

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL BAYRON,

APPELLANT

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit
Moss Justice Center
1675 York Highway, Ste. 1-A
York, SC 29745-7495
(803) 628-3020

Attorneys for Respondent

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SC Court of Appeals

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENT	260
CERTIFICATE OF COUNSEL	264

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of York	)	11-GS-46-2968
	)	
State of South Carolina,	)	
	)	
	)	
vs.	)	TRANSCRIPT
	)	OF RECORD
	)	
Michael Bayron, Jr.	)	
	)	
	)	

November 30th-December 1st, 2011
York, South Carolina

BEFORE:

THE HONORABLE LEE S. ALFORD, JUDGE; and a jury.

APPEARANCES:

MARINA BENDER-HAMILTON, ASSISTANT SOLICITOR
JENNY DESCH, ASSISTANT SOLICITOR
Attorneys for the State

AMY SIKORA, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

AMINAH R. HARDY, RPR
Official Court Reporter

INDEX

Opening statement by Ms. Hamilton.....	93
Opening statement by Ms. Sikora.....	96

Deputy Jonathan Reed (Jackson v. Denno)

Direct examination by Ms. Hamilton.....	11
Cross-examination by Ms. Sikora.....	15

Ralph Merchant

Direct examination by Ms. Hamilton.....	103
Cross-examination by Ms. Sikora.....	106

Deputy Jonathan Reed

Direct examination by Ms. Hamilton.....	107
Cross-examination by Ms. Sikora.....	120
Re-direct examination by Ms. Hamilton.....	142
Recross-examination by Ms. Sikora.....	149

Deputy Joshua Yates

Direct examination by Ms. Hamilton.....	150
---	-----

Claribel Correa

Direct examination by Ms. Sikora.....	168
Cross-examination by Ms. Desch.....	182
Re-direct examination by Ms. Sikora.....	210

Michael Bayron, Jr.

Examination by the Court.....	212
-------------------------------	-----

Closing argument by Ms. Sikora.....	217
Closing argument by Ms. Hamilton.....	225
Jury Charge.....	230
Jury Verdict.....	250
Sentence of the Court.....	258

EXHIBITS

		Marked	Admitted
S-1	DVD	49	105
S-2	Gun	49	116
S-3	Bullets and magazine	49	117
S-4	Black and white photograph	56	114
S-5	DVD	144	144
S-6	DVD	144	144
C-1	Email	4	
C-2	Email	4	
C-3	Email	4	
C-4	Note from jury	245	
C-5	Note from jury	248	

P R O C E E D I N G S

1
2 MS. HAMILTON: May it please the Court, the State
3 would like to call its case of Michael Bayron, Jr.
4 Indictment Number 2011-GS-4602968. This case is pointing
5 and presenting. The State is ready to proceed. And he
6 has pled not guilty, Your Honor.

7 THE COURT: Counsel, ready to proceed today with
8 trial?

9 MS. SIKORA: Yes, Your Honor, we are.

10 THE COURT: Defendant pleads not guilty?

11 MS. SIKORA: Yes, Your Honor, he has.

12 (Court's Exhibit Numbers 1 through 3 were marked.)

13 THE COURT: What time is the jury coming?

14 MS. HAMILTON: 10:30.

15 THE COURT: 10:30?

16 MS. HAMILTON: 10:30.

17 THE COURT: Okay. Let's take care of any pretrial
18 motions and motions in limine at this time. State have
19 any pretrial motions, motions in limine?

20 MS. HAMILTON: No, Your Honor, we do not.

21 THE COURT: Let's go through the defense motions.

22 MS. SIKORA: Yes, Your Honor. May it please the
23 Court. The first motion that the State had was a motion
24 to determine if the State has complied with both Rule 5
25 and Brady.

1 MS. HAMILTON: Your Honor, we have complied with
2 Rule 5.

3 MS. SIKORA: The second motion, Your Honor, would be
4 to determine the prior record of the defendant the State
5 would intend to introduce should he choose to testify in
6 the trial.

7 MS. HAMILTON: Your Honor, any prior convictions are
8 not impeachable. But if the door is opened by putting him
9 on the stand, we have one charge that would go towards his
10 peacefulness.

11 THE COURT: And what is that?

12 MS. HAMILTON: It is a disorderly conduct offering
13 violence. It involved him -- he pointing a gun and
14 threatening to kill -- he was going to kill Carlos. And
15 involving the same gun in this incident.

16 THE COURT: That's a prior, but he was charged with
17 what in that?

18 MS. HAMILTON: Disorderly conduct offering violence.

19 THE COURT: And what was the maximum penalty on that?

20 MS. HAMILTON: I believe 30 days. Which is why it's
21 not impeachable, Your Honor.

22 THE COURT: I think you can use it if he gets on the
23 stand and opens the door, obviously. And it could be used
24 to, if he opens the doors and testifies one way or
25 another, to impeach him. But other than that, you

1 wouldn't be able to impeach him with just -- with that
2 prior crime. But if he opened the door, for instance, "I
3 never done anything like that, I wouldn't be violent," of
4 course they can prove otherwise as he puts his credibility
5 at issue there.

6 MS. HAMILTON: Yes, Your Honor.

7 THE COURT: All right. Next.

8 MS. SIKORA: I do believe the State's complied with
9 this, a motion for all list of witnesses as well as the
10 criminal history of any of the State or Defense's non law
11 enforcement witnesses. We do have the victim on our
12 witness list, Your Honor, Ms. Correa. The State has told
13 me that she does not have a record. I actually believe I
14 need to make an amendment to my witness list. Karen
15 McClure with the 911 center was originally the person that
16 was under subpoena by the State and the defense, Your
17 Honor. But it's my understanding that it's just going to
18 be Ralph Merchant from the 911 center. So Karen McClure's
19 name would not need to be read to the jury, Your Honor.

20 THE COURT: Okay.

21 MS. SIKORA: The next motion from the defense would
22 be a motion to sequester the witnesses for both the State
23 and the defense, with the exception of the case agent and
24 the victim in this case, Your Honor.

25 MS. HAMILTON: Your Honor, we're okay with that. The

1 case agent -- we'd like to put the case agent as Jonathan
2 Reed, Officer Reed.

3 MS. DESCH: Your Honor, point of clarification. If
4 the victim is testifying for the defense, does that still
5 stand or does she have to be sequestered as well? Because
6 we would ask that she be sequestered.

7 MS. SIKORA: My position on that, Your Honor, would
8 be regardless of who her testimony may or may not benefit,
9 she still, in fact, is the victim in this case and has the
10 right to be present throughout the trial.

11 MS. DESCH: It's not a matter of who her testimony
12 benefits; it's a matter that it has changed since the time
13 that she gave statements originally, so because there is
14 inconsistent statements, are we anticipating inconsistent
15 statements? To have her sit in here and hear things could
16 obviously change the way she testifies once she gets on
17 the stand under oath.

18 MS. SIKORA: I don't think the fact that she may or
19 may not have given inconsistent statements changes the
20 fact that she is a victim, Your Honor, and frankly the
21 inconsistencies --

22 THE COURT: Well, it could because --

23 MS. SIKORA: -- were made by her.

24 THE COURT: -- if she said she's not a victim, she's
25 not a victim. If she's going to get on the stand and say

1 "I'm not a victim," she -- how is she a victim, she says
2 I'm not a victim. So that's the issue, and I don't know.
3 Normally the victim is entitled to be present throughout
4 the trial. She says she's not a victim, she's going to
5 get on the stand and say she's not a victim, then I don't
6 know that she's entitled to stay in the courtroom as a
7 victim and listen to the other testimony of sequestered
8 witnesses. And so I'm going to -- well, I think I'm going
9 to do this. That's a question that's not come up before,
10 but I think we're agreed on the facts that that's what's
11 going to happen.

12 So under those circumstances, I'll do one of two
13 things. I will not sequester at all or I will sequester
14 and require her to stay out until after she testifies.
15 Because I -- if she's going to get on the stand and
16 testify, and that's what you're telling me, that she's not
17 a victim, this didn't happen or didn't happen that way or
18 she's not a victim in any way, she's going to testify on
19 the defendant's behalf, as a witness for him and not
20 against him, she's no longer a victim. And so she may be
21 a victim but not in reality, not as far as her testimony
22 is concerned in this case.

23 So you got two choices. We can either sequester and
24 she will be treated as a defense witness as opposed to a
25 victim. Or we cannot sequester at all and everybody can

1 stay in. Either way you want. I'll give you your choice.

2 MS. SIKORA: Okay, Your Honor. Then we will go ahead
3 with not sequestering. But just in all fairness and
4 candor to the Court about what I'm representing about her
5 testimony, I mean, to be completely honest with you, Your
6 Honor, there's been several different versions and I'm not
7 entirely sure what she is going to say today on the stand,
8 but we will go ahead and withdraw the motion to have
9 witnesses sequestered.

10 THE COURT: All the more reason, perhaps as she's
11 here, you got her on your witness list and indications are
12 that she wishes -- wanted to withdraw the charges against
13 the defendant and take a position she's not a victim, then
14 she wouldn't be a victim. But I think probably the safest
15 thing to do is I think the motion to sequester is within
16 the discretion of the Court. I think I'll just deny the
17 motion to sequester, and you agree that if she's going to
18 be treated as a defense witness as opposed to a victim and
19 you don't want to sequester her anyway, but I'm just going
20 to deny your motion to sequester. I think that's the
21 easiest way to deal with it. That way, we don't have to
22 worry about it. Whether she's a victim or a witness for
23 the defense, it really doesn't matter because she'll be in
24 the courtroom anyway, so I'll just -- we will not
25 sequester the witness.

1 MS. SIKORA: Thank you, Your Honor. The next motion
2 from the defense is to determine the existence and
3 admissibility of any prior bad act evidence that the State
4 may intend to introduce under Rule 404 or Lyle.

5 MS. HAMILTON: Your Honor, we are not going to make
6 the motion to admit what we've spoken earlier about, the
7 disorderly conduct under Lyle and prior bad act. But,
8 again, if he opens the door, we intend.

9 THE COURT: Okay. So they're not going to introduce
10 any prior bad acts on his behalf. However, of course, if
11 he takes the stand and testifies, he opens the door with
12 regard to his credibility. Whatever he might testify to
13 might open the door to be impeached for that or -- then
14 that's the only way it would come in. They're not going
15 to offer it.

16 MS. SIKORA: Thank you, Your Honor. The next motion
17 from the Defense is to determine the existence and
18 admissibility of any and all statements allegedly made by
19 the defendant which the State intends to use at trial.

20 MS. HAMILTON: Your Honor, we do have some statements
21 that would be admissible after Miranda rights were read to
22 the defendant that were to the officers, and the officer
23 who would testify as to those statements is present and
24 here and if the defense would like to object --

25 THE COURT: Are these written or oral statements?

1

2 MS. HAMILTON: These are oral statements, Your Honor.

3 THE COURT: All right. Has that been made available
4 to the defense? They aware of what those were?

5 MS. HAMILTON: Yes, Your Honor. It was on video, and
6 we have turned that over to them.

7 MS. SIKORA: Yes, Your Honor. We would just to
8 protect the record and request a Jackson v. Denno hearing
9 with regard to those statements.

10 THE COURT: All right. Let's go ahead with the
11 Jackson v. Denno hearing as to the State.

12 MS. HAMILTON: Your Honor, the State calls Deputy
13 Reed.

14 MS. HAMILTON: May it please the Court.

15 THE COURT: Solicitor.

16 DEPUTY JONATHAN REED, having first been duly
17 sworn, testified under oath as follows:

18

19 DIRECT EXAMINATION

20 BY MS. HAMILTON:

21 Q. Officer Reed, did you interview the defendant,
22 Michael Bayron, Jr., and get his statement?

23 A. I did.

24 Q. Was anyone else from law enforcement with you at that
25 time?

DEPUTY JONATHAN REED - DIRECT EXAMINATION BY MS. HAMILTON

1 A. Yes.

2 Q. And who was with you?

3 A. Deputy Yates.

4 Q. And where did the interview take place?

5 A. The defendant was seated in the rear of my patrol
6 vehicle.

7 Q. And what was the date of that interview?

8 A. June 23rd, 2011.

9 Q. Okay. Now, I'm going to ask you to tell us about the
10 environment. How many people were present during this
11 interview?

12 A. There were several neighbors outside. But right near
13 us where we were at, it was just me and the defendant at
14 that time.

15 Q. Okay. Was anyone pointing a gun at the defendant?

16 A. No.

17 Q. Was anyone threatening him?

18 A. No.

19 Q. Were you and people around you being nice to him?

20 A. Yes.

21 Q. Was he handcuffed?

22 A. Yes, he was.

23 Q. Did he appear to be clear headed and sober?

24 A. Yes.

25 Q. Did he appear to be hurt or injured?

DEPUTY JONATHAN REED - DIRECT EXAMINATION BY MS. HAMILTON

1 A. No.

2 Q. Did he appear to be reasonably intelligent?

3 A. Yes.

4 Q. So he was able to understand what was going on and
5 what was being said to him?

6 A. Yes.

7 Q. Did anyone make any promises to him to get him to
8 talk?

9 A. No.

10 Q. Did you read him his Miranda rights?

11 A. I did. Read them off of a card that we carry with
12 us.

13 Q. Okay. And please tell us his rights as you read them
14 to him.

15 A. I asked him -- I said, "You have the right to remain
16 silent. Anything you say can and will be used against you
17 in a court of law. You have the right to talk to an
18 attorney and have him present with you. You can have him
19 present with you while you're being questioned. If you
20 cannot afford to hire an attorney, one will be appointed
21 to represent you before any questioning if you want. You
22 can decide at any time to exercise these rights and not
23 answer any questions or make any statements. Do you
24 understand these rights?"

25 Q. Did he indicate that he understood those rights?

DEPUTY JONATHAN REED - DIRECT EXAMINATION BY MS. HAMILTON

1 A. Yes.

2 Q. How did he indicate?

3 A. I asked him if he understood. He told me yes.

4 Q. Okay. Did he waive those rights and agree to talk
5 with you?

6 A. At that time, no.

7 Q. When did he?

8 A. I returned back to the patrol car after I recovered
9 some evidence, and he initiated contact with me at that
10 point. And I asked him again if he had a problem talking
11 with -- I asked him, "Do you want to talk to us now?" And
12 he said, "Yes."

13 Q. And was this Miranda recorded on video?

14 A. Yes.

15 Q. And you viewed this video?

16 A. Yes.

17 Q. Did you actually interview him and talk to him about
18 this incident on June 3rd?

19 A. Yes.

20 Q. I mean 23rd.

21 A. Yes, I did.

22 Q. And he -- did he tell you his story?

23 A. Yes.

24 Q. Let me ask you one more time. Did you or anyone else
25 make threats or promises to the defendant in any way to

DEPUTY JONATHAN REED - CROSS-EXAMINATION BY MS. SIKORA

1 get him to talk with you or make a statement to you?

2 A. No.

3 Q. Please tell us what he said.

4 A. He told me that him and his wife had been involved in
5 a argument. They were going through some difficulties.
6 He said the argument was just normal couple argument,
7 argument that most couples have over some financial
8 problems. He said that he felt like he was being kicked
9 out of the house, and so he went to get his gun, which was
10 his most prized possession. And he said that he took his
11 gun and then left.

12 MS. HAMILTON: That's the proffer of the State, Your
13 Honor.

14 THE COURT: Any other statements?

15 MS. HAMILTON: No, sir, Your Honor.

16 THE COURT: Questions, Counsel?

17 MS. SIKORA: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. SIKORA:

20 Q. You mentioned that the defendant was seated. Was it
21 in your patrol car at that time?

22 A. Yes, ma'am.

23 Q. Was he handcuffed at that time?

24 A. Yes.

25 Q. And how long was the interaction between you and

1 Mr. Bayron whenever he was talking to you about what had
2 happened that day?

3 A. I can give you an approximate. I don't know the
4 exact time. I'd say probably no more than ten minutes.

5 MS. SIKORA: Thank you.

6 No further questions from the defense, Your Honor.

7 THE COURT: Anything further?

8 MS. HAMILTON: No, Your Honor.

9 THE COURT: Thank you, sir. You may stand down.
10 Any more motions?

11 MS. SIKORA: No, Your Honor.

12 THE COURT: Court is required to find by
13 preponderance of the evidence that the statements were
14 free and voluntarily made after reading him the Miranda
15 warning. Court so finds it will be admissible into
16 evidence.

17 Next motion, please.

18 MS. SIKORA: Thank you, Your Honor. There were two
19 in-car videos in this incident, Your Honor, one recorded
20 by Deputy Yates' patrol car and one by Deputy Reed's
21 patrol car. Ms. Hamilton and I have had discussions, and
22 we had submitted to her a list of requested redactions
23 from that video. It's my understanding, my conversation
24 with her that she has agreed to the redactions that we
25 have requested. I have actually marked as a court

1 exhibit, labeled numbers 1, 2, and 3, those e-mails which
2 specifically listed out the redactions that the defense
3 has requested. And we would just like to clarify for the
4 record whether or not those were, in fact, done.

5 MS. DESCH: Your Honor, I think Ms. Hamilton and
6 Ms. Raney have gone over this quite in detail throughout
7 their period of negotiations. And after receiving all the
8 redactions and looking at it, there are several legal
9 issues as to why we couldn't bring in the video. For
10 instance, it is a Crawford violation if the victim is not
11 testifying for us for us to bring in the video, so we
12 would choose not to put in the video. There's also
13 several portions of the video that we would argue they're
14 self-serving hearsay for the defendant.

15 So based on the self-serving hearsay and the Crawford
16 violation, the State is not moving in to bring the video
17 in our case-in-chief, but I do want to get a ruling from
18 the Court that -- for a couple of reasons. One, if the
19 video is kept out for legal reasons, I think in the past
20 we've had defense attorneys that then argue to the jury
21 that there's -- you know, the State didn't show you all
22 the evidence, and therefore that's reasonable doubt. And
23 so in this case it's a legal ruling that the victim's
24 statement can't come in under Crawford and the
25 self-serving hearsay shouldn't be brought in for legal

1 reasons, that then the defense can't argue to the jury
2 that we are hiding evidence.

3 The second thing I would say is the self-serving
4 hearsay that is in the video, if then -- I do think
5 there's character evidence that's in there as well, so
6 should the defense later in their case put in the video,
7 which they have access to and have had access to, of
8 course we've already discussed that if the defendant
9 brings in character evidence that we do have the case, we
10 would like to bring up about him pointing and waving a gun
11 at a bouncer in Rock Hill.

12 And finally, Your Honor, if the defense puts in the
13 video for any reason, which I don't think they would, but
14 if they brought it in after the victim testifies for them
15 or does not put it in, I would also argue that once they
16 put on a case and once they put on the victim, that the
17 State then could also argue to the jury that they had
18 access to the video and they didn't put it in. And I know
19 that's pretty novel of an issue, but it's just to clarify
20 before we bring in the jury. Those would be things
21 throughout the trial that I anticipate coming up.

22 MS. SIKORA: Just briefly, Your Honor. My
23 conversations with Ms. Hamilton leading up to that, it was
24 my understanding that y'all were going to show a small
25 portion of the video. So that is not the case, just so

1 I --

2 MS. DESCH: Not at this point, no.

3 MS. SIKORA: Not at this point, no.

4 Your Honor, I don't know that ultimately once we have
5 concluded with the evidence in this case that there is
6 going to be a Crawford issue because the victim is under
7 subpoena, she is currently present in the courtroom, and
8 the defense does intend to call her as a witness. That
9 would obviously alleviate any Crawford issue. Maybe as we
10 get further along in the trial, depending on what comes
11 out evidence-wise or not, it may be something we have to
12 take up at a later time. It's hard to anticipate exactly,
13 you know, what's going to be said and what we're going to
14 want to bring in for impeachment or nonimpeachment
15 purposes. But I don't see a Crawford issue when we
16 actually plan on calling her as a witness in the case.

17 THE COURT: Well, wouldn't it then be corroboration
18 of her testimony if you offer?

19 MS. SIKORA: At this point, Your Honor, the defense
20 has no intention of offering the video.

21 THE COURT: I understand. But I'm saying if you
22 offer it after she testified, wouldn't that be bolstering
23 of her testimony in court if she then put on a video in
24 which she says the same thing? Would it be bolstering of
25 her testimony?

1 MS. SIKORA: Well, let me -- I guess the best way to
2 put it is if I don't have any intention of introducing it
3 for bolstering the witness testimony, but what I see
4 potentially happening as we go through the trial, the
5 State's going to call the 911 operator. They're going to
6 call the two police officers. One of the defense's
7 motions that we haven't gotten to yet is we are asking
8 that the statement that the victim made to the police
9 officers that night not be admitted through the police
10 officer's testimony since she would not have testified at
11 that point, and I can speak more about that when we get to
12 that specific motion.

13 So when the victim is actually called by the defense
14 in this case, I don't have any intention of introducing
15 the video through her or bolster her testimony, but it is
16 possible or foreseeable, at least, in the defense that
17 given once she has testified about the statement she made
18 to the police -- and we're not entirely sure what she's
19 going to say about that -- there may become an issue with
20 the State presenting rebuttal evidence from the police
21 officers and what their memory serves. And I see it more
22 coming up in that context with regard to the police
23 officers --

24 THE COURT: Impeachment.

25 MS. SIKORA: -- testifying, impeachment purposes for

1 them. We don't have any intention of putting it in to
2 bolster Ms. Correa's statements.

3 THE COURT: Well, again, if we get to that issue, we
4 can deal with it when it comes up. We don't have to fully
5 rule on that at this point. We'll do that later. But it,
6 you know, appears to me if she testifies one way under
7 oath today and the video shows that she told the officer
8 something different than hers, then I think they probably
9 could ask her if she had previously said otherwise. Got
10 her to say when she said it to the officer, I guess. That
11 wouldn't necessarily mean you had to bring the video in.

12 What you get into, though, once we bring in part of
13 the video, then we would -- then the other side is
14 entitled to bring in that which is not prevented from
15 being brought in under the rules of evidence. It still
16 has got to meet the rules of evidence. But -- so once
17 part of it comes in, some other parts of it can come in
18 and maybe all of it, for that matter, depending on whether
19 they meet the rules of evidence or admissibility. And so
20 we'll cross that bridge, I guess, when we get to it.

21 All right. Next. What else?

22 MS. SIKORA: Your Honor, in this case, my client was
23 initially arrested for pointing and presenting a firearm
24 and also criminal domestic violence, first offense. Given
25 the fact that this court doesn't have jurisdiction under

1 the rules and I've spoken with Ms. Hamilton about that, to
2 hear the criminal domestic violence, first offense, here,
3 we're just going forward on the pointing and presenting
4 charge here with you today. So what we are asking is that
5 through our motion to exclude any mention during the trial
6 of the fact that Mr. Bayron has been charged with criminal
7 domestic violence. He has not been to trial on that, Your
8 Honor, and has not, in fact, been convicted.

9 MS. DESCH: May it please the Court. Your Honor, I
10 think in this particular case, it is clear that we would
11 need to get into the acts and everything that's happening
12 at the scene because part of what the State needs to prove
13 in the elements of pointing and presenting was that it was
14 done in a threatening matter. And to set the res gestae
15 of the whole scene, police officers are called out there
16 for a pointing -- for "my husband's pointing a gun at me."
17 They get there. It's a very volatile situation. The
18 defendant ends up getting tazed. He gets back up. And in
19 this excited State of the scene, the victim says that
20 he -- they were arguing about being evicted, "He got
21 closer to me, I was afraid, I was scared, the kids were
22 scared, he hit my hand, he broke a TV in front of me."
23 And the defendant admits the argument but, you know, of
24 course he says that, "I didn't -- I didn't threaten her or
25 intimidate her with the gun; I just took it because I was

1 leaving."

2 So I think in that case that it is very important
3 that we bring in the res gestae, because that's an element
4 of the pointing and presenting, that it was done in a
5 threatening way. So there is a State v. Simmons case,
6 defendants -- burglary of the -- it was a case, in fact,
7 the defendant burglarized a first home, and in the trial
8 of the second home, it was so inextricably intertwined --
9 I'm quoting the law -- the case -- with an attempt to
10 evade the second homeowner who gave chase that there was a
11 subsequent case captured by the police. So to explain why
12 he was running from a second homeowner, they had to bring
13 in the fact that he had burglarized another house. And
14 that's just a portion of it. But it's State v. Simmons
15 352 SC 342 court of appeals case in 2002. So we would
16 argue that it's absolutely necessary to res gestae to
17 bring in the facts.

18 Obviously if the Court if -- would be inclined, it
19 can be said that he hasn't been convicted of it, but I
20 think as far as the facts are concerned -- and I think
21 there's a case akin to the fact that if someone has PTI
22 and the charges are expunged that you can't talk about the
23 fact that there was a conviction or a charge because it's
24 been expunged, but you can talk about the activity that
25 led up to the arrest. And in this case, I think we should

1 be able to bring in the activity that led up to the arrest
2 because it is so intertwined with the pointing and
3 presenting. There's got to be a reason that he pulled the
4 gun out, and that's why.

5 MS. SIKORA: Your Honor, we don't have issue with the
6 State bringing in any of the facts surrounding that,
7 whether there was hitting or not hitting. We're not
8 asking that the actual facts of what went on that night
9 are excluded. We're simply asking that the fact that he
10 was charged with criminal domestic violence be excluded,
11 the fact that he was charged, not the circumstances, you
12 know, of what happened that night, whether he hit her, hit
13 her, didn't hit her, threatened her, didn't threaten her.
14 We're fine with all of that coming in. Broke the TV,
15 didn't break the TV.

16 But I think it's going to be confusing to the jury
17 since the issue of whether or not he is guilty of criminal
18 domestic violence is not actually the issue that's before
19 them today. Of course they can take all those other facts
20 and the context of what was happening into consideration,
21 and we're fine with that. We're just asking the fact that
22 he was charged with the CDV not be mentioned to the jury
23 today.

24 MS. DESCH: We can concede that. Deputy Reed will
25 not say that.

1 THE COURT: You'll be able to get into all the facts,
2 circumstances, what was said. Be able to not actually say
3 he was charged, also charged with criminal domestic
4 violence. Although, you know, I'm making that ruling, I
5 can foresee the possibility of some indication he wasn't
6 charged with anything else, some inference of that. You
7 may open the door again. If you infer to the jury he was
8 only charged with this and not the criminal domestic
9 violence. I know you're not going to say that.

10 MS. SIKORA: Right.

11 THE COURT: But if you infer that they didn't charge
12 him with anything else, therefore the only -- you know,
13 you see what I'm saying? To make it more favorable to
14 your side that they didn't also charge him with criminal
15 domestic violence, all this would have happened. So to
16 infer that would open the door to it coming in in the
17 future with an instruction from the Court that you're
18 limiting instructions for that, that he's charged with
19 that, that's not been disposed of, that's not before you.
20 That's another way to deal with it.

21 MS. SIKORA: Yes, Your Honor. I have no intention of
22 saying anything like that today.

23 THE COURT: Well, I mean, I know you're not going to
24 say it directly, but you can't infer it either without
25 opening the door to it, it appears to me, because he was

1 charged. And so push comes to shove, I think they can
2 offer testimony what he was charged with and hadn't
3 been -- with a limiting instruction of the Court you're
4 not to consider that, that hasn't been disposed of, he
5 hasn't been tried in magistrate's, hasn't pled guilty, or
6 whatever. In any event, that's where we are.

7 All right. All right. Next. What's next?

8 MS. SIKORA: And, Your Honor, and there's just one
9 final motion from the defense. It's our understanding
10 that the prosecution in this case does not intend to call
11 the victim as part of their case-in-chief, so we would
12 just ask at this time for a determination regarding the
13 admissibility of the statements made by the victim to the
14 police once they actually arrived on the scene with
15 regards to the officers testifying about that. She did
16 make some statements to the 911 operator. We don't have
17 any issue whatsoever with those statements and the entire
18 911 call coming in, but we would have issues under
19 Crawford given the fact that they're choosing to make her
20 unavailable, given the fact that she is in the courtroom
21 with having the police officers testify about what she may
22 or may not have said before she actually takes the stand,
23 Your Honor.

24 MS. DESCH: May it please the Court, Your Honor.
25 Sorry, and this is the first part of it, but are we

1 conceding that the 911 tape comes in? Is there no need
2 for an argument on that?

3 MS. SIKORA: No.

4 MS. DESCH: Okay. To the point where we could excuse
5 Ralph Merchant, or do you still want to put him on the
6 stand and go through the foundation?

7 MS. SIKORA: We're conceding that the 911 call comes
8 in. It's my understanding that either through you all or
9 through us, you were going to call and intend to -- call
10 him and intend to present the 911 call.

11 MS. DESCH: No, but what I'm asking is conceding the
12 point that if both of us want to put it in, are we
13 stipulating that it comes in and we don't need to put
14 Ralph on the stand, Mr. Merchant on the stand --

15 THE COURT: Are you waiving authentication?

16 MS. DESCH: -- or would you still like to go through
17 the foundation questions or just waive and make it State's
18 exhibit? I mean, we would move to put it in, but if we're
19 both moving to put it in, would you like to go through in
20 front of the jury with Mr. Merchant on the stand and the
21 foundation, or are we stipulating that it's now State's
22 Exhibit 1 and admitting it into evidence?

23 MS. SIKORA: Do you mind if I speak briefly with my
24 client, Your Honor?

25 (A sotto voce discussion was held between Ms. Sikora

1 and the defendant.)

2 MS. SIKORA: Your Honor, I expect that Mr. Merchant's
3 testimony would be very brief, and we would like to have
4 him go ahead and take the stand in that regard.

5 THE COURT: Okay.

6 MS. DESCH: Thank you. But we don't have any
7 Crawford objection or anything to the 911 call?

8 MS. SIKORA: No, or any of the statements made within
9 the 911 call. We do not, Your Honor.

10 MS. DESCH: Your Honor, as far as the statements to
11 the victim, you've heard little bits and pieces, but
12 essentially she calls 911, says, "My husband pointed a gun
13 at me." When the officers get out to the scene, she tells
14 them that they were in an argument, that, "He hit me, that
15 he slapped my hands, broke the TV in front of me, I was
16 scared, the kids were scared," and she gives great detail,
17 and then she does it in a written statement at the scene.
18 And she at that point says, "Well, he didn't point it at
19 me. He was just waving it around and presenting it."

20 So both of those things were done, and we would lay
21 the foundation of the fact that it was done under the
22 startling events, that there's no time for her to -- it's
23 reliable, there's no time for her to make something up
24 because, one, it's an ongoing emergency. When they get
25 out to the scene, the defendant has left and come back by

1 the time the officers get there. So it is chaos at the
2 scene. There's -- the defendant gets tazed. There's
3 screaming in the background. And so we would clearly say
4 that it fits under the excited utterance exception.

5 As far as Crawford, we are not making her
6 unavailable. I mean, what happens in the -- obviously in
7 Crawford, you know it very well, it's the defense that
8 made the witness, his wife at the time, unavailable by
9 claiming this spousal exception. And in this case, we are
10 not making her unavailable. We sent subpoenas out to her.
11 She avoided subpoenas, and at some point -- avoided
12 subpoenas and went to the defense and at some point
13 obviously decided to testify for the defense. So it's not
14 us that's making her unavailable. She made herself
15 unavailable. And we would argue that we, the State,
16 shouldn't be prejudiced in that.

17 And so the defense earlier in an argument stated that
18 because she is here under subpoena by the defense that
19 there is no Crawford issue, and yet now she's saying there
20 is a Crawford issue. So we would argue that, one, she's
21 not a witness against the defense. She's for the defense.
22 So -- but we should be able to bring out statements that
23 were made at the scene based on the hearsay exception
24 because we argue that there is no Crawford that applies
25 here.

1 MS. SIKORA: May it please the Court, Your Honor. I
2 think what we have -- and we're talking about two police
3 officers or one police officer or whatever it may be
4 testifying before the victim takes the stand and is
5 subject to cross-examination. I think there's a two-prong
6 issue that we have here because frankly, with the excited
7 utterance, it doesn't matter whether she's available or
8 not. But one of the conditions in terms of admissibility
9 of excited utterance is that she is still under the stress
10 of the event that she's making statements about.

11 It's very clear, in my opinion, Your Honor, there is
12 an in-car video that captures the whole thing when Deputy
13 Reed -- he was the first responder -- pulls up on the
14 scene wearing a body mike, you can hear when we gets out
15 of the car, there's no screaming or yelling of any kind.
16 Whenever he gets up to the house, Mr. Bayron is unaware of
17 what the police are doing out there. He does close the
18 door. The door does have to be broken into by the police
19 officers. And in all fairness to them, they're just doing
20 their job to try to protect the victim.

21 And Mr. Bayron is ultimately tazed in front of his
22 wife and his three children. And at that time Your Honor,
23 the screaming that is heard from the victim in the case,
24 you know, while he is being tazed, it sounds like somebody
25 is being stabbed a thousand times in front of her. I

1 mean, it's like blood curdling, obviously very stressful
2 to her. I don't think anybody anticipated that it was
3 going like that.

4 So while she is upset -- you know, basically the
5 first thing that's happened when the police get there and
6 she's obviously still upset shortly thereafter once he's
7 in the car and the police are talking to her about what
8 happened, but I think there's a question at that point,
9 given the fact that there's no yelling, the situation has
10 been diffused, you know, once he is tazed and in the car
11 whether or not the stress that she's under whenever she's
12 making these statements are actually due to the actions of
13 Mr. Bayron, alleged actions of Mr. Bayron earlier in the
14 night, or in the fact that she sees her husband, you know,
15 get tazed by the officers with her three children and is
16 extremely upset, you know, as you can hear by listening to
17 the video.

18 But I still think, Your Honor, given the fact that
19 these statements will be coming in or not coming in prior
20 to the fact that she has taken the stand that we are not
21 trying to hide her from anyone. She is available if she
22 is here in the courtroom. I think there is a Crawford
23 problem with that, and we would cite to the case, and I do
24 happen to hand up to the Court, Your Honor, you know,
25 Crawford and its prodigies. But more specifically, you

1 know, the Hammond case, which was included with the Davis
2 v. Washington opinion of the Court. And that case is
3 extremely similar to the case that we have at hand. It's
4 a CDV case, Your Honor, that they found the female victim
5 in that case calls 911. And that particular case, all the
6 911 conversations between the victim and the dispatch
7 operator is brought in.

8 And we are not opposing that in this case; however,
9 just like in the Hammond case, as in our case, when the
10 police get out to the scene, they don't walk in in the
11 middle of any type of feuding or argument between the
12 parties. They immediately separate the two of them.
13 After Mr. Bayron is tazed, he is taken out, put in
14 handcuffs, and put in the patrol car away from Ms. Correa.
15 In the Hammond case, without the tazing incident taking
16 place, but the same thing happened. The police officers
17 were able to separate the victim in one room. Separate
18 the defendant in another room. And at that point, the
19 statements that were being made to the victim in the
20 Hammond case, the Court found that those were, in fact,
21 testimonial. They were not nontestimonial and hence not a
22 Crawford problem because those statements were not made to
23 meet an ongoing emergency, because at that point, the
24 emergency had ended. The parties had been separated, the
25 police are there. No one is in harm's way. And the Court

1 in Hammond ruled that although the statements the victim
2 made in the 911 call do come in under the excited
3 utterance and they are testimonial, so Crawford does not
4 exclude them coming in, the statements she made to the
5 police about what happened that night once the police had
6 had the parties separated are, in fact, testimonial, no
7 longer an excited utterance, and therefore do not come in
8 if the witness has not testified prior to the police
9 officers giving their testimony. And I'd be happy to hand
10 up those cases to the Court if you'd like.

11 THE COURT: I'm familiar with it. It comes down to a
12 question of time and facts and circumstances at the time.
13 It's a question that's a judgment call that has to be made
14 as to the circumstances and the amount of time that
15 expires, what's actually going on, and et cetera, whether
16 the victim has had an opportunity for a cooler reflection
17 to be able to make reflective statement. I think the
18 police in Davis and the excluded statements were made some
19 hour or so later, wasn't it, after they got out there, was
20 it not? And so she had plenty of time to think about what
21 she wanted to tell them.

22 So I think it's a question of timing and what was
23 going on at that time; is there still an existing mental,
24 emotional, physical condition going on. Are those excited
25 utterance, present sense impression under Rule 803 of the

1 rules of evidence hearsay exceptions. Says, "Availability
2 of the declarant is immaterial." Okay? And these come
3 into play. So the question is could it be classified as
4 an existing mental, emotional, or physical condition an
5 excited utterance or present sense impression. Those are
6 the three bases for allowing it in.

7 So the question is had she had time to think about
8 what she wanted to tell the police or not. I think that's
9 the key to the thing. Was this all part of the same
10 process that was going on as she was affected mentally by
11 what was going on to the extent that she didn't have a
12 chance to think about what was going to be coming in at a
13 trial or something like that with regard to her testimony
14 or allegations she was making at that time, she was making
15 upon cool reflection or had an opportunity to think about
16 it. Of course she told officers. And so, I mean, that's
17 kind of the key to it. I mean, we don't have a bright
18 line kind of thing. It can be -- I think they ruled two
19 hours later it can come in depending on the circumstances.
20 Or ten minutes later it might not come in. Just depending
21 on what the situation is.

22 And so I don't really think I'm in a position to make
23 that determination at this point. I would say that at a
24 minimum, if she takes the stand and testifies, that it --
25 the State is not allowed to go into it in their

1 case-in-chief, they at least would be able to -- if she
2 gets on the stand and testifies something different, be
3 able to come in and impeach her and put the officers back
4 in and reply and testify. So, I mean, you can choose your
5 poison. Earlier, of course, might be better than the
6 later poison, but it's up to you on that. But I'm not --
7 I can't really rule on it. I have to look at the facts
8 and see. I have no way of knowing. I have to listen to
9 some of the testimony, and then maybe I can rule on it.
10 Okay.

11 MS. DESCH: Thank you, Your Honor.

12 MS. SIKORA: Thank you, Your Honor.

13 THE COURT: I may have to look at the video or
14 something. I don't know. It's a judgment call as to
15 whether she had a chance to cool, calm down to the extent
16 that she could make a statement, rational -- a statement
17 made after rational thinking or whether she was making
18 statements based on the continuing events going on at that
19 particular time. It's not -- and so if it falls under
20 that category, then I think it probably comes in. Because
21 under Rule 803, the availability of the declarant is
22 immaterial. Okay.

23 And whether it's testimonial or nontestimonial means
24 that she's saying -- making statements during a time when
25 she's emotionally distressed and not able to coolly

1 reflect on what she wants to say or really rationally
2 think about it and then make a statement. Then it becomes
3 testimonial because if she's doing it -- make those
4 statements during the time when she's emotionally
5 distressed and is not able to have any kind of cool
6 reflection about it or any rational thinking about it,
7 then it comes in under exception. So I'll just have to
8 wait and see. There's no way I can make that decision at
9 this point.

10 MS. SIKORA: May it please the Court, Your Honor.
11 Just briefly. I'm just trying to think ahead and think
12 about the way to keep this the cleanest. Are you
13 suggesting that maybe in an abundance of caution, we may
14 have to proffer some testimony in that regard? Because
15 it's my understanding before we even get into the excited
16 utterance that it has to be shown the statement was
17 related to the startling event; that it was made while she
18 was under the stress of the excitement, Your Honor; and
19 that the stress or the excitement that she was under was
20 actually caused by the startling event itself. And since
21 there seems to be some question when she was at the point
22 and the situation was diffused with the police officers if
23 she was stressed or excited at that point because she had
24 just seen her husband be tazed or if she was stressed or
25 excited from what happened earlier in the night.

1 I mean, I don't know the answer to that question.

2 But I think that that is an issue, and I'm concerned with
3 the police officers just getting on the stand and having
4 free rein without all of that being established ahead of
5 time. And for the record, you know, the defense would
6 disagree that it's a present sense impression because
7 she's talking about things that have already happened, not
8 about things as they are happening. I'm just trying to
9 avoid the arguments in front of the jury and, you know,
10 being able to cleanly get through everyone's testimony
11 today.

12 THE COURT: Well, I think probably the best thing to
13 do is if we don't have time to proffer it right now, I may
14 need to hear some testimony before I rule on it, and then
15 we could also have a proffer at that time. And so
16 probably the best thing to do, stay away from it in
17 opening statements and deal with it, let there be a
18 proffer, let the Court rule on that if I've heard
19 something or seen whatever I'm going to hear or see. I
20 mean, there's no way I could do it at this point. It
21 could be either way right now, depending on what was going
22 on and how much time expired and what was actually going
23 on at the time.

24 And so I certainly don't think you can rule it out at
25 this point as it being falling in one of these three

1 exceptions to the hearsay rule, was she available or not
2 available. And so it just depends on what the facts are
3 and the circumstances under which she was making
4 statements. I don't know how to do that without hearing
5 it. So I -- probably best thing to do is have a proffer
6 at the appropriate time instead of waiting on the opening
7 statements, in case I rule against you on it.

8 MS. DESCH: Yes, Your Honor. Does that conclude
9 defense's motions?

10 MS. SIKORA: Yes.

11 MS. DESCH: Your Honor, I would like to bring one
12 thing up. There has been talk, and I'm obviously second
13 chair and have not been as involved, but I just thought
14 that this was something that should be brought up prior to
15 the jury being sworn because it could have double jeopardy
16 consequences at some point. As you can glean from these
17 discussions, the victim is not exactly happy with the
18 State right now and did ask to have the charges dropped
19 and on several occasions talked to Mrs. Hamilton on the
20 phone and in front of Dawn, who is also a paralegal
21 advocate in our office, Dawn Carter. And during those
22 discussions things were said, then relayed differently to
23 the defense when the victim would go down and talk to the
24 defense. So there's several discussions about what the
25 victim's actually going to say when she comes in here

1 today.

2 What I would like to address with the Court is if at
3 any point the victim intends to say something that makes
4 Mrs. Hamilton a witness in her own case, I do think it's
5 something that we need to either proffer or address with
6 the Court because it is very rare that we would have a
7 solicitor called as a witness, but if, for instance, the
8 victim takes the stand and says she threatened me or she
9 lied to me or she did this, I don't think that's something
10 you can repair with a jury. You know, obviously when
11 lawyers stand up in front of juries, we are held to a
12 standard of officers of the court. We are held to a high
13 standard of presenting credible evidence, and to then have
14 a jury hear from a witness because she's angry at the
15 State for proceeding, that things were done that were not
16 done, I don't think we can unring that bell.

17 And if that's going to happen, we need to address it
18 because at that point, Mrs. Hamilton would have to recuse
19 herself, I would have to take over, and then we would have
20 to call a solicitor in our own case. And just I think
21 that that's something that we try really hard to avoid.
22 And I'm not saying the defense is doing anything. I'm
23 just saying since we really don't know what she's going to
24 say, I'm just trying to anticipate before we swear a jury.

25 MS. SIKORA: May it please the Court, Your Honor. I

1 can explain and I have told Ms. Hamilton why Dawn Carter
2 is on the witness list, just as why Barton O'Kelley, an
3 investigator from our office, is on the witness list.
4 Back in September of this year, the victim came into the
5 Solicitor's Office. She did sign a drop warrant form.
6 Dawn was the person that actually notarized that form, so
7 it was just done in an abundance of caution on the
8 defense's part that should the victim take the stand and
9 testify that she never did that, that we could call Dawn
10 as an impeachment witness to help authenticate the
11 document. We weren't going to get into, you know, what
12 she may have said to the State at the time she was in
13 there when she asked to have the case dismissed. Just
14 like when she came into our office, she gave a statement
15 to Mr. O'Kelley. The essence of that statement was, you
16 know, I lied about what happened that night, I told the
17 prosecutor that I lied about that.

18 So should Ms. Correa take the stand and deny that she
19 ever made that statement or that that statement was
20 coerced in any way that she made to Mr. O'Kelley, in an
21 abundance of caution, we had put him on our witness list
22 to reflect that should that come out. But we don't have
23 any intention of going into the issue or trying to put
24 Ms. Hamilton on the stand or making her a witness in the
25 case. It was just simply putting Dawn Carter on there

1 should she deny having then signed the drop warrant form
2 and have Ms. Carter authenticate that document. That's
3 all.

4 MS. DESCH: And, Your Honor, like I said, I don't
5 think it's the defense that's going to elicit any of these
6 questions. What I anticipate -- and part of the statement
7 that the --

8 THE COURT: Wait a sec. Is the victim, as far as you
9 know -- I know you can't absolutely say what the victim's
10 going to testify to, but it's your understanding if you're
11 going to call the victim as a witness, is she going to
12 allege statements made to her by one of the assistant
13 solicitors?

14 MS. SIKORA: Your Honor, I have no intention of
15 asking her about statements that were made to her by the
16 assistant solicitor, and it's my understanding that that
17 would be hearsay and inadmissible anyway. I may ask her
18 about statements she may have made to them, but I have no
19 intention of soliciting evidence from her regarding what
20 the solicitors may or may not have said to her. I just
21 don't think that comes in.

22 MS. DESCH: Well, I mean, we could -- obviously being
23 as candid as we can, and I'll be even more candid. I
24 mean, the fact that she sits down with an advocate in our
25 office and signs a drop warrant and also sits down -- and

1 in the form from the public defender's office that
2 Mr. O'Kelley went over with her, there are statements in
3 there that say, "Is this voluntary," and it's both on the
4 statement that she wrote -- the victim wrote at the scene,
5 and it's on the same form. It's a standard form that the
6 public defenders use that say, you know, "Is this
7 voluntary, do you understand."

8 I mean, obviously whoever is cross-examining the
9 victim or whoever is getting the direction examination
10 from the victim is going to get into issues such as are
11 you aware that if you say that you lied to police that
12 that's a crime in and of itself. So I do anticipate that
13 things like that are going to be brought up in front of
14 the jury, and rightly so. And I would say from the
15 State's point of view, if we are crossing her, that those
16 things do go to bias and all those reasons why we would
17 impeach her with her own statement.

18 So I do agree with the defense that, I mean, there
19 might be a reason to call, say, Mr. O'Kelley or someone to
20 rebut what the victim said. What I'm trying to avoid is
21 at no point did Mrs. Hamilton threaten the victim. Even
22 taking in the most candid view that she's explaining
23 that -- and asking a conversation -- for instance, when we
24 get the note from the public defender's office that says
25 the victim said she told you all this, but she didn't,

1 that puts Mrs. Hamilton in a very awkward position because
2 she is saying that never happened, but now it's in writing
3 on a statement to the public defender's office that may or
4 may not come in. And there's no way to rebut that other
5 than Marina excusing herself and then me calling her to
6 the stand and saying, "Did you ever threaten the victim?"

7 And I know these are all novel issues, for the most
8 part. But that's something that I think we need to be
9 acutely aware of as we're -- you know, cross-examination,
10 full-on impeachment, all that stuff, I expect that. But
11 to go so far as to say that Mrs. Hamilton threatened or
12 did anything like --

13 THE COURT: If she was going to say anything like
14 that, we need to know about that now. She's saying we're
15 going to get into a trial and you make a motion for a
16 mistrial based on assistant solicitor being called as a
17 witness, you know, she's participated in the trial up to
18 that point.

19 MS. SIKORA: May it please the Court, Your Honor. I
20 mean, I can show you and then the State has a copy of the
21 statement that she made to Mr. O'Kelley in our office. It
22 does not say anyone threatened her whatsoever. It simply
23 says, you know, that --

24 THE COURT: "I told them that I wanted to drop it" or
25 something like that?

1 MS. SIKORA: Yeah. I can read it exactly so there's
2 no question. It simply says -- it's talking about her
3 lying. The statement was -- and this is by Ms. Correa,
4 given to Mr. O'Kelley in our office on October the 12th.
5 "Regarding the night I called 911 on my husband, I lied to
6 the officers, saying my husband hit me and had a gun on
7 me. And he never did any of those things. I was just
8 upset and wanted him to leave. I also have signed a drop
9 warrant form and have told Ms. Bender that I lied on my
10 police statement." I mean, I don't see anything in here
11 saying that Ms. Bender threatened her.

12 THE COURT: All right. Well, then, you all might
13 need to make a decision on that. Ms. Hamilton is going to
14 deny that or needs to take the stand to deny that she was
15 told that she -- told by the victim that she lied to the
16 police. If she was going to get on the stand and testify
17 concerning that, then you all need to make a decision on
18 that if she --

19 MS. DESCH: Well, in addition to that, Your Honor,
20 there is an e-mail from -- an e-mail discussion on
21 November 8th between Ms. Ramey and Ms. Hamilton starting
22 from -- sorry, it says Sikora on here.

23 MS. SIKORA: For the record, I am Sikora.

24 MS. DESCH: Okay. They both got married at the same
25 time.

1 Okay. So Ms. Sikora writes to Ms. Bender at the time
2 in this e-mail, November 8, 2011, at 4:15 p.m. Ms. Correa
3 also said -- in the subject line says that, "You are
4 threatening to put her in jail for a false report. I
5 think this trial" -- and it goes on to discuss timing of
6 the trial. And Marina responds, "I asked whether she
7 realized the repercussion of saying she made a false
8 report, proceeded to tell her that it's a crime."

9 So that is fair. I do think and I would argue the
10 same thing is that if the victim is intending to either
11 lie in her statement to the police or lie on the stand, I
12 mean, typically in situations, we have a separate attorney
13 appointed to that person specifically to go over all those
14 rights. So I don't think that an advocate or a solicitor
15 or the defense or investigator to say, are you aware
16 that -- if this is what you're saying, this is a voluntary
17 statement that you're giving to us, but are you aware that
18 there are consequences to those. That is not a threat in
19 any way, but to someone -- to a layperson outside the
20 legal system, if she honestly thinks that she was
21 threatened, then her saying that in front of the jury is
22 detrimental and it could cause a mistrial. It could cause
23 Ms. Hamilton to have to recuse herself, and that just
24 brings in so many other things.

25 So, I mean, the testimony from Mrs. Hamilton would be

1 I went over -- you know, once that became an issue, yes,
2 we did discuss the fact that a false report is a crime in
3 and of itself. That's not a threat. That's just
4 explaining, as we would do to an unrepresented client, we
5 go over all those things. Do you realize you have a right
6 to a trial, the right to remain silent, that it's our
7 burden. And I think as officers of the court, that's our
8 job to do. And the State of South Carolina has a
9 constitution that has the victims' bill --

10 THE COURT: Well, why don't we just do this. Trying
11 to cut this down a little bit. She can testify as to
12 exactly what was said and nothing more. She cannot
13 testify that she was threatened unless it's something
14 outside these statements. Based on these statements and
15 forms that both sides have just gone over, there is no
16 threat. She might could have perceived it as a threat,
17 but it's -- if she's advising her of legal consequences of
18 giving two statements contradictory to each other and
19 doing so under oath, then there's a possibility of being
20 prosecuted. That's true. That is a crime. Okay. It's
21 perjury.

22 And so if they told her that, then I don't -- I don't
23 perceive that as a threat. I think it could be used as a
24 threat in some way, depending on how it was used in that.
25 But if she was just informed of that, you know, I don't

1 see that as a threat. She may perceive it as a threat.
2 But if she doesn't testify before the jury "I was
3 threatened by the solicitor when I wanted to drop this,"
4 she can say I was told that I could be charged with a
5 crime or whatever the statement says. But I think if we
6 keep it within the context of the actual statement rather
7 than her making a statement to the jury that she was
8 threatened by the prosecutor. If she was threatened, you,
9 know, and that's what happened, she can testify to what
10 happened. But if it's based on these statements, what
11 I've heard, then I think it just needs to stay within
12 those and it shouldn't be a problem.

13 But I think what the State's trying to avoid is we
14 get into the trial, and the victim makes a statement that
15 then the assistant solicitor feels that she needs to
16 respond to under oath, then what we may have is a mistrial
17 and have to start all over again without her as the
18 State's attorney. So, I mean, I think that's what they're
19 trying to avoid, getting in the middle of a trial and then
20 having a mistrial and have to try it over again. In which
21 the assistant solicitor feels she has to testify, then she
22 would need to, of course, recuse herself from the case and
23 let the assistant solicitor handle it. That'd probably
24 have to be done in another trial, so it'd have to be a
25 mistrial. Trying to avoid a mistrial.

1 MS. SIKORA: May it please the Court. Just briefly,
2 Your Honor. That is the very reason that I disclosed
3 those statements to the prosecution and then talked with
4 Mrs. Hamilton about it, because neither side, I believe,
5 wants to have a mistrial. So anything that I see as a
6 potential issue that comes up, that is why I brought it to
7 their attention to avoid that. So I don't have any
8 intention of saying, you know, when I'm questioning
9 Ms. Correa, didn't Ms. Hamilton threaten you and this kind
10 of -- I have no intention of asking her any questions
11 about that.

12 I do, however, you know, have intentions of asking
13 her questions about the statement that she gave to our
14 office where she did say at the end, "I have told
15 Ms. Bender that I lied on my police statement." So
16 whether or not the State feels, you know, that they want
17 to put up rebuttal evidence to that is really their call.
18 But I have no intention of going to any type of
19 threatening. I just wanted to make them aware to avoid
20 the mistrial situation.

21 THE COURT: Y'all are aware of that statement. If
22 you have to make the call on that, if you feel you need to
23 rebut that, her statement to Mr. O'Kelley, then y'all have
24 to make that -- you make that judgment call now before we
25 get started.

1 MS. DESCH: Yes, Your Honor. Thank you.

2 MS. HAMILTON: Your Honor, we're going to proceed.

3 THE COURT: Going to proceed? All right. Now, let's
4 take a quick break and come back, and I'm going to run
5 through the voir dire with you right quickly. Shouldn't
6 take but a couple minutes to do that. Let's take a quick
7 break.

8 (A recess was taken from 11:04 a.m. to 11:19 a.m.)

9 (State's Exhibit Numbers 1, 2, and 3 were marked.)

10 THE COURT: Y'all talking about Number 1 and 2 in
11 your request voir dire? Is that what you're talking
12 about? Are you talking about voir dire requests?

13 MS. DESCH: Yes, Your Honor. Going over it, I think
14 essentially most of those are standard. In fact, I think
15 all of them are your standard jury questions.

16 THE COURT: Well, they're not my standard. I give
17 them per request now.

18 MS. DESCH: Okay.

19 THE COURT: I only have about five or six standards.

20 MS. DESCH: Well, the first ones are dealing with,
21 you know, do you know anybody in the Solicitor's Office.
22 We would counter, you know, do you know anybody in the
23 public defender's office or been represented by a public
24 defender or anybody. But as far as -- I don't know that
25 we have -- do we have any objection...

1 Just for the interest of time, I think you can
2 combine one and three with State and/or federal
3 prosecutor's office, and I think two and four, same thing,
4 State or federal. But they're not objectionable.

5 THE COURT: I'll just ask those questions. I don't
6 have any problems with those questions. I'll ask these
7 questions during voir dire. As one of them, though,
8 Number 7. If they need to respond to that, I'll bring
9 them down front, get their response. I don't want to have
10 them explain anything in front of the rest of the jury
11 that might pollute the jury. So I'll just bring them down
12 in front if anybody stands up.

13 Let's go over the State's request. What's the
14 defense position regards the State's request?

15 MS. SIKORA: With regard to Number 1, Your Honor, I
16 think it's a little misleading since we're really talking
17 about a pointing and presenting case, not domestic
18 violence in the traditional sense. We're not here on a
19 criminal domestic violence charge. So I would ask that
20 something be asked more in line with the fact that this is
21 a firearms crime rather than domestic violence because I
22 think --

23 THE COURT: Well, it really is domestic violence
24 based on the facts. And if -- as alleged by the State, I
25 don't have any problem with asking that. It doesn't say

1 he's charged with domestic violence. But asking them --
2 but it is an altercation between a husband and wife or
3 people living there. And so that could be affected by
4 someone else who's been in a domestic-violence-type
5 situation. And so I don't see any problem with that.
6 It's not saying that he's charged with domestic violence,
7 even though he is. So I don't see any problem with just
8 asking them if they've been involved. Basically you're
9 asking have you been in this kind of volatile situation
10 before.

11 MS. SIKORA: Okay.

12 THE COURT: All right.

13 MS. SIKORA: And with respect to Number 2, Your
14 Honor, could it be added on to in a sense that -- I guess
15 I don't particularly like the wording "do you think the
16 State should dismiss the charges if requested by the
17 victim." We would be asking for something more along the
18 lines could you be fair and impartial to the parties given
19 the fact that the victim may have asked for the charges to
20 be dismissed, something more along that line of wording.

21 THE COURT: Yeah, I don't think it ought to be asked
22 in the form of a question. All right. Say what you just
23 said. I thought that was pretty good. Can you say it
24 again.

25 MS. HAMILTON: Read back from the court reporter.

1 MS. SIKORA: I will try to reiterate that. Again,
2 Your Honor, my objection was with the form. I think the
3 better form of the question would be, you know, to the
4 jurors could you be fair and impartial to both the State
5 and the defense if the victim has requested that the
6 charges be dismissed. We're requesting basically the same
7 form that we requested on Number 2 for Number 3 as well on
8 the State's requested voir dire.

9 THE COURT: All right. I'll ask Number 2 in the form
10 you agreed to, and I'll bring them down in front of I in
11 case somebody -- I don't want to stand up and start
12 talking about -- let them give their explanation -- come
13 down, let them give their explanation down front where
14 counsel can hear.

15 All right. If I ask Number 3 in the form, could you
16 be fair and impartial to both the State and the defendant
17 if the victim and defendant have reconciled.

18 MS. SIKORA: Yes, Your Honor, that's what we would
19 request.

20 THE COURT: I think on all of the requests by the
21 State, I'll bring them down in front, be able to stand in
22 front of us. I'll just go through them as a series, along
23 with the one for the defense, which is Number 7. I'll go
24 through all of those last, and if any of them stand on
25 some of those, we'll bring them down and they can respond

1 down in front next to the court reporter. But I'll ask
2 them in the form that you agreed to. All right. Anything
3 else on that?

4 MS. DESCH: Your Honor, just briefly. Well,
5 Mrs. Hamilton is going to get those premarked. Something
6 reminded me in discussing about the voir dire questions.
7 The State would like to make a motion the defense be
8 precluded from -- precluded from bringing jury
9 nullifications to the argument. I know that it's -- you
10 can't argue jury nullifications to the jury, but I think
11 things are slipped in because they don't seem like jury
12 nullification. One of them being arguing to the jury.
13 Now, of course we're trying to weed out those that would
14 be moved by emotional reasons or because the victim is
15 reconciled with the defendant, but -- when the fact of the
16 matter is when we get to the panel and there's closing
17 arguments or opening statements made and defense
18 attorneys -- and I'm not saying Ms. Sikora would do this,
19 but just in an abundance of caution, arguing to the jury
20 the victim's here, she's with him, she doesn't care,
21 therefore why should you, and before -- that it's a waste
22 of taxpayers' money or any of those things that sort of
23 kind of give the jury permission to find not guilty on
24 reasons other than legal reasons, on the emotional reasons
25 or things that just say, well, the victim doesn't care,

1 why should we, which I think is a problem that comes up in
2 almost all domestic violence cases. So if we could just
3 be aware that we would object to anything like that and
4 maybe prevent it before it happens.

5 THE COURT: Counsel.

6 MS. SIKORA: Just briefly, Your Honor. I have no
7 intention of saying the victim doesn't care, so why should
8 you. In fact, I think the fact that the victim is here
9 wanting to tell her story suggests just the opposite. She
10 does care. This is her family. You know, this has
11 affected her deeply. The situation's been going on since
12 July. So I have no intention of making an argument that
13 she doesn't care or that just because the victim may have
14 wanted the charges to be dismissed, that's your reason to
15 set him free today. I think that the jury's entitled to
16 know, you know, how she feels about that when she
17 testifies, but not as a point of argument on our -- I have
18 no intention of doing that, Your Honor.

19 THE COURT: Okay. Well, I think they're just trying
20 to anticipate everything ahead of time, but of course --
21 the question is whether the State proved the elements of
22 the offense beyond a reasonable doubt. That's the issue
23 today at this time. And that's the only issue we have to
24 decide. And so -- okay.

25 MS. SIKORA: Just briefly, Your Honor, if I may.

1 THE COURT: Yes, ma'am.

2 MS. SIKORA: With respect to State's Request
3 Number 4, "Have you ever been involved in a physical
4 altercation as a participant, victim, or witness?" I
5 don't have any problem with that, Your Honor, if you would
6 follow that up with your standard "If so, would that
7 affect your ability to be fair and impartial to both
8 sides?"

9 THE COURT: Well, here's what I'll do. That's one of
10 the -- I'm bringing them down in front on all theirs, so
11 if anybody stands up, I'm going to bring them down in
12 front. I will ask them that. Then that's when I'm going
13 to ask them that. But I can also hear from them down in
14 front without the rest of the jury hearing something that
15 may prejudice the jury, some juror. So what I'll do is
16 bring them down, and I always ask them that, would this
17 affect your ability to be fair and impartial in the case
18 or could you listen to the testimony and the evidence in
19 the case and the law and render a decision that's fair and
20 impartial. I always ask them that, but we'll do that down
21 front. Okay.

22 MS. SIKORA: Thank you, Your Honor.

23 THE COURT: Anything else before we bring the jury
24 up?

25 MS. HAMILTON: Nothing else, Your Honor.

1 MS. SIKORA: Nothing, Your Honor.

2 THE COURT: All right. So five and five? We'll go
3 ahead and draw one alternate, and strikes will be two for
4 the defense and one for the State on the alternate.

5 MS. DESCH: Court's indulgence, if I could excuse
6 myself for a minute.

7 THE COURT: Yeah. If you, Counsel, approach just one
8 minute. I want to ask you one thing.

9 (WHEREUPON, a bench conference was held.)

10 (State's Exhibit Number 4 was marked.)

11 MS. SIKORA: May we approach briefly, Your Honor.

12 (WHEREUPON, a bench conference was held.)

13 (Jury enters the courtroom at 11:36 a.m.)

14 THE COURT: Good morning, ladies and gentlemen of the
15 jury panel. If you'd give me your attention, please. Let
16 me begin by apologizing for the delay in getting you out
17 of the jury assembly room up here. There's some other
18 matters that we had to take care of this morning that took
19 a little longer than we expected, and I apologize for the
20 delay. We try not to keep you sitting down there that
21 long, but it was unavoidable this morning.

22 We are now about to go into a trial in the matter of
23 the State of South Carolina versus Michael Bayron, Jr.
24 Last name is spelled B-A-Y-R-O-N, Jr. The State charges
25 Mr. Bayron with the offense of pointing and presenting a

1 firearm. To this charge, the defendant has pled not
2 guilty. And we're about to go into a trial in that
3 matter. Now, the State is represented in this case by
4 Assistant Solicitors Marina Bender-Hamilton and Jenny
5 Desch. Counsel, please stand so the jury can see who you
6 are. Thank you. You may be seated.

7 Is anyone on the jury panel related by blood or
8 marriage, friends with, or have any other type social,
9 business, or professional relationship with either Marina
10 Bender-Hamilton or Jenny Desch? If so, please stand. Is
11 anyone on the jury panel related by blood or marriage,
12 friends with, or have any other type social, business, or
13 professional relationship with anyone who works in the
14 16th Circuit Solicitor's Office? If so, please stand.

15 The defendant in this case, Michael Bayron, Jr., is
16 represented by assistant solicitors Amy Sikora and Mark
17 McKinnon. Counsel, please stand and also have Mr. Bayron
18 stand so the jury can see who he is in person. Thank you.
19 You may be seated.

20 Is anyone on the jury panel related by blood or
21 marriage, friends with, or have any other type social,
22 business, or professional relationship with Michael
23 Bayron, Jr.? If so, please stand. Is anyone on the jury
24 panel related by blood or marriage, friends with, or have
25 any other type social, business, or professional

1 relationship with Amy Sikora or Mark McKinnon? If so,
2 please stand. Is anyone on the jury panel related by
3 blood or marriage, friends with, or have any other type
4 social, business, or professional relationship with that
5 is currently or formerly represented by or any other
6 relationship to the York County Public Defender's Office?
7 If so, please stand.

8 Ladies and gentlemen of the jury panel, I'm going to
9 go through a list of potential witnesses in this case.
10 All of these witnesses may not be called, but they may be
11 called, and what I'm going to ask you to do is when I call
12 the potential witness's name, if you're related by blood
13 or marriage, friends with, or have any other type social,
14 business, or professional relationship with any of these
15 named potential witnesses, when I call their names, I
16 would ask that you please stand. If the witnesses -- all
17 of them may not be present in the courtroom, but if they
18 are present, I would ask that they stand so the jury can
19 see who you are in person. Here are the potential
20 witnesses.

21 Ralph Merchant with 911. All the way in the back.
22 Thank you, sir. You may be seated. Officer Jonathan Reed
23 with York County Sheriff's Office. Officer Reed down in
24 front. Thank you, sir. Officer Yates with the York
25 County Sheriff's Office. He's all the way in the back.

1 Thank you, sir.

2 Claribel Correa. This is Ms. Correa in the back.

3 Thank you, ma'am. Barton O'Kelley with the public
4 defender's office, an investigator with them. Dawn Carter
5 with the Solicitor's Office, a victim advocate of the
6 Solicitor's Office.

7 Has any member of the jury panel either presently or
8 in the past ever been employed by or volunteered with any
9 city, county, state, or federal law enforcement agency or
10 law enforcement's victim/witness assistance program? If
11 so, please stand.

12 Is any member of the jury panel related by blood or
13 marriage to or close personal friends with any person who
14 is now or has ever been employed by or volunteered with
15 any city, county, state, or federal law enforcement agency
16 or law enforcement's victim/witness assistance program?
17 If so, please stand. Yes, ma'am, in the front, please
18 give us your name and number.

19 JUROR: Carla Wilson.

20 THE COURT: And your number.

21 JUROR: 242.

22 THE COURT: Yes, ma'am.

23 JUROR: My significant other is a volunteer -- a
24 South Carolina State constable. We've lived together nine
25 years.

1 THE COURT: Ma'am, is there anything about that
2 relationship that would interfere in any way with your
3 ability to give both the State and the defendant a fair
4 and impartial trial in this case?

5 JUROR: I don't think so, no.

6 THE COURT: I have to have a definitive answer, yes
7 or no.

8 JUROR: No.

9 THE COURT: Thank you. Thank you, ma'am. A lot of
10 people answer "I don't think so," but I need a definite
11 answer.

12 Yes, ma'am. Please give us your name and number.

13 JUROR: Peggy Sandifer, Number 203.

14 THE COURT: Yes, ma'am.

15 JUROR: My son works for the York County Sheriff's
16 Department.

17 THE COURT: Ma'am, have you discussed this case at
18 all with him?

19 JUROR: (The witness shakes her head.)

20 THE COURT: You have to answer verbally so the court
21 reporter --

22 JUROR: Oh, I'm sorry. No.

23 THE COURT: Okay. Is there anything about that
24 relationship that would interfere in any way with your
25 ability to give both the State and the defendant a fair

1 and impartial trial in this case?

2 JUROR: No.

3 THE COURT: Thank you, ma'am.

4 Yes, ma'am.

5 JUROR: Amanda Totherow. 226. My dad is a retired
6 sheriff's officer.

7 THE COURT: In York County?

8 JUROR: Uh-huh.

9 THE COURT: Ma'am, is there anything about that
10 relationship that would interfere in any way with your
11 ability to give both sides a fair and impartial trial in
12 this case?

13 JUROR: No, sir.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am.

16 JUROR: Jenna Jongquist, Number 122. My brother is a
17 police officer in North Carolina, Mecklenburg County.

18 THE COURT: Ma'am, is there anything about that
19 relationship that would interfere in any way with your
20 ability to give both the State and the defendant a fair
21 and impartial trial in this case?

22 JUROR: No.

23 THE COURT: Thank you, ma'am.

24 Anyone else?

25 Has any member of the jury panel either presently or

1 in the past ever been employed by or volunteered with any
2 city, county, state, or federal prosecutor's office or
3 prosecutor's victim/witness assistance program? If so,
4 please stand.

5 Is any member of the jury panel related by blood or
6 marriage or close personal friends with any person who is
7 now or has ever been employed by or volunteered with any,
8 city, county, state, or federal prosecutor's officer or
9 prosecutor's victim/witness assistance program? If so,
10 please stand.

11 Has any member of the jury panel ever contributed to
12 or volunteered time with Mothers Against Drunk Driving,
13 Students Against Drunk Driving, Citizens Against Violence
14 Everywhere, or any other similar organization that lobbies
15 on behalf of victims or lobbies for tougher sentences for
16 criminal offenders? If so, please stand.

17 Yes, ma'am. Please give us your name and number.

18 JUROR: Anita Case, Number 45.

19 THE COURT: Yes, ma'am.

20 JUROR: In high school I was part of the Students
21 Against Drunk Driving.

22 THE COURT: Ma'am, is there anything about your
23 involvement with that organization that would interfere in
24 any way with your ability to give both the State and the
25 defendant a fair and impartial trial in this case?

1 JUROR: No sir.

2 THE COURT: Thank you, ma'am.

3 Anyone else?

4 Has any member of the jury panel ever contributed
5 money to the Fraternal Order of Police, the South Carolina
6 Law Enforcement Officers' Association, or any organization
7 that supports the police or law enforcement? If so,
8 please stand.

9 All right. Let me begin over here, and then I'll
10 skip back over. Give me your name and number, please,
11 ma'am.

12 JUROR: Cathy Lucas, 140.

13 THE COURT: Yes, ma'am.

14 JUROR: I contribute yearly -- annually to the South
15 Carolina Troopers Association.

16 THE COURT: Ma'am, is there anything about your
17 support of that organization that would interfere in any
18 way with your ability to give both sides a fair and
19 impartial trial in this case?

20 JUROR: No.

21 THE COURT: Thank you, ma'am.

22 Now I'll go back here. I'm going to go to my left to
23 right. Yes, sir?

24 JUROR: I contribute to the -- my wife and I
25 contribute to the State Troopers and the Fraternal Order

1 of Police.

2 THE COURT: All right. Give us your name and number
3 for the record.

4 JUROR: Excuse me. I'm Martin Putnam, 252.

5 THE COURT: Sir, is there anything about your support
6 of those organizations that would interfere in any way
7 with your ability to give both the State and the defendant
8 a fair and impartial trial in this case?

9 JUROR: No, Your Honor.

10 THE COURT: Thank you, sir.

11 Yes, sir. Please give us your name and number.

12 JUROR: Vladimir Chopko, Number 48. State Trooper, I
13 just contributed donation.

14 THE COURT: Sir, is there anything about your support
15 of that organization that would interfere in any way with
16 your ability to give both sides a fair and impartial trial
17 in this case?

18 JUROR: No.

19 THE COURT: Thank you, sir.

20 Yes, sir.

21 JUROR: Anthony Patterson, 175. I've donated to the
22 Fraternal Order of Police and State Trooper.

23 THE COURT: Sir, is there anything about your support
24 of those organizations that would interfere in any way
25 with your ability to give both sides a fair and impartial

1 trial in this case?

2 JUROR: No, sir.

3 THE COURT: Thank you, sir.

4 Yes, ma'am.

5 JUROR: Lisa Wheeler, Number 235. I contributed to
6 the Fraternal Order of Police, the York County Sheriff's
7 Department, and the New York Police Department for the
8 9/11 fund. I don't think it would interfere with my
9 judgment at all.

10 THE COURT: Could you -- as far as those
11 organizations, interfere in any way with your ability to
12 give both sides a fair and impartial trial?

13 JUROR: No.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am.

16 JUROR: Carla Wilson, 242. I've contributed to the
17 Police Benevolent Association and the State Trooper.

18 THE COURT: Ma'am, is there anything about your
19 support of those organizations that would interfere in any
20 way with your ability to give both sides a fair and
21 impartial trial in this case?

22 JUROR: No.

23 THE COURT: Thank you, ma'am.

24 Yes, ma'am.

25 JUROR: My name is Dona Edmonds, Number 72. Mine is

1 a little deduction because I worked for the Department of
2 Corrections. But it has nothing to do with my ability to
3 judge.

4 THE COURT: You're not currently working with them,
5 are you?

6 JUROR: No.

7 THE COURT: That's formerly. All right. Ma'am, and
8 I'll ask you -- you've answered it, but let me ask you
9 directly. Would that interfere in any way with your
10 ability to give both the State and the defendant a fair
11 and impartial trial in this case?

12 JUROR: No.

13 THE COURT: Thank you, ma'am.

14 Yes, sir.

15 JUROR: Jeffrey Benson, 251. I also contributed to
16 the State Trooper and Benevolent associations.

17 THE COURT: Sir, is there anything about your support
18 of those organizations that would interfere in any way
19 with your ability to give both sides a fair and impartial
20 trial in this case?

21 JUROR: No, sir.

22 THE COURT: Thank you, sir.

23 Yes, ma'am.

24 JUROR: Patricia D. Schult, Number 208. I have in
25 the past contributed to the Fraternal Order of Police.

1 THE COURT: Ma'am, is there anything about your
2 support of that organization that would interfere in any
3 way with your ability to give both sides a fair and
4 impartial trial in this case?

5 JUROR: No, Your Honor.

6 THE COURT: Thank you, ma'am.

7 Anyone else?

8 Ladies and gentlemen of the jury panel, I'm going to
9 ask you now a series of five questions. And what I'm
10 going to ask you to do, if you need to respond to one or
11 more of these questions, I'll ask you to wait until I have
12 gone through all five questions. And then if you need to
13 respond to one or more of these questions, though they may
14 apply to you, when I have completed all five questions,
15 I'll get you to come to the center aisle and come forward
16 one at a time and we'll take your responses down front
17 next to the court reporter here.

18 Here are the five questions. Has any member of the
19 jury panel been the victim of any kind of crime involving
20 a firearm? That's the first question. Any -- been the
21 victim of any kind of crime involving a firearm.

22 Next question, have you or anyone else close to you
23 ever been the victim of domestic violence? Next question,
24 could you be fair and impartial to both the State and the
25 defendant if the victim requests -- requested the charges

1 be dropped? Could you nevertheless be fair and impartial
2 in this case? That is to say, could you listen to the
3 testimony and evidence and the law that comes in and still
4 render a decision which would be fair and impartial in
5 this case if the defendant had requested -- excuse me, the
6 victim had requested the charges be dropped?

7 Next question, could you be fair and impartial to
8 both the State and the defendant if the victim and the
9 defendant have reconciled? That is, again, could you
10 listen to the testimony and evidence and the law and
11 render a decision which would be fair and impartial to
12 both the State and the defendant?

13 Next question is, have you ever been involved in a
14 physical altercation as a participant, victim, or witness?
15 If you need to respond to any one of these questions or
16 one or more of them, I'll ask you to come to the center
17 aisle at this time and we'll take your responses down in
18 front next to the court reporter here.

19 Come around here, please. Give us your name and
20 number again.

21 JUROR: Martin Putnam, 252.

22 THE COURT: Yes, sir. Which one do you need to
23 respond to?

24 JUROR: I believe it was the last question. And I've
25 been robbed by gunpoint by four people, and in the last

1 question I was in altercation with two people at Winthrop
2 who were -- actually assaulted me. I took care of that.

3 THE COURT: Let me ask you whether there's anything
4 about your experiences in that regard that would interfere
5 in any way with your ability to give both the State and
6 the defendant a fair and impartial trial in this case?

7 JUROR: Not at all, Your Honor.

8 THE COURT: Thank you, sir. Return to your seat.

9 Thank you.

10 Give us your name and number for the record.

11 JUROR: Lisa Wheeler, Number 235.

12 THE COURT: Yes, ma'am.

13 JUROR: I've been a victim of domestic violence.

14 I've been a witness to domestic violence. I've been a
15 witness to a violent altercation. I think that's it.

16 THE COURT: Okay. Is there anything about your
17 experiences in that regard that would interfere in any way
18 with your ability to give both the State and the defendant
19 a fair and impartial trial in this case?

20 JUROR: No.

21 THE COURT: Thank you, ma'am.

22 JUROR: Okay.

23 THE COURT: Please give us your name and number for
24 the record.

25 JUROR: Patricia Thacker, 224.

1 THE COURT: Yes, ma'am.

2 JUROR: My nephew, Terry Jackson, was found guilty
3 for starting fires here in South Carolina, and it was a
4 situation. And I have been a victim of domestic violence
5 in York County.

6 THE COURT: Ma'am, is there anything about your
7 experiences in that regard that would interfere in any way
8 with your ability to give both the State and the defendant
9 a fair and impartial trial in this case?

10 JUROR: No.

11 THE COURT: Thank you, ma'am. Return to your seat.
12 Give us your name and number again.

13 JUROR: Jeffrey Benson.

14 THE COURT: And your number was?

15 JUROR: 251.

16 THE COURT: Yes, sir. Yes, sir.

17 JUROR: I had a question for you. I missed the
18 introduction of the charges against -- whatever you
19 brought --

20 THE COURT: It's pointing and presenting a firearm.
21 And the State charges the defendant.

22 JUROR: Thank you. Sorry I misstated. And I have
23 experience with domestic violence personally. Family
24 members, husband, wife. So that's my experience.

25 THE COURT: All right, sir. Is there anything about

1, your experience in that regard that would interfere in any
2 way with your ability to give both the State and the
3 defendant a fair and impartial trial in this case?

4 JUROR: I think potentially.

5 THE COURT: You think it could affect your ability --

6 JUROR: I think so.

7 THE COURT: All right. I'm not going to require you
8 to sit on this particular case, then.. So if you'll just
9 have a seat back with the jury and just follow
10 instructions, if you will.

11 JUROR: Very good.

12 THE COURT: Thank you.

13 JUROR: Thank you.

14 THE COURT: Give us your name and number, please.

15 JUROR: Name is Raymond, last name is Cables.

16 Number is 38.

17 THE COURT: Yes, sir.

18 JUROR: I was about 17. I worked at KFC. As I
19 opened the back door, this man just came in. I seen a gun
20 held at me. Told the store, "I'm robbing the store."

21 THE COURT: Okay. May I ask you, was there anything
22 about your experiences in that regard that would interfere
23 in any way with your ability to give both the State and
24 the defendant a fair and impartial trial in this case?

25 JUROR: No.

1 THE COURT: Thank you, sir.

2 Come on up. Give us your name and number.

3 JUROR: I'm Carla McGuiniss. 154.

4 THE COURT: Yes, ma'am.

5 JUROR: My sister is in a violent relationship, and
6 I've also been in one in the past.

7 THE COURT: Okay. Is there anything about your
8 experiences in that regard that would interfere in any way
9 with your ability to give both the State and the defendant
10 a fair and impartial trial in this case?

11 JUROR: Possibly I may be a little biased toward the
12 woman's side. Based on those two examples.

13 THE COURT: All right. All right. I'm not going to
14 require you to sit on this case, then, this particular
15 case. I'm going to go ahead and excuse you. Just go back
16 and have a seat with the jury and follow instructions, if
17 you will. Okay?

18 Give us your name and number for the record.

19 JUROR: It's Andrea Massy Weaver. Number 234.

20 THE REPORTER: It's -- I'm sorry, ma'am?

21 JUROR: Andrea.

22 THE COURT: Andrea Weaver Massey, and your number
23 was?

24 JUROR: 234.

25 THE COURT: 234. Yes, ma'am.

1 JUROR: In 2008, I was a victim of domestic violence,
2 my husband was.

3 THE COURT: Okay. Let me ask you whether there's
4 anything about your experiences in that regard that would
5 interfere in any way with your ability to give both the
6 State and the defendant a fair and impartial trial in this
7 case.

8 JUROR: No.

9 THE COURT: Thank you, ma'am.

10 JUROR: Thank you.

11 THE COURT: Give us your name and number again for
12 the record.

13 JUROR: Jenna Jongquist, Number 22.

14 THE COURT: Yes, ma'am.

15 JUROR: I wasn't sure if this applied to Number 1,
16 but my grandfather and uncle were both robbed and shot
17 about 15 years ago.

18 THE COURT: Okay. Is there anything about your --

19 JUROR: Not die. They did not die.

20 THE COURT: They didn't die?

21 JUROR: No.

22 THE COURT: Is there anything about your experience
23 in that regard that would interfere in any way with your
24 ability to give both the State and the defendant a fair
25 and impartial trial in this case?

1 JUROR: No.

2 THE COURT: Please give us your name and number for
3 the record.

4 JUROR: Steven Brakstad, Number 29.

5 THE COURT: Yes, sir.

6 JUROR: The one -- I guess the first one is my wife's
7 grandfather was murdered by his brother, long before --
8 they were really young, and my wife was involved when she
9 was a little child with, I guess, being held up by
10 gunpoint by another family member, but it was like a whole
11 family thing, so --

12 THE COURT: Okay. Is there anything about your --

13 JUROR: Nothing for me.

14 THE COURT: Is there anything about your experiences
15 in that regard that would interfere in any way with your
16 ability to give both the State and the defendant a fair
17 and impartial trial in this case?

18 JUROR: No, sir.

19 THE COURT: Thanks.

20 Please give us your name and number for the record.

21 JUROR: Lindsay Gladden, 91.

22 THE COURT: Yes, ma'am.

23 JUROR: I was just confused on one of your questions.
24 Was I supposed to sit back there if I could be impartial
25 or if I couldn't be impartial?

1 THE COURT: Well, just tell me if one of them applies
2 to you of the questions I asked you, violence and these
3 other questions, criminal domestic violence, violent
4 altercation, or witness or being involved --

5 JUROR: It was the one about if you can be impartial
6 come up here, not come up here. It was like the
7 fourth one.

8 MS. HAMILTON: Number 3.

9 JUROR: Some of the others --

10 THE COURT: Okay. Could you still be fair and
11 impartial?

12 JUROR: Yes, I can, but we didn't know if we were
13 supposed to come up here and tell you that or if we sit
14 down.

15 THE COURT: No. No. You're fine. If you say you
16 can be fair -- well, let me just ask you this question to
17 be sure we're on the same wavelength. Could you listen to
18 the testimony and the evidence that comes in during the
19 course of this trial and the course of instruction to you
20 with regard to the law that applies and render a decision
21 to be fair and impartial in this case?

22 JUROR: Yes.

23 THE COURT: Could you do that?

24 JUROR: Yes, I can.

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

1 Please give us your name and number.

2 JUROR: It's Krystle Graham, 93.

3 THE COURT: Yes, ma'am.

4 JUROR: Okay. I have been a victim of domestic
5 violence by my child's father during pregnancy. At the
6 same time I had previously worked in supporting domestic
7 violence charities in Charlotte, one being conditions one
8 was putting clients in domestic violence housing. So I'm
9 just having mixed feelings as if -- if I'm able to
10 actually listen to the testimony.

11 THE COURT: Okay. Well, let me ask specifically this
12 question. Is there anything about your experiences in
13 that regard that would interfere in any way with your
14 ability to give both the State and the defendant a fair
15 and impartial trial in this case? Could you do that or
16 not do that? Just be as honest as you can.

17 JUROR: With personal experience, I can do that. But
18 ethical judgment as far as me supporting domestic violence
19 housing in Charlotte financially as well as putting
20 patients in there, you know, I'm just having -- just
21 ethical considerations. I'm just unsure.

22 THE COURT: Okay. All right. Well, let me ask you
23 this question. Just answer it as honestly as you can.

24 JUROR: Okay.

25 THE COURT: Can you listen to the testimony and

1 evidence that comes in during the course of -- in spite of
2 your experiences --

3 JUROR: Yes.

4 THE COURT: Could you listen to the testimony and
5 evidence and render a decision that's going to be fair and
6 impartial? Could you do that or not do that? Just be as
7 honest as you can.

8 JUROR: Yes.

9 THE COURT: You think you can?

10 JUROR: Yes.

11 THE COURT: Okay. All right.

12 Give us your name and number again just for the
13 record.

14 JUROR: Carla Wilson, 242.

15 THE COURT: Yes, ma'am.

16 JUROR: My sister was a victim of spousal abuse.

17 THE COURT: Is there anything about your experiences
18 in that regard that would interfere in any way with your
19 ability to give both the State and the defendant a fair
20 and impartial trial in this case?

21 JUROR: No. I just don't like the idea.

22 THE COURT: Okay. All right. Could you be fair and
23 impartial in this case?

24 JUROR: Yes.

25 THE COURT: Thank you, ma'am.

1 (A sotto voce discussion was held between Judge
2 Alford and all counsel.)

3 THE COURT: Thank you for your patience, ladies and
4 gentlemen. I have just a few more questions. Has any
5 member of the jury panel had any prior knowledge about the
6 case from any source, including the media or any other
7 source, before coming here to court today? If so, please
8 stand. Has any member of the jury panel formed or
9 expressed an opinion as to the guilt or innocence of the
10 defendant, Michael Bayron, Jr.? If so, please stand.

11 Is any member of the jury panel conscious of any
12 interest, bias, or prejudice for or against the defendant,
13 Michael Bayron, Jr.? If so, please stand. Can each
14 member of the jury panel give both the State and the
15 defendant, Michael Bayron, Jr., a fair and impartial trial
16 in this case? If not, please stand. Does any member of
17 the jury panel know of any reason whatsoever why he or she
18 should not serve as a juror in this particular case? If
19 so, please stand.

20 Any additional questions requested of the jury panel
21 from the State?

22 MS. HAMILTON: No, Your Honor.

23 THE COURT: From the defense?

24 MS. SIKORA: No, Your Honor.

25 THE COURT: Thank you.

1 Madam Clerk, please give us a jury.

2 THE CLERK: If your name is drawn, please bring any
3 personal belongings you have and come stand by the
4 bailiff.

5 Number 25, William Bowling. What say you for the
6 State?

7 MS. HAMILTON: Please present the juror.

8 THE CLERK: Defense?

9 MS. SIKORA: Please seat the juror.

10 THE CLERK: Sit in the jury box.

11 Number 133, Samuel Lane. What say you for the State?

12 MS. HAMILTON: Please excuse the juror.

13 THE CLERK: Excused in this case.

14 Number 64, Darin Davenport. What say you for the
15 State?

16 MS. HAMILTON: Please present the juror.

17 THE CLERK: Defense?

18 MS. SIKORA: Please seat the juror.

19 THE CLERK: Sit in the jury box.

20 Number 203, Peggy Sandifer. What say you for the
21 State?

22 MS. HAMILTON: Please present the juror.

23 THE CLERK: Defense?

24 MS. SIKORA: Please excuse this juror.

25 THE CLERK: Excused in this case.

1 Number 200, Michael Rowe. What say you for the
2 State?

3 MS. HAMILTON: Please present the juror.

4 THE CLERK: Defense?

5 MS. SIKORA: Please seat the juror.

6 THE CLERK: Number 9, Annette Altizer. What say you
7 for the State?

8 MS. HAMILTON: Please present the juror.

9 THE CLERK: Defense?

10 MS. SIKORA: Please seat the juror.

11 THE CLERK: Sit in the jury box.

12 Number 48, Vladimir Chopko. What say you for the
13 State?

14 MS. HAMILTON: Please present the juror.

15 THE CLERK: Defense?

16 MS. SIKORA: Please seat the juror.

17 THE CLERK: Sit in the jury box.

18 Number 165, Jacie Morris. What say you for the
19 State?

20 MS. HAMILTON: Please present the juror.

21 THE CLERK: Defense?

22 MS. SIKORA: Please seat the juror.

23 THE CLERK: Sit in the jury box.

24 Number 122, Jenna Jongquist. What say you for the
25 State?

1 MS. HAMILTON: Please present the juror.
2 THE CLERK: Defense?
3 MS. SIKORA: Please excuse this juror.
4 THE CLERK: Excused in this case.
5 Number 38, Raymond Cables. Say you for the State?
6 MS. HAMILTON: Please present the juror.
7 THE CLERK: Defense?
8 MS. SIKORA: Please seat this juror.
9 THE CLERK: Sit in the jury box.
10 Number 45, Anita Case.
11 MS. HAMILTON: Madam Clerk, number again?
12 THE CLERK: 45.
13 MS. HAMILTON: Please excuse the juror.
14 THE CLERK: Excused in this case.
15 Number 160, Jackie Miller. What say you for the
16 State?
17 MS. HAMILTON: Please present the juror.
18 THE CLERK: Defense?
19 MS. SIKORA: Please seat this juror.
20 THE CLERK: Sit in the jury box.
21 Number 93, Krystle Graham. What say you for the
22 State?
23 MS. HAMILTON: Please present the juror.
24 THE CLERK: Defense?
25 MS. SIKORA: Please excuse this juror.

1 THE CLERK: Excused in this case.

2 Number 226, Amanda Totherow. What say you for the
3 State?

4 MS. HAMILTON: Please present the juror.

5 THE CLERK: Defense?

6 MS. SIKORA: Please seat this juror.

7 THE CLERK: Sit in the jury box.

8 Number 72, Dona Edmonds. What say you for the State?

9 MS. HAMILTON: Please present the juror.

10 THE CLERK: Defense?

11 MS. SIKORA: Please excuse this juror.

12 THE CLERK: Excused in this case.

13 Number 175, Anthony Patterson. What say you for the
14 State?

15 MS. HAMILTON: Please present the juror.

16 THE CLERK: Defense?

17 MS. SIKORA: Please seat this juror.

18 THE CLERK: Sit in the jury box.

19 Number 235, Lisa Wheeler. What say you for the
20 State?

21 MS. HAMILTON: Please present the juror.

22 THE CLERK: Defense?

23 MS. SIKORA: Please excuse this juror.

24 THE CLERK: Excused in this case.

25 Number 147, Ronnie Martin. What say you for the

1 State?

2 MS. HAMILTON: Please present the juror.

3 THE CLERK: Defense?

4 MS. SIKORA: Please seat this juror.

5 THE CLERK: Sit in the jury box.

6 Number 50, Steve Collier. What say you for the

7 State?

8 MS. HAMILTON: Please present the juror.

9 THE CLERK: Defense?

10 MS. SIKORA: Please seat this juror.

11 THE CLERK: Sit in the jury box.

12 THE COURT: Please seat the alternate.

13 THE CLERK: Number 208, Patricia Schult.

14 THE CLERK: What say you for the State?

15 MS. HAMILTON: Please present the juror.

16 THE CLERK: Defense?

17 MS. SIKORA: Please seat this juror.

18 THE CLERK: Sit in the jury box.

19 THE COURT: Any questions concerning the selection
20 process from the State?

21 MS. HAMILTON: No, Your Honor.

22 THE COURT: From the defense?

23 MS. SIKORA: No, Your Honor.

24 (A off-the record discussion was held between the Judge
25 and the Clerk.)

1 THE COURT: Ladies and gentlemen of the jury panel
2 who were not selected for this particular case, I'm going
3 to excuse you at this time and ask you please to call in
4 to your voicemail number tonight, anytime after 7:00.
5 Anytime after 7:00. Please enjoy your afternoon and call
6 in tonight. Thank you very much.

7 Clerk will please swear the jury panel.

8 (WHEREUPON, the jury panel was sworn.)

9 THE CLERK: Let the record show all affirmed.

10 THE COURT: Thank you. Please be seated, ladies and
11 gentlemen.

12 Counsel, I'm going to give the jury a preliminary
13 instruction, as I normally do. First jury of the week,
14 particularly. Ladies and gentlemen of the jury panel,
15 first let me say I'm going to ask Juror Number 64, Darren
16 W. Davenport, sir, if you will please serve as foreperson
17 of the jury. I think your educational background will
18 enable you to do that quite well. The foreperson is asked
19 to sit on the first seat on the front row. You can do
20 that once you go out and come back in. They'll put you
21 there. I want to give you -- Mr. Foreman, ladies and
22 gentlemen of the jury panel, I'm going to give you what I
23 call a preliminary instruction of what to expect with
24 regard to the trial and how we're going to proceed during
25 the trial and hope you'll feel a little more comfortable

1 in these unfamiliar surroundings.

2 First thing that will happen after I've completed my
3 instruction to you is that an attorney for the State, who
4 is an assistant solicitor, will make an opening statement
5 to you and then the attorney for the defendant, one of the
6 defendant's -- attorneys for the defendant will have the
7 same opportunity to address you in an opening statement.
8 These opening statements by the attorneys are not
9 evidence. But you should pay close attention because
10 they're in essence going to identify to you what they
11 perceive or say the issues in the case are.

12 After they've made their opening statements to you,
13 then the State will proceed by presenting the testimony
14 and the evidence that they want you to consider. The
15 reason the State goes first is that the State has the
16 burden of proof in this case. There is no burden of proof
17 upon the defendant to prove his innocence. The burden of
18 proof is upon the State of South Carolina to prove the
19 charge against this defendant by evidence that satisfies
20 you, the jury, beyond a reasonable doubt before you can
21 return a verdict of guilty. If the State fails to meet
22 that burden of proof, then your verdict must be not
23 guilty.

24 After the assistant solicitors have presented to you
25 the evidence they want you to consider on behalf of the

1 State, then the same opportunity will be afforded to the
2 defense. The defendant may, but is not required, to
3 present any testimony or evidence because the State has
4 the burden of proving the defendant guilty beyond a
5 reasonable doubt. The defendant does not have to prove he
6 is innocent. He is presumed innocent, and that
7 presumption stays with him throughout the trial and may
8 only be removed if the State meets its burden of proving
9 the guilt of the defendant beyond a reasonable doubt.

10 Now, what is evidence? Evidence is the sworn
11 testimony you'll hear from the witness stand to my right;
12 exhibits admitted into the record for your consideration
13 by me, the presiding judge; and any stipulation of
14 counsel. Now, exhibits may take many forms, such as
15 documents, pictures, videotapes, maps, diagrams, and so
16 forth. Stipulations or agreements of facts by the
17 attorneys. If the attorneys enter into a stipulation or
18 agreement as to facts, that will be made known to you and
19 you may consider it, give it such weight as you deem
20 appropriate once you begin your deliberations. Sworn
21 testimony, exhibits, and stipulations or agreements by the
22 attorneys are the only evidence you may consider in your
23 deliberation of the innocence or guilt of the defendant.
24 You may not consider anything you heard from any other
25 source about this case in making your decision, because

1 that is not evidence.

2 After you've heard all the evidence, then the
3 attorneys for the State and the defendant will once again
4 appear before you and make what we call closing arguments.
5 We call them arguments because the attorneys are allowed
6 at that time to argue their positions and will attempt to
7 persuade you as to their view or position as to the facts.
8 When you've heard final arguments from counsel, I will
9 then charge you, which simply means to instruct you as to
10 the law that applies to the issues in this case. You will
11 then retire to the jury room to deliberate and reach your
12 verdict. That's how a case is tried in general sessions
13 court, whether it be this case or any other case. Some
14 cases take a half a day or a day. Some cases take weeks.
15 But the same format applies in every case.

16 As the trial judge, I have three functions to perform
17 during the trial. I am the presiding officer and
18 therefore see that the trial is run in an orderly manner.
19 I decide based on rules of civil and criminal procedure
20 whether testimony and exhibits are admissible into
21 evidence for your consideration. And at the conclusion of
22 the trial, I instruct you as to the law you must apply to
23 the issues in this case or the facts in this case in
24 reaching your verdict.

25 You, ladies and gentlemen, are also judges in this

1 case. You are the judges of the facts. In other words,
2 you determine the truth of the facts in this case. Under
3 our constitution, I am not permitted as the judge of the
4 law to have an opinion about the facts. So I do not get
5 into whether I believe a witness or not. That is not my
6 function. I'm not even permitted to express an opinion,
7 if I had one, as to the facts in this case. So you, the
8 jury, determine what is the truth of the facts.

9 Now, I do not permit jurors to take notes during the
10 trial because it is my experience that while writing
11 notes, you may miss something very important for you to
12 hear and you may fail to observe a witness when
13 testifying. It is important that you pay careful
14 attention to all testimony and introduction of evidence
15 since you must judge the credibility or believability of
16 the witnesses and the weight to give all evidence
17 introduced in this case in determining the truth of the
18 facts.

19 During the trial, the attorneys may object to the
20 admissibility of certain testimony or other evidence. I
21 will either sustain the objection, which means I agree and
22 the testimony or evidence may not be made part of the
23 record for your consideration. Or I'll overrule the
24 objection, which means as the judge of the law, I have
25 determined that it is admissible as part of the record for

1 your consideration. The mere fact that I have admitted it
2 does not mean that you must believe it or disbelieve it.
3 I simply determined that it is admissible under our rules,
4 and it is up to you, then, to believe it or disbelieve it
5 and to assign such weight to it as you determine to be
6 appropriate.

7 At the conclusion of the trial, when we send you to
8 the jury room, every exhibit that is admitted into
9 evidence will be sent to the jury room for you to examine
10 further and to consider. I'll remind you that one of the
11 most important aspects of your duty as a jury lies
12 essentially in the oath that you have just taken to well
13 and truly try the case and to determine the truth of the
14 facts in this case. That oath, once again in a very
15 essential way, says that you're the sole judges of the
16 facts in this case.

17 Mr. Foreman, ladies and gentlemen of the jury panel,
18 whatever your verdict in this case, it must be your
19 unanimous verdict. All 12 jurors must agree on the
20 verdict, which the foreperson will be authorized to write
21 on behalf of the jury.

22 Mr. Foreman, ladies and gentlemen of the jury panel,
23 you're not to discuss this case at any time during the
24 trial until I tell you, and that will not occur until
25 you've received all of the evidence and I've instructed

1 you upon the law. You should not discuss the case among
2 yourselves. You should not discuss it with family,
3 friends, or anyone else you might see on recess from
4 court. You might say, well, what's wrong with our
5 discussing the case as we go along or someone finds out
6 I'm on a jury, they want to know something about the case
7 that I'm on, what's wrong with discussing it? The problem
8 with discussing the case among yourselves and with anyone
9 else is once you begin discussions about the case, you
10 start forming opinions. And you wouldn't be fair to both
11 sides in this case if you didn't wait until you heard all
12 the testimony and evidence and I've instructed you upon
13 the law that applies before you start forming opinions.
14 Until then, you should wait, keep an open mind, until you
15 have all the information you need to make a decision in
16 this case.

17 Now, if you should overhear the -- you should
18 overhear the parties, their attorneys, or witnesses
19 talking about the case outside of the courtroom, you
20 should not listen to them but move away. If anyone should
21 deliberately try to discuss the case with you, you should
22 not discuss it with them but leave and report that attempt
23 to me through the bailiff or the clerk of court's office,
24 give them the best description you can of that person, and
25 I will deal appropriately with that person. No one should

1 try to discuss the case with you. If they do, I certainly
2 wish to be made aware of it.

3 If there should be any media coverage of this
4 trial -- I do not know of any at this time, and there may
5 not be any. But if there should be, please do not read,
6 listen to, or watch any media account of the trial until
7 after the trial is over and the verdict is in. There
8 should be any media coverage and someone wanted to save it
9 for you until after the trial, you'd be welcome to
10 relisten to a media account after the trial is over and
11 the verdict is in, but please do not do that in the
12 meantime.

13 Please do not go on the internet and try to find out
14 anything about this case or get any information over media
15 accounts that may be on the internet. I'm well aware that
16 some people through electronic devices get a lot of
17 information from that source. Please do not use any kind
18 of electronic device to try to get any information about
19 this case whatsoever. There's no way we can guarantee the
20 accuracy of any other account of this case, and it's very
21 important that you make your decision solely on the sworn
22 testimony and evidence that comes in during the course of
23 the trial and the evidence that's admitted during the
24 trial and not from any other source.

25 Now, I'm concerned about your comfort, your ability

1 to see and hear the testimony and evidence so you can
2 properly do your job. I'll try to take a break about
3 every hour and half. If you need a break before the time
4 a break is taken, please raise your right hand and let me
5 know. And I'll take a break as quickly after that as I
6 can. If you cannot hear or see something you need to hear
7 or see during the course of the trial, I'll try to
8 anticipate that, but some of you are sitting much further
9 away from the witness stand or where the attorneys might
10 be standing than I. So if you cannot hear or see
11 something you need to hear or see as we go through the
12 trial, please do not hesitate to raise your right hand and
13 let me know and I'll make sure that you're able to hear or
14 see so you can properly do your job.

15 If you wish to communicate with the Court other than
16 needing a break or the inability to see or hear, please
17 write that message down on a tablet provided for you back
18 in the jury room, give that to the bailiff. The bailiff
19 will bring it to me. I'll either correspond in like
20 manner or I'll bring you back out in the courtroom to
21 respond, as case need be. That's how we should
22 communicate, you now having been sworn as jurors in this
23 case.

24 If you have something to drink back in the jury room
25 once you go back there, before you come into the

1 courtroom, and you want to bring that back to the jury
2 box -- drink, like, water, Coke, whatever, tea, coffee --
3 if you have that and you want to bring it in, the clerk
4 allows you do you that and I do it as well, so if you have
5 something to drink back there, you want to bring it in the
6 jury box, you're welcome to do that.

7 All right. Thank you for your kind attention --
8 well, let me say, the alternate, ma'am, I'll ask you to
9 keep that same seat throughout the trial. The foreperson
10 will be seated in the first seat on the front row directly
11 in front of the alternate. All the other seats are
12 interchangeable. It really does not matter where you sit,
13 but we do like to have the foreperson and alternate keep
14 the same seats throughout the trial.

15 Thank you for your kind attention, ladies and
16 gentlemen. We're now actually ready to get started with
17 the trial. And please listen attentively now as counsel
18 address you in opening statements.

19 THE COURT: Counsel.

20 MS. HAMILTON: May it please the Court.

21 THE COURT: Solicitor.

22 OPENING STATEMENTS BY MS. HAMILTON

23 MS. HAMILTON: Good morning. Ladies and gentlemen,
24 we are here today because the defendant, Michael Bayron,
25 Jr., has been charged with pointing and presenting a

1 firearm at his wife, Claribel Correa. Now, your role
2 today is very important. You are the fact finders in this
3 case. You'll listen to all of the evidence presented to
4 you, and you will weigh that evidence. And at the end,
5 you'll come to the conclusion as to what happened that
6 night on June 23rd, 2011.

7 Now, again, the defendant is charged with pointing
8 and presenting a firearm. This crime has three elements
9 to it. The first element; pointing or presenting. Second
10 element, an unloaded or loaded firearm. And the third
11 element is at another. Now, that "or" in between point or
12 present or loaded or unloaded firearm means you just need
13 one or the other, not both. If you're convinced by the
14 evidence presented to you today that a firearm was
15 pointed, not presented, that one element will be
16 satisfied.

17 Now, pointing or presenting. Pointing is pretty
18 self-explanatory, pointing a weapon at someone. But
19 presenting, that can be a complicated term. So I'm going
20 to explain that to you. Now, the judge at the end of this
21 case will charge you with the law. What I'm doing right
22 now is just explaining the law to you. Now, again,
23 presenting a firearm, that's defined as to offer to view
24 that firearm in a threatening manner or to show that
25 firearm in a threatening manner.

1 Now, you may be asking what is a threatening manner?

2 Well, what you need to do as a juror, as the fact finders,
3 is look to the surrounding circumstances. When this gun
4 was brought out, what was going on? Was this a hostile
5 environment? Was it volatile? Is there an argument going
6 on? Was someone angry? That would be a threatening
7 manner. Was this gun used to intimidate someone, threaten
8 them? If so, that is presenting a firearm.

9 Now, ladies and gentlemen, you will hear from the
10 first responding officer on scene today, Deputy Reed. He
11 got a call from dispatch the night of June 23rd, 2011,
12 in regards to a domestic dispute or disturbance, and a
13 weapon was involved. So he goes on scene, not knowing
14 what he's going to encounter. And upon arriving at 221
15 Garden Way, Apartment 88 -- this is the defendant's
16 apartment -- he encounters a very volatile situation. The
17 defendant sees Officer Reed, as he will testify to, and he
18 runs into the apartment and barricades himself in that
19 apartment. Officer Reed will explain to you he had to
20 knock down the door to get inside.

21 Upon arriving inside of this apartment, he sees
22 debris from a shattered television on the ground and he
23 sees the defendant taking an aggressive stance towards
24 him. He sees the victim by the doorway. She's crying.
25 She's upset. Holding her children next to her. A

1 volatile situation.

2 Ladies and gentlemen of the jury, I ask that you
3 listen to all of the evidence presented to you today, and
4 weigh that carefully. And I will stand back before you at
5 the end of this trial and I will ask that you come to a
6 verdict that speaks the truth in this case, and that is a
7 guilty verdict. The defendant pointed and presented a
8 firearm at his wife. Thank you, ladies and gentlemen.

9 MS. SIKORA: May it please the Court.

10 THE COURT: Counselor.

11 OPENING STATEMENTS BY MS. SIKORA

12 MS. SIKORA: It's June 23rd of this year. That was
13 a Thursday. It's late at night. It's about 2:30 in the
14 morning, and Mr. Bayron and Ms. Correa are still awake.
15 They're a young family. They have three small children,
16 and they're awake talking about the fact that tomorrow is
17 going to be the last day in their home. The economy is
18 tough, money is tight, and they know that tomorrow they're
19 going to be evicted from the home they were living in.

20 Mr. Bayron and Ms. Correa start talking about the
21 situation that their family has found themselves in, and
22 talking that night leads to arguing. And Mr. Bayron
23 actually leaves the residence at that point. Ms. Correa,
24 after Mr. Bayron has left, picks up the phone and calls
25 911. The police are sent out to their residence.

1 When the police get there that night, Deputy Reed was
2 the first one to arrive. And when he gets there, he finds
3 that Mr. Bayron has returned to the home and Ms. Correa is
4 still at the residence as well. And what Deputy Reed
5 finds when he gets there is that Mr. Bayron does not have
6 a gun in his hand, does not have a gun anywhere on his
7 person, like his pockets or his waistband. In fact, the
8 police ultimately find the gun locked inside Mr. Bayron's
9 scooter in the parking lot of their apartment complex.
10 And the police need a key to actually be able to access
11 the compartment where that gun is located.

12 You're going to hear testimony from the officers
13 about what they saw that night. I don't think you're
14 going to hear any testimony that Ms. Correa had any
15 physical signs of injury to her. Talking about things
16 like bruising, redness, swelling. I don't think you're
17 going to hear there were any threats made to Ms. Correa by
18 Mr. Bayron, verbally threatening her, saying things like
19 I'm going to kill you or I'm going to shoot you.

20 It is the prosecution's job, it is their duty, their
21 burden under this law and under the criminal law to prove
22 this case to you beyond a reasonable doubt. Now, some of
23 you before may have served on a civil jury. And when we
24 say "civil jury," we're talking about, for example, you
25 know, two people are in a car accident, one person sues

1 the other person to get damages they suffered as a result
2 of the car accident. Civil cases are about money. And if
3 you have served in a civil case before on a jury, the
4 burden of proof in those type of cases is much different
5 than it is in criminal court. In civil court, the
6 evidence has to tip just ever so slightly in favor of one
7 of the parties in order for that person to get a judgment
8 on their behalf.

9 Criminal system doesn't work like that. The burden
10 of proof in a criminal case is much higher. It requires
11 that the State proves each and every element of the
12 offense charged beyond a reasonable doubt. So what does
13 that actually mean in practice? The judge will talk to
14 you about that when he instructs you on the law at the end
15 of the case. So I'm just going to touch on it briefly
16 with you.

17 One way that reasonable doubt has been described is
18 doubt that would cause a reasonable person to hesitate to
19 act after you have heard all of the evidence in this case,
20 at the end of this case. It is not enough if you are just
21 convinced that Mr. Bayron is guilty. You must be firmly
22 convinced of his guilt on each and every element of the
23 crime based on the evidence that is presented to you here
24 today.

25 Like Ms. Hamilton stated, there are three elements to

1 pointing and presenting. Pointing or presenting an loaded
2 or unloaded firearm at somebody else. And I would agree
3 with her definition of what it means to present a firearm,
4 Element Number 1 of this offense. It has to be done in a
5 threatening way, shown or offered to view at another
6 person in a threatening manner. It is not enough, under
7 the law, for one person to have a gun in their hand that
8 someone else simply observes. That is not what presenting
9 means under our law.

10 You're going to hear testimony from the 911
11 operators, several of the police officers that were
12 involved in this case, and Ms. Correa herself. And I'm
13 not going to talk a lot about what they're going to say.
14 I think you need to hear what they have to say directly.
15 They were the people that were there that night, and you
16 can judge for yourself what you think of their testimony.

17 I will say the case, I expect it to be very short.
18 But nonetheless, it's still very important. This case is
19 very important to both my client, Mr. Bayron, and his
20 wife, Ms. Correa. Hold the State to their burden of
21 proof. I think you will find at the end of this case the
22 evidence simply does not meet that burden. And we will
23 ask you to find Mr. Bayron not guilty. Thank you.

24 THE COURT: Mr. Foreman, ladies and gentlemen of the
25 jury panel, it's by the courtroom clock about a quarter to

1 one, so going to go ahead and recess for lunch at this
2 time. There is a matter that I need to take up with
3 counsel out of your presence, and we'll do that, take a
4 little longer than normal lunch hour so we can accomplish
5 that. So let me ask you to be back in the jury room ready
6 to go at 2:15. At 2:15. That's about an hour and a half.
7 That should give everybody plenty of time to get lunch and
8 get back. And the time we take will be free -- you'll be
9 free of the courthouse while we're doing that. So please
10 enjoy your lunch, and please be back in the jury room
11 ready to go at 2:15. Thank you.

12 (WHEREUPON, the jury left open court at approximately
13 12:43 p.m.)

14 THE COURT: Now, I realize while the jury is going
15 out that I didn't get that right. I think we were
16 supposed to take up some urgent -- we were going to do
17 that before we send the jury to lunch, or are we going to
18 do it after opening statements? I can't remember.

19 MS. HAMILTON: We can just do it when they get back.

20 THE COURT: We'll have to now. We probably could
21 have gone ahead and taken his testimony. I really meant
22 to do that, but I realized while the jury was going out
23 because I was thinking we said after we do opening
24 statements. Any rate, we'll get him in. I'm sorry,
25 Mr. Merchant, we should have probably gotten you in but...

1 All right. Let's go ahead and address it while we're
2 in here and going. Let's look at it and take the other
3 issue up. What are your proffers going to be on what the
4 officer -- what was going on at the time the officer got
5 there?

6 MS. HAMILTON: Beg the Court's indulgence.

7 MS. SIKORA: Can I just confer with her a moment?

8 (A sotto voce discussion was held amongst counsel.)

9 MS. HAMILTON: Your Honor, we don't intend bringing
10 in through Deputy Reed any statements from the victim on
11 scene. We do, however, in impeachment if that were -- if
12 she puts her on.

13 THE COURT: All right. I think we already agreed
14 that the 911 statement would come in. So you're saying
15 that what the victim said to the Officer Reed at the time
16 he arrived --

17 MS. HAMILTON: Yes, Your Honor.

18 THE COURT: -- you're not going to offer that except
19 in rebuttal or --

20 MS. HAMILTON: Cross-examination, Your Honor.

21 THE COURT: -- cross-examination? And so if the
22 victim testifies differently, then you would ask her about
23 that?

24 MS. HAMILTON: Yes, Your Honor. And it's just a
25 written statement that was taken.

1 THE COURT: That would not come in before she
2 testifies but when she testified. All right. Which means
3 it would not be a violation of Crawford versus Washington.
4 Okay. Does that address the problem, or is there anything
5 else we need to proffer, Counsel?

6 MS. SIKORA: May it please the Court, no, that
7 addresses the problem, if they don't intend on bringing
8 out during their examination the officer -- the statements
9 made by the victim to the officer. I obviously have no
10 problem with them impeaching the victim with that or
11 possibly calling him in rebuttal. That's fine with us,
12 Your Honor.

13 THE COURT: All right. Is there any other issue we
14 need to address? Is that the only one we needed a proffer
15 on?

16 MS. HAMILTON: That's it, Your Honor.

17 THE COURT: Anything.

18 MS. SIKORA: Nothing further from the defense, Your
19 Honor.

20 THE COURT: Anything else that comes up, we'll just
21 have to address it as we go along. All right. Then in
22 that case, let's go ahead and get some lunch and we'll
23 start back at 2:15.

24 (A recess was taken from 12:48 p.m. to 2:29 p.m.)

25 THE COURT: Counsel, approach just a minute.

1 (WHEREUPON, a bench conference was held.)

2 (The jury enters the courtroom at 2:33 p.m.)

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury panel, hope you enjoyed your lunch
5 today. We're ready now to resume with the trial. We're
6 to that part of the trial where counsel will -- we're at
7 that part, we call it the first witness.

8 State will call its first witness, please.

9 MS. HAMILTON: The State calls Ralph Merchant.

10 WHEREUPON, RALPH MERCHANT, having first been duly sworn,
11 testified under oath as follows:

12 MS. HAMILTON: May it please the Court.

13 THE COURT: Solicitor.

14 DIRECT EXAMINATION

15 BY MS. HAMILTON:

16 Q. Good afternoon, Mr. Merchant.

17 A. Good afternoon.

18 Q. Thank you for being here. Would you please state
19 your name for the record.

20 A. Ralph Anthony Merchant.

21 Q. And, Mr. Merchant, where do you work?

22 A. I am the operations manager for the York County 911
23 system.

24 Q. How long have you been employed at York County 911?

25 A. After the conversion, altogether it's been 13 years

RALPH MERCHANT -- DIRECT EXAMINATION BY MS. HAMILTON

1 now.

2 Q. Could you please describe the duties and
3 responsibilities you have in that position.

4 A. Overall day-to-day operations of the 911 center for
5 the County. Staffing and make sure meetings with
6 responding agencies. Developing policy and procedures.
7 Everything like that.

8 Q. Would you please describe how that is done?

9 A. I'm sorry, ma'am?

10 Q. Could you please describe how you prepare those
11 tapes.

12 A. The tapes on it? The recordings -- everything in the
13 center is recorded. It's in a closed system. Nobody can
14 alter it in any way. There is a couple of us -- the
15 quality assurance manager, myself, and the director --
16 that can go into a computer and pull those tapes when
17 necessary for court, just like this. And like I said, we
18 can't manipulate it in any way. We just can pull it out
19 through a certain -- certain date and certain channel or
20 telephone number or dates and times like this, and we can
21 make copies of it, and that's all we can do with it.

22 Q. Okay. And are these CDs maintained throughout the
23 regular course of business?

24 A. Yes, they are. They're locked away in a
25 double-vaulted system and on a computer. And if need be,

RALPH MERCHANT -- DIRECT EXAMINATION BY MS. HAMILTON

1 we burn CDs with the information and provide them to
2 agencies that request them. Anything that goes out of the
3 center, we have a copy of that request, where did it go
4 and for what reason.

5 Q. Now, Mr. Merchant, I'm going to hand you this CD.
6 Marked as State's -- for identification purposes, State's
7 Exhibit 1. Now, have you listened to this CD copy of the
8 911 recordings from the night of June 23rd, 2011?

9 A. Yes, ma'am, I have.

10 Q. And is that -- do you recognize that CD?

11 A. Yes, I do, because those are my initials right there.

12 Q. Okay. All right. And is this -- well, actually,
13 I'll take that back.

14 MS. HAMILTON: Your Honor, people offer State's
15 Exhibit 1 for issue into evidence.

16 MS. SIKORA: May I see it briefly, Your Honor? No
17 objection, Your Honor.

18 THE COURT: Admitted without objection.

19 (State's Exhibit Number 1 was admitted into evidence.)

20 MS. HAMILTON: Your Honor, may I please publish it to
21 the jury?

22 THE COURT: You may.

23 (Audio tape played in open court.)

24 Q. Okay. Mr. Merchant, after listening to this 911
25 recording, do you recognize the telecommunicator that was

RALPH MERCHANT -- CROSS-EXAMINATION BY MS. SIKORA

1 on that recording that you just listened to?

2 A. Yes, ma'am, I do.

3 Q. And who was that telecommunicator?

4 A. Trip Halloween (phonetic).

5 Q. And is this copy a true and accurate reproduction of
6 the 911 call made from 221 Garden Way, Apartment 88, and
7 the recording that followed the 911 call from the
8 residence --

9 A. Yes, it is.

10 Q. -- on June 23rd, 2011?

11 Thank you. Please answer any questions the defense
12 may have.

13 MS. SIKORA: May it please the Court, Your Honor.

14 THE COURT: Counsel.

15 CROSS-EXAMINATION

16 BY MS. SIKORA:

17 Q. Just briefly, Mr. Merchant, I know when the tape
18 first started playing the volume was a little low, but
19 were you able to hear from where you were sitting the
20 entire 911 call and what was said?

21 A. Yes, ma'am, I was.

22 Q. Okay. And is it true that at the beginning of the
23 call, Ms. Correa indicated to the 911 operator that
24 Mr. Bayron did not hit her?

25 A. Per the recording.

RALPH MERCHANT -- CROSS-EXAMINATION BY MS. SIKORA

1 Q. And later on during the call, she indicated that he
2 did hit her?

3 A. Per the recording.

4 Q. Thank you.

5 MS. SIKORA: No further questions.

6 MS. HAMILTON: Nothing further.

7 THE COURT: Thank you, sir. You may stand down, sir.
8 Can we have this witness excused?

9 MS. HAMILTON: Yes, Your Honor.

10 THE COURT: Any objections, Counsel?

11 MS. SIKORA: No objection, Your Honor.

12 THE COURT: Thank you. You may be excused at this
13 time.

14 THE WITNESS: Thank you, sir.

15 MS. HAMILTON: The State would like to call Deputy
16 Reed.

17 WHEREUPON, DEPUTY JONATHAN REED, having first been duly
18 sworn, testified under oath as follows:

19 DIRECT EXAMINATION

20 BY MS. HAMILTON:

21 Q. Good afternoon. Thank you for being here. Would you
22 please state your name for the Court.

23 A. Jonathan Henry Reed.

24 Q. And, Deputy Reed, what is your occupation?

25 A. I'm currently employed as a deputy sheriff with the

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 York County Sheriff's Office.

2 Q. What do you do in that position?

3 A. I'm assigned to the patrol division.

4 Q. Okay. And what type of training do you have for that
5 position?

6 A. I attended the Criminal Justice Academy starting in
7 '07, and then we have monthly training that occurs at our
8 facility once a month.

9 Q. How long have you been employed with the York County
10 Sheriff's?

11 A. Five years, little over five years.

12 Q. Were you employed in your present capacity on the
13 night of June 23rd, 2011?

14 A. Yes, I was.

15 Q. Okay. I'd like to draw your attention now to the
16 morning, early morning of June 23rd, 2011. Where were
17 you at?

18 A. We were -- when we were dispatched to the call, I was
19 at the fuel pumps that are on Heckle Boulevard near
20 Highway 5.

21 Q. And what made you respond to 221 Garden Way,
22 Apartment Number 88?

23 A. Dispatch had given out a call to some other units
24 about a domestic disturbance. I was the closest unit, and
25 so I went ahead and answered up that I would go ahead and

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 take the call.

2 Q. Can you please describe to me what you see or hear
3 when you receive a call from dispatch.

4 A. First, normally the dispatch will come across the
5 radio and give a call out, and we have what's called a
6 mobile data terminal. It's basically a computer monitor
7 that sits in our patrol car. It's a little bit ahead of
8 us. And it will have the address and normally the
9 complainant, whoever's calling, their name, a phone
10 number, and then a narrative that will describe the nature
11 of the call. It will normally give a little bit more
12 detail than what we're getting over the radio.

13 Q. Do you remember what time you arrived?

14 A. I believe it was sometime around 2:30 in the morning.

15 Q. Okay. Now, could you please describe to me what you
16 saw when you arrived on scene.

17 A. I had been told by dispatch and could also -- I could
18 read in the narrative that the suspect was supposed to
19 have left and returned on a gray scooter. I came into the
20 apartment complex. There's several buildings in there, so
21 I had a little bit of difficulty at first locating the
22 building, the correct building. I was coming down the --
23 a row of vehicles that was parked in front of the building
24 that had been given out to us, and I observed a gray
25 scooter at the end around a group of vehicles.

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 As I came around those vehicles, I was shining my
2 spotlight because I'm always trying to make sure that I'm
3 not getting ambushed as soon as I get out on a call. And
4 I located the apartment number, and I saw a gentleman
5 standing in the doorway. The left half of his body was
6 obscured. The door was open. It appeared that he was
7 talking or yelling at somebody that was inside the house.

8 Q. Okay. And what did you proceed to do next?

9 A. At that point, since we had been told -- advised that
10 it was a domestic disturbance that was involving a weapon,
11 I went ahead and exited the patrol car very quickly and
12 began to approach as tactfully as I could while keeping
13 the suspect in sight using the vehicle for cover in case I
14 was going to start taking fire. And I started to yell out
15 to the suspect, who was standing in the doorway, that he
16 needed to come towards me. I drew my firearm because I
17 could see that his right hand didn't have anything, but as
18 I said earlier, the left half of his body was not exposed,
19 so I didn't know if he was holding a gun in that hand.
20 And I started to tell him that he needed to come towards
21 me.

22 Q. Okay. And that person you just said you encountered,
23 the suspect, on June 23rd, is he in the courtroom --

24 A. Yes.

25 Q. -- today?

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 And could you please point him out for identification
2 purposes.

3 A. (Indicating.)

4 Q. And what is he wearing?

5 A. He's -- right now he's wearing a black shirt and a
6 tie.

7 Q. Now, what was the demeanor of the defendant?

8 A. He was very agitated. Obviously didn't like me being
9 there. You know, I told him that he needed to come
10 towards me. He said, "Why?" I said, "Because I told you
11 to." And at that point he said, "Fuck you" and ran back
12 inside the house, slammed the door. Basically just not
13 complying with anything I had to say.

14 Q. And what did you proceed to do next?

15 A. At that point, my fear was the next thing I was going
16 to hear was gunshots, so I had to make a decision in that
17 split second whether I was going to wait for backup or go
18 inside and protect whoever he was talking to inside the
19 house, which I assumed was the female that had called. So
20 I ran up to the door, and as I'm running up to the door, I
21 heard the deadbolt click. And there was no time at that
22 point to knock on the door or to yell for someone to come
23 out, so I went ahead and kicked the door open and went
24 inside the house.

25 Q. And what did you encounter once inside the apartment?

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 A. Soon as I came into the door, there was a --
2 immediately to my right up against the window, there was a
3 female and -- and I remember a couple small children that
4 she had huddled up against her. And to her -- I guess to
5 her right, kind of right in front of me was the defendant
6 standing right in front of me. He was yelling at me, you
7 know, to get out of his house and that what I was doing
8 was illegal. I could see all over the floor there was
9 debris. Looked like it may have been a TV that was --
10 that had been smashed on the floor. It was complete
11 chaos. The woman was screaming. Kids were crying. It
12 was kind of...

13 Q. And without telling me what she said, did you speak
14 with the victim, Ms. Correa, that night?

15 A. I did.

16 Q. Okay. And what was her demeanor?

17 A. She was still pretty upset. You know, she was
18 crying. Appeared to me that she was still a little bit
19 scared. At that point, I had already managed to take the
20 defendant into custody. He was seated in my patrol
21 vehicle, and I was talking to her outside near the
22 apartment, and I notice that she kept looking over towards
23 the car, which I took as she -- it looked like she was
24 still a little bit afraid of him or trying to gauge
25 whatever his reaction was for her to be talking to us.

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 Q. And did you collect any evidence from the scene that
2 night?

3 A. I did.

4 Q. What did you recover?

5 A. I recovered a Hi-Point 9-millimeter pistol. And it
6 included a magazine and eight rounds.

7 Q. And where did you recover that from?

8 A. I recovered it from that scooter that I had
9 originally seen when I arrived on scene.

10 Q. Okay. I'm going to show you an exhibit. Deputy
11 Reed, I'm going to be handing you what's been marked as
12 State's Exhibit 4 for identification purposes. What is
13 this?

14 A. It's a photo of the handgun that I recovered, the
15 Hi-Point 9-millimeter. And this is a photo prior to me
16 removing it from the scooter.

17 Q. And how do you recognize this photo?

18 A. I took the photo.

19 Q. And does this photo fairly and accurately depict the
20 gun that you recovered that night from the defendant's
21 scooter on June 23rd, 2011?

22 A. Yes, it does.

23 Q. Okay. And has this photograph been altered? Any
24 deletions made to it?

25 A. No.

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 Q. Okay.

2 MS. HAMILTON: Your Honor, the people offer State's
3 Exhibit 4 for admission into evidence.

4 MS. SIKORA: No objection.

5 THE COURT: Admitted without objection.

6 MS. HAMILTON: I request to publish to the jury.

7 THE COURT: You may publish.

8 (State's Exhibit Number 4 was admitted into evidence.)

9 Q. Now, at the bottom of that photo, it says
10 "April 4th, 2007." Why does it say that?

11 A. A lot of times the batteries will run out on the
12 camera, and whenever I put new batteries in there for some
13 reason -- I'm sure it's just how it's designed -- it will
14 reset the clock on there, and I -- apparently I forgot to
15 set it back to the correct date whenever I put the new
16 batteries in. That's happened before on other pictures.

17 MS. HAMILTON: Beg the Court's indulgence while the
18 jury looks.

19 Q. Okay. Now, Deputy Reed, why did you take this photo
20 that night?

21 A. I wanted to show that the gun was -- where the gun
22 was recovered and the condition that it was recovered in.

23 Q. Deputy Reed, I'm just handing you what's been marked
24 as State's Exhibit 2 for identification purposes. You
25 just testified that you recovered a 9-millimeter handgun

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 from the defendant's scooter. What did you do with it?

2 A. I took it over to my patrol vehicle and went ahead
3 and ejected a magazine and then checked the chamber. On
4 the semiautomatic pistols, often there's going to be a
5 round inside the chamber after you eject the magazine, so
6 for safety purposes I went ahead and checked the chamber
7 and wound up ejecting a round, discovering that the gun
8 was indeed loaded.

9 Q. So have you seen this pistol before?

10 A. I have.

11 Q. Where did you see it?

12 A. I saw it that night, the night of the incident. It
13 was inside the defendant's scooter.

14 Q. And that night, what was the date?

15 A. It was June 23rd, 2011.

16 Q. And is this pistol in substantially the same
17 condition and appearance now as it was that night, on June
18 23rd, 2011?

19 A. Well, with the exception, of course, like I said, I
20 ejected the round that was in the chamber and also took
21 the magazine out. But other than that, it appears to be
22 the same handgun.

23 Q. And how do you know that this is the same gun taken
24 from the scooter?

25 A. This is the tag that I placed on it. I've got my

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 signature on here from when I dropped it into evidence and
2 it's got the -- and the serial number matches.

3 MS. HAMILTON: Your Honor, people offers State's
4 Exhibit 2 for admission into evidence.

5 MS. SIKORA: No objection.

6 THE COURT: Admitted without objection.

7 (State's Exhibit Number 2 was admitted into evidence.)

8 Q. And did you say that gun was loaded?

9 A. Yes, it was.

10 Q. Deputy Reed, I'm just handing you what's been marked
11 for identification purposes as State's Exhibit Number 3.

12 And you can open that. If you can take that out and
13 please explain to me what that is.

14 A. This is going to be the magazine that I ejected from
15 the handgun, from the firearm. And inside I'm going to
16 have eight rounds that were recovered, seven from the
17 magazine and one from the chamber.

18 Q. And how did this first come into your possession?

19 A. I -- when I got into the -- got -- opened the scooter
20 up, when I opened the scooter up, the handgun was lying
21 inside. You can see from the picture. I took the handgun
22 out and then ejected the magazine, again for safety
23 purposes. Took all the rounds out of it and ejected the
24 one from the chamber.

25 Q. Okay. And how do you recognize that that is what you

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 recovered that night?

2 A. I -- this is the envelope that I placed it in. I've
3 got my signature on it from when I dropped it into
4 evidence.

5 Q. And is that magazine and the bullets that were in the
6 evidence bag in substantially the same condition and
7 appearance now as they were when you first saw them on
8 scene that night, on June 23rd, 2011?

9 A. Yes, with the exception, of course, when I first saw
10 them they, you know, were in the magazine and then one was
11 inside the chamber of the handgun. And then the magazine
12 was seated into the handgun.

13 MS. HAMILTON: Your Honor, the People offer State's
14 Exhibit Number 3 for admission.

15 MS. SIKORA: No objection.

16 THE COURT: Admitted without objection.

17 (State's Exhibit Number 3 was admitted into evidence.)

18 Q. I'm going to go back to when you took the defendant
19 into custody. What did you proceed to do once you took
20 him into custody?

21 A. When I took him into custody, first thing, of course,
22 was to place handcuffs on him. And then I took him
23 outside the residence. We removed the probes from the
24 Taser that had to be used. Took him outside to my patrol
25 car and went ahead and seated him in the backseat of the

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 patrol car and then read him Miranda, his Miranda
2 warnings, which I have on a card that I have in my
3 possession. Read those to him, advising him of his rights
4 before I asked him any questions.

5 Q. And those Miranda rights, that's what we see on
6 Law & Order, the you have the right to remain silent --

7 A. Correct.

8 Q. -- anything you say -- great.

9 And so you -- did you speak to the defendant after
10 recovering the weapon? Did you speak to him after
11 recovering the weapon?

12 A. Actually, it was more of he spoke to me. When I took
13 the handgun back to the patrol car, I wound up going in my
14 front seat. I think I was looking for an envelope. I
15 don't remember what I was doing in the front seat. And
16 then he had initiated contact with me after he had
17 initially refused to answer any questions. He didn't want
18 to speak after I read him Miranda.

19 When I came back to the patrol car after recovering
20 the firearm, he initiated contact with me. And I asked
21 him, "So you want to talk now?" And he said, "Yeah," and
22 then we started to talk about the incident.

23 Q. Okay. Now, going back to what you had said a second
24 ago, you addressed -- you took out Taser probes.

25 A. Yes.

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 Q. What is that? How does...

2 A. The Taser is a electronic control device. It's used
3 as a less-lethal weapon. It's basically if we have a
4 situation where it would not be safe, when we have a
5 noncompliant suspect and it would not be safe to go
6 hands-on wrestling with somebody and that situation.
7 There are a number of reasons why I didn't think it would
8 be safe to go hands on.

9 Basically you'll take the Taser, and it's shaped sort
10 of like a handgun. You point it at the suspect, you'll
11 pull the trigger, and it will discharge some probes,
12 basically little fish hooks that will go and either attach
13 into clothing and sometimes can embed a little ways into
14 the skin and will give an electrical shock that
15 immobilizes the suspect. And typically the charge lasts
16 for 5 seconds. It can go more if we continue to hold the
17 trigger or if we decide there needs to be another
18 discharge, another shock. There is probes that have wires
19 that are attached to the gun, to the battery, which will
20 deliver more shocks if necessary.

21 Q. And with those, did you notice any substantial injury
22 to the defendant after removing --

23 A. No. He wasn't complaining of any injury.

24 Q. Going back to speaking with the defendant. What did
25 he state to you when he began initiating contact with you

DEPUTY JONATHAN REED -- DIRECT EXAMINATION BY MS. HAMILTON

1 in the back of your patrol vehicle?

2 A. He told me -- we began talking about the incident.

3 He started to tell me that him -- he and his wife had been

4 involved in an argument. He said it was a normal

5 argument, something that all couples go through. They're

6 arguing over some financial difficulties. I believe they

7 were getting evicted. And he said that he felt like he

8 was being kicked out of the house. So he went and got his

9 firearm. Said it was his most prized possession. He went

10 and got his firearm and took it with him, left the

11 residence.

12 MS. HAMILTON: Beg the Court's indulgence.

13 Q. Thank you. Please answer any questions that defense

14 may have.

15 MS. SIKORA: May it please the Court.

16 THE COURT: Counselor.

17 CROSS-EXAMINATION

18 BY MS. SIKORA

19 Q. Good afternoon, Deputy Reed. I believe you testified

20 you got a call to be -- to come out to Mr. Bayron's house

21 around 2:30 in the morning?

22 A. I believe it was sometime around 2:30 in the morning.

23 Q. Do you remember how long it took you from the time

24 you received the call to the time you actually would have

25 arrived at the residence?

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 A. I don't remember the exact time. It wasn't long
2 because I wasn't very far away. I was at the fuel pumps,
3 which is over on Heckle Boulevard.

4 Q. Do you know about how many miles it would be between
5 where you were located and the defendant's residence?

6 A. If I had to estimate, I'd say maybe 3 to 4, 3 to 4
7 miles.

8 Q. Three to 4 miles?

9 A. It's really not that far.

10 Q. And when you receive a call from dispatch, do they
11 give you some basic information about the type of call
12 that you're going out on?

13 A. Yes, ma'am.

14 Q. And back on June 23rd, that night, did dispatch
15 give you any information about whether or not a weapon was
16 involved?

17 A. Yes, they did.

18 Q. And what kind of information did you have?

19 A. The -- on the CAD screen -- I don't think they
20 gave -- I don't remember them giving it over the radio
21 that a handgun had been pointed, but on the CAD screen,
22 which is on the mobile data terminal, I remember reading
23 that the suspect had pointed -- or the -- or the victim
24 was claiming that the suspect had pointed a handgun at
25 her.

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 Q. Okay. And whenever you arrived at the residence,
2 were there any other police officers with you that night?

3 A. No. I was the first officer on the scene.

4 Q. And when you arrived out there, were you dressed
5 similar to how you are today in court?

6 A. Similar. Short sleeves and a tie because of the
7 weather at that time.

8 Q. And did you arrive in a -- what we would call a
9 patrol car?

10 A. Yes.

11 Q. And the patrol car is marked with the York County
12 Sheriff's Office emblem?

13 A. Yes, ma'am.

14 Q. Does it have blue lights on the top of the car?

15 A. Yes, ma'am.

16 Q. Is your car also equipped with an in-car video camera
17 system?

18 A. Yes, ma'am.

19 Q. Could you just please explain for the jury briefly
20 what an in-car camera system is.

21 A. We've got a camera that -- it's -- there's a little
22 camera that's mounted on the front of our car that's --
23 it's inside the passenger compartment but it's right up
24 against the windshield. And whenever we activate it,
25 anything that's recorded goes back to a -- some kind of

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 computer in the rear of our patrol car. I'm not sure how
2 it all works. We have a digital camera recording system
3 now. It goes back to that, and then whenever we stop
4 recording, it will save it to that computer. And then
5 whenever we pull it to a hot spot, typically it's located
6 at a district office. Ours is at district III, our
7 district III office. We'll pull up and it will download
8 that video to the main server, which we can pull up on our
9 website.

10 Q. Do you know if your in-car video camera was
11 operational that night when you went out on this call?

12 A. Yes.

13 Q. And how do you know that?

14 A. I turned it on myself, and I was able to go back
15 later on and make a copy of the video.

16 Q. Did you actually have the opportunity to watch the
17 video that was captured by your camera from this night?

18 A. Yes.

19 Q. And in addition to the camera that your car is
20 equipped with, are -- do you have as part of your uniform
21 and the gear you have on any type of microphone system on
22 your body?

23 A. Yes. I have a body mike.

24 Q. And can you explain how that works to the jury.

25 A. It's a tiny little box that -- normally I wear it on

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 the front of my belt, and it's basically an audio
2 recorder. Anytime that the camera's activated, as long as
3 that's turned on, which, you know, I always leave it on.
4 Whenever it's turned on, it will start recording and all
5 the audio that's going along with the video that's being
6 recorded will be transmitted back to the computer as well.

7 Q. And do you know if your body mike was working back on
8 June 23rd, when you came out on this call?

9 A. Yes, it was.

10 Q. And how do you know that?

11 A. Because, again, I watched the video, and I was able
12 to verify.

13 Q. Were there any other officers that ultimately arrived
14 out on scene that night?

15 A. Yes.

16 Q. And who would that be?

17 A. Deputy Yates and Sergeant Wright came out.

18 Q. And they arrived after you did?

19 A. They did.

20 Q. About how long after you first arrived on scene did
21 the other officers show up?

22 A. Deputy Yates showed up -- I can't give you an exact
23 time. I could estimate maybe probably under ten minutes,
24 fairly under ten minutes that he showed up. Again, it was
25 just estimating because I don't remember the exact time he

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 showed up.

2 Q. Were the other officers on scene when you actually
3 went inside the residence?

4 A. No.

5 Q. And you testified earlier that when you first
6 arrived, you could see a gentleman in the doorway at that
7 residence?

8 A. Yes.

9 Q. And that part of his body was obscured so you
10 couldn't see if he had a weapon or anything in his hands?

11 A. Correct.

12 Q. And after you were able to make it into the
13 residence, did you find any type of weapon in his hand?

14 A. No, I did not.

15 Q. Did you find any type of weapon anywhere on his
16 person, like in his pockets or his pants?

17 A. No, ma'am.

18 Q. And I believe you testified that whenever you first
19 saw this individual standing at the door, he was either
20 talking or arguing with someone?

21 A. Either talking or yelling, but I couldn't hear
22 anything. So if he was yelling, it wasn't very long.
23 Possibly arguing with somebody.

24 Q. When you say "yelling," was he raising his voice?

25 A. No. It looked like he was kind of agitated. His

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 mouth was moving pretty quickly, open pretty wide. I
2 mean, you know what someone looks like if they're yelling
3 at somebody, even if you don't hear it. It appeared to me
4 that he might either be talking or yelling at somebody
5 inside the house.

6 Q. And when you first got there and you parked your
7 patrol car, how far would your patrol car have been from
8 the front door of that residence? Do you remember?

9 A. Maybe 20, 25 feet.

10 Q. And you testified that you saw a scooter as you
11 approached the residence?

12 A. Yes.

13 Q. And how far was the scooter that you observed from
14 the front door of the residence?

15 A. It was in between, so I'd say maybe 10 feet.

16 Q. About 10 feet.

17 Did you find any weapons at all inside the residence?

18 A. No, ma'am.

19 Q. You testified that you found the 9-millimeter that we
20 have seen in evidence inside a scooter?

21 A. Yes, ma'am.

22 Q. Did you -- were you able to just get in the scooter
23 without using a key, or did it require a key for you to
24 access what was inside?

25 A. Required a key.

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 Q. And you took a photograph of the gun?

2 A. Yes, ma'am.

3 Q. And you took a photograph of the gun for what
4 purpose?

5 A. Just to show that it was -- what the condition of the
6 gun was, that it didn't have a magazine ejected or rounds
7 laying all over the place. Just to show that that was the
8 condition of the gun and where it was sitting. It was
9 indeed inside that compartment on the scooter.

10 Q. So is it fair to say that you considered the
11 photograph that you took of the gun as potential evidence
12 in this case?

13 A. Potentially.

14 Q. Now, was the photograph of the gun taken with the
15 in-car video camera, or did you have an actual traditional
16 camera you can hold in your hand?

17 A. I had a digital camera that I used.

18 Q. And did you speak with Ms. Correa that night?

19 A. I did.

20 Q. And about how long did you speak with her? Do you
21 remember?

22 A. I don't remember the exact amount of time.

23 Q. Did you see any signs of injury to her? Redness?

24 Bruising? Swelling? Anything at all?

25 A. No, ma'am.

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 Q. Did you take any photographs of her body?

2 A. No, ma'am.

3 Q. And you testified that according to the information
4 that you had from dispatch, it was your understanding when
5 you were headed out on the call that someone had pointed a
6 gun at the victim?

7 A. That's correct.

8 Q. So to kind of clear up what you also testified to in
9 direct, when you arrived at the residence, you could not
10 see part of the defendant's body?

11 A. Right, the left half of his body.

12 Q. And there was some talk about a Taser and some
13 probes?

14 A. Yes, ma'am.

15 Q. Was the defendant actually tazed that night?

16 A. Yes.

17 Q. And at what point was Mr. Bayron tazed?

18 A. When I forced entry into the home, I came into the
19 home and again I saw the female with the two children to
20 the right. He was right in front of me, and there was all
21 the debris all over the floor. I told him to -- I had
22 told him to step out, told him -- I went to reach for his
23 arm, I think it was his left arm, and I actually made
24 contact with him. He jerked away from me and took an
25 aggressive stance, just kind of backing up. Obviously

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 wasn't going to comply with me. Still yelling at me, you
2 know, telling me no, that, you know, I need to get out of
3 his house. Had his fist clenched.

4 So I made the determination at that point because of
5 all the objects that were in the floor, the possibility
6 that the gun was maybe hidden somewhere, either in his
7 waistband, somewhere on his person, somewhere in the
8 house, had the children that were right there that he
9 needed to be immobilized. I didn't need to be wrestling
10 with him and potentially hurting somebody else or hurting
11 one of us, including him, even more than was necessary.
12 So I tried to use the least amount of force.

13 Q. Because you were the only officer on scene at this
14 point?

15 A. That's correct.

16 Q. And at the time that Mr. Bayron was tazed, was
17 Mr. Correa and the children able to see what was going on?

18 A. Yes, they were.

19 Q. And what was her reaction to that?

20 A. She was already screaming whenever I came into the
21 house. When I kicked in -- open the door. She just
22 continued to scream and cry.

23 Q. And you testified that you've been a police officer
24 for about five years?

25 A. Yes.

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 Q. And how many calls would you say you go on, on
2 average, in the course of a year?

3 A. I couldn't even tell you. I mean, we do a lot.

4 Q. A lot? More than a hundred? Less than a hundred?

5 A. Probably more than a hundred.

6 Q. And do you always do a police report every time you
7 respond out on a call?

8 A. No.

9 Q. In what type of cases would you do a police report?

10 A. It's common -- I would say it's common for us to do
11 one after a domestic disturbance. We're always going to
12 do one if there's an arrest, and that's on any case. If
13 there's an arrest, other than it being -- with the
14 possible exception of a commitment warrant, someone didn't
15 pay a traffic fine. But if there's an arrest, especially
16 if it's a domestic. And of course if force is used beyond
17 just, you know, placing your hands on someone and taking
18 them into custody.

19 Q. And you testified that you had some training with the
20 Criminal Justice Academy and then once-monthly training
21 with the sheriff's office. Does any part of the training
22 that you've received cover report writing?

23 A. Yes.

24 Q. Does any part of the training that you received cover
25 the gathering of evidence?

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 A. Yes, from time to time.

2 Q. Do you have any idea how many reports you may have
3 written between the time of this incident, back on
4 June 23rd, and now?

5 A. I have no idea. I'd have to go back and look.

6 Q. Did you write the report in this particular case?

7 A. Yes, I did.

8 Q. And is it fair to say when you're preparing a police
9 report that one possible use of it would be to refresh
10 your memory in case you were going to court on a case?

11 A. Yes.

12 Q. Because often, as we are here today, you don't go to
13 court typically on cases right away; there's a
14 several-month lapse in between the time of the incident
15 and the time you go to court, correct?

16 A. Correct.

17 Q. Have you had a chance to review the report in this
18 incident prior to coming to court today?

19 A. Yes.

20 Q. Do you have a copy up there with you right now?

21 A. No, I don't.

22 Q. Would you like a copy before I start asking questions
23 about it --

24 A. Sure.

25 Q. -- to help refresh your memory?

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 You testified earlier that when you arrived at the
2 residence that Ms. Correa seemed crying and appeared
3 scared; is that correct?

4 A. Yes.

5 Q. Would you say that that would be important to note in
6 your police report, the demeanor of the victim at the
7 time?

8 A. At which point?

9 Q. Well, you testified when you arrived at the residence
10 that the victim in this case, Ms. Correa, appeared scared
11 and was crying. Is that true?

12 A. Are you talking about when I kicked in the door?
13 Because that's when I first -- first took the --

14 Q. Well, you tell me. At what point did you -- at what
15 point was it your opinion that her demeanor was that she
16 was crying and scared?

17 A. Well, when I first kicked in the door, she was
18 screaming, crying, appeared terrified.

19 Q. And if you want to take a minute to review your
20 report before you answer the question, did you note
21 anything about Ms. Correa's demeanor that night in your
22 police report?

23 A. Doesn't appear that -- no, doesn't appear that I did.

24 Q. And you also testified that you at some point began
25 speaking to Mr. Bayron. Yes or no?

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 A. Correct, yes.

2 Q. About what had happened earlier in the night?

3 A. Yes.

4 Q. Before you arrived on scene?

5 A. Yes.

6 Q. Yes?

7 And that Mr. Bayron told you that he thought he was
8 being kicked out of the residence, so he got his firearm
9 and left; is that correct?

10 A. Yes.

11 Q. If you would take another look at your report, is
12 there anything in there concerning your conversation with
13 Mr. Bayron about him stating that he thought he was being
14 kicked out of the residence?

15 A. No, I don't think -- no, it doesn't say that.

16 Q. No, there's nothing in the report about that?

17 A. No, ma'am.

18 Q. And you testified that when you went into the home,
19 you saw some debris laying around the residence?

20 A. Yes.

21 Q. Did you use your camera to take photographs of what
22 the condition of the inside of the house looked like?

23 A. No, ma'am, I did not.

24 Q. Why not?

25 A. I just didn't even think about doing it. Didn't

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 occur to me.

2 Q. Well, you were actually out there on scene. Did you
3 ever witness Mr. Bayron threaten Ms. Correa while you were
4 there?

5 A. No, ma'am, I did not.

6 Q. Did you ever witness Mr. Bayron hit or attempt to hit
7 Ms. Correa while you were there?

8 A. No, ma'am.

9 Q. Thank you.

10 MS. SIKORA: I have no further questions.

11 MS. HAMILTON: Court's indulgence for a second. Your
12 Honor, may we approach?

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, a bench conference was held in the
15 presence but not within the hearing of the jury.)

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen of the jury panel, there's a matter we need to
18 take up at this time out of your presence, so I'm going to
19 go ahead and retire you to the jury room, and you may
20 refresh yourselves during the break. We'll probably take
21 about 10 or 15 minutes. Thank you.

22 (WHEREUPON, the jury left open court at approximately
23 3:33 p.m.)

24 THE COURT: All right, Counsel. Had a pretty
25 extensive discussion here at the bench, but it didn't

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 resolve anything, I don't think. You have to decide if
2 you going to put the video in. If you going to put the
3 video in, decide what you're going to redact out of it and
4 not put in. It can be explained to the jury the Court
5 found some issue -- there's certain information -- I can
6 just say to them the Court's found certain information --
7 or it's on there. It's not relevant to this case and
8 therefore we are not including it. I can tell them that.
9 I can give them that instruction. I've done that before.
10 Just say some of this information is not relevant to this
11 case, and the Court has determined that it would be
12 redacted. We can do that. It's one way to do it, but you
13 all need to decide what you're going to do.

14 MS. DESCH: Your Honor, I think what -- Ms. Hamilton
15 is telling me is that the video is two hours long, but I
16 think at the very --

17 THE COURT: Two hours?

18 MS. DESCH: Yes. I think at the very least, the
19 State would now basically have to put in the part where
20 the officer goes in, arrives, searches the scene, goes to
21 the door, goes in, and you hear what's going on at the
22 scene at the time that he arrives in the -- to the point
23 where -- I suppose to the point where he takes him and put
24 him into custody, and then the situation -- I agree with
25 the defense, the situation would be somewhat diffused at

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 that point to separate the parties. And without us
2 calling Ms. Correa, that is a Crawford issue as to whether
3 or not she then writes a statement to the side.

4 I will note for the Court, my understanding of the
5 video -- and correct me if I'm wrong -- I don't know if it
6 picks it up, but at various times, even when Mr. Bayron is
7 in the back of the patrol car, he is still, like, shouting
8 out. Even as the victim is standing there writing the
9 statement on her own, he is sort of directing, you know,
10 don't go in my scooter, don't go in my house. So he's
11 still -- I mean, it's not exactly a situation as it's been
12 portrayed that it's all diffused and everyone's separated.
13 I mean, he's very actively kind of participating from the
14 back of the car throughout the entire portion of it.

15 So, I mean, although technically we legally could get
16 that in, you know, unless the Court were to rule that it's
17 still an excited utterance at that point where she's
18 trying to write her statement after it's been diffused and
19 there's still activity going on, we'd have to figure out
20 where to stop it to not violate anything the Court has
21 already ruled on.

22 THE COURT: Well, you know, I haven't seen it. You
23 say it's two hours long. I have not seen it. So I have
24 no idea what's on it, where to stop, anything else. So
25 you have to agree on something or we have to look at it

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 now and try to decide what to do. Y'all need to decide
2 what the issues are, I think, and what you need to do with
3 it. Before you kind of tentatively agreed on redacting
4 certain portions, letting certain portions in. And maybe
5 we just need to do that. I'd have to take time to do
6 that.

7 MS. SIKORA: May it please the Court, Your Honor. To
8 try to simplify things, and I don't know if I'm putting
9 words in her mouth, but if it's the State's intention that
10 they just want to put in the beginning of Deputy Reed's
11 video where he first arrives on the scene, shows up,
12 Mr. Bayron is tazed, they ultimately get him out of the
13 house and they put him in the patrol car, if that's the
14 only portion of the video they're talking about showing,
15 that section is relatively short. It all happens fairly
16 quickly, so it should not take that long. Unless I'm
17 misunderstanding what they're wanting to put in.

18 THE COURT: You want to put in, as defense counsel
19 has suggested, from the time the officer arrives on the
20 scene until he brings the defendant out and puts him in
21 the patrol car, handcuffs him and puts him in the patrol
22 car, up to that point, or are you talking about more than
23 that?

24 MS. DESCH: Your Honor, I think we'll put in to the
25 point where he's put in the back of the car, and then just

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 to give the jury clarification, deal on redirect the fact
2 that video and the report are things that officers review
3 before coming in too. And then if the victim does take
4 the stand for the defense, we'll deal with the rest of her
5 statements as they come up. But as far as the
6 case-in-chief, we'll put the portion in that -- is that
7 agreeable -- to the point where he's taken from the house
8 and put into the car, before she's handed a clipboard?

9 MS. SIKORA: Yes. Just for clarification purposes,
10 because I know that we had requested certain redactions of
11 stuff that is clearly inadmissible before the jury and the
12 State agreed with that. Because of the fact that they're
13 just talking now about putting a very short portion of the
14 video in, even though I had made notes about exactly at
15 what minute I wanted that, can we just be entirely sure,
16 Your Honor, so I don't want to see this case get mistried.
17 Since it is just a short clip of the video, may myself and
18 the --

19 THE COURT: All right. Go ahead.

20 MS. SIKORA: -- prosecutor watch that together?
21 Because it's a very small clip. It's like ten minutes.

22 THE COURT: All right. Why don't you do that. The
23 rest of us will take a short break. And I'll give you
24 enough time to do that, take a quick break yourself.

25 I'm going to let the officer stand down, let the

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 record reflect. You can do anything you want to do during
2 the break case except talk about the case. You can't
3 discuss the case with the attorneys or anything else.
4 Okay. You may stand down.

5 (A recess was taken from 3:39 p.m. to 4:00 p.m.)

6 THE COURT: All right, Counsel. Where are we?

7 MS. HAMILTON: Your Honor, I think we have come to a
8 consensus. We're going to agree to show about, I'd say
9 ten minutes of video clips from the beginning of the
10 incident where he was tazed and all of that happened, hear
11 the screaming. Then we're going to stop it and then bring
12 in the admissions that he testified to that were not in
13 the incident report.

14 THE COURT: Admissions?

15 MS. HAMILTON: Yes, Your Honor, of the defendant.

16 MS. DESCH: Your Honor, essentially the purpose of
17 the video is essentially what we talked about at side-bar.
18 It would be the fact that it has been brought out on cross
19 enough that the jury is wondering where this video is.
20 And so the purpose is the first four minutes of the video
21 that we're going to show is Deputy Reed coming up to the
22 scene, showing the spotlight, going up to the door and
23 just busting in the door. And I will warn you, it is a
24 high-pitched scream, and so we're going to have to deal
25 with volume issues, but there are going to be volume

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 issues that we probably should warn the jury about. Going
2 into the house and then calming the situation, the tazing
3 event, calming the situation, and then Deputy Reed
4 basically getting the defendant calmed down, taking the
5 Tasers out of him and putting him in the car.

6 We stop at that point because of legal reasons. That
7 is when it starts getting into where the victim's making
8 statement. So for that, we're conceding that legally
9 we're not getting in an overt Crawford objection. And
10 then we'll move to the portion where then the deputies are
11 searching the scooter, find the gun, bring the gun back
12 over to the top of the hood where the camera's showing,
13 unload it, take the chamber out, and then talking to the
14 defendant about why he's being arrested. And I think
15 there's no mention of CDV in that. I think it was very
16 clear that he talks about being arrested for pointing and
17 presenting and talks to the defendant about why the
18 deputy's arresting him for pointing and presenting.

19 And then there is some self-serving hearsay about the
20 defendant denying it and all that, but then there is --
21 we'll stop it at some point before he gets into any
22 character evidence. So again another legal issue,
23 stopping it and then jumping ahead to essentially the very
24 end where he says, "We had an argument, and I grabbed my
25 gun and left the house." And then we stop it completely.

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 So we covered all the legal issues and conceded.

2 THE COURT: That's your agreement?

3 MS. SIKORA: Yes, Your Honor. The three of us
4 watched it together, and the portions she described the
5 defense is fine with.

6 THE COURT: Now, so you're going to ask the officer
7 about that, and then you're going to offer the video now;
8 is that right?

9 MS. HAMILTON: Correct.

10 THE COURT: Now, you want a limiting instruction from
11 the Court to the jury to explain -- explanatory
12 instructions just to say you'll hear the video, the Court
13 has found certain portions of it are not relevant to this
14 case and therefore those portions have been excluded. You
15 have any problem with that? That's what I typically do.

16 MS. SIKORA: I don't have any problem with that, Your
17 Honor, given the fact that part of what they're taking out
18 is the victim's statement.

19 THE COURT: Well, I hear you saying that. If you go
20 from here and you stop it and then you start back and you
21 stop it --

22 MS. SIKORA: Right, right.

23 THE COURT: -- then you start back, the jury's going
24 to say, how about the rest of it, you know, what's going
25 on.

DEPUTY JONATHAN REED -- CROSS-EXAMINATION BY MS. SIKORA

1 MS. SIKORA: I don't have any problem with a limiting
2 instruction. My only request would be possibly to say
3 "relevant at this time" because that other portion of the
4 video I foresee very likely becoming relevant once
5 Ms. Correa has actually taken the stand.

6 THE COURT: I can say found not to be relevant at
7 this time and therefore they may exclude it.

8 MS. SIKORA: That's fine with me, Your Honor.

9 THE COURT: All right. Please bring the jury in.
10 I'll wait until you offer it first and then I'll instruct
11 them.

12 MS. HAMILTON: Thank you, Your Honor.

13 (The jury enters the courtroom at 4:04 p.m.)

14 THE COURT: Counsel ready to proceed?

15 MS. HAMILTON: Yes, Your Honor. Just review, Your
16 Honor.

17 RE-DIRECT EXAMINATION

18 BY MS. HAMILTON:

19 Q. Deputy Reed, defense counsel in cross-examination of
20 you brought up that there was a video that exists. Do you
21 also review video when you prepare for trial, first of
22 all, in addition to the incident report to refresh your
23 memory?

24 A. Yes, ma'am.

25 Q. Is it fair to say that that incident report may not

DEPUTY JONATHAN REED -- RE-DIRECT EXAMINATION BY MS.
HAMILTON

1 have every single detail that possibly happened on scene?

2 A. That's correct. A report's a summary of the events.

3 Q. Is that because a video is a true copy of what

4 actually happened on scene that night?

5 A. Yes, ma'am.

6 Q. Okay. And, Deputy Reed, you stated earlier that you

7 manually activated your camera when you arrived on

8 scene --

9 A. Yes, ma'am.

10 Q. -- correct?

11 And I know defense counsel -- actually, you

12 explained -- they asked you how video works, activation,

13 your training. You explained that to her. Now I'm going

14 to ask you, have you had a chance to view these videos?

15 That one we watched prior. And this is your video from

16 the car. You reviewed these disks?

17 A. Yes.

18 Q. Okay. Is this video that you had watched prior, this

19 version and this version, in-car video of the DVD that you

20 just watched a fair and accurate representation of the

21 actual scene that night that you observed on June 23rd,

22 2011?

23 A. It will give pretty good audio. Of course it's not

24 going to be able to show the inside of the residence, but

25 it will give a good depiction of the reactions of

DEPUTY JONATHAN REED -- RE-DIRECT EXAMINATION BY MS.
HAMILTON

1 everybody that was on the scene through the audio
2 recording. Of course, you can see me at the beginning of
3 the video when I'm going up to the house. That's as much
4 as it's going to show, and it will show when I retrieved
5 the firearm. So there are parts of it that it will give
6 better depiction than others.

7 Q. And have these CDs been altered or edited in any way
8 since you removed them from the camera that night?

9 A. The copies that I submitted, no.

10 Q. Now, what about this copy that you watched prior to
11 today?

12 A. I know that we did watch one that had some redactions
13 in it, had some parts that were taken out.

14 Q. Okay.

15 (State's Exhibits Number 5 and 6 were marked.)

16 MS. HAMILTON: Your Honor, the State offers State's
17 Exhibit -- Number 5 and 6 for admission into evidence.

18 THE COURT: Any objection, Counsel?

19 MS. SIKORA: No.

20 THE COURT: Admitted without objection.

21 (State's Exhibit Number 5 and 6 were admitted into
22 evidence.)

23 MS. HAMILTON: May I please publish to the jury, Your
24 Honor?

25 THE COURT: Yeah, you may publish. Let me give the

DEPUTY JONATHAN REED -- RE-DIRECT EXAMINATION BY MS.
HAMILTON

1 jury an instruction about it. You may go ahead and get
2 them ready to publish.

3 Mr. Foreman, ladies and gentlemen of the jury panel,
4 you're about to see some CDs and videos taken at the
5 scene. Some of these -- some parts of the CDs the Court
6 has found not relevant at this particular time during the
7 trial. They're not relevant, and therefore they are being
8 excluded at this time by a finding of the Court with
9 regard to whether they're allowable. I want you to
10 understand there will be some skips in the tape is what
11 I'm telling you. We call that redacting, but that's the
12 reason for it. The Court has found it's not relevant at
13 this particular time. It may become relevant, it may not
14 become relevant as we go through the trial. At any rate,
15 the portions you will see are portions of it. It's not in
16 its entirety.

17 You may proceed.

18 MS. DESCH: Your Honor, just to warn the jury, there
19 is -- it will be a loud --

20 THE COURT: There's one other thing I want to say.
21 Part of this is rather shrill or loud, so just prepare
22 yourself for that.

23 Q. Now, Deputy Reed, is this the video from your car,
24 patrol car that night on June 23rd?

25 A. Yes, ma'am.

DEPUTY JONATHAN REED -- RE-DIRECT EXAMINATION BY MS.
HAMILTON

1 Q. And to the right, what is that building?

2 A. That's going to be the apartment complex which houses
3 the apartment that we responded to.

4 (Videotape was played in open court.)

5 MS. HAMILTON: Sorry, Court's indulgence.

6 (Videotape was played in open court.)

7 Q. Now, Deputy Reed, what we are seeing right now, what
8 is going on?

9 A. At this point, we're attempting to retrieve the
10 firearm, locate the firearm. And I believe this point we
11 may have already gotten the keys to it. I'm not quite
12 sure. I believe we've already gotten the keys to it and
13 I'm trying to get it out.

14 Q. The keys to what?

15 A. To the scooter and to unlock it so I could retrieve
16 the firearm.

17 Q. Where is that located on the screen?

18 A. It's just barely to the right. Like I said earlier,
19 it's between my patrol car and the door. It may be a
20 little bit offset, but it's still between the patrol car
21 and the door of the residence.

22 Q. Okay. And where did you obtain those keys?

23 A. The keys were laying on the -- as soon as you come in
24 the door, there's a little linoleum right before you get
25 up to the stairs or get to the stairs that are going up.

DEPUTY JONATHAN REED -- RE-DIRECT EXAMINATION BY MS.
HAMILTON

1 And they were laying right on the floor, like right inside
2 the doorway.

3 Q. Okay. So from the defendant's residence, house?

4 A. Yes, the defendant's residence.

5 Q. And this is when the defendant is placed in the car?

6 A. Correct.

7 Q. He is located in the car when you get the keys?

8 A. Yes, that's correct.

9 (Videotape was played in open court.)

10 Q. Okay. So Deputy Reed, after watching that video, at
11 the beginning when you come on scene, everything's
12 happening so quickly. You can't tell if anyone inside
13 that home, that apartment, defendant's apartment, is upset
14 prior to you forcefully entering the home?

15 A. That's correct.

16 Q. Okay. Now, going back to the first video in the
17 conversations -- or the conversation with you. He says,
18 "Guns, where are -- what guns?" Do you remember seeing
19 that in the first video?

20 A. Yes.

21 Q. And he said "I don't have any guns" in the first
22 video. Do you remember him saying that?

23 A. I'm sorry, I must have missed that.

24 Q. Okay. And then later in the second video that we
25 just played, you proceed to get keys from the house?

DEPUTY JONATHAN REED -- RE-DIRECT EXAMINATION BY MS.
HAMILTON

1 A. Correct.

2 Q. To open the scooter?

3 A. That's correct.

4 Q. And what did you find in that scooter?

5 A. Found the handgun that I recovered and winded up
6 putting in evidence.

7 Q. The gun that he said he did not have?

8 A. That'd be correct. The gun located in his scooter.

9 Q. And you unloaded that handgun and placed it in your
10 patrol car?

11 A. Correct.

12 MS. HAMILTON: Beg the Court's indulgence.

13 Q. Okay. So what happened once you put it on the patrol
14 car? Where was the defendant sitting?

15 A. He was in the rear of my patrol vehicle.

16 Q. Now, what happened after you had placed the weapon in
17 the car?

18 A. At that point, he initiated contact with me, started
19 speaking with me and asking me basically what was going
20 on, what he was being charged with, if he was being
21 charged with anything. Trying to find out what was going
22 on.

23 Q. So when he initiates contact with you after you had
24 gotten the gun out of the scooter with the keys from his
25 house, he then admits that yes, there was a gun and I

DEPUTY JONATHAN REED - RECROSS-EXAMINATION BY MS. SIKORA

1 grabbed it after an argument and left?

2 A. Yes.

3 Q. Thank you.

4 RECROSS-EXAMINATION

5 BY MS. SIKORA:

6 Q. Just briefly, Deputy Reed. Whenever you were inside
7 the house, inside the residence when you first got there
8 and you had asked "Where's the gun," do you remember
9 seeing that on the video?

10 A. Yes, ma'am.

11 Q. And Mr. Bayron said, "What gun? I don't have any
12 gun."

13 A. I remember asking -- yeah, what gun.

14 Q. Is it possible that Mr. Bayron could have been
15 referring to the fact that there was no gun in the house
16 since that's where you were when the question was being
17 asked?

18 A. I can't answer that.

19 Q. Thank you.

20 MS. SIKORA: No further questions.

21 THE COURT: Thank you, sir. You may stand down.

22 MS. HAMILTON: State calls Deputy Yates.

23 WHEREUPON, DEPUTY JOSHUA YATES, having first been duly
24 sworn, testified under oath as follows:

25 DIRECT EXAMINATION

DEPUTY JOSHUA YATES - DIRECT EXAMINATION BY MS. HAMILTON

1 BY MS. HAMILTON

2 Q. Good afternoon, Deputy Yates. Would you please state
3 your name -- full name for the record.

4 A. Joshua Brad Yates.

5 Q. And what is your occupation?

6 A. I work in the patrol division for the sheriff's
7 office.

8 Q. And what type of work do you do in that position?

9 A. I work patrol along with Deputy Reed. We work the
10 district III area. We're basically in the marked patrol
11 cars, answering all calls for service in the Rock Hill
12 area.

13 Q. And what is district III area?

14 A. Rock Hill.

15 Q. What type of training do you have for this position?

16 A. I as well went to the academy as Deputy Reed, and we
17 do have training every month.

18 Q. And how long have you been employed with the York
19 County Sheriff's Office?

20 A. March will be four years.

21 Q. And were you employed in the present capacity on the
22 night of June 23rd, 2011?

23 A. I was.

24 Q. Okay. Now, I'd like to draw your attention to that
25 night. Where were you the night of June 23rd, 2011?

DEPUTY JOSHUA YATES - DIRECT EXAMINATION BY MS. HAMILTON

1 A. I was patrolling Rock Hill. I believe I was in the
2 southern area of Rock Hill. We actually had had a
3 burglary. Guys was breaking into cars, and our canine
4 team was out tracking. I was on the perimeter, and then
5 the call came out about the domestic disturbance at the
6 Willow Glen Apartments.

7 Q. And what made you respond based upon dispatch?

8 A. Deputy Reed was dispatched to a domestic disturbance.
9 Any time that we go to a domestic situation, there's two
10 officers that go just for officer safety reasons.

11 Q. And how long after do you estimate that Reed was on
12 scene did you arrive?

13 A. I don't know. It wasn't long.

14 Q. Okay. And could you please describe to me the scene
15 that you saw when you arrived at 221 Garden Way, Apartment
16 88.

17 A. When I pulled up in the apartment complex, I noticed
18 Deputy Reed had the defendant in handcuffs at the back of
19 his vehicle. He was removing the probes from the Taser
20 that were in the defendant. At that point he
21 handcuffed -- he was already handcuffed. Then he placed
22 him in the patrol car. That was what I saw initially when
23 I pulled up.

24 Q. Did you have a chance to go inside the apartment?

25 A. I did.

DEPUTY JOSHUA YATES - DIRECT EXAMINATION BY MS. HAMILTON

1 Q. Okay. And what did you see when entering that
2 apartment?

3 A. From the doorway you could see that it appeared that
4 some type of disturbance had occurred. There was debris
5 all over the ground and the TV was broken. That was also
6 on the ground.

7 Q. And without telling me anything she said, did you
8 speak to the victim that night?

9 A. I did.

10 Q. Where was the defendant at this time when you spoke
11 to her?

12 A. The defendant was in the back of Deputy Reed's patrol
13 car.

14 Q. Now, going -- without saying anything that the
15 children may have said, did you speak to the children that
16 were on scene that night?

17 A. I did.

18 Q. And what was their demeanor?

19 A. Seemed to be scared. Initially when I made contact
20 with the victim, she was still holding the three children
21 with her. Basically in our job, you know, we go to
22 situations like this, and we have children that basically
23 it affects them a lot. I believe the children were maybe
24 five to infant age -- age range. Basically what I do, I
25 carry in my patrol car, I have a bag of, you know, little

DEPUTY JOSHUA YATES - DIRECT EXAMINATION BY MS. HAMILTON

1 plastic stars, badges or whatnot, that I hand out to kids
2 on any type of situation to kind of try to calm them down.
3 And I handed three of the children the little badges that
4 I had in my patrol car.

5 Q. Okay. And where did you end up taking the victim and
6 the children after the incident?

7 A. I'm not sure the relative, but we took her up the
8 street to the Shadow Lane Mobile Home Park. I believe it
9 was a grandmother. I don't know if it was the defendant's
10 mother or the victim's mother.

11 Q. And how far away was that from the apartment that you
12 had responded to?

13 A. Less than a mile.

14 MS. HAMILTON: Beg the Court's indulgence.

15 Q. Now, going back to when you had spoken to the
16 children, you gave them badges. Did you getting down on
17 their level help to calm them?

18 A. It did.

19 MS. SIKORA: Objection. Relevancy, Your Honor.

20 THE COURT: Sustained, Counsel.

21 Q. And...

22 MS. HAMILTON: Beg the Court's indulgence.

23 Q. Why was Ms. Correa and the children taken from the
24 scene?

25 A. Due to the damage of the door that Deputy Reed had to

DEPUTY JOSHUA YATES - DIRECT EXAMINATION BY MS. HAMILTON

1 make entry to the residence. My sergeant, Sergeant
2 Wright, and I were also on scene after Deputy Reed had
3 transported, and we thought it was safe for the victim and
4 the three children to go elsewhere due to the damage to
5 the door. We were unable to resecure the front door.

6 Q. And where was the defendant taken?

7 A. To the Moss Justice Center.

8 Q. Did she ask to be taken to that location?

9 A. I believe she did.

10 Q. Thank you. Please answer any questions the defense
11 may have.

12 MS. SIKORA: Nothing from the defense, Your Honor,
13 for this witness.

14 THE COURT: Thank you, sir. You may stand down.

15 MS. DESCH: Your Honor, may it please the Court, how
16 are we looking on time? Since I overheard there were some
17 concerns about time.

18 THE COURT: Well, I plan to go to about five or so.
19 Depends on where you are.

20 MS. DESCH: Well, the only remaining issue would be
21 some issues that we'd have to discuss outside the presence
22 of the jury.

23 THE COURT: Counsel, approach just a minute.

24 (WHEREUPON, a bench conference was held in the
25 presence but not within the hearing of the jury.)

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury panel, it's about 25 minutes until
3 five. The next witness that we would take is probably
4 going to be a rather lengthy witness. So we're discussing
5 that. Think we'll just go ahead and adjourn for the day
6 and pick back up in the morning about 9:30. For your
7 information, I will tell you that I think we'll finish
8 with the testimony, get arguments and charge done before
9 lunch tomorrow, so it's not going to be a long period of
10 time in the morning. But we'll go ahead and recess for
11 the day.

12 What I'm going to ask you to do is be back in the
13 jury room ready to go in the morning at 9:30, and we'll
14 try to get started promptly at 9:30 and resume the case.
15 Please have a pleasant night tonight and be back at 9:30.
16 Thank you.

17 (WHEREUPON, the jury left open court at approximately
18 4:34 p.m.)

19 THE COURT: All right. Counsel, any matter we need
20 to take up now outside the presence of the jury?

21 MS. HAMILTON: State rests, Your Honor.

22 THE COURT: I understand you're resting, but we're
23 going to do that in the morning, as I understand it,
24 before the jury. But you're resting now, so we'll
25 undertake any motions you got.

1 MS. DESCH: Your Honor, I mean, we'll rest and move
2 into the DV motion and start, and we might as well clear
3 that out and maybe possibly would be clarifying with the
4 defendant whether or not he's going to take the stand and
5 what you typically do to make sure --

6 THE COURT: We can do that if a decision has been
7 made on that. If you're going to rest, you still have to
8 do that before the jury so the jury know you're resting.
9 We can do that. Nevertheless, we can go ahead and take up
10 any motions and then I can -- if the defendant made up his
11 mind whether he's going to testify or not, let me ask him
12 about that so we can get that much done. So where are we
13 now? What do you want to take up now?

14 MS. HAMILTON: Nothing other than responding to
15 defense motion.

16 THE COURT: Counsel?

17 MS. SIKORA: Your Honor, since the State hadn't
18 officially rested in front of the jury, did you want me to
19 make my DV motion now or afterwards?

20 THE COURT: Yeah, sure, you can make it now. It will
21 be considered timely made. Even though they haven't
22 rested on the record, I just want them to do it in front
23 of the jury so they'll know we followed wherever we are in
24 the trial. But if you want to make a directed verdict
25 motion. I thought you all were talking about some motion

1 regarding DVD. I didn't --

2 MS. SIKORA: No.

3 THE COURT: -- what you said. But directed verdict
4 motion, go ahead.

5 MS. SIKORA: Yes. I have no motion regarding the
6 DVD, Your Honor, but I do have a motion for directed
7 verdict. The defense would put forth that none of the
8 witnesses so far have testified that this incident
9 actually occurred within York County, or at least that I
10 recall hearing, Your Honor. And therefore we would ask
11 for a directed verdict on that basis as well as the fact
12 that there has been the lack of evidence presented on the
13 fact of whether or not my client actually pointed or
14 presented a firearm at someone else, being Ms. Correa in
15 this case, Your Honor.

16 MS. DESCH: May it please the Court, Your Honor.
17 Your Honor, as you know, the standard is in the light most
18 favorable to the moving party, and we would point out
19 first, addressing the York County issue, I believe in the
20 introduction of Deputy Reed's testimony when Ms. Hamilton
21 was going through the standard first questions -- what is
22 your name, where do you work, where did you respond to
23 this address -- at that point he gave the address of
24 Garden Way, and I believe he said "York County" at that
25 point.

1 But we would argue, one, the argument is that he said
2 it. Two, in the abundance of caution, if he didn't say
3 "York County," we would say that clearly on several
4 occasions the 911 tape has the address in Rock Hill and he
5 is a York County Deputy. He's talked about having
6 jurisdiction. He responded to the address on Garden Way
7 in Rock Hill in York County. And then that's where the
8 gun was found.

9 As far as the pointing and presenting, Your Honor, at
10 Claribel Michelle Correa, at this point as far as the DV
11 motion standard, we feel that the 911 call, if it's found
12 to be credible by the Court would be the victim's voice,
13 and she identifies herself as Claribel Correa, and she
14 says "Michael Bayron" in response to the 911 operator
15 asking you her boyfriend's name, even though she says, "My
16 husband pointed a gun at me." So we would say that from
17 the 911 call that there's direct evidence that -- from her
18 words that said, "My husband pointed the gun at me" and
19 identifies him as the defendant. And in circumstantial
20 evidence that -- that it was pointed in a threatening way
21 is the burden we have before the jury, but I would say for
22 the purposes of the DV motion that there is the
23 defendant's own words at the end of that third clip that
24 we showed that admits having an argument, and he says at
25 that point, "I did grab the gun from the house and leave."

1 And I think that would be the existence of the elements.

2 Whether we could prove that beyond a reasonable doubt
3 would be obviously at the jury portion in closing
4 arguments after all the evidence has been presented. But
5 the 911 tape and the evidence from the defendant's own
6 mouth, I think that there is existence of the elements in
7 each of the case. To not be redundant, Mr. Bayron was
8 identified as the defendant, the firearm was entered into
9 evidence, and that that would be the elements of pointing
10 or presenting.

11 THE COURT: Let's talk about the jurisdictional
12 issue. You're saying that it was Officer Reed who
13 testified as to where he went, whether it was in York
14 County or not?

15 MS. DESCH: Ms. Hamilton is telling me that it was
16 Reed and Yates. I know it was in her questions. And we
17 can obviously play back the evidence. But it was said --
18 Your Honor, there was testimony, and obviously we can rely
19 on the court reporter, but there was testimony about where
20 were you that day. He gives the address of at the pumps.
21 And then there's further discussion, and I think it was
22 with Yates, that district III, and he describes district
23 III as his district in Rock Hill. Whether the words "York
24 County" were said, we would ask that the Court take
25 judicial notice that Rock Hill is in York County and in

1 the alternative, move to reopen the case just to have the
2 deputy stand there.

3 But I think there was an answer in both Reed's
4 testimony and in Yates'. Yates specifically district III,
5 Rock Hill. His jurisdiction, he's patrolling his
6 jurisdiction. But in Deputy Reed stating that that
7 address on Garden Way is in York County.

8 THE COURT: Let me ask the court reporter if you can
9 go back to the time. And should be right at the beginning
10 Officer Reed's testimony and see he mentioned York County
11 in there anywhere when he was going to call.

12 (The court reporter reads back.)

13 MS. DESCH: Your Honor, if you wanted to, if the
14 court reporter were so inclined, I do remember in Deputy
15 Yates' introduction there was talk about where his patrol
16 is --

17 THE COURT: Yeah, we don't have to play that back.
18 He testified that patrol district III and the district --
19 you asked where district III was; he said the city of Rock
20 Hill. And, of course, the city of Rock Hill is located
21 entirely within York County. There's no question about
22 that. Court will take judicial notice of that. We can
23 get the map and tell that. But the city of Rock Hill is
24 located entirely within York County. No part of the city
25 of Rock Hill is located outside of York County. He said

1 that was their district.

2 Furthermore, the address given where they were sent
3 to the apartments is located in Rock Hill and within York
4 County. And I'll have to go back and look, but I think
5 there's a case that says if it sufficiently identifies a
6 location within the county that that is sufficient to
7 establish jurisdiction. I don't think they have to say
8 the magic words "was this in York County." I don't think
9 they have to say that.

10 But I'm asking my clerk to try to find the case, but
11 that's come up before. And I think that the appellate
12 courts have said that if the location -- if it's
13 established that the location where it happened is in York
14 County or in the county in which the case is being
15 prosecuted that that is sufficient. And I think it's
16 going to be sufficient in this case, but I'll reserve a
17 ruling on that until tomorrow. I'm pretty sure we can
18 find a case on that. It's come up before.

19 Insofar as the issue with regards to the pointing and
20 presenting, there is a 911 call, which is in evidence, did
21 come in, by a person who identifies herself as Claribel
22 Correa. And she gives her address at the particular
23 apartment where they went, and she happened to be at that
24 particular apartment when they got there. And there was a
25 big disturbance going on at that time, and she was there.

1 And her statement, which is in the evidence, that came in
2 over the 911 tape, is she clearly says that, "My husband
3 pointed a gun at me." She clearly says that. And of
4 course then you've got the other evidence when you get
5 there that the gun was actually in the scooter. He had
6 left and come back. His own statement to the police after
7 he was Mirandised was that, yeah, we had a disturbance. I
8 was being -- an argument. I was being put out of the
9 house. I went and got my most prized possession, a gun,
10 and took it out. So he doesn't say I pointed it at
11 anybody, necessarily presented it to anybody.

12 But you do have her statement, excited utterance over
13 the 911 tape in which she clearly says he pointed a pistol
14 at her. And when they got to the scene, you know, and she
15 was wanting to leave the place at the time she was talking
16 on the 911 tape. She was wanting to leave there because
17 she was afraid for her and the children.

18 Now, when -- the other -- one definition of
19 presentation is to brandish a gun in a situation in which
20 there is an altercation going on, threats, or attempt to
21 intimidate are part of an ongoing disturbance. And so
22 those would be questions for the jury, it appears to me.
23 And it's -- in looking at the motion of directed verdict,
24 of course required to look at the evidence in the light
25 most favorable to the party against whom the motion is

1 made. In this case, it's light most favorable to the
2 State. I find there is substantial evidence from which
3 the jury could infer, if they believe the testimony or
4 evidence has been put in that the State has proven the
5 elements of this offense beyond a reasonable doubt.

6 The credibility of the witnesses, the weight of the
7 evidence, those are matters for the jury to determine.
8 The Court's only determination, I do not weigh the
9 evidence or judge the credibility of the witnesses. My
10 role is only to determine on a motion for directed verdict
11 whether there is any substantial evidence from which a
12 jury could make that finding. I find there is substantial
13 evidence from which they could make a finding.

14 So as to that particular part of your motion, I deny
15 your motion for directed verdict. I think there is
16 evidence there. That's a jury decision. The other part I
17 will look at a little closer. I'm sure there's a case
18 here somewhere. Haven't had it come up in recent years,
19 but it's come up in the past. And the Court in the past
20 has said you don't have to magically say the county in
21 which or the city in which it occurred as long as you can
22 identify the location as being within that jurisdiction.
23 There's no question but what these apartments are located
24 in the city of Rock Hill. There's no question that the
25 city of Rock Hill is located entirely within York County.

1 There's no question what these officers testified, their
2 patrol area is the city of Rock Hill and that they work
3 for York County Sheriff's Department. I think you
4 wouldn't normally be enforcing the law outside the county
5 unless you had some kind of special arrangements. And so
6 given all that, I don't think there's any question of what
7 the jurisdiction is there. And -- but I'll look at it
8 again, make a final ruling on it in the morning. But I'm
9 confident in that. Anything else?

10 MS. HAMILTON: Nothing from the State, Your Honor.

11 MS. SIKORA: Just one thing briefly from the defense,
12 Your Honor. My -- I did get a letter from my client's
13 bondsman, and I can present that to the Court, and it has
14 been notarized indicating that he is willing to stay on my
15 client's bond throughout the duration of the trial. He
16 has been out up to this point, so I just wanted to raise
17 that issue with the Court.

18 THE COURT: All right. My only concern about that
19 would be insofar as the victim is concerned, but I assume
20 that they have been together during the period of time
21 he's been out on bond anyway. Not going to make much
22 difference, I don't guess, whether he's out -- one more
23 day won't normally make a difference. So I am -- and the
24 only thing is I'm going to leave him out overnight on
25 bond. The only thing -- I don't have to do that,

1 Mr. Bayron. Make sure I pronounce your name correctly. I
2 don't have to do that, but I'm going to do that, leave you
3 out overnight because you're here in court and you've been
4 here when you're supposed to be here. However, I need to
5 admonish you that if for any reason you did not show up in
6 the morning when you're supposed to be here, the trial
7 would go on in your absence. Your attorney would be here
8 to represent you to the best of her ability, but the trial
9 would go forward. If the jury found you guilty, of course
10 bench warrant would be issued for your arrest and your
11 sentence would be sealed until you were arrested and
12 brought in, and then the sentence would be imposed on you
13 at that time. Of course if you're found not guilty, I
14 mean, that would be the end of the matter anyway. But do
15 you understand that if you fail to show up, the trial is
16 going to go forward in your absence? Do you understand
17 that?

18 THE DEFENDANT: I understand, Your Honor.

19 THE COURT: All right. I'll leave him out on bond
20 overnight. Has he made a decision whether you're going to
21 testify or not? You don't have to do that right now, but
22 has he made a decision?

23 MS. SIKORA: Your Honor, we've talked about it. We
24 planned that the first witness that we'd call in the
25 morning would be Ms. Correa. We'd like to reserve the

1 right to officially make that decision, depending upon how
2 her testimony goes.

3 THE COURT: I'll allow you to do that. So we'll make
4 that decision tomorrow. I think that's about it for
5 tonight. We're going to look at the jurisdictional issue,
6 see what we can find on it. If you can find something on
7 it too, I'd appreciate it. We're going to be looking for
8 it. But I'm sure there's a case in there somewhere. It's
9 come up before. It's not the first time it's come up. It
10 hasn't come up in several years. Nobody raises it
11 anymore. But any rate, we'll look at it.

12 If you want to come up and let's -- well, I think we
13 can just do it right here, don't have to tie you up
14 anymore, with regard to the charge. I think you -- both
15 sides are familiar with my charges. They'll be the same
16 in this case. The only difference being with pointing and
17 presenting, we need to discuss that maybe. If you want to
18 come up to the bench and let's go over that just a minute.

19 (WHEREUPON, a bench conference was held.)

20 (The proceedings were adjourned until 9:30 a.m.)

21 (Proceedings resumed at 9:49 a.m. on November 30th, 2011.)

22 THE COURT: Back on the record. Let me say that with
23 regard to the directed verdict motion yesterday, on the
24 29th during trial, the Court finds that there is
25 substantial evidence before the jury from which -- that

1 could infer that this event occurred in York County and
2 therefore the Court has jurisdiction here in this case.
3 And therefore, it's a matter for the jury to determine if
4 there's substantial evidence. Therefore, I'll deny your
5 motion for directed verdict on that issue.

6 And specifically I'd say that the officers'
7 testimony, they're, of course, York County officers from
8 that jurisdiction, outside the county except under special
9 circumstances. They testified that they were patrolling
10 according to their normal duties and that Rock Hill was
11 their -- they were assigned to district III, which
12 encompasses the city of Rock Hill and that that is their
13 district. And that's where they got called out to. The
14 Court certainly notes that I lived in York County for more
15 than 69 years, and the city of Rock Hill has always been
16 and still is encompassed totally within York County. All
17 right. Thank you. Please bring the jury in.

18 (The jury enters the courtroom at 9:51 a.m.)

19 THE COURT: All right. When we adjourned yesterday,
20 we were at the end of the State's case. State ready to
21 proceed?

22 MS. HAMILTON: Yes, Your Honor. The State rests.

23 THE COURT: Counsel, ready to proceed with the
24 Defense?

25 MS. SIKORA: May it please the Court, yes, we are,

1 Your Honor. The Defense calls Ms. Claribel Correa to the
2 stand, please.

3 Ms. Correa, if you would just step up to the court
4 reporter there so she could swear you in before you take
5 the stand.

6 WHEREUPON, CLARIBEL CORREA, having first been duly sworn,
7 testified under oath as follows:

8 DIRECT EXAMINATION

9 BY MS. SIKORA:

10 Q. Could you please state your name for the Court and
11 spell your last name for the court reporter.

12 A. It's Claribel Michelle Correa, C-O-R-R-E-A.

13 Q. And how old are you?

14 A. 23.

15 Q. And do you have any children?

16 A. Yes.

17 Q. How many do you have?

18 A. I have three.

19 Q. And how old are your kids?

20 A. I have a seven-year-old, a five-year-old, and a
21 one-year-old.

22 Q. And who is the father those children?

23 A. Michael Bayron, Jr.

24 Q. All right. Are you and Mr. Bayron currently
25 together?

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

- 1 A. Yes, at the moment we are.
- 2 Q. And how long have y'all been together?
- 3 A. Nine years.
- 4 Q. And do you know how old Mr. Bayron is?
- 5 A. He's 26.
- 6 Q. And back on June 23rd of this year, what was the
7 financial situation of your family at that time?
- 8 A. Well, he had just lost his job, and I was currently
9 unemployed.
- 10 Q. And at that time, were you living in Rock Hill?
- 11 A. Yes.
- 12 Q. And were your plans back on June 23rd to continue
13 to stay in the house you were in?
- 14 A. Yes.
- 15 Q. Were you facing eviction from the home you were
16 living in at that time?
- 17 A. Yes.
- 18 Q. And when did you expect to be evicted?
- 19 A. The next day. June 24th.
- 20 Q. So in the early morning hours of June 23rd, did you
21 have a conversation with Mr. Bayron about the financial
22 situation your family was in?
- 23 A. Yes.
- 24 Q. And what were you discussing with him?
- 25 A. We were discussing our financial issues, and about

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 being evicted.

2 Q. And did that discussion turn into an argument?

3 A. Yes, it did.

4 Q. At some point, did Mr. Bayron leave the house?

5 A. Yes.

6 Q. And at some point did you call 911?

7 A. Yes.

8 Q. And at the time you called 911, was Mr. Bayron still
9 at the house with you?

10 A. No.

11 Q. Who was in the house with you when you called 911?

12 A. Just me and my three kids.

13 Q. Okay. Do you remember calling 911 that night?

14 A. Yes.

15 Q. Were you present here in the courtroom whenever the
16 911 operator played the tape from that night?

17 A. Yes.

18 Q. And you were able to hear that entire call?

19 A. Yes.

20 Q. And is that call exactly how you remember it
21 happening that night?

22 A. Yes.

23 Q. And when you first called 911, did you tell them that
24 Mr. Bayron pointed a gun at you?

25 A. Yes.

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 Q. Did you also tell him he did not hit you?

2 A. Yes.

3 Q. But then later in the call, did you tell the 911
4 operator that he had, in fact, hit you?

5 A. Yes.

6 Q. Did you explain why you changed your story in that
7 short period of time?

8 A. Well, I was really upset at the time. I was upset at
9 Michael. We were already having an argument, and I
10 just -- I can't explain why I did what I did. It was a
11 mistake.

12 Q. At some point that evening, did Mr. Bayron return
13 back to the house?

14 A. Yes.

15 Q. And when he returned to the house, were you still on
16 the phone with 911?

17 A. When he was -- when he had just pulled up on the
18 scooter, yes, I was.

19 Q. Did Mr. Bayron, to your knowledge, ever see you on
20 the phone with 911?

21 A. No, he did not.

22 Q. When you returned to the house, did you tell
23 Mr. Bayron that you had called 911?

24 A. No.

25 Q. Did you tell Mr. Bayron the police were coming out?

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

- 1 A. No.
- 2 Q. And after you called 911, do you remember about how
- 3 long it took the police to actually come out to your home?
- 4 A. About maybe 15, ten minutes. 15 minutes.
- 5 Q. About 15 minutes?
- 6 A. Yeah.
- 7 Q. And when the police arrived to your home, where was
- 8 Mr. Bayron when the police got there?
- 9 A. He was at -- near the front door.
- 10 Q. Okay. Was the front door opened or closed?
- 11 A. It was slightly opened.
- 12 Q. Where were you when the police showed up?
- 13 A. I was on the right side of the door.
- 14 Q. When you say "on the right side," do you mean inside
- 15 or outside the door?
- 16 A. I was inside, inside of the door on the right.
- 17 Q. Inside the house?
- 18 A. Uh-huh.
- 19 Q. Okay. And after the police arrived at the house, how
- 20 long did it take to have them take Mr. Bayron out of the
- 21 home? Do you remember?
- 22 A. It happened so fast, it was maybe less than ten
- 23 minutes.
- 24 Q. Less than ten minutes?
- 25 A. Yeah.

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 Q. And do you know where they took Mr. Bayron? Did you
2 see that?

3 A. Yeah, well, I stepped out the home when the police
4 first kicked in my door. But they took him to the back of
5 a patrol car.

6 Q. Okay. And how far was that patrol car from where you
7 were standing?

8 A. It was right at the -- near the curb of the sidewalk
9 where I was standing.

10 Q. Do you remember how many police officers were out
11 there that night?

12 A. At first it was only one.

13 Q. Okay.

14 A. And then another police car was there, and it was
15 like two more.

16 Q. So it was a total of three officers?

17 A. Yes.

18 Q. At some point while the police were at your home that
19 night, did you talk to the police?

20 A. Yes.

21 Q. Did you talk to police about what had happened
22 earlier in the evening?

23 A. Yes.

24 Q. Did the police ask you if Mr. Bayron pointed a gun at
25 you?

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 A. Yes.

2 Q. And what did you tell them?

3 A. I told them that he didn't point the gun at me.

4 Q. Do you remember what you did tell the officers about
5 what happened that night?

6 A. Not entirely, no.

7 Q. Do you remember speaking with officers and giving a
8 written statement about what happened?

9 A. Yes.

10 Q. Do you remember telling the officers whether or not
11 Mr. Bayron hit you that night?

12 A. Yes.

13 Q. And what did you tell the officers about whether or
14 not he struck you?

15 A. I told them that he didn't hit me and it was like
16 a -- in a defensive way.

17 Q. Can you just explain what you mean by "defensive
18 way"?

19 A. Like I was trying to hit him and he hit my hand down.

20 Q. And how many times did he hit you?

21 A. I said it was only once.

22 Q. You said it was only once, but how many times
23 actually did he hit you?

24 A. None.

25 Q. None? Did you tell the police that he verbally

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 threatened you in any way?

2 A. No.

3 Q. Did you sustain any injuries that night?

4 A. No.

5 Q. Any redness, bruising, swelling to your arm?

6 A. No.

7 Q. And did Mr. Bayron ever have a gun that night in your
8 presence?

9 A. No.

10 MS. SIKORA: May I approach the witness, Your Honor?

11 THE COURT: You may.

12 Q. (MS. SIKORA) I want you to take a few minutes to
13 look over what I've handed you. Did you have a chance to
14 look it over?

15 A. Yes.

16 Q. Do you recognize what that document is that I gave
17 you?

18 A. Yes.

19 Q. And what is it?

20 A. It's a police statement that I wrote that night.

21 Q. Okay. So that's your handwriting on this form?

22 A. Yes.

23 Q. When was that statement taken? Do you remember?

24 A. I'm sorry?

25 Q. Do you remember what on date that statement was

CLARIBEL CORREA -- DIRECT EXAMINATION BY MS. SIKORA

1 taken?

2 A. On June 23rd, 2011.

3 Q. Is that when you the police were still at your home
4 that night?

5 A. Yes.

6 Q. And in that statement, did you tell the officers that
7 Mr. Bayron actually slapped your arm twice?

8 A. Yes.

9 Q. But how many times did he actually slap you?

10 A. None.

11 Q. Did you tell the officers in the statement that he
12 broke your television set?

13 A. Yes.

14 Q. Did Mr. Bayron, in fact, break your television set?

15 A. Yes.

16 Q. Tell me how that happened.

17 A. Well, we were arguing in the living room and, you
18 know, we were just very angry with each other, trying to
19 hurt each other's feelings, and he just broke the TV, like
20 he just pushed it off the edge of the stand where it was
21 on.

22 Q. And did you ever try to make physical contact with
23 Mr. Bayron yourself?

24 A. No.

25 Q. So when you testified earlier -- I just want to make

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 sure I'm clear. Did you ever try to hit him?

2 A. No, we weren't standing that close to each other.

3 Q. You weren't standing that close to each other, but

4 you had mentioned something earlier about him acting

5 defensively. Why would he have to act defensively if you

6 weren't trying to strike him?

7 A. That's what I told the police to make them believe he

8 hit me.

9 Q. You also said in your statement that you were very

10 scared. Do you remember that?

11 A. Yes.

12 Q. And were you afraid of him that night?

13 A. No.

14 Q. Why did you tell the police you were?

15 A. So they can believe my story.

16 Q. Now, we talked about the fact at first you told 911

17 that he did point a gun at you.

18 A. Uh-huh.

19 Q. And there was some discussion in the statement you

20 gave to the police that night about the gun; is that

21 correct?

22 A. Right.

23 Q. And the statement you gave the police, what did you

24 say? Don't read from the statement, but what did you tell

25 them about whether or not he pointed a gun at you?

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 A. I said that he did not point the gun or load it; that
2 he just had it in his hand while we were arguing.

3 Q. But you testified earlier that he did not, in fact,
4 have it in his hand?

5 A. No.

6 Q. Did you even see the gun that night?

7 A. Well, I knew it was in my home but it wasn't in my --
8 in my vision. It wasn't in my presence at that moment.

9 Q. It was not?

10 A. No.

11 Q. Ultimately your husband was arrested that night for
12 pointing and presenting a firearm; is that correct?

13 A. Yes.

14 Q. And ultimately the case went to be prosecuted by the
15 Assistant Solicitor's Office in York County; is that
16 correct?

17 A. Yes.

18 Q. Did you have any conversations with the prosecutor
19 about this case?

20 A. Yes.

21 Q. And which prosecutor did you have those conversations
22 with?

23 A. Ms. Bender.

24 Q. And could you point her out for us?

25 A. (indicating).

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 Q. What color hair does she have?

2 A. Blondish.

3 Q. And how many conversation did you have with

4 Ms. Bender about this?

5 A. I've had numerous. About one -- one to three, around

6 there.

7 Q. And did you ever tell Ms. Bayron that you lied to the

8 police -- I'm sorry, Ms. Bender-Hamilton that you lied to

9 the police about what happened that night?

10 A. I do remember telling her at least once he never

11 pointed a gun at me.

12 Q. And did you ask at some point Ms. Bender-Hamilton to

13 dismiss the charges against your husband?

14 A. Yes.

15 Q. In fact, did you come to the Solicitor's Office in

16 September of this year and sign a drop warrant form?

17 A. Yes.

18 Q. And after that happened, was the case, in fact,

19 dismissed?

20 A. No.

21 Q. At some point after that, did you ever make contact

22 with my office, the Public Defender's office?

23 A. Yes.

24 Q. At some point did you actually come into our office?

25 A. Yes.

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 Q. And who did you meet with when you came into the
2 office?

3 A. Mr. O'Kelley.

4 Q. Barton O'Kelley?

5 A. Barton.

6 Q. And whenever you met with Mr. O'Kelley, did
7 Mr. Bayron come with you to our office?

8 A. No.

9 Q. Who came with you that day?

10 A. A family friend.

11 Q. And who would that be?

12 A. His name is Benjamin Cruise.

13 Q. Did you meet with Mr. O'Kelley with the family friend
14 or just by yourself?

15 A. By myself.

16 Q. And during the course of that meeting with
17 Mr. O'Kelley, did you also give Mr. O'Kelley a statement
18 about what happened that night?

19 A. Yes.

20 Q. Do you remember what that statement said?

21 A. Yes.

22 Q. And what did the statement say?

23 A. It says that I lied on my -- on my previous statement
24 on the 911 call and on the police statement that I lied,
25 that my husband never, in fact, hit me or pointed a gun at

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 me or presented it.

2 Q. Did you say why you lied about those things in

3 statement to Mr. O'Kelley?

4 A. Because I was angry at Michael.

5 Q. Okay. Did you also say in that statement whether or

6 not you had told the prosecutor in this case if you had

7 lied about your statement --

8 A. Yes.

9 Q. -- to the police? And did you, in fact, lie to your
10 statement made to the police?

11 A. If I lied on the police statement?

12 Q. Yes.

13 A. Yes, I did.

14 Q. So before you took the stand today, you put your hand
15 on the Bible and took an oath to tell the truth here in
16 this courtroom, correct?

17 A. Yes.

18 Q. And is it your testimony today that Michael Bayron
19 ever hit you that night?

20 A. Yes, that he never hit me.

21 Q. Okay. And it is your testimony that he did not point
22 a gun at you?

23 A. He did not.

24 Q. Did he ever threaten you any way verbally?

25 A. No.

CLARIBEL CORREA - DIRECT EXAMINATION BY MS. SIKORA

1 Q. Did he threaten to shoot you?

2 A. No.

3 Q. Did he threaten to kill you?

4 A. No.

5 Q. Did he actually injure you?

6 A. No.

7 Q. Did he ever actually have the gun in his hand during
8 the course of your whole conversation or argument with him
9 that night?

10 A. No.

11 Q. Thank you. I have no further questions.

12 CROSS-EXAMINATION

13 BY MS. DESCH:

14 Q. Help me with the math. You're 23 now, right?

15 A. Yes.

16 Q. And you guys have been together since --

17 A. I was 14.

18 Q. You were 14? Where did you guys meet?

19 A. Our families has always known each other, so we were
20 always connected. And he moved to North Carolina -- well,
21 I was already living here a year before him, and he moved
22 in the same apartment complex. And like I said, our
23 families know each other.

24 Q. Been in Rock Hill your whole life?

25 A. No. I been in Rock Hill about ten years now.

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Q. Ten years? Okay. Were you in high school when you
2 guys met?

3 A. No, I was in middle school.

4 Q. Middle school?

5 A. Uh-huh.

6 Q. Dated him. Did you date anyone else when you first
7 met him, or has this been like, you know, nine years
8 together the entire time?

9 A. It's been nine years together the entire time.

10 Q. And then first child born when you were 16?

11 A. Yes.

12 Q. Okay. Where's your mom and dad?

13 A. Well, my dad is currently in jail. He hasn't been in
14 my life, and my mom currently resides in Rock Hill also.

15 Q. Is that where you went the night of? That was the --

16 A. Yes.

17 Q. -- where Deputy Yates --

18 A. I went to my mother's house.

19 Q. Do you have a good relationship with Mom?

20 A. Yes.

21 Q. Supportive?

22 A. Yes.

23 Q. What about other family?

24 A. I have a good relationship with -- I have mostly
25 aunts that live out here. And his dad also dates one of

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 my aunts, so...

2 Q. Mr. Bayron's dad dates one of your aunts?

3 A. (The witness nods her head.)

4 Q. Okay. And he's got family around here too?

5 A. Yeah, he has an uncle. One of his brothers live out
6 here.

7 Q. What about his parents?

8 A. Only his dad resides in Rock Hill.

9 Q. His mom is not in the picture?

10 A. No, she lives in New York.

11 Q. All right. So okay family relationship around here?

12 A. Yeah.

13 Q. When you're upset, who do you turn to?

14 A. Well, at the time I turn to my aunt mostly. Her name
15 is Katherine.

16 Q. Is that the one that's dating Mr. Bayron's dad?

17 A. Yes.

18 Q. All right. Who else?

19 A. If not her, I usually turn to my mom.

20 Q. So aunt and Mr. Bayron's dad first, right?

21 A. Aunt and my mother.

22 Q. Okay. The night that you guys -- on June 23rd, you
23 said that Mr. Bayron had just lost his job.

24 A. Yeah.

25 Q. He lost it in May, right, around there?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

- 1 A. He lost it around May.
- 2 Q. So it was the two of you and the three children in
3 the apartment?
- 4 A. Right.
- 5 Q. Do you have a car?
- 6 A. No.
- 7 Q. Do you have -- when did you last work?
- 8 A. Before then, 2009.
- 9 Q. So it had been a couple years. So you had been home
10 alone with the kids?
- 11 A. Yes.
- 12 Q. So everything, all the financial stuff is in
13 Mr. Bayron's hands, right?
- 14 A. Yes.
- 15 Q. So the fact that he brings home the money to pay the
16 bills, that -- him losing a job is pretty stressful.
- 17 A. Yes.
- 18 Q. All right. So you had been about a month not having
19 money coming into the house at that time?
- 20 A. Yes.
- 21 Q. Tried to keep the house?
- 22 A. Yes.
- 23 Q. Eviction notice comes in, right?
- 24 A. Yes.
- 25 Q. Kind of a high stressful time?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. Yes.

2 Q. Is the -- his scooter the only transportation he has?

3 A. Yes.

4 Q. And so that's what he rides when he's working to and
5 from?

6 A. Yes.

7 Q. Any other income coming into the home? You guys get
8 any help from anybody?

9 A. My mother and his dad was helping us pay the bills at
10 the time that we were having a struggle with it. That's
11 the -- one of the reasons it was so hard on us and why we
12 starting arguing because the apartment was, in fact, under
13 my mother's name. She was a cosigner along with -- along
14 with us.

15 Q. It was your mom and who else was on the lease?

16 A. Him. He was working, so he had to be.

17 Q. So Mr. Bayron and your mother had the lease?

18 A. Uh-huh, yeah.

19 Q. So eviction notice comes in. It's the next day. The
20 discussion at 2:30 in the morning, wasn't part of the
21 argument the fact he had gone out drinking that night and
22 that frustrated you, that your only money was going toward
23 that?

24 A. Well, I assumed that he went out drinking. Sometimes
25 he goes out with his friends. But he had went out and

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 left, and I was at home packing by myself, which is, in
2 fact, is why I was pretty upset that I had to pack and
3 deal with my three children and he was out. I didn't know
4 where he was.

5 Q. So he comes home at 2:30. You think he's been
6 drinking. You know that you're getting evicted. There's
7 no money, and so there's certainly no money to go out
8 drinking. So that kind of raises the stakes of you
9 getting upset that night?

10 A. Right.

11 Q. He comes in; you get into an argument. He breaks the
12 TV. Now you're losing even more. Can't afford to replace
13 the TV, right?

14 A. Right.

15 Q. So kids are still up, aren't they?

16 A. Well, at the time, my youngest, my one-year-old was
17 not up. Only the two, the seven-year-old and the
18 five-year-old.

19 Q. Okay. Were they up because they were just up, or
20 because they heard the arguing and woke up?

21 A. Well, they were helping me pack, so they were in
22 their rooms packing some of their stuff. They were up
23 pretty late that night.

24 Q. What was the layout of the apartment? Everything on
25 one floor, or did you have like one floor and --

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

- 1 A. We had a two floor.
- 2 Q. Bedrooms downstairs or upstairs?
- 3 A. Bedrooms are upstairs.
- 4 Q. So living room, bathroom, kitchen downstairs?
- 5 A. Right.
- 6 Q. So you're packing up that area?
- 7 A. Uh-huh.
- 8 Q. Seven and five year old are helping?
- 9 A. Uh-huh.
- 10 Q. You're upset at Michael not being there?
- 11 A. Yes.
- 12 Q. He comes in and an argument starts?
- 13 A. Well, we started talking first, and then it led to an
- 14 argument.
- 15 Q. Now, at some point, he tells the kids to go upstairs,
- 16 correct?
- 17 A. Well, the kids -- well, I sent the kids upstairs.
- 18 They were already upstairs. I said that he sent upstairs
- 19 to make my story believable, but they were already
- 20 upstairs. They weren't present at the time of the
- 21 argument.
- 22 Q. So at some point you called the police officers and
- 23 they respond, right?
- 24 A. Yes.
- 25 Q. Now, we've done a lot of talking about this statement

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 that Ms. Sikora went over with you.

2 MS. DESCH: The first one.

3 BY MS. DESCH:

4 Q. So if you could review this for me, please, again.

5 When you went over this with Ms. Sikora, you identified

6 your statement as the one you gave to -- was it Deputy

7 Yates?

8 A. Yes.

9 Q. Deputy Yates was the second -- you were in court
10 yesterday, right?

11 A. Yes.

12 Q. Deputy Yates was the second one, the second officer
13 that came on the stand?

14 A. Yes.

15 Q. And he was the one that came in and talked to the
16 children, and got everything calmed down?

17 A. Yes.

18 Q. All right. He nice to you?

19 A. Yes, he was.

20 Q. Nice to the kids?

21 A. Yes.

22 Q. Did you feel comfortable around him?

23 A. Honestly, no.

24 Q. How come?

25 A. Because my door had just been kicked in and my -- me

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 and my kids watched my husband be tazied by another police
2 officer.

3 Q. So not comfortable, but you felt comfortable getting
4 in the car to drive to Mom's house?

5 A. Yeah, well, they offered me a ride over there at the
6 time, so yes.

7 Q. Now, I'm just curious, do you -- what in your mind
8 are the consequences of lying?

9 A. Well, I don't -- I didn't know it was a crime to lie
10 on a police statement. Or to lie --

11 Q. It's been explained to you by several people now,
12 hasn't it?

13 A. Yes.

14 Q. So tell me what the consequences are.

15 A. You can be imprisoned.

16 Q. For how long?

17 A. I wasn't informed of how long.

18 Q. So even when you sat down with Mr. O'Kelley and you
19 went over your statement. Now, you said you met with
20 Mr. O'Kelley by yourself, correct?

21 A. Yes.

22 Q. And Mr. O'Kelley told you who he worked for, right?

23 A. Yes.

24 Q. And you had go into the Public Defender's office to
25 meet with him, right?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. Yes.

2 Q. And you knew he was an investigator with your

3 husband's attorney's office, correct?

4 A. Yes.

5 Q. And you knew that the purpose of you going in there

6 was to write a statement about the case for your husband,

7 right?

8 A. Yes.

9 Q. And he sat you down -- and I mean, Mr. O'Kelley's
10 been doing this a long time, right?

11 A. Yes.

12 Q. So he knows -- he knows the consequences of what
13 happens when statements are written.

14 MS. SIKORA: Objection. How does she know what
15 Mr. O'Kelley does or does not know?

16 MS. DESCH: Withdrawn.

17 THE COURT: Sustained.

18 BY MS. DESCH:

19 Q. You saw this -- I don't mean this to be rude in any
20 way, but you could read what was on the paper, right?

21 A. Yes.

22 Q. Now, the statement given by Mr. O'Kelley to give to
23 you -- show you -- I'm going to give you this second
24 statement. Now, for the purposes of the record, the
25 second statement that I've handed you is one piece of

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 paper. On the top it says "voluntary statement"

2 underlined. Date 10/12/11, page 1 of 1, correct?

3 A. Yes.

4 Q. Okay. Now underneath that, there's a line that has
5 your name, but that's not in your handwriting, is it?

6 A. No.

7 Q. That's Mr. O'Kelley wrote your name in there?

8 A. Yes.

9 Q. It says, "I am or we are going to talk to you about"
10 and then there's some words in there that's essentially
11 the pending charges against your husband. Is that how you
12 understand it to be?

13 A. Yes.

14 Q. Now then the next line says "which occurred on
15 6/23/2011," correct?

16 A. Yes.

17 Q. Okay. Now, when you get into the body of the
18 statement, do you see a question that's written there?

19 A. Yes.

20 Q. Okay. What's that question? Was that gone over with
21 you at the time you wrote this statement?

22 A. No, I was just asked to read it over.

23 Q. Which part? Your statement or the page that's in
24 front of you?

25 A. The page that's in front of me, that question.

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Q. Now that question you're looking at, that's
2 preprinted.

3 A. Yes.

4 Q. Do you remember reading that before you actually
5 wrote anything down?

6 A. Yes.

7 Q. What was that question? What do you understand that
8 question to be?

9 A. Just basically asking me if I'm telling the truth.

10 Q. Okay. And it says you declare it's a voluntary
11 statement.

12 A. Right.

13 Q. Do you know what that means?

14 A. Yes.

15 Q. You're doing it on your own.

16 A. Yes.

17 Q. That nobody promised you anything.

18 A. Right.

19 Q. That it's of your own free will.

20 A. Right.

21 Q. That nobody's threatening you or forcing you to do
22 the statement.

23 A. Right.

24 Q. And you're not being coerced. Do you know what that
25 means?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. Like convinced.

2 Q. That's a good explanation, yeah. So favor or no
3 favor and no leniency or no -- do you know what that
4 means?

5 A. No.

6 Q. Now, these forms are often used when it's someone
7 that has pending charges, which you don't, correct?

8 A. Correct.

9 Q. So sometime when people give statements, they hope
10 that's going to help them with later prosecution. So in
11 this case it wouldn't apply to you, but that's the words
12 that's in the statement.

13 A. Okay.

14 Q. Okay. Now, the next part, there's an answer. Is
15 that your handwriting or Mr. O'Kelley?

16 A. That's mine.

17 Q. Okay. So you wrote yes, you understand all the
18 questions we just went over?

19 A. Yes, right.

20 Q. Now, at that point or any point you met with
21 Mr. O'Kelley, did he explain that you have your own
22 fifth amendment rights? Do you know what that means?

23 A. No.

24 Q. So do you watch Law and Order?

25 A. Sometimes.

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Q. Do you know when they arrest people and they say, You
2 have the right to remain silent?

3 A. Right.

4 Q. You have the right to protect yourself, not say
5 anything that will incriminate you? Do you know what that
6 means?

7 A. Yes.

8 Q. What does that mean?

9 Q. I'm sorry.

10 A. That's okay. It's a weird thing. We all hear it on
11 TV, but to not incriminate yourself is to basically -- the
12 Constitution gives you the right that you don't have to
13 say anything that puts yourself in jeopardy of going to
14 jail. So that's what we call fifth amendment rights.

15 A. Okay.

16 Q. Did anybody explain all that to you?

17 A. No.

18 Q. Okay. Now, did anybody explain to you that lying to
19 the police officer is a crime?

20 A. No.

21 Q. Now, did they -- and this is really important.
22 There's two filing false -- filing false report crimes.
23 Did you know that?

24 A. No.

25 Q. There's one that if you lie about a misdemeanor, it's

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 a 30-day crime. Okay. If you lie about a felony, that's
2 a five-year crime. Do you know what that means?

3 A. No.

4 Q. That means you could face up to five years in jail if
5 you're lying about a felony.

6 A. Okay.

7 Q. Okay. Did anybody explain that to you?

8 A. No.

9 Q. Okay. Now, you didn't sign anything that said you
10 understood that by saying you lied to the police, you
11 could get in your own trouble?

12 A. Not that I remember.

13 Q. Nothing of that was explained to you? You were just
14 given this piece of paper to write the statement, right?

15 A. Right.

16 Q. Now, what did you write in that statement?

17 A. I wrote that what I said was a lie.

18 Q. Tell me what you wrote.

19 A. I wrote regarding the night I called 911 on my
20 husband, I lied to the officers saying my husband hit me
21 and had a gun on me. He never did any of these things. I
22 was just upset and wanted him to leave. I also have
23 signed a drop warrant form and have told Ms. Bender that I
24 lied on my police statement.

25 Q. Now, when you met with Ms. Bender,

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Ms. Bender-Hamilton that's here, did you also have a
2 victim advocate with you, Ms. Dawn Carter?

3 A. Yes.

4 Q. Do you know what a victim advocate is?

5 A. No.

6 Q. A victim advocate is someone that their sole job is
7 to advocate for you or fight for you. Does that make
8 sense?

9 A. Yes.

10 Q. Now, in that capacity, did you know that victims have
11 their own rights in South Carolina?

12 A. No.

13 Q. In the Constitution, victims have their own rights.
14 So we have advocates that fight for your rights aside from
15 everybody's elses. Did you know that?

16 A. No.

17 Q. Now, when you met with Ms. Bender, talked to her on
18 the phone, you had several different conversations, did
19 you not?

20 A. Yes.

21 Q. Now, do you remember having a conversation shortly
22 after she told you we were going to trial because
23 Mr. Bayron wanted to keep his gun. Do you remember having
24 that conversation with Ms. Bender?

25 A. Not entirely, no.

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Q. So you don't remember calling her being frustrated
2 because he was choosing a gun over you?

3 A. I remember calling her numerous times being
4 frustrated, but I don't remember exactly what I said or
5 what the conversation was about at that moment.

6 Q. Do you remember telling her that he did, in fact,
7 have the gun, but you didn't think it would matter?

8 A. No.

9 Q. Do you remember saying he did, in fact, hit you but
10 you didn't think it was a crime and you wanted it to go
11 away?

12 A. No.

13 Q. Who takes care of the children if you go to jail?

14 A. I'm guessing my mom. I don't -- I don't know.

15 Q. You're willing to risk that just to get him out of
16 trouble?

17 A. Well, it's not just to get him out of trouble. It's
18 trying to set things right because I lied in the first
19 place.

20 Q. Let's talk about that lie you said you did in the
21 first place. Do you have that other statement that I gave
22 you that Ms. Sikora went over?

23 A. Yes.

24 Q. Now, this is a little bit of a different piece of
25 paper, right?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. Yes.

2 Q. It starts with the address in the corner, top left
3 corner you have an address. What's that say?

4 A. 221 Garden Way, Apartment 88.

5 Q. Now, that's where the police came that night, right?

6 A. Yes.

7 Q. And that's where you were living with Mr. Bayron and
8 your children?

9 A. Yes.

10 Q. And that's in your handwriting, right?

11 A. Yes.

12 Q. Now then, down there's a block that says York County
13 Sheriff's Office voluntary statement. Do you see that?

14 A. Yes.

15 Q. And there's again now a paragraph section that starts
16 "voluntary statement" and then "I" and a place for a name.

17 A. Uh-huh.

18 Q. What's that say?

19 A. Claribel Correa.

20 Q. Now, that's in your handwriting as well?

21 A. Yes.

22 Q. And it says "know and understand my rights, having
23 decided to answer questions at this time, I now make the
24 following statement." That's preprinted. That's not
25 anything you wrote, right?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. No.

2 Q. Do you see what's it say after "I, Claribel Correa"?

3 A. "Know and understand my rights, having decided to
4 answer questions at this time, I now make the following
5 statement."

6 Q. Okay. But that's preprinted on the form, right?

7 A. Yes.

8 Q. Now then, we get into the handwritten statement,
9 right?

10 A. Uh-huh.

11 Q. And that's in your handwriting?

12 A. Yes.

13 Q. Now, in fact, when you were writing this, Deputy
14 Yates had given you a clipboard and stepped away from you,
15 right?

16 A. No, both police officers were there at the time I was
17 writing it.

18 Q. But he was around the area that he gave you a clip
19 board and you wrote this on your own?

20 A. Right.

21 Q. And Mr. Bayron was at the scene still, but he was in
22 the back of the police car, right?

23 A. Yes.

24 Q. So you stepped away and you started writing. What
25 did you write that night?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. I wrote almost the same thing thing I said on the 911
2 call.

3 Q. Well, you start with "Michael Bayron, Jr., and I were
4 arguing about us getting evicted," correct?

5 A. Yes.

6 Q. "He was very drunk while were were arguing, he kept
7 getting closer to me." Correct?

8 A. Yes.

9 Q. "I thought he was going to hit me, so I put up my
10 hands, put my hands up, and then he slapped my arm twice."
11 Correct?

12 A. Yes.

13 Q. "And then he picked up our TV and broke it in front
14 of of my two kids." Correct?

15 A. Yes.

16 Q. "I was very scared. He told my kids to go upstairs."
17 You with me so far?

18 A. Yes.

19 Q. "He grabbed his gun, proceeded to argue with me."
20 Right?

21 A. Yes.

22 Q. "He never pointed it or cocked it. He just had it in
23 his hand. He then left. I called the police. He
24 returned, and the police came." And that's all in your
25 handwriting, correct?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. Yes.

2 Q. And at the bottom, same language as the public
3 defender statement, "I'm doing this of my own free will, I
4 wasn't threatened, promised, I signed my name in the space
5 below to show my statement is the truth," correct?

6 A. Yes.

7 Q. And that is your statement at the bottom, correct?

8 A. Yes.

9 Q. I mean that's your signature?

10 A. Yes.

11 Q. And that was dated 6/23/11?

12 A. Yes.

13 Q. At 3:30 in the morning?

14 A. Yes.

15 Q. Witnessed by Deputy Yates?

16 A. Yes.

17 Q. Now, in this statement, there are certainly things
18 that you now claim today are true like he broke the TV,
19 right?

20 A. Yes.

21 Q. Because you know that's not a crime. You can break
22 your own TV if you want.

23 A. Because that was true.

24 Q. And in this, kids -- two kids, so same thing as what
25 you stated today. The seven- and five-year-old were with

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 you; the baby was upstairs, right?

2 A. Right.

3 Q. He left the house. You're still saying that part's
4 true?

5 A. Yes.

6 Q. And you called the police. You're still saying that
7 part is true?

8 A. Yes.

9 Q. And he came back. You're still saying that part is
10 true?

11 A. Yes.

12 Q. Who lives at 313 Kimble Lane?

13 A. My aunt.

14 Q. Is that the -- sorry to keep asking -- but is that a
15 aunt that's dating --

16 A. No.

17 Q. Okay, so it's a different aunt?

18 A. Yes.

19 Q. And 320 Kimble Lane?

20 A. My mother.

21 Q. Is that Mom? Now, when you called 911, you kept
22 saying, "I want to leave. I want to go to my mom's," but
23 it was the dispatch operator that told you not to go?

24 A. Yes.

25 Q. But you said it a couple times. "I want to leave. I

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 want to go to my mom's." Right?

2 A. Right, because I was getting ready to leave at that
3 time.

4 Q. And you were so scared about what happened you said,
5 "I'm going to walk. I'm that scared. I want to leave
6 this area before he comes back. I'm going to walk to my
7 mom's," which is a mile away.

8 A. It's less than a mile.

9 Q. Do you know what a bond hearing is?

10 A. Yes. That's when someone who is seeing a judge to
11 see if they can get a bond to get out, not go to jail.

12 Q. Do you know sometimes in addition to that they put
13 conditions on bonds?

14 A. Yes.

15 Q. Why do they put conditions on bonds?

16 A. To prevent you from going to jail, I guess. Or from.

17 Q. Let me clarify that. Do you know that sometimes to
18 get out of jail in a victim case they put on no-contact
19 provisions?

20 A. Right.

21 Q. And you know that in this case, there was a provision
22 that Mr. Bayron not contact you?

23 A. Yes.

24 Q. Correct? Now, that contact order has been violated
25 between the arrest and the trial, correct?

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 A. Yes.

2 Q. You had contact with Mr. Bayron?

3 A. Over the phone, yes.

4 Q. Well, you had contact here in court. You left and
5 came together, correct?

6 A. Yesterday, yes.

7 Q. And today you came together?

8 A. Yes.

9 Q. So there have been months where you had time to talk
10 to him about what we're doing here today?

11 A. Well, no. I haven't talked to him about any of --
12 about this case. Only time I have spoken to him has to do
13 with my kids.

14 Q. So him being arrested and you taking the stand to lie
15 for him is not something you guys discussed? That's not a
16 important factor in your life?

17 A. No, it's not. I'm not lying. I lied in the
18 beginning when I called 911.

19 Q. Did you listen to the 911 tape yesterday?

20 A. Yes.

21 Q. I'm going to play it for you again. I want you to
22 tell me what voice you hear when it comes on.

23 (Audiotape was played in open court.)

24 Q. Is that your voice?

25 A. Yes.

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Q. And that's the call you made for help on the night of
2 June 23rd?

3 A. Yes.

4 Q. And that was after Mr. Bayron grabbed the gun and
5 left the house?

6 A. Yes.

7 (Audiotape was played in open court.)

8 Q. I'm sorry, what was that last part you said in the
9 911 tape?

10 A. I didn't hear it. I'm sorry.

11 Q. You didn't hear where you just said, "He hit me; he
12 pointed a gun at me"?

13 A. At that moment. I'm sorry. I didn't hear it. I
14 don't know what part you're talking about.

15 Q. We'll play it again.

16 (Audiotape was played in open court.)

17 Q. So in this statement when you're calling the police
18 the night it happened before you had time to talk to
19 Mr. Bayron about the trial. You said, "He hit me, he
20 pointed a gun at me, he broke the TV."

21 A. Yes.

22 Q. Is that what it just said?

23 A. Yes.

24 (Audiotape was played in open court.)

25 Q. That was you hanging up really quickly when you saw

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 him coming back?

2 A. Yes.

3 Q. Now, you could hear that statement pretty well,
4 couldn't you?

5 A. Yes.

6 Q. You mean you could hear it in this courtroom?

7 A. Yes.

8 Q. You didn't remember what he was wearing, right?

9 A. No.

10 Q. But you knew it was a 9-millimeter gun that was
11 pointed at you?

12 A. It was -- not that it was pointed at me. I know it
13 was a 9-millimeter because he had owned that gun for a
14 couple years already.

15 Q. And in the call, you say "it was pointed at me." You
16 said it twice, correct?

17 A. Right.

18 Q. And in the call that happened during the argument,
19 you say, "He hit me, pointed a gun at me, broke TV in
20 front of my kids," right?

21 A. Uh-huh, yes.

22 Q. Today in court, you want to jury to believe that it's
23 only the TV that was broken in this argument, correct?

24 A. Because that is the truth, yes.

25 Q. Now, in your questioning by Ms. Sikora, you said

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

- 1 plainly when she asked you about having a gun, you said
2 none, and then he never had the gun in your presence. She
3 asked you, "Did he ever have the gun in your presence?"
4 And you said no.
- 5 A. Correct.
- 6 Q. That's what you're saying today?
- 7 A. Correct.
- 8 Q. If you never saw a gun, and there was never one in
9 your presence, you would not be able to identify one on a
10 911 tape, correct?
- 11 A. Well, like I said, he has owned that gun. It's his
12 gun. It's a registered gun, so I know what it looks like
13 and I know what it is.
- 14 Q. You said you didn't even know it was loaded, but
15 you've seen since that it was, right?
- 16 A. Well, I didn't know it was loaded.
- 17 Q. You saw the video in court. You saw that officer
18 took the magazine out.
- 19 A. Yes, I saw that.
- 20 Q. You heard the cocking.
- 21 A. Yes.
- 22 Q. And the bullet taken out the chamber.
- 23 A. Yes.
- 24 Q. And separated into two.
- 25 A. Yes..

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Q. So the gun that's sitting here in front of you today,
2 this is Mr. Bayron's gun, correct?

3 A. Yes.

4 Q. Okay. Do you know what these are?

5 A. Bullets.

6 Q. Do you know what happens when they come out of a gun?

7 A. They kill people.

8 Q. Okay. You said that he left on the scooter, right?

9 A. Yes.

10 Q. You described the -- your husband's scooter to the
11 police officers?

12 A. Yes.

13 Q. And that was a scooter they actually found the gun
14 in?

15 A. Correct.

16 Q. The loaded gun?

17 A. Yes.

18 Q. And you heard Mr. Bayron himself say he grabbed the
19 gun in the house and took it with him to the scooter,
20 correct?

21 A. Yes.

22 Q. And you heard on the video yesterday in Mr. Bayron's
23 own words, "We were having an argument. I grabbed the gun
24 and I left."

25 A. Yes.

CLARIBEL CORREA - CROSS-EXAMINATION BY MS. DESCH

1 Q. Thank you, Ms. Correa.

2 MS. SIKORA: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. SIKORA:

5 Q. Has anyone at all threatened you or tried to pressure
6 you into giving the testimony you're giving here today?

7 A. No.

8 Q. Did anyone at all pressure you or threaten you in any
9 way to call the Solicitor's Office and ask that the
10 charges be dismissed?

11 A. No.

12 Q. Has anybody at all threatened or pressured you or
13 coerced you to come to the public defender and meet with
14 Mr. O'Kelley?

15 A. No.

16 Q. Did you make that statement of your own free will?

17 A. Yes.

18 Q. And is the statement that you made to Mr. O'Kelley
19 the truth?

20 A. Yes.

21 Q. And is the statement when you made when you called
22 the Solicitor's Office the truth?

23 A. Yes.

24 Q. Now, you said when you met with Mr. O'Kelley, he
25 didn't tell you that you could go to jail for lying, is

CLARIBEL CORREA - REDIRECT EXAMINATION BY MS. SIKORA

1 that true?

2 A. Yes.

3 Q. But you did testify earlier with Ms. Desch that you
4 know if you tell a lie about something on the stand while
5 you're testifying, that you could go to jail?

6 A. I was informed after I wrote that statement that I
7 could.

8 Q. Okay. Who told you that?

9 A. Ms. Bender told me and I don't -- I just think it was
10 just her that informed me of that.

11 Q. Okay.

12 MS. SIKORA: No further questions. Thank you.

13 MS. DESCH: Nothing further.

14 THE COURT: Thank you, ma'am. You may stand down.

15 Mr. Foreman and ladies and gentlemen of the jury
16 panel, we'll take a short recess at this time. There's a
17 matter I need to take up with counsel at this time, so
18 please retire to the jury room. You may refresh
19 yourselves.

20 (WHEREUPON, the jury left open court at approximately
21 10:44 a.m.)

22 THE COURT: Counsel, is the defendant planning to
23 testify in the case or not? Have y'all made a decision on
24 that, or you need a couple minutes?

25 MS. SIKORA: May it please the Court, Your Honor, may

CLARIBEL CORREA - REDIRECT EXAMINATION BY MS. SIKORA

1 I have a few moments to speak to him in private about
2 that?

3 THE COURT: Let's just go ahead and take a quick
4 recess. Take about five minutes or so or ten, and you can
5 discuss that with him, everybody go ahead and refresh
6 yourselves and then come back. Then we'll question him
7 about that.

8 MS. SIKORA: Thank you, Your Honor.

9 (A recess was held from 10:45 a.m. to 10:57 a.m.)

10 THE COURT: All right. Bring Mr. Bayron around.
11 Place him under oath, please, ma'am.

12 WHEREUPON, MICHAEL BAYRON, having first been duly sworn,
13 testified under oath as follows:

14 THE COURT: Put your hand down. So you're Michael
15 Bayron, Jr., for the record; is that correct?

16 THE DEFENDANT: That's correct, sir.

17 THE COURT: Mr. Bayron, we've reached the stage of
18 your trial where you may present your defense. You have
19 the right to testify in your own behalf; however, no one
20 can make you testify. In any event you have a record of
21 any conviction involving dishonesty or false statement or
22 for a crime punishable by imprisonment for more than one
23 year and this Court determines that the probative value of
24 permitting this evidence outweighs its prejudicial effect
25 to you, a solicitor will be able to introduce this record

MICHAEL BAYRON - EXAMINATION BY THE COURT

1 for impeachment purposes to attack your credibility.

2 If you elect not to take the stand, I will charge the
3 jury that they are not to give the fact that you did not
4 testify any consideration whatsoever. There is to be
5 absolutely no prejudice to you because you did not
6 testify. It's left entirely up to you whether or not you
7 testify, and you may talk with your attorney or family or
8 friends or anyone else, but the ultimate decision is left
9 entirely up to you. Do you understand it is your decision
10 as to whether you will or will not testify in your case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you discussed with your attorney the
13 advantages and disadvantage of testifying in the case?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: And do you wish to testify, sir?

16 THE DEFENDANT: No, I don't.

17 THE COURT: Is that your decision, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: Thank you. You may return to your seat.
20 Plan to offer any other testimony?

21 MS. SIKORA: May it please the Court, Your Honor, you
22 know, when the jury comes back in, the Defense intends on
23 resting. At that time I would just request that we have a
24 brief conference with the other counsel about going over
25 jury instructions. We can --

1 THE COURT: Well, let's do that now.

2 MS. SIKORA: Want to do it now?

3 THE COURT: I want to get this case over. I've been
4 giving you delays and delay and delays. Let's get it over
5 with. We got a whole backdrop of stuff that's got to be
6 done today.

7 MS. SIKORA: Okay.

8 THE COURT: And we're running way behind. This case
9 should have been finished yesterday.

10 Come on up. Tell me what you want to do about the
11 charge.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: All right, Counsel. My understanding is
14 the Defense will rest at this point. And you can rest
15 before the jury when they come back in, but so for the
16 sake of moving on with the case time-wise, I'll hear you
17 with regard to any motions you might wish to make at this
18 time. They're considered timely made at this time.

19 MS. SIKORA: Thank you, Your Honor. May it please
20 the Court. At this time the Defense would renew their
21 motion for a directed verdict based on the facts of
22 Ms. Correa's testimony today that she lied about
23 everything that she told the police and furthermore the
24 statements that she had initially given were inconsistent
25 in and of themselves, and we feel there is not enough

1 evidence to take this case to a jury based on those facts,
2 Your Honor.

3 THE COURT: State wish to be heard on the motion?

4 MS. DESCH: I'm sorry, what was the motion?

5 MS. SIKORA: He asked if you wanted to be heard on
6 the directed verdict motion.

7 MS. DESCH: Yeah, we would just renew what we argued
8 yesterday.

9 THE COURT: Looking at the motion directed verdict,
10 Court's required to look at the evidence in the light most
11 favorable to the party against whom the motion is being
12 made. This case, looking at the evidence light most
13 favorable for the State, I find, as I did in the State's
14 case, that there is substantial evidence from which the
15 jury could infer the State has proved the elements of this
16 offense beyond a reasonable doubt.

17 The Court does not weigh the evidence or judge the
18 credibility of the witnesses. The Court simply determines
19 on the directed verdict motion whether there is any
20 substantial evidence on which the jury could infer that
21 the State has proven the elements of the offense beyond a
22 reasonable doubt. And, again, credibility of the witness
23 is a matter for the jury to determine, when Ms. Correa was
24 telling the truth, whether she was telling the truth when
25 she gave the statements to the police or was she telling

1 the truth when she testified in court today. That's a
2 matter for them to determine, not for the Court. Her
3 credibility is an issue for the jury, not for the Court.

4 And so I find there is substantial evidence. It's
5 the jury's decision to determine the credibility of the
6 witnesses. But there is evidence, so the matter will go
7 to the jury. Anything else?

8 MS. SIKORA: Nothing from the Defense, Your Honor.

9 THE COURT: Please bring the jury in, sir. Again
10 I'll ask you to rest before the jury.

11 (The jury enters the courtroom at 11:05 a.m.)

12 THE COURT: Counsel, ready to proceed?

13 MS. SIKORA: May it please the Court. At this time,
14 the Defense rests, Your Honor.

15 THE COURT: Anything in reply from the State?

16 MS. HAMILTON: Nothing, Your Honor.

17 THE COURT: Mr. Foreman, ladies and gentlemen of the
18 jury panel, this concludes the taking of testimony and
19 evidence in this case. We have yet remaining final
20 arguments from counsel, my instruction to you with regard
21 to the law that applies to the issues in this case. I ask
22 that you listen attentively now as counsel address you in
23 closing arguments.

24 Counsel, ready to proceed?

25 MS. SIKORA: Yes, Your Honor. May it please the

1 court, Your Honor.

2 THE COURT: Solicitor.

3 CLOSING ARGUMENTS BY MS. SIKORA

4 MS. HAMILTON: As I was thinking about the last words
5 that I would say to you today, it occurred to me that I
6 don't have the last word in this case at all. You all do.
7 It is your duty as the jurors in this case to determine
8 what actually happened that night based on the evidence
9 before you and to decide based on the evidence that you've
10 heard, all of the evidence, whether or not the State has
11 met their burden of proving each and every element of this
12 case beyond a reasonable doubt. So let's go through that
13 evidence briefly now.

14 Police officers, they did a good job in this case.
15 They did what they could do. They testified on the stand
16 that they weren't there to witness whatever went on
17 between Mr. Bayron and Ms. Correa that night. They came
18 after the fact. So the only two people or two adults that
19 were there when -- on June 23rd at 2:30 in the morning
20 are Mr. Bayron and Ms. Correa. They are the two people
21 that know what really happened that night.

22 Let's take the 911 call, where this all began. At
23 that point, Mr. Bayron is gone from the house. Ms. Correa
24 calls 911 and tells the 911 operator that he pointed a gun
25 at her but he didn't hit her. And they go through basic

1 information about where she's living, and the operator
2 asked her again what happened. And at that point she
3 says, "He pointed a gun at me and he hit me." Within that
4 short two-minute time span, her story has already changed
5 once. And Mr. Bayron is not present when she makes that
6 911 call. There's no other adult in the home, according
7 to her testimony, that could threaten or coerce her to
8 make those two conflicting statements to 911.

9 She goes on to say to the 911 operator, well, the gun
10 wasn't loaded, but that still counts. She does not tell
11 the 911 operator that she's scared. She does talk about
12 walking, because she wants to leave the house. But you
13 heard her testify today that she doesn't have a car. They
14 only have a scooter in that family, and Ms. Correa and her
15 three children are certainly not going to sit on that
16 scooter in order to get to her mother's house. She never
17 says to the 911 operator in that call "I'm leaving because
18 I'm scared."

19 When Ms. Bayron comes back to the house while she's
20 on the phone with 911, she quickly gets off the phone. If
21 she's so afraid of him and so scared and he's pointing a
22 gun at her and hitting her, isn't that the time that you
23 would want to be on the phone with 911? This guy armed
24 with a gun comes in your house, he's assaulted you, and at
25 that point, that's when you hang up. She just says, "He's

1 back. I'm hanging up." Doesn't say, oh, my goodness,
2 he's back, hurry up, come quickly, I'm scared, he's back,
3 he's back. That's not what she said. And that 911 call
4 is in evidence. If you have any question about what you
5 heard on that 911 call, you'll -- we'll be able to play
6 that for you again during your deliberations.

7 The police officers testified when they got the call
8 from dispatch that Mr. Bayron had pointed a gun at her,
9 but Officer Reed was only 3 or 4 miles away, so it didn't
10 take him long to get out to their house that night. And
11 when Mr. Reed gets out to the house, he's equipped with a
12 body mike and the audio that that body mike picks up is
13 recorded on his in-car camera inside his patrol car. And
14 you all have seen the video of what happened when Officer
15 Reed first came out on the scene.

16 The door was open, at least partially, to Mr. Bayron
17 and Ms. Correa's residence. You don't hear as the officer
18 walks up to their residence that night a couple in the
19 middle of fighting or struggling or yelling at each other.
20 You don't start to hear any yelling, and very loud yelling
21 at that, until Ms. Correa witnesses the police officers
22 taze her husband in front of her children.

23 Now, I don't find any fault whatsoever with the fact
24 that the police officer did that. He's out there alone
25 with no back-up officer. The information that that police

1 officer has as he's dispatched to the scene is that
2 there's a domestic disturbance -- those can be volatile
3 situations -- and that there's someone armed with a gun.
4 The police officer was doing his job. He was doing what
5 he had to do to protect the safety of everyone involved,
6 as he told you when he testified on the stand.

7 Later in that same video from Deputy Reed, you even
8 hear the defendant speaking with the officer about the
9 fact that he was tazed and he understands why the officer
10 had to do it. And Mr. Bayron is talking to the officer in
11 a calm voice about that incident. Mr. Bayron is put in
12 the patrol car. He's in handcuffs. And at that point the
13 officers begin to talk to Ms. Correa about what happened
14 that night.

15 Ms. Correa tells the officers, "He didn't point a gun
16 at me." She even puts that in her statement to the police
17 officers. And this is just a short time after the 911
18 call. Mr. Bayron is in the back of the patrol car. He is
19 not in the position to influence what she says to the
20 officers at that time either. He's completely separated
21 from her. She tells the officers that he wasn't even
22 waving the gun around. And she changes the story. We
23 started out in the 911 call first with, "He didn't hit
24 me," then went to "He did hit me," and then tells the
25 police, "Actually, he slapped me twice."

1 When the police get out there that day, they don't
2 find Mr. Bayron with a gun in his hand. They don't find
3 Mr. Bayron with a gun anywhere on his person, like his
4 pockets, waistband. They don't find the gun anywhere in
5 the house. They find the gun in a scooter in a parking
6 lot, which Officer Reed testified, I believe, when he was
7 on the stand was about 10 to 15 feet from the door of the
8 residence. And Officer Reed told you he had to get the
9 key to the scooter to even be able to get in there and
10 retrieve the gun.

11 Police officers testified that when they got out to
12 the scene, there was what they called debris inside the
13 house. There was never really any description given of
14 what that word "debris" means. We don't know what kind of
15 housekeeper Ms. Correa is. We don't know what her living
16 room typically looks like. We do know that she has three
17 small children, ages seven and under, and that they're
18 about to be kicked out of their home the next day and that
19 they were in the middle of packing. I bet that living
20 room was a mess, given those circumstances.

21 The officer testified that he had access to a digital
22 camera that night. He was able to take a picture that you
23 have here in evidence that will be sent back to the jury
24 room with you. He was able to take this picture of the
25 gun, but he didn't take pictures of the debris inside

1 Mr. Bayron and Ms. Correa's residence. Wouldn't you like
2 to be able to see what that looked like?

3 He didn't take any pictures of Ms. Correa's arms,
4 where she had told the police once they arrived out there
5 she had been slapped twice so that we could see it in the
6 picture whether or not there was any redness, swelling,
7 injury, any kind of sign or mark on her body that she had,
8 in fact, been slapped.

9 Ms. Correa told you today that she was very upset
10 with her husband. This was not a high point in the lives
11 of these two people. They were under a lot of strain and
12 pressure, given their financial situation. They knew
13 their family of five the very next day were being evicted
14 and had to find someplace else to go. She testified they
15 have limited financial resources. Only one parent in the
16 house is working. They don't even have a car. She was
17 upset with Mr. Bayron because he had been out spending
18 money, or what she believed, he was out spending money on
19 alcohol when their family was facing all these
20 difficulties at the time. Very stressful for the family.

21 I don't blame her for being upset with him. I
22 understand why she was mad at him. And sometimes when
23 people are angry, they say things that they don't mean.
24 Sometimes when people are angry and upset, they don't have
25 the wherewithal to stop and think about what they're doing

1 and the consequences of what they're doing in the heat of
2 the moment.

3 After Mr. Bayron is arrested, Ms. Correa told you she
4 contacted the Solicitor's Office several times. She
5 testified here today that she lied about what happened to
6 the police. In fact, she has even asked the State to
7 dismiss the charge altogether. When that did not happen,
8 Ms. Correa told you that she reached out to our office,
9 the public defender's office. Nobody from my office came
10 out to her house. She testified that she came in to our
11 office with herself and a family member, not Mr. Bayron,
12 and that she met with Mr. Barton O'Kelley, an investigator
13 in our office. And when she met with Mr. O'Kelley about
14 the statement that she gave to him, she was alone.
15 Mr. Bayron wasn't there sitting in the room with her.

16 And in that statement that she gave to Mr. O'Kelley,
17 she admitted I was upset with my husband and I lied to the
18 police about what happened that night. And I have told
19 the prosecutor already that I lied about what happened
20 that night. Who ended up putting Ms. Correa on the stand?
21 Wasn't the prosecution. She's the victim in this case.

22 The fact is, as I stated at the beginning, the only
23 two people that were there that night are Ms. Correa and
24 Mr. Bayron. Given the fact that Ms. Correa was
25 inconsistent in her statements of what happened and the

1 911 call when Mr. Bayron was not present when she made
2 that call, given the fact that just minutes later after
3 the police arrived, she gives an entirely different
4 version and then she contacts the Solicitor's Office,
5 contacts the public defender's office and lies and says
6 that she made the whole thing up.

7 She was here on the stand before you today. It's
8 your job to determine her credibility. That is
9 essentially the evidence that you have before you. Is
10 that proof beyond a reasonable doubt? Are you willing to
11 convict Mr. Bayron given the inconsistent statements,
12 given the fact that she has admitted today that she has
13 lied about all that? And this is not the first time that
14 she has said she had lied. This started back in
15 September, when she started letting the prosecution and
16 the defense know that she made those things up because she
17 was upset.

18 Like I talked to you about in my opening statement,
19 it's not the defense's job to prove this case. We don't
20 have that burden. The prosecution is the one with the
21 burden in this case, to prove each and every element of
22 the crime of pointing and presenting beyond a reasonable
23 doubt. And the judge is going to instruct you on the law
24 at the end of the case, but I'm just going to touch
25 briefly on that with you now.

1 It is against the law to point or present a loaded or
2 unloaded firearm at someone else. Like we talked about
3 before, I believe everybody understands what it means to
4 point a gun at someone. Presenting the firearm under the
5 law in this case requires more than simply having a gun in
6 your hand that someone else can see. You have to present
7 that gun at somebody else in a threatening manner. You
8 heard Ms. Correa tell you she didn't feel threatened. She
9 wasn't scared. In fact, she told you today he didn't even
10 have it in his hand while they were arguing.

11 We're all sitting in the Moss Justice Center.
12 Justice. The American flag is right behind Judge Alford
13 up there. Is there enough evidence to convict Mr. Bayron
14 of this crime? Are you not just convinced but firmly
15 convinced, or is there reasonable doubt, the kind of doubt
16 that would hesitate for you to act? Hold the State to
17 that burden, ladies and gentlemen, and find the defendant
18 not guilty.

19 MS. HAMILTON: May it please the Court.

20 THE COURT: Solicitor.

21 CLOSING ARGUMENTS BY MS. HAMILTON

22 MS. HAMILTON: Good morning, ladies and gentlemen.
23 This is a pointing and presenting case. What I'm going to
24 do is I'm going to go through a list of the things that
25 occurred on June 23rd and thereafter. You heard the 911

1 tape. The victim in this case, Claribel Correa, makes
2 that phone call to 911 immediately after this incident.
3 On that 911 tape, she is hysterical. She's alone.
4 There's no one to influence her in this apartment. She
5 has her children with her.

6 In this 911 call, she says the defendant pointed the
7 gun -- Michael Bayron, Jr., pointed the gun at me. He
8 pointed the gun at me. She said, "I'm scared. I'm going
9 to leave. I'm going to leave." After the dispatcher
10 pushes for more details, that is when she says, "He hit
11 me." She didn't deny that he hit her in that 911 tape.
12 That does not happen. She initially says he pointed a gun
13 at her. Upon further -- asking for further details, the
14 911 dispatcher asked for further details, that's when she
15 says, "He hit me." She never said he didn't.

16 Now, when this 911 call gets made, she had no time to
17 fabricate. It's very credible. No time to make up a
18 story. No time to discuss this matter with the defendant.
19 No time to think about these repercussions of that on her
20 financial situation if the defendant did point the gun.
21 Now I'm going to let you listen to this 911 tape again.
22 I'm going to let you hear. This is in the moment. She's
23 excited. She's not -- she's calling for help. She wants
24 someone to come help her.

25 (Audiotape was played in open court.)

1 MS. HAMILTON: The 911 call ends with her hanging up
2 the phone. "Can't talk. I got to go." She's scared.
3 Knowing that maybe if he saw her on that phone, this bad
4 situation that she's in could get worse.

5 Let's go after the 911 tape, when the officers
6 arrive. You know, as you heard her say, it's about ten
7 minutes after. The defendant has been back on scene, been
8 around the victim. Once the officers arrive and they find
9 a scooter, the scooter that the victim says on the 911
10 call was on the scene, belonged to the defendant, the one
11 he left on. When the officers search that scooter, they
12 find the 9-millimeter handgun that she said he had in the
13 911 tape that he pointed at her.

14 When they enter the apartment, they see debris on the
15 floor from a smashed television, consistent with the 911
16 tape. She said, "He smashed a television." Now, I know
17 the defense just said to y'all in her closing that nobody
18 testified that the debris on the ground was from the
19 smashed television. But, in fact, when Officer Yates was
20 on the stand testifying, he stated there was debris on the
21 floor from a broken television, a broken TV. He did see
22 that, consistent with what this victim says on the 911
23 tape. And both the defendant and the victim admit they
24 were in an argument. And as he says, he went and got his
25 gun to leave after that argument.

1 Now let's move further. An hour after the 911 call,
2 Deputy Yates takes a statement from the victim on scene.
3 Now, when he takes the statement from her, he's with her.
4 The defendant is in a patrol car. No influence over her.
5 No way to intimidate her. In the statement she says
6 exactly, "Michael Bayron, Jr." -- the defendant --
7 "grabbed his gun and proceeded to argue with me. He never
8 pointed it or cocked it. He just had it in his hands."
9 He had it in his hands, as she said, during an argument.

10 Did she change her story? He didn't point it; he had
11 it in his hands. That would be presenting in itself. A
12 tense environment. They were arguing over finances. And
13 he brings a gun out, and as she says, proceeded to argue
14 with me with his -- the gun in his hands. Is brandishing
15 a weapon in front of her. Showing this weapon in a
16 threatening manner.

17 She now claims on the stand, as you heard, that he
18 never had a gun. There's no gun. But the defendant had
19 said he did. He grabbed it before he left. Why would he
20 grab it before he left if there was no gun? You heard
21 from Officer Reed and it was shown to you that when the
22 gun was found, it was a loaded gun. One bullet in the
23 chamber of this 9-millimeter handgun belonging to the
24 defendant. Seven in the magazine. Just a loaded firearm.

25 Now, the victim was on the stand today. I'm going to

1 talk to you about the credibility that the defense is
2 saying she does not have now. This statement that she
3 made to the public defender from Barton O'Kelley was made
4 on October 12th, 2011. That is almost four months after
5 this incident occurred. She has reconciled with the
6 defendant. She has been around the defendant. She's had
7 time to think about what the repercussions of this charge
8 against him can have on her financial situation. She may
9 not have anywhere to live. She hasn't worked since 2009.
10 She depends on him for her finances. She depends on him
11 to eat. She's had time to think about that, and now she's
12 going back on her statement from the scene. That credible
13 statement from the scene, when she's calling for help and
14 no time to think about it. No time to fabricate a story.

15 Now, ladies and gentlemen, the elements again,
16 pointing and presenting a firearm are, one, point or
17 present; two, unloaded or loaded firearm; and third, at
18 another. I believe that the State has proven beyond a
19 reasonable doubt that the defendant pointed and presented
20 this weapon at his wife, Claribel Correa. Now, as the
21 defendant said -- I mean public defender said in her
22 closing, sometimes people do things that they shouldn't do
23 in the heat of the moment, not thinking of the
24 consequences. Exactly. That's what the defendant did.
25 In the heat of the moment in that argument, he did

1 something he shouldn't have done. Brought that gun out.
2 Pointed it at his wife. In the heat of the moment, not
3 thinking about the consequences of his action.

4 Now, ladies and gentlemen, you've heard all the
5 evidence. You've heard all the witnesses. I ask that you
6 come to a verdict that speaks the truth in this case and
7 find this defendant guilty of pointing and presenting a
8 firearm at his wife, Claribel Correa. Thank you.

9 JURY CHARGE

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury panel, you've heard final arguments
12 of counsel. It's now time for me to charge you. That is
13 to instruct you with regard to the law that applies to the
14 issues in this case. In this case, the State charges the
15 defendant with the offense of pointing or presenting a
16 firearm. To this charge, the defendant has pled not
17 guilty, which then places upon the State the burden of
18 proving the defendant guilty.

19 A person charged with committing a criminal offense
20 in South Carolina is never required to prove himself
21 innocent. I charge you that it is an inviolate, core rule
22 of law that a defendant in a criminal trial must always be
23 presumed innocent until his guilt has been proved beyond a
24 reasonable doubt. This presumption of innocence remains
25 with the defendant at all times throughout the trial and

1 is only removed when and if the State has proved guilt
2 beyond a reasonable doubt. It is your solemn duty, ladies
3 and gentlemen, if not clearly convinced of guilt beyond
4 every reasonable doubt to the contrary to find the
5 defendant not guilty.

6 Mr. Foreman, ladies and gentlemen of the jury panel,
7 I instruct you and emphasize to you the fact that the
8 defendant did not testify in his case is not a factor to
9 be considered by you in any way in your deliberations.
10 You must not consider the fact the defendant has chosen
11 not to testify when you determine the guilt or innocence
12 of the defendant. It must not be considered by you in any
13 manner whatsoever either against or for the defendant.

14 A defendant has the constitutional right to remain
15 silent. The assertion of that constitutional right cannot
16 and must not be considered by you in your deliberations.
17 On your oath, then you would reach no inference and draw
18 no conclusion whatsoever from the fact that the defendant
19 did not testify. The fact the defendant did not testify
20 should not even be discussed in your jury room. The
21 burden of proof, as I stated to you, is upon the State.
22 It is not the burden of the accused to prove his
23 innocence. The burden of proof remains upon the State to
24 prove guilt beyond every reasonable doubt.

25 So the State had the burden of proving the defendant

1 guilty beyond a reasonable doubt. What is a reasonable
2 doubt? Some of you may have served as jurors in civil
3 cases where you were told it is only necessary to prove
4 the fact is more likely true than not, such as by the
5 greater weight of the preponderance of the evidence.
6 However, in criminal cases, the State's proof must be more
7 powerful than that. It must be beyond a reasonable doubt.

8 Now, ladies and gentlemen, a 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
11 this world that we know with absolute certainty. And in
12 criminal cases, the law does not require proof that
13 overcomes every possible doubt. A reasonable doubt may
14 also be described as the kind of doubt that would cause a
15 reasonable person to hesitate to act. If you have such a
16 doubt as to the guilt of the defendant, then he would be
17 entitled to a verdict of not guilty.

18 Reasonable doubt may arise from evidence which is in
19 the case, from the absence or lack of evidence in the
20 case. If, based on your consideration of the evidence,
21 you're firmly convinced that the defendant is guilty of
22 the crime charged, you must find him guilty. If on the
23 other hand you think there is a real possibility that he
24 is not guilty, you must give him the benefit of the doubt
25 and find him not guilty. You alone must make the

1 determination of whether or not reasonable doubt exists as
2 to the guilt of the defendant.

3 Mr. Foreman, ladies and gentlemen of the jury panel,
4 there are two types of evidence which are generally
5 presented during a trial. There is direct evidence and
6 circumstantial evidence. Direct evidence is the testimony
7 of a person who asserts or claims to have actual knowledge
8 of a fact, such as an eyewitness. Circumstantial
9 evidence, proof of a chain of facts and circumstances
10 indicating the existence of a fact.

11 The law makes absolutely no distinction between the
12 weight or value to be given to either direct or
13 circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence than of
15 direct evidence. You should weigh all the evidence in the
16 case. After weighing all of the evidence, if you're not
17 convinced of the guilt of the defendant beyond a
18 reasonable doubt, you must find the defendant not guilty.

19 Mr. Foreman, ladies and gentlemen of the jury panel,
20 under the constitution of South Carolina, you are the
21 finders of facts in this case. I do not have the right to
22 pass upon the facts or even to express any opinion I might
23 have as to the facts. Nor may I suggest in any way what I
24 may think about the guilt or innocence of the defendant.
25 You should form no opinion in that regard from anything I

1 may have said or any ruling I have made during the course
2 of the trial.

3 As the sole judges of the facts in this case, you're
4 also necessarily the sole judges of the credibility or
5 believability of each of the witnesses that has testified
6 during the course of the trial. Now, there are a number
7 of factors which you may consider in arriving at your
8 assessment as to a particular witness's credibility or
9 believability. Some factors I'm going to list for you
10 now, and should you think of other factors that you
11 believe also ought to be considered when you go back into
12 your jury room on the question of credibility, then you
13 should consider those factors as well. But you may
14 consider the demeanor of the witness from the witness
15 stand. What was that witness's manner of appearance? Was
16 the witness straightforward in answering questions or
17 hesitant in responding to questions? Simply put, do you
18 believe the witness is telling the truth or not telling
19 the truth? Do you believe the witness knew of what that
20 witness testified or did not know of what that witness
21 testified?

22 You may consider whether or not the testimony of a
23 witness is consistent or inconsistent with that witness's
24 own testimony or with other testimony or evidence
25 presented during the course of the trial. You may also

1 consider how the witness came to know the facts to which
2 he or she testified. You may consider the opportunity
3 that a witness had to observe or hear; that is, to
4 perceive the existence of a fact by means of their senses.

5 You may also consider whether or not a witness is
6 biased or prejudiced. That simply means do you find that
7 particular witness had some reason to come into court and
8 testify one way or another to help or hurt one side or the
9 other. You may also consider whether or not the testimony
10 of a witness was strengthened or weakened by other
11 testimony or other evidence presented during the course of
12 the trial.

13 As you're the finders of the facts in this case, and
14 you as the judges of the credibility or believability of
15 each of the witnesses that have testified may believe as
16 much or as little of what a witness testifies to as you
17 deem appropriate. You may believe all of what a witness
18 says, you may believe none of what a witness says, or you
19 may believe only part of what a witness says. You may
20 believe one witness as against several or several as
21 against one. Whatever your good judgment and common sense
22 tells you is the most believable testimony is the
23 testimony you should accept and reject that testimony
24 which you find not to be credible or believable.

25 Mr. Foreman, ladies and gentlemen of the jury panel,

1 I've charged you that the testimony of the witness may be
2 discredited or impeached by showing that he or she
3 previously made statements which are inconsistent with his
4 or her present testimony. The earlier contradictory
5 statements are also admissible to establish the truth of
6 these statements. It is the province of the jury to
7 determine the credibility, if any, to be given the earlier
8 statements and to be given the testimony of the witness
9 who has been impeached.

10 If a witness is showing knowingly to have testified
11 falsely concerning any material matter, you may consider
12 this in determining whether to trust that -- such
13 witness's testimony in other particulars. You may reject
14 all of the testimony of the witness or give all or part of
15 such testimony the credibility you think it deserves.

16 Mr. Foreman, ladies and gentlemen of the jury panel,
17 the same constitution that makes you the finders of the
18 facts makes me the sole and only instructor in the law.
19 You must accept as correct the law that I charge and apply
20 to the law the evidence as you find it and reach your
21 verdict. Put aside any conceptions you may have had as to
22 the law before coming here today and accept the law as I
23 instruct it to be. You for purposes of your duty as
24 jurors today should not be concerned about what the law
25 ought to be but what I charge you the law is now in this

1 state.

2 Mr. Foreman, ladies and gentlemen of the jury panel,
3 I charge you with regard to criminal intent. Criminal
4 intent is a necessary element of each crime that must be
5 proved by the State beyond a reasonable doubt. Criminal
6 intent is always a matter that must be determined by the
7 jury from the circumstances shown to have existed.

8 There is no way to prove intent to a mathematical
9 certainty. There is no way medical science can dissect a
10 person's brain and determine what he had in mind. So the
11 law says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how the jury
13 makes a determination whether or not the statement
14 requiring -- excuse me, the element requiring intent was
15 present.

16 Criminal intent is a state of mind which operated
17 jointly with an act is the commission of a crime.
18 Criminal intent is a mental state, a conscious wrongdoing.
19 So it is up to you, the jury, to determine what the
20 defendant intended to do based on the circumstances shown
21 to have existed. I tell you that the State must prove
22 criminal intent beyond a reasonable doubt, just as the
23 State must prove every element beyond a reasonable doubt.
24 It is not necessary to establish intent by direct and
25 positive evidence, but intent may be established by

1 inference in the same way as any other fact by taking into
2 consideration the acts of the parties and all of the facts
3 and circumstances of the case. While the State may prove
4 motive, it is unnecessary that the State do so. However,
5 the State must prove intent.

6 Now, Mr. Foreman, ladies and gentlemen of the jury
7 panel, I'm going to charge you now with the law
8 specifically as to the offense of which the defendant is
9 charged in this case. You'll not have these instructions
10 written down for you back in the jury room, so you'll have
11 to call on your collective memories as to what I instruct
12 the law to be. But once you begin deliberating, if you
13 have some question still about the law, upon your request,
14 I'll be glad to bring you back out in the courtroom and
15 reinstruct you on any part of the law that you wish to be
16 reinstructed on. But I'll ask you at this time, listen
17 carefully now as I go through the law.

18 Section 16-23-410, the South Carolina Code of Laws of
19 the State of South Carolina as amended provides that it
20 shall be unlawful for any person to present or point at
21 any other person any loaded or unloaded firearm. Before
22 you can find a -- the defendant guilty of the -- of this
23 offense, you must find all three elements of this crime
24 have been proved to your satisfaction beyond a reasonable
25 doubt. The elements are as follows -- well, let me say

1 first before I get into the elements, the State also has
2 to establish jurisdiction in the court with regard to this
3 offense. Jurisdiction is established by showing that the
4 offense occurred within York County. So the State has to
5 find that -- to have shown that as well. Now -- and the
6 jury would have to make that finding as well.

7 The elements are as follows: The defendant committed
8 some action with regard to a firearm that amounts to
9 pointing or presenting. Second element is the item that
10 the defendant pointed or presented was, in fact, a
11 firearm. It is not necessary for you to find that the
12 firearm was loaded with ammunition of some kind. The
13 firearm may be loaded or unloaded. Third element, the
14 defendant pointed or presented the firearm at another
15 person other than himself. To present a firearm is
16 defined as offering to view in a threatening manner or to
17 show in a threatening manner. Waving or showing a gun at
18 someone in a direct, actively aggressive and threatening
19 manner constitutes presenting a firearm.

20 In order to find the defendant guilty, you must find
21 that all three of these essential elements have been
22 proved beyond a reasonable doubt. If you find that any
23 one of these elements has not been proved beyond a
24 reasonable doubt, then you must return a verdict of not
25 guilty on that charge.

1 Mr. Foreman, ladies and gentlemen of the jury panel,
2 nothing that I may have said or done during the course of
3 this trial has been in any way intended to express or
4 suggest a view to the case an opinion as to the facts, the
5 weight of the evidence, or the credibility of the
6 witnesses. If any of my actions or words have seemed to
7 so indicate, you're to disregard such and form your own
8 opinion as to these matters. You've been selected as fair
9 and impartial jurors, sworn to impartially try and
10 determine the facts of this case. And when you comply
11 with your oath to do so, then no one will have a right to
12 criticize your verdict and you will have fully discharged
13 your duty as jurors.

14 You are to decide this case according to the
15 testimony you heard from the lips of the sworn witnesses
16 along with other evidence introduced during the course of
17 the trial. I charge you that as jurors, you must decide
18 the issues in this proceeding without bias and without
19 prejudice to any party. You cannot allow yourself to be
20 governed by sympathy, by prejudice, by passion, by public
21 opinion, or any other arbitrary factor. Both the State
22 and the defendant have the right to expect that each of
23 you will carefully and impartially consider all of the
24 evidence in the case and that you will follow the law as I
25 explained it to you.

1 Mr. Foreman, ladies and gentlemen of the jury panel,
2 whatever your verdict in this case, it must be your
3 unanimous verdict. All 12 jurors must agree on the
4 verdict, which the foreperson will be authorized to write
5 on behalf of the jury. Mr. Foreman, I charge you that
6 once you begin your deliberations, that you maintain some
7 order in those deliberations, that everyone who wishes to
8 participate and be heard in those deliberations be allowed
9 to do so. If for any reasons any member of the jury panel
10 should take a break from the deliberations, all should
11 take a break. By that I mean all 12 jurors should be
12 present and deliberating when deliberations are going on.

13 Now, I have prepared for your use in the jury room,
14 Mr. Foreman, a verdict form. I'm going to go over that
15 form with you at this time. There are two possible
16 verdicts which appear on the form. They are as follows:
17 We, the jury, find the defendant, Michael Bayron, Jr.,
18 guilty of the offense of pointing or presenting a firearm.
19 The other possible verdict that appears is we, the jury,
20 find the defendant, Michael Bayron, Jr., not guilty.

21 In preparing the verdict form, I have to put the
22 possible verdicts on the form in some order. I do it the
23 same way every time. The order in which the possible
24 verdicts appears means absolutely nothing, and you should
25 infer nothing from it.

1 What you should do, Mr. Foreman, is the jury should
2 deliberate. Once the jury has reached a unanimous
3 verdict, you will simply go to the verdict form, find the
4 verdict which corresponds to the unanimous verdict reached
5 by the jury. You will simply put a checkmark by that
6 verdict, sign your name on the line above the word
7 "foreperson's signature" and date it. Once you've done
8 that, if you'll knock on the door, let the bailiff know
9 you've reached a verdict. The bailiff will let me know,
10 and I'll bring you back out into the courtroom and receive
11 that verdict.

12 I'm going to ask you, if you will, at this time to
13 retire to the jury room, but do not yet begin your
14 deliberations. I have to give counsel an opportunity to
15 request additional instructions on the law. If additional
16 instructions are requested and I deem them necessary, I
17 will bring you back out and give you those additional
18 instructions. If no additional instructions are
19 necessary, I will send to you by means of the bailiff the
20 verdict form, any exhibits which have been admitted into
21 evidence, and instructions to begin deliberating.

22 Let me give you one caution. The gun that's been
23 introduced into evidence will be sent back. It has a
24 safeguard on it, so it won't fire, but I'm nevertheless
25 going to ask you not to put the bullets in the gun. I

1 don't think that's necessary. Please do not do that.

2 Again, if no additional instruction necessary, you'll
3 have those back there and get instructions to begin
4 deliberating. Please do not begin deliberating until you
5 get that instruction. Please retire to the jury room, all
6 except the alternate. Ma'am, I'll ask you at this time
7 not to go into the jury room but wait just outside the
8 courtroom door for further instructions. Thank you.
9 Please retire.

10 (WHEREUPON, the jury left open court at approximately
11 11:55 a.m.)

12 THE COURT: Exceptions, additional requested charges
13 from the State?

14 MS. HAMILTON: None, Your Honor.

15 THE COURT: From the defense?

16 MS. SIKORA: May it please the Court, Your Honor, no.
17 The only request from the defense at this point would be
18 given the fact that the in-car videos that were placed
19 into evidence were not redacted and only portions of those
20 shown to the jury, the jury would like to rehear testimony
21 from those, we would just ask that it would be done in
22 court.

23 THE COURT: Yeah, and I probably should have told
24 them at the time of sending them back. If it's okay with
25 you, I'll just let the bailiff tell them that if they wish.

1 to have either of those -- play the videos or CDs played
2 that we'll bring them back out into the courtroom, upon
3 their request to bring them back out here to replay them.
4 If you could just tell them that. Although we're sending
5 them back, they can't play them back there, but they wish
6 to hear them, then we'll bring them back out -- upon their
7 request, bring them back out and play them for them.
8 Okay?

9 THE BAILIFF: Okay.

10 THE COURT: No other exceptions?

11 (A discussion was held off the record.)

12 THE COURT: As it turns out, we made it through the
13 trial without an emergency developing with regard to one
14 of the other jurors, so it will not be necessary for you
15 to participate in deliberations at this point. So I'm
16 going to excuse you at this time with our thanks for your
17 service thus far this week and your patience. You -- of
18 course you're welcome to stay if you wish. If you wish to
19 be excused, I would ask you to please call in tonight
20 after 7:00 to the voice mail number to get further
21 instructions. Okay?

22 JUROR: Thank you.

23 THE COURT: Thank you very much for your service,
24 ma'am.

25 (WHEREUPON, the jury began their deliberations at

1 11:57 a.m.)

2 THE COURT: Counsel, we'll be at ease.

3 (A recess was taken from 11:57 a.m. to 2:17 p.m.)

4 (Court's Exhibit Number 4 was marked.)

5 THE COURT: Can you bring the jury in and have them
6 bring the 911 CD, whatever that is, bring that out with
7 them. We're going to need something to play that on? Can
8 you play it on here?

9 MS. HAMILTON: We have it ready to be played.

10 THE COURT: Pardon me?

11 MS. HAMILTON: We have it ready to be played.

12 THE COURT: You already got it?

13 MS. HAMILTON: Yes. No, no, no, we don't have the
14 911 yet.

15 THE COURT: But you can play it on that?

16 MS. DESCH: But we can play the CD on here, yes, sir.

17 THE COURT: Bring the CD with the 911 call, please,
18 sir.

19 (The jury enters the courtroom.)

20 THE COURT: Mr. Foreman, ladies and gentlemen of the
21 jury panel, I had your note. I was trying to let you eat
22 a little pizza before we brought you back out, give you
23 time to do that before we got started. So we're going to
24 do that now. And I'm going to -- you had requested,
25 according to your note, wanted to hear the 911 call, you

1 wanted to hear the audio from Deputy Reed's vehicle, and
2 you wanted to hear the three elements of pointing and
3 presenting law again.

4 So what I'm going to do is we'll first play the 911
5 call first, which is the way they've got it listed here.
6 And then second we'll do the audio from Deputy Reed's
7 vehicle. Then finally I'll reinstruct you on the law.
8 Okay.

9 (Audiotape was played in open court.)

10 (Videotape was played in open court.)

11 MS. DESCH: Your Honor, I believe that's the
12 conclusion of both the video and audio.

13 THE COURT: Okay. Now, Mr. Foreman, ladies and
14 gentlemen of the jury panel, I'm going to recharge you on
15 the law on pointing and presenting a firearm exactly as I
16 did before. I charged you that Section 16-23-410 is the
17 code of laws of the State of South Carolina, 1976, as
18 amended provides that it shall be unlawful for any person
19 to present or point at any other person any loaded or
20 unloaded firearm.

21 Before you can find a -- the defendant guilty of this
22 offense, you must find all three elements of this crime
23 have been proved to your satisfaction beyond a reasonable
24 doubt. The elements are as follows: First, the defendant
25 committed some action with regard to a firearm that

1 amounts to pointing or presenting. Two, the item that the
2 defendant pointed or presented was, in fact, a firearm.
3 It is not necessary for you to find that the firearm was
4 loaded with ammunition of some kind. The firearm may be
5 loaded or unloaded. The defendant -- the third element is
6 that the defendant pointed or presented the firearm at
7 another person other than himself. "Present a firearm" is
8 to find as offering to view in a threatening manner or to
9 show in a threatening manner, waving or showing a gun at
10 someone in a direct, actively aggressive and threatening
11 manner constitutes presenting a firearm.

12 In order to find the defendant guilty, you must find
13 all three of these essential elements have been proved
14 beyond a reasonable doubt. If you find that any one of
15 these elements has not been proved beyond a reasonable
16 doubt, then you must return a verdict of not guilty.

17 All right. With that information, now the last two
18 parts of that charge are simply defining what presentation
19 of a firearm is, presenting a firearm is what I just --
20 defined it. All right. Please retire back to the jury
21 room, resume your deliberations.

22 (WHEREUPON, the jury left open court at approximately
23 2:38 p.m.)

24 THE COURT: All right. Exceptions from the State?

25 MS. DESCH: No, Your Honor.

1 THE COURT: From the Defense?

2 MS. SIKORA: No, Your Honor.

3 THE COURT: We'll be at ease. We'll make this a
4 court exhibit, please, ma'am.

5 (Court's Exhibit Number 5 was marked.)

6 (The jury enters the courtroom at 3:22 p.m.)

7 THE COURT: Mr. Foreman, ladies and gentlemen of the
8 jury panel, I know you haven't reached a verdict yet. We
9 started out really -- I hoped that we would be able to get
10 the case resolved by now, but what -- I have a diagnostic
11 test scheduled in Rock Hill in about 20 minutes. And I
12 have to get that done today. Had that scheduled in
13 advanced, hoping I would be there. Got it scheduled last
14 appointment of the day. And so what we're going to do is
15 go -- and I need to be here while you're deliberating, so
16 what I'm going to do is go ahead and send you home for the
17 evening. I'll ask you to come back at 10:00 in the
18 morning. Have something else scheduled in the morning.
19 And so I'm going to ask you to be back at 10:00, come back
20 to the jury room, resume your deliberations in the
21 morning. I would like to go further, but this -- really
22 don't have any choice today, so we'll go ahead and send
23 you home for the evening.

24 And I would like to remind you, though, on the
25 overnight recess, please do not discuss this case with

1 anyone. And you need to be together when you're
2 discussing it, so don't discuss it separately and please
3 don't discuss it with family, friends, anyone else you
4 might see on the recess. Anybody tries to discuss it with
5 you, please do not discuss it with them but make note of
6 that person, let the bailiff or clerk's office know upon
7 your return, and I'll deal appropriately with that person.

8 Please do not -- I do not know of any media account
9 of this trial, but if there should be any media account of
10 this trial, on -- even if it's on the internet, please do
11 not use any kind of electronic device to try to find out
12 anything about this case or read any kind of media account
13 if there should be. I don't think there will be any, but
14 I don't know that. So, again, please do not relisten to
15 or watch any media account of this or go on the internet
16 and try to find out -- or any kind of electronic device,
17 try to find out anything about this case. And that's not
18 a hardship for anybody, I don't think, because -- you
19 know, for that period of time.

20 Please have a pleasant night tonight and be back in
21 the jury room ready to go at 10:00 in the morning. 10:00,
22 and you'll resume your deliberation. Soon as you come
23 here, you don't need directions from me. As soon as all
24 12 jurors are present, Mr. Foreman, you will begin
25 deliberations. Wait until you have all 12. Thank you.

1 (WHEREUPON, the jury left open court at approximately
2 3:47 p.m.)

3 THE COURT: So we'll be available at 10:00 in the
4 morning. Okay.

5 (Trial adjourned until 10:00 a.m.)

6 (Proceedings resumed at 12:31 p.m. on December 1st, 2011.)

7 THE COURT: Please bring the jury in. Have a
8 verdict. I have no idea what the verdict is. Bring the
9 jury in.

10 (The jury enters the courtroom at approximately
11 12:32 p.m.)

12 VERDICT

13 THE COURT: Mr. Foreman, have you, the jury, reached
14 a unanimous verdict in the case?

15 THE FOREPERSON: We have, sir.

16 THE COURT: Please hand the form up to the baliff.
17 Clerk will please publish the verdict.

18 THE CLERK: Indictment number 2011-GS-46-2965 (sic),
19 the State of South Carolina versus Michael Bayron, Jr.,
20 we, the jury, find the defendant Michael Bayron, Jr.,
21 guilty of the offense of pointing and presenting a
22 firearm. Signed by foreperson, dated December the 1st,
23 2011. If this is your verdict, please say so by raising
24 your right hand. Let the record reflect all jurors
25 affirmed this verdict.

1 THE COURT: Thank you. Any questions of the jury
2 panel from the State?

3 MS. HAMILTON: No, Your Honor.

4 THE COURT: From the defense?

5 MS. SIKORA: No, Your Honor.

6 THE COURT: Mr. Foreman, ladies and gentlemen of the
7 jury panel, this will conclude your service on this case.
8 It will also conclude your service for the week. We're
9 not going to start another jury trial this week. For your
10 information, Judge Hayes has had a trial going on all
11 week. Pretty big trial over there. They're still going
12 on as we speak. And so -- but they'll not start another
13 trial over there. We're not going to start another trial
14 over here today. We've disposed of all the cases we had
15 on our trial docket for this week. For your information,
16 also -- well, we have plenty of other work to do that's
17 going to keep us busy through tomorrow. Matter of fact,
18 we were very busy yesterday afternoon while you were
19 deliberating. We've been very busy this morning working
20 in here while you were were deliberating. We have plenty
21 of other work to keep us busy through tomorrow, but we
22 will not have another jury trial. I want to take this
23 opportunity to thank you for your service this week. We
24 certainly understand your being here this week has
25 required you to be away from your jobs and family and

1 other things you feel are important, and we do not take
2 that sacrifice for granted. We deeply appreciate your
3 being here and your willingness to serve. A check will be
4 put in the mail for your service this week. In short
5 order, they'll get a check out to you for your service
6 this week. Does anyone on the jury need anything to take
7 to your employer showing you were required to be here this
8 week? Does anybody need that other than the jury summons?
9 Good. Thank you. You're free go at this time, and the
10 bailiff will show you out. Again, thank you for your
11 service and your patience. All of you are free to go at
12 this time except the foreperson. Sir, I'll ask you to
13 come up and sign the indictment for us, if you will.
14 Everyone else is free to go. Thank you.

15 (WHEREUPON, the jury left open court at approximately
16 12:35 p.m.)

17 THE COURT: Glad to hear you with regard to any
18 motions you wish to make at this time.

19 MS. SIKORA: May it please the Court, Your Honor, at
20 this time, the defense would renew all previous objections
21 in this case and their motion for directed verdict. We
22 would also ask for a new trial based on lack of evidence
23 to support the verdict for the reasons we previous stated
24 when arguing our directed verdict motion.

25 THE COURT: Well, as I previously stated, your motion

1 was noted for the record and limited to the light most
2 favorable to the State, which I'm required to do on your
3 motion. I find there was substantial evidence from which
4 the jury could infer the State had proven the elements of
5 this offense beyond a reasonable doubt. Therefore, it is
6 a matter for the jury to determine the credibility of the
7 witnesses and the weight of the evidence, not for the
8 Court. Court's only function is to find whether there's
9 was any substantial evidence, and I find there is
10 substantial evidence. Therefore, I deny your motion for
11 judgment notwithstanding the verdict of the jury. We
12 ready for -- we have a sentence if you're ready.

13 MS. SIKORA: Yes, Your Honor.

14 THE COURT: Bring him around. State wish to be heard
15 on sentencing or give me any record?

16 MS. HAMILTON: Yes, Your Honor. May it please the
17 Court. The defendant, Michael Bayron, Jr., has three
18 prior criminal convictions, a 2009 possession of marijuana
19 second. And then he has -- as I stated, Your Honor,
20 during the trial, a disorderly conduct offering violence
21 and resisting arrest with -- resisting police. In this
22 disorderly conduct offering violence charge, he also
23 pointed a gun at a Jeff Stanley, threatening to shoot the
24 bouncer. Same gun used in this case. Same serial number,
25 seven in magazine, one in chamber. In that case, he fled

1 from officers in handcuffs and was eventually detained.

2 The State feels that -- additionally, he had contact
3 with the victim, knowing he should not as a bond
4 condition, continued to have contact with her. And the
5 State feels he is still a threat to her and the children
6 in her custody. And based on his prior convictions and
7 his prior use of a weapon in volatile situations in this
8 case and in the prior case, we feel that a jail sentence
9 would be appropriate in this case.

10 THE COURT: Thank you. Counsel.

11 MS. SIKORA: May it please the Court, Your Honor. We
12 would point out the fact that Mr. Bayron is just 25 years
13 old. All of his prior convictions have been for
14 misdemeanor offenses. He does hold down two jobs
15 currently and is working to try to provide for his three
16 small children and his wife, Your Honor. I believe Your
17 Honor remembers the testimony given by the victim -- and
18 she is still present in the courtroom in this case --
19 where she states that she is not fearful of her husband.
20 I don't believe she would like to see her husband go to
21 jail or views him as a threat. She's present in the
22 courtroom.

23 Ms. Correa, did you wish to address the court? No.

24 She is present in the courtroom now, Your Honor. She
25 has never expressed any type of fear of him to me. I

1 don't know if my client wishes to say anything or not, but
2 we would respectfully request, Your Honor, given the fact
3 he only has misdemeanors prior on his record, has never
4 done any jail time, that you would consider a probationary
5 sentence, especially considering he is the only
6 breadwinner in his family, Your Honor, to provide for
7 these children.

8 THE COURT: Mr. Bayron, anything you want to say to
9 the Court?

10 THE DEFENDANT: Yes, I would like to say that what
11 the solicitor said a couple minutes ago is false about --
12 in my first -- my first case with the club. I was not --
13 I did not point or present a firearm. If that was the
14 case, I would have been charged with pointing and
15 presenting a firearm at that time. So that being said,
16 you know, I am not a violent person. You know, I've have
17 my firearm since I was 21. I never had any problems with
18 it. Agreeing with Amy, I would like a probation sentence
19 because I'm already found guilty. I don't believe I
20 belong in jail. I've been with my wife since I was 16
21 years old and she was 14, almost ten years now, and I
22 think it's very unnecessary for me to go to jail. I've
23 been convicted already. My life has been, you know,
24 pretty hard since this day. And I feel we suffered -- my
25 family suffered enough already.

1 THE COURT: What really bothers me about the case is
2 that the jury found you that you were guilty of these
3 offenses, so we're not going to discuss that. That's a
4 jury function. How do you come in -- wife come in here
5 and lie under oath in contradiction of a false statement
6 she gave to police. Police -- she could have been
7 prosecuted. She still could be prosecuted. That bothers
8 me. It bothers me a lot that her testimony -- either one
9 time or the other, she was lying. And each time is a
10 violation of the law. But to allow her to do that rather
11 than taking responsibility for what you did and just
12 dealing with it that way, instead concocting some story
13 and have her come in and handle it. She's given
14 statements to the police up there. They got the 911 tape
15 all that, and the jury found that you were guilty. They
16 decided. Okay? And put your wife in a position to try to
17 clear yourself, that one way or the other, she's violating
18 the law. Either filing a false police report or
19 committing perjury under oath here on the stand. One or
20 the other. That's what bothers me.

21 THE DEFENDANT: Can I reply?

22 THE COURT: You don't care about anybody but
23 yourself, Mr. Bayron. You don't care about anybody but
24 yourself. You can say anything you want to. Go ahead.
25 Go ahead.

1 THE DEFENDANT: No, I was asking if I could reply to
2 it.

3 THE COURT: Tell me. Tell me.

4 THE DEFENDANT: I did not tell my wife to come up
5 here and -- you know --

6 THE COURT: Don't insult my intelligence. Will you
7 please not. You may think you've got everybody fooled.
8 I'm not fooled by anything that's going on. I've been
9 around for a while. You think this is the first one of
10 these cases I've seen, Mr. Bayron? I've seen these cases
11 where, you know, somebody's drunk like that arguing,
12 waving a gun around, killed his wife and I sentenced him
13 to 25 to 30 years in prison, no parole. That's what could
14 have happened in this case. By accident maybe even, or
15 recklessness is enough. That gun had gone off and killed
16 her, you'd be in here on homicide. Do you understand
17 that?

18 THE DEFENDANT: (The defendant nodded his head.)

19 THE COURT: Sir?

20 THE DEFENDANT: I said yes, sir.

21 THE COURT: Instead of making up all this stuff and
22 trying to get out of everything, you need to understand
23 how serious this was. You could have killed her or killed
24 one of the children. And the children saw all this stuff.
25 Breaking the TV, waving a gun, and you drunk and carry on

1 and yelling, and -- why -- they saw all that. You think
2 that has any impact on them? All you care about is
3 yourself, Mr. Bayron. That's it. You don't care about
4 what impact it has on the children, whether you could have
5 killed them or your wife while you were drunk, waving a
6 gun around. You don't care. All you care about is
7 clearing yourself. That's what bothers me about this.
8 You're not taking responsibility. "I suffered enough."

9 SENTENCE

10 THE COURT: Sentence of the Court is in case number
11 2011-GS-46-2968, Michael Bayron, having pled guilty (sic)
12 to pointing and presenting a firearm at a person, sentence
13 of the Court is to be committed to the State Department of
14 Corrections for a determinate term of five years, provided
15 upon the service of six months -- I'm being kind to you --
16 the balance is suspended with probation for two years,
17 given credit for any time served.

18 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for York County, South Carolina, on the
30th day of November through the 1st of December, 2011.

February 14th, 2012

Aminah R. Hardy

Aminah Hardy, RPR

WITNESSES

SO\Reed

ARREST WARRANT NUMBER

02541

ACTION OF GRAND JURY

~~TRUE BILL~~

Person of Grand Jury

e:

VERDICT

Person of Petit Jury

e:

DOCKET NO. 2011-GS-46-02968

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

vs.

MICHAEL BAYRON JR.

Indictment for

POINTING/PRESENTING A FIREARM

SC Code: 16-23-410

CDR Code: 122

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.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

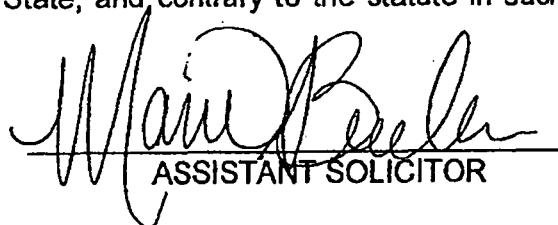
INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

POINTING/PRESENTING A FIREARM

The Defendant, Michael Bayron Jr., did in York County, South Carolina, on or about June 23, 2011, point or present a firearm at Claribel Michelle Correa while at their residence located at 221 Garden Way Apt. 88, Rock Hill, South Carolina, all in violation of Section 16-23-410 of the Code of Laws of South Carolina, (1976, as amended.)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

SO\Reed

ARREST WARRANT NUMBER

602540

ACTION OF GRAND JURY

TRUE BILL

represent person of Grand Jury
date: 9/15/11

VERDICT

represent person of Petit Jury
date:

DOCKET NO. 2011-GS-46-03146

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

vs.

MICHAEL BAYRON JR.

Indictment for
CRIMINAL DOMESTIC VIOLENCE

SC Code: 16-25-20
CDR Code: 2671

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.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

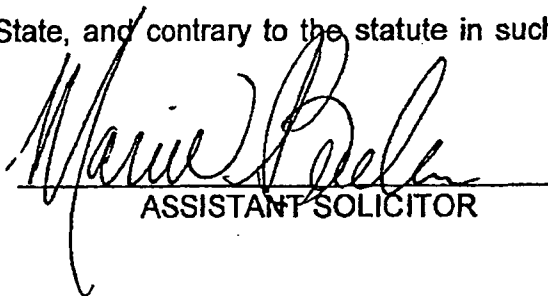
INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE

The Defendant, Michael Bayron Jr., did in York County, South Carolina, on or about June 23, 2011, commit the crime of Criminal Domestic Violence, in that the Defendant did cause physical harm or offer or attempt to cause physical harm to Claribel Michelle Correa, a family or household member, with apparent present ability under circumstances reasonably creating fear of imminent peril. All in violation of Section Code 16-25-20, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

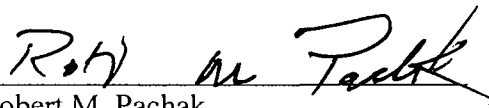

ASSISTANT SOLICITOR

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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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 2nd, 2012


Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

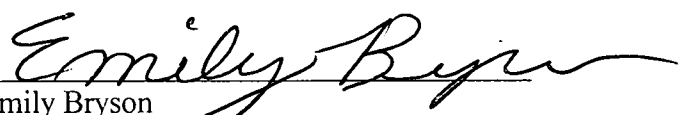
V.

MICHAEL BAYRON,

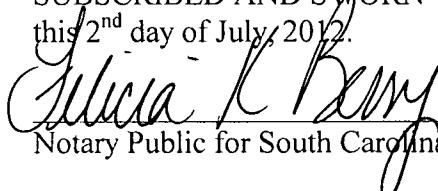
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 2nd day of July, 2012.


Emily Bryson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 2nd day of July, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

RECEIVED

JUL 02 2012

SC Court of Appeals