

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of General Sessions
Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2016-000527

Case No.: Assault and Battery Of A High And Aggravated Nature 2015-GS-04-00781; Pointing/Presenting A
Firearm 2015-GS-04-00782

THE STATE,

RESPONDENT,

Versus

JESUS V. MARTINEZ,

APPELLANT.

AMENDED RECORD ON APPEAL


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Anderson, South Carolina
February 21, 2017

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SC Court of Appeals

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**IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM ANDERSON COUNTY
ADMINISTRATIVE LAW COURT**

The Honorable R. Lawton McIntosh

**Case No.: Assault and Battery Of A High And Aggravated Nature 2015-GS-04-00781;
Pointing/Presenting A Firearm 2015-GS-04-00782**

JESUS VARGAS MARTINEZ,

Appellant,

Versus

STATE,

Appellee.

NOTICE OF INTENT TO APPEAL

Comes now the Appellant, Jesus Vargas Martinez, by and through his undersigned attorney hereby appeals from a decision and order of the Honorable R. Lawton McIntosh rendered on February 24, 2016 and filed with the Clerk of Court on February 24, 2016.


Fletcher N. Smith, Jr.
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Anderson, South Carolina
March 2, 2016

**IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM ANDERSON COUNTY
ADMINISTRATIVE LAW COURT**

The Honorable R. Lawton McIntosh

**Case No.: Assault and Battery Of A High And Aggravated Nature 2015-GS-04-00781;
Pointing/Presenting A Firearm 2015-GS-04-00782**

JESUS VARGAS MARTINEZ,

Appellant,

Versus

STATE,

Appellee.

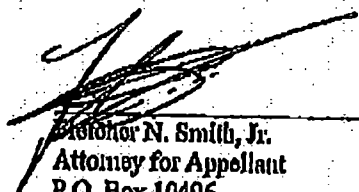
CERTIFICATE OF SERVICE

I, Fletcher N. Smith, Jr., hereby certify that I have this 2, day of March, 2016, served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

**The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211**

**The Honorable Richard A. Shirley
Tenth Judicial Circuit Clerk of Court
P.O. Box 8002
Anderson, SC 29622**

**Catherine T. Huey, Esquire
Sr. Career Prosecutor
Tenth Judicial Circuit Solicitor's Office
100 South Main Street
Anderson, SC 29624**



Fletcher N. Smith, Jr.
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P.O. Box 10496
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(864) 232-6541 Office
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Anderson, South Carolina
March 2, 2016

WITNESSES

Anderson Police Dept.
Blake Vaughn

ARREST WARRANT NUMBER

2015A0420700130

TRUE BILL
ACTION OF GRAND JURY

MAY 12 2015

Foreperson of Grand Jury
Date:

VERDICT

GUILTY -

Foreperson of Grand Jury

Date: 2/24/16

DOCKET NO. 2015-GS-04-00782

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAY 12 2015

TERM

THE STATE

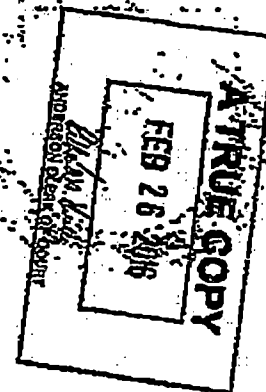
VS.

JESUS V MARTINEZ

INDICTMENT FOR

POINTING/PRESENTING A FIREARM

SC Code: § 16-23-0410
CDR Code: 0122



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on MAY 12 2015, the
Grand Jurors of Anderson County present upon their oath:

POINTING/PRESENTING A FIREARM

The defendant, Jesus V Martinez, did in Anderson County, on or about February 12, 2015, point and/or present a firearm at the victim, Floyd Mills. This is in violation of §16-23-410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Catherine T. Huey
CATHERINE T. HUEY
SR. CAREER PROSECUTOR

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON
STATE VS.

JESUS V MARTINEZ

AKA: Jesus Martinez

Race: Unknown

Sex: M

Age: 48

DOB: [REDACTED]

SSN: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED]

SID# SC01290208

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Pointing/Presenting a Firearm (5)
 In violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory OPS☐ §17-25-45

The charge is:

☒ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Catherine T. Huey

68416

Catherine T. Huey, Sr. Career Prosecutor SO Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ 3; provided that upon the service of 3 days/months/years and or payment
 of \$ 3; plus costs and assessments as applicable; the balance is suspended with probation for 5
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015 GS04781☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTOP

days/hours Public Service Employment

Obtain CRD ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/B beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: No contact with victims
 including all members
 of Transwell and Smith Law Firm

☐ Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk:
 Court Reporter:
 SCCA/217 (03/2011)

Presiding Judge:
 Judge Bar ID:
 Sentence Date:

Judge Code: #2752

2/24/16

WITNESSES

Anderson Police Dept.
Blake Vaughn

ARREST WARRANT NUMBER

2015A0420700129

TRUE BILL
ACTION OF GRAND JURY

MAY 12 2015

Foreperson of Grand Jury
Date:

VERDICT

Guilty-

Foreperson of Grand Jury

Date: 2/24/16

DOCKET NO. 2015-GS-04-00781

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAY 12 2015

TERM

THE STATE

VS.

JESUS V MARTINEZ

INDICTMENT FOR

ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

A TRUE COPY

FEB 26 2016

APPROPRIATE COURT

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on MAY 12 2015, the
Grand Jurors of Anderson County present upon their oath:

ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

The defendant, Jesus V. Martinez, did on or about February 12, 2015 in Anderson County, injure Floyd Mills and did accomplish that injury by means likely to produce death or great bodily injury. All in violation of 16-03-0600(B)(1), 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.

Catherine T. Huey
CATHERINE T. HUEY
SR. CAREER PROSECUTOR

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON
STATE VS.

JESUS V MARTINEZ

AKA: Jesus Martinez
Race: Unknown Sex: M Age: 48
DOB: [REDACTED] SSN: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DLA: [REDACTED] SID# SC01290208

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-65-04-0078
A/W: 2015A0420700129
Date of Offense: 02/12/2015
S.C. Code #: 16-03-0600(D)(1)
CDR Code #: 3411

SENTENCE SHEET



*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Harnat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery Of A High And Aggravated Nature
In violation of § 16-03-0600(D)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

✓ CONVICTED OF or ☐ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lowd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense,
The plea is: ☐ Without Negotiations or Recommendation,
ADJST: ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)
☐ Negotiated Sentence, ☐ Recommendation by the State.

Catherine T. Huey, Sr. Prosecutor SC Bar # 68416

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 3 days/months/years and or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-65-04-00782
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered . PTUP
Total \$ plus 20% fee \$ days/hours Public Service Employment
Payment Terms Obtain ORD ☐

Set by ☒ TRUE COPY

RECEIVED FEB 26 2016

Recipient: [REDACTED]

Phone: [REDACTED]

§14-1-206 (Assessments 107.5%) \$
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$
§56-3-2995 (DUI Assessment) \$12 \$
§56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§14-1-212 (Law Enforce. Funding) \$25 \$25.00
§14-1-213 (Drug Court Surcharge) \$150 \$
§50-21-114 (BUI Breath Test Fee) \$50 \$
§56-3-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.3 (SCJA Surcharge) \$5 \$5.00
3% to County (if paid in installments) \$ \$130.00
TOTAL

Attend Voc. Rehab. Or Job Corp. ☐
May serve W/B beginning ☐
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ Beginning \$
\$ Paid to Public Defender Fund
Other: NO contact with victims
including all members of
Trammell and Willie's Law firm.

☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 to be paid to Clerk
during probation.

Clerk of Court/County Clerk
Court Reporter: R. [REDACTED]
SCCA/217 (03/2011)

Presiding Judge: [REDACTED]
Judge Bar ID: [REDACTED]
Sentence Date: 2/24/16

Judge Code: #2752

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of General Sessions
Scott Sprouse, Circuit Court Judge

Appellate Case No. 2016-000527

THE STATE,

Respondent,

v.

JESUS V. MARTINEZ,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

**Trial transcript pages 28-34, 38-60, 65-75, 84, 86-91, 94-95,
97-130.**

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of General Sessions
Scott Sprouse, Circuit Court Judge

Appellate Case No. 2016-000527

THE STATE,

Respondent,

v.

JESUS V. MARTINEZ,

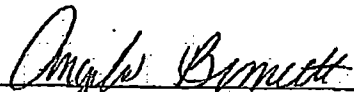
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Fletcher N. Smith, Jr., Esquire
112 Wakefield Street
Greenville, SC 29601

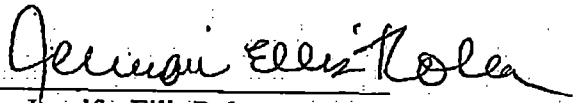
I further certify that all parties required by Rule to be served have been served.
This 9th day of January, 2016.


ANGELA BENNETT
Administrative Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

JENNIFER ELLIS ROBERTS
Assistant Attorney General

CATHERINE HUEY
Acting Solicitor, Tenth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 9, 2016

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Floyd Simpson "Trey" Mills, III				
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Lisa Hunt				
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EXHIBITS

No	DESCRIPTION	ID	EV
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Juror#	Name	Race	Sex	Strikes			Accept
				Ct	Pl.	Def.	
77	Gregory P. Moss	W	M				X
21	Rachael M. Christian	W	F				X
115	Larry C. Sellers	W	M				X
38	Kimberly A. Edwards	W	F				X
130	John R. Stubblefield	W	M				X
60	Don A. Jameson	W	M				X
114	Stephen K. Sanders	W	M				X
93	Marvin A. Owens	W	M				X
134	Alison L. Taylor	W	F				X
54	John M. Hayes	W	M				X
70	Takisha J. Lewis	B	F				X
19	Louise A. Calvanese	W	F				X
100	Kassandra T. Penland	W	F	A	L	T	X

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

1 proven their case beyond a reasonable doubt, you get to
2 say guilty. But we believe that during the course of
3 this trial we're going to show you that Mr. Vargas should
4 be found not guilty.

5 Thank you very much.

6 THE COURT: All right. Ms. Huey, call your
7 first witness.

8 MS. HUEY: Your Honor, the State calls Trey
9 Mills to the stand.

10 FLOYD SIMPSON "TREY" MILLS III

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. HUEY:

14 Q. Mr. Mills, what is your occupation?

15 A. I'm a civil trial attorney. I've been practicing
16 since January 6th of 2006 here in Anderson County with
17 Ernie Trammel.

18 Q. And what's the name of your firm?

19 A. It's Trammel and Mills now. It was Trammel Law Firm
20 when I first started.

21 Q. And so how long have you been an attorney all
22 together?

23 A. Going on eleven years.

24 Q. And a partner for how many?

25 A. Five.

1 Q. Generally, what does your practice consist of?

2 A. We're a civil trial practice. We do worker's
3 compensation and personal injury claims when you're hurt
4 by the negligence, ignorance or omissions of others. We
5 sue insurance companies.

6 Q. You sue insurance companies?

7 A. Yes.

8 Q. And generally how and when do you earn your fee?

9 A. I only earn my fee -- it's a contingency fee. I
10 don't get paid up-front, by the hour or a retainer fee.
11 I get paid based on a percentage of what I get my
12 clients. A third, one-third, minus any costs or liens or
13 third-party liens for health bills and things of that
14 nature. If I get them nothing, I get nothing.

15 Q. And that's just generally how it works; is that
16 correct?

17 A. That's correct.

18 Q. Are you familiar with the defendant in this case,
19 Jesus Martinez?

20 A. Yes.

21 Q. And how are you familiar with him?

22 A. I first became familiar with him from a June 9th,
23 2013, motor vehicle collision his son Jesse was in who's
24 seated behind him in the red checkered shirt. Jesse was
25 involved in a motor vehicle collision. He and Jesus came

1 to my office to represent him. I represented Jesse on
2 that claim and resolved it for him for a settlement that
3 he received.

4 And then I became their attorney on a second
5 occasion when they were involved in a second motor
6 vehicle collision on October 20th of 2013. And they were
7 in my office the next day on October 21st of 2013.

8 Q. And is Mr. Martinez, Jesus Martinez, in the
9 courtroom today?

10 A. Jesus Martinez is wearing the jacket and the blue
11 shirt seated between Mr. Smith and the interpreter.

12 Q. And sitting at the defense table?

13 A. Correct. He's wearing the blue shirt.

14 Q. So was Jesus a client of yours then to start with or
15 someone else's?

16 A. He was my client. Each time he was my client. I am
17 the only one at the office who does the personal injury
18 work.

19 Q. So what was the nature of your representation with
20 Mr. Jesus Martinez then, generally speaking?

21 A. A contingency-fee basis. He was my client I was
22 representing for an injury claim.

23 Q. This was a motor vehicle collision?

24 A. Correct. This was a motor vehicle collision. First
25 it was him as guardian for his son's injury. And then

1 the second time was representing he and his son for a
2 motor vehicle collision.

3 Q. And over the course of your representation of Mr.
4 Martinez, how many times do you think you saw him?

5 A. Half a dozen to ten counting -- six to ten times.

6 Q. And would you speak with him on each occasion?

7 A. Yes.

8 Q. And did you ever have any trouble communicating with
9 Mr. Martinez?

10 A. His English is very good.

11 Q. And he seemed to understand you?

12 A. Yes.

13 Q. As a result of your representation, eventually did
14 any issues arise?

15 A. Absolutely. The issue that we're here for today.

16 Q. Okay. And prior to that, what happened? What went
17 wrong?

18 A. Okay. So he was involved in an October 20th motor
19 vehicle collision, he and his son. It takes some time
20 with treatment for them to get better. In this case, it
21 was probably the middle of the next year, so 2014, when
22 we were able to get all the bills and records together
23 and present them to the at-fault party's insurance
24 company.

25 We presented them to the insurance company. They

1 made fairly low offers. I believe Mr. Martinez's medical
2 bills were around twenty-five thousand dollars. They
3 made an offer of thirty-five thousand dollars. I agreed
4 with Mr. Martinez that that was not a good offer, that we
5 should file suit, which is initiate pleadings and
6 litigation. He agreed.

7 We filed suit. My firm filed suit on his behalf and
8 Jesse's behalf against the at-fault party sometime in
9 2014, on July 30th of 2014. And then sometime between
10 July and October, Mr. Martinez came into the office and
11 wanted to fire me.

12 Q. So he wasn't happy with your representation?

13 A. He wanted his money.

14 Q. And what do you mean by that?

15 A. He wanted his money now. He didn't want to wait for
16 the litigation to be over. He wanted -- he was in need
17 of money then and now. I told him that's not how it
18 works. We've lost leverage if I do that. I can
19 certainly settle it, but it's even then going to take
20 time because by this point, a defense attorney is
21 involved. And they get paid by the hour.

22 Q. Now, so regardless, he did fire you though; is that
23 correct?

24 A. Yes. He said he no longer wanted my services and
25 fired me there and left the office.

1 Q. So once that happened, did you continue to have
2 contact with Mr. Martinez?

3 A. I sent him a letter indicating that just because he
4 fired me to try to circumvent my attorney's fee, it
5 doesn't work that way because the contract was signed. I
6 sent him a letter indicating with this signature, the
7 contract, all the information I sent to the insurance
8 company, and the lien I would be putting on his file to
9 be paid for not only my services but the medical liens on
10 his file for the treatment that had been given to him.
11 And I sent him a letter to his last address I had for
12 him. There was some emails exchanged between the two of
13 us. He called the office and made at least two
14 appointments where I sat down and discussed -- just him,
15 face-to-face, no interpreter -- these issues. And he
16 continually wanted his money then. And he then realized
17 that this is going to hold up his money because I did
18 indeed have a lien on the file.

19 Q. Now, was he was aware of that lien then?

20 A. Yes, very aware of the lien. I sent him everything
21 in writing.

22 Q. And what does that lien do?

23 A. The lien means the insurance company can't disburse
24 the checks without my law firm's name on it as well. And
25 they can't just give him the money because I am asserting

1 a lien against both the fees -- the settlement amount.

2 Q. And the reason for that is what?

3 A. I work on a contingency fee. So a lot of people
4 agree to use me when they don't have to put any money up
5 front. But when I do what I say I'm going to do, I do
6 the work I say I'm going to do and get you an offer on
7 the table that either we resolve or don't resolve, I've
8 done what I said I was going to do for what you hired me
9 for. So I was asserting my fee on the case for the work
10 I had done and got the offer on the table for. He never
11 had an offer when he came to me. I did what I said I was
12 going to do. I was asserting my fees and services.

13 Q. Okay. So drawing your attention then to February
14 12th of last year, what were you doing around one thirty,
15 one forty-five that day?

16 A. I honestly don't remember. I mean, I wasn't meeting
17 with anybody. I was at my desk doing legal work.

18 Q. Just what you normally do?

19 A. Right.

20 Q. And did you see the defendant in this case on that
21 particular day?

22 A. I know that he called the office and wanted to make
23 an appointment impromptu because he was in the area. I
24 agreed, and he came to the office within five to eight
25 minutes after making the phone call.

1 Q. And what did you understand the nature of this
2 meeting to be?

3 A. I know the insurance company had sent him the checks
4 with both our names on it. And we had met previously
5 before this day and had agreed to work everything out. I
6 agreed to reduce my fee. I agreed to -- so everything
7 could move forward. We had agreed for him to sign the
8 disbursement which I need for my records. And he was
9 going to endorse the checks and put in my trust account
10 which I have to do by law. It's a State of South
11 Carolina law. And so we were going to sign paperwork and
12 get everything moving.

13 Q. And so that's what you thought was going to happen?

14 A. Absolutely.

15 Q. All right. And he did come to the office with those
16 checks?

17 A. Yes, he came to the office with those checks.

18 Q. So tell me about when you first met with Mr.
19 Martinez on this particular day then? How did the
20 meeting start out?

21 A. He was waiting up front in our lobby to the right of
22 the door. He was sitting there in a long white leather
23 jacket. I went and got him. I brought him to the middle
24 conference room which is in the middle of our office.
25 There are two walls. The wall facing me would have been

1 the windows to the parking lot. And I would have closed
2 the two heavy wooden doors behind me. I sat him down to
3 the right of the head of the table. And I went and got
4 the disbursement paperwork with all the liens with
5 everything that needed to be signed.

6 Once I gathered everything, I closed the door behind
7 me, sat down at the head of the table, him to my right..
8 I got ready to sign all the paperwork and I passed it to
9 him to sign, indicating everything broken down to by the
10 penny, which is what a disbursement is. At that point,
11 he looked over it and passed me an index card with a
12 white background, little blue lines and a little red line
13 at the top. On it in English said, "Sign the check or I
14 will kill you." I thought it was a joke. I mean, I
15 thought it was a joke. He kept pointing to it and
16 indicating that. I said, "That's not funny." You know,
17 regardless of, you know, English, Spanish, you don't joke
18 about stuff like that. He said he wasn't joking. And
19 then he, you know, said, "Sign the check." I said, "I'm
20 not signing the checks unless you sign the disbursement.
21 That's how it works. I have to -- if you sign these
22 checks, you're going to go cash them. I have lienholders
23 to pay. I have things to do with that money that, by
24 law, I'm obligated to do if you don't do it."

25 So he then stood up, lifted up his white leather

1 jacket where he pulled out a black, what looked to be --
2 I don't know what caliber, but it was a gun. It was a
3 black handgun. And he said, "I'm serious."

4 Q. And what did he do with that gun at that time?

5 A. He pointed it at me. At first, he put it under his
6 arm like that because I was to his left. And he said,
7 "Sign the checks." My law partner, Ernie Trammel -- I
8 could hear him. He had just come out of his office. And
9 so I was trying to talk loud enough so somebody would
10 hear me. And he kept wanting me to sit down or to stay
11 down. And he had it tucked under his left armpit. He
12 said, "Stay down." You know, "Sign ..."

13 Q. You're still seated at the conference table?

14 A. I was still seated. He was standing at this point.
15 He's not a very tall gentleman. And he was still
16 standing at my right side. He kept telling me to stay
17 down, sign the checks. And I kept backing away, telling
18 him not to.

19 And eventually he took his left hand and just
20 punched me in the back of the head. It wasn't hard. It
21 wasn't anything that knocked me out. It didn't -- it was
22 just this -- it woke me up and rattled me. And at that
23 point, I tried to stand up and push my arm out to the
24 right, just as a reaction. I mean, I don't even know
25 what I was doing looking back. But it was just a

1 reaction because I'd just got punched in the back of the
2 head with a gun being held to me.

3 I stood up. And when I did that, he tried to hit me
4 with the butt of the gun. I'm six two; he's not. He hit
5 me in the back of the head and the back of my right
6 shoulder. When he did that, he also put the gun to my
7 temple and said, "Sign the fucking check or I'll kill you
8 and everybody in the office."

9 I signed the check. I did so though -- I'm very
10 narcissistic about my signature. I sign Trey. It's
11 really long to sign Floyd Simpson Mills III. I sign my
12 name a lot. I sign Trey. That's how I sign everything.
13 I was hoping that somebody would realize when I signed it
14 like that, there's a reason I did it.

15 Q. Okay. Let me back you up just a bit. He hit you
16 with his fist first?

17 A. Left fist first.

18 Q. He then hit you with the gun?

19 A. After I began to react and stand up and pushing away
20 with my right hand, he came down with his right hand and
21 the gun in his right hand to the back of my head and to
22 the right shoulder. It wasn't ...

23 Q. He didn't get a good lick in, so to speak? Was he
24 able to really hit you hard?

25 A. I've been hit harder. Not with a gun.

- 1 Q. But you felt it nonetheless?
- 2 A. Yes, I felt it.
- 3 Q. He then put the gun to your head. Was the gun
- 4 touching your head?
- 5 A. Yes. Yes.
- 6 Q. And he threatened you and everyone in your office?
- 7 A. He threatened to kill me if I didn't sign the check
- 8 and everybody in my office.
- 9 Q. And you signed the checks; is that correct?
- 10 A. I signed the checks.
- 11 Q. What did he then do?
- 12 A. He then asked me to sit down and put my head on the
- 13 table. And I said, "No." I was standing at this point.
- 14 I backed away from the door, the only entrance going into
- 15 the board room. And I said, "Just leave. Just go." You
- 16 know, I'm not putting my head on the table. I asked him
- 17 just to leave. And he grabbed everything off the table,
- 18 all the paperwork.
- 19 Q. Including the checks?
- 20 A. Yes, including the checks, including the index card.
- 21 Grabbed everything, tucked it in his leather jacket and
- 22 walked out like nothing happened.
- 23 Q. What did you do once he left?
- 24 A. I followed right behind him. And Ashley Reese was
- 25 coming in my direction headed to Ernie's office. And I

1 told her once he was clear, once he was at least towards
2 the front of the office, I said, "Call 9-1-1. He just
3 pulled a gun on me." At that time, you know, I went back
4 to my office to call 9-1-1.

5 Q. Now, did you require any medical treatment?

6 A. No. No.

7 Q. Did you ever have any bruising of you?

8 A. No.

9 Q. Would your hair have been covering one of the spots
10 that he would have hit?

11 A. Yes.

12 Q. And I don't think I asked you the address of your
13 law firm. Do you know?

14 A. 1650 East Greenville Street on Highway 81 there
15 beside the Zaxby's.

16 Q. And is that in the city limits of Anderson?

17 A. Yes.

18 MS. HUEY: Your Honor, it's my understanding
19 that the Defense does not object to State's 1 through 8,
20 so at this time we'd seek to admit them into evidence.

21 THE COURT: Any objection?

22 MR. SMITH: No objection, Your Honor.

23 THE COURT: State's Exhibits 1 through 8 would
24 be admitted without objection.

25 (WHEREUPON, State's Exhibits Number 1 through 8 were

1 admitted into evidence.)

2 Q. Mr. Mills, if you don't mind, would you step down?

3 I'm going to show you State's 1 through 8 ...

4 (WHEREUPON, the witness stepped down from the
5 witness stand.)

6 Q. ... and just have you tell the jury what each photo
7 depicts. This would be State's Exhibit 1.

8 A. That's the entrance. That's where people would park
9 to come into our office. That's our office.

10 Q. All right. And this is State's Exhibit 2.

11 A. That would have been the front door that Jesus
12 walked through. He would have sat in the chair on the
13 right of that entrance.

14 Q. This is State's Exhibit 3.

15 A. That would have been the hallway we walked down.
16 The conference room is past that picture on the left.

17 Q. State's Exhibit 4?

18 A. Again, a better picture of the hallway. The
19 conference room is immediately to the left of that wall
20 on the left.

21 Q. And that desk area?

22 A. That desk area is ornamental. There's nobody that
23 sits there. It's just for show.

24 Q. And is that across from the conference room?

25 A. Correct. The door to the conference room would be

1 directly across from that.

2 Q. This may be a better view then. State's Exhibit 5?

3 A. Again, that's the desk, and those are the doors to
4 the conference room on the left. Ernie's office would be
5 there in the distance.

6 Q. State's Exhibit 6.

7 A. That would be the conference room, the entrance
8 door. I was sat at the head of the table. Jesus was sat
9 to the right.

10 Q. And those were the two double doors that you
11 referred to?

12 A. Yes.

13 Q. All right. And the windows that we can see -- well,
14 actually let me show you State's Exhibit 7.

15 A. That's a better look of the conference room.
16 Obviously, the windows there face Zaxby's. Jesus would
17 have sat a little closer than that chair on the right.

18 Q. And those windows face the parking lot?

19 A. Correct.

20 Q. Is that right?

21 A. Correct.

22 Q. Not anywhere else in your office?

23 A. No.

24 Q. Is there a window in there to the rest of the
25 office?

1 A. No. That's the deposition room. We can't record,
2 or you don't want a lot of people knowing what's said in
3 those deposition rooms. And that's why it's a conference
4 room.

5 Q. And this is State's Exhibit 8.

6 A. That would be looking with the windows behind you.
7 I sat at the head of the table closest to the doors.

8 Q. Closest to those double doors?

9 A. Correct.

10 Q. And then Mr. Martinez would have sat to your right,
11 which would have been ---

12 A. He would have sat in that chair closest -- the chair
13 to the side of the wall is the chair I was actually
14 sitting in.

15 Q. Okay. Just hang on one second.

16 MS. HUEY: Your Honor, it's my understanding
17 that State's Exhibit 9 and 10 the Defense has no
18 objection to.

19 THE COURT: Is that correct, Mr. Smith?

20 MR. SMITH: No objection, Your Honor.

21 THE COURT: State's Exhibits 9 and 10 will be
22 admitted without objection.

23 (WHEREUPON, State's Exhibits Number 9 and 10 were
24 admitted into evidence.)

25 Q. Okay. Mr. Mills, while you're down here, I'm going

1 to show you State's 9 and 10. Could you please tell the
2 jury what those are?

3 A. Those are the settlement checks that would have been
4 made out to Jesus and Jesse Martinez and our law firm for
5 the settlement amounts.

6 Q. And these are the checks in question?

7 A. Correct.

8 Q. From February 12th of 2015?

9 A. Yes.

10 Q. Okay. And on the back, is this the signature that
11 you spoke of?

12 A. Yes.

13 Q. I'm going to put this up here.

14 A. Okay.

15 Q. This is State's 9. I'm just going to highlight your
16 signature. Is that how you typically sign ---

17 A. No.

18 Q. --- and endorse a check?

19 A. Not unless I have a gun to my head.

20 Q. And, again, this is State's 10. Is that your
21 typical signature?

22 A. No.

23 Q. And in fact, Mr. Mills, while you're here ...

24 (WHEREUPON, the witness wrote his signature on a
25 piece of paper.)

1 MS. HUEY: If you could, could I mark that,
2 please?

3 (WHEREUPON, State's Exhibit Number 11 was marked for
4 identification only.)

5 MS. HUEY: Your Honor, State's 11, I believe,
6 is admitted without objection.

7 MR. SMITH: No objection, Your Honor.

8 THE COURT: All right. State's Number 11 will
9 be admitted without objection.

10 (WHEREUPON, State's Exhibit Number 11 was admitted
11 into evidence.)

12 Q. And Mr. Mills, is this your usual signature?

13 A. Yes.

14 Q. Mr. Mills, why did Mr. Martinez actually have the
15 checks in his possession?

16 (WHEREUPON, the witness resumed the witness stand.)

17 A. Once he had fired me, the insurance company, they
18 don't really care. They want to just be done with
19 whatever claim is in front of them. So they seem -- the
20 way they seemed to protect my interest was to put my name
21 on the check. So they had sent the checks directly to
22 Jesus.

23 Q. But regardless, they had to be endorsed by both you
24 and Mr. Martinez?

25 A. Absolutely, just like any other check anyone would

1 receive.

2 Q. And did you speak with law enforcement that day
3 after this incident?

4 A. I did.

5 Q. And gave a statement as to what happened?

6 A. I did.

7 MS. HUEY: That's all I have at this time,
8 Judge.

9 MR. SMITH: Your Honor, may it please the
10 Court.

11 THE COURT: Your witness, Mr. Smith.

12 CROSS-EXAMINATION

13 BY MR. SMITH:

14 Q. How are you doing, Mr. Mills? I have a few
15 questions for you. With regard to your statement, this
16 is the statement you gave to the police at the time; is
17 that correct?

18 A. Do you want me to come down and look at it?

19 Q. Yes, sir, if you don't mind.

20 THE COURT: Have you got a copy?

21 (WHEREUPON, the witness stepped down from the
22 witness stand.)

23 A. Okay. I'll look at it with you.

24 Q. All right. This statement right here is the
25 statement that you signed right there. That's your

1 signature?

2 A. Yes, sir.

3 Q. And you gave this to the law enforcement that day;
4 correct?

5 A. Yes, sir.

6 Q. Thank you, Mr. Mills.

7 A. Do you want me to stay down here?

8 Q. No, you can go back up.

9 (WHEREUPON, the witness resumed the witness stand.)

10 Q. The fact is in that ...

11 MR. SMITH: Have you got a copy of that
12 statement?

13 Q. Mr. Mills, I don't think you got to read it. As I
14 understand it there, there's nothing in the statement
15 where he threatened to kill everybody in the office; is
16 that correct?

17 A. I only had a page to fill out, and I was pretty
18 nervous at the time.

19 Q. You were nervous?

20 A. I was really nervous.

21 Q. Well, the police officer said you said to him that
22 you pushed Mr. Martinez out of the way when he was in
23 your office. You gave a statement to the police officer.
24 And he put in his report that "Mills stated that Martinez
25 then put the gun to his head and told him to sign the

1 check. At that time, Mills said ..." Let me see. Let
2 me go back up. "Mills advised Martinez then passed him a
3 note that said, 'Sign the check or I will kill you.'
4 Mills said he refused at which time Martinez hit him in
5 the head with a closed fist. Mills said he pushed
6 Martinez back." Do you remember giving the police that
7 statement that you pushed him back?

8 A. I remember -- yeah, I remember very vividly what
9 happened.

10 Q. Okay. So as I understand it, the man hit you, then
11 you pushed him back; correct?

12 A. No. What you're doing is like a swipe. He was
13 standing right at my right shoulder. I pushed him that
14 way and stood up.

15 Q. All right. So that was a good stiff arm like in a
16 football thing?

17 A. No. I wish I'd got a good stiff arm in on him.

18 Q. Okay. Now, in your statement you never said that he
19 tried to kill everybody in your office, did you?

20 A. I'm glad he didn't. But I didn't have any more room
21 to write anything.

22 Q. I understand. But your law partner had three pages.
23 They can give you as many pages as you wanted.

24 A. No, it's not in my statement signed right here, but
25 he said it to me because I was there.

1 Q. All right. We won't be quibbling. I understand
2 there ain't but one page right here now. The other thing
3 too is that the note -- you don't say in your statement
4 that he took the note with him, do you?

5 A. I don't put that he took the checks either.

6 Q. I understand. But you told the police officer -- in
7 your statement to the police, you told them that he took
8 the checks. And you didn't tell him he took the note
9 either, the police?

10 A. I said he took all the paperwork off the table.
11 There was no more paperwork left on the table.

12 Q. All right. And so let me see how this operated.
13 You pushed him out of the way, and then he swiped all the
14 paperwork off the table before he went out the door?

15 A. You make it sound like it happened that quickly, but
16 it didn't. I was there. No. What happened was I pushed
17 him back. That's when he came at me with the butt of the
18 gun, put it to my temple, told me to sign the fucking
19 check. And then he made me sign the check. I signed the
20 check. He then backed up, grabbed everything on the
21 paper. He did a swipe like you're doing. And then he
22 put it inside his white leather jacket that went down to
23 his knees.

24 Q. All right. And then you said your law partner was
25 inside the law office, but I believe his statement that

1 he was coming -- he was getting out of his car when
2 everybody was running out. Do you know whether or not he
3 said that to the police?

4 A. Who are you referring to as my law partner?

5 Q. Mr. Trammel.

6 A. Ernie Trammel or Roy Trammel?

7 Q. Roy Trammel.

8 A. He's not my law partner. He's an associate there.

9 Q. Got you. Got you. Okay. And he was present out
10 there at the scene that day?

11 A. I don't know that he was there.

12 Q. Okay.

13 A. He may have been out in the parking lot, but I don't
14 think he was inside the office.

15 Q. All right. Now, on a date prior to that, Roy
16 Trammel -- you asked Roy Trammel to be present with a gun
17 because you were a little bit afraid of Mr. Martinez at
18 that time?

19 A. There were some aggressive emails Mr. Martinez had
20 sent me from the period of December until January that
21 were very aggressive.

22 Q. All right.

23 A. I was concerned for a lot of things. And then Mr.
24 Martinez called in frequently, like he did on the day
25 this happened, and asked if he could meet with me on a

1 day prior. And at that point in time, yes, sir, I said
2 -- I asked Roy Trammel, who's an associate there, to go
3 get his concealed weapon and put it in his office. And I
4 left the conference room door open.

5 Q. Right. You say, "Trey asked me to get my pistol and
6 have me one -- have me during his conference with Mr.
7 Jose [sic]. Trey took Jesus to the conference room and
8 left the door open. My office is located directly across
9 from the conference giving me a clear line of sight into
10 the conference room." Is that how it happened?

11 A. I don't know what he saw or what. But I did --
12 yeah, I was concerned with his nature and the way he was
13 doing with his emails.

14 Q. Okay. Now, as I understand it, now, he spoke good
15 English by saying -- what was that thing you said about
16 the fucking note and stuff? What did he say? How did he
17 say that thing?

18 A. He said, "Sign the fucking check or I'll kill you
19 and everybody in the office."

20 Q. Right. He said it in good English without having to
21 have an interpreter; is that correct?

22 A. Well, he also had met with me prior times and spoke
23 very good English and explained to me the situation that
24 had happened with the wreck. He explained how they got
25 hurt. He explained the medical treatment he needed. So

1 he was able to explain all of that in English to me
2 beforehand, before this incident ever happened. So I
3 didn't need an interpreter then.

4 Q. All right. So you were angry at him that day with
5 him doing all this stuff right here, correct, taking them
6 checks away because you wanted to get paid and he wanted
7 to get paid too; right?

8 A. I'll lose a lot more money being here right now
9 today than I ever will not being here.

10 Q. Yes, sir. You're a good lawyer and all that stuff.
11 But my question is you were mad that day?

12 A. No. We'd actually worked it out the day prior, that
13 I was scared he was going to be aggressive. We had
14 worked it out. I told him I'd take twenty-five percent
15 instead of a third. I told him I'd pay any lien he was
16 concerned about. And I had it all in writing for him to
17 sign. He said he'd consider it and take it with him. So
18 this second incident on February 12th which we're here
19 for today is when he pulled the gun. So I thought we had
20 it all worked out. So I wasn't mad at all.

21 Q. I understand. Okay.

22 A. I don't think you do.

23 Q. Well, let me see if I can be clear. After the
24 incident that you say happened, you were mad at him after
25 that when he took them checks and left your office,

1 weren't you?

2 A. I was mad because he hit me with the butt of a gun
3 and put a gun to my head. That's why I was mad.

4 Q. Right. Now, I understand that they didn't find him
5 at the -- at a bank trying to cash that check -- those
6 checks, was he?

7 A. We'd already called to cancel the checks. So I
8 don't know what he did.

9 Q. Okay. Which bank did you think he was going to?

10 A. I have no idea what bank he banks at.

11 Q. All right. And let me see. There's no other
12 witness that witnessed this to your knowledge except you
13 and Mr. Vargas; is that correct?

14 A. Thank God. I'm glad nobody else did have a gun.

15 Q. I understand. But I just need to get an answer to
16 the question. There was no one else to your knowledge
17 ---

18 A. It was just Jesus Martinez and I in the conference.
19 Those are the only two people.

20 Q. Thank you very much.

21 THE COURT: Any redirect?

22 MS. HUEY: Just a couple questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. HUEY:

25 Q. Mr. Mills, Mr. Smith addressed some emails that Mr.

1 Martinez sent to you. What were the nature of those
2 emails?

3 A. They were very aggressive. Pretty much he was very
4 threatening, saying I'd better sign the checks. That
5 he'll bring them, and I'll sign them when he brings them
6 in. And that I was just a little boy and he knew -- he
7 ran a masonry company in 2005 and made millions of
8 dollars, and he knew more than I did. And it was just --
9 you know, he's sick. And they were all in English. They
10 were all in English. But they were aggressive, and I
11 thought they were very telling of what was to come.

12 Q. And these were sent in the weeks leading up to this
13 incident?

14 A. Yes. They were sent in the January time frame of
15 2015.

16 Q. But on this particular incident on February 12th,
17 why weren't you as scared that day?

18 A. He'd come the day prior. We had worked it out. He
19 said we need to be men. "We act like men and settle this
20 instead of roosters in the yard," is how he said it in
21 English. "We don't need to be like two roosters in the
22 yard." I agreed. I knew a fee dispute would take a year
23 to get resolved. I'd rather take twenty-five percent and
24 get paid then than wait a year and get forty percent. So
25 I'm glad it worked out. Plus he could do me more damage

1 in the community telling everybody what a bad lawyer I am
2 or just defaming my name. I'd rather have it worked out
3 than fight.

4 Q. So you were under the impression this was worked out
5 and you were not expecting any more ill will?

6 A. Absolutely not.

7 MS. HUEY: That's all I have, Judge.

8 THE COURT: Anything further from this witness?

9 MR. SMITH: Not at the present time, Your
10 Honor.

11 THE COURT: All right. Thank you, Mr. Mills.
12 You may step down.

13 THE WITNESS: Thank you.

14 MS. HUEY: Your Honor, the State calls Blake
15 Vaughn to the stand.

16 **BLAKE VAUGHN,**

17 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

18 **DIRECT EXAMINATION**

19 BY MS. HUEY:

20 Q. Mr. Vaughn, where do you work?

21 A. Anderson City Police Department.

22 Q. And how long have you been with the police
23 department?

24 MR. SMITH: Officer, would you raise your
25 voice, please?

1 THE COURT: Just pull that microphone closer.

2 A. Anderson City Police Department. And I've been
3 there for just a little over a year.

4 Q. And were you working with the police department in
5 February of last year?

6 A. I was.

7 Q. In what capacity?

8 A. Road patrol.

9 Q. And what does road patrol mean?

10 A. Basically, we patrol the communities and streets,
11 enforce traffic and also answer calls for service.

12 Q. And did you receive a call for service on February
13 12th of 2015?

14 A. I did.

15 Q. And did that call cause you to respond to the
16 Trammel Law Firm?

17 A. Yes, ma'am, it did.

18 Q. And is that located within the city limits of
19 Anderson then?

20 A. It is.

21 Q. And is that also within the county?

22 A. It is.

23 Q. What was the nature of that particular call?

24 A. It initially come out as a man with a gun at the law
25 firm, was the initial call that came out.

1 Q. And so what is your first step when you respond to a
2 scene such as this?

3 A. Obviously, the main thing is get there as quickly
4 and safely as possible. But, you know, we was advised
5 that he had left the scene prior to our arrival.

6 Q. It was advised that what?

7 A. We were advised that he had fled the scene shortly
8 after the call had came in.

9 Q. And so what is your first step then? Are you trying
10 to look for the suspect who fled, or are you responding
11 to the crime scene or both?

12 A. A little bit of both. I mean, we knew that we had
13 just a short period of time before he was completely out
14 of the area. So we did try to locate the vehicle for
15 just a few minutes prior to going on the scene.

16 Q. And do you remember about what time you got to the
17 law firm?

18 A. I believe it was one fifty-five p.m.

19 Q. Once you arrived at the firm, who, if anyone, did
20 you speak with?

21 A. I made contact with the victim, Trey Mills.

22 Q. And when you're in contact with the victim, do you
23 generally get a statement from him at that time? An oral
24 statement?

25 A. Right. Yeah. Initially we're trying to get the

1 who, what, when, where so that we can disburse the
2 information to the other units. So that was my initial
3 contact with him was finding out exactly what happened.

4 Q. Okay. And then do you eventually get a written
5 statement from him?

6 A. Yes, ma'am.

7 Q. And then do you also put in your report what the
8 victim may have stated?

9 A. Yes, ma'am.

10 Q. So there are two or three opportunities for a victim
11 to address you as to what happened on this particular
12 incident?

13 A. Correct.

14 Q. And does that mean that some details may be left out
15 of some of their statements?

16 A. Yeah, it's common.

17 Q. Now, once you met with Mr. Mills, what was your next
18 step?

19 A. Once I met with Mr. Mills and had found out what
20 happened, I immediately put information out over the
21 radio, the suspect information, for other units and also
22 county units to be on the lookout for the suspect
23 vehicle.

24 Q. And what's that called?

25 A. A BOLO.

1 Q. A BOLO. What does that stand for?

2 A. Be on the lookout.

3 Q. So a BOLO was issued on this particular day. And
4 what was the BOLO for?

5 A. The BOLO was for a dark green late '90s model Dodge
6 Ram. And we also had a tag number that Mr. Mills was
7 about to provide us.

8 Q. And were you able to locate -- were you able to do
9 anything with this BOLO then? Was anyone found as a
10 result?

11 A. Yes. Yes. The tag number was ran, and we received
12 the name and address for the registered owner. And while
13 other units were checking the area, a county unit went to
14 that address to specifically check for that vehicle.

15 Q. Okay. Let me make sure I'm understanding you. So
16 you're at the law firm speaking with Mr. Mills?

17 A. Correct.

18 Q. Other units in your area with the police department
19 are trying to find this green Dodge truck?

20 A. Right.

21 Q. And Mr. Martinez?

22 A. Right.

23 Q. And in addition the County has to help; is that
24 correct?

25 A. Right, because his address which the vehicle was

1 registered to was in the County's jurisdiction.

2 Q. And so to your knowledge, did -- was the County able
3 to meet up with the defendant in this case?

4 A. Yes, ma'am.

5 Q. About how much time had passed from the initial 9-1-
6 1 call to the time you got to the defendant's home?

7 A. I believe from the initial 9-1-1 call to the time I
8 was advised that -- well, the County was on scene at his
9 residence when he pulled up was around thirty-five
10 minutes, I believe.

11 Q. Okay. So a little over thirty minutes or so?

12 A. Correct.

13 Q. Had passed?

14 A. Right.

15 Q. And so County arrived first and then you followed;
16 is that correct?

17 A. Yes, ma'am.

18 Q. When you were responding to the defendant's home,
19 what kind of things did you -- first of all, let me back
20 up. How long did it actually take you to drive to the
21 defendant's home?

22 A. From the time I left the law firm until the time I
23 got to his house, it took me roughly twenty to twenty-
24 five minutes.

25 Q. And when you left the law firm, which direction did

1 you go?

2 A. I headed south on Greenville Street and then to
3 Williamston Road toward 29.

4 Q. So if you're pulling out of the parking lot, are you
5 taking a left or a right?

6 A. I took a left out of the parking lot.

7 Q. Okay. And you're heading toward which area?

8 A. Headed down toward Williamston Road, and then turn
9 there to head toward 29 which will lead you out to the
10 area of his address which is off of Highway 413.

11 Q. Okay. And what kind of things did you pass along
12 the way?

13 A. There's numerous businesses. A swamp. There's one
14 swampy area I passed over. There's woods, creeks. It's
15 both residential and rural areas between the law firm and
16 his residence.

17 Q. Okay. And about how long did you say it took you to
18 get there?

19 A. Between twenty and twenty-five minutes.

20 Q. Once you arrived at the defendant's home, did you
21 meet up with the County officer who arrived.

22 A. I did.

23 Q. And who was that?

24 A. Deputy Purdy.

25 Q. And where was Deputy Purdy's car?

1 A. It was -- well, when I got there, it was down the --
2 behind the defendant's car in the driveway.

3 Q. Behind the what?

4 A. It was behind Mr. Martinez's car in the driveway.

5 Q. And Mr. Martinez was in the driveway?

6 A. Yes, ma'am.

7 Q. In his truck?

8 A. Well, he was out of the truck when I got there, but
9 his truck was in the driveway beside the house.

10 Q. And this was the same truck that had been BOLO-ed
11 earlier?

12 A. Correct.

13 Q. And did you initiate a search of the defendant's
14 truck?

15 A. I did.

16 Q. And what, if anything, did you locate inside this
17 truck?

18 A. I located two checks that had been signed by Mr.
19 Mills that were what appeared to be settlement checks
20 from an insurance company.

21 Q. And these were the checks that you were aware of?

22 A. Right. Right. I believe one was ---

23 Q. Or what you thought to be?

24 A. Yes, ma'am.

25 Q. I'm going to show you what's been previously

1 admitted as State's 9 and 10. Are these consistent with
2 the checks you collected from the defendant's truck on
3 February 12th of 2015?

4 A. Yes, ma'am, this is them.

5 Q. And where were those located inside the truck?

6 A. They were in the center console of the truck.

7 Q. Can you describe the interior of the truck?

8 A. Yes. It wasn't very well kept, and there was trash
9 strewn throughout the entire truck. But these happened
10 to be in the center console on top of everything. They
11 were not very hard to locate.

12 Q. Did you find a note, a threatening note?

13 A. I did not.

14 Q. Did you locate a weapon of any sort?

15 A. I did not.

16 Q. Particularly a gun?

17 A. No, I did not.

18 Q. Could you please describe the area around the
19 defendant's house?

20 A. The house itself is surrounded by several acres.
21 The driveway of the residence from where we -- you know,
22 from where we ended up in the driveway and right in front
23 of the house, you could only see from the road if you
24 were right in front of the house. You couldn't see --
25 I'm sorry.

1 Q. Right. And so there's no proof whatsoever that he
2 ever actually owned a gun, is there?

3 A. No, sir, not to my knowledge.

4 MR. SMITH: No further questions.

5 THE COURT: Anything further from this witness?

6 MS. HUEY: No, sir, Your Honor.

7 THE COURT: Thank you, Officer. You can step
8 down.

9 MS. HUEY: Your Honor, the State calls Ashley
10 Reese.

11 ASHLEY REESE,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. HUEY:

15 Q. Ms. Reese, where do you work?

16 A. Trammel and Mills Law Firm.

17 Q. How long have you been there?

18 A. Fourteen years.

19 Q. Do you work for a particular attorney in that firm?

20 A. Ernie Trammel.

21 Q. But you're familiar with Trey Mills, I suppose?

22 A. I am.

23 Q. And how long have you worked for Trey?

24 A. I think about ten years.

25 Q. Are you familiar with the defendant in this case,

1 Jesus Martinez?

2 A. Yes, ma'am.

3 Q. And how so?

4 A. I had -- I was his paralegal for a worker's comp
5 case, and he and his son have had several cases with our
6 firm.

7 Q. And so how many times do you think you've observed
8 Mr. Martinez over the course of that representation?

9 A. Probably twenty or more times.

10 Q. And did you ever have any trouble communicating with
11 Mr. Martinez?

12 A. No, ma'am.

13 Q. He seemed to speak English to you?

14 A. Yes, ma'am.

15 Q. And he seemed to understand when you spoke English
16 with him?

17 A. Yes, ma'am.

18 Q. What was his demeanor like when he would typically
19 come to the firm?

20 A. He was really friendly, a little flirtatious.

21 Q. But he knew you?

22 A. Yes.

23 Q. And you knew him?

24 A. Yes.

25 Q. And is he in the courtroom today?

- 1 A. He is.
- 2 Q. And would you please point him out then?
- 3 A. He's sitting right there in the blue shirt.
- 4 Q. At the defense table?
- 5 A. (Nodded head up and down in the affirmative.)
- 6 Q. Now, drawing your attention to February 12th of last
- 7 year, do you remember what you were doing between one and
- 8 two that day?
- 9 A. I was working in my office.
- 10 Q. And did you see the defendant in this case on that
- 11 particular day?
- 12 A. Yes, ma'am.
- 13 Q. Were you aware of why he was there?
- 14 A. To meet with Trey.
- 15 Q. When you first saw him, what was his demeanor like?
- 16 A. He was friendly. He said "Hey, sweetie. How are
- 17 you?" Just his normal self.
- 18 Q. Like he normally is?
- 19 A. Yes, ma'am.
- 20 Q. Did you hear or see anything unusual while Trey was
- 21 meeting with Mr. -- while Mr. Mills was meeting with Mr.
- 22 Martinez?
- 23 A. No, ma'am.
- 24 Q. Where was the meeting taking place?
- 25 A. In our conference room.

1 Q. Did you see the defendant again after the meeting
2 was over?

3 A. Yes, ma'am.

4 Q. And how long do you think had passed since you'd
5 first seen him?

6 A. I'm not really sure. I don't think it was really
7 that long.

8 Q. Just a short time?

9 A. Yes, ma'am.

10 Q. When you next saw the defendant after the meeting
11 was over, what was his demeanor like at that time?

12 A. He didn't acknowledge me at all. He had come out of
13 the conference room and was walking towards me. And I
14 said, "Have a good day," because I assumed he was
15 leaving. And he wouldn't acknowledge me. He wouldn't
16 look at me. He just looked straight ahead. He looked
17 really angry. He was walking swiftly and real stiff.

18 Q. And is that how he usually left the building?

19 A. No, ma'am.

20 Q. What was the next thing you noticed?

21 A. Trey came out of the conference room and yelled at
22 me to call the cops and said that Jesus had just pulled a
23 gun on him.

24 Q. So Trey yells, "Call the cops. Jesus just pulled a
25 gun on me"?

1 A. Yes, ma'am.

2 Q. What does Trey look like when he's telling you this?

3 A. He was disheveled. He looked scared, shocked. I've
4 never seen him look like that before.

5 Q. And you've worked with him for ten years?

6 A. Yes, ma'am.

7 Q. So did you know he was serious?

8 A. Yes, ma'am.

9 Q. And did you, in fact, call the police?

10 A. Yes, ma'am.

11 Q. Once you called the police, what happened after
12 that?

13 A. I was on the phone with the dispatcher, and I yelled
14 at one of the other paralegals in our office to lock the
15 door. And we had clients in the lobby. And I told her
16 to get them away from the windows because I didn't know
17 where he had went.

18 Q. And so the doors were locked?

19 A. Yes.

20 Q. Clients moved?

21 A. Yes, yes.

22 Q. And what happened after that?

23 A. I just relayed information to the dispatcher. And
24 then I found out Trey was on the phone with them as well,
25 so I hung up and then went back to his office to check on

1 him after that.

2 Q. And how was his demeanor at that point?

3 A. He was terrified.

4 Q. What, if anything, did you notice about the
5 condition of the conference room?

6 A. The tables were pushed -- chairs were pushed away
7 from the table. There's a paper and pen on the
8 conference room table. It just -- it looked scattered.

9 MS. HUEY: That's all I have of this witness,
10 Judge.

11 THE COURT: Mr. Smith?

12 MR. SMITH: I will be very brief, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Let me just make sure I'm clear on this. Ms. Ashley
16 Reese?

17 A. Yes, sir.

18 Q. All right. So you never saw a gun; correct?

19 A. No, sir.

20 Q. You never saw a note; correct?

21 A. No, sir.

22 Q. You never heard Mr. Vargas threaten Mr. Mills;
23 correct?

24 A. No, sir.

25 MR. SMITH: No further questions.

1 THE COURT: Anything further from this witness?

2 MS. HUEY: No, sir, Your Honor. May she be
3 excused?

4 THE COURT: Thank you, ma'am. You may step
5 down.

6 Any objection to this witness being excused?

7 MR. SMITH: No objection, Your Honor.

8 THE COURT: She's excused.

9 MS. HUEY: The State calls Lisa Hunt.

10 LISA HUNT,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. HUEY:

14 Q. Ms. Hunt, where do you work?

15 A. Trammel and Mills Law Firm.

16 Q. How long have you worked there?

17 A. About sixteen years.

18 Q. And do you work for a particular attorney there?

19 A. Trey Mills.

20 Q. Are you familiar with the defendant in this case,
21 Jesus Martinez?

22 A. I am.

23 Q. And how are you familiar with him?

24 A. We've had a couple of cases with him.

25 Q. How many times do you think you've observed Mr.

- 1 Martinez over this time?
- 2 A. Maybe fifteen, twenty times.
- 3 Q. And is he in the courtroom today?
- 4 A. He is.
- 5 Q. Could you please point him out?
- 6 A. Right there.
- 7 Q. And is he seated at the defense table?
- 8 A. He is, in the middle.
- 9 Q. Now, in your dealings with Mr. Martinez, did you
- 10 ever have any trouble communicating with him?
- 11 A. No, never.
- 12 Q. Okay. He seemed to speak English to you?
- 13 A. He did.
- 14 Q. And you spoke English to him?
- 15 A. That's correct.
- 16 Q. And he seemed to understand?
- 17 A. He did.
- 18 Q. Drawing your attention to February 12th of last
- 19 year, do you remember what you were doing around one or
- 20 two that day?
- 21 A. Yes. I was in my office working.
- 22 Q. What, if anything, unusual happened around this
- 23 time?
- 24 A. I heard a lot of screaming noise going on. So I
- 25 finally got up. My office is way on the other side of --

1 like in a corner. So I finally got up and walked to the
2 front office to see what was going on. And I heard
3 Ashley Reese screaming for me to lock the doors because
4 Jesus had a gun. And we had clients in the front office.
5 And she just said, "Lock the doors and get the clients to
6 the back of the office. Jesus just pulled a gun to
7 Trey's head."

8 Q. Now, as you moved -- so then did you move to the
9 front of the office to lock the door?

10 A. Well, I started to lock the door, but there was a
11 client right by the door, Ms. Helen Brown. She got up
12 and she locked the door before I could get to it.

13 Q. So when you were at the front door, could you see
14 the defendant?

15 A. I saw him, yes.

16 Q. And what was he doing?

17 A. He was getting in his truck. He had a green truck.
18 And he got in and he sat there for a few minutes, and
19 then he pulled off.

20 Q. And when he pulled off, could you see which
21 direction he went?

22 A. No, I didn't. He left the parking lot.

23 Q. But he left the parking lot?

24 A. Yeah.

25 Q. Now, were you aware that he had been meeting with

1 Mr. Mills?

2 A. I was.

3 Q. So once you dealt with the clients, did you
4 eventually get to see Trey?

5 A. Yes. The clients, one of them went to my office;
6 the other went to our library. And I walked to the back
7 and I saw Ashley. She was on the phone with 9-1-1 at the
8 copier. And I went to Trey's office, and he was also on
9 the phone with 9-1-1.

10 Q. And were you able to speak with Trey eventually?

11 A. Yeah. He hung up.

12 Q. What was his demeanor?

13 A. He was scared to death. He was white as a ghost,
14 shaking. I thought he was going to pass out. He could
15 barely talk.

16 Q. So while he's in this condition, what does he say to
17 you?

18 A. That he was in the conference room with Jesus. And
19 they were going to sign the checks, but instead Jesus ---

20 MR. SMITH: Your Honor, I object to this unless
21 it's an excited utterance at this point.

22 THE COURT: Sustained.

23 MR. SMITH: Thank you.

24 Q. How many minutes had passed since Mr. Martinez had
25 left?

1 A. When I walked to the back?

2 Q. (Nodded head up and down in the affirmative.)

3 A. Not many. I mean, it had just happened.

4 Q. And, again, if you can describe Mr. Mills'
5 condition?

6 A. He was scared, shaken, pale. And, again, I thought
7 he was going to pass out. I've never seen him like that.

8 MS. HUEY: Judge, may I approach?

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 Q. Just one more minute, Ms. Hunt. And did you
13 eventually give a statement to law enforcement?

14 A. I did.

15 MS. HUEY: That's all I have for this witness,
16 Judge.

17 THE COURT: Your witness, Mr. Smith.

18 MR. SMITH: Thank you, Your Honor. May it
19 please the Court.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Same questions. You saw no gun; correct? You never
23 saw a gun?

24 A. I never saw a gun.

25 Q. You never saw a note?

1 THE COURT: Okay.

2 MR. SMITH: I move for directed verdict of
3 acquittal, Your Honor. We don't believe that looking at
4 the evidence in the light most favorable to my sister,
5 the State, that she has made a case, a prima facia case,
6 that he's guilty of any of the charges that she's
7 charging him with under those two indictments.

8 THE COURT: Mr. Smith, I've heard the
9 testimony, and I believe there's sufficient testimony in
10 the record to make this a factual issue. Therefore, it's
11 a jury question, so I have to deny your motion.

12 MR. SMITH: Thank you, Your Honor.

13 THE COURT: All right. Mr. Jesus Vargas
14 Martinez ...

15 Please put him under oath.

16 (WHEREUPON, the defendant was duly sworn.)

17 THE COURT: Mr. Martinez, at this time I am
18 going to explain to you some of your rights. If you do
19 not understand anything that I say, please let me know,
20 and I will explain it again in more detail. If you
21 answer the question, I will assume that you understood
22 the question. Do you understand?

23 THE DEFENDANT: (By the Interpreter) Yes.

24 THE COURT: We have reached the stage in the
25 trial where you may present your defense. You have the

1 THE COURT: All right. The State has rested.
2 Does the Defense have any witnesses to present?

3 MR. SMITH: No witnesses from the Defense
4 either, Your Honor. We rest our case.

5 THE COURT: Okay. Thank you, Mr. Smith.

6 All right. Ladies and gentlemen, that concludes the
7 testimony in the case. The next stage of the trial will
8 be closing arguments by the attorneys. Now, due to the
9 lateness of the hour -- it's four thirty -- and I
10 understand that staying after five interferes with
11 peoples' daily lives on a significant scale. Sometimes
12 we have to do it, but I try to avoid it when I can. So
13 I'm going to let you go home now. And we'll just do
14 closing arguments and the remainder of the trial in the
15 morning.

16 The instructions I gave you at the beginning still
17 apply. When you leave, you can't talk about the case
18 with third parties. I know when you get home your
19 family's going to want to know what you're doing up here.
20 They're going to want to hear from you. You just tell
21 them you can't talk about it. Okay? It's very
22 important.

23 You can't deliberate amongst yourselves. Don't call
24 each other up and discuss the evidence. You can't talk
25 about this case. And you can't do independent research

1 THE COURT: I have reviewed the proposed charges
2 handed up by the Defense. Ms. Huey, were there any
3 submissions from the State?

4 MS. HUEY: None from the State, Your Honor. I
5 do have an issue with several of them.

6 THE COURT: Okay. Okay. And I'll just go down
7 these. Two through eight are all covered in my standard
8 charges. We've got the charge straight out of the bench
9 book which defines assault and battery of a high and
10 aggravated nature. Included in that charge, there is a
11 definition of what constitutes an assault, what
12 constitutes a battery. I have a standard charge on
13 defendant's failure to testify. The resolution of doubt
14 in favor of the defendant, the definition of reasonable
15 doubt and general charge on proof, all of that's included
16 in my standard reasonable doubt charge. So I'm not going
17 to charge two through eight. Now, mere presence, that
18 appears to be the standard charge that's in the bench
19 book.

20 Ms. Huey, do you have any objection to number one,
21 mere presence?

22 MS. HUEY: No, sir, Your Honor.

23 THE COURT: Okay. Well, we'll charge number
24 one. Now, I wanted to discuss with you the lesser-
25 included offenses the Defense has requested. What

1 specific lesser-included offenses are you requesting, Mr.
2 Smith?

3 MR. SMITH: The lesser-included offense of
4 assault and battery third degree.

5 THE COURT: Okay.

6 MR. SMITH: And assault and battery -- I guess
7 all three of them, Your Honor.

8 THE COURT: The statute ...

9 And Ms. Huey, I'm going to give you the opportunity
10 to be heard on this issue.

11 The statute -- and I find this at South Carolina
12 § 16-3-600, this would be subsection (c)(3), "Assault and
13 battery first degree is a lesser-included offense of
14 assault and battery of a high and aggravated nature."
15 And then (d)(3), "Assault and a battery in the second
16 degree is a lesser-included offense of assault and
17 battery of the first degree." And then (e)(3), "Assault
18 and battery in the third degree is a lesser-included
19 offense of assault and battery in the second degree and
20 assault and battery of a high and aggravated nature." So
21 I think if I charge one lesser-included offense, I have
22 to charge all of them.

23 MR. SMITH: Yes, sir. From a logical
24 standpoint, I believe so.

25 MS. HUEY: I do think that's correct, Your

1 Honor.

2 THE COURT: Okay. So I'm having my clerk put
3 this together. Now, this is my thought. If either party
4 objects to this, I'll read the entire statute. But the
5 charge -- we have assault and battery first degree, which
6 has a whole bunch of circumstances in which the offense
7 would apply, most of which have nothing to do with this
8 case. Parts of it talk about non-consensual touching of
9 private parts and that kind of thing, which my
10 inclination is to redact that part and read the pertinent
11 parts of the statute unless either party objects. Then
12 I'll just read the entire statute.

13 MS. HUEY: Judge, I think that's appropriate to
14 redact, especially the non-consensual touching.

15 THE COURT: I mean, I think just -- even though
16 there's no accusation in this case of anything like that,
17 when you read things like that to a jury, it could
18 inflame them just hearing the term.

19 MR. SMITH: Yeah, it could cut both ways. And
20 I don't want to confuse the jury, and I don't think the
21 prosecution does. It's going to come down to whether or
22 not there was an assault, pointing a firearm or whatever.
23 I agree.

24 THE COURT: Well, basically, what I would do is
25 take out the parts -- the sexual assault-type allegations

1 or elements of this offense. And it would just say, "A
2 person who commits the offense of assault and battery in
3 the first degree if the person unlawfully injures another
4 person and the act occurred during the commission of a
5 robbery, burglary, kidnapping or theft. A person may
6 also commit the offense of assault and battery in the
7 first degree if the person unlawfully offers or attempts
8 to injure another person with the present ability to do
9 so and the act either is accomplished by means likely to
10 produce death or great bodily injury or occur during the
11 commission of a robbery, burglary, kidnapping or theft.
12 Great bodily injury means bodily injury which causes a
13 substantial risk of death or which causes serious
14 permanent disfigurement or protracted loss or impairment
15 of the function of a bodily member or organ." So that
16 would be what I would include to charge on assault and
17 battery in the first degree.

18 MS. HUEY: Yes, sir.

19 THE COURT: Is there any objection from either
20 side?

21 MR. SMITH: No objection from the Defense.

22 MS. HUEY: No objection, Your Honor.

23 THE COURT: Okay. All right. Now, second
24 degree also has a provision that involves non-consensual
25 touching of private parts. Basically, I would do the

1 same, is redact that. And this charge is, "A person
2 commits the offense of assault and battery in the second
3 degree if a person unlawfully injures another person or
4 offers or attempts to injure another person with the
5 present ability to do so and either moderate bodily
6 injury to another person results or moderate bodily
7 injury to another person could have resulted. Moderate
8 bodily injury means physical injury requiring treatment
9 to an organ, system of the body other than the skin,
10 muscles and connective tissues of the body except where
11 there is penetration of the skin, muscles and connective
12 tissues that require surgical repair of a complex nature
13 or when the treatment of the injury requires the use of
14 regional or general anesthesia." And then it defines
15 private parts, which I'm going to redact that as well.

16 So is there any objection to me handling it in that
17 manner?

18 MS. HUEY: No, sir, Your Honor.

19 MR. SMITH: No, sir.

20 THE COURT: Okay. All right. Then third
21 degree just, "A person commits the offense of assault and
22 battery in the third degree if the person unlawfully
23 injures another person or offers or attempts to injure
24 another person with the present ability to do so."
25 That's just right out of the statute.

1 So with that said, are there any other requests for
2 charge?

3 MR. SMITH: None, Your Honor. The only other
4 thing, Your Honor, you're going to say that each one of
5 those are lesser-included offenses?

6 THE COURT: Right. Right. And, now, the
7 verdict form we have -- and basically the verdict form is
8 just going to list the indictments and say, "We, the
9 jury, unanimously find on indictment number 2015-GS-04-
10 00781 that the defendant, Jesus Vargas Martinez, is not
11 guilty or guilty of assault and battery of a high and
12 aggravated nature or ..." and then the same choices.
13 It's going to say the lesser-included offense of assault
14 and battery first degree or the lesser-included offense
15 of assault and battery second degree or the lesser-
16 included offense of ...

17 MR. SMITH: Yes, sir.

18 THE COURT: And then I will instruct them that
19 they have to -- they have to reach a verdict on one of
20 those.

21 MR. SMITH: Yes, sir.

22 THE COURT: If they find him not guilty, then
23 they don't have to go any further.

24 MR. SMITH: Yes, sir.

25 THE COURT: I mean, Ms. Huey, that's how ---

1 female through the use of force, the purposeful
2 infliction of shame and disgrace and the resistance of
3 lawful authorities. These are only examples of
4 circumstances of aggravation."

5 MS. HUEY: I'm afraid that's the old law,
6 Judge. I don't know that I have to prove a circumstance
7 of aggravation anymore.

8 THE COURT: Well, let's see here. Well, that's
9 right out of the bench book. Now, the statute says, "A
10 person commits the offense of assault and battery of a
11 high and aggravated nature if a person unlawfully injures
12 another person and great bodily injury to another person
13 results or the act is accomplished by means likely to
14 produce death or great bodily injury." I mean, I can
15 read straight out of the statute if ---

16 MR. SMITH: That's fine with me, Your Honor.

17 THE COURT: Okay. I'll just -- now ...

18 MR. SMITH: Judge, could I get a copy of that
19 statute? I probably -- I didn't bring it.

20 MS. HUEY: Mine is all scribbled on.

21 MR. SMITH: That's okay.

22 THE COURT: Okay. All right. Now, what I feel
23 that I do need to read to the jury is the definition of
24 assault and battery that is included in the charges.

25 MR. SMITH: Oh, yes, sir.

1 THE COURT: So I'll just -- since it's included
2 in all of the charges, I'll take out -- I'll read the
3 statute, and then I will just read these two paragraphs
4 defining assault and battery. And that's applicable to
5 all of the lesser-included offenses as well.

6 MR. SMITH: Yes, sir.

7 THE COURT: Okay.

8 MR. SMITH: Your Honor, since I didn't put up
9 any evidence, do I get the last argument?

10 THE COURT: They have not changed that rule
11 yet.

12 MR. SMITH: Thank you, Your Honor.

13 MS. HUEY: They're working on it, though,
14 aren't they?

15 THE COURT: They have proposed that to the
16 Legislature. And it will soon -- when the Legislature
17 adopts it, we'll soon mirror the federal system and the
18 civil system where the State will open in full, the
19 Defense will close in full and the State would have the
20 opportunity to reply.

21 MR. SMITH: Yes, sir.

22 THE COURT: So we haven't adopted it yet.

23 MR. SMITH: Well, she's tough, Your Honor, you
24 know. She and I used to be in Greenville together.

25 THE COURT: All right. My clerk is sending the

1 (WHEREUPON, the jurors in unison shook their head
2 side to side in the negative.)

3 THE COURT: Let the record reflect there are no
4 affirmative responses. Very good.

5 We are now ready to proceed into the next stage of
6 the trial. I appreciate your patience this morning.
7 We've been dealing with some legal issues, issues of law.
8 And now we're ready to move forward.

9 The attorneys will have the opportunity to make
10 closing arguments to you. And after that, then I will
11 give you an instruction on the law.

12 So Ms. Huey?

13 MS. HUEY: May it please the Court.

14 CLOSING ARGUMENT

15 BY MS. HUEY:

16 When I started this trial, I told you all that this
17 would be a short one, but nonetheless an important one.
18 And that's just what happened.

19 Now, admittedly in this case we do not have a gun,
20 and we do not have a threatening note. But what we do
21 have is the testimony of Trey Mills who took the stand
22 yesterday and told you what happened to him on February
23 12th, 2013. Now, putting aside all the ---

24 MR. SMITH: Speak up. He asks that ---

25 THE COURT: Ms. Huey, could pull the

1 microphone. I believe the interpreter is having a hard
2 time hearing you.

3 And let me just say, if you would like to sit over
4 here closer to her, you can so that you can hear.

5 (WHEREUPON, the defendant and interpreter moved
6 closer to the jury box.)

7 CLOSING ARGUMENT

8 CONTINUED BY MS. HUEY:

9 So, as I said, we had the testimony of Trey Mills
10 who was the defendant's onetime attorney, as well as the
11 victim in this case. And let's put aside the legal talk
12 and the insurance companies and the car wrecks and the
13 liens and all of that stuff. And what it boils down to
14 is Trey Mills took that stand and said that Jesus
15 Martinez walked into his conference room and pointed a
16 gun at him. And when that didn't work, he hit Trey Mills
17 in the head with that same gun and then put it to his
18 temple and said, "Sign these checks or I'll kill you."
19 That is the evidence we do have.

20 Now, what corroborates that that happened to Trey
21 Mills? First of all, why in the world would he subject
22 himself to coming in this courtroom? Why in the world
23 would he make that up? Number one. You have common
24 sense as jurors, and you don't leave that outside. You
25 take that with you into the jury room when you start

1 deliberating. Why in the world would he make that up?

2 And when Ashley Reese took the stand, his assistant
3 who's known Mr. Mills for over ten years, and she said,
4 "Trey came out of the conference room ..." These are
5 some of the words used. "... white as a ghost, shaking,
6 terrified. Call 9-1-1. Jesus pulled a gun on me." How
7 in the world did he have time to concoct that story?

8 Jesus Martinez did pull a gun on him, and he called
9 9-1-1. And as a result, law enforcement came out. And
10 he told law enforcement the same thing. "Jesus Martinez
11 pulled a gun on me, and then he put it to my head and
12 threatened to kill me."

13 Lisa Hunt also testified. She thought Mr. Mills was
14 going to pass out. He was shaking. Again, white as a
15 ghost. Terrified. Mr. Mills' demeanor isn't the only
16 demeanor that changed that day though. Ashley Reese also
17 told you that Mr. Martinez, who is normally, what,
18 flirty, sweet and nice -- that's exactly how he was when
19 he came into the office on February 12th. But when he
20 left, didn't even acknowledge her, walked quickly past
21 her. His jacket looked bulky. What did he have in his
22 jacket? The papers and the gun that Mr. Mills said he
23 put there. That's why his jacket looked bulkier. And
24 Ashley Reese noticed that the defendant's demeanor was
25 also different. And he got in his car and he drove off.

1 Now, he was out in the wind for at least thirty
2 minutes or so before law enforcement could get to him.
3 And is that time to get rid of a gun and that note? I
4 submit to you that, yes, it was. Of course, he had time.

5 Blake Vaughn, the officer with Anderson Police
6 Department, testified that many businesses -- you have to
7 drive by many businesses, rural areas, a swamp even, not
8 to mention the woods around the defendant's house. There
9 were places to dispose of the damning evidence, the
10 especially damning evidence, the gun and the note. But
11 what he didn't want to get rid of were those checks.

12 And that's what we do have, ladies and gentlemen.
13 We have two checks that are made out to Mr. Martinez and
14 the Trammel Law Firm. Both parties had to endorse these
15 checks. Trey Mills did not want to do that. This is not
16 his signature. This is not his signature. He showed you
17 what his signature is. He signed this way hoping that it
18 would tell people who saw this that he didn't want to do
19 this. He did this under duress. He did this with a gun
20 pointed to his head. This is not how it works. He would
21 be violating the law. He would get in trouble if he let
22 Mr. Martinez walk out of that office with those checks
23 because not only would he not get paid -- that's a whole
24 other issue -- but the other people who had liens
25 wouldn't get paid. But Mr. Martinez held onto these

1 checks because he wanted to cash these checks as quickly
2 as he could.

3 Now, the defendant has been charged with pointing
4 and presenting a firearm and well as assault and battery
5 of a high and aggravated nature. Pointing and presenting
6 a firearm is literally just that. Pointed and presented
7 it at Mr. Mills.

8 To find the defendant guilty beyond a reasonable
9 doubt of assault and battery of a high and aggravated
10 nature, there has to be an unlawful injury. Now, that
11 injury can be anything, even slight. A scratch, stub
12 your toes. Just an unlawful injury caused by another
13 person. And I submit to you that Mr. Martinez, the
14 defendant in this case, hit Mr. Mills not only with his
15 fists, but then with the gun, then put that gun to his
16 head. That is your unlawful injury. It doesn't matter
17 that he didn't need medical treatment or he wasn't
18 bleeding. He was still injured under the law.

19 Now, the means used had to potentially cause great
20 bodily injury or death. And when you put a gun to
21 someone's head and say, "I'm going to kill you," is that
22 going to cause great bodily injury or death? That's what
23 Trey Mills thought, and that's what he told you. He was
24 scared for himself and his office. And that's why he
25 signed those checks.

1 Now, the Defense will have you believe that it's
2 simply Mr. Mills' word alone, but that's not true.
3 Granted, that is definitely a large part of this case,
4 the crux of this case. But how is what he told you
5 corroborated? It's corroborated by Ashley Reese and Lisa
6 Hunt who have known him for over ten years and never seen
7 him like that. Never seen him shaking, terrified, white
8 as a ghost.

9 It's corroborated by the fact that he gets law
10 enforcement out there right away. Let's make this
11 happen. Go find Mr. Martinez. It's corroborated by the
12 fact that these checks are in Mr. Martinez's possession.
13 These checks had Mr. Mills' scribbled, scared, signature
14 on them.

15 You have more than enough to convict this defendant
16 of pointing and presenting and assault and battery of a
17 high and aggravated nature. Please find him guilty.

18 Thank you.

19 THE COURT: Mr. Smith?

20 MR. SMITH: Your Honor, may it please the
21 Court.

22 CLOSING ARGUMENT

23 BY MR. SMITH:

24 Gentlemen, I think y'all might be able to hear me.
25 I'm not going to scream at the jury. I think I can talk

1 loud enough.

2 Mr. Foreperson, members of the jury, now comes my
3 time to discuss with you the law and facts in this case.
4 And at the beginning of this trial, I told you what we
5 were going to prove. We who have no burden of proof
6 whatsoever was going to prove right from the
7 prosecution's file that this man, Jose [sic] Martinez
8 Vargas, is not guilty about pointing a firearm or
9 threatening to kill Mr. Mills.

10 Now, I told you the Prosecution had a weak case from
11 the start. And right off, she wanted to say she had
12 corroborating evidence to back up his testimony because
13 she know his testimony alone ain't enough, right? She
14 just told you that. She said it's corroborated by
15 Ashley, Lisa, law enforcement and the checks. That's
16 what she said. All right? Everybody told you there was
17 no gun and no note and no injury to Mr. Mills. How does
18 that corroborate assault and battery of a high and
19 aggravated nature?

20 So let's go down to the facts. You say, well -- Mr.
21 -- what is really the issue in this case? Well, the
22 issue is not stealing any checks because Mr. Vargas right
23 here was entitled to these checks along with Mr. Mills.
24 They both were entitled to them. And the fact of the
25 matter is not only were they both -- so you can't say he

1 stole these checks. He's not been charged with stealing
2 any checks. Any implication that she may have made
3 inadvertently that he stole the checks, that would be
4 untrue. He's not charged with larceny. Also, Mr. Vargas
5 never attempted to cash the checks, and she stated -- I
6 think she said he wanted to cash those checks right away.
7 Well, if he wanted to cash those checks right away, he
8 would have went right to a bank and cashed them right
9 away. So that doesn't corroborate anything either;
10 right?

11 Now, the other thing too that gets you is that Mr.
12 Mills told you -- he said he called the bank. Now, he
13 wasn't concerned -- now, this person who's supposed to be
14 white as a ghost, he wasn't concerned. He said he called
15 the bank and asked them to put a stop payment on the
16 checks. So he was mad about those checks because he told
17 you about those checks. He said he was going to reduce
18 the fee down to one fourth to where -- he was charging
19 the guy forty percent. He was going to reduce it down to
20 twenty-five percent. Get this deal done. He told you
21 that. Forty percent down to twenty-five percent. He
22 said he didn't want to wait another year for his money.

23 Now, the other thing too is -- and this is the key
24 thing which she overlooked in her closing statement. You
25 remember when Mr. Mills said he assaulted Mr. Vargas when

1 he said Mr. Vargas was standing beside him? And when he
2 was sitting up here in this witness stand and I was
3 asking the questions, I said, well, "Did you swipe him?"
4 He said, "No." He stiff-armed him. Now, that's assault
5 on Mr. Vargas over there. And that assault on Mr.
6 Vargas, Mr. Vargas had a right to get a warrant for his
7 arrest for that assault. In order to cover that assault,
8 this story comes out that Mr. Vargas has gone to try to
9 attempt to kill this man.

10 Now, the key is they ain't never told you where the
11 note went. They had all these papers on the table there
12 getting ready to sign. Now, he didn't tell you he was
13 standing up there signing them. He was sitting down. He
14 signed all the papers. They didn't show y'all those
15 other papers that they could have brought into this
16 courtroom. Right? The disbursement sheet they told you
17 about, where is that? What hand did Mr. Vargas sign
18 those disbursement sheets? Where are they? And what
19 pocket did Mr. Vargas take the checks on the one hand,
20 gun in the other hand? When did he pick up the note? So
21 the note got to still be in the office, but where is it?

22 Now, she told you a little bit of it. She said,
23 "Well, Mr. Vargas said, 'I'm going to kill you.'" They
24 say he said that out of his mouth. Remember that just a
25 few minutes ago? But when the man testified, he didn't

1 tell the cops this, that he said he's going to kill
2 everybody in the office. That's adding more to the
3 testimony to what was not told to the cops, not told to
4 anybody else in that office, but was told to you to make
5 it look like he was not only threatening Mr. Mills
6 himself, but he was threatening everybody in that office.
7 And even she had to concede in her closing statement that
8 he only said, "I'm going to kill you, Mr. Mills."

9 Now, the fact is they say this man can speak
10 English. We got an interpreter over there. Somebody
11 would have had to write that note in English for him to
12 get it up there. We don't have no note. Ain't got no
13 gun. And don't you think you would have -- if somebody
14 hit you upside the head hard enough with a gun butt that
15 you going to have some kind of knot on your head. You're
16 going to have some kind of injury on your head. You
17 think common sense -- common sense will tell me
18 something. And if you got a knot on your head from
19 somebody butting you with a gun, pistol whipping you
20 basically, then you're going to go the doctor. That's
21 what lawyers would say. Probably Mr. Mills would send
22 you to the doctor. Say, go see the doctor right now.
23 Make sure you ain't got no concussion. He's a personal
24 injury lawyer; right? You going to send them to the
25 doctor to make sure he ain't got no concussion. We ain't

1 got no medical reports whatsoever there was any injury.
2 Nothing. Nada. Zero, zero. Zero equals zero. So we
3 got no gun.

4 Then she wants y'all to prove her case; right? She
5 just told y'all -- she say, please prove my case, members
6 of the jury. This man probably got rid of the gun on the
7 way because he was gone about thirty minutes. Well, that
8 ain't the way the system work. She got to prove Vargas
9 right here guilty beyond a reasonable doubt. She's got
10 to connect the dots. Like in 9/11 when we didn't connect
11 the dots, then the terrorists go in and bomb the
12 building. She got to connect the dots.

13 Now, just because somebody's charged and indicted
14 doesn't mean a thing in America. You're just charged
15 because that's probable cause to believe that maybe a
16 crime had been committed. Because I asked the officer.
17 I said, Mr. Officer -- I said, "Did you have any personal
18 knowledge what went on?" He said, "No." He charged this
19 man on the basis of his word, this man's word.

20 Then Mr. Vargas got to the police and said, "You
21 assaulted me when you pushed me." Would that warrant
22 come out for Mr. Vargas without corroboration? It's got
23 to be a two-way street here.

24 Now, the other thing -- and I don't want to be too
25 long -- is the way I looked at it -- and I'm hoping I can

1 assist you -- we who have no burden of proof means that
2 the State has got to prove each and every element of
3 every crime including the included offenses beyond a
4 reasonable doubt. And I think His Honor's going to
5 charge you that beyond a reasonable means if it would
6 cause you to hesitate. It doesn't mean hesitate for an
7 hour. It doesn't mean hesitate for fifteen minutes.
8 Just any hesitation means you're supposed to find the man
9 not guilty. That's the way the criminal justice system
10 work. It may not be what you agree with or what I agree
11 with, you know. But, you know, we not here in the Soviet
12 Union and China and all those places that say, well,
13 you're guilty, and you've got to prove your innocence.
14 We ain't that. Even Democrats and Republicans ain't got
15 that far yet where we, you know, convict each other and
16 presume you're guilty and you have to prove your
17 innocence. That ain't the way this system work. That
18 ain't the way the founding fathers and the founding
19 mothers set it up.

20 All right. So, they've got to prove his guilt
21 beyond a reasonable doubt. And if you have any sort of
22 hesitation, well, let me give you some reasons why you
23 might want to hesitate. Besides the fact there ain't no
24 gun, there ain't no note, ain't no corroboration like she
25 tried to say the check was, that ain't no corroboration

1 of somebody having a gun. If you got a check on your
2 person, that don't mean you got no gun; right? Just
3 because you drive down the road doesn't mean you got no
4 gun. Somebody got to identify it.

5 Now, the officer's out there in the woods searching.
6 The officer's at some business searching. He's out at
7 the man's house. He's searching. He didn't find
8 anything. Well, he can't put in his report I believe the
9 man had a gun because I didn't find something out there
10 at the scene. That defies common sense, don't it? So if
11 she ain't got that proof, she can't hook that up in
12 circumstantial.

13 All right. So the officer says he had no personal
14 knowledge. He was not present at the scene. My sister
15 right here of the Bar, she wasn't present at the scene.
16 I wasn't present at the scene. So we don't know. We
17 assume, but we don't know. With assumptions if you say,
18 okay, legally -- legally, now -- he's innocent; right?
19 His Honor's going to charge you the fact that he didn't
20 testify, you can't hold that against him. He's going to
21 tell you that. You watch from up there. If I'm telling
22 you something wrong, you go with what the Judge tells you
23 because, you know, I'm a lawyer and he runs this
24 courtroom. But I believe he's going to tell you that you
25 can't hold that against him. And you can't even discuss

1 the fact that he didn't testify. So he's legally
2 innocent. So it's his word against his word; right?
3 It's the legal word against a factual or non-factual word
4 of Mr. Mills. So it is a tie. If it's a tie, then
5 you've got to resolve the tie of not guilty in favor of
6 Mr. Vargas. He's going to tell you, you've got to
7 resolve all doubt in favor of Mr. Vargas right here.
8 That's what His Honor's going to tell you. I believe
9 he's going to tell you that.

10 And the officer testified -- now, if 'ole Vargas was
11 going home, now, he wasn't speeding; right? He wasn't
12 speeding, they say. And it takes about twenty minutes to
13 get out there to where his house is. So that meant he
14 drove from the office. And another officer arrived there
15 on the scene because that officer testified right up
16 there. He said this fellow Purdy got out to the scene at
17 Vargas' house.

18 And then 'ole Vargas comes along. Pulls right on up
19 in there. And when he pulls right on up in there,
20 Officer Purdy's right there. Stops him. Well, they
21 didn't bring Officer Purdy in here to say, well, he threw
22 the gun out the window when he came up to Officer Purdy.
23 He threw the note out the window when he came up to
24 Officer Purdy. They said that truck was so trashy up --
25 remember when they said it was trash. If it was so

1 trashy up, he didn't find the checks, no guns. That
2 don't corroborate their position. That corroborates our
3 position that he's not guilty of the charges. And we
4 know that there were no calls made to Vargas by the
5 police department saying hey, 'ole Vargas, come on down
6 to the police department. So he didn't know one way or
7 the other whether he was going to get rid of some checks
8 or some guns or some notes.

9 Now, outside of the fact that she said there's no
10 axe to grind and all of that -- and, you know, the fact
11 is he's got the assault where he pushed the guy. Then
12 he's got the fact that you want to -- they got these
13 emails. You remember they talked about them emails. He
14 said, "Those emails were kind of aggressive." Now, the
15 emails never said, I'm going to kill you. Right? If the
16 emails had said that Mr. Mills got, I'm going to kill
17 you, Mr. Mills, in those emails, then maybe he would have
18 been justified to call his law partner in there with that
19 pistol. Remember? They said before the 12th he had a
20 conference with him. I guess that was the day before.
21 And the other partner was out there. Had that old
22 pistol. And he was looking from his office into the
23 conference room while Mr. Vargas and Mr. Mills were
24 having a conference. That was the day before when they
25 agreed on whatever they agreed on.

1 Now, why introduce a pistol? Why they introduce a
2 pistol? They going to shoot 'ole Vargas if they start
3 arguing in that room? Because they never said that day
4 before, 'ole Vargas had a weapon then; right? Okay. Nor
5 did they ever say 'ole Vargas was going to kill them that
6 day before.

7 Now, the ladies -- I don't think any of them ladies
8 lied. They ain't got nothing to come here in this
9 courtroom and lie about. I think they honest ladies. I
10 mean, they work for the people. And you going to do
11 everything you can to help the people you working for. I
12 mean, you know, you come in here. And so they get up on
13 the stand they say -- the key component is see no gun, no
14 note, no injury. They don't hear nothing about no
15 outburst from Mr. Vargas. They say he just walks out
16 stiff.

17 And, of course, I imagine if you put some checks in
18 there, your pocket going to bulge up. I imagine they
19 could see that. So that don't corroborate nothing. They
20 didn't see the pocket bulged up when he went in. So if
21 he went in with his gun out, his pockets wouldn't be
22 bulged up. But on the way out, this mystical gun comes
23 in that they want you to believe, with common sense,
24 right, that made his pockets bulge out. Well, going in,
25 your pockets would still be bulged out too; right?

1 There's so much inconsistency and doubt in this case.

2 Now, His Honor's going to tell you about these
3 lesser-included offenses. We don't believe any of them
4 apply, but His Honor's got to charge you with them. And
5 the key is the most they got, if they prove their case,
6 would be assault and battery of the third degree where
7 there was no touching whatsoever. We ain't conceding
8 nothing. We ain't saying there's no gun. We ain't
9 saying there's no note. We're saying there is no note.
10 We're saying there's no gun. We're saying he never did
11 point anything. I just want to make that clear. But His
12 Honor is going to charge you the lesser-included offenses
13 for the benefit of what the South Carolina law requires.

14 And he's going to charge you also that mere presence
15 -- if you find from all the evidence that the defendant
16 was merely present at or near the scene of this alleged
17 crime on the date in question, you are instructed that
18 such presence at or near the scene of the crime will not
19 support a finding of guilty. Mere presence can only
20 create a suspicion, can only create a suspicion, and you
21 cannot find the defendant guilty because of suspicion.
22 And he's going to charge you that.

23 So members of the jury, as I say in cases, y'all
24 have no axes to grind one way or the other. Y'all's job
25 -- I'm not trying to interfere with y'all's job by saying

1 what I'm saying. I'm just bringing some stuff up trying
2 to jog your memory, and maybe it'll assist you or not.

3 If I said something wrong or if I make y'all mad by
4 what my tone is, please don't hold it against Mr. Vargas
5 because he's got more to lose than I do. And all I'm
6 going to ask is that y'all bring back a verdict that will
7 speak the truth.

8 And I want to thank you on behalf of Mr. Vargas and
9 myself, and I know the State thanks you as well. We want
10 to thank you for your participation and taking time out
11 of y'all busy schedule to be here. Thank you. Thank you
12 very much.

13 Your Honor. I'll move this out of the way, Your
14 Honor.

15 CHARGE

16 BY THE COURT:

17 All right. Ladies and gentlemen, we've come to the
18 point in the trial where I instruct you on the law. My
19 instructions will be somewhat lengthy. They will be in
20 three parts: first, the instructions on general rules
21 that define and control the jury's duty; second, the
22 instructions that state the rules of law you must apply,
23 what the State must prove to make its case; and third,
24 some rules for your deliberations.

25 The general rules begin with your duties as jurors.

1 It is your duty to find the facts from all of the
2 evidence in the case. To those facts you must apply the
3 law as I give it to you. You shall not be concerned with
4 what the law should be, but what it is. And you must not
5 be influenced by any personal likes, dislikes, opinions,
6 prejudices or undue sympathy. That means you must decide
7 the case solely on the evidence before you in accordance
8 with the law, the very thing that you took an oath to do
9 at the beginning of the trial.

10 It is your responsibility, and yours alone, to
11 determine the facts of this case. I would, therefore,
12 charge you that if during the course of this trial or
13 during this charge you have been given or left with the
14 impression or feeling that I have a personal feeling
15 about the facts of this case or that I favor one side or
16 the other, I would specifically instruct you to disregard
17 that impression. Under our constitution, I am not
18 allowed to have an opinion as to the facts of this case.
19 You should not be influenced by any objections or the
20 Court's ruling on them. You and you alone are the judges
21 of the facts.

22 You determine the facts by evaluating or weighing
23 the evidence that you have heard during the trial. What
24 is evidence? Evidence is the sworn testimony from
25 witnesses and any exhibits that have been entered into

1 evidence.

2 The statements by the attorneys are not evidence.

3 What they have said in opening statements, closing
4 arguments and at other times is intended to help you
5 interpret the evidence, but it is not evidence.

6 There are two types of evidence, which are generally
7 presented during a trial, direct evidence and
8 circumstantial evidence. Direct evidence proves directly
9 the existence of a fact and does not require deduction.
10 Circumstantial evidence is proof of a chain of facts and
11 circumstances indicating the existence of a fact.

12 Crimes may be proven by circumstantial evidence.
13 The law makes no distinction between the weight or value
14 to be given to either direct or circumstantial evidence.
15 However, to the extent the State relies on circumstantial
16 evidence, all the circumstances must be consistent with
17 each other, and when taken together point conclusively to
18 the guilt of the accused beyond a reasonable doubt. If
19 the circumstances merely portray the defendant's behavior
20 as suspicious, the proof has failed.

21 The State has the burden of proving the defendant
22 guilty beyond a reasonable doubt. The burden rests with
23 the State regardless of whether the State relies on
24 direct evidence, circumstantial evidence, or some
25 combination of the two.

1 What is a reasonable doubt in the law? A reasonable
2 doubt is the kind of doubt that would cause a reasonable
3 person to hesitate to act. Some of you may have served
4 as jurors in civil cases where you were told that it was
5 only necessary to prove that a fact is more likely true
6 than not true such as by the greater weight or
7 preponderance of the evidence.

8 In criminal cases, the State's proof must be more
9 powerful than that. It must be beyond a reasonable
10 doubt. Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced of the defendant's guilt.

12 There are very few things in this world that we know
13 with absolute certainty. And in criminal cases, the law
14 does not require proof that overcomes every possible
15 doubt. If, based on your consideration of the evidence,
16 you are firmly convinced that the defendant is guilty of
17 the crime charged, you must find the defendant guilty.
18 If, on the other hand, you think there is a real possibility
19 the defendant is not guilty, you must give the defendant
20 the benefit of the doubt and find him not guilty.

21 A reasonable doubt may arise from the evidence or
22 from a lack of evidence. The defendant is entitled to
23 every reasonable doubt that may arise in the case. If
24 upon any issue of fact essential to a conviction and a
25 verdict of guilty of an offense, if you have any

1 reasonable doubt as to how that issue should be resolved,
2 it is your duty to resolve that doubt in favor of the
3 defendant. Suspicion, however strong, is not enough to
4 sustain a conviction. The evidence presented by the
5 State must be substantial evidence that tends to prove
6 the guilt of the defendant beyond a reasonable doubt.

7 As judges of the facts, you are the sole judges of
8 the credibility, that is the believability, of the
9 witnesses who have testified in this case. In
10 determining their credibility, you may take into
11 consideration many things such as the appearance and
12 manner of the witness on the stand, sometimes referred to
13 as the demeanor of the witness.

14 Was the witness able to see, hear or know the things
15 about which the witness testified? How well was a
16 witness able to recall and describe those things? Did
17 the witness have a cause or reason to be biased and
18 prejudiced in favor of the testimony he or she gave? How
19 reasonable was the witness' testimony considered in light
20 of all the evidence in the case. Was the witness'
21 testimony contradicted by what the witness had said or
22 done at another time or by the testimony of other
23 witnesses or by other evidence?

24 These are some of the factors you may consider in
25 deciding whether to believe testimony. As jurors, you

1 have the right to believe all of the testimony of a
2 witness or none of the testimony of a witness. You have
3 a right to believe a portion of the testimony of a
4 witness and discard the rest. You may believe the
5 testimony of one witness over the many or the many over
6 the one. Most certainly, you do not determine the matter
7 of credibility or believability by simply counting up the
8 number of witnesses who may have testified on behalf of
9 the parties in the case. Your sole objective is to find
10 the truth. It does not matter whether the truth comes
11 from a witness for the State or a witness for the
12 defendant.

13 The defendant has pled not guilty to these
14 indictments. And that plea puts the burden of proof on
15 the State to prove the defendant guilty. A person
16 charged with committing a criminal offense is never
17 required to prove himself innocent.

18 I charge you that it is an important rule of the law
19 that a defendant in a criminal trial, no matter what the
20 seriousness of the charge may be, will always be presumed
21 to be innocent for the crime for which the indictment was
22 issued unless guilt has been proven by evidence
23 satisfying you of that guilt beyond a reasonable doubt.

24 The presumption of innocence does not end when you
25 begin your deliberations, but it accompanies the

1 defendant throughout the trial until you reach a verdict
2 of guilt based on evidence satisfying you of that guilt
3 beyond a reasonable doubt.

4 Presumption of innocence is like a robe of
5 righteousness placed about the shoulders of the defendant
6 which remains with the defendant until it has been
7 stripped from the defendant by evidence satisfying you of
8 the defendant's guilt beyond a reasonable doubt.

9 Presumption of innocence is not mere legal theory.
10 It is not just a legal phrase. It is a substantial right
11 to which every defendant is entitled unless you, the
12 jury, are satisfied from the evidence of the defendant's
13 guilt beyond a reasonable doubt.

14 In order to establish criminal liability, criminal
15 intent is required. For example, the mental state
16 required to be proven by the State for a particular crime
17 may be purpose, intent, knowledge, recklessness or
18 criminal negligence. Criminal intent must be proven by
19 the State beyond a reasonable doubt.

20 Criminal intent is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation. There's no way to prove intent to a
23 mathematical certainty. There's no way medical science
24 can dissect a person's brain and determine what that
25 person had in mind. So the law says that criminal intent

1 may be inferred from the circumstances shown to have
2 existed. This is how you make a determination of whether
3 or not the element requiring intent was present.

4 It is not necessary to establish intent by direct
5 and positive evidence, but intent may be established by
6 inference in the same way as any other fact, by taking
7 into consideration the acts of the parties and all of the
8 facts and circumstances of the case.

9 Criminal intent is a mental state, a conscious
10 wrongdoing. It is up to you to determine what the
11 defendant intended to do based on the circumstances shown
12 to have existed. Criminal intent can arise from action
13 or a failure to act. It may arise from negligence,
14 recklessness or an indifference to duty or to the
15 consequences that is considered by the law to be the
16 equivalent of criminal intent.

17 If you find from all the evidence that the defendant
18 was merely present at or near the scene of this alleged
19 crime on the date in question, you're instructed that
20 such presence at or near the scene of the crime will not
21 support a finding of guilty. Mere presence can only
22 create a suspicion, and you cannot find the defendant
23 guilty because of suspicion.

24 Mere presence at or near the scene of a crime does
25 not in and of itself permit an inference to be drawn by

1 you that the defendant had knowledge of any criminal plan
2 which might have been formed, nor does mere presence
3 support an inference of intent to engage in criminal
4 conduct. Suspicious circumstances like mere presence are
5 not sufficient for a finding of guilt against the
6 defendant.

7 The indictments charge the defendant with assault
8 and battery of a high and aggravated nature and pointing
9 and presenting a firearm. I remind you that the fact
10 that the defendant was arrested, charged and indicted in
11 this case is not evidence in this case and cannot be
12 considered by you as evidence of guilt in this case, nor
13 does it create any presumption or inference of guilt.
14 These documents are simply the formal written instruments
15 which contain the charges made against the defendant.
16 They are the formal documents by which this case is
17 brought into this court.

18 I instruct you and emphasize that the fact that the
19 defendant did not testify is not a factor to be
20 considered by you in any way in your deliberation and in
21 your considerations on the questions of guilt or the
22 innocence of the defendant. It must not be considered by
23 you in any manner whatsoever. A defendant has the
24 constitutional right to remain silent, and the assertion
25 of this right must not be considered by you in your

1 deliberations.

2 I repeat. Under your oath you are to draw no
3 conclusion whatsoever from the fact that the defendant in
4 this case did not testify. The fact that the defendant
5 did not testify should not even be discussed in the jury
6 room. The burden of proof, as I have stated to you, is
7 on the State. The defendant is not required to prove his
8 innocence. The burden of proof remains on the State to
9 prove guilt beyond a reasonable doubt.

10 Now, the defendant has been charged with assault and
11 battery of a high and aggravated nature. And that is,
12 defined as if the person unlawfully injures another
13 person and great bodily injury to another person results
14 for the act is accomplished by means likely to produce
15 death or great bodily injury.

16 Now, there are also lesser-included offenses under
17 assault and battery of a high and aggravated nature. One
18 is assault and battery first degree. A person commits
19 the offense of assault and battery in the first degree if
20 the person unlawfully injures another person and the act
21 occurred during the commission of a robbery, burglary,
22 kidnapping, or theft. A person may also commit the
23 offense of assault and battery in the first degree if the
24 person unlawfully offers or attempts to injure another
25 person with the present ability to do so and the act

1 either is accomplished by means likely to produce death
2 or great bodily injury or occurred during the commission
3 of a robbery, burglary, kidnapping or theft.

4 Great bodily injury means bodily injury which causes
5 a substantial risk of death or which causes serious
6 permanent disfigurement or protracted loss or impairment
7 of the function of a bodily member or organ.

8 There's also the lesser-included offense of assault
9 and battery second degree. A person commits the offense
10 of assault and battery in the second degree if the person
11 unlawfully injures another person or offers or attempts
12 to injure another person with the present ability to do
13 so and either moderate bodily injury to another person
14 results or moderate bodily injury to another person could
15 have resulted.

16 Moderate bodily injury means physical injury
17 requiring treatment to an organ system of the body other
18 than the skin, muscles and connective tissues of the body
19 except where there is penetration of the skin, muscles,
20 and connective tissues that require surgical repair of a
21 complex nature or when treatment of the injuries requires
22 the use of regional or general anesthesia.

23 And lastly, the last lesser-included offense of
24 assault and battery third degree. A person commits the
25 offense of assault and battery in the third degree if the

1 person unlawfully injures another person or offers or
2 attempts to injure another person with the present
3 ability to do so.

4 The defendant is also charged with pointing and
5 presenting a firearm. And the law states it is unlawful
6 for a person to present or point at another person a
7 loaded or unloaded firearm.

8 Ladies and gentlemen, we're almost to the point
9 where I send you to the jury room to begin your
10 deliberations. This has been a long instruction on the
11 law. But I leave you with some final thoughts.

12 You were chosen as jurors in this case because both
13 sides believed that you could be fair and impartial in
14 deciding this case. I instruct you to make use of your
15 life experiences, your good common sense and your sense
16 of logic and reason in evaluating the evidence in this
17 case.

18 You are not partisans or advocates for either side.
19 You have no friends to reward nor any enemies to punish.
20 You are the judges of the facts. Your sole interest is
21 to find the truth from the evidence presented in this
22 case.

23 Be courteous with one another. Listen to the views
24 of your fellow jurors. Take the amount of time necessary
25 for you to thoroughly evaluate the evidence. This case

1 is important to both sides, and this is their only day in
2 court.

3 Now, Madam Forelady, I'm going to go over the
4 verdict form with you. Your verdict form is broken down
5 based on offense. It says, "We the jury ..." It has
6 indictment number 2015-GS-04-00781. "We, the jury,
7 unanimously find on this indictment ..." It lists the
8 number again. "...that the defendant, Jesus Vargas
9 Martinez ..." And it gives you two choices. "... not
10 guilty or guilty of assault and battery of a high and
11 aggravated nature." Whatever the choice that you make as
12 a jury, you would check the appropriate box.

13 Now, it lists the lesser-included offenses as you go
14 down. It says, "Alternatively, the defendant may be
15 found guilty of the lesser-included offense of assault
16 and battery in the first degree. You may not find the
17 defendant guilty of this offense if you have found him
18 guilty of assault and battery of a high and aggravated
19 nature." And then it gives you the same choices, not
20 guilty or guilty of assault and battery in the first
21 degree.

22 Then you go down the page and you have the same
23 instruction. "Alternatively, the defendant may be guilty
24 of the lesser-included offense of assault and battery in
25 the second degree." And, "You may not find the defendant

1 guilty of this offense if you have found him guilty of
2 assault and battery of a high and aggravated nature or
3 assault and battery in the first degree." And it gives
4 you the same choices, not guilty or guilty.

5 And finally, under this column, you have an
6 instruction on the lesser-include offense of assault and
7 battery in the third degree. The choices are not guilty
8 or guilty of assault and battery in the third degree.
9 And, "You may not find him guilty of assault and battery
10 in the third degree if you have found him guilty of
11 assault and battery of a high and aggravated nature,
12 assault and battery in the first degree or second
13 degree."

14 Then the other offense is on the last page. "We,
15 the jury, unanimously find on the indictment number 2015-
16 GS-04-00782, that the defendant, Jesus Vargas Martinez,
17 is ..." And the same choices, not guilty or guilty, of
18 pointing and presenting a firearm.

19 Now, place no significance on the order in which the
20 choices appear on the page. One just simply had to go on
21 the page before the other.

22 Now, the last thing I want to do for you -- all of
23 these offenses involve assault and battery. And I want
24 to define what an assault is and what a battery is under
25 the law.

1 An assault occurs when a person unlawfully attempts
2 or offers to commit a violent injury upon another person
3 and had the present ability to complete the attempted
4 injury. An assault is the intentional creation of a
5 reasonable fear of immediate bodily harm. It is not
6 necessary that the attempted injury or harm actually take
7 place.

8 For example, if I walk up to you and you are within
9 arm's reach and I draw back to hit you, that is an
10 assault.

11 A battery is the unlawful touching of another person
12 by a person who has committed the assault. An unlawful
13 touching can be caused by a part of the accused body or
14 any object that the accused puts in motion. A battery is
15 the completion of the assault by using force or applying
16 force to another person, however slight, in a rude, angry
17 or resentful manner without legal justification for doing
18 so.

19 Using my earlier example, if I carry through the
20 assault by hitting you, then that is the battery. So
21 that is the definition of assault and battery.

22 So with that said, I'm going to have you return to
23 the jury room. Do not begin your deliberations until I
24 send the verdict form back with the exhibits.

25 So, Mr. Bailiff, if you'll take the jury to the jury

1 room.

2 (WHEREUPON, the jury exited the open court at
3 approximately 10:45 a.m.)

4 THE COURT: All right. Any exceptions to my
5 charges from the State?

6 MS. HUEY: None, from the State, Your Honor.

7 THE COURT: Any exceptions to my charges from
8 the Defense?

9 MR. SMITH: None.

10 THE COURT: All right. I'd like the attorneys
11 to come forward, look and count the exhibits, make sure
12 they're all there, and then we'll send the exhibits and
13 the verdict form back to the jury.

14 (WHEREUPON, court stood at ease.)

15 THE COURT: All right. We have everything?

16 MS. HUEY: Yes, sir.

17 THE COURT: All right. Mr. Bailiff, if you'll
18 take the verdict form and the exhibits back to the jury.
19 Tell them they may begin their deliberations. And bring
20 the alternate back into the courtroom.

21 (WHEREUPON, the verdict forms and exhibits were
22 delivered to the jury to begin their deliberations
23 at approximately 10:47 a.m. after which the
24 alternate juror entered the courtroom.)

25 THE COURT: Madam Alternate, this concludes

1 your service in the case since the case is now delivered
2 to the jury and all of them were able to finish, the
3 primary jurors. You are welcome to stay, if you would
4 like to, to see how it turns out. Otherwise, you can
5 leave now. But the jury is reporting -- the whole pool
6 is reporting back at two o'clock. So it's up to you. We
7 thank you for your service on this case.

8 (WHEREUPON, the alternate juror exited the courtroom
9 at approximately 10:48 a.m.)

10 THE COURT: All right. We'll now go into
11 recess.

12 (WHEREUPON, court stood at recess awaiting the
13 verdicts of the jury.)

14 THE COURT: Would you get our jury for us,
15 please, sir?

16 (WHEREUPON, the jury entered the open court at
17 approximately 11:14 a.m.)

18 THE COURT: All right. Madam Forelady, has the
19 jury reached a verdict?

20 MADAM FORELADY: We have, Your Honor.

21 THE COURT: Would you hand that to the bailiff,
22 please, ma'am?

23 (WHEREUPON, the verdict form was handed up to the
24 Court.)

25 THE COURT: Mr. Clerk, would you publish the

1 party before I dismiss the jury?

2 MS. HUEY: Nothing from the State, Your Honor.

3 MR. SMITH: Nothing from the Defense, Your
4 Honor.

5 THE COURT: All right. Ladies and gentlemen,
6 thank you for your service on this case. You will be
7 dismissed now. However, the entire pool is to report
8 back at two o'clock. So thank you for your service.
9 You're dismissed until two o'clock.

10 (WHEREUPON, the jury exited the open court at
11 approximately 11:16 a.m.)

12 THE COURT: Okay.

13 MR. SMITH: Your Honor, may I make my motions?

14 THE COURT: So noted for the record. Go ahead.

15 MR. SMITH: Judgment notwithstanding the
16 verdict, a new trial.

17 THE COURT: That would be denied.

18 MR. SMITH: Thank you, Your Honor.

19 THE COURT: Okay. Mr. Smith, would you and
20 your client come forward, please, sir?

21 MR. SMITH: Yes, Your Honor.

22 (WHEREUPON, counsel and the defendant approached the
23 bar after which court stood at ease.)

24 THE COURT: All right. We're back on the
25 record here where Jesus V. Martinez has been convicted of

1 through.

2 And then he had a workers' compensation claim, and
3 all of that got discombobulated. But I think he used a
4 different law firm in that.

5 THE COURT: Okay. All right. I've reviewed
6 the photographs and documents, Mr. Smith. I'm giving
7 your originals back.

8 MR. SMITH: Thank you, Your Honor. So if
9 there's any compassion the Court can offer, we would ask
10 that benefit be given to Mr. Vargas. And his son and
11 daughter are seated ---

12 THE COURT: Do they wish to address the Court?

13 MR. SMITH: Do y'all wish to say anything to
14 the Court?

15 That's his son.

16 THE COURT: Yes, sir. State your name.

17 (WHEREUPON, the defendant's son approached and held
18 the microphone but did not speak.)

19 THE COURT: Does Mr. Martinez wish to tell me
20 anything?

21 THE DEFENDANT: (By the Interpreter) No, sir.

22 THE COURT: Okay.

23 All right. I've heard the testimony in the case,
24 and this is a serious incident. On assault and battery
25 of a high and aggravated nature, he could get up to

1 twenty years on that offense. Pointing and presenting a
2 firearm, he'd get five additional on that.

3 I understand certainly emotions take control of
4 people, but it can't be a defense to this. And this is a
5 serious, serious offense. So this is going to be the
6 sentence of the Court.

7 On indictment 781, the defendant will be confined to
8 the Department of Corrections for a term of ten years.
9 That would be suspended on the service of three years,
10 followed by probation for five years.

11 MR. SMITH: Thank you, Your Honor.

12 THE COURT: And a condition of probation, no
13 contact with the victims.

14 And then pointing and presenting a firearm, 782,
15 he'd be sentenced to five years, suspended on three years
16 followed by five years probation. No contact with the
17 victims. That would be concurrent.

18 Good luck to you, sir. I hope you can put all of
19 this behind you.

20 MS. HUEY: And Your Honor -- I'm sorry, Your
21 Honor. May I ask for no contact with the law firm in and
22 of itself?

23 THE COURT: Okay. All right. I'll put victims
24 including the Trammel and Mills Law Firm, including all
25 members of the Trammel and Mills Law Firm.

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FEB 27 2017

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of General Sessions
Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2016-000527

Case No.: Assault and Battery Of A High And Aggravated Nature 2015-GS-04-00781;
Pointing/Presenting A Firearm 2015-GS-04-00782

JESUS VARGAS MARTINEZ,

Appellant,

Versus

STATE,

Respondent.

CERTIFICATE OF SERVICE

I, Fletcher N. Smith, Jr., hereby certify that I have this 21, day of February, 2017, served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

THE HONORABLE JENNY ABBOTT KITCHINGS
South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211

THE HONORABLE RICHARD A. SHIRLEY
Tenth Judicial Circuit Clerk of Court
Post Office 8002
Anderson, SC 29622

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Attorney General

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Anderson, South Carolina
February 21, 2017

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of General Sessions
Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2016-000527

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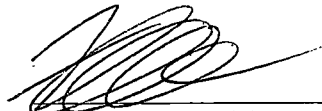
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6

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February 24, 2017

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
1015 Sumter Street (29201)
P.O. Box 11629
Columbia, SC 29211

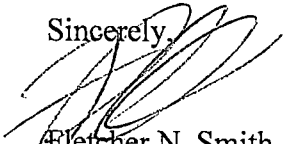
In Re: State v. Jesus Vargas Martinez
Appeal No:2016-000527

Dear Ms. Abbott-Kitchings:

Please find enclosed the Appellant's Amended Record on Appeal in the above referenced case. One original and fourteen (14) copies according to Rule are included in the packet. Pursuant to the Certificate of Service all parties listed below have been served.

Feel free to contact our office with any questions regarding this matter.

Sincerely,


Fletcher N. Smith, Jr.
FNS/lm
Enclosure(s)

Alan McCorory Wilson, Esquire
Attorney General

Jennifer Ellis Roberts
Assistant Attorney General
Office of Attorney General

The Honorable Richard Shirley
Tenth Judicial Circuit Clerk of Court

Catherine T. Huey, Esquire
Sr. Career Prosecutor
Tenth Judicial Circuit Solicitor's Office

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