed to judgment to
14 go after their guy. They went after Francisco and charged
15 him with attempted murder, and they didn't really
16 investigate whether he had any justification for what
17 happened.

18 Just because of a gun is fired and somebody is shot
19 doesn't mean you're guilty of attempted murder. And I think
20 you'll hear that early on the witness says -- somebody who
21 was shot and is considered a victim -- she told law
22 enforcement that there were some justification for what
23 happened. Nothing was followed up on. They just charged
24 him with attempted murder. I think you'll listen that
25 there's evidence that was found at the scene that

Direct Examination of Ms. Burns by Sol. Molina

97

1 corroborates with what that woman said. She was a victim
2 and will be testifying. But they didn't do anything with
3 it. In fact, that evidence got destroyed.

4 And so what I'd ask is you consider listening to all
5 the evidence, all the witnesses on the stand, and think
6 about the State's burden. Because right now Francisco, he's
7 sitting there, with all the power of the State of
8 South Carolina and all the resources going after him and
9 saying he did it. There's no justification. He tried to
10 murder people. I'll ask you to consider justification.
11 Justification and reasonable doubt, it's the State's highest
12 burden. When somebody wants it -- when the government wants
13 to prosecute you and go after your freedom, it's a high
14 burden. And I ask you to hold them to that burden and find
15 him not guilty. Thank you.

16 THE COURT: Thank you. State may call it's first
17 witness.

18 SOL. MOLINA: State calls Lindsay Burns.

19 (Whereupon, the witness, LINDSAY BURNS, was duly
20 sworn.)

21 THE CLERK: Please have a seat. State your name and
22 spell your last name for the record.

23 THE WITNESS: Lindsay Burns: L-I-N-D-S-A-Y, B-U-R-N-S.

24 - - - - -

25 DIRECT EXAMINATION

1 BY SOL. MOLINA:

2 Q. Good afternoon, Ms. Burns. Where do you work?

3 A. Beaufort County Sheriff's Office.

4 Q. And what is your role at the Sheriff's Office?

5 A. I am the current record supervisor and I also pull the
6 911 audio and radio transmissions.

7 Q. Are those 911 calls kept in the ordinary course of
8 business?

9 A. Yes.

10 Q. And were you asked to pull calls in this case?

11 A. Yes, we do. We were.

12 Q. I'm going to hand you --

13 SOL. MOLINA: Permission to approach the witness?

14 Q. Going to hand you what's been marked as State's
15 Exhibits 1 and 2. Can you take a look at these items,
16 please, and tell me if you recognize them?

17 A. I do.

18 Q. And what are those items?

19 A. They are the 911 calls provided to the Solicitor's
20 office, I provided.

21 Q. Are they the 911 calls from July 5, 2021, related to a
22 shooting incident at The Oaks apartments?

23 A. Yes. That's what's on this.

24 Q. And have you reviewed those and signed them?

25 A. I have.

1 Q. And those are a fair and accurate copy?

2 A. Yes.

3 SOL. MOLINA: State moves States Exhibit 1 and 2 into
4 evidence.

5 MS. GIBBS: Without objection.

6 THE COURT: They are admitted.

7 (State's Exhibit Nos. 1 and 2 were received into
8 evidence.)

9 SOL. MOLINA: And permission to publish?

10 THE COURT: Yes.

11 (Audio played at 2:28 p.m. and ends at 2:34 p.m.)

12 SOL. MOLINA: I have no further questions. Please
13 answer any the defense has.

14 MS. GIBBS: I have no questions for this witness.

15 THE COURT: You can step down. Thank you.

16 SOL. MOLINA: State calls Amanda Masskooni.

17 (Whereupon, the witness, AMANDA MASSKOONI, was duly
18 sworn.)

19 THE CLERK: Please have a seat. State your name and
20 spell your last name for the record.

21 THE WITNESS: Amanda Masskooni, M-A-S-S-K-O-O-N-I.

22 - - - - -

23 DIRECT EXAMINATION

24 BY SOL. MOLINA:

25 Q. Since 2021, have you gotten married?

- 1 A. Yes.
- 2 Q. What was your maiden name?
- 3 A. Maie, M-A-I-E. Yeah.
- 4 Q. And where do you currently work?
- 5 A. At Volte.
- 6 Q. What do you do there?
- 7 A. I am a sales administrator.
- 8 Q. Where were you working in July of 2021?
- 9 A. At Coastal Security Services.
- 10 Q. And what did you do for them?
- 11 A. I was the director of business development.
- 12 Q. What duties were included in that?
- 13 A. So I oversaw the dispatch center. I helped build
- 14 client relations. I oversaw all of, like, the accounts and
- 15 things like that, all of the clients that they maintained,
- 16 developing new business.
- 17 Q. Did you respond to requests for surveillance footage?
- 18 A. Yes.
- 19 Q. Was the surveillance footage kept in the ordinary
- 20 course of business?
- 21 A. Yes.
- 22 Q. And for surveillance, are the cameras always running
- 23 and recording?
- 24 A. Yes.
- 25 Q. Do the cameras have sound?

1 A. Some do, yes.

2 Q. Do the cameras at The Oaks have sound?

3 A. No.

4 Q. And that's The Oaks in Hilton Head?

5 A. Correct.

6 Q. Did you get a request on July 5, 2021, to pull footage
7 from cameras at The Oaks near apartment 4?

8 A. Yes.

9 Q. Do cameras -- in which direction did the cameras face?

10 A. So there's a few. They face out towards the parking
11 lot and in the entrances of the community.

12 Q. Do any near apartment 4, or for this case, face towards
13 the apartments themselves?

14 A. No, ma'am.

15 Q. I'm going to hand you what's previously marked as
16 State's Exhibits 3 and 4. If you could take a look at
17 those, please. Do you recognize those items?

18 A. Yes, ma'am.

19 Q. And what is State's Exhibit 3?

20 A. Video footage that I pulled from The Oaks.

21 Q. And did you sign that?

22 A. Yes. That's my signature.

23 Q. Is that a fair and accurate representation of the
24 surveillance footage you pulled?

25 A. Yes.

1 Q. And it's routinely kept in the ordinary course of
2 business?

3 A. Yes.

4 Q. Okay. And State's Exhibit 4, what is that item?

5 A. It's a screenshot of one of the videos of the
6 surveillance that we pulled.

7 Q. Is that a fair and accurate representation of the
8 surveillance video you pulled?

9 A. Yes.

10 SOL. MOLINA: The State moves State's Exhibit 3 and 4
11 into evidence?

12 MS. GIBBS: Without objection.

13 THE COURT: They are admitted.

14 (State's Exhibit Nos. 3 and 4 were received into
15 evidence.)

16 SOL. MOLINA: And permission to publish?

17 THE COURT: (Affirms.)

18 BY SOL. MOLINA:

19 Q. And if you could just orient the jury to what they're
20 seeing on the screen.

21 (Video plays.)

22 A. So this particular angle is pointing towards down into
23 the community. So it's a camera on a post that's looking
24 down towards the entrance of The Oaks. So you go down a
25 line of parking spots.

1 Q. And is the date and time referenced at the top the date
2 and time this was recorded?

3 A. Correct.

4 Q. The surveillance was recorded?

5 A. Yes.

6 Q. Okay. And what about -- what about that bottom there,
7 what is that?

8 A. So on the left-hand side where it's highlighted in red,
9 that's the IP address of the cameras. Some neighbors
10 determine and they rename them based on the location. But
11 for The Oaks, they just left them the IP address. And the
12 bottom where all the little blurbs are is when there's
13 motion detected on a camera so you can review footage more
14 easily.

15 Q. And where would the apartments be if you're facing this
16 direction?

17 A. So if you're looking down at the headlights that are
18 coming towards you, the apartments are on the left-hand
19 side.

20 (Video continues.)

21 Q. And is this 3:05 in the morning?

22 A. Yes, that's correct.

23 Q. And what time is indicated on this clip?

24 A. 3:10 in the morning.

25 Q. Of July 5, 2021?

1 A. Correct.

2 Q. What time is indicated on this one?

3 A. 3:17.

4 (Video continues.)

5 Q. We don't see the timestamp. But are you able to
6 estimate around what time?

7 A. So based on the video clip, I would say 3:34.

8 (Video continues.)

9 Q. Is that indicated by the red line down on the timeline?

10 A. Correct. Sorry, I'm having a hard time seeing.

11 Q. It's far away. I'm sorry. Could it be . . .

12 A. It looks like 3:48.

13 Q. Just before 3:50?

14 A. Yeah. Just before 3:50.

15 (Video continues.)

16 Q. And what camera view is this?

17 A. This is above the entrance. So it's pointing out of
18 the exit onto US 278. So it's watching cars leave the
19 community.

20 Q. Okay. And this is 3:58 on that morning?

21 A. Yes.

22 (Video continues.)

23 Q. Prior to reviewing surveillance, did you have any
24 information about the identity of the people involved?

25 A. No.

1 Q. And when you pulled it, did anybody ask you to identify
2 anybody in the video?

3 A. No.

4 Q. While reviewing, were you able to identify anybody in
5 the video?

6 A. Yes.

7 MS. GIBBS: Your Honor, I would just object over my
8 prior objections.

9 THE COURT: And that's noted for the record.

10 MS. GIBBS: Thank you.

11 BY SOL. MOLINA:

12 Q. Were you able to identify anybody in the video?

13 A. Yes.

14 Q. And who was that?

15 A. Francisco Cortes.

16 Q. How do you know Francisco Cortes?

17 A. He and I went to high school together.

18 Q. Okay. Had you recently seen a picture of him in the
19 last couple of weeks?

20 A. Yes.

21 Q. And nobody suggested or influenced you to make that
22 identification, did they?

23 A. No.

24 Q. When you provided the surveillance footage, did you
25 tell law enforcement who you thought it was?

1 A. Yes.

2 Q. Do you see the person you know as Francisco Cortes in
3 the courtroom today?

4 A. I do.

5 Q. And can you identify something he's wearing?

6 A. A blue suit with a black mask.

7 SOL. MOLINA: Please let the record reflect that the
8 witness has identified the defendant.

9 THE COURT: Noted.

10 Q. And he's the person you identified to law enforcement
11 as the male in the surveillance video?

12 A. That's correct.

13 Q. And I'm also just showing you State's Exhibit 4. And
14 this is the screenshot you took?

15 A. (Nonverbal response.)

16 Q. And one more question. Is The Oaks located in
17 Beaufort County?

18 A. Yes.

19 SOL. MOLINA: I have no further questions. Please
20 answer any the Defense has.

21 MS. GIBBS: Thank you. Just briefly.

22 - - - - -

23 CROSS-EXAMINATION

24 BY MS. GIBBS:

25 Q. Hey, Amanda. How are you?

1 A. Good. How are you?

2 Q. Good. Okay. So just a technical question. Are you
3 able to zoom in any closer in those videos or is that as
4 close as you can get?

5 A. That was as close as we could get.

6 Q. Okay. And just to be clear, you were not actually at
7 The Oaks during the shooting, correct?

8 A. That's correct.

9 Q. And so you were not there to be an actual witness to
10 this incident?

11 A. That's correct.

12 Q. Okay. And you mentioned a picture that you saw
13 recently. It had his name, too, with it?

14 A. Yes.

15 Q. Okay. And I know you said you remembered you went to
16 school with him. At Bluffton High School?

17 A. That is correct.

18 Q. Did you have any classes or anything with him?

19 A. Probably a few. But definitely seen him in the
20 hallways.

21 Q. Okay. Any conversations or anything like that?

22 A. Maybe once or twice.

23 Q. Okay. Would it surprise you if I told you he didn't
24 attend Bluffton High School? I actually pulled your records
25 and y'all attended middle school together. Would that

1 surprise you?

2 A. Yes.

3 Q. Okay. So you were mistaken about that?

4 A. I was.

5 Q. Okay.

6 MS. GIBBS: I have no further questions.

7 THE COURT: Any redirect?

8 SOL. MOLINA: May we approach?

9 THE COURT: Sure.

10 (A bench conference was held off the record and out of
11 the hearing of the jury panel.)

12 SOL. MOLINA: I have no further questions for this
13 witness.

14 THE COURT: Thank you, ma'am. You can step down.

15 SOL. MOLINA: State calls Olivia Erskine.

16 (Whereupon, the witness, OLIVIA ERSKINE, was duly
17 sworn.)

18 THE CLERK: Please have a seat. State your name and
19 spell you last name for the record.

20 THE WITNESS: Olivia Erskine: O-L-I-V-I-A,
21 E-R-S-K-I-N-E.

22 - - - - -

23 DIRECT EXAMINATION

24 BY SOL. MOLINA:

25 Q. Good afternoon, Olivia. Do you know Francisco Cortes?

1 A. Yes, ma'am.

2 Q. How do you know him?

3 A. We met a few years ago with one of our mutual friends
4 at the beach.

5 Q. And would you say at that time -- how would you
6 characterize your relationship with him at that time?

7 A. We were unfamiliar with each other.

8 Q. In 2021?

9 A. Yes, ma'am.

10 Q. Do you know any nicknames he goes by?

11 A. No, ma'am.

12 Q. Do you know him as Kenny?

13 A. No, ma'am.

14 Q. Do you see Francisco Cortes in the courtroom?

15 A. Yes, ma'am.

16 Q. Can you identify something he's wearing?

17 A. A mask.

18 SOL. MOLINA: Please let the record reflect she's
19 identified the defendant.

20 THE COURT: So noted.

21 Q. So you met him through mutual friends. Did you plan to
22 hang out with him on the night of July 4, 2021?

23 A. Yeah. We were hanging out.

24 Q. Okay. What were your plans that night?

25 A. We were just hanging around the house and stuff.

1 Q. Did he pick you up from your house and take you
2 anywhere?

3 A. No.

4 Q. Did y'all plan to see fireworks?

5 A. Yes, ma'am.

6 Q. Did he pick you up to take you to see fireworks?

7 A. Yes.

8 Q. And that was night of July 4, 2021?

9 A. Yes.

10 Q. After he picked you up, did you go anywhere else?

11 A. No.

12 Q. Into the early morning hours of July 5, 2021?

13 A. No.

14 Q. You did not go to The Oaks apartment complex unit
15 number 4 in Hilton Head?

16 A. I do not remember much that night.

17 Q. So you don't remember going to The Oaks?

18 A. No. I don't remember much from that night.

19 Q. Okay. Do you remember anything from that night?

20 A. No, ma'am.

21 Q. Do you remember speaking to officers on scene?

22 A. No.

23 Q. What's the next thing that you remember?

24 A. I remember waking up in the hospital.

25 Q. Okay. Do you remember speaking to Officer Cushman in

1 the hospital?

2 A. No, ma'am.

3 Q. Shortly after you arrived on July 5, 2021?

4 A. No, ma'am.

5 Q. You don't remember talking to him at all?

6 A. No. I don't know which officer that is, and I couldn't
7 identify him.

8 Q. Do you remember speaking to any officer in the hospital
9 when you arrived there?

10 A. There wasn't any.

11 Q. Okay.

12 A. I was in a private area.

13 Q. You don't remember speaking to any officers in
14 Savannah Memorial?

15 A. No. I was in a private room, in a private area.

16 Q. Okay. Before you got into a private room when you were
17 waiting to be seen?

18 A. No. They weren't allowed to speak to patients.

19 Q. Okay. Olivia, where were you shot?

20 A. My wrist and my finger.

21 Q. Okay. Did you have any other injuries?

22 A. An abrasion on my chin.

23 Q. Okay. Was that under your chin?

24 A. Yes, ma'am.

25 Q. What treatment did you receive for your injuries?

1 A. I was given morphine. And I had to undergo a very long
2 surgery for recovery, and I had to do physical therapy
3 afterwards.

4 Q. Did they -- do you -- are you able to bend your finger,
5 the one that was shot?

6 A. Only the tip of the finger.

7 Q. Okay. Not the middle knuckle?

8 A. No, ma'am.

9 Q. And did you get a metal rod put in your arm during that
10 surgery?

11 A. Yeah. It was something of the sort, but I think it's a
12 bit thinner a rod.

13 Q. Were pins placed in your fingers?

14 A. Yes. Three of them.

15 Q. And you continued -- or you had to do physical therapy
16 following surgery?

17 A. Yes, ma'am.

18 Q. Prior to being shot, were you convicted of giving false
19 information to law enforcement in 2021?

20 A. No.

21 Q. You weren't convicted in Georgia of that?

22 A. No. I wasn't in Georgia.

23 SOL. MOLINA: Court's indulgence.

24 (Brief pause.)

25 SOL. MOLINA: No further questions. Please answer any

1 Ms. Gibbs has.

2 MS. GIBBS: Thank you.

3 - - - - -

4 CROSS-EXAMINATION

5 BY MS. GIBBS:

6 Q. Good morning -- or good afternoon, Olivia. How are
7 you?

8 A. I'm all right. How are you?

9 Q. I'm doing well, thank you. My name is Courtney Gibbs
10 and I represent Francisco Cortes, who you know, correct?
11 You know Francisco?

12 A. Yes, ma'am.

13 Q. Okay. And I know I might be repeating myself with what
14 the Solicitor asked you. But so you're saying you don't
15 remember anything about that night?

16 A. No, ma'am. It was very traumatic.

17 Q. Okay. And you don't remember that you spoke to the
18 officers on the scene?

19 A. No.

20 Q. And you don't remember that you spoke to
21 Investigator Cushman at the hospital?

22 A. No. I really don't.

23 Q. And you don't remember that you said that your
24 boyfriend shot you on accident because the other guy
25 wouldn't open the door?

1 A. No. I was on a lot of medication in there.

2 Q. Okay.

3 A. I was --

4 Q. And you don't remember that you said that the other guy
5 you were in the house with had a knife and you described the
6 knife?

7 A. I do remember him having a knife.

8 Q. Okay. And that he locked the door so you couldn't get
9 out. Do you remember that?

10 A. I do remember that.

11 Q. Okay. And do you remember speaking to my investigator,
12 Christy, on Friday on the telephone? She worked for my
13 office.

14 A. Yes, ma'am.

15 Q. Okay. So this was this past Friday. You remember
16 that?

17 A. Yes, ma'am.

18 Q. Okay. And you remember saying to her -- and do you
19 remember, do you call him Kenny? Francisco, do you ever
20 call him Kenny?

21 A. Sometimes.

22 Q. Because I think it's his middle name, right?

23 A. Yeah.

24 Q. Okay. And you said that Kenny was just trying to help
25 you get out of there because the guy was being

1 confrontational and he had a knife. Remember that?

2 A. Yes.

3 Q. Okay. And you also -- at the hospital you told the
4 officer the same thing, that he had a knife. But you don't
5 remember that part?

6 A. Right.

7 Q. Okay. And you remember telling my investigator Christy
8 he was trying to hold you there, and Francisco came and was
9 trying to help you get you out?

10 A. Yes.

11 Q. And that he pointed a knife at Francisco when he came
12 up to the door to help you, then closed it and locked it?

13 A. Yes.

14 Q. And that you were scared?

15 A. Yes, I was.

16 Q. And I'm assuming you don't remember. But that night
17 that this happened, do you remember you were communicating
18 with Kenny while this was going on?

19 A. Yes. Like, badly, trying to.

20 Q. So you remember that -- I'm assuming y'all were
21 talking. Were you telling him what was going on and that
22 you wanted help getting out of the house?

23 A. Yes.

24 Q. Because you were scared?

25 A. Yes.

1 Q. Because he had a knife and was threatening?

2 A. Yes. He was threatening.

3 Q. Okay.

4 A. Just was more the two of them having an argument,
5 really disliking one another.

6 Q. Okay. And he was arguing because he wouldn't let you
7 out of the apartment and had a knife, correct?

8 A. Correct.

9 Q. And did you feel like your life was in danger?

10 A. Yes. But not because of the defendant, but because of
11 the man inside of the apartment.

12 Q. He had been drinking?

13 A. Yes.

14 Q. Okay. Did you know the man that was inside the
15 apartment with you?

16 A. Not too well.

17 Q. And because he didn't speak much English?

18 A. No.

19 Q. And he became aggressive with you?

20 A. Very.

21 Q. And grabbed a knife?

22 A. Yes.

23 Q. And wouldn't let you leave?

24 A. Correct.

25 MS. GIBBS: I have no further questions at this time.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY SOL. MOLINA:

4 Q. So do you remember talking to law enforcement on scene
5 or at the hospital? You testified you don't.

6 A. Yes, ma'am.

7 Q. Okay. And so the only -- the first time you've
8 indicated this aggressive and threatening behavior was last
9 Friday to the Defense's investigator?

10 A. Yes, ma'am.

11 Q. And the first time you've indicated that you weren't
12 allowed to leave because of these aggressive threats is last
13 Friday to the Defense's investigator?

14 A. Yes, ma'am.

15 SOL. MOLINA: Nothing further.

16 MS. GIBBS: Just briefly since you said --

17 - - - - -

18 RECROSS-EXAMINATION

19 BY MS. GIBBS:

20 Q. You do remember talking to the officer at the hospital,
21 Cushman? You might not remember his name, but you do
22 remember?

23 A. It's hard to remember their face.

24 Q. Okay. But you remember an officer there?

25 A. Sort of.

1 Q. Okay. So do you remember that that night when you were
2 in the hospital and you talked to the officer, you did say
3 the other guy had weapon and he had a knife, and you
4 described it to the officer?

5 A. Yeah. It's been a long time.

6 SOL. MOLINA: I would object. She said she doesn't
7 remember.

8 THE COURT: I'm gonna allow you to ask the question.

9 MS. GIBBS: Thank you, Judge.

10 Q. Were you aware that your statement was recorded on the
11 officer's body cam?

12 A. Yes, ma'am.

13 Q. Okay. Prior to becoming to court to testify, did you
14 speak with the Solicitor on this case?

15 A. Yes, ma'am.

16 Q. Okay. And did you have -- did you have the opportunity
17 to watch these videos or anything?

18 A. No, I wasn't.

19 Q. Okay. Well, I watched the videos. So I just -- if you
20 don't mind, I'm gonna go through what I -- and see if you
21 remember saying --

22 SOL. MOLINA: I would object to that.

23 MS. GIBBS: And I'll rephrase it.

24 SOL. MOLINA: With her testifying to what she saw in
25 the video instead of asking her questions about what she

1 remembers.

2 MS. GIBBS: I'll rephrase it, Judge.

3 SOL. MOLINA: She's also testified that she doesn't
4 remember.

5 BY MS. GIBBS:

6 Q. You remember being at the hospital and an officer
7 taking your statement? You might . . .

8 A. Just barely.

9 Q. Okay. And you said you did describe the knife to the
10 officer. Do you remember that?

11 A. A little bit. But it's kind of hard because of all the
12 medication that I was on at the time to remember.

13 Q. You described it like a big butcher knife. Do you
14 remember that?

15 A. Yes, ma'am.

16 Q. And that you were arguing with this man because he
17 didn't want you to leave and your boyfriend wanted you out.
18 Do you remember saying that?

19 A. Yes, ma'am.

20 Q. And he had locked the door so you couldn't get out and
21 he had a knife that was held up?

22 A. Yes, ma'am.

23 Q. Do you remember you told the officer twice you didn't
24 want to press charges?

25 A. Yes. I don't want to press charges.

1 Q. And is your testimony today -- is anybody forcing you
2 to say what you're saying today on the stand?

3 A. No, ma'am.

4 Q. Did my client force you to say what you're saying today
5 on the stand?

6 A. No, ma'am.

7 MS. GIBBS: I have no further questions.

8 SOL. MOLINA: May we approach?

9 THE COURT: Yes.

10 (A bench conference was held off the record and out of
11 the hearing of the jury panel.)

12 - - - - -

13 FURTHER EXAMINATION

14 BY SOL. MOLINA:

15 Q. Has Francisco Cortes ever coached you or told you what
16 to say related to this case?

17 A. No.

18 SOL. MOLINA: Nothing further.

19 THE COURT: You can step down.

20 THE WITNESS: Thank you.

21 SOL. MOLINA: State calls Staff Sergeant

22 Joshua Scheemaker.

23 (Whereupon, the witness, JOSHUA SCHEEMAKER, was duly
24 sworn.)

25 THE CLERK: Please have a seat. State your name and

Direct Examination of Staff Sgt. Scheemaker by Sol. Molina

121

1 spell your last for the record.

2 THE WITNESS: Staff Sergeant Joshua Scheemaker,
3 S-C-H-E-E-M-A-K-E-R.

4 - - - - -

5 DIRECT EXAMINATION

6 BY SOL. MOLINA:

7 Q. Where do you work, Staff Sergeant Scheemaker?

8 A. The Beaufort County Sheriff's office.

9 Q. And how long have you been with the Sheriff's office?

10 A. Just over 13 years.

11 Q. What's your current role at Sheriff's Office?

12 A. I'm a patrol supervisor for the southern enforcement.

13 Q. Were you working on July 5, 2021?

14 A. I was.

15 Q. And did you respond to a call at 400 William Hilton
16 Parkway?

17 A. I did.

18 Q. Is that in Beaufort County?

19 A. It is in Beaufort County.

20 Q. Is it in Hilton Head?

21 A. It is in Hilton Head.

22 Q. Okay. When you got on scene, what did you see?

23 A. I saw a female running towards a couple of deputies.

24 And then I was directed towards, I believe, the number 4

25 building or the number 4 apartment in The Oaks, which was

1 the apartment complex we were called to.

2 Q. Once at apartment number 4, what did you do?

3 A. Myself and Staff Sergeant Angstadt observed a Hispanic
4 male near the front door, at which time we challenged him
5 and ordered him to come down and tell everyone to exit the
6 residence. He said that no one else inside the residence
7 spoke English. So we had him come down. He was detained.
8 At that point, we went up to the residence and began trying
9 to call additional people out.

10 Q. Did additional people come out?

11 A. Yes. Two additional, a male and female, came out.
12 They were both -- got detained and escorted all the way down
13 the steps. And as we continued to call people out, we heard
14 a voice inside saying he couldn't get out. At that time, we
15 entered the residence, began conducting a sweep, made
16 contact with an individual inside one of the bedrooms that
17 had been shot in the leg.

18 Q. And let me go back a little bit. Why were you
19 detaining these people?

20 A. Just due to the -- getting information that a female
21 had been shot. Not knowing who a suspect or a victim or
22 anything was at any time, we detained everyone so we had
23 further information as to what truly transpired.

24 Q. And did either the Hispanic male or the couple speak
25 very good English?

Direct Examination of Staff Sgt. Scheemaker by Sol. Molina

123

1 A. The couple did not. They only spoke Chinese. Later on
2 I used a translator to try to some get information from
3 them.

4 Q. And you said that you went in and cleared the
5 residence. I'm going to show you State's Exhibit 5, for
6 identification purposes, No. 5. And if you could look at
7 this and tell me if this would assist in your testimony?

8 A. Yes.

9 Q. Okay.

10 SOL. MOLINA: And for demonstrative purposes only,
11 State asks to publish State's Exhibit No. 5?

12 THE COURT: And you've taken a look at this, Ms. Gibbs?

13 MS. GIBBS: Yes, Your Honor.

14 THE COURT: Any objection?

15 MS. GIBBS: No objection for demonstrative purposes.

16 THE COURT: You can show it to the jury.

17 (State's Exhibit No. 5 was marked for identification.)

18 Q. Staff Sergeant Scheemaker, can you come down from the
19 stand and kind of orientate us on this demonstrative where
20 you cleared and found the individual that had been shot in
21 the leg?

22 A. Yes. So as we came up the stairs, the front door is
23 right here. We were trying to figure who was inside. We
24 heard the voice. So as we began to come in, I was trying to
25 clear as much as I could prior to making it past an open

1 door and everything. We continued to hear the voice say
2 he's here, at which time we entered this bedroom and located
3 the male. I believe he was partially on the bed on the
4 floor with a gunshot wound to his leg. That's what time we
5 brought him out and everything. And then we came back in to
6 finish ensuring the whole apartment was cleared.

7 Q. So this would be unit number 4?

8 A. Yes.

9 Q. Okay. And while clearing, did you discover bullet
10 holes?

11 A. Yes. There were bullet holes through the wall right
12 here indicating that there was some shooting that was
13 heading this way from the entry of the residence into the
14 dwelling.

15 Q. Okay. Did you find any indication that the bullets
16 went through other walls?

17 A. I know there were bullet holes in this wall, the
18 interior wall of this. I believe it was like a made room or
19 something like that. Because it was made out of, like,
20 sheets and plywood or something like that that entered into
21 this bedroom.

22 Q. Okay. Did you discover holes that led into
23 apartment 6?

24 A. Correct. As we were looking through the whole
25 residence and everything, I noticed bullet holes that went

1 through the wall. After we had contained this and secured
2 this, I went next door just to make sure there was no one
3 inside the building -- the residence next door -- that had
4 been shot. I made contact upon entering their residence
5 with there consent and stuff, I observed at least one bullet
6 hole that had entered just above the -- I believe it was a
7 TV or something in the corner -- that entered into their
8 apartment.

9 Q. And that was into their home?

10 A. Correct.

11 Q. And there were how many people in that one?

12 A. I believe three at that time.

13 Q. How would you describe that demeanor of the couple that
14 only spoke Chinese?

15 A. They were definitely scared and were confused as to
16 what had transpired.

17 Q. And you used Language Line to talk to them?

18 A. Correct.

19 Q. What did they tell you happened?

20 A. They said they were in their bedroom.

21 MS. GIBBS: Objection to hearsay.

22 SOL. MOLINA: It's an exception under present sense
23 impression and excited utterance.

24 THE COURT: I need you to ask -- I didn't catch the
25 time frame.

1 BY SOL. MOLINA:

2 Q. Were you one of the first responders on scene?

3 A. Correct.

4 Q. And at the time that you spoke with this couple, had
5 much time passed?

6 A. No.

7 Q. Did they appear to still be under the stress of the
8 incident?

9 A. They did. They were still confused as to what had
10 occurred and everything.

11 Q. And what did they say?

12 A. Through translation, they advised that a male and
13 female had entered the residence and were with one of their
14 roommates. At which time the female stayed with the
15 roommate and the one male left the residence. They stayed
16 in the room at which point they all of a sudden started
17 hearing gunshots later on.

18 Q. And did they know who those people were?

19 A. They did not know who those people were.

20 Q. Do you know -- or about how old was this couple if you
21 had to guess?

22 A. I would say probably late 40s.

23 Q. Okay. And were they sleeping when it happened?

24 A. They just said they were in their bedroom. They didn't
25 indicate whether they were asleep or awake.

Cross-Examination of Staff Sgt. Scheemaker by Ms. Gibbs.

127

1 Q. Okay.

2 THE COURT: I have no further questions. Please answer
3 any the defense has.

4 MS. GIBBS: Just briefly.

5 - - - - -

6 CROSS-EXAMINATION

7 BY MS. GIBBS:

8 Q. Officer, you were one of the first people on the scene
9 as you stated?

10 A. Correct.

11 Q. And so you arrived to a very chaotic scene?

12 A. Yes.

13 Q. Okay. And this was about 3:00 something in the
14 morning. So it was extremely dark at this apartment
15 building, correct?

16 A. Correct.

17 Q. Okay. And y'all were using your flashlights and things
18 of that nature to be able to see?

19 A. Flashlights. And I believe there were streetlights and
20 stuff along the parking lot and everything.

21 Q. Okay. And I know initially, as you already testified,
22 y'all pulled everybody out of the house, put them in
23 handcuffs. And it was very -- you were yelling at them and
24 dragging them out of the house because you didn't know what
25 was going on, correct?

1 A. Correct.

2 Q. And at some point, I know you check-in with your -- I
3 believe it was Investigator Calore or your duty
4 investigator, correct?

5 A. Correct.

6 Q. Had to let him know what was going on?

7 A. Uh-huh.

8 Q. And the scene was so chaotic. I remember you told him
9 it makes no sense at all; nothing is making sense at this
10 point, but we are trying. Do you remember saying that,
11 something of that nature?

12 A. Probably.

13 Q. Okay. Because this was very confusing. You had
14 different people who do not speak English, right?

15 A. Correct.

16 Q. And you have the Chens, who they're the couple you were
17 just speaking about. And they spoke Chinese, correct?

18 A. Correct.

19 Q. In which you kind of ascertained they couldn't identify
20 who the shooter was, right?

21 A. Correct.

22 Q. Okay. And part of what y'all also did was you tried to
23 secure the scene, right?

24 A. Correct.

25 Q. So you go in the house, you get -- you help Yao out who

Direct Examination of Ms. Drummond by Sol. Molina

129

1 was injured. Got him out, right?

2 A. Yes.

3 Q. And then you did another sweep inside the home to make
4 sure nobody was in there, right?

5 A. Yes.

6 Q. Okay. And nobody else was in there?

7 A. No one else was in there.

8 Q. All right. And at that time, did you take any evidence
9 besides the gunshot residue kit?

10 A. I never took a GSR.

11 Q. Oh, you didn't?

12 A. No.

13 Q. Okay. So you didn't collect any evidence?

14 A. Correct.

15 Q. And you didn't take any pictures or anything?

16 A. Correct.

17 Q. Okay.

18 MS. GIBBS: I have no further questions at this time.

19 THE COURT: Any redirect?

20 SOL. MOLINA: No redirect.

21 THE COURT: You can step down.

22 THE WITNESS: Thank you.

23 SOL. MOLINA: State calls Natascia Drummond.

24 (Whereupon, the witness, NATASCIA DRUMMOND, was duly
25 sworn.)

1 THE CLERK: Please have a seat. Go ahead and state
2 your name and spell your last name for the record.

3 THE WITNESS: Natascia Drummond. Last name,
4 D-R-U-M-M-O-N-D.

5 . - - - -

6 DIRECT EXAMINATION

7 BY SOL. MOLINA:

8 Q. Good afternoon. Where were you living in July of 2021?

9 A. The Oaks, apartment 6.

10 Q. And that's at 400 William Hilton Parkway?

11 A. Yes.

12 Q. And who was living with you?

13 A. My mom and my stepdad.

14 Q. At the time in July of 2021, were you going to school
15 or anything?

16 A. Yes. I think I was attending TCL College and working
17 two jobs.

18 Q. And working two jobs?

19 THE COURT: Can I get you to pull your microphone a
20 little bit closer. Thank you.

21 Q. And I'm gonna take you to the night of July 5th,
22 morning of -- or July 4th, the morning of July 5, 2021.

23 Do you remember what you were doing that night?

24 A. I remember I had an assignment. My boyfriend at the
25 time was in the Navy. And usually I stay up late to do my

1 assignment. And I remember that night he was like go to
2 bed, and then when I wake up in the morning, I'll wake you
3 up and then you have to be there at 4:00 o'clock. And I
4 went to bed. When I went to bed, I remember hearing knocks
5 on the door. And then I got so scared, so I let my
6 mom -- at that time, it was a one-bedroom apartment. I was
7 living in the living room at the time. And then my mom
8 rushed out. She was naked. And I said somebody's knocking
9 at the door. And then she went and she was greeted by the
10 police officers.

11 Q. You were talking about where you were staying. Show
12 you State's Exhibit 5. So you were in unit number 6. And
13 you said you were staying in the living room. Is that where
14 your bed was?

15 A. Yes.

16 Q. And were you doing your assignment at that table?

17 A. Yes. Near the wall . . .

18 COURT REPORTER: I'm sorry, can you repeat that last
19 part.

20 A. So I was -- my computer would be where the bullet hit.
21 My computer was right against that wall.

22 Q. I'm gonna hand you what's been marked as State's
23 Exhibits 6, 7, 8, 9, 10 and 13. Can you take a look at
24 these pictures?

25 A. (Witness complies.)

1 Q. What are those pictures of, in general?

2 A. So that's where -- that's the living room. This is
3 where we lived.

4 Q. Okay. They're pictures of the apartment living room
5 that you were in?

6 A. Yes.

7 Q. And are they fair and accurate depictions of the living
8 room?

9 A. Yes.

10 SOL. MOLINA: State moves State's Exhibit 6, 7, 8, 10,
11 and 13 into evidence?

12 MS. GIBBS: Without objection.

13 THE COURT: They are admitted.

14 SOL. MOLINA: And State's Exhibit 9 into evidence?

15 MS. GIBBS: Without objection.

16 SOL. MOLINA: And permission to publish?

17 THE COURT: Yes, ma'am.

18 (State's Exhibit Nos. 6, 7, 8, 9, 10, and 13 were
19 received into evidence.)

20 Q. So I'm gonna show the jury State's Exhibit -- it's
21 Exhibit 6. And you said this was the inside of your
22 apartment?

23 A. Yes.

24 Q. And this was the table that you are working at?

25 A. Yes.

1 Q. The one in State's Exhibit 6 with the chairs?

2 A. Yes.

3 Q. Prior to July 5, 2021, were there bullet holes in your
4 walls?

5 A. No, ma'am.

6 Q. And where were you -- where was your mother and your
7 stepfather sleeping?

8 A. So they sleep in the room, that's the room that comes
9 with the . . .

10 Q. Would it be this room?

11 A. Yes. The bedroom. So they lived in the bedroom. And
12 at the time, I lived in the living room.

13 Q. Okay. Do you remember hearing any shots fired?

14 A. No, ma'am. Not that I recall.

15 Q. You just woke up to the police in your living room or
16 at your door?

17 A. Yes.

18 SOL. MOLINA: I don't have any further questions.

19 Please answer any the defense has.

20 MS. GIBBS: Just briefly.

21 - - - - -

22 CROSS-EXAMINATION

23 BY MS. GIBBS:

24 Q. So you don't know who fired those shots?

25 A. No, ma'am.

1 MS. GIBBS: Thank you. I have no further questions.

2 SOL. MOLINA: Judge, may we approach?

3 THE COURT: Sure.

4 (A bench conference was held off the record and out of
5 the hearing of the jury panel.)

6 THE COURT: Okay. Ladies and gentlemen, we're gonna
7 use this as a stopping point for the day. We have some
8 witnesses who are gonna require the use of an interpreter,
9 and we've got the interpreters scheduled for tomorrow. So
10 I'm gonna go ahead and dismiss you for the day. We do have
11 some legal matters that we'll need to address in the
12 morning, and so I'm gonna have you come back at 10:00.
13 Again, I try to avoid you having long periods of time where
14 you're just waiting on us. So, again, if you'll be back and
15 ready to move forward at 10:00 a.m. If you'll get here a
16 few minutes before that so that when 10:00 o'clock rolls
17 around, we'll be ready to roll about at that time.

18 Once again, please don't discuss this case with anyone
19 overnight. Don't look at any news reports, anything on the
20 Internet, anything on social media pertaining to this case.
21 Have a good night.

22 (The jury is excused for the day and exits the
23 courtroom at 3:35 p.m.)

24 THE COURT: Okay. So you will email me the unredacted
25 jail calls along with your notes?

1 SOL. MOLINA: Of what's already been redacted for
2 exhibit purposes.

3 THE COURT: Okay. And I will listen to that so I can
4 give you a ruling in the morning. Anything else that we
5 need to address?

6 MS. GIBBS: Nothing from the Defense.

7 SOL. MOLINA: Nothing from the State.

8 THE COURT: Will be at recess until tomorrow.

9 (Brief recess.)

10 THE COURT: Okay. So we're back on the record. One of
11 the bailiffs just stopped me and said that one of the jurors
12 had indicated they thought they knew someone in the
13 courtroom and had some level of discomfort. So I was gonna
14 bring the juror in and question the juror about what the
15 situation is.

16 (Brief pause.)

17 BAILIFF 1: Just come in here and face the Judge,
18 please.

19 THE COURT: First of all, I want to tell you that
20 you're not in any trouble. We just want to hear from you
21 what the situation is. So tell me your juror number?

22 JUROR: 366.

23 THE COURT: And you realized that you recognized
24 somebody?

25 JUROR: Yes. Yes. Back in the courtroom, on the

1 defendant's side, a male, Hispanic descent. I'm the coach
2 at Hilton Head, football, Middle School. I'm the coach of
3 the softball varsity team. The gentleman in the back, I
4 don't know the affiliations to the defendant, but I've seen
5 an individual in my neighborhood. I live in a gated
6 community where this crime occurred less than 1 mile from.
7 I guarantee I've seen this individual a bunch of times. And
8 in the event that he's related to the defendant, if we were
9 to come to the conclusion that he was guilty or not guilty,
10 I'm too close to that. I've seen the individual numerous
11 times.

12 THE COURT: Well, let me see if I can first -- do y'all
13 know who you're referring to a young man who was seated in
14 the back of the courtroom?

15 MS. GIBBS: I believe we actually asked. We didn't
16 know who he was either. And he said his name was John Paul
17 and wanted to watch the trial. I'm not sure who it is.

18 THE COURT: Okay. He's not one of the State's
19 witnesses?

20 SOL. MOLINA: He is not one of the State's witnesses.
21 I don't know who he is.

22 THE COURT: And he's not a defense witness. He's not
23 on our witness list.

24 MS. GIBBS: No, Your Honor. Yeah, we asked because we
25 did not know who he was.

1 BAILIFF 1: I think Rhett talked to him. His phone
2 went off.

3 THE COURT: Okay.

4 BAILIFF 1: And the deputy that was in the back took
5 him out in the hall. Now, I don't know ---

6 BAILIFF 2: Rhett's on his way.

7 THE COURT: Okay. Let's just ask him. If you don't
8 mind ---

9 JUROR: I don't mind doing my civic duty, but not at
10 the expense . . .

11 THE COURT: Just want to find out if he is in fact is
12 related to this case in some way.

13 JUROR: And usually in the court I'm under the
14 assumption we go around the room and state why we're here.
15 I'm from New York. So I have some unfamiliarity with the
16 court proceedings. But anything that I've been a part of in
17 the past, everybody in the room would -- no witnesses are
18 allowed to come into the courtroom prior to them
19 being -- supposed to speak, which is very surprising
20 somebody . . .

21 THE COURT: Well, the witnesses are sequestered until
22 after they testify. Once they've testified, they're
23 allowed. Our courtrooms in this country are open to the
24 public.

25 JUROR: I understand.

1 THE COURT: So anybody can come in, sir.

2 JUROR: I understand. But the crime also occurred less
3 than a mile from my house.

4 THE COURT: I understand. And tell me your name, sir?

5 CAPTAIN CALHOUN: I'm Captain Calhoun of the Sheriff's
6 Office.

7 THE COURT: And your name, sir?

8 STAFF SGT. PARNELL: Rhett Parnell, Staff
9 Sergeant Parnell.

10 THE COURT: And do I understand that you had some
11 communication with the young man who was sitting in the back
12 here?

13 SGT. PARNELL: I did. Well, his phone went off. I
14 just escorted him out, told him to turn it off.

15 THE COURT: Okay. So that's the only interaction you
16 had with him?

17 SGT. PARNELL: Yes, ma'am.

18 THE COURT: Okay. Well, sir, I guess let me ask do you
19 feel that -- I don't know who he is. I don't know if he's
20 just come in off the street. He's not a witness in this
21 case. He will not be taking the stand. I don't know if he
22 has any connection to anybody in this case. Does that make
23 you feel better?

24 JUROR: No. Because it doesn't make a whole lot of
25 sense to me. Somebody randomly comes to watch a crime that

1 occurred in Hilton Head, just wants to see it. Somebody
2 that would like to see it live. So it doesn't make sense,
3 no.

4 THE COURT: So you're not comfortable serving?

5 JUROR: I'm not comfortable serving.

6 THE COURT: Have you had any discussion about anything
7 you brought to the bailiff's attention with your fellow
8 jurors?

9 JUROR: No, I have not.

10 THE COURT: Okay. Let me just confirm with the
11 attorneys.

12 JUROR: Sure.

13 THE COURT: If you'll just wait in the hallway.

14 JUROR: You bet. And I apologize.

15 THE COURT: No. That's fine. You did the exact right
16 thing and let us know.

17 JUROR: Thank you.

18 THE COURT: Thank you.

19 (Juror 366 exits the courtroom at 3:47 p.m.)

20 THE COURT: So I'd like to excuse the juror.

21 MS. GIBBS: I would also like him to be excused,
22 Your Honor.

23 THE COURT: The State, I just want to give y'all the
24 chance to tell me whatever you want to tell me.

25 SOL. MOLINA: No objection to him being excused.

1 THE COURT: Okay. If y'all don't mind, I will just let
2 the bailiffs know that he can be excused. I'm not gonna
3 call him back in and unless y'all want me to.

4 SOL. MOLINA: No, ma'am.

5 BAILIFF 1: Okay. Yes, Your Honor.

6 THE COURT: Have the other jurors left?

7 BAILIFF 1: Yes, ma'am.

8 THE COURT: Don't let him go back in the jury room.
9 But if you want to go ahead and excuse him. If everybody
10 else is gone, that's fine.

11 BAILIFF 1: Yes, ma'am. Thank you.

12 THE COURT: Thank you.

13 Okay. we've got two jurors. So we will -- I'm gonna
14 put the alternate juror 1 and alternate juror 2 on a sheet
15 of paper. We can randomly select what alternate is going to
16 take place. I have lost my pen.

17 Looks like we'll have juror number 265 and juror
18 number 107 are our two alternates. This is my very
19 scientific method of us picking. I put the juror numbers on
20 a sheet of paper. I'm shuffling it in my hands. Madam
21 Clerk, if you want to come pick one. This will be our
22 juror, our twelfth juror.

23 THE CLERK: 107.

24 THE COURT: Okay. So 107. Our alternate 107 will now
25 be our juror, and the remaining alternate will remain the

1 alternate, assuming they all appear tomorrow.

2 Okay. We'll will at recess until 9:30.

3 MS. GIBBS: Thank you, Judge.

4 SOL. MOLINA: Thank you, Your Honor.

5 (The trial proceedings concluded for the day at
6 3:50 p.m.)

7 - - - - -

8 (The trial proceedings resumed Tuesday, December 17,
9 2024, at 9:55 a.m.)

10 THE COURT: Okay. Just a couple of housekeeping things
11 before we get started. I don't know if I've heard yet if
12 all the jurors are here. Hopefully, they are. I guess
13 we're still a little bit ahead of schedule. So we've added
14 juror 107 as our twelfth juror.

15 The bailiff did ask this morning -- one of the jurors
16 asked if they could take notes. My general feeling is I let
17 them take notes because I'm taking notes, like we're all
18 taking notes. It seems unfair to not allow them to take
19 notes. But I'll give them my standard instruction as to not
20 relying on anyone else's notes over their own recollection,
21 that they should all rely on their own recollection, not
22 just rely on the person who's taking notes.

23 Okay. I have listened to all of the audio recordings,
24 and I have watched the one that is the video. And then I
25 started looking for the redactions in an email, and I knew I

1 had seen the redactions, but I thought I had seen it in an
2 email. And I just see right here in front of me that it was
3 actually attached along with the videos.

4 SOL. MOLINA: Judge, I also made an exhibit of
5 everything that I sent to you to make a Court's exhibit.

6 THE COURT: Okay. You can mark that as Court's
7 Exhibit No. 1.

8 (Court's Exhibit No. 1 was marked for identification.)

9 THE COURT: So my ruling with respect to the jail calls
10 is that I do find that they're admissible subject to the
11 redactions. So I have not been through all the redactions.
12 But, of course, anything pertaining to other offenses to
13 being in jail, basically only the relevant portions coming
14 in that pertain to her testimony or what she's gonna -- what
15 he's instructing her to do as far as not testifying, going
16 to the public defender, and telling her she wants to drop
17 the charges, what she is to say, basically limited to that
18 portion.

19 SOL. MOLINA: So only when he's telling her what to
20 say? Because there are some things that I didn't redact on
21 the calls for other reasons than, you know, him telling her
22 what to do. I kept in the stuff about their relationship
23 and the tattoos, because she testified yesterday that they
24 don't have any kind of relationship. She didn't even really
25 know him. And so she denied a relationship and any memory

1 of the incident and that she wasn't coached and she doesn't
2 know him as Kenny. So the stuff related to his tattoo,
3 getting the tattoo that she loves, gives him money, misses
4 him, wants to protect her, keep her mom from finding out,
5 where they have casual conversation about, you know, how
6 he's doing and sex I think is all evidence to impeach the
7 testimony that she said, but also to show her evidence of
8 bias under rule 608(c). It's relevant to the case because
9 she's saying there was no relationship. And, clearly, they
10 have some kind of relationship that's closer than what she
11 indicated yesterday.

12 As far as talking about money and his sister, that kind
13 of stuff, I think that portion is relevant to connect some
14 of the dots when we see him on one jail call -- or one video
15 call talking about these things, then he goes on to somebody
16 else's account and it's kind of a continuation. And they're
17 talking about the same things to show that these are in fact
18 the same people that we just saw talking for authentication
19 purposes.

20 And I have redacted from what I could find: references
21 to a drug use, to being in jail, to previous incidents in
22 previous jails, how long he's been in there, possible
23 punishments, court dates, him getting a new attorney. I
24 clicked the beginning of the video so that you don't see him
25 walking up, you know, in the full detention center uniform,

1 it's just when he's sitting there, you know, talking about
2 what it's like in there, water and tablets and bond
3 mentions. And I've sent those redactions to the Defense and
4 I did not get anything back about any additional time stamps
5 or what she wanted out of them.

6 THE COURT: Let me ask: So for -- I'm looking at your
7 redactions from 82868040 on the audio recording, the
8 "hopefully out soon," you're redacting that?

9 SOL. MOLINA: That part has been cut out, yes.

10 THE COURT: And so also redacting parts about fighting?

11 SOL. MOLINA: Yes. What's kept in is he's "trying to
12 be chill, but if they mess with me, they got to go." But
13 nothing about "I've been in too many fights; haven't been in
14 too many fights since I've been in Beaufort."

15 MS. GIBBS: And, Judge, that is exactly why I wanted
16 you to listen to the calls first before I let those specific
17 redactions -- because I did let the State know I would have
18 objections to the already redacted versions. And I would
19 agree with your original ruling that I think the only
20 relevant issues and statements that should be part of the
21 calls are what's relevant to the case. I think everything
22 else is not relevant. I think it's prejudicial. I think
23 it's confusion -- confusing to the jury. I don't see why
24 they need to hear, you know, about sex and money on the
25 books and, you know, owing money, people owing him money.

1 You know, I can go through because I've highlighted
2 everything, each call that I think pertains to the case.
3 You know, I don't think I have an argument against with what
4 he's telling her to say, her testimony or anything to do
5 with the case. But I think everything else is extremely
6 prejudicial and outweighs any probative value. I think it
7 gets into character evidence. You know, some of these
8 conversations don't put him in a good light and it has
9 nothing to do with her testimony in this case. And so I
10 would agree with what you rule that I think -- like that
11 video visit, I don't think anything should come in on that
12 entire video visit. There's one line in the entire visit,
13 and it's a line she says. It's something about maybe the
14 State picked up or something. You know, it's just one line
15 that she said that doesn't have anything to do with the
16 case. And I just think it's misleading to the jury. And,
17 you know, 402, 403, 404, I think it hits all of those rules.
18 And it's prejudicial and not relevant. And I think it
19 should just be related to the case, what comes in.

20 SOL. MOLINA: It is related to the case because she
21 denied having a relationship or friendship or anything with
22 him. You don't have casual conversations with people that
23 you have no -- in the detention center that you have no kind
24 of connection to. It goes to her bias of why she got up
25 there and couldn't remember anything that I asked her.

1 Because she's putting money on his books. She loves him.
2 She's -- they're gonna get -- they're gonna have a baby.
3 They're gonna be together. You know, she wants to keep her
4 mom from finding out what happened. It goes to his
5 consciousness of guilt in telling her what to say and her
6 motive to misrepresent. Because if he gets out, they're
7 gonna have a baby and they're gonna be together and they're
8 gonna be in love.

9 It's, you know, evidence of her bias and impeaching
10 her. And, you know, as far as the tattoo and him telling
11 her put money on my books, you know how to do that, it goes
12 to the intent of this case and the common scheme or plan.
13 Because when they're talking about the sex and putting money
14 on my books, they're not talking about something that has
15 happened; it's a plan to, you know, if you need to get
16 money, you know how to do it. Which is what's happening in
17 this case. And, you know, the tattooing on her so that
18 people know and know, you know, that it's his, it's all
19 relevant to this case and to his malice and consciousness of
20 guilt and her motive to represent and her bias and to
21 impeach her testimony. And, certainly, talking about, you
22 know, money on the books and stuff like that is not more
23 prejudicial than probative.

24 THE COURT: If he was charged with trafficking, I think
25 that would be a closer call. But this is not a trafficking

1 case. It's an attempted murder case. And I think this talk
2 of going out and, you know, earning money is very
3 prejudicial, and I don't know how probative it is to whether
4 or not ---

5 SOL. MOLINA: It goes to their relationship. She's
6 under the impression that they are in a romantic
7 relationship. It's the State's position that he's
8 manipulating her. And it's a business relationship on his
9 end. He's still controlling her and telling her what to do.
10 It's all explains the context of this attempted murder and
11 assault and battery of a high and aggravated nature.

12 MS. GIBBS: And then, Judge, just briefly. I do
13 believe the fact that the jury is gonna hear that they are
14 talking and having conversations is enough to show that they
15 have a relationship. Because they're talking on jail phones
16 to each other. And also, you know, the manipulation aspect
17 that the Solicitor wants to get out can be accomplished by
18 putting in the parts were he's talking about telling her
19 what to say, not going to the Solicitor and stuff, that's
20 relevant to this case. I think that accomplishes all of
21 that. I think everything else is extra. Putting money on
22 books, that's not a common scheme or plan. That's just, you
23 know, put money on my books. I think -- and, you know,
24 there are some hearsay implications I think that she says.
25 And I think anything that has to do with the case is the

1 only thing that's relevant and the jury should hear.

2 SOL. MOLINA: Money on his books goes to her bias. She
3 has also a financial interest. She is giving him money.

4 THE COURT: So not I'm gonna allow anything in respect
5 to him saying you know how to -- you know how to earn money,
6 that she should go out and come up with this money. I think
7 there's -- I don't have an objection to him saying I want
8 you to put money on my books or, you know, give my sister
9 money to put on my books. But nothing with respect to, you
10 know, she knows how -- she knows how to earn money, she
11 knows how to get money.

12 MS. GIBBS: And what about -- I mean, there are some
13 stuff about, you know, the sex and the tattoos and when he's
14 talking about -- I mean, there's one part where -- I think
15 Gary can confirm -- he might be talking about a drug deal or
16 something of that nature.

17 THE COURT: Well, nothing pertaining to drug use.

18 SOL. MOLINA: And he says people owe me money. It
19 could be for anything.

20 MS. GIBBS: He says he's got mad people that owes him
21 money.

22 SOL. MOLINA: Mad people that owe him money, as in a
23 lot of people that owe him money.

24 THE COURT: Yeah. I don't think anything pertaining to
25 people owing him money would be relevant. Everything the

1 State just talked about redacting as far as drug use, being
2 in jail, getting a new attorney, bond reduction, previous
3 incidents, how long he's been there, court dates, again,
4 stuff about people owing him money or about her getting
5 money for him by some illicit means, I do think -- I'm gonna
6 allow in some amount of just general chatter between them
7 because I do think what their relationship is relevant given
8 her testimony that they have no relationship. In the video,
9 I don't recall a whole lot that was relevant to her
10 testimony except he does say something to that effect don't
11 talk about this -- if I'm remembering correctly -- don't
12 talk about this here on the call, do it later on a separate
13 account.

14 SOL. MOLINA: The video also talks about putting
15 money on -- it acknowledges that she has a different hair
16 color now than she did, you know. The tattoo, money on the
17 books, guy bitter, don't talk about my case when we talk.
18 If he's gone, there should be no case. Then they talk about
19 going on a date. The drug stuff is out. Name and tattoo,
20 don't give my sister money. Money on my books. Tattoo.
21 Redact the stuff about Jasper jail. He calls her mine,
22 talks about sex and talk about the tattoo and Kenny Cortes.
23 Which she denied to me knowing him as Kenny Cortes, she
24 admitted it on cross. She's allowed to hook up with people
25 as long as he puts money on her books.

1 I would -- there is more in the video call, and some of
2 it is necessary to connect him and her to the jail call made
3 on somebody else's account.

4 THE COURT: Yeah. I think where he talks about "don't
5 talk about it on here, I'll call you in a few minutes on a
6 different account," that is admissible. The stuff about
7 going on a date, that is admissible. The stuff about how he
8 is going to impregnate her when he gets out, that is
9 admissible. The stuff about the tattoo. I'm excluding the
10 stuff about allowing her to hook up with other guys to get
11 money. I think that's highly prejudicial and has very
12 little probative value in this case.

13 SOL. MOLINA: I understand your ruling. I would just
14 ask if the Defense could also provide time stamps of what
15 they think falls within the ruling.

16 MS. GIBBS: And I'm happy to look. I did not do -- I
17 just basically wrote my little transcript and kind of
18 highlighted, you know, just the portions that I thought.

19 THE COURT: So maybe when we break at lunch. I'm
20 assuming that these couple of witnesses that we have, that
21 we have translators for, will go first.

22 SOL. MOLINA: Yes, ma'am.

23 THE COURT: And that's gonna be a little bit of a
24 lengthy process. Move a little bit slower.

25 SOL. MOLINA: Yeah. I would assume that one will take

1 longer. I was planning on SLED and the detention center
2 possibly going tomorrow. SLED is coming tomorrow. They had
3 another trial in Greenwood. So we have today to do the
4 redactions from, you know, the one from DC today. And for
5 scheduling purposes, I have a witness coming at
6 4:00 o'clock. It's a doctor that had surgeries and moved
7 patients around to be here, and that's why he is a special
8 time.

9 THE COURT: Sure. Anything else before we bring in the
10 jury?

11 SOL. MOLINA: We may have a break -- I mean, I guess we
12 can take it up when the Solicitor calls Officer Cushman.
13 It's my understanding she intends to introduce Olivia's
14 recorded statement through -- that was taken at the hospital
15 on the officer's body-worn camera. I would have an
16 objection to that statement. But I'm happy if we can take
17 it up when they call him as a witness.

18 THE COURT: Okay. Let's go ahead and bring the jury
19 in. I just hate to leave them sitting for too long.

20 (Brief pause.)

21 THE COURT: The jurors have selected number 117 as the
22 foreperson.

23 (Brief pause.)

24 (The jury enters the courtroom at 10:19 a.m.)

25 THE COURT: Good morning, everyone. Thank you again

1 for being here promptly. We appreciate your punctuality.
2 Just a couple of housekeeping matters before we resume the
3 testimony. I have excused one of our jurors from serving.
4 So juror number 107 will now be our twelfth juror, which
5 still leaves us one alternate juror remaining. I understand
6 that you all have selected juror number 117 as the
7 foreperson. And whoever that is, if you could just raise
8 your hand.

9 (Juror complies.)

10 THE COURT: Great. Thank you.

11 And I also understand that you all have some question
12 about taking notes. I do not have any objection to taking
13 notes. I'm taking notes. You see the attorneys taking
14 notes. It seems unfair that all of us be allowed to take
15 notes and you not be allowed to take notes. I do have to
16 caution you that if you are not taking notes, that's fine,
17 too, but I don't want you to rely on the memory of the
18 person who is taking notes over your own recollection of the
19 testimony.

20 So sometimes there -- a tendency to think, well, I
21 don't have to pay as close attention because someone else is
22 taking notes. Again, you should rely on your recollection
23 of the testimony rather than relying on someone else's notes
24 about what the testimony was. So with that, you're welcome
25 to take notes. And I will turn it over to the State to

1 resume our testimony.

2 SOL. MOLINA: Thank you. State calls Yao Ming Zhang.

3 (Whereupon, the Interpreter, JIANHUA TAN, was duly
4 sworn to interpret from English to Chinese and from
5 Chinese to English.)

6 (Whereupon, the witness, YAO MING ZHANG, was duly
7 sworn.)

8 THER CLERK: Please state your name.

9 THE WITNESS: My name is Yao Ming Zhang.

10 (Brief pause.)

11 THE COURT: And can I get your name, ma'am?

12 INTERPRETER: My name is Jianhua, J-I-A-N-H-U-A, last
13 name Tan, T-A-N.

14 - - - - -

15 DIRECT EXAMINATION

16 BY SOL. MOLINA:

17 Q. Good morning. Do you also go by Jack sometimes?

18 A. Yes. My English name is Jack.

19 Q. Where were you living in July of 2021?

20 A. I was working in a restaurant and living in a dorm
21 called Oaks Apartment.

22 Q. And what restaurant were you working at?

23 A. Asian Bistro.

24 Q. How often were you working?

25 A. Six days a week.

1 Q. Does your family live with you?

2 A. No. Just by myself. Because I work here, the boss
3 provided the living, the living space.

4 Q. Were there other people that lived in the apartment
5 with you?

6 A. Yes. There was another couple, a Chinese couple --
7 Chinese couple and a Mexican.

8 Q. A Mexican male?

9 A. Male.

10 Q. And I'm gonna show you what's been previously marked as
11 State's Exhibit 5. If you could, could you tell us which
12 bedroom was yours?

13 A. I live here. The Mexican male here. That's where the
14 Chinese couple lives.

15 Q. So the Chinese couple was in this bedroom, you're in
16 the first bedroom, the Mexican male is in the second
17 bedroom?

18 A. Yes.

19 Q. And y'all were all home the early morning of July 5,
20 2021?

21 A. Yes.

22 Q. And what were you -- was anybody else there that night?

23 A. No. Just the four of us.

24 Q. What time did you go to bed that night? Do you
25 remember?

1 A. Around 10:30 that night.

2 Q. And at some point in the early morning of July 5, 2021,
3 did you wake up?

4 A. I was sound asleep. But then around 2:30 and
5 3:00 o'clock, early morning, there was gunshot, the sound of
6 gunshot, and a bullet came into my room.

7 Q. When you heard the gunshots, where in your room were
8 you?

9 A. I was sleeping in my bed.

10 Q. Around 2:30 or 3:00, did you hear anybody else in the
11 apartment?

12 A. I heard somebody. A male and female were screaming.

13 Q. And then how long after that was there gunfire?

14 INTERPRETER: Could you clarify, please?

15 Q. Was the screaming close in time to when you heard the
16 shots fired?

17 A. It was like it happened at the same time. They were
18 screaming, and then I heard the bullet that came into my
19 room.

20 Q. Did you see anybody with a gun that night?

21 A. No.

22 Q. After you were shot, what happened?

23 A. I felt the bullet was hitting my knee and it hurt a
24 lot. And because of the pain was so much that I rolled onto
25 my bed.

1 Q. Did police come to the apartment?

2 A. Yes. Then two police officers came in and helped me
3 get up and walk me out.

4 Q. And were you taken to the hospital?

5 A. Yes. The ambulance took me to the ER in the Savannah
6 Hospital.

7 Q. What treatment did your knee require?

8 A. They had to stop the bleeding, and then they told me to
9 follow up with my family doctor and to have surgery.

10 Q. Did you have surgery two days later?

11 A. Yes. I had surgery a few days later. But by that
12 time, my leg was so swollen. It was one pain or others. So
13 swollen because the bullet was still inside of my knee.

14 Q. Okay. I'm gonna show you what's been marked as State's
15 Exhibits 11 and 12. And can you look at those and tell me
16 if you recognize those?

17 A. Yes. This is my leg where it got the bullet shot.
18 This is the X-ray showing the bullet.

19 Q. Did you take these pictures?

20 A. Yes. Before I had surgery, I took the picture myself.
21 And also while in the ER, I took the picture when I was in
22 the ER.

23 Q. Okay. And are they fair and accurate representations
24 of how your knee looked?

25 A. Yes. It was exactly like that.

1 SOL. MOLINA: State moves State' 11 and 12 into
2 evidence.

3 COURT REPORTER: Without objection.

4 THE COURT: They are admitted.

5 (State's Exhibit Nos. 11 and 12 were received into
6 evidence.)

7 SOL. MOLINA: And permission to publish?

8 THE COURT: And, I'm sorry, you said 11 and 12?

9 SOL. MOLINA: Yes, ma'am.

10 THE COURT: I thought we had 6 through 13 yesterday.
11 Did I just get the numbers wrong?

12 SOL. MOLINA: I skipped 11 and 12 yesterday.

13 BY SOL. MOLINA:

14 Q. And is this the inside or outside of your knee?

15 A. Outside of my knee and the scar is still there.

16 Q. And you still have a scar where that wound is?

17 A. Yes. Where the bullet went in and where the doctor
18 took the bullet out is where the scar is.

19 Q. And I'm gonna show you State's Exhibit 12. So if we
20 orient it the same way as that other picture, that is the
21 outside of your knee with the bullet in it?

22 A. Yes. That is what exactly showed when I went to the ER
23 when they did an X-ray.

24 Q. After you had surgery, were you able to walk and move
25 around?

1 A. No. I stayed home and rested and recovered for a
2 month.

3 Q. And prior to being shot, you didn't hear any other
4 noises going on?

5 A. No. I was sound asleep because I worked in a
6 restaurant where I was very tired that day. So I was sound
7 sleeping and didn't hear anything until the screaming, and
8 the bullet came in about the same time.

9 Q. And you lived in unit 4 of the Oaks Apartment?

10 A. That's correct.

11 SOL. MOLINA: I have no further questions. Please
12 answer any of that the Defense has.

13 COURT REPORTER: No questions for this witness.

14 THE COURT: Thank you. You can step down.

15 SOL. MOLINA: State calls Faquin Hernandez Cruz.

16 (Whereupon, the Interpreter, BEVERLY NEIDERHISER, was
17 duly sworn to interpret from English to Spanish and
18 from Spanish to English.)

19 (Whereupon, the witness, FAQUIN HERNANDEZ CRUZ, was
20 duly sworn.)

21 THE COURT: Can I get your name, ma'am?

22 INTERPRETER: Beverly Neiderhiser.

23 THE COURT: Can you spell your last name?

24 INTERPRETER: N-E-I-D-E-R-H-I-S-E-R.

25 THE COURT: H-I-S-E-R?

Direct Examination of Mr. Cruz by Sol. Molina

159

1 INTERPRETER: Yes.

2 THE COURT: Thank you.

3 - - - - -

4 DIRECT EXAMINATION

5 BY SOL. MOLINA:

6 Q. Good morning. Where do you live?

7 A. I live in the apartment in the Oaks.

8 Q. Were you living there beyond July 5th of 2021?

9 A. Yes.

10 Q. Do you live in a different apartment in the complex
11 now?

12 A. Now, I do.

13 Q. In July of 2021, who lived with you in the apartment?

14 A. There was Mr. Jack and an Asian couple, an Asian man
15 with his wife.

16 Q. To be clear, there was only one Asian couple?

17 A. Yes. One pair or couple.

18 Q. What had you done earlier in the day of July 4, 2021?

19 A. I was working.

20 Q. Where do you work?

21 A. In Okko Insurance [sic]. In the restaurant Loco(ph).
22 Okko.

23 Q. Is the restaurant called Okko?

24 A. Yes.

25 Q. Is it an Asian restaurant?

1 A. I'm sorry, I'm so nervous. Yes, it's called --

2 INTERPRETER: The interpreter would like him to repeat.

3 A. Asia Roma Restaurant.

4 Q. Okay. What is your job at the restaurant?

5 A. I work as a busboy.

6 Q. In July of 2021, how often were you working?

7 A. I worked as a busboy. I always worked as a busboy.

8 Q. Did you work every day?

9 A. Yes. I worked six days a week.

10 Q. Did you work long hours on the days you worked?

11 A. Yes. I work for 11 hours a day.

12 Q. When you got home from work on July 4, 2021, what did
13 you do?

14 A. I got home. I took a shower. And I was looking at
15 things on the phone with my friends.

16 Q. Did you eat or drink anything?

17 A. I had four beers. I was having some beers.

18 Q. And while having beers, were you talking anybody?

19 A. Yes.

20 Q. At some point that night, did you invite anybody over
21 to your apartment?

22 A. Yes.

23 Q. Okay. Can you tell us about that?

24 A. I invited a girl to the house. I also had a friend.

25 Q. You invited another friend over?

1 A. No. He wasn't a friend. I knew him on Facebook, and
2 he brought a girl to the house.

3 Q. You arranged with this person on Facebook to bring this
4 girl over?

5 A. No. I just told him to bring the girl and that was it.

6 Q. Did the girl come over?

7 A. Yes.

8 Q. How did she come to your house?

9 A. A workmate was driving the car and brought her.

10 Q. Somebody brought her over to the house?

11 A. Yes. Yes.

12 Q. And what did y'all do at the house?

13 A. We didn't do anything. We just came into my room and
14 we were talking for a while.

15 Q. Do you remember talking to her in the kitchen?

16 A. No, I don't remember that. I don't remember if I
17 talked to her in the kitchen.

18 Q. Do you remember if she left at some point?

19 A. I don't remember if she left at some point.

20 Q. Do you remember if she left and came back?

21 A. I don't remember.

22 Q. Was she there to have sex with you?

23 A. Yes.

24 Q. And at some point did you agree to give her money for
25 sex?

1 A. Yes.

2 Q. What happened after -- you brought us to being in your
3 room. What happened after y'all were in your room?

4 A. We talked a little bit. And she wanted more money, but
5 I wasn't in agreement with that.

6 Q. What happened after that?

7 A. She grabbed her phone and dialed, I think, to the
8 person who -- to the guy who brought her to the house.

9 Q. What happened after that?

10 A. Then there was knocking on the door and I went to open
11 it, and I saw that the man was there with a gun, and I
12 pushed the door shut to lock it.

13 Q. What happened after that?

14 A. So then the shots started and I was scared, so I ran.
15 And I ran to the room where the couple was on the floor.

16 Q. Where was the girl at that point?

17 A. She was in my room.

18 Q. At some point did she leave your apartment?

19 A. Yes. When the gunshots stopped, she left because I was
20 with the other roommate.

21 Q. And was she shot when she left?

22 A. Yes.

23 Q. Did you shoot her?

24 A. No.

25 Q. Initially, you denied that she was there for sexual

1 services. Why did you initially deny that to the police?

2 A. At that moment I was really scared, and I didn't know
3 what to answer.

4 Q. Was the girl free to leave the apartment at any point?

5 A. Yes. She was free.

6 Q. And did you lock the door to keep the man out?

7 A. Yes.

8 Q. And is that because you saw him with a gun?

9 A. Yes.

10 Q. At any point did you threaten the girl?

11 A. No.

12 Q. At any point did you have a knife on the girl?

13 A. No.

14 Q. Do you recall picking up a knife at any point that
15 night?

16 A. I don't remember.

17 Q. Do you remember about how long she was there before
18 there were shots fired?

19 A. Like between 25 and 30 minutes.

20 SOL. MOLINA: I have no further questions. Please
21 answer any that the Defense has.

22 MS. GIBBS: Thank you.

23 - - - - -

24 CROSS-EXAMINATION

25 BY MS. GIBBS:

1 Q. Good morning. Do you remember talking to officers to
2 give a statement on July 28th of 2021?

3 A. Yes, I think so. I remember I went to an office on the
4 Island, I believe.

5 Q. Yes. And do you remember telling them that you
6 actually -- you called a girl named Madeline that you've
7 been talking to on Facebook for about a week?

8 A. I didn't say Marilyn, Madeline. I didn't say a name.
9 I just said some friends.

10 Q. But you said you were talking to a girl on Facebook and
11 then you were talking to her on the phone?

12 A. Yes, I talked to her. But I didn't mention Marilyn, I
13 just said it was a friend. That's all.

14 Q. Okay. And you invited her over, right?

15 A. Yes.

16 Q. And you said when she got there, you talked about life
17 and that you're both single and lonely?

18 A. No.

19 Q. You don't remember telling the investigators that?

20 A. I don't remember telling the officers that.

21 Q. Do you remember telling the officers that you paid her
22 \$200 to help her with rent?

23 A. Yes. I offered some money for her because I didn't --

24 INTERPRETER: Interpreter would like you to repeat the
25 end of that.

1 A. I gave her money to pay the rent because I couldn't
2 afford to pay a lot of money for sex with her.

3 Q. Do you remember telling the officers that the shots
4 happened after you went into the kitchen to get water and
5 you didn't see anybody or open the door?

6 A. No.

7 Q. Do you remember saying that you thought this was a
8 robbery?

9 A. Yes.

10 Q. Do you remember the officers telling you they thought
11 you were not telling the truth?

12 A. No.

13 Q. Do you remember that you admitted drinking five beers
14 and you also had drinks at the restaurant at work?

15 A. Yes. I had four beers. I remember having four beers
16 after getting off work.

17 Q. Do you remember calling her your girlfriend?

18 A. No.

19 Q. Did you talk to the Solicitor about your testimony
20 before you got on the stand today?

21 A. No.

22 Q. You never told the officers that you paid for sex; your
23 final statement was that you gave her money for rent?

24 A. Yes. I don't remember ever telling the officer that I
25 paid for sex. But that's the reason she was in the house

1 was for sex.

2 Q. And do you remember you told the officers you never
3 talked to anyone at the door or had an argument with
4 anybody?

5 A. No, I don't remember. I don't remember that really.

6 Q. And you don't remember that you never mentioned you saw
7 a gun until today?

8 A. No. I do remember telling the officer that he had a
9 gun in his hand when I closed the door.

10 MS. GIBBS: I have no further questions.

11 THE COURT: Redirect?

12 - - - - -

13 REDIRECT EXAMINATION

14 BY SOL. MOLINA:

15 Q. Do you remember speaking with me at some point?

16 A. No.

17 Q. Why did you think it was a robbery?

18 A. Because she was asking me for a lot of money and I
19 thought this is not normal. Somebody doesn't ask for more
20 money.

21 Q. And do you remember telling officers that you were
22 ashamed to admit that you were paying for sex?

23 A. Yes.

24 SOL. MOLINA: No further questions.

25 MS. GIBBS: Beg the Court's indulgence.

1 - - - - -

2 RE CROSS-EXAMINATION

3 BY MS. GIBBS:

4 Q. Do you remember you told officers you thought she stole
5 \$600 out of your wallet?

6 A. Yes.

7 Q. And is that what one of the things the officer said
8 when they didn't believe what you were saying?

9 A. Uh-huh. Yes.

10 MS. GIBBS: Thank you. No further questions.

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

12 SOL. MOLINA: State calls Corporal Zachary Ray.

13 (Whereupon, the witness, ZACHARY RAY, was duly sworn.)

14 THER CLERK: Please have a seat. State your name for
15 the record and spell it.

16 THE WITNESS: My name is Zachary Edgar Ray:

17 Z-A-C-H-A-R-Y, E-D-G-A-R, Ray, R-A-Y.

18 - - - - -

19 DIRECT EXAMINATION

20 BY SOL. MOLINA:

21 Q. Good morning. Where do you work?

22 A. I currently work for the Beaufort County Sheriff's
23 Office.

24 Q. And how long have you been with the Sheriff's Office?

25 A. Approximately four years.

1 Q. Do you have any other law enforcement experience?

2 A. I do.

3 Q. Where else did you work?

4 A. With the South Carolina Highway Patrol from February of
5 2018 until February of 2021.

6 Q. Where were you working on July 5, 2021?

7 A. On Hilton Head Island in the County of Beaufort.

8 Q. For the Sheriff's Office?

9 A. Yes, ma'am.

10 Q. And were you working that early morning, the night
11 shift, on July 5th?

12 A. Yes. Night shift runs from, I believe, 6:30 p.m. until
13 6:30 a.m. So I was working during that time, yes.

14 Q. So July 4th into July 5th?

15 A. Yes, ma'am.

16 Q. And what do you do at the Sheriff's Office now?

17 A. Currently, I'm an investigator in the southern
18 investigation section. During that time, I was a road
19 patrol deputy on Hilton Head.

20 Q. And what are the duties of a road patrol deputy?

21 A. To respond for calls for service. And also patrol the
22 roadways of the County and engage in proactive and reactive
23 patrol and then respond to calls for service.

24 Q. Are road deputies the ones that are kind of first on
25 scene for law enforcement usually?

1 A. Generally, yes.

2 Q. Did you receive a "shots fired" call on July 5, 2021?

3 A. I did.

4 Q. Okay. Do you recall about what time that came in?

5 A. I believe the call came in at 3:59 a.m. on July 5th.

6 Q. And where was that call to?

7 A. The location was 400 William Hilton Parkway in Hilton
8 Head, which is The Oaks apartment complex.

9 Q. And did you respond there?

10 A. I did.

11 Q. When you got there, were you one of the first on scene?

12 A. Myself and Deputy Adams I believe were the first on
13 scene, yes.

14 Q. What are the duties of the first officers on scene,
15 typically?

16 A. Generally, is to control the scene and ensure it's not
17 gonna get worse. If there's active -- something actively
18 going on, to address that at that time. During that time,
19 there wasn't nothing actively going on, at least there were
20 no people to interact with. And at that time, I don't
21 believe we knew exactly what unit it was in due to it being
22 apartment complex. Our first goal is to find out where it
23 happened and then address it there.

24 Q. So you said something actively happening. What was
25 going on when you got there?

1 A. So when I arrived, I arrived I think around the same
2 time as Adams, Deputy Adams. I arrived. I'm at the
3 entrance of the actual apartment complex. And I first see
4 Olivia Erskine walking up to me. Purportedly, she had been
5 involved. We later found out she was.

6 I know Olivia Erskine from previous calls. That's
7 how I was able to identify her right off the bat when I
8 first interacted with her. She stated she had been shot.
9 She was very hysterical, loud and screaming. I had noticed
10 that she was shot in one of arms. I saw blood leaking and I
11 saw a large bulge near her wrist. I don't know if it was
12 from the injury or what, but I knew there was a bulge in her
13 wrist. At the entrance -- so I was assuming she walked from
14 the apartment -- or the apartment she was in out to the
15 road. That's where we met her. She stated she had been
16 shot. We were asking her what exactly had happened. We
17 find out it did happen in unit 4 at 400 William Hilton
18 Parkway. And that's when I applied a tourniquet on her arm
19 to stop the bleeding.

20 Q. And why -- as part of your law-enforcement training are
21 you taught when and how to apply a tourniquet?

22 A. Yes.

23 Q. In what situations do apply tourniquets?

24 A. To stop -- in general, it's to stop massive bleeding on
25 a limb such as a leg or an arm.

1 Q. And I'm gonna show you what's been marked as State's
2 Exhibit 30. Do you recognize that item?

3 A. I do.

4 Q. And what is that?

5 A. It is a CD -- or a DVD that contains body camera
6 footage from my body camera from this call.

7 Q. And did you initial that?

8 A. I did.

9 Q. And is this a fair and accurate copy of your body-worn
10 camera that night?

11 A. It is.

12 Q. And your interaction with Olivia?

13 A. Yes.

14 SOL. MOLINA: State moves State's 30 into evidence and
15 permission to publish?

16 MS. GIBBS: Without objection.

17 THE COURT: It's admitted.

18 (State's Exhibit No. 30 was received into evidence.)

19 (Video starts play at 11:11 a.m. and stops at
20 11:15 a.m.)

21 Q. Did she indicate to you anybody else on scene that was
22 possibly a threat?

23 A. Once we asked her who was involved in this, she said it
24 was Francisco Cortes. And we couldn't get anything else
25 other than that, who else was inside the apartment at the

1 time. We didn't know that there was that many people that
2 it turned out to be. But we didn't realize at that point.

3 Q. After you passed Olivia off to EMS, what did you do?

4 A. I continued towards the actual scene of where this
5 incident occurred. When you actually go into the Oaks,
6 there's several lanes that go in between the buildings.
7 Unit 4 is the lane that's literally as -- you would actually
8 be able to see it inside of the body-camera footage right
9 here. It's the first lane closest to the actual roadway
10 itself, off the road.

11 I went there where we made contact with some of
12 the occupants inside unit number 4. With other deputies
13 arriving on scene, we actually detained one individual
14 inside the back of another deputy's patrol car while I read
15 him Miranda rights at the time. We didn't identify him. We
16 had no idea who he was or whether or not he was a suspect.
17 We later identified him through his driver's license. I was
18 unable to understand the conversation I was having with him.
19 There was a language barrier there. And the gentleman also
20 appeared quite intoxicated, so it was hard to understand
21 him. But I later identified him as -- I believe his name is
22 Faquin Hernandez Cruz. And that was -- we had confirmed
23 that through his ID. After that, I also spoke with a female
24 Chinese -- a Chinese Asian female who I later obtained a GSR
25 kit from.

1 Q. And were the other people inside the apartment also
2 detained?

3 A. Multiple were inside the back of that same patrol car
4 that Mr. Faquin was. I believe three in total were placed
5 in the back of that patrol car.

6 Q. And were y'all detaining people to get the scene under
7 control?

8 A. Yes.

9 Q. And for officer safety?

10 A. Yes. We had no idea who actually was involved in the
11 actual incident itself. So in order to prevent it from
12 getting worse or people walking off, we decided to detain
13 them in the back of that patrol car.

14 Q. And to your knowledge, while you were on scene, was
15 Francisco Cortes over there?

16 A. To my knowledge, I did not see him while I was on
17 scene.

18 Q. Okay. And did Olivia indicate she knew where he was?

19 A. No. She couldn't tell us whether or not he was still
20 there or he had already left. She was unable to tell us
21 where exactly he was at.

22 SOL. MOLINA: Please answer any questions the Defense
23 has.

24 MS. GIBBS: No questions for this witness.

25 SOL. MOLINA: Judge, may we approach?

1 THE COURT: Sure.

2 (A bench conference was held off the record and out of
3 the hearing of the jury panel.)

4 THE COURT: Ladies and gentlemen, we have a couple of
5 issues of law we need to take up, and this is a good time
6 for a break, anyway. So I'm gonna ask you to return to the
7 jury room while we have some discussions.

8 (The jury exits the courtroom at 11:19 a.m.)

9 THE COURT: We have the body-worn footage from
10 Officer Cushman. Is that correct?

11 SOL. MOLINA: Yes, ma'am.

12 THE COURT: Yes, ma'am.

13 MS. GIBBS: Thank you, Judge. May it please the Court?
14 I would object to the body-worn camera of Olivia's statement
15 at the hospital though Officer Cushman's camera. I believe
16 the Solicitor and I have a difference of an opinion. It's
17 my understanding the Solicitor believes that it should come
18 in as impeachment testimony based on her testimony
19 yesterday. My argument would be -- and I think we're both
20 looking at -- and I won't argue for her -- but we're looking
21 at Rule 613(b), when you're allowed to get evidence that --
22 extrinsic evidence of a prior consistent.

23 Clearly, she did get on the stand. We were both able
24 to cross-examine her. My position would be that when
25 Solicitor direct examined her, she said I don't remember.

1 And so I believe she is hoping to impeach based on that. I
2 would argue that I actually impeached her and got her to
3 admit and confront her that she did speak to officers. And
4 since she admitted -- and I was able to cross-examine her
5 about that statement at the hospital as well as a statement
6 that she made to my investigator on Friday. Since she
7 admitted that it was made, that evidence of the prior
8 statement should not be admitted.

9 From my notes, I can see -- you know, when I first
10 crossed her, I got -- she did change her statement. She at
11 first did say she did not admit. But when I recrossed her,
12 she did admit that -- she said she barely remembers talking
13 to investigators at the hospital. And then at that point I
14 went back and asked her about the things that she did say in
15 that statement at the hospital, and she answered those
16 questions. And then the Solicitor got -- I believe she got
17 an extra shot at her. And so I think at this point she was
18 confronted, she admitted she made the statement. So it
19 should not be admissible. And I believe the Solicitor is
20 arguing the opposite.

21 THE COURT: Yes, ma'am.

22 SOL. MOLINA: Thank you. Rule 613(b) states if a
23 witness does not admit that he made the prior inconsistent
24 statement, extrinsic evidence is admissible. So it includes
25 her saying I don't remember talking to anybody. On direct

1 examination, she didn't remember anything about the
2 incident. She stated that multiple times. She didn't
3 remember speaking to officers on scene. She didn't remember
4 speaking to officers at the hospital. She, in fact, said
5 she was in a private room where officers aren't allowed to
6 be. She then, on cross, admitted to telling officers that
7 the victim, Faquin, was aggressive and threatened her, I
8 believe. But then on recross when I asked her if she
9 remembered saying that, she said no. She didn't admit to
10 -- she admitted to limited, if any, portions of a statement.
11 She actually in admitting that she said he was aggressive,
12 in and of itself, I should be able to impeach because she
13 actually never said that he was aggressive when she was at
14 the hospital.

15 This falls squarely into 613(b). The foundation was
16 laid. And she may have impeached her with a separate
17 statement that she then gave on Friday, last Friday. But
18 that's when she was asking her, well, you gave it again on
19 Friday. For the hospital, she didn't remember anything
20 except for saying that he was aggressive. And then when I
21 asked her again, she doesn't remember it. It fall squarely
22 into 613(b) because she didn't say that at the hospital
23 either.

24 MS. GIBBS: And the only thing I'd add is I think we
25 have a little bit -- on my notes for recross, I did get her

1 to admit she barely remembers being at the hospital and the
2 officer taking her statement. She remembered -- so then I
3 went back and crossed her on those questions that -- or what
4 she said in the hospital. She remembers describing a knife
5 as a big butcher knife. Remembers not being able to leave
6 because the guy had a knife. No one forced her to -- and
7 that I wanted to. So I would say she did. Even though she
8 said she barely admit, she did admit to making a statement.

9 THE COURT: I do think that it's admissible under
10 613(b) also 801(d)(1)(a), which pretty much mirrors that
11 rule. So under both of those rules it's not hearsay. I
12 also think that it is admissible as an exception to hearsay
13 under Rule 803, subsection 5, Recorded Recollection: A memo
14 or record concerning a matter about which a witness once had
15 knowledge but now has insufficient recollection to enable
16 the witness to testify fully and accurately shown to have
17 been made or adopted by the witness for the matter of
18 suppression of the witness's memory to reflect that
19 knowledge correctly.

20 MS. GIBBS: Thank you, Judge. And based on that
21 ruling, I would have one further the argument. It's my
22 understanding -- the Solicitor has provided me
23 Officer Cushman's body camera of Olivia's statement actually
24 is three parts. The Solicitor has provided me the first two
25 and says she plans to introduce them. I asked the Solicitor

1 to introduce the last five minute video of her interview in
2 the hospital because that is the part of her interview where
3 she admits that -- she describes the knife. She says it was
4 pretty thick. Describes how big it was. Says it was a
5 pretty tall, black handle, silver plate. It was square. I
6 mean, she does say something about a gun. And she also says
7 that she doesn't want to press charges.

8 And I would argue under Rule 106, the rule of
9 completeness, that she should -- I would ask that she also
10 play that third five-minute video that adds that part.
11 Specifically, I would say the Solicitor opened the door.
12 Because on her redirect of Olivia, she asked one question.
13 She said this is the first time you brought up the knife is
14 this past Friday with defense investigator. And so I would
15 say if that third video is not played where she describes
16 the knife and shows that I was not -- that she did bring it
17 up initially at the hospital, I think it should, in
18 fairness, be considered along with the first two.

19 SOL. MOLINA: I believe my recross question was related
20 to her saying for the first time that he was aggressive and
21 threatening her on Friday. As for the description of or
22 saying there was a knife and not wanting to press charges,
23 in Defense's first argument to keep the body cam out, she
24 acknowledged that the witness did in fact say and admit
25 those things. And those are the only thing she got out of

1 her from the hospital was that she didn't want to press
2 charges and she had a knife.

3 And moreover, Rule 106 says an adverse party may
4 require at that time or any other writing or recording,
5 which ought be considered in fairness. That is for them to
6 introduce, that the extra content of it, the remainder. I
7 don't have to introduce it. I told her I don't object to
8 her introducing that, even though it does contain statements
9 that she did testify to. If she wants -- if she wants to
10 introduce that, I have no objection.

11 MS. GIBBS: And I guess I just read this rule a little
12 differently. It just says an average party may require the
13 introduction at that time of any other writing or recorded
14 statement, which in fairness -- which I think in this --
15 clearly, this is just -- I'm not sure why the State would
16 want to introduce, leave out the last five minutes where
17 she's clearly describing a knife and says she doesn't want
18 to press charges.

19 SOL. MOLINA: In the notes section of the rule, in the
20 last sentence, in the second half of it, it says the party
21 seeking to bring out the remainder must do so during
22 cross-examination or during that party's case. She doesn't
23 know why I'm not introducing that. She has already stated
24 in her cross and testimony that there was in fact a knife.
25 But, again, if she wants to do introduce that portion of

1 body cam, the State doesn't object.

2 (Brief pause.)

3 THE COURT: Just looking under section of recorded
4 recollection to see if there is anything regarding any
5 requirement, basically of completeness, that the entire
6 recording be . . .

7 SOL. MOLINA: And I will say they are on different
8 recordings. Because Officer Cushman cuts off and on his
9 body camera when he's not interacting with the victims he's
10 interviewing. So it's when he goes back after -- so he
11 interviews her one time, that would be my first body cam.
12 He interviews her a second time. He then goes and -- he at
13 some point leaves and talks to the other victim. And then I
14 believe he goes back and talks to her. So the portion that
15 she wants isn't even on the same file.

16 MS. GIBBS: And that is correct. There is a break. I
17 believe she goes to change clothes or something. But the
18 third video is five minutes long, and it's clearly a
19 continuation of that interview. Because the first thing,
20 she comes out of the bathroom and Officer Cushman says,
21 "Olivia, can you describe that knife," and she describes it.

22 SOL. MOLINA: Again, I don't object to her putting it
23 in, but the rules don't require that I put it in. And I
24 believe if she's trying to get out testimony about the
25 knife, I think she does say it -- let me double check -- in

1 one of the body cams. Yeah, she does say it in one of the
2 body cams I am playing. But if she wants to put it in, the
3 State does not object to that.

4 THE COURT: That's the way that I'm reading 106 as
5 well. I don't see that it requires them to put in all of
6 her statement. And, I mean, it's very clear in the notes
7 that prior to seeking to introduce the remainder, now can do
8 it contemporaneously. It' doesn't have to wait. You can do
9 it during cross-examination or during that party's case.

10 MS. GIBBS: Thank you, Judge.

11 THE COURT: Let's take -- I'll let y'all have a little
12 bit of a break as well while we've got the jury out. Let's
13 just take ten minutes.

14 (Brief recess at 11:35 a.m.)

15 THE COURT: Okay. Anything else before we bring in the
16 jury in?

17 SOL. MOLINA: Just a scheduling matter. I was talking
18 to Ms. Gibbs during the break. And if Your Honor is okay
19 with it, if we could do my next witness and then break for
20 lunch. I think I should be able to roll through my other
21 witnesses pretty quickly. And I didn't want to leave a gap
22 of time between finishing that and the doctor. And so
23 during the break we can work on the redactions if we have
24 time.

25 THE COURT: Okay. I'm good with that.

1 (Brief pause.)

2 (The jury enters the courtroom at 11:51 a.m.)

3 SOL. MOLINA: State calls Sergeant Zach Cushman.

4 (Whereupon, the witness, ZACH CUSHMAN, was duly sworn.)

5 - - - - -

6 DIRECT EXAMINATION

7 BY SOL. MOLINA:

8 Q. Can you please state and spell your name for the
9 record?

10 A. Yes. My name is Zachariah Cushman: Z-A-C-H-A-R-I-A-H,
11 C-U-S-H-M-A-N.

12 Q. Where do you work, Sergeant Cushman?

13 A. I work for the Beaufort County Sheriff's Office.

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

15 A. About nine years. Since 2015.

16 Q. What do you do at the Sheriff's Office now?

17 A. I'm an investigator in the southern criminal
18 investigation section.

19 Q. Were you an investigator in 2021?

20 A. I was.

21 Q. And were you involved in the investigation of a
22 shooting that occurred at the Oaks on July 5, 2021?

23 A. I was.

24 Q. How did you become involved?

25 A. I was called early in the morning and requested to

1 respond to Savannah Memorial Health in Savannah to interview
2 victims of the incident.

3 Q. And did you go there that morning?

4 A. I did.

5 Q. Do you remember about what time it was?

6 A. I got a phone call around 4:00 or 5:00 a.m. and I went
7 to the hospital.

8 Q. Did you go straight there?

9 A. I did.

10 Q. When you got there, who did you meet with?

11 A. I met with Olivia Erskine. And I also met with --
12 don't want to say the name incorrectly.

13 Q. Does Yao Ming Zhang sound familiar?

14 A. Yes. Yao Ming Zhang.

15 Q. And when you met with Olivia, had she been treated yet?

16 A. No. She was sitting on a gurney or on a stretcher with
17 the EMS medical staff from Hilton Head that brought her.
18 They were still waiting for her to be, I guess, formally
19 admitted into the care of the hospital.

20 Q. And did she agree to speak with you?

21 A. She did.

22 Q. Did she appear alert and able to understand?

23 A. Yes.

24 Q. Who you were?

25 A. Yes.

1 Q. What you were there for?

2 A. Yes.

3 Q. Okay. I'm gonna hand you what's been marked as States
4 Exhibits 31 and 32. Do you recognize those items?

5 A. I do.

6 Q. And how do you recognize them?

7 A. These are copies of my body-cam video, a recording. I
8 reviewed them and initialed on the CDs where I reviewed
9 them.

10 Q. Okay. And are those fair and accurate copies?

11 A. Yes, they are.

12 SOL. MOLINA: State moves State's 31 and 32 into
13 evidence.

14 MS. GIBBS: Subject to my prior objections.

15 THE COURT: Thank you. They are admitted.

16 (State's Exhibit Nos. 31 and 32 were received into
17 evidence.)

18 SOL. MOLINA: And permission to publish?

19 THE COURT: Yes, ma'am.

20 (Video starts play at 11:56 a.m. and stops at
21 12:16 p.m.)

22 Q. And the next one is State's Exhibit 32, for the record.

23 (Video starts play at 12:16 p.m. and stops at
24 12:25 p.m.)

25 Q. Officer Cushman, while you were at the hospital, did

1 you collect clothes belonging to Olivia?

2 A. I did.

3 Q. And did you collect her phone?

4 A. I did.

5 Q. I'm going to hand you State's Exhibits 19, 20, and 21.

6 Do you recognize State's 19?

7 A. I do.

8 Q. And how do you recognize it?

9 A. I see where I signed the bags, turned it into evidence
10 on the 5th of July. It's a pair of Adidas shoes belonging
11 to Olivia Erskine. And I recognize my seal on the back of
12 the bag where I signed the seal.

13 Q. Okay. And State's Exhibit No. 20?

14 A. This is clothing belonging to Olivia Erskine that I
15 collected at the hospital. I recognize it from my signature
16 on the chain of custody and then my signature on the seal
17 when the bag was turned in.

18 Q. And State's Exhibit 21?

19 A. This is Olivia Erskine's cell phone, an iPhone SE.
20 Recognize my signature on the chain of custody and also on
21 the seal when it was turned into evidence on the 5th of
22 July.

23 Q. And did you alter or change any of these items?

24 A. I did not.

25 Q. Did you maintain their integrity while in your custody

1 and control?

2 A. I did.

3 SOL. MOLINA: State moves State's 19, 20, and 21 into
4 evidence.

5 COURT REPORTER: Without objection.

6 THE COURT: They are admitted.

7 (State's Exhibit Nos. 19, 20, and 21 were received into
8 evidence.)

9 Q. I'm also showing you State's 33 through 44. You can
10 just look through those.

11 A. (Witness complies.)

12 Q. And do you recognize those items?

13 A. I do.

14 Q. Are these pictures that you took?

15 A. They are.

16 Q. Are these pictures of State's Exhibits 19, 20, and 21?

17 A. That's correct.

18 Q. And are they fair and accurate depictions?

19 A. Yes.

20 Q. Of what they looked like when you collected them?

21 A. Yes.

22 SOL. MOLINA: State moves State's Exhibits 33 through
23 44 into evidence.

24 MS. GIBBS: Without objection.

25 THE COURT: They are admitted.

1 (State's Exhibit Nos. 33 through 44 were received into
2 evidence.)

3 SOL. MOLINA: And permission to publish?

4 THE COURT: Yes.

5 Q. And State's 33, what are we looking at?

6 A. That's gonna be a sweater that Olivia was wearing in
7 the hospital when I made contact with her and I subsequently
8 collected. And the top left is a tourniquet that was
9 collected from her as well.

10 Q. State's 34?

11 A. That's that same sweater. I believe that's just the
12 back of it. There was a hair tie tied into a knot to, I
13 think, tighten the sweater.

14 Q. State's 35?

15 A. That's a close-up picture of the tourniquet from
16 Olivia's arm.

17 Q. State's 36?

18 A. Those are Olivia's black shorts that she was wearing at
19 the time.

20 Q. State's 37?

21 A. The same shorts but the back of them.

22 Q. 38?

23 A. Those are Olivia's socks that she was wearing at the
24 time.

25 Q. State's 39?

1 A. Those are Olivia's shoes that she was wearing at the
2 time.

3 Q. 40?

4 A. Those are the same shoes from a different angle.

5 Q. 41?

6 A. That's Olivia's phone.

7 Q. 42?

8 A. That's the back of her phone showing the phone case.

9 Q. 43?

10 A. Another picture of the back of her phone.

11 Q. And 44?

12 A. It's a picture of her phone. It's a close-up of the
13 IMEI number and the other information on the back of the
14 phone.

15 Q. While at the hospital, did you speak with anybody else?

16 A. Yes. I also interviewed the second victim,
17 Mr. Yao Ming Zhang.

18 Q. And did you collect items from him?

19 A. I did.

20 Q. What did you collect from him?

21 A. I collected a pair of pants from him.

22 Q. And did you also take photographs?

23 A. I did.

24 Q. Related to him?

25 A. I believe I took pictures of his pants.

Direct Examination of Sgt. Cushman by Sol. Molina

189

1 Q. Okay. I'm handing you State's Exhibits 14, 45, and 46.

2 A. State's Exhibit 14, it's a pair of Yao Ming Zhang's
3 pants. I recognize it from the chain to custody were I
4 signed it. I also recognize my signature on the seal when
5 the bag was turned into evidence.

6 Q. And State's Exhibits 45 and 46, do you recognize those?

7 A. I do. These are pictures of the same pants that I
8 collected. After I got back to the office, I took pictures
9 to document what they look like.

10 Q. And did you alter or change any of these items?

11 A. I did not.

12 Q. Are those pictures a fair and accurate depiction of the
13 pants when you collected them?

14 A. They are.

15 Q. And did you maintain the integrity of State's
16 Exhibit 14 while it was in your custody and control?

17 A. I did.

18 SOL. MOLINA: State moves State's Exhibits 14, 45, and
19 46 into evidence.

20 MS. GIBBS: Without objection.

21 THE COURT: They are admitted.

22 (State's Exhibit No. 14 was received into evidence.)

23 (State's Exhibit Nos. 45 and 45 were received into
24 evidence.)

25 SOL. MOLINA: Permission to publish?

1 THE COURT: Yes.

2 Q. And State's Exhibit 45 is what?

3 A. It's the same pair of pants from Mr. Zhang laying
4 out -- I don't know if that is the back or front. I'm not
5 sure.

6 Q. Were these the pants he indicated to you he was wearing
7 when he was shot?

8 A. Correct. Yes.

9 Q. And State's Exhibit 46, is that a close-up of the
10 pants?

11 A. Yes.

12 Q. And the items contained within those bags all have
13 blood on them, right?

14 A. Suspected blood. Yes, ma'am.

15 Q. Did Olivia remember her phone password?

16 A. She didn't. She had given me a few letters and numbers
17 that she thought was part of it. But it was kind of a long
18 password and she didn't have it. She couldn't remember it.

19 Q. So were you able to get into her phone to verify any
20 communication?

21 A. I was not.

22 SOL. MOLINA: Court's indulgence.

23 Q. While you were in the hospital talking to Olivia, did
24 Francisco Cortes stop by to visit her?

25 A. No, ma'am.

1 SOL. MOLINA: No further questions. Please answer any
2 the Defense has.

3 - - - - -

4 CROSS-EXAMINATION

5 BY MS. GIBBS:

6 Q. Sergeant Cushman, how are you?

7 A. Doing well.

8 Q. Great. When you first met Olivia at the hospital, did
9 you have any concerns about any pain medication she might've
10 received in the ambulance?

11 A. No, ma'am. She said numerous times they wouldn't give
12 her anything.

13 Q. And I know the jury has seen your body-cam videos of
14 your interview with Olivia. But that did not show the
15 entirety of your interview with Olivia, correct?

16 A. I believe there is more video. Yes, ma'am.

17 Q. Okay. And you did -- after that, you did question her
18 about the night that she mentioned, correct?

19 A. I'd have to review it, but I believe so.

20 Q. You asked her to describe it?

21 A. Yes, ma'am.

22 Q. Okay. And without saying what she said, she was able
23 to describe it?

24 A. Yes, ma'am. She gave me a description.

25 Q. Okay. And you also took a buccal swab from Olivia for

1 DNA?

2 A. I did.

3 Q. Okay. So you just swapped her mouth?

4 A. Correct. We fill out a form and she provided a sample.

5 Q. And later on -- I know there's been a discussion about
6 cash and all of that. The Solicitor's Office called you
7 later, months later, is that correct, to go check and see if
8 there's any cash in the clothes you collected from Olivia?

9 A. Correct.

10 Q. And you went to go check and there was no cash that was
11 found?

12 A. Correct.

13 Q. And the two cell phones you took, you put those into
14 evidence?

15 A. Yes, ma'am. I don't know about the second cell phone,
16 which cell phone you're referring to, on that one. But the
17 first one I did put into evidence, correct.

18 Q. Okay. Olivia's phone you put into evidence?

19 A. Yes.

20 MS. GIBBS: Thank you. I have no further questions.

21 - - - - -

22 REDIRECT EXAMINATION

23 BY SOL. MOLINA:

24 Q. Did she show you the cash?

25 A. She did. She pulled out a wad of cash as she was

Redirect Examination of Sgt. Cushman by Sol. Molina

193

1 talking about how much it was. And I don't know what she
2 did with it after that. But she pulled it out and showed it
3 to me at that point.

4 Q. And in your experience in law enforcement, does gunshot
5 residue kits -- do you get results for victims?

6 A. The lab normally -- the SLED lab will not test it if
7 it's the victim of a gunshot wound themselves. There has to
8 be some special circumstances. It's outside of their
9 parameters to normally do that.

10 SOL. MOLINA: I have no further questions. Please
11 answer any recross.

12 MS. GIBBS: No further questions.

13 THE COURT: Thank you, sir. You can step down.
14 What time do y'all anticipate the jury returning?

15 SOL. MOLINA: May we approach?

16 THE COURT: Please.

17 (A bench conference was held off the record and out of
18 the hearing of the jury panel.)

19 THE COURT: Okay. Ladies and gentlemen, this is a good
20 place for us to stop. I'm gonna go ahead and dismiss you
21 for lunch. We will be taking up some issues during the
22 lunch break. I'm gonna have you come back at 2:00 o'clock,
23 and hopefully we'll be resuming shortly thereafter. Thank
24 you. Again, please do not discuss the case during the
25 break.

1 (The jury exits the courtroom at 12:40 p.m.)

2 THE COURT: Okay. We're at recess.

3 (Lunch recess until 2:07 p.m.)

4 THE COURT: Okay. So a little bit of bad news. I have
5 another juror who wants to talk with us. My understanding
6 from the bailiff is that she recognized Officer Cushman.
7 And so I'm gonna bring her in. Is that correct?

8 BAILIFF: Yes.

9 (Brief pause.)

10 BAILIFF: Your Honor, I'm bringing in the juror.

11 THE COURT: Okay. Hi, there. If you'll tell me your
12 juror number.

13 JUROR: 107.

14 THE COURT: Okay. So nobody is mad at you. You're not
15 in any trouble. I appreciate you bringing this to our
16 attention. So tell me what your situation is.

17 JUROR: You mentioned something like if we knew any of
18 the people on the police force to bring it forward. I heard
19 Zach Cushman, but I didn't know until I put the name with
20 the face until I saw him walk in. And me and my brother,
21 we've known him and we go to church -- well, we went to
22 church together. Him and my brother are close friends.

23 THE COURT: He's a close friend of your brother's?

24 JUROR: Yes.

25 THE COURT: And do you feel like that it is going to

1 prevent you from being fair and impartial in this case?

2 JUROR: I don't want to make the wrong decision.

3 THE COURT: Sure. Okay. Well, I'm gonna go ahead and
4 excuse you from the case. You have not discussed this with
5 any of the other jurors?

6 JUROR: No. I haven't brought it up.

7 THE COURT: Any other questions you want me to ask this
8 juror?

9 MS. GIBBS: No, Your Honor.

10 SOL. MOLINA: Nothing from the State.

11 THE COURT: Any objections to me excusing him?

12 SOL. MOLINA: No, ma'am.

13 MS. GIBBS: No, Your Honor.

14 THE COURT: Thank you so much. I thank you for
15 bringing that to our attention.

16 (Juror 107 is excused and exits the courtroom at
17 2:09 p.m.)

18 THE COURT: So I think our second alternate was number
19 265.

20 THE CLERK: Yes, ma'am.

21 THE COURT: Number 265 will now be our twelfth juror.
22 Okay. Anything else we need to talk about before we
23 bring the jury in?

24 SOL. MOLINA: Nothing from the State.

25 MS. GIBBS: No, Your Honor.

1 (Brief pause.)

2 (The jury enters the courtroom at 2:13 p.m.)

3 THE COURT: Okay. I think we're ready to begin again.

4 We have excused one of the jurors who realized that he knew
5 someone involved with the case. So we are down to 12. So
6 we really do need you to be here, and we appreciate you
7 being here very much. Thank you again for being punctual
8 getting back from lunch. And we're gonna turn it back over
9 to the State.

10 SOL. MOLINA: State calls Sheila Erskine.

11 (Whereupon, the witness, SHEILA ERSKINE, was duly
12 sworn.)

13 THE CLERK: Please take a seat. State your name and
14 spell it for the record, please.

15 THE WITNESS: My name is Sheila Erskine, S-H-E-I-L-A,
16 E-R-S-K-I-N-E.

17 - - - - -

18 DIRECT EXAMINATION

19 BY SOL. MOLINA:

20 Q. Good afternoon, Ms. Erskine. How do you know Olivia?

21 A. I'm Olivia's mother.

22 Q. Do you have other children?

23 A. Yes, I do.

24 Q. And where does Olivia fall in order of your children?

25 A. She's my -- I have three children. She's my last.

1 Q. Okay. Have you ever met Francisco Cortes?

2 A. Not in person, no.

3 Q. Did Olivia ever tell you if they were friends?

4 A. Shortly, like a week or two before this, she had met
5 him.

6 Q. Okay. And did she mention him to you by any other
7 name?

8 A. Yeah. She said his name was Kenny.

9 Q. Do you recall the night of July 4, 2021?

10 A. Yes, I do.

11 Q. Was Olivia with you that night?

12 A. She was with me in the afternoon until early evening.

13 Q. And did she have plans that night that you were aware
14 of?

15 A. Well, I told her my plans. And she told me that she
16 had planned to go --

17 MS. GIBBS: Objection to hearsay.

18 SOL. MOLINA: It's already been testified to through
19 Olivia.

20 THE COURT: Okay. Well, without knowing -- I don't
21 know what she was getting ready to say, so that doesn't fall
22 within the hearsay objection.

23 Q. Was Olivia going to watch fireworks that night?

24 A. Yes.

25 Q. Was she going with Kenny?

1 A. Yes.

2 Q. And at some point did you learn that Olivia had been
3 shot?

4 A. Yes.

5 Q. Can you please tell the jury about the circumstances in
6 which you learned she had been shot?

7 A. Well, on July 4th my phone was shut off at midnight
8 because I hadn't paid my bill. So I didn't realize it until
9 morning. So I paid my phone bill. And as soon as I turned
10 my phone on, it was like blowing up. My ex-husband was
11 calling me and he told me ---

12 MS. GIBBS: Objection. Hearsay.

13 A. He was like, oh, my gosh ---

14 THE COURT: Just a minute. Any objections it's
15 hearsay?

16 SOL. MOLINA: The effect on listener. It's what she
17 did afterwards that I'm trying to elicit.

18 THE COURT: Okay. Well, don't tell us what anyone else
19 told you.

20 THE WITNESS: Okay.

21 THE COURT: That would be hearsay.

22 THE WITNESS: Okay.

23 THE COURT: If you want to rephrase the question.

24 BY SOL. MOLINA:

25 Q. What happened after you found out Olivia had been shot?

1 A. I talked to the police. I went to the hospital to be
2 with her.

3 Q. And you went straight to the hospital?

4 A. I started to drive to the hospital. But before I got
5 to the bridge, I was physically ill. And so I had to go
6 home and get a friend to drive me.

7 Q. Why were you sick?

8 A. Because I was told that my daughter was critically
9 injured and shot three times.

10 Q. So not sick from eating something?

11 A. I think it was my nerves.

12 Q. Okay. So somebody drove you to the hospital?

13 A. Yes.

14 Q. While you were in the hospital, did you speak with
15 Francisco Cortes?

16 A. Yes.

17 Q. Was he there visiting Olivia?

18 A. No.

19 Q. How did you speak with him?

20 A. Olivia asked me to call his phone number.

21 Q. Okay. And did he answer the phone?

22 A. I reluctantly called him because I wanted to -- I
23 wanted to find this man and hope, you know, catch him. The
24 first time I called, he answered the phone, but he didn't
25 talk at all; he just listened. And then I hung up. I

1 waited a few more minutes, and we called that number back
2 again. And, again, he listened. So I said is this Kenny.
3 And he said you called me. And then I said, you know, my
4 daughter is hurt very bad. She's been shot. How did this
5 happen? I said she has to have surgery, you know, to put
6 her hand and her arm back together. And he said that he was
7 sorry.

8 Q. And did he say anything else?

9 A. Well, I gave the phone to Olivia because I was hoping
10 maybe she could find out where he was.

11 Q. Did he indicate to you whether or not he knew the
12 police were looking for him?

13 A. I told him the police were looking for him. I said
14 this is serious.

15 Q. And what did he say? Do you remember?

16 A. I don't think he said anything.

17 Q. You mentioned being with Olivia and some of her
18 injuries and the surgery. Did she have a metal rod put in
19 her arm?

20 A. Yes. Her whole arm was shattered.

21 Q. And while you were with -- or after the incident, did
22 you take -- and after surgery -- did you take pictures of
23 her?

24 A. Yes.

25 Q. Okay. I'm gonna show you State's Exhibits 47 through

1 51. And if you could just take a look at these pictures and
2 tell me if those are the pictures that you took?

3 A. Yes. Yes. Yes.

4 Q. And those are -- what are -- those are pictures of
5 Olivia after her surgery?

6 A. Yes. I didn't see before because she was -- everything
7 was wrapped. But this chin -- they're all bad. They're
8 terrible.

9 Q. Are these fair and accurate depictions of how she
10 looked when you saw her after the surgery?

11 A. That face picture was before the surgery.

12 Q. Okay.

13 A. The fingers and the stitches --

14 Q. Okay.

15 A. -- where after.

16 Q. Okay. And they're fair and accurate of how you saw
17 her?

18 A. Yes.

19 Q. Okay.

20 SOL. MOLINA: State moves State's Exhibits 47 through
21 51 into evidence.

22 MS. DIGGS: Without objection.

23 (State's Exhibit Nos. 47 through 51 were received into
24 evidence.)

25 SOL. MOLINA: And permission to publish to the jury?

1 THE COURT: Yes.

2 Q. This is the face one that you were talking about?

3 A. Yeah. The nurse said that was a bullet graze to her
4 chin.

5 Q. And State's 48. And it's a little dark to see. But is
6 this the underside of her arm?

7 A. Yes.

8 Q. And in this picture, what are we seeing? State's 49.

9 A. The four little stitches.

10 Q. Here?

11 A. That's the entrance.

12 Q. Okay.

13 A. And they came out the other side of her arm, shattered
14 her arm bone.

15 Q. Okay. And State's 50. What are we looking at in
16 State' 50?

17 A. That's her fingers. And those three pins in those, and
18 she has stitches in three fingers. The middle finger has
19 stitches on the top.

20 Q. Is that State's 51?

21 A. And the pins.

22 Q. Okay.

23 A. Because her finger, they almost had to amputate it.

24 Q. Okay. After she had surgery, were you with her for
25 recovery?

1 A. Yes.

2 Q. What kind of recovery did she do?

3 A. She had those pins. Her hand was wrapped for like a
4 month, and it wasn't allowed to be touched because the
5 doctor didn't want to be infected. And those pins were in
6 her fingers for two months, a little over two months. And
7 then I can't -- I think it was two weeks they took out her
8 stitches, but the pins stayed in there for two months. And
9 that after they took the pins out of her fingers, she went
10 to physical therapy to regain the use of her fingers and her
11 hand.

12 Q. Is she able to bend all of her fingers?

13 A. Her thumb and her pinky she can bend. But the other
14 three, she has -- like, her index finger bends a little bit.
15 Her ring finger bends a little bit. But her middle finger
16 has no knuckle. It's permanently straight. So she can't
17 bend it. She can move it, but it doesn't bend like the rest
18 of her fingers.

19 Q. And was she -- with her arm, did that restrict her from
20 anything?

21 A. Still today, I mean, she can't lift heavy stuff. And
22 it hurts her. When she gets cold, it's painful. When it
23 rains, she said it's painful. Or if she overexerts herself,
24 her hand is sore.

25 SOL. MOLINA: I have no further questions. Please

1 answer any that Ms. Gibbs has.

2 MS. GIBBS: Beg the Court's indulgence. May it please
3 the Court?

4 - - - - -

5 CROSS-EXAMINATION

6 BY MS. GIBBS:

7 Q. Okay. So it's fair to say you don't like
8 Francisco Cortes?

9 A. Well, that's fair.

10 Q. Okay. And did you dial his number from her phone?

11 A. No. The police had her phone.

12 Q. Then how did you know how --

13 A. She told me the phone number.

14 Q. Okay. And she told you she's being held hostage?

15 A. She said that the man wouldn't let her out of the
16 apartment.

17 MS. GIBBS: Thank you. I have no further questions.

18 THE COURT: Any redirect?

19 - - - - -

20 REDIRECT EXAMINATION

21 BY SOL. MOLINA:

22 Q. Did Francisco Cortes ever come, to your knowledge, to
23 visit her in the hospital or in her recovery or anything
24 like that to check on her?

25 A. No. He shot her and he left her.

Direct Examination of Sgt. Calore by Sol. Molina

205

1 SOL. MOLINA: Nothing further.

2 THE COURT: Anything further, Ms. Gibbs?

3 MS. GIBBS: No, Your Honor.

4 THE COURT: Thank you, ma'am. You can step down.

5 SOL. MOLINA: State calls Sergeant Andrew Calore.

6 (Whereupon, the witness, ANDREW CALORE, was duly
7 sworn.)

8 THE CLERK: Please have a seat. State and spell your
9 name for the record, please.

10 THE WITNESS: My name is Andrew Calore, A-N-D-R-E-W,
11 C-A-L-O-R-E.

12 - - - - -

13 DIRECT EXAMINATION

14 BY SOL. MOLINA:

15 Q. Sergeant Calore, where do you work?

16 A. I work for the Beaufort County Sheriff's Office.

17 Q. And how long have you been with the Sheriff's Office?

18 A. Been with the Sheriff's Office for 15 years.

19 Q. What is your current duty at the Sheriff's Office?

20 A. Currently assigned to the southern investigation
21 section.

22 Q. What was your duty in July of 2021?

23 A. July of 2021, I was still assigned to the investigation
24 section. At the time, I was the duty
25 investigator for -- incidents that occur.

1 Q. And when you say you're the duty investigator, what
2 does that mean?

3 A. Every night there's an investigator that is on-call for
4 any type of major incidents or anything that is a lengthy
5 investigation. And that particular night, it was my duty.
6 So if there were any major incidents, I responded to those
7 to go investigative the jurisdiction of those calls.

8 Q. And you mentioned on that night you were on duty and
9 you responded. Where did you respond to?

10 A. I responded to 400 William Hilton Parkway which is in
11 Beaufort County ---

12 Q. Do you recall about what time you got there?

13 A. A little after 4:00, I believe. Past 4:00.

14 Q. When you got on scene, what happened?

15 A. Typically, whenever I respond as the duty investigator,
16 I'll make contact with the patrol supervisor that's out
17 there at the time. Get briefed about what's going on, try
18 to get a baseline for what had happened, determine what
19 further investigating needs need to be addressed which, you
20 know, can require additional resources, additional
21 personnel, and kind of take over where they had left off.

22 Q. So you were briefed and then made -- were in charge of
23 making decisions of what happened next?

24 A. Once I was briefed, I contacted additional
25 investigators to assist -- obviously, I had two victims that

1 were being transported to Savannah Memorial -- and the
2 investigator to go out there and interview those victims to
3 determine further what happened.

4 Q. All right. So you sent an investigator to talk to the
5 victims at the hospital. And then what did you do on scene?

6 A. Once on scene, you know, got briefed by a couple of
7 patrol officers that were on scene. Bot briefed by the
8 patrol supervisor. At that point, once I had a basic
9 understanding of what's going on, I typically go out and
10 surveil the crime scene, see exactly what needs to be done;
11 photographs, see what evidence is available. Most of the
12 time I'll start with photographing the scene.

13 Q. Did you start with unit 6 in this case?

14 A. I did.

15 Q. I'm gonna show you State's Exhibits 6 through 10 and
16 13.

17 SOL. MOLINA: And can I have the witness step down?

18 THE COURT: Sure.

19 Q. I'm going to share State's Exhibit 6. Can you -- and
20 it's a little hard to see on this. Can you tell us what
21 we're looking at in this picture?

22 A. Yeah. This is the --

23 Q. And you can point.

24 A. This is the apartment 6 at The Oaks. As you can see,
25 from what this picture is looking, it's of the living room.

1 You can see two bullet holes in the unit. This one right
2 here by the TV is the joining wall to apartment 4. And this
3 is the wall to the kitchen.

4 Q. Okay. And for the wall to the kitchen, I'm gonna show
5 you State's Exhibit 13. And what are we looking at in that
6 picture?

7 A. This is a close-up photograph of the wall by the kitchen
8 which you can tell there's a bullet hole right there.

9 Q. And then I'm gonna go to State's Exhibit 7. And what
10 is in that picture?

11 A. This is a photograph of -- close-up photograph from the
12 first one that we looked at. There's a bullet hole above
13 the television right there.

14 Q. Is that what State's Exhibit 8 is showing?

15 A. Yes. That is a close-up picture of the bullet hole in
16 the wall.

17 Q. And I think you said it, but where does this wall
18 adjoin to?

19 A. This wall adjoins to apartment 4.

20 Q. Now I'm gonna show you State's Exhibit 9. Can you
21 orient the jury where this was?

22 A. This is the front door to the residence right here.
23 And this would be on the opposite side of the last
24 photograph that was shown. So this is the opposite side of
25 the wall that adjoins 4. And this is where the

1 bullet -- one of the bullets had passed through the entire
2 structure of apartment 6.

3 Q. And is that State's Exhibit 10 a closer view?

4 A. Yes. That is a closer view with the bullet hole next
5 to that picture frame.

6 Q. Okay. Thank you. You can go back to the stand. Were
7 you able to collect any of the bullets out of apartment 6?

8 A. I was not.

9 Q. Why not?

10 A. Typically, in situations like this where the bullet
11 travels through a wall, there appears to be, like in those
12 paragraphs, a designated endpoint so to speak where that
13 bullet has stopped traveling. In this particular incident,
14 we noticed that the bullet did not pass through that last
15 wall in apartment 6. And, typically, what we see with that
16 if it does go through the sheet rock, but it does not pass
17 through the other side and it hasn't hit a stud, typically
18 that bullet falls in between the stud and the drywall that
19 separate those two rooms.

20 Q. So you would've had to cut out the wall to access that
21 bullet?

22 A. Yes. You have to create significant damage to get that
23 out.

24 Q. After apartment 6, what did you do?

25 A. After photographing that scene and speaking to the

1 occupants inside, then I went to apartment 4 and started my
2 investigation of that apartment, which appeared to be the
3 main location where this incident transpired.

4 Q. You took pictures?

5 A. I did.

6 Q. I gonna show you State's Exhibits 52 through 65. And
7 if you could just look at these first and tell me if you
8 recognize them?

9 A. I do.

10 Q. And what are the photographs of, generally?

11 A. These are photographs of the crime scene.

12 Q. Of the outside --

13 A. Yes, ma'am.

14 Q. -- of the crime scene? And are those fair and accurate
15 depictions of the outside of the crime scene?

16 A. They are, yes.

17 SOL. MOLINA: At this time, State moves State's
18 Exhibits 52 through 65 into evidence.

19 MS. GIBBS: Without objection.

20 THE COURT: They are entered.

21 (State's Exhibit Nos. 52 through 65 were received into
22 evidence.)

23 Q. And, Sergeant Calore, I'm gonna ask you down again off
24 the stand to walk us through what's in these pictures.

25 Okay. State's Exhibit 52, can you orient the jury

1 to what we're looking at?

2 A. Yeah. This is the outside of the apartment complex.
3 This area up top here, which is where the light it, is
4 apartment number 4. There's evidence markers that are
5 placed down here which identifies evidence found at the
6 scene.

7 Q. Okay. And I'm gonna hand you State's Exhibit 54. What
8 is that a picture off?

9 A. This is evidence marker 1. There's a shell casing
10 right here that was marked.

11 Q. And are these the evidence markers that we saw in the
12 last picture?

13 A. Yes.

14 Q. Okay. And I'm gonna hand you State's Exhibit 55.

15 A. This is bench marker number 2, a shell casing that was
16 found outside of the apartment complex. Or I'm sorry, out
17 at the apartment on the ground, which is depicted in the
18 first photograph.

19 Q. There?

20 A. Yes.

21 Q. Those last few pictures are close-ups of 1 and 2 there?

22 A. Correct.

23 Q. Okay. Now I'm handing you State's Exhibit 56. Where
24 is this?

25 A. This is the stairs leading up to apartment number 4. If

1 you can provide the first photograph from Exhibit 52, as you
2 can see, you come up the stairs, you make a right. There's
3 another set of stairs that's hidden behind this wall. That
4 is the representation of this photograph. There are various
5 pieces of evidence that were marked utilizing evidence
6 markers at the time.

7 Q. And as part of your investigation, you take pictures
8 and you also mark evidence with these markers, right?

9 A. Correct.

10 Q. So I'm going to show you now State's Exhibit 57. What
11 are we looking at in 57?

12 A. These evidence markers number 3 and 4. These are two
13 shell casings that were found on the stairs. If I can refer
14 back to the previous photograph, these shell casings were
15 located right on the step.

16 Q. And then what is in State's Exhibit 58?

17 A. 58 is evidence marker number 5. Again, refers back to
18 the previous photograph, evidence marker number 5. As you
19 can see, there's blood droplets on the ground and a shell
20 casing found on the stairs.

21 Q. And what about State's Exhibit 59?

22 A. 59, this is evidence marker 6. This is a shell casing.
23 Difficult to see, but this is a set of water boots. And
24 inside the pair of that boots, there is a shell casing in
25 there. This refers back to the previous photograph. These

1 boots were located up in this corner behind these bicycles.

2 Q. And it State's Exhibit 60, is that just a closer view?

3 A. This is a close-up view, a little bit out of focus, of
4 a shell casing that was found inside the boot. The shell
5 casing is right there.

6 Q. And what about in State's Exhibit 61?

7 A. This is a black T-shirt that was found at the front
8 door of the residence. Referring back to this photograph,
9 this is evidence marker number 7, which is right up here,
10 this black shirt I was taking a photograph of.

11 Q. And what is State's Exhibit 62?

12 A. This evidence marker 13. This was a cell phone that
13 was left at the top of the stairs. Referring back to this
14 photograph, in this top corner right there, that is the cell
15 phone that was marked in this photograph.

16 Q. And State's Exhibit 64, what are we looking at in that?

17 A. This is the front door of the residence. There are a
18 multitude of bullet holes in this area of the front door,
19 apartment number 4.

20 Q. State's 65?

21 A. And this is same door, different photograph, different
22 angle. Again, it shows the bullet holes in the front of the
23 door right there.

24 Q. And you marked -- you can take the stand, but I am
25 gonna have you come back down.

1 A. Okay.

2 Q. In addition to marking and photographing evidence, did
3 you collect the shell casings you found?

4 A. I did.

5 Q. I'm handing you what's been marked as States
6 Exhibit 23. States Exhibit 23 and also State's Exhibits 24
7 through 29. If you could take a look, first, at State's
8 Exhibit 23. What is State's Exhibit 23?

9 A. 23 is the shell casings that were collected on scene.

10 Q. And is that envelope sealed?

11 A. It is.

12 Q. And did you cut it open?

13 A. I did.

14 Q. Yesterday to access the casings inside to mark for
15 evidence?

16 A. Correct.

17 Q. And within State's Exhibit 23, can you look in there
18 and see if you recognize State's Exhibits 24 through 29?

19 A. Yes, I recognize them.

20 Q. And how do you recognize them?

21 A. Shell casings I collected on the scene. It was a chain
22 of custody upon the collection of that, and my signature not
23 only is on the chain of custody, it's on the front of the
24 envelope. And on the back of the envelope where there's
25 evidence tape, those were sealed upon collection and that's

1 my signature on the back.

2 Q. Okay. And while they were in your custody and control,
3 did you maintain the integrity of those items?

4 A. I did.

5 Q. Did you alter or change them in any way?

6 A. No.

7 Q. And after you collected them like we're talking about,
8 you sealed and signed?

9 A. Correct.

10 Q. Okay. I'm going to hand you State's Exhibit 22 and 18.
11 Can you take a look at State's Exhibit 18 and 22? Do you
12 recognize these items?

13 A. I do.

14 Q. How do you recognize them?

15 A. This was -- both of these were items that were
16 collected on scene. Referring back to the photographs
17 you've just shown, one was marked with evidence marker 13,
18 the other was marked with evidence marker 7.

19 Q. Were those items that you collected?

20 A. They were.

21 Q. And after you collected them, did you seal and sign
22 them?

23 A. I did.

24 Q. And while they were in your custody and control, did
25 you maintain the integrity of them?

1 A. I did.

2 SOL. MOLINA: States moves State's Exhibits No. 18 --
3 18 and 22 into evidence.

4 MS. GIBBS: Without objection.

5 THE COURT: They are admitted.

6 (State's Exhibit No. 18 was received into evidence.)

7 (State's Exhibit No. 22 was received into evidence.)

8 Q. Okay. And what is State's Exhibit 18?

9 A. 18 is a black T-shirt that was found at the entrance of
10 the apartment.

11 Q. Referring to State's Exhibit 63, is this one marked
12 between these two markers?

13 A. Yes. Evidence marker 7.

14 Q. Okay. And what is State's Exhibit 22?

15 A. 22 was a cellular phone that was located.

16 Q. Located at the scene?

17 A. Yeah. On the open railing at the top of the stairs
18 right before you enter the apartment.

19 Q. Would that be that one that was marked by 13?

20 A. Yeah. It's not marked in that photograph, but it was
21 marked in the other photograph.

22 Q. Okay. That one?

23 A. Yes. That's correct.

24 Q. So that is the outside patio area. Did you also take
25 photographs of the inside ---

1 A. I did.

2 Q. --- of the doorway? What did you see when you walked
3 in the door?

4 A. Once you walk inside the apartment, there was a decent
5 amount of blood that was on the initial entry point. But
6 also looking at the wall, there were some bullet holes in
7 the wall.

8 Q. I'm gonna show you what's been marked as State's
9 Exhibits 66 through 70. If you can take a look at those.

10 A. (Witness complies.)

11 Q. And do you recognize those?

12 A. Yeah. These are photographs that I took inside the
13 apartment.

14 Q. And are they fair and accurate representation of the
15 inside?

16 A. They are.

17 SOL. MOLINA: State moves State's 66 through 70.

18 MS. GIBBS: Without objection.

19 THE COURT: They are admitted.

20 (State's Exhibit Nos. 66 through 70 were received into
21 evidence.)

22 SOL. MOLINA: And permission to publish?

23 THE COURT: Yes.

24 Q. What are we looking at in State's Exhibit 66?

25 A. That is the interior of the front door the apartment.

1 Q. Okay. And what are these?

2 A. Those are -- appear to be blood on the inside of the
3 door.

4 Q. Okay. Would it help to come down and take a closer
5 look? I know that this is not high definition.

6 A. Yeah, okay. Sorry. It looks a lot different from
7 right there. These are actually the bullet holes from the
8 interior front door.

9 Q. And what about if -- these are the bullet holes you're
10 talking about, right?

11 A. Correct. This group right here.

12 Q. And this is the inside of this door?

13 A. Yes. That is correct.

14 Q. All right. And what about in State's Exhibit 67, what
15 are we looking at in that?

16 A. 67, this is when you come in the front door, this is a
17 hard wall as soon as you come in the door. There is a round
18 of bullet holes in the front door here. There is blood on
19 the -- I'm sorry, I said door -- wall, bullet holes in the
20 wall. There's blood on the wall here and then there is
21 blood on the floor down in this area.

22 Q. And I'm just gonna show you State's Exhibit 5. Which
23 area are you talking about when you were just describing
24 that?

25 A. Its' about right -- (indicating.)

1 Q. Okay. So that's the area we're looking at. All right.
2 Now, in State's Exhibit 68, what is that a picture of?

3 A. This is primarily the same general area of the last
4 photograph. The last photograph was almost a straight-on
5 photo of the wall. This is if you looked a little bit to
6 your left, this would be the wall that leads to a hallway.
7 And down here there is a kitchen and a bedroom. And there's
8 blood on the ground right there.

9 Q. And I'm gonna show you State's Exhibit 70. What is
10 that?

11 A. This photograph would be referring back to the last
12 one. If you came down right here and made a right on this
13 wall and came through here, there are the two rooms on the
14 right, two bedrooms.

15 Q. Okay. And did you go into those bedrooms?

16 A. I did.

17 Q. And did you take pictures in each of those bedrooms?

18 A. Yes, ma'am.

19 Q. All right. I'm going to hand you State's Exhibit 71
20 through 77. And if you could look at those here and tell me
21 if you recognize them without showing them to the jury.

22 A. Yes, I recognize them.

23 Q. And are those pictures you took inside of that first
24 bedroom?

25 A. They are.

1 Q. And are they a fair and accurate representation?

2 A. They are.

3 SOL. MOLINA: State moves State's Exhibits 71 through
4 77 into evidence.

5 OTHER: Without objection.

6 THE COURT: They are admitted.

7 (State's Exhibit Nos. 71 through 77 were received into
8 evidence.)

9 Q. All right. So what are we looking at between 70 and
10 71, if you need to refer to 70?

11 A. This photograph -- let me back up. The previous
12 photograph has the two rooms when you make the right into
13 the hallway. The next photograph is from this room, which
14 was identified as Mr. Jack's room. And this is the inside
15 of his bedroom. There's bullet holes obviously from -- in
16 the wall which would be the opposite side of the previous
17 photograph.

18 Q. That's the wall we saw in the picture just inside of
19 the doorway?

20 A. Correct.

21 Q. All right. And I'm gonna hand you State's Exhibit 72?

22 A. This is just a secondary pan of the bedroom. Took
23 photographs more towards the left side. This window right
24 here faces the parking lot of the front of the apartment.

25 Q. Now State's Exhibit 73?

1 A. This is the same bedroom. This is just a close-up of
2 the wall which shows the bullet holes that went through the
3 wall in this particular room.

4 Q. All right. State's Exhibit 74?

5 A. This is a photograph of the opposite side of the wall.
6 As you can see, there's a bullet hole there. Referring back
7 to Exhibit 72, this photograph with the towel is on this
8 wall where the door swings open.

9 Q. State's Exhibit 75?

10 A. This is just a close-up of that area. The reason the
11 close-up was taken is due to a bullet hole in the wall right
12 there.

13 Q. State's Exhibit 76?

14 A. Same angle, same photograph area. We moved the towel
15 from the wall and noticed that there were three bullet holes
16 that had gone through that wall.

17 Q. And what's State's 77?

18 A. These are again just close-up photographs of the
19 previous photograph, bullet hole in the wall.

20 Q. All right. And then after Mr. Jack's bedroom, did you
21 go into the next bedroom?

22 A. I did.

23 Q. And did you take photographs in there?

24 A. I did.

25 Q. Gonna hand you what's been marked as State's

1 Exhibits 78 through 88, if you could just take a look at
2 those, please.

3 A. (Witness complies.)

4 Q. And do you recognize those pictures?

5 A. Yeah.

6 Q. And are those pictures a fair and accurate
7 representation of that second bedroom?

8 A. They are.

9 Q. On July 5, 2021.

10 SOL. MOLINA: State moves State's Exhibits 78 through
11 88 into evidence.

12 MS. GIBBS: Without objection.

13 THE COURT: They're admitted.

14 (State's Exhibit Nos. 78 through 88 were received into
15 evidence.)

16 Q. Showing you States' Exhibit 70 again. And I'm gonna
17 hand you 78, if you just tell us what is in that.

18 A. This photograph is from the second bedroom. Referring
19 back to Exhibit 70, this would be the second bedroom that is
20 next to Jack's bedroom which was identified as Faquin's
21 bedroom. This is just a photograph prior to entry into that
22 room.

23 Q. All right. State's Exhibit 79?

24 A. This is a photograph of evidence marker 14, which was
25 identified due to a condom wrapper on the ground.

1 Q. And State's Exhibit 81?

2 A. This is a photograph of -- referring back to this
3 photograph, if you come in the room, immediately to the
4 right there is a wall there that separates those two
5 bedrooms. This is a photograph of the walls with the bullet
6 holes in the wall.

7 Q. What is State's Exhibit 80?

8 A. Exhibit 80 is just a left-hand pan of the bedroom and
9 they apartment. Again, another window that would be visible
10 to the parking lot of the apartment complex.

11 Q. And is the State's Exhibit 81, where is that -- is this
12 in that photo?

13 A. Yes. This would be -- if you kinda put these two
14 together, 81, which is this photograph, is on that hard wall
15 as soon as you enter the room, and then this, Exhibit 80, is
16 a pan to the left.

17 Q. Okay. And I'm gonna hand you State's Exhibit 84.
18 What's in 84?

19 A. 84 is evidence marker 15. That evidence marker was
20 labeled due to a condom being found on the floor.

21 Q. And I'm gonna hand you State's Exhibit 86. And just to
22 orient us, where is that?

23 A. So looking back at -- looking back at Exhibit 80, which
24 was a left-hand pan, this is a window that leads to the
25 parking lot of the apartment complex. A little bit more to

1 the left, this is the window right here, a refrigerator, and
2 a nightstand.

3 Q. And State's Exhibit 88?

4 A. Referring back to 80, again, this is a left-hand pan of
5 the bed with two bullet holes in the wall.

6 Q. Okay. And is that what evidence marker 12 is?

7 A. That is what evidence marker 12 is for.

8 Q. And there were other -- you mentioned a condom and the
9 wrapper. Did you collect those?

10 A. I did.

11 Q. I'm handing you State's Exhibits 15 and 16. Do you
12 recognize those items?

13 A. I do.

14 Q. And how do you recognize those items?

15 A. These items are identified showing collected by me
16 through the chain of custody with my name and signature on
17 it. On the back when these items were sealed for evidence,
18 I initial, date, and put my badge number.

19 Q. Okay. And are those items that you collected in
20 Faquin's room?

21 A. They were, yes.

22 Q. And what are those items?

23 A. State's Exhibit 15 is a condom wrapper that was
24 identified in the photograph and evidence marker 14.

25 State's Exhibit 16 is the condom that was identified by

1 evidence marker 50.

2 Q. And did you alter or change those items in any way?

3 A. I did not.

4 Q. Did you maintain their integrity while they were there
5 in your custody and control?

6 A. I did.

7 SOL. MOLINA: States moves State's Exhibits 15 and 16
8 into evidence.

9 MS. GIBBS: Without objection.

10 THE COURT: They are admitted.

11 (State's Exhibit No. 15 was received into evidence.)

12 (State's Exhibit No. 16 was received into evidence.)

13 Q. You can take the stand. Thank you. While you were in
14 apartment number 4, did you find a knife?

15 A. I did.

16 Q. Where was that knife?

17 A. That knife was on the kitchen counter.

18 Q. Okay. Did you find a gun?

19 A. I do not.

20 Q. Did you ever find a gun in this case?

21 A. I did not.

22 SOL. MOLINA: Court's indulgence.

23 (Brief pause.)

24 SOL. MOLINA: I have no further questions. Please
25 answer any that the Defense has.

1 MS. GIBBS: Thank you. May it please the Court?

2 - - - - -

3 CROSS-EXAMINATION

4 BY MS. GIBBS:

5 Q. How are you, Investigator?

6 A. Good. How are you, ma'am?

7 Q. Great. Thank you. So you didn't have any body-worn
8 cameras that was entered into evidence?

9 A. No. At the time that this incident happened, they were
10 just starting to distribute those. I had not received one
11 yet.

12 Q. Okay. But, obviously, you did write reports to submit?

13 A. Correct.

14 Q. And as you testified, you were the duty investigator
15 that was called to the scene, right?

16 A. Yes, ma'am.

17 Q. Okay. And basically your job is to get information
18 from the on-scene officers as things were going on so you
19 could kinda decide what -- you know, maybe where they should
20 be directed and what things that needed to be done?

21 A. Correct.

22 Q. Okay. And I know one of the first things you did is
23 you wanted an officer to go to Savannah Memorial Hospital to
24 talk to Olivia and Yao, right?

25 A. Yes, ma'am.

1 Q. And there's where Officer Cushman went?

2 A. Yes, ma'am.

3 Q. Okay. And you got to the scene pretty quickly. I
4 mean, it wasn't right at the beginning, but you got there
5 and kind of dived -- dove right in pretty soon after the
6 call?

7 A. I don't remember my exact arrival time. But after
8 4:00, before 5:00, I know that.

9 Q. Okay. And you did -- I mean, clearly, you went inside
10 the home. One of the things you noted is that there was
11 blood pooling near the door only and there's no blood
12 anywhere else in the apartment, right?

13 A. Correct.

14 Q. Okay. And while you were there, you also made contact
15 with Faquin Cruz Hernandez, right?

16 A. Yes, ma'am.

17 Q. And he was one of the men who was pulled out of the
18 apartment. And it is seems like you kinda noted you hear
19 intoxicated ---

20 A. Yes, ma'am.

21 Q. --- in your report? Okay. And also -- and this might
22 be just from watching some of the body cameras -- there
23 might have been a discussion about whether or not he was
24 telling the truth about how much English he actually did or
25 did not understand. Maybe that was a question?

1 A. I know he spoke -- when I was briefed by the deputy he
2 said that he spoke some English and that was the information
3 that I got.

4 Q. Okay.

5 A. But not fluent.

6 Q. And it seemed like you collected most of the evidence
7 that was on the scene. You took all the pictures and
8 collected evidence from, you know, in and around the house?

9 A. Yes, ma'am.

10 Q. You also put the markers down or did another officer do
11 that?

12 A. I did.

13 Q. Okay.

14 A. Yeah. Those are my markers.

15 Q. And you collected the six shell casings, right?

16 A. Correct.

17 Q. And you didn't swab any of them for DNA or finger
18 prints?

19 A. I did not.

20 Q. All right. You did swab for DNA on the blood on the
21 floor?

22 A. Yeah. The blood that was identified by the front door
23 was swabbed.

24 Q. Okay. Did you swab any of the blood that was on that?
25 Was there blood on that shirt that was found?

1 A. The black shirt?

2 Q. The black shirt.

3 A. Yeah. I believe there was blood on it.

4 Q. Okay.

5 A. I did not swab it.

6 Q. You did not swab that. And as you just testified,
7 there was a knife in that home?

8 A. Correct.

9 Q. Right. And you actually collected it and put it into
10 evidence?

11 A. I did.

12 Q. And you took a picture of it?

13 A. I did.

14 Q. And that was in one of the pictures that was just put
15 into evidence that the jury saw, right?

16 A. No.

17 Q. Okay.

18 SOL. MOLINA: Judge, I don't object to her putting the
19 picture in if she wants to.

20 MS. GIBBS: I was just questioning him about it.

21 Q. Do you recall -- I mean, do you remember, since you
22 took a picture and put into evidence, it was a butcher
23 knife, a square butcher knife?

24 A. Yeah. Probably the best description it was more like a
25 cleaver.

1 Q. A cleaver?

2 A. Yeah.

3 Q. Okay. And you collected and took a picture of it
4 because you thought it might be evidence?

5 A. Correct.

6 Q. Right. And you didn't swab that for DNA for
7 fingerprints?

8 A. No, ma'am.

9 Q. All right. And, clearly, that knife did not get put
10 into evidence just now, right?

11 A. In court?

12 Q. Yes. Just now?

13 A. No.

14 Q. Okay. Because it got destroyed. The evidence
15 department destroyed it?

16 A. From what I was told, yes.

17 Q. Okay. And I know you took pictures of the door with
18 the bullet holes. Does it indicate to you that the door was
19 closed when the bullets were shot through?

20 A. I can't say.

21 Q. Okay. But it was clustered in a way that was kind of
22 near the door handle and the lock, possibly, to kind of
23 indicate that it was closed?

24 A. Yeah. It was close to the doorknob than it was to the
25 hinges.

1 Q. Okay. And after -- you were the one who decided which
2 charges were gonna be issued and what warrants would be put
3 out, right?

4 A. Correct.

5 Q. And you signed the warrants?

6 A. Correct.

7 Q. And at the time, as for the attempted murder warrants,
8 you had two attempted murder warrants. One was listed as
9 Yao as the victim, right?

10 A. Correct.

11 Q. And the other attempted murder warrant listed Olivia as
12 the victim, right?

13 A. Correct.

14 Q. So you did no warrants that listed Faquin as any sort
15 of victim?

16 A. No.

17 Q. Okay. Now, I know you submitted a request for SLED for
18 forensic testing I believe for the gunshot residue testing
19 and the shell casings, right?

20 A. Yes.

21 Q. Okay. And for the shell casings, as you said, it
22 wasn't for DNA or fingerprints. It was for, you know,
23 whether the same gun -- firearms testing, like whether they
24 were the same gun fired and of that nature, right?

25 A. Of the shell casings?

1 Q. Right.

2 A. Yes. Correct.

3 Q. And then for the gunshot residue was basically testing
4 all the gunshot residue tests that were collected during
5 this investigation?

6 A. Yes.

7 Q. Okay. Now, Francisco, he was arrested a few days after
8 this incident, to your knowledge?

9 A. I don't remember the exact date.

10 Q. Okay. But he never was swabbed for gunshot residue?

11 A. No. Too much time had passed.

12 Q. Okay. Now, I know in your report you noted that you
13 were going to submit a forensic test and request for DNA at
14 the Sheriff's Office lab?

15 A. Correct.

16 Q. Right. And so that's separate from SLED where the
17 other testing was done?

18 A. Yes.

19 Q. Okay. And then I know you noted you were waiting
20 because you wanted to, you know, collect all the DNA swabs
21 that were done in the investigation?

22 A. Correct.

23 Q. Okay. And so to your knowledge, it's my understanding
24 DNA swabs were done of Olivia, right?

25 A. Yes.

- 1 Q. Do you recall who else?
- 2 A. Faquin.
- 3 Q. Faquin?
- 4 A. Uh-huh.
- 5 Q. Okay. Was there any other?
- 6 A. And we --
- 7 Q. Yao?
- 8 A. Correct me if I'm wrong, but yeah, Jack.
- 9 Q. Okay, Jack. Yeah. Okay. Now, were they not submitted
- 10 for testing?
- 11 A. I submitted them for testing.
- 12 Q. Okay. So the DNA lab never tested them?
- 13 A. Correct.
- 14 Q. All right. Now, you were able to speak to Faquin. A
- 15 few weeks later after this incident he came in and spoke to
- 16 you?
- 17 A. Yeah.
- 18 Q. And the translator?
- 19 A. He spoke with -- I interviewed him. But because he
- 20 didn't speak English, I had to have Staff Sergeant Machado
- 21 (ph) with me because he's one of our Spanish interpreters.
- 22 Q. Okay. And it seems -- I mean, in some of that you made
- 23 it clear you didn't believe he was being truthful with you?
- 24 A. Not his whole -- not his whole statement, no.
- 25 Q. Okay. And you didn't question him about the knife that

1 was found?

2 A. No.

3 Q. All right. And you also collected the phones in this
4 case. Or at least Faquin's phone you collected at the
5 scene, right?

6 A. Correct.

7 Q. And then there's also another phone that
8 Officer Cushman took from Olivia at the hospital, right?

9 A. Correct.

10 Q. And I know those were submitted into -- to try and get
11 forensic downloads from them or to see what you can get off
12 them. Is that right?

13 A. Yeah. A digital forensic examination.

14 Q. Digital forensic -- okay. And I know they were first
15 sent to SLED?

16 A. Yes.

17 Q. And then I guess a while later you discovered they
18 didn't test them, they just accidentally sent them back to
19 Beaufort County?

20 A. Yeah.

21 Q. Without testing them?

22 A. Yeah. Can I explain that?

23 Q. Sure.

24 A. The phones were sent to SLED for forensic examination.
25 At the time, SLED was in the process of moving their

1 evidence laboratory. And those phones were placed on a
2 shelf that is deemed return to agency. So before they could
3 even be processed at SLED, they were already being sent back
4 without my knowledge.

5 Q. Okay. But you let SLED know that -- you got basically
6 Beaufort County's digital lab, and I believe Officer Cushman
7 was actually the one who did -- analyzed the phone
8 themselves?

9 A. Yes, after the fact.

10 Q. Okay. And there was no evidence of that?

11 A. Excuse me?

12 Q. There was no evidence that could be recovered that was
13 helpful from those phones?

14 A. No.

15 Q. All right. But you didn't -- and I know -- let's see.
16 I know you sent a preservation letter to AT&T and T-Mobile,
17 right?

18 A. Correct.

19 Q. And is that the cell phone carriers for those two
20 phones?

21 A. It is.

22 Q. And a preservation letter, you send that to ask to
23 preserve any phone records that they may have so you can get
24 them?

25 A. Actually, correction. They were not for those two

1 phones.

2 Q. Okay.

3 A. It was for Olivia's and Francisco's phones.

4 Q. Okay. But you never -- I mean, you never got those
5 phone records, right?

6 A. No. The intent of sending the preservation letter was
7 to try and acquire text content data, which was text
8 messages between individuals. However, as I learned, AT&T
9 and T-Mobile do not retain those records. So a search
10 warrant was not obtained to obtain records that exist.

11 Q. Okay. But you can get call logs?

12 A. Yes.

13 Q. To show if they communicated and things of that nature?

14 A. If it was done through the carrier service, yes.

15 Q. And you did not subpoena any Facebook records?

16 A. I did not.

17 Q. Okay. You never went and got a statement from
18 Francisco?

19 A. From what I was told, once he was arrested, he did not
20 wish to speak to law enforcement.

21 Q. But he never -- I mean, he never waived his rights or
22 signed a -- I mean, he was never . . .

23 A. He was never spoken to face-to-face.

24 Q. Okay. All right.

25 MS. GIBBS: Beg the Court's indulgence.

1 I have no further questions.

2 - - - - -

3 REDIRECT EXAMINATION

4 BY SOL. MOLINA:

5 Q. All right. Sergeant Calore, I'm going to show you
6 State's Exhibits 89 through 91, if you could tell me if you
7 recognize those items. Do you recognize those?

8 A. I do.

9 Q. And what are they?

10 A. These are three photographs that I took from the
11 kitchen of the apartment number 4 at The Oaks.

12 Q. And those are fair and accurate representation --

13 A. Yes.

14 Q. -- of those items?

15 SOL. MOLINA: State moves State's 89 through 91 into
16 evidence.

17 MS. GIBBS: Without objection.

18 THE COURT: They are admitted.

19 (State's Exhibit Nos. 89 through 91 were received into
20 evidence.)

21 Q. And State's 89, what are we looking at?

22 A. Can I come back down?

23 Q. Yes, of course.

24 A. Can I refer back to . . .

25 Q. State's Exhibit 5.

1 A. So this is a photograph of the kitchen. The two
2 previous photographs that were shown were the two bedrooms
3 when you come -- make a right into this hallway. Jack's
4 bedroom. Faquin's bedroom kept going down the hall to the
5 left. There's a kitchen at the very back corner of the
6 room. That's what this picture represents. That fridge is
7 gonna be the top right corner of that room.

8 Q. Okay. And then State's Exhibit 90?

9 A. This is just the opposite side. So putting these two
10 photographs together, you have the refrigerator on this hard
11 wall that is adjoining apartment 6. And across that is the
12 countertop and appliances for the other side.

13 Q. And State's Exhibit 91?

14 A. This is a photograph of the countertop. The knife that
15 I just described was right here. This is just a
16 continuation of Exhibit 90. You can see the toothbrush and
17 toothpaste, which is one in the same in this photograph.

18 Q. Is there any blood on that knife?

19 A. No.

20 Q. Did you see any blood on that knife when you collected
21 it?

22 A. I did not.

23 Q. I'm going to ask you back up to the stand. And that
24 knife was found in the kitchen?

25 A. Yes. Yes, ma'am.

1 Q. Okay. And is it your understanding that the evidence
2 department destroyed it by mistake?

3 A. That's what I was told.

4 Q. That they intended to destroy a knife from another case
5 that was closed?

6 A. From my understanding, yes.

7 Q. And that knife, as pointed out, wasn't swabbed for any
8 kind of DNA, right?

9 A. No, ma'am.

10 Q. And the DNA, as pointed out, that you got was from
11 Olivia, Faquin, and Jack, correct?

12 A. Correct.

13 Q. Buccal swabs?

14 A. Buccal swabs, yes.

15 Q. And those three people were all people that we knew
16 were inside of the apartment?

17 A. Correct.

18 Q. That night. And you swabbed the blood. Was there
19 anybody, to your knowledge, based on information you
20 received, that was bleeding besides Olivia or Jack?

21 A. No.

22 Q. And they both had gunshot wounds?

23 A. Olivia and Jack did, yes.

24 Q. Did any of them have any kind of knife wounds?

25 A. No.

1 Q. You also discussed the defendant being arrested a few
2 days later. Was he arrested in Beaufort County?

3 A. He was not.

4 Q. And you said he was not swabbed for gunshot residue.
5 Why was that?

6 A. Typically, there's many circumstances regarding gunshot
7 residue. Typically, if it's been over -- I forget with the
8 exact time is per SLED's policy, but I know it's less
9 than -- I believe it's less than 24 hours from a time that
10 an incident occurs until a time that you can process it.

11 Q. So they wouldn't have processed it?

12 A. No. And so many days had passed that, you know, an
13 average person would've washed their hands in that time
14 frame as well, which would make that test useless.

15 Q. And you didn't swab any shell cases?

16 A. I did not.

17 Q. Why not?

18 A. Typically, you're not gonna find DNA evidence or
19 fingerprints on shell casings that have been fired out of a
20 firearm. That's just because of the high heat that is
21 produced.

22 Q. Okay.

23 A. I've never -- I've swabbed numerous shell casings prior
24 to that, and I've never received any type of DNA evidence
25 off any of them at the time that I've been a law enforcement

Recross-examination of Sgt. Calore by Ms. Gibbs

241

1 officer.

2 SOL. MOLINA: Court's indulgence.

3 (Brief pause.)

4 SOL. MOLINA: I have no further questions for you.

5 MS. GIBBS: Very briefly.

6 - - - - -

7 RECROSS-EXAMINATION

8 BY MS. GIBBS:

9 Q. So as you mentioned, Faquin was not bleeding because he
10 was not shot, right?

11 A. Correct.

12 Q. And so if he had been holding that knife, it's very
13 possible that there would be no blood on that knife, right?

14 A. Possibility.

15 Q. But it is also possible if he was holding that knife,
16 that he would have left fingerprints and DNA on the handle,
17 right?

18 A. DNA, yes. Fingerprints more likely than not, no.

19 MS. GIBBS: No further questions.

20 THE COURT: Thank you, sir. You can step down.

21 SOL. MOLINA: Judge, may we approach?

22 THE COURT: Yes.

23 (A bench conference was held off the record and out of
24 the hearing of the jury panel.)

25 THE COURT: Okay. Ladies and gentlemen, we're gonna go

1 ahead and take a break. We do have another witness who is
2 expected here at 4:00. We have a couple of matters we're
3 gonna take up during the break now. So you have a little
4 bit of a longer break right now before we have our last --
5 probably our very last witness today.

6 Is that what we're anticipating?

7 SOL. MOLINA: Yes, ma'am.

8 THE COURT: Thank you again. Please don't begin
9 discussing the case.

10 (The jury exits the courtroom at 3:25 p.m.)

11 THE COURT: We'll just be at recess. Come and get me
12 if he was to get here any earlier.

13 SOL. MOLINA: Okay. Thank you.

14 (Recess at 3:26 p.m.)

15 THE COURT: Okay. We're ready for the jury?

16 SOL. MOLINA: Yes, ma'am.

17 (Brief pause.)

18 (The jury enters the courtroom at 4:01 p.m.)

19 SOL. MOLINA: State calls Dr. Jason Norcross.

20 (Whereupon, the witness, DR. JASON NORCROSS, was duly
21 sworn.)

22 THE CLERK: Take a seat up here. Please state your
23 name for the record and spell it.

24 THE WITNESS: Did you ask me to spell it, too?

25 THE CLERK: Yes, sir.

Direct Examination of Dr. Norcross by Sol. Molina

243

1 THE WITNESS: Okay. My name is Jason Patrick Norcross.
2 My name is spelled J-A-S-O-N; last name, N-O-R-C-R-O-S-S.

3 - - - - -

4 DIRECT EXAMINATION

5 BY SOL. MOLINA:

6 Q. Dr. Norcross, where do you work?

7 A. I work at Hilton Head Hospital.

8 Q. And what do you do at Hilton Head Hospital?

9 A. I'm an orthopedic surgeon specializing in hip and
10 replacement surgery.

11 Q. What does an orthopedic surgeon do?

12 A. We are charged with treating people's bone and joint
13 ailments, soft tissue injuries, extremity injuries, things
14 of that nature.

15 Q. And you perform surgery on those areas ---

16 A. Yes, ma'am.

17 Q. --- and injuries? And you see a broad variety of
18 patients and cases?

19 A. Yes, ma'am. Although, my specialty training is in
20 joint reconstruction, so I do lots of hip and knee
21 replacements and revisions and things like that. I take
22 general orthopedic call, which means I'm responsible for,
23 you know, orthopedic injuries that come through the
24 emergency room and have the occasions of taking care of lots
25 of different injuries -- wounds, gunshot wounds, tibia

1 fractures, an assortment of different things.

2 Q. For your education, where did you go to school?

3 A. My undergrad education was at University of Rochester
4 in New York, New York State. And then I went to UNC Chapel
5 Hill School of Medicine for medical school. And then
6 I matched in residency, then I did five years of residency
7 training at University of Texas Medical Branch in Galveston.
8 And then I did a hip and knee fellowship in Sydney,
9 Australia. That's the bulk of my training.

10 Q. When did you graduate from medical school?

11 A. I graduated from medical school in 2001.

12 Q. And did you go into your residency right after that?

13 A. Yes. Straightaway and then graduated residency in
14 2006.

15 Q. And then you said you went and did an additional
16 training for hip and knee?

17 A. Yes, that's correct. I did that six months -- well, so
18 I started in August and then left January 1st of my first
19 year of training to do a knee fellowship. My group did not
20 have a hip and knee specialist. And so I had the
21 opportunity to do that. And then I subspecialized
22 thereafter as -- you know, probably 90 percent of my
23 surgeries are of the hip and knee with 10 percent being, you
24 know, various assortments of injuries through emergency room
25 call and other referrals.

1 Q. For employment history, are you employed anywhere
2 besides Hilton Head Regional?

3 A. Yes, ma'am. I'm employed currently by UNC hospital
4 system, UNC Healthcare I guess would be the technical name
5 for it. I go up one day a week to my former stomping
6 grounds where I practiced for 14 years in North Carolina.
7 And I worked for one of the hospitals there doing basically
8 hip and knee surgery one day a week. That employment is
9 coming to an end -- I had no choice -- as of January 1st of
10 this year. I practice here, so I can't do that anymore.

11 Q. And so you've been an orthopedic surgeon now for about
12 20 years. Is that fair, give or take?

13 A. Yeah. Give or take, yeah. So, you know,
14 professionally, not as a student. You know, since 2006,
15 doing your five years of residency or doing orthopedic
16 surgery at that time. So it's been -- I guess combined,
17 yeah.

18 Q. And you're talking about your practice. So you
19 regularly perform surgeries?

20 A. Yes, ma'am. I have six surgeries tomorrow.

21 Q. And do you do continued learning? Are they required or
22 do you do them?

23 A. Yes, ma'am. I've kept current. I just got back in
24 November -- from my November 18 credit CME course. I go to
25 Hip and Knee Society meeting annually, at least I have for

1 the last three or four years where I attend extra training
2 and extra courses and stuff to continue my -- to do my
3 necessary CME course work.

4 Q. Are you a part of any professional organizations?

5 A. Yeah. I'm part of -- well, my membership just expired.
6 So I haven't renewed it. But the Academy of Orthopedic
7 Surgeons I've been a member of my whole career. And then
8 I'm active member of the Hip and Knee Society, which is the
9 reason I go to the meetings once a year to attend.

10 SOL. MOLINA: At this time the State would offer
11 Dr. Norcross as an expert in the field of orthopedic
12 surgery.

13 MS. DIGGS: Without objection.

14 THE COURT: Okay: Ladies and gentlemen, normally a
15 witness is not permitted to testify about opinions. They
16 can testify as to what they heard or they saw, what they
17 sensed. But an exception applies when a witness has been
18 determined to be an expert in a certain field by virtue of
19 training, experience. In this case, Dr. Norcross has been
20 qualified as an expert, so he is allowed to give you opinion
21 testimony in the area of orthopedic surgery. You are to
22 give his testimony whatever weight you feel is appropriate.

23 BY SOL. MOLINA:

24 Q. Dr. Norcross, I'm gonna bring you back a little bit.
25 Did you see a patient by the name of Yao Ming Zhang on

1 July 9, 2021?

2 A. Yes, ma'am. I actually met him two days prior in my
3 clinic.

4 Q. Okay. And what was he seeing you for?

5 A. My best recollection, my colleague, Dr. Aquino (ph)
6 called and asked me July 7th to work in one of her patients
7 who was a gunshot victim. And she was worried because it
8 was near his knee joint. And she does send -- refer her
9 knee patients. And so I agreed to work him in to see him
10 that day on July 7th. I did perform a surgery on this
11 gentleman on July 9th as he stated.

12 Q. Okay. And prior to surgery, did you discuss risks
13 involved in surgery?

14 A. Yes. When I met him for the first time, I had an X-ray
15 made in my office, and he had what looked like a pretty good
16 size bullet fragment -- I'm not a bullet expert, but ---

17 Q. I'm gonna show State's -- what's already been admitted
18 into State's Exhibit 12 as Yao's X-ray of his knee. Is this
19 what you were looking at?

20 A. Yes. This was one of four X-rays that we've obtained
21 the day that he came in. I actually looked at his X-rays
22 before I came to this so I was totally refreshed on it. But
23 he had, you know, the bullet fragment very close to the
24 outside of his patella which, you know, it was very close to
25 being inside of his knee joint. And as a result of -- thank

1 you -- as a result of that X-ray, the proximity of what
2 looked like a bullet to the knee, I had recommended strongly
3 that we go retrieve the bullet fragment. Actually, I was a
4 little worried that there may have been some communication
5 of the bullet with the knee joint which would be something
6 that would require more of an emergent or rapid need for
7 surgery.

8 So when we encounter that X-ray, the wound on his
9 knee, you know, it was clear to me that he needed to have
10 surgery to retrieve the fragment, wash it out, and explore
11 to make sure it didn't violate his knee joint, which could
12 have potentially resulted in, you know, an infection in the
13 joint, a destruction of his knee. So we kind of jumped on
14 it quickly. And so I think I posted his surgery for
15 two days later from when I met him. And then discussed the
16 surgery, to answer your question -- sorry, I was a little
17 long-winded -- to discuss the risks and benefits of the
18 surgery. And so when I told him what needed to happen, we
19 discussed if we didn't do it, you know, then there would be
20 potential for, you know, potential catastrophic injury to
21 his knee as one of the risks of not doing the surgery, in
22 addition to obvious surgical risks including anesthesia
23 complications related to intubation and sedation and, you
24 know, any kind of surgical complications related to
25 infections.

1 He did have a rash, you know, basically imperfect
2 skin, adjacent to where this fragment was that I had to
3 kinda cut near it. You always risk going after that
4 fragment and it's not being infected; and because it's
5 adjacent to contaminated skin, actually introducing bacteria
6 into the wound. So we kinda had to treat the surgery in a
7 very delicate manner. So I had to kinda go in with a
8 plan A, plan B, plan C. And we discussed all of that ahead
9 of time. So I don't know if that answers the specifics of
10 your question.

11 Q. It does. And so the surgery was necessary. I just
12 want to back up a little bit. Communication with the joint,
13 what does that mean?

14 A. So if there is an open area that allows the skin and
15 the air to communicate with the joint itself, if there's an
16 open door, if there's an opening -- a rip, a tear, a
17 hole -- in the joint capsule that allows anything from the
18 outside to get in. And so we had to kinda prove that. And
19 so one of my goals with taking him to the operating room was
20 to retrieve the fragment and to clean up the wound, but also
21 to prove or disprove whether or not there was communication
22 or an open door into the joint. Because if there was, the
23 likelihood of a severe infection of the knee joint and then
24 all of the complications that ensue afterwards is high.

25 And so during the surgery, we explored the wound

1 or treat the fragment, cleaned it all up, freshened up the
2 skin, and then did my best to prove that there wasn't an
3 open door to the joint. You inject the joint with a big
4 volume of fluid and then wiggle it around to see if you can
5 get the fluid to express out of a hole. And there did not
6 seem to be a communication. So we felt safe to not then
7 open the joint and then potentially introduce the
8 possibility for germs to go from the outside into the inside
9 as a result of the surgery. So the surgery itself had its
10 own risks, just doing something. But I think the benefits
11 of what we did definitely outweighed the risk, which is a
12 discussion we had prior to the surgery.

13 Q. So is it fair to say, and for a variety of reasons, a
14 gunshot wound could result in great bodily injury or
15 death ---

16 A. Yes, ma'am.

17 Q. -- for a number of reasons?

18 A. Very much so. Yes, ma'am.

19 Q. And I'm gonna hand you what's been marked as State's
20 Exhibit 17. And if you could just look at this item. And
21 do you recognize that item?

22 A. It's has the appearance of what I took out --

23 Q. Is your name on the bottle that it's in?

24 A. It is. So the patient's name, my patient's name,
25 Mr. Zhang, in addition to my name as the attending

1 physician. So I would assume that, you know, chain of
2 custody was I washed it out, put it in this cup, sealed it,
3 gave it to the nurse who then took charge of it.

4 Q. Okay. So other than retrieve it and sanitize, did you
5 alter it in any way?

6 A. No, ma'am. In fact, I once I put in this cup, I didn't
7 expect ever to see it again.

8 Q. Okay.

9 SOL. MOLINA: State moves State's Exhibit 17 into
10 evidence.

11 COURT REPORTER: Without objection.

12 THE COURT: It's admitted.

13 (State's Exhibit No. 17 was received into evidence.)

14 SOL. MOLINA: Thank you, Dr. Norcross. I have no
15 further questions. Please answer any the Defense has.

16 MS. GIBBS: I have no questions for this witness.

17 THE COURT: Thank you, sir. You can step down. Do
18 y'all want to approach just a moment?

19 (A bench conference was held off the record and out of
20 the hearing of the jury panel.)

21 THE COURT: Okay. Ladies and gentlemen, we have
22 finished a little earlier than we had anticipated. I'm
23 gonna go ahead and dismiss you for the day. We will start
24 back tomorrow morning at 9:30. Once again, please don't
25 begin discussing the case with anyone overnight.

1 (The jury is excused for the day and exits the
2 courtroom at 4:17 p.m.)

3 THE COURT: Anything else before we conclude for the
4 day?

5 SOL. MOLINA: Nothing from the State.

6 MS. GIBBS: Nothing for Defense.

7 THE COURT: Okay. We'll be at recess.

8 (The trial proceedings adjourned for the day at
9 4:18 p.m.)

10 - - - - -

11 (The trial proceedings resumed Wednesday, December 18,
12 2024, at 10:00 a.m.)

13 THE COURT: Okay. Crisis averted. The juror is now in
14 the building. Anything before we bring the jury in?

15 SOL. MOLINA: Nothing from the State.

16 MS. GIBBS: No, your Honor.

17 THE COURT: Okay. Thank you. Whenever they're ready,
18 we're ready. We're ready for the jury whenever --

19 BAILIFF: Okay.

20 (Brief pause.)

21 (The jury enters the courtroom at 10:05 a.m.)

22 THE COURT: Okay. Good morning. I think we are ready
23 to move forward. I'm gonna turn it back over to the State.

24 SOL. MOLINA: State calls Captain Jackie Legree.

25 (Whereupon, the witness, JACQUELINE LEGREE, was duly

Direct Examination of Ms. Legree by Sol. Molina

253

1 sworn.)

2 THE CLERK: Please have a seat. Please speak directly
3 into the microphone. State your name and spell your last
4 name for the record.

5 THE WITNESS: Jacqueline Legree. Legree is
6 L-E-G-R-E-E.

7 - - - - -

8 DIRECT EXAMINATION

9 BY SOL. MOLINA:

10 Q. Good morning, Captain Legree. Where do you work?

11 A. Beaufort County Sheriff's Office.

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

13 A. Twenty-six years.

14 Q. What is your current role at the Sheriff's Office?

15 A. I'm the evidence custodian.

16 Q. And what does that mean?

17 A. That means I am in control of maintaining the integrity
18 of all the evidence that comes into the custody of Beaufort
19 County Sheriff's Office.

20 Q. And do you have policies and procedures that you follow
21 related to keeping the evidence?

22 A. Yes.

23 Q. And do you keep evidence in cases that have been
24 adjudicated?

25 A. Yes.

1 Q. Do you keep cases after they've been adjudicated?

2 A. Yes.

3 Q. In what scenarios -- do you keep evidence forever and
4 always?

5 A. Yes.

6 Q. What about after the case has been disposed of?

7 A. After a case has been adjudicated, we create an
8 evidence disposal retention form. Those forms are then
9 provided to the case officer deputies. At that point, they
10 will complete that form. They will inform us that the case
11 in fact has been adjudicated and if the evidence can be
12 destroyed.

13 Q. And by adjudicated you mean by plea or dismissal? It's
14 no longer pending in any way?

15 A. Yes.

16 Q. Are you aware that a knife was collected and submitted
17 into evidence in this case?

18 A. I am.

19 Q. And do you know what happened to that knife?

20 A. It is my belief that the knife was an inadvertently
21 destroyed.

22 Q. And how did that happen?

23 A. The two cases are very similar, the case numbers.
24 They're 21S. And the last three numbers are the same. So
25 it is my belief that in destroying the case that should have

1 been destroyed that that particular knife pertaining to this
2 case was inadvertently destroyed.

3 Q. Let me back up a little bit. So in every case that's
4 made, is there a case number that is assigned to that case?

5 A. Yes. There is a case number. .

6 Q. And then the evidence is stored under that case number?

7 A. Yes.

8 Q. And those case numbers can be similar because how are
9 they generated?

10 A. They are generated by our evidence management system
11 which is Spillman. So our case numbers are automatically
12 generated when an officer makes a case for him to call for
13 service.

14 Q. Is it just one after the other numerically?

15 A. Yes.

16 Q. So in this case, there was another case that had a
17 similar number?

18 A. Yes.

19 Q. And is the case number for this case 21S137323?

20 A. Yes.

21 Q. And was the case number for the other case 217240323?

22 A. Yes.

23 Q. So the other case, the second number I listed, that one
24 was the one marked for destruction?

25 A. Yes.

1 Q. Because it had been resolved?

2 A. Yes.

3 Q. And even though the knife was destroyed by mistake,
4 Sergeant Calore who's the one that collected it and
5 submitted it, did he follow policies and procedures related
6 to submitting evidence?

7 A. Yes.

8 Q. And but for the mistake between the case numbers, were
9 the policies and procedures of purging evidence otherwise
10 followed?

11 A. Yes. Absolutely.

12 Q. And so was the destruction of the knife in this case
13 done in bad faith or was it a mistake?

14 A. It was honestly a mistake. It was not destroyed in bad
15 faith.

16 SOL. MOLINA: I don't think I have any other questions.
17 Please answer any that Courtney has.

18 THE WITNESS: Okay.

19 MS. GIBBS: I have no questions for this witness.

20 THE COURT: Thank you, ma'am. You can step down.

21 SOL. MOLINA: State calls Michelle Eichenmiller.

22 (Whereupon, the witness, MICHELE EICHENMILLER, was duly
23 sworn.)

24 THE CLERK: Please take a seat. Please directly into
25 the microphone. And state your name and spell your last

Direct Examination of Ms. Eichenmiller by Sol. Molina

257

1 name for the record.

2 THE WITNESS: My name is Michelle Eichenmiller,
3 E-I-C-H-E-N-M-I-L-L-E-R.

4 - - - - -

5 DIRECT EXAMINATION

6 BY SOL. MOLINA:

7 Q. Good morning. Where do you work?

8 A. I work for the South Carolina Law Enforcement Division
9 also known as SLED. I work in the firearms department in
10 the forensic laboratory.

11 Q. And how long have you been in SLED?

12 A. About 18 1/2 years.

13 Q. And you said you're in the firearms department?

14 A. That's correct.

15 Q. What is your educational background?

16 A. I have a bachelor's degree in biology and psychology.
17 I also have a Master of Science in Forensic Science.

18 Q. Okay. Do you have any additional training related to
19 firearms?

20 A. Yes. In order to be a firearms examiner, there's no
21 college you can attend. Once you're hired somewhere, it's
22 like an apprenticeship program. So you learn with the
23 examiners that are already there. You do a lot of studying
24 and practice casework on your own: microscopic comparisons,
25 write papers, take tests. It takes about three years. At

1 the end of three years, I took a comprehensive final, and
2 the deemed me competent to do casework on my own.

3 Q. And how long have you been doing -- working in the
4 firearms department?

5 A. The whole time I'm at SLED, 18 1/2 years.

6 Q. Do you have to be certified?

7 A. We're not certified at SLED, no.

8 Q. Okay. Do you have any publications?

9 A. No.

10 Q. Have you been qualified as a witness before?

11 A. I have.

12 Q. How many times?

13 A. Approximately 130 times.

14 Q. Okay. And do you do continued training with firearms?

15 A. Yes. I'm member of the Association of Firearm and
16 Toolmark Examiners known as AFTE. They put on training at
17 least once a year as an international organization. So once
18 a year we have a conference, which we try to attend as much
19 as possible. There's also an online forum where we can keep
20 up-to-date to the new things coming out in the field of
21 firearms.

22 SOL. MOLINA: At this time the State moves to qualify
23 the witness as an expert in firearm and toolmark
24 identification.

25 MS. GIBBS: Without objection.

1 THE COURT: Okay. She is so declared to be an expert
2 in that field. Ladies and gentlemen, just like we talked
3 about yesterday with Dr. Norcross, again, witnesses are
4 normally not allowed to give opinion testimony unless we
5 have declared them to be an expert in some particular field,
6 and then they can give you expert testimony, opinion
7 testimony in that field.

8 BY SOL. MOLINA:

9 Q. What items related to firearms do you test?

10 A. We test fired bullets, fired cartridge cases, or the
11 firearms themselves in our department. We also do toolmark
12 examinations as requested, serial number restorations.

13 Q. And what are toolmarks?

14 A. Toolmarks are marks made by a harder object on a softer
15 object. So in the case of like a pry bar on a door frame,
16 that's something we can do, but also a tool as a firearm
17 that marks the cartridge case or the bullet.

18 Q. And I'm going to hand you what's been previously marked
19 and identified as State's Exhibit 23. And within 23 is 24
20 through 29. But can you first take a look at 23 and tell me
21 if you recognize that?

22 A. This is the envelope containing the evidence I examined
23 in this case. Whenever something is submitted to the lab at
24 SLED, it gets its own lab number which gets a barcode, and
25 that barcode is scanned as it moves throughout the

1 laboratory. I also see on here that my evidence tape seal
2 initials and date are on here as well.

3 Q. And did you receive this envelope sealed?

4 A. Yes.

5 Q. And it was cut open yesterday. So can you take a look
6 inside and tell me you can identify State's Exhibits 24
7 through 29?

8 A. These are the cartridge cases I examined in this case.
9 The seal is still intact with the date and my initials. I
10 also engraved on each cartridge case the case number, the
11 item number, and my initials. And these will have that on
12 there as well.

13 Q. And when you received these items, did you test them?

14 A. Yes.

15 Q. And then you sealed them back up and initialed them?

16 A. That's correct.

17 Q. And other than testing, did you change or alter them in
18 any way?

19 A. No.

20 SOL. MOLINA: State moves State's Exhibits 23 through
21 29 into evidence.

22 MS. GIBBS: Without objection.

23 THE COURT: They are admitted.

24 (State's Exhibit Nos. 23 through 29 were received into
25 evidence.)

1 Q. And can you tell us your conclusion as to those items?

2 A. When I received fire cartridge cases in a case, I will
3 compare them to each other to try to determine how many
4 firearms were used. In this case, I had the six fired
5 9-millimeter Ruger caliber cartridge cases. I physically
6 examined them and microscopically compared them to each
7 other using my comparison microscope, which I can put one
8 cartridge case on one side and one on the other. I look
9 through the ocular, which looks like a pair of binoculars,
10 to see both of them at once. I can change the angles and
11 the magnification to view the individual characteristics I
12 need to make -- to form an opinion. I found matching
13 individual identifying characteristics, and concluded that
14 these six cartridge cases were fired by one firearm.

15 Q. And you stated that they were 9-millimeter cases?

16 A. That's correct.

17 Q. And are you able to tell -- you said you can match
18 cases to a firearm. Can you match bullets to a case after
19 it's been fired?

20 A. No. There's no scientific way to match a bullet back
21 to its cartridge case.

22 Q. Okay.

23 SOL. MOLINA: I have no further questions. Please
24 answer any the Defense has.

25 MS. GIBBS: Thank you. Just briefly.

1 - - - - -

2 CROSS-EXAMINATION

3 BY MS. GIBBS:

4 Q. So from your testing, you can tell that the same gun
5 fired all of those casings, right?

6 A. That's correct.

7 Q. But unless you had a specific gun to try and compare it
8 to, you're not able to match it? Right now you're not able
9 to, like, definitively say what gun fired it?

10 A. That's correct.

11 Q. Okay. Thank you.

12 THE COURT: Any redirect?

13 SOL. MOLINA: No redirect.

14 THE COURT: Thank you, ma'am. You can step down.

15 SOL. MOLINA: State calls Lieutenant Eddie Aiken.

16 (Whereupon, the witness, EDWIN AIKEN, was duly sworn.)

17 THE CLERK: Please take a seat. Speak directly into
18 the microphone. And state your name and spell your last
19 name for the record.

20 THE WITNESS: Edwin Aiken, A-I-K-E-N.

21 - - - - -

22 DIRECT EXAMINATION

23 BY SOL. MOLINA:

24 Q. Good morning, Lieutenant Aiken. Where do you work?

25 A. The Beaufort County Detention Center.

- 1 Q. And what is your role at the detention center?
- 2 A. The Office of Professional Standards. I also keep
- 3 records as far as the phone records and training records.
- 4 Q. And you keep phone records. Are the phone calls
- 5 recorded?
- 6 A. Yes.
- 7 Q. And are they always recorded?
- 8 A. They are always recorded.
- 9 Q. Would an exception be if they were talking to an
- 10 attorney or something?
- 11 A. Yes.
- 12 Q. Okay. In addition to phone calls, is there a video
- 13 chat option?
- 14 A. Yes. We have a video visit module.
- 15 Q. Is that called a visit or a visitation?
- 16 A. We consider it a visitation.
- 17 Q. Are those recorded also?
- 18 A. Yes. Unless they're privileged, obviously.
- 19 Q. And are those calls kept in the regular and ordinary
- 20 course of business, those records?
- 21 A. Yes.
- 22 Q. And I'm gonna have -- hand you what's been marked as
- 23 State's Exhibits 92 through 96. And do you recognize those
- 24 items?
- 25 A. I do.

1 Q. Are those calls that came from the detention center?

2 A. Yes.

3 Q. And have you had a chance to review those?

4 A. I did.

5 Q. And are they a fair and accurate representation of
6 those calls?

7 A. Yes.

8 SOL. MOLINA: State moves State's 92 to 96 into
9 evidence.

10 MS. GIBBS: Subject to my prior objections.

11 THE COURT: Your objection is noted. But for the
12 record, they are admitted.

13 (State's Exhibit Nos. 92 through 96 were received into
14 evidence.)

15 BY SOL. MOLINA:

16 Q. So at the detention center, does each inmate have their
17 own account from which they can make calls?

18 A. Yes. They have a PIN number that they have to enter
19 into the phone in order to make a call.

20 Q. Is sharing PINs or using other people's accounts
21 permitted?

22 A. It's not permitted.

23 Q. Does it happen occasionally?

24 A. It happens on occasion. Yes, ma'am.

25 Q. And related to visitor accounts, when would somebody

1 have to create a visitor account?

2 A. In order to visit, you have to have a visitor count.

3 Q. And that would be to include that video chat?

4 A. Yes.

5 Q. That we talked about. Does Olivia Erskine have a
6 visitor account?

7 A. She does.

8 Q. And what is the phone number associated with her
9 account?

10 A. So her phone number is listed as (843)816-2253.

11 Q. And is that the phone number that was called in State's
12 Exhibits 92, 93, 95, 96?

13 A. Yes.

14 Q. And what visitor account is associated with State's 94,
15 the video chat?

16 A. Oh, that would be Olivia's.

17 SOL. MOLINA: And at this time, the State will publish
18 those calls. This is State's Exhibit 92.

19 (Audio plays at 10:25 a.m. and stops at 10:32 a.m.)

20 SOL. MOLINA: State's Exhibit 93.

21 (Audio plays at 10:32 a.m. and stops at 10:39 a.m.)

22 SOL. MOLINA: States Exhibit 94.

23 (Audio plays at 10:39 a.m. and stops at 10:46 a.m.)

24 Q. And do you know about when this call happened, the
25 date?

1 A. I would have to get the records. I don't if it's in
2 the --

3 Q. Well State's number -- State's 94 and 95, did those
4 calls occur the same day?

5 A. Yes.

6 Q. I'm just going to skip ahead a few minutes.

7 (Audio of State's 94 resumes.)

8 SOL. MOLINA: State's Exhibit 95.

9 (Audio plays at 10:55 a.m. and stops at 11:01 a.m.)

10 SOL. MOLINA: State's Exhibit 96.

11 (Audio plays at 11:01 a.m. and stops at 11:05 a.m.)

12 SOL. MOLINA: Thank you. No further questions. Please
13 answer any that the Defense has.

14 MS. GIBBS: No questions for this witness.

15 THE COURT: Thank you, sir. You can step down.

16 SOL. MOLINA: At this point, the State rests its case.

17 THE COURT: Okay. Ladies and gentlemen, we have a few
18 matters that we need to take up outside of your presence.
19 I'm gonna send you back to the jury room. Please do not
20 begin discussing the case.

21 (The jury exits the courtroom at 11:05 a.m.)

22 THE COURT: Okay. The State has rested. Ms. Gibbs?

23 MS. GIBBS: Thank you, Judge. At this time, I'll renew
24 all of my prior motions and objections. And I'll also make
25 a motion at this time for a directed verdict. If you look

1 at the evidence in the light most favorable to State, as we
2 must at this point, I don't believe that the State has met
3 their burden of proof to send it through to the jury.
4 Specifically, I don't believe they have proven any specific
5 intent to kill or that Mr. Cortes acted unlawfully. And I
6 would ask that this case be dismissed.

7 THE COURT: Okay. Yes, ma'am?

8 SOL. MOLINA: Thank you, Judge. There has been ample
9 evidence of specific intent to kill in this case. While
10 malice as an operation of law can't be implied, for the fact
11 finder, they can infer malice from the case. There has been
12 the surveillance footage. And you heard from the witnesses
13 and the victims, specifically Faquin who denied holding her
14 hostage and preventing her from leaving. He stated that he
15 saw the gun and that's why he closed the door. From Olivia,
16 following her impeachment, that she was brought there by the
17 defendant. He was waiting for her, that he wanted her to
18 come out and was frustrated, for lack of a better word, that
19 she wasn't coming out when banged on the door. When they
20 opened it, they saw the gun, closed and locked. In her
21 statements, it was because he was tired -- or it was because
22 the victim, Faquin, was testing his patience, not because he
23 was holding her hostage.

24 There's also malice indicative of the specific intent
25 to kill when Olivia describes the two sets of shots for the

1 specific intent to kill Faquin. It was the first set of
2 shots. She says then that she thought the shooting was
3 over, at which point she went to open the door and that's
4 when she got shot. That is sufficient specific intent as to
5 her. He intended to kill the person opening the door, and
6 she was that person.

7 Although, there just needs to be some evidence of the
8 elements in this case to send to the jury, there's ample
9 evidence that puts the defendant on scene as the shooter and
10 that he acted with a specific intent to kill and not in
11 defense of Olivia. And he was not there acting lawfully
12 because they were soliciting sex. Thank you.

13 THE COURT: I do think that there are jury questions
14 with respect to each of the offenses with the offense of
15 attempted murder pertaining to Olivia, with the offense of
16 attempted murder pertaining to Mr. Cruz, the shots coming
17 right there at the front door. The testimony from Mr. Cruz
18 that he was at the front door, saw the gun, slammed the
19 door. Then, again, the testimony that -- I believe the
20 testimony was that the first round of shots had stopped and
21 that Olivia was then going to the door when trying to get
22 out and the next shots came. Certainly, there's enough
23 evidence to go to the jury regarding assault and battery of
24 a high and aggravated nature, with respect to Jack and the
25 two counts of discharging a firearm into a dwelling as well

1 as the possession of a weapon during a violent crime.

2 Specific intent, while we can't infer, we can instruct
3 the jury that -- I can instruct the jury that, you know,
4 they can infer that from specific acts, or that's something
5 you all can argue to the jury whether or not he had the
6 intent to kill anyone. But I do think there's sufficient
7 facts and evidence to meet the element of specific intent.
8 So I'm gonna respectfully deny the motion for directed
9 verdict.

10 MS. GIBBS: Thank you.

11 THE COURT: I think if he was justified or if there was
12 some motivation -- some legal motivation for him to protect
13 her that's, again, a jury question. I do need to speak to
14 the defendant about his rights with respect to testifying.
15 So, Mr. Cortes, let me address that with you now.

16 You have the constitutional right to remain silent.
17 That is not just a legal theory, it's an important right.
18 That means that you decide you do not want to testify, I
19 will specifically instruct the jury that you have the
20 constitutional right to remain silent and that they cannot
21 use that against you. They can't even discuss that fact
22 during their deliberations. The State has the burden of
23 proving you guilty and that you do not have any
24 corresponding duty to prove anything in this case. You
25 certainly do not have to prove yourself innocent. The State

1 has to prove you guilty.

2 Having said that, this is your day in court. So you
3 get to make that determination of whether or not you want to
4 testify. You should talk with your attorney about that
5 decision. You can talk with friends and family. But,
6 ultimately, it's your decision whether or not you want to
7 take the standard and testify. If you make the decision you
8 do want to testify, we'll follow the same procedure that we
9 followed for every witness. You'll take the stand. Your
10 attorney will ask you questions on direct examination, and
11 then the State will get a chance to ask you questions on
12 cross-examination. Ms. Gibbs will ask you questions on
13 redirect. The State can have an opportunity to ask you
14 questions on recross.

15 We discussed briefly whether or not there are any prior
16 offenses that are impeachable. Convictions?

17 SOL. MOLINA: Yes. I believe there are some that that
18 fit within the last ten years and carry -- sorry -- that are
19 in the last ten years and carry more than a year include the
20 2023 burglary third, that he pled to. But the 2014 in
21 Georgia: theft, arson second, and an obstruction. But I
22 think I would just ask about the theft or arson second.

23 THE COURT: You would ask about the --

24 SOL. MOLINA: Yes. The theft of stolen property, the
25 arson second degree, and the burglary third.

1 THE COURT: And the theft of stolen property and the
2 arson second degree were out of Georgia?

3 SOL. MOLINA: Yes. 2014 out of Georgia for which he
4 received five years of probation, which would put us in the
5 ten-year limit for sure.

6 THE COURT: And there's a 2023 burglary third degree?

7 SOL. MOLINA: Yes, ma'am.

8 THE COURT: And what was the result of that? The
9 conviction was in 2023?

10 SOL. MOLINA: Yes. The conviction was in 2023, and he
11 received time served for that one.

12 THE COURT: Okay. And what are your thoughts,
13 Ms. Gibbs?

14 MS. GIBBS: Yes, Your Honor, I would agree. If he
15 does -- I guess I would like to put on the record whether or
16 not he is or is not going to testify. And then if he is, I
17 would maybe ask that maybe some of the charges be off like a
18 felony instead of a specific charge. But I don't know if we
19 need to get into that unless he does decide to testify.

20 THE COURT: Well, I certainly find that these offenses
21 fall within 609(a)(1) and that they are punishable by more
22 than one year. Of course, it's the State's burden to prove
23 that the probative value outweighs the prejudicial effect.
24 Looking at the factors: the impeachment value of the prior
25 crimes, the time of the conviction versus subsequent

1 history, the similarity between the past crime and the crime
2 charged, the importance of the defendant's testimony, the
3 centrality of the credibility issues.

4 Of course, in this case, I do find that there are
5 significant issues regarding credibility and because there
6 are several theories of how this took place. So I do think
7 that his testimony, if he testifies, would be important and
8 credibility would certainly be a central issue. So I do
9 find that the probative value would outweigh the prejudicial
10 such that the State could use those three offenses for
11 impeachment.

12 So, again, I just want you to understand that before
13 you testify, so you know all of the factors to consider in
14 making that decision. So, if you testify, of course the
15 State can use those prior offenses as impeachment. I would
16 of course instruct the jury that that is only to be used for
17 a credibility determination.

18 Do you need to discuss this with your attorney? What I
19 plan to do is let's take about a ten-minute before we bring
20 the jury back in. Do you have any other witnesses that you
21 had planned on ---

22 MS. GIBBS: No, Your Honor.

23 THE COURT: Okay. So let's take about a ten-minute
24 break. We'll come back at 11:30. So you guys have one last
25 chance to talk about that decision.

1 MS. GIBBS: Thank you.

2 SOL. MOLINA: And if I may, really quickly, I believe
3 the last call I put into evidence, number 96, I think I
4 accidentally put the unredacted version on the disk, which
5 is why I stopped it short. Because it was ten minutes, and
6 that's how long they are. And so I will get the redacted
7 version and switch it with the unredacted that was in
8 evidence.

9 THE COURT: So you're gonna substitute State's 96,
10 unredacted, with State's 96?

11 SOL. MOLINA: Yes.

12 THE COURT: Call it -- call it the second name ---

13 SOL. MOLINA: Yes.

14 THE COURT: --- go back.

15 SOL. MOLINA: That's what I was planning on because it
16 was by mistake that it was added.

17 THE COURT: Okay. Gotcha. All right. Let's be at
18 recess.

19 (Recess from 11:18 am until 11:39 a.m.)

20 THE COURT: Okay. We're back on the record.

21 Ms. Gibbs, has your client made a determination?

22 MS. GIBBS: Yes, Your Honor.

23 THE COURT: Mr. Cortes, are you going to testify, sir?

24 DEFENDANT: No, Your Honor.

25 THE COURT: Okay. What I would suggest -- thank you.

1 I'm going to bring the jury in and let you rest on the
2 record. And then I'm gonna go ahead and dismiss them for
3 lunch so that we can have our conference on the charges,
4 verdict forms, and let y'all have a lunch as well. So I'm
5 thinking we dismiss them right at 11:45. We probably need a
6 good 30 minutes. I'm going to maybe have them back at 1:30.
7 That will give us sufficient time.

8 (The jury enters the courtroom at 11:42 a.m.)

9 THE COURT: Okay. The State has rested. Ms. Gibbs?

10 MS. GIBBS: At this time, the Defense would rest also.

11 THE COURT: Thank you. Ladies and gentlemen, you have
12 heard all the testimony and the evidence in the case. The
13 next part of our process will be closing arguments and then
14 my instructions on the law. I'm gonna go ahead and send you
15 to lunch at this point because we have a number issues that
16 we're gonna address while you're at lunch. I'm gonna ask if
17 you'll be back at 1:30. Again, when you come back, we'll
18 move into closing arguments, instructions, and then you'll
19 begin your deliberations. Once more, we're on the
20 homestretch here. Please don't discuss the case with anyone
21 during the break. We'll see you back at 1:30.

22 (The jury exits the courtroom at 11:43 a.m.)

23 THE COURT: Are there any requests for lesser included
24 offenses?

25 SOL. MOLINA: I don't know if the Defense is going to

1 request them. I think that there is evidence in the record
2 to support a lesser included of assault and battery first
3 for Faquin and assault and battery of an high and aggravated
4 nature for Olivia. I think there's evidence to support both
5 of those. And the question related to the attempted murder
6 is specific intent, and that's what they have built their
7 defense around. And for assault and battery first, it
8 doesn't require specific intent, but he could have caused
9 the injury. And for assault and battery of a high and
10 aggravated nature, doesn't require the specific intent but
11 did injure and could have been great bodily injury or death
12 by means which caused this. So I think there is evidence to
13 support it in the record.

14 (Brief pause.)

15 MS. GIBBS: Sorry, Judge.

16 (Brief pause.)

17 MS. GIBBS: Judge, my client would ask that for a no
18 lesser included, or just at least not the lesser included
19 additions that the Solicitor selected. Although, I do
20 realize there already is an indictment for ABHAN, so there
21 will already be an ABHAN jury charge.

22 SOL. MOLINA: And I can get the case. And it's not
23 that the State doesn't still believe that they're attempted
24 murder charges. It's that the case law says to warrant a
25 jury charge on a lesser included, the evidence viewed as a

1 whole must be such that the jury could conclude the
2 defendant is guilty of the lesser instead of the indicted.
3 And there's just been evidence throughout this case
4 sufficient to prove a lesser instead of the indicted. And I
5 think it -- it's not that we want it. And I don't know that
6 it's, you know ---

7 THE COURT: You're not requesting it?

8 SOL. MOLINA: Yeah. I don't know that it's, you know,
9 a choice. I think it's required by case law. If there's
10 evidence of lesser included, it should be charged.

11 THE COURT: Okay. My understanding is it should be --
12 if they requested it, it should be charged. But the
13 defendant does not have to request the lesser included.

14 MS. GIBBS: I apologize, Judge. I have not had this
15 conversation with my client. And so I think that surprised
16 him, and that is on me. I might just -- if you don't mind,
17 just have one minute to talk to him very quickly.

18 THE COURT: Sure. I'll give y'all time to talk about
19 that.

20 MS. GIBBS: Okay.

21 THE COURT: My feeling is the State can request it or
22 the defendant can request it. If nobody requests the lesser
23 included then I do not charge the lesser included, even if
24 there's facts to support it. But I only charge the lesser
25 included if there -- if it fits within that.

1 MS. GIBBS: And I may -- if I may just talk to him
2 after we finish our discussion. And then I may actually
3 request that I just -- I want to make sure I speak to him
4 about it before I do anything.

5 THE COURT: That's fine.

6 MS. GIBBS: Clearly, I did not prepare him for that
7 discussion.

8 THE COURT: So let me tell you, I'm gonna give you a
9 hard copy of my proposed charges. But let me kinda go over
10 with you briefly what is in my charges at this point.
11 Certainly, a lot of these are very standard. The charge
12 about multiple indictments, the presumption of innocence, of
13 course reasonable doubt, duties of the jury and the trial
14 judge, direct and circumstantial evidence, credibility of
15 witnesses being their determination. I'll have an
16 instruction on the failure of the defendant to testify, not
17 being held against him. One on expert witnesses, since we
18 have heard from an expert in orthopedic surgery and firearms
19 identification. I have a charge in here about prior
20 inconsistent statements and then a charge on attempted
21 murder, on assault and battery of a high and aggravated
22 nature, on possession of a weapon during a violent crime,
23 discharging a firearm into a dwelling. That's our draft
24 that we've got so far.

25 Are there any specific charges that you all are

1 requesting?

2 MS. GIBBS: Yes, Judge. I would also be requesting a
3 defense of others charge. I do believe that there was
4 evidence to support that charge with Olivia's testimony as
5 well as some of the other evidence submitted that did
6 discuss a knife and being locked in and held hostage. And,
7 I mean, specifically, in her testimony, she did say she felt
8 like her life was in danger because of the man in the
9 apartment. He became very aggressive with her, grabbed a
10 knife, and wouldn't let her leave. That she was
11 communicating with my client to let him know and that's why
12 he came to the door. And I would request that charge also.

13 THE COURT: Do you have a specific charge that
14 you're --

15 MS. GIBBS: I do. It's a difficult charge to find. I
16 did find a -- and I'm happy to send. But, I mean, basically
17 it's a -- I mean, it says defense of others. And it goes
18 into under the law of self-defense, the defendant may take
19 another's life in the defense of others. Which I know
20 nobody died in this case. And then it lists the -- and I'm
21 happy to send a copy -- and then it lists self-defense.

22 THE COURT: Okay. Anything else that you're requesting
23 in this case?

24 MS. GIBBS: No, your Honor.

25 (Brief pause.)

1 THE COURT: Okay. How about with the State?

2 SOL. MOLINA: The State would oppose a defense of
3 others charge. Included in self-defense is that you have to
4 be without difficulty, without fault in bringing on the
5 difficulty. I don't believe that Olivia is without fault in
6 bringing on the difficulty. She was communicating about the
7 price, not that she was in fear for her life. I think that
8 a reasonable person in that position would not have been in
9 fear of their life from anybody other than the defendant.
10 And so we would ask that the defense of others not be
11 included. I don't believe they were acting lawfully as
12 required.

13 MS. GIBBS: And, Judge, I would just say I believe that
14 would be a question of fact for the jury to decide. I did
15 not hear any testimony on the stand from Olivia besides that
16 when was she was communicating Mr. Cortes was that she
17 needed help, or something of that nature. I don't remember
18 exactly what she said. But I did specifically ask her, you
19 know, if she was communicating with him and why. And she
20 did say something to the effect that she let him know and
21 that he was coming to help her.

22 Clearly, there is other evidence where the price comes
23 up, you know, with Faquin. But I have not heard -- you
24 know, maybe that -- I don't think that the prostitution has
25 definitively been determined. I mean, I get that there's

1 been testimony about it. But Olivia herself said nothing
2 about it on the stand. And as far as my client being a part
3 of that, I don't think there's been anything specific saying
4 that he was the one that set it up. I know that there's
5 circumstantial evidence to that effect.

6 THE COURT: I think Mr. Cruz testified to that, that it
7 was arranged through ---

8 MS. GIBBS: I don't believe he said -- he said he did
9 on Facebook, but I'm not sure if he specifically said my
10 client.

11 THE COURT: Yeah. I don't -- if he later said that the
12 defendant brought her to the house. But it did not connect
13 those two people, so it's one in the same. I'm gonna charge
14 the defense of others. Whether or not that's credible or
15 not, that's for the jury to determine.

16 MS. GIBBS: Thank you, Judge.

17 THE COURT: Any other charges that the State is
18 requesting?

19 SOL. MOLINA: No, I don't believe so. I do believe
20 that we have another matter that I would like to be heard
21 after we do -- or like the closing, after we do the charge.

22 THE COURT: So I have a charge in here on transferred
23 intent. I'm feeling very squeamish about transferred
24 intent. I mean, our current case law seems to be holding
25 attempted murder to such a specific ground. And the case

1 was kind of everywhere about transferred intent.

2 MS. GIBBS: Right. I know I have that. I'm sure you
3 know what case I'm -- I'm sure we're talking about the same
4 case. But just that attempted -- that transferred attempt
5 doesn't apply to specific intent, a crime such as attempted
6 murder. Yes, the Williams case.

7 THE COURT: That doesn't seem to make a lot of sense to
8 me because if I say I am going to kill you and I shoot at
9 you and I miss and shoot the person behind you, I intended
10 to have a specific intent if I had shot. But, again, the
11 case law is a little murky. I'm just gonna review that
12 case.

13 SOL. MOLINA: I think -- I also don't think that
14 transferred intent can apply to attempted murder. But I
15 think there needs to be a transferred intent for the
16 discharging of a firearm into a dwelling because he intended
17 to shoot into 4 and he also shoots into number 6. I don't
18 want there to be confusion that number 6 doesn't count
19 because he was only trying to shoot into number 4.

20 THE COURT: Well, let's look at the jury charges of
21 discharging into . . .

22 MS. GIBBS: I guess my concern is -- I mean, maybe I'm
23 missing something. But normally just all the charges are
24 read at once to the jury. There's no singling out to say,
25 you know, this charge applies to this victim and that charge

1 applies this charge. So my concern would be if you put in
2 transferred intent then they may apply it to the attempted
3 murder charge. I think that was the issue with the assault
4 and battery first-degree is applying it to a specific
5 victim. I don't think a jury is going to -- this is what I
6 need to talk to my client about -- is a jury is not gonna
7 know that one charge applies to just one victim or the one
8 charge?

9 THE COURT: Well, I guess I would disagree because it's
10 specifically in the indictment who the victim is of each.

11 MS. GIBBS: Okay. That's what I wanted to clear up.

12 THE COURT: Because, again, I'll give you this hard
13 copy so you'll have it in your hands for the closing. But
14 that we've got the attempted murder of Oliva Erskine, we've
15 got the attempted murder of Mr. Cruz, we've got assault and
16 battery at a high and aggravated nature against Mr. Zhang,
17 discharging a firearm into a dwelling at 400 William Hilton
18 Parkway, unit 4, discharging into unit 6, and then the
19 possession of a weapon during a violent crime.

20 With regard to transferred intent, since there is no
21 specific intent for discharging into a dwelling -- I'm just
22 trying -- I'm scrolling here to get to my charge on that.

23 SOL. MOLINA: And it might become necessary for the
24 assault and battery of a high and aggravated nature because
25 he didn't intend to shoot Jack, but Jack was ultimately shot

1 and not his intended victims.

2 THE COURT: The charge I've got for discharging a
3 firearm into a dwelling is the defendant is charged with
4 discharging a firearm at or into dwellings, State must prove
5 beyond a reasonable doubt that the defendant discharged a
6 firearm or caused a firearm to be discharged at or into a
7 dwelling house. A dwelling house is any house, townhouse,
8 apartment, building, shed, box in which there sleeps a
9 proprietor, tenant, watchman, clerk, laborer, or
10 person while they're with a view to the protection of the
11 property.

12 MS. GIBBS: I think I would agree. My concern is
13 transfer of intent if that's gonna confuse the jury. It may
14 apply to other charges, and I don't think there's a
15 requirement of intent for discharging a firearm into a
16 dwelling.

17 And as for Jack, I believe that is why the State -- the
18 charge for Jack was originally attempted murder in the
19 warrant. And I believe that was why the State indicted, and
20 that was an ABHAN to make up for the fact that clearly
21 intent might be an issue since it went through a wall. So I
22 think that was taken care of by making that charge an ABHAN
23 instead of attempted murder.

24 THE COURT: Okay. I'm gonna look at the case law
25 before I tell y'all what I'm gonna do with transferred

1 intent.

2 Okay. So no other requests for charges at this point?

3 MS. GIBBS: No, your Honor.

4 SOL. MOLINA: I don't think so. No, Your Honor.

5 THE COURT: Okay. Something else you want me to
6 address?

7 SOL. MOLINA: Yes, Your Honor. It's the matter of
8 closing order. It's the State's position that the Defense
9 has entered evidence into the record; and, therefore, the
10 State is entitled to final argument. I'll pass one up for
11 your law clerk. State v. Hankard is related to the
12 defendant showing a tattoo to the jury, not during his case,
13 and ultimately his defense attorney decided not to show that
14 tattoo because the trial court stated that would be entering
15 evidence, and he appealed. And the Court of Appeals
16 affirmed that the trial court saying, you know, the display
17 of a tattoo is not testimonial but it remains evidence. And
18 had he shown it, he would've lost the right to closing.

19 State v. Beatty, that discusses a case from the 1930s
20 about introducing telegrams into evidence through the
21 prosecution's case. And cites it stating that if a
22 defendant offers any evidence on trial of the case, the
23 State is not deprived of its general right to opening and
24 concluding arguments. Consequently, the loss of the right
25 to make the final argument depends on whether the defendant

1 introduces any evidence at all, not upon whether he calls
2 any witnesses.

3 In this case, the defense has elicited testimony from
4 the witnesses that are now facts into evidence, specifically
5 that Olivia's life was in danger, that he was acting -- that
6 Faquin was aggressive, and that she was communicating with
7 the defendant to help her. And those were not statements
8 elicited by the prosecution. They were used by the Defense
9 to impeach her. And she did acknowledge that she made those
10 statements. And so now, as a result, those statements are
11 facts in evidence that have created the necessity for a
12 defense of others charge, and that she will argue in her
13 closing, I'm assuming, that Faquin was being aggressive, her
14 life was in danger, and that she was scared. It's different
15 than pointing out stuff that maybe law enforcement didn't
16 do, the absence of collecting evidence or something of that
17 nature. In this case, she has elicited direct facts that
18 the witnesses acknowledged. And so they are now facts in
19 the record that she can argue in closing that support the
20 defense of others that will not be charged. So it's the
21 State's position that she has introduced evidence, and the
22 State has the right to the final argument.

23 THE COURT: So I feel like this is -- the defendant has
24 the right to confront the witnesses, guaranteed under the
25 confrontation clause. And so impeaching by a prior

1 inconsistent statement, basically having to re-exercise to
2 confront the witnesses by impeachment -- by impeachment by a
3 prior inconsistent statement, and basically the thorough
4 cross-examination of the witnesses should not now trigger
5 your loss of -- I think that's fundamentally different than
6 presenting evidence.

7 SOL. MOLINA: I think it would be different than, for
8 example, say, you know, that's the first time you've ever
9 said something like that or, you know, well, you didn't say
10 that then in crossing them and putting out there that it is
11 inconsistent. She has now provided evidence to prove it was
12 inconsistent.

13 THE COURT: You're referring to when she said didn't
14 you give my investigator a statement saying X, Y, Z.

15 SOL. MOLINA: And Olivia said ---

16 THE COURT: --- impeachment ---

17 SOL. MOLINA: Yes.

18 THE COURT: --- under testimony that she did not recall
19 anything about the incident.

20 SOL. MOLINA: Correct. And it's -- you know, if she
21 would have said, "No, I don't," then those wouldn't be facts
22 in evidence that they could argue later on. But she did say
23 yes, I did say those things; yes, I was scared; yes, I was
24 being threatened. And so now those are facts in evidence.
25 Additionally, they brought up that there was other body

1 camera and a description of a knife provided. She pointed
2 out that DNA swabs were taken. There were many times that
3 it wasn't just you didn't do this, you didn't do that,
4 you're not telling the truth. It's positive evidence of
5 that she was scared, her life was in danger.

6 And, you know, you do have the right to confront your
7 accusers and fully cross-examine them. But that doesn't
8 mean that you can do it without -- in a way -- you can do it
9 in a way that doesn't put in evidence. And just because you
10 chose a way that put in evidence that you necessarily have
11 to to fully cross-examine the defendant doesn't mean that
12 you can still retain your final -- the final argument.

13 She wasn't prevented from fully examining the witness.
14 I didn't object. She could've just said you said something
15 or, you know, you made -- she could have impeached her in a
16 way that said, well, you've made several different
17 statements. Today, you didn't remember, and back then you
18 were saying something different. And using what I put in
19 against each other to discredit her testimony would be one
20 thing. But she put in, well, you met with my person and you
21 said you were scared for your life and you said that he was
22 being aggressive and threatening you, and now it's become
23 evidence that supports a jury charge that she's going to
24 argue.

25 THE COURT: Well, that's an argument that I have not

1 heard before. Yes, ma'am?

2 MS. GIBBS: Judge, I would agree. What I would say is
3 I do have the right to confront witnesses, as you've already
4 stated. Olivia, who is basically the main witness, said she
5 did not remember. And so I needed to impeach her based on
6 her interview with my investigator who I had her on the
7 witness list prepared, you know, if I needed to call her to
8 testify to their conversation. But instead I did
9 cross-examination where I'm allowed to ask leading
10 questions, and she had had opted my cross-examination of the
11 leading questions and she agreed and adopted those
12 statements. It's not evidence like a tattoo. You know,
13 it's basically me cross-examining and impeaching their
14 whiteness that I had to do or I wouldn't have -- or it could
15 have been left with I wouldn't be able to get into any of,
16 you know, any of the statements that were made to my
17 investigator through her.

18 And as far as like the DNA, I definitely have the right
19 to point out that, you know, this knife -- which, to me, is
20 obviously a very important part of our defense -- was
21 collected and taken into evidence and they didn't swab for
22 DNA. Which I feel like I've asked questions like that
23 almost every trial I've done when this issue comes up
24 because I think it's important for the jury to consider what
25 could've been done but was not. And I don't think that's

1 presenting any sort of evidence. I don't think the case law
2 applies at all. I think I was doing my job.

3 SOL. MOLINA: I agree she does have the right to fully
4 cross-examine, and I agree that it was used for impeachment.
5 It was impeachment evidence. She provided -- it wasn't
6 just, you know, "But you have given inconsistent stories,
7 correct?" And she can lead her and then point out the
8 inconsistent stories she gave today at trial and she gave to
9 law enforcement. But it was that one step further of
10 providing evidence that on Friday she talked to this
11 investigator and said that she was scared, her life was
12 threatened. And that is evidence. And I agree, she has the
13 right to cross-examine and fully impeach witnesses. But
14 impeachment evidence is still evidence.

15 And, additionally, bringing up the fact that the knife
16 was destroyed. Because that was a fact now in evidence that
17 she introduced. And she has put in plenty of evidence,
18 although it's not physical. It doesn't have to be physical.
19 And although she didn't put up a case, it doesn't have to
20 be. She has elicited and not -- she hasn't provided -- or
21 I'm not arguing that because she's negated certain things
22 that people didn't do, it's that she put in that Olivia was
23 scared, that Olivia was in fear for her life, and the knife
24 was destroyed.

25 MS. GIBBS: Judge, well, the knife, I cross-examined

1 the lead investigator who should have knowledge. He had
2 knowledge because he answered. That's not new evidence.
3 They provided me the fact. Just because they didn't want to
4 present it in their case doesn't mean that I can't cross on
5 that. I honestly don't know what to say in some of these
6 instances. But I would just stand by it's not evidence, the
7 impeaching, and it's crossing my client. And it was not --
8 I did not put anything into evidence.

9 SOL. MOLINA: That's exactly my point is, you know, he
10 did know. I did turn it over to her as the rules require me
11 to. And then I chose not to put it in my case, and then she
12 chose to put it in my case. And so now we have ---

13 THE COURT: I don't think that with regards to the
14 knife, I mean, the defendant's got the right not to -- the
15 defendant has a right to comment on there is evidence that
16 exists that the State chose not to introduce, and I think
17 that's a fair comment.

18 SOL. MOLINA: I think that would be fair in closing
19 that she could ---

20 THE COURT: How will the jury ever know that?

21 SOL. MOLINA: Well, she could argue ---

22 THE COURT: Let me finish.

23 SOL. MOLINA: Sorry.

24 THE COURT: Because she can't go up and argue the facts
25 outside of the evidence in closing. But, certainly,

1 otherwise the State could just pick and choose what evidence
2 you want to present to the jury and then say, well, you
3 know, we didn't. So you've got make a choice if you want
4 the jury to know that that evidence exists. You've got to
5 present that evidence. I think it's a fair comment and fair
6 cross-examination to say, "Isn't it true that there was a
7 knife at the scene? Isn't it true someone destroyed the
8 knife," without compromising your position in closing
9 arguments.

10 SOL. MOLINA: I think it's fair to ask, "And wasn't
11 there a knife collected?" And then in closing argue, "You
12 have all these pictures, you have all these things, but
13 where is the knife? Why didn't they put the knife in?" And
14 that's different than asking, "Well, wasn't that knife
15 destroyed?" Because now that is a different fact versus why
16 aren't they showing you this knife that they said collected.
17 And I think one triggers the loss of closing argument and
18 one doesn't. Pointing out things that they didn't do or,
19 you know, should have done different than saying she was
20 scared, aggressive, life was in danger, and also they
21 destroyed the knife.

22 MS. GIBBS: Sounds' like she's arguing I should be
23 direct examination. I should be doing direct question --
24 open-ended questions instead of cross-examination questions.
25 I think if she had an objection, you know, over -- the

1 objection should have been made at the time Olivia was on
2 the stand or the Investigator Calore was on the stand. If
3 there's an objection, I think it should have been made then.

4 But I feel like this case -- maybe this is a strategy
5 trying to make me into putting into evidence, like with the
6 picture of the knife. You know, none of those -- every
7 single picture got put in except for the one of the knife.
8 You know, I was able -- I mean, if I said wasn't there a
9 knife and he's like yes, I mean my job is to cross and say
10 you took a picture of a knife, you know, to get that out.
11 And that's not -- she's clearly eliciting stuff on direct
12 and keeping stuff out. And so my job is to cross on things
13 he has knowledge of. If he didn't have knowledge of things,
14 he could say I don't know. Cross is not evidence".

15 SOL. MOLINA: And I'm not saying that she doesn't have
16 the right to cross and that she should've been directing
17 witnesses and that she doesn't have the right to impeach. I
18 think all of those are very important tools in the process.
19 But impeachment evidence is still evidence. And what she
20 could've done, there was already facts that there was a
21 knife there. It came out in maybe the 911 call. The knife
22 was not -- that was not hidden. It was not something that
23 wasn't put into the case. But I didn't put a picture into
24 it until she brought up that there was a picture taken, and
25 so I didn't want it to appear that I was hiding something.

1 But what she could've done is -- and we're conflating
2 impeachment evidence and effectively cross-examining and
3 attacking the case -- is she could have, you know, talked
4 about, "So you were aware there was a knife on scene,"
5 because other witnesses have said that. And then in closing
6 said, "Where is this knife? Why are y'all seeing this
7 knife? Why is that?"

8 You can impeach and cross-examine and then argue
9 without putting in evidence. In this case, she put in
10 impeachment evidence, and I didn't object because I don't
11 know that there was a basis that I had to object. She laid
12 a proper foundation to impeach Olivia and did so. I don't
13 know that I had a foundation and I would've been overruled.
14 That doesn't change the fact that it's impeachment evidence.

15 THE COURT: So the witness admits making a prior
16 inconsistent statement. Extrinsic evidence that the prior
17 statement was made is inadmissible. So, I mean, not only
18 was it not admitted into evidence by the defendant, it was
19 not admissible into evidence, the actual statement. But
20 eliciting testimony on cross-examination that the person
21 made a prior inconsistent statement, I think that is -- it's
22 is fair cross-examination. I think it's part of the
23 confrontation clause. Pointing out that the State has
24 evidence that it did not introduce during its case in chief
25 is not the same. I do not believe it's introducing

1 evidence. I understand your argument. Excellent arguments.
2 I'm gonna respectfully deny that motion.

3 SOL. MOLINA: Thank you.

4 THE COURT: Anything else that y'all need to address
5 before I give you chance to get lunch?

6 MS. GIBBS: No, Your Honor.

7 THE COURT: So if you'll give me just a minute, what
8 I'm gonna do is go back -- I'm gonna actually read this case
9 on transferred intent. Well, I guess you just need to
10 discuss whether you want the lesser included. So why don't
11 what we do this -- it's 12:20. I will email you the draft
12 of the jury charges. Let's maybe -- can we be back in here
13 at 1:15? Does that give y'all enough time?

14 MS. GIBBS: Yes.

15 THE COURT: So that we're all on the same page with
16 what I'm going to charge them.

17 (Brief pause.)

18 THE COURT: Okay. We'll be at recess.

19 (Recess at 12:22 p.m. The trial proceedings resumed at
20 1:34 p.m.)

21 THE COURT: Did you all get the email with the jury
22 charges?

23 MS. GIBBS: Yes.

24 SOL. MOLINA: Yes, ma'am.

25 THE COURT: Okay. And I can give you a hard copy, too.

1 But let's talk about lesser includeds.

2 MS. GIBBS: We are not requesting any lesser includeds.

3 THE COURT: Okay. So in that case, this is pretty much
4 in its final form. Would it help you all to have a hard
5 copy of this or are you okay with?

6 SOL. MOLINA: Do you have a hard copy handy?

7 MS. GIBBS: I didn't see a defense of others charge.

8 THE COURT: I'm sorry, it does not have the defense of
9 others charge in it. Let me add that and then we'll get you
10 both a copy.

11 MS. GIBBS: Thank you.

12 (Brief pause.)

13 THE COURT: Can I hand you all -- I'm changing the
14 indictment number on these. But so you can take a look at
15 the basic form of the verdict form that I would propose.

16 (Brief pause.)

17 THE COURT: As to the basic form of the jury verdict
18 form?

19 SOL. MOLINA: No objection.

20 MS. GIBBS: No objection.

21 THE COURT: Okay.

22 (Brief pause.)

23 THE COURT: Okay. I sent the verdict forms to you.

24 Okay. Let's make sure you all had a chance to take a
25 look at the -- you got a hard copy of the jury charges in

1 front of you. Any additions, retractions, objections?

2 SOL. MOLINA: I thought implied malice was included in
3 your attempted murder charge when I first looked.

4 (Brief pause.)

5 THE COURT: I'm just pulling up the charge book here.

6 SOL. MOLINA: And I do have a case that says implied
7 malice or attempted murder. Because it's, you know, made
8 clear in this about specific intent. And then there's -- so
9 that you can't infer the intent.

10 But basically the implied malice refers to whether it's
11 proved by direct or circumstantial evidence and not by
12 conduct or words. And I can hand you the case for your
13 reference. It's State v. Taylor. And it
14 distinguishes -- because there is a part in the charge book
15 that I think is not in line with it.

16 THE COURT: Yeah. It refers to either expressed or
17 inferred and then it talks about inferences, and it looks
18 like we've cut that.

19 SOL. MOLINA: There is -- there is something in there
20 that's not supposed to be in the charge anymore.

21 It's just that we can't say using a deadly weapon is
22 evidence of malice; give them circumstances which, under the
23 law, implies malice.

24 MS. GIBBS: So are you wanting to add ---

25 SOL. MOLINA: Yes.

1 MS. GIBBS: --- add this from Taylor?

2 SOL. MOLINA: Yes. I just don't want it to be
3 confusing with the expressed malice. This case starts with
4 the first paragraph, action speak louder than words. As
5 long as we don't say, you know, malice can be inferred from
6 the use of a deadly weapon or it can be inferred from flight
7 or . . .

8 THE COURT: So in the charge book, it looks like . . .

9 We have the -- stating with malice aforethought in the
10 proposed charges that you've got in front of you -- let's
11 see here.

12 What I've got in the charge book says malice
13 aforethought may be expressed or inferred. These terms,
14 expressed and inferred, do not mean different kinds of
15 malice but merely the manner in which malice may be shown to
16 exist. That is either by direct evidence or by inference
17 from the facts and circumstances which are proved.
18 Expressed malice is shown when a person speaks words which
19 express hatred or ill will for another or when the person
20 prepared beforehand to do the act which was later
21 accomplished. For example, lying in wait for a person or
22 any other acts of preparation going to show that the deed
23 was within the defendant's mind would be expressed malice.

24 And then it looks like we just deleted the next section
25 which says malice may be inferred from conduct showing --

1 conduct showing a total disregard for human life. If facts
2 are proved beyond a reasonable doubt sufficient to raise an
3 inference of malice to your satisfaction, this inference
4 would simply -- would be simply an evidentiary fact to be
5 considered by you, the jury, along with the other evidence
6 in the case, and you may give it the weight you decide it
7 should receive.

8 SOL. MOLINA: And in Taylor they charged that -- again,
9 on the fourth page in the third full paragraph not including
10 that ending sentence, but the judge charged the jury about
11 malice, expressed or inferred, referred to malice direct or
12 inferences, malice means hatred, what could be inferred from
13 conduct that shows a total disregard for life. And then we
14 have the specific intent. I'm not trying to add anything
15 more than that.

16 THE COURT: So tell me what you're suggesting, that we
17 remove a portion of this?

18 SOL. MOLINA: I don't think that we need to remove
19 anything. I think we just need to add -- oh, actually, I
20 think -- sorry. Does the statute say expressed malice
21 aforethought? I thought it just said malice aforethought.
22 Because we have it in here with expressed malice
23 aforethought. And that's in the first paragraph under the
24 attempted murder section.

25 Yeah. Because the statute says a person with intent to

1 kill attempts to kill another person with malice
2 aforethought, either expressed or implied.

3 (Brief pause.)

4 THE COURT: Okay. So, again, I don't see in
5 Taylor any -- there are not -- I can find where they here,
6 actually gives us an implied malice charge other than to say
7 that this one was not . . .

8 SOL. MOLINA: Yeah. That that one was fine. And
9 that's all I'm -- and I think that that, the one that they
10 used, is pretty close to the one in the charge book. And so
11 that's all I'd be asking for. Not going into, like, great
12 detail about implied malice, but just adding to -- where the
13 attempted murder is defined, adding to kill another person
14 with, or maybe just taking out expressed and just putting
15 with malice aforethought. And then malice, there's
16 expressed malice and implied malice, expressed malice is
17 this and implied malice is this. Because the statute does
18 include either expressed or implied.

19 THE COURT: So we've got -- I'm just adding to the
20 first paragraph where it says to kill another person with
21 malice aforethought, I deleted the expressed. I've written
22 with malice aforethought, either expressed or implied. And
23 the -- one, two, three -- fourth paragraph, we've got that
24 malice may be shown by direct evidence or by inference.
25 We've got a definition of expressed malice, which is

1 straight from the charge book.

2 SOL. MOLINA: It's just in that under attempted
3 murder -- one, two, three -- fourth paragraph, it talks
4 about malice and then it gives a specific example -- or not
5 example, but then it gives a type of malice, the expressed
6 malice, and doesn't go on -- it creates another type of
7 malice within the malice definition.

8 MS. GIBBS: So you're wanting to be added on implied
9 malice?

10 SOL. MOLINA: Just adding implied -- am I missing it on
11 this?

12 THE COURT: Looks like we have a cut-and-paste from the
13 original because of all the discussion of inferences.

14 (Brief pause.)

15 THE COURT: Okay. I'm going to cut and past here.

16 (Brief pause.)

17 SOL. MOLINA: And I think any concern about the
18 confusion between implied, and what they can imply is
19 cleared up by that exact next paragraph where it talks about
20 specific intent. So it's clear that those are different
21 things.

22 (Brief pause.)

23 THE COURT: Okay. I'm going to change this.

24 I'm gonna email this to you one more time so you guys
25 see exactly the language.

1 (Brief pause.)

2 THE COURT: Okay. I have changed it in writing. It
3 still says expressed malice aforethought in the first
4 paragraph. I'm writing that in.

5 (Brief pause.)

6 THE COURT: Are you all okay with the attempted murder
7 charge?

8 SOL. MOLINA: Yes.

9 MS. GIBBS: Yes, Your Honor.

10 THE COURT: Anything else with respect to the charges?

11 MS. GIBBS: Not from the Defense, Your Honor.

12 SOL. MOLINA: Nothing from the State.

13 THE COURT: Okay. And you all have seen the verdict
14 form?

15 SOL. MOLINA: Yes, ma'am.

16 THE COURT: Do you want to take a look at the final?

17 (Brief pause.)

18 THE COURT: In the charges, I've got the attempted
19 murder and assault and battery of a high and aggravated
20 nature are the violent offenses; that they first would have
21 to find him guilty of a crime of violence, and those two are
22 crimes of violence.

23 Okay. I think we're ready for the jury. So, again,
24 the State will close first, the defendant will close second.

25 (Brief pause.)

1 MS. GIBBS: Judge, may I just -- I apologize. I'm just
2 looking -- I'm a little confused, and I know I'm late
3 arguing this. But the inferred malice, I know we just
4 discussed this, but the statute says expressed or implied.
5 I'm a little -- adding the inferred, I'm not sure, is that
6 appropriate? And I think I was in my head confusing implied
7 and inferred. And now I'm reading it, and I'm reading
8 inferred, but the statute clearly just says expressed or
9 implied.

10 THE COURT: And you're correct. Both in the original
11 charge and in the Taylor case they seem to use the inferred
12 and implied interchangeably. So it says the judge charged
13 the jury that malice could be expressed or inferred, but
14 these terms referred to whether malice is proved by direct
15 evidence or by the jury's inference from other facts. So it
16 tracks exactly the language that's in both the charge book
17 and in the Taylor case.

18 MS. GIBBS: I think I just don't like it being heard
19 from conduct showing a total disregard for human life.

20 THE COURT: I'm sorry?

21 MS. GIBBS: I believe I just don't like words of malice
22 maybe being inferred from conduct showing a total disregard
23 for human life.

24 SOL. MOLINA: That's the definition of implied malice.

25 THE COURT: Yeah, I think that's straight out of this.

1 So we deleted anything that says, you know, that you have by
2 operation of law of certain facts that you automatically
3 have an inference of malice. So that's the part that's now
4 been deemed objectionable. Like when you say if they use a
5 deadly weapon, by operation of law, that is malice. That's
6 an inference of malice. So now we have -- in this case, it
7 says, "The Judge charged the jury that malice means hatred
8 or ill will, and that it could be inferred from conduct that
9 shows a total disregard for human life." And then says, "We
10 believe the charge in its entirety was correct."

11 SOL. MOLINA: Okay.

12 THE COURT: And it goes on to say, "Abundant
13 authorities support using inferences to find specific
14 intent."

15 MS. GIBBS: I wanted to make sure I was not -- because
16 it does get a little confusing.

17 THE COURT: It is. And because we've said it's a
18 specific intent crime that you can prove by either expressed
19 or implied means.

20 Okay. Now we're ready for the jury.

21 (The jury enters the courtroom at 2:19 p.m.)

22 THE COURT: Okay. Ladies and gentlemen, thank you for
23 your patience with us as we work through a number of issues
24 with law. We are now going to turn it over to the State for
25 closing argument.

CLOSING STATEMENTS

SOL. MOLINA: May it please the Court?

THE COURT: Yes, ma'am.

SOL. MOLINA: When I first talked to y'all on Monday, I told you that this case was about control and ownership. And the ways in which the defendant exercises control and ownership of those around him is through violence and manipulation. And that's what all the evidence that y'all have seen, you heard, have shown.

Now, we started with a 911 call and you heard from the anonymous neighbor banging on the door, sounded like wanted money, and then shots fired. Then you hear from Olivia. And she says I've been shot. She's begging for help. And when they ask her who did it, it was an accident. Francisco Cortes, but it was an accident. She immediately jumps in to defend him and excusing him. Because he's manipulating her.

And then you saw the surveillance camera. And it's a little hard to see far away. But you see him, you see him there. You see him waiting in this car. And you see him in one of the videos pull the gun out, put it on the center console. Forty minutes before a 911 call. That's malice. That's planning. That's preparation. And why would you pull a gun out 40 minutes before anything happens while you're sitting in your car? Doesn't make sense. And what

1 he wants you to believe, he's defending Olivia and he loves
2 Olivia. They're gonna be together. He loves her. Why
3 would somebody who loves another person arrange for them to
4 hang out with another man, 3:00 o'clock in the morning,
5 while he's waiting outside for her with a gun? Doesn't make
6 sense. He's not there to defend her.

7 You heard a lot from Olivia. She gave many statements.
8 You heard from her in the 911. You heard from her on
9 Officer Ray's body cam. You heard from her in her interview
10 at the hospital with Officer Cushman. You heard from her in
11 the jail call. You saw her on the stand. And what you
12 heard from her was largely consistent. You know, she says
13 to 911, Officer Ray, Officer Cushman, "Francisco Cortes shot
14 me. Accident." She doesn't say I was being held hostage.
15 She doesn't say I was scared for my life. She doesn't say
16 that. She said it was an accident because she knows, and
17 she knew at that time, that her life wasn't in danger from
18 Faquin. He was not the threat. He was the threat.

19 And you saw her come and testify. And on direct, she
20 couldn't remember anything. She couldn't remember that she
21 called him Kenny when I asked. But cross-examination, I
22 know he was Kenny. No, I don't remember anything else. Oh,
23 yeah, I do remember in a statement that I gave last Friday
24 that I was really scared and that my life was being
25 threatened and my knight in shining armor came and rescued

1 me. But then he left her there. This person he cares so
2 much about, he leaves her there. He flees the scene. And
3 you see that in the surveillance when she's apparently
4 texting and calling him for help. She's got this knife on
5 her. She's scared. Calmly gets out of the car, walks up.
6 After he shoots her, runs to his car and flees. Doesn't
7 call 911. Doesn't go to the hospital. Doesn't wait for
8 her. Leaves her alone bleeding in a parking lot at
9 4:00 o'clock in the morning. That's malice.

10 And she does tell you about this night. And she is
11 consistent in the 911 when she's talking to officers, there
12 was a knife. Faquin had a knife. But she's not saying it
13 was to keep her in. What she's saying at the hospital, it
14 was to keep him out. He sees the gun and grabs a knife.
15 Well, she couldn't remember if it was before or after. But
16 somebody is pounding on your door at 4:00 o'clock in the
17 morning, if you see a gun, that might be reasonable. It
18 wasn't to hold her hostage. It was to keep him out, to keep
19 himself safe.

20 And she does, you know, change her story a little bit.
21 She's consistent that it's an accident. And Olivia believes
22 it's an accident. Because why would somebody who loves you
23 and is gonna have a baby with you shoot you? But why would
24 that person also leave you? It's not true. He's
25 manipulating her.

1 And she also told you something that is very, very
2 important in understanding this case. At the hospital, she
3 says, "banging on the door, opens the door, saw the gun.
4 Closes and locks the door, and then he starts shooting."
5 That's intent to kill Faquin. He was trying to kill him.
6 She says, "I thought the shooting was over. I went to open
7 the door and leave." She was shot then. That's intent to
8 kill Olivia. It doesn't matter if he thought it was Faquin
9 opening the door. He intended to kill the human being
10 opening the door. Mistaken identity is not a defense. It
11 does not negate specific intent to kill. The fact that a
12 human being was opening the door, that he laid in wait,
13 waited to see if anybody came out, and then shot that person
14 who tried, that's intent to kill. It doesn't matter that
15 Olivia believes it's an accident or that he thought it was
16 somebody else. Mistaken identity doesn't matter.

17 You also heard that as a result of him shooting into
18 the closed door of apartment 4 -- and y'all will have these
19 back with you -- that while shooting through the closed door
20 of apartment 4, it went through the walls and hit Jack, Yao
21 Ming Zhang, sleeping in his bed after a long day's work.
22 That's malice. It also went through the walls into unit 6
23 where three other people were asleep after working hard all
24 day. But he didn't care when he's firing into an apartment
25 because he needs to regain control and ownership.

1 You heard from Dr. Norcross about Jack's injuries; how
2 he was worried about it; how he worked him in because he was
3 worried that something was worse in there and luckily it
4 wasn't; that it could have led to something worse. You
5 heard from Ms. Sheila who testified about the ordeal that
6 Olivia went through: a bullet grazing under her chin; her
7 fingers being pinned; almost had to have her fingers
8 amputated, still can't bend them; a metal rod in her arm.
9 The means by which he caused injury to Jack could have
10 caused great bodily injury or death, and the evidence has
11 shown that.

12 We also know that he fired six shots because Olivia
13 told us she believed he was using a 9-millimeter gun. Six
14 9-millimeter cases all from the same gun; all shot from the
15 same gun. And we know Jack didn't have a bullet in him when
16 he went to sleep.

17 A big deal was made about this night. It's a red
18 herring. They found a knife in the kitchen where you would
19 expect it to be. And even if Faquin grabbed the knife, it's
20 because somebody was banging on his door at 4:00 o'clock in
21 the morning with a gun. It's a red herring. She was not
22 held hostage. She was not scared for her life. She told
23 y'all he wanted more time to pay for more time, I think he
24 should've gotten some more time. But my boyfriend is
25 jealous and possessive. And, you know, he was testing his

1 patience, and look at how far it got him. Look at how far
2 it got her.

3 It's important to remember that y'all can use your
4 common sense and life experiences. This case is not
5 complicated. There's a lot going on because there's
6 interpreters and their statements and this knife. It's not
7 complicated. The defendant arranged a sexual encounter for
8 Olivia. He was fed up because he felt like his time was
9 being wasted. And he didn't want to wait around any longer
10 so he told her it's time to go because she belongs to him.
11 And when she didn't come out, he had to go and regain
12 control of ownership through violence and manipulation.
13 That's malice. And in the process hurt Jack, shot into the
14 residences of Mr. and Mrs. Chen and Natascia Drummond and
15 her family in apartment six.

16 And you heard in his jail calls coaching her, telling
17 her what to say: "You said a bunch of stuff. You didn't
18 need to say all that. They don't need to know all that."
19 And telling her you have to say I knew about the knife, I
20 knew about it, so that his actions can be justified. He
21 didn't know about that knife. It wasn't about that knife.
22 It wasn't about Olivia. If he cared about Olivia, he
23 wouldn't have left her. If he cared about Olivia, he
24 might've, after shooting, gone and checked on her. He left
25 her. Flight is consciousness of guilt. Telling her what to

1 say is consciousness of guilt. Telling her not to come to
2 court, that hurt's his case, consciousness of guilt. This
3 is not a complicated case. It seems that way, but it's not.

4 And it's my job to prove to you these elements beyond a
5 reasonable doubt. And reasonable doubt might sound
6 complicated, it's not that complicated either. It's like a
7 puzzle. And you have all of the puzzle pieces that you need
8 to see what this picture is. You might not have a corner
9 piece, you might be missing another piece down here, that
10 doesn't mean you don't know what happened on July 5, 2021.
11 And all of that evidence supports a verdict of guilty for
12 attempted murder against Faquin, for attempted murder
13 against Olivia, for assault and battery of a high and
14 aggravated nature for Jack, Yao Ming Zhang, for the two
15 counts of discharging a firearm into a dwelling, and for
16 possession of a weapon during a violent crime. So I ask
17 that y'all find him guilty.

18 (Note 2:36 p.m.): closing defense

19 MS. GIBBS: May it please the Court?

20 THE COURT: Ms. Gibbs.

21 MS. GIBBS: Good afternoon. I know it's been a long
22 week. Y'all have heard a lot. You want to go through
23 everything because there's been a lot. I came at the
24 beginning and I told y'all that this case was a rush to
25 judgment, and that if you fire a weapon, that doesn't

1 necessarily mean that you committed a crime. And in this
2 case, my client, he acted to defend Olivia. And the law
3 states that if somebody has the right to act in
4 self-defense, a person can intervene to defend them. And
5 that's lawful. That's not an illegal act. So what I want
6 you to consider, because you'll see that jury charge, one of
7 the first things is he is not guilty because he --
8 Olivia had the right to act in self-defense. And I'll just
9 start with her testimony, and I'll get into more. I know
10 there's some issues that y'all want to hear about.

11 Her testimony, she has a right to self-defense. She
12 told you that she was in a room with a drunk man. There was
13 some -- he wanted sex. He had a knife. He wouldn't let her
14 out. The door was locked. She was worried that he was
15 going to stab or hurt her with it, and she needed help. And
16 she was communicating with my client on the phone, and he
17 rushed to help her. She was so scared, and she was in a
18 precarious position. I mean, she's a young girl. And
19 whatever you feel about somebody doing sex work or whatever
20 it is, she's in a position where she's alone in a house with
21 a man who was drunk and doesn't speak much English, and she
22 has the right to defend herself. She is a woman. And a
23 knife was pulled, and he won't let her out, and the door is
24 locked. And so because of that, Francisco can come help
25 her. He has the right to kill them. That's what the law

1 says. He can shoot and shoot and shoot and kill somebody to
2 defend her, and that's what he did.

3 And I get it. I get it. There's something you all are
4 gonna have to consider is credibility of witnesses. And
5 y'all have heard a lot of stuff. And when Olivia got on the
6 stand, I get it. She said I don't remember when the State
7 tried to question her. And then when I questioned her, she
8 was more free. She gave me -- she told me more information.
9 And I get what kind of light, you know, y'all are gonna have
10 to consider whether to believe it or not. For one, Olivia
11 did not want to press charges ever in this case, and she
12 made a note of that. And she spoke to the Solicitor's
13 office and she told them she didn't remember. Y'all have
14 heard the jail phone calls. They don't make my client look
15 good. Clearly, they are in a relationship. They love each
16 other. He says some things that I don't think are great.
17 You don't have to like him to find him not guilty. Because
18 the State wants to make this about ownership, control,
19 jealousy.

20 But did Francisco have control over her over every
21 single thing that she said to the police? I want to point
22 out to you the things that she said from day one that the
23 officers, the Solicitor -- nobody wanted to listen to it,
24 from day one. And I'll start with right on scene, 911, she
25 does, she says, "It was an accident. It was

1 Francisco Cortes. He didn't mean to do it." She doesn't
2 talk -- how is he controlling her? She's just sort of
3 walking off, leaving. In the hospital, she hadn't even seen
4 the doctor yet. She was sitting in a bed. There's no way
5 she talked to Francisco. Officer Cushman goes there and
6 interviews her. Y'all heard the video. She says -- she
7 brings up the knife. She says, "He wouldn't let me out. He
8 had a knife. He locked me in." She said they were
9 communicating. These are things she said from day one. He
10 had nothing to do with that. He didn't tell her to say
11 that.

12 And then her mother, you heard her mother get on the
13 stand. And I know y'all saw how that woman looked at my
14 client. She hates him. Hate. But even she said in the
15 hospital bed -- she didn't talk to him. That was the
16 initial -- you know, she's not gonna try to help my client.
17 That Francisco called and he did apologize. And she said,
18 yeah, my daughter was saying that he held her hostage and he
19 wouldn't let her out. He did not tell her to say that. Her
20 mother said that she said that. That's in the hospital bed.

21 And the next -- to both jail calls. I get it. He's
22 telling her what to say. He's telling her go press charges.
23 He's telling her all kinds of things. But one thing, I want
24 you to pay attention to, I think it's important, he's
25 saying, you know, "I heard everything, all the evidence. I

1 heard what you said." And he didn't like the part about the
2 jealousy. He didn't like the part, you know, about
3 prostitution and things like that. He goes you need to tell
4 Buddy, you need to go tell them that Buddy was holding you
5 hostage. And she goes but that's what happened, that's what
6 he did. She confirms it. And that's an important point.
7 You know, you may not like how he looks, you know, when
8 hearing some of those statements, you know, I think he's
9 scared. He's in jail, clearly. He doesn't know what's
10 gonna happen to him. He knows he's in serious trouble, but
11 that doesn't take away the fact that Olivia, their witness,
12 she's been saying this from the beginning. There was a
13 knife, he had me locked in. And she told you she was
14 scared. Imagine being in that situation.

15 The other thing is Faquin. Consider his credibility.
16 It's difficult. It was difficult for him. He does not
17 speak English. His original interview was in Spanish. And
18 so it's kind of hard to point out to y'all kinda the
19 differences and the lies and the different things he's
20 saying then and now. I kinda tried a little bit. Faquin,
21 from the beginning, he was drunk on the scene. He came in
22 later. Investigator Calore admitted, you know, you're not
23 -- there is some things they didn't believe he was telling
24 the truth about. He would not say straight with, like, the
25 money. You know, first it was I had to her pay rent and

1 then it was for sex and then it was different things. And
2 they never asked him about the knife either. So he never
3 had the chance to be questioned about it or talk about it
4 then.

5 Clearly, now, I mean, years later when he did have an
6 opportunity to speak with the Solicitor's Office -- and what
7 I say is not evidence -- but he said he has never talked to
8 the Solicitor's Office before he testified. I think you if
9 you remember, the Solicitor actually got back up again and
10 said and you spoke to -- something to the nature of they're
11 trying to bring it up again, "Did you speak to us?" And he
12 said no. And I think she was surprised he said that. But
13 again, what I'm saying is not evidence. In his case, I'm
14 gonna ask y'all to look between the lines.

15 What are the things he's -- he don't want to say too
16 much. He was -- he wasn't clear. I know the Solicitor's
17 Office says that my client arranged this prostitution deal.
18 But he never said my client's name. He said first he was,
19 you know, friends or a coworker. You know, he's on Facebook
20 talking to a friend or somebody. He never said my client's
21 name. He never said that he spoke to him. You know,
22 there's things he said that he wants you to believe. But he
23 met my client whenever he gave her a ride there. I don't
24 know. We don't know how other people live their lives.
25 Just because they may be doing things that aren't things

1 that we would do or a situation that we put ourselves in, it
2 doesn't mean she's not allowed to defend herself or that
3 he's not allowed to come to defend her or give her a ride to
4 the apartment to make sure she's safe.

5 How is he jealous? Her theory of jealousy doesn't make
6 sense to me. How are you jealous if you're a pimp, you're
7 having sex with somebody else or threesomes or everything
8 they're talking about. It's seemed like a very open sexual
9 back-and-forth conversation on -- you can hear all that. It
10 just doesn't make sense to me. There's nothing that shows
11 my client in any way communicated with Faquin and set that
12 up. We just know he gave her a ride. And that's when she
13 was in trouble and couldn't get out of this apartment at
14 3:00 in the morning or 4:00 in the morning. She was locked
15 in, she asked for his help and he came. And he was allowed
16 to shoot and do whatever he needed to do to get her out.
17 And that's what he did. And he was scared. Whatever
18 happened, he was scared. You know, things happen. This was
19 a serious, bad situation. And he did what he thought he had
20 to do. And I'm sure after that happened -- I think also on
21 the jail phone call he makes a statement, he apologized to
22 her. She said, you know, my life is really changed, and my
23 hand is messed up. And he's like I'm sorry, it wasn't meant
24 for you. And he said something about and I wanted to come
25 back to pick you up and take you to hospital, but the cops

1 were there.

2 You don't have to like him to find him not guilty. You
3 don't have to think he's a good person. There's a lot of
4 stuff y'all heard that probably you don't like. Like her
5 mother, her mother was still admit that her daughter at the
6 hospital said she was being held hostage. Now -- rush to
7 judgment. Law enforcement charged him with attempted murder
8 immediately. Charged two warrants -- or just two attempted
9 murder warrants, one for Olivia and one for Jack. Now, the
10 Solicitor's Office, they're allowed to indict the case and
11 present it to the grand jury. And so that's how Jack's case
12 was clearly -- and, truly, he's an innocent victim. He did
13 not deserve that. But that's how that case became assault
14 and battery of a high and aggravated nature and attempted
15 murder.

16 And that's how Faquin, all of a sudden, became a victim
17 in this case. Because the officers, after they were on the
18 scene and evaluated everything that was going on, they
19 didn't charge any charge that had anything to do with
20 Faquin. Why should y'all treat him as a victim if law
21 enforcement didn't? The Solicitor's Office could, but they
22 brought the charge later on. There was something that was
23 going on at that time that made them think he's not a victim
24 or they would have charged him with attempted murder. So I
25 want you to think about that because something is not right.

1 And after being charged with attempted murder, even though
2 Cushman had already gone to the hospital and told them she's
3 saying he had a knife, and even though Investigator Calore
4 was taking pictures, found the knife, took it into evidence,
5 to a picture of it, he thought it was important, they
6 didn't -- they didn't follow up on anything with that knife.
7 And the Solicitor wants you to think it's a red herring,
8 it's not a big deal. Well, if that's true, why did she not
9 want you to see anything about that knife.

10 That knife, I'm sorry, that is important. That knife,
11 they didn't test it. Wouldn't it be nice to know if
12 Faquin's DNA was on that handle, or if it's not? If it
13 wasn't on it, well, I probably wouldn't be able to argue
14 this to you. But we don't know. It's easy. Swab it. They
15 swab blood. They took swabs from mouths from Faquin. They
16 had his DNA, and then they did nothing with it. They didn't
17 test it. Or it got sent to the lab and the lab didn't test
18 it. And all those pictures that the State showed y'all
19 yesterday, countless numbers of pictures -- they took a lot
20 of pictures of the scene. So many -- the only picture they
21 didn't put it was the picture of that knife. And when I
22 asked -- so I had to stand up there. Because if I hadn't
23 said anything, y'all might not even hear anything about that
24 knife. But I stood up and said you also took a picture of a
25 knife, right? But that was one of the pictures, and he said

1 yes. And then the State said, well, I'm not objecting but,
2 you know, the Defense is welcome to show it to y'all.
3 That's not our burden. They didn't want to show it to you
4 for whatever reason.

5 I now they're trying to say it's a red herring. When
6 you heard her recorded statement at the hospital, there was
7 like -- and I asked Officer Cushman, like, wasn't there more
8 recorded statements, like there were three discs and you
9 heard two. And that was the part where she described the
10 knife, but y'all didn't hear that. I had to bring it up. I
11 think it's important. I think it's something that should
12 have been followed up on. I think they should have made an
13 effort to try and talk to my client when he was arrested
14 three days later. Doesn't sound like they did. He said not
15 face-to-face, there was no contact face-to-face. But you
16 would've heard more about this. But this case is
17 almost -- it's over three years old. And now this is the
18 first time he is getting to tell y'all through me and
19 Olivia. Yeah, she wanted to tell her story to my
20 investigator. It is what it is. She didn't want to press
21 charges. She didn't want -- you know, she didn't want to do
22 this. But she wanted us to know the truth. And so she told
23 our investigator, and she told y'all the same.

24 I'm asking y'all to find him not guilty because he
25 acted lawfully by defending her because she had the right to

1 act in self-defense. But then there are considerations.
2 Did they -- they have to prove he had the intent to kill.
3 And that's just something y'all need to think about.
4 Everything I told y'all, that is not considered when you're
5 protecting someone. That's a legal right.

6 I'm also interested in the bullet holes in the door.
7 To me, I wish that there was a little bit more of an expert
8 kind of -- you know, they have experts that can put strings
9 through the door to see was it opened or closed. I think
10 that would be important, where those holes were. They
11 weren't like at head level. They were kinda near the door,
12 you know, the lock and the door, to me, which doesn't show
13 intent to kill. That shows maybe he tried to get it open.
14 But, again, we don't have that evidence. I can't -- I'm not
15 gonna try to make that case. But it would be nice to know
16 more specific forensic idea of how the bullets traveled.
17 And I'm sorry, they could've tested those shell casings for
18 DNA and fingerprints. It is possible for DNA and
19 fingerprints to be on that. But they didn't.

20 And that knife, I'm back to that knife. That knife got
21 destroyed, whether intentional or by complete accident. By
22 complete accident, that's a problem. Y'all aren't even able
23 to look at it. And that is another thing y'all wouldn't
24 have known about if I hadn't told y'all. Because I had to
25 cross-examine Investigator Calore about the picture of the

1 knife, about it being destroyed. And only then did y'all
2 hear how it got destroyed because it's a red herring.
3 Something that shows that Olivia was in danger and thought
4 she was gonna get killed, and she needed his help to save
5 her life.

6 And all these issues, all these things, all the
7 ways where you're like I don't know what happened; there
8 might be some things I don't believe or some things I do
9 believe; or I don't like how Francisco talked to her on the
10 phone; or, you know, was the door opened or closed; or
11 was -- you know, do you believe some of peoples' statements
12 or not. That's all reasonable doubt, because the State must
13 prove beyond a reasonable doubt that my client is guilty.
14 And that is a high burden. She tried to -- she diminished
15 like it wasn't a big deal, reasonable doubt. If somebody is
16 charged with a crime and they're facing losing their life
17 and their liberty, I would hope that the State would treat
18 that burden of proof with utter seriousness. It's not
19 something that's, oh, not a big deal.

20 You have to be firmly convinced. You have to be firmly
21 convinced that that crime was committed to be able to find
22 him guilty. And if there are things that you're not sure
23 about or maybe you -- you know, maybe you believe almost all
24 of what the Solicitor says in her evidence in the case she's
25 presented. There's still some part that you're not sure

1 about because there's some points you believe the other
2 side -- you believe that a knife is important -- you have to
3 find him not guilty. You have to find him not guilty.
4 Because this case, there is all kinds of reasonable doubt,
5 even if you think you're hearing two sides of the story. We
6 were not there that day. We were not there. We can't get
7 inside my client's mind to see his intent. That's
8 reasonable doubt. And I'm gonna ask you to find my client
9 not guilty. Thank you.

10 JURY CHARGE

11 THE COURT: Okay. Ladies and gentlemen, you've heard
12 all the testimony and the evidence in this case, and it's
13 now my duty to instructor you on the law. The indictments
14 in this case allege several different offenses against the
15 defendant. The charges are the attempted murder of
16 Olivia Erskine; the attempted murder of Faquin Hernandez
17 Cruz; assault and battery of a high and aggravated nature
18 against Yao Ming Zhang; discharge of a firearm into a
19 dwelling at unit 4 of the complex; discharge of a firearm
20 into a dwelling at unit 6; and possession of a weapon during
21 a violent crime. Each indictment charges a separate and
22 distinct offense. You must decide each indictment
23 separately on the evidence and the law applicable to it
24 uninfluenced by your decision as to any other indictment.
25 The defendant may be convicted or acquitted on any or all of

1 the offenses charged. You'll be asked to write a separate
2 verdict of guilty or not guilty for each indictment.

3 I remind you that the fact the defendant was arrested,
4 charged, and indicted in this case is not evidence and
5 cannot be considered by you as evidence of guilt, nor does
6 it create any presumption or inference of guilt. This
7 document or indictment is simply the formal written
8 instrument which contains the charge made against the
9 defendant. It's the formal document by which this case is
10 brought into court.

11 The defendant has pled not guilty to this indictment,
12 and that plea puts the burden on the State to prove the
13 defendant guilty. A person charged with committing a
14 criminal offense in South Carolina is never required to
15 prove himself innocent. I charge you that it is an
16 important rule of law that the defendant in a criminal
17 trial, no matter what the seriousness of the charge may be,
18 will always be presumed to be innocent of the crime for
19 which the indictment was issued unless guilt has been proven
20 by evidence satisfying you of that guilt beyond a reasonable
21 doubt. This presumption of innocence does not end when you
22 begin your deliberations, but it accompanies the defendant
23 throughout the trial unless or until you reach a verdict of
24 guilt based on evidence satisfying you of that guilt beyond
25 a reasonable doubt.

1 The presumption of innocence is not mere legal theory;
2 it's not a mere legal phrase. It is a substantial right to
3 which every defendant is entitled. Again, unless you, the
4 jury, are satisfied from the evidence of the defendant's
5 guilt beyond a reasonable doubt. Reasonable doubt in the
6 law is the kind of doubt for which you can give a reason.
7 It's also described as the kind of doubt that would cause a
8 reasonable person to hesitate to act. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced
10 of the defendant's guilt. There are very few things in this
11 world that we know with absolute certainty. And in criminal
12 cases, the law does not require you to overcome every
13 possible doubt. If, based on your consideration of the
14 evidence, you are firmly convinced that the defendant is
15 guilty of the crime charged, you must find the defendant
16 guilty. If, on the other hand, you think there's a real
17 possibility that the defendant is not guilty, you must give
18 the defendant the benefit of the doubt and find him not
19 guilty.

20 I'll remind you that during this trial you and I have
21 certain duties to perform. As the trial judge, it's my
22 responsibility to preside over the trial of this case, and I
23 also have the duty to rule on the admissibility of the
24 evidence offered during the trial. You are to consider only
25 the competent evidence before you. You are to consider only

1 the testimony which has been presented from this witness
2 stand and any exhibits which have been entered into the
3 record in this case.

4 I have the additional duty to charge you the
5 law applicable to the case. As the presiding judge, I'm the
6 sole judge of the law in this case. And it is your duty as
7 jurors to accept and apply the law as I know state it to
8 you. If you already have any ideas to what the law is or
9 what you think the law ought to be, and it does not agree
10 with what I now tell you the law is, you must abandon your
11 previous idea because you're sworn to accept the law and
12 apply the law exactly as I state it to you now.

13 In every case tried before a jury, the jury becomes the
14 sole and exclusive judges of the facts. A trial judge
15 cannot comment on or make any statement to a trial jury
16 about the facts in a case. Since you, the jury, are the
17 sole judges of the facts, you are not to infer from what
18 I've said during the progress of this trial in ruling on the
19 admissibility of evidence or otherwise, or anything that I
20 say now during the course of this instruction to you that I
21 have any opinion about the facts in the case. The law does
22 not permit me to have an opinion about the facts. This is a
23 matter solely for you, the jury, to determine.

24 As jurors, it's your duty to determine the effect,
25 value, weight, and truth of the evidence presented during

1 this trial. There are two types of evidence which are
2 generally presented during a trial. There's direct evidence
3 and there's circumstantial evidence. Direct evidence
4 directly proves the existence of a fact and does not require
5 deduction. Direct evidence is the testimony of a person who
6 claims to have actual knowledge of the facts such as an
7 eyewitness. Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of a fact.
9 Crimes may be proven by circumstantial evidence. The law
10 makes no distinction between the weight or value to be given
11 to either direct or circumstantial evidence, nor is a
12 greater degree of certainty required of circumstantial
13 evidence than of direct evidence. You should weigh all of
14 the evidence in this case.

15 However, to the extent that the State relies on
16 circumstantial evidence, all of the circumstances must be
17 consistent with each other, and when taken together, point
18 conclusively to the guilt of the accused beyond a reasonable
19 doubt. If these circumstances merely portray the
20 defendant's behavior as suspicious, the proof has failed.
21 After weighing all of the evidence, if you are not convinced
22 of the guilt of the defendant beyond a reasonable doubt, you
23 must find the defendant not guilty. The State has the
24 burden of proving the defendant guilty beyond a reasonable
25 doubt. And this burden rests with the State regardless of

1 whether the State relies on direct evidence, circumstantial
2 evidence, or some combination of the two.

3 Now, necessarily, you must determine the credibility of
4 the witnesses who have testified in this case, and
5 credibility simply means believability. It becomes your
6 duty as jurors to analyze and evaluate the evidence and
7 determine which evidence convinces you of its truth. In
8 determining the believability of witnesses who have
9 testified, you may believe one witness over several, or
10 several witnesses over one. You may believe a part of the
11 testimony of a witness and reject the remaining part of the
12 testimony of the same witness. You may believe the
13 testimony of a witness in its entirety, or you may reject
14 the testimony of a witness in its entirety. You may
15 consider whether any witnesses exhibited to you any
16 interest, bias, prejudice, or other motive in this case.
17 You can also consider the appearance and manner of the
18 demeanor of the witness while on the witness stand.

19 I instruct you and emphasize that the fact the
20 defendant did not testify in this case is not a factor to be
21 considered by you in any way in your deliberation and in
22 your consideration on the question of the guilt or innocence
23 of the defendant. It must not be considered by you in any
24 manner whatsoever. A defendant has the constitutional right
25 to remain silent. And the assertion of this constitutional

1 right must not be considered by you in your deliberations.
2 I repeat, under your oath, you are to draw no conclusion
3 whatsoever from the fact that the defendant in this case did
4 not testify. The fact that the defendant did not testify
5 should not even be discussed by you in the jury room. The
6 burden of proof, as I've stated to you, is on the State.
7 The defendant is not required to prove his innocence, and
8 the burden of proof remains on the State to prove guilt
9 beyond a reasonable doubt.

10 The rules of evidence ordinarily do not allow witnesses
11 to testify to opinions or conclusions. But an exception to
12 this rule exists for witnesses that we call expert
13 witnesses. This is a witness who by education and
14 experience has become expert in some art, science,
15 profession, or calling. And they may state an opinion as to
16 relevant and material matter in which the witness claims to
17 be an expert and may also state the reasons for the opinion.

18 In this trial you have heard expert testimony in the
19 fields of orthopedic surgery from Dr. Norcross as well as
20 firearms and toolmark identification
21 from Michele Eichenmiller. You should consider any expert
22 opinion received in this case, and like any other evidence,
23 give it the weight you think it deserves. If you decide
24 that the opinion of an expert witness is not based on
25 sufficient educational and experience, or if you conclude

1 that the reasons given in support of the opinion are not
2 sound, or that the opinion is outweighed by other evidence,
3 you may disregard the opinion entirely. An expert witness'
4 testimony is to be given no greater weight than that of
5 other witnesses simply because the witness is an expert.
6 Further, you're not required to accept an expert's opinion
7 even though it is not contradicted.

8 There has been evidence presented that witnesses may
9 have made prior statements which are not consistent with the
10 witness' present testimony. You make use this evidence to
11 decide whether to believe the witness. You may also use
12 evidence of the earlier contradictory statements to
13 determine the truth of those statements. It's up to you to
14 decide whether to believe the earlier statement or the
15 testimony given at trial. If a witness is shown to have
16 knowingly testified untruthfully concerning any material
17 matter, you may consider this in determining whether to
18 trust the witness' testimony as to other matters. You may
19 reject all testimony of that witness, or give all or part of
20 the testimony that weight you think it deserves.

21 The defendant is charged with attempted murder. In
22 order to prove this crime, the State must prove that the
23 defendant acted with the specific intent to kill another
24 person, and the defendant attempted to kill another person
25 with malice aforethought, either expressed or implied.

1 Malice is hatred, ill will, or hostility toward another
2 person. It is the intentional doing of a wrongful act
3 without just cause or excuse and within an intent to inflict
4 an injury, or under circumstances that will infer an evil
5 intent. Malice aforethought does not require that malice
6 exists for any particular time before the act is committed.
7 But malice must exist in the mind of the defendant just
8 before and at the time the act is committed. Therefore,
9 there must be a combination of the previous evil intent and
10 the act.

11 Malice aforethought may be expressed or it may be
12 inferred. These terms expressed and inferred don't mean
13 different kinds of malice, but merely the manner in which
14 malice may be shown to exist. That is either by direct
15 evidence or by inference from the facts and circumstances
16 which are proved. Expressed malice is shown when a person
17 speaks words which express hatred or ill will for another or
18 when the person prepared beforehand to do the act which was
19 later accomplished. For example, acts of preparation going
20 to show that the deed was within the defendant's mind would
21 be expressed malice. Malice may be inferred from conduct
22 showing a total disregard for human life. If facts are
23 proved beyond a reasonable doubt sufficient to raise an
24 inference of malice to your satisfaction, this inference
25 would be simply an evidentiary fact to be considered by you,

1 the jury, along with other evidence in this case, and you
2 may give it the weight you decide it should receive.

3 A specific intent to kill is an element of attempted
4 murder. Intent means attending the result which actually
5 occurred, not accidentally or involuntary. Intent may be
6 shown by acts and conduct of the defendant and other
7 circumstances from which you may naturally and reasonably
8 infer intent. Evidence of the character of the act, the
9 character of the instrument used, the manner in which it was
10 used, the purpose to be accomplished, and the resulting
11 wounds or injuries may be considered in determining the
12 intent with which the act was committed.

13 The defendant is also charged with assault and battery
14 of a high and aggravated nature. A person commits the
15 offense of assault and battery of a high and aggravated
16 nature if the person unlawfully injures another person and
17 great bodily injury to another person results, or the act is
18 accomplished by means likely to produce death or great
19 bodily injury. Great bodily injury means bodily injury
20 which causes a substantial risk of death or which causes a
21 serious permanent disfigurement or protracted loss or
22 impairment of the function of a bodily member or organ.

23 The defendant is charged with discharging a firearm at
24 or into a dwelling. The State must prove beyond a
25 reasonable doubt that the defendant discharged a firearm or

1 caused a firearm to be discharged at or into a dwelling
2 house. A dwelling house is any building in which there
3 sleeps a proprietor, tenant, or person who lodges there with
4 the intention of protecting the property.

5 The defendant is charged with possession of a weapon
6 during the commission of or attempt to commit a violent
7 crime. The State must prove beyond a reasonable doubt that
8 the defendant was in possession of a firearm, or visibly
9 displayed what appeared to be a firearm, during the
10 commission of a violent crime. Further, the State must show
11 that the defendant had actual or constructive possession of
12 the firearm, and establish a nexus between the firearm and
13 the underlying crime. A firearm means any machine gun,
14 automatic rifle, revolver, pistol, or any weapon which will,
15 is designed to, or may be readily converted to expel a
16 projectile. In order to find the defendant guilty of
17 possession of a weapon during the commission of a violent
18 crime, you must first find the defendant guilty of either
19 committing a violent crime or attempting to commit a violent
20 crime. Both attempted murder and assault and battery of a
21 high and aggravated nature are classified as violent crimes
22 under South Carolina law. The State must prove beyond a
23 reasonable doubt that the weapon further advanced or helped
24 in the commission of the crime.

25 Under the law of self-defense, the defendant may take

1 another's life in the defense of others. The right to
2 intervene to protect another person is subject to the same
3 rights and limitations as the right of self-defense. The
4 defendant may take the life of a person who assaults a
5 friend, relative, or bystander if that friend, relative, or
6 bystander would've had the right of self-defense. To show
7 that the person being defended have the right of
8 self-defense, it must first be shown that the person being
9 defended and the defendant are both without fault in
10 bringing on the difficulty. If the conduct of the person
11 defended or the defendant was the type which was reasonably
12 calculated to and did provoke a deadly assault, the person
13 would be at fault in bringing on the difficulty and would
14 not have the right of self-defense. Therefore, the
15 defendant would not have the right to use deadly force in
16 defending that person.

17 The defense of another person is excusable if the
18 defendant had reasonable grounds to believe, and in good
19 faith did believe, that the person being defended was in
20 imminent danger of death or serious bodily harm from the
21 victim. In deciding whether the person defended actually
22 was or that the defendant actually believed the person was
23 in imminent danger of death or serious bodily injury, you
24 should consider all the facts and circumstances surrounding
25 the crime including the physical condition and

1 characteristics of the parties.

2 In your deliberations, your verdict must be unanimous.
3 All twelve must agree on the verdict. In just a moment I'm
4 gonna send you back into the verdict -- excuse me -- into
5 the jury room with the verdict forms and with all of the
6 exhibits that have been entered into evidence. Let's go
7 over the verdict forms. You will have a separate verdict
8 form for each of the indictments. It's a very simple form.
9 At the top you'll see the indictment number, the State
10 versus Francisco Cortes. There will be a separate one for
11 each offense. So for this one it says, "As to the charge of
12 attempted murder of Faquin Hernandez Cruz, we, the jury,
13 unanimously find the defendant," and then you'll have a
14 choice of guilty or not guilty.

15 Please don't read anything into the order in which your
16 two options appear. One has gotta appear first and one has
17 gotta appear second. Once you have reached a unanimous
18 verdict on that offense, you'll simply check the box for
19 guilty or not guilty, and our jury foreperson will sign that
20 the jury has reached that unanimous verdict.

21 Again, you will have a verdict form for each of the
22 offenses. I do want to point out that for the offense of
23 possession of a weapon during a violent crime, we have noted
24 on the verdict form that it says, "You should only
25 deliberate on this charge if you have found the defendant

1 guilty of either the attempted murder or the assault and
2 battery of a high and aggravated nature charges. If you
3 found the defendant not guilty as to each of these charges,
4 then you do not need to deliberate further."

5 Any additions, subtractions before I send the jury
6 back?

7 SOL. MOLINA: Nothing from the State.

8 MS. GIBBS: None, Your Honor.

9 THE COURT: Okay. In just a moment, we're gonna escort
10 you back to the jury room. Please don't begin your
11 deliberations until we have brought the verdict form and all
12 the exhibits back to you. And then once you've received
13 those, you'll be free to begin your deliberations. Thank
14 you.

15 (The jury exits the courtroom at 3:17 p.m.)

16 THE COURT: Okay. Anything we need to address before
17 we get the exhibits together?

18 SOL. MOLINA: Nothing from the State.

19 MS. GIBBS: No, your Honor.

20 THE COURT: Okay. If I could get y'all to make sure
21 that we have everything we need and nothing that we don't.
22 I'm showing we have State's Exhibits 1 through 96 to go
23 back.

24 SOL. MOLINA: I don't think there's anything that has
25 to be -- to not send back.

1 THE COURT: And we talked about earlier substituting a
2 redacted form of the --

3 SOL. MOLINA: I checked and it was the correct version
4 that is submitted.

5 THE COURT: Okay. Great.

6 (Brief pause.)

7 (State's Exhibit No. 87 withdrawn from evidence.)

8 (The jury begins deliberations at 3:30 p.m.)

9 THE COURT: Okay. I understand that we have a verdict.

10 (Brief pause.)

11 (The jury enters the courtroom at 4:55 p.m.)

12 VERDICT

13 THE COURT: Okay. Madam Foreperson, I understand that
14 you all have reached a verdict?

15 FOREPERSON: Yes.

16 THE COURT: And would you hand the verdict form to the
17 bailiff, please.

18 Okay. As to the charge of attempted murder of Faquin
19 Hernandez Cruz, the verdict states: We, the jury,
20 unanimously find the defendant guilty. As to the attempted
21 murder of Olivia Erskine, we, the jury, unanimously find the
22 defendant guilty. As to the charge of assault battery of a
23 high and aggravated nature against Yao Ming Zhang, we, the
24 jury, unanimously find the defendant guilty. As to the
25 charge of discharging a firearm into a dwelling as to

1 400 William Hilton Parkway, unit 4, we, the jury,
2 unanimously find defendant guilty. As to the charge of
3 discharging a firearm into a dwelling at 400 William Hilton
4 Parkway, unit 6, we, the jury, unanimously find the
5 defendant guilty. As to the charge of possession of a
6 weapon during a violent crime, we, the jury, unanimously
7 find the defendant guilty.

8 Ladies and gentlemen, let me ask you: Is this your
9 verdict?

10 (The jury affirms.)

11 THE COURT: Anything further from the State or the
12 Defense?

13 MS. GIBBS: I'd ask that you pool the jury.

14 THE CLERK: I'm going to call your juror number.
15 Please answer me clearly. Juror number 200, was this your
16 verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Juror number 117, was this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Juror number 275, was this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?
2 JUROR: Yes.
3 THE CLERK: Juror number 295, was this your verdict?
4 JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 JUROR: Yes.
7 THE CLERK: Juror number 73, was this your verdict?
8 JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR: Yes.
11 THE CLERK: Juror number 183, was this your verdict?
12 JUROR: Yes.
13 THE CLERK: Is it still your verdict?
14 JUROR: Yes.
15 THE CLERK: Juror number 238, was this your verdict?
16 JUROR: Yes.
17 THE CLERK: Is it still your verdict?
18 JUROR: Yes.
19 THE CLERK: Juror number 258, was this your verdict?
20 JUROR: Yes.
21 THE CLERK: Is it still your verdict?
22 JUROR: Yes.
23 THE CLERK: Juror number 307, was this your verdict?
24 JUROR: Yes.
25 THE COURT: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Juror number 141, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Juror number 4, was this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Juror number 265, was this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Thank you.

15 THE COURT: Okay. Ladies and gentlemen, I want to
16 thank you so much for your service this week. This does
17 conclude your jury service. We will not be trying anything
18 else for the remainder of the week. We understand that this
19 is never a convenient time to come and just quietly
20 rearrange your entire lives to be here. It's particularly
21 not convenient given it's the week before Christmas and it's
22 a busy time of year, so we are particularly appreciative of
23 you being here.

24 Sometimes our cases, we have a large number of cases
25 and they're lined up and they're just waiting for court time

1 or waiting for jury time. During COVID, we could not
2 convene juries for a period of time. And so it made us all
3 the more appreciative of jurors being willing to give their
4 time to come here and, again, rearrange their entire lives
5 for this week. So we thank you so much for your service.
6 You're free to go.

7 (Jurors are dismissed and exit the courtroom at
8 4:59 p.m.)

9 THE COURT: Do you need a few minutes to get sentencing
10 sheets.

11 SOL. MOLINA: Yes, ma'am.

12 THE COURT: About 15 minutes you think?

13 SOL. MOLINA: Ten. I'm working on them now.

14 THE COURT: We'll be at ease then about ten minutes.

15 (Brief recess at 5:00 p.m.)

16 SOL. MOLINA: Thank you. The State in this case is
17 recommending 26 years. His prior record includes a 2012
18 simple possession of marijuana; a 2020 public disorderly
19 conduct, entering after warning and resisting arrest; a 2023
20 resisting arrest and burglary third. Out of Georgia, a 2013
21 trespassing; 2014 theft by stolen property, arson
22 second-degree, and obstruction of law enforcement; and a
23 2014 probation violation on those.

24 The State is recommending 26 years. This was a
25 senseless act of violence. He targeted very vulnerable

1 victims in Olivia and Faquin. As you heard a little bit, he
2 fled the scene and hid in the ceiling of a Jasper church
3 following this incident, and that resulted in the burglary
4 third convictions.

5 Additionally, there were other jail calls that occurred
6 after she was subpoenaed telling her not to come to court,
7 it was worth her going to jail over. He was trying to get
8 his friends and family to make sure she didn't come to
9 court. You know, go hang out with her, bring her to the
10 house. It's these aggravating circumstances that the State
11 requests 26 years. And I've also passed up the permanent
12 restraining orders for the victims and the witness,
13 Ms. Sheila.

14 MS. GIBBS: Thank you. May it please the Court? This
15 is always difficult because, clearly, we -- Francisco put up
16 a defense. He, obviously, doesn't agree with the facts as
17 stated by the Solicitor. But I've also -- he's in a
18 situation where I don't want him to admit guilt or apologize
19 or do anything that might impact his appellate purposes. So
20 he will not be speaking or addressing the Court.

21 But I would like to say he has been in jail 1,262 days.
22 And he was -- when he was arrested, he was hiding in a
23 church. You know, it's a burglary. Or he was hiding
24 upstairs. So it wasn't -- I know with his record, there's
25 an arson second. I think that's obviously the most serious.

1 My understanding, it dealt with setting a mattress on fire.
2 I don't think his record indicates a violent record. He's
3 never been to prison. He has expressed remorse. I mean,
4 even on the jail calls, he -- and to Olivia and to her
5 mother, he apologized. I don't think what happened was what
6 was intended. But I guess I can't really get too much into
7 it.

8 He grew up in the Hilton Head/Bluffton area. He works
9 construction. He also worked at Charbar in Hilton Head. He
10 has no children. I don't really know if he has a lot of
11 family support. I've never spoken to anybody in his family.
12 I haven't had this case that long. But we did get in
13 contact with his family about being here, they were not able
14 to be here. I think they've got a lot going on as well. So
15 he's got one person here supporting him, that's a friend he
16 met in jail. So I do think there is some mitigating
17 circumstances as far as his childhood. When I looked at the
18 school records, maybe just, you know -- I feel like he has
19 had somewhat of a troubled, not a lot of family support,
20 upbringing. He has been -- in my representation, he has
21 been extremely respectful to me, extremely nice, and very
22 appreciative.

23 And, I mean, this has been a really -- this was a tough
24 case. This was a really hard situation. I know he
25 clearly -- I know he does feel remorse for the injuries and

1 this situation. I would ask that you consider a 10-year
2 sentence. I understand the recommendation. I just think
3 that is -- and I know he realizes. We've discussed what
4 could happen and how he's very lucky that nothing else
5 happened and it wasn't more serious. But he doesn't
6 really -- you know, the characterization of a senseless, I
7 think he -- I mean, clearly, we put up a defense that he
8 felt like he had to act. But, again, he has shown remorse.
9 And I would just ask that you consider a 10-year sentence
10 and give him credit for 1,206 days.

11 THE COURT: How old is your client?

12 MS. GIBBS: 30.

13 (Brief pause.)

14 SENTENCE OF THE COURT

15 THE COURT: Before we talk about the sentence, I want
16 to go over the requirements of this permanent restraining
17 order that I'm signing today that prohibits you, Mr. Cortes,
18 from having any contact with Mr. Cruz, with Sheila --
19 Sheila Erskine, Olivia Erskine, or Yao Ming Zhang. Sorry, I
20 thought I had one for Mr. Cruz. Oh, I do. And for Faquin
21 Hernandez Cruz.

22 What that means, sir, is don't contact them via any
23 form. It means don't call, don't text, don't email, don't
24 mail them a letter, don't go around where they live or where
25 they work, don't send anyone else to do any of those things

1 on your behalf. Don't reach out to them via any form of
2 social media. It means no contact of any sort whatsoever.

3 As to the sentencing, so I guess what I see from you in
4 terms of remorse, really it looked like it was expressed for
5 the purpose of trying to get Olivia to do your bidding. It
6 didn't seem to me that it was sincere remorse. It looked to
7 me like you were still trying to manipulate her from the
8 jail cell. Your actions certainly didn't show any remorse.
9 You put her in harm's way. You caused the harm to her and
10 then you abandoned her there. Looks to me that you're
11 continuing to try to manipulate her from jail and
12 encouraging her to still put herself in harm's way. You're
13 basically every parent's nightmare. Every parent prays that
14 their child will not come across somebody like you who does
15 this to their child.

16 So I'm gonna give you, for the attempted murder charge
17 against Olivia Erskine, 22 years. For the attempted murder
18 of Mr. Cruz, 20 year concurrent sentence. For the assault
19 and battery of a high and aggravated nature, that's a
20 concurrent 10 years. For both charges of discharging a
21 firearm into a dwelling, 5 years on each of those. Again,
22 these are all concurrent. And for possession of a weapon
23 during a violent crime, 5-year concurrent. So an aggregate
24 22 years. You have 10 days from today's date if you want to
25 appeal the conviction and the sentence.

1 Anything further from the State?

2 SOL. MOLINA: Nothing from the State.

3 MS. GIBBS: Nothing further, Judge.

4 THE COURT: Okay. We are adjourned.

5 (The trial proceedings concluded Wednesday,

6 December 18, 2024, at 5:26 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF COLLETON) CERTIFICATE OF REPORTER

3

4 I, HEATHER R. LANDRY, Court Reporter for the Judicial
5 Department of the State of South Carolina, do hereby certify
6 that the foregoing is a true, accurate, and complete
7 Transcript of Record of the proceedings had in the trial of
8 the State v. Francisco Cortes, in the Court of
9 General Sessions for Beaufort County, South Carolina, on the
10 16th through the 18th days of December 2024.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13

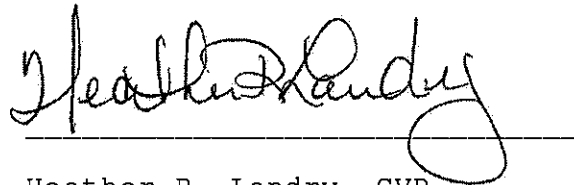
14

April 8, 2025

15

16

17

A handwritten signature in black ink, reading "Heather R. Landry", is written over a horizontal line.

18

Heather R. Landry, CVR
Official Court Reporter

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT 9:25
	)	
STATE OF SOUTH CAROLINA	)	INDICTMENT NO(s): 2022GS070756, 261,
	)	2023GS0701862
	)	
v.	)	
Francisco Cortes,	)	DEFENDANT'S NOTICE OF MOTION AND
	)	MOTION TO SUPPRESS JAIL CALLS
Defendant.	)	

YOU WILL PLEASE TAKE NOTICE that the Defendant, Francisco Cortes, by and through his undersigned counsel, will move before the Presiding Judge of the Court of General Sessions as soon as counsel may be heard, for an Order Suppressing from evidence of all jail phone calls allegedly made by the Defendant while incarcerated at the Beaufort County Detention Center. The Defendant contends that the jail phone calls that the State of South Carolina seeks to introduce against him were obtained in violation of his First Amendment right, as incorporated by the Fourteenth Amendment, to be free to communicate without the uninvited ears and eyes of the government, and his state, under Art. § 10, and federal constitutional rights, under the Fourth and Fourteenth Amendments, to be free from unreasonable searches and seizures because they were obtained without a warrant, subpoena, court order, or other legal process by the State of South Carolina.

FACTS

This incident occurred in Beaufort County on July 5, 2021. Mr. Cortes was arrested on unrelated charges in Jasper County on July 9, 2021. A hold was placed on Mr. Cortes for the Beaufort County charges of Attempted Murder (2 counts), Discharging a Firearm into a Dwelling

(2 counts), Unlawful Carrying of a Pistol and Possession of a Weapon During a Violent Crime. The 14th Circuit Solicitor's Office directly presented an additional charge of Assault and Battery of a High and Aggravated Nature on December 7, 2023. After his arrest in Jasper County on July 9, 2023, Mr. Cortes was booked into the Jasper County Detention Center ("JCDC") and remained there until April 18, 2022 where he was transferred to the Beaufort County Detention Center ("BCDC") on these pending Beaufort County charges and where he remains today.

Per documentation provided by L/Cpl. Eddie Aiken of the Beaufort County Detention Center, on December 2 and December 9, 2024, Assistant Solicitor Samantha Molina accessed the recorded jail calls of Mr. Cortes. On December 11, 2024, Ms. Molina subpoenaed five specific jail calls with call ID Numbers 82868040, 82890502, 82964796, 82964494, 83306068. (Attached hereto as EXHIBIT 1). Ms. Molina provided Defense Counsel a copy of these jail phone calls the State intends to use in the prosecution of this case.

AUTHORITY

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. "[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." Wilson v. Arkansas, 514 U.S. 927, 931 (1995). "A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (citing Horton v. California, 496 U.S. 128, 133 (1990)). The Fourth Amendment prohibits "unreasonable searches and seizures" by the Government. Terry v. Ohio, 392 U.S. 1, 9 (1968). Pre-trial detainees maintain protections afforded under the Fourth Amendment, including a diminished expectation of privacy. Bell v. Wolfish, 441 U.S. 520, 557 (1979).

"When a pretrial detainee remains in custody, he is not disrobed of his constitutional rights and laid bare for the zealous investigation of his case." State v. Ellefson, 266 S.C. 494, 500 (1976). A pretrial detainee enjoys the presumption of innocence, and his rights are curtailed "only to the extent justified by the considerations underlying our penal system." Ellefson, at 500.

In Ellefson, the South Carolina Supreme Court reversed appellant's conviction and remanded for a new trial after concluding the trial court erred by admitting three letters written by appellant to a witness while in pretrial confinement. Id. at 498. The letters at issue in Ellefson were obtained by the State through the efforts of a detective who was not connected with the operation of the jail. Id. Rather, the State's efforts were entirely investigatory and in pursuit of securing a conviction. Id. The detective in Ellefson had been given permission to read and photocopy the letters by the jailor who routinely scanned outgoing mail as a security precaution. Id.

The Ellefson Court invoked a two-prong analysis the State must satisfy to justify the censorship. Id. at 499-500. First, the regulation or practice in question must further an important or substantial governmental interest. Id. at 500. Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Id. The detective testified he was censoring the mail solely to try to get evidence for the case and not for purposes of jail security and no warrant was issued. Id.

Because the search in Ellefson was not for any legitimate jail purpose, the Court proceeded into a Fourth Amendment analysis, explaining, "the most basic constitutional rule in this area is that searches conducted outside the judicial process, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions." Id. at 501 (citing Coolidge v. New Hampshire, 403 U.S. 443, 454, 455, 91 S.Ct. 2022, 2032, 29 L.Ed.2d 564 (1971)).

To satisfy the exigent circumstances exception, there “must be a showing by the State that the exigencies of the situation made that course imperative.” Id. (citing McDonald v. U.S., 335 U.S. 451, 456, 69 S.Ct. 191, 93 L.Ed. 153 (1948)). The Court found no exigent circumstances existed and there was no attempt by the State to show the existence of probable cause. Id. The opening and reading of appellant’s letters was entirely exploratory and contravenes the very purpose of the constitutional safeguard against unreasonable searches and seizures. Id. at 501. Additionally, the Court determined the search impinged upon the Appellant’s First Amendment right, as incorporated by the Fourteenth Amendment, to be able to communicate without the uninvited ears and eyes of the government. Id.

Consent is another exception to the search warrant requirement. “‘Consent’ is a broad term and is defined as ‘agreement, approval, or permission as to some act or purpose.’” State v. Whitner, 399 S.C. 547, 554, 732 S.E.2d 861, 865 (2012) (quoting Black’s Law Dictionary 346 (9th Ed. 2009)). “Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances.” State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 856 (2003). “The state bears the burden of establishing the voluntariness of the consent.” Id.

ANALYSIS

While Ellefson concerns censorship of prison mail, the same logic applies to recorded jail phone calls as they are both intimate forms of communication made by pre-trial detainees that have not been convicted of the crime that they are being detained for and only have these limited avenues to communicate with individuals outside of the detention center such as family, significant

others and legal counsel. They are both subject to monitoring by the detention center for purposes of security.

In Ellefson the letters were obtained by the State through the efforts of a detective who was not connected with the operation of the jail. His efforts were entirely investigatory and in pursuit of securing a conviction. Similarly, Mr. Cortes's phone calls were obtained by the State through the efforts of the Assistant Solicitor herself—who certainly is not connected with the operation of the jail. See EXHIBIT 1. Further, L/Cpl. Eddie Aiken of the Beaufort County Detention Center had not listened to Mr. Cortes's calls prior to receiving the Assistant Solicitor's subpoena. Thus, Mr. Cortes's phone calls were listened to by the Assistant Solicitor and then specifically subpoenaed by the State solely to get evidence for this case and not for the legitimate purposes of jail security and no search warrant was issued, nor any attempt by the State to show the existence of probable cause.

In the present case, if the State relies upon the exigent circumstances exception to the warrant requirement, then there must be a showing by the State that the exigencies of the situation made that course imperative. Here, the State did not subpoena Mr. Cortes's phone calls until December 11, 2024, more than three years after his arrest and more importantly, the week before his jury trial. Listening to the recorded jail calls and then issuing a subpoena for Mr. Cortes's specific phone calls is clearly an attempt to secure evidence for purposes of prosecution and shows there were no exigencies making that course imperative.

If the State relies upon the consent to search exception, it has the burden of proving the voluntariness of the consent. Id. at 502. It is assumed the State will argue that consent was given by Mr. Cortes because of the recording prior to his jail calls informing him that they were being

monitored and recorded. This issue was addressed in Ellefson, as when appellant was processed into the jail, he signed a card authorizing jail officials to read his mail. The State attempted to elevate this into a waiver of constitutional rights. Apparently, all inmates were required to sign the card and this is accomplished routinely during the reception process. If the State relies upon the consent to search, it has the burden of proving the voluntariness of the consent. Id. at 502-503 (citing Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968)). The court thus cannot assume there was consent. Id. (citing People v. Henry, 65 Cal.2d 842, 56 Cal.Rptr. 485, 423 P.2d 557 (1967)). For noncustodial searches, the current test is whether or not the consent was voluntary under the totality of the circumstances. Id. at 503 (citing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)). The skeletal details of the so called 'consent' belie it. If we were to hold the appellant consented to waive his constitutional rights here, the doctrine of consent would be effectively emasculated. Id.

Mr. Cortes was in pre-trial detention when the calls took place. He didn't have any choice in whether his calls were monitored and recorded. He did not have the ability to give consent. Consent can't be forced or involuntarily given.

Therefore, for the above-mentioned reasons, the Defendant asks this Honorable Court to Suppress any and all of his jail phone calls which the State of South Carolina intends to introduce in this case against him.

Respectfully submitted,

Courtney A. Gibbs
 Courtney A. Gibbs
 Deputy Public Defender
 14th Circuit Public Defender's Office

Beaufort, South Carolina
12/16, 2024

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Tim
☐		07/13/2024 15:21:20	82368040	47965	CORTES	1-843-816- 2253	Debit	Local	B3-1	579	10:00

Showing 1 to 1 of 1 entries

Show 1,000 v entries

View Listeners

Username	Action	Last Access
ealiken	Burn	12/11/2024 17:19:21
ealiken	Manifest	12/11/2024 17:19:21
ealiken		12/11/2024 16:56:44
smolina	Play	12/02/2024 13:31:24
smolina	Listened (71%)	
smolina	Download	12/02/2024 13:30:15

[Handwritten signature and date: 12/11/2024]

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time ▾	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Tim
☐		07/20/2024 09:09:56	82890502	344669	ANDERSON	1-843-815- 2253	Debit	Local	83-1	498	9:00

Showing 1 to 1 of 1 entries

Show 1,000 ▾ entries

View Listeners

Username	Action	Last Access
eaiken	Burn	12/11/2024 17:17:28
eaiken	Manifest	12/11/2024 17:17:28
eaiken		12/11/2024 16:59:38
eaiken	Listened (5%)	
eaiken	Play	12/11/2024 16:59:04
smolina	Listened (37%)	
smolina	Play	12/02/2024 13:19:38
smolina	Download	12/02/2024 12:38:26

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Tim
☐		08/10/2024 13:10:07	82964796	142	SIMMONS	1-843-816-2253	Prepaid	Local	B3-1	560	10:00

Showing 1 to 1 of 1 entries

Show 1,000 ▾ entries

View Listeners

Username	Action	Last Access
eaiken	Burn	12/11/2024 17:18:14
eaiken	Manifest	12/11/2024 17:18:14
eaiken		12/11/2024 16:58:18
smolina	Play	12/09/2024 08:08:55
smolina	Listened (73%)	
smolina	Download	12/02/2024 15:15:56

Visitation Records

Showing 1 to 1 of 1 entries

CSN	Visit ID	Scheduled Start	Actual Start	Duration	Scheduled End	Actual End	Visitor ID	Visitor	Visitor Station	Inmate ID	Inmate	Inmate Station	Additional Visit
B2954494	111892	08/10/2024 12:30:00	08/10/2024 12:30:00	29:38	08/10/2024 13:00:00	08/10/2024 13:00:00	46773	ERSKINE, OLIVIA	Onsite	47965	CORTES, FRANCISCO	B3	

Showing 1 to 1 of 1 entries

Show 1,000 v entries

View Listeners

Username	Action	Last Access
ealican	Burn	12/11/2024 17:16:34
ealican	Manifest	12/11/2024 17:16:33
smolina	Listened (10%)	
smolina	Download	12/02/2024 15:37:36
smolina	Play	12/02/2024 15:37:32

Close

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time ▾	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Tim
☐		11/17/2024 10:24:44	83308068	47965	CORTES	1-843-816- 2253	Debit	Local	B3-1	603	10:00

Showing 1 to 1 of 1 entries

Show 1,000 ▾ entries

View Listeners

Username	Action	Last Access
eaiken	Burn	12/11/2024 17:18:43
eaiken	Manifest	12/11/2024 17:18:43
eaiken		12/11/2024 16:57:43
smolina	Listened (100%)	
smolina	Download	12/09/2024 11:29:07
smolina	Play	12/09/2024 11:28:52

358

WITNESSES

Beaufort County Sheriff's Office

T. Calhoun

ARREST WARRANT NUMBER

2021A0710200242

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: DEC - 7 2023

VERDICT

Guilty

Foreperson of Petit Jury

Date: 12/18/24
INDICT

DOCKET NO. 2022GS0700756

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2023

THE STATE

vs.

FRANCISCO CORTES

Indictment For

Attempted Murder

SC Code: 16-3-29

CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

RECEIVED

DEC 31 2024
SC Court of Appeals

RECEIVED

DEC 31 2024
SC Court of Appeals

Certified - A True Copy

Rebecca A. Stoner
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF BEAUFORT)

2022GS0700756

At a Court of General Sessions, convened on December 7, 2023, the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about July 5, 2021, the Defendant, FRANCISCO CORTES, did, with intent to kill and with malice aforethought, attempt to willfully kill [REDACTED] all in violation of Section 16-3-29, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

360

WITNESSES

Beaufort County Sheriff's Office

T. CATHAN

ARREST WARRANT NUMBER

2021A0710200243

ACTION OF GRAND JURY

True Bill

Forfeiture of Grand Jury

Date: DEC - 7 2023

VERDICT

Guilty

Forfeiture of Petit Jury

Date: 12/13/24

INDICT

DOCKET NO. 2022GS0700757

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2023

THE STATE

vs.

FRANCISCO CORTES

Indictment For

Assault and Battery of a High &
Aggravated Nature

SC Code: 16-3-600(B)(1)(b)

CDR Code: 3411

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

RECEIVED

DEC 31 2024

SC Court of Appeals

Certified - A True Copy

Rebecca Stoner
Jeri Ann Roseneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2022GS0700757

At a Court of General Sessions, convened on December 7, 2023, the Grand Jurors of Beaufort County present upon their oath:

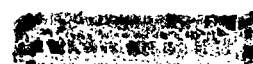
Assault and Battery of a High & Aggravated Nature

That in Beaufort County, South Carolina, on or about July 5, 2021, the Defendant, FRANCISCO CORTES, did injure [REDACTED] by means which were likely to produce death or great bodily injury to [REDACTED] all in violation of Section 16-3-600(B)(1)(b), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor



362

WITNESSES

Beaufort County Sheriff's Office

T. Calhoun

ARREST WARRANT NUMBER

2021A0710200244

ACTION OF GRAND JURY

True Bill

Jeffrey R. Allen
Foreperson of Grand Jury

Date: DEC - 7 2023

VERDICT

Guilty

[Redacted]
Foreperson of Petit Jury

Date: 12/18/24

INDICT

DOCKET NO. 2022GS0700758

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2023

THE STATE

vs.

FRANCISCO CORTES

Indictment For

**Discharge Firearm At or Into
Dwelling**

SC Code: 16-23-440(A)

CDR Code: 0052

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

RECEIVED

DEC 31 2024

SC Court of Appeals

Certified - A True Copy

Rebecca Stoner
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF BEAUFORT)

2022GS0700758

At a Court of General Sessions, convened on December 7, 2023, the Grand Jurors of Beaufort County present upon their oath:

Discharge Firearm At or Into Dwelling

That in Beaufort County, South Carolina, on or about July 5, 2021, the Defendant, FRANCISCO CORTES, did discharge, or cause to be discharged, a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons, to wit: [REDACTED] William Hilton Parkway [REDACTED], all in violation of Section 16-23-440(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor



NOV 10 2023

CLERK

2023 NOV 10 11:00 AM

CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA
2023 NOV 10 11:00 AM

364

WITNESSES

Beaufort County Sheriff's Office

T. Calhoun

ARREST WARRANT NUMBER

2021A0710200245

ACTION OF GRAND JURY

True Bill

[Signature]
For person of Grand Jury

Date: DEC - 7 2023

VERDICT

Guilty

[Redacted]
For person of Petit Jury

Date: 12/13/24

INDICT

DOCKET NO. 2022GS0700759

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2023

THE STATE

vs.

FRANCISCO CORTES

Indictment For

**Discharge Firearm At or Into
Dwelling**

SC Code: 16-23-440(A)

CDR Code: 0052

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

RECEIVED

DEC 31 2024

SC Court of Appeals

Certified - A True Copy

[Signature]
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2022GS0700759

At a Court of General Sessions, convened on December 7, 2023, the Grand Jurors of Beaufort County present upon their oath:

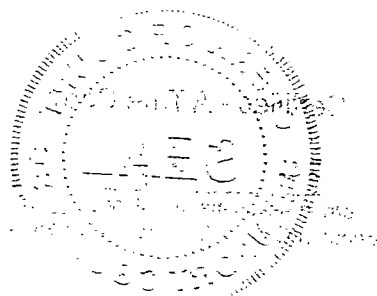
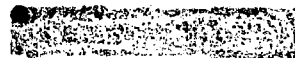
Discharge Firearm At or Into Dwelling

That in Beaufort County, South Carolina, on or about July 5, 2021, the Defendant, FRANCISCO CORTES, did discharge, or cause to be discharged, a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons, to wit: [REDACTED] William Hilton Parkway [REDACTED] all in violation of Section 16-23-440(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor



366

WITNESSES

Beaufort County Sheriff's Office

T. CALTON

ARREST WARRANT NUMBER

2021A0710200246

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: DEC - 7 2023

VERDICT

Guilty

Foreperson of Petit Jury
Date: 12/18/24
INDICT

DOCKET NO. 2022GS0700760

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2023

THE STATE

vs.

FRANCISCO CORTES

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

RECEIVED

DEC 31 2024

SC Court of Appeals

Certified - A True Copy

Jerri Ann Roseaneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF BEAUFORT)

2022GS0700760

At a Court of General Sessions, convened on December 7, 2023, the Grand Jurors of Beaufort County present upon their oath:

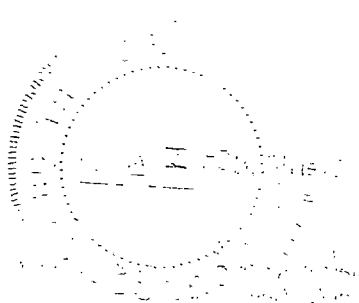
Possession of Weapon During Violent Crime

That in Beaufort County, South Carolina, on or about July 5, 2021, the Defendant, FRANCISCO CORTES, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime and FRANCISCO CORTES was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor



368

WITNESSES

Beaufort County Sheriff's Office

T. CACHOUN

DOCKET NO. 2023GS0701862

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2023

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

FRANCISCO CORTES

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill

For person of Grand Jury

Date: DEC - 7 2023

VERDICT

Guilty

For person of Petit Jury

Date: 12/10/24

INDICT

Indictment For

Attempted Murder

SC Code: 16-3-29

CDR Code: 3410

Defendant

Witness:

C.C.C. PLS. and G.S.

RECEIVED

DEC 31 2024

SC Court of Appeals

Certified - A True Copy

Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF BEAUFORT

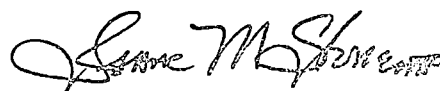
2023GS0701862

At a Court of General Sessions, convened on December 7, 2023, the Grand Jurors of Beaufort County present upon their oath:

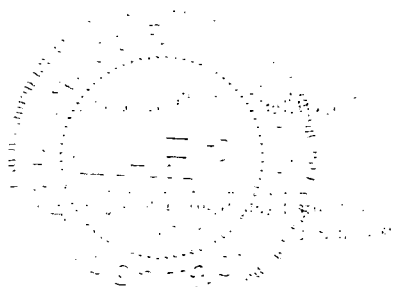
Attempted Murder

That in Beaufort County, South Carolina, on or about July 5, 2021, the Defendant, FRANCISCO CORTES, did, with intent to kill and with malice aforethought, attempt to willfully kill [REDACTED] all in violation of Section 16-3-29, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor



370
STATE

FRANCISCO CORTES

0-304
INDICTMENT/CASE#: 2022GS0700756

STATE OF SOUTH CAROLINA

RECEIVED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

STATE

VS.

DEC 31 2024

INDICTMENT/CASE#: 2022GS0700756

SC Court of Appeals

FRANCISCO CORTES

A/W#: 2021A0710200242

AKA:

Date of Offense: 07/05/2021

Race: [REDACTED] Sex: [REDACTED] Age: [REDACTED]

S.C. Code §: 16-3-29

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 3410

Address: [REDACTED]

City, State, Zip:

DL#* SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Attempted Murder

In violation of § 16-2-39 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature] 104209
Solicitor SC Bar # Defendant

[Signature] 74595
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 22 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
6,262 (days/months)

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ 128.75

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Rabena L. Stran
Heather Landry

Presiding Judge: _____
Judge Code: _____
Sentence Date: _____

Krish Carter
2762
12/18/24

372
STATE

FRANCISCO CORTES

INDICTMENT/CASE#: 2022GS0700757

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

STATE

VS.

INDICTMENT/CASE#: 2022GS0700757

FRANCISCO CORTES

A/W#: 2021A0710200243

AKA:

Date of Offense: 07/05/2021

Race: Sex: Age:

S.C. Code §: 16-3-600(B)(1)(b)

DOB: SS#:

CDR Code #: 3411

Address:

City, State, Zip:

DL#* SID#

DEC 31 2024

SENTENCE SHEET

SC Court of Appeals

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Assault and Battery of a High and Aggravated Nature

In violation of § 16-3-600(B)(1)(b) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor 104209 SC Bar # Defendant 74595 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 10 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$, provided that upon the service of days/months/years/Time Served and or payment

of \$, plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
1262 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing

☐ The Defendant Shall be Released from County Detention Center.

SCCA/217 (07/2021)

Certified - A True Copy Page 1 of 2

Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
TOTAL		\$ 128.75

Clerk of Court/Deputy Clerk: Rebecca T. Stoner
Court Reporter: Heather Landry

Presiding Judge: Kirk Lintz
Judge Code: 2762
Sentence Date: 12-18-24

374
STATE

FRANCISCO CORTES

0-104
INDICTMENT/CASE#: 2022GS0700758

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

RECEIVED

STATE

VS.

DEC 31 2024

INDICTMENT/CASE#: 2022GS0700758

FRANCISCO CORTES

SC Court of Appeals

AKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#* _____ SID# _____

AW#: 2021A0710200244
Date of Offense: 07/05/2021
S.C. Code §: 16-23-440(A)
CDR Code #: 0052

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Discharge a Firearm Into a Dwelling

In violation of § 16-23-440(A) of the S.C. Code of Laws, bearing CDR Code # 0052

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

8 Molina 104209 Cty 74:15
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 5 days/months/years Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment of \$____ plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

1,262 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114 (BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$
TOTAL			\$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:

Rebecca L. R. Stoner
Heather Landry

Presiding Judge:
Judge Code:
Sentence Date:

Krish C. L.
2742
12-18-24

376
STATE

FRANCISCO CORTES

INDICTMENT/CASE#: 2022GS0700759

STATE OF SOUTH CAROLINA

RECEIVED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

STATE

DEC 31 2024

INDICTMENT/CASE#: 2022GS0700759

VS.

SC Court of Appeals

FRANCISCO CORTES

A/W#: 2021A0710200245

AKA:

Date of Offense: 07/05/2021

Race: Sex: Age:

S.C. Code §: 16-23-440(A)

DOB: SS#:

CDR Code #: 0052

Address:

City, State, Zip:

DL#* SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Discharge a Firearm Into a Dwelling

In violation of § 16-23-440(A) of the S.C. Code of Laws, bearing CDR Code # 0052

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor 8Molina SC Bar # 104209 Defendant

Attorney for Defendant City SC Bar # 74595

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.

1,262 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114 (BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$
TOTAL			\$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:

Rebecca P. [Signature]
Heather Landry

Presiding Judge:
Judge Code:
Sentence Date:

Kristin [Signature]
2762
12-18-24

378
STATE

FRANCISCO CORTES

0-54
INDICTMENT/CASE#: 2022GS0700760

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

RECEIVED

STATE

VS.

DEC 31 2024

INDICTMENT/CASE#: 2022GS0700760

SC Court of Appeals

FRANCISCO CORTES

W#: 2021A0710200246

AKA:

Date of Offense: 07/05/2021

Race: Sex: Age:

S.C. Code §: 16-23-490

DOB: SS#:

CDR Code #: 0549

Address:

City, State, Zip:

DL#* SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Possession of a Weapon During a Violent Crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

SMolina 104209
Solicitor SC Bar # Defendant

CAJ Jr 77595
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
1,262 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114 (BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$
TOTAL			\$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:

Robert L. Stoner
Heather Landry

Presiding Judge:
Judge Code:
Sentence Date:

Kush Cortes
2762
12-18-24

380
STATE

FRANCISCO CORTES

INDICTMENT/CASE#: 2023GS0701862

STATE OF SOUTH CAROLINA

RECEIVED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

STATE

VS.

DEC 31 2024

INDICTMENT/CASE#: 2023GS0701862

SC Court of Appeals

FRANCISCO CORTES

A/W#:

DIRECT INDICTMENT

AKA:

Date of Offense:

07/05/2021

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#

S.C. Code §:

16-3-29

CDR Code #:

3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Attempted MurderIn violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 20 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.1,262 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

SCCA/217 (07/2021)

Certified - A True Copy

Page 1 of 2

Jeri Ann Roseneau - Clerk of Court
Beaufort County, SC - Rebecca Stoner

STATE

FRANCISCO CORTES

INDICTMENT/CASE#: 2023GS0701862

381

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:

Rebecca P. Stoner
Heather Landry

Presiding Judge:
Judge Code:
Sentence Date:

Kristh Corte
12-18-24
2762

CERTIFICATE OF COUNSEL FOR APPELLANT

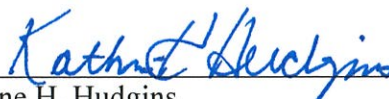
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Feb 17 2026

SC Court of Appeals



Kathrine H. Hudgins
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of February, 2026.

