

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

VOLUME II OF II

ORIGINAL

Appeal from Beaufort County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NICK RUSSELL EVANGELISTA,

APPELLANT

RECEIVED

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SC Court of Appeals

APPELLATE CASE NO 2018-000448

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT (DECEMBER 11-14, 2014).....	1
<u>JACKSON V. DENNO</u> HEARING.....	16
TESTIMONY	
PHILIP NIX (IN-CAMERA)	
Direct Examination by Ms. Swanson.....	17
Cross Examination by Ms. Campbell	21
ROBERT GREENE (IN-CAMERA)	
Direct Examination by Ms. Swanson.....	23
Cross Examination by Ms. Campbell	27
IMMUNITY HEARING.....	37
DEFENDANT'S MOTION ON BURDEN OF PROOF FOR IMMUNITY	37
COURT'S RULING	39
TESTIMONY	
NICK EVANGELISTA (IN-CAMERA)	
Direct Examination by Ms. Campbell	43
Cross Examination by Ms. Swanson	73
JON ADAMS (IN-CAMERA)	
Direct Examination by Ms. Swanson.....	89
Cross Examination by Ms. Campbell	98
Redirect Examination by Ms. Swanson	112
COLLOQUY ON IMMUNITY UNDER S.C. CODE § 16-11-440 AND 16-11-450	115
COURT'S RULING	121
OPENING STATEMENT BY MS. SWANSON	126
OPENING STATEMENT BY MS. CAMPBELL.....	129
TESTIMONY	

BROOKER DEVORE	
Direct Examination by Ms. Swanson.....	136
ROBERT DICARLO	
Direct Examination by Ms. Swanson.....	140
BRANDON COOLER	
Direct Examination by Ms. Swanson.....	143
Cross Examination by Ms. Campbell	164
Redirect Examination by Ms. Swanson.....	167
Re-Cross Examination by Ms. Campbell.....	168
Redirect Examination by Ms. Swanson.....	169
ROBERT SNIPES	
Direct Examination by Ms. Swanson.....	170
JAMES FRYDRYCHOWICZ	
Direct Examination by Ms. Swanson.....	172
PHILIP NIX	
Direct Examination by Ms. Swanson.....	178
ROBERT GREENE	
Direct Examination by Ms. Swanson.....	182
JEFFREY MORAN	
Direct Examination by Ms. Swanson.....	188
Cross Examination by Ms. Campbell	192
NICK BATALIS	
Direct Examination by Ms. Swanson.....	194
Cross Examination by Ms. Campbell	204
Redirect Examination by Ms. Swanson	213
JOHN ADAMS	
Direct Examination by Ms. Swanson.....	214
Cross Examination by Ms. Campbell	225
Redirect Examination by Ms. Swanson	250
TIMOTHY FRENCH	
Direct Examination by Ms. Swanson.....	254
Cross Examination by Ms. Campbell	261
THE STATE RESTS	277

TESTIMONY

NICK EVANGELISTA

Direct Examination by Ms. Campbell	279
Cross Examination by Ms. Swanson	329

LOIS VERONEN

Direct Examination by Ms. Campbell	370
Voir Dire Examination by Ms. Swanson	372
Direct Examination by Ms. Campbell (continued)	374
Cross Examination by Ms. Swanson	390

SARAH COTTER

Direct Examination by Ms. Campbell	402
Cross Examination by Ms. Swanson	406
Redirect Examination by Ms. Campbell	408

JENNIFER KELLY

Direct Examination by Ms. Campbell	409
Cross Examination by Ms. Swanson	411

JULIE BHUIYAN

Direct Examination by Ms. Campbell	413
Cross Examination by Ms. Swanson	415

DUDLEY RUFFALO

Direct Examination by Ms. Campbell	419
Cross Examination by Ms. Swanson	421
Redirect Examination by Ms. Campbell	422

ERIC RICKER

Direct Examination by Ms. Campbell	424
Cross Examination by Ms. Swanson	427

ADAM PAUL

Direct Examination by Ms. Campbell	429
Cross Examination by Ms. Swanson	432
Redirect Examination by Ms. Campbell	434

NATHAN ARNETT

Direct Examination by Ms. Campbell	435
Cross Examination by Ms. Swanson	438

MICHAEL MALVASIO

Direct Examination by Ms. Campbell	439
Cross Examination by Ms. Swanson	445

CATHRYN EVANGELISTA	
Direct Examination by Ms. Campbell	447
Cross Examination by Ms. Swanson	452
THE DEFENSE RESTS	455
CLOSING ARGUMENT BY MS. CAMPBELL	456
CLOSING ARGUMENT BY MS. SWANSON	471
CHARGE ON THE LAW	487
VERDICT	508
SENTENCING	509
DEFENSE NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO BAR PROSECUTION UNDER S.C. CODE 16-11-410 THROUGH 450 (WITH ATTACHMENTS)	510
STATE'S EXHIBIT 35 (JOURNAL).....	573
COURT'S EXHIBIT 3 (TO DO LIST)	587
COURT'S EXHIBIT 9 (EMAIL)	596
INDICTMENT.....	597
CERTIFICATE OF COUNSEL	599

1 impossible, the belief that only the death of the batterer
2 can provide relief may be reasonable in the mind of a person
3 of ordinary firmness.

4 Words accompanied by hostile acts may, depending on
5 the circumstances, establish self-defense. Evidence of
6 prior difficulties between the defendant and the victim may
7 be considered in deciding whether a threat existed, whether
8 the defendant had a reason to believe a threat existed and
9 how serious that threat was.

10 The relative sizes, ages and weights of the
11 defendant and the victim may be considered in deciding the
12 apparent or actual need for force in self-defense and the
13 amount of force needed.

14 Prior instances of violence by the victim may be
15 considered in deciding whether the defendant actually
16 believed he was in imminent danger of death or serious
17 bodily injury, or was actually in imminent danger.

18 Threats made by the victim may be considered in
19 determining whether the defendant actually was or believed
20 he was in imminent danger.

21 The intoxication of the victim may be considered in
22 deciding whether the defendant's fear of death or bodily
23 harm was reasonable.

24 The final element of self-defense is that the
25 defendant had no other probable way to avoid the danger of

1 death or serious bodily injury than to act as the defendant
2 did in this particular instance.

3 If the defendant was on his own premises, the
4 defendant had no duty to retreat before acting in
5 self-defense. The defendant had no duty to retreat if by
6 doing so, the danger of being killed or suffering serious
7 bodily injury would increase.

8 A battered person who is held hostage by the
9 batterer may have no other means by avoiding a battering
10 than but to kill the batterer in self-defense. A battered
11 person who acts while on his own premises has no duty to
12 retreat.

13 I instruct you that a person cannot be required to
14 make an exact calculation as to the degree or amount of
15 force which may be needed to avoid death or serious bodily
16 harm. Therefore, in self-defense, the defendant has the
17 right to use the force needed to avoid death or serious
18 bodily harm. The force used in self-defense does not have
19 to be limited to the degree or amount of force used by the
20 victim. The defendant has the right to use as much force as
21 appeared to be necessary for complete self-protection and
22 which a person of ordinary reason and firmness would have
23 believed to be needed to prevent death or serious bodily
24 harm.

25 If the defendant is justified in defending himself,

1 then the defendant is also justified in continuing until it
2 is apparent that the danger of death or serious bodily
3 injury has completely ended.

4 Ladies and gentlemen, you've been selected as fair
5 and impartial jurors, sworn to impartially try the facts of
6 the of this case. And when you comply with your oath, then
7 no one has the right to criticize your verdict. And you
8 will have fully fulfilled your obligation in this case as
9 jurors. You should not be influenced by opinions or
10 expressions of opinions outside the evidence of this case.
11 But you should decide this case based on the testimony that
12 you've heard from the sworn witnesses and the other evidence
13 that has been introduced in this case.

14 There are two possible verdicts in this case. And
15 please don't draw any significance to the order in which I
16 state them. It is simply that one must be stated first.
17 And they are as follows: As to Indictment No.
18 2014-GS-07-1787, we the jury, by unanimous consent, find the
19 defendant guilty of murder or not guilty. Again, there's no
20 significance to the order in which I state the possible
21 verdicts.

22 Ladies and gentlemen, your verdict must be a
23 unanimous one, which means all twelve of you must agree in
24 order to reach a verdict in this case.

25 Mr. Foreman, when the jury reaches a verdict, it is

1 your responsibility to fill out the verdict form, to sign
2 and date the form, and also to knock on the door and advise
3 the bailiffs that the jury has reached a verdict. Also, if
4 the jury has any questions during deliberations, it is your
5 responsibility to write out those questions, to sign and
6 date the note and, likewise, follow the same process by
7 knocking on the door and advising the bailiffs that the jury
8 has a question.

9 Ladies and gentlemen, if you have any questions
10 during deliberations, please know that there will be a delay
11 in us responding. And that is because there's a process
12 that we must follow in answering your questions. So note if
13 you have a question, there will be a delay because we are
14 following that procedure.

15 Also, Mr. Foreman, any notes should never reflect
16 any numerical breakdown in the jury, as jury deliberations
17 are to be confined within your jury room and you should
18 never disclose to the Court any type of numerical breakdown
19 between the jury.

20 Again, ladies and gentlemen, your verdict must be
21 unanimous, which means that all twelve of you must agree in
22 order to reach a verdict. I'm going to ask that you return
23 to your jury room, but do not yet begin your deliberations.
24 I have some very brief matter of law to take up with counsel
25 that may require further instruction or clarification of an

1 instruction. If there's no further instruction, we will
2 send in your notepads, the evidence, the verdict form, and
3 at that time dismiss the alternates. And you will be
4 allowed to begin your deliberations.

5 Please go with the bailiffs and do not begin your
6 deliberations.

7 (Whereupon, the jury leaves open court at 2:37
8 p.m.)

9 THE COURT: Any exceptions, from the State?

10 MS. SWANSON: None from the State.

11 THE COURT: From the defense?

12 MS. CAMPBELL: No, Your Honor.

13 THE COURT: Can you all make sure -- we already
14 went through the evidence? Everything has been accounted
15 for?

16 MS. SWANSON: Yes, Your Honor.

17 MS. CAMPBELL: Yes.

18 THE COURT: If you can collect the notebooks of the
19 jury, except the alternates', if you can put those on the
20 railing for me. And then if you could collect the
21 alternates and bring them to me. Take that to the bailiffs
22 for me.

23 THE BAILIFF: There are no alternate notebooks.

24 THE COURT: Okay. They didn't take any notes. If
25 you could bring the alternates to me so I can excuse them.

1 Madam Clerk, do we have any laptops in the building
2 for the jury to look at evidence?

3 THE CLERK: Yes, ma'am.

4 THE COURT: If we could locate that, that would be
5 wonderful. There wasn't any special software they needed to
6 load on the laptop to look at the evidence, correct?

7 MS. SWANSON: No, Your Honor.

8 (Whereupon, the jury begins deliberations at 2:40
9 p.m.)

10 (Whereupon, the alternates enter the courtroom.)

11 THE COURT: We thank you for your time and
12 attention to this case. We know being an alternate may seem
13 thankless, but it's a necessary part of the process. You
14 are welcome to stay with us until the jury completes their
15 deliberation, or you are welcome to leave. Just let the
16 bailiff know what you want to do. We will find a place for
17 you to sit and wait. You are welcome to discuss this case,
18 but I would ask you do not do it until the end of the week
19 when the jury has reached their verdict.

20 Thank you so much for your service. I hope it's
21 been educational for you. You are excused with the Court's
22 profound thanks. Thank you very much.

23 (Whereupon, the alternates are excused.)

24 THE COURT: Okay. The record should reflect the
25 jury has begun its deliberations at 2:40.

1 Y'all provided me with Mr. Evangelista's full dump
2 from his text messages and web history. I'm going to have
3 those marked as Court's exhibits just so we will have the
4 entirety of the record of what I've reviewed.

5 MS. SWANSON: Yes, Your Honor.

6 THE COURT: All right. Is there anything else we
7 need to do other than hang out and wait for our bosses to
8 give us further instructions?

9 MS. SWANSON: Not that I'm aware of.

10 THE COURT: If could stay close for me, I would
11 appreciate it.

12 (Court's Exh.6, 146 Text messages; was marked for
13 identification.)

14 (Court's Exh. 7, Nick Evangelista's web history,
15 was marked for identification.)

16 THE COURT: State ready to proceed?

17 MS. SWANSON: The State is ready.

18 THE COURT: Defense ready to proceed?

19 MS. CAMPBELL: We are ready.

20 THE COURT: Please bring in the jury.

21 (Whereupon, the jury returns to open court at 4:21
22 p.m.)

23 THE COURT: Mr. Foreman, is it correct that the
24 jury has reached a verdict?

25 THE FOREPERSON: Yes, Your Honor.

1 THE COURT: If you will give the verdict form to
2 the bailiff for me, please.

3 Sir, if you will stand for publication of the
4 verdict.

5 State of South Carolina v. Nick Russell
6 Evangelista, 2014-GS-07-1787, we the jury by unanimous
7 consent find the defendant guilty of murder, signed by the
8 foreperson, dated 12/14/17.

9 Ladies and gentlemen, if this is your verdict,
10 please indicate by raising your right hand.

11 Let the record reflect that all raised their right
12 hand and the verdict stands. You may put your hands down.

13 Is there any request to poll the jury, from the
14 State?

15 MS. SWANSON: None from the State.

16 THE COURT: From the defense?

17 MS. CAMPBELL: Yes, Your Honor.

18 THE COURT: Ladies and gentlemen, there's been a
19 request to poll the jury. I will ask you -- ladies and
20 gentlemen, I'm going to call each of you by your juror
21 number. And I need for you to answer two questions for me:
22 One, is this your verdict? And is this still your verdict?

23 Starting with No. 53. Sir, is this your verdict?

24 JUROR 53: Yes, ma'am.

25 THE COURT: Is this still your verdict?

1 THE COURT: Thank you, sir.

2 MS. CAMPBELL: Your Honor, that would be all that
3 we would have at this time. Thank you.

4 THE COURT: You're welcome.

5 Anything further, from the State?

6 MS. SWANSON: Nothing further.

7 THE COURT: Sir, if you would stand for sentencing.

8 Sir, I find it appropriate, based on the facts
9 presented at trial, that you be sentenced to the State
10 Department of Corrections for a period of 45 years. You
11 will get credit for any time that the State can calculate
12 pursuant to 24-13-40 and that you are entitled to.

13 Thank you very much. We will be in recess.

14 Thank you all very much for your service.

15 (Whereupon, proceedings are adjourned.)

16 (Whereupon, proceedings are adjourned.)

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA

vs.

NICK EVANGELISTA,
Defendant.) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
) Indictment No.: 2014GS0701787 MURDERNOTICE OF MOTION AND MEMORANDUM
IN SUPPORT OF MOTION TO BAR
PROSECUTION UNDER
SC CODE 16-11-410 through 450

YOU WILL PLEASE TAKE NOTICE that the Defendant, **NICK EVANGELISTA**, by and through his undersigned counsel, will move before the Presiding Judge of General Sessions Court on **DECEMBER 11, 2017** or as soon as this matter may be heard for an Order Barring Prosecution pursuant to SC Code 16-11-410.

FACTS

On or about August 26, 2014, Nick Evangelista defended himself against the violence, threats of death and aggression of Rebecca Melton and as a result of defending himself, he caused the death of Rebecca Melton. The autopsy indicated that Rebecca Melton died as a result of suffocation. The autopsy further reveals that Rebecca had a BAC of .226% at the time of death along with high levels of amphetamines and venlafaxine (commonly known as Xanax). This event took place at the couple's residence [REDACTED] Apartment [REDACTED]—St. Andrews Villas—Palmetto Dunes—Hilton Head, SC) which Nick Evangelista had been sharing with his girlfriend, Rebecca Melton. Nick

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Evangelista was arrested in October 2014 and charged with Murder in the death of Rebecca Mofon.

Over the course of their two year relationship, Nick and Rebecca shared numerous homes together on Hilton Head Island. After beginning dating, Rebecca almost immediately moved in with Nick. The only times they lived apart were when Nick fled the home for a few days at a time to escape the abuse and stayed at a hotel or at his place of work, Optim Health, where he was employed as a Physician's Assistant. During the time that Nick and Rebecca were in an intimate and on-going relationship, Rebecca was arrested three (3) times for Criminal Domestic Violence against Nick. One time law enforcement arrest both of them. There were many other incidents of verbal and physical abuse, threats and assaults against Nick perpetrated by Rebecca which Nick did not report to law enforcement. However, he did report many of these incidents to close friends, family and co-workers. In fact, he emailed his friends, family and co-workers about Rebecca's threats to kill him and to kill them in an effort to have those individuals be on guard and have knowledge that their lives as well as his life had been threatened by Rebecca. In many of the physical assaults, Rebecca injured Nick severely physically and on one occasion she stabbed him which caused a deep vein wound which bleed profusely causing Nick to fear that he would bleed out and die. If he had not had medical training and been able to stop the bleeding on his own, then he may well have died from this injury.

Defendant's attorney retained the services of Dr. Susan Knight and Dr. Lois Veronen in the preparation of this matter. Dr. Susan Knight issued a

violence risk assessment for Nick and Dr. Voronen issued findings on the issue of Spousal Battery Syndrome for Nick. Both reports are attached hereto.

LAW AND ARGUMENT

The Defendant directs this Honorable Court to the South Carolina Protection of Persons and Property Act as detailed for this Honorable Court herein below:

SECTION 16-11-410.

This article may be cited as the "Protection of Persons and Property Act".

HISTORY: 2006 Act No. 379, Section 1, eff. June 9, 2006.

SECTION 16-11-420. Intent and findings of General Assembly.

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

HISTORY: 2006 Act No. 379, Section 1, eff. June 9, 2006.

SECTION 16-11-430. Definitions.

As used in this article, the term:

(1) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.

(2) "Great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(4) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

HISTORY: 2006 Act No. 379, Section 1, eff. June 9, 2006.

SECTION 16-11-440. Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business.

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcibly entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle,

- or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.
- (B) The presumption provided in subsection (A) does not apply if the person:
- (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or
- (2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or
- (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- (4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.
- (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.
- (D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.
- (E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.
- HISTORY: 2006 Act No. 379, Section 1, eff. June 9, 2006.
- SECTION 16-11-450. Immunity from criminal prosecution and civil actions; law enforcement officer exception; costs.**
- (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.
- (B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.
- (C) The court shall award reasonable attorneys' fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).
- HISTORY: 2006 Act No. 379, Section 1, eff. June 9, 2006.

The Defendant relies principally on the South Carolina Supreme Court decision in State v. Jones, Opinion No. 27837 issued May 18, 2016 (attached hereto) for his contention that he is immune from prosecution for the death of Rebecca Melton. Additionally, the Defendant seeks protection and immunity

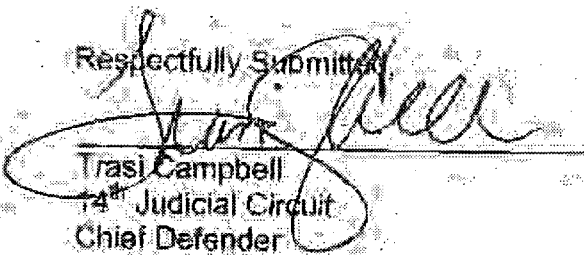
from prosecution by the State of South Carolina as he asserts he is entitled to the protections and immunity offered to the citizens of South Carolina under South Carolina Protection of Persons and Property Act 16-11-410 through 16-11-450. Specifically, the Defendant directs this Honorable Court to 16-11-440(c) wherein the law allows him the protection of the law and immunity from prosecution as follows:

1. A person who is not engaged in an unlawful activity; and (THE DEFENDANT WAS ACTING LAWFULLY AT THE TIME AND NOT ENGAGED IN AN UNLAWFUL ACTIVITY)
2. has no duty to retreat; (THE DEFENDANT HAD NO DUTY TO RUN OR RETREAT)
3. and has the right to stand his ground; (THE DEFENDANT HAD THE RIGHT TO STAND HIS GROUND IN HIS HOME AS REBECCA CHARGED AT HIM AND PHYSICALLY ASSAULTED HIM)
4. and meet force with force, including deadly force, (THE DEFENDANT MET LIKE FORCE WITH LIKE FORCE AS REBECCA REPEATEDLY STRUCK NICK ABOUT THE HEAD AND FACE AND BODY JUST AS SHE HAD DONE A FEW WEEKS PRIOR WHEN SHE GRABBED CAR KEYS AND STABBED NICK IN THE ARM AND HE SUFFERED A DEEP VEIN WOUND WHICH COULD HAVE CAUSED HIS DEATH IF NOT TREATED)
5. if he reasonably believes it is necessary to prevent death or great bodily injury to himself (THE DEFENDANT'S BELIEF WAS REASONABLE BASED UPON THE ATTENDANT CIRCUMSTANCES AND PREVIOUS INTERACTIONS WITH REBECCA WHERE REBECCA THREATENED TO KILL THE DEFENDANT AND HAD PREVIOUSLY TRIED TO KILL THE DEFENDANT)

Therefore, based upon the law and the facts and circumstances surrounding the events of August 26, 2014 detailed herein, the Defendant seeks

a hearing on this matter to be conducted by this Honorable Court prior to any further actions in this matter. The Defendant further seeks protection from prosecution and requests that this Honorable Court make a ruling that he is immune from prosecution on these indictments based upon the law and the facts and circumstances of this event.

Respectfully Submitted,


Traci Campbell
14th Judicial Circuit
Chief Defender
Violent Crimes Division

Beaufort, South Carolina
11-20-2017

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November 14, 2017

Traci Campbell, Attorney at Law
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Re: Nick Russell Evangelista

Dear Ms. Campbell:

At your request I have conducted an examination of your client, Nick Russell Evangelista. Mr. Evangelista is a 56-year-old, father of two sons, a one-time divorced Caucasian male. He was working as a physician assistant in an orthopedic practice in Bluffton and Hilton Head, SC prior to his arrest in October of 2014. Mr. Evangelista is charged with the murder of Rebecca (Becca) Melton, his live-in intimate partner for two years. Additionally, he is charged with two counts of Violation of Drug Distribution. The purpose of this examination was to examine Mr. Evangelista's history of victimization, the impact of this victimization, and to determine whether this history and his psychological profile is consistent with the Spousal Battery Syndrome.

The Spousal Battery Syndrome or Battered Woman Syndrome is a legal term used to describe an individual who, having experienced intimate partner violence in his or her relationship, is traumatized by the victimization to the extent that it impairs his or her ability to formulate independent intention and actions. For some victims it appears that the fear response of "fight, flight, or freeze" of the primitive brain is highly activated; thus, the victim is not engaging in thoughtful or intentional behavior, but is instinctively responding in ways to preserve one's life.

In the psychological research the reactions of individuals to violence at the hands of an intimate or domestic partner are identified by various terms: Abuse Victims, Battered Spouse, "Domestic Violence Victims", "Victims of Violence," "Victims of Intimate Partner Violence," and/or "Victims of Trauma." In some situations of intimate partner victimization, the victimization has been so severe and prolonged that the reactions of the victim are comparable to individuals who have been prisoners of war, experienced torture, or been brainwashed.

The emotional bond between the perpetrator of violence or the abuser and the victim has been the subject of research and extensive theorizing for the past 40 years. Documentary movies and books have chronicled the lives of children, women, and men who have lived in forms of captivity experiencing fear, shame, silence, self-loathing, and a myriad of other emotions. In many of these situations victims may have had the opportunity to leave or flee the abusive situation, but to not do so because of loyalty and allegiance to the perpetrator. These are very complex and confusing relationships which may not be easily recognizable to within the justice system.

Although it is less common for men to report intimate partner violence, research studies support that men are victims as well as women are.

In the process of conducting this examination of Nick Evangelista, Discovery Documents provided by the Public Defender's Office were reviewed. Also reviewed was Rebecca Melton's health care record as established by Volunteers in Medicine. Additionally, psychological instruments that have been found sensitive to the effects of violence were administered. In addition, a standard measure of psychological personality functioning was administered, and lengthy interviews were conducted.

Mr. Evangelista traveled from his current residence in Georgia to the examiner's office in Rock Hill, SC office on August 18, 2017. He presently lives with his father and step-mother. He was allowed to be released from the Beaufort jail while awaiting trial after a Judge's hearing in which extensive evidence was presented documenting that he is neither a flight risk nor a risk for repeat offending. Mr. Evangelista is on house-arrest and can work, travel to meetings, church, and doctor's appointments. He was seen for six hours on August 18, 2017. He has also been interviewed by telephone on three occasions on November 6, 13, and 14, 2017, each for an additional hour.

Mr. Evangelista had been prepared for the evaluation and understood the purpose and procedure. He was straightforward and answered questions in the detail required. His affect was mixed; his voice and facial expression conveyed sadness and resignation. His eyes welled when discussing the separation from his sons, his pain for his sons, ex-wife, parents and his family and the shame his actions have brought them. Tears rolled down his cheeks when he expressed his helplessness and frustration in trying to love and help Becca. His voice became stronger and his face more relaxed when he spoke of his work and how much he valued engaging in patient care and being of service to others. He spoke of one day being able to use his training and knowledge to serve people again.

The following measures were administered to Mr. Evangelista as part of an assessment battery:

1. The Detailed Assessment of Post Traumatic Stress (DAPS) The DAPS is a detailed and comprehensive clinical measure of trauma exposure and post-traumatic stress in individuals who have a history of exposure to one or more potentially traumatic events. The instrument assesses peri and post-traumatic

symptoms (e.g. intrusion, avoidance, hyperarousal) and associated features (e.g. dissociative symptoms, substance abuse, suicidality) related to a specific traumatic event. It generates a tentative diagnosis of Post-Traumatic Stress Disorder (PTSD) or Acute Stress Disorder (ASD). The DAPS assesses current and lifetime history of DSM-IV-TR trauma exposure, as well as the severity and clinical significance of an individual's post-traumatic symptoms, including dissociative, cognitive and emotional responses. The DAPS scales include the three PTSD symptom clusters (Re-experiencing, Avoidance, and Hyper-arousal) and three associated features of PTSD: Trauma-Specific Dissociation, Suicidality, and Substance Abuse. Two validity scales identify over-reporting and under-reporting of psychological symptoms.

- 2) Personality Assessment Inventory (PAI), authored by Leslie Morey, PhD, is a multi-scale test of psychological functioning that assesses constructs relevant to personality and psychopathology evaluation (e.g., depression, anxiety, aggression) in various contexts including psychotherapy, crisis evaluation, forensics, personnel selection, pain/medical issues and child custody assessments. The PAI has 22 non-overlapping scales, providing a comprehensive overview of psychopathology in adults. The PAI contains four kinds of scales: 1) validity scales, which measure the respondent's approach to the test, including faking good or bad, exaggeration, or defensiveness; 2) clinical scales, which correspond to psychiatric diagnostic categories; 3) treatment consideration scales, which assess factors that may relate to treatment of clinical disorders or other risk factors but which are not captured in psychiatric diagnoses (e.g., suicidal ideation); and 4) interpersonal scales, which provide indicators of interpersonal dimensions of The Personality Assessment.

3. Additional interviewing was conducted to obtain information about educational background, trauma and victimization history, relevant social history, mental health, and drug and alcohol history.

Question 1: What is the background of the relationship between Rebecca Melton and Nick Evangelista?

Nick met Rebecca Melton at a time when he was vulnerable to the hope of a long-term relationship. Nick had one previous marriage with two sons. Becca told Nick she had been an airline pilot for Delta and had been laid off during the downturn in the economy. She said she was originally from Ontario, Canada, had also lived in Michigan for many years, and had been in the Atlanta, Savannah, Hilton Head, and Beaufort area for many years. She told Nick she had two previous marriages with three children from her first marriage and one child from the second marriage.

Becca was a petite blonde woman approximately 5'3" in height and weighing approximately 120 pounds. She was two years older than Nick. Nick was a dark haired medium built man approximately 5'8" and 170 pounds. They were an attractive couple.

and both quite social when out for dinner or at a bar. They shared a love of listening to live music. Nick had been in bands when he was younger and enjoyed a variety of music. He knew band members in the Hilton Head, Savannah, and Beaufort areas.

Nick and Becca's relationship moved very quickly. According to Nick they did not spend any evenings or nights apart during the first two weeks after meeting. It was in their second week after meeting that Nick woke up and found Becca had gotten up and left. According to Nick he called her, and she did not answer. He assumed she had left to take care of her dog. He was not allowed to have dogs at his condo and thus she left the dog at the room she had been renting.

On his way to work at approximately 5:30 am, Nick called her again, and she answered. She told him that she was on the beach and had taken all her medications and wanted to die. Nick was shocked, confused and worried. At that point nothing had happened between them. Nick felt compassion for her and wanted to provide relief for her suffering. He offered her reassuring words, encouragement and his best bedside manner. Nick's compassion and caring were activated, and he tried to "make it right" for Becca. They got together that evening and Becca was happy and pleasant. Nothing was mentioned of her dark depression in the early morning.

The first incident of interpersonal violence between them occurred on Sunday before St. Patrick's Day of 2013. Becca's daughter, Molly, and her boyfriend from Georgia had come to spend the weekend with Becca and as part of the entertaining them, they all attended the St. Patrick's Day parade together. Becca appeared to be angry with her daughter when they first arrived at the parade in Hilton Head. They watched the parade and afterward Molly and the boyfriend headed back to Georgia. Becca returned to Nick's place and, with no provocation, flew into a rage. She grabbed Nick, threw her wine at him, yelled and screamed at him. She rocked the glass bar with her body and all the glasses and bottles hit the floor, breaking much of the glassware. Nick could not understand this sudden rage or what might have caused it. He tried to talk with her and calm her, but she would not be calmed. She threatened him, his ex-wife and children. She said her father was a crime boss who could kill them all, and no one would ever know. Her rage then turned to depressive talk of suicide. Becca left his residence. Nick called Molly. Molly told Nick this was not the first time that her mom had become violent, threatening, and irrationally aggressive with no apparent provocation and had then followed it with a threat to take her own life.

That evening Nick went to sleep at 1:30 or so. He called Becca the next day and they talked. She was calm, but expressed anger at him for involving Molly in the incident. Nick apologized for calling Molly. He also told Becca she needed to get some mental health help, or their relationship could not continue.

Subsequently, Nick believed Becca did get counseling and therapy. He believed she had some deep-seated problems from her past and he thought she could get better with therapy. In the meantime, he would continue to be loving and caring.

During the Memorial Day weekend of 2013, Nick and Becca went to a seafood bar and restaurant that was only one block from where he lived. They enjoyed dinner and began dancing and having a good time. However, Becca's speech became slurred and she kept losing her balance. Nick suggested they leave. Becca was emphatic she wanted to continue to stay and dance.

Nick left the restaurant alone, walked to his place and went to sleep. Later Becca came to his house, loudly knocked on the door and he let her in. Becca was screaming at him and threatening him. She grabbed him and scratched him.

Nick called the police. In the ten or so minutes before they arrived, Becca calmed down and begged Nick not to report the incident. The police arrived, photographed Nick and took his report. The police ran a background check on Becca. There was an outstanding warrant for her arrest. Two months prior she had a Disorderly Conduct charge for cursing an officer and creating a disturbance. Becca had not shown up for her court date. The police initially said Becca would be transported to jail. She cried and begged and calmed down. The police then told them they were too busy to transport Becca to jail. Nick felt sorry for her and told the police he felt they could handle the situation.

In this instance Nick again protected Becca from the consequences of her own behavior. He recognized the variability in her emotions and mood, he again tried to encourage her to attend therapy and to get the medications she needed.

In fact, Nick was well-accustomed to helping people. He worked as the Physicians Assistant for a highly skilled orthopedic physician. The people treated in the practice improved greatly with the care administered through the practice. Nick had a strong commitment to patient care, found it deeply rewarding, and felt great compassion for individuals who were in physical and emotional pain or suffering. He thought Becca could be helped in the same manner as his professional patients. He was a loving caregiver.

The couple moved in together in June of 2013. Becca tried to get various jobs and obtained some, but would seldom last longer than 2 or 3 weeks. There is a document in the discovery materials indicating the manager from one of her retail jobs filed a complaint accusing Becca of falsely listing merchandise return claims and pocketing the cash herself.

Nick tried to use his best compassionate listening skills in his relationship with Becca. In the relationship he was loving, attentive, and tried hard to ease her pain, cooperate with her plans to get financially sound and help her to stabilize. He understood that depression can be a highly debilitating condition.

Becca slept very poorly and would often wake Nick up at night to complain about something or to launch into an idea that she had. This bizarre nighttime activity coupled with his strong commitment to his work and the patients he served gave Nick little time for bill paying and for attending to financial commitments. Thus, Becca took over

managing his finances and paying of the bills. She set up joint accounts and talked Nick into getting rid of his car in an effort to save money.

In this time, Nick was being emotionally abused and controlled by Becca. She was loving and sweet when it worked to gain her goals. She was threatening and angry when he tried to resist her schemes and plans. She threatened him with her stated ties to the crime underworld. She claimed she could have both of his sons and his ex-wife killed, and it would look like an accident. She threatened it in such a cold and calculated way that Nick believed her.

Becca also isolated Nick from his support system and family. On one occasion Nick sought refuge at his ex-wife's home and slept on the couch. Becca came to the residence and screamed threats about his not being at home. He was ashamed that he was in such a violent and dysfunctional relationship and that he did not know how to break free from it without endangering his family, friends, and his work colleagues. At times he would leave home and sleep in his office. His staff would get harassing calls and messages from Becca. She stole plants from outside the office and she threw the office patio furniture over the balcony.

Becca's rage was also directed toward his possessions and furnishings. On occasion she broke glasses and smash bottles. On another occasion she threw his racing bicycles and gear off the balcony. On other occasions, she cut up his clothes. On another occasion she buried his clothes. She took all the contents of the refrigerator and heaved the items against the walls. The police were called to intervene several times; typically, it was neighbors calling to report the disturbing noise and behaviors. The couple had three evictions in slightly over one year.

Psychological abuse by Becca included name calling with a full range of derogatory terms. He told Nick "your profession is a waste", "you are not a real doctor." She also succeeded in getting Nick to believe that he had been financially exploited by his ex-wife. Becca convinced Nick that his ex-wife was carrying on a lesbian relationship and that had been the real reason for their divorce. Becca then badgered Nick into going to court for a reduction in child support. In the summer of 2014 Nick hired an attorney in Beaufort and was able to get his monthly support reduced. This created tension in his relationship with ex-wife and his sons.

Becca's depression was worsening. Upon Becca's return from Michigan after her mother's death she was more depressed, more unstable, and more irrational than ever before. Nick likened Becca's depression during the day and her irrationality and terrible irritability and rage at night to Alzheimer's sundowner behavior.

Becca cried more and more often and said she wanted to join her mother by dying. According to Nick, Becca was drinking nightly--in addition to taking several medications.

Question # 2: What was, and is, Nick's level of psychological functioning?

Based upon the results of the psychological test battery and interview data, Nick is psychologically distressed; his functioning is moderately impaired in some areas and severely impaired in other areas.

The results of the Personality Assessment Inventory validity scales indicate Nick attended to the material and answered consistently. Validity scales further indicate she answered in a forthright manner and did not attempt to present an unrealistic or inaccurate impression. There is no indication of malingering or feigning psychological symptoms or behaviors. Nick's responses on the PAI clinical scales produce elevations on several scales and subscales suggesting multiple diagnosis and several areas that could be targeted for clinical intervention. Profile patterns of this type are often the result of prolonged and horrific abuse and degradation and are suggestive of impairment in functioning in several areas. The highest of the subscales was traumatic stress (T=90). Also in the range of clinical significance were the affective depression (T=80) and cognitive depression (T=75). Approaching clinical significance was the subscale of physiological depression (T=69).

The DAPS offers a more comprehensive account of Nick's traumatic history. This assessment procedure measures the worst of the traumatic experiences that the respondent (Nick) has experienced. The experience which Nick rated as the worst of the traumatic events was the week of threats and escalated violence perpetrated by Becca beginning the 19th of August and culminating on the night of August 26th, 2014. During this week, Nick experienced having his clothes taken and buried, being threatened with having his sons killed, being stabbed in the hand with a car key, having staff at his work receive harassing phone calls, receiving demanding texts, having the contents of the refrigerator emptied and thrown all over the kitchen, being cursed at and being told that Becca would destroy him. These events induced the fear that he and his children and others he cared about might be destroyed. These events produced extreme fear, helplessness, horror, shame, humiliation, and disgust. These feelings and thoughts continued to be re-experienced in thoughts and memories.

Nick was traumatized by the increasing threats and Becca's degrading behaviors. To the outside world during the daytime, Nick was a hard-working, competent and compassionate professional treating patient in the orthopedic clinic or assisting with surgeries at the hospitals. At night at home with Becca, he became an appeaser and a conforming partner to her depressive and irrational demands.

Results of the Personality Assessment Inventory, DAPS, and interview data indicate Nick is suffering from two mental disorders: Post Traumatic Stress Disorder and Major Depressive Disorder. These disorders continue to impact Nick. He experiences worthlessness, hopelessness, and has thoughts of taking his life, although the period of severe suicidality appears to have passed. He is presently living with his father and step-mother in Georgia and awaiting trial. He is active in a church and reports his faith life is sustaining him. On occasion, he has been able to find work, but as soon as a background

check is conducted, the murder charge shows up and he is no longer able to progress in the employment setting.

Question #3. How did the physical abuse and psychological control exerted by Becca impact Nick's cognitive and psychological functioning?

Nick's cognitive abilities were highly impaired. He could not formulate a plan to keep Becca stable and functioning consistently. He had love and compassion for Becca coupled with a realistic fear of what she could do to him when she was focused on his destruction.

His fear had a realistic basis. She had already destroyed his property including clothing, bicycles, and furniture. She was threatening his work by calling with accusations. She had control of his money and the only transportation he had was his bicycle. Nick felt Becca had ultimate power over all aspects of his life. He feared for his family and sons.

Nick felt his physical well-being, his professional integrity, and the survival of those he loved depended on keeping Becca appeased. Repeatedly Becca's use of dramatic controlling strategies induced fear and kept Nick unbalanced by not knowing what horror or abuse was coming next.

Nick's self-esteem was diminished by the abusive and controlling relationship. His feelings of overwhelming depression and his fear waxed and waned. He felt ashamed he was in such a dysfunctional relationship. When he left the residence, he was faced with Becca in pursuit and threatening him. When he remained, he faced her rage, anger, and horrific threats in the middle of the night.

Question #4 What was Nick's state of mind at the time of Becca's death?

On the 19th of August 2014 Nick awoke out of a sound sleep with Becca screaming that he had to get out of the apartment. She attacked him physically and verbally. She accused him of stealing her medication. She was in an irrational rage that was not based upon anything that had happened earlier in the day between them. She hit him, pushed him, slapped him, yelled all types of obscenities at him. She stabbed him with a key which pierced a vein and bled profusely. She took all the contents of the refrigerator and freezer and threw them against the wall. Some of the containers burst open, other containers broke, there was food on the floor and the walls. She threatened to kill him and those he loved. He was able to escape from the residence with a backpack and used his bicycle for transportation. He checked into a hotel and stayed there for one night and then slept in the office for several days.

Nick worked at the office for the next several days and tried his best to focus on his responsibilities of seeing patients and meeting their needs. He was getting threatening texts from Becca and his staff was getting harassing calls. He was trying his best to keep

himself calm and safe, but his fear was heightened; intermittently, he continued to re-experience the threats and violence of the raging attack of the 19th.

By the end of the week, Becca appeared to have calmed down and Nick returned to their residence. They shopped on that Sunday and things were relatively calm for a couple of days. On the 26th of August, Nick recalls Becca texted him and apologized for the terrible fight they had on the 19th. She said she had found the medication she had accused him of taking. She said she wanted to make it up to him and that she would make dinner for them that evening. Nick remembers getting home at around 5 pm. Becca was happy and in a good mood. She said they would have a couple drinks, make love, and then have dinner.

All appeared to go well until around 10 o'clock and after each of them finished their second vodka drink, Becca became very depressed again talking about her mother's death. She then began to rage about Nick's ex-wife, Cathy and how she believed Joe, Nick's youngest son was being mistreated by Cathy. Nick did not say anything or correct her for he knew she would become enraged at him. They laid down and made love in their bedroom. They had never eaten dinner. Becca slept poorly and often wanted to talk when Nick wanted to sleep. On this night, again, Nick fell asleep and awoke to Becca fully enraged at him and screaming, "Get out" and hitting him. This felt to Nick like a reliving to the attack he had experienced on the 19th. It had similar cues of awaking to her raging voice of "Get out!". She went to the spare bedroom and began to grab his belongings. She attacked him, hit him many times, and cursed at him; he was able to pin her down and she screamed at him, "Just kill me," "Go ahead and kill me." Nick reports he lost complete awareness of time and space. Psychologically, he experienced a dissociative episode and during that time he strangled and/or suffocated Becca. His actions were not planned, but were a reflexive behavior of self-preservation.

Becca's violent and provocative behavior of "Just kill me" and "Go ahead and kill me" reflects her desire to die and stop suffering with her depressive thoughts, overwhelming hopelessness and helplessness for her future. She created a situation in which Nick did for her what she had been unable to do for herself—ended her life. In the psychological and psychiatric literature on suicide this phenomenon has been identified as "victim-precipitated suicide," or "provoked suicide."

In conclusion, Nick has been a victim of violent acts, assaults, and degrading acts in his relationship with Becca Melton. These acts coupled with his compassion for her depression and his love for her, produced cognitive, affective, and behavioral changes in Nick that have come to be known as the "Battered Spouse Syndrome". His cognitive problem-solving ability had been impaired, and he was reliving experiences of previous abusive episodes when she attacked him. He acted reflexively in a way to preserve his life. This was not a conscious free-thinking adult man capable of volitional acts, but a man biologically and psychologically responding to past threats and attacks.

If additional information is needed, please do not hesitate to contact me.

Sincerely,

Lois J. Veronen

Lois J. Veronen, Ph.D.

Licensed Clinical Psychologist

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VIOLENCE RISK ASSESSMENT

Examinee: EVANGELISTA, Nick Russell

Case Name: *State of South Carolina vs. Nick Russell Evangelista, (Case No. # 201409010381)*

Birth Date: [REDACTED]

Dates of Interviews: November 12, 2014; and August 7, 2015

Examiner: Susan C. Knight, Ph.D., ABPP

IDENTIFYING DATA: Mr. Nick R. Evangelista is a 54-year-old, divorced, Caucasian male, currently in custody and charged in the state of South Carolina, County of Beaufort, with Murder, and Violation/Drug Distribution Law, in violation of S.C. Codes §16-3-10 and §44-53-380. Mr. Evangelista's defense counsel, Traci Campbell, Esq., requested a forensic psychological examination to evaluate his historical and present psychiatric functioning, and to assess his risk of future violence within the context of requesting bond. Therefore, on the above listed dates, Mr. Evangelista was evaluated at a psychological office in Charleston, South Carolina.

PSYCHOLOGICAL-LEGAL SUMMARY OPINION: Based on the totality of data gathered in the evaluation, to include clinical interviews with Mr. Evangelista totaling over six hours; interviews with multiple family members, his former wife, and close friend; a review of available legal documents, recordings and health records; and application of multiple violence risk assessment measures, the following is opined as summarized:

Mr. Evangelista was raised in Minnesota, by married parents, and with two younger siblings. He was described as a happy, active and well-adjusted youth. However, at age 12, his parents divorced, resulting in a significant adverse impact on his development. He withdrew from social activities, his academic performance declined, and he began using marijuana. As a teenager, his parents placed him in residential substance treatment, and his substance use resolved.

At age 27, in 1988, Mr. Evangelista enlisted in the U.S. Navy, serving six years in the field of aviation physiology. Upon an Honorable separation, he earned his Bachelor's/Physician Assistant (P.A.) degree, and has been steadily employed as a Physician Assistant in orthopedic practices. He was married for 13 years, with two sons from this union, ages 18 and 21 years.

Prior to the instant allegations, Mr. Evangelista's formal arrest record indicates one conviction for theft at age 19, with no convictions for violent acts or threatening conduct. The present allegations are isolated to his then intimate relationship, with no such history or claims outside of this relationship. He is medically and psychiatrically stable, and without major psychiatric disorder, including psychosis, personality or major mood disorders, or active substance abuse.

During the evaluation, he was forthcoming, with no signs of affective lability, negativistic attitudes, hostility, volatility, or violent ideation. Application of violence risk assessment measures did not indicate a significant risk of future violence. His conditional release plan is stable and viable, which includes close familial support and pastoral counseling. He plans to reside with his father and stepmother of 35 years, and find custodial/maintenance work. Taken together, evaluation data strongly indicate that Mr. Evangelista does not present a significant risk of future violence towards any member of his family or to the community at large.

Name: EVANGELISTA, Nick
Date of Birth: [REDACTED]

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SOURCES OF INFORMATION: The following sources of information were reviewed in forming the opinions found in this report:

1. Beaufort County Sheriff's Office Prosecutorial Summary, by Reporting Officer DiCarlo, Investigating Officer Adams, and Supervisory Officer Florencio, dated October 9, 2014;
2. Beaufort County Sheriff's Office 'Original' and Supplemental Reports, by Reporting Officers Worrell and Tannuzzi, dated September 4, 2014;
3. Beaufort County Sheriff's Office Supplemental Reports by Officer Disbrow, dated September 5, 2014; and October 8, 2014;
4. Beaufort County Sheriff's Office Supplemental Reports by Officer Squires and Florencio dated September 5, 2014;
5. Beaufort County Sheriff's Office Supplemental Report by Officer Cooler, dated September 22, 2014;
6. Beaufort County Sheriff's Office Supplemental Report by Officer Florencio, dated September 9, 2014;
7. Beaufort County Sheriff's Office Supplemental Report by Officer Calentine, dated October 7, 2014;
8. Beaufort County Sheriff's Office Supplemental Reports of Officer Moran, dated October 8, 2014; and October 30, 2014;
9. Beaufort County Sheriff's Office Supplemental Report of Officer Rowell, dated October 6, 2014;
10. Beaufort County Sheriff's Office Booking Report for N. Evangelista, dated October 3, 2014;
11. Municipality of Hilton Head Island Arrest Warrant 2014A0720300254 for Murder, dated October 2, 2014;
12. County of Beaufort Arrest Warrant 2014A0710300448 for Drugs/Violation Drug Distribution Law, dated September 19, 2014;
13. County of Beaufort Arrest Warrant 2014A0710300449 for Drugs/Violation Drug Distribution Law, dated September 19, 2014;
14. Subpoena in a Criminal Case, South Carolina General Session Court, County of Beaufort, to Expedite, dated September 5, 2014;
15. Beaufort County Sheriff's Office Miranda Warning Form for N. Evangelista, dated October 2, 2014;
16. Beaufort County Victim Notification Form, Confidential Information, to Z.G., dated October 3, 2014;
17. Electronic Correspondence by N. Evangelista written on July 5, 2013, sent from M.M. to B.C., on September 4, 2014;
18. Beaufort County Sheriff's Office Statement of C.B., dated September 4, 2014;
19. Beaufort County Sheriff's Office Statement of J.B., dated September 5, 2014;
20. Beaufort County Sheriff's Office Statement of S.C. dated September 5, 2014;
21. Typed Statement of Sherry Hamilton, Municipal Court Assistant, dated September 8, 2014;
22. Beaufort County Sheriff's Office Evidence Submittal Forms, dated September 5, 2014; September 10, 2014; September 22, 2014; October 3, 2014; and October 5, 2014;
23. State of Florida, In the Circuit Court County of Escambia, Waiver of Extradition, for N. Evangelista, dated October 2, 2014;

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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24. Affidavit for Search Warrant in the Circuit Court of the First Judicial Circuit of Florida In and For Escambia County, Florida, by Inv. R. Greene, dated October 1, 2014;
25. Escambia County Sheriff's Office Seized/Release Property Receipt, dated October 2, 2014;
26. Escambia County Corrections Inmate Records Hold Detainer/Fugitive Warrant, dated October 1, 2014;
27. Escambia County Sheriff's Office Rights Waiver for N. Evangelista, dated October 1, 2014;
28. Electronic Mail records of SSgt. E. Calandine to/from Florida Fusion Center, dated October 1, 2014; and October 2, 2014;
29. Motel receipt from Best Western Point South, dated August 27, 2014;
30. Letter from Optima Healthcare to Sgt. John Adams, dated September 17, 2014;
31. Prescription records from 'Easy Fill PRN,' for R. Melton, dated March 28, 2014; and April 17, 2014;
32. Unidentified tables dates, signatures, prescription numbers, patient names, etc.;
33. Freedom of Information Request from Ashleigh Holland (WSAV) to the Office of Sheriff, Beaufort County, dated September 29, 2014;
34. Electronic Communication from T. Washington (WTOC) to the Beaufort County Sheriff's Office, dated September 11, 2014;
35. Letter from Beacon Investigative Solutions to the Beaufort County Sheriff's Office, dated September 23, 2014;
36. Autopsy Final Report from the Medical University of South Carolina, Department of Pathology and Lab Medicine, by N. Batalis, M.D., verification date of October 2, 2014;
37. Authorization for Coroner's Autopsy for Medical Examiner's Office, MUSC, dated September 4, 2014;
38. Autopsy Preliminary Report, from the Medical University of South Carolina, Department of Pathology and Lab Medicine, by N. Batalis, M.D., verification date of September 5, 2014;
39. Toxicology Report for R. Melton, by NMS Labs, dated September 16, 2014;
40. MUSC Department of Pathology Medical and Forensic Autopsy Section, Evidence and Personal Effects Transfer Sheets, dated September 5, 2014; and September 6, 2014;
41. Beaufort County Sheriff's Office Forensic Services Laboratory, Forensic Examination Report (Supplemental), dated July 13, 2015;
42. Mr. Evangelista's Notes/Writings, dated September 10, 2014; September 11, 2014; September 12, 2014; September 13, 2014; September 17, 2014; and September 21, 2014;
43. ICHR Request for Rap Sheet for N. Evangelista, dated October 6, 2014;
44. ICHR Request for Rap Sheet for R. Melton, dated November 18, 2014;
45. Beaufort County Sheriff's Office Incident and Supplemental Reports by LCpl. Bilcoze, dated December 22, 2011;
46. Beaufort County Sheriff's Office Incident and Supplemental Reports by Cpl. Evans, dated September 6, 2012;
47. Beaufort County Sheriff's Office Booking Report for R. Melton, dated September 6, 2012;
48. Beaufort County Sheriff's Office Detainee Transportation Check Sheet for Detainee, R. Melton, dated September 6, 2012;

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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49. Freedom of Information Requests, and Legal Requests for law enforcement records related to R. Melton's arrest on September 6, 2012, various dates;
50. Beaufort County Sheriff's Office Incident Report by Officer Polites, dated July 5, 2013;
51. Beaufort County Sheriff's Office Supplemental Incident Report by Officer Polites, dated July 17, 2013;
52. Beaufort County Sheriff's Office Booking Report for R. Melton, dated July 5, 2013;
53. Beaufort County Sheriff's Office Detainee Transportation Check Sheet for Detainee, R. Melton, dated July 5, 2013;
54. Beaufort County Victim Notification Information Form for N. Evangelista, dated July 5, 2013;
55. Beaufort County Sheriff's Office Written Statement of N. Evangelista, dated July 4, 2013;
56. Beaufort County Sheriff's Office Written Statement of R. Melton, dated July 4, 2013;
57. Beaufort County Sheriff's Office Evidence Submittal Form, dated July 9, 2013;
58. Beaufort County Sheriff's Office Discovery Forms, dated July 13, 2013; and September 19, 2013;
59. Freedom of Information Requests, Legal Requests for law enforcement records, and legal documents submitted by attorneys, related to R. Melton's arrest on July 4, 2013, various dates;
60. State of South Carolina County of Beaufort/Town of Hilton Head, Orders for Destruction of Arrest Records, dates of February 6, 2014; and April 22, 2014;
61. Beaufort County Sheriff's Office Incident Report by Officer Dickman, dated September 1, 2013;
62. Beaufort County Sheriff's Office Supplemental Incident Report by Officer Florencio, dated September 16, 2013;
63. Beaufort County Victim Notification Information Forms for N. Evangelista and R. Melton, dated September 1, 2013;
64. Beaufort County Sheriff's Office Evidence Submittal Form, dated September 2, 2013;
65. Beaufort County Sheriff's Office Discovery Form, dated September 9, 2013;
66. Freedom of Information Requests, Legal Requests for law enforcement records, and legal documents submitted by attorneys, related to R. Melton's and N. Evangelista's arrest on September 1, 2013, various dates;
67. Beaufort County Sheriff's Office Incident Report by Officer Parnell, dated February 6, 2014;
68. Beaufort County Sheriff's Office Supplemental Incident Report by Officer Florencio, dated February 19, 2014;
69. Beaufort County Sheriff's Office Incident Report by Officer Paul, dated March 1, 2014;
70. Beaufort County Sheriff's Office Booking Report for R. Melton, dated March 1, 2014;
71. Beaufort County Sheriff's Office Detainee Transportation Check Sheet for Detainee, R. Melton, dated March 1, 2014;
72. Beaufort County Victim Notification Information Forms for N. Evangelista, dated March 1, 2014;
73. Beaufort County Sheriff's Office Written Statement of N. Evangelista, dated March 1, 2014;
74. Beaufort County Sheriff's Office Evidence Submittal Form, dated March 3, 2014; and March 7, 2014;

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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S. Knight, Ph.D., ABPP

75. Freedom of Information Requests, Legal Requests for law enforcement records, and legal documents submitted by attorneys, related to R. Melton's arrest on March 1, 2014, various dates;
76. Beaufort County Sheriff's Office Discovery Form, dated March 11, 2014;
77. Audio/Video Recording of Mr. Evangelista's statement to Escambia County Sheriff's personnel, on October 1, 2014;
78. In-Car Audio/Video Recordings of Mr. Evangelista's verbalizations to Escambia County Sheriff's personnel, on October 1, 2014;
79. Audio Recordings of 911 calls made by Mr. Evangelista, on September 1, 2013; and March 3, 2014;
80. Audio Recording of 911 call made by Palmetto Dunes Security requesting a welfare check, on September 4, 2014;
81. Crime Scene Video of [REDACTED], taken by law enforcement, dated September 4, 2014;
82. CD of Crime Scene Photographs, taken by law enforcement on September 4, 2014;
83. Affidavit, Criminal Warrant, and various legal and court documents related to a charge of Stalking incurred by R. Melton, with incident date of June 29, 2010;
84. Affidavit, Warrant, Bond and court document related to a charge of Aggravated Stalking incurred by R. Melton, with incident date of August 20, 2010;
85. Family Court/Divorce Records of R. S. Melton, dated from May 2000 to April 2011;
86. Mental Health Treatment Records of R. Melton, by F. Bolgan, LISW, dated February 19, 2014 to July 16, 2014;
87. 'Mental Status Examination' Report of Claimant R. Melton, by S. Shaffer, Ph.D., dated July 15, 2014;
88. Psychological Evaluation Report of R. Melton, by C. Spivey, Ph.D., date of evaluation August 21, 2014;
89. Medical Records from 'Volunteers in Medicine' for R. Melton, dated from February 2012 to August 2014;
90. Psychotherapy notes from 'Volunteers in Medicine' for R. Melton, dated from November 2009 to August 2014;
91. Walgreens pharmacy records for R. Melton, dated from June 2012;
92. Notes from Beacon Investigative Solutions, dated from September 22, 2014 to October 2, 2014;
93. Mental Health Treatment records from J. Evans, MSW, for N. Evangelista, dated August 2009; August 2013; and January 2014;
94. Suburban Extended Stay Receipt in Bluffton, South Carolina, for N. Evangelista, dated March 1, 2014 to March 3, 2014;
95. Red Roof Inn Receipts for N. Evangelista, dates of February 7, 2014 to February 21, 2014; April 19, 2014 to April 21, 2014, and August 19, 2014 to August 20, 2014;
96. Walgreens pharmacy records for N. Evangelista, dated from September 2007 to October 2013;
97. Kroger pharmacy records for N. Evangelista, dated from December 2013 to August 2014;
98. Clinical Interview with Mr. Nick Evangelista, lasting approximately three and one half hours, on November 12, 2014;
99. Telephone Interview with Cathy Evangelista, Mr. Evangelista's ex-wife, on July 7, 2015;

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

- 100. Telephone Interview with Tony Evangelista, M.D., Mr. Evangelista's brother, on July 22, 2015;
- 101. Telephone Interview with Mr. Nick Evangelista (Sr.), Mr. Evangelista's father, on July 23, 2015;
- 102. Telephone Interview with Ms. Betsy Olafson, Mr. Evangelista's sister, on July 29, 2015;
- 103. Telephone Interview with Ms. Sue Evangelista, Mr. Evangelista's mother, on August 5, 2015;
- 104. Clinical Interview with Mr. Nick Evangelista, lasting approximately three hours, on August 7, 2015;
- 105. Telephone Interview with Mr. Evangelista's close friend, D. Burke, on August 11, 2015;
- 106. Telephone Interview with Jolene Evangelista, Mr. Evangelista's stepmother of 35 years, on August 11, 2015;
- 107. Attempts were made for a telephone interview with Pastor Roland Dann, however, such attempts were unsuccessful by the submission of this report;
- 108. Attempts were made for a telephone interview with Michael Malvasio, Mr. Evangelista's close friend, however, contact was unsuccessful by the submission of this report;
- 109. Psychiatric records from Lowcountry Psychiatry, Dr. Joseph Wallers, have been repeatedly requested, however, not received by the submission of this report;
- 110. Mr. Evangelista's military records were requested shortly after his November 2014 interview; however, they have not yet been received by the submission of this report.

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to each interview, Mr. Evangelista was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be confidential and would be used to prepare a report for his attorney, which, at his attorney's discretion may be distributed to the court. He was also informed that the nature of the evaluation did not include a treatment relationship with the examiner and treatment would not be provided. Mr. Evangelista acknowledged understanding the parameters of the evaluation, and provided consent to proceed.

HISTORICAL DATA: Historical data was provided by Mr. Evangelista and supplemented with collateral information where indicated.

Developmental/Familial: Mr. Evangelista was born in Evanston, Illinois, to an intact family. At three years of age, his family moved to Bloomington, Minnesota, where he resided for the remainder of his upbringing. Mr. Evangelista has two siblings, a younger brother by five years, and a younger sister by nine years, both of whom were raised with him. His father worked in "sales, medical supplies;" as a high school teacher for 27 years; and "opened a chain of jewelry stores." Neither parent, nor sibling, has any history of major mental illness, substance abuse or criminality.

Mr. Evangelista's parents separated when he was 12 years old. He reported no abuse or violence between his parents prior to their separation, "but a lot of verbal altercations." Before the divorce, he reported being involved in "sports, music, active in everything... was a model student, good kid, no problems at home." However, due to significant adverse impact from the divorce, he began "to not care about school," and withdrew from his activities. His grades suffered, and he began smoking marijuana at age 14, with his use steadily increasing.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

Therefore, in 1977, at age 16, his parents placed him in an inpatient substance treatment facility. He remained in treatment for several months, without completion, before transitioning to a halfway house. He then "stayed with friends, found jobs, bounced around" before settling into a stable residential situation, and increased job stability as he grew older.

He reported no history of physical or sexual abuse, or neglect, as a child or adolescent. However, he reported his mother was "pretty verbal [abusive] to me, taking out frustrations about my father." He reported no conduct associated with fire-setting, animal cruelty, vandalism, assaultive behavior, defiance, or physical altercations; and reported no involvement with law enforcement, juvenile justice, or social service agencies during his upbringing.

Current Familial Relationships: His father is 76 years old, retired, and resides in Ellijay, Georgia with his wife (Mr. Evangelista's stepmother) of 35 years. He attained his Master's of Education in "special education" "in my 60's" and is presently engaged in "tutoring for DII." His mother is 76 years old, retired, and continues to reside in Minnesota. He last spoke with his mother in 2003 due to a "falling out" regarding parenting issues related to his then minor children. Mr. Evangelista's brother, is 49 years old, resides in the Dallas, Texas, and is an ophthalmologist. His sister is 45 years old, resides in Portland, Oregon, and works in the on-line education field.

Collateral Interview [Mother]: Mr. Evangelista's mother reported no complications with her pregnancy or with Mr. Evangelista's birth. He met developmental milestones at an accelerated rate, and was "very advanced, very smart." As a child, he was "very outgoing, lots of personality, did things to get a good laugh, very personable child." He was reading by the 1st grade, and in classes would "do little mischievous things to try and make people laugh."

She reported that he was 12 years of age when she separated from his father, and believed their divorce had a much more adverse impact on him than her younger children. He became "moody, surly, started doing poorly in school, started using marijuana at age 14 or 15, I'm not sure that would have happened without the divorce." She acknowledged "lots of [verbal] fighting" between she and his father prior to their separation. She retained full custody, with his father's presence significantly diminished in his life. Although he was "very bright," his struggles with their divorce continued such that his grades dropped, and drug use increased. They eventually placed him in residential treatment, after which he resided in a halfway house, and then on his own.

She reported he had no severe or unusual childhood illnesses, with only a "tonsillectomy" that she could recall. She reported no conduct problems, and no interaction with law enforcement when he was a juvenile. She reported he had strong and positive peer relationships.

Over the summer of 2003, Mr. Evangelista visited her with his children. At that time, she noted he was "distracted" and "very upset about the divorce." During that visit, they had an argument about how to raise his children, and have not spoken to each other since that time. She has received "two apology letters," receiving the last one six weeks ago, which brought her to tears. She expressed a desire to speak with him, in person, to repair and heal their relationship.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

Collateral Interview (Father): Mr. Evangelista's father described him during his upbringing as "a great kid, natural leader, very athletic." He described verbal abuse by Mr. Evangelista's mother, and that the divorce was difficult. As did his mother, his father described, that as a youth, Mr. Evangelista used marijuana, prompting a residential treatment program.

Educational/Vocational History (Prior to Military): Mr. Evangelista's elementary school years were "great, perfect student, well-behaved, tested high." He reported no behavioral problems during his elementary school years. During middle school, he "started to struggle, started losing interest, day dreaming... looking back, I had a real focusing problem... but it never came to anybody's attention." His parents' divorce also accounted for the decrease in his academic performance. He reported no disciplinary problems, however, his grades dropped, and he began to struggle academically. Beginning in high school, he engaged in truancy at times, due to marijuana use. In the 11th or 12th grade, he discontinued his schooling. A few years later, at age 19, he earned his GED. Extracurricular activities at various times during his schooling included "swim team, played lots of sports, school band, the saxophone, voice and guitar."

From ages 17 to 19, Mr. Evangelista worked odd jobs, including at a "car wash and gas station." From ages 20 to 24, he obtained his first long-term, stable job, working in a "maintenance/custodial job" at a church. At age 24, he began work at a chain of fitness clubs, as a fitness instructor, where he worked until age 27, when he joined the military.

Military History: At age 27, on November 7, 1988, Mr. Evangelista enlisted in the United States Navy. He desired to improve his future opportunities and serve his country. He served until July 7, 1994, when he was separated with an Honorable Discharge, due to medical conditions. He separated at the rank of E-5.

He reported being assigned to the "USS Carl Vinson" from 1989 to 1990, the "USS Kany Hawk" from 1990 to 1991, and assigned to Hawaii from 1992 to 1994. His "home base" was "Miramar" in San Diego. During his time in the service, he worked in "aviation physiology" and in "water survival training." He "taught airmen how to survive, they required a scuba trained person." He also "worked under a flight surgeon" and "trained first responders." Although he had planned on a long career in the military, injuries and lasting medical conditions prompted his separation. During his service, he suffered "horrible disc herniation" due to the physical nature of his work. He underwent "neurosurgery," and in March 1993, was diagnosed with "battered nerve syndrome." He was discharged, as the military did not believe he could be fully rehabilitated.

He reported no disciplinary events or conduct problems during his service. He earned a "4.0 the whole time," referencing maintaining the highest performance evaluation score throughout his career. He earned the "Navy Achievement Medal," which is a "flight honor given by the F-14 squadron." He credits the military for positively changing his life, as "it got me turned around."

Collateral Interviews (Mother/Father): Of his military service, his mother stated he "thrived in the Navy, followed all the rules, rose up in the ranks, we were so pleased." His father described the military as a turning point for Mr. Evangelista, stating, "he did great at the Great Lakes Naval Station, graduated with honors and got into the medical corps... was the medical corpsman for 5,000 men, taught fighter pilot survival techniques, but he injured his back..."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

Educational/Vocational History (After Military): Upon his separation in 1994, he returned to Minneapolis, and attended Augsburg College for a college degree track with an emphasis in Physician Assistant (P.A.) studies. He had taken college courses while in the military, and built upon those credits. He began studies in 1996, and, in 1998, "graduated *magna cum laude*, with a BA/PA, got my college degree with P.A. degree."

From 1998 to 2002, he worked in Farmout, Minnesota, as a P.A. in an orthopedic surgery practice. He "worked closely with the doctors," with one physician opening a practice in Hilton Head, South Carolina. Therefore, in 2002, Mr. Evangelista relocated to Hilton Head to work for this physician in the new practice. In 2004, the "practice failed," and he found work in Savannah, commuting from Bluffton. He worked in a "pain management" practice until around 2005.

In 2005, he began work with Dr. Charles Hope, at Optim Orthopedics in Savannah. The practice "got very busy, I got crushed with work, lots of call, wasn't able to see the kids a lot." He worked there until 2011, when another practice recruited him, however, he returned to Dr. Hope's practice within two months. He worked in both the Bluffton and Savannah office locations, traveling to additional outpatient clinics. He was employed fulltime with Optim at the time of his arrest. Mr. Evangelista reported caring deeply for his patients and his work, and stated several patients have written him letters during his time in detention.

Relationship History: Mr. Evangelista was married in July 1988, just prior to his military enlistment. During their marriage, his wife worked in the "mortgage banking" industry. His first son was born in March 1994, and his second son was born in 1997. His sons are now 18 and 21 years old, and he has no children from other unions. His oldest son attends college at USC in Columbia and was recently accepted into the "business school" at USC. His younger son will begin college studies in Orlando, Florida, in Fall 2015, where he will study "audio engineering."

In 2002, after almost 13 years of marriage, he and his wife separated. He "didn't see it coming, it was hard." His divorce was finalized in 2003. He reported no infidelity by either party, and no abuse, or domestic violence issues. He described the divorce as his wife's decision "not to do this [marriage] anymore." The split was amicable, sharing joint custody of their children, and they "co-parented well." He described maintaining a "good" and friendly relationship with his wife after their separation and divorce. His ex-wife is presently 52 years of age, continues to reside in Hilton Head, where she cares for their children, is "self-employed" and has not remarried.

In 2004, Mr. Evangelista had two three-month relationships, which "both ended amicably." He was "lonely" for some time, before meeting someone in 2010, and with whom he was involved in a one and a half year relationship. This individual was 26 years younger, and worked in education. They resided together for one year, and he introduced her to his family. Their relationship ended amicably as she wanted children. He referred to this as "sad, but we remained friends." He reported no domestic issues of any kind with this individual.

In 2012, he was involved with an individual, and was "crazy about her, our families hit it off well." He reported they separated, as she was not ready for a serious relationship, and admitted to feeling hurt, reacting verbally to their split. His next relationship was with the alleged victim, meeting her in December 2012. His relationship with her is detailed in a subsequent section.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

Collateral Data [Father]: His father met Mr. Evangelista's girlfriend of one and a half years, prior to the alleged victim. He described them together as "sweet, cordial, he opened doors, pulled her chair out, he was very conscious of her being involved in the conversation, they spoke of the age difference quite a bit and she wanted children, it was a mutual split."

Social History: Mr. Evangelista reported heavy involvement in athletic activities, including "softball pretty regularly, big into cycling, training constantly, met a lot of people in cycling." He joined an amateur racing team, "Low Country Velo" which is an established "USA Cycling Club." However, around 2007, his work became overwhelming and he "couldn't compete anymore, but rode socially." He would frequently commute to work on his bike. Additional hobbies included music, "played in a band."

Legal History: Mr. Evangelista has no history of juvenile arrests or charges. He reported his first arrest at age 19 in Hennepin County, Minnesota, for a misdemeanor charge of "Improper Use of a Credit Card." He explained misusing a credit card that did not belong to him, and that this offense occurred during a time of financial hardship. He was sentenced to "restitution and probation" which he reported completing successfully and without violation. He further reported an arrest for Criminal Domestic Violence, 1st, in September 2013; however, this charge was dismissed and expunged from his record.

Collateral Data: A formal criminal history record for Mr. Evangelista indicated no history of charges from South Carolina; prior to the instant case. Records indicate prior charges of Receiving Stolen Property, and Attempt to Commit Theft, from Minnesota, with an arrest date of January 3, 1980. These charges occurred 35 years ago, making Mr. Evangelista 19 years of age at the time. These charges are believed to be misdemeanors, however, it is not clear if he was originally charged with the former, and pled to the latter. Disposition of these charges is not listed. In addition, he has an "Out of State Fugitive" charge from Escambia County, Florida, from October 1, 2014, which is related to his current case.

Substance Use History: As noted above, Mr. Evangelista used marijuana heavily in his late teens, with his parents placing him in residential substance treatment. Although he did not finish the program, by his early 20's, his marijuana use "tapered off" and "was not a problem after." Regarding other substances, he reported experimental use of powder cocaine "briefly" in his "mid-twenties" however, none since that time (1980's). He reported no other use of illicit substances, and no abuse of prescription medication.

With regard to alcohol, at age 17, or 18, Mr. Evangelista would consume "beer, a Friday or Saturday night." He reported no excessive or problematic use at this time. In his 40's, he began consuming alcohol on a more regular basis, with daily drinking, "beer or wine." He would have "three or four [glasses] a night" and "more on the weekend." He was "not sure why it [his drinking] increased." He reported no history of alcoholism in his family; no clinically significant consequences from alcohol use, including alcohol-related charges, work-related problems, withdrawal symptoms, medical or psychological issues, or reckless, dangerous behavior when drinking. However, he acknowledged alcohol contributed some to relationship problems. At the time of the allegations, he was consuming "three or four vodka drinks a night, and six to eight on the weekends."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

10

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S. Knight, Ph.D., ABFP

Medical History: Mr. Evangelista reported no history of major medical conditions, or current medical conditions requiring treatment. He reported no history of seizures, head trauma, or loss of consciousness. His surgical history includes a tonsillectomy as a youth; two right knee surgeries, in 2000 and 2014; and right shoulder surgery in 2012 for a "rotator cuff repair." Due to his chronic orthopedic issues, prior to his detention, he took various pain management medications, as well as "Celebrex" approximately "five out of seven days" for "knee or back pain."

Current Medications: Mr. Evangelista's current medications include only over-the-counter ibuprofen [Motrin] for chronic knee and shoulder pain.

Mental Health History: Mr. Evangelista has no history of psychiatric hospitalizations. As a child, he attended several "family counseling" sessions in the wake of his parents' divorce. After his marital separation, he attended one counseling session to deal with the stress of his divorce. He attended two more sessions during his relationship with the alleged victim, using these sessions as "crisis intervention..." These sessions were with psychotherapist, Jocelyn Evans, MSW, who practices in Hilton Head, South Carolina.

Mr. Evangelista has a limited history of psychiatric medications. In 2009, he was prescribed Seroquel® [medication used to treat psychosis and mood lability among other symptoms] "to balance things out" regarding "ups and downs" in his mood. He took this medication for "one and a half weeks," before discontinuing this medication due to adverse side effects. A psychiatrist through Ms. Evans' office had prescribed this medication. Additionally, at the time of his arrest, he had been taking Vyvanse®, 30 mg, prescribed by psychiatrist Joseph Walters. Vyvanse® is a medication used to treat symptoms of difficulty focusing, hyperactivity and impulsivity, usually associated with Attention Deficit Hyperactivity Disorder.

Collateral Data [Mental Health Records]: Mr. Evangelista's therapy records from Jocelyn Evans, MSW, indicate three prior visits in August 2009, August 2013, and January 2014. Per the first available session notes in 2009, it was noted that he had been seen before by Ms. Evans, although those notes were not included in records, presumably due to being over 10 years old. In 2009, he presented with endorsement of recent suicidal thoughts (not detailed), with depressive symptoms. He felt overworked, with financial difficulties, and Ms. Evans' believed he had "anxiety, depression." The two sessions from August 2013 and January 2014 focused on relationship issues with the alleged victim, including domestic conflict.

Collateral Data [Mental Health Records]: Mr. Evangelista's psychiatric treatment records from psychiatrist, Joseph Walters, M.D., have been repeatedly requested, but not yet received by the submission of this report.

MENTAL STATUS EXAMINATION: During the first interview in November 2014, Mr. Evangelista's clinical presentation was characterized by heightened anxiety and emotionality, significantly depressed mood and tearful affect. However, his presentation during the second interview in August 2015 was much improved, with a pleasant, optimistic mood, and stable affect. Each time, he was appropriately dressed in detention center attire, with good attention to grooming and hygiene. His interpersonal style was open, respectful, polite and cooperative.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

He was forthcoming with information, providing details without hesitation, and without prompting by the examiner. There were no abnormalities observed in his speech or psychomotor functioning (he was not agitated or slowed). His thought content was appropriate to the evaluation, with no bizarre, odd or unusual content observed. His thought process was linear and organized. Attention and concentration were well sustained and without apparent deficit during the interviews. There were no overt signs of major mental illness or cognitive difficulties.

PSYCHOLOGICAL REVIEW OF SYMPTOMS: During the first interview in November 2014, Mr. Evangelista reported "severe anxiety at night, depression, not sleeping." He had "panic attacks, heart racing, sweaty palms, panicking at night." His thoughts revolved around "my children, remorse, regret." He also reported nightmares and flashbacks related to the charged incident. He preferred isolation rather than talking to others, with a loss of pleasure or enjoyment in any activity. He was not on any type of medication at this time, and had submitted a request to be seen by mental health services. He reported no placement on suicide watch at the detention center, and "no [suicidal] urges" or suicidal ideation during his detention.

Prior to his current detention, Mr. Evangelista reported no prolonged or severe depressive episodes; symptoms associated with mania or hypomania; or psychotic symptomatology including hallucinations, ideas of reference, delusions or paranoia. He reported no symptoms consistent with obsessive-compulsive pathology, and no trauma-related symptoms, including flashbacks, nightmares, or avoidance behaviors. He reported no history of homicidal ideation, violent thoughts or fantasies, or preoccupation with violent themes. During each interview, Mr. Evangelista reported no history of homicidality, or current suicidality. He reported a history of suicidality in the weeks and months after the charged incident, contemplating and preparing various methods, including by hanging, carbon monoxide poisoning, cutting his wrists and overdose. He reported one prior suicide attempt in August or September 2014, when he took 40 "extra strength Tylenol" combined with alcohol. He reported this as his only suicide attempt.

During the second interview in August 2015, Mr. Evangelista reported no dysregulation in mood, sleep, appetite, focus, or memory, and no suicidality or homicidality. He is "walking daily, one to two hours a day" which has helped with his mood, energy level and orthopedic issues. He reported no disciplinary events of any kind at the detention center. Although he previously submitted a request to see mental health, he stated he never received a response, and thus, was not evaluated. However, he no longer feels it necessary to see mental health services. He stated his anxiety and depression are significantly improved, and he no longer experiences panic or trauma-related symptoms. In explanation, Mr. Evangelista reported heavy involvement in a Bible study group with other inmates. He is also receiving regular visits from a local pastor and a friend. He believed these activities have "gotten me through a really dark time."

Due to the nature of the presenting issue, Mr. Evangelista was questioned about his history of anger expression and any physical aggression. He reported no history of anger dyscontrol, with no one having told him he has a "temper." He reported some frustration or irritation with work issues when very busy, but that he easily returns to baseline after a short time. He reported, "zero" physical fights as an adolescent or adult, with "only two kids fights" when he was 9 or 10 years old due to "boys picking on each other." He stated no one was hurt during those incidents.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

He reported his most aggressive acts as an adult, as defensively "restraining" the alleged victim when they would fight in order to minimize her abuse, in addition to the alleged incident, which led to his charges. He reported never having "lost control" prior to the instant allegations. He reported no history of threatening behavior, or property damage.

Mr. Evangelista described himself as more impulsive when younger, but is "now wiser with age, look at the pros and cons" in making most decisions, and that he does not normally act on impulse. He reported no reckless or risk taking behaviors, describing himself as "fairly cautious, I'm not an adrenaline junkie" citing his recreational activities as swimming, bicycling, and music.

Should he be granted bond, Mr. Evangelista plans to reside with his father and stepmother in Ellijay, Georgia. He understands he will likely be on "ankle monitoring and house arrest." He believes he could possibly "work at the church" near his father, as he has done custodial and maintenance work for a church in his early 20's. However, he will work wherever will hire him as he "wants to help my kids out." He understands he can no longer work as a P.A. He plans to "have conversations with my family members and heal wounds, to say I'm sorry." In addition, he plans to seek "pastoral counseling" for issues related to "shame, guilt, and spiritual things."

Collateral Interview: Mr. David Burke has been visiting Mr. Evangelista since October 2014, having seen him at least "20 to 25" times. Mr. Burke works as a pharmacist in Hilton Head, and owns a local pharmacy. Mr. Burke knew Mr. Evangelista several years prior, when their children dated, and knew of him professionally; however, they were not close. Approximately two weeks after Mr. Evangelista's arrest, Mr. Burke reached out, and visited him at the detention center. Afterwards, he made regular visits, describing that they now have a close friendship with many commonalities.

He described Mr. Evangelista as initially appearing "full of loneliness, fear, shame, guilt, loss and hurt." However, as their visits progressed, Mr. Burke stated, "you could not believe the changes... he has changed dramatically... such a different person, stating, "it is truly a heart change." When asked what had changed, Mr. Burke stated, "he has hope, not necessarily that he will get out, but on life, his whole outlook has changed, he has a sense of purpose, hope, calm and peace about everything." He believes Mr. Evangelista has a strong desire to reconnect with his sons and support them. He was also aware of Mr. Evangelista's active participation in Bible study, and with a Pastor who comes to visit him.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

13

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S. Knight, Ph.D., ABPP

DIAGNOSTIC FORMULATION: The following diagnoses are rendered on the basis of the above data and according to the *Diagnostic and Statistical Manual for Mental Disorders, 5th Edition (DSM-5)*.

- * **Diagnoses:** (Previously Axis I & Axis II) Cannabis Use Disorder, Severe, in Sustained Remission
- * **Medical Conditions:** (Previously Axis III) History of Multiple Knee and Shoulder Surgeries
History of Tonsillectomy

As a teenager, Mr. Evangelista began using marijuana to cope with his parents' marital separation. His use increased in frequency, resulting in lowered academic performance, with an adverse social impact. His parents placed him in a residential treatment program for adolescents, and he reported no use since that time, over thirty years ago. Therefore, he is assigned a Cannabis Use Disorder, in Sustained Remission, with the latter specifier used to indicate that no symptoms of this disorder have been present for 12 months or longer (or 35 years in his case).

Further, given Mr. Evangelista's reports of increased drinking beginning in his 40's, an Alcohol Use Disorder was considered. However, despite his reports of drinking daily over recent years, he reported no clinically significant consequences from alcohol use, which is required for a substance disorder diagnosis. For example, he reported no alcohol-related legal charges, work-related impairment, medical or health conditions, physiological dependence or "cravings," tolerance, unsuccessful efforts to reduce use, adverse financial impact, or failure to fulfill obligations. Although he acknowledged alcohol use may have contributed to relationship conflict at times, this, in isolation, is not sufficient for a substance use disorder. It is possible he is under-reporting symptoms, or lacks insight into his alcohol use, and this disorder should remain a diagnostic consideration in future assessments.

A diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) was considered for Mr. Evangelista. He reported a childhood history of difficulty focusing, concentrating and daydreaming, which interfered with successful completion of his schoolwork. As an adult, he has been prescribed medication for symptoms of inattentiveness, and difficulties with concentration, and was taking the medication (Vyvanse) at the time of his arrest. However, he did not report enough symptoms, to sufficient severity, for a formal diagnosis of ADHD at this time. Further, he reported no difficulties with these symptoms during his present detention, where he is not medicated. Records from his treating psychiatrist, who was prescribing his ADHD medication may assist in clarifying this issue. However, despite repeated requests, this examiner has not yet received these records.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

14

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S. Knight, Ph.D., ABPP

EVALUATION OF FORENSIC ISSUES: Due to the nature of the presenting issues, a collateral account of the allegations is provided, followed by pertinent information with regard to Mr. Evangelista's account and collateral interview data.

Collateral Account of Allegations [Violation/Drug Distribution Law] in March/April 2014: Per the Prosecutorial Summary, it is alleged that on March 23, 2014 and April 17, 2014, the defendant, as a Certified Nurse Practitioner, "failed to furnish any record of the fact that he wrote a non-patient, his girlfriend, two prescriptions of a quantity of Clonazepam, a Schedule IV Controlled Substance."

Defendant's Account of Allegations [Violation/Drug Distribution Law] in March/April 2014: Regarding these charges, Mr. Evangelista acknowledged writing two prescriptions for the alleged victim, his girlfriend, for her psychiatric medication in March and April 2014. Records indicate that she had been prescribed this anti-anxiety medication for years, with no records indicating that he has ever taken this medication. He described issuing these prescriptions within the context of the alleged victim having to leave town on short notice to deal with her mother's serious illness. He related that doing this made him very uncomfortable and he worried about the legal repercussions if discovered. He further stated, that later in the relationship, "she threatened to divulge it, she used it against me."

Collateral Account of the Allegations [Murder] on August 26, 2014: Per the Prosecutorial Summary, it is alleged that on August 26, 2014, at the residence they shared, the defendant "did strangle to death the victim [name of victim] during an altercation at their apartment." The autopsy report identified, 'Cause of Death' as "smothering" with the 'Clinical Summary' stating "...decedent's boyfriend had reportedly confessed to holding her down and smothering her with bubble wrap." The defendant's girlfriend was 55 years old at the time of her death. Authorities located her in their residence after a welfare check on September 4, 2014. Toxicology reports indicated an elevated blood alcohol level (.226) with positive results also found for amphetamine, caffeine, and Effexor (used for depression and anxiety).

From the night of the incident, to his arrest on October 1, 2014, Mr. Evangelista traveled to various southern locations, in a suicidal state. Law enforcement documents indicate that after the incident, "he was contemplating suicide" with "box cutters and he was going to bleed out or he would hang himself with the rope in the jeep which is tied in a 'hangman's' loop."

On October 1, 2014, Mr. Evangelista was arrested, in Escambia County, Florida, where he waived his rights and provided a recorded statement to law enforcement. During his statement, he expressed suicidality, and that he wished he were dead, and was tearful at times. In his statement, he described physical abuse towards him by the victim, stating, "she has been arrested three times for violence against me." He expressed that he had loved her, but could not "fix" her. He described that she threatened him, left scratches on his face, took the car keys to disable him from going to work, and engaged in property destruction. He reported being genuinely scared, sometimes staying at the office to avoid conflict.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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He reported that their argument on the night in question began in bed, and escalated to the charges, during which he "blacked out" and "snapped." Just prior to this, he reported, "she started hitting me, scratching me" while he was "holding her down, trying to calm her down." He used "bubble wrap" that was on the floor due to an upcoming move, which caused the smothering. After realizing she was deceased, he reported leaving the residence, to "figure out a way to kill myself." He expressed shame, disappointment, and remorse, and that "I wanted life with her no matter how hard it was."

Supplementary Collateral Documents: Supplementary documentation is outlined below to highlight pertinent events related to their history, and presented in chronological order.

Prior to meeting Mr. Evangelista, the alleged victim's formal criminal history record reflects charges from Georgia, to include Willful Obstruction of Law Enforcement Officers (arrest date in *January 2010*, with 'Dismissed- Completed Conditional Discharge Sentence' in April 2010); Stalking (arrest date in *June 2010*, 'nolle prossed' in August 2012); and a felony charge of Aggravated Stalking (arrest date in *August 2010*). Regarding disposition of the latter case, her 'rap sheet' indicates a disposition of 'Time Expired Restriction for Non-Criminal Justice Purposes' from August 2014. Once in South Carolina, she incurred a charge of Public Disorderly Conduct (*September 2012*), regarding an incident related to alcohol intoxication, disposition "non-conviction."

Beaufort County Sheriff's Office reports indicated, that on *July 4, 2013*, Mr. Evangelista contacted authorities to report domestic abuse by the alleged victim. He is listed as the 'victim' with a "scratch on right side of neck." He reported she "has struck him before in recent months and has threatened to kill him and his kids." He wrote in his statement, "this is just the latest of many abuses." No injuries were noted for her, she did not provide a statement, and she was arrested for Criminal Domestic Violence, 1st.

As referenced by multiple parties, an email was sent by Mr. Evangelista on *July 5, 2013*, to friends and family, and is included in the discovery. His message stated, "he had to press charges... for assault" on "the woman I love." He referenced "many, many events" previous to this email with "yet another physical assault" on the evening in question. He also referenced "threats" that she had made "not only on my life but the lives of my children. She claims that her father and her family have enough money and power to basically kill at will without any trace or evidence." He told them he initiated a "1000 yd restraining order" against her "but she has never shown much in the way of restraint thus far." He provides her identifying information "if it turns out that harm should come to me or my children in any way."

Beaufort County Sheriff's Office indicates that on *September 1, 2013*, Mr. Evangelista called 911. Audio from the call reflects that he stated, "my girlfriend threatens me constantly... she has a CDV pending... she will not stop... she hit me..." To her, he can be heard saying, "I'm done with your threats and abuse" and, to 911, "she hit me in my face." He stated, "she's hitting with her fists, threw a bottle at me, and bruised my arm." Law enforcement arrived and investigated the incident. They arrested both Mr. Evangelista and the alleged victim, as he was noted to have "scratches on facial region" and she had "bruises on arms and legs." Neither wrote a statement, both were charged with CDV, and both charges were later dismissed and expunged.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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Beaufort County Sheriff's Office indicates that on *February 4, 2014*, a neighbor called 911 due to hearing a verbal altercation in a nearby apartment. While on the phone with 911, he observed that, "a large black pole was thrown from the third floor, down onto the parking area below." When law enforcement arrived, only the alleged victim was in the apartment. She admitted to throwing the pole "out of anger" because Nick would not leave her alone." It was noted that she had no visible injury, "was not afraid and did not wish to leave her apartment." After law enforcement left, she contacted them to report her medication missing, and believed Mr. Evangelista took it. Although charges of Petty Larceny and CDV were initiated for Mr. Evangelista, further investigation was not possible as she "refused to provide details of the incident." Therefore, officers requested, "this case be exceptionally cleared." Hotel receipts indicate that Mr. Evangelista stayed in a hotel around this time (February 7, 2014 to February 21, 2014), as he reported having done at times to de-escalate the situation.

Beaufort County Sheriff's Office indicates that on *March 1, 2014*, an anonymous caller contacted law enforcement due to overhearing a verbal altercation. After their investigation, Mr. Evangelista is listed as the "victim" with "scratches on face and neck," with the alleged victim listed as the suspect. No visible injuries to her are noted. She was "determined to be the primary aggressor" and was arrested for Criminal Domestic Violence. At this time, she was completing PII for a prior CDV charge. Hotel receipts indicate that Mr. Evangelista also stayed in a hotel around this time (March 1, 2014 to March 3, 2014).

Collateral data indicate Mr. Evangelista placed a 911 call on *March 3, 2014* for assistance. Audio from the call indicates that Mr. Evangelista described the alleged victim as "threatening, completely belligerent, I bailed her out, but it is not working." He states he is "afraid" and says, "I don't feel safe anymore." The 911 dispatcher had difficulty locating their residence, and the disposition of this call is not clear.

A witness, who was a co-worker of Mr. Evangelista's, reported that on *August 19, 2014*, Mr. Evangelista's girlfriend called his place of work "and demanded to talk to Nick or she would call the Sheriff's Office... she got mad and hung up."

In early *September 2014*, a witness (friend of Mr. Evangelista's ex-wife, Cathy) checked on their residence several times, at the request of Cathy. This individual noted that Cathy did not wish to go alone, as "Mr. Evangelista's girlfriend was known for domestic violence."

Mr. Evangelista's writings found in his Jeep at the time of his October 1, 2014 arrest, indicate the writings were from various dates in *September 2014*. His writings are reflective of suicidality, and feelings of "I don't deserve to live" and "I should have been dead days ago." He refers to his actions as "indefensible" and that there are "not enough words" to "temper the loss" suffered by her family. He expresses love for the alleged victim, stating, "I'm forever ashamed and sorry." He also details the abuse in the relationship, "the violence on me was daily" and described threats and property destruction. He expresses love for his sons, stating, "I will love you both with all I have left."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

17

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S. Knight, Ph.D., ARRP

Defendant's Account of Allegations [Murder] on August 26, 2014: In December 2012, Mr. Evangelista met the alleged victim through an on-line dating website, which was his first attempt at using such sites. Within several days, the alleged victim sent him a message and then "we exchanged phone messages and texted." He met her in person "within a week" and she was the "first and only" person he met through the site. He described his initial impression of her as "charismatic, personable, and social." After meeting, they "spent every night together for the next few weeks, having fun but it moved pretty quick." At this time, he was "happy to be happy" after being "lonely" for some time. In late December 2012, he took her to meet his children and ex-wife, with whom he had maintained a close and supportive relationship, and by May 2013, she had moved in with him.

When they first met, she told him she had "dual citizenship with Canada, that her family owned lots of acres of land in Ontario, and said her dad was well-connected to the Mafia, that her dad could make anybody disappear." She told him "she was a former Delta captain/pilot, and was given a lot of money, got bought out and forced to retire." However, despite claims of a prior lucrative career, "she didn't have any money when we met" and was unemployed. She had great difficulty keeping a job, and he was her primary source of support. Her only source of independent financial support stemmed from a financial settlement awarded after she won a "slip and fall" lawsuit.

Mr. Evangelista reported a history of psychiatric illness with the alleged victim. She took the psychiatric medications, "Effexor® [anti-depressant], Adderall® [for ADHD], and Klonopin® [anti-anxiety]" and was seeing a psychologist "to manage depression." He further stated she would threaten suicide or threaten to harm herself on numerous occasions. The first time occurred early in the relationship, in February 2013, when she told him she "took a whole bottle of Klonopin®, I'm done this before and it has never worked." After hearing this, he "called her on the hour, every hour, she talked me out of calling 911 or her family, she told me she tried it before, looking back, I know she didn't take it."

Mr. Evangelista characterized their relationship as having brief periods of enjoyable times, however, described the majority of time as highly conflictual and unstable. He described frequent arguing, often escalating to threats, property destruction, and physical violence perpetrated by the alleged victim. For example, he reported that she exhibited intense episodes of unprovoked anger, which included physically abusive behavior toward him, as well as threatening statements.

Regarding the former, he reported numerous times where she would "cut" him with keys or her fingernails, leaving deep scratches in his arms or on his face. He felt particularly embarrassed about the scratches on his face, which were plainly visible to others. This conduct was evident early in the relationship, and worsened as the relationship progressed. He stated, "she started to get worse, she drank, a vodka drinker, had misguided anger." The anger episodes, "happened every other two or three weeks, would become physical, unfounded anger, drinking brought it on, slurred speech, bizarre speech." He was asked about any physical behaviors towards her, and he reported "tried to restrain her, hit her in self-defense." During their fights, Mr. Evangelista would often leave their residence to go stay in a motel, but she would "try to find me when I ran away."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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Due to these altercations, the alleged victim incurred three charges of Criminal Domestic Violence during their relationship after Mr. Evangelista called law enforcement. He called 911 "at least six times" during their relationship, with none of the available data indicating that she contacted 911. However, he also "paid for her attorney to try and minimize the damage from the CDV's."

Further, he reported that, during their fights, she tried to prevent him from leaving. He stated, "she would immediately take my wallet and car keys to prevent me from leaving home, she would disable the bike, poke holes in the water bottle, flatten the tires." As his car keys were hidden, and his bike was disabled, he would have no way to get to work. Therefore, his ex-wife "would rent me a car so I could get to work." During such times, she would also "take all my work clothes, \$1000 worth of clothes, and put them in a bag and hide it in the woods, and I would have to find it in the woods." This was also done to prevent him from leaving and going to work. She further destroyed property to prevent him from communicating with others or with his workplace. For example, "she broke two I-Phones, she wanted to disable me... I missed work many times." He did not confide in his work colleagues as to why he was missing work, as he was "too embarrassed," particularly due to the scratches on his face. She also "showed up to my work and demanded to see me," which caused Mr. Evangelista difficulties with his employer. She further suggested they just have one car, "to get rid of my car," and then "it was her car, her keys, very controlling." She also had Mr. Evangelista write her a check each month, which she deposited in her bank account, and is how she maintained control over the finances.

Regarding the threatening conduct, he reported she made frequent verbal threats, against his life, his children's lives and his ex-wife, stating, "I could kill your kids, I'm going to kill your kids, I'm going to kill Cathy, I'm going to kill you." He stated "every two weeks, something happened again, the threats continued, 'I'll kill you, I'll kill your kids'."

In addition to threats, she reportedly told Mr. Evangelista she had his family, and others from his past, under investigation and surveillance. For example, she told him, "I looked up all your old girlfriends and had them investigated," presumably due to jealousy. She "told me she was having my son surveilled at school, said, 'I'm having my dad come down from Canada, and stalk your kids.'" Regarding his ex-wife, she told Mr. Evangelista that "she broke into Cathy's house and planted cameras because she thought Cathy was having group sex and neglecting the kids, and she said I was giving her [Cathy] all this [alimony and child support] money, said 'you shouldn't be paying this,' and I got sucked into it, believed her..." He reported "she took her [Cathy] to court to reduce the child support, and she would not allow me to speak to Cathy." When asked why he believed a seemingly preposterous story of planting cameras, he stated, "she had such a way to convince me, she said she was watching the footage, she brainwashed me."

He reported that she did not want him to have contact with his family or others, stating, "she tried to drive me away from everybody..." He stated, "she was very jealous," of his contact with his family members. He gave the example of "she smashed my phone when my older son called." Therefore, he saw his children less and less as the relationship progressed, and she did not allow him to see his ex-wife. Mr. Evangelista further stated the alleged victim was very possessive of his time and attention, even to the extent that when he fell asleep, she would become enraged that he was no longer attentive.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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He stated, she "would stay up all night, keep me up all night, she would get angry when I passed out to sleep, would start breaking things." At times, he would "sleep outside on the patio," to try and rest, however, "she said, 'I'm going to wake you up every hour.'"

Mr. Evangelista was asked to detail some specific examples of their relationship conflict and altercations. These are described below in chronological order.

He described an event that occurred in *March 2013* during which they saw his ex-wife at a St. Patrick's Day parade. He stated, "Cathy came over to say hello, and two hours later [alleged victim] lost her mind, punching, hitting, and slapping me, she was drunk." In *April or May 2013*, he contacted law enforcement due to an abusive situation and she was arrested for a bench warrant for Disorderly Conduct. In *May 2013*, after an instance where she became "physical" with him, he "left the home, went to my ex-wife's and she came over to Cathy's house, banging on the door, and waking everyone up."

In *July 2013*, Mr. Evangelista sent an email to his family warning them about the alleged victim, in case something had happened to him. When asked what prompted the email, he stated, "the whole day prior, she was upset at me, threatening my kids all day long, she sat outside all day." They had an argument, and she "marched away, went home, she came home, was throwing bottles, hitting me, slapping me, breaking things, scratched my face." He called the police and "they took her away, charged her with CDV, she got out the next day, I went to a friend's house, there was a restraining order." He clarified that he initiated the "restraining order," due to her abusive and threatening behavior. During this time, they stayed in separate residences, stating, "I let her sleep in house" while he stayed with a friend. Several days later, she "called apologetically, said 'please come home' and I did." She "went to court and had to do AA meetings, I was going to drop the charges, the court said go to couples' counseling even though I was not charged." They went to counseling at "Volunteers in Medicine" and "saw a therapist together," who was her long-time therapist.

In *August 2013*, they had to relocate from their residence as, "the landlord had it with her, she was causing trouble, noisy, disruptive, she would steal, mess with the landlord's stuff."

In *September 2013*, he described another "fight, there were so many fights, she was taking Klonopin and drinking, she threatened the kids, said they're all going to die, she got physical with me, I got physical back just trying to restrain her, she put scratches on my face, she would dig her nails in my face, they would last for days, countless times." During this altercation, he contacted law enforcement, and they were both arrested and charged with Criminal Domestic Violence. After this incident, he "bailed her out." This charge does not appear on his formal arrest record, and was dismissed and expunged.

In *October 2013*, they moved into another "condo" with "police calls there, but no arrests, the neighbors were calling over the noise, she smashed a \$3,000 computer, threw bicycles over the balcony, crushed a \$10,000 bike, yelling... at this point, I would leave and go to Cathy's or to a hotel, she was very violent towards people."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

20

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S. Knight, Ph.D., ABPP

In *February 2014*, law enforcement was called to their apartment by neighbors, due to the noise. Prior to the arrival, the alleged victim destroyed his racing bike, and admitted to police that she threw a metal pole over the balcony into the parking lot. Mr. Evangelista had already left to stay in a motel for the night, prior to police being contacted, and he did not realize they were there. Also in *February 2014*, they were again evicted "for numerous complaints and police calls."

In *March 2014*, Mr. Evangelista again called the police, because "she hit me, and I barricaded myself in the bathroom, she smashed glass and my guitar, the neighbors called and they took her to jail for her 3rd CDV." At this point, he "was going to move out, I left her car at the jail, I put myself up in a hotel." However, eventually, "I bailed her out and she talked me out of leaving." At this point, "she had PTI and three CDV charges, I paid \$7,000 for her attorney, she wasn't working, she had to wear an ankle monitor and go to counseling but she showed up drunk to the first counseling session."

At one point in *February or March 2014*, he "got a call from the bank, she had written a check to herself from me, for \$2,000, trying to empty out my bank account." He did not press charges for this incident, but took steps with his financial institution to protect his account. When asked why he did not leave the relationship at this time, he stated "I got soft, weak and I didn't know what she was capable of if I left, I didn't want to lose my whole life, so I went back to her."

- Against this description of his overall relationship and specific incidents prior to the charges, Mr. Evangelista was asked his account of the allegations.

On Tuesday, *August 19, 2014*, they had an argument, and she "took everything out of the refrigerator, and threw it on the walls, including ketchup." During this altercation, she "stabbed me in the forearm with car keys, cut me, I had bandages." Due to her abusive conduct, he "left with my bicycle and backpack with clothes, slept at a hotel" which was "across the street, the one I usually went to." The next day, he "rode my bike to work and stayed away."

On Wednesday (*August 20, 2014*) and Thursday (*August 21, 2014*) evenings, he "slept at work, had clothing there, had food, things to shower and shave." On Wednesday (*August 20, 2014*), she "came to work banging on the door, yelling 'get home' and she 'took the office patio furniture and threw it into the woods.'" On Friday (*August 22, 2014*) and Saturday (*August 23, 2014*) nights, he stayed in a motel in Bluffton. During this time, "she sent me a number of texts," and on Sunday (*August 24, 2014*) morning, sent him a text "that said 'I hurt myself, I'm so sad, my mom has died, I wish I was dead.'" Regarding her "hurt myself" reference, he stated she had accidentally cut herself after dropping a glass table.

After receiving these texts, he went home on Sunday morning, and "she was sad, on edge, we made up and cried, I got my clothes from the woods [where she had taken them], went out and did some shopping, she liked to shop, I was exhausted, the food was still on the walls, everything in the fridge had been put on the walls." On Monday (*August 25, 2014*), "she texted me she found her medication" which she had accused Mr. Evangelista of taking. On Tuesday (*August 26, 2014*), "she wanted to make a nice dinner, and said she was sorry." At this time, they were in the process of moving to a "beach house, which was all picked out."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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On Tuesday night (August 26, 2014), "he came home from work... we made drinks, sat on the porch and she got sad and quiet, talked about my youngest son, she wanted him to move in with me, she didn't trust my older son, her not being able to see her kids was huge. Her sadness turned to anger, I didn't do anything, or say anything, and she got angry." They went to bed around 11:00 p.m., and engaged in sexual activity. Afterwards, "she was wide awake as she usually is, if I even drift off, that would be it, I was going to leave again, she came in hitting, punching, scratching, saying 'give me your keys and wallet.'" He stated, "things got more and more physical, we ended up on the floor, and I took bubble wrap to slow her down, to keep her from assaulting me, she said, 'just kill me, kill me' and 'I wish I could die, and be with my mom.'" He did not recall the length of time they were on the floor.

He was very tearful when describing this situation. He stated "this fight was just one more, I was so tired and worn down, so tired of showing up to work having to explain myself, so tired and embarrassed, just didn't want to do it one more time." He had "never done anything like this before." At the time, "she was pretty intoxicated, at least four drinks." Mr. Evangelista had consumed three drinks over the course of four hours prior to going to bed, and did not drink anything after getting out of bed (just prior to the incident).

After the altercation, he checked her pulse and realized she was deceased. He "frantically packed a bag, my intention was to kill myself." He did not have his phone as "my phone was at work, I had to hide my phone at work in the locker or she would smash it." He went to his workplace, and retrieved his phone and other belongings, and began traveling. At this point, "if I had owned a gun, I would have shot myself." While on the road, he "bought a garden hose and tape with the intention of carbon monoxide poisoning." He drove south, and "realized I can't do it with a new car. It did not work, and I tried to keep on the move." He then "bought a box cutter to cut myself, but chickened out, then got big bottle of Tylenol and 'took 40 extra strength pills, and threw up." He "bounced around" from hotel to hotel, and from place to place. He eventually "bought a hangman's noose, but chickened out." He was also drinking heavily during this time, "I was so upset, my intent was self-destruction." His suicidality continued until the time of his arrest on October 1, 2014.

Mr. Evangelista was asked why he stayed in the relationship given the ongoing physical and emotional abuse. In response, he stated, "I loved her and wanted to fix it" and that "if I didn't do what she said, she would totally have a breakdown." In response to her abuse, he "yelled back, screamed, felt completely confined, and trapped, but I believed I could make it [her] better." He clarified, by stating, "I wanted to fix her, [but] she trapped me, she had thousands of my dollars in her bank account, she trapped me, extorted me, I didn't have a car, she threatened the loss of my job, she had my money, my way to work, she had my kids against me, I wrote her a check every month and she put it in her bank account, she was very controlling, I knew I had to get out of the home, and go to a hotel, and that worked to survive."

In discussing the allegations, Mr. Evangelista expressed much remorse, guilt, sadness, and shame over pain he has caused her family, and his family.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

22

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S. Knight, Ph.D., ABPP

Collateral Interview (Ex-Wife): Ms. Cathy Evangelista, Mr. Evangelista's ex-wife and mother of his two children, indicated the following. At the beginning of the interview, she made it clear she was not advocating for Mr. Evangelista, but felt she must "tell the truth." She met him in 1988, stating, "I've known him almost 30 years." They divorced after 13 years of marriage, finalizing their divorce in 2002. They separated over differences related to career issues. She reported no verbal, emotional or physical abuse of any kind during their relationship. After their separation and divorce, "the relationship stayed friendly between us, we put the children first, we were complimented on it." They saw each other frequently, spent holidays together and co-parented successfully. After their divorce, she knew two of Mr. Evangelista's girlfriends, prior to him meeting alleged victim. She knew of no domestic issues, abuse, or trauma within these relationships, having met both women.

Cathy met the alleged victim around "Christmas" of December 2012. She noted her sons immediately did not care for her, and Cathy saw "some red flags." Cathy stated, "she would work and then get fired, she told us that she was a pilot before the [airline] merge, or some other awesome job, you would think she believed it, the way she talked." She described Mr. Evangelista as vulnerable to believing what others told him, and described him as "gullible, really bad liar, such an easy sell, very suggestible."

In early 2013, she stated that Mr. Evangelista came to her house, and "said he was afraid, he was afraid to stay at his home, thought she was going to kill him, was trashing things." Therefore, Cathy let him stay for the night. The alleged victim came to her home, "pleading" for Mr. Evangelista to come home, saying, "why don't you want to be with me?" Cathy also knew she came by his work, and stated, "he hid in the stairwell at work when she showed up." Due to these and similar behaviors by the alleged victim, "they broke up and got back together, many times."

Cathy was asked if she knew of any threatening statements made by the alleged victim. She stated that Mr. Evangelista told her that the alleged victim would repeatedly "threaten to kill the children, to kill me, plant drugs in the house, threatened to get him fired." She stated, "according to her [alleged victim], her father was a millionaire, and her dad could have us all killed." She heard reports of the threats numerous times from Mr. Evangelista during his relationship with the alleged victim.

Per Cathy, the alleged victim "was never allowed to see the children." When asked why, she stated, "Nick always had scratches on his face, neck and arms" and she was afraid for the children's safety. When asked if she saw scratches on Mr. Evangelista more than once, she stated, "oh, yes." She also stated that "her [alleged victim] reputation on the island was... threatening behavior, always drunk or high, two lawsuits, I did not want the children around her."

Cathy further related different examples of having to assist Mr. Evangelista due to the alleged victim's conduct. For example, she has had to "pick him up from the side of the road, rent him a car, put him up in a hotel... or he would be out with the clothes on his back." When she tried to speak with him about it, "he would say, 'I know, I know, I have to leave' and then he would go back." She said people they both knew would ask her if he was alright, and would tell her "he looked exhausted, pale, looked horrible."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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Cathy stated that on one occasion, "he was forced to call me and tell me everything was his fault, that he instigated the arguments, that he was the physical aggressor, that he is the one to lie." She stated, "he made the same call to his father, said the relationship was all his fault, and I asked him 'is she was standing next to you right now?'"

When asked why she thought he did not leave the relationship, she believed it was because of the threats, "she threatened to have him fired... or act out with the kids." Cathy stated, "he seemed manipulated and abused" both emotionally and physically, which she based on "what he told me, the way he acted around us, the things he would say." Cathy last saw Mr. Evangelista in Spring 2014, "and he said they broke up and he said 'I'm really leaving this time,' and then we never talked again after that, [but] I pleaded for him to leave."

Of the charges, Cathy stated "he's not a murderer, just couldn't get out of the situation, he just slipped or broke down, couldn't get out of the house." During their approximate 27 year friendship/relationship, she "never once saw any violence, or heard of him being violent, I've never had even a thought of him hurting us." She stated "he wears his heart on his sleeve, he's not a fighter, very passive... he swam, biked, made people laugh, he was not an angry guy, so gullible."

Collateral interview [Father]: His father never met the alleged victim, but stated, "she told him she was an airline pilot, and had connection to Canada and hit men." He noticed that when they began dating, the communication between he and Mr. Evangelista was much less frequent. Prior to that time, they "kept up quite a bit, he was very good about calling."

His father stated he received a phone call from Mr. Evangelista during their relationship, where he stated, "he said there was a problem and threat against all our lives and that she would destroy his life and that if something ever happened to him, to check [her], he was guarded in what he said, I couldn't get him to open up about it..." Several months later, his father received another phone call, in which Mr. Evangelista "sounded completely broken down and distraught, that he made it up and I asked if she was standing there, is she hovering over you while you talk, he said it was all his fault." Of the alleged victim, he stated, "everything I knew, she was not a nice person, a drinker, the boys did not like her" and believed "she took complete control over all his funds."

After that phone call, his father stated, "communication was completely shut down, we couldn't reach him, we were very concerned about his well-being, we could not locate him." He stated their calls were "never returned, he stopped responding to family on Facebook and his page was shut down." He next heard that Mr. Evangelista was "missing" and then learned of his charges. His reaction was "numb, non-belief, no way, not this guy, I never knew him to be in a fist fight, I coached him growing up, never once did he show any signs of any type of violence." He described his son as a passive individual, who naturally allows others to assume a dominant role, and added, "he would flee rather than fight."

Name: Evangelista, Nick

Date of Birth: [REDACTED]

24

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S. Knight, Ph.D., ABPP

His father saw Mr. Evangelista at his arraignment in October 2014, where he looked "awful, drawn, not good." He presently speaks with Mr. Evangelista once or twice a week, and last saw him at the end of May [2015]. At that time, he "seemed positive, way up, he teaches Bible classes now, he got born again, through Pastor Roland, it has carried him, his whole demeanor has changed." His father stated Pastor Roland and a local pharmacist have been seeing Mr. Evangelista regularly. His father related that, if Mr. Evangelista is granted bond, then he is "welcome" to reside with him and his wife in Ellijay, Georgia. His father plans to travel to the bond hearing to show his support.

Collateral Interview [Stepmother]: Mr. Evangelista's stepmother of 35 years described him as "always very intelligent, always very happy, always entertaining and made you laugh, a fabulous dad." She also noticed that after the alleged victim came into his life, "all communication cut off" whereas before, he had been good about staying in touch. She stated that his July 2013 email "scared us really bad, that she was connected to a hit-man, we felt he had been totally cut off from his family." She has never known, nor heard of, any incident of violence from Mr. Evangelista prior to the allegations. She is "totally on board" with him living in their home, should he be granted bond.

Collateral Interview [Siblings]: Given their distance (Texas and Oregon), his siblings have not seen Mr. Evangelista in several years, and never met the alleged victim. They knew of no history of violence with Mr. Evangelista, either as a child or an adult. His brother's daughters followed the alleged victim's Facebook postings and believed them to be "not good, rather unstable, unusual." They were shocked regarding the charges. His brother stated that he had heard "he was in an abusive relationship and finally reached a breaking point."

Collateral Interview [Mother]: Of the charges, his mother has never known him to be physically violent in any manner either as a child, adolescent or adult, and stated his case was "awful, shocking."

VIOLENCE RISK ASSESSMENT MEASURES: Three violence risk assessment measures were utilized to supplement the above data and more formally evaluate the issue of future violence risk. The measures included the Psychopathy Checklist-Revised, PCL-R™, the Violence Risk Appraisal Guide-Revised (VRAG-R), and the HCR-20^{V3}. Such measures have been extensively researched with respect to variables related to an increased risk of violence. The measures and resulting findings are described below.

Psychopathy Checklist-Revised (PCL-R™): The PCL-R™ is designed to assess for the clinical construct of psychopathy. Psychopathy is a constellation of behavioral, affective, and interpersonal characteristics, with hallmark traits including a pervasive lack of empathy, a callous disregard for others, criminal versatility, an exploitative nature with shallow and labile emotions and manipulative behavior. Research has demonstrated that the presence of psychopathy is a potent risk factor associated with the commission of future violent acts. Therefore, in a violence risk assessment, it can be informative to determine if the individual has significant psychopathic traits, thus, most likely placing him at a higher risk for violent recidivism. Total PCL-R™ scores range from 0 to 40, with a generally accepted cut score of 30 to place one in the psychopathic range.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

25

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

Mr. Evangelista's total PCL-R™ score (PCL-R = 4) did not meet the threshold level indicative of the presence of psychopathy. This finding alone, cannot rule out the risk of future violence, however, if Mr. Evangelista had scored high on this measure, his risk of committing future violence would most likely be significantly increased.

Violence Risk Appraisal Guide-Revised (VRAG-R): The VRAG-R is an actuarial assessment measure, which combines a number of variables demonstrated via research to correlate with risk of future violence. These variables include items related to historical data, criminal history, anti-sociality, and substance abuse. It should be noted that the estimates of risk based on actuarial instruments only indicate a person's similarity or lack thereof with members of a particular group rather than a risk specific to that individual. There are risk factors relevant to violent offending that are not included in the VRAG-R.

Information on the VRAG-R variables was obtained through in-depth clinical interviews with Mr. Evangelista, a review of collateral records, and by interviewing collateral sources. On the VRAG-R, a range of scores from (≤ -24 to $\geq +27$) can be obtained, with higher scores associated with more risk. Scores are divided into nine categories of risk from lowest to highest. A score of (VRAG-R = -13, in Risk Category 3) was calculated for Mr. Evangelista, which can be considered to fall within a "Low" risk category. Among offenders in the development sample for the VRAG-R, approximately 70% obtained higher scores than Mr. Evangelista.

HCR-20^{V3}: The HCR-20^{V3} is an interview and assessment tool designed to assess an individual's risk of future violence. The HCR-20^{V3} is comprised of twenty items in *Historical*, *Clinical* and *Risk Management* domains that combine to assess an individual's overall level of violent recidivism risk. Thus, the measure captures past, present, and future risk variables. Items are assessed for the *presence* of the risk factor, and the *relevance* of the item to future violence for that individual. Information on these variables was obtained through in-depth clinical interviews with Mr. Evangelista, a review of collateral records, and through collateral interviews.

Historical variables include an individual's 1) *history of violence*; 2) *antisocial behaviors*; 3) *instability of relationships*; 4) *instability of employment*; 5) *history of substance use*; 6) *major mental illness*; 7) *personality disorders*; 8) *history of traumatic experiences*; 9) *history of violent attitudes*; and 10) *history of response to supervision and/or treatment*. These variables are considered over the course of an individual's lifetime.

With regard to the first, and most potent risk factor, the analysis is conducted both pre and post his charges. Mr. Evangelista has little *history of violence* prior to the present allegations. As his only prior legal conviction has been for a non-violent act (theft), occurring over 35 years ago, he therefore, has none reflective of violence. He incurred a charge of Criminal Domestic Violence in September 2013, but this was dismissed and expunged. It is important to note that, per audio of a 911 call, he contacted authorities for assistance during this incident due to abusive conduct towards him, with no reports of injury from the alleged victim. He reported his most aggressive actions prior to the allegations as related to defensive actions taken during altercations with the alleged victim (restraining to prevent further injury), and hitting back defensively. He reported no further incidents of violence, with no fights as an adult or adolescent, and no collateral source reported any type of violent conduct.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

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S. Knight, Ph.D. ABFP

Relatedly, he has no discernable history of violent attitudes, or pattern of antisocial conduct, as reflected by a minimal criminal history.

Regarding the alleged violence associated with the allegations, there is no question his charge represents a violent act, and thus he scores positively on this item. In examination of this violence, the context was limited to his intimate relationship at the time, occurring after several years of abusive, threatening, controlling and volatile conduct perpetrated towards him, with no reports of violence outside of this relationship. Therefore, while relevant, the relevancy of this item is most germane to this specific relationship, instead of to future violence.

In consideration of *instability in relationships*, the following was found. Regarding intimate relationships, he was married for almost 13 years, out of an approximate 17-year relationship, indicating a stable relationship history in regards to longevity. In addition, per all collateral sources, including his ex-wife, his marriage was without domestic conflict. They remained friends after the divorce, spending time together with their children, and co-parented peacefully and effectively. He further described his relationships after his marriage, and before the alleged victim, as stable, with amicable splits, but did admit to lashing out verbally due to hurt feelings.

In contrast, the relationship with the alleged victim was an outlier in his history, characterized by frequent conflict, with evaluation data indicating threatened and physical violence perpetrated toward him. This would indicate a positive risk factor for relationship instability; however, with diminished relevancy to future violence due to the permanent dissolution of this relationship. With regard to other than intimate relationships, particularly, familial (mother), he has maintained some distance, and in the case of his mother, has not spoken in years. Therefore, taken together, the domestic instability with the alleged victim, and the absence of a relationship with his mother, would count as a positive, and moderately relevant risk factor.

With regard to the additional historical factors, he has maintained a stable *employment* history. For thirty-four years, since age 20, he has worked in full-time, steady jobs, for years at a time. He also worked for six years in the military, serving with honors. Subsequently, he has worked as a Physician Assistant for the past 16 years, staying at practices for years at a time. He reported no history of being fired from these jobs, with good job performance, and taking much pride in his work. Others noted that work was a great source of pride and accomplishment for Mr. Evangelista and that he took it very seriously.

Regarding substance abuse, while he has a history of cannabis abuse, this resolved over 30 years ago, and he does not presently meet criteria for a *substance* disorder. Therefore, while this item is technically 'present,' it is not 'relevant' to future violence. In addition, although perhaps using more frequent than the average individual, his alcohol use, as reported, did not yield clinically significant consequences sufficient for a substance disorder. His use of alcohol has not significantly interfered with his functioning, nor has resulted in unsafe or criminal conduct. It is possible that he is minimizing his use, or lacks insight into the problematic nature of use. Therefore, for the purposes of risk management, it is recommended that he abstain from alcohol use.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

Applied Psychological Services, LLC

S. Knight, PhD, ABPP

Further, he has no history of a *major mental disorder* that is serious, persistent or interfered with his functioning in important life domains. His history of reported symptoms associated with Attention Deficit Hyperactivity Disorder was mild, and without significant impact on his overall functioning. Other symptoms noted in records (irritability, sadness, anxiety) appear adjustment-related to life stressors, such as his divorce, or financial issues. Further, his reported anxiety, depression and trauma-related symptoms that were present at the beginning of his detention in November 2014 have since resolved, and do not represent underlying, chronic mental illness. Relatedly, he has no history of *personality disorders*.

Mr. Evangelista reported events surrounding the allegations as a *traumatic experience*, with none prior. He experienced trauma-related symptomatology related to this alleged incident, including nightmares, intrusive memories and thoughts, flashbacks, anxiety, and difficulty sleeping. These symptoms have resolved, with his mental state stable.

Further, his only course of *supervision* (e.g., probation) has been a probationary period at age 19 for a minor charge, of which he reported successful completion. There is no indication from self-report or records, that he has been non-compliant with *treatment*, when recommended.

Clinically, risk factors on the HCR-20^{V3} include 1) *degree of insight*; 2) *present degree of violent ideation or intent*; 3) *present symptoms of mental illness*; 4) *present instability of functioning*; and 5) *present treatment or supervision response*. In Mr. Evangelista's case, none of these risk factors are present. He exhibits considerable insight into his current situation, including significant factors and circumstance related to the allegations. He does not express, nor is there any indication of violent ideation or intent, and no active symptoms of mental illness creating instability of functioning. Based on available data, he is psychiatrically and medically stable, and has conducted himself appropriately during his current detention. He is not presently under *supervision or treatment* of any kind, and thus, his response cannot be evaluated.

With regard to Risk Management factors, which represent an assessment of variables (out of custody) over the next one to 12 months, to include 1) *professional services and plans*; 2) *his living situation*; 3) *level of personal support*; 4) *level of stress*; and 5) *treatment response*, the following was indicated: Data does not indicate problems associated with risk management and he does not meet criteria for elevated risk on any of these factors. For example, if released on bond, he has specific and realistic plans with regard to residence, and financial support. His level of personal support is strong, with multiple familial and other individuals readily available for emotional and social support. His coping response to stressors appears resilient and intact, as he demonstrated a much more optimistic, future-oriented, and rational approach to his stressful situation during the second interview. Further, he plans to seek pastoral counseling to assist in coping with what he believes is shame, remorse, regret, and spiritual concerns.

Therefore, based on the evaluation and application of the HCR-20^{V3} risk factors to Mr. Evangelista's specific history and situation, it is opined that Mr. Evangelista is positive for two factors, which are historical in nature: a) history of violence as it relates to the allegations and b) relationship instability. The former occurred within an isolated and singular context, which escalated for years, and which no longer exists. He has no history of violence outside of that context.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

28

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

The latter represents more global relationship difficulties, which may indicate the need for intervention (e.g. therapy) regarding interpersonal dynamics. Taken together, in consideration of his individual, case-specific details, and in consideration of the other 18 risk factors, Mr. Evangelista represents a Low risk for any future violence, including serious physical harm, or imminent violence.

CONCLUSION AND SUMMARY: Based on the totality of data gathered in the evaluation, to include clinical interviews with Mr. Evangelista totaling over six hours; interviews with multiple familial contacts, including his parents, siblings, ex-wife, and close friend; a review of available legal and investigative documents, photographs and recordings; a review of collateral health, and various types of additional relevant records; and application of multiple violence risk assessment measures, the following is opined.

Mr. Evangelista was primarily raised in Minnesota, by married parents, and with two younger siblings. He excelled in school, and athletics, with reports that he was a happy, well-adjusted child. At age 12, his parents divorced, which had a significant adverse impact on his development. He withdrew from social activities, his academic performance decreased, and he began use of marijuana. As a teenager, his parents placed him in residential substance treatment, with no reported problems since that time, over 35 years ago.

At age 27, in 1988, Mr. Evangelista enlisted in the U.S. Navy, serving six years in the field of aviation physiology. He reportedly did very well in the Navy, earning the highest of marks on performance evaluations, and worked to train pilots in survival and physicality. Due to lasting medical conditions stemming from his military activities, he was discharged, and separated honorably. He subsequently earned his Bachelor's/Physician Assistant (P.A.) degree, and has been steadily employed as a Physician Assistant in orthopedic practices for the last 16 years. He was employed full-time at the time of his arrest, where he had worked since 2005.

From 1988 to 2003, he was married for 15 years, with two sons from this union, ages 18 and 21 years. His wife reported no domestic conflict within the relationship, and that they separated amicably. They both reported maintaining a close and supportive relationship after their divorce, making co-parenting a top priority with their children.

Prior to the instant allegations, Mr. Evangelista's formal legal record indicates one conviction for theft at age 19, with no convictions for violent acts or threatening conduct. The present allegations are isolated to his then intimate relationship, with no such history or claims outside of that relationship. Comprehensive analysis of historical relationship events leading to, and culminating in the alleged violent conduct was necessary to assess his risk of future violence and is detailed in the above sections.

Essentially, Mr. Evangelista's self-report, and the collateral data, describe an unstable, highly conflictual relationship with the alleged victim, which was characterized by threatening and abusive behaviors towards him. He called law enforcement numerous times, and she was charged with Criminal Domestic Violence on three occasions. His calls reflect reports of the ongoing physical abuse and threats, which were observed by his ex-wife on numerous occasions.

Name: Evangelista, Nick

Date of Birth: [REDACTED]

29

Applied Psychological Services, LLC

S. Knight, Ph.D., ABPP

During the alleged incident, he described another altercation where she was verbally and physically abusive. He described the sequence of events that resulted in her death, after which he panicked, and fled, with indicators of acute suicidality during this time. He was arrested without incident and provided a detailed statement to arresting authorities. In speaking about the incident then and now, he expresses deep regret, remorse, and sorrow for the pain and shame he has caused her family, and his family.

Application of violence risk assessment measures did not indicate a significant risk of future violence. He did not meet the threshold level for psychopathy, and had few positive risk factors on these measures. While the conduct alleged by the charges, and his history of relationship instability, are his primary risk factors, these are largely confined to the relationship with the alleged victim, with no history of violence prior to that time. It is opined that the charged violent conduct was an isolated and singular incident, occurring within the context of escalating conflict and years of abuse, and does not extend to other situations or environments.

During the evaluation, he was forthcoming, with no signs of affective lability, negativistic attitudes, hostility, volatility, or violent ideation. On the contrary, he presented as calm, optimistic, pleasant and future-oriented. He is medically and psychiatrically stable, and without major psychiatric disorder, including psychosis, personality or major mood disorders, or active substance abuse. Regarding the latter, while he has a remote history of cannabis use that is not considered a risk factor, he reported daily drinking prior to the incident. Although his reports did not rise to the level of an alcohol use disorder, this could be due to minimization or lack of insight regarding his use. Therefore, it is opined that he abstain from all alcohol use, should he be released on bond, with consideration of an ankle monitor sensitive to alcohol consumption.

His conditional release plan is viable, which includes close familial support, and with the goal of seeking pastoral counseling. He plans to reside with his father and stepmother in Ellijay Georgia, both of whom have expressed very strong support for Mr. Evangelista. He plans to find custodial or maintenance work, as he understands he can no longer work as a P.A. However, he desires to financially assist his sons, and will work any job that will hire him. He further desires to heal relationships with his family, particularly his sons, and mother.

In sum, taken together, evaluation data strongly indicate that Mr. Evangelista does not present a significant risk of future violence towards any member of his family or to the community at large, and can be safely managed on conditional release if granted bond.

Respectfully Submitted,



Susan C. Knight, Ph.D., ABPP
Board-Certified Forensic Psychologist

August 12, 2015

Date Signed

Name: Evangelista, Nick
Date of Birth: [REDACTED]

30

Applied Psychological Services, LLC
S. Knight, Ph.D., ABPP

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Appellant,

v.

Whitlee Jones, Respondent.

Appellate Case No. 2014-002123

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 27637
Heard January 13, 2016 – Filed May 13, 2016

AFFIRMED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General Alphonso Simon, Jr., all of Columbia;
Solicitor Scarlett Anne Wilson, of Charleston, for
Appellant.

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Respondent.

JUSTICE BEATTY: Whitlee Jones was indicted for the murder of her boyfriend after she fatally stabbed him at their shared residence. In a pretrial motion, Jones asserted immunity from prosecution under the "Protection of

Persons and Property Act" (the Act).¹ Following a hearing, the circuit court judge granted the motion, finding Jones established by a preponderance of the evidence that she was entitled to immunity under section 16-11-440(C) of the Act.² In this

¹ S.C. Code Ann. §§ 16-11-410 to -450 (2015); *see id.* § 16-11-450(A) (stating, in relevant part, "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force").

² Pertinent to this appeal are the following provisions of section 16-11-440:

(A) A person is *presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:*

(1) *against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and*

(2) *who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.*

(B) *The presumption provided in subsection (A) does not apply if the person:*

(1) *against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or*

* * *

(C) *A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the*

direct appeal,³ the State challenges the judge's order on two assertions of error: (1) section 16-11-440(C) is inapplicable because the stabbing occurred within Jones's residence and not "another place where [s]he ha[d] the right to be" as identified in subsection (C); and, alternatively, (2) Jones failed to establish that she was acting in self-defense when she stabbed her boyfriend. We affirm.

I. Factual / Procedural History

During the early morning hours of November 2, 2012, Jones fatally stabbed Eric Lee, her live-in boyfriend, one time in the chest while in their shared residence. The events leading up to the stabbing were established during the pretrial hearing.

In her written statement to police, Jones recounted that during the evening of November 1, 2012, she and Lee were involved in a physical altercation over a cell phone that Lee had purchased and given to Jones. According to Jones, Lee began pushing her and punching her as she began to leave their apartment. Jones stated that, while she was outside the apartment, Lee pulled her hair and attempted to force her back inside. During this confrontation, some of Jones's hair weave was removed from her head as Lee dragged her down the street. A neighbor, who witnessed the commotion, called 911 for help at 11:28 p.m. Jones claimed that Lee continued to try and force her back into the apartment. After she threw the phone on the ground, Jones was able to flee the apartment when Lee went to retrieve the phone. At some point during the confrontation, Jones called her friend, Erica Grant, and left a voicemail message urging Grant to pick her up from the apartment. The message also recorded Jones repeatedly pleading for Lee to "get off" of her.

right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(A), (B), (C) (2015) (emphasis added).

³ See *State v. Duncan*, 392 S.C. 404, 407 n.2, 709 S.E.2d 662, 663 n.2 (2011) (finding an order granting a motion to dismiss under the Act is immediately appealable); see also *State v. Isaac*, 405 S.C. 177, 747 S.E.2d 677 (2013) (clarifying *Duncan* and holding that the denial of a request for immunity is not immediately appealable).

Jones stated that she returned to the apartment after she "cooled down." When she opened the door, Jones observed Lee throwing her things around. After Jones called her cousin, Jasmine Taylor, to pick her up, she began collecting her things as Lee yelled at her that "[it's] over" and "rush[ed][her] to leave." When Taylor and Grant arrived at the apartment, Jones began to place her belongings in the car. According to Jones, Lee followed her around the apartment making sure that she did not take any of his possessions. Taylor, who assisted Jones while Grant remained in the car, testified that Lee continued to argue with Jones.

Jones stated that when she went upstairs to retrieve her shoes, she noticed a knife and "grabbed it for protection." After the three went downstairs, Jones and Lee remained in the living room while Taylor stood outside the living room. Jones stated that Lee "started yelling and pushing me again telling me to get out." Jones further claimed that Lee then grabbed her, asked her if she was mad, and began shaking her while telling her "It's over. It's your fault." Because Jones believed that Lee was getting ready to hit her again, she "grabbed the knife out of [her] shirt and stabbed him" one time in the chest. Jones then ran out of the apartment. Taylor did not witness the stabbing, but stated that she heard an "uh" before Jones ran out.

Taylor and Jones then got into Grant's car and drove away. However, they only drove around the corner before Jones told them to turn around and admitted that she had stabbed Lee. They returned to the apartment where they found Lee on the ground in the doorway. Taylor testified that Lee was still conscious and was moaning. Jones and Taylor drove Lee to the hospital where he later died. Grant remained at the apartment to wait for police, who had been called by a neighbor at 12:12 a.m. on November 2, 2012 to report what had happened.

Subsequently, a Charleston County grand jury indicted Jones for murder. Jones asserted immunity from prosecution under section 16-11-440(C) of the Act. Following a hearing, the circuit court judge granted Jones's motion. Initially, the judge noted that section 16-11-440(A) would not apply in Jones's case because Lee was a lawful resident of the place where the stabbing occurred. As a result, the judge found Jones was "defaulted to Section (C)." The judge explained:

Section (C) operates in a similar manner as section (A), but does not allow for the presumption of reasonable fear. Because [Lee] was a co-resident, subsection (A) is inapplicable to [Jones] and she is therefore defaulted into subsection (C).

In so ruling, the judge rejected the State's argument that the language in subsection (C), "in another place where he has a right to be," would exclude Jones's dwelling, residence or occupied vehicle, because those places are expressly identified in subsection (A). The judge determined "the 'another place' language is intended to encompass dwellings, residences or occupied vehicles, along with any other place where a person has a right to be and is acting lawfully."

The judge explained that "[o]ne seeking to utilize section (C) against another co-resident simply loses the presumption of reasonable fear of imminent peril of death or great bodily injury" as provided in section (A). The judge recognized that while section (C) applies to an incident that occurs in a dwelling, residence or occupied vehicle, it removes the presumption of reasonable fear. The judge reasoned that "[t]o hold that a person cannot utilize Section 16-11-440(C) if the person were inside of their own home would create a nonsensical result--that a person can defend themselves from attack by their spouses, lovers, or any other co-resident while outside of their home, but not inside of their home."

Applying subsection (C), the judge found Jones established by a preponderance of the evidence that she was entitled to immunity under section 16-11-440(C) because she: (1) was not engaged in unlawful activity at the time of the attack; (2) was attacked in a place where she had a right to be; (3) did not have a duty to retreat but, rather, had the right to stand her ground and meet force with deadly force; and (4) acted in self-defense. The State filed a direct appeal from this order.

II. Standard of Review

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013); see *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (recognizing that the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007).

III. Discussion

A. Arguments

The State contends Jones is not immune from prosecution under section 16-11-440(C) because the stabbing occurred in Jones's residence and not in "another place where she had a right to be" as identified in subsection (C). Because the South Carolina Legislature used the phrase "dwelling, residence, or occupied vehicle" in subsections (A), (B), (D), and (E) of section 16-11-440, the State maintains the Legislature's purposeful use of the term "another place" in subsection (C) means the Legislature clearly intended subsection (C) to apply to places other than a defendant's dwelling, residence, or occupied vehicle.

Further, the State argues that if the Legislature intended the Act to cover scenarios similar to the one presented in Jones's case, then subsection (B) would not expressly limit the application of subsection (A) when the person "[a]gainst whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle." Finally, the State asserts the legislative intent of the Act was to expand the common law Castle Doctrine to include an occupied vehicle and place of business, which was accomplished by the enactment of subsections (A) and (C), respectively.

Even if subsection (C) is applicable, the State claims the judge erred in finding Jones established that she was acting in self-defense when she stabbed Lee. The State submits the evidence in the record does not support the judge's determination that Jones believed she was in imminent danger of losing her life or sustaining bodily injury and that such fear was reasonable. The State notes that no witnesses saw Lee hit or attack Jones just prior to the stabbing. The State also points out that Jones voluntarily returned to the apartment after the initial physical altercation and was not being held against her will as Lee was insisting that she leave the apartment. Consequently, the State contends the judge erred in granting Jones immunity from prosecution under the Act.

B. Analysis

1. Applicability of Subsection (C)

a. Castle Doctrine Codified / Default into Subsection (C)

Under the Castle Doctrine, "[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." *State v. Gordon*, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924) (citation omitted). The Legislature explicitly codified the Castle Doctrine when it promulgated the Act and extended its protection, when applicable, to include an occupied vehicle and a person's place of business. See S.C. Code Ann. § 16-11-420(A) (2015) ("It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business").

As explained by this Court in *Curry*⁴, "[s]ection 16-11-440(A), the main thrust of the Act, provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence or occupied vehicle." *Curry*, 406 S.C. at 370, 752 S.E.2d at 266. "However, the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence." *Id.*

Here, there is no dispute that Lee had an equal right to be in the apartment at the time of the stabbing. Thus, as recognized by this Court in *Curry*, Jones was defaulted into seeking immunity under subsection (C), which deals with the use of force by one who is attacked in another place where he has a right to be. See *Curry*, 406 S.C. at 370, 752 S.E.2d at 266 (concluding defendant, who sought

⁴ In *Curry*, the defendant and the victim were socializing at the defendant's mother's apartment when an argument and fight ensued. *Curry*, 406 S.C. at 369, 752 S.E.2d at 265. The defendant shot the victim based on the belief that the victim was lunging towards him. *Id.* At the close of the State's case, the defendant moved for a directed verdict pursuant to the Act. *Id.* The trial judge denied the motion and the jury convicted the defendant of voluntary manslaughter. *Id.* This Court found evidence supported the judge's denial of immunity under subsections (A) and (C) of section 16-11-440. *Id.* at 370-72, 752 S.E.2d at 266-67.

immunity under the Act after he fatally shot the victim, was defaulted into section 16-11-440(C) where the victim was a social guest and rightfully in the defendant's mother's apartment).

While *Curry* is instructive, our decision is not dispositive of the instant appeal. First, we did not expressly analyze whether a residence qualifies as "another place" under subsection (C). Second, the decision in *Curry* was presented in the posture of a directed verdict motion and a jury charge issue rather than a motion for pretrial immunity. Third, unlike Jones and Lee, the defendant and the victim in *Curry* were not cohabitants in the residence since the shooting occurred in the defendant's mother's apartment. Finally, *Curry* did not resolve all issues regarding the Act as we stated that "[t]he full reach of the Act and whether the statutory provisions in the Act extend beyond the common law Castle Doctrine are questions for another day." *Curry*, 406 S.C. at 373, 752 S.E.2d at 267.

b. Interpretation of Subsection (C)

Although this Court tangentially addressed the applicability of section 16-11-440(C) in *Curry*, the Court of Appeals has on two occasions expressly interpreted this provision. The court, however, reached conflicting results.

In *Manning*, the defendant was charged with murder following the death of his girlfriend at the defendant's home. *State v. Manning*, Op. No. 5228 (S.C. Ct. App. filed May 7, 2014) (Shearouse Adv. Sh. No. 18 at 16). The defendant claimed immunity from prosecution under the Act and, alternatively, claimed self-defense. *Id.* After the trial judge denied the defendant's pretrial motion for immunity, the matter proceeded to trial and the defendant was convicted of voluntary manslaughter. *Id.* The Court of Appeals issued a published opinion affirming Manning's conviction and sentence on May 7, 2014. *Id.* In reaching its decision, the court held in part that, based upon a plain reading of section 16-11-440(C), "the language 'in another place' refers to a place *other than one's dwelling, residence, or occupied vehicle*, as subsection 16-11-440(A) governs unlawful acts in one's dwelling, residence, or occupied vehicle." *Id.* at 23 (emphasis added). However, the court withdrew the opinion, granted rehearing, and subsequently held new oral arguments after the retirement of one of the judges on the panel.⁵

⁵ Despite the withdrawal of this opinion, members of the Bench and Bar continue to cite it as authority in opposition to a defendant's claim of immunity under section 16-11-440(C). Therefore, we find it necessary to address this decision in our analysis.

Following re-argument, the Court of Appeals affirmed in part and remanded in an unpublished opinion. *State v. Manning*, Op. No. 2014-UP-411 (S.C. Ct. App. filed Nov. 19, 2014), *cert. granted* (May 20, 2015). This decision, however, did not address the applicability of section 16-11-440(C).

One month after *Manning* was decided, the Court of Appeals issued its decision in *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), *cert. granted* (Nov. 5, 2015). In *Douglas*, the defendant was arrested and indicted for the murder of an acquaintance while at the defendant's residence. *Id.* at 312, 768 S.E.2d at 235. Prior to trial, the defendant filed a motion to dismiss the case on the ground he was entitled to immunity pursuant to section 16-11-440(C). *Id.* At the hearing on the motion, the defendant testified that after a day of golfing and drinking, he and the victim went back to the defendant's residence where they continued drinking. *Id.* at 313, 768 S.E.2d at 236. After the victim excused himself to use the restroom, he returned to the living room holding a bottle of the defendant's anti-anxiety medication. *Id.* The victim continued to taunt the defendant about the medication and refused to relinquish the bottle. *Id.* During the resultant physical altercation, the defendant fatally shot the victim. *Id.* at 314, 768 S.E.2d at 236. The State appealed the circuit court's order granting the defendant's motion for immunity. *Id.* at 315, 768 S.E.2d at 237.

The Court of Appeals affirmed based upon its interpretation of section 16-11-440(C). In so ruling, the court reasoned:

The State places emphasis on the word "another" in the phrase "another place where [the accused] has a right to be" in subsection (C) of section 16-11-440. The primary definition of "another" is "different or distinct from the one first considered." *Merriam Webster's Collegiate Dictionary* 51 (11th ed. 2003). This definition would arguably modify "place," as used in section 16-11-440(C), in such a way as to make "dwelling, residence, or occupied vehicle" and "another place" mutually exclusive. This is the interpretation the State proposes. On the other hand, the second and third definitions of "another" are "some other" and "being one more in addition to one or more of the same kind," respectively. *Id.* The third definition is more inclusive and arguably would *not* eliminate "dwelling, residence, or occupied vehicle" as a possible "place" where the person using deadly force has a right to be pursuant to section 16-11-440(C).

The General Assembly's use of this language in section 16-11-420 clearly indicates its intent to provide the protections of the Act to persons within their own home facing not only unwelcome intruders but also "attackers," including those who are initially invited into the home and later place the homeowner in reasonable fear of death or great bodily injury. Further, the language of section 16-11-440(C) itself indicates that its application is not limited to businesses. Therefore, the more inclusive definition of "another" is the proper definition to employ in interpreting section 16-11-440(C). See *Sparks*, 406 S.C. at 128, 750 S.E.2d at 63 ("A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." (citation and quotation marks omitted)); *Broadhurst*, 342 S.C. at 380, 537 S.E.2d at 546 ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." (citation omitted)).

Douglas, 411 S.C. at 330-31, 768 S.E.2d at 245.

We agree with the Court of Appeals that the phrase "another place" in subsection (C) encompasses a residence. However, while *Douglas* resolved the discrete point of law that Jones's residence qualifies as "another place" where she had the right to be, the instant case requires further analysis as it implicates a policy decision regarding immunity under the Act for domestic situations.

In particular, we must evaluate the propriety of the circuit court judge's statement that "[t]o hold that a person cannot utilize Section 16-11-440(C) if the person were inside of their own home would create a nonsensical result--that a person can defend themselves from attack by their spouses, lovers, or any other co-resident while outside of their home, but not inside of their home." We agree with the judge's assessment because the legislative history and text of the Act reveal that the Legislature did not intend such an absurd result. See *Bryant v. State*, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009) ("The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature."); *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000) ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed

in the light of the intended purpose of the statute."); *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.").

We need not delve too deeply into the statutory language to discern the intended purpose of the Act as the Legislature explicitly stated in the Preamble that it was enacted to "authorize the lawful use of deadly force against an intruder or *attacker in a person's dwelling, residence, or occupied vehicle* under certain circumstances." Act No. 379, 2006 S.C. Acts 2908, 2908 (emphasis added). Although the Preamble generally identifies the fundamental purpose of the Act, the Legislature clearly enunciated its intent and reasons for promulgating the Act in section 16-11-420, which states:

- (A) It is the *intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.*
- (B) The General Assembly finds that it is *proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.*
- (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and *this right shall not be infringed.*
- (D) The General Assembly finds that *persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.*
- (E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, *nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.*

S.C. Code Ann. § 16-11-420 (2015) (emphasis added). In order to accomplish these objectives, the Legislature enacted section 16-11-440. This section identifies the circumstances for which a person may invoke the protection of the Act.

Section 16-11-440(C) is broadly worded and, as recognized in *Douglas*, does not eliminate the inclusion of a residence as "another place." Specifically, subsection (C) states:

A person who is not engaged in an unlawful activity and *who is attacked in another place where he has a right to be, including, but not limited to, his place of business*, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

Id. § 16-11-440(C) (emphasis added). By using the language "but not limited to, his place of business," we find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction.

Contrary to the State's position, the elimination of the presumption of reasonable fear from subsection (C) as provided in (A) did not remove the Act's protection from one attacked in his or her home by a cohabitant. Rather, we believe the Legislature intended to authorize a cohabitant to invoke the protection of the Act but required this person to establish his or her reasonable fear of the attacker. We find the Legislature did so in order to differentiate between an intruder, who is presumably a violent stranger intent on harming the residents, versus a "household member"⁶ or a cotenant, who is presumably a welcome member of the home.

To interpret 16-11-440(C) as the State proposes would improperly limit the protection of the Act based on the geography of the incident and the identity of the assailant. Moreover, under the State's interpretation, one charged with a violent

⁶ Defining a "household member" as a spouse, former spouse, persons who have a child in common, or a male and female who are cohabiting or formerly have cohabited. S.C. Code Ann. § 16-25-10(3) (Supp. 2015).

crime against a cohabitant in their shared residence would *never* be entitled to immunity from prosecution despite the inclusion of section 16-11-440(C) in the Act.

Furthermore, we believe a decision that prohibits a person, who is attacked in his or her residence, from seeking immunity under the Act would not only be in direct contravention of the provisions of the Act but would undoubtedly infringe on the person's Second Amendment right to bear arms, which was specifically identified in section 16-11-420(C) as a foundational basis for the Act.⁷ *See District of Columbia v. Heller*, 554 U.S. 570, 628 (2008) ("[T]he inherent right of self-defense has been central to the Second Amendment right.").

Consequently, in order to effectuate the Legislature's intent to protect persons in South Carolina from violence being perpetrated upon them, particularly in their residence or "Castle," we conclude Jones was authorized to invoke the protection of the Act under section 16-11-440(C) because her residence qualified as "another place" that she had a right to be.

c. Pre-Act Castle Doctrine Cases

Notably, our conclusion is consistent with decisions from this Court that predate the Act, particularly the seminal Castle Doctrine case of *State v. Gordon*, 128 S.C. 422, 122 S.E. 501 (1924), which states:

Where a house, premises, or place of business is jointly occupied, used, and possessed by two persons, as by partners, joint tenants, or tenants in common, each joint occupant, being equally entitled to possession, *need not retreat when attacked while in the building or premises by the other joint occupant.*

Id. at 426, 122 S.E. at 502 (citation omitted) (emphasis added); *see Robinson v. State*, 308 S.C. 74, 417 S.E.2d 88 (1992) (discussing, in dicta, law of self-defense with respect to battered woman's syndrome and noting that a battered woman who acts while on her own premises has no duty to retreat); *State v. Grantham*, 224 S.C.

⁷ U.S. Const. amend. II ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."); S.C. Const. art. I, § 20 (providing in part that "[a] well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed").

41, 77 S.E.2d 291 (1953) (holding that husband who shot and killed his wife while she was advancing upon him with a knife in their home was not bound to retreat in order to invoke the benefit of self-defense); *but see State v. Stephenson*, 85 S.C. 247, 252, 67 S.E. 239, 241 (1910) ("Assuming that a husband attacked in his house by his wife, who was there by right, should retreat, such duty would be annulled if the wife joined with a trespasser in making the assault.").

d. Policy Rationale

Our decision is also aligned with the majority of jurisdictions in the United States that apply "Stand Your Ground" laws to protect victims of domestic violence who are, in general, cohabitants in a residence.

Whether a victim of domestic violence may invoke immunity from prosecution under the provisions of Stand Your Ground laws has been the subject of much debate amongst legal scholars. *See, e.g., Brandi L. Jackson, No Ground On Which to Stand: Revise Stand Your Ground Laws So Survivors of Domestic Violence are No Longer Incarcerated for Defending Their Lives*, 30 Berkeley J. Gender L. & Just. 154, 168-70 (2015) (noting that "[s]ome SYG jurisdictions have limited the application of the defense to only those situations where an intruder attacked the defendant, depriving domestic violence survivors of the SYG privilege when their attacker is an intimate partner or a cohabitant," but recognizing several jurisdictions have abolished "the distinction between an intruder and co-occupant when evaluating whether the defendant could invoke the SYG defense").

Appellate courts have responded by authorizing a person, who is charged with a violent crime against a cohabitant that occurs in their residence, to invoke the doctrine of self-defense and seek immunity from prosecution. *See, e.g., State v. White*, 819 N.W.2d 473 (Neb. Ct. App. 2012) (adopting majority rule that the privilege of non-retreat should apply equally regardless of whether the attacker is a cohabitant or an unlawful entrant); *State v. Effler*, 698 S.E.2d 547 (N.C. Ct. App. 2010) (recognizing that ordinarily a person is not required to retreat when assaulted in his dwelling or within the curtilage thereof, whether the assailant be an intruder or lawful occupant of the premises); *State v. Thomas*, 673 N.E.2d 1339, 1343 (Ohio 1997) ("The majority of jurisdictions in the United States have held that there is no duty to retreat when one is attacked in one's home, regardless of whether or not the assailant has a right to be in the home equal to that of the one being assailed."); *State v. Harden*, 679 S.E.2d 628, 640 (W.Va. 2009) (adopting majority position and holding that "an occupant who is, without provocation, attacked in his or her home, dwelling or place of temporary abode, by a co-

occupant who also has a lawful right to be upon the premises, may invoke the law of self-defense and in such circumstances use deadly force, without retreating, where the occupant reasonably believes, and does believe, that he or she is at imminent risk of death or serious bodily injury"). See Generally Linda A. Sharp, Annotation, *Homicide: duty to retreat where assailant and assailed share the same living quarters*, 67 A.L.R. 5th 637 (1999 & Supp. 2015) (collecting state cases involving the question of whether a person attacked in his or her living quarters, which the person shared or occupied with the assailant, is under a duty to retreat before using deadly force to repel the attack; recognizing majority view that there is no rational reason for a distinction between an intruder and a cohabitant when considering the policy for preserving human life in the domicile).⁸

2. Self-Defense

Having determined that subsection (C) is applicable to the facts of the instant case, the question becomes whether there is evidence to support the judge's ruling that Jones acted in self-defense.

⁸ In view of the ongoing conflict over the language of section 16-11-440(C), the Legislature may wish to clarify this provision. Further, we take this opportunity to invite the Legislature to evaluate the language of section 16-11-450, which states:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with the applicable law or the person using the deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A) (2015) (emphasis added). We believe the use of the language "or another applicable provision of law," which presumably includes the common law of self-defense, arguably entitles all defendants who claim self-defense to a pretrial determination of immunity under the Act. See *Singleton v. State*, 313 S.C. 75, 82, 437 S.E.2d 53, 58 (1993) ("The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment.").

"Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). Therefore, the defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence. *Id.* However, if section 16-11-440(A) applies, there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A).

In order to establish a case of self-defense, the defendant must demonstrate the following elements:

- First, the defendant must be without fault in bringing on the difficulty.
- Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.
- Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.
- Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Curry, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4 (quoting *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

Under this Court's deferential standard of review, we hold there is evidence to support the judge's findings as to each element of self-defense. First, there is nothing in the record to suggest that Jones was at fault in bringing on the difficulty as she attempted to leave the apartment before the first altercation, returned the disputed cell phone to Lee, and contacted her friends to pick her up from the apartment. Second, Jones claimed in her statement that she believed Lee was going to hit her again and that had she not acted as she did, then she would have been killed. Third, Jones's belief that she was in imminent danger of losing her life

or sustaining great bodily injury" was reasonable given Lee's actions toward her earlier in the evening, which included Lee punching Jones, dragging her by her hair, and forcing her back into the apartment. Further, Jones stated that as she was leaving the apartment Lee grabbed her, asked her if she was mad, and began shaking her while telling her "It's over. It's your fault." Finally, as previously discussed, Jones had no duty to retreat because she was attacked in her own home.

IV. Conclusion

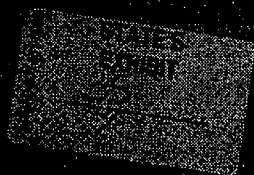
We conclude the circuit court judge properly granted Jones immunity from prosecution pursuant to section 16-11-440(C) because Jones's residence qualified as "another place" where she had the right to be, she met the other statutory requirements, and there is evidence to support the judge's ruling that Jones acted in self-defense.

Accordingly, we affirm the judge's order granting Jones immunity from prosecution.

AFFIRMED.

KITTREDGE, HEARN, JJ., and Acting Justice James E. Moore, concur.
PLEICONES, C.J., concurring in result only.

⁹ As defined by the Act, "great bodily injury" means "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 16-11-430(2) (2015).



9-10-14

These will be the last words
of me, Nick Russell Evangelista.
I should have taken my own life days
ago, and I will soon because I don't
deserve to live. I took the life of
a good and beautiful person. I was in
love with Becca Melton, or at least
I believed I was. I tried, I tried
so hard for so long to convince myself
I did love her. It's only been
the last few days where I found out
I didn't. Not that I never loved her
because I did, it's the events of
the last 2 years that likely led
to what I did 2 weeks ago today.
She didn't deserve to die, nobody does,
and for that I can not live any longer.
She never deserved to be hit, slapped or abused
either, no matter how many times she
initiated it, which was very often.
I still believe that she had a very severe
undertreated Mental illness. What it was
exactly is not for me to say, but I believe
it was deeply rooted in Bi Polar disease.
Initially the bad days or events occurred 2 wks
apart. In the end, after the death of her
mom, it was daily. I cracked, I don't
excuse myself, but I want to tell my side.
Many many people know "Becca's" story.
Nobody knows mine.

9-10-14

My Hope is to tell my side as best
 I can with what Time I have left.
 I am already the most hated person on
 Earth by her family and the biggest
 shame of mine. I'm sure of this
 Despite having no Contact with anyone
 Since Sept 26th

In the End there are 2 sides to
 every story. The truth is Somewhere
 inbetween. I say that not to
 defend my action, because it's indefensible
 I also don't say it to apologize to
 her family and friends for there are
 not enough words to ever temper ~~the~~ the
 loss they have suffered

I suppose it's mostly a confession, Not
 to God, because I don't believe in
 God and have not for years.

Also, it's for my family to know what
 I've done and where I have been
 for the last 2 yrs.

I'm certain that most of it will be
 difficult if not impossible for them to
 read. I don't care, It just must be told.

I love and Miss Beca and I'm
 forever ashamed and sorry for what
 I've done to all of you.

9-10-14

I met Becca online, on a free Dating Site. She was not ashamed to tell people how we met, I however was. Not because of her, but because I never thought I would have to resort to that. I never told anyone this, I lied because of my own Shame and Pride.

Ironically, It was Jessica who insisted I go online to find someone after she and I failed to rekindle our 1 1/2 yr relationship just a month earlier.

I reluctantly went online on a very lonely Tuesday night in Dec 2011. after 2 days of horrible responses, I was very near getting off of it.

How I came to this point, to get online and try to find "her" needs to be told, I believe my frame of mind at that point had something to do with what eventually broke me down.

In the end, It turns out that I suck at relationships. I found out that despite the story of why my marriage failed (because of me) I, after that, could never truly be happy with anyone, even a woman I truly fell head over heels with, Kim. I ruined us because I was already so fucked up in the head that I couldn't even see what I could have had with her.

9-11-14

My first "real" relationship after my divorce in 2003 was Jessica who I met at work in 2010. Most know that she was young enough to be my daughter. I truly loved her but knew I could not raise more children with her and in the end, I blew that relationship up to allow her to move on. It took until April of 2012 to really get over that. It happened fast and out of nowhere. Kim was stunning, smart, and to me perfect. I wasn't looking, she found me and knocked me off my feet. It's a rule I've always taken fast and hard but never harder than this. There was so much right about her and I was so happy. Why is this important? Because I now think me losing her hurt me deeply. Deeper and darker than even I realized. I lost her because I wouldn't allow things to just grow. I was so in love I became impatient. When I became weak with my impatience I got my feelings hurt and said horrible things to make her hurt. My pattern of "abuse" to this point had always been verbal only, never physical. Cathy and Jessica will attest to that.

9-11-14

I was more devastated by my loss of
Kip than any other loss in my life.
I have fought drug and alcohol
addiction my whole life and still do.
So after every event like this I would
just ramp up my drinking to a level
that would kill most people.
Once again, I ran to Jessica. She was
going through a breakup too and for
a short time we physically comforted
each other in a fucked up way.
Eventually I blew that up yet again
and there I was with my greatest
fear, I'm alone. I was alone for
many years after divorce and did ok I guess
but nearly 3 yrs of being with someone
and now being alone, scared me to death.
That is probably the one thing that drove
me to seek love online. Something I
vowed to never do.
For the first 2 days I was so frustrated
by the types of women who showed an
interest in me. It was just awful.
I told myself that in the next day
or two at the most, I would be done.
By Saturday, Megan and I were texting,
sending pics, and planning to meet soon.
Right away I thought that this would
and could be great. It wouldn't take
more than a few weeks to make me
start to question myself.

9-12-14

I suppose it was a combination of my fear of being alone and the energy Becca had that made me want to be with her every day.

I don't think we spent one night apart for the first 2 weeks.

She would stay at my place because she rented a room elsewhere.

She couldn't bring her dog through and I believe that triggered some of her early behaviour with me.

On more than one night in the first weeks, I woke up to find her gone. I would be around 2 or 3 am.

I would call her, leave voice mails and she wouldn't answer.

One of those days, I was on my way to work at 5:30 am when I called her.

She told me that she was on the beach with her dog and took all her Klonopin.

She wanted to die. At that point

Nothing bad had happened between us

so I didn't understand why she wanted this. I was shocked,

confused and very worried.

That night all was well, like it never happened.

She told me later that it wasn't the first time she tried suicide.

9-12-14

Based on my experiences with Jessica and Kim, I wanted very much for Becca to meet Cathy and my sons. Jessica could never be cool with my kids nor could they with her. Kim and her family were warming and we had such a good time together with the hope that the latter would happen again. I decided to invite Becca to have Christmas dinner with us. All seemed fine and well that night and I believed all would be fine from then on.

A few weeks later Becca and I went to a bar to watch my friends band. By simple chance I struck up an conversation with a woman who worked with Cathy at HHH Beachfront condos where she was a bartender shortly after we separated. As Becca and I talked, this lady began to tell us of Cathy's lesbian relationship with Jillian and others. At the same time I was shocked but more so, aware of why she left. It now started to make sense.

Because of that meeting Becca told me she had Cathy investigated and opened up a whole new chapter of a book that I thought was closed.

9-13-14

for a long time I was pissed
as hell at Becca for doing that.
But I realized the risk she took
to do it. I was either going to
understand it or leave her.

As hard as it was to live my
divorce over again, I was grateful
to know the truth. There will be many
of you who will deny this but just
if I hadn't heard it from a stranger
before Becca, I would still doubt it
to this day.

For this reason, coupled with the
fact that Cathy and Rich used the
shit out of my situation, I
decided to pursue the petition on
child support. I was led to
believe one thing all these years,
only to find out I'd been lied
to in so many ways.

It wasn't long after this that
the real trouble with Becca started to
develop. I believe that she saw
Cathy as the enemy and the
days of me hanging out with my
kids anytime were going to come
to an end. I didn't chase her
over them. I chose No Drama.

9-17-14

I haven't written a word in 4 days. I should have been dead days ago. If I had a gun, it would be so. Every other method seems unreliable.

I don't want to fail at this.

I don't want to live and I will find a way to do this.

But now I'm done writing.

There are a million other details to share about the hell I lived in the last 2 years. But here is the synopsis. For every time I retaliated because violence with my own, there was 4 or 5 more times I didn't.

I became something in the end that I couldn't control and despite medication and therapy, she couldn't control herself either. When she came home after the death of her mother, the violence on me was daily.

I left for 5 days to try and avoid it. I slept at work and a hotel then went home. It never changed.

It would start the same every day.

I would come home from work,

she would be sad, or some days

not even awake at 4pm.

9-17-14

We would have some drinks and she would change into anger. It wasn't always anger at me but since no one else was around eventually it would be directed at me.

I couldn't just leave, she would take the car keys, threaten my job, basically blackmail me. I wouldn't know day to day if I could even get to work. Sometimes I couldn't and I had to lie about it. She destroyed thousands of dollars of my personal property in her anger outbursts. I've never seen anything like it.

My \$800⁰⁰ social bill, my \$300⁰⁰ iMac computer, a \$600⁰⁰ iPhone and more. Just simply smashed them to where they were useless.

She was the one who threw all the food from the fridge on the walls of our home in Palmetto Dunes. I sat there for days. I refused to clean it.

9-17-14

In the last few months, she began to talk about getting Joe to live with us. She thought a lot about Joe and thought we could give him a better life than he was getting.

I wasn't sure, never was and was so afraid that he would be caught up in her insanity. I didn't want that to happen, but I kept that to myself.

The day she died, she began to talk about it once again. As always her behavior escalated until late at night she was out of control. Even after making love, she became so angry she took the car keys and told me to leave. It was just like so many fights before, except this time, I'd had enough. In a moment I don't really remember I finished it. I took what I could and ran. I haven't shed a tear since. I feel horrible, yes. I don't know why I don't cry for her. Perhaps my life was so bad that this could actually be better.

I don't know

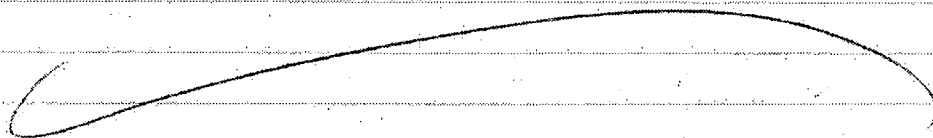
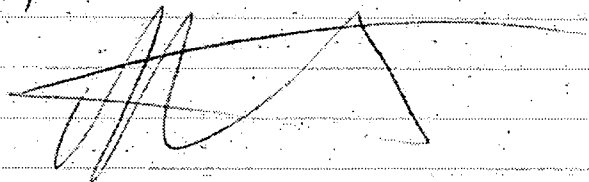
9-17-14

My Sons, My loves.

I am sorry, so sorry to leave you
with this shame.
You Don't Deserve it.

You are the Best Things I ever
did and I Love you Both forever.

Your father.



9-21-14

To my Sons,
Yes, sadly for me I'm still
living. I have just a few more
dollars to my whole name.
I'm far away from you on a day
I was supposed to take you
to, to your first NFL game.
It crushes my heart to know I
will never be able to do that.
I just had to write one more time
to tell you how much I really
love you both. Yes Nick I always
loved you and always will.
Sorry I couldn't be a man and
show you.

I miss you both so much and
have done the worst possible
thing to you.

I love you both
will all I have left.

Your Dad

Michaels - Return

Dicks - Return

CVS - Drop off person.

P.O. Box - ck mail

T.J. - Returns

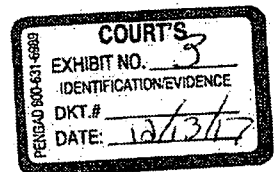
Radio Shack or Best buy for
my Computer work

Lowe's -

Belks -

Walmarts?

man - if I do
get bill do
change my
all



Michael's - X-mas lights (Another day)
Returns

CVS - ~~pick up~~ pers. (both

(Beaufort)
I-J - Returns

~~Leaves - Returns~~

~~Get paper plates, light bulbs~~

Belk's - Beaufort
Returns - cups

~~Walmart - Returns, members~~

~~O get misc. / stuff / stuff~~

~~Get bagging~~

Nicks office clothes

Lowes- buy;

- 1) Hammock / return old one
- 2) blower
- 3) ceiling Fans (3)

But they were tears of
 sadness, not caring anymore
 that life is over. Because I
 caused the love of my life
 to leave me.

I never feel safe
 alone, not even with
 Sugar. Only when you
 are here. What do I do?

I wish you wouldn't
 say we have to come
 to an end, because we
 don't Nick, so please
 don't do that to us.

I ~~know~~ ^{understand} the fact that
 you say your life will
 be better without me,
 that so hurts me,
 we don't have to be
 apart Nick. You
 know this.

me. Everyone makes mistakes
 in life, relationships and
 marriages. But I guess I
 don't get a chance at that.
 Although I've given you
 many. Oh well. I know you
 were over here. I understand,
 but very, very sad, worried
 about where I'm going, about
 my health, so scared.
 Oh gee then to top it off
 I get a phone call from
 Social Security that my
 disability went threw.
 I don't even care, no I even
 I'm the most honest you
 will ever have met or will
 meet in your. Money makes
 me happy if I have someone
 to share it with. So
 what's the point, All I did
 was cry when they called,
 they probably thought I
 was having an episode
 of some sort.

I guess I leave
this ~~Sat~~ the 30. Nice
of him huh? Oh well,
you will have another week
then off to your other
home. Enjoy the beach
for me And Sugar.

but hey I'm used to
that. No body
wants pets, so I
loose not only you
but my dog. Then
I guess its the shelter
for me, or, I may
just commit myself,
I'm so SAD as I
write this. I love
being HAPPY, you make
me HAPPY, sugar make
me HAPPY, and now
it's all gone. I will
just wait on you to
email on when you
want me out and I
will go. Bob never
did text me back, so

I will never be ok
without you, so
please don't leave
us. You are the best
man Nick, please
just come home

I've always believed
in you and always
will, you don't lie
to me, you don't
want anyone else, you
are perfect for me.
Please get back to
me somehow. I
guess I will leave
soon. I'm almost
packed up. My things
will be in a storage here,

Nick Baby you never had to leave.
 You left on your own, you didn't
 want me anymore, I never stop
 thinking of you, for any minute of my
 day. I want you for a lifetime
 please know that. You didn't
 cause me pain, I deserved it
 being so uncontrollable that's why
 I'm seeking more help at VIM.
 Something is bad wrong for me to treat
 any person like I have you. You are
 the most caring man I've ever
 been with, one who cares if I even
 get off, you tell me I look nice
 I smell nice. You what I do to
 our homes. You are a good man,
 and I will call your Attorney on
 Mon. And Apologize About my
 behavior. I was wrong, and I
 was just trying to get at you.
 I will fix it. But you took
 money I pay bills with And that
 was wrong, but I don't care if
 you give it back. I'm not a bad
 person. I just need to be
 loved and cared for And I
 sucked it all up. I'm sorry
 I wish you could forgive

Cooler, Brandon

20140904-281

From: mike malvasio [mikemoto8@aol.com]
Sent: Thursday, September 04, 2014 9:51 PM
To: Cooler, Brandon
Subject: Re: Trouble

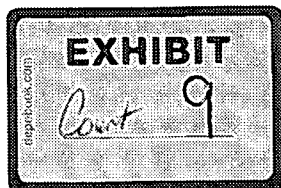
On Jul 5, 2013, at 2:23 AM, Nick Evangelista <nevangelista7@me.com> wrote:

> I am so sorry to even have to write this email to anyone. It seems the woman I love and have loved since December of 12, has some serious problems that may eventually end in harm to me or others. Tonight, after many many events that none of you are aware of, I had to press charges on Becca for assault and she is now headed for jail with a bail hearing in the morning Friday 7-5. I only tell you this because of the threats she has made not only on my life but the lives of my children. She claims that her father and her family have enough money and power to basically kill at will without any trace or evidence. Tonight, I told the police this and wrote it in a statement as she was taken to jail for yet another physical assault on me. Moto, I included you only because I named you in the statement as a witness to my whereabouts tonight. Sorry brother. As for the rest of you, tomorrow she will likely be out on bond. She has a 1000 yd restraining order from my property but she has never shown much in the way of restraint thus far. If it turns out that harm should come to me or my children in any way, her name is Rebecca Melton. DOB [REDACTED] Originally from Windsor Ontario Canada. Again, I am so ashamed and sorry that I should ever have to involve any of you but I truly believe that she will not go quietly.

> Nick

>

> Sent from my iPhone



597

WITNESSES

J. Adams- BCSO

ARREST WARRANT NUMBER

2014A0720300254

ACTION OF GRAND JURY

True Bill

Jennifer Snider
Foreperson of Grand Jury
Date:

DEC 18 2014

VERDICT

Guilty

AS Guilty
Foreperson of Petit Jury
Date: 12/14/17

INDICT

DOCKET NO. 2014GS0701787

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2014

THE STATE

vs.

Nick Russell Evangelista

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0701787

At a Court of General Sessions, convened on December 18, 2014 the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about August 26, 2014, with malice aforethought, express or implied, Nick Russell Evangelista did kill and murder Rebecca Melton and that she did die in Beaufort County as a proximate result thereof; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

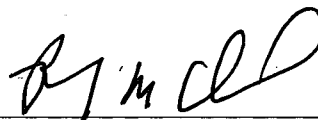
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of October, 2019.

RECEIVED
OCT 03 2019
SC Court of Appeals