

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

Appellate Case No. 2012-212800
Circuit Court Case No. 2006-GS-26-2998

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SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

LARRY CHESTNUT,

APPELLANT.

RECORD ON APPEAL

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1 A. He didn't have it pointed at anybody. He didn't want
2 to hit -- he didn't want to hurt Ty. The last thing Joey had
3 on his mind was I think I'm going to stab Ty right now to
4 give him -- he didn't want to hurt him. He didn't want to
5 hurt him. He didn't. He just wanted it to stop. There was
6 never no I want to hurt this man at all.

7 I really don't want to see my sister get hit in the face
8 or anybody else in this living room, and if you could please
9 not do that. You know, it was just don't let it escalate to
10 any more hitting anybody or I have to step in. I'm a
11 brother. You know what I'm saying, I'm a brother, and ain't
12 no more of this shit going to happen, excuse me, in here. I
13 can't do that.

14 Q. Now, Ma'am, let me ask you on another subject, the
15 Solicitor was asking you about your relationship with Ty and
16 whether or not he lived there and where his home was. Both
17 you and Ty referred to that apartment as your home, did you
18 not?

19 A. Yeah.

20 Q. All right. And he had -- his clothes were there in
21 your closet, hanging up there, and had them there, right, and
22 he spent most of his nights there at that place, did he not?

23 A. Yes sir.

24 Q. In fact, you told the police when your sister, Cindy,
25 came to the house that night and she knocked on the door, at

1 first you thought it was Ty, but then you thought, well, why
2 would Ty be knocking on the door instead of just using his
3 key to come on in?

4 A. He had the key that night because Joey was with him,
5 and they had the key to my brand new Volkswagen convertible,
6 and they had to come back in that house, because I might have
7 been asleep, and the kids were asleep, and Joey' keys were
8 there. Joey left his truck. Joey had to get his truck
9 because Joey didn't live with me.

10 Joey at some sort -- they had to have the key because
11 Joey had to come back in and get the key to his truck to
12 drive it back to my mama and daddy's house because Joey
13 didn't stay with me. Mo had to go home. Everybody -- Ty had
14 to come home to where I was staying that night, and whether
15 he stayed or didn't stay, he had to have a key, or Joey -- I
16 had to give the key to somebody to get in that house to get
17 keys for people to get their cars and leave once they came
18 there.

19 Now everybody there had to leave, you know what I'm
20 saying. Somebody -- they had to come in my house, and just
21 in case I was asleep, here, Ty, here's the key tonight. You
22 get the key. Y'all come back in. Joey can get his keys to
23 his truck in case I'm asleep, whether I'm awake or not awake.

24 **MR. WILSON:** I don't have any questions. Ma'am, thank
25 you so much.

JURY OUT/ON RECORD

1 **THE COURT:** Mr. Long?

2 **MR. LONG:** No sir.

3 **THE COURT:** All right, Ma'am. You may step down.

4 **MS. LIVESAY:** Your Honor, I have one more question.

5 **THE COURT:** I appreciate that. We've had Direct, and
6 Cross, and Redirect, and Recross. We're done.

7 You may step down, Ma'am.

8 All right, ladies and gentlemen, we're going to stop for
9 lunch at this point in time. I want you to be back in your
10 jury room at -- by two o'clock, please. Be back in your jury
11 room by two o'clock.

12 Everyone else remain seated while the jury retires,
13 please.

14 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
15 **JURY.)**

16 **THE COURT:** All right. Solicitor, anything else at
17 this point in time?

18 **MS. LIVESAY:** No sir.

19 **THE COURT:** Mr. Wilson?

20 **MR. WILSON:** Nothing, Your Honor.

21 **THE COURT:** And Mr. Long?

22 **MR. LONG:** No sir.

23 **THE COURT:** All right. Very good. Thank you very
24 much. Two o'clock.

25 **MR. WILSON:** Thank you.

JURY OUT/ON RECORD/JURY IN
CHAPELL E - DIRECT BY LIVESAY

1 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND
2 OUTSIDE THE PRESENCE OF THE JURY.)

3 THE COURT: All right. Solicitor, is the State ready
4 for the jury?

5 MS. LIVESAY: Yes sir.

6 THE COURT: Mr. Wilson?

7 MR. WILSON: Judge, we have a question that we'd like
8 to ask before the jury ---

9 THE COURT: Okay.

10 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

11 THE COURT: All right. Ask the jury to come in, please
12 Ma'am.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY.)

15 THE COURT: All right.

16 Solicitor, your next witness, please Ma'am.

17 MS. LIVESAY: Thank you, Your Honor.

18 At this time, the State calls Chapell E to the
19 stand.

20 THE COURT: Please come around to be sworn, Ma'am,
21 right up here, please.

22 CHAPELL E , being first duly sworn, testifies as
23 follows:

24 THE COURT: You may proceed, Solicitor.

25 MS. LIVESAY: Thank you, Your Honor.

1 **DIRECT-EXAMINATION BY MS. LIVESAY:**

2 Q. How old are you, Chapell?

3 A. Fifteen.

4 Q. Okay. And ---

5 **THE COURT:** I'm sorry. You said fifteen?

6 A. Yes sir.

7 **THE COURT:** Thank you.

8 Q. And where are you currently in school now?

9 A. Socastee High School.

10 Q. And what grade are you in?

11 A. Tenth.

12 Q. And are you nervous today, being up there?

13 A. Yeah.

14 Q. And do you normally smile or laugh when you get
15 nervous?

16 A. Yeah.

17 Q. Okay. Where -- who do you currently live with?

18 A. I live with my dad, but I stay with my sister during
19 the summer.

20 Q. And do y'all live here in Myrtle Beach?

21 A. Yes Ma'am.

22 Q. Have you always lived in Myrtle Beach?

23 A. Yes.

24 Q. Now, do you know the different between the truth and a
25 lie?

CHAPELL E - DIRECT BY LIVESAY

1 A. Yeah.

2 Q. Okay. And if I told you this shirt was black, is that
3 true?

4 A. No. That's false.

5 Q. Do you know why we're here today?

6 A. Yes.

7 Q. Okay. And were you at -- Christie is -- Christie is
8 who to you?

9 A. My aunt.

10 Q. Okay. Christie Hucks is your aunt?

11 A. Uh huh (**indicating positive**).

12 Q. And who ---

13 **THE COURT:** You need to say yes or ---

14 A. Yes. Sorry.

15 **THE COURT:** Thank you.

16 Q. And who is Cindy Evans?

17 A. She's my mom.

18 Q. Okay. Do you remember being over at Christie's house
19 the night of May 21st, 2006?

20 A. Yes.

21 Q. Okay. And were you over there spending the night?

22 A. Yes.

23 Q. Okay. And did you have a friend over there spending
24 the night as well?

25 A. Uh huh (**indicating positive**), yes.

1 Q. And who was that?

2 A. That's Larry's daughter, Tynesha.

3 Q. Okay. And do you know Larry Chestnut?

4 A. Only by Christie, but I know him, yeah -- yes.

5 Q. And do you know Kendrick Chestnut?

6 A. No. I think that was the first time that I met him

7 was -- I can't really remember, but I'm pretty sure that's

8 the first time I met him.

9 Q. So had you been over there that day for that birthday

10 party?

11 A. Yes Ma'am.

12 Q. And do you remember seeing Kendrick and Larry over

13 there that night?

14 A. Yes Ma'am.

15 Q. Okay. And so you were over there just spending the

16 night?

17 A. Yes.

18 Q. Had you ever been in that apartment before?

19 A. Uh huh **(indicating positive)**, yes.

20 Q. Okay. And what were you and Tynesha doing that night?

21 A. We were -- well, they had a party, so we were like

22 swimming in the pool and like eating, because they had a

23 cookout, and then we went like later on around six or so, we

24 went inside and watched some T.V., and I think I passed out

25 around like eight or nine, or something like that.

1 Q. And about how old were you then?

2 A. Eight.

3 Q. Okay. And do you remember any commotion going on in
4 that house that night when you were there?

5 A. Like later on, yeah.

6 Q. Okay. What -- what do you remember, anything going on
7 in the house? Did you hear any yelling or see anything?

8 A. No. When I was like sleeping, I got woken up by glass
9 breaking, and then like a lot of yelling and stuff, and then
10 like -- I like closed my eyes and like -- just -- then I like
11 -- I can't -- I mean, I remember, but there was just like
12 Joey and Tyler both in the living room and I like closed my
13 eyes again, and like I just remember Joey saying like don't
14 touch my sisters, and then I like closed my eyes again, and I
15 just heard Ty yell like or what, and then like -- I like
16 opened my eyes again, and like Joey was on the ground.

17 Q. Okay. Where were you sleeping at or where were you
18 when you saw or heard that?

19 A. I was on the couch in the living room.

20 Q. And it was downstairs?

21 A. Downstairs.

22 Q. Okay. And then what happened? What do you remember
23 happening next?

24 A. After that, Christie came in and told us to -- she put
25 us upstairs in her room, in her bedroom.

1 Q. And while you were upstairs, did you remember hearing
2 anything?

3 A. No.

4 Q. Okay. And then what do you remember happening once
5 you were upstairs?

6 A. When we were upstairs, me and Tynesha were just like
7 there, like seriously like scared to death, and then we heard
8 Ty, Larry Chestnut, yell, and he was like screaming Tynesha's
9 name, and then I just didn't want to stay by myself, so I
10 went with Larry Chestnut and his daughter.

11 Q. Okay. But he didn't force you to go with him?

12 A. No, not at all.

13 Q. Because you were scared?

14 A. Yeah, and I didn't want to be by myself.

15 Q. Okay. And when Tynesha got up and went, you just kind
16 of got up and went, too?

17 A. Yeah.

18 Q. Okay. And so did Larry Chestnut come up there and get
19 y'all or get Tynesha?

20 A. He -- he didn't like really come up the stairs, but he
21 was like half-way up there.

22 Q. Okay. And then did you follow suit right downstairs?

23 A. Yeah.

24 Q. Okay. What happened then?

25 A. Then we went into -- I think it was Mo's car, I mean

CHAPELL I - DIRECT BY LIVESAY

1 Kendrick's car exactly, but he was the one that was driving,
2 so I suppose it was his car, and we went into his car and
3 went to ---

4 Q. Who all was in that car?

5 A. It was me, Tynesha, Larry, and Kendrick Chestnut.

6 Q. Okay. And who was driving the car?

7 A. Kendrick.

8 Q. Okay. Who was in the front seat?

9 A. The passenger?

10 Q. Uh huh **(indicating positive)**.

11 A. Larry.

12 Q. Okay. And who was in the back seat?

13 A. It was Tynesha and me.

14 Q. And then what happened once y'all got in the car?

15 A. Like Kendrick kept on yelling and saying like MF over
16 and over, that he was going to go back and like kill someone,
17 and then I -- I -- he just kept on saying it over, and over,
18 and like over.

19 Q. He kept on saying ---

20 A. I'm going to go back. I'm not scared. I'm going to
21 go kill them, MF, MF, I'm going to go kill them, MF, MF. He
22 didn't say anyone's name, but he just said he was going to go
23 back and kill them, but it wasn't just one person. It was
24 them.

25 Q. Okay. And what was Larry Chestnut doing in the car?

CHAPELL E - DIRECT BY LIVESAY

1 A. Larry was in the passenger seat. He wasn't really
2 doing anything besides holding -- like he was injured. He
3 was just holding his injury and just not even talking. He
4 was just -- I mean, he might have said something like, you
5 know, oh, my gosh, or something, but he wasn't like really
6 saying anything like ---

7 Q. Okay. So he was just in the car kind of like this
8 (indicating)?

9 A. Yeah.

10 Q. Never really saying a whole lot?

11 A. Uh uh **(indicating negative)**.

12 Q. Did you know who they were talking about or who
13 Kendrick Chestnut was talking about?

14 A. I didn't know exactly.

15 Q. And where did y'all go in that car?

16 A. We went to Larry's parents' house.

17 Q. Okay. And what happened once you got to that house?

18 A. We went to the house and Larry's mom was there, and
19 she brought us in and give us like some water and something
20 to eat and then took us to a bedroom, and we sat there.

21 Q. You weren't scared while you were at that house, were
22 you?

23 A. No.

24 Q. Okay. So they dropped you off at that house?

25 A. Uh huh **(indicating positive)**, yeah.

1 Q. Okay. Now, Joey Hucks, the victim in this case, did
2 you know him?

3 A. Yeah; yeah.

4 Q. How did you know Joey?

5 A. He was my uncle, but he seemed more like almost a
6 cousin. I felt like we were -- like he wasn't like an uncle
7 because I feel like adults are like uncles, but he was more
8 like a cousin because he did fun stuff with us.

9 Q. Because he was a younger guy?

10 A. Yeah.

11 Q. Okay. So technically he was your uncle?

12 A. Yes.

13 Q. Okay. Now, describe at the time what Larry Chestnut
14 looked like. Did he look like he looks today?

15 A. What was that?

16 Q. How did Larry Chestnut look when all this was going
17 on, do you remember?

18 A. Not -- not really.

19 Q. Okay. Do you remember what Joey Hucks looked like?
20 Was he a big guy, small guy, tall guy?

21 A. He was like a tall, bigger guy, ---

22 Q. Okay.

23 A. --- clean-cut, like nice.

24 Q. Okay. Would you say he was a muscular guy?

25 A. Not really.

1 Q. So he was a big guy, but kind of overweight, not
2 really muscular?

3 A. Yeah.

4 Q. Okay. Now, I know you're nervous, and I just want to
5 go back and ask you a couple more questions, okay? When you
6 were in the house, you said you heard glass break and that
7 kind of woke you up. When you opened your eyes, who did you
8 see in the living room with you?

9 A. It was -- it was Joey, Ty, and Christie, but like I
10 couldn't really see her because she was not like in the
11 corner, but she was like beside him, but since she's like so
12 kind of tall, I just didn't really recognize her.

13 **THE COURT:** You need to speak up.

14 A. I didn't recognize her too much. I don't know.

15 Q. That's okay. And then what did you see happen while
16 your eyes were open?

17 A. I saw -- it -- like him -- it was Joey standing there,
18 and then Ty, and they were just like standing there. They
19 didn't look -- I don't -- like Joey looked kind of scared,
20 but then I just couldn't -- I don't know. I can't really --
21 sorry, because I don't know.

22 Q. Okay. And then who took you upstairs?

23 A. It was Christie.

24 **(PHOTO OF JOEY HUCKS MARKED AS STATE'S EXHIBIT NUMBER 27**
25 **FOR IDENTIFICATION ONLY.)**

1 **MS. LIVESAY:** Your Honor, may I approach the witness?

2 **THE COURT:** Yes Ma'am.

3 Q. Chapell, I'm showing you what's been marked as
4 State's Exhibit Number 27. Do you know who that is in that
5 picture?

6 A. That is Joey Hucks.

7 Q. Okay. And is that what he looked like?

8 A. Yes Ma'am.

9 Q. Is that what he looked like the night that all this
10 happened?

11 A. Yes Ma'am.

12 Q. Do you recognize who else is in that picture?

13 A. His mom, Becky.

14 Q. And is that basically what she looked like at that
15 time?

16 A. Yes Ma'am.

17 **MS. LIVESAY:** Your Honor, at this time the State wishes
18 to put into evidence State's Exhibit Number 27 and publish it
19 to the jury.

20 **THE COURT:** Any objection, Mr. Wilson?

21 **MR. WILSON:** Can I have one second, please, Your Honor?

22 **THE COURT:** Yes sir.

23 **MR. WILSON:** Your Honor, I object. One, I don't think
24 that any foundation for when this picture was taken, whether
25 it's ten years ago, or five years ago, or ---

1 **THE COURT:** Could I see the picture, please?

2 **MS. LIVESAY:** Certainly, Your Honor.

3 **THE COURT:** Okay.

4 All right, Solicitor, if you would, why don't you lay a
5 foundation.

6 **MR. LONG:** Your Honor, if I might before she gets into
7 laying a foundation, whether she lays a foundation or not, I
8 don't see the relevance in it. I would make an argument that
9 it's totally irrelevant, has nothing to do with the facts in
10 this case.

11 **THE COURT:** I do believe it's relevant if a proper
12 foundation is laid. It's close in time to the time of the
13 incident because the ---

14 **MS. LIVESAY:** Thank you, Your Honor.

15 **THE COURT:** --- physical appearance of everyone
16 involved has become an issue by the State and the Defense.

17 **MS. LIVESAY:** Thank you.

18 Q. Chapell, you said that you didn't really think of Joey
19 as an uncle, but a cousin, is that right?

20 A. Yes Ma'am.

21 Q. Because he was a younger guy?

22 A. Yes Ma'am.

23 Q. Was he a teenager, still in his teenage years, do you
24 know?

25 A. Yes Ma'am.

1 Q. Okay. And he wasn't -- did you notice -- was he
2 living on his own at that time or still living with his
3 parents?

4 A. He was still living with his parents.

5 Q. And you were his -- technically his niece, is that
6 correct?

7 A. Yes Ma'am.

8 Q. Okay. So did you see him often at family functions?

9 A. Yes Ma'am.

10 Q. So you saw him a lot?

11 A. Yes.

12 Q. Okay. And you saw him the night that this happened?

13 A. Yes Ma'am.

14 Q. Okay. Now, I want you to look at this picture. Tell
15 me who is in this picture.

16 A. It's Becky, his mom, and then Joey Hucks.

17 Q. Okay. And you recognize Joey Hucks? That's your --
18 technically your uncle?

19 A. Yes Ma'am.

20 Q. Okay. And you can see his physical appearance in this
21 picture, is that right?

22 A. Yes Ma'am.

23 Q. Okay. And is this how he looked as far as physical
24 appearance, weight, on the night that all of this happened?

25 A. Yes Ma'am.

1 **MS. LIVESAY:** Your Honor, at this time the State wishes
2 to move it into evidence and publish it to the jury.

3 **THE COURT:** Further objection, Mr. Wilson?

4 **MR. WILSON:** Yes sir. Your Honor, my objection is
5 still the same, but the issue is how old is the picture. Is
6 it when he was in fifth grade or is it something that
7 happened a week ago, a week before this incident? That's
8 what I'm concerned about, and there's nothing at this point
9 which suggests that this was a recent photograph.

10 **MS. LIVESAY:** Your Honor, the ---

11 **THE COURT:** Well, -- go ahead.

12 **MS. LIVESAY:** That's okay.

13 **THE COURT:** The testimony of the witness is that the
14 physical appearance of the person in the picture is the same
15 as the night of the incident. Whether or not the -- there's
16 a date on the photograph then does not affect its
17 admissibility.

18 I'm going to admit it over the objection of the
19 Defendant -- I keep wanting to use people's nicknames; I
20 don't want to do that -- Mr. Larry Chestnut, and as to the
21 Defendant, Kendrick Chestnut, Mr. Long, a further
22 objection?

23 **MR. LONG:** No, Your Honor. Just again to follow up
24 that I find it irrelevant. I know that the State has brought
25 into question some appearance of people, but the Defense

1 certainly hasn't.

2 **THE COURT:** In cross-examination, both Defendants have
3 talked about that, and it's certainly been made an issue as
4 to the physical appearance of the ---

5 **MS. LIVESAY:** Thank you, Your Honor.

6 **(PHOTO OF JOEY HUCKS ADMITTED INTO EVIDENCE AS STATE'S**
7 **EXHIBIT NUMBER 27.)**

8 Q. And you testified earlier that he was a bigger guy, is
9 that right?

10 A. Yes Ma'am.

11 Q. And in this picture, can you tell he's a bigger guy?

12 A. Yes Ma'am.

13 Q. Okay. When you looked at his arm here, as you see,
14 he's kind of a bigger guy?

15 A. Yes.

16 Q. Would you call it muscular, though, in the picture?

17 A. No, not really.

18 Q. And is this normally how he dressed?

19 A. Yeah, like in polos and khakis, and tucked in, a belt,
20 but his ---

21 Q. Tucked in how?

22 A. Like he always tucked in his shirt and had a belt
23 because I could like -- he always had like a brown belt on,
24 like I -- I don't know -- I remember it like always, every
25 time I saw him.

CHAPELL E - DIRECT BY LIVESAY
 CROSS BY WILSON

1 Q. So he pretty much even dressed kind of the same every
2 day, khakis and polos, and even tucked his shirt in?

3 A. Yes Ma'am.

4 **MS. LIVESAY:** No further questions for this witness,
5 Your Honor.

6 **THE COURT:** Cross-examination, Mr. Wilson.

7 **MR. WILSON:** Thank you very much.

8 **CROSS-EXAMINATION BY MR. WILSON:**

9 Q. Ms. F , when all of this happened, you were eight
10 years old, ---

11 A. Yes sir.

12 Q. --- is that correct?

13 And your mother is Cindy?

14 A. Yes sir.

15 Q. But you don't live with your mother now?

16 A. Like my parents got separated, but I was living with
17 my mother at the time, and now my dad has an apartment and I
18 have some clothes like over there and that's where I usually
19 stayed now.

20 Q. And that's what I was asking you.

21 A. I stayed with my mom then, and I didn't really see my
22 dad.

23 Q. That's what I was asking. You don't live with your
24 mom now? You live with your dad?

25 A. Well, they're my parents, but I like -- I've been

1 staying with my sister during the summer because it's closer
2 to my job.

3 Q. Well, did you tell the Solicitor that you lived with
4 your dad?

5 A. Yeah, but I like live with my dad, but for the summer,
6 I've been staying with my sister.

7 Q. Okay. Well, is your normal, regular home ---

8 A. At my dad's, yes.

9 Q. My question is your normal home where you live, when
10 you identify as -- when you tell the school that's in your
11 information, is that with your dad?

12 A. Yes, but I don't use that address, but if -- I use --
13 we have one house, but we only use that because I know that
14 address by heart, but I don't know my dad's address, but I
15 stay with him. Like all my clothes are there, my bed is
16 there, my furniture, my T.V., my ---

17 Q. When did you go to live with your dad? You were
18 living with your mom when this occurred. When did you go
19 live with your dad?

20 **MS. LIVESAY:** Your Honor, I have to object to the
21 relevance of this question.

22 **THE COURT:** I'm going to allow this question. We'll
23 see where it goes at this point in time.

24 **MR. WILSON:** Thank you very much.

25 **THE COURT:** Go ahead.

1 Q. When did you go live with your dad?

2 A. Seventh grade.

3 Q. Seventh grade?

4 A. I don't ---

5 Q. And you lived -- since seventh grade, you've lived
6 with your dad continuously since seventh grade?

7 A. Yes sir.

8 Q. All right. And why did you go live with your dad?

9 **MS. LIVESAY:** Your Honor, I have to object as to where
10 the relevance is as to her domestic situation in this
11 courtroom on this particular ---

12 **THE COURT:** All right. Mr. Wilson, ---

13 **MR. WILSON:** Yes sir.

14 **THE COURT:** Come up, please.

15 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

16 Q. Now, you said you started living with your dad when
17 you were in seventh grade, or eighth grade?

18 A. Seventh.

19 Q. Now, did you go visit with your mom?

20 A. Yes.

21 Q. All right. And when you were visiting with your mom
22 over the past six, seven years, did you and your mom ever
23 discuss what happened that night?

24 A. I didn't really like discussing it. It's not a topic
25 I like discussing about.

1 Q. But my question was, was in the six years since this
2 happened, ---

3 A. Yes, we have.

4 Q. You have. All right. How many times would you think
5 you and your mom discussed this before you came here today,
6 over the years?

7 A. Two times.

8 Q. Two times?

9 A. Not even in details or anything. I didn't like
10 discussing it. I'd just quit.

11 Q. Okay. Did your mom bring you to meet with the
12 Solicitor to discuss it?

13 A. My sister did.

14 Q. Your sister brought you to the Solicitor's Office to
15 discuss ---

16 A. But my mom was in the car with us because she decided
17 to ride with us also.

18 Q. Now, you were eight years old and you were asleep on
19 the couch?

20 A. Yes. Yeah.

21 Q. And the police talked with you the night that this
22 incident occurred, did they not?

23 A. I don't remember talking to the police, but I remember
24 talking to like a detective lady at the hospital ---

25 Q. Okay.

1 A. --- if that's the same thing.

2 Q. Yeah, okay. So you remember talking to somebody in
3 law enforcement that night, is that correct?

4 A. Yes.

5 Q. Okay. And do you remember telling them at that time
6 that you remember being -- the only thing you remembered
7 was being in the car going to Mr. Larry Chestnut, Sr.'s
8 house?

9 A. I don't remember saying that.

10 Q. Well, what -- tell me what you told them that night,
11 the police.

12 A. Well, she came up and she was like how were you, and
13 what my name was, and she asked me like what happened or --
14 and like -- she just asked me stuff I don't know. (Witness
15 is crying.)

16 Q. Ma'am, just let me -- I'm going to be brief. Just let
17 me ask you a couple more things and I'll be through. Did you
18 ever see while you were in the house that night any fight
19 between Larry Chestnut, Ty, and Joey?

20 A. I didn't see like -- I mean, I knew something like --
21 apparently Joey fell to the ground. I knew Ty must have hit
22 him. I just knew something happened. I just didn't see it
23 completely.

24 Q. Did I understand you to tell the Solicitor that you
25 were asleep, that you woke up when you heard a noise, and

1 that you thought you saw Christie, Joey, and Ty in the living
2 room area?

3 A. What was that?

4 Q. Did you tell the Solicitor a minute ago that you were
5 asleep on the couch, that you heard a noise that woke you up,
6 something breaking which woke you up, and that when you woke
7 up you saw Ty, Christie, and Joey in the living room area?

8 A. It wasn't in the -- it was just like I was so sad I
9 just didn't know, and then once I heard somebody else -- like
10 I heard them come into the living room, and I decided like
11 okay, maybe something is fine. I just wanted to see.

12 Because the glass broke, I didn't know if somebody
13 dropped something accidentally, so I just opened my eyes to
14 see if it was okay, and then it was just like yelling, and
15 then I closed my eyes again, and then I heard Joey say like
16 don't touch my sisters, and I was like -- I like opened my
17 eyes again, and it was just like or what, and I just closed
18 my eyes, and then Joey was on the ground.

19 Q. And my question simply is this: Did you see any
20 contact between Joey and ---

21 A. I didn't see any contact.

22 Q. Okay. And then Christie took you and Tynesha
23 upstairs?

24 A. Yeah.

25 Q. And do you recall which room upstairs y'all were in?

1 A. It was Christie's bedroom.

2 Q. Okay. And other than that, you saw nothing else, is
3 that correct, until Larry Chestnut came up the stairs calling
4 for Tynesha to leave?

5 A. Yeah. I didn't see anything else.

6 Q. All right. And was there anybody else in the house at
7 that point when you woke up?

8 A. No, I didn't see anyone. Well, what was the question?
9 Sorry, I just got confused.

10 Q. What I was asking, was there anyone else in the house
11 when you woke up?

12 A. I didn't see anyone else.

13 Q. All right. Now, was your friend, Tynesha, was she
14 awake also?

15 A. I -- I don't remember seeing her awake. The couch,
16 like it was just kind of like -- like comfy, when you know
17 how like you sink into them, like you don't really see the
18 other person. I don't know. I just think I said I didn't
19 see above the blanket or something to see if somebody else
20 was awake.

21 Q. Okay. So when you woke up, you were not aware as to
22 whether or not Tynesha was also awake at that time?

23 A. No, I couldn't see if she was awake.

24 Q. How long was it after you said you opened your eyes
25 and you saw Christie, and Joey, and Ty in the living room

1 that Christie took you and Tynesha upstairs?

2 A. What was that?

3 Q. How long, what period of time, between the time you
4 said you opened your eyes and you saw Christie, and Joey, and
5 Ty in the living room before Christie took you and Tynesha up
6 the stairs?

7 A. I -- oh, just like I said it happened, like she
8 immediately came and took us upstairs, like as soon as -- as
9 soon as it happened.

10 Q. Do you remember what Joey was wearing that night?

11 A. I felt like -- it was like -- was it -- it was a polo
12 shirt and khakis, but I just can't tell you exactly. I felt
13 like it was almost stripes, but I just don't know exactly.
14 Maybe it was. I don't know.

15 Q. And is that because you don't really remember?

16 A. Yeah, I don't remember what he had on.

17 Q. And is there a lot about that night that you don't
18 remember, being eight years old?

19 A. No, I remember, and I just don't remember -- like I
20 don't remember clothes. I just remember stuff that happened,
21 not really minor de- -- like the stuff that didn't really
22 matter, I felt it didn't matter.

23 Q. And when y'all got in the car with Ty, and as I
24 understand it, you went voluntarily? Nobody ---

25 A. No one forced me, no.

1 Q. You went because your friend, Tynesha, was going, and
2 you would have been left there alone?

3 A. Yeah.

4 Q. So you came downstairs, got in the car with them, and
5 they took you directly to Larry Sr.'s house?

6 A. Yes sir.

7 Q. Did anybody bother you, harm you, curse you, hit you,
8 anything untowards to you in any way whatsoever?

9 A. No.

10 Q. When you got to the home of Mr. Chestnut, were they
11 anything to you but kind, and considerate, and helpful?

12 A. Yeah.

13 Q. Yeah, they were or ---

14 A. I mean, Ms. Sandra was, but -- and I just -- Ty didn't
15 come inside the house, so I don't know how they would have
16 acted, so I don't know.

17 Q. All right. Tell me about that. When y'all were
18 riding in the car that night going to Mr. Chestnut, Sr.'s
19 home, you said that Ty -- the entire time that he's in the
20 car is holding his wound, is that correct?

21 A. Yes.

22 Q. Was there ever a period when you were in his presence
23 when he was not holding the wound?

24 A. What?

25 Q. Was there ever a period of time when you were in the

1 car riding with Ty and Mr. Kendrick Chestnut and Tynesha when
2 Ty was not holding his chest where the wound was?

3 A. I felt like he was holding it, but I just don't know
4 if he was holding it the whole entire time or he didn't stop
5 holding it.

6 Q. Did you see what kind of covering he had on it,
7 whether it was a towel, or a bandage, or a rug, or could you
8 see what he was pressing to his chest or anything?

9 A. I think he had something. I think he had like
10 something, a cloth maybe that was white or something. I
11 don't know.

12 Q. Do you recall whether or not he was wearing a shirt
13 that night when you got in the car and y'all were going ---

14 A. He didn't have a shirt on.

15 Q. He did not have a shirt on?

16 A. I'm pretty sure of that.

17 Q. I'm sorry?

18 A. I'm -- I'm not exactly sure, but I just don't remember
19 him having a shirt on.

20 Q. And you said to the Solicitor that -- and I'm just
21 asking so I'm clear, that you heard Ty yell, calling
22 Tynesha's name, and he was half-way up the stairs?

23 A. Yeah, he was calling her name and half-way up those
24 stairs, yes.

25 Q. Did -- did Larry, that is Ty Chestnut, ever say

1 anything while they were in the car riding from Christie's
2 house and Ty's house to Mr. Sr's -- Chestnut's house? Did he
3 ever say anything that you can recall?

4 A. No.

5 Q. Now, you said at one point that when you told the
6 Solicitor, that Joey looked kind of scared as he was standing
7 there. Is that what you said?

8 A. Yes.

9 Q. Now, when -- when you saw him, where was he standing?
10 Where was Joey standing?

11 A. By the stairs, like his back to the stairs.

12 Q. All right. His back to the stairs?

13 A. Yeah. I saw Joey, but I could only see Ty's back.
14 Like I was on the couch, so it was just kind of like he was
15 angled.

16 Q. Okay. And which side were you looking at him from,
17 that is Joey, when you were on the couch?

18 A. I could see his right hand.

19 Q. You could see his right hand?

20 A. His right side.

21 Q. His right side, okay. And did you see a knife in his
22 right hand?

23 A. No.

24 Q. Did you see any knife or anything in Ty's hand?

25 A. I did not see anything.

1 **MR. WILSON:** If the Court could give me one second,
2 Your Honor.

3 **THE COURT:** Yes sir.

4 **MR. WILSON:** I don't think I have any other questions.
5 Thank you Ma'am.

6 **THE COURT:** Mr. Long.

7 **MR. LONG:** Thank you, Your Honor.

8 **CROSS-EXAMINATION BY MR. LONG:**

9 Q. Ms. E , you doing okay?

10 A. Yes.

11 Q. I won't take long. You understand you've been called
12 as a witness here by the Prosecutor, so we have to ask you
13 some questions involved in this, you understand that?

14 A. Yes.

15 Q. Okay. You remember right after this happened being at
16 the hospital and talking to a lady?

17 A. Yes.

18 Q. And do you remember that lady detective being the nice
19 lady seated right over here in the dark suit?

20 A. Yes.

21 Q. And at the time, her name was Salena Mann, you
22 remember that?

23 A. I didn't remember her name.

24 Q. But that's her?

25 A. Yes.

1 Q. All right. And you remember her coming up to you --
2 how long after this whole thing happened did she come talk
3 with you?

4 A. Well, they took Christie, my mom, and all them in a
5 room, and they kept me separate, so she came -- she came so I
6 didn't have to be by myself.

7 Q. So how long, was my question, how long after all of
8 this happened was it that she was talking to you?

9 A. Like how long did she talk to me for?

10 Q. How long after this thing happened. You were on the
11 couch, you went upstairs, you got in the car, and you rode
12 to Mr. Larry, Sr.'s house, right? From that point until the
13 point where she was talking to you, how long was that?

14 A. I -- I don't -- I don't know. It could have -- I
15 don't know how long we sat in the hospital for exactly.

16 Q. I can help you. Was it the same night?

17 A. Yeah, it was the same, like the same ---

18 Q. Okay.

19 A. Well, it wasn't the same night, but it was the same
20 day, yeah.

21 Q. The same twenty-four hours?

22 A. Yeah.

23 Q. Right. Okay. It wasn't later in the week?

24 A. No.

25 Q. Or it wasn't last week?

1 A. No. It was when they went into the hospital, and
2 everyone was at the hospital with me right then.

3 Q. Okay. How did you get to the hospital? You were at
4 Mr. Larry, Sr.'s house. Did somebody come get you and take
5 you to the hospital?

6 A. I remember Christie and my mom came and got me, and we
7 went straight to the hospital.

8 Q. Okay. Do you remember what they said in the car on
9 the ride to the hospital?

10 A. I don't remember what they said in the car.

11 Q. Okay.

12 A. They were just like -- just talking in -- like they
13 didn't say exactly what happened, but they were just like,
14 oh, my gosh, I can't believe this happened, and I was just
15 completely ---

16 Q. Okay. And when you -- that night or morning at the
17 hospital when you sat down with Salena Mann, was there
18 anybody else in the room or just the two of you?

19 A. Yeah, it was just me and her.

20 Q. And do you remember that she had a recorder that she
21 pulled out ---

22 A. Yeah.

23 Q. --- and she told you she was going to record it?

24 A. Yes.

25 Q. Have you listened to that recording lately?

- 1 A. I haven't -- I haven't.
- 2 Q. You've never heard that recording?
- 3 A. No.
- 4 Q. No?
- 5 A. I don't think so, no.
- 6 Q. And you said your sister brought you to the
- 7 Solicitor's Office when?
- 8 A. I was supposed to come one day, but I didn't make it
- 9 because I had to go to work, but I came two other days, and
- 10 we were just going over what we saw and stuff.
- 11 Q. And none of those two times did they play your -- it's
- 12 a short little recording. Neither of those two times they
- 13 played that for you?
- 14 A. No.
- 15 Q. Well, I have a copy of it. We've all listened to it,
- 16 and would you agree with me that what you said that night to
- 17 Salena Mann about the conversation in the car, I'm talking
- 18 about in the car now where you said Kendrick was driving the
- 19 car, and Larry was in the passenger seat holding his
- 20 wound, ---
- 21 A. Yes.
- 22 Q. --- and not saying anything, and they got you over to
- 23 Mr. Larry, Sr.'s house, which is a very short distance,
- 24 right, pretty much up Highway 15 over to 501, and then at Bob
- 25 Grissom right there, right?

CHAPELL F - CROSS BY MR. LONG

1 A. We went -- which way is that? I think we went on Pine
2 Island and then we went and took a right to -- I don't know
3 if that's 501, but I ---

4 Q. Which is a very little short car ride?

5 A. It was about five or six minutes.

6 Q. And you would agree with me they were going real fast?

7 A. Yeah.

8 Q. And would you also agree with me that what you told
9 Salena Mann hours after this happened on the tape is that
10 what you heard in that car, quote, Kendrick Chestnut say,
11 quote, and I'm going to use some bad -- you say it on the
12 tape and use some bad language, but I don't want to use bad
13 language with you.

14 I'm going to use some abbreviations, okay, but isn't it
15 true that you said then that Kendrick Chestnut said I'm going
16 to kill that f-ing S.O.B. as opposed to what you just
17 testified to. You said he said he was going to kill all of
18 them, he was going to kill them, and you didn't know who he
19 was talking about. Isn't it more true that you told Salena
20 Mann that he was talking about your uncle?

21 A. I didn't know he was talking about my uncle, but I
22 remember that he did say S.O.B. now that you just told me
23 that, but he did say he was going to go back and kill them.
24 He said S.O.B., but then he said also them, like he wanted to
25 kill the person he was heading for and also them.

1 Q. Okay. Now, you didn't say anything about them in your
2 conversation with Salena Mann. That's what I'm trying to get
3 into. You just remembered that in your meeting with the
4 Solicitor, or did you just remember that today?

5 A. I ---

6 Q. Why did you not remember that hours after ---

7 **THE COURT:** Mr. Long, how about don't ask three or four
8 questions.

9 **MR. LONG:** Yes sir.

10 **THE COURT:** Just ask one at a time please sir.

11 Q. Why did you not remember that when you -- and say that
12 to Salena?

13 A. What?

14 Q. Why did you not remember to say to Salena Mann a few
15 hours after this happened that he was going to go back and
16 kill all of them?

17 A. He said something about going back and killing them,
18 so I -- I had said something about it. I might have not said
19 that exactly, but he ---

20 Q. Okay. Okay. So you just -- you admit that he may not
21 have said that exactly?

22 A. No. He said something about going back and hurting
23 them, maybe not killing them.

24 Q. Did you tell Salena Mann that he said he was going to
25 go back and hurt somebody? Did you tell her that?

1 A. That's what he said then. (Witness is crying.)

2 Q. If you did, it would be on that recording?

3 A. Yes.

4 Q. The reason I'm asking this, and if you need to take a
5 break, I just ---

6 **THE COURT:** Just continue on, Mr. Long.

7 Q. If you need to take a break, you can, but the reason
8 I'm asking that is because it appears to me in the statement
9 that you gave to the detective that he made one statement,
10 which was I'm going to kill that S.O.B., and my question of
11 you is did you believe or did you know at that time that Joey
12 Hucks was dead?

13 A. I did not.

14 Q. Okay. And you're obviously an intelligent tenth
15 grader. You're much more close to being an adult now than
16 you were back then. You're sitting here testifying on the
17 witness stand, doing a great job.

18 My question is you did not know that Joey Hucks was dead
19 at the time, and it sounds to me like Kendrick Chestnut did
20 not know that Joey Hucks was dead at the time because he said
21 in the car with you ---

22 A. But he wanted to make sure he was dead.

23 Q. He wanted to make sure. Did he say that?

24 A. No, but he said he wanted to go back.

25 Q. Okay. Now, what you told Salena was I'm going to kill

1 that S.O.B. Now, why do you think he said that?

2 **MS. LIVESAY:** Your Honor, I have to object at this
3 point. It calls for speculation.

4 **THE COURT:** Sustained.

5 **MR. LONG:** Okay.

6 Q. The -- did you know that Joey Hucks had cut Larry
7 Chestnut across the chest?

8 A. I didn't know Joey did, but I just knew that Ty got
9 cut because he had a wound.

10 Q. So you didn't know that Joey was the one that pulled
11 out a knife and cut Larry Chestnut to put him in the
12 condition that he was in, in that car that you were riding
13 in? You didn't know that, did you?

14 A. I -- I didn't know, but now that I think about it,
15 because, you know, I was there when I saw -- you know, like
16 when I saw him. I didn't see Joey get punched, but when I
17 saw him on the ground and then he was just kind of like -- I
18 just don't know. I didn't know. I didn't know.

19 Q. You didn't know that Joey cut Larry Chestnut and
20 that's the reason -- if you had known that Joey had cut Larry
21 Chestnut and that's why Larry Chestnut was bleeding in the
22 car, ---

23 A. I ---

24 Q. --- would that then have made sense to you why
25 Kendrick Chestnut said what he said?

1 **MS. LIVESAY:** Your Honor, again, I'm going to have to
2 make an objection as to speculation.

3 **THE COURT:** Rephrase the question, please, Mr. Long.

4 Q. You said you did not know. You knew that Larry
5 Chestnut was cut, but you did not know that your uncle was
6 the one that cut him, right?

7 A. What was that again?

8 Q. You knew that Larry Chestnut was cut, but you did not
9 know that your uncle was the one that cut him with the knife,
10 right?

11 A. I felt like it was him just because it would -- that
12 little moment or him getting punched, I just kind of knew
13 that it was him that did because it was just like ---

14 Q. You're saying that you kind of knew that it was Joey
15 that cut him?

16 A. I did, yeah, because I knew it wasn't going to be my
17 mom or Christie. I knew it wasn't going to be Moke or Mo
18 because he was in the -- I just knew it wasn't anyone else.

19 Q. I'm sorry. Did you just say that you knew it wasn't
20 Mo because he wasn't in the fight?

21 A. No, because he was in the car, so why would he be in
22 the car with Ty if he -- you know, like why would Mo be in
23 the car if he cut Ty, so I knew it wasn't Mo. I knew it
24 wasn't my mom. I knew it wasn't Christie, and I didn't see
25 Moke in the room, so I did- -- like I knew Moke was there,

CHAPELL E - CROSS BY LONG
MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 but I just didn't see him, so when I saw Joey get punched, I
2 just knew it just had to be him.

3 Q. That cut Larry Chestnut?

4 A. Yeah.

5 **MR. LONG:** I don't have any further questions.

6 **THE COURT:** Redirect?

7 **MS. LIVESAY:** No further questions, Your Honor.

8 **THE COURT:** All right.

9 You may step down, Ma'am.

10 All right. Solicitor, further witnesses from the State?

11 **MS. LIVESAY:** Yes sir. At this time the State calls
12 Michelle McSpadden to the stand.

13 **THE COURT:** All right. Please come around and be
14 sworn, Ma'am.

15 **MICHELLE McSPADDEN,** being first duly sworn,
16 testifies as follows:

17 **DIRECT-EXAMINATION BY MS. LIVESAY:**

18 Q. And, Michelle, tell the jury who you are currently
19 working for.

20 A. Myrtle Beach Police Department.

21 Q. Okay. And how long have you been there?

22 A. Just a little less than twelve years.

23 Q. And what kind of training have you undergone with the
24 Myrtle Beach Police Department?

25 A. I'm a certified police officer, so I've been through

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 the South Carolina Criminal Justice Academy, and I've had
2 additional training in Crime Scene.

3 **THE COURT:** Ma'am, could you move in front of the
4 microphone, please. Thank you.

5 Q. And what are your current responsibilities at the
6 Myrtle Beach Police Department?

7 A. I am assigned to the Crime Scene Unit, so I respond to
8 crime scenes, process and collect evidence.

9 Q. Okay. And processing means what exactly?

10 A. It could mean taking fingerprints. It could mean
11 collecting blood or other kind of DNA standards, several
12 things, I mean cell phone examinations. We do lots of
13 different processing.

14 Q. And how long have you been in that particular
15 department?

16 A. A little less than seven years.

17 Q. Okay. And are you familiar that we're here today for?

18 A. Yes Ma'am.

19 Q. And were you employed with Myrtle Beach during May of
20 2006?

21 A. Yes Ma'am.

22 Q. And in the capacity as a crime scene investigator?

23 A. Yes Ma'am.

24 Q. Okay. And tell the jury a little bit about how you
25 became involved in this particular case.

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. I was working the night shift that night. It was a
2 May weekend, and around 2:55 in the morning the patrol
3 supervisor called for the Crime Scene Unit because of a
4 stabbing on Highway 15.

5 Q. Okay. And did you respond to that stabbing?

6 A. I did.

7 Q. What was the address you responded to?

8 A.

9 Q. And that is in Myrtle Beach?

10 A. It is.

11 Q. Okay. And when you arrived, what did you see?

12 A. It was dark. It was almost 3:00 A.M. Well, it was a
13 little after 3:00 by the time I got there. There's a row of
14 apartments, I guess, that run kind of parallel, I think, to
15 Highway 15 with a small yard in the front between the road
16 and the apartments.

17 Q. Okay. What was the first thing you did when you
18 arrived on the scene?

19 A. I met with Investigator Bertang, and he got for me
20 some crime scene tape so that we could kind of keep people
21 out of the -- the scene, and then it started to rain. I was
22 afraid that we would lose evidence in the rain because blood
23 washes away. Fingerprints may wash away in the rain
24 depending on how heavy it is, so I did collect a few things
25 from the front yard.

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 Q. Okay. And did you take pictures of the front yard?

2 A. I did, yes. I took lots of pictures of the front
3 yard.

4 Q. Okay. And did you number the items that were in the
5 yard at that time when you got there?

6 A. Yes, I did. We have little yellow evidence tents that
7 have numbers on them, so I marked them with evidence tents.

8 Q. Okay. So what you've marked in the yard, there's a
9 number that coincides with what that item is?

10 A. Yes.

11 **MS. LIVESAY:** Your Honor, can I approach the witness?

12 **THE COURT:** Yes Ma'am.

13 **(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 26 FOR**
14 **IDENTIFICATION ONLY.)**

15 Q. Ms. McSpadden, do you recognize what I'm showing you
16 that's been marked as State's Exhibit Number 26?

17 A. Yes. This is a photograph that I took.

18 Q. Okay. And what is this photograph of?

19 A. This is the front yard, as seen from around the edge
20 of Highway 15.

21 Q. Okay. And does this essentially and accurately depict
22 what you saw that night?

23 A. Yes.

24 Q. And what is in the yard?

25 A. Well, the -- you want the list of ---

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 Q. Yes, just the tags. Are those the items you have
2 listed?

3 A. Yes. There are items of evidence in the yard that are
4 all marked by a yellow tag.

5 Q. Okay. And the items -- the numbers, do they coincide
6 where that item is?

7 A. Yes, right next to them.

8 MS. LIVESAY: Your Honor, at this time, the State
9 wishes to introduce into evidence State's Exhibit Number 26
10 and publish it to the jury.

11 THE COURT: Any objection, Mr. Wilson?

12 MR. WILSON: I have no objections, Your Honor.

13 THE COURT: Mr. Long?

14 MR. LONG: No, Your Honor.

15 THE COURT: It's in evidence without objection.

16 MS. LIVESAY: Thank you, Your Honor.

17 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
18 26.)

19 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 20 FOR
20 IDENTIFICATION ONLY.)

21 Q. And I'm showing you now what's been marked as State's
22 Exhibit Number 20. Do you recognize it?

23 A. Yes.

24 Q. What is it?

25 A. It's also a photograph that I took.

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 Q. Okay. And tell the jury does this essentially and
2 accurately depict what you saw?

3 A. Yes.

4 Q. And what are these?

5 A. They are some of the same evidence markers. Of
6 course, I've backed up a little bit so you can see one more,
7 but it's evidence that's in the yard that has been marked by
8 a yellow marker.

9 Q. Okay. And what is this here?

10 A. It's a blue Suburban.

11 Q. Okay. And was that there when you got there, just
12 parked out there?

13 A. Yes.

14 Q. Okay. And did y'all actually tape around the
15 Suburban?

16 A. We did.

17 Q. Okay. So that was considered part of the crime scene?

18 A. It was.

19 **MS. LIVESAY:** Your Honor, at this time the State wishes
20 to introduce into evidence State's Exhibit Number 20 and
21 publish it to the jury.

22 **THE COURT:** Any objection, Mr. Wilson?

23 **MR. WILSON:** No objections, Your Honor.

24 **THE COURT:** Mr. Long?

25 **MR. LONG:** No, Your Honor.

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 **THE COURT:** All right, sir.

2 So State's 26 and 20 are in evidence without objection.

3 **MS. LIVESAY:** Thank you, Your Honor.

4 **(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**
5 **20.)**

6 Q. Ms. McSpadden, if you don't mind, tell the jury -- go
7 through those numbers and tell the jury exactly what each
8 number is.

9 A. Okay. Number 1, there were three paper napkins.
10 Number 2 is a plaid shirt. Num- ---

11 Q. A plaid shirt?

12 A. A plaid, button-down shirt.

13 Q. Okay.

14 A. Number 3 was a blood stain in the grass that I took
15 swabs from. Number 4 is a folding knife with an orange
16 handle. Number 5 is a little ceramic monkey. Number 6 is a
17 green and purple ball, like a tennis ball. Number 7 is a
18 little piece of a -- some kind of wrapper off I'm not sure
19 what. It was very small. And then Number 8, which you
20 probably can't see from that photograph, a pair of scissors.

21 Q. Now, did you basically mark every item that was in the
22 yard?

23 A. Yes.

24 Q. Now, you said you noted that there was a Number 8, but
25 you couldn't see it ---

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. That's correct.

2 Q. --- see it in that picture?

3 A. Correct.

4 Q. Is that right?

5 A. Yes.

6 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 18 FOR
7 IDENTIFICATION ONLY.)

8 Q. Do you recognize what I'm showing you now that is
9 State's Exhibit Number 18?

10 A. Yes.

11 Q. Okay. And what is this?

12 A. This is a photograph I took of a little courtyard kind
13 of outside of the apartment where the incident happened.

14 Q. And is this Item 8?

15 A. Yes.

16 Q. And what is this?

17 A. A pair of scissors that were on the ground in the
18 courtyard behind the air conditioner.

19 Q. And does this essentially and accurately depict what
20 you saw that night?

21 A. Yes.

22 Q. So all of these pictures were taken before anybody in
23 Myrtle Beach Police Department touched anything?

24 A. Correct.

25 Q. So you took a picture where you found them?

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. Yes.

2 MS. LIVESAY: Your Honor, at this time the State wishes
3 to introduce State's Exhibit Number 18 into evidence and
4 publish it to the jury.

5 THE COURT: Any objection, Mr. Wilson?

6 MR. WILSON: No objections, Your Honor.

7 THE COURT: Mr. Long?

8 MR. LONG: No sir.

9 THE COURT: It's in evidence without objection.

10 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
11 18.)

12 Q. Now, if you don't mind, where is that air conditioner?
13 What yard is that we're looking at? Is that the front on the
14 highway or is that on the back?

15 A. It's on the highway side, I believe. As you walk from
16 the highway back to the apartments, you have the row of
17 hedges. If I remember correctly, there's a little courtyard
18 with the air conditioner.

19 Q. Okay. So you can hardly see those scissors in this
20 picture.

21 A. Okay.

22 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 19 FOR
23 IDENTIFICATION ONLY.)

24 Q. Do you recognize what I'm showing you now that's
25 marked as State's Exhibit Number 19?

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. Yes.

2 Q. Okay. And what is this a picture of?

3 A. This is the same courtyard, I believe, with the air
4 conditioner, just from a -- taken from a different angle.

5 Q. Okay. Now, is this a door here to go outside or into
6 apartments?

7 A. That's in the apartment. I can't remember if that's
8 the living room door or exit door. I'm sorry.

9 Q. That's okay. And you're telling us that this door
10 leads out into the highway?

11 A. I believe so. I'm not positive.

12 **MS. LIVESAY:** Your Honor, at this time the State wishes
13 to put 19 into evidence.

14 **THE COURT:** Any objection, Mr. Wilson?

15 **MR. WILSON:** No objections, Your Honor.

16 **THE COURT:** Mr. Long?

17 **MR. LONG:** No sir.

18 **THE COURT:** All right.

19 It's in evidence without objection.

20 **(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**
21 **19.)**

22 Q. But that door that we're looking at definitely leads
23 into the apartment, is that right?

24 A. That's correct, yes.

25 **(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 21 FOR**

1 **IDENTIFICATION ONLY.)**

2 Q. I'm going to show you what's been marked as State's
3 Exhibit Number 21. Do you recognize it?

4 A. Yes.

5 Q. What is it?

6 A. Another picture from the same area showing the
7 scissors and the wiring for the air conditioner.

8 Q. Okay. Now, when you look at the scissors, do you see
9 anything on the scissors that could be potentially ---

10 A. They are stained red, which I would believe to be
11 blood.

12 Q. Okay. And did you swab the scissors for evidence to
13 find blood or anything on the scissors?

14 A. After collecting them, yes.

15 **MS. LIVESAY:** Your Honor, at this time the State wishes
16 to put 21 into evidence.

17 **THE COURT:** Any objection, Mr. Wilson?

18 **MR. WILSON:** No objections, Your Honor.

19 **THE COURT:** Mr. Long?

20 **MR. LONG:** No sir.

21 **THE COURT:** It's in evidence without objection.

22 **(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**
23 **21.)**

24 Q. So when you saw that red substance on the scissors,
25 that's what then noted you to swab?

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. Yes.

2 Q. Okay. And what are you looking for when you're
3 swabbing the scissors?

4 A. For any biological evidence, to include blood.

5 Q. And are you trying to match up the blood on the
6 scissors to who that blood belongs to?

7 A. Sure.

8 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 23 FOR
9 IDENTIFICATION ONLY.)

10 Q. I'm showing you now what's been marked as State's
11 Exhibit 23. Do you recognize that?

12 A. The entrance to the apartment, yes.

13 Q. Okay. Did you take this picture?

14 A. I did.

15 Q. Does this substantially and accurately depict the way
16 it looked that night?

17 A. Yes Ma'am.

18 Q. Was anything moved or altered before you took this
19 picture?

20 A. Not that I know of.

21 Q. Can you tell where this door is leading to?

22 A. The kitchen.

23 MS. LIVESAY: Your Honor, at this time I'd like to put
24 State's Exhibit Number 23 into evidence and publish it to the
25 jury.

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 **THE COURT:** Any objection, Mr. Wilson?

2 **MR. WILSON:** No objections, Your Honor.

3 **THE COURT:** Mr. Long?

4 **MR. LONG:** No sir.

5 **THE COURT:** It's in evidence without objection.

6 **MS. LIVESAY:** Thank you.

7 **(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**
8 **23.)**

9 Q. Now before I show the jury, I'm showing you what's
10 been marked as State's Exhibit Number 19, that picture.

11 A. Uh huh **(indicating positive)**.

12 Q. Let me ask you, is this the same door that's in this
13 picture?

14 A. It is, yes.

15 Q. So this air conditioner, now are you sure that that's
16 on the way out to the highway?

17 A. Yes.

18 Q. To the highway.

19 A. Now I'm sure, yes.

20 Q. And you're sure now that door I showed you earlier
21 goes into the kitchen?

22 A. Yes.

23 Q. So those scissors that you found were found by the air
24 conditioner by the front door?

25 A. Yes Ma'am.

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 Q. And that front door led out to the highway?

2 A. Yes Ma'am.

3 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 24 FOR
4 IDENTIFICATION ONLY.)

5 Q. I'm showing you now what's been marked as State's 24.
6 Do you recognize this?

7 A. Also a picture of the front door, yes Ma'am.

8 Q. Okay. And does this substantially and accurately
9 depict the way it looked that night?

10 A. Yes Ma'am.

11 Q. Anything altered about it?

12 A. No Ma'am.

13 Q. Now, when you are looking at this picture, can you see
14 all the way to the other end of that apartment?

15 A. Yes.

16 Q. Okay. So can you recognize what this is here, what
17 room that is?

18 A. The living room.

19 Q. Okay. And where ---

20 THE COURT: I'm sorry, Ma'am. I didn't hear you.

21 A. The living room.

22 Q. Where were you standing taking the picture?

23 A. Just outside the front door.

24 Q. Okay. So this is a shot outside the front door and
25 you are shooting and you can see right through into the ---

1 A. Yes.

2 THE COURT: Sorry, Ma'am. Do you want to introduce
3 that into evidence.

4 MS. LIVESAY: I'm sorry, Your Honor. Can I please
5 place 24 into evidence?

6 THE COURT: Any objection, Mr. Wilson?

7 MR. WILSON: No objections, Your Honor.

8 THE COURT: Mr. Long?

9 MR. LONG: No sir.

10 THE COURT: All right.
11 It's in evidence without objection.

12 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
13 24.)

14 Q. So you're standing actually outside on that front
15 step?

16 A. In that courtyard area, yes.

17 Q. And taking the picture?

18 A. Yes.

19 Q. Did you diagram this apartment in your notes or in
20 your CSI Report?

21 A. No Ma'am. Investigator Carol Allen did the diagram.

22 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 22 FOR
23 IDENTIFICATION ONLY.)

24 Q. Okay. I'm showing you now what's been marked as
25 State's Exhibit Number 22. Do you recognize this?

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. Yes Ma'am.

2 Q. Has anything been altered in this room or touched?

3 A. Not that I know of.

4 Q. And did you take this picture?

5 A. I did.

6 Q. And this picture is ---

7 A. This is the kitchen after you just walk in the door
8 and turn to the left.

9 Q. Okay. Now, let me ask you this: This drawer that's
10 open here, you opened that drawer?

11 A. I did not, no.

12 Q. Did you touch or did anybody touch anything when you
13 came in there to take pictures?

14 A. Not that I know of.

15 **MS. LIVESAY:** Your Honor, at this time the State wishes
16 to place State's Exhibit Number 22 in evidence.

17 **THE COURT:** Any objection, Mr. Wilson?

18 **MR. WILSON:** No objections, Your Honor.

19 **THE COURT:** Mr. Long?

20 **MR. LONG:** No sir.

21 **THE COURT:** It's in evidence without objection.

22 **(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**
23 **22.)**

24 Q. So you didn't open any drawers or go through anything
25 in that kitchen?

1 A. No Ma'am, not prior to that photo being taken.

2 Q. And when you came in there, you took pictures of this
3 kitchen, there were items laying on the floor as well that
4 you collected right there?

5 A. Yes.

6 Q. Okay. What were those items?

7 A. We collected blood stains from the floor and the wall
8 from the kitchen, a black and white hat from the floor in the
9 kitchen, and an open soda can from the floor, a T-shirt, and
10 then between the kitchen and living room pieces of a picture
11 frame in that little walkway area.

12 Q. Okay. When you walked into that kitchen, did it
13 appear like there had been a struggle?

14 A. It did.

15 Q. Okay. And what indicated to you that there had been a
16 struggle?

17 A. There was blood on both the floors and the walls, a
18 substantial amount of blood.

19 Q. And do you remember what they looked like on the wall,
20 the stains on the wall?

21 A. If I can refer back. On the wall next to the little
22 laundry room area, there was blood on kind of the -- it's
23 almost like a door frame and on the wall. They're small
24 droplets. They were kind of spread over a large area.

25 Q. And what do you call it?

MICHELLE McSPADDEN - DIRECT BY LIVESAY

- 1 A. I would call it blood spatter.
- 2 Q. Okay. And it was on the kitchen wall?
- 3 A. Yes.
- 4 Q. Okay. And you said you found a T-shirt in the
- 5 kitchen, is that right?
- 6 A. Yes.
- 7 Q. Okay. Did you ever find out who that T-shirt belonged
- 8 to?
- 9 A. I don't have it in my notes. If I did, I don't know.
- 10 Q. Okay. Let me ask you this question: Were there any
- 11 tears on the T-shirt that you remember?
- 12 A. I'm sorry, I don't recall.
- 13 Q. Okay. But there was a plaid shirt in the -- outside
- 14 in the yard, is that right?
- 15 A. That's correct.
- 16 Q. And a white T-shirt in the kitchen?
- 17 A. Yes.
- 18 Q. Okay. Did you take pictures of the T-shirt?
- 19 A. I have photographs of it on the floor. Oh, yes, I --
- 20 also I have -- I photographed it after it was returned back
- 21 to the Crime Scene Lab.
- 22 Q. Okay. What did that -- did that T-shirt have any
- 23 tears on it, the one found in the kitchen?
- 24 A. It appears so, yes.
- 25 Q. Where does it appear to have a tear?

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. There's a blue and white design across the front that
2 kind of comes crossways, and it's kind of in the center of
3 the design from what I can tell.

4 Q. Okay. And how about the plaid shirt, did you take a
5 picture of that?

6 A. I did. I photographed the plaid shirt as well.

7 Q. Okay. And did the plaid shirt have any tears on it?

8 A. It appears to be missing some buttons. I can't tell.
9 There is one photograph that has -- is just very small.
10 There's something kind of in the center of it that I've
11 marked with a scale. It may just be the missing button or it
12 may be a tear. I'm not positive.

13 Q. Okay. But there's something along here on both
14 shirts?

15 A. Yes.

16 Q. And one was found in the kitchen and one was found
17 outside?

18 A. Yes.

19 Q. Okay.

20 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 17 FOR
21 IDENTIFICATION ONLY.)

22 Q. Do you recognize what I'm showing you now that's been
23 marked State's Exhibit Number 17?

24 A. Yes.

25 Q. And what is this?

1 A. It is a orange folding knife that was on the lawn.

2 Q. Okay. And is this a picture of exactly what it looked
3 like that night?

4 A. Yes.

5 Q. And does this picture substantially and accurately
6 depict what it looked like that night?

7 A. Yes.

8 Q. Okay. And what is this here in the picture?

9 A. Evidence marker number 4, the little yellow evidence
10 tents we talked about.

11 Q. Okay. So you actually put a marker down beside this
12 before you moved it?

13 A. I did.

14 Q. Okay.

15 **MS. LIVESAY:** Your Honor, at this time the State moves
16 State's Exhibit Number 17 in evidence and asks that it be
17 published.

18 **THE COURT:** Any objection, Mr. Wilson?

19 **MR. WILSON:** No objections, Your Honor.

20 **THE COURT:** Mr. Long?

21 **MR. LONG:** No sir.

22 **THE COURT:** All right.

23 So that's State's -- is that 17, Ma'am? Solicitor, ---

24 **MS. LIVESAY:** I'm sorry, Your Honor.

25 **THE COURT:** Is that 17?

1 **MS. LIVESAY:** Yes sir, Your Honor.

2 **THE COURT:** All right. State's 17 is in evidence
3 without objection.

4 **(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**
5 **17.)**

6 Q. Now, did you collect that knife and swab it?

7 A. I did.

8 Q. Okay. And when I say swab it, what -- tell the jury
9 -- explain to the jury exactly what that means.

10 A. Okay. We use two blood swabs or two swabs for each
11 biological sample we collect. There are still swabs that are
12 packed in like cellophane almost, packed individually, one
13 per packet, so we would move to swab area and then package
14 those two together, swab the same area and package those two
15 together in paper.

16 Q. Okay. And what items did you swab in this case that
17 I've shown the jury? I guess -- let me rephrase that. What
18 items did you swab that were outside the residence?

19 A. I swabbed the blood stain in the grass, the scissors,
20 and the knife, and I'm not sure about the shirt from outside.
21 I'd have to go back and refer. Yes, also the plaid shirt
22 from the lawn.

23 Q. I'm sorry. What item did you swab that you had found
24 outside?

25 A. The blood stain on the grass, the knife, the scissors,

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 and the plaid shirt.

2 Q. Okay. Now, when you are swabbing those items, you are
3 swabbing them looking for what?

4 A. It would be biological evidence, blood in this case.

5 Q. Okay. So basically you are looking to see whose blood
6 that is on the knife or on the scissors?

7 A. Correct.

8 Q. Okay. And what is the process normally, do you keep
9 it there at Myrtle Beach Police Department? Is it sent off
10 somewhere?

11 A. Myrtle Beach Police Department does not have a DNA
12 Lab. We refer all of our DNA evidence to SLED, which is the
13 South Carolina Law Enforcement Division, in Columbia.

14 Q. Okay. And in the process of trying to match up who
15 this blood or who this biological evidence belongs to, did
16 you take any swabs from anybody involved in this case?

17 A. I also swabbed Larry Chestnut.

18 Q. Okay. And tell the jury what that entailed.

19 A. Mr. Chestnut arrived at the Police Department after --
20 well, he arrived at the Police Department and I met with him
21 in our conference room. The same little cellophane-packed
22 swabs that we use for any other kind of collection we use on
23 the donor of the DNA standard. We take the swab and swab
24 just the inside of their cheek, scrub it a little with a
25 cotton swab like you would use, like a Q-tip, so you scrub

1 the inside of their cheek. We do two, and then those are
2 packaged in paper.

3 Q. Okay.

4 (SCISSORS MARKED AS STATE'S EXHIBIT NUMBER 28 FOR
5 IDENTIFICATION ONLY.)

6 Q. Do you recognize what I'm showing you now?

7 A. Yes.

8 Q. What is it?

9 A. The scissors from the courtyard.

10 Q. And are these the exact scissors you collected?

11 A. Yes.

12 Q. And are these the scissors in the picture?

13 A. Yes.

14 Q. Okay. Now, what is this here?

15 A. Evidence tape. This tape is used to seal up all of
16 our evidence once it's collected. It's very fragile, so that
17 you could tell if it has been -- if the package has been
18 opened.

19 Q. Okay.

20 MS. LIVESAY: Your Honor, at this time the State wishes
21 to put 28 in evidence.

22 THE COURT: Any objection to State's 28?

23 MR. WILSON: I don't have any objection to any chain of
24 custody. I'm just not sure yet that it's been linked
25 sufficiently.

1 **THE COURT:** Why don't you ask a further question,
2 Solicitor, ---

3 **MS. LIVESAY:** I will, Your Honor.

4 **THE COURT:** --- of this witness, please Ma'am.

5 Q. Did you collect these?

6 A. I did.

7 Q. And where did you collect them from?

8 A. The courtyard in front of the apartment.

9 Q. And when you collected them, what did you do with
10 them?

11 A. They were placed into my Crime Scene van, just like
12 all the other evidence, and then once back at the lab, they
13 were placed into our evidence room.

14 Q. Were they in anybody else's custody or control between
15 the time they left the house and the time they went into the
16 evidence room?

17 A. No.

18 Q. Okay. During that time, did you in any way, fashion,
19 or form alter these scissors?

20 A. Only to swab them.

21 Q. Okay. And are these the scissors you collected that
22 night?

23 A. Yes.

24 Q. And do these scissors appear exactly the way they
25 appeared the night you collected them?

MICHELLE McSPADDEN - DIRECT BY LIVESAY

1 A. Yes.

2 MS. LIVESAY: Your Honor, the ---

3 MR. WILSON: I withdraw my objection, Your Honor.

4 THE COURT: All right, very good.

5 MS. LIVESAY: Thank you, Your Honor. At this time, the
6 State is going to publish it to the jury ---

7 THE COURT: I'm sorry. What number is it?

8 MS. LIVESAY: State's Exhibit Number 28.

9 THE COURT: And any objection, Mr. Long?

10 MR. LONG: No, Your Honor.

11 THE COURT: State's 28 is in evidence without objection.

12 (SCISSORS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 28.)

14 Q. And are these the scissors that you located by the ---

15 A. The air conditioner, yes Ma'am.

16 Q. --- the air conditioner? Okay. And is this how they
17 appeared the night you collected them?

18 A. You don't see the blood on them now, but they're in a
19 similar condition, just without the blood now.

20 Q. Okay. And you actually swabbed the blood, trying to
21 get ---

22 A. Correct.

23 Q. --- evidence off of it?

24 MS. LIVESAY: One second, Your Honor, please.

25 THE COURT: Yes Ma'am.

MICHELLE McSPADDEN - CROSS BY WILSON

1 **MS. LIVESAY:** No further questions, Your Honor.

2 **THE COURT:** Mr. Wilson.

3 **MR. WILSON:** Thank you, Your Honor.

4 **CROSS-EXAMINATION BY MR. WILSON:**

5 Q. Ms. McSpadden, is it Sergeant, Detective, ---

6 A. Just Officer.

7 Q. Officer. Now, Crime Scene, you're what we would
8 commonly call a Crime Scene Specialist?

9 A. Yes sir.

10 Q. A CSI kind of person, is that right?

11 A. Yes sir.

12 Q. And that's probably the most critical -- would you
13 agree with me, that's probably the most critical part of the
14 investigatory process for law enforcement is when a Crime
15 Scene person comes in to preserve whatever evidence there is,
16 physical or otherwise?

17 A. Yes sir.

18 Q. Okay. And so when you came on this particular day,
19 you came with the understanding that that was what your role
20 was?

21 A. Yes sir.

22 Q. And that you wanted to do everything that you possibly
23 could to preserve any evidence, physical evidence, pictures,
24 whatever, that might be there so that we could have it for
25 this very purpose?

1 A. Yes sir.

2 Q. And -- and in the process of preserving that evidence,
3 you would then send it to SLED for SLED to test, or whatever
4 other expert, maybe the pathologist, or whomever else needed
5 to see the physical evidence in order to make decisions about
6 the investigation?

7 A. Yes sir.

8 Q. Now, you took how many pictures would you say you
9 took? The Solicitor has introduced several pictures. How
10 many pictures did you take that night or during the process
11 of this investigation?

12 A. I guess somewhere around two hundred and fifty.

13 Q. So you took over two hundred -- around two hundred and
14 fifty pictures?

15 A. Yes sir.

16 Q. And did you turn all those pictures that you took, all
17 two hundred and fifty, over to the Solicitor?

18 A. Yes.

19 Q. And how long ago did you turn those two hundred plus
20 pictures over to the Solicitor?

21 A. The way case transmittal works in our Police
22 Department, the lead investigator puts all of the case
23 together. They have access to everything, and they do the
24 transmittal. I'm not sure when the transmittal was done.

25 Q. Okay. And in the process, after you take these

MICHELLE McSPADDEN - CROSS BY WILSON

1 pictures, do you have communication with the Solicitor or
2 with their office about what you need to do in terms of
3 having certain pieces of evidence processed by SLED or by
4 some other expert?

5 A. Not with the Solicitor's Office. My contact has been
6 with the lead investigator in the case.

7 Q. Okay. And who would that have been?

8 A. At the time, I believe it would have been Salena Mann.

9 Q. Okay. So would Detective Mann have contact with the
10 Solicitor's Office to determine which pieces of evidence
11 needed to go to SLED or some other agency to be tested?

12 A. I don't know.

13 Q. You don't know?

14 A. I don't know.

15 Q. All right. So once you gather it, you turn it over to
16 Detective Mann and then you are kind of through with it, is
17 that what you're saying?

18 A. I do the request for processing by SLED. I would have
19 done that most likely, but that would have been kind of at
20 the direction of Salena Mann.

21 Q. All right. Now, when you got to the house this night
22 -- did you come that night?

23 A. I did.

24 Q. It was 3:00 A.M., right?

25 A. Yes.

1 Q. When you got there that night or the early morning
2 hours and you learned that there had been some altercation
3 there, you wanted to determine who the blood belonged to in
4 that house, right? That would have been one of the things
5 that -- that law enforcement would have been interested in?

6 A. Absolutely.

7 Q. All right. And did you make a determination as to how
8 many people had been in and out of the house before you
9 arrived?

10 A. No sir.

11 Q. Did you make a determination as to how many blood
12 stains were in the house?

13 A. Individual stain patterns, there were -- wow. We
14 photographed every one, but I did not count every one.

15 Q. You photographed every one, but you didn't count every
16 one?

17 A. Correct.

18 Q. All right. So every one of those blood spatter
19 patterns would be included in the two hundred and fifty plus
20 photographs that you took, ---

21 A. Yes sir.

22 Q. --- in some of those photographs?

23 A. Yes sir.

24 Q. Now, as I understood it, you said that you took blood
25 or tested the blood of Larry Chestnut?

MICHELLE McSPADDEN - CROSS BY WILSON

- 1 A. I took a DNA standard from Mr. Chestnut, yes.
- 2 Q. Okay. And when was that?
- 3 A. November 18th, 2010.
- 4 Q. Okay. And did you take blood standards from anybody
- 5 else?
- 6 A. No sir, I did not.
- 7 Q. What about from Cindy Evans?
- 8 A. I don't believe I did, no sir.
- 9 Q. What about from Moke, Richard Day?
- 10 A. No sir.
- 11 Q. Now, in your work, when you came in you didn't know
- 12 who the blood belonged to, right?
- 13 A. That's correct.
- 14 Q. So when you did your swabs, did you find blood that
- 15 belonged to someone who was unidentified?
- 16 A. I have copies of the reports from SLED, and we sent to
- 17 them somewhere in the area of eighty-five different DNA
- 18 unknown samples. Not all of them were tested.
- 19 Q. All right. And when SLED came back and told you that
- 20 based on what you had sent them, some of the blood spatters
- 21 were of an unidentified person, right?
- 22 A. Yes.
- 23 Q. All right. And tell us what effort you made, because
- 24 we know that whoever that unidentified person is or was, it
- 25 was not Larry Chestnut, right?

1 A. Larry Chestnut's blood was one of the unidentified.
2 His was included ---

3 **MS. LIVESAY:** Your Honor, I'm going to have to object.
4 I don't know that Ms. McSpadden is the best witness to
5 testify about the blood spatter. SLED was the one that made
6 that decision ---

7 **THE COURT:** I appreciate that.

8 Mr. Wilson, why don't you get to the question that
9 you're aiming to get to.

10 **MR. WILSON:** Yes sir, I will.

11 Q. Just for the sake of moving this along, let me ask you
12 this way. There was blood in there, in that room, in that
13 kitchen, that to this day is still unidentified, correct?

14 **MS. LIVESAY:** Your Honor, again I'm going to have to
15 object.

16 **THE COURT:** I appreciate that. I'm going to allow this
17 witness to answer the question if she can.

18 A. I'm not sure that it's unidentified. The last report
19 I have, which is dated April 15th, 2011, indicates ---

20 **THE COURT:** All right, Ma'am, he's asking you of your
21 knowledge, not of somebody else's knowledge.

22 A. Then no sir, I do not know.

23 Q. You do not. All right. Now, let me ask you this,
24 Ma'am. In regards to -- I saw that you identified this as
25 being an item that you found in the yard?

1 A. Yes sir.

2 Q. And actually, it was just outside the back door, maybe
3 two feet, right?

4 A. Correct, yes.

5 Q. All right. And it was not out on the grass where you
6 found the other six or seven items that you say you found?

7 A. That is correct.

8 Q. And when you got there, did you find a knife?

9 A. Yes sir.

10 Q. Well, did you take a picture of the knife?

11 A. Yes sir.

12 Q. Now, let me show you Defendant's -- I'm sorry, State's
13 Exhibit Number ---

14 **MR. WILSON:** May I approach, Your Honor?

15 **THE COURT:** Yes sir, absolutely.

16 Q. --- State's Exhibit Number 17.

17 A. Yes sir.

18 Q. Is that the knife?

19 A. It is.

20 Q. All right. Now, where is the knife?

21 A. It was in the yard, I believe near like the center of
22 the yard.

23 Q. The center of the yard?

24 A. Yes.

25 Q. Do you know where Mr. Hucks was at in the yard?

1 A. Mr. Hucks had been taken from the scene before I got
2 there.

3 Q. So do you know of your own knowledge how close in
4 proximity to him the knife was that was found in the yard?

5 A. I do not know.

6 Q. Did you take a picture of where you believed he was
7 laying in the yard?

8 A. I did photograph a blood stain in the yard, yes sir.

9 Q. How far was the knife from the blood stain that you
10 found in the yard?

11 A. They were quite close. I'm not sure, maybe a couple
12 of feet.

13 Q. A couple of feet away. Now, the knife that we're
14 talking about, this orange-handle mysterious knife, where is
15 it now, today?

16 A. It should be here in the courtroom.

17 Q. Here in the courtroom. Do you have it?

18 A. I do not have it.

19 Q. Well, you're the evidence custodian, right?

20 A. No sir. I'm ---

21 Q. You're the Crime Scene person ---

22 A. I'm the Crime Scene officer.

23 Q. --- who took it. Did you bring it to Court?

24 A. I believe it was brought, but I -- I did not bring it
25 myself.

MICHELLE McSPADDEN - CROSS BY WILSON
JURY OUT/ON RECORD

1 Q. Okay. So who has it? The Solicitor has it?

2 A. There's a couple of boxes of evidence sitting back
3 there. I believe it would be in one of those.

4 Q. Okay. Well, can you get it for me?

5 **THE COURT:** Do you need to step down and go through
6 those boxes to find it?

7 A. If he needs it, yes, sir.

8 **THE COURT:** Ladies and gentlemen of the jury, if you
9 would go to your jury room for about five or ten minutes,
10 please. Leave your pads and pens.

11 Everyone else remain seated at this time, please.

12 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
13 **JURY.)**

14 **THE COURT:** All right, Ma'am, do you know where that
15 evidence is located?

16 **OFFICER McSPADDEN:** Yes sir.

17 **THE COURT:** All right. I'll give you the opportunity
18 to go down and go through it and find that evidence. You
19 cannot talk to the Solicitor in the interim. You can -- you
20 will have to resume the witness chair until we're ready to go
21 back.

22 We'll take a short break for about five or ten minutes.

23 Thank you very much.

24 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE**
25 **PRESENCE OF THE JURY.)**

JURY OUT/ON RECORD

1 **THE COURT:** Is the State ready to resume?

2 **MS. LIVESAY:** Your Honor, actually, sir, we have a
3 matter to take up while the jury is out.

4 **THE COURT:** Okay. What is that, please?

5 **MS. LIVESAY:** We have a issue with the knife. If Mr.
6 Wilson doesn't plan on introducing the knife into evidence,
7 obviously we do not want the jury to see it in any way,
8 shape, fashion, or form.

9 **THE COURT:** Is your intention at this point in time,
10 Mr. Wilson, to introduce the knife into evidence?

11 **MR. WILSON:** My intention is to mark it for
12 identification purposes at this point.

13 **THE COURT:** All right. Very good. I mean, it can be
14 done by showing it to the witness, the witness keeping it on
15 the desk in front of them, identifying it, handing it back,
16 getting it to the Court Reporter, having her mark it, and she
17 can put it somewhere on her desk that is below the sight of
18 the jury.

19 **MS. LIVESAY:** Is there any way we can put it in a bag,
20 Your Honor, and that would ensure that ---

21 **THE COURT:** Did y'all put it in a bag?

22 **MS. LIVESAY:** No, it's not in a bag now.

23 **MS. VON HERRMANN:** Your Honor, just by way of
24 explanation, here is the situation with this knife.

25 That particular knife was a gift from Bab Cox to Joey,

JURY OUT/ON RECORD

1 and she would like to have that knife returned to her.
2 Obviously the knife was put in evidence, which Mr. Wilson
3 has every right to do, and it's in there and we can't get it
4 out.

5 **THE COURT:** Well, I appreciate that, but I understand
6 the sentimentality. I surely do, but I can't let that govern
7 the procedures in this criminal trial.

8 Now, I understand what the State is trying to do. I'm
9 sure you understand that if it doesn't come into evidence at
10 some point in time, you're going to be facing closing
11 arguments from the Defense attorney, why won't the State
12 introduce this knife into evidence, and why are they, you
13 know, keeping it from you, and, you know, why won't they show
14 it to you, you know.

15 Y'all do what you want to do, but obviously that's
16 what's going to happen. So y'all do what you want to do, but
17 I'm going to let Mr. Wilson -- now, Mr. Wilson, you can't go
18 parading it around in front of the jury. You understand
19 that.

20 **MR. WILSON:** Yes sir.

21 **THE COURT:** We'll keep it as least visible as possible,
22 and you understand that?

23 **MS. LIVESAY:** Yes sir.

24 **THE COURT:** All right. Very good. Thank you very
25 much.

JURY IN
MICHELLE McSPADDEN - CROSS BY WILSON

1 Ask the jury to come back in, please.

2 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
3 JURY.)

4 THE COURT: All right. Mr. Wilson, you may resume,
5 sir.

6 MR. WILSON: Thank you very much, Your Honor.

7 CONTINUING CROSS-EXAMINATION BY MR. WILSON:

8 Q. Ms. McSpadden, I think I was asking you earlier about
9 the item which was exhibited in State's Exhibit Number 17.

10 A. Yes sir.

11 Q. And did you find that item?

12 A. Yes sir.

13 Q. And do you have it?

14 A. Yes sir.

15 Q. All right. And where is it?

16 A. Here.

17 Q. All right. Now, where specifically was it that you
18 found this particular item?

19 A. In the front yard, around the middle of the yard.

20 Q. All right. And you said, as I -- if I remember
21 correctly, that this was approximately two feet from where
22 you believe Joey was -- would have been in the yard?

23 A. Approximately, yes sir.

24 Q. Okay. And you found six of these seven other items,
25 seven other items, I think, to be exact, in the yard, and

MICHELLE McSPADDEN - CROSS BY WILSON

1 one, which is Number 8, was by the door?

2 A. Yes sir.

3 Q. May I have that?

4 **MR. WILSON:** And, Your Honor, I'd just ask at this time
5 it be marked for identification purposes.

6 **THE COURT:** All right. Very good.

7 **(ORANGE KNIFE IN CLEAR CONTAINER MARKED AS DEFENDANT'S**
8 **(LARRY CHESTNUT) EXHIBIT NUMBER 5 FOR IDENTIFICATION ONLY.)**

9 **THE COURT:** Go ahead, Mr. Wilson.

10 Q. When you came to the house that night, could -- when
11 you walked into the kitchen area, being a Crime Scene person,
12 could you see blood spatters all over the walls in the
13 kitchen?

14 A. Yes sir.

15 Q. Okay. Did you see any blood spatters on the wall in
16 the living room?

17 A. I don't recall blood on the wall in the living room.
18 I do recall it on the bannister, which serves as kind of the
19 living room wall heading up the stairs.

20 Q. Okay. And whose blood was that on the bannister
21 leading to the stairs?

22 A. I don't know. That would be amongst the SLED reports.

23 Q. Okay. And which swab item was it that you sent with
24 that?

25 A. From the bannister, we have 20 and 21.

MICHELLE McSPADDEN - CROSS BY WILSON

- 1 Q. Okay. So you did swabs 20 and 21, and then you sent
2 those two swabs to SLED to be tested ---
- 3 A. Correct.
- 4 Q. --- to determine whose blood was on that particular
5 swab?
- 6 A. Correct.
- 7 Q. Now, did you take any swabs of blood from the floor of
8 the living room?
- 9 A. Yes, Number 18.
- 10 Q. Okay. And what swab number was that?
- 11 A. I'm sorry, 18.
- 12 Q. Swab Number 18. And did you send that particular swab
13 to SLED to be tested?
- 14 A. Yes sir.
- 15 Q. All right. Other than the one spot that you say you
16 saw in the front room, did you see any other spots of blood
17 on the floor in the living room?
- 18 A. No sir.
- 19 Q. So one, and you took a swab of that?
- 20 A. Yes sir.
- 21 Q. All right. In the kitchen, there were lots and lots
22 of blood spatterss and stains, ---
- 23 A. Yes sir.
- 24 Q. --- correct?
- 25 In fact, there was blood on the floor. Was there blood

1 on the ceiling?

2 A. I don't recall blood on the ceiling.

3 Q. Okay. Did you look or take pictures of the ceiling?

4 A. I did not photograph the ceiling.

5 Q. Was there blood on the counters?

6 A. I don't recall blood on the counters. I do have
7 photographs of the counters, but they are quite small and you
8 just can't tell from these photographs if there was blood
9 there or not.

10 Q. Okay. How high up on the walls were the blood
11 spatters that you found, in the kitchen I'm speaking of?

12 A. Sure. I'm showing them above four feet.

13 Q. Above four feet?

14 A. Yes sir.

15 Q. Okay. And did -- when you talked with Detective Mann,
16 or whoever your supervisor or lead investigators were, was
17 there ever a decision made to hire or have these blood
18 spatters examined by a blood spatter expert to determine how
19 they got made when placed on the walls?

20 A. That was not part of the decision that I was involved
21 in, but I do believe it was done.

22 Q. Okay. Now, based on your training in the field of
23 crime scene investigation, you are aware, are you not, that
24 there are experts at SLED who can look at patterns and make
25 determinations about where things were done and how they were

1 done?

2 A. Yes sir.

3 Q. All right. And you knew that when you were taking
4 these photographs and these swabs, ---

5 A. Yes sir.

6 Q. --- correct?

7 And I'm sure that after you completed the pictures and
8 the swabs, that you then met with Detective Mann and whoever
9 else were your supervisor, to discuss these spatters and what
10 needed to be done in that regard?

11 A. I don't recall a conversation about the spatters
12 specifically.

13 Q. Okay. So you don't ever recall discussing that with
14 them?

15 A. I don't.

16 Q. Now, did you find blood spatters leading out of the
17 kitchen out into the back yard?

18 A. I do see there was a blood stain on the floor between
19 the stairs and the back door. I'm sorry, which -- you said
20 back yard, sir. I'm sorry.

21 Q. The yard where you took the photographs of the seven
22 items that you say you found.

23 A. I see. Okay. Yes sir, there were several on that
24 kind of a door stoop and then leading into the kitchen, ---

25 Q. Okay.

MICHELLE McSPADDEN - CROSS BY WILSON

- 1 A. --- or out of the kitchen.
- 2 Q. So there was a trail of blood leading out of the
- 3 kitchen out towards the back door?
- 4 A. Yes.
- 5 Q. And even on the little metal stoop that's between the
- 6 door and the sidewalk?
- 7 A. Yes sir.
- 8 Q. Did you find any more blood stains or spatters on the
- 9 sidewalk as you're coming out of the door?
- 10 A. The only one I collected from outside was the one in
- 11 the center of the yard where I believe Joey to have been.
- 12 Q. No other blood spatters in the yard that you found
- 13 other than that one?
- 14 A. No sir.
- 15 Q. Now, whose -- well, let me ask you this: In regards
- 16 to the items of evidence that you collected, when those items
- 17 are removed from your custody, there should be some kind of a
- 18 chain telling where they went, right?
- 19 A. Yes sir.
- 20 Q. And at some point in time, you sent the scissors to
- 21 the pathologist to look at?
- 22 A. Correct.
- 23 Q. And you also sent the knife to the pathologist to look
- 24 at?
- 25 A. Correct.

MICHELLE McSPADDEN - CROSS BY WILSON

1 Q. And the purpose of that would be so that the
2 pathologist could maybe compare the scissors to the wounds
3 and the knife to the wounds and be able to tell us which item
4 made which wound?

5 A. Correct.

6 Q. That's what we hope for, right?

7 A. Yes sir.

8 Q. And did you do that, or who made the decision to do
9 that?

10 A. I did not attend the autopsy. Carol Allen attended
11 the autopsy. I don't know if it was her decision or Salena
12 Mann's, or a combination of it.

13 Q. All right. Now, do you know whether or not those
14 items had been to SLED for testing before you sent them to
15 the pathologist to work with?

16 A. They were not.

17 Q. They were not?

18 A. No sir.

19 Q. So before you send them to SLED to be tested, you sent
20 them to the pathologist. Who handled them at the
21 pathologist's office if you know?

22 A. I don't know.

23 Q. Do you know whether they were handled or not?

24 A. I don't.

25 Q. When you got there that night outside, was there a lot

1 of lighting out in that back yard?

2 A. No sir. It's quite dark.

3 Q. Quite dark out there, very difficult to see without
4 some artificial lighting?

5 A. Yes sir.

6 Q. If I've asked you this, I apologize, if I've already
7 asked you this, but you swabbed the scissors? I know you
8 told me that, ---

9 A. Yes sir.

10 Q. --- is that correct?

11 A. Yes.

12 Q. Did you also swab the orange-handle knife?

13 A. Yes sir.

14 Q. And how many swabs did you take from the orange-handle
15 knife?

16 A. A total of four.

17 Q. Okay. Can you tell us, the swabs that you took from
18 the knife, did you take them from the handle, from the blade,
19 or from both?

20 A. Both.

21 Q. Did you also do both sides of the blade?

22 A. I don't recall.

23 Q. Let me ask you, Ma'am, you don't know what happened
24 there that night other than taking the photographs, and
25 pictures, and collecting evidence?

MICHELLE McSPADDEN - CROSS BY WILSON
CROSS BY LONG

1 A. Correct.

2 Q. You weren't there, so you have no independent
3 knowledge of what occurred?

4 A. That's correct.

5 Q. All right. And you don't know who had which weapon?

6 A. No sir.

7 Q. All right. And you don't know who cut first or
8 anything?

9 A. No sir.

10 Q. And you don't know of your own personal knowledge
11 whose blood is on what?

12 A. No sir.

13 MR. WILSON: No further questions.

14 THE COURT: Mr. Long.

15 MR. LONG: Thank you.

16 CROSS-EXAMINATION BY MR. LONG:

17 Q. Ma'am, you, as a crime scene specialist, you're also
18 trained in fingerprint removal or fingerprint lifting, is
19 that right?

20 A. Yes sir.

21 Q. Do you have some special kind of training for that
22 sort of thing?

23 A. Most of it is on the job.

24 Q. And you did -- also did some fingerprinting here at
25 this scene?

MICHELLE McSPADDEN - CROSS BY LONG

1 A. Yes sir, not at the -- I don't recall if I did at the
2 scene specifically. I know some of the items from the scene
3 were eventually fingerprinted.

4 Q. Okay. Tell me what items were fingerprinted.

5 A. I have in my notes that the ceramic monkey was
6 fingerprinted, the one from the yard. I don't recall
7 anything else.

8 Q. So you think that the ceramic monkey is the only thing
9 that you fingerprinted? Why?

10 A. I know that each item was processed for DNA. It
11 would be swabbed. That was the more important of the two
12 processes, fingerprint versus DNA, so I elected to do the
13 DNA first. By the very nature of swabbing something, it's
14 likely that I would have destroyed fingerprints.

15 Q. Item Number 28, the set of scissors, ---

16 A. Yes sir.

17 Q. --- where exactly on these scissors did you swab them?
18 Excuse me; that's State's Number 28.

19 A. I only have noted that I collected two swabs from two
20 different areas on the scissors. It would normally be my
21 procedure to swab both the grip area and then separately the
22 blade area, but I don't have that specifically written in my
23 notes.

24 Q. You're not sure exactly where you swabbed them? Well,
25 and the direct question, did you fingerprint these?

MICHELLE McSPADDEN - CROSS BY LONG
REDIRECT BY LIVESAY

1 A. No sir, I don't believe so.

2 Q. Did you fingerprint the orange-handle Case knife?

3 A. I don't believe so.

4 Q. Did you fingerprint the drawer that was pulled open in
5 the kitchen, State's Exhibit Number 22, to see if there were
6 any fingerprints on it?

7 A. I don't recall that.

8 Q. So then I think I know the answer to the question, but
9 did you find Kendrick Chestnut's fingerprints on any weapon
10 that you found on this crime scene?

11 A. No sir.

12 Q. Did you find Kendrick Chestnut's fingerprints on the
13 drawer in the kitchen?

14 A. No sir.

15 **MR. LONG:** That's all I have.

16 **THE COURT:** Redirect?

17 **MS. LIVESAY:** One second, Your Honor.

18 May I approach the witness, Your Honor?

19 **THE COURT:** Yes Ma'am, please.

20 **REDIRECT-EXAMINATION BY MS. LIVESAY:**

21 Q. I'm showing you what's been marked as I.D. Number 5?

22 **MS. LIVESAY:** Am I reading this correct?

23 **THE REPORTER:** It is Larry Chestnut, Number 5.

24 **MS. LIVESAY:** Thank you.

25 Q. Do you recognize this?

1 A. I do.

2 Q. What is it?

3 A. It's the knife from the front lawn.

4 Q. Okay. And did you take it that night?

5 A. I did.

6 Q. And is this the same knife you swabbed?

7 A. It appears to be, yes.

8 Q. Okay. And when you collected it, what did you do

9 with it? How did you protect the integrity of this

10 evidence?

11 A. I see. It was packaged, you know, separately from all

12 the other evidence, as would be normal procedure, swabs taken

13 from it, and packaged separately as well.

14 Q. Okay. So this item was by itself?

15 A. Yes.

16 Q. It never got mixed up with another item?

17 A. No.

18 Q. So there's no way that blood from one item could get

19 on this item?

20 A. No.

21 Q. Okay.

22 **MS. LIVESAY:** At this time, Your Honor, the State

23 wishes to place Defendant's Exhibit Number 5 into evidence.

24 **THE COURT:** Well, it will have to be now marked with a

25 State's Exhibit.

1 **MS. LIVESAY:** Yes sir, Your Honor.

2 **THE REPORTER:** State's Exhibit 29.

3 **THE COURT:** Is there any objection, Mr. Wilson?

4 **MR. WILSON:** Absolutely none, Your Honor.

5 **THE COURT:** Mr. Long?

6 **MR. LONG:** No sir.

7 **THE COURT:** All right.

8 So State's 29 is in evidence without objection.

9 **(ORANGE-HANDLE CASE KNIFE ADMITTED INTO EVIDENCE AS**
10 **STATE'S EXHIBIT NUMBER 29.)**

11 Q. Now, did you see biological evidence on both the knife
12 and the scissors?

13 A. Yes.

14 Q. Okay. And did you swab those?

15 A. Yes.

16 Q. Okay. Now, tell the jury how do you swab it. Do you
17 just run a Q-tip across the blade?

18 A. Okay, it depends on whether the blood is dry or wet.
19 If the blood is still wet, then yes. It's a sterile swab,
20 just like we spoke about before, unpackaged, and then it
21 would be -- my procedure is normally to on something like
22 this do both the blade and the handle as separate areas, so I
23 would swab just the area with two sterile cotton swabs,
24 package those, and then move on to -- let's say I started
25 with the blade, then I would move on to the handle, swab it

MICHELLE McSPADDEN - REDIRECT BY LIVESAY

1 with two sterile cotton swabs, package it.

2 Now, if the blood had been dry, the only addition is
3 just a little bit of sterile water, distilled water on the
4 swab.

5 Q. Okay. And did you -- when you swab the blade, do you
6 label it swab of the blade, so when it gets to SLED what part
7 that is?

8 A. I have them -- the stuff that I have from SLED just
9 said swabs from the knife. I don't recall whether or not
10 they were told specifically which area it came from.

11 Q. Okay.

12 **MS. LIVESAY:** Let me mark this as an exhibit.

13 Will you mark that for me real quick, Dixie.

14 **(SLED REPORT MARKED AS STATE'S EXHIBIT NUMBER 30 FOR**
15 **IDENTIFICATION ONLY.)**

16 **MS. LIVESAY:** I'm showing her the SLED Report, which
17 has been marked as State's Exhibit Number 30.

18 Q. When you look at this report, does it break down for
19 you where that swab came from?

20 A. Yes.

21 Q. Okay. How is it broken down?

22 A. Number 63, it says swab from the blade, and 64 also
23 says swab from the blade. 28 ---

24 Q. Does it tell you blade of what item?

25 A. It says of the Case knife.

MICHELLE McSPADDEN - REDIRECT BY LIVESAY
RECROSS BY WILSON

1 Q. Okay. And 28 says what?

2 A. 28 says they were swabs from the handle, 28, Items 1
3 and 2, swabs from the handle of the folding knife, so from
4 this it appears that I did both sides of the blade, as well
5 as the handle.

6 Q. Okay. And even more importantly than that, when you
7 sent that swab to SLED, they knew where -- which part of that
8 item was swabbed?

9 A. Correct.

10 Q. Okay. So you labeled it when you did the handle; it
11 said swab handle. When you did the blade, swab blade?

12 A. Yes.

13 Q. Okay. Are those items packaged separately?

14 A. They are, yes.

15 Q. Okay. So there's no way whatever you swabbed from the
16 handle got on another swab?

17 A. No.

18 **MS. LIVESAY:** No further questions, Your Honor.

19 **THE COURT:** Cross-examination -- I'm sorry. Recross?

20 **MR. WILSON:** I just have one or two questions.

21 **RECROSS-EXAMINATION BY MR. WILSON:**

22 Q. Ma'am, when you got there, was the blood still wet on
23 the floor?

24 A. I did not go into the house immediately because we
25 waited for a search warrant. My thought is it would have

1 probably been dry by the time we did go into the house. I
2 know the blood on the outside on the ground was still wet,
3 but I don't recall about the blood on the floor.

4 Q. What about the blood on the scissors and on the knife,
5 were they still wet?

6 A. I don't recall because it was raining, and I just
7 don't remember. I'm sorry; I just don't.

8 **MR. WILSON:** No other questions. Thank you, Ma'am.

9 **THE COURT:** Mr. Long?

10 **MR. LONG:** Your Honor, I would -- I don't have any
11 questions, but I would request now that this is in, to
12 publish it to the jury.

13 **THE COURT:** Not a problem if you would like to do so.
14 Anything else?

15 **MR. LONG:** No sir.

16 **THE COURT:** All right.

17 Ma'am, you may step down.

18 Do you wish the witness to be excused?

19 **MS. LIVESAY:** Yes, Your Honor.

20 **THE COURT:** All right.

21 Any objection?

22 **MR. WILSON:** No objections, Your Honor.

23 **THE COURT:** Mr. Long?

24 **MR. LONG:** No sir.

25 **THE COURT:** All right.

ADRIENNE RILEY HEFNEY - DIRECT BY LIVESAY

1 Ma'am, you are released from your subpoena and may go
2 back to your regular activities. Please make sure you don't
3 have any exhibits.

4 Who is your next witness, Solicitor?

5 **MS. LIVESAY:** At this time, Your Honor, the State calls
6 Adrienne Riley from the South Carolina Law Enforcement
7 Division.

8 **THE COURT:** All right.

9 **ADRIENNE RILEY HEFNEY**, being first duly sworn,
10 testifies as follows:

11 **DIRECT-EXAMINATION BY MS. LIVESAY:**

12 Q. And, Ms. Hefney, tell the jury where you work.

13 A. I work with the South Carolina Law Enforcement
14 Division, more commonly known as SLED.

15 Q. Okay. And what do you do at the -- at SLED?

16 A. I'm a forensic DNA analyst.

17 Q. Okay. And tell the jury about your educational
18 background.

19 A. I have a Bachelor of Science Degree from the
20 University of South Carolina in Biology. I've taken post-
21 graduate courses in Molecular Biology, Population Genetics
22 and Statistics. I also possess a MBA from Winthrop
23 University as well, and I received my training on the job
24 from a court-qualified analyst, and each year we are required
25 to attend a conference or a training class in continuing

ADRIENNE RILEY HEFNEY - DIRECT BY LIVESAY

1 education to stay abreast of any changes or updates in the
2 field of DNA analysis.

3 Q. And tell the jury and the Court, how long have you
4 been at SLED?

5 A. Since 1997, so that's almost fifteen years.

6 Q. Okay. And have you held the same position?

7 A. Since March of 1999, I have.

8 Q. Okay.

9 A. Before then, I was a technician.

10 Q. Okay. And tell the jury again exactly what your
11 position has been since 1999.

12 A. Forensic DNA Analyst.

13 Q. Okay. And have you ever testified in Court before?

14 A. Yes Ma'am, I have.

15 Q. Okay. How many times?

16 A. Roughly almost sixty times.

17 Q. Have you ever been qualified as an expert?

18 A. Yes Ma'am, I have.

19 Q. And how many times have you been qualified as an
20 expert?

21 A. All of those times, almost sixty.

22 Q. Okay. And what court was that in, State ---

23 A. In both General Sessions in the State Court, as well
24 as Federal.

25 Q. Okay.

ADRIENNE RILEY HEFNEY - DIRECT BY LIVESAY

1 **MS. LIVESAY:** Your Honor, at this time the State wishes
2 to offer the witness as an expert in the field of DNA
3 analysis.

4 **THE COURT:** All right.

5 Mr. Wilson, do you wish to voir dire the witness as to
6 her qualifications or challenge the State's offer?

7 **MR. WILSON:** I do not.

8 **THE COURT:** Mr. Long?

9 **MR. LONG:** No sir.

10 **THE COURT:** All right.

11 The witness is qualified to give her opinion.

12 You may proceed.

13 **MS. LIVESAY:** Thank you, Your Honor.

14 Q. Ms. Hefney, if you don't mind, tell the jury exactly
15 -- we call -- we say DNA all the time. Explain to them
16 exactly what that means.

17 A. Sure. DNA stands for deoxyribonucleic acid, and what
18 that is, it's a chemical that is found in all your nucleated
19 cells of your body, and what it does, it tells us -- it makes
20 us individuals. A lot of us have the same DNA because it --
21 DNA that goes for humans having two arms, and two legs, and
22 eyes, and nose, but, of course, we look around this
23 courtroom, everybody looks different, so everyone's DNA is
24 unique.

25 We receive our DNA from our parents. We get half from

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1 our mother and half from our father, and so the only two
2 people that will have the same DNA would be identical twins.

3 Q. Okay. Now, let me ask you this: Do you do your
4 statistical comparison or statistical analysis when you're
5 testing DNA?

6 A. We do. What we do is because of that uniqueness of
7 DNA that no two people have the same DNA, we use that in
8 crime scene investigations, and how that is, we compare
9 knowns to unknowns.

10 The knowns would be what's like a blood standard from a
11 victim and on a suspect, and that's blood that was taken out
12 of the vein of them, or buccal swabs, or sometimes it's
13 pronounced buccal swabs, from the inside of their cheek.
14 Those are known standards because we know the origin from
15 where they came.

16 The unknowns are samples that were left behind at a
17 crime scene. It can be blood left behind at a homicide,
18 semen left behind at a sexual assault case, or saliva, any
19 type hair, fibers, we can get DN- -- not fibers, we can't get
20 DNA from, but hair, blood, semen, saliva, teeth, bone, we're
21 able to get DNA profiles from.

22 And so when we develop a DNA profile from a unknown,
23 we'll make a comparison to a known. We'll do a visual
24 comparison to see if that matches, and if it does, we'll
25 apply a statistical weight to it, to say if you were to see

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1 however many people you should only expect to see this DNA
2 profile or this combination of DNA profiles one time.

3 Q. And explain exactly how evidence gets to SLED, how the
4 chain works in SLED.

5 A. Sure. Evidence is submitted by local law enforcement
6 agencies. It's brought to SLED. It is logged in, in our
7 Evidence Control Department. A request is put on it based on
8 what they need done, and if it's DNA that they need done,
9 then we will go downstairs to our Evidence Control
10 Department, retrieve it, bring it upstairs to work on it.

11 Back in '06 when this case was done, we had technicians
12 that would retrieve the evidence for us, bring it to us and
13 put it in our location, in our refrigerator, and then we
14 would retrieve it from there.

15 Q. Okay. And did Myrtle Beach Police Department submit
16 evidence to SLED regarding the number L0608393?

17 A. Yes Ma'am, they did.

18 Q. Okay. And if you don't mind, did you do a report
19 regarding this -- what was submitted to SLED?

20 A. Yes Ma'am. I made the comparisons of those unknown
21 swabs to those known standards that I received.

22 Q. Okay. And if you don't mind, could you please go
23 through each item and tell the jury what your final result
24 was.

25 A. Sure. First of all, on Item 85, which was the swab

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1 from a folding knife that was found in the white Chrysler
2 glove box, as well as Item 28.1, and these are SLED item
3 numbers that I'm reading by, they may differ from Myrtle
4 Beach item numbers, but Item 28.1 was some swabs taken from
5 the handle of a folding knife. There was insufficient human
6 DNA on those for STR analysis, and STR just stands for short
7 tandem repeat. That's the type of DNA analysis that we do at
8 SLED.

9 Now, the DNA -- and I'll read directly from my report in
10 regards to the other items.

11 Q. I'm sorry. Before we get too far now, there were two
12 -- there were swabs submitted from two different knives, is
13 that right?

14 A. Yes.

15 Q. Okay. And what is the description of the second
16 knife?

17 A. A Case knife. I'm assuming that's a brand name of a
18 knife.

19 Q. Okay. So it's definitely two different knives that
20 you're taking swabs off of, though, ---

21 A. Well, that I received a swab from, yes Ma'am.

22 Q. --- that you received swabs from, and what you just
23 told us about was the folding knife, is that right, that was
24 found from a Chrysler?

25 A. Yes Ma'am.

1 Q. I'm sorry, go ahead. Please continue. What was the
2 next item?

3 A. Okay. The DNA profile developed from Items 63, which
4 was a blade of a Case knife, and 65, which was scissors, is
5 a mixture of at least two individuals. Joseph Hucks and
6 Larry Chestnut cannot be excluded as possible contributors
7 to this mixture. The probability of randomly selecting an
8 unrelated individual who could contribute to this mixture is
9 approximately one in three hundred and fifty thousand.

10 Kendrick Chestnut is excluded as a possible contributor
11 to this mixture.

12 Do you want me to keep reading the rest of them or ---

13 Q. Could you go ahead and tell us about the next analysis
14 you performed.

15 A. The DNA profile developed from Item 66, which was
16 another swab from scissors, is a mixture of at least two
17 individuals. The DNA profile of the major contributor to
18 this mixture matches the DNA profile of Joseph Hucks. The
19 probability of randomly selecting an unrelated individual
20 having a DNA profile matching the major contributor to this
21 mixture is approximately one in one point five quadrillion.

22 The partial DNA profile of the minor contributor to this
23 mixture matches the DNA profile of Larry Chestnut. The
24 probability of randomly selecting an unrelated individual
25 having a DNA profile matching the minor contributor to this

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1 mixture is approximately one in one hundred and seventy
2 thousand.

3 Q. That's a lot of information. Do you mind holding on
4 one second.

5 A. Sure.

6 Q. If you don't mind, I'm going to use this pad to write
7 it down kind of what the analysis is, ---

8 A. Okay.

9 Q. --- and who it matched up to. That way we can keep it
10 straight. Can you see this?

11 A. Not really.

12 **MS. LIVESAY:** Your Honor, do you mind if she steps
13 down so she can make sure the accuracy of what I put on
14 this ---

15 **THE COURT:** I don't have a problem with that, but then
16 you're just going to have to move it so that your -- you've
17 got to move that thing closer over here to the microphone.

18 **MS. LIVESAY:** I understand.

19 If you don't mind, could you step down, ---

20 **THE COURT:** You may step down.

21 A. Okay.

22 **MS. LIVESAY:** --- and that way you can make sure
23 I'm ---

24 Q. If you don't mind, take me back to -- I know we've
25 already gone through it, but if you don't mind helping, the

1 swab from the scissors, is that what you were just testifying
2 to?

3 A. Yes Ma'am. The first results I have are the swabs
4 from the blade of the Case knife ---

5 **THE COURT:** Your voice is going to have to go up,
6 Ma'am, or you're going to have to get closer to that
7 microphone, one of the two.

8 A. I can speak louder.

9 **THE COURT:** Okay.

10 Q. Okay. Tell me about the Case knife.

11 A. The DNA profile from Item 63, which is the blade from
12 the Case knife, and the scissors, is a mixture of two
13 individuals. Joseph Hucks and Larry Chestnut cannot be
14 excluded as possible contributors to this mixture.

15 Q. Okay. So we've got the blade of the Case knife?

16 A. Uh huh (**indicating positive**).

17 Q. And the scissors?

18 A. Yes.

19 Q. And that's one analysis you performed? They were
20 swabs taken off these items, and you compared them to the
21 known swabs of Larry Chestnut, Joseph Hucks, and Kendrick
22 Chestnut?

23 A. Yes.

24 Q. So, and what -- and your results were what?

25 A. That it's a mixture of Joseph Hucks and Larry

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1 Chestnut.

2 Q. Okay. And tell the jury -- explain to the jury
3 exactly what a mixture is.

4 A. Sure. A mixture is when you have DNA evidence, a
5 biological stain has been left behind. It's been left
6 behind in more than one person, so I have the biological
7 evidence of more than one person, whether that be blood from
8 one person and saliva from another, or blood from both of
9 them. I have no way of knowing that, but I just know that
10 there was two biological specimens here in this one swab, or
11 two swabs in this case, from two different people.

12 Q. Okay. Would you say what I wrote up here is
13 accurate?

14 A. Yes.

15 Q. Okay. What is the second unknown swab or swabs?

16 A. The second one is from scissors, and that's Item
17 66, ---

18 Q. Okay.

19 A. --- and it's also a mixture of at least two
20 individuals.

21 Q. Okay. And who are those two individuals?

22 A. The major contributor to this mixture matches the DNA
23 profile of Joseph Hucks.

24 Q. Okay.

25 A. And let me explain what I mean by major contributor

1 versus minor contributor. Just as I explained that you have
2 those two stains or two things that were deposited by two
3 different people, say one person deposited blood and one
4 person just deposited a little piece of -- a bit of
5 something, that's just for, you know, explanation purposes.
6 The blood would be a stronger profile than that small
7 amount, and so the major contributor to that mixture you can
8 clearly see, and then the other person would be a minor
9 contributor.

10 In some cases in a mixture we have both contributing
11 equal amounts of biological specimen, like what we said in
12 the first one with the blade of the Case knife and the
13 scissors. Both of them are contributing to that, but I can't
14 say one is major and one is minor.

15 Q. Is this accurate?

16 A. Yes.

17 Q. Okay. And by major, you mean that there is more of
18 that specimen on the scissors?

19 A. Yes, more of that person.

20 Q. Okay. Got'cha. So more of Joey's DNA is on the
21 scissors than Larry Chestnut?

22 A. Yes.

23 Q. Okay. I'm sorry. Go ahead and tell us about the next
24 unknown swab.

25 A. The next one is DNA profile developed from Item 64,

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1 swab from the blade of the Case knife, is a mixture of at
2 least two individuals. The DNA profile of the major
3 contributor to this mixture also matches the DNA profile of
4 Joseph Hucks. Larry Chestnut cannot be excluded as a
5 possible minor contributor to this mixture, and Kendrick
6 Chestnut is excluded as a possible minor contributor to this
7 mixture or a possible contributor to this mixture.

8 Q. If you don't mind, explain to the jury what you mean,
9 cannot be excluded?

10 A. It means that everything I see, the DNA profile that I
11 developed of those two people, there's nothing that's saying
12 that they're not there.

13 Q. But you don't have enough to say that is Larry
14 Chestnut's DNA on the blade of the Case knife?

15 A. Yes.

16 Q. And you said somebody could be excluded?

17 A. Kendrick Chestnut.

18 Q. Okay. Would you say that's accurate?

19 A. Yes.

20 Q. Tell us about an unknown DNA swab.

21 A. The next unknown is from a T-shirt. I believe this is
22 Kendrick Chestnut's T-shirt, ---

23 Q. Okay.

24 A. --- and a transfer stain on the T-shirt. The DNA
25 profile I developed, Item 40.1, is a mixture of at least two

1 individuals. The DNA profile of the major contributor to
2 this mixture matches the DNA profile of Kendrick Chestnut.
3 The probability of randomly selecting an unrelated individual
4 having a DNA profile matching the major contributor to this
5 mixture is approximately one in seven hundred and forty
6 quadrillion.

7 Joseph Hucks cannot be excluded as a possible minor
8 contributor to this mixture. Larry Chestnut is excluded as a
9 possible minor contrib- -- a possible contributor to this
10 mixture.

11 Q. Okay. So we know that that's not Larry's DNA on that
12 swab on Kendrick Chestnut's T-shirt?

13 A. On Kendrick's T-shirt.

14 Q. And we don't know if it could be Joey or not?

15 A. Joseph Hucks cannot be excluded.

16 Q. So there's some profiles that appear to belong to Joey
17 Hucks, but not enough for you to be able to say, yes, that's
18 Joey Hucks?

19 A. Correct. There's not enough there for me to exclude
20 Joey Hucks from it.

21 Q. Got'cha. Would it -- tell me about the next item.
22 I'm sorry, let me make sure I've got this written correctly
23 before I let you go too far. Is that accurate?

24 A. That's accurate.

25 Q. Okay. Tell us about the next one.

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1 A. There is another swab from the same T-shirt. The
2 profile developed from Item 40.2 is a mixture of at least two
3 individuals. The DNA profile of the major contributor to
4 this mixture often matches the DNA profile of Joseph Hucks.
5 Kendrick Chestnut cannot be excluded as a possible minor
6 contributor to this mixture. Larry Chestnut is excluded as a
7 possible minor contributor to this mixture.

8 Q. So Larry Chestnut is excluded?

9 A. Uh huh **(indicating positive)**.

10 Q. And, I'm sorry, what was the analysis regarding Joseph
11 Hucks?

12 A. It mat- -- he was a major contributor.

13 Q. He was a major contributor or a match?

14 A. The T-shirt.

15 Q. Yes, the T-shirt would be a major contributor or was
16 it a match on that T-shirt to Joey Hucks?

17 A. Both. He's a major contributor and it matches the DNA
18 profile of Joey -- Joseph Hucks.

19 Q. Okay. But he's a major contributor and is a match?

20 A. Yes.

21 Q. Is that right?

22 A. Yes Ma'am.

23 Q. Okay. Tell me about Kendrick Chestnut on that T-
24 shirt.

25 A. He cannot be excluded as a possible minor contributor,

1 and this is an example of, say, it was Kendrick's T- -- it's
2 Kendrick's T-shirt, so clearly it's got his skin cells on the
3 T-shirt. That would be -- you may not find a profile. That
4 is another way to explain the difference between major and
5 minor.

6 Q. So you would expect Kendrick Chestnut to be ---

7 A. To be on his own T-shirt.

8 Q. --- on his T-shirt, right?

9 A. Yes Ma'am.

10 Q. Is this correct here, what I wrote here?

11 A. Yes.

12 Q. And is this all the results that you came up with
13 regarding the evidence?

14 A. I have three more items, but as far as no DNA profile
15 foreign to the victim, Joseph Hucks, was developed in 45 and
16 46, and those were his fingernail clippings, and no DNA
17 profile was developed from Item 28.2, which was the blade of
18 the folding knife.

19 Q. Thank you, but before you go, is this a accurate
20 depiction of exactly what the results are that came from
21 SLED?

22 A. Yes.

23 **MS. LIVESAY:** Your Honor, at this time, I'm going to
24 introduce this into State's evidence.

25 **THE COURT:** Have it marked, please.

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1 **MS. LIVESAY:** I'm sorry, Your Honor?

2 **THE COURT:** Have it marked, please.

3 And what's the number, please, Ma'am?

4 **THE REPORTER:** State's 31.

5 **THE COURT:** State's 31.

6 All right. Mr. Wilson, State's 31, do you have any
7 objection to it?

8 **MR. WILSON:** Yes sir. One, it's not the official
9 report that this agent did. I wouldn't have any objection to
10 the official report that she did. What I object to is these
11 are the notes that were taken by the Solicitor during her
12 direct examination.

13 **THE COURT:** All right.

14 Solicitor, do you want to introduce State's 30 into
15 evidence?

16 **MS. LIVESAY:** No sir, I do not.

17 **THE COURT:** All right. I am not going to allow State's
18 31 into evidence. I will have it marked for identification.
19 It can be used for demonstrative purposes only. Thank you
20 very much.

21 **(CHART OF DNA TESTIMONY MARKED AS STATE'S EXHIBIT NUMBER**
22 **31 FOR IDENTIFICATION ONLY.)**

23 Q. Let me ask you, Ms. Hefney, what I've written up
24 there, is this the results of your report?

25 A. Yes, my notes.

1 Q. Okay.

2 MS. LIVESAY: Your Honor, she has testified that these
3 are the results of her report, and I ask to move this into
4 evidence ---

5 THE COURT: I appreciate that, and again, I am not
6 going to allow you to put that into evidence. You may put
7 into evidence the original report if you so choose to do so.
8 That's your choice. I will not allow State's 31 in evidence.
9 It can be used for demonstrative purposes. Thank you very
10 much.

11 Q. Let me ask you this, Ms. Hefney. Was Larry Chestnut a
12 major contributor on the scissors or the Case knife in any of
13 your results?

14 A. No Ma'am, he was not.

15 Q. Okay. Even on the blade of the case knife, which you
16 told me the blade of the Case knife, who was the major
17 contributor, whose DNA was the major contributor of the blade
18 of that knife?

19 A. Okay. On one of the items, Item 63 was also a blade
20 swab from Case knife, and that was a mixture of both Joseph
21 Hucks and Larry Chestnut.

22 Q. Okay.

23 A. Item 64 is another swab from the blade of Case knife,
24 and that's a mixture of two, and major contributor to that
25 one is also Joseph Hucks.

1 Q. Okay. So were there any other swabs other than these
2 two that are labeled blade of Case knife?

3 A. No, just 63 and 64.

4 Q. Okay. So on both blades of that case knife, both
5 swabs that were taken from the Case knife, Joey Hucks, that
6 DNA was equal to the amount of DNA from Larry Chestnut or was
7 a major contributor?

8 A. That's correct.

9 Q. Okay. But on neither swab on the case knife, on that
10 blade, was Larry Chestnut the major contributor?

11 A. No, he was not.

12 Q. Okay. Let me ask you, too, a little bit about the
13 scissors. You had an item -- two items labeled or two swabs
14 that were taken off the scissors, is that correct?

15 A. That's correct, Item 65 and 66.

16 Q. Okay. And again, on the scissors, there was one where
17 Joey Hucks and Larry Chestnut -- it was an equal mixture from
18 both, is that correct?

19 A. Yes.

20 Q. Okay. And then on the other swab from the scissors,
21 Joey Hucks again was the major contributor on the scissors?

22 A. That's correct.

23 Q. Okay. So on none of the items as far as the scissors
24 or the blade of the Case knife was Larry Chestnut ever a
25 major contributor?

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- 1 A. That is correct.
- 2 Q. Okay. If you don't mind, I'll ask you a little bit
3 about that T-shirt, Kendrick Chestnut's T-shirt. The results
4 from the T-shirt, there was a stain on the T-shirt, is that
5 correct?
- 6 A. Yes Ma'am.
- 7 Q. Okay. And you said that was a transfer stain?
- 8 A. That's how it was labeled.
- 9 Q. That's how it was labeled?
- 10 A. Yes.
- 11 Q. Okay. So you don't know. It's just labeled as a
12 transfer swab?
- 13 A. No. I just got the swab.
- 14 Q. And the DNA on that T-shirt matched up to Kendrick
15 Chestnut?
- 16 A. That is correct.
- 17 Q. And would you be surprised by that?
- 18 A. No.
- 19 Q. Now, without a doubt on that particular one, Larry
20 Chestnut's DNA is not anywhere on that, that particular swab?
- 21 A. That is correct.
- 22 Q. Okay. And on that stain, on Kendrick Chestnut's
23 shirt, Joey Hucks cannot be excluded?
- 24 A. That is correct.
- 25 Q. That just means that there's a similarity of his DNA.

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1 on it, just not enough for you to be able to say that's a
2 match, correct?

3 A. That's correct.

4 Q. Now, there was another swab taken off that Kendrick
5 Chestnut T-shirt, is that correct?

6 A. Yes Ma'am, there was.

7 Q. Now, who was the major contributor of the DNA on that
8 -- that swab?

9 A. Joseph Hucks.

10 Q. Okay. And that would be unusual on somebody else's T-
11 shirt, is that right?

12 A. That's correct.

13 Q. Okay. Now, who can be excluded? Whose DNA definitely
14 was not on that T-shirt?

15 A. Larry Chestnut.

16 Q. Okay. Now ---

17 **MR. LONG:** Your Honor, I object to that. It's not that
18 his DNA was not on the T-shirt. It was not on the swab.

19 **THE COURT:** I'm going to allow the question and the
20 answer. You have the opportunity to cross-examine the
21 witness. Thank you.

22 Q. Who cannot be excluded?

23 A. Kendrick Chestnut.

24 Q. Okay. And is that a surprise to you?

25 A. No. It's -- it was his T-shirt.

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1 Q. Okay. So on everything that came off his T-shirt, it
2 would be his DNA or it would -- enough of his DN- -- or some
3 portion of a similarity of his DNA, just not enough where you
4 could say that's Kendrick Chestnut?

5 A. That is correct.

6 Q. Okay. So on nothing that came off of his T-shirt
7 could Kendrick Chestnut be excluded?

8 A. Correct.

9 Q. Okay. And did that surprise you in any way?

10 A. No.

11 Q. Okay. Ms. Riley, I'm showing you now what's been
12 marked as State's Exhibit Number 30. Do you recognize what
13 I'm showing you?

14 A. Yes. This is the copy of my report that I've been
15 reading off of with my signature.

16 Q. Okay. And has that report that I'm showing you now
17 been altered in any way? Is that an exact copy of your
18 report?

19 A. It is.

20 **MS. LIVESAY:** Your Honor, at this time the State moves
21 the SLED Report into evidence as State's evidence Number 30.

22 **THE COURT:** Any objection, Mr. Wilson?

23 **MR. WILSON:** I don't have any objection to it.

24 **THE COURT:** Mr. Long?

25 **MR. LONG:** No sir.

1 **THE COURT:** State's 30 is in evidence without
2 objection.

3 **(SLED REPORT (5 PAGES) ADMITTED INTO EVIDENCE AS STATE'S**
4 **EXHIBIT NUMBER 30.)**

5 **MS. LIVESAY:** Can I ask you to step down for a minute,
6 please, for some testimony.

7 Can you speak loud so I can have you up more this way
8 because there's not a mic over here.

9 A. Okay.

10 Q. As part of your report, they are -- they are Page 4
11 and 5, okay, and you've got a copy of it, is that correct?

12 A. That's correct.

13 Q. Okay. I'm going to show it to the jury then. What is
14 this I'm showing to the jury?

15 A. This is a representation of a DNA profile, of the DNA
16 profile that we developed from the knowns as well as the
17 unknowns in this case.

18 Q. Okay. And this is where you did your statistical
19 analysis, is that right?

20 A. That is correct, and what you see here across the top
21 of here, these are what are known as genetic locations. You
22 have twenty-three pairs of chromosomes in your body. We, as
23 DNA analysts, look at the chromosomes or genetic markers that
24 are different, that make you unique, and right here at the
25 top, these are where they are named, so right there you see

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1 D8S1179. That just means that's chromosome eight at site one
2 thousand, one hundred and seventy nine on that chromosome.

3 Q. Let me ask you this just real quick, to interrupt you.
4 Could you read this chart before you went to school to do
5 DNA?

6 A. No, not -- I wouldn't know what it meant.

7 Q. So you would have no idea before you went to school
8 what any of this meant?

9 A. That is correct.

10 Q. Okay. Would you expect a lay person or anybody else
11 to understand this chart?

12 A. No.

13 Q. Okay. And that report you did basically tells the
14 results of this chart?

15 A. That's correct.

16 Q. Okay. This is actually extremely complicated, would
17 you say?

18 A. It can be, but, I mean, it's -- you know, it's easily
19 explainable so a lay person can explain -- can understand it.

20 Q. Right. Let me ask you this way: Would it be easier
21 to understand these results by looking at this table or what
22 I just did on this note pad?

23 A. Oh, what you just did on the note pad.

24 Q. Okay. And let me ask you this: This table -- this
25 table is exactly what I wrote on my note pad, is that right?

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1 A. Well, it's the results of what we look at in
2 determining what's real.

3 Q. Okay. So there's nothing -- there's no results on
4 this, this, that is not on your report?

5 A. No. What they'll be able to see from this chart is
6 just where the DNA profile from each one came from, and there
7 will be a representation of what she has written here.

8 Q. Okay. So your report just gives the results of what
9 this table is telling you as a scientist?

10 A. That's correct.

11 Q. Okay.

12 **MS. LIVESAY:** I'm sorry, and go ahead and have a seat.

13 Q. Now, when you do this report at SLED, which is
14 basically the results of this table, do you just send that to
15 the -- to the Myrtle Beach Police Department, or is there a
16 review process? Tell the jury about that.

17 A. There is a lengthy review process. Once I do this
18 report, or any analyst, we're reviewing it as we go. It's
19 sent to a peer, another analyst in the DNA Department. They
20 review it, and once they approve it, it's sent to a
21 supervisor and they review it, and they have the final review
22 and the final sign-off before it's sent to the submitting
23 agency, so it goes through at least two reviews before it's
24 sent out the door, or three reviews including the analyst
25 that does it.

1 Q. So that report has been reviewed several times by
2 other people before it ever leaves the South Carolina Law
3 Enforcement Division?

4 A. That's correct. That's every report that we submit.

5 Q. Okay. So right after you do the results, you do this
6 report and then they actually look at it separate and apart
7 and say, yes, this is accurate, or no, it's not?

8 A. That's correct.

9 Q. Okay. And how many people do that?

10 A. Well, right now we're down to about less than ten
11 maybe that are DNA analysts that's doing that.

12 Q. Okay. Now, just -- just so I'm clear and the jury is
13 clear because it's very complicated, or it seems complicated,
14 on the report, there's nothing up here that's inapplicable?

15 A. That's correct.

16 Q. Okay. So there's nothing in that report that's going
17 to say Larry Chestnut is a contributor on anything, any
18 blades, any scissors, anything?

19 A. That Larry Chestnut is a contributor?

20 Q. Uh huh **(indicating positive)**.

21 A. Well, he is a contributor on Item 63 and 65; he cannot
22 be excluded as one.

23 Q. Right, but is he a major contributor on ---

24 A. Oh, a major, no Ma'am.

25 Q. Okay. So given that report, I know it's complicated,

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CROSS BY WILSON

1 it's complicated for me, you're sure and this result up here
2 is correct that Larry Chestnut is not a major contributor on
3 any blade or any pair of scissors?

4 A. That is correct, not a major contributor.

5 Q. Okay.

6 **MS. LIVESAY:** No further questions, Your Honor.

7 **THE COURT:** Cross-examination, Mr. Wilson.

8 **CROSS-EXAMINATION BY MR. WILSON:**

9 Q. Ma'am, first let me ask you in regards to -- first in
10 regards to DNA, you can make a determination that a person is
11 included, and then you have to come up with a statistical
12 analysis to quantify that, would that be a fair statement?

13 A. I believe that's a fair statement.

14 Q. Okay. And what is the statistical analysis that you
15 came up with in order to determine that a person is not
16 excluded? Give us the statistical analysis that you came up
17 with to show that that person is not excluded.

18 A. Not excluded, okay. Like, for example, in the first
19 paragraph where the DNA profile from Item 63 and 65 is a
20 mixture of two individuals, and Joseph Hucks and Larry
21 Chestnut cannot be excluded as possible contributors to this
22 mixture, and the probability of randomly selecting an
23 unrelated individual who could contribute to this mixture is
24 approximately one in three hundred and fifty thousand.

25 Q. Well, now, I apologize, but I thought you said that

1 they were included?

2 A. They cannot be excluded.

3 Q. Sixty-three, did you not say that the blade, which is
4 the blade Case knife, correct, 63, right?

5 A. Yes.

6 Q. And in that, did you not say that Joseph Hucks and
7 Larry Chestnut are contributors to that?

8 A. They cannot be excluded as possible contributors to
9 this mixture.

10 Q. Okay. So are you say- -- what my question to you is,
11 if you're saying that they can't be excluded, in order to
12 include somebody you have to give us a statistical analysis
13 of what the odds are that that person is included, whether
14 it's one in five trillion or whether it's one in two hundred
15 and eighty billion, or whatever the number is, right?

16 A. That's correct. That's what the one in three hundred
17 and fifty thousand is.

18 Q. What I'm asking you is -- that's when they're
19 included. What I'm asking you is you're saying to me now
20 that -- you're not saying that they are major contributors
21 and they're included; you're saying we can't exclude them.
22 That's what I'm asking you about, the difference, not those
23 people who we know and you've said to us, look, these people
24 are major contributors to this. I'm asking you about the
25 ones where you're saying, well, I'm not saying that they're a

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1 contributor. I'm saying they can't be excluded as a possible
2 contributor.

3 A. Well, pretty much when they cannot be excluded,
4 they're included.

5 Q. Well, then, if they're included, give us the
6 statistical probability that you have to give us in order to
7 tell us what the odds are that they are, in fact, included.

8 A. That would be the one in three hundred and fifty
9 thousand.

10 Q. One in three hundred in fifty thousand, and how many
11 people in the world?

12 A. There's almost seven billion people in the world.

13 Q. Okay. So if it's one in three hundred and fifty
14 thousand, then that would mean that there are probably
15 another eight hundred thousand people out there somewhere
16 that could have put that -- that blood there, right, or that
17 stain?

18 A. That's a statistical weight to it, so yes sir.

19 Q. Yeah, so then what you are telling us is that you
20 really honestly don't know what it is when you're talking
21 about a person not being able to be excluded?

22 A. I'm doing this based on what I see as far as the known
23 standards and making a comparison to the unknown, and when I
24 did, that I could say these two people, I didn't see anything
25 saying that they are not a contributor to this mixture.

1 Q. And what do you have to say that they are? That's
2 what I'm asking.

3 A. Their DNA profile.

4 Q. You told the Solicitor in your conversation with her
5 that there is not enough there to say that a person is
6 excluded, and so what I'm asking you is what is it that you
7 have to find to show that?

8 A. I didn't say there was not enough there to say that
9 person is excluded.

10 Q. You didn't say there's not enough there to say that
11 Joey was excluded when you were talking about the T-shirt?

12 A. There is not enough to make a match to it saying that
13 he's not the major contributor to it, but he's not excluded.
14 He's included if that's the case. Is that what you're
15 asking?

16 Q. You said on the T-shirt -- you said that the major
17 contributor to the T-shirt was Kendrick Chestnut, is that
18 correct?

19 A. On the transferred stain, the swab from his
20 transferred stain.

21 Q. Okay. And then you go on to say that Joseph Hucks
22 cannot be excluded, but Larry can be excluded?

23 A. Correct.

24 Q. And what I'm asking you now is you told us that you
25 have to have a statistical probability to show the chances

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1 that that stain belongs to a particular individual, and what
2 I'm asking you simply now is in regards to this can't be
3 excluded for Joseph Hucks, you're not telling us that that
4 stain belongs to Joseph Hucks in any way, are you?

5 A. I'm not -- I didn't add a statistical weight to it, no
6 sir, ---

7 Q. Okay. And ---

8 A. --- that he cannot be excluded.

9 Q. And by the rules that you operate under, unless you
10 find enough there, you're not permitted to assign a
11 statistical amount to it, are you?

12 A. That's incorrect.

13 Q. So you can just dig up a number and put it there
14 regardless?

15 A. No. At this time when this case was written or this
16 report was written, when they cannot be excluded we were not
17 applying statistical rates to cannot exclude. Now we
18 actually are applying statistical weights to it, so if I had
19 the program here or whatever, I could apply a statistical
20 weight to his not being excluded.

21 Q. You could do that now? What -- you've had this case
22 since 2006 or '07, ---

23 A. Right.

24 Q. --- and you knew you were coming to Court because you
25 submitted a new report, what was it, April of 2011?

1 A. Yes sir, but you cannot send a different report for
2 it. That's just the way we were writing reports at that
3 time.

4 Q. All right. Now, let's go back and talk about this DNA
5 stuff and about major contributors and minor contributors.

6 A. Okay.

7 Q. Now, a major contributor and a minor contributor
8 actually has a lot to do with how much of a stain you find on
9 the item that you're trying to examine, fair?

10 A. Not necessarily.

11 Q. Okay. Well, ---

12 A. It's based on how much DNA or how much biological
13 evidence was contributed by that person on that stain.

14 Q. Yeah, but you -- when you get a swab, you don't have
15 the entire stain. You have a swab of the stain?

16 A. That is correct.

17 Q. You never saw this stain in its entirety, did you?

18 A. That's correct.

19 Q. You saw a swab that somebody brought you, and that
20 swab would have had whatever substance was on the item that
21 was swabbed, right?

22 A. That is correct.

23 Q. All right. And -- and so if more of one person's
24 blood is on there, then you would expect that that person is
25 going to be the major contributor versus less of him, is that

1 correct?

2 A. That is correct, if there was a swab of the blood
3 stain, yes, sir.

4 Q. That's right, and -- and not only that, if it's
5 swabbed incorrectly, then you're going to get the wrong
6 results anyway because then you're not going to know which --
7 if you -- for instance, to give you an example, if you swab
8 an area where there is a lot of blood and then you swab an
9 area where there is a very little blood, then you may get in
10 that lot of blood one person's blood primarily, and where you
11 swab the second area, then you find other blood in there,
12 which is less, right?

13 A. If it was swabbed that way, yes, sir.

14 Q. Yeah, so my question to you is when you're saying that
15 a person can't be excluded, that does not mean that that
16 person is, in fact, a contributor to anything, does it?

17 A. It means that they are a possible contributor to this.

18 Q. Possible, possible, and how many possible scenarios
19 are there, a half million, two million, fifty billion, four
20 quadrillion, what, or do you know?

21 A. I do not know.

22 Q. You do not know. And now the rule is when you're
23 going to testify about something, if you can't quantify it,
24 then you should not be saying that that belongs to a
25 particular individual, should you?

1 A. That's not necessarily the case.

2 Q. Not necessarily the case, so you can quan- -- not
3 quantify it and then come in this courtroom and tell a jury
4 that it belongs to somebody?

5 A. Because we do a visual match first and then apply a
6 statistical weight to it. It doesn't change that what we saw
7 that the DNA profile that appears that Joseph Hucks or
8 whoever cannot be excluded. That does not change. We just
9 don't have a statistical weight to it, ---

10 Q. Let's go back ---

11 A. --- but it does not negate the match, or exclude or
12 include.

13 Q. Okay. Let's go back to Item 63. Do you recall that
14 one?

15 A. Yes sir. That's the blade from the Case knife.

16 Q. All right, the blade from the Case knife, and now did
17 you tell the Solicitor that Joey Hucks was the major
18 contributor on that?

19 A. I did not.

20 Q. And what did you say?

21 A. I said Joseph Hucks and Larry Chestnut cannot be
22 excluded as possible contributors to this mixture.

23 Q. Okay. So that means what you're saying is you're not
24 sure if that's Larry's blood and/or that's Joseph Hucks'
25 blood on that knife based on that swab that you did or that

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1 you have? Isn't that what you're saying?

2 A. No sir.

3 Q. Well, tell me in your words what you're saying then.

4 A. I'm saying that the DNA that was found on that swab
5 from that blade appears to be a mixture of those two
6 individuals.

7 Q. All right. And how did you come to that
8 determination, because you're saying that they can't be
9 excluded, but neither one of them are major or minor
10 contributors. You're just saying that they can't be
11 excluded?

12 A. Because they are of equal concentration for the most
13 part, so I can't say that one is a major and one is a minor,
14 so they're both just -- it's a mixture. It's a homogenous
15 mixture, and that is what you will see on the chart that's on
16 my report.

17 Q. Did you do blood typing at all?

18 A. We don't do blood typing any more, sir.

19 Q. So you can't tell us even if the blood from the stain
20 is consistent or inconsistent with Larry or Joey, can you?

21 A. I'm saying that the blood from the stain, the DNA, is
22 consistent with both Larry, as well as Joseph.

23 Q. Okay. You're saying it's consistent with that, is
24 that what you're saying?

25 A. Where they cannot be excluded.

1 Q. Where they cannot be excluded, and -- but you can't
2 tell them how many other people can be included?

3 A. I'm not sure I understand what you're asking me,
4 but ---

5 Q. Okay. All right. Let me move on. Let me go to the
6 scissors. Now, -- well, let me back up and go back to the
7 knife. If the knife was found -- well, first of all, you
8 don't know where the knife was found, do you?

9 A. No sir.

10 Q. All right. And you weren't there. You didn't see any
11 of this. Did you even see pictures of this place?

12 A. No sir.

13 Q. All right. The knife was -- was -- now, 63 was the
14 blade of the Case knife. Now, was that one side or is that
15 both sides?

16 A. I'm not sure, sir. That would be what the crime scene
17 person or whoever swabbed.

18 Q. Well, you have a 64 which you say is the blade of a
19 Case knife?

20 A. That's correct.

21 Q. Now, is that the same Case knife or is that a
22 different Case knife?

23 A. That, I'm not sure. These are descriptors that was
24 given to me as they were submitted.

25 Q. Okay. So you don't know if 63 and 64, which are the

1 swabs that you tested, come from the same knife or not?

2 A. That is correct. It just said a blade of a Case
3 knife.

4 Q. Right. Now, if 64, you say Joseph Hucks and Larry
5 Hucks (sic) cannot -- he -- I'm sorry, Larry Chestnut cannot
6 be excluded, is that right?

7 A. I said that the DNA profile -- of Item 64, which is
8 blade from Case knife, the DNA profile of the major
9 contributor to this mixture also matches the DNA profile of
10 Joseph Hucks, and Larry Chestnut cannot be excluded as a
11 possible minor contributor to this mixture.

12 Q. Okay.

13 **MS. LIVESAY:** Your Honor, ---

14 A. Kendrick Chestnut is excluded as a possible minor
15 contributor.

16 **THE COURT:** Yes Ma'am.

17 **MS. LIVESAY:** If I may, Mr. Wilson is asking questions,
18 and I don't know if he is going to go further down this road
19 about whether or not this swab came from the same Case knife.
20 The seems and appears like a chain question, which he's
21 already consented the chain is good. Now is he questioning
22 whether or not that's a swab or ---

23 **THE COURT:** I'm going to allow the question. I don't
24 see it as such regarding your agreement.

25 You may continue, Mr. Wilson.

1 **MR. WILSON:** Thank you very much.

2 Q. Now, just let me ask you a couple more things and I --
3 then I'm going to be through, but I just need a couple more
4 things here with you. In Item 64 you say that the major
5 contributor is Joseph Hucks, correct?

6 A. That is correct.

7 Q. And that the minor contrib- -- and that Larry Chestnut
8 cannot be excluded, that's what you're saying?

9 A. As a possible minor contributor, yes sir.

10 Q. All right. Now, did you come up with a statistical
11 analysis or information to say what the probability is that
12 that blood or that stain belonged to Joey Hucks?

13 A. Also matches means that it's the same statistic that I
14 would have presented earlier, and so in this case I've
15 already matched Joseph Hucks to another item and applied
16 statistical weight, so that's what also matches means. It's
17 the same statistical weight, and in this case that
18 statistical weight would be one in one point five
19 quadrillion.

20 Q. Okay. And what was the one for Larry Chestnut for
21 Item 64?

22 A. Again, Larry Chestnut was a possible minor contributor
23 and cannot exclude visual match. We did not apply a
24 statistical weight to it.

25 Q. All right. So it's a possibility is what you're

1 saying, it's a possibility that it could belong to him, but
2 we really don't know because you can't tell us that there's a
3 probability, and in your field of work, a possibility is true
4 for just about anything, isn't it?

5 A. I'm not sure what you're asking with that.

6 Q. What I'm asking you is in science, in your field, when
7 you're dealing with these -- with blood and with the DNA,
8 that anything is possible for the most part, right?

9 A. Anything is possible to a degree of reasonable
10 scientific certainty.

11 Q. Which is why, which is why you're required to give us
12 the statistical analysis telling us the quantitative number
13 as to how that probability exists so that we know that the
14 chances that it belongs to Larry Chestnut is one in five
15 hundred billion or one in two hundred and twenty-five
16 million, as opposed to your showing up here saying, well,
17 it's possible it belongs to him.

18 A. Or it's probable that it -- that we don't see anything
19 where he can -- it doesn't belong to him.

20 Q. Okay. So what you're saying is, well, we looked at it
21 and we didn't see anything that said it wasn't his, so we
22 must assume that, well, if we didn't see anything to show
23 that it wasn't his, maybe it is? That's what you're saying,
24 right?

25 A. I'm looking at the DNA profile and I'm noticing that

1 everything that I'm seeing is matching his DNA profile that's
2 not already matching Joseph Hucks as the major.

3 Q. Well, if it matches his DNA, then why can't you say
4 that he is included?

5 A. We said he cannot be excluded as a possible minor
6 contributor.

7 Q. I understand that's what you're saying, Ma'am. I
8 know ---

9 A. And it could be because -- let me look at the chart.
10 You were asking me about Item 64, is that correct?

11 Q. I asked you about several, but yes, that's one of
12 them.

13 A. Okay. So if I refer to my chart here on the stand,
14 I'm noticing that in a lot of profile -- in a lot of the DNA,
15 Joseph Hucks and Larry Chestnut may share an allele, which
16 means, for example, in what I was saying the D8 site 1179, at
17 that one, Joseph Hucks is a eight thirteen. Larry Chestnut
18 is a twelve thirteen, so they both have a thirteen allele at
19 that location.

20 Q. Well, but I may have a thirteen ---

21 A. And so when we have -- excuse me -- when we have a
22 major contributor as an eight thirteen and throughout this
23 profile we see that Joseph is an eight thirteen, why we
24 didn't apply a statistical weight is -- we have a twelve, so
25 who can the twelve come from? We see that Larry has a twelve

1 as well, and Larry has a thirteen. If we were to subtract
2 out the thirteen from Joseph, which we can't do because he's
3 the major contributor, in order to apply that statistical
4 weight to Larry.

5 Q. Isn't it true, Ma'am, ---

6 A. And you can go through each one of them and determine
7 -- you can see how we determined what we did.

8 Q. Is it not true, Ma'am, that if you are a relative, or
9 a sister or brother, that your DNA is going to be closer to
10 that sister or brother?

11 A. Not necessarily, not unless you are identical twins,
12 because you can have completely different profiles as
13 siblings just by, you know, the random match. You can get
14 one thing from your mother. One sibling can get one allele
15 from their mother. The other could get the other and may not
16 match up the same way each time.

17 Q. Yes, it may not match up ---

18 A. There may be some similarities, ---

19 Q. You're right, ---

20 A. --- but not often or not all. I'm sorry.

21 Q. Okay. There are going -- if it's a brother and a
22 sister, there are going to be some similarities because you
23 share genes from your parents, so she may have -- the sister
24 may have had a thirteen, too, right, on her DNA pattern,
25 right?

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1 A. Well, I have ---

2 Q. If you don't -- I'm sorry. Go ahead.

3 A. I'm sorry. I have both Larry and Kendrick's DNA
4 standard, and I'm assuming they are brothers, and for example
5 at D21, which is chromosome 21, site 11 on that chromosome,
6 Larry Chestnut is a 2732.2. Kendrick Chestnut is a 2832.
7 They don't share not one at that location.

8 Q. You're assuming that they're brothers, and you're
9 assuming wrong, aren't you?

10 A. I asked were they brothers.

11 Q. And you were told that they're brothers?

12 A. I asked -- I said I'm assuming that they're brothers.
13 I'm just giving an example of what you were asking me.

14 Q. Well, my point -- and that's my very point, Ma'am.
15 They are not brothers.

16 A. Okay.

17 Q. So that is not a good analogy because they're not
18 brothers.

19 A. Okay.

20 Q. And my point is if you are actually siblings, and the
21 thing here is you never had any DNA from Christie, did you,
22 the sister of Joey, did you?

23 A. No sir.

24 Q. You never had any DNA to match with that of Cindy,
25 right?

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1 A. No sir. I just had those three standards from Joseph,
2 Larry, and Kendrick.

3 Q. Because if you had those, you might be here telling us
4 that you can't exclude them?

5 A. If they are identical twins, I couldn't, because we
6 don't just look at one location. We look at all of them, and
7 if you have two siblings that are that similar to all of them
8 and they are not identical twins, that's unusual. I haven't
9 seen it yet and I've done cases with siblings, but without
10 seeing their DNA profiles, I can't say that for certain.

11 Q. But Mr. Chestnut is not identical twins with Joey,
12 right?

13 A. That's correct.

14 Q. Right?

15 A. Correct.

16 Q. Let me ask you, when you got these items to examine,
17 did you -- were they sent to you directly before they went to
18 fingerprinting or any other place, or did they just come to
19 you, or do you know?

20 A. I don't know without -- I can look at the chain and
21 tell.

22 Q. That's okay.

23 A. But the swabs would have directly come to me because
24 they wouldn't do fingerprints on a swab.

25 **MR. WILSON:** If the Court would bear with me just one

1 second.

2 **THE COURT:** Yes sir.

3 Q. Just let me ask you one last thing. What about
4 weather conditions, would that affect the amount of
5 contribution that you might find on, say, a knife or
6 scissors?

7 A. I'm not sure if it will affect how much you have. It
8 will affect -- if DNA gets wet and it -- or extremely hot,
9 then that could destroy DNA, because DNA is pretty stable on
10 items in a dry state with -- but that's if it's not exposed
11 to extreme heat or moisture.

12 Q. Do you know whether or not it was raining the night
13 that this all happened?

14 A. I do not know.

15 Q. Do you know whether or not these items had been left
16 out in the rain for a period of time before they were
17 collected?

18 A. I do not know, but I would have to say the fact that I
19 did get some DNA from it would lead me to believe that they
20 weren't, because the DNA would have washed away before they
21 had a chance to collect if they were.

22 Q. All of it would have washed away?

23 A. Possibility. It depends on if you had a heavy
24 downpour, that's a possibility, especially blood would have
25 washed away.

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1 **MR. WILSON:** Thank you, Ma'am.

2 **THE COURT:** All right. Mr. Long.

3 **MR. LONG:** Thank you, Your Honor.

4 **CROSS-EXAMINATION BY MR. LONG:**

5 **Q.** Ms. Hefney, how many items did law enforcement send
6 you in this case originally for testing?

7 **A.** Originally law enforcement sent a lot of items, which
8 is normal with SLED, but our case acceptance policy, we
9 usually talk with law enforcement or talk with the
10 investigator to find out what items are most probative.

11 On homicide cases we typically do five items, but we can
12 go further in that and do more, depending on what's most
13 probative, because we cannot -- we don't have the time or the
14 money to do eighty some items that are submitted.

15 **Q.** And that's the case here, eighty-five plus items were
16 submitted to you, is that right, in 2007?

17 **A.** Yes sir. It looks like eighty-five items were
18 submitted for DNA analysis.

19 **Q.** Okay. And then -- so eighty-five items were sent to
20 you, but you only tested how many?

21 **A.** In this case we tested eleven.

22 **Q.** And who made the decision to test those eleven and to
23 disregard the other seventy-four?

24 **A.** A conversation between SLED and Investigator Salena
25 Mann, or Detective.

ADRIENNE RILEY HEFNEY - CROSS BY LONG
REDIRECT BY LIVESAY

1 Q. So Salena Mann decided which items SLED tested and
2 which items SLED didn't test?

3 A. Yes. I have a narrative where my then trainee spoke
4 with Salena Mann to find out which items of evidence were
5 most probative in the case in terms of DNA, and in that case
6 she said that the swabs from the two knives and the scissors
7 were the most important to be tested, and so that's what we
8 did.

9 Q. Okay. Now, the two weapons in this case, here, ---

10 A. Okay.

11 Q. --- the swabs that were taken from these two weapons
12 and sent to SLED, you did test, correct?

13 A. If this is a -- yeah, that's a folding knife and
14 scissors, yes.

15 Q. Okay. Did you find a DNA match for Kendrick Chestnut
16 on either or any of the swabs taken from those weapons and
17 sent to Columbia, did you find any match for DNA for Kendrick
18 Chestnut on the items?

19 A. No sir, I did not.

20 **MR. LONG:** Thank you, Ma'am. That's all I have.

21 **THE COURT:** Redirect?

22 **MS. LIVESAY:** Yes sir, just a couple of real quick
23 questions.

24 **REDIRECT-EXAMINATION BY MS. LIVESAY:**

25 Q. Ms. Hefney, Mr. Long has asked you about the items.

1 Is it y'all's practice to try to narrow down what's tested?

2 A. Yes Ma'am.

3 Q. Okay. And how many agencies across the State are
4 sending you items, every agency?

5 A. All the counties in the State, yes Ma'am, with the
6 exception of parts of Richland County and parts of Greenville
7 County.

8 Q. Okay. So every other agency is sending you evidence
9 just like we are?

10 A. That's correct.

11 Q. Okay. And about how many items do you normally test,
12 is it requisite to test?

13 A. Depending on the case, we start with like five of the
14 most probative items in cases of homicide, and we work out
15 from there.

16 Q. Okay. So when we first send you stuff, your first
17 answer is pick your best five?

18 A. Exactly.

19 Q. Okay. You just don't have the manpower to test every
20 item we send?

21 A. No Ma'am.

22 Q. Okay. Now, as far as the -- what you get at SLED, you
23 get it, what, just packaged up?

24 A. Yes Ma'am. We get the swabs typically on a dried --
25 off of a clothing item.

1 Q. And when you get it, do you refer to it as Lab Number
2 L0608393?

3 A. Yes. And this -- each -- when the case is submitted
4 by the local law enforcement agency, it's assigned a case
5 number, and all of those items that were submitted under that
6 or with those victims and that suspect are with that case
7 number.

8 Q. Okay. Now, let me ask you this: Do you have any idea
9 who Larry Chestnut is?

10 A. I have no idea.

11 Q. Do you have any idea who Kendrick Chestnut is?

12 A. No Ma'am.

13 Q. Do you have any idea who Joey Hucks is?

14 A. No Ma'am.

15 Q. Could you recognize any of them in this courtroom?

16 A. No Ma'am.

17 Q. Okay. So when you get it, you're just testing these
18 results in some lab?

19 A. That is correct.

20 Q. Okay. You're not out looking at a crime scene, or
21 viewing pictures? You're just testing these swabs in a
22 controlled lab?

23 A. That's correct.

24 Q. And these are just the results you came up with?

25 A. That's correct.

COURT TO JURY

1 **MS. LIVESAY:** No further questions, Your Honor.

2 **THE COURT:** Anything on those questions?

3 **MR. WILSON:** Nothing, Your Honor.

4 **MR. LONG:** No sir.

5 **THE COURT:** All right.

6 Ma'am, you may step down. Make sure you don't have any
7 exhibits with you.

8 Solicitor, do you wish the witness to be excused?

9 **MS. LIVESAY:** Yes sir.

10 **THE COURT:** Any objection, Mr. Wilson?

11 **MR. WILSON:** None, Your Honor.

12 **THE COURT:** Mr. Long?

13 **MR. LONG:** No sir.

14 **THE COURT:** All right.

15 Ma'am, you are released from your subpoena, may go back
16 to your regular activities.

17 Solicitor, and Mr. Wilson, Mr. Long, y'all come and talk
18 to me for a second.

19 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

20 **THE COURT:** All right. Ladies and gentlemen, we are
21 going to stop for the evening. We will reconvene tomorrow
22 morning at nine o'clock. Please be in your jury room at nine
23 o'clock tomorrow morning.

24 Please remember don't talk about the case. Don't allow
25 anybody to talk to you about it. Don't look up anything,

COURT TO JURY
JURY OUT/ON RECORD

1 decide the case solely and completely on the facts and
2 evidence presented in this courtroom and from no other
3 source.

4 I'll see you back tomorrow morning at nine o'clock.
5 Please leave your pads and pens.

6 Everyone else remain seated, please.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
8 JURY.)

9 THE COURT: Ms. Schandl, Ma'am, the Solicitor's Office
10 was asking me to continue on tonight. It was my choice. I
11 decided not to. You are not released from your subpoena.
12 You will be back tomorrow morning at nine o'clock. Thank
13 you, Ma'am.

14 MS. SCHANDL: Sir, ---

15 THE COURT: Ma'am, you will need to be back tomorrow
16 morning at nine o'clock. Thank you.

17 MS. SCHANDL: Judge, we will be in Charleston.

18 THE COURT: I'm sorry, Ma'am. You are under subpoena.
19 You will be here.

20 MS. SCHANDL: I didn't receive the subpoena, sir.

21 THE COURT: And you will be here tomorrow morning.
22 Thank you, Ma'am.

23 All right. Ms. Deborah Durick. Ms. Durick, where are
24 you at, please, Ma'am?

25 MS. DURICK: Here.

JURY OUT/ON RECORD

1 **THE COURT:** Ms. Durick, your cell phone went off
2 earlier today.

3 **MS. DURICK:** Yes, sir. I apologize.

4 **THE COURT:** I appreciate that. It's the third one in
5 this trial.

6 There is a sign downstairs. There's a sign on that door
7 when you walk in this courtroom. There's an Order of the
8 Chief Justice of the State of South Carolina. Cell phones
9 are not permitted to be operated in any courtroom in the
10 State of South Carolina. I made that clear earlier.

11 I find you in contempt of court. I hereby order you to
12 either ten days in the J. Reuben Long Detention Center, or
13 you will pay a fine of Two Hundred Dollars, and that will be
14 paid to the Clerk of Court of Horry County by 5:00 P.M.
15 Friday. Thank you very much.

16 Solicitor, anything else that we need to do before we
17 resume tomorrow morning at nine o'clock?

18 **MS. LIVESAY:** No sir.

19 **THE COURT:** Mr. Wilson?

20 **MR. WILSON:** Nothing, Your Honor.

21 **THE COURT:** Mr. Long?

22 **MR. LONG:** No sir.

23 **THE COURT:** Thank you very much. Nine o'clock tomorrow
24 morning.

25 (End Day.)

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right. Solicitor, is the State ready to
4 proceed?

5 MS. LIVESAY: Yes, sir.

6 THE COURT: And Mr. Wilson?

7 MR. WILSON: Yes, sir, Your Honor.

8 THE COURT: And, Mr. Long?

9 MR. LONG: Yes, sir.

10 THE COURT: All right. I'll wait till you get situated
11 there. That's all right. Not a problem. Don't rush around.
12 All right. Good deal.

13 All right. Ask the jury to come in, please.

14 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
15 JURY.)

16 THE COURT: All right, Solicitor, your next witness,
17 please, ma'am.

18 MS. LIVESAY: Ty, Your Honor. At this time, the State
19 calls Dr. Cynthia Schandl to the stand.

20 THE COURT: All right. Please come around to the sworn,
21 please, ma'am.

22 CYNTHIA SCHANDL, being first duly sworn,
23 testifies as follows:

24 MS. SCHANDL: My name is Cynthia Anna Schandl,
25 S-C-H-A-N-D-L.

DIRECT-EXAMINATION BY MS. LIVESAY:

Q. Dr. Schandl, where are you currently working?

A. I'm working at the Medical University of South Carolina in Charleston, South Carolina in the medical and forensic autopsy section.

Q. And could you tell the jury a little bit about your educational background?

A. Yes. I am a Forensic Pathologist. In order to become a Forensic Pathologist, one must first be a doctor, so, I have a Bachelor's Degree which is a prerequisite for going into medical school. My Bachelor's Degree is in Biology from the California State University in San Bernadino. I attended medical school at the Medical University of South Carolina in Charleston. I then attended graduate school coincidentally with my medical school training at the Medical University of South Carolina within the Department of Pathology and Laboratory Medicine. Following medical school and graduate school, I did get my licensure to practice medicine in the State of South Carolina. I also hold a license to practice medicine in the state of Florida.

Following medical school, I chose pathology as my specialty and continued my training in a residency training program in Pathology and Laboratory Medicine again at the Medical University of South Carolina in Charleston.

In order to then sub-specialize in the field of Forensic

1 Pathology there is an additional one-year of fellowship
2 training required to become board certified in that
3 sub-specialty. I completed that year of sub-specialty
4 fellowship training also at the Medical University of South
5 Carolina in Charleston, South Carolina.

6 Having completed those seventeen years of training, I
7 then took my board certification examinations in the fields of
8 Anatomic Pathology, Clinical Pathology and Forensic Pathology
9 and I am Board Certified in those three fields.

10 I was -- I have been faculty at the Medical University
11 of South Carolina in the Medical and Forensic Autopsy Section
12 since 2004, and I have been Co-director of the section for two
13 years.

14 Q. Thank you, doctor. And how many autopsies have you
15 performed?

16 A. I've performed over two thousand autopsies.

17 Q. Okay. And how many times have you testified in a
18 courtroom?

19 A. I have testified over sixty times in courtrooms both --
20 more than both -- state, federal and military court.

21 Q. And were you ever declared an expert in any of those
22 courts?

23 A. In each instance, yes, ma'am.

24 Q. Okay. And so you gave expert testimony all sixty times
25 or more?

1 A. That's correct.

2 MS. LIVESAY: Your Honor, at this time, the State wishes
3 to declare Dr. Schandl as an expert in the field of Pathology.

4 THE COURT: All right. Mr. Wilson, do you wish to voir
5 dire?

6 MR. WILSON: Without objection, Your Honor.

7 THE COURT: All right. And do not wish to challenge.
8 All right. Mr. Long?

9 MR. LONG: I do not wish to challenge, Your Honor.

10 THE COURT: All right. Very good. She is qualified to
11 give her opinion.

12 MS. LIVESAY: Thank you.

13 Q. Dr. Schandl, did you perform an autopsy on Joseph Hucks
14 in May of 2006?

15 A. Yes, ma'am.

16 Q. Okay. And just so the jury is familiar, what is the
17 usual protocol as to how you perform an autopsy in that type
18 of situation?

19 A. Well, this case is called a forensic autopsy and that is
20 where the fields of medicine and law coincide. So if, when
21 someone dies there is a possibility of a legal issue, whether
22 it has to do with an accident or a homicide or a suicide or
23 even in some cases natural death such as on-the-job natural
24 death, that becomes a forensic autopsy case and it is at the
25 county coroner's discretion which ones of those cases will be

1 autopsied.

2 In this particular instance, the Deputy Coroner of Horry
3 County determined that this case, Mr. Joseph Hucks, should be
4 autopsied. At that point, the Deputy Coroner contacted our
5 office and requested that we perform that autopsy.

6 The county coroner is responsible for transporting the
7 body, in this case Mr. Hucks, to the Medical University of
8 South Carolina where the autopsies are performed when we do
9 them.

10 When the case arrives and when we are prepared to begin
11 the case, the individual will come up from the morgue, which
12 is on the ground floor, to the autopsy suite, the main autopsy
13 suite, which is on the second floor. At that time, we will
14 take a series of photographs to document how we receive the
15 individual, whether clothed or unclothed, and their current
16 state of any medical intervention or not, in order to document
17 those findings.

18 After we take those initial sets of photographs, we will
19 then frequently remove the clothing, and in some cases such as
20 in this case, we will examine the clothing separate and take
21 separate photographs of the clothing.

22 Then we would turn our attention to the decedent, in
23 this case, Mr. Joseph Hucks. Another set of photographs are
24 taken of the body, and particular note is made of those things
25 that may be identifying features such as hair color, eye

1 color, height and weight, as well as those things that may be
2 considered injuries. In Mr. Hucks' case, he had some bruises
3 and he had some stab wounds and he had some cuts. All of
4 these things are then taken pictures -- we take pictures of
5 these things and then we document their size and their shape
6 and where they are located on the body, using diagrams and
7 using other charts in order to record our numbers.

8 After we're done recording all of the information that
9 we can gather looking at the outside of the body, we turn our
10 attention to the inside of the body, which is often what is
11 thought of as the autopsy examination, where a "Y" incision is
12 made and the organs are examined for disease as well as for
13 injuries. And all of these things were also done on Mr.
14 Joseph Hucks' case.

15 And after completing those examinations, we have to
16 compile in a report all of our findings based on what we see
17 externally, so on what we call the external examination;
18 internally, the internal examination of the organs and
19 tissues; toxicologic examination, so blood or other body
20 fluids are tested for toxicological substances in every
21 forensic case; and then we also look at tissues and
22 organs under the microscope to see, again, if there are any
23 disease processes or injuries that we can see under the
24 microscope that we couldn't see with our naked eye, or to
25 confirm those findings that we did see with our naked eye.

1 And once all these results are back, then I compile a
2 report and that report is generated and sent to the coroner's
3 office.

4 Q. Dr. Schandl, just so I understand, basically what you're
5 doing is examining just what the body looks like when it gets
6 to you, and you take pictures and document the injuries you
7 can just see with the eye on the outside of that body?

8 A. That's the first step; yes, ma'am.

9 Q. And then the second step is when you actually cut the
10 body open, start looking at the organs, pulling the skin back,
11 looking for bruises?

12 A. That's correct.

13 Q. Okay. And you actually document any injuries and take
14 pictures of any injuries that are from -- in the organs, or
15 puncture wounds to any organs, anything like that is taken out
16 and a photograph is taken?

17 A. That is highly dependent upon the pathologist performing
18 the case but it is my practice to do so, yes.

19 Q. Okay. Do you recognize what I'm showing you?

20 (DIAGRAM MARKED STATE'S EXHIBIT NUMBER 32 FOR
21 IDENTIFICATION ONLY.)

22 Q. Dr. Schandl, I'm showing you what's been marked as
23 State's Exhibit Number 32. Do you recognize it?

24 A. Well, I don't recognize it specifically, but it is a body
25 diagram ---

1 Q. Okay.

2 A. ---A male body diagram.

3 Q. And would this assist you in marking the injuries that
4 you documented that were on Joseph Hucks?

5 A. I certainly can do that, yes, ma'am.

6 **MS. LIVESAY:** Your Honor, at this time, the State wishes
7 to ask Dr. Schandl to step down so she can use the diagram.

8 **THE COURT:** All right. If you want to have her ---

9 You can either be right in front of the jury where the
10 microphone is or right here, but you may step down, Ma'am.

11 A. May I bring my notes?

12 **THE COURT:** Yes, ma'am.

13 A. Thank you, sir.

14 Q. Can you speak loud?

15 A. Yes, ma'am, I can.

16 **THE COURT:** And just remember, those right there are
17 microphones so the closer you are to it, obviously the easier
18 it is for everybody to hear.

19 Can you move that one back just a little bit, Solicitor?

20 **MS. LIVESAY:** Okay. I just want to make sure all the
21 jurors can see it.

22 **THE COURT:** All right.

23 **MS. LIVESAY:** Everybody can see it. Okay. Wonderful.

24 Q. Dr. Schandl, if you don't mind, I've got a blue pen and a
25 red pen; if you don't mind, could you please mark the puncture

1 wounds, not the bruises, with the red pen?

2 A. Yes, ma'am. Would you like me to describe them as I go?

3 Q. Yes, ma'am, please.

4 A. I will do that.

5 Mr. Hucks had ten injuries that were caused by sharp
6 force. What I mean by sharp force is what you're thinking I
7 mean by sharp force, which means inflicted by something
8 sharp. We can tell the difference between sharp force and
9 blunt force by looking at the skin. Are the edges that are
10 affected, are they sharply cut or are they not cut, are they
11 more matched.

12 In this case, I'm going to be describing ten separate
13 sharp forced injuries that may have been caused by something
14 sharp. I'll begin -- I have them numbered from one to ten and
15 I will go through them in that order from one to ten so that I
16 don't get confused.

17 Number one is a cut to the chin. This cut to the chin
18 just goes right through the skin; it doesn't go into the
19 underlying soft tissue; doesn't hit any major structures; it's
20 small.

21 The second one, I will call a stab wound. I call this
22 one a cut and I'm calling this one a stab wound. The reason I
23 am doing that is to differentiate between two kinds of sharp
24 force injury that I differentiate between. One of them cuts,
25 or incised wounds, are longer on the skin than they are deep.

1 So, in this case, the length of this wound is longer than the
2 depth of that wound into the body. I'm calling this one a
3 stab wound. What I mean by that is that the length
4 of the wound on the skin is not as long as the depth of the
5 stab into the body. The depth of number two was less than one
6 inch, zero point seven inch into the body, but again, did not
7 hit any apparent vital organs or structures.

8 Q. Doctor, can you tell anything about the path of that
9 wound?

10 A. The path of that wound is through the skin and into the
11 soft tissue beneath the skin. If you are asking about the
12 direction of the wound, that's a different question.

13 Q. What is the direction of the wound?

14 A. The direction of that wound is back, down and medial.
15 So, if I am in front of this person, back would be towards
16 him, down would be as you would imagine down, and medial is
17 toward the center of the body, so something like this
18 **(indicating)**.

19 Number three is to the right chest, right about here
20 **(indicating)**. This is a stab wound, again, that means it is
21 deeper than the wound on the skin is wide. This stab wound,
22 number three, is two point one inches deep. This stab wound,
23 again, goes through skin, it goes through the subcutaneous
24 tissue and into the breast tissue. It does not go into the
25 chest cavity, it does not hit any apparent vital structures or

1 organs.

2 Q. What is the direction of that stab wound, Doctor?

3 A. The direction is back and down and lateral. So, again,
4 back, down and lateral meaning towards the edges of the body,
5 something like this (**indicating**).

6 Number four is to the left side of the chest. Number
7 four is also a stab wound. It's depth is one-half of an inch.
8 Again, this stab wound is not apparently hitting any vital
9 structures, any vital organs. The direction of number four is
10 back, down and medial. So, again, back, down and towards the
11 center of the body; back, down and medial. .

12 Number five is to the left chest. Number five is a stab
13 wound. It goes to a depth of four inches. Unlike all of the
14 other wounds that I will describe, number four does hit vital
15 organs and structures. It hits the sac around the heart. It
16 goes through one of the walls of the heart and into the septum
17 of the heart, the thobias, the two sides of the heart.

18 As a result of this injury what I see at autopsy is six
19 hundred milliliters of blood around the heart. So, if you're
20 thinking of a two-liter bottle, it's less than half of a
21 two-liter bottle, but within the sac around the heart
22 compressing the heart. That's a lot of blood around the heart
23 in the pericardial sac, compressing the heart.

24 In addition to this six hundred mils of blood are one
25 thousand six hundred milliliters of blood in the chest cavity

1 that would have leaked from the inside of the heart to the
2 inside of the sac around the heart and out into the chest
3 cavity. All together, as you can add, I'm sure, that's more
4 than a two-liter bottle of blood spilled into Mr. Hucks'
5 pericardial sac, the sac around the heart, as well as his
6 chest cavity. And the direction of that wound is down and
7 back.

8 Number six is to the left arm, the medial aspect of the
9 elbow. This is classified -- excuse me -- as an incised
10 wound, or a cut. Again, the cut itself is wider than the
11 pathway is deep. This is a larger cut than the other ones.
12 being two point two inches in length, and it's depth is one
13 point two inches, and it does go through the skin, through the
14 tissue beneath the skin, and into the muscle of the arm.

15 Q. Dr. Schandl, if you don't mind, is there a name for this
16 type of injury?

17 A. Well, again, this is an injury to the inside of the
18 elbow, it's to the arm. I can simply call it an incised
19 wound. There is a possibility that it was obtained when he
20 was attempting to defend himself, but that is supposition, and
21 I cannot tell you that.

22 Q. Did you classify this as a defensive wound in your
23 report?

24 A. I classified wounds that are to the hands or to the arms
25 as defense wounds, and I put that in quotations because that

1 is a supposition based on the location of the wound and not
2 based on the actual events.

3 Excuse me.

4 Number seven is to the medial aspect of the left thumb.
5 It is an incised wound and its depth is less than one-half
6 inch. It goes through the skin and into the muscle of the
7 thumb.

8 Number eight is to the second finger where the thumb
9 opposes the second finger. This is a stab wound because it is
10 deeper than it is wide. It is also less than one-inch deep.
11 It is zero point eight inch deep, and it also goes through the
12 skin, subcutaneous tissue, and into the muscle.

13 Q. Let me ask you this, what are these wounds -- are these
14 also classified as defensive wounds due to the location?

15 A. They are on the hand so I would put them -- consider them
16 to be potential defense wounds, again, using quotations to
17 make it clear that I -- it's a supposition and not a fact.

18 Number nine is to the left lateral upper thigh. Number
19 nine is a stab wound; it is deeper than it is wide. It is one
20 point four inches deep, and goes through the skin and
21 subcutaneous tissue, into muscle. It does not hit any
22 apparent vital organs or structures.

23 Q. What is the direction of this puncture wound?

24 A. This puncture wound is simply going lateral, towards the
25 middle of the body.

1 And number ten, the last one, is to the left back, the
2 mid-back. This is also a stab wound. The depth of this wound
3 is four point three inches. It goes through the skin and the
4 subcutaneous tissue, the tissue beneath the skin, as well as
5 into muscle. It does not penetrate the chest cavity, it does
6 not hit any vital organs or structures.

7 Q. What is the direction of this wound?

8 A. Wound ten, the direction is forward, because now we're
9 talking about going from his back to his front, forward, down
10 and medial, again towards the core of the body, so something
11 like this (**indicating**), and that are the ten.

12 Q. Okay. If you don't mind, with this pen, do you mind
13 marking where you saw bruising on the victim?

14 A. Sure.

15 Q. Just so we can decipher it; blue for the bruises and red
16 for the puncture wounds.

17 A. So upon the external examination there were some bruises
18 identified and some other things, so in particular, there was
19 an abrasion or a scrape around his nose here which had
20 bruising around it. and there was a fracture.

21 Q. So, his nose was fractured?

22 A. So, this -- the part of his nose here, when I mashed on
23 it -- we call that palpation -- I could feel that it was
24 broken. All right. And surrounding that broken nose was an
25 abrasion and the contusion which is just a bruise.

1 In addition, there was a bruise below this knee. The
2 other bruise that's very difficult to put on this diagram was
3 discovered during the course of the autopsy when the scalp is
4 reflected. So, one of the procedures, in order to remove the
5 brain we have to reflect the scalp in order to cut along the
6 skull to get the brain out. In so doing, we see the inside
7 surface of the scalp. At that point, it was apparent that
8 there is a bruise, bleeding, right about this part of his
9 head.

10 Q. Do you mind marking that? Was it right up in here? And
11 that was an acute bruise?

12 A. This is misleading because it's on the inside surface of
13 the scalp, not on the outside of the scalp.

14 The injuries all appeared to be acute, which simply means
15 that they happened recently.

16 Q. Thank you, Doctor.

17 If you don't mind, Doctor, I'm just gonna clear up a
18 couple of things. Whenever there is injury. and I understand
19 it doesn't -- you have no idea what the situation was, or how
20 the cut happened. or anything like that, you are just given
21 this body to mark up injuries; is that right?

22 A. That's right to an extent. Sometimes we get a story from
23 the coroner but often it is very preliminary.

24 Q. Okay. And any wound that is on the inside of the arm or
25 on the hand is noted on any autopsy report as a defensive

1 wound?

2 A. It can be. Again that's pathologist dependent, depending
3 on how they like to define their terms. From my point of view
4 I consider a possible defense wound one of the hands or arms.
5 It can also be to the feet or legs, depending upon the
6 situation and how the person might have been attempting to
7 defend themselves. So, it's a fluid term, and it certainly,
8 by no means, means that they were -- that he got those cuts or
9 stabs in defending himself. It is certainly possible that he
10 did but it is just as possible that he did not.

11 Q. Did you see any bruising anywhere else other than his
12 scalp which I understand means you pulled back the skin and
13 viewed acute bleeding; is that right?

14 A. That's correct.

15 Q. Which just means that that bruising underneath the scalp
16 was recent?

17 A. It was. That's right.

18 Q. Okay. So, the only bruising you saw on him was either
19 around the eyes or the scalp just that when you pulled the
20 skin on the top of the head; is that right?

21 A. That is correct until I looked at the slides under the
22 microscope. Would you like ---

23 Q. That's fine. I understand. What -- which wound here
24 ultimately caused the death of Joey Hucks?

25 A. The fatal wound is what is designated on that chart as

1 wound number five. It was to the left chest. It was four
2 inches deep and it went through the pericardial sac, the sac
3 around the heart and through one of the walls of the heart and
4 into the septum of the heart causing a great deal of bleeding.

5 Q. Okay. Now, we talked earlier about first you take
6 pictures of the external and mark those and then you open the
7 body up and start looking at the organs; is that correct?

8 A. Yes.

9 Q. Okay. When you opened him up and you looked at his
10 heart, could you visually see the puncture wound in the heart?

11 A. That's how I know it was there. I saw it and I probed it
12 with a little metal probe and followed it as far as it went
13 into the wall of the heart, yes.

14 Q. Okay. Now, was the direction of any of the wounds that
15 you saw on him, anything other than forward and downward or
16 backward and downward?

17 A. With the exception of the one that was simply lateral to
18 the leg, no -- that is correct -- and the ones to the arms,
19 which we do not classify quite the same way.

20 Q. So, all other wounds other than number nine, were forward
21 and downward?

22 A. Other than six, seven, eight and nine, and of course the
23 one to the back.

24 Q. Now, as far as number ten, that was the wound on the
25 back; is that correct?

1 A. Yes, it is.

2 Q. Okay. I understand this is not to scale, but where you
3 placed this puncture wound is near the center of the back; is
4 that correct?

5 A. I can tell you more precisely. It is 4.3 inches to the
6 left of center.

7 Q. Okay. So, it was definitely towards the center of his
8 back.

9 A. It was 4.3 inches left of center.

10 Q. Okay. Now, where you marked these injuries, is there a
11 diagram you're working off of?

12 A. Yes, ma'am.

13 Q. Okay. And is this a accurate depiction of the diagram
14 that you're using?

15 A. It's close.

16 Q. Now, when you did the report, are these injuries that
17 you've marked on this, this is all of the injuries that are in
18 your report; is that correct?

19 A. With the exception of those I found microscopically.

20 Q. Okay. Now, you said earlier, too, that you look under
21 the microscope for bacteria or disease or anything like that;
22 is that right?

23 A. Yes, ma'am.

24 Q. Okay. Did you find any disease or anything like that
25 when you looked at Joey Hucks?

1 A. He has -- and some of this is under the microscope and
2 some of this is just looking at the organs themselves. His
3 heart is large, it's 500 grams. We call that cardiomegaly.
4 That could cause him problems if he had lived over time and it
5 may not. He also has a very mild coronary artery disease.
6 One of his coronary arteries was about ten percent occluded by
7 atherosclerosis. Unfortunately, that's not that unusual for an
8 eighteen-year-old in our country. His liver was somewhat
9 large and round and it was found to be somewhat fatty under
10 the microscope. His gall bladder demonstrated what I call,
11 and what pathologists call, cholesterolosis, which is another
12 marker
13 of increasing fats in the blood stream over time, they tend to
14 deposit there in the gall bladder wall. Now, those are the
15 disease processes that I found, all very minor.

16 As far as potential injury, there was bleeding in the
17 area of the left back around the spleen or within the spleen,
18 around the kidney and around the adrenal on that side. I
19 cannot conclusively tell you that those are due to injury,
20 however, it is my opinion that that is most likely as I do not
21 see these -- the hemorrhage around those tissues due to
22 resuscitative efforts or other things that we know occurred to
23 Mr. Hucks.

24 Q. The minor disease or what you're describing now, did that
25 cause his death?

1 A. No, ma'am.

2 Q. When the body was brought down, were any items brought to
3 you to try to decipher if they caused these wounds?

4 A. Yes, ma'am. Brought also with Mr. Hucks, but in the
5 custody or cared for by a law enforcement official at all
6 times, were a pair of scissors and a pocket knife. What I do
7 with these items is place them on -- individually, one at a
8 time, one and then the next, onto a clean surface, using
9 gloves, and I'll take a photograph of the item, usually the
10 front and the back of the item, and then I will make a drawing
11 of that item and then I will measure, in this case, blade
12 length, handle length, total length, those sorts -- make those
13 sorts of measurements. And then after I'm done with one, you
14 get the -- a new pair of gloves and a new surface, and you do
15 the other one. And then the law enforcement official is,
16 again, still in custody and they simply return with that
17 person. And that's what was done with these two items.

18 Q. Could you tell whether or not which item caused these
19 puncture wounds, the scissors or the knife?

20 A. No, ma'am.

21 Q. And could you tell the jury, just explain to them why not
22 in this particular case?

23 A. Yes. So, the scissors and the knife, although they sound
24 quite dissimilar, are actually similar from my point of view.
25 They both have a -- when you're using -- if you open the

1 scissors, the blade, if you take one blade, has a single sharp
2 edge and a blunt edge. They knife also has one sharp edge and
3 one blunt edge. They're similar in length, the blades, with
4 the scissors being about an inch longer, and there aren't any
5 identifying features on Mr. Hucks that would correlate
6 directly with either the scissors or the knife. What I mean
7 by that is there are instances when someone is stabbed when a
8 bone may be punctured that you can see direct evidence of the
9 type of blade on the bone. That did not occur in this case.
10 There are other instances when a weapon has been used and --
11 all the way down to the hilt, and there may be an abrasion of
12 that hilt that you might be able to match. That did not
13 happen in this case. So, given that those items, those pieces
14 of evidence were absent, I could not differentiate between one
15 single-edge blade and another.

16 **MS. LIVESAY:** No further questions for this witness, Your
17 Honor.

18 **THE COURT:** Cross-examination.

19 **MR. WILSON:** Thank you very much, Your Honor.

20 **THE COURT:** Yes, sir.

21 **CROSS-EXAMINATION BY MR. WILSON:**

22 Q. Doctor, I just have a few questions. Did you make a
23 determination as to how much alcohol had been consumed by Mr.
24 Hucks?

25 A. Yes, sir. So part of the autopsy examination in the case

1 of forensic autopsy cases is a toxicologic examination and
2 that was performed in this case. His alcohol level was
3 measured to be 141 milligrams per deciliter. That is
4 equivalent to 0.141 percent.

5 Q. Okay. And are you familiar with the driving under the
6 influence laws, right?

7 A. Yes, sir, I am.

8 Q. And that would be what, .8?

9 A. 0.08.

10 Q. And so he was almost twice that?

11 A. That is correct.

12 Q. And did you also make a determination as to whether or
13 not there were any drugs, marijuana specifically, in his
14 system?

15 A. Yes, sir. That is certainly part of the toxicological
16 analysis.

17 Q. All right. And what was your finding there?

18 A. In this case, Mr. Hucks had on-board, meaning in his
19 blood, some what's called Delta 9 Carboxy Tetrahydrocannabinol
20 which is THC. Now, Delta 9 Carboxy, THC, is an inactive
21 metabolite of marijuana. It is not active. So I have
22 absolutely no indication that he was, was under the influence
23 of marijuana at the time of his death. All I know from that
24 information is that previously he was exposed to marijuana.

25 Q. Okay. But you can't tell us how -- you can't tell us

1 when that was?

2 A. That is correct.

3 Q. You don't know if it was a day before or earlier in the
4 day or whatever?

5 A. That is correct.

6 Q. All right. Now, let me ask you, ma'am, in regards to
7 these injuries that we have been talking about, let's talk
8 first about the one that you said that was in his hand. I
9 think you said in here (*indicating*); is that correct?

10 A. That is correct.

11 Q. Which hand would that have been in?

12 A. It was his left hand.

13 Q. His left hand. And if you're holding a knife and you're
14 trying to stab somebody it would be difficult to get cut here,
15 would it not?

16 A. It would depend how you were holding the knife, sir.

17 Q. Okay. So, you're thinking that it is possible to do it
18 that way?

19 A. It is possible.

20 Q. Okay. And what about the thumb? Which thumb are we
21 talking about?

22 A. It's the left thumb.

23 Q. The left thumb is also the one that gets cut. So -- and
24 again, I'm gonna ask you if you're holding -- and you said
25 that you're familiar with State's Exhibit Number 29; is that

1 correct?

2 May I approach, Your Honor?

3 **THE COURT:** Yes, sir.

4 A. Yes, sir. This is the knife that I saw.

5 Q. All right. And let me ask you, Could that knife have
6 made these wounds?

7 A. Yes, sir.

8 Q. So, what you're telling us is that knife could've made
9 these wounds, or perhaps these scissors could've made that
10 wound?

11 A. Yes, sir.

12 Q. Or perhaps some other item which has not been presented
13 to you could have made those wounds?

14 A. That is correct.

15 Q. And in fact, on all of the wounds that you've described,
16 you can't tell us which item caused which wounds?

17 A. That is also correct.

18 Q. Now, in regards to -- well, let me ask it, I guess, this
19 way. You said that there was -- on wound number five, which
20 was the fatal wound, if I make no mistake.

21 A. Yes, sir.

22 Q. That in looking at that wound, you found 600 milliliters
23 of blood around the heart or inside his cavity.

24 A. Inside of his pericardial sac directly around the heart;
25 yes, sir.

1 Q. And that's a lot of blood, isn't it? Would that be
2 considered a lot of blood?

3 A. That is a great deal of blood to carry around your heart.

4 Q. If a person lost that kind of blood, what would be their
5 state at that point?

6 A. That is going to be extremely variable. It's going to
7 depend upon how quickly that blood accumulates around the
8 heart. And then it's going to depend upon how quickly the
9 blood that is accumulating around the heart in the pericardial
10 sac, and directly around the heart, held against the
11 heart by the pericardial sac, is able to escape the
12 pericardial sac and go into the body cavity adjacent to it,
13 this time the left chest cavity. So the problem that you run
14 into, if the blood leaves the heart and goes around the heart
15 and is held next to the heart by the pericardial sac, your
16 heart is pushing against that blood. it's called a
17 pericardial tamponade. That can cause death, in and of
18 itself, irregardless of the amount of bleeding.

19 Q. Okay. So irregardless of the 600 liters of blood, if the
20 person say had 300 liters of blood, 300 milliliters, I'm
21 sorry, of blood in that cavity, then that person would also --
22 could possibly die?

23 A. Yes. Now, again, often in those cases, you have a tear
24 that does not involve direct access to another cavity. Maybe
25 you have an aortic tear or something else natural, and if you

1 accumulate 300 milliliters in your pericardial sac, and it's
2 stuck in there, and it happens quickly, that certainly
3 can be a cause of death.

4 Q. Okay. And let me also ask you if you get a wound, say to
5 your chest, and your actual muscles are cut, are you going to
6 have the strength and ability at that point to continue to cut
7 and fight?

8 A. Again, that is extremely individual and dependent upon
9 the individual's fortitude, if you will, as well as the extent
10 of the injuries.

11 Q. Ma'am, I notice that you said that there was some
12 bruising in the top part of his head but you didn't see any
13 external evidence of that bruising, just internal when you
14 pulled the skin back.

15 A. Yes, sir.

16 Q. Okay. And so tell us, if you could, what would cause
17 there to be a bruising under the scalp, on the inside, but not
18 reflected by a bruise or contusion on the outside?

19 A. Well, again, that can be very variable. It is more --
20 more often seen with a blunt force injury. We were talking
21 about sharp force and blunt force. So, if you have a blunt
22 force injury that is spread out over some area, then you can
23 transmit that force into the inside of something without an
24 appearance of that wound on the outside of that thing. So
25 that is the most common scenario for that, is a blunt force

1 injury that is not focused in a small area.

2 Q. Let's say if you're in a scuffle and you're on the floor
3 and your fighting and your head gets banged against the
4 refrigerator or the stove or the floor, would that -- could
5 that possibly have caused that kind of an injury?

6 A. It could.

7 Q. And let me ask you, ma'am, when we were talking -- the
8 Solicitor kept asking you about defensive wounds, defensive
9 wounds, so let me ask you something about these defensive
10 wounds that she wanted to talk about. Now, the reason you
11 can't tell us as to whether or not that's a defensive wound or
12 not is because, one, you weren't there so you didn't see what
13 happened.

14 A. Yes, sir, that is paramount.

15 Q. And secondly, because a wound is on a certain location
16 doesn't necessarily mean that the person was attempting to
17 defend themselves at the time?

18 A. That is correct.

19 Q. In fact, a person could be swinging at someone else with
20 a knife when that person swings back with another object, and
21 cut them on their arm at the time they're swinging; that could
22 also happen, couldn't it?

23 A. That is another scenario.

24 Q. All right. And the same thing is true with the thumb and
25 with the cut between the arm -- between the ---

1 A. Yes.

2 Q. I'm sorry -- between the hand, the finger and the thumb.

3 A. Yes, one can discern multiple scenarios.

4 Q. Now, let me ask this, and then I think I'm through. The
5 scissors, the knife -- you said that the blade of this knife
6 is one inch -- I'm sorry, the scissors is one inch longer than
7 the blade of the knife?

8 A. Approximately.

9 Q. Okay. So, about one inch difference in the -- in the
10 blade length of the two weapons that you were brought?

11 A. Yes, sir.

12 Q. All right. And do you know whether or not -- if the
13 scissors were in fact one of the items used, and we don't know
14 that for a fact, but if they were one of the items used, would
15 it have been open or would they have to have been closed?

16 A. I'm afraid I do not know the answer to that.

17 **MR. WILSON:** OKAY.

18 Would the Court -- one second, please, sir.

19 **THE COURT:** Yes, sir.

20 Q. Thank you so much, Doctor.

21 A. Yes, sir.

22 **THE COURT:** Mr. Long?

23 **MR. LONG:** Thank you, Your Honor.

24 **CROSS-EXAMINATION BY MR. LONG:**

25 Q. Ma'am, the -- what effect does time have on blood

1 alcohol?

2 A. It depends if you're continuing to drink or not.

3 Q. Okay. And then what -- does time -- I mean, how long
4 after the cause of death, or the time of death, excuse me, did
5 you actually test the blood for alcohol?

6 A. As far as the -- what -- I'm sorry, I don't know your
7 name.

8 Q. I'm Russell Long; I'm sorry.

9 A. Mr. Long, is asking -- we take samples at the time of
10 autopsy. That is standard. The body will metabolize as long
11 as it's alive. When it's dead, it's not doing that. So, the
12 question about how long after he was dead did you take the
13 sample is not necessarily relevant, presuming that he was
14 refrigerated, which he was. So a more relevant question would
15 be -- if I may?

16 Q. Please.

17 A. How long after he had his last drink, or how many drinks
18 did he have, perhaps, compared to how long did he live. So,
19 it's more -- it's more interesting or important, perhaps, to
20 know how long he lived to see how high his alcohol level may
21 have been at one time. But again, it's -- after death, we
22 don't expect a great deal of change until one begins to
23 decompose, which also did not occur in this case.

24 Q. So, you're saying that after -- after death, the blood in
25 the vein -- the alcohol in the blood, in the veins, would not

1 change over time, it would not deplete, alcohol would not seep
2 into the system and therefore not show in the blood?

3 A. No, sir. In fact, we often have the opposite result. If
4 we draw the blood sample too near to the body core we may have
5 an artificial elevation of levels. In this case -- one
6 moment.

7 **THE COURT:** There's some water there.

8 A. Thank you. In this case, this was a peripheral blood
9 sample and so we do -- we expect it to be as accurate as we
10 can be doing a post mortem blood alcohol level.

11 Q. Okay. Do you have -- you did measurements, you have
12 height and weight measurements in your report?

13 A. Yes, sir.

14 Q. As soon as you get that water, I would ask you to
15 indicate to the jury what your findings were there.

16 A. We measured Mr. Hucks to be about six-two-and-a-half in
17 height, and about 308 pounds.

18 Q. And would size and height and weight have any impact on
19 blood alcohol?

20 A. There is a correlation, definitely, between how many
21 drinks one must drink in order to get to a certain blood
22 alcohol level and their body mass, their size. You can simply
23 think of it that they have more blood and so you'll have to
24 drink more in order to increase the concentration of alcohol
25 in the blood if you are bigger.

1 There are certainly genetic variables to how quickly the
2 alcohol is metabolized. Some people very quickly metabolize
3 alcohol and never reach the level that you would expect them
4 to be at for how much they have drunk. So there are many
5 variables but yes, there is a correlation between size and the
6 number of drinks required in order to reach a certain blood
7 alcohol level.

8 Q. Okay. There's no question, ma'am, that when you're --
9 you have a subject on your table, and you begin your
10 observation from the exterior, and then you work your way to
11 the interior, and then you work your way to testing blood and
12 that sort of thing, there's no question that you leave no
13 stone unturned, you find every injury that you possibly can
14 find to the subject that's on your table; is that correct?

15 A. That is the intention; yes, sir.

16 Q. Okay. And the question that I have is, if there were any
17 other injuries to Joey Hucks, other than the ones that you've
18 depicted on here, would you have found them?

19 A. I believe so.

20 Q. So, it's safe to say that the only injuries to Joey Hucks
21 are the ones that you've told this jury about?

22 A. Yes, the ones that are diagramed there and the ones that
23 I described.

24 Q. And therefore, ma'am, it's safe to say that you found
25 absolutely no injury of blunt force to the side of Joey Hucks'

1 face or head?

2 A. That is correct.

3 Q. And it's true to say that you found no injuries to the
4 back of the head, blunt force injury to the back of the head
5 of Joey Hucks?

6 A. That is correct.

7 Q. Thank you, ma'am. I don't have any other questions.

8 **THE COURT:** Re-direct.

9 **MS. LIVESAY:** Just two, Your Honor.

10 **REDIRECT-EXAMINATION BY MS. LIVESAY:**

11 Q. Dr. Schandl, I've just got a couple of questions. Did
12 you measure the length of the knife blade and the scissors?

13 A. Yes, ma'am.

14 Q. Would you tell the jury how long the blade on the
15 scissors are?

16 A. The blade of scissors is 3.6 inches in length.

17 Q. Okay. And how long is the blade on the knife?

18 A. The blade on the knife is 2.3 inches in length.

19 Q. Okay. And tell me about the wound to the heart that
20 killed him. How deep is that wound?

21 A. The depth of wound number five to the left chest that
22 perforated the heart was 4 inches deep.

23 Q. Okay. So that's longer than the blade of the scissors
24 and the knife; is that right?

25 A. That is correct.

1 Q. Does that mean that it would be impossible for either one
2 of those items to puncture his heart?

3 A. No, it does not.

4 Q. Okay. What does that mean, that it just went further in
5 than the blade?

6 A. That's correct. So there's a couple of ways to
7 understand that. One is that, yes, it went in further than
8 the blade, so perhaps it went in to the hilt, or the edge of
9 scissors, or whatever weapon it may have been.

10 The other thing to keep into consideration is that we're
11 human bodies and we're compressible. We're not made out of
12 rock. So when you're going to hit somebody, or if you're
13 going to hit somebody with a knife, it's likely that those
14 things that you're passing through are compressing as you're
15 passing through them, including the chest wall which we know
16 expands when we breath and contracts when we exhale. So it --
17 there are at least those two things going on. Yes, it can be
18 pushed past the hilt or past whatever the end of the item is,
19 and, yes, the chest and the other soft tissues of the body are
20 very compressible. So, taking those two things into
21 consideration, you can certainly achieve a depth deeper than
22 the weapon's blade.

23 Q. Okay. Now, Mr. Long asked you about a punch to the side
24 of the head.

25 A. Yes, ma'am.

1 Q. Is it possible to be punched on the side of the head and
2 there not be any bleeding underneath the scalp?

3 A. Yes, ma'am.

4 Q. Okay. And there's possible that people can get bumps or
5 bruises or punched all the time and you don't find that
6 injury, any sort of bleeding underneath the scalp or bleeding
7 anywhere else?

8 A. That does occur.

9 Q. So, just because it's not bleeding under the scalp or a
10 big lump on his head doesn't mean it didn't happen; is that
11 right?

12 A. I can only tell you what I see.

13 **MS. LIVESAY:** No further questions, Your Honor.

14 **THE COURT:** Any recross on those questions, Mr. Wilson?

15 **RECROSS-EXAMINATION BY MR. WILSON:**

16 Q. Ma'am, one of the other scenarios would be that, if there
17 was another weapon other than those two items that we just
18 discussed; that is also a scenario, is it not?

19 A. Yes, sir.

20 Q. All right. And in regards to any abrasions, if a person
21 is -- you had Joey's body, and he's a white male, correct?

22 A. Yes, he is.

23 Q. And did he have any growth on his face, a beard or
24 anything?

25 A. One moment. He has stubble, beard and mustache stubble.

1 Q. Okay. Is there any difference between bruising and
2 contusions?

3 A. No, sir, they are interchangeable.

4 Q. Okay. And if, if -- especially a light-complexioned
5 person who is white, if they are kicked, wouldn't you expect
6 to find bruising?

7 A. You may.

8 MR. WILSON: No other questions.

9 THE COURT: Mr. Long?

10 MR. LONG: Briefly, Your Honor.

11 **RECROSS-EXAMINATION BY MR. LONG:**

12 Q. Ma'am, the, the -- no question that you examined the
13 outside of Joey Hucks' face and the back of his head; is that
14 right?

15 A. That's correct.

16 Q. Did you see any signs of bruising or any signs of trauma
17 in either area?

18 A. No, sir.

19 Q. No question that you looked under the skin on the side of
20 the face and under the skin on the back of the head and
21 there's no -- is that correct?

22 A. That is correct. Now, we do not peel the facial skin
23 off. We peel down to the eyebrows. So this is my view, okay?
24 So I would see definitely the back of the head, which we'd go
25 all the way down to the base of the neck, and I would

1 definitely see all the way here and anything in those areas.

2 Q. Okay. And there's no question that both exterior and
3 your interior probe, you found no bruising to the side of the
4 face or to the back of the head?

5 A. That's correct.

6 Q. Okay. If I told you that I were punched in the side of
7 the face, and then you were able to examine the exterior of
8 the side of my face, and the interior of my skin -- I don't
9 know you would do that, put me under and take a look, I guess
10 -- what would that tell you about the punch that I took to the
11 side of the face?

12 A. Well, it again is very, very variable, and depending upon
13 the circumstances of -- one would think that in a situation
14 where a person is healthy and walking around then you can make
15 these kinds of arguments, that the harder you are hit the more
16 you will bruise, and they can be accurate, however they may
17 not be as accurate in somebody who is impaired in some way
18 particularly by a loss of blood. So, it is true to the extent
19 of one of us walking around, the harder you are hit the
20 more likely you will bleed and the more you may bleed but it
21 cannot be extended into every circumstance of everybody.

22 Q. Okay. So -- and there's no question that you can exclude
23 as a cause of death any blunt force trauma in this case
24 whatsoever?

25 A. That's correct.

1 Q. Thank you.

2 THE COURT: All right. Solicitor, do you wish the
3 witness to be excused?

4 A. Yes, sir.

5 Q. Any objection, Mr. Wilson?

6 MR. WILSON: No objection, Your Honor.

7 THE COURT: Mr. Long?

8 MR. LONG: No, sir.

9 THE COURT: All right. Thank you, ma'am. You are
10 released from your subpoena and you may go back to your
11 regular activities. Thank you very much.

12 All right. Solicitor, who is your next witness, please?

13 MS. LIVESAY: Carol Allen, Your Honor. The State at this
14 time calls Carol Allen.

15 THE COURT: All right. Please come around up here to be
16 sworn, please, ma'am.

17 CAROL ANN ALLEN, being first duly
18 sworn, testifies as follows:

19 MS. ALLEN: Carol Ann Allen, last name spelled A-L-L-E-N.

20 DIRECT-EXAMINATION BY MS. LIVESAY:

21 Q. Ms. Allen, where are you currently working?

22 A. Myrtle Beach Police Department.

23 Q. How long have you been there?

24 A. Approximately nineteen years and four months.

25 Q. Okay. And tell the jury what kind of training you've

1 All right. Next witness, Solicitor.

2 **MS. LIVESAY:** Your Honor, at this time, the State rests.

3 **THE COURT:** All right. Very good.

4 All right, ladies and gentlemen, there are some matters
5 of some length that the Court, in any criminal case, has to
6 take up at this point in time, when the State rests, so I'm
7 gonna do those at the present time. It's a little early to
8 send you to lunch but there's no sense in keeping you
9 sitting there in the jury room while we're doing this because
10 it will take some period of time as it does in every criminal
11 case, nothing unusual here. So I'm gonna let you go to lunch.
12 I'm gonna ask that you -- obviously, we're gonna be here for a
13 while and I'll need to give the other participants some time
14 for lunch.

15 So if y'all will be back in the jury room at 1:15. Be
16 back in your jury room at 1:15, 1:15 back in the jury room.

17 Obviously, don't talk about the case, don't allow
18 anybody to talk about the case.

19 Leave your pads and pens.

20 Thank you very much. 1:15.

21 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
22 **JURY.)**

23 **THE COURT:** All right. The State having rested; any
24 motions, Mr. Wilson?

25 **MR. WILSON:** Yes, sir, Your Honor. Your Honor, at this

1 time, I would make a motion for a directed verdict as to the
2 charge of murder. And I think that in this case, while there
3 is certainly evidence of some kind of altercation, and I think
4 that in this particular case because -- and I guess I'm
5 arguing in part the **Castle Doctrine** that, in part, this
6 Defendant, my client was at his home when this all occurred,
7 and that as a result of that, he's entitled to stand his
8 ground and defend himself against whatever may occur to his --
9 and not have to flee from his premises, and therefore, the --
10 my position would be that, that because of the **Castle**
11 **Doctrine**, and because of his right to defend himself, that the
12 State has not overcome that in trying to establish that there
13 was a murder, or that there was malice involved in this. I
14 think all of the evidence suggests, and is that -- and I don't
15 think that this is disputed in the record -- is that Joey is
16 the first person in the house to have a weapon, and that he
17 cuts my Defendant before anything else occurs, and in terms of
18 anything regards to any significant violence occurs, and that
19 that would mean, therefore, that my Defendant had a right to
20 defend himself. And even if -- even if the argument is made
21 that, well, he was trying to defend some third person, then
22 the problem with that is, is that when you're trying to defend
23 a third person, you have to get in the position that third
24 person is in, and the third person would not have been able to
25 use a knife in order to try to stab him to death, because at

1 that point, at minimum, you have, at worst, some kind of a
2 domestic altercation, at worst at that particular point, at
3 the time Joey pulls the knife and tries to kill Mr. Chestnut,
4 and so I would say to the Court that as a result of all that,
5 that there is no malice, that he has a right to defend
6 himself, and that the **Castle Doctrine** applies, and so does
7 self-defense, and I would ask the Court to give a directed
8 verdict as to the offense of murder.

9 **THE COURT:** All right. Well, let's talk about this.
10 Hold on one second and let me look at one thing and then we'll

11 ---

12 **MS. LIVESAY:** Your Honor, I think ---

13 **THE COURT:** Before you do that, can I look at something?
14 That's what I was asking. Please hold on for a second.

15 Thank you, ma'am.

16 All right. Mr. Wilson, you're talking about the **Castle**
17 **Doctrine**, are you're talking about 16-11-440?

18 **MR. WILSON:** Yes, sir.

19 **THE COURT:** All right. 16-11-440, effective date, June
20 9th, 2006. This matter occurred on or about May 21, 2006. I
21 understand it was not indicted until July. I'm relying on the
22 case of **State versus Bolin**, 673 S.E.2d 885. South Carolina
23 Court of Appeals held that the persons -- the **Protection of**
24 **Persons and Property Act**, 16-11-440, did not apply
25 retroactively to require jury instructions regarding that

1 particular matter. So relying on that case, you cannot rely
2 on 16-11-440. The matters happened before the enactment of
3 that statute. The Court of Appeals has held that it shall not
4 apply retroactively because the Legislature did not -- its
5 intent was not clear in the statute, and the Appellate Courts
6 have ruled that that Act is not retroactive.

7 Now, you may have an argument about self-defense, but
8 it's the Court's ruling that, based upon that particular
9 case and what we have here, I can't apply 16-11-440
10 retroactively.

11 I'll be glad for you to make any arguments you'd like to
12 make.

13 **MR. WILSON:** Your Honor, I would argue to the Court that
14 what really should apply is the date of the indictment as
15 opposed to the date of the offense, and he was indicted after
16 the statute was enacted.

17 **THE COURT:** And let me go back, I took the case off too
18 quick. Hold on a second.

19 The Court of Appeals, in its legal analysis says,
20 "Turning to the case at bar, the Act went into effect on
21 June 9th, 2006, four months after the events leading to the
22 instant matter." That happened in February of sometime in
23 2006. "Thus in order for the Act to apply, the Legislature
24 must have either intended the Act to be retroactive or, in the
25 absence of such legislative intent, the Act must fall under

1 the exception to the presumption of prospective application by
2 being remedial or procedural. Here, as indicated in the
3 Court's recent holding of State versus Dickey, there is no
4 evidence of legislative intent that the Act be applied
5 retroactively. In fact, the plain language of the Act
6 specifically indicates the legislature's intent that the Act
7 be applied prospectively."

8 I appreciate what you're saying, but the Appellate Court
9 has, in talking about that particular case, said the Act went
10 into effect on June 9th, 2006, four months after the events
11 leading to this instant matter. I believe I'm bound by their
12 Decision that the Act, 16-11-440, cannot be applied
13 retroactively. I appreciate the fact that he was indicted and
14 clearly was indicted on July 27th, 2006, as indicated on the
15 face of the indictment as against Mr. Larry Tyrone
16 Chestnut and Mr. Kendrick Chestnut, but in the indictment it
17 clearly states and all the testimony and facts in evidence
18 here is, the matter happened, whatever happened, on May 21,
19 2006. So, the incident for which they are charged happened
20 before the effective date of the legislation. I do not
21 find -- I do not believe the fact that they were indicted
22 afterwards changes that. So, I appreciate your argument, it's
23 here in the record, but I don't see how that changes it.

24 **MR. WILSON:** Your Honor, then my next argument would be
25 that the crime of murder should still be dismissed. All the

1 evidence in this case suggests that there was a fight, that
2 there was some heated argument, that there was obviously heat
3 and passion going on during the course of this altercation and
4 that as a result of that that, at worst, there could be --
5 would be manslaughter as opposed to murder.

6 **THE COURT:** Yes, Solicitor?

7 **MS. LIVESAY:** Just very briefly on that, Your Honor. I
8 believe several witnesses including, Richard Day and Cindy
9 Evans, commented that they heard statements that came from
10 Joey Hucks that said, don't -- don't touch my sisters. They
11 then heard somebody say, or what; I'll kill you. And Cindy
12 Evans' testimony was, all she remembers hearing is kill, kill,
13 kill. Your Honor, I believe that's not only implied malice
14 but actual malice and I think the circumstances around this
15 killing was that there was a cooling-off period. After he got
16 off of Cindy Evans, he then walked into the den area, which is
17 where he started another altercation. There was no argument
18 until he walked off of Cindy Evans and came into the living
19 room, and then that's when the altercation took place. There
20 was a cooling-down period.

21 Also, there was several witnesses that stated Kendrick
22 Chestnut and Larry Chestnut, while in the house, were saying
23 kill, kill, kill. They get in the car, they've got Chappel
24 E in the car, they're again in the car. Kendrick Chestnut
25 is saying let's go back and kill that guy. The words kill

1 were used again, which is express malice. I believe this is a
2 murder case. I don't think there's anything in the record or
3 in the testimony that would lead to anything that there was
4 expressed malice in this particular case.

5 **THE COURT:** Now, the way I recall the testimony is that
6 certainly there -- and in looking at this, I'm not making any
7 determinations here as to what was said, and might as well go
8 over the directed verdict standard just so it's clear.
9 Obviously, the Defendant is entitled to directed verdict when
10 the State fails to produce evidence of the offense charged.
11 My job is to look at the existence of evidence, not its weight
12 or credibility or believability; that's not my job; that's the
13 jury's job. I'm looking at whether evidence exists or not.
14 If there's any direct evidence or substantial circumstantial
15 evidence, reasonably tending to prove the guilt of the accused
16 -- that's the standard I have -- reasonably tending to prove
17 the guilt of the accused, then the case is submitted to the
18 jury. My standard is not beyond a reasonable doubt. That's
19 not my standard. That's the jury's standard but that's not my
20 standard. is there any direct evidence or substantial
21 circumstantial evidence reasonably tending to prove the guilt
22 of the accused? Now, I would grant a directed verdict motion
23 if the evidence merely raises a suspicion the accused is
24 guilty or if I would find that the jury would have to merely
25 speculate as to the guilt of the accused, or the evidence only

1 raises a mere suspicion that the person is guilty. But in
2 this particular case I think the evidence is clear there was
3 an altercation by your client, Mr. Wilson ---

4 **MR. WILSON:** Yes, sir.

5 **THE COURT:** --- Larry Chestnut, in the kitchen -- all
6 right -- that did not involve Joey Hucks at that point in
7 time.

8 **MR. WILSON:** Yes, sir.

9 **THE COURT:** Comes out of the kitchen, Mr. Hucks is in the
10 living room area. There's testimony that Mr. Hucks made a
11 statement, with something in his hand that was down by his
12 leg, that was not held out or pointed to, or shown to the
13 Defendant or shown to the Defendant, your client, in a
14 threatening manner. In response to the question, or response
15 to the statement that Mr. Hucks made, your client -- there's
16 testimony -- I'm not saying this is what happened, but there
17 is testimony and evidence says, or what, and immediately
18 lunges to and strikes Mr. Hucks, who then, in a falling back
19 motion swings, and your client is cut. The altercation
20 continues on from thereafter.

21 I find from the facts and evidence presented, from all
22 the testimony and the evidence presented, there is direct
23 evidence and there is substantial, circumstantial evidence
24 reasonably tending to prove your client guilty of murder.
25 Again, I'm not judging its weight, I'm not judging

1 its credibility or believability, I'm saying evidence exists
2 in the record from which, if the jury believes it to be true,
3 they find its credible, again the jury's job, there's evidence
4 they can use, that's in the record, to find your Defendant
5 guilty of the crime of murder. They could also find
6 him guilty of voluntary manslaughter from the facts and
7 evidence presented. I don't think there's any question about
8 that. If there -- and we'll talk about that later on -- but
9 certainly, the facts in evidence would support a conviction
10 for voluntary manslaughter, if that's their view of the
11 evidence. But I'm going to respectfully deny your request for
12 a directed verdict on the insufficiency of evidence for the
13 crime of murder.

14 **MR. WILSON:** Thank you, Your Honor. Your Honor, I
15 understand the Court's ruling. One last thing in that regard
16 is that I think, in analyzing the scenario that the Court just
17 presented, ---

18 **THE COURT:** Well -- and I included all the other facts.
19 I brought those out, but I'm not just relying on that. I want
20 to be clear about that. Okay? I'm relying on all the other
21 testimony, and all the others facts and evidence presented.

22 **MR. WILSON:** Yes, sir.

23 **THE COURT:** I did make a point of talking about that but
24 that's not the sole basis or the reason I am ruling. I'm
25 looking at all the facts and evidence that have been presented

1 in this case. Okay?

2 **MR. WILSON:** Yes, sir. And my point is simply that,
3 under the common law, my Defendant had no duty to retreat.
4 Once he was -- assuming that, in the state -- in the light
5 most favorable to the State, that it occurred just the way the
6 Court presented it a second ago, assuming that's the way it
7 happened, my Defendant was home. He had no duty to retreat,
8 and the case law for that is -- goes all the way back to 1926,
9 saying that in addition to no duty to retreat in one's
10 home, no duty to retreat within the home cartilage is
11 required.

12 **THE COURT:** That's true, but mutual combat takes it out
13 of the realm of self-defense and contemptuous language. If
14 you could even construe the words used by Mr. Hucks as they
15 have been testified to, whether or not -- again, I'm not
16 talking about weight -- I'm talking about credibility or
17 believability, there's testimony. If you can find that --
18 even if you could find that language to be contemptuous, then
19 that's not a reason to then go forward with violent acts.
20 Okay? As -- when you're talking about being at home and the
21 right of self-defense, okay, those are exceptions to
22 self-defense, mutual combat, contemptuous language or -- not
23 contemptuous language but the -- when you're talking about
24 words that are used, they cannot bring it to the level, except
25 if there is just such outrageousness that's associated, or

1 implications, or statements into words that would cause
2 somebody to be in extreme fear of what the person is saying,
3 but the language that's been testified to can't arise to that.

4 **MR. WILSON:** Judge, and I understand and I'm not gonna

5 ---

6 **THE COURT:** Well, I appreciate it, I'm not -- I haven't
7 stopped you yet.

8 **MR. WILSON:** My -- you know, even in the light most
9 favorable to the State, when we're looking at this, you have a
10 man who is twice the size of my Defendant, by the admission of
11 the only person who was there, is there with a weapon of some
12 type in his hand, whether you want to believe it's a knife or
13 some other item ---

14 **THE COURT:** Right.

15 **MR. WILSON:** ---But he's standing there with a weapon
16 confronting my Defendant, who is in his home.

17 **THE COURT:** That's correct.

18 **MR. WILSON:** And then, my Defendant has a right -- once
19 that happens, once he is confronted by this individual who is
20 twice his size to defend himself, and he can't wait until he's
21 stabbed in order to start trying to defend himself. The man
22 is there making an accusation to him, keeping him from
23 leaving, and he's in his own home.

24 **THE COURT:** That's certainly a conclusion the jury,
25 looking at the facts of this case, could come to. It's not

1 the only conclusion they could come to. I'm not telling you
2 I'm not gonna charge self-defense, or it's not a defense in
3 this case, but in talking about dismissing the case for lack
4 of evidence, what I'm telling you is, there is evidence in the
5 record that could support a conviction, there's evidence in
6 the record that can support the argument you're making.
7 It's a classic jury case. They've got to weigh credibility,
8 believability, find that evidence which convinces them of its
9 truth, weigh that evidence against the State's burden to prove
10 the Defendant guilty of the crime charged beyond a reasonable
11 doubt. This is a classic jury case. The evidence is there,
12 that's why I'm denying your motion for a directed verdict.
13 I'm not saying those aren't arguments that can't be made or
14 it's not an issue to be presented in accordance with the law
15 to the jury. I'm just not gonna grant a directed verdict
16 motion.

17 **MR. WILSON:** Thank you, Your Honor.

18 **THE COURT:** All right. Mr. Long?

19 **MR. LONG:** Yes, sir, Your Honor. Judge, I'm -- as you
20 can tell, and I know you've taken and you always do take
21 meticulous notes during a trial, I'm in a totally different
22 position, and I know that you see Mr. Wilson's position being
23 the classic jury case. I see my position as being a classic
24 directed verdict case.

25 The only evidence in this case that has my client doing

1 **MR. WILSON:** No, sir.

2 **THE COURT:** All right.

3 **MR. WILSON:** Your Honor, one thing that I do ask the
4 Court is, I know that you said be back at 1:15, and it's 12:10
5 now.

6 **THE COURT:** Right.

7 **MR. WILSON:** I'm -- at this point, I do plan to present
8 some witnesses ---

9 **THE COURT:** But you need to discuss that with your
10 client?

11 **MR. WILSON:** Yes, sir.

12 **THE COURT:** All right. I'm not gonna go in with him now
13 my questions as to -- to him about the -- his rights,
14 Constitutional Rights at this point in time.

15 **MR. WILSON:** All right, sir.

16 **THE COURT:** When we reconvene, you can let me know if
17 you're going to present testimony. If you're gonna present
18 testimony, then I'll let you present that testimony, and then
19 we'll go into the questions with your client as to whether or
20 not he wants to testify in this case, so he has the benefit of
21 everything before it would be time for him to testify, but if
22 you are not, then obviously we have to go into it at that
23 point in time.

24 And then, regarding your client, Mr. Long, we'll do his
25 after that occurs. All right.

1 **MR. WILSON:** Thank you very much, Your Honor.

2 **THE COURT:** Thank you very much. All right. 1:15.
3 Thank you very much.

4 **(THE FOLLOWING TAKES PLACE AFTER LUNCH BREAK AND OUTSIDE**
5 **THE PRESENCE OF THE JURY.)**

6 **THE COURT:** Is the State ready for the jury to come in?

7 **MS. LIVESAY:** Yes, sir.

8 **THE COURT:** And Mr. Wilson?

9 **MR. WILSON:** Your Honor, I have a matter that we probably
10 need to take up and put on the record before we go forward.

11 **THE COURT:** Okay, great. All right.

12 **MR. WILSON:** We're at a point where both Defendants have
13 kind of reached an inconsistent position with how we move
14 forward in the trial.

15 **THE COURT:** Okay.

16 **MR. WILSON:** And that's, I know, a situation inherit when
17 you try two -- both Defendants together and it -- one -- the
18 position of one can compromise the position of the other,
19 and that's the place we find ourselves where, where we have
20 inconsistent defenses here, trying to go forward, And the
21 impact is substantial on either one, depending on which choice
22 we make, and I'm not even sure exactly what I'm asking the
23 Court to do about it, except I think that it needs to be in
24 the record because if, at some point in time one of these
25 Defendants is prejudiced and there's a conviction in this

1 case, then that's obviously going to be, you know, perhaps a
2 grounds for appeal, or at least post-conviction relief if
3 nothing else. And while I'm trying not to give away
4 everything in my conversation with you, I'm trying to at least
5 let you understand what's going on and that was what the delay
6 was about ---

7 **THE COURT:** All right.

8 **MR. WILSON:** ---And which -- what I was trying to attend
9 to, and I've discussed this with Mr. Long for a period of
10 time, and I've discussed with my clients, and we're kind of at
11 an impasse, as best I can tell, from how we proceed from this
12 point.

13 **THE COURT:** All right, sir. I appreciate what you're
14 telling me. Is there anything that you are requesting of the
15 Court, anything you want me to do, or anything that you
16 specifically want to bring to my attention?

17 **MR. WILSON:** Well, yes, sir, I guess what I'm trying to
18 bring to your attention is, is that, if I proceed the way I
19 want to proceed, then I am prejudicing Mr. Long and his client
20 and how they want to proceed. And it, it puts them in a bad
21 situation if I do what I need to do to protect my client,
22 which is obviously my ---

23 **THE COURT:** Which you have to do, which is your duty and
24 your obligation is to, you know, use your best efforts to
25 represent your client in conjunction with his input and, you

1 know, he needs to be obviously advised of all this and, give
2 you his decision as to how he would like you to proceed.

3 MR. WILSON: Yes, sir.

4 THE COURT: So, I'm assuming you've done that?

5 MR. WILSON: I have discussed it with him, yes, sir.

6 THE COURT: All right. And he's given you his input as
7 to how he would like you to proceed?

8 MR. WILSON: Well, he's given me input. He's kind of ---

9 MR. LONG: Judge, if I might?

10 THE COURT: Yes, sir.

11 MR. LONG: If there is a way that Mr. Wilson and I can --
12 this is not about any of the evidence in the case, this is
13 about how to proceed from here forward.

14 THE COURT: All right.

15 MR. LONG: We're talking about whether to put up a
16 defense or not.

17 THE COURT: Well, I'd assumed that's what it was.

18 MR. LONG: Mr. Wilson and I can have a short conference
19 with you without opposing counsel, because it's got to do with
20 trial strategy, to explain to you where our conflict rests,
21 and maybe get some guidance from the Court there, then I think
22 we might be able to make some headway with the problem that
23 we've got.

24 THE COURT: All right. Are you asking that that be on
25 the record, out of the presence of the Solicitor and the

1 State's representatives, is that what you're asking -- or you,
2 the two of you, would like to come to my office without their
3 presence and speak to me? What do you want to do?

4 **MR. LONG:** I think it has to be on the record, Judge.

5 **THE COURT:** Very good. I don't have a problem doing
6 that.

7 All right. Without knowing what it is that Defense
8 counsel wants to tell me, I'm sort of having a -- I'm gonna
9 have to move a little bit in the dark here, Solicitor, but if
10 I hear from them a little bit and I determine that y'all
11 should not be excluded, I will immediately bring you back
12 into the courtroom and tell you what has occurred, but there
13 may be things that they need to bring up in the
14 representation, or ethically, or however it is that they want
15 to present it, that should be outside the presence of the
16 State. So at this point in time, I'm going to clear the
17 courtroom of everyone except for the Defendants, court
18 security, court personnel and their attorneys.

19 So, everyone else needs to exit the courtroom. Don't
20 get lost because we're gonna get started here shortly.

21 **(THE FOLLOWING TAKES PLACE ON THE RECORD IN THE PRESENCE**
22 **OF SECURITY PERSONNEL, CLERK, JUDGE, LAW CLERK, DEFENDANTS AND**
23 **THEIR COUNSEL.)**

24 **THE COURT:** All right. Mr. Wilson, you want to start or
25 Mr. Long? It doesn't really matter.

1 **MR. WILSON:** Your Honor, my Defendant wants to present
2 evidence in this case ---

3 **THE COURT:** Okay.

4 **MR. WILSON:** ---And witnesses, including testimony about
5 his injuries and his hospitalization and all that, and the --
6 obviously the problem for that is that once we do that,
7 then the Co-Defendant then loses his last argument, as well as
8 we losing our last argument.

9 **THE COURT:** Right, and I believe that to be the law of
10 the case. The major case I've found on that is State versus
11 Crowe. It's found at 188 S.E.2d 379, a 1972 Decision of the
12 South Carolina Supreme Court. Interestingly enough, that case
13 cites a case called State versus Huckie, which is found at 22
14 S.C. 298, an 1885 Decision of the South Carolina Supreme
15 Court.

16 I'll be glad for you to put anything on the record that
17 you would like to, you know, argue against precedent, but
18 obviously there is a long established rule in the State of
19 South Carolina that says when defendants are jointly tried and
20 any one of them introduces evidence, the State is
21 entitled to the closing argument, the last argument. So,
22 that's clearly extremely, a lengthy time period, been the law
23 of the State of South Carolina.

24 So, if, Mr. Long, you want to make any arguments against
25 precedent, I'll be glad for you to do that.

1 **MR. LONG:** And let me show you how it applies in this
2 case, how totally unfair the established law is in this case.

3 **THE COURT:** I mean, y'all don't disagree with that? I
4 mean, that's the established ---

5 **MR. LONG:** Right.

6 **THE COURT:** ---Law of this state.

7 **MR. LONG:** No, I don't have anything to refute that the
8 law is established in that manner, but let me tell you where
9 we are. And, you know, you take law exams and nothing ever
10 turns out the way it is out here in real life, but here's what
11 we've got. I've got a client that's got minimal evidence
12 against him in a record right now, and the State closed. They
13 didn't call their chief investigator who took these statements
14 from my client, these statements that we worked on
15 **Bruton** and we redacted so much stuff. The first statement
16 that my client made got redacted all to pieces by Mr. Wilson
17 because my client, in his third statement, implicated Mr.
18 Larry Chestnut a whole lot worse than he's been implicated so
19 far.

20 **THE COURT:** Yes, sir.

21 **MR. LONG:** Puts a weapon in his hand and so forth.

22 **THE COURT:** Yes, sir.

23 **MR. LONG:** Okay. If Mr. Wilson puts up testimony, my
24 client loses the right to argue last. I've explained to my
25 client, and also to Mr. Wilson and his client, that means if

1 he doesn't put up any testimony, and he doesn't put any
2 evidence in, Nancy Livesay, the Solicitor, is gonna
3 have to stand up and make her closing statement right now.

4 **THE COURT:** Right.

5 **MR. LONG:** Mr. Wilson is going to be able to make a
6 closing statement after that, and I get to come in and pick up
7 the crumbs.

8 **THE COURT:** Right.

9 **MR. LONG:** And so the last thing, aside from your jury
10 instructions, are gonna be Ralph Wilson and me. That's
11 substantial. We hang on to that last argument, as you well
12 know, for dear life in cases so that we can have the
13 opportunity. This is bigger than that. We've got a double
14 chance to talk to this jury before they go back into that jury
15 room. This is bigger than normal. We've got two chances to
16 talk to this jury before they make their decision with no
17 Nancy Livesay in the middle.

18 **THE COURT:** Right.

19 **MR. LONG:** Now, if they put up testimony -- my client has
20 no criminal record, there's nothing -- there's no reason in
21 the world for him not to testify for himself ---

22 **THE COURT:** Correct.

23 **MR. LONG:** ---If they put up evidence. If they don't put
24 up evidence, then he's got a reason not to testify because I
25 get to argue last, and he agrees with that a hundred percent.

1 **THE COURT:** Right.

2 **MR. LONG:** But if they put up testimony, any testimony,
3 then we lost our argument ---

4 **THE COURT:** Right.

5 **MR. LONG:** ---So I might as well put him up. If and when
6 I put him up, they're gonna bring that third statement that
7 they got redacted all up, and they're gonna cross-examine him
8 with it, and it's gonna be detrimental to Mr. Wilson's client.
9 So, we are at, literally, the first time in this case,
10 aside from the time when Kendrick gave that statement to the
11 police ---

12 **THE COURT:** Right.

13 **MR. LONG:** ---The first time in this case where we really
14 do have a conflict here ---

15 **THE COURT:** Yes, sir.

16 **MR. LONG:** --- and it's a major one because, again,
17 you're talking about either I lose, we lose a double chance to
18 talk to a jury before a case is over and I -- and then if he
19 doesn't put up testimony -- see, Ralph wants to put up some
20 testimony to show how bad his client's injuries were. I don't
21 know if he's planning on calling his client or not but I know
22 he wants his injuries because his injuries, the doctors are
23 gonna tell the jury, are just as bad, or real close to being
24 just as bad as Joey Hucks'. He just lived and Joey didn't ---

25 **THE COURT:** Right.

1 **MR. LONG:** --- which is helpful to both defenses. If my
2 client is defending his cousin ---

3 **THE COURT:** I understand. It makes a self-defense
4 argument stronger.

5 **MR. LONG:** Right. That's where we are, and it is a
6 major, major conflict. I dropped a monster bomb on them by
7 bringing that up, but that's just the way it is. That is the
8 truth, and that's where we are, and we don't intend to put
9 ourselves cross with Larry Chestnut one bit but ---

10 **THE COURT:** I appreciate that. And I appreciate that and
11 I understand, you know, there is a, you know, connection that
12 the Defendants have that was before this incident.

13 **MR. LONG:** So, Judge, I'm asking, I guess -- you need us
14 to ask for something.

15 **THE COURT:** Yep.

16 **MR. LONG:** I'm asking that we -- that because this is so
17 prejudicial to each of these Defendants, and we're always
18 looking for the best interest of -- we're always protecting
19 the rights of the accused -- if we've got -- I don't believe
20 this exact situation was contemplated in that 1976 case. This
21 situation, we've clearly shown to you, that either way it's
22 going to be detrimental to the other, so I am requesting that
23 we go outside the established law because this case is not
24 directly on point with that, and ask you to determine that it
25 would be wholly unfair, and put these clients -- put

1 these clients' odds against each other to force my client to
2 argue first if Mr. Wilson puts up testimony.

3 **THE COURT:** All right. So, what you're asking for, I'm
4 assuming ---

5 **MR. LONG:** Is a last argument.

6 **THE COURT:** --- is the last argument. Okay. And you're
7 arguing against precedent, and you would like the last
8 argument. All right. I understand the reasons that you've
9 put forward the reasons for putting them up outside the
10 State's presence but as far as the legal issue, I think I am
11 obligated at this point in time to say -- bring the State back
12 and in say -- you know, for you to just to make your motion; I
13 want the last argument. You can say, in general, you know,
14 it's prejudicial to my client for all the reasons we set forth
15 previously, and any legal arguments you want to make, or how,
16 you know, harmful it is to your client or whatever, whatever
17 it is, but I have to give the State some opportunity to
18 respond to your request to have the last argument.

19 **MR. LONG:** Certainly.

20 **THE COURT:** All right. Anything else y'all want to say
21 before I do that?

22 **MR. WILSON:** No, sir.

23 **THE COURT:** All right. Very good.

24 Deputy, can you find the two Assistant Solicitors and ask
25 them to come back in, please.

1 **(MS. LIVESAY AND MS. VON HERRMANN RETURN TO COURTROOM.)**

2 **THE COURT:** All right. Mr. Long, you have a motion that
3 you'd like to make at this point in time?

4 **MR. LONG:** Yes, sir, Your Honor. I -- we all agree, and
5 I think Your Honor has clearly stated, and I believe that all
6 four lawyers standing in front of you would agree, that the
7 established law in the State of South Carolina, by the 1972
8 case, is that if one defendant puts up testimony or evidence
9 in any way then both defendants lose their right to argue last
10 in the case, in the case of co-defendants. I am arguing
11 against precedence here. I do not believe that that 1972 case
12 contemplated this scenario right here.

13 Let me give the -- I've given the Court the scenario,
14 I'm gonna give the Solicitors the scenario so they can argue
15 against it. The scenario is thus -- this. As we sit right
16 now, we both have retained our right to argue last. My
17 client, Kendrick Chestnut, firmly believes that his right to
18 argue last is substantial. It is very substantial. It's
19 important to him, right now. Okay? If Mr. Wilson puts up
20 evidence, puts in testimony of any kind, my client,
21 through no doing of his own, is gonna lose that substantial
22 right, and here's how it works out. If Mr. Wilson puts up
23 testimony -- my client has no criminal record whatsoever. If
24 Mr. Wilson puts up testimony, there's no reason in the world
25 for my client not to testify in this case, because he has no

1 criminal record. He might as well testify, because his
2 testimony is good for him. All of the statements that he
3 gave, including the third statement that's been redacted all
4 to pieces, is good for him, so he might as well testify. If
5 he testifies, okay, through **Bruton**, Mr. Wilson has been able
6 to redact his third statement all too pieces. All kinds of
7 bad stuff has been said by my client about his client in that
8 third statement, which is not gonna be in evidence in this
9 case, unless he calls evidence, which then takes away my right
10 to argue last, and there's no reason in the world why my
11 client wouldn't testify then because he's got no criminal
12 record, and then the bad stuff about Larry Chestnut is gonna
13 come in. So, we have, lawyers, we have a real conflict now, a
14 big-time conflict. And so I'm asking the Court that the
15 precedence in this case did not foresee this exact problem
16 that we've got, and it is wholly unfair -- if Mr. Wilson is
17 allowed to go forward and put in evidence it is totally unfair
18 to Kendrick Chestnut to allow him to lose his right that
19 we've worked real hard during this trial to protect, which is
20 the right to argue last. So, I'm asking that Your Honor go
21 outside that case that established the law, and allow Kendrick
22 Chestnut, even if Mr. Wilson puts in testimony, to argue last.

23 **THE COURT:** All right. All right, Solicitor, let me hear
24 from you?

25 **MS. VON HERRMANN:** Well, Your Honor, obviously, the law

1 is what it is. I think it contemplates absolutely this
2 situation. This is a joint trial where we have joint
3 co-defendants. I understand that Mr. Long and Mr. Wilson may
4 think that they have a conflict between each other, but the
5 fact of the matter is, there is no relationship between them.
6 They're only -- they're only duty is to their client. And so,
7 Mr. Wilson's duty to his client is to do whatever it is that
8 he thinks is best for his client, either to put up evidence or
9 not put up evidence. Mr. Long's duty to his client is to do
10 the same. They are two -- it's like two separate trials.
11 There is no -- just because they're sitting at the table
12 doesn't mean that they have to help one another.

13 The law is well established here, and I think it
14 contemplates this exact situation. I think also what it does,
15 if the Court were to grant that, is it places us in the
16 position where we've got to stop this trial, we've got
17 to go the Court of Appeals, we've got to file an interlocutory
18 appeal, and we've got to deal with all of that mess for
19 something that is arguing against long, long-standing
20 precedent.

21 **MR. WILSON:** Your Honor, if I might ---

22 **THE COURT:** Yes, sir.

23 **MR. WILSON:** I think the difference -- and I agree with
24 Mr. Long that this is not the typical co-defendant situation.
25 What's happening here is, I can control what happens to Mr.

1 Long. That should never happen. I have absolutely no legal
2 right to control what happens to his client, and to affect his
3 ability to make a decision for his client. But what's
4 happening here is I'm -- if I do what I want to do, I am, in
5 fact, taking away Mr. Long's ability to represent his client
6 in the best way that he believes he should be represented, and
7 I have control of that. There is no way that a co-defendant
8 should be able to control what happens to the other
9 co-defendant when they have inconsistent positions.

10 **MS. VON HERRMANN:** If they had inconsistent positions,
11 there is a remedy for that, and that is for them to make a
12 motion for the severance of their particular cases, and that
13 is something that should've been done at the beginning of this
14 case, severance at the beginning of the case is the remedy for
15 that problem, and once we find ourselves where we are now, the
16 law is clear.

17 **THE COURT:** All right. Hold on one second. And I
18 appreciate the fact that no motion for a severance was made.
19 I mean, it's -- that wasn't before me, but it's also the fact
20 that -- an argument that a, you know, one co-defendant is less
21 culpable, or the co-defendant is the one that's alone is
22 guilty of the crime, those matters alone are not really a
23 reason for a -- for a severance, but that's really not before
24 me. What's before me is this matter of last argument. And as
25 indicated by counsel, we were talking about the case of State

1 versus Crowe and State versus Crowe, which is a case that is
2 found -- and let me make sure I'm correct -- 188 S.E.2nd 379,
3 258 S.C. 258, 1972 Decision of the South Carolina Supreme
4 Court, and it clearly states, where defendants are jointly
5 indicted and tried, and any one of them introduces evidence,
6 the State is entitled to the closing argument, the last
7 argument, when one of them, even though the other one doesn't
8 want to, and that case, incidentally, or I guess for the
9 purpose of the record, cites State versus Huckie, found at 22
10 S.C. 298, an 1885 Decision of the South Carolina Supreme
11 Court.

12 So, obviously, we're dealing with a -- an established
13 rule in the State of South Carolina that has been in existence
14 for an extremely long period of time. I appreciate the
15 circumstance that the Defendants and their attorneys have
16 expressed to the Court, both in the presence and out of the
17 presence of the State's representatives, but I do not find
18 those reasons and those arguments to be sufficient to go
19 against this longstanding and established procedure as
20 established by our Supreme Court of the State of South
21 Carolina. If the current Supreme Court, as its constituted,
22 wants to overturn this rule that's been in existence for
23 hundreds of years, they're gonna have to do that. I don't see
24 that it's either proper or necessary in this particular case,
25 and I do not find it to be a proper thing to do under the

1 facts and circumstances of this particular case.

2 All right. Anything else, gentlemen, that you want to
3 put on the record at this point in time?

4 Mr. Wilson?

5 **MR. WILSON:** No, sir.

6 **THE COURT:** All right. And Mr. Long?

7 **MR. LONG:** No, sir.

8 **THE COURT:** All right. Very good. Regarding that, then,
9 it's your intention as I understand it, Mr. Wilson, to put on
10 at least a few witnesses before you would come to the position
11 whether or not your client is gonna testify; is that right?

12 **MR. WILSON:** Your Honor, my client is indicating to me as
13 you speak that he no longer wants to put up witnesses.

14 **THE COURT:** Well, how about you, since we've talked about
15 this -- I'm gonna give y'all about five more minutes to talk
16 to him since he's just indicating that to you here in open
17 court. I think -- you know, I'm gonna give you the
18 opportunity to stop and talk to him about that, and fully
19 explore that with him and make sure that's his wish and his
20 decision because ---

21 **MR. WILSON:** Yes, sir.

22 **THE COURT:** --- you know, he's the one on trial, he needs
23 the -- he needs to make the call here. All right?

24 **MR. WILSON:** Yes, sir.

25 **THE COURT:** Thank you very much.

1 **MR. WILSON:** Thank you, Your Honor.

2 **THE COURT:** All right. We'll take a short break.

3 Thank you very much.

4 **MS. VON HERRMANN:** Thank you, Your Honor.

5 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE**
6 **PRESENCE OF THE JURY.)**

7 **THE COURT:** All right. Mr. Wilson ---

8 **MR. WILSON:** Yes, sir, Your Honor.

9 **THE COURT:** --- has your -- did your client make a
10 decision -- let's -- before we talk about him testifying,
11 about presenting evidence?

12 **MR. WILSON:** We have made a decision, Your Honor.

13 **THE COURT:** And what is that decision?

14 **MR. WILSON:** My client has decided that he will not
15 present evidence.

16 **THE COURT:** All right. And so I -- I think it's
17 important since we've had this extended discussion in this
18 matter.

19 Mr. Larry Chestnut, could you stand up, please, sir?

20 Your attorney has indicated that you have fully
21 discussed with him all of these issues about presenting
22 testimony or not presenting testimony, how that would be good,
23 or beneficial to you, or how it might harm your case, and
24 obviously both of you or just interested, and the only thing
25 y'all are concerned with is how it impacts you; you understand

1 that, correct?

2 MR. LARRY CHESTNUT: Yes, sir.

3 THE COURT: All right, sir. And Mr. Wilson has fully
4 discussed this with you, correct?

5 MR. LARRY CHESTNUT: Yes, sir.

6 THE COURT: All right, sir. And do you have any
7 questions you need to ask him now about this, any questions
8 you've got about this point?

9 MR. LARRY CHESTNUT: No, sir.

10 THE COURT: All right, sir. And understanding, you're
11 the one on trial, and ultimately it's your decision, are you
12 in agreement with what your attorney has said, that you do not
13 want to present evidence in this case?

14 MR. LARRY CHESTNUT: Yes, sir.

15 THE COURT: All right. Very good. Thank you very much.

16 MR. WILSON: Judge ---

17 THE COURT: Yes, sir.

18 MR. WILSON: --- just so the record is real clear, his
19 sole reason for not presenting evidence is based on the
20 discussion we had with the Court earlier, with Mr. Long and
21 with the Solicitor, about the last argument and the conflict
22 that it caused between Defense counsel.

23 THE COURT: And I appreciate the conflict, okay, I really
24 do; I understand that. I was a defense -- you know, I was a
25 trial attorney, and I was never a prosecutor, so I understand

1 that. Okay?

2 **MR. WILSON:** Yes, sir.

3 **THE COURT:** But, you know, your job is to represent your
4 client and Mr. Long's job is to represent his client, and the
5 two of them have to do what they think is in their own best
6 selfish interest.

7 **MR. WILSON:** Yes, sir.

8 **THE COURT:** All right. How it best helps me, that's how
9 you've got to -- whether it hurts or harms your life-long
10 buddy and friend or not, that's where you are, and that's how
11 you got to look at it. So, again, I appreciate your telling
12 me that, Mr. Wilson, but again ---

13 Mr. Chestnut, I need for you to stand back up again now.

14 All right. Whatever the reason is and that's your
15 reason, and that's a great reason, you know, whatever reason
16 you want to use, okay, in making your decision, but again, you
17 understand it's your decision, correct?

18 **MR. LARRY CHESTNUT:** Yes, sir.

19 **THE COURT:** All right. And you're free to make that
20 decision based on the information you get from your attorney,
21 and your attorney can say, I think its best that we do "X",
22 but you don't have to do "X". Okay? You can say, I
23 appreciate what you're telling me, Mr. Wilson, but I want to
24 go a different way, I want do this. All right? You're the
25 one on trial.

1 So, again, here's the question, do you want your
2 attorney to present evidence on your behalf in this case or do
3 you want to preserve or keep the last argument? Which one do
4 you want? Do you want to present evidence, or do you want to
5 keep the argument, because that's what it comes down to?

6 **MR. LARRY CHESTNUT:** The argument, sir.

7 **THE COURT:** I'm sorry; I didn't hear you.

8 **MR. LARRY CHESTNUT:** Keep the argument.

9 **THE COURT:** Keep the argument. All right. Very good.
10 Thank you very much, sir.

11 Thank you.

12 All right. So, I'm not gonna bring the jury out and then
13 have Mr. Wilson you tell me the Defense rest, and I turn to
14 you, Mr. Long, and you tell me the Defense rests for your
15 client. We'll do that in front of the jury but -- so that we
16 can take care of all these matters now, Mr. Wilson,
17 officially, are you telling the Court that on behalf of your
18 client, and that being Larry -- it has Larry, and it's got --
19 I think it has Ty, Tyrone, I'm sorry -- Larry Tyrone Chestnut,
20 as set forth on the indictment, on behalf of your client, does
21 the Defense rest?

22 **MR. WILSON:** The Defense rests, Your Honor, at this time
23 on behalf of Larry Chestnut.

24 **THE COURT:** All right. Very good. All right. Thank
25 y'all. Y'all can have a seat.

1 All right, Mr. Long? What is the position on behalf of
2 your client Kendrick Chestnut?

3 MR. LONG: Kendrick Chestnut rests, and we need to renew
4 ---

5 THE COURT: That's what I was gonna ask you to do at this
6 point in time now. I want y'all, since y'all rest, so we
7 don't have to then -- okay, Madame -- or Mr. Foreman, ladies
8 and gentlemen, go back out and then y'all make your arguments,
9 so that's where we are.

10 So, let me hear your arguments.

11 MR. WILSON: Your Honor, I won't go back into it. You've
12 heard it, it's all in the record, but I would like to at this
13 point renew my motion for a directed verdict that I made at
14 the end of the State's case in its entirety, and I would also
15 like to renew the motion that we made in camera, and then with
16 the Solicitor present regarding the conflict between the
17 Defenses in this case and the last argument.

18 THE COURT: All right. Very good.

19 Again, not going through the whole directed verdict
20 standard again, but basically -- and I think it's clear that
21 what the Court is looking at is the existence of evidence,
22 whether the evidence exists in the case, whether it's been
23 properly introduced and it's before the jury in this
24 matter, not weighing credibility, believability, whether
25 something is true or not true, that being the job of the jury,

1 but I find, in response to your motion for directed verdict,
2 that there is, in this case, direct evidence and substantial
3 circumstantial evidence, both of them, reasonably tending to
4 prove the guilt of your client for the crime for which he has
5 been charged, that being murder, and therefore would
6 respectfully decline to grant your motion for a directed
7 verdict.

8 Mr. Long?

9 **MR. LONG:** Your Honor, I ---

10 **THE COURT:** I'm sorry. Were there any other motions that
11 you had, Mr. Wilson?

12 **MR. WILSON:** Nothing further, Your Honor,

13 **THE COURT:** All right. Thank you.

14 **MR. LONG:** Your Honor, I renew my motion for a directed
15 verdict. There is no evidence -- now that Defenses have both
16 rested and this case is over, there is no evidence in this
17 record tending to prove the guilt of Kendrick Chestnut of
18 murder, none. There might be some evidence in this record
19 that might show an assault, there might be some record -- some
20 evidence in this record that might show some kind of
21 accessory, but there is no evidence in the record, in
22 this case, that would tend to prove guilt of murder against
23 Kendrick Chestnut at all, and we would respectfully request
24 you to direct a verdict against Kendrick Chestnut.

25 **THE COURT:** All right, sir. Let me -- before I get

1 directly to your arguments, let me address for both of you,
2 again, the State's ruling on the -- or the -- regarding the
3 last argument matter. The Court reaffirms my previous ruling
4 that we discussed on the record, relying upon the precedent
5 that has been set in this state of longstanding, and I cited
6 the two cases, the State versus Crowe, the 1972 Decision of
7 the South Carolina Supreme Court, and the 1885 Decision of the
8 South Carolina Supreme Court, State versus Huckie, whereby the
9 issues where the defendants are jointly indicted and tried,
10 and any one of them introduces evidence, the State is entitled
11 to the closing argument, or the last argument. I find that to
12 be the -- not only the precedent, the proper precedent, but
13 applying that to the facts and circumstances of this case, I
14 find it to be proper, and that it does not unduly prejudice
15 the Defendants in this matter, they having been jointly tried
16 and -- in this matter. So, I respectfully decline to grant
17 the last arguments to the Defendants if they had decided to
18 put up testimony, or one of them had decided to and the other
19 one didn't.

20 Now, on the basic issues of directed verdict, not going
21 through that again, but again, regarding your motion for a
22 directed verdict, I do find -- and we previously talked about
23 that, but again, relying upon all the evidence that has been
24 presented by the State in this case, I do find that there is
25 direct evidence, and also substantial circumstantial evidence

1 that reasonably tends to prove the guilt of your client, Mr.
2 Kendrick Chestnut, and that would prove him guilty of the
3 crime for which he's charged, and that being murder.

4 Now, you made sort of a ancillary argument, I believe.
5 Correct if I'm wrong, but he was charged in the indictment for
6 murder. The law of the State of South Carolina is in an
7 indictment a person can be convicted on the theory of
8 accomplice liability pursuant to an indictment only charging
9 him with the principal offense. And I believe that's --
10 again, is longstanding law in the State of South Carolina, so
11 just the fact that he was charged as a principal does not mean
12 that, based upon the facts and the evidence presented he
13 cannot be convicted on the theory of accomplice liability of
14 the crime for which he's charged, that is murder. And so
15 rolling all that into your argument for a directed verdict, I
16 would respectfully decline to grant your motion for a directed
17 verdict, Mr. Long.

18 All right. Any further motions on behalf of your client,
19 Mr. Long?

20 **MR. LONG:** No, Your Honor.

21 **THE COURT:** All right. Very good.

22 I sort of jumped ahead of myself, didn't I? I did not
23 ask your respective clients, and inform them about their right
24 to testify, and we need to do that, so -- I don't intend to go
25 back to these directed verdict motions. I'll deal with that

1 in just a second, but I want to be clear about this, and I
2 sort of covered it with Mr. Larry Chestnut but not as I
3 should.

4 Mr. Chestnut, please stand, if you would.

5 And Madame Clerk, would you place him under oath?

6 **LARRY CHESTNUT**, being first duly
7 sworn, states as follows:

8 **THE COURT:** All right. Now, at this time, Mr. Chestnut,
9 I'm gonna explain to you certain of your Constitutional
10 Rights. If, at any time, you don't understand me, you have a
11 question about it, there's something you need you bring up,
12 you need to stop me in some way. You can raise your hand, you
13 can tell Mr. Wilson, whatever it is, but you need to tell me
14 there's something we need to talk about. Are we in agreement
15 there?

16 **MR. LARRY CHESTNUT:** Yes, sir.

17 **THE COURT:** All right. Very good. We've reached the
18 stage of the trial, the State has presented its case, whatever
19 it's gonna present, and the State has rested. You have the
20 right to claim the protection given to you by the Fifth
21 Amendment to the Constitution of the United States of America.
22 And that says no person shall be compelled, that means forced,
23 in any criminal case, to be a witness against themselves.
24 That means nobody can make you testify, they can't force you
25 to testify, but you have the right to testify. You can

1 testify if you want to. That's your choice, and it's your
2 decision. Again, you get the advice of your attorney, but
3 again it's your decision, your choice. If you decide to
4 testify, you're gonna be subject to the same rules that you've
5 seen all the other witnesses that come up in this trial, be
6 put under oath, your attorney will ask you questions, and then
7 one of the Solicitors will cross examine you as to any issues
8 or facts the Court would deem proper; do you understand that?

9 **MR. LARRY CHESTNUT:** Yes, sir.

10 **THE COURT:** All right. In addition, is there -- does Mr.
11 Larry Chestnut have any -- Solicitor, does Mr. Larry Chestnut
12 have any record that you would be cross examining him on?

13 **MS. LIVESAY:** No, sir.

14 **THE COURT:** All right. Very good. So, that's not an
15 issue, you don't have a record that they could ask you about.
16 If you decide to testify, and again it's your decision, that's
17 got to be made freely and voluntarily, nobody is making you
18 make this decision. You're deciding to do whatever it is
19 that, that you're going to do in this, and you understand the
20 rights that I've talked to you about. If you decide not to
21 testify, I'm going to charge the jury, I'm gonna tell the
22 jury, in my instructions on the law to them, that they can't
23 give that fact any consideration whatsoever. I'll tell them
24 they can't even talk about it in the jury room; it's not a
25 fact in this case; they can't use it in making up their

1 decision.

2 Now, understanding it's your decision to testify or not
3 testify in this matter, do you have any questions you need to
4 ask your attorney or anybody else at this time?

5 **MR. LARRY CHESTNUT:** No, sir.

6 **THE COURT:** All right. Do you understand everything
7 we've talked about?

8 **MR. LARRY CHESTNUT:** Yes, sir.

9 **THE COURT:** All right. Do you want to testify in this
10 case?

11 **MR. LARRY CHESTNUT:** No, sir.

12 **THE COURT:** Very good. Thank you very much.

13 All right. Mr. Kendrick Chestnut.

14 Madame Clerk, if you'll place him under oath, please.

15 **KENDRICK CHESTNUT,** being first duly
16 sworn, states as follows:

17 **THE COURT:** All right. Mr. Kendrick Chestnut, I
18 appreciate the fact you were probably listening to the
19 questions and what just went on in my talking to Mr. Larry
20 Chestnut, but yours is a separate case, and yours is separate
21 decision. Do you understand that?

22 **MR. KENDRICK CHESTNUT:** Yes, sir.

23 **THE COURT:** All right. Now, I'm gonna explain to you, as
24 I did to Mr. Larry Chestnut, certain of your Constitutional
25 Rights that you have, and again, if there's anything you don't

1 understand, or you've got a question about it, or something
2 you need to bring up, you need to stop me and tell me. Raise
3 your hand, you can tell Mr. Long, but somehow you've got to
4 indicate to me that you've got a question or an issue. Are we
5 in agreement there?

6 **MR. KENDRICK CHESTNUT:** Uh-huh (indicating positive.)

7 **THE COURT:** All right. Very good. Now, we've reached
8 the stage of the trial where you can present a defense. Now,
9 you can call people on your behalf, you can testify, but you
10 have the right to claim the protection given to you by the
11 Fifth Amendment to the Constitution of the United States of
12 America, and that says no person shall be compelled, that
13 means forced, in any criminal case, to be a witness against
14 themselves. That means nobody can make you testify. You
15 can testify if you want to, that's your choice. You control
16 that; it's your decision. You can get all the advice you want
17 to from your attorney, but you make the decision; you
18 understand that?

19 **MR. KENDRICK CHESTNUT:** Yes, sir.

20 **THE COURT:** All right. Now, regarding this, if you
21 decide to testify, you're gonna be subject to the same rules,
22 you've seen it, what happens, your attorney would call you,
23 he'd ask you questions, you'd answer them, and then you would
24 be asked questions by the State and Mr. Wilson; you understand
25 that?

1 **MR. KENDRICK CHESTNUT:** Yes, sir.

2 **THE COURT:** All right. As I understand it, Solicitor,
3 the -- Mr. Kendrick Chestnut has no record; is that right?

4 **MS. LIVESAY:** No, sir.

5 **THE COURT:** All right. Very good. So that's not an
6 issue. If you decide to testify, again, that's got to be your
7 choice. You've got to make it freely and voluntarily, knowing
8 the -- the protections given to you by the Constitution, and
9 again, if you decide to testify, I'm gonna tell the jury, I'll
10 make it clear to them there's two cases here, they got to make
11 two decisions, that they can't give the fact that you didn't
12 testify any consideration whatsoever, they can't talk
13 about it in the jury room, it's not part of this case; they
14 can't use it to make a decision. I will be clear with them
15 about that.

16 Now, before I asked you if you want to testify, do you
17 understand everything we've talked about?

18 **MR. KENDRICK CHESTNUT:** Yes, sir.

19 **THE COURT:** Do you have any questions that you need to
20 ask me or Mr. Long?

21 **MR. KENDRICK CHESTNUT:** No, sir.

22 **THE COURT:** Do you need to talk to anybody about this?

23 **MR. KENDRICK CHESTNUT:** No, sir.

24 **THE COURT:** All right, sir. Do you want to testify in
25 this case?

1 **MR. KENDRICK CHESTNUT:** No, sir.

2 **THE COURT:** All right. Very good. Thank you very much.

3 All right. Having covered that, and taking the renewed
4 motions for a directed verdict by the Defendant Larry
5 Chestnut, I -- any additional arguments you want to make Mr.
6 Wilson on your directed verdict motion?

7 **MR. WILSON:** No, sir, Your Honor.

8 **THE COURT:** All right. I respectfully decline to grant
9 the directed verdict based on the matters we've previously
10 discussed, you know, all of the issues, the State versus Crowe
11 and all the other issues we talked about.

12 Mr. Long, any other arguments you want to make on
13 directed verdict?

14 **MR. LONG:** No, Your Honor.

15 **THE COURT:** All right, sir. Very good. Again, the Court
16 respectfully declines to grant the motion based on all the
17 matters we previously discussed just a few moments ago.

18 All right. Since we're gonna go into the closing
19 arguments in this matter, and obviously the State is going to
20 make their argument first, their complete and full argument,
21 whatever argument you're gonna make, that's what you're going
22 to do.

23 Mr. Wilson, you will have your argument, and Mr. Long
24 will have his argument, and then I'll charge the jury.

25 Now, regarding that, let's talk about first, the verdict

1 form. My intention -- and I'll be glad to hear from all of
2 you at this point in time -- is to present to the jury, on the
3 verdict form against Larry Tyrone Chestnut - that's the name
4 under which he's been indicted - a two-page verdict form.
5 On the front page it has murder, on the charge of murder, we
6 the jury, by unanimous consent, find the Defendant Larry
7 Tyrone Chestnut - you've got two choices to check a block on -
8 not guilty or guilty. The note underneath that says, in bold
9 letters, if you find the Defendant not guilty on Count 1
10 murder, please proceed to Count 2, voluntary manslaughter, on
11 page 2, if you find the Defendant guilty of Count 1, murder,
12 proceed to the case of Kendrick Chestnut.

13 Any objection?

14 And then page 2 is the verdict form for voluntary
15 manslaughter. On a charge of voluntary manslaughter, we the
16 jury, by unanimous consent, find the Defendant Larry Tyrone
17 Chestnut, two choices again, a block, not guilty, guilty.

18 And then down at the bottom, if they've gone to that,
19 and it says, please proceed to the case of Kendrick Chestnut.

20 Any objection to that form from the State?

21 **MS. LIVESAY:** No, sir.

22 **THE COURT:** From the Defendant Larry Chestnut?

23 **MR. WILSON:** No, sir, Your Honor.

24 **THE COURT:** All right.

25 **MR. LONG:** I do object to it, Your Honor.

1 **THE COURT:** Okay. Well, I was gonna get to your ---

2 **MR. LONG:** I object to the Larry Chestnut verdict form
3 actually. I don't think it's correct or proper to have a jury
4 decide the Larry Chestnut case in full before they can move to
5 decide the Kendrick Chestnut case. I think they should be
6 able to decide the Kendrick Chestnut case first, and move to
7 the Larry Chestnut case second, or they should be able to do
8 them both at the same time. But I don't think it's fair for
9 my client -- if they fail to reach a verdict your verdict
10 form, and your instruction, doesn't even get them to the point
11 where they're trying to decide my client's innocence or guilt,
12 so, I don't think that's proper. I would ask that you remove
13 the, if you find the Defendant Larry Chestnut guilty of
14 anything, or not guilty of anything, then move to Kendrick
15 Chestnut. I don't think that's fair. I believe we -- since
16 we're two separate defendants being tried at the same time,
17 you give them a verdict form for Larry Chestnut that lets them
18 decide if he's guilty or not guilty of murder, guilty or not
19 guilty of voluntary, guilty or not guilty of involuntary.
20 Nothing about Kendrick Chestnut in his, and I would ask that
21 in Kendrick's you say that they have three -- well, three
22 possible verdict forms: murder, guilty or not guilty;
23 voluntary, guilty or not guilty; or involuntary, guilty or not
24 guilty.

25 **THE COURT:** We haven't gotten to the involuntary or ---

1 **MR. LONG:** Well, I ---

2 **THE COURT:** Well, we're not there yet.

3 **MR. LONG:** Right. Well, I object to the reference to
4 Kendrick -- to waiting to go to Kendrick Chestnut's
5 deliberation until after a decision has been made ---

6 **THE COURT:** So, what's your suggestion?

7 **MR. LONG:** My suggestion is to take it out.

8 **THE COURT:** All right. Well, I appreciate that. I've
9 got two verdict forms. I'm gonna tell them -- I got to tell
10 the jury something.

11 **MR. LONG:** I would ask that you tell the jury that
12 they've got two cases to decide. In one of the cases, they've
13 got Larry Chestnut's verdict form. The verdict form in Larry
14 Chestnut is this ---

15 **THE COURT:** Okay.

16 **MR. LONG:** As soon as they reach a verdict, inform Mr.
17 Foreman, sign your name on the verdict line and knock on the
18 door. I would ask the same for Kendrick Chestnut's verdict
19 form.

20 **THE COURT:** Well, I -- well, I'm not gonna tell them to
21 knock on the door ---

22 **MR. LONG:** Well ---

23 **THE COURT:** I will tell them ---

24 **MR. LONG:** Set it aside and ---

25 **THE COURT:** When they have reached a decision, whatever

1 it is, on both of them, then they can knock on the door and
2 let -- let us know.

3 **MR. LONG:** I've got a question for the Court actually,
4 I've never had this arise, and obviously we've had some
5 co-defendant issues here. What happens if the jury can't
6 reach a decision on one defendant, but does reach a decision
7 on the other? How do we find out that they've reached that
8 decision if we don't give them ---

9 **THE COURT:** Because there's -- they will, at some point
10 in time knock on the door, write a note and let us know.
11 They're not gonna sit there for three days without doing
12 something. All right. I mean, they're gonna -- they're gonna
13 bring it to the Court's attention.

14 **MR. LONG:** But if you tell them that they have to decide
15 Larry Chestnut's case first ---

16 **THE COURT:** All right. I appreciate what you're saying
17 but I'm not gonna tell them, decide one case and knock on the
18 door. I'm not gonna tell them to do that.

19 **MR. LONG:** And I'm not really asking for that.

20 **THE COURT:** Okay.

21 **MR. LONG:** That was an illustration of why it's important
22 not to give them ---

23 **THE COURT:** All right. That's fine. I can tell them to
24 -- there's a verdict form for one, and the verdict form for
25 two, you have to decide both cases separately, and I've got a

1 charge about that.

2 **MR. LONG:** Just that one verdict ---

3 **THE COURT:** And then when you have decided both cases,
4 knock on the door and let the Court know. All right. Any
5 problem with that?

6 **MR. LONG:** I have no problem with that whatsoever.

7 **THE COURT:** All right. Very good. I don't have a
8 problem doing that. That's not a problem at all. Not a
9 problem at all.

10 Now -- okay now. You have brought up -- and I did not
11 prepare a verdict form, and not currently my intention to
12 include involuntary manslaughter in this matter. Tell me -- I
13 understand it may or may not be the choice of the State or a
14 particular Defendant, it's my duty to charge the jury what I
15 think is the proper law independent of what I'm asked of by
16 the State or the Defense, but you've brought it up. Tell me
17 under what facts and circumstances that have been placed in
18 the record that would have me charge the jury involuntary
19 manslaughter.

20 **MR. LONG:** None. That was a -- just a slip. I was going
21 through ---

22 **THE COURT:** Okay.

23 **MR. LONG:** I was going through a murder trial ---

24 **THE COURT:** Okay.

25 **MR. LONG:** I haven't seen any evidence in this case that

1 would lend a jury to find anybody guilty of involuntary
2 manslaughter.

3 **THE COURT:** Okay. So, you want me -- well, my intention
4 is to present it to them on behalf of your client on the
5 charge of murder, that if they find him -- I am going to put
6 on there, on both of them, if you find the Defendant not
7 guilty of Count 1, murder, please proceed to Count 2,
8 voluntary manslaughter on page 2. I got to tell them that.

9 **MR. LONG:** I agree with that.

10 **THE COURT:** All right. So -- and then I would put also,
11 if you found the Defendant guilty of Count 1, murder, stop
12 deliberating on that matter.

13 **MR. LONG:** Right.

14 **THE COURT:** Because that's -- that would be end of it.
15 We don't want to confuse them and think they have to then make
16 a decision on voluntary when they've already made a decision
17 on murder. All right.

18 Okay. So that's my intention there. I'll set that
19 aside for a minute.

20 Charge on the -- charge on the law. Talk to them about
21 the usual things we usually talk about, credibility,
22 believability, same thing I told them about note taking,
23 direct and circumstantial evidence, the thing about expert
24 witnesses that just because I qualified somebody to give their
25 opinion doesn't give them a special status, you judge all the

1 evidence the same, it's credibility, believability, a charge
2 about testimony of children, basically indicating that, as
3 with any witness you determine whether or not that testimony
4 is believable, in deciding that you may consider not only
5 matters that we've already discussed but you also may consider
6 the age of the child, the child's ability to observe and
7 remember facts, the child's ability to understand and
8 understand questions, because young children may not fully
9 understand what is happening. It's up for the jury to decide
10 whether or not the child understood the seriousness of
11 appearing as a witness at the criminal trial, whether the
12 child understood the questions, whether the child had a
13 good memory, whether the child understands the difference
14 between lying and telling the truth, and in addition, young
15 children may be influenced by the way questions are asked.
16 It's up to the jury to make that decision.

17 The instruction about the Defendants did not testify,
18 that it's not a factor to be considered by them in their
19 deliberations, not to be considered in any manner whatsoever,
20 draw no conclusions, presumption of innocence, reasonable
21 doubt, the kind of doubt that would cause a reasonable person
22 to hesitate to act.

23 Also I am going to charge mere presence, mere presence
24 at the scene is not sufficient to prove somebody guilty of a
25 crime. Tell them, again, it's the burden of the State of

1 South Carolina to prove every element of the crime charged
2 beyond a reasonable doubt. I am going to charge murder,
3 voluntary manslaughter, and I probably -- I said mere
4 presence, I probably will put that at the end. I'll probably
5 then say mere presence, and I will use also an additional
6 charge that a person's mere presence where a crime may be --
7 may be, or was being committed, does not in and of itself make
8 a -- the Defendant guilty of the crime.

9 And then I'll talk about the hand of one is the hand of
10 all, and then we will obviously need to talk about
11 self-defense. Anything else? Prior record of a defendant, I
12 need to put that in there because that was one of the
13 witnesses -- I said defendant, prior record of a witness is
14 what I'm gonna charge because there was a -- I think it was
15 Mr. Day, that will be -- that will be charged. I will also
16 charge and I'll just read it to you, it's not that long. I
17 charge you that there are two defendants in this case,
18 Kendrick Chestnut is charged with murder, Larry Tyrone
19 Chestnut is charged with murder. The case of each defendant
20 and the evidence and the law concerning that defendant
21 should be considered separately and individually. Your
22 verdict does not have to be the same for both Defendants. The
23 fact is you may find one Defendant guilty or not guilty, and
24 that should not, and cannot control your verdict as to the
25 other Defendant.

1 Where more than one person is charged with a crime, if
2 the evidence warrants it, you may convict one and acquit the
3 other or you may acquit both, or you may convict both. It
4 would depend upon your view of the testimony and evidence.
5 You must take each defendant and consider the evidence as to
6 that defendant and my instructions to you on the law. You
7 will then write a separate verdict for each individual
8 Defendant on the charges or the charge presented. So, I will
9 do that also.

10 Now, as to self defense, my intention to charge self
11 defense -- I am going to include in there, I mean, you know,
12 you have to be without fault, the issue about mutual combat,
13 imminent danger, the right to act on appearances, size and
14 age, and no other way to avoid the danger, there's -- also
15 state that the Defendant was on his own premises; the
16 Defendant had no duty to retreat before acting in self
17 defense, increased risk of harm; the defendant has no duty to
18 retreat if by doing so the danger or being killed or suffering
19 serious bodily injury would increase; lawful guests, lawful
20 guests in another's home has no duty to retreat before using
21 deadly force in self defense; degree of force, continuing
22 until a threat of harm is ended; defense of others; and that
23 should -- I believe that would be what I would charge.

24 So, anything from the State that you would -- we
25 probably need to put in there greater or lesser offense; I

1 just thought about that, since I am charging murder and
2 voluntary manslaughter. So I do need to put in there greater
3 or lesser offense.

4 Anything else from the State?

5 **MS. VON HERRMANN:** Judge, if we could have just a moment
6 to look over this self defense charge. Obviously, that does
7 change a little bit with the inclusion or exclusion of the
8 **Castle Doctrine**, so if you could give us just a moment to look
9 at that.

10 **THE COURT:** Okay. All right.

11 **MS. VON HERRMANN:** Your Honor, may we approach for one
12 moment?

13 **THE COURT:** Sure.

14 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

15 **THE COURT:** All right. So, is there anything else that
16 the State wants me to add?

17 **MS. VON HERRMANN:** No, sir.

18 **THE COURT:** All right. And how about the -- your client,
19 Mr. Wilson?

20 **MR. WILSON:** Your Honor, the only thing that I have asked
21 earlier, and the Court's already ruled on it actually, is the
22 **Castle Doctrine** and the Court's ruled on that, and -- but I
23 just want to again make a record that I object.

24 **THE COURT:** Okay. And I appreciate that and I won't
25 charge 16-11-440 for the reasons I stated previously, that I

1 was being not only governed by the Court of Appeals case, but
2 the fact that the effective date of 16-11-440 and when this
3 incident took place. I think everybody -- whatever the
4 incident was, I think everybody is in agreement that it took
5 place, you know, on May 21.

6 **MR. WILSON:** Yes, sir.

7 **THE COURT:** And the effective date of the legislation was
8 June 9, 2006. They weren't indicted until in July, and that
9 was July 27th, and I know that was your argument, but I think
10 what I'm governed by is when it actually took place.

11 **MR. WILSON:** I understand.

12 **THE COURT:** And then the Court of Appeals saying that
13 we're not -- the legislation was not retroactive, and that was
14 not the intent of the legislature to make it retroactive.
15 Okay?

16 **MR. WILSON:** Yes, sir.

17 **THE COURT:** All right. Since we have kept them out
18 there, you want like five minutes and get organized and we'll
19 come in and -- what we'll do is I'll bring them in, I'll turn
20 to you, Mr. Wilson, and you can tell me that the Defense
21 rests, and then I'll turn to you, Mr. Long, you can tell me
22 the Defense rests, and then we'll go straight on to the
23 closing argument of the State.

24 **MS. LIVESAY:** Your Honor, if there is any way that we can
25 break and start that tomorrow morning, it would be most

STATE'S SUMMATION BY LIVESAY
DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 the 911 caller saw, one young woman, one young man.

2 I don't know when he suffered that fatal wound. I do
3 not know. I'm not here to tell you I know that. I don't
4 know if Richard Day getting to him could have saved him from
5 suffering that fatal wound, but what I can tell you is
6 Kendrick Chestnut made sure that nobody was going to get over
7 there. That's for certain.

8 I don't know what would have changed if Richard Day had
9 gotten to him. I know it saved Cindy Evans. I don't know if
10 it would have saved Joey Hucks or not, but what I do know is
11 we will never know that because Kendrick Chestnut was
12 standing there. He's just as guilty.

13 I don't know where that wound -- I don't know when it
14 punctured his heart. I don't know. I don't know if Richard
15 Day getting over there and grabbing Larry Chestnut again off
16 of somebody else would have saved Joey Hucks' life, but what
17 I do know is that Kendrick Chestnut kept that from ever
18 happening. I want you to find Kendrick Chestnut guilty of
19 murder.

20 Thank you for your time.

21 **THE COURT:** Mr. Wilson.

22 **MR. WILSON:** If I didn't know better, I would wonder if
23 I sat through the same trial as the Solicitor.

24 Your Honor, one of the jurors has a note.

25 **THE COURT:** Madam Bailiff.

JURY OUT/ON RECORD/JURY IN
DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 All right. We'll take a short break for about five
2 minutes.

3 Everybody else remain seated, please.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY.)

6 THE COURT: Five minutes. Thank you very much.

7 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
8 PRESENCE OF THE JURY.)

9 THE COURT: Solicitor, is the State ready?

10 MS. LIVESAY: Yes sir.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: Ready, Your Honor.

13 THE COURT: Mr. Long?

14 MR. LONG: Yes sir.

15 THE COURT: Ask the jury to come in, please.

16 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
17 JURY.)

18 THE COURT: All right. Mr. Wilson.

19 MR. WILSON: Thank you very much, Your Honor.

20 THE COURT: Yes sir.

21 MR. WILSON: Mr. Foreman and ladies and gentlemen,
22 you've been here now for four days. You've got to listen to
23 all of the witnesses who testified in this case. You got to
24 hear the Solicitor's closing argument, statement, if you
25 will. Now you're going to hear from me, and then you'll hear

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 from Mr. Long, and let me say at the outside that obviously
2 this is a serious matter.

3 You have one young man who is dead. You have two other
4 young men who are on trial for their lives. It doesn't get
5 much more serious than that. There are no winners here
6 regardless of what happens.

7 But a Court and a trial is about the truth. It's not
8 about who your family is, and who you are related to. It's
9 not about what color you are, or how big you are, or how
10 short you are. It's about the truth.

11 In fact, His Honor is going to instruct you that you're
12 going to have a verdict form, and the word, verdict, itself
13 means to speak the truth, veredicto, to speak the truth.

14 Where you sit, you have no friends to reward. You have
15 no enemies to punish. You have but one job, determine what
16 the truth is in this case and whether or not the State, not
17 whether the Defendants, but whether the State has proven
18 beyond a reasonable doubt the charges that they have made.

19 They must bring you evidence which satisfies you beyond
20 every reasonable doubt, and a reasonable doubt has been
21 defined from one time to another as a doubt for which you, as
22 an honest person seeking the truth, can give a reason.

23 One of the issues that the Solicitor has raised to you
24 is, well, you know, in this case there is no self-defense
25 because Larry Chestnut didn't have a right to defend himself.

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 How absurd can that possibly be? Can you think of anything
2 more absurd than to say that a man does not have a right to
3 defend himself when he is confronted with a three hundred and
4 eight pound man who has a knife in his hand and is standing
5 between him and the door.

6 One thing that I want to bring to your attention is
7 this. Remember in the testimony that if you listen --
8 depending on who you are listening to because they were all
9 over the place with this stuff, but depending on who you're
10 listening to, when Larry Chestnut comes out of the kitchen,
11 whatever has happened is over with. Cindy is going on about
12 her business at that point. Christie is going on about her
13 business at that point. He is coming out of the kitchen,
14 going into the living room where his daughter is, to leave.

15 Now, this is not a situation where they are saying,
16 well, Joey comes into the kitchen while he has Cindy down and
17 he pulls out the knife and says, oh, you know, get off my
18 sister. No, no, no, no, no, no, no. Cindy is up and out of
19 it. Christie is up and out of it. This man is trying to
20 leave. He is trying to go get his daughter so he can go
21 home, which is what he tells you -- and Christie tells you
22 that's what he said. I am leaving.

23 But, see, alcohol and drugs are a funny thing. They
24 make people do things that they would not ordinarily do, and
25 I don't think ordinarily Joey Hucks would have pulled a

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 knife, but he did. He did. And the law does not require an
2 individual to stand there and wait until you get stabbed to
3 defend yourself. It doesn't require that. And the Solicitor
4 told you that. She said that. Of course, she was talking
5 about Joey, but it applies both ways.

6 Larry Chestnut had a right. The only thing standing
7 between him and the door and his daughter was a three hundred
8 pound man with a knife, this knife, and what did he tell you,
9 something else -- we were talking about self-defense, and you
10 know what she says, oh, well, you know, he had a chance to
11 leave. Do you know what, remember what they said was is that
12 the witnesses testified to, is that after whatever
13 altercation happened in the -- with Joey and with Larry
14 Chestnut there in the front room area, that Larry Chestnut
15 had no weapon. Remember, he had no weapon.

16 Christie says he got cut in that altercation with Joey
17 and his knife. Then if Joey is finished and he's trying to
18 leave, and Joey is finished and Joey is trying to leave, why
19 does Joey end up in the kitchen with this knife? Joey has to
20 -- after he cuts Ty, after he cuts Larry Chestnut, he then
21 proceeds -- because, remember, now, the scissors are
22 allegedly in the kitchen. The scissors are allegedly in the
23 kitchen, which means what, that Larry Chestnut is leaving, if
24 he's backing up away from this knife to go try to find
25 something to protect himself, and Joey pursues him. He

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 follows him in the kitchen with this knife.

2 Self-defense? How far you gotta run? He goes to the
3 kitchen because he can't get out the door because he's
4 standing there, the three hundred and eight pound man with a
5 knife, between him and the door and his daughter. He can't
6 go out the door. He's already cut.

7 And you know what the other amazing thing is, even after
8 he's cut and he's standing there, Christie, according to her,
9 because now she says she's the only other person in the house
10 at this moment, Christie does what? Nothing.

11 Does she take the child? Does she take Ty to the
12 doctor? Does she stop and see how seriously he's injured?
13 Does she try to take the knife from her brother, who has
14 already cut him? No. No. Did you ever hear one person
15 testify from this witness stand that any of them ever tried
16 to take the knife from Joey Hucks? Not a single person.

17 And while I'm on that, remember Carol Allen, the
18 investigator from the Police Department, and I asked her when
19 she was on the witness stand, and I'm asking her about -- I
20 show her some documents and asked her if she recognizes them.
21 First she says yes she recognizes them. Then she said, well,
22 yeah, but I didn't take them, so I will say no. I said,
23 well, I'll hand you your case file. Well, yeah, they're in
24 my case file, but I don't really know what they look like.

25 And I asked her, I said, well, Larry Chestnut is in the

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 hospital. Did you ever go over there and take pictures of
2 his wounds like you took pictures of the wounds that the
3 Solicitor brought in here? I -- I didn't take no pictures.
4 I didn't no pictures of him. No, she didn't want to because
5 they didn't want you to see them.

6 You know, and that's what I'm talking about when I talk
7 about the truth. Law enforcement's job is to find the truth,
8 to bring it to you so that you can review it, and when they
9 hide it, and when they secret it, and when they keep it from
10 you, then we can't have the truth.

11 Let's talk about how all this started. Remember the
12 testimony that Cindy says she got a call from her sister and
13 it's one-thirty, two o'clock in the morning. She's in the
14 bed. She gets up, she says, and after she gets up, she and
15 her boyfriend then make it over to the house, and she says
16 they sit there and they're eating pizza and talking, but now,
17 remember when she called her sister at one-thirty or two
18 o'clock in the morning, she's upset. She's upset about what?
19 Not that Ty hit her, not that Ty beat her up, not that he
20 molested her or anybody, nothing, because some girl from six
21 years ago sent him a card that had a picture from six years
22 ago.

23 When the sister comes over, now they're all there
24 together. She -- she's upset. Apparently her sister gets
25 into it. They get upset, so now they're waiting. They're

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 waiting for Larry Chestnut to come back. They're sitting
2 there. They say, oh, but we weren't drinking, and you can
3 believe that if you want to. We weren't drinking, and we
4 weren't using no drugs. We were just sitting there eating
5 pizza, waiting on him to come.

6 And when Ty shows up, she's ready for him. Now, you saw
7 her on the stand, so you see what her demeanor is. You see
8 how aggressive she is just in -- in the conversation I had
9 with her. Can you imagine how it was that night when Larry
10 Chestnut showed up at the house and she got this upset just
11 about a card, and she's sitting there for hours, and hours,
12 and hours while he's out at a club with her brother and some
13 other guy, and she's getting more and more angry.

14 Her sister comes. They start discussing it. Her sister
15 gets in on the act. Finally he shows up. She's loaded for
16 bear. As soon as he comes in, they go into the front room --
17 go into the kitchen to talk. Well, now, I remember asking
18 her when she was on the witness stand, because she tried to
19 say there are two separate incidents, that she's in the
20 kitchen and he pushes her against the stove, and then later
21 on he had to push her a second time when she's by the wall as
22 she's coming out.

23 Well, the reason for that, folks, is this: If the
24 pushing occurred in the kitchen, which is what she testified
25 to, and remember, I asked her specifically, hey, didn't you

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 give a statement to the police on, I think it was May 26th of
2 2006, saying that there was only one pushing, and that was in
3 the kitchen when he pushed you against the stove, and he
4 walked out and said I'm leaving, which is when he ran into
5 Joey.

6 And let me tell you this, you can believe one second,
7 when I asked her about that, if that weren't true, I promise
8 you this Solicitor would have had every witness in here in
9 the world to, oh, well, that wasn't in her statement. That
10 wasn't what she said in that statement. Oh, no, that's not
11 what she said. That's what she said in 2006. That ain't
12 what she said today, no, because the problem for them is --
13 is that it needs to happen in the hallway because they need
14 somebody to see it so they can justify the intervention by
15 Cindy.

16 Well, what happened is just as she said in her first
17 statement in 2006, which is that she and Ty are in the
18 kitchen talking. She tells him she wants him to leave. He
19 says some curse words, I'm leaving, pushes her against the
20 stove. He walks out.

21 Cindy hears her crying. Cindy runs in, and by
22 Christie's testimony, Cindy throws her shoe and hits Ty with
23 the shoe. Ty then knocks her. She then falls against the
24 counter because there's water on the floor in the room.
25 Something else, Christie was never injured in any way

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1 whatsoever. She didn't testify to any injuries, and believe
2 me, you saw all these pictures that they had, if they had one
3 spot, one bruise, one anything that looked like a bruise,
4 they would have brought it in here to you.

5 She wasn't hurt. He never choked her. Think about it,
6 if she is pregnant, she's eight -- seven or eight months
7 pregnant, and he's got her up, according to them, up by her
8 neck, up against the wall, she'd have bruises under her neck.
9 Ain't no bruises because they didn't happen. It happened
10 just the way she said it did in her 2006 statement.

11 As he starts to leave the kitchen, when he starts to
12 leave, that's when Cindy comes and jumps him. But then even
13 after Cindy jumps him, he pushes her aside, or knocks her
14 down, or whatever it is, they get into a scuffle. What does
15 he do? Does he get a knife? Does he get a gun? No. What
16 does he do? He tried to leave again and he's heading out.

17 Well, the only problem is when he starts to go out,
18 who's standing there? Now, if Joey was really concerned
19 about what was going on in the kitchen, why not come in the
20 kitchen. Joey is a three hundred pound man, and if Richard
21 Day is in there, you've got Richard Day in there and you
22 would have had Joey in there. Why would you need a knife?

23 Joey waits until Ty comes out of the kitchen. When he's
24 coming out of the kitchen, that's when Joey confronts him
25 with this knife, and according to -- to Christie, that Joey

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1 has the knife down by his side. And you believe that, you
2 can look for the Easter Bunny. It ain't true.

3 Think about it. If they're telling the truth and if
4 he's scared, if he is scared, but see, the problem with that
5 is alcohol and drugs will make you great. It will make you
6 do stuff you would not ordinarily do. His alcohol was almost
7 double the legal limit, drugs in his system, but she couldn't
8 tell us exactly when it was, how many hours it was before he
9 took them. She doesn't know.

10 Ty gets to the foot of the stairs to get his daughter to
11 go home. Joey is standing there. No question about one
12 thing, Ty ends up getting cut at that point with the knife,
13 with this teeny-weeny -- teeny-weeny knife that they talked
14 about. He gets cut. According to the witnesses, he hit Joey
15 at that point. There is never a time when Ty hits anybody
16 before they hit him, including Cindy, according to Christie.

17 Now, this is his home, too. Whether you like the
18 relationship that they had or don't like the relationship
19 they had don't really matter. He was living there with her.
20 That's the arrangement that they had. He was home, and when
21 you're home, you don't have a duty to retreat.

22 His Honor is going to tell you you don't have to retreat
23 if you're going -- if it's going to cause you to be in more
24 danger, you don't have to retreat, but he did, even after he
25 was cut, because if Joey wanted to get away after he cut him,

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1 all Joey had to do was go out the front door, but what did he
2 do? He goes in the kitchen.

3 You know, you see in trying to argue self-defense, if
4 you have the pictures of the wounds that Larry Chestnut had,
5 you'd have a better idea of what really went on, but the
6 State and law enforcement decided they weren't going to do
7 that. They didn't take those because they didn't want you to
8 see them. God forbid we be fair.

9 Let me -- let me tell you something else that is a
10 problem here for them. Remember all the testimony about, oh,
11 well, they were outside. Remember Ms. Wellons, I think it
12 was, Pat Ritner, or Ms. Wellons, whatever her last name was,
13 I remember her first name was Pat, she was actually the very
14 first witness who testified, and what she said was that she
15 saw two people on the ground outside when she was parked
16 there waiting -- she was passing by. Somebody flagged her
17 down, and that what she remembered seeing was two people on
18 the ground, and one person was over the other person and the
19 other person was still on the ground.

20 The Solicitor wants you to believe that that was Larry
21 Chestnut on top of Joey. That's what she keeps on -- oh, he
22 was there outside and they were just stabbing him. It ain't
23 true. Christie told you -- remember her testimony when she
24 -- when she brought -- she's the one who came into the
25 kitchen, got her brother and took him outside. She said I

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 never left him.

2 After I got outside, I never left him. The only thing I
3 did was I got up one second to walk -- there was a door, two
4 doors down, to try to yell for those people. I wasn't more
5 than twenty feet from him. I came right back to him. That's
6 the only time she left him. And she says, what was she
7 doing, kneeling down with him, and the amazing thing is,
8 remember, because they would have you believe that not only
9 was Ty out there with him, that they had Mr. Kendrick -- Mr.
10 Kendrick out there also with him, kicking him and beating
11 him. It ain't true. It didn't happen. And you don't have
12 to take my word for it. That's what Christie said.

13 Let me talk for a minute about Richard Day, because
14 that's the person who said that -- Richard Day is the one who
15 says, oh, yeah, I saw him, got outside and he was stabbing
16 him, and -- and Kendrick Chestnut was kicking him and, you
17 know, and everything. Now, who is Richard Day? This -- this
18 witness that they brought you, five months earlier, January
19 of the same year, to the same Police Department, what did he
20 do, giving false information and was convicted of it, so do
21 you think he will tell you the truth?

22 I want to ask him, and said, well, in your first
23 statement, that's not what you said? (Mr. Wilson imitating
24 answer of Richard Day, which is not understandable.) You
25 know the amazing thing in this is other than Christie, not a

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 single person is willing to admit that they ever saw Joey
2 with that knife, not a single one of them. Do you honestly
3 believe that, that they were all there -- Cindy pretended she
4 had never even seen the knife before. Come to find out, one
5 of his sisters had given it to him for his birthday.

6 See, it doesn't matter where the truth comes from. It
7 doesn't matter where it comes from. It's still the truth,
8 and it doesn't matter who it hurts or helps, it's still the
9 truth. And I don't care how much law enforcement or how much
10 the State tries to hide stuff from you, if it comes out, it's
11 still the truth.

12 I wonder if Larry Chestnut hadn't defended himself that
13 night and he had gotten stabbed to death like Joey if we'd be
14 here, if it were the other way around. I submit to you we
15 would not. We wouldn't be here.

16 I know that you recall all of the evidence. I'm not
17 going to stand here and go through it line by line with you
18 again. I know that you remember it. I noticed that you were
19 paying very close attention throughout this trial. I
20 appreciate that on behalf of Larry Chestnut. I appreciate
21 that on behalf of the State.

22 Larry Chestnut was not at fault in bringing on this
23 difficulty, and even if you believe, which I can't -- even if
24 you believe that he started whatever happened with Cindy and
25 not -- I'm sorry, Christie, and not Christie herself, that he

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 started it, it was over and done with when he started to
2 leave, when he started to walk out to leave to go get his
3 daughter, and Joey confronts him with a knife.

4 Whatever had happened was over. It was done with, and
5 he's leaving. Joey wasn't going to have it. He wasn't going
6 to have it, but, you know, the most telling thing, and I
7 think I said this to you earlier, the most telling thing, the
8 most telling thing is, is that when Ty gets cut, he's got no
9 weapon. Nobody disputes that. Nobody disputes that, and
10 nobody in this trial that I remember ever says that he saw a
11 weapon with Ty other than Christie, but be that as it may,
12 after Ty got cut, he goes away from Joey because he's in the
13 kitchen.

14 He didn't -- there's not one bit of testimony that he
15 grabbed Joey by the arm and dragged Joey all the way into the
16 kitchen while Joey is holding that knife so that he can fight
17 with him some more. No, no, no, no, no. Joey comes in the
18 kitchen. When his sister, Christie, comes back, he's still
19 in the kitchen with the knife, standing at one end -- Larry
20 is standing here, and then Mo is further down at the end of
21 the other counter.

22 They take him outside. That's when they say they see
23 the wounds, so whatever happened, happened in the kitchen.
24 Remember the testimony, even though I don't think the police
25 did a very good job in this case, the one thing that they

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 probably did do a good job at was they at least had
2 photographs of the blood spatters. The blood was splattered
3 all over the kitchen, and I remember asking her about it,
4 well, did you take swabs of that blood so we could see whose
5 blood it was? Well, yeah, we took swabs, but we didn't test
6 them.

7 I wonder whose blood it was and I wonder why they didn't
8 test it. And remember I also asked her, well, don't y'all
9 have blood spatter experts at SLED who can come in here and
10 tell us exactly where somebody was standing and maybe how
11 they were positioned at the time that this was happening.
12 Well, yeah. I said, well, did y'all send this -- ask for
13 this expert? Well, I think we did. Well, have you seen an
14 expert? I haven't. Maybe that's because they don't want you
15 to know that either.

16 You see, the State is not like a Defense lawyer. My
17 job, my only job, is to represent my client. The State's job
18 is to be fair.

19 Let me say this: When you talk about being in imminent
20 danger, what does that mean? It means that there is an
21 immediate threat posed to your person, that there is some way
22 that a person can injure you immediately, right then, and if
23 a three hundred pound man standing between you and a door
24 with a knife in his hand isn't an imminent threat, I don't
25 know whatever would be, so was that an imminent danger? Was

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 he in imminent danger? Absolutely.

2 Not only was he in imminent danger, he actually got cut,
3 so you don't have to wonder about whether it was just
4 imminent. Oh, it happened. And then she says, oh, well, he
5 could have ran. He could have retreated. He did. After he
6 got cut, he retreated. He went in the kitchen. She said,
7 well, he went in there to find scissors. Maybe he did. I
8 don't know, but I can tell you this, Joey followed him in
9 there.

10 One of the things I want to point out to you is, is that
11 remember, they were talking about some of the cuts on Joey's
12 hands. You're going to have this knife in your jury room.
13 This is not a lock-blade knife you will see. It can -- so if
14 you're using it and you use it the wrong way, then it can
15 fold in on your hand. That's the problem with a non-locking
16 blade knife. This is not a lock-blade knife. A lock-blade
17 knife when it folds, it will stay open regardless of what you
18 do with it. This one won't. That's how he got those cuts on
19 his hand.

20 And remember, the pathologist told you, I can't tell you
21 which item made which wound. I don't know. And not only did
22 she say that, she said, well, not only can I not tell you
23 which wounds the knife made, I can't tell you which wounds
24 the scissors made, and there could have been another weapon
25 that I didn't even know about that could have made all of

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON

1 those wounds.

2 You see, the State has the burden of proof. That's
3 their job, because they decide when to charge somebody and
4 what to charge them with. Because they do, then the law says
5 that's fine, but then you've got to come in and you've got to
6 prove it beyond a reasonable doubt. You can't just say,
7 well, maybe that's what happened, because that's what they
8 give you, say, well, look, maybe this is what happened, maybe
9 that -- maybe it happened this way. Well, we don't really
10 know, but that could be. It don't matter, just find somebody
11 guilty. We'll be happy. That's fine. Larry, we'll just
12 find him guilty. It don't matter.

13 Well, it don't work that way, folks, and it's a
14 dangerous thing when you're not given all of the evidence and
15 all of the information so that you can make the right
16 decision. It's a dangerous thing.

17 I'll tell you a little story. When I was growing up, my
18 mama used to tell me this story. I didn't really understand
19 it then, and the reason she was telling it to me wasn't about
20 circumstantial evidence. It was about just how people are,
21 but she told me the story about how there was this little boy
22 named Johnny and his mom had cooked a cherry pie and she put
23 it in the window to cool, and they'd say when daddy comes
24 home for supper, we're going to all eat the pie.

25 Well, Johnny decides that he wants to eat the pie before

DEFENDANT'S (LARRY CHESTNUT) SUMMATION BY WILSON
DEFENDANT'S (KENDRICK CHESTNUT) SUMMATION BY LONG

1 suppertime, so what does he do? He goes up over the safe in
2 the window. He gets the pie. He eats the pie. Then he
3 realizes mama is going to be upset. So what does Johnny do?
4 He gets the cat. He takes the cat and set the cat's feet
5 down in the pie. The cat then jumps off the counter onto the
6 sink and onto the floor and runs out the door. Mama comes
7 back. What does mama think? The cat ate the pie. It didn't
8 happen. Johnny ate the pie.

9 My point is simply this: Things aren't always the way
10 that they seem, and people will manipulate things to make
11 them look different.

12 Larry Chestnut is not guilty. He's not guilty of
13 manslaughter. He's not guilty of murder. He's not guilty of
14 anything except trying to stay alive, and he has a right to
15 do that.

16 I want to leave you with this, and that is doing right
17 sometimes is hard. It's hard, but it's still right. It's
18 still right, and the right word for Larry Chestnut is not
19 guilty. He is not guilty. Thank you.

20 **THE COURT:** All right. Mr. Long.

21 **MR. LONG:** Thank you, Your Honor.

22 Mr. Foreman and ladies and gentlemen, I need you bad.
23 You sat there listening to a lot of talk this morning. We
24 started around 9:15 and it's almost lunchtime, and a whole
25 lot has been said, and a whole lot has not been said, but

CHARGE BY THE COURT

1 What is required is that based upon your consideration
2 of the evidence, the evidence you find to be true, you are
3 firmly convinced that the defendant is guilty of the crime
4 charged, you must find the defendant guilty.

5 On the other hand, if you are not firmly convinced that
6 the defendant is guilty of the crime charged, you must give
7 the defendant the benefit of the doubt and find the defendant
8 not guilty.

9 Both Defendants in this matter are charged with the
10 crime of murder. I'll talk about it later on again, but I'll
11 say it now, and again, these are two cases. You are making
12 two decisions. These are two separate matters. Your
13 decision in one does not and should not affect your decision
14 in the other because you are making two separate decisions.

15 Now, both Defendants being charged with the crime of
16 murder, the State has to prove beyond a reasonable doubt that
17 the defendant killed another person with malice aforethought.
18 Malice, that's hatred, ill will, hostility towards another
19 person. It's the intentional doing of a wrongful act without
20 just cause or excuse with an intent to inflict an injury or
21 under circumstances that the law is going to infer the evil
22 intent.

23 Now, malice aforethought does not require that malice
24 exist for any particular time before the act is committed,
25 but it has to exist. This malice has to exist in the mind of

CHARGE BY THE COURT

1 one is the hand of all.

2 Now, present at the commission of the crime means to be
3 sufficiently near to aid, abet, assist in the commission of
4 the crime. Again, mere presence at the scene of a crime is
5 not sufficient to convict one as a principal on this theory
6 of aiding and abetting.

7 Intent is also a necessary element. There must have
8 been some kind of common design or intent to commit the
9 crime, and the crime must have been committed with the person
10 aiding and abetting by some kind of overt act. Intent means
11 intending the result which actually occurs, not by accident.

12 Intent may be shown by acts and conduct of the defendant
13 in any other circumstances from which you could infer intent,
14 remembering again the State has to prove all this to you
15 beyond a reasonable doubt. The State has the burden of proof
16 on everything, to prove it to you beyond a reasonable doubt.

17 Now, in this case both Defendants have raised the
18 defense of self-defense. Self-defense is a complete defense,
19 and if established, you must find the defendant not guilty.
20 The State has the burden of disproving self-defense beyond a
21 reasonable doubt. If you have a reasonable doubt of the
22 defendant's guilt after considering all the evidence,
23 including evidence of self-defense, then you must find the
24 defendant not guilty.

25 On the other hand, if you have no reasonable doubt of

CHARGE BY THE COURT

1 the defendant's guilt after considering all the evidence,
2 including evidence of self-defense, if any, then you must
3 find the defendant or defendants guilty.

4 The following elements are required to establish self-
5 defense. One, without fault. The defendant must be without
6 fault in bringing on the difficulty. If the defendant's
7 conduct was the type which was reasonably calculated to and
8 did provoke a deadly assault, the defendant would be at fault
9 in bringing on the difficulty and would not be entitled to an
10 acquittal based on self-defense.

11 Mutual combat. If the defendant voluntarily
12 participated in mutual combat for the purposes other than
13 protection, the killing of the victim would not be self-
14 defense. This is true even if during the combat the
15 defendant feared death or serious bodily injury. However, if
16 before the killing is committed the defendant withdraws and
17 tried in good faith to avoid further conflict and either by
18 word or act makes that fact known to the victim, he would be
19 without fault in bringing on the difficulty.

20 For mutual combat, there must be a mutual intent and
21 willingness to fight. This intent may be shown by the acts
22 and conduct of the parties and the circumstances surrounding
23 the combat. In addition, it must be shown that both parties
24 were armed with a deadly weapon.

25 The second element of self-defense, the Defendant must

CHARGE BY THE COURT

1 show that he was actually -- I mean the second element is the
2 defendant was actually, not the defendant doesn't have to
3 show to you -- the facts and evidence is that the defendant
4 was actually in imminent danger of death or serious bodily
5 injury, or that the defendant actually believed he was in
6 imminent danger of death or serious bodily injury.

7 If the defendant was actually in imminent danger, it
8 must be shown that the circumstances would have warranted a
9 person of ordinary firmness and courage to strike that fatal
10 blow to prevent death or serious bodily injury. If the
11 defendant believed he was in imminent danger or serious
12 bodily injury, it must be shown that a reasonably prudent
13 person of ordinary courage would have had that same belief.

14 In deciding whether the defendant actually was or
15 believed he was in imminent danger of death or serious bodily
16 injury, you consider all the facts and circumstances
17 surrounding the crime. The defendant does not have to show
18 that he was actually in danger. It is enough if the
19 defendant believed he was in imminent danger and a reasonably
20 prudent person of ordinary courage would have had that same
21 belief.

22 The defendant has the right to act on appearances even
23 though the defendant's belief may have been mistaken. It is
24 for you to decide whether the defendant's fear of immediate
25 danger of death or serious bodily injury was reasonable and

CHARGE BY THE COURT

1 would have been felt by an ordinary person in the same
2 situation.

3 The relative size, ages, and weights of the defendant
4 and the victim may be considered in deciding the apparent or
5 actual need for force in self-defense and the amount of force
6 needed. Intoxication of the victim may be considered in
7 deciding whether or not the defendant's fear of death or
8 bodily harm was reasonable.

9 The final element of self-defense is the defendant had
10 no other probable way to avoid the danger of death or serious
11 bodily injury than to act as the defendant did in this
12 particular circumstance. If the defendant was on his own
13 premises, the defendant had no duty to retreat before acting
14 in self-defense. The defendant had no duty to retreat if by
15 doing so the danger of being killed or suffering serious
16 bodily injury would increase.

17 A lawful guest in another's home has no duty to retreat
18 before using deadly force in self-defense. A lawful guest is
19 a person who either enters the premises of another by
20 expressed or implied invitation.

21 Regarding the degree of force, a person cannot be
22 required to make an exact calculation as to the degree or
23 amount of force which may be needed to avoid death or serious
24 bodily harm. Therefore, in self-defense the defendant has
25 the right to use the force needed to avoid death or serious

CHARGE BY THE COURT

1 bodily harm.

2 The force needed in self-defense does not have to be
3 limited to the degree or amount of force used by the victim.
4 The defendant has a right to use so much force as appeared to
5 be necessary for complete self-protection and which a person
6 of ordinary reason would believe to have been needed to
7 prevent death or serious bodily harm.

8 If a defendant is justified in defending himself or
9 others, the defendant is also justified in continuing until
10 it is apparent that the danger of death or serious bodily
11 injury has completely ended.

12 Under the law of self-defense, a defendant may take
13 another's life in the defense of others. The right to
14 intervene to protect another person is subject to the same
15 rights and limitation as the right to self-defense, those
16 same elements we just talked about.

17 The defendant may take the life of a person who assaults
18 a friend, relative, or bystander if that friend, relative, or
19 bystander would have had the right of self-defense.

20 To show that the person being defended had the right of
21 self-defense, it has to be shown that the person being
22 defended and the defendant were both without fault in
23 bringing on the difficulty.

24 The defense of another person is excusable if the
25 defendant had reasonable grounds to believe and in good faith

CHARGE BY THE COURT

1 did believe that the person being defended was in imminent
2 danger of death or serious bodily harm. In deciding whether
3 the person defended actually was or the defendant actually
4 believed they were in imminent death (sic) of serious bodily
5 injury, you consider all the facts and circumstances
6 surrounding the crime, including the physical condition and
7 characteristics of the parties.

8 Again, a person acting on behalf of another has the
9 right to act on appearances just like the person who may be
10 attacked.

11 And I told you a couple of times, there's two
12 Defendants. Kendrick Chestnut is charged with the crime of
13 murder, and Larry Tyrone Chestnut is charged with the crime
14 of murder, with also the lesser included offense of voluntary
15 manslaughter. The case of each Defendant and the evidence
16 and law concerning that Defendant must be considered
17 separately and individually. Your verdict does not have to
18 be the same for both Defendants.

19 You may find one Defendant guilty or not guilty, and
20 that does not control your verdict as to the other Defendant.
21 Where more than one person is charged with a crime, if the
22 evidence warrants it, the evidence you find to be true and it
23 is proved to you beyond a reasonable doubt, you can convict
24 one, acquit the other. You may acquit both, or you may
25 convict both.

CHARGE BY THE COURT

1 It will depend upon your view of the testimony and
2 evidence, and you must take each Defendant and consider the
3 evidence as to that Defendant and my instructions to you.
4 You must write a separate verdict for each Defendant on the
5 charge, so we will get to the verdict form then.

6 There is a verdict form here for Larry Tyrone Chestnut.
7 It has the caption of the case and it says murder. On the
8 charge of murder, we, the jury, by unanimous consent, find
9 the Defendant, Larry Tyrone Chestnut, and you've got two
10 choices -- I put one before the other; don't assign anything
11 to that -- not guilty or guilty.

12 Mr. Foreman, once your jury has well and truly
13 deliberated on that particular charge, if you have found the
14 Defendant, Larry Tyrone Chestnut, not guilty of murder, then
15 you must consider whether the State has proved to you beyond
16 a reasonable doubt the charge or crime of voluntary
17 manslaughter, and you make your decision on that now.
18 Obviously if you found him guilty of murder, you stop and
19 that's the end of that particular case against Larry Tyrone
20 Chestnut.

21 If you found him not guilty, you go on to the second
22 page, voluntary manslaughter. On the charge of voluntary
23 manslaughter, we, the jury, by unanimous consent, find the
24 Defendant, Larry Tyrone Chestnut, again two choices, not
25 guilty or guilty.

CHARGE BY THE COURT

1 Mr. Foreman and ladies and gentlemen, when you've
2 reached a unanimous verdict on Larry Tyrone Chestnut, that's
3 the end of that matter.

4 You also have the case of Kendrick Chestnut, and I'm not
5 telling you which one to go -- go one before the other.
6 Y'all can make that decision. I've got to read one to you
7 before the other one, so the other one is Kendrick Chestnut,
8 a separate case.

9 On the charge of murder, we, the jury, by unanimous
10 consent, find the Defendant, Kendrick Chestnut, two choices,
11 not guilty or guilty. If you find him not guilty of murder,
12 you must proceed to the next lesser included offense,
13 voluntary manslaughter. If you find him guilty, obviously
14 that's the end of that particular matter with Kendrick
15 Chestnut.

16 If you found him not guilty on the charge of voluntary
17 manslaughter, we, the jury, by unanimous consent, find the
18 Defendant, Kendrick Chestnut, two choices, not guilty or
19 guilty.

20 So, Mr. Foreman and ladies and gentlemen of the jury,
21 when you have reached a unanimous verdict on both of the
22 matters, then you knock on the door and let the bailiff know
23 that the jury has reached a unanimous verdict on both of the
24 matters.

25 Now, I've said unanimous throughout this -- the entire

CHARGE BY THE COURT
JURY OUT/ON RECORD

1 that I should not have done.

2 In this case self-defense has been raised. I told you
3 that regarding malice, that it could be inferred when the
4 deed is done with a deadly weapon. Self-defense is an issue
5 that cannot be inferred. Malice cannot be inferred by the
6 use of a deadly weapon. That is not part of a murder charge,
7 so disregard that. It is not part of this case. Disregard
8 that completely.

9 All right. Thank you very much. Go back to your jury
10 room. Y'all go ahead and have your lunch and when you're
11 done with that, let the bailiff know, please. Thank you.

12 **(THE FOLLOWING TAKES PLACE AT 1:05 P.M. OUTSIDE THE**
13 **PRESENCE OF THE JURY.)**

14 **THE COURT:** All right. Solicitor, I know you wanted me
15 to re-charge malice. Without further request from the jury,
16 I would not do that.

17 Mr. Wilson, any objections, deletions to the charge as
18 originally given, with the correction?

19 **MR. WILSON:** None.

20 **THE COURT:** Mr. Long?

21 **MR. LONG:** No sir.

22 **THE COURT:** All right. Thank y'all.

23 Before -- obviously I want y'all to check with Ms.
24 Dixie, make sure we've got all the proper exhibits here to go
25 into the jury room.

JURY OUT/ON RECORD/JURY IN
VERDICTS OF THE JURY

1 brief moment with everybody in the courtroom. I do not know
2 what the verdict is. We will all hear the verdict at the
3 same time.

4 Whatever the verdict is, it will be received with
5 respect and silence. There will be no reaction to the jury's
6 verdict. I will give you an opportunity to leave the
7 courtroom now if you cannot follow these instructions. If
8 you stay and there is some kind of outburst or overt reaction
9 to the verdict, you will be detained by a Deputy Sheriff of
10 the Horry County Sheriff's Office. When all these
11 proceedings are over with, I will then proceed into a
12 contempt of court hearing.

13 If anyone wishes to leave, please do so now. Thank you
14 very much.

15 Ask the jury to come in.

16 **(AT 3:45 P.M., THE FOLLOWING TAKES PLACE WITHIN THE**
17 **PRESENCE OF THE JURY.)**

18 **THE COURT:** All right. Mr. Foreman, has your jury
19 reached a verdict in these matters?

20 **THE FOREMAN:** Yes, we have, Your Honor.

21 **THE COURT:** All right. Good. Could you hand the
22 verdict forms to the Clerk of Court, please sir.

23 (The Court reviews the verdict forms.)

24 You may publish the verdicts.

25 **DEPUTY CLERK OF COURT:** Indictment Number 2006-GS-26-

VERDICTS OF THE JURY

1 2998, State of South Carolina, County of Horry, versus Larry
2 Tyrone Chestnut. On the charge of murder, we, the jury, by
3 unanimous consent, find the Defendant, Larry Tyrone Chestnut,
4 not guilty.

5 Indictment Number 2006-GS-26-2998, State of South
6 Carolina, County of Horry, versus Larry Tyrone Chestnut. On
7 the charge of voluntary manslaughter, we, the jury, by
8 unanimous consent, find the Defendant, Larry Tyrone Chestnut,
9 guilty.

10 2006-GS-26-2997, State of South Carolina, County of
11 Horry, versus Kendrick Chestnut. On the charge of murder,
12 we, the jury, by unanimous consent, find the Defendant,
13 Kendrick Chestnut, not guilty.

14 Indictment Number 2006-GS-26-2997, State of South
15 Carolina, County of Horry, versus Kendrick Chestnut. On the
16 charge of voluntary manslaughter, we, the jury, by unanimous
17 consent, find the Defendant, Kendrick Chestnut, not guilty.

18 Signed by Foreperson, James Spain.

19 Ladies and gentlemen of the jury, if this is your
20 verdict, so signify by raising your right hand.

21 **THE COURT:** The jury having affirmed their verdict by
22 raising of the right hand, does the State wish the jury
23 polled?

24 **MS. LIVESAY:** No sir.

25 **THE COURT:** Does the Defendant, Larry Chestnut, wish

JURY OUT/ON RECORD

1 that I previously made on the record regarding those -- those
2 matters. All right, sir.

3 All right. Is the State ready to proceed with
4 sentencing at this time?

5 **MS. LIVESAY:** Yes sir.

6 **THE COURT:** All right. Solicitor, I'll be glad to hear
7 from you.

8 **MS. LIVESAY:** One minute.

9 **THE COURT:** Yes Ma'am.

10 **MS. LIVESAY:** Your Honor, the victim's family does not
11 wish to be heard. They don't want to address the Court.

12 **THE COURT:** All right, Ma'am. And is there anything
13 that the State would -- would want to -- want to say at this
14 time?

15 **MS. LIVESAY:** No sir.

16 **THE COURT:** All right. Thank you, Ma'am.
17 Yes sir, Mr. Wilson.

18 **MR. WILSON:** May it please the Court, Your Honor.

19 You know, I -- you've heard all the testimony in this
20 case, so it's pointless for me to go back through that. I
21 would just say to you that Larry has no criminal history,
22 and, you know, this all obviously is a very tragic,
23 unfortunate act that -- or unfortunate event for everybody
24 involved, and that he and the victim in this case were good
25 friends, had been friends throughout before all this

JURY OUT/ON RECORD

1 happened.

2 And things obviously got out of control that night. How
3 they got out of control is debatable, but they did. This
4 happened. Obviously, and I don't know -- I know that if
5 recordings were brought to the Court, I don't know if this
6 ever occurred, but when he heard that his -- that Joey had
7 died, he was in shock, and you could tell that from the tape
8 recording of the conversation when the police told him that
9 Joey had died, and he just kept saying, Joey, Joey did, Joey
10 did ---

11 **THE COURT:** Yes sir. I remember that. I heard it.

12 **MR. WILSON:** And I'm saying that to say that he is
13 remorseful that Joey is dead. He is remorseful that this
14 occurred. You know, he believed that he needed to try to
15 defend himself as best he could. I tried to explain that to
16 the jury as best I could to convey that to them.

17 He was severely injured in this -- he was in the
18 hospital -- he had three stab wounds, one of which the doctor
19 says was clearly life-threatening. He was in Grand Strand
20 Hospital for, I think, six days while in custody. They moved
21 him to J. Reuben Long. His lung collapsed as a result of one
22 of the stab wounds. They had to take him to Conway Hospital.
23 He stayed in Conway Hospital, I think, for nearly two weeks
24 as a result of that before they brought him back to the jail,
25 you know, and so he has suffered a great deal also.

JURY OUT/ON RECORD

1 I understand that the Court has a responsibility once a
2 jury bring a verdict. We respect that and understand that.
3 I would ask, though, that the Court have mercy in this
4 situation considering all the facts and circumstances
5 surround this matter.

6 **THE COURT:** Thank you, sir. Does your client wish to
7 address the Court in any fashion?

8 **MR. WILSON:** No sir.

9 **THE COURT:** All right, sir. Thank you.

10 And is there anyone here on his behalf that wanted to
11 say something?

12 **MR. WILSON:** This is his father, Larry Chestnut, Sr.,
13 Your Honor.

14 **THE COURT:** All right, sir.

15 If you'd just come around right to that microphone right
16 there and just tell me your name and I'll be glad to hear
17 from you, sir.

18 **LARRY CHESTNUT, SR.:** Your Honor, my son has been a role
19 model to young kids. A lot of things he done when he was
20 young. I mean, he has four daughters. One of them turned
21 thirteen today, another one thirteen. He got one two, and
22 one about seven, and I can't help the kids. My health is not
23 as good as it should be, but I need my son, because he is my
24 son and my best friend, and just please have some leniency on
25 him because without him I won't survive. Thank you.

JURY OUT
SENTENCING OF DEFENDANT, LARRY CHESTNUT

1 **THE COURT:** Thank you, sir.

2 Anything else, Mr. Wilson?

3 **MR. WILSON:** That's all, Your Honor.

4 **THE COURT:** Very good.

5 Anything Solicitor?

6 **MS. LIVESAY:** Nothing further from the State, Your
7 Honor.

8 **THE COURT:** Thank you, Ma'am.

9 2006-GS-26-2998, the State of South Carolina, County of
10 Horry, versus Larry T. Chestnut, regarding voluntary
11 manslaughter.

12 Mr. Chestnut, the Court has obviously listened to all
13 the facts and the evidence presented at this trial. I've
14 heard the things that have been said on your behalf. I heard
15 the things regarding the tape that Mr. Wilson mentioned, and
16 obviously the passionate plea on your behalf by your father.
17 I appreciate all those things. This is just an immense
18 tragedy all the way around.

19 Based on the facts and circumstances presented at trial,
20 the jury having found you guilty of voluntary manslaughter,
21 the sentence of the Court is the Defendant is committed to
22 the State Department of Corrections for a determinate term of
23 twenty years. The Defendant is given credit for the time he
24 has already served. Thank you very much.

25 **MR. WILSON:** Thank you, Your Honor.



Transcription

Case Number: 81448-1
81448-2

Case Name: State v. Larry Chestnut
State v. Kendrick Chestnut

Solicitor:

Date: 22 May 2006 **Time:** 15:01

Description: Third interview of Three with Kendrick Chestnut

Participants: Investigator Bertang
Detective Selena Mann
Kendrick Chestnut (AKA Mo)

CD/DVD#: CD#4

Track/Ch #: Track labeled "Kendrick Chestnut 2nd interview" but is actually Kendrick's third interview.

Transcriber: Melissa Jarrard **Reviewer:**

Notes / Comments:

This track is labeled "Kendrick Chestnut 2nd interview" on the CD, but it is actually Kendrick's third interview overall.

EXHIBIT
Counts
3g. 14-12
dec

1 **TRANSCRIPTION BEGINS**

2 BERTANG: And what we're going to do is um just like before we're going to record

3 all this stuff this, this way there's no discrepancy about what you said or

4 what I said, um things like that.

5 CHESTNUT: Mm, hmm.

6 BERTANG: So we're going to get started, sound good to you, you ready?

7 MANN: Yeah, you?

8 BERTANG: First thing. Yeah, I'm ready.

9 MANN: If you don't I can just (unintelligible).

10 CHESTNUT: Can I take (unintelligible).

11 BERTANG: You're good.

12 CHESTNUT: Okay.

13 BERTANG: Aside from being in our custody is there anything else that we can get you

14 right now? I mean are you comfortable you're not.

15 CHESTNUT: Well.

16 BERTANG: As comfortable as can be.

17 CHESTNUT: I, I understand ya'll got to do what ya'll got to do. I'm just ready to get

18 out of that place, man.

19 BERTANG: I hear you.

20 CHESTNUT: You know I mean I can see if I did something I'd be totally guilty but I'm

21 not going to jail behind nobody else's stuff, whatever he did, you know.

22 BERTANG: Okay.

23 CHESTNUT: That's why I'm here.

24 BERTANG: Alright.

25 CHESTNUT: You know.

26 BERTANG: Alright. Spell your name again.

27 CHESTNUT: Uh Kendrick Chestnut.

28 BERTANG: And just like before I'm doing the same thing. I'm going to ask you the

29 same questions again, you under the influence of any drugs or alcohol?

30 CHESTNUT: No sir.

31 BERTANG: Okay. And you can read and write English, correct?

32 CHESTNUT: Yes sir.

33 BERTANG: And you do understand it's being recorded?

34 CHESTNUT: Yes sir.

35 BERTANG: I'm going to read you your rights again.

36 CHESTNUT: Mm, hmm.

37 BERTANG: You have the right to remain silent, you understand that?

38 CHESTNUT: Mm, hmm. Yes sir.

39 BERTANG: Anything you say can and will be used against you in a court of law, do

40 you understand that?

41 CHESTNUT: Yes sir.

42 BERTANG: You have the right to talk to a lawyer and have him present with you while

43 you're being questioned, do you understand that?

44 CHESTNUT: Yes sir.

45 BERTANG: If you cannot afford to hire a lawyer one will be appointed to represent

46 you before any questioning if you wish, do you understand that?

47 CHESTNUT: Yes sir.

48 BERTANG: If you desire to make a statement or answer questions you have the right to
49 stop at any time, do you understand that?

50 CHESTNUT: Yes sir.

51 BERTANG: This is to certify that the above rights have been explained to me and I
52 understand each one of them, if you'd like to sign that's going to indicate
53 such.

54 CHESTNUT: Sign right here?

55 BERTANG: Yes. You understand those rights and that I've read them to you.

56 CHESTNUT: I understand them.

57 BERTANG: Uh and those two boxes here. One is a waiver of rights and the other is
58 refusal to make a statement. Under the waiver of right it says: I am willing
59 to make a statement at this time. I do not want a lawyer at this time. I
60 understand and know what I'm doing. No promises or threats have been
61 made to me and no pressure or coercion of any kind has been used against
62 me. Underneath refusal to make a statement it says: I am not willing to
63 make a statement and/or answer questions at this time. Select whichever
64 one suits you.

65 CHESTNUT: Alright. I can answer any thing you have to ask me.

66 BERTANG: Alright.

67 CHESTNUT: To help ya'll through this case or whatever cause I didn't have nothing to
68 do with it and I got nothing to hide.

69 BERTANG: And just for the record today's date is 05-22-06, the time is now 15:01
70 hours and also present in this interview is Detective Selena Mann. What
71 uh, what do they call you on the street?

72 CHESTNUT: Uh some friends call me Mo sometimes.

73 BERTANG: Why do they call you Mo?

74 CHESTNUT: Cause my uncle gave me that name when I was little.

75 BERTANG: Uh, huh.

76 CHESTNUT: I had some fat cheeks and some guy used to play basketball named Mo
77 Cheeks or something.

78 BERTANG: Mo Cheek, who'd he play for?

79 CHESTNUT: I'm not sure. I was kinda little when I got named that.

80 BERTANG: I see uh so uh what's up with this thing?

81 CHESTNUT: Um I really don't know what's going on. I was surprised when you told
82 me that you know Joey was passed or whatever and uh in fact I didn't
83 even know Joey was stabbed you know I know he was bleeding from the
84 face but both of em was bleeding from the face and uh I didn't even know
85 he was hurt bad you know I just know Ty had open cuts on him cause he
86 had his shirt off, it was split open so I wasn't really thinking if, if Joey if I
87 knew Joey was hurt like bad off I would have got him in the car with me
88 and took both of em to the hospital.

89 BERTANG: Okay.

90 CHESTNUT: I wouldn't have left him there or nothing like that.

91 BERTANG: Wh, what's this stuff that you remember now?

92 CHESTNUT: Okay um I remember when they were outside, everybody was outside and
93 [uh I finally got Ty to stop from off of Joey. I got him offa Joey] and I was
94 telling him, come on you bleeding bad, you bleeding bad. I need to get
95 you to the hospital and uh before we entered back inside the house for him
96 to get his daughter I remember he [he had something in his hand. I didn't
97 see what it was but I remember he had something in his hand and I could
98 hear it hit the wall before he went back in he must have threw it right there
99 on the side of the door.]

100 BERTANG: Uh, huh.

101 CHESTNUT: Like entering on the right hand side and uh.

102 BERTANG: When he was walking into the house?

103 CHESTNUT: Yeah when he was getting ready, we was going back in to go out the front,
104 well he was going to get his daughter.

105 BERTANG: Okay.

106 CHESTNUT: He like facing 15, Highway 15 and uh I didn't really pay it no attention I
107 was just thinking about everything [and I remember you know hearing
108 something hit the wall. I guess he threw, he threw it or whatever.

109 BERTANG: Do you know what it was or what it looked like?

110 CHESTNUT: I'm not sure what it was. I didn't even see it but I heard it.

111 BERTANG: Alright. What did it sound like?

112 CHESTNUT: It could have been, something hit the wall it could have been whatever he
113 had you know for him to cut Joey with. Whatever it was that's um I
114 figuring that's what it was, whatever he threw. He didn't even walk back

115 in the house with it and I was telling him, come on man you bleeding bad,
116 you bleeding bad you know and head him back into the house and I didn't
117 even look back to see if Joey or Christy or anybody was okay you know I
118 was just out of my mind just trying to get him to safety and uh I could
119 remember he, he threw something out of his hand.

120 BERTANG: Okay.

121 CHESTNUT: And it hit the side, either the wall or the bricks or hit something so.

122 BERTANG: You, you said that you, you tried to get Ty off of Joey. What was going on
123 then?

124 CHESTNUT: Well I was like outside, everybody was outside I remember seeing Cindy
125 she was like, ran in the road trying to stop somebody and uh I'm looking,
126 Moke he's over here and uh Ty and Joey they was still fighting each other
127 and uh well they were like almost on their knees or whatever, like both of
128 em was on the ground and I was pulling him off of em like, come on man
129 stop, ya'll stop you know, let's go man, you cut bad you need to get to the
130 hospital or whatever and I guess eventually it kicked into him like, oh I'm
131 hurt or whatever and then he thought about leaving you know. But I don't
132 know what really, I don't know if I hadn't I know they were arguing, well
133 him and his girlfriend they had something to say and uh he said something
134 to her whatever and evidently it got her upset and she start crying and me
135 and Joey we were getting ready to head back out you know I was going to
136 wait outside from the start but uh something just like just go ahead in and
137 Joey'll hurry up cause he is going to get, get his keys from Christy and

138 give her, her keys back cause we drove her little bug and she had his truck
139 because, his other brother's truck got a flat over there and uh he let Christy
140 take him home or to his house with his truck and we went out for a little
141 while and when we got back you know Ty was saying he was ready to go
142 home so okay we'll just take him on home then me and Joey was going to
143 go back out and uh I was telling Joey, come on go ahead and get your keys
144 from Christy man and we gonna get outta here and the last thing he said to
145 me was like okay and Ty was coming out the kitchen and he was like let
146 me check on Christy and she was crying you know and after that they just
147 start arguing and I could, I do remember seeing Cindy on the kitchen floor
148 you know like I don't know if he pushed her down or whatever but I
149 remember now that she was on the kitchen floor and um I don't know if
150 she was, they was fighting or whatever her and Ty but I know it was
151 already going on, all the commotion was going on so I was right there like
152 in the hallway and I was like Moke, Moke stop you don't have nothing to
153 do with this, let's, let's, just help me stop em you know what I'm saying
154 he was like, no my girlfriend, my girlfriend so when I finally did let him
155 go it was just all, it was everything going on there next thing I know the
156 backdoor's open you know and everybody was outside but I could
157 remember seeing Cindy on the ground because when I was holding Moke
158 like stop Moke you know what I'm saying help me and he was like no my
159 girlfriend, my girlfriend and when I looked back she was on the ground
160 you know. But uh let's see if there's anything else, I can remember seeing

161 them just swinging at each other I know Joey had the knife and like I said
162 Ty he had to have had something in his hand to because I know he was
163 swinging, it was swinging but I couldn't see no blade or nothing so it
164 couldn't have been no big knife or nothing like that if he did have, he did
165 have something cause he threw something out of his hand but it couldn't
166 have been nothing with a big blade. Well Joey just had a little knife I
167 remember seeing that from earlier.

168 BERTANG: Okay.

169 CHESTNUT: You know so whatever Ty had.

170 BERTANG: Describe, describe how he, how Ty was swinging.

171 CHESTNUT: He was just like, like punching like you know what I'm saying like hitting
172 at him, he wasn't swinging wildly at him he was just, it was like damn like
173 slow motion it was like crazy you know so evidently he had something in
174 his hand sticking him then.

175 BERTANG: Mm, hmm.

176 CHESTNUT: You know but I wasn't aware of it this was in the kitchen.

177 BERTANG: Okay.

178 CHESTNUT: And uh after that they were outside swinging and before you know it they
179 were on the ground and um like I said it was happening so fast I couldn't
180 remember everything when I talked to you the last time. I had to sit down
181 and think about it all over again you know and uh I'm pulling him off Joey.
182 Joey was not out he was like, they were like both on the ground he wasn't
183 laying down or nothing like that and I pulled him off of him and like, yo

184 man stop let's go man you need some help man you bleeding you know
185 what I'm saying. I didn't see Joey bleeding nowhere in his stomach or
186 wherever he was stabbed but I can remember Ty hitting him like swinging
187 back, he was swinging back. Joey would swing and he would swing you
188 know. I didn't see the knife in Ty's hand but I did see the little knife in
189 Joey's hand and uh cause in the kitchen at first or whatever after it started
190 I don't know who swung at who first but I remember me and Moke was
191 standing right there and all of us was just like, we was shocked when Ty
192 first got cut. Well there was a little boom, boom, boom in the kitchen or
193 whatever you know and then after, after Ty got cut he just ripped his shirt
194 off and went I don't care, I don't care and he swung and hit Joey you
195 know and it was just, Christy was hollering, everybody was hollering and
196 screaming and it happened so fast but I, I don't know I was just sorry Joey
197 is hurt, dead. I feel sorry for his family you know everything cause we
198 hang out and it's just crazy you know. I'm even sorry Ty hurt but you
199 know it's, it's just bad, it's bad when someone is taken out of this world
200 over something that could have been avoided you know. They was just
201 arguing, him and his girlfriend had a little problem or whatever and you
202 know what anybody would be over protective of their sister or whatever
203 you know.

204 BERTANG: Mm, hmm.

205 CHESTNUT: If I'm right here and a guy's talking to my sister, her boyfriend or
206 whatever I'm going to say something, hey chill out, especially if she's

207 pregnant or whatever so I don't think he was wrong for stepping up for his
208 sister you know but I just wish it wouldn't have happened like this you
209 know at the hospital when I first talked to you I didn't even know Joey
210 was cut you know I didn't even know he was cut at all. I knew he was
211 bleeding from the face cause I thought they head butted each other or
212 something you know but I didn't know he was actually hurt bad. I though
213 Ty had the bad end of it of the stick you know cause I know he was cut
214 bad and I was just trying to get him to the hospital to make sure he was
215 okay you know. If I'd have known Joey was hurt and down or stabbed or
216 whatever I would have made sure I could have got him to that doctor with
217 me right then. I wouldn't have left him there. I wouldn't have left neither
218 one of them there, I would have tried both of em there you know.

219 BERTANG: Let's start at the beginning of the night um (unintelligible).

220 CHESTNUT: Okay you want to start from the whole day?

221 BERTANG: Yeah.

222 CHESTNUT: Okay it was Ty's birthday and uh his dad and mom cooked on the grill all
223 day and uh some people we went to school with you know all of em came
224 over. Christy's friends they came over. We all you know everybody we
225 listened to old music, new music and everybody had a good time,
226 everybody ate and uh right before it got dark I went and uh I went and got
227 my mom's car, her and her boyfriend's car and I got back over there and
228 um we was just talking, sitting down, we was drinking a little bit of keg
229 beer. I had a beer or two over there and um all of a sudden, well Joey he

230 had just got there he wasn't there all day. Well Joey had got there he was
231 sitting in the house talking to Christy when I got back he was already there
232 and I can remember um they were like, yo what's up man, let's go out
233 man, let's go out for a little while you know it's my birthday and I was
234 like I don't care to go out cause I don't really got too much money. I had
235 about forty, well fifty or sixty bucks in my pocket. I'm like I don't really
236 have too much money to go out. Come on you ain't got to worry about it
237 you know come on let's go out man you know we'll take, me and Joey
238 will take care of buying the beer, whatever and you know I'll get Joey to
239 buy you a beer if I have to that's what he was saying so he was like I've
240 got a few dollars you know and I was like well okay and he was like well
241 come on let's take your car because um Tommy, his truck had, the tire had
242 went flat and uh Joey was going to let Christy take Tommy and his
243 girlfriend home in his truck and I said well my mom's car got one light
244 from it being wrecked I don't think that's a good idea and uh you know
245 especially like going off riding and drinking or whatever so he uh Christy
246 was like well ya'll just take my car and um ya'll go out for a little while
247 and I'll take Tommy home with Joey's truck. So I was like okay well
248 whatever I, I wasn't really in their conversation, I'm just listening you
249 know cause whatever she want to do or they want to do I'd have went
250 along with it but basically they wanted to go out to the club you know so I
251 was like okay whatever so we left.

252 BERTANG: Who left?

253 CHESTNUT: Me, Ty, Joey and Ty's brother Jason he was there too so we took him
254 around the corner to Ty's dad house and we dropped him off and uh me,
255 Ty, and Joey we went on out.

256 BERTANG: Where'd you guys go?

257 CHESTNUT: The first club we got to was I believe Fan Tails and uh Ty and Joey they
258 were in the back of the club I was sitting to the bar playing that little video
259 machine.

260 BERTANG: Mm, hmm.

261 CHESTNUT: Cause I know I don't have too much money to spend I just sit back play
262 the little game for a dollar whatever.

263 BERTANG: How'd you do?

264 CHESTNUT: Well I uh I played uh (unintelligible) matter of fact I got first place and uh
265 well after that they just like well let's go, let's go so I was like okay we'll
266 leave.

267 BERTANG: What time did you guys get to that to the Fan Tails?

268 CHESTNUT: Uh probably about I know we still had like a couple of hours he said like
269 (unintelligible) well I still got two hours before my birthday's over you
270 know we'll go out for a little while. So it had to be about ten thirty, ten
271 forty five before we left Fan Tails.

272 BERTANG: Mm, hmm.

273 CHESTNUT: And uh cause we didn't stay there long maybe thirty, thirty minutes or
274 something like that so after that we was like you know we'll go
275 somewhere else, he wanted to go to all the clubs and I was like well you

276 know something Joey can't get into every club we go to you know cause
277 some clubs they have their you have to be twenty one you know some
278 clubs you can be eighteen to come in so we went over to uh Nuttin Butt
279 Horseplay next and um they didn't have nothing going on in there and uh
280 we maybe stayed there ten or fifteen minutes. Me and Ty we saw this, this
281 girl that one of his baby's mothers friend she works there to the club and
282 uh we saw her and told her it was Ty's birthday and she bought me and Ty
283 a shot and did it with us and uh we left but not right then but we was there
284 about fifteen minutes so we left and uh I was like well where we going
285 and uh we went to the Penthouse Club, right. And uh the time we got
286 there I went in and Joey and Ty they came in and Ty was looking for his
287 money, he said he lost his money and I by that time I didn't even know he
288 lost his money. They went back outside but I already ordered me and Ty a
289 drink to the bar and I was sitting right there to, to the bar but right in front
290 of the game and I was like well where they at and I remember going back
291 to the door with the drinks and uh the owner there Mike was like you
292 know you can't come out of here with those drinks and I was like I'm just
293 trying to see if my friend done came back outside so I went and sat back to
294 the bar maybe uh ten minutes after that Ty and Joey came back and they
295 said they went back over to the club he thought he lost his money over
296 there four hundred dollars or something over there to the club so we had
297 that drink that I bought, bought us right there at the Penthouse and now Ty
298 was like what the hell I lost my money I'm ready to go home shortly, I

299 want to go home you know what I'm saying. So I'm like well whatever,
300 whatever you know and uh I don't, we wasn't to the Penthouse too long
301 because he didn't have no money. I think they walked around for a second
302 and when we left the Penthouse we were going, Ty was saying let's go
303 home, just take me home and you and Joey can come back out. I'm not
304 sure exactly what time it was but on our way home to their house Ty said
305 stop, stop, stop I remember we stopped at the Pink Pussycat right there on
306 Third Avenue.

307 BERTANG: Mm, hmm.

308 CHESTNUT: And um we had a beer in there matter of fact I know what time it was
309 because they were just getting ready to stop serving alcohol so I, it had to
310 be about two o'clock or something like that. They stop serving alcohol so
311 there's no more beer and um we dropped that first beer matter of fact the
312 one of the managers there he bought it for us, he bought that beer I told
313 him it was my friend's birthday or whatever my cousin and he bought us
314 that beer and we drunk it and then uh mostly everybody was getting ready
315 to go and by that time at two o'clock it's like this other club we go to it's
316 called Derriere's most people (unintelligible) that's when like most of the
317 crowd just get there so I was like okay cool Joey we'll take Ty on home
318 and we'll go on right to Derriere's.

319 BERTANG: Mm, hmm.

320 CHESTNUT: You know he done lost his money so all I can do is like buy me a six pack
321 and you just take your own beer in there and you okay cause they don't
322 serve alcohol there.

323 BERTANG: Did Ty lose his money or did he spend it?

324 CHESTNUT: He said he lost it.

325 BERTNAG: And what do you think happened?

326 CHESTNUT: Well he had his wallet he looking all through his wallet like man I done
327 lost my money so he couldn't have spent four hundred dollars he said it
328 was four hundred dollars so he had to lose it or whatever I don't know. He
329 could have gave it away I don't really know but anyway um we were
330 going to take him home and me and Joey was going to go back to
331 Derriere's.

332 BERTANG: Mm, hmm.

333 CHESTNUT: And uh time we got to their house.

334 BERTANG: Did you go anywhere else from the clubs before you got to the uh.

335 CHESTNUT: Pussycat?

336 BERTANG: Before you got back to the.

337 CHESTNUT: Ty's house.

338 BERTANG: Highway.

339 CHESTNUT: Yeah we stopped right there to that store on Third Avenue.

340 BERTANG: Right.

341 CHESTNUT: The Scotchman.

342 BERTANG: Mm, hmm.

343 CHESTNUT: And Ty went in the store. Me and Joey just bullshitting around.

344 BERTANG: Mm, hmm.

345 CHESTNUT: Outside and uh.

346 BERTANG: What did Ty get?

347 CHESTNUT: I'm not sure what he bought from the store. I know he went inside, he said

348 he had to stop to the store. So Joey stopped and he went in the store and uh

349 after he came back out or whatever me and Joey was bullshitting around

350 while he was in the store and he was telling me, man I love you man you

351 know, you hadn't followed me up but I was just showing you I'm for real

352 and I was like Joey, man it's okay, it's cool you know we gonna hang out

353 have a good time and uh we went back to their house, right down the road

354 and I wasn't even going to go inside because Joey just run in there giving

355 Christy her keys and get his keys and we were going to get in his truck and

356 go and I was still going to leave my mom's car over there for a little while.

357 BERTANG: Mm, hmm.

358 CHESTNUT: So uh.

359 BERTANG: Who was in the house?

360 CHESTNUT: Time we got in the house I remember seeing Ty's little daughter and

361 Cindy's daughter on the couch they were asleep and uh Cindy and Christy

362 and uh Cindy's boyfriend was in the house and uh you know we was right

363 there it's piled up in the living room, we just piled up in the living room.

364 And Christy and Ty they were in the kitchen they went in the kitchen and

365 uh I guess, I know Ty came back out of the kitchen, he was like Nesha get

366 your stuff you know I'm getting ready to take you to home or whatever
367 and then Christy she started crying, I don't know what he said or did he
368 touch her or any, I don't know but I know she started crying and that's
369 when Joey and Cindy they ran in the kitchen to see what was going on or
370 whatever and they got so loud and the next thing you know their fighting.
371 BERTANG: And where are you right now?
372 CHESTNUT: I was standing, I was still out but they right there in the kitchen but I'm
373 still right, I'm close to the kitchen but it's right there in the living room. I
374 was standing like beside the TV.
375 BERTANG: Okay.
376 CHESTNUT: You been in there?
377 BERTANG: Mm, hmm.
378 CHESTNUT: I was standing like beside the TV like almost to the closet and they were
379 right there in the kitchen. Everybody hollering, hollering, hollering and the
380 next thing I know they were like starting to fight you know and I just, I
381 can remember hearing Christy just saying stop, ya'll stop, ya'll stop, ya'll
382 stop, you know. Don't, just trying to avoid or whatever and next thing I
383 know they were hooked up and both of em was just bleeding all of a
384 sudden like they head butted each other they was just bleeding so fast and
385 I was just like shocked like well damn did they head butt each or, or what
386 you know.
387 BERTANG: So both are in the kitchen?
388 CHESTNUT: Uh, huh and I'm like Joey.

389 BERTANG: Where's everyone else?

390 CHESTNUT: Their still in the kitchen.

391 BERTANG: Whose fighting with who?

392 CHESTNUT: Okay.

393 BERTANG: And do you see any weapons? What's, be, be very detailed.

394 CHESTNUT: Okay. I'm, I'm trying the best I can be, to get this all out to you uh they

395 arguing, I can remember uh after they, the commotion started. Cindy was

396 on the floor, I don't know if him and Cindy got into a fight first or what

397 but I know Joey was still right there you know him ~~Joey was arguing with~~

398 Ty, Ty was arguing with Joey And Cindy was right there arguing with Ty

399 too, So everybody's just arguing with him, arguing with him and Christy

400 was standing like almost next to the refrigerator just like, ya'll stop, ya'll

401 stop or whatever you know and I was standing right there in the living

402 room.

403 BERTANG: Mm, hmm.

404 CHESTNUT: So the next thing I know they start fighting. Well scuffling or whatever

405 you know and I can remember seeing Cindy on the ground and Moke he

406 was going crazy right then and he was like in the living room with me like

407 right somewhere up next to the TV and I can remember cause he start

408 going fool and I can remember just grabbing him like Moke, no, no, no

409 you don't got nothing to do with that, Don't, don't try to jump on him you

410 know what I'm saying just help me just try to stop it but see I was talking

411 so fast and he probably wasn't even paying me no attention cause his

412 girlfriend in there and he probably could see him push her down or
413 whatever. I know he saw his girlfriend on the ground, when I looked she
414 was on the ground. And he was like, no my girl, my girl, my girl. So by
415 that time they done, Joey I saw Joey with the knife you know but they
416 were already pushing on each other, whatever. Both of em was bleeding
417 before, before Ty got cut across his chest both of em was bleeding and uh
418 I can remember saying, Joey man what the fuck? Ya'll stop, man ya'll
419 stop you know and I guess he was just so amped up about it he was just
420 like shhhhoosh just like, like some wrestler that do that, just like blow
421 water out of his mouth or something you know he wasn't hurt then he was
422 just like blowing me off like shhoosh fuck that you know I'm ready to
423 fight or whatever you know and he had the knife out and you know the
424 next thing I know like he swung. I don't know if Ty swung at him first or
425 if he swung at Ty first or whatever but I remember seeing Ty get cut and
426 he pulled his shirt off and he swung back and hit Joey. [he couldn't have
427 stabbed Joey then. I don't know if he had something in his hand or not
428 then but I know he was hitting him. He was hit like, hitting back, like
429 swinging back I don't know if he was fighting him or sticking him you
430 know] and after that um everybody going crazy and screaming and
431 hollering and uh like I said the back door opened I don't know who got
432 out the back door first. I remember Cindy, I know when I got outside in
433 the back Cindy was almost in the road, she was trying to stop somebody
434 and uh I'm looking and looking and I guess it's just happening so fast and

435 I'm trying to find Ty and he's right there on Joey. You know well both of
436 em's like on the ground but he's like kicking Joey he, Ty was standing up.
437 Joey's like almost on his knees or something. He's punching and kicking
438 and I'm like stop, stop, stop man what you doing, you hurt, you need to go
439 you know what I'm saying.

440 BERTANG: Mm, hmm.

441 CHESTNUT: And he was, well I was holding Ty you know he was still swinging and
442 trying to get away from me and I was like yo man you need to get from
443 out of here you know and I guess when he realized it he just snapped out
444 of it and was like damn, damn I'm hurt, I'm hurt you know what I'm
445 saying cause I, he, he just kept saying oh, oh, moaning and groaning.

446 BERTANG: What was Joey doing?

447 CHESTNUT: I didn't even look back. Once I pulled Ty off of Joey I never looked back.

448 BERTANG: Mm, hmm.

449 CHESTNUT: Never. Even when I came from behind the building and turned all I could
450 see is uh Cindy done stopping help.

451 BERTANG: Mm, hmm.

452 CHESTNUT: You know, but before we went back in that house when I was telling him
453 yo come on you need to go, you need to go he, he threw something against
454 that wall

455 BERTANG: Okey.

456 CHESTNUT: And I don't know what it was. I'm figuring it's whatever he stuck Joey
457 with.

458 BERTANG: Okay.

459 CHESTNUT: And uh.

460 BERTANG: And then what.

461 CHESTNUT: He was like Nesha come on, come on and he tried to go upstairs cause

462 Nesha and the other little girl ran upstairs and he was like fell right down

463 next to the stairs, on the stairs and uh he had this blanket and uh Nesha

464 and the little girl well I didn't even see the little girl like I said but the girl

465 came right behind Nesha and um they jumped in the car with us.

466 BERTANG: Mm, hmm.

467 CHESTNUT: And I can, trying to find my keys. I was so upset and I couldn't find my

468 keys but I had it in that little side pocket and I got the wrong key, trying to

469 turn it and he's just like come on man I'm hurt, I'm hurt and I thought

470 okay my key right here and I cranked the car up and we drove from out of

471 there and uh went down Pine Island Road and I can remember seeing that

472 whoever, a little white car or jeep or something than Cindy done stopped it

473 was right there. Well they done had a couple of people stopped you know.

474 BERTANG: Who, who was driving?

475 CHESTNUT: My car, my mom's car, me.

476 BERTANG: What does she have?

477 CHESTNUT: She who?

478 BERTANG: What kind of car is it?

479 CHESTNUT: I'm not. It's a white uh what kind of car is that uh a Chrysler I believe, it's

480 a Chrysler and uh we turned down there in uh by that time he done called

481 his dad on the phone and was telling him, I'm hurt and I got Nesha right
482 here, I was going to bring her right here to the house so by the time we got
483 to his dad's house his dad was already outside and uh Nesha and the little
484 girl jumped out and uh I, Larry was like just take me straight to the
485 hospital cause I was like he, he hurt bad, he's hurt. He was like just take
486 him straight there. I'll get Nesha and them in the house and I'm coming so
487 I backed up out of there I didn't even think if Joey was hurt or honestly I
488 knew he was cut bad I seen across his chest and I was just wanting to get
489 him to help you know and uh we drove straight, I had my emergency
490 lights on and we went straight to the hospital and five minutes after we got
491 there his daddy came and uh I was just sitting there trying to make sure he
492 was okay and like I said I didn't even know Joey was hurt or nothing like
493 that. And before, before I know it Christy and those they came up and uh
494 she was like, see I was looking at em like, damn all this shit happened and
495 I'm just looking right there at the car standing in front and she was like
496 how dare you look over here it's all your fault and I was like, what's my
497 fault you know what did I was just saying like what the hell did I do and
498 the cop was standing there was like just go inside you know but she
499 probably was upset because Joey was hurt or whatever you know but I
500 didn't know he was hurt you know what I'm saying if I knew he was
501 down I would have tried to get him to safety too you know I wouldn't
502 have left him there.

503 BERTANG: Mm, hmm.

504 CHESTNUT: You know but uh after that we was sitting in the hospital waiting to hear if
505 Ty was going to be okay or whatever you know just sitting there waiting
506 you know and um next thing I know they was wanting to take me down
507 for questioning.

508 BERTANG: Okay. When um ya'll dropped Tynesha off at uh at Ty's dad house.

509 CHESTNUT: Mm, hmm.

510 BERTANG: Did the other girl get out too?

511 CHESTNUT: Yeah she jumped right out with her.

512 BERTANG: Did you get out of the car?

513 CHESTNUT: No. I didn't open the door.

514 BERTANG: Alright and then ya'll went from there. How did you get to the hospital?

515 CHESTNUT: I went straight down uh Grissom the whole way until you get on the
516 bypass.

517 BERTANG: Okay.

518 CHESTNUT: Yup.

519 BERTANG: ~~Alright.~~ (unintelligible) when you went outside and saw Ty he was
520 swinging or whatever.

521 CHESTNUT: Uh, huh.

522 BERTANG: And Joey was on his knees.

523 CHESTNUT: First they were like squared off.

524 BERTANG: Mm, hmm.

525 CHESTNUT: And they was, both of em was standing up like squared off like they were
526 punching each other or whatever you know and uh I took my eyes off of

527 them like I said for a second and by the time I got to em or whatever you
528 know I pulled him off of Joey Joey was on the ground like on his knees
529 basically he was almost on his knees or whatever. I didn't look. I know he
530 was down. He wasn't standing up.

531 BERTANG: Well what was he doing? I mean on his knees.

532 CHESTNUT: Well he, he had his eyes open and everything he was trying, he was still
533 moving you know I didn't, they was still fighting like you know. And I
534 pulled, I pulled him, I pulled him basically off of Joey like, stop, stop, stop
535 you know what I'm saying you got to get to the hospital man you hurt and
536 you still out here trying to fight you know and uh we just rushed out of
537 there like I said. I, I wasn't thinking about Joey. I didn't know he was hurt
538 you know stabbed. I thought Ty had the bad end of the deal like I said but
539 he did it you know he know he did it you know I.

540 BERTANG: Did what?

541 CHESTNUT: Well evidently he stabbed Joey to kill him you know.

542 BERTANG: Well how do you know that?

543 CHESTNUT: Cause you said he had stab wounds right?

544 BERTANG: Well you said he stabbed him to kill him.

545 CHESTNUT: What I'm saying is Joey is dead, right? He probably didn't mean to kill
546 Joey or whatever what I'm saying is Joey is dead, right? He probably
547 didn't mean to kill Joey or whatever what I'm saying is now Joey is dead
548 you know and she asked me at the hospital did I see any scissors or
549 whatever you know a knife or scissors and I told her no you know I didn't.

550 But whatever he, he stabbed Joey with is evidently it's on the ground like
551 over there? ~~3~~ Whatever he threw that's what he had you know] but I didn't, I
552 didn't do nothing to him. I know that for a fact I didn't have nothing in my
553 hands, or stabbed him or whatever. I was trying to get em apart and stop
554 the whole thing you know cause it just started over nothing. We, we were
555 getting ready to go back out. The next thing I know their arguing, and just
556 flipped off.

557 BERTANG: Do you have a gun?

558 CHESTNUT: Yes I have uh three right now but I had more than that but a couple got
559 missing.

560 BERTANG: Well what kind of guns do you have?

561 CHESTNUT: I have a uh a forty five, a thirty eight, and a nine millimeter.

562 BERTANG: Okay where they at?

563 CHESTNUT: All of them are in the pawn shop right now.

564 BERTANG: Pawn shop.

565 CHESTNUT: Needed some money I had to pawn em.

566 BERTANG: Which pawn shop you deal with?

567 CHESTNUT: Dick's.

568 BERTANG: Dick's. Which one?

569 CHESTNUT: On 501.

570 BERTANG: They do you right there?

571 CHESTNUT: Uh you can't complain when you need help. You just take what you can
572 get.

573 BERTANG: The uh did you have a gun with you that night?

574 CHESTNUT: No.

575 BERTANG: In the car?

576 CHESTNUT: No.

577 BERTANG: Anywhere on you?

578 CHESTNUT: Nope.

579 BERTANG: Alright.

580 CHESTNUT: (unintelligible) they been in there for a couple of weeks.

581 BERTANG: Okay.

582 CHESTNUT: Well maybe a couple of weeks.

583 BERTANG: Did you take any swings at Joey or anyone else?

584 CHESTNUT: I, I think I did swing I'm not going to sit here and lie and try to cover up

585 for myself or nothing I think I did swing you know but it was just, it

586 wasn't to hurt nobody I was just trying to stop em you know.

587 BERTANG: Mm, hmm.

588 CHESNTNUT: Get all of em from off of him, you know.

589 BERTANG: And where did that take place?

590 CHESTNUT: I'm not sure if it was inside or outside. It just happened so fast you know I

591 wasn't trying to hurt nobody. I really I grabbed the other guy Moke I had

592 him like and he stopped you know and he was just like yo my girlfriend

593 you know. I didn't try to hurt nobody I was just basically trying to stop em

594 you know.

595 BERTANG: Okay. When you grabbed Moke?

596 CHESTNUT: Uh, huh. This was inside the house.

597 BERTANG: Alright. Then at what part did you and Joey get into it?

598 CHESTNUT: Well Joey was never like in my face or nothing. I believe when we was

599 outside I hit at Joey, I hit at him to try to get that knife out of his hand or

600 whatever and uh that's why I say I grabbed him but I didn't grab his hand

601 I was hitting at his hand you know and tried to knock the knife out of his

602 hand but Christy was like, no don't hit him, don't hit him, don't hit him.

603 But I wasn't trying to hit him you know I was just thinking so fast like just

604 stop you know trying to get the knife from him or whatever but.

605 BERTANG: Did you ever kick him?

606 CHESTNUT: No. No. That's one thing if a man you don't get nothing out of kicking

607 nobody. I don't you know. If you can't fight then you, you fight somebody

608 that fight back. If you got somebody down you don't kick him. You're

609 less than a man if you do that you know. Ty was kicking him you know

610 when I was pulling him off of him he was getting kicked then.

611 BERTANG: Did you ever make any threats that you were going to shoot anybody?

612 CHESTNUT: No. No, I didn't have no business, how could I shoot somebody. I didn't

613 have a gun on me.

614 BERTANG: Well you don't have to have a gun on you to make a threat, I mean.

615 CHESTNUT: Yeah, but I didn't. I was like stop. I was trying to get him to stop basically

616 man, I don't, everybody was screaming, everybody was upset and to my

617 knowledge I didn't say nothing about shooting or nothing like that. I was

618 basically trying to just stop em you know I could have said anything, I'm
619 going to get you or whatever just to try to stop em you know.

620 BERTANG: Is it that you didn't say it or you don't recall it or you.

621 CHESTNUT: I don't recall saying that I'm going to shoot nobody well I, I know I didn't
622 say that because I didn't have nothing to do with it. I'm trying to stop
623 them you know.

624 BERTANG: Have you talked to Ty?

625 CHESTNUT: Nope I didn't know nobody could talk to him.

626 BERTANG: Who've you talked to so far?

627 CHESTNUT: Uh mostly my family.

628 BERTANG: What have they told you is going on?

629 CHESTNUT: They said uh Ty had some fluid on his lungs and that nobody could talk to
630 him and uh basically I was just, I told, I called his brother earlier and I told
631 him uh I don't know why they got me down here to the station that Ty
632 needed to go ahead and fess up to whatever he did because I didn't have
633 nothing to do with that and his daughter said well if nobody could talk to
634 him and they wanted to let his dad talk to him and I was like well they,
635 they need to go ahead and tell, tell everybody what's up you know
636 basically get me out from downtown because I feel like I have no reason
637 to be there.

638 BERTANG: Mm, hmm.

639 CHESTNUT: I'm more, I could be a witness. I'm not, I didn't do nothing you know I
640 was just there you know.

641 BERTANG: What do you think Ty's going to say?

642 CHESTNUT: I think he's going to tell the truth. He has no reason to lie and everybody

643 else that was there know you know what I'm saying.

644 BERTANG: What would you say if I said that he's trying to put this off on you?

645 CHESTNUT: I wouldn't believe it.

646 BERTANG: You think?

647 CHESTNUT: I wouldn't believe it cause I, he has no reason to say that.

648 BERTANG: You believe he's just going to say hey I killed somebody.

649 CHESTNUT: Naw. Really um what I think is he going to break it all down and tell you

650 whatever happened you know he, he could tell you, explain it a little more

651 than me because he was involved in it you know.

652 BERTANG: Right.

653 CHESTNUT: But he have no reason to lie on me. He has no reason to lie on me. I saved

654 him basically by getting him to the hospital.

655 BERTANG: Right.

656 CHESTNUT: To safety you know. That would be crazy if he tried to hurt or bring

657 somebody else down. I mean if I do something I'm wrong you wouldn't

658 even have to sit here and ask me you know more than once I'd tell you

659 right then that I did this, I'm sorry that I'm wrong you know.

660 BERTANG: What do you, looking back what do you recall of what you did or didn't

661 do that if you had to take it back you could? What do you think that you

662 did that was wrong that night?

663 CHESTNUT: What I think is if I had some money we would have never went back to
664 their house for him and his girlfriend to get in an argument because we
665 would have went on to another club you know it would have never been
666 that argument with him and his girlfriend right then that's the only thing I
667 wish I had some money to stop us from going back to the house you know
668 cause Joey's not a bad guy man. I like Joey a lot and I, I really wanted to
669 call Christy and talk to her you know about the whole thing you know but
670 I didn't and uh my mom she told me it's probably best not to call her right
671 now. But I really want to call her. I want to call her and just talk to her you
672 know cause it's, it's bad when something like this happens you know and
673 we'd only been back to their house for a couple of minutes and we were
674 getting ready to go back out you know. All Joey wanted to do was just see
675 a girl or that, that just makes his day you know all he do is work and go
676 out you know. He don't really go out but he work and he like, he like girls.
677 He like for us to go out and see girls or whatever you know.

678 BERTANG: Do you have any problems with Moke?

679 CHESTNUT: Naw me and Moke we bullshit around or you know we talk a little shit but
680 it's nothing no problems.

681 BERTANG: What about Cindy?

682 CHESTNUT: Nope.

683 BERTANG: No problems with her?

684 CHESTNUT: Nope. Not, not so. Not one problem.

685 BERTANG: What about Christy?

686 CHESTNUT: Well when Christy and Ty get mad at each other she like take it out on me
687 a little bit. I guess because I come over and we play a game or whatever
688 you know that's just how a girlfriend will be about their boyfriend's friend
689 or whatever. When she mad at him she's mad at you so but we never had a
690 problem Ty and Christy get mad at each other and he'll like go home and I
691 find out I'll be the one that make them get back together you know I'll get
692 him to go back home to her you know but we never had no, no problems.

693 BERTANG: Well where does Ty spend most of his time at?

694 CHESTNUT: In the house.

695 BERTANG: And it's at her house or his house?

696 CHESTNUT: It's his house.

697 BERTANG: Does he sleep there?

698 CHESTNUT: Yeah.

699 BERTANG: So that's like his place too?

700 CHESTNUT: That's their place if you look in there you'll see pictures with me, Ty, me,
701 Ty, and Joey and you'll, you'll see some different pictures in there or
702 whatever some of our other friends but uh he mainly lives there.

703 BERTANG: Okay.

704 CHESTNUT: He been staying there since they uh got the place fixed up and going.

705 BERTANG: Alright. Well Mo the main concern that I have is after talking with
706 everyone.

707 CHESTNUT: Uh, huh.

708 BERTANG: That their relaying to me that you had a little bit more involvement in that
709 and that you were.

710 CHESTNUT: Well I didn't have nothing involved the only thing I was trying to do was
711 stop everything from happening you know I might have screamed a little
712 bit but they were fighting.

713 BERTANG: Mm, hmm.

714 CHESTNUT: All of them they were fighting, they were on Ty you know I can
715 understand Cindy that's her sister, her sister's pregnant, Moke, that's his
716 girlfriend. If I see somebody do something to my girlfriend I'm going to
717 be upset.

718 BERTANG: Right.

719 CHESTNUT: Or whatever and Joey you know. I didn't play no part in that. I didn't
720 know they were going to go there and argue you know.

721 BERTANG: Mm, hmm.

722 CHESTNUT: I was just waiting on Joey to get the keys and we were getting ready to get
723 outta there.

724 BERTANG: Well if there all on Ty then how does Joey wind up getting stabbed all
725 those times and dying?

726 CHESTNUT: Could be when they were outside like I say I can remember seeing Ty
727 swinging too you know but um I mean both of em are cut. That's got to
728 tell you that they were at each other you know.

729 BERTANG: Okay.

730 CHESTNUT: I wasn't in the middle of em.

731 BERTANG: But different people are telling me that, that both you and Ty were beating
732 up on Joey.

733 CHESTNUT: No. Well where everybody else is at then. If me and Ty got Joey where is
734 everybody else, you know? That, that's not true I wouldn't do that not one
735 bit.

736 BERTANG: Wouldn't do what?

737 CHESTNUT: I wouldn't help Ty beat up Joey that's, that's their business if they want to
738 fight, fight it out I want to let them fight it out as long as they didn't have
739 no weapons or whatever because that's your sister their family, their our
740 family you know.

741 BERTANG: But you said that you saw weapons.

742 CHESTNUT: Yeah I said if they didn't have any weapons you know if they wanted to
743 just fight each other hell they would have went in the backyard and fought
744 you know and I wouldn't have nothing to stop or whatever you know. If
745 Christy wanted to go, let her go.

746 BERTANG: So then why didn't you let it go in the kitchen if, if they were all fighting?

747 CHESTNUT: Well eventually I did until they was jumping him and I was trying to stop
748 them from jumping him. You know Cindy's over here fighting on him.
749 She's got a bottle and probably done, couple of bottles bust in the kitchen
750 I'm not sure what it was a plate or whatever but I could hear stuff busting
751 and people, I could hear him hollering you know what I'm saying I could
752 hear him like ohhhh whatever you know. So I was just basically trying to
753 stop them from jumping on him you know and I, I should have just not

754 even I should have just got in the car because I wasn't even going to go in.
755 I was going to sit on the car and wait on Joey to come back out with his
756 keys. Well like I said I'll just okay we'll go on in and I rushed Joey to
757 come on so we could go you know. I didn't, I ain't got no intentions of
758 hurting Joey or nobody.

759 BERTANG: Mm, hmm.

760 CHESTNUT: You know I go over there to Christy's house, she cook, she's a very nice
761 person, she feeds me if I want something to eat you know everything you
762 know there's nothing like that with, with us I mean we go out we have a
763 good time and that's that.

764 BERTANG: Right. Why would different people who are separated give me the same
765 story about what you did and what you didn't do?

766 CHESTNUT: Well what did they say I do? What, what I'm supposed to did?

767 BERTANG: Well I can't tell you but the reason why I'm asking is because their telling
768 me you did more than just try to break em up.

769 CHESTNUT: No I, I just tried to break em up man basically that's the whole thing I
770 tried to do was break em up that's it. I was trying to stop em from fighting
771 and after I finally got Ty to stop I just rushed him straight to the hospital
772 you know if I'd did something wrong I wouldn't have just shot up there
773 or. Or you know I, I couldn't just sit there and say okay I'm getting ready
774 to go to jail I just, I just did but I mean.

775 BERTANG: Mm, hmm.

776 CHESTNUT: I was just sitting there trying to make sure Ty was okay. I didn't know
777 Joey was down whenever.

778 BERTANG: If you try to keep on getting Ty to stop. Is, who's the main one? I mean if,
779 was Ty beating up on Joey, Joey beating up on Ty?

780 CHESTNUT: No um.

781 BERTANG: You keep saying that you're trying to get Joey to stop. (unintelligible)

782 CHESTNUT: No I was trying to get Ty.

783 BERTANG: (Unintelligible).

784 CHESTNUT: Yeah. Cause Ty had.

785 BERTANG: (Unintelligible).

786 CHESTNUT: Yeah, he, he was kind of like, when they were, when he had Joey down a
787 little bit when he was kicking him and stuff Ty had the best of Joey you
788 know. And I was trying to get him off of him.

789 BERTANG: When Ty was kicking him.

790 CHESTNUT: Yeah, yeah.

791 BERTANG: And what was Joey doing?

792 CHESTNUT: He was down.

793 BERTANG: Down how?

794 CHESTNUT: On, on a knee. I don't, I'm not sure if he was on one knee or two knees but
795 he wasn't standing up.

796 BERTANG: Mm, hmm.

797 CHESTNUT: And he wasn't laying down flat.

798 BERTANG: And where was he kicking him?

799 CHESTNUT: I'm not sure. I wasn't standing there just watching but I can remember
800 seeing him moving and kicking him or whatever but I'm not sure where he
801 kicked him at.

802 BERTANG: Okay. Why would Moke say that you threatened to shoot him?

803 CHESTNUT: I don't know. I don't, I don't believe Moke would say, well I'm not sure
804 why he said that. I didn't have a gun. If I said it I was probably just trying
805 to stop em. I don't recall saying that I'm gonna shoot you, you know. I
806 could have said anything cause everything was happening, I'm not sure
807 what exactly I said but I know I don't recall saying that. I was just
808 basically trying to stop em you know. I wasn't, I didn't hurt nobody or
809 nothing like that.

810 BERTANG: That's, that's what he told me. I'm not making this up and I'm telling you
811 what my direct conversation was with him. And that's why I'm asking you
812 why would he tell me repeatedly that you were threatening to shoot?

813 CHESTNUT: I don't know why he would say that. I can't answer something that he say
814 why. I mean I can't answer why he would say that cause I don't know. I
815 don't know why he would say that.

816 BERTANG: Is he lying or?

817 CHESTNUT: I don't recall saying that. I don't recall saying that. Like I said I could
818 have said anything to try to stop em you know but I don't recall saying it.

819 BERTANG: To try to stop who?

820 CHESTNUT: Everybody from fighting it was just going on. I could, I don't remember
821 saying that.

822 BERTANG: Okay.

823 CHESTNUT: Like I said I don't recall. I was just trying to stop everything you know

824 from going on.

825 BERTANG: Mm, hmm.

826 CHESTNUT: We were having a good time all day you know.

827 BERTANG: If, if you don't remember that what else might you not remember?

828 CHESTNUT: What you mean what else I might not?

829 BERTANG: Is it possible you don't remember taking more swings or kicking people

830 or?

831 CHESTNUT: No I didn't, I didn't.

832 BERTANG: I mean cause you said a lot was going on.

833 CHESTNUT: It was a lot going on.

834 BERTANG: If you don't remember some stuff you were saying is it possible that you

835 don't remember some of the stuff you were doing?

836 CHESTNUT: No I remember what I was doing. I was basically trying to stop them from

837 fighting.

838 BERTANG: Okay. Now keeping that in, in mind.

839 CHESTNUT: Uh, huh.

840 BERTANG: Their telling me. If more than one person is telling me that you're also

841 swinging and kicking. Why?

842 CHESTNUT: (Unintelligible)

843 BERTANG: Why would they say that? I'm telling you what they told me.

844 CHESTNUT: Okay. Well listen I did not kick one time. I did not kick one time. So I
845 don't know who could have told you that. Moke he was over there and
846 how could all of them be watching what I do? If all of them is telling you,
847 telling you that then I mean they was just standing and watching you
848 know. Cindy was in the road. I could, I don't know exactly where Christy
849 was I just could hear her saying stop and hollering you know. I just
850 remember hearing Christy hollering and uh Moke was somewhere outside.
851 I just tried, I just tried to stop it you know I wasn't involved with it man.

852 BERTANG: Okay.

853 CHESTNUT: I just tried to stop it you know that's all. I wish I would have never even
854 went out when they was like come on let's go out but the only reason I
855 went was it's his birthday. I didn't have much money in my pocket you
856 know I didn't want to go and have to worry about somebody getting
857 something for me or whatever but uh it's, it's, it's bad man you know
858 cause Joey is gone you know it's, it's bad you know and uh we just got
859 there and me and Joey was getting ready to go back out it's just bad to
860 know that he's not here.

861 BERTANG: Mm, hmm.

862 CHESTNUT: You know what I'm saying that's why I really want to talk to Christy to
863 just I'll cry with her you know I will I'll cry with her or whatever you
864 know what I'm saying cause it's bad I mean I know Joey through her and
865 if he want to go out or see some girls or something I take him you know
866 what I'm saying and we just have a good time. He never been no bad

867 person. I never seen Joey start nothing with nobody, him and his friend
868 Quinn they'll come out and we'll take him out and uh that just be that you
869 know we never got, argued or nothing, nothing, nothing in that kind you
870 know. It's just he stepped up for his sister just like any other man would
871 do and uh this is bad man cause he's gone you know. It's that I was very
872 surprised and shocked when you told me that I couldn't even and I went
873 back in and it was just like, only thing I could think about, damn Joey's
874 dead you know and it damn near ran me crazy cause I wanted to call or
875 talk to somebody if I knew that I, I could have avoided Christy saying
876 something to me, just talk to her at the hospital you know.

877 BERTANG: Mm, hmm.

878 CHESTNUT: Just to be there just show her you know that I love ya'll damn you know
879 what I'm saying cause which I do I eat from her or whatever you know I
880 stay to her house before it's never been nothing bad you know.

881 BERTANG: How'd you get all the blood on your shirt that's there?

882 CHESTNUT: Well Joey was like just (unintelligible), he was standing up you know just
883 spitting it and maybe from when I grabbed uh Ty too I was shaking him
884 like come on man let's go, let's go [and I pulled him off of Joey] that could
885 have happened some too but uh most of it came from like when he did
886 that.

887 BERTANG: And where was that inside?

888 CHESTNUT: Inside. It should well I was standing close to the wall or something it
889 might be some little sprinkles on the wall or something you never know.

890 BERTANG: Alright. When you pulled Ty off, how did you have him? I mean, in front
891 or in back of him or what?
892 CHESTNUT: Behind him.
893 BERTANG: So if I'm you and I pull Ty up like this. Is that right? You pull him off this
894 way.
895 CHESTNUT: Yeah. Yeah.
896 BERTANG: So if he's in front of you how are you getting blood all on the front of your
897 shirt that, that spray?
898 CHESTNUT: No well it wasn't a spray it was like mostly sprinkles on it.
899 BERTANG: Well the sprinkles were all over so how?
900 CHESTNUT: Yeah.
901 BERTANG: How did it, if you've got Ty in front of you like this. How are you getting
902 all those sprinkles on you here?
903 CHESTNUT: Well see it could already have been on my shirt.
904 BERTANG: Okay.
905 CHESNTUT: You know from inside from him spitting it out it could have already been
906 on my shirt but uh I grabbed Ty from the back. I did grab him from the
907 back like come on let's go, let's go. And he went like I said before he went
908 in the house he threw something on the side of the building. I'm not sure
909 what it was but whatever it is it could be what Joey got stabbed with you
910 know that's what he could have had.
911 BERTANG: And what is it that you were trying to you said you were trying to swing or
912 something or maybe get the knife away from Joey?

913 CHESTNUT: Yeah they were outside standing up then. They were, they was.

914 BERTANG: You were doing that outside?

915 CHESTNUT: Yeah I swung at Joey um one time and Christy she was right there she was

916 like no don't you hit him, don't you hit him and you know I basically I

917 stopped.

918 BERTANG: And what, what is Ty doing then?

919 CHESTNUT: You see I took my eyes off of him but him and Joey was still right there

920 both of em was standing up.

921 BERTANG: Mm, hmm.

922 CHESTNUT: You know I guess Ty was uh I don't know which way he was facing but

923 everybody was outside you know like I said it was going on so fast I want

924 to tell you everything you want to know but it's it happened real fast you

925 know.

926 BERTANG: I'm just trying to picture this.

927 CHESTNUT: Uh, huh.

928 BERTANG: So Ty and Joey have knives and their outside right?

929 CHESTNUT: No I didn't see Ty with a knife.

930 BERTANG: Well you assume that he had something.

931 CHESTNUT: Yeah after I saw him throw something against the wall.

932 BERTANG: Okay.

933 CHESTNUT: And remembered that then yeah.

934 BERTANG: Did he (unintelligible) Joey has a knife?

935 CHESTNUT: I didn't even see Joey's knife no more.

936 BERTANG: Okay.

937 CHESTNUT: The only time I saw Joey's knife was in the house. When they were
938 outside,

939 BERTANG: But you told me before that you were trying to get the knife out of his
940 hand.

941 CHESTNUT: Yeah I was swinging at his hand. I'm not sure.

942 BERTANG: Was it inside or outside.

943 CHESTNUT: Outside.

944 BERTANG: Okay.

945 CHESTNUT: But like I said I swung at his hand outside cause I, I know he had a knife
946 but I didn't actually when they were outside I didn't see the knife no more
947 but I did swing at his hand outside.

948 MANN: Where, when you're swinging at his hand. I mean you would know if you
949 popped him you know what I'm saying I mean are you hitting him in the
950 arm are you hitting him in the face, you hitting?

951 CHESTNUT: No I didn't hit him.

952 MANN: You hitting him in the body.

953 CHESTNUT: In the face I, across his arm. It was across his arm and uh as I did it
954 Christy was like no don't you hit him, don't you, just I'm going to call the
955 police that's when she said she was calling the police but the whole time
956 he's supposed to call the police after all that's happening you know.

957 BERTANG: Mm, hmm.

958 CHESTNUT: Don't just say that cause I was trying to stop him or I took a swing at Joey
959 you know but um this was outside.

960 MANN: Um when you're doing that, the only reason is cause you know that we've
961 talked about um the fact um we've talked about when you're fighting with
962 him and we've told you we talked to the witnesses and I'll be straight up
963 with you.

964 CHESTNUT: When I'm fighting with who?

965 MANN: When, well when everybody, when the whole fight's going on the
966 witnesses are saying that you take and you swing and you actually strike
967 him and that Joey falls.

968 CHESTNUT: No.

969 MANN: And the only reason I'm asking you this is because we separated the
970 witnesses immediately.

971 CHESTNUT: Uh, huh.

972 MANN: And when we separate them they all tell us the same story and I'll be
973 straight up with you we've talked to Ty.

974 CHESTNUT: Uh, huh.

975 MANN: Ty corroborates a lot of what their saying. So we've got all these people
976 saying that you come in and take a swing and strike, and strike him. Does
977 that have anything to do with stab wounds, no? We're just trying to
978 establish and make sure that you're telling us the true story. We're trying
979 to get a picture of what went on and I know you say that you were

980 swinging and you're not sure you think it's possible you swing and you
981 strike him. I mean.

982 CHESTNUT: No I didn't strike Joey in the face. When I swung one time and as I say I
983 was thinking he had a knife in his hand and I swung and it was low it
984 wasn't no upper body, face or nothing like that.

985 MANN: When you're in, out or when you're inside the house?

986 CHESTNUT: I didn't swing one time inside the house.

987 MANN: So the only time you swing is outside.

988 CHESTNUT: Uh, huh the only thing I did inside the house was grab Moke.

989 MANN: Okay.

990 CHESTNUT: And uh you know I thought maybe he cause he stopped I mean I was like
991 yo come on now don't, don't jump into it to and he was like you know
992 when I was talking to him I guess Ty and Moke's girlfriend got into it.

993 MANN: Yeah.

994 CHESTNUT: You know but uh.

995 MANN: Now where are you, when ya'll are inside. How is everybody positioned
996 when Joey does that (unintelligible) and sprays you with blood.

997 CHESTNUT: Okay um I'm standing uh almost in that little hallway before you get in the
998 kitchen and Joey's standing right, right here.

999 MANN: So if I'm, if I'm Joey.

1000 CHESTNUT: Mm, hmm.

1001 MANN: Where are you at? Do I need to move this way?

1002 CHESTNUT: No if.

1003 MANN: Go ahead you can stand up. That's fine.

1004 CHESTNUT: Okay.

1005 MANN: If I'm Joey.

1006 CHESTNUT: I don't know exactly how I was standing in there. I was right there still in
1007 the little walkway and Joey was right here where you are.

1008 MANN: Mm, hmm.

1009 CHESTNUT: And Ty and uh Christy was over here and Cindy was somewhere over
1010 there.

1011 MANN: Okay.

1012 CHESTNUT: You know and I'm thinking Moke was behind me I'm think, he was
1013 somewhere close to me but when it all happened I wasn't watching to see
1014 where who was.

1015 MANN: Alright.

1016 CHESTNUT: Or watching to see where this person was I was just basically trying to
1017 stop the whole thing. I didn't have nothing to do with it you know I was
1018 just trying to stop em .They started arguing, him and Christy they had
1019 some words and they family you know. I don't have nothing to do with
1020 that.

1021 MANN: Well let's get back to you're.

1022 CHESTNUT: Mm, hmm.

1023 MANN: Your saying, same thing, you're standing right there. Joey's right here
1024 and you said Ty's over here are they physically fighting when he blows.

1025 CHESTNUT: No.

1026 MANN: the spit on you.

1027 CHESTNUT: No but both of them are, Ty's standing back, he's standing back, and both

1028 of them are already bleeding.

1029 MANN: Uh, huh.

1030 CHESTNUT: Down their face.

1031 MANN: Okay.

1032 CHESTNUT: And uh I guess Joey was just tasting his blood or whatever and uh I was

1033 like Joey what the fuck. Ya'll stop, ya'll stop and he was just like

1034 (unintelligible) and it just came all over me.

1035 MANN: So he's standing here and he's looking at you and Ty's over here?

1036 CHESTNUT: Uh, huh.

1037 MANN: And he blows it on you then.

1038 CHESTNUT: Yeah.

1039 MANN: Alright but they're not fighting at that point?

1040 CHESTNUT: No.

1041 MANN: Okay what's going on has anybody been stabbed at that point?

1042 CHESTNUT: No.

1043 MANN: Okay so there's no, nobody's been stabbed at that point.

1044 CHESTNUT: No. Nobody's been stabbed yet but right after that, that's, the knife came

1045 out. That's when I saw the knife. I don't know exactly when it came out

1046 he could have already had it out then.

1047 MANN: Then the knife comes out in the house?

1048 CHESTNUT: Yeah.

1049 MANN: Okay and then are they fighting when he gets stabbed or does he reach out
1050 and stab or how did it happen?

1051 CHESTNUT: No. He, Joey, I saw when Joey cut him across his chest I, I didn't see Joey
1052 cut him anywhere else. I heard he was stuck three times or whatever Ty
1053 but uh when Joey hit him across his chest you know I, I do remember
1054 seeing Ty like hit him back I'm not sure if he had something in his hand
1055 then.

1056 MANN: Yeah.

1057 CHESTNUT: You know but I can remember seeing Ty hit him back and uh it just like I
1058 said.

1059 MANN: (unintelligible)

1060 CHESTNUT: It just happened all so fast and I don't know why I'm now um I'm like a
1061 witness there you know. I didn't do nothing.

1062 MANN: And I understand. The problem for us is that we have to try to clarify stuff
1063 with you because we've got, when we respond to the scene what we do is
1064 we swarm the scene and we separate everybody. Everybody is still on
1065 (unintelligible). So I mean we've got them, we're on the scene for a while
1066 before you ever get to the hospital so we're on the scene probably within,
1067 we're there before EMS I mean we're there right after you leave.

1068 CHESTNUT: Mm, hmm.

1069 MANN: We're already there because neighbors have already called us.

1070 CHESTNUT: Mm, hmm.

1071 MANN: You know what I'm saying so we're already in route while you're still on
1072 scene. We get there and you've just left. So that's how quick we're there.
1073 We separate everybody and everybody kind of tells us the same story.
1074 We've talked to Ty, we talked to Ty last night.

1075 CHESTNUT: Mm, hmm.

1076 MANN: [And Ty's given us somewhat of a story] But when, one thing that concerns
1077 me is I want to know about the conversation when ya'll were in the car
1078 leaving. What's said between ya'll? [Cause what Ty tells me and what that,
1079 the little girl tells me matches up.

1080 CHESTNUT: Well Ty he didn't really talk.

1081 MANN: Yeah.

1082 CHESTNUT: Until after he called his dad, he was just basically leaning. I rolled the
1083 windows down. Tried to give him a cigarette, he didn't take the cigarette
1084 and uh after he said whatever he talked to his dad for one second, I'm
1085 going to the hospital. I'm hurt, I'm hurt cause his daughter and the little
1086 girl they got out and I drove him straight to the hospital. The only thing I
1087 was telling him is you going to be okay, you going to be okay and he was
1088 just like, oh god I'm busted, I'm dying , I'm dying just hurry, hurry, hurry
1089 and I was like well I'm driving fast as I can to get you there you know. It
1090 wasn't no conversation about nothing. The only thing I was thinking about
1091 was getting him to the doctor, to get him to safety.

1092 MANN: What about when you, whenever ya'll pull out, before ya'll drop the
1093 children off. What, I mean what's your state of mind? What do you think?

1094 I mean cause I'd be mad, I mean if my cousin or someone that's like my
1095 brother has a big slash I'm going to be pissed.

1096 CHESTNUT: Well I'm basically freaked out from what happened so we're in the car
1097 and uh like I say I was fumbling. I got the wrong key in the, in the, I'm
1098 trying to find the right key and he's saying hurry, hurry, hurry you know
1099 just hurry up, hurry up man and I finally figured out where my key was
1100 and popped it in and drove straight to his dad's.

1101 MANN: So you don't remember saying anything when you're driving off?

1102 CHESTNUT: No.

1103 MANN: Like you know that you're pissed at any of them for cutting him I mean
1104 anything to that effect.

1105 CHESTNUT: No. That, that wasn't even on my mind right then I was just trying to get
1106 him to safety.

1107 BERTANG: But Mo here, here's the deal.

1108 CHESTNUT: Uh, huh.

1109 BERTANG: Okay cause we're going to be wrapping this up real shortly.

1110 CHESTNUT: Okay.

1111 BERTANG: Alright and this is you're opportunity to fill us in on exactly what's
1112 happened. I understand what you're telling us but at the same point we
1113 have people saying that you're outside saying, kill that mother fucker,
1114 alright.

1115 CHESTNUT: I would never say that.

1116 BERTANG: Well and I wouldn't say that either cause we're on tape here.

1117 CHESNTUT: Yeah. I
1118 BERTANG: Tell me what happened.
1119 CHESTNUT: I didn't say that.
1120 BERTANG: So I mean that's the story you're going with because right now we got a
1121 guy whose dead and we've got, I've got a chief that wants answers so.
1122 CHESTNUT: I understand.
1123 BERTANG: I got a guy that's dead that we're not going to argue with right? We're not
1124 going to argue with that, right? There's a guy that's dead.
1125 CHESTNUT: Yes a guy who's dead.
1126 BERTANG: There's a guy that's dead and I have several people saying that you're
1127 outside saying kill that mother fucker.
1128 CHESTNUT: Naw I didn't say that. I didn't say that.
1129 BERTANG: So is that the story that I'm going to be going to the solicitor with is
1130 saying, he's saying.
1131 CHESTNUT: Listen.
1132 BERTANG: All, all he knows is that he sees Joey with a knife, he doesn't, he doesn't
1133 see his friend Ty with a knife.
1134 CHESTNUT: I (unintelligible).
1135 BERTANG: But somehow Joey gets stabbed how many times?
1136 MANN: Ten.
1137 BERTANG: Ten times and you don't see any of this except you see a motion like this
1138 but you don't see anything else in the hand.
1139 CHESTNUT: Naw it wasn't nothing sticking out of his hand.

1140 BERTANG: (unintelligible).

1141 CHESTNUT: That's why I said.

1142 BERTANG: I'm saying is that the story that you want me to tell the solicitor.

1143 CHESTNUT: Listen.

1144 BERTANG: Because they're going to be making the determination about who's getting

1145 charged with what.

1146 CHESTNUT: Okay. I understand all of that. I'm trying to give you all the cooperation

1147 that you need.

1148 BERTANG: Mm, hmm.

1149 CHESTNUT: I didn't have nothing to do with it and I'm telling you the exact truth cause

1150 I have no reason to lie to you I didn't do nothing. I didn't do nothing

1151 wrong.

1152 BERTANG: Well I have people telling me that that's what you're, you're outside

1153 screaming that.

1154 CHESTNUT: I didn't say that. I did not say that.

1155 BERTANG: While Ty's getting the best of him.

1156 CHESTNUT: I did not say that. When, when I got back to Ty and he was kicking on

1157 Joey I stopped him and I was talking to him and he came to his senses and

1158 was like okay yeah I got to go, I got to go. I guess that's when he really

1159 felt like he was hurt you know because I, I grabbed him.

1160 BERTANG: I ain't worried about how he's feeling right now. That, that's not my

1161 concern, my concern is what, what you were saying.

1162 CHESTNUT: Uh, huh.

1163 BERTANG: Cause I've got people saying you're on the scene there trying to shoot
1164 people or trying to threaten that you're going to shoot people and that
1165 you're telling them hey, kill that mother fucker.

1166 CHESTNUT: I did not say that. It's not true. It's not true.

1167 BERTANG: Alright.

1168 CHESTNUT: It's not true. I, I don't want to see Joey die. I don't want to see him dead.
1169 You sound like I want to see him dead. I like Joey. I don't want to see
1170 nobody dead that I go out with.

1171 MANN: Okay you're saying.

1172 CHESTNUT: Or whatever.

1173 MANN: Something about you may say something out of anger like you wanted it
1174 to stop, you just wanted it to stop.

1175 CHESTNUT: But I wasn't outside.

1176 MANN: And you were saying stuff.

1177 CHESTNUT: Yeah I wasn't outside, kill that mother fucker. I, I would never say that.

1178 BERTANG: What are you inside when you said it?

1179 CHESTNUT: No I wasn't, I well outside or inside it doesn't matter. I did not say that,
1180 kill that mother fucker.

1181 BERTANG: So everyone's lying then?

1182 CHESTNUT: You damn right they lying. I didn't say that.

1183 MANN: Who broke his nose?

1184 CHESTNUT: I'm not sure who broke it. Him and Ty was fighting evidently Ty broke it.

1185 MANN: Everybody tells me you gave him one good punch and he went down.

1186 CHESTNUT: No. Like I told you I swiped at Joey I hit him on his arm and Christy was
1187 like, don't hit him, don't hit him. Him and Ty was right there fighting. His
1188 nose could have been broke in the kitchen cause I told you both of em was
1189 just pouring blood. It could have been broke from the start. I didn't break
1190 his nose. I didn't hurt Joey or nothing. I don't know why. I, I want ya'll to
1191 figure out what happened you know ya'll have to do that but I don't
1192 deserve I feel like I don't deserve to be downtown you know I was just
1193 there trying to stop it and I got Ty to the hospital before he died. I didn't
1194 want to see Joey hurt.

1195 BERTANG: Well, I mean unfortunately right now unless, unless you can give us a
1196 reason why you said that and maybe you done some certain things right
1197 now we're in a bind because like I said my chief wants some answers and
1198 we've got to.

1199 CHESTNUT: (unintelligible).

1200 BERTANG: (Unintelligible). And we're gonna give him answers but unless I can
1201 explain why you said or maybe did certain things we're gonna have a
1202 problem.

1203 CHESTNUT: I didn't say kill that mother fucker.

1204 BERTANG: What did you say?

1205 CHESTNUT: I didn't say that. Well.

1206 BERTANG: What did you say?

1207 CHESTNUT: I didn't say nothing outside.

1208 BERTANG: What did you say?

1209 CHESTNUT: Nothing outside.

1210 BERTANG: You didn't say anything you just walked outside and checked him out.

1211 MANN: Why did you say (unintelligible).

1212 CHESTNUT: I was going stop, stop it I was talking to Moke, I had Moke right there you

1213 know and I was telling him just try to help me don't jump in it you know.

1214 BERTANG: That's exactly how you said it?

1215 CHESTNUT: That's not exactly how I said it.

1216 BERTANG: Tell me exactly how you said it.

1217 CHESTNUT: I don't remember exactly how I said it. We were right there and I was

1218 trying to tell him don't jump into it you know don't jump into it, just try to

1219 help me stop em you know that's what I was trying to tell him I can't

1220 really tell you exactly how I said it or how loud my voice was or whatever.

1221 I can't tell you that right now cause I, I really can't remember man this is

1222 mind wrecking when stuff like this happens you know. If you know

1223 somebody and you go out with them and they just, you was out with them

1224 thirty minutes ago or whatever and the next thing you know he's dead I

1225 mean you going to be actually kind of mind wrecked too. And to answer

1226 questions or whatever you know it, it fucks you up man you know and I

1227 don't want you to sit here and just make it seem like I'm lying to you

1228 cause its (unintelligible)making me go crazy you know what I'm saying,

1229 it's fucked up this is something serious that just happened man.

1230 BERTANG: Mm, hmm.

1231 CHESTNUT: I don't like that Joey is dead, you know.

1232 BERTANG: You need some more time to think?

1233 CHESTNUT: Naw I just, I told you everything else that I remember that happened. And

1234 I called, I got my girlfriend to call and leave some messages.

1235 BERTANG: Mm, hmm.

1236 CHESTNUT: And to tell ya'll to come talk to me.

1237 MANN: Do you have anything else?

1238 BERTANG: Is there anything else that you want to add before I cut this off?

1239 CHESTNUT: No.

1240 BERTANG: You sorry, you're not sorry, you?

1241 CHESTNUT: This is bad that all this happened man, it's bad, it's very bad you know if

1242 there's anything I could do to prevent all this from happening like I said if

1243 I'd had uh a hundred bucks in my pocket this would have never happened

1244 because we would have went on somewhere else you know and it'd never

1245 happen, it's just bad man.

1246 BERTANG: Alright it's four o' six p.m. and I'm gonna cut this tape off.

1247 **END OF TRANSCRIPTION**

CERTIFICATE OF TRANSCRIPTION

I, [NAME], [POSITION] for the Fifteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is, to the best of my ability, a true, accurate, and complete
transcript of the indicated audio recording, which I have personally transcribed and/or reviewed.

I do further certify that I am neither, of kin, counsel, nor hold any interest for any party
hereto, other than through my official capacity with the Office of the Fifteenth Circuit Solicitor.

MONTH, DAY, YEAR

NAME
POSITION

WITNESSES

S. Mann/MBPD

DOCKET NO. 2006-GS-26-2998

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

SRH 81448-2

COURT OF GENERAL SESSIONS

JULY TERM 2006

THE STATE
VS

ARREST WARRANT NO. K-000972

CDR: 0116 816-03-0010,0020

DOA: 05-25-06

LARRY TYRONE CHESTNUT M/B

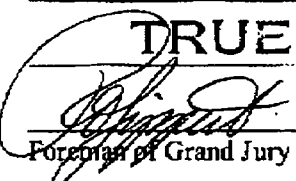
MYRTLE BEACH, SC 29577

DOB: 05/20/78

SS#:

ACTION OF GRAND JURY

TRUE BILL


Foreman of Grand Jury

JUL 27 2006

VERDICT

ATTORNEY: ORRIE WEST

INDICTMENT FOR:

MURDER

ORIGINAL

Foreman of Petit Jury Date:

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF HORRY)

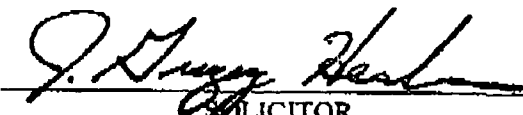
MURDER

At a Court of General Sessions, convened on July 27, 2006, the Grand Jurors of Horry County present upon their oath:

MURDER**CDR: 0116 §16-03-0010,0020**

That LARRY TYRONE CHESTNUT, did in Horry County, while acting in concert with another, on or about May 21, 2006, willfully, feloniously, and intentionally kill the victim, Joseph Hucks, with malice aforethought, either express or implied, by means of stabbing the victim several times, and the victim did die as a proximate result thereof on or about May 21, 2006 in Horry County, in violation of Section §16-3-10, S. C. 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

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

Appellate Case No. 2012-212800
Circuit Court Case No. 2006-GS-26-2998

STATE OF SOUTH CAROLINA,

RESPONDENT,

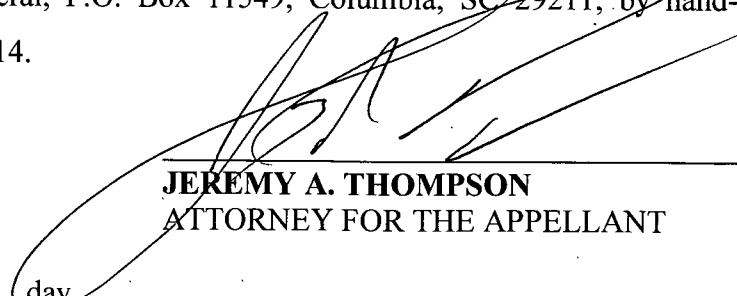
v.

LARRY CHESNUT,

APPELLANT.

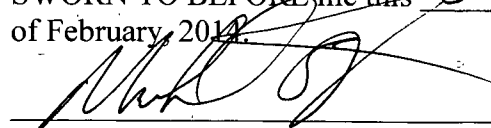
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Record on Appeal and two copies each of the Final Brief of Appellant and Final Reply Brief of Appellant in the above-entitled case have been served upon opposing counsel, Deborah R.J. Shupe, Senior Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by hand-delivery, this 3rd day of February, 2014.



JEREMY A. THOMPSON
ATTORNEY FOR THE APPELLANT

SWORN TO BEFORE me this 3rd day
of February, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: 7/10/2022

RECEIVED

FEB 03 2014

SC Court of Appeals