

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

THE STATE,

**RECEIVED**

JAN 28 2016

SC Court of Appeals  
RESPONDENT

V.

JOSHUA GRIFFITH,

APPELLANT

APPELLATE CASE NO. 2014-000066

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
STATE'S EXHIBIT 5 (photograph)**

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY ) 2009-GS-26-04833, 04834, 0835  
2013-GS-26-03198

STATE OF SOUTH CAROLINA, )  
)  
Plaintiff, ) **Transcript of Record**  
)  
vs. )  
) **January 6-10, 2014**  
)  
JOSHUA BLAKE GRIFFITH, )  
)  
Defendant. )

**B E F O R E:**

Honorable Edward B. Cottingham  
Horry County Courthouse  
Conway, South Carolina

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B. Alexander Hyman, Esquire  
Blake A. Hewitt, Esquire  
**Attorney for Defendant**

Kay H. Richardson  
**Circuit Court Reporter**

State v. Griffith  
MOTIONS

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1 at all so it should not even be asked.

2 THE COURT: Generally, prior bad acts are not admissible.

3 MS. FOX: Yes, sir.

4 THE COURT: All right. What else you got; any other  
5 motions from the State?

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

7 THE COURT: How about it, you had several motions?

8 MR. HYMAN: Judge, I would renew the motions that I had  
9 prior. Prior I had made a motion for a severance obviously in  
10 case now with Mr. Axelrod's client, Blakely Brown pleading,  
11 that has technically severed it.

12 Judge, I would still renew my motion for a change of  
13 venue. I spoke about the area code 29579, the fact that that  
14 area code did, everyone that lived in that area code received  
15 a newspaper claiming that my client was a gang member and this  
16 was a gang initiation. Since that, there have been other news  
17 articles as well that have also been in that area code 29579.

18 THE COURT: I've ruled on that three times and I'll rule  
19 one more time.

20 MR. HYMAN: I understand.

21 THE COURT: The rule requires me to inquire of the jury  
22 first as to whether or not the Defendant can receive a fair  
23 trial in Horry County.

24 MR. HYMAN: Right.

25 THE COURT: And I'm gonna do that in the next few

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MOTIONS

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1 minutes.

2 So, your motion is, is rejected at this time. If after voir  
3 diring the jury, I conclude that he cannot get a fair jury,  
4 then I'll deal with it as appropriate.

5 MR. HYMAN: Judge, one more motion and I don't know if  
6 you want to handle this prior to jury selection or after, but  
7 I would make a motion that all non-experts be sequestered.  
8 Any witnesses that, this deals with witnesses who are talking,  
9 doing recollection of what occurred that night, Judge, I think  
10 that ---

11 THE COURT: Why non-experts, why not sequester the  
12 experts, too?

13 MR. HYMAN: Judge, we could sequester them too; that -- I  
14 would be fine with that as well.

15 THE COURT: I have no problem with sequestering the  
16 witnesses.

17 MS. LIVESAY: Your Honor, the only people I need to keep  
18 in the courtroom is gonna be Ginger Pop. She's my  
19 investigator so she'll be assisting me with the trial.

20 THE COURT: Right.

21 MS. LIVESAY: I ask that Nicole Bryan be in here just to  
22 listen to the testimony. She is the gang expert, but that's  
23 up to you, Your Honor.

24 THE COURT: No, sir, I'm gonna let her stay.

25 MS. LIVESAY: Thank you, Your Honor.

State v. Griffith  
MOTIONS

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1 THE COURT: All right. Does that conclude your motions?

2 MS. LIVESAY: Your Honor, I'm sorry. I should have  
3 brought this up earlier, but I'm not sure -- I want to make  
4 sure I'm clear. Robert Penna is a victim and Ryan Palmer is a  
5 victim so I'm asking, of course, that they be able to be  
6 present for as much as the trial as they wish to be since they  
7 are victims in this case.

8 THE COURT: They can be, yes.

9 MS. LIVESAY: Thank you, Your Honor.

10 MR. HYMAN: Well, and Judge, I would say I understand  
11 that they're victims in that. They are not on trial, however,  
12 though and they are eye witnesses as to what occurred.

13 THE COURT: No, sir, I'm gonna leave the victims in the  
14 courtroom.

15 MR. HYMAN: Well, again, just for the record, I would  
16 request that be sequestered as well.

17 THE COURT: No, sir, they -- in my view, they are  
18 entitled -- as victims, they are entitled to be in the  
19 courtroom.

20 MR. HYMAN: Judge, part of my motion to sequester, I also  
21 would like if someone does testify that they be remanded to  
22 the courtroom or else out of the courthouse. Again this is  
23 talking about eye witness testimony. There have been many,  
24 many, many statements, many of which don't correlate to the  
25 others.

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MOTIONS

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1 THE COURT: What is your motion now?

2 MR. HYMAN: Judge, I'm asking that after somebody  
3 testifies, if they have an eye witness, that that eye witness  
4 not be allowed and the same thing with mine ---

5 THE COURT: I got you.

6 MR. HYMAN: --- that they not be allowed to go right back  
7 into the same room.

8 THE COURT: Well, you want them to leave -- to leave them  
9 in the courtroom?

10 MR. HYMAN: They can stay in the courtroom; that's fine.

11 THE COURT: Oh, I'm not gonna let them go back in with  
12 the ---

13 MR. HYMAN: That's what I'm asking.

14 THE COURT: Oh, no, I'm not gonna do that. They'll be  
15 told not to -- not to discuss their testimony with any other  
16 witnesses, too.

17 MR. HYMAN: Well, and Judge, that -- it's one thing to  
18 tell them, but it's quite another thing to keep them from  
19 doing it.

20 THE COURT: Well, they're not going -- there's no reason  
21 to send them back in there. That's not gonna happen.

22 MR. HYMAN: Thank you, Judge.

23 THE COURT: All right. Now you've made several motions  
24 pretrial and the record will reflect those motions that you  
25 made and my ruling on them and to the extent that you made.

1 those motions, you're protected but you want to renew them  
2 again?

3 MR. HYMAN: Judge, that was the motions, those were the  
4 motions that I wanted to renew at that time. Judge, again  
5 just for the record, renewing my previous motion about the  
6 gang expert not being admissible is relevant to this case; I  
7 would just renew that. I know you've already made a finding,  
8 but for the record, I would renew that.

9 THE COURT: Well, my finding was made on the basis of  
10 her, of her testimony and you can call it what you want to,  
11 but now based on pretrial, you're trying to allege that the  
12 victim was in some sort of gang or association and did this  
13 similar conduct on previous occasions. That's what you said.

14 MR. HYMAN: Judge, to an extent and ---

15 THE COURT: Well now, apparently now you don't want to  
16 call it a gang, you want to call it, I use association; what  
17 do you use?

18 MR. HYMAN: Judge, this was called a crew.

19 THE COURT: A what?

20 MR. HYMAN: A crew.

21 THE COURT: A crew? Well, the State may call it a gang  
22 too, but we'll see. It seems to me if you're gonna bring gang  
23 association, they may well bring in some gangs, too.

24 MR. HYMAN: Judge, I understand that.

25 THE COURT: All right. As long as we understand it,

State v. Griffith  
VOIR DIRE

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1 JUROR 119: Krystal Gabel, juror number 119. My  
2 grandfather is a retired cop with Horry County.

3 THE COURT: Is employed where?

4 JUROR 119: Horry County.

5 THE COURT: I'm gonna excuse you.

6 JUROR 96: Heather Edwards and my husband is a police  
7 officer with Horry County.

8 THE COURT: I'll excuse you.

9 Okay. Mr. Hyman, any further inquiry?

10 MR. HYMAN: No, Your Honor.

11 THE COURT: All right, sir.

12 Now, ladies and gentlemen, I'm going to have each side  
13 call the name of their perspective witnesses. The State's  
14 calling about forty or fifty; don't let that scare you.  
15 They're not gonna call forty or fifty, but they are potential  
16 witnesses and the Defense may have a similar number, but they  
17 are only potential witnesses and not necessarily witnesses.

18 MR. HYMAN: Judge, can I approach one second.

19 (REPORTER'S NOTE: A bench conference was held off the record  
20 in the presence of the jury but out of hearing of the jury.)

21 MR. SPRATLIN: Juror Number 336, Ms. Sobczyk, if you  
22 would come up for a second?

23 (REPORTER'S NOTE: The following sidebar conference takes  
24 place with counsel for Plaintiff, Defense and Juror Number  
25 336.)

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VOIR DIRE

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1 THE COURT: Your name, please.

2 JUROR 336: Karen Sobczyk.

3 THE COURT: And what is your connection with her?

4 MR. SPRATLIN: Your Honor, I believe -- Ms. Sobczyk, you  
5 were the victim of an armed robbery when you were working at  
6 the Walgreens off of -- Garden City. I was the prosecutor in  
7 that case. I don't know if you remember me but I recognize  
8 you, so that's what I just had to let the Court be aware of  
9 that.

10 JUROR 336: Yeah, I was robbed.

11 THE COURT: Does that impact on you one way or the other?

12 JUROR 336: I believe no, he pled guilty.

13 THE COURT: You had that information that ---

14 MR. HYMAN: And, Judge, she said, I believe no, he pled  
15 guilty. I would just ask that she be excused based off of her  
16 involvement in ---

17 THE COURT: No, I'm not gonna do that. You were a victim  
18 two years ago?

19 JUROR 336: Yes. It was -- I want to say two ---

20 THE COURT: My inquiry, would that impact on your ability  
21 to be fair to the State and the Defendant?

22 JUROR 336: No.

23 THE COURT: You can base your verdict on the law and  
24 evidence in this case?

25 JUROR 336: Yes.

State v. Griffith  
VOIR DIRE

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1 THE COURT: Yes, I can't disqualify her.

2 MR. SPRATLIN: Thank you.

3 THE COURT: You're qualified.

4 (REPORTER'S NOTE: End of sidebar.)

5 THE COURT: All right. Mr. Hyman, you've agreed that  
6 we'll go forward with the calling of the potential witnesses  
7 from the State?

8 MR. HYMAN: Yes, sir.

9 THE COURT: Proceed to do so.

10 Now, ladies and gentlemen, let me -- I want you to call  
11 -- to save some time, let's call them three at a time.

12 My inquiry is as they call these names, are you related  
13 by blood or connected by marriage or do you have any special  
14 relationship with them. You may have known them casually some  
15 years back, but if they're related to you or you have a  
16 special connection with them, I want you to stand. Read three  
17 at a time for me.

18 MR. SPRATLIN: Yes, sir.

19 Good afternoon, my name is Martin Spratlin with the  
20 Solicitor's Office assisting Ms. Nancy Livesay in the trial of  
21 this case. A list of potential witnesses for the State, Neil  
22 Frebowitz, Horry County Police Department; Tim Troxell, Horry  
23 County Police Department; Rusty Crocker, Horry County Police  
24 Department.

25 (REPORTER'S NOTE: No response.)

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VOIR DIRE

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1 MR. SPRATLIN: Jim Chatfield, Horry County Police  
2 Department; Robert Deal, Charleston Police Department; Randall  
3 Ghent, Horry County Police Department.

4 (REPORTER'S NOTE: No response.)

5 MR. SPRATLIN: Ryan Seipt, Horry County Police  
6 Department.

7 JUROR 37: I'm sorry, Officer Rusty Crocker and I were  
8 employees together with the City of Conway.

9 THE COURT: How long ago was that?

10 JUROR 37: I've been retired six years.

11 THE COURT: That's fine. That's for information only;  
12 that's fine, but I thank you for responding.

13 COURT REPORTER: I need your number please?

14 JUROR 37: 37.

15 MR. SPRATLIN: Ryan Seipt, Horry County Police  
16 Department; Heather Brummett, Horry County Police Department;  
17 Lori Rabon, Horry County Police Department.

18 (REPORTER'S NOTE: No response.)

19 MR. SPRATLIN: Nikke Hughes, South Carolina Law  
20 Enforcement Division; Patricia Crooks, South Carolina Law  
21 Enforcement Division; Sheree Brown, South Carolina Law  
22 Enforcement Division.

23 (REPORTER'S NOTE: No response.)

24 MR. SPRATLIN: Matthew Fits, South Carolina Law  
25 Enforcement Division; Amy Stephens, South Carolina Law

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VOIR DIRE

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1 Enforcement Division; John Caulder, Horry County Police  
2 Department.

3 (REPORTER'S NOTE: No response.)

4 MR. SPRATLIN: Ashley McNeill, Joseph Beeson, Robert  
5 Penna, Mike Luczaj, Dillon Morris, Ryan Palmer, Klevis  
6 Hornallie, Martha Carmichael, Renee Hardwick, Michael Parker.

7 MR. SPRATLIN: Ma'am, if you would stand up so the Judge  
8 can actually hear you.

9 Judge, we have one witness, who I believe knows a juror  
10 or witness, excuse me, one juror who knows a witness.

11 THE COURT: Have her come forward please. Have that  
12 juror come forward.

13 (REPORTER'S NOTE: The following sidebar conference takes  
14 place with counsel for Plaintiff, Defense and Juror Number  
15 290.)

16 THE COURT: May I have your name?

17 JUROR 290: Daphne Rabon.

18 THE COURT: What is your jury number?

19 JUROR 290: 290.

20 THE COURT: And what is your response?

21 JUROR 290: Okay. I know Renee, not very well, my sister  
22 worked with her.

23 THE COURT: No special connection?

24 JUROR 290: No, sir.

25 THE COURT: That's fine.

State v. Griffith  
VOIR DIRE

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1 JUROR 290: She hasn't worked for her for a couple of  
2 years.

3 (REPORTER'S NOTE: End of sidebar.)

4 THE COURT: Proceed.

5 MR. SPRATLIN: Thank you, Your Honor. Michael Parker,  
6 Kenneth Muth, Robert Bullock.

7 (REPORTER'S NOTE: No response.)

8 MR. SPRATLIN: Kala Houck, Marianna Mays, Seith Rogers.

9 (REPORTER'S NOTE: No response.)

10 MR. SPRATLIN: Demarrio Burdine, Blake Brown, Nicole  
11 Bryan.

12 (REPORTER'S NOTE: No response.)

13 MR. SPRATLIN: Dr. Edward Proctor, Brent Young, Carmen

14 ---

15 THE COURT: Wait a minute. Now, Dr. Proctor, any of you  
16 clients of Dr. Proctor?

17 (REPORTER'S NOTE: No response.)

18 THE COURT: Proceed.

19 MR. SPRATLIN: Brent Young, Carmen Mureddu, Alyssa  
20 Florist, Forrest, excuse me.

21 (REPORTER'S NOTE: No response.)

22 MR. SPRATLIN: Lynn Baker, Eric Smith, Pete Cestare,  
23 Horry County Police Department; Chris Tucker, Horry County  
24 Police Department.

25 (REPORTER'S NOTE: No response.)

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VOIR DIRE

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1 MR. SPRATLIN: Gary McDaniel, Shane Harris, Joshua  
2 Wilson, Ginger Cox, Horry County Solicitor's Office.

3 (REPORTER'S NOTE: No response.)

4 MR. SPRATLIN: Your Honor, that includes all potential  
5 witnesses on behalf of the State.

6 THE COURT: All right. Mr. Hyman, please proceed.  
7 Same inquiry, ladies and gentlemen.

8 MR. HYMAN: Blake Griffith, Blakely Brown, Demario  
9 Burdine.

10 (REPORTER'S NOTE: No response.)

11 THE COURT: Hold it. Slow up; go ahead now, please.

12 MR. HYMAN: Kacie Henry, Brittany Keith, Shane Cox, Chad  
13 Anderson, Joshua Moore, Bruce Blankenship, Theron Nalley,  
14 Fabian Boyzo, Marianna Mays, Kayla Houck, Angie Collingwood,  
15 Detective Tim Troxell, Horry County Police Department; Neil  
16 Frebowitz, Horry County Police Department; Detective Gonska,  
17 Horry County Police Department; Hunter Gwinn, Dillon Morris,  
18 Carmen Mureddu, Tom Covino, Klevis Horanlli, Vitaly Ninichuk,  
19 Mike Vera, Ryan Palmer, William Lovell, Joshua Cody Wilson,  
20 Seth Rogers, Tyler Bingham, Joseph Swanger, Carli Crocker,  
21 Tamara Tindal, Don Myers, Robert Walker, Brandon Brown, Mary  
22 Ann Denner, Johnny Vernon, Chris Whiteside, Shari Griffith,  
23 Robin Griffith, Michael Parker.

24 (REPORTER'S NOTE: No response.)

25 THE COURT: All right. Thank you, Mr. Hyman.

State v. Griffith  
JURY SELECTION

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1 All right. We've had an exhaustive voir dire; is there  
2 any other questions; what says the State?

3 MS. LIVESAY: No, sir, Your Honor.

4 THE COURT: Mr. Hyman, what says Mr. Hyman or Mr. Hewitt?

5 MR. HYMAN: Nothing further, Your Honor.

6 THE COURT: Mr. Hewitt?

7 MR. HEWITT: Nothing further, Your Honor, thank you.

8 THE COURT: All right. Let's have the jury strikes five  
9 and ten.

10 CLERK: Yes, sir, Your Honor.

11 JURY SELECTION:

12 THE COURT: Proceed to call.

13 CLERK: When I call your name and jury number, if you'll  
14 come to the front of the courtroom, turn around, face the back  
15 of the courtroom and bring any belongings that you have with  
16 you.

17 Juror number 273, Garry Orkin. Yes, sir, if you'd just  
18 turn around right there and face the back of the courtroom.

19 What say the State?

20 MS. LIVESAY: Please present this juror.

21 CLERK: Defense?

22 MR. HYMAN: Please seat the juror.

23 CLERK: Please be seated in the jury box.

24 240, Rachel McCray. That's good if you'll just turn  
25 around and face the back of the courtroom.

State v. Griffith  
OPENING BY LIVESAY

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1 Now we're gonna have opening statements, then testimony.  
2 At the conclusion of the case, I'll give you the instructions  
3 on the law with regard to the issues that are here and Counsel  
4 at that time will have an opportunity to give you a final  
5 summation. That will be the procedure in the trial of this  
6 case.

7 You may have your opening statement.

8 MS. LIVESAY: Thank you, Your Honor.

9 OPENING BY MS. LIVESAY:

10 Ladies and gentlemen of the jury, I am Nancy Livesay.  
11 I'm a prosecutor in Horry and Georgetown County which is our  
12 Fifteenth Judicial Circuit. I'm gonna be very brief in the  
13 opening statement. I'm just gonna tell you a little bit about  
14 what this Defendant is charged with and a little bit about  
15 what you can expect to hear from the witnesses. That way,  
16 when you're listening to this testimony, you know what to  
17 listen for to find him guilty of murder, assault and battery  
18 with intent to kill and conspiracy.

19 Murder is exactly what you think it is. It is the  
20 killing of another person with malice or premeditation.  
21 That's what murder is. Now, the Judge will come to you at the  
22 end for the jury instructions and give you all the details  
23 right out of the statute exactly what murder is, but that is a  
24 summation. It is the killing of another person with malice or  
25 premeditation.

State v. Griffith  
OPENING BY LIVESAY

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1           Now assault and battery with intent to kill, the  
2 Defendant is charged with two counts of assault and battery  
3 with intent to kill. That is an assault and battery which  
4 creates great bodily injury with the intent to either kill  
5 somebody or injure them. That's what assault and battery with  
6 intent to kill is.

7           Now the fourth indictment is for conspiracy. That is  
8 exactly what you would think it is as well. It's when one or  
9 more people get together, or persons get together, with a plan  
10 to commit a criminal act. That's what conspiracy is.

11           Now in this case, there's three victims. There's one  
12 David John Houghtaling, which is the deceased victim. There's  
13 also two other victims. The two other victims are the victims  
14 of assault and battery with intent to kill. That's Robert  
15 Penna and Ryan Palmer.

16           Now, what you're gonna hear is this happened in a  
17 nightclub in September of 2009. That's where it took place  
18 about 2:00 or 3 o'clock in the morning. You're gonna hear  
19 that the Defendant, which is Blake Griffith and another  
20 Defendant, Blake Brown, came down to the beach with two of  
21 their friends. Now Blake Brown will not be present today.  
22 Today is Blake Griffith's trial. So don't let that concern  
23 you. The two of them came down together with their friends,  
24 hung out in Myrtle Beach down here for two or three days.  
25 What you're gonna find out is the night of this murder, before

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OPENING BY LIVESAY

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1 they even got to that nightclub, the two of them came down  
2 here together. That Monday night they went into the Red Hot  
3 Shoppe and bought a knife. They went straight from buying  
4 that knife to the Afterdeck, which is where this all took  
5 place. You're also gonna hear that the three victims, D.J.,  
6 Robert and Ryan, were unarmed. Neither one of them had any  
7 kind of weapon. You're gonna hear that those two Defendants,  
8 Blake Griffith and Blake Brown walked into that Afterdeck with  
9 weapons and you're gonna hear from witnesses that they were  
10 looking for a fight, they were looking for trouble that night.  
11 And what you're gonna hear is they finally got it. They  
12 finally walked up to Ryan Palmer and his friends. I'm not  
13 gonna tell you a lot about the altercation because I want you  
14 to hear it from the people that were there. They were there;  
15 I was not there. So, I want you to hear the details of that  
16 altercation from them. But what I can tell you is that it  
17 ended with Robert Palmer, I'm sorry, Ryan Palmer being cut  
18 across the scalp and across two fingers. You're gonna hear  
19 that Robert Penna was stabbed in the back. You're gonna hear  
20 that D.J. was stabbed right through the chest. I'm not gonna  
21 give you the details of that altercation, but I'm gonna tell  
22 you that's what came out of it. One boy is deceased from the  
23 stab wound through the heart and these two boys, one stabbed  
24 in the back and other one across the head and fingers. You're  
25 also gonna hear that's how they were after this altercation

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1 took place. They were out in the parking lot for EMS to get  
2 there, for some sort of medical assistance. You're gonna hear  
3 as well that then Blake Griffith, after this took place, and  
4 they're out there waiting for medical assistance on the  
5 ground, took off running from the Afterdeck. Now there's some  
6 details there, he had some conversations with the two girls he  
7 came down with, but he ran. That, that's ultimately how that  
8 ended. These boys were out in the parking lot bleeding and  
9 Blake Griffith takes off running. You're gonna hear that he  
10 was found earlier that morning, like I told you, this happened  
11 about 2:00, 3 o'clock in the morning and you're gonna hear  
12 they found him hiding in the woods around 6:30 or 7 o'clock.  
13 You're also gonna hear from the people that found him and  
14 you're gonna hear that this boy didn't have an injury on him;  
15 not a stab wound, not a cut, not a bloody nose, not a black  
16 eye, not a busted lip.

17 Now I'm gonna ask you to listen to all of this  
18 information from the witnesses. You're gonna hear from these  
19 two boys along with the other witnesses and then I'll come  
20 back to you in closing and talk to you more in detail about  
21 murder, about ABWIK, about conspiracy, but that's a summation  
22 of what, what you need to be looking for in the testimony,  
23 what to expect, so when you hear these things it won't be a  
24 surprise and you can pay attention to the details. So I ask  
25 your full attention for my case as well as for Mr. Hyman and

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1 like I said, I'll come to you again in closing. I appreciate  
2 your time.

3 THE COURT: Mr. Hyman?

4 MR. HYMAN: May it please the Court?

5 OPENING BY MR. HYMAN:

6 MR. HYMAN: Good afternoon now, I guess it's not morning.  
7 I introduced myself to you earlier; I'm gonna do that again.  
8 My name is Alex Hyman. I'm from Conway, lived here my whole  
9 life. I'm proud, proud member of this community. I'm proud  
10 to be from Horry County. Like I said, I've always been here.  
11 If any of y'all that have grown up around Horry County and  
12 you've been here for a long time or if you've been here ten or  
13 fifteen years, you notice a lot of things have changed around  
14 the county whether it be new roads, whether it be new venues,  
15 whether it be new people. All of these things change and I  
16 remember when I was a kid, my dad was one that he had a ton of  
17 sayings when I was growing up. He'd always bring out these  
18 sayings to me. I remember when I was, you know, fifteen/  
19 sixteen years old, he would always say, you know, don't go  
20 over to that beach. That didn't mean he had anything against  
21 Myrtle Beach, just always said that meaning there might be  
22 some trouble at that beach. He also used to say stuff like  
23 nothing good happens after midnight. I don't know if any of  
24 y'all's parents ever said that to y'all or y'all may have said  
25 it to your children, but you know, at the time, I didn't

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1 realize what that meant. I had no clue what my dad meant. It  
2 took me growing up, having children of my own to kind of  
3 realize that maybe he was right, maybe those comments and  
4 sayings that he had weren't too far off. And you know when  
5 you're young, you think you're invincible, you think you got  
6 the world by the tail, you think you're in complete control  
7 and nothing can affect you; nothing can harm you; you're in  
8 complete control. And as you well know, that's just not the  
9 case. When I took this case, I realized before I ever took it  
10 that this involved the death of a young man, injuries to two  
11 other young men, witness statements from other young women,  
12 young men and women. And I say this because I really want you  
13 to understand this, in dealing with my client and dealing with  
14 his family, we have all grieved for the loss of David John  
15 Houghtaling. It was absolutely a senseless death and it  
16 should've been, could've been avoided.

17 I do want you to know a little bit about my client. His  
18 name is Joshua Blake Griffith. Josh is, he actually goes by  
19 Blake, but Blake, he's twenty-three years old now. At the  
20 time this occurred, he had just turned eighteen. He was a  
21 senior in high school up in Greenville, actually Homecoming  
22 King, played sports, had athletic scholarships, actually he  
23 had a baseball scholarship to go to college. I tell you all  
24 this because I want you to understand when this occurred,  
25 Blake was not the same guy that you see here right now. At

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1 that time I call Blake, I told him he was boy; he wasn't a  
2 young man at that time. When I say boy, if you saw the  
3 pictures of him and you will, you'll see what I'm talking  
4 about. Back when this occurred he was five foot seven, a  
5 hundred and forty-five pounds. Now since this, he's put on  
6 about fifty pounds of muscle and I put about fifty pounds on  
7 after high school too, but it wasn't muscle unfortunately.  
8 You know I say that just because you're gonna see pictures and  
9 you're gonna see him sitting over there a lot more than you're  
10 gonna see those pictures and I want you to remember the  
11 pictures because he was a boy when this occurred; he wasn't a  
12 young man like he is now.

13 You know, unfortunately when I started looking into this  
14 case, started talking to witnesses, started to talking to my  
15 client, started looking at the evidence, started really trying  
16 to investigate on this, it reminded me of another saying my  
17 daddy used to have. He used to tell me this and I believe my  
18 granddaddy must have told him too because it got passed down  
19 and I can tell you I'll pass it down to my children as well.  
20 He used to say, son, if you go looking for trouble, I can  
21 guarantee you, you're gonna find it and that's what we've got  
22 here. What we have here is a group of guys, hanging out,  
23 admittedly boozing, under the influence of drugs at a local  
24 hangout in a place that admittedly served alcohol to underage  
25 people. You've got them hanging out there and you've got them

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1 getting in a bar fight with a couple tourists, because that's  
2 what these two boys were, Blake Brown, Blake Griffith both  
3 tourists, here on vacation with two young ladies.

4 Now what they want you to realize and they want you to  
5 believe is this was something way more than that. They want  
6 you to believe that my client along with his co-defendant and  
7 two young ladies drove 250 miles from Greenville to Myrtle  
8 Beach, spend three nights, decided to go to the Hot Shoppe,  
9 get a pocket knife, then go to the Afterdeck and say, you know  
10 what, we're gonna kill somebody. We're gonna kill somebody we  
11 don't know, someone we've never met at a place we've never  
12 been to in front of what's estimated at 300 witnesses. That's  
13 what they want you to believe. They want you to believe they  
14 went there for the sole purposes of doing that and that's just  
15 not the case. It's absolutely not the case. What we have  
16 here is a bar fight. It's not a murder, it's not  
17 manslaughter, it's not assault and battery with intent to  
18 kill, it's not criminal conspiracy; it's a bar fight that went  
19 wrong. And I'll tell you this, the bar fight went wrong, but  
20 it could've been ended up in a completely different way. Had  
21 my client or his co-defendant not acted in the way that they  
22 did, some of these alleged victims could possibly be on trial  
23 right now for murder. It very easily could've gone the other  
24 way; very easily could have gone the other way.

25 Now, what I want you to understand is I told you what

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1 they want you to know; what they want you to believe, but  
2 there's also some things that you need to hear that they don't  
3 want you to know. There are quite a few things that they  
4 don't want you to know. They don't want you to know that when  
5 this took place, it took the police thirty minutes to get  
6 there. They don't want you to know that. They don't want you  
7 to know that it took EMS forty minutes to respond. They don't  
8 want you to know that the Afterdeck and their staff  
9 contaminated a vast majority of the evidence in this. They  
10 don't want you to know that the evidence custodian, the person  
11 who collected all of this evidence, has been fired for  
12 misconduct. They don't want you to know that. They don't  
13 want you to know that one of the first responders has also  
14 been fired and they certainly don't want you to know that  
15 maybe, maybe my client and his co-defendant didn't start this  
16 fight. But I'll tell you this, you're gonna know all these  
17 things and you're gonna know through the witness stand.  
18 You're gonna hear people testify, you're gonna hear their own  
19 witnesses testify that my client and his co-defendant did not  
20 throw the first punch. You're gonna hear countless witnesses  
21 say that it was the victims who threw the first punch, the  
22 victims.

23 Now I am certainly sympathetic for the Houghtaling  
24 family's loss. I certainly am. Losing a family member, a  
25 loved one, a friend -- it's terrible. We've all dealt with

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1 it. You know one of the first things that we always try to  
2 ask ourselves is why. We look for somebody to blame; we look  
3 for something to blame whether it's gun control or whether  
4 it's this; we always look for a reason of why this happened.  
5 Now, I always try to say, we look for reason in an  
6 unreasonable situation and that's what we've got here. We got  
7 a bar fight and nothing, nothing more than that. This was a  
8 bar fight that got way out of hand.

9 Now I'm not gonna tell you a whole lot more. I'm gonna  
10 kind of do like Ms. Livesay did and let you actually listen to  
11 what people on the stand are gonna say, but I will leave you  
12 with this. Again, if you're looking for trouble, I can  
13 guarantee you're gonna find it. That's what we have here.  
14 Now they want to say that our people were looking for trouble.  
15 You're gonna hear testimony that my client was having the  
16 absolute night of his life, most fun he said he'd ever had.  
17 You're gonna hear him say that. You're gonna hear other  
18 people say that.

19 I thank you for your service. I thank you for your  
20 patience. I know that there are so many other places you'd  
21 rather be right now than sitting right where you're at, but I  
22 do thank you for your willingness to serve and my client does  
23 as well.

24 THE COURT: Thank you, Mr. Hyman. Thank you, Solicitor.  
25 Call your first witness please.

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1 MS. LIVESAY: Thank you, Your Honor. At this time the  
2 start, the State calls Marianna Mays to the stand.

3 CLERK: Ma'am, please raise right hand, place your left  
4 hand on the Bible.

5 MARIANNA MAYS, HAVING BEEN SWORN  
6 TESTIFIES AS FOLLOWS:

7 CLERK: Just get up and speak into the microphone. State  
8 your full name and spell your last name?

9 MS. MAYS: It's Marianna Elizabeth Mays, M-A-Y-S.

10 DIRECT EXAMINATION OF MARIANNA MAYS BY MS. LIVESAY:

11 Q: Marianna, tell the jury how old are you?

12 A: Twenty-four.

13 Q: And where do you currently live?

14 A: Greenville, South Carolina.

15 Q: And how long have you lived in that area?

16 A: Twenty-four years.

17 Q: And where are you currently working?

18 A: Bath and Body Works and Advanced Storage Systems.

19 Q: And how did you -- did you come down to Horry County on  
20 vacation?

21 A: Yes, ma'am.

22 Q: Okay. More than once?

23 A: Yes, ma'am.

24 Q: Okay. And about how long have you been coming here for  
25 vacation?

- 1 A: All my life. We have a beach house down here in Myrtle  
2 Beach.
- 3 Q: Okay. Now do you know the Defendant, Blake Griffith?
- 4 A: Yes, ma'am.
- 5 Q: And tell the Jury how you know him?
- 6 A: I met him like at school and people we hang out with.
- 7 Q: For about how long have you known him?
- 8 A: Between eight and ten years now.
- 9 Q: So did he, he went to high school with you?
- 10 A: Yes, ma'am.
- 11 Q: Okay. And that was in Greenville?
- 12 A: Yes, in Traveler's Rest High School.
- 13 Q: Traveler's Rest?
- 14 A: Uh-huh (affirmative response).
- 15 Q: Okay. Now had you ever had an occasion to come to Myrtle  
16 Beach with Blake Griffith?
- 17 A: Yeah.
- 18 Q: Okay. And was that on or around September 8th of 2009?
- 19 A: Yes, ma'am.
- 20 Q: Okay. Who else came down with you that weekend?
- 21 A: Kayla Houck and Blake Brown.
- 22 Q: Okay. And I'm sorry, name everybody including yourself?
- 23 A: Myself and Blake Griffith.
- 24 Q: Okay. Now, how did that come about?
- 25 A: Kayla and I planned a beach trip and they got brought in

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1 it two or three days beforehand.

2 Q: Okay. And whose car did y'all take?

3 A: My mother's Jeep.

4 Q: And how old were you at that time?

5 A: Nineteen.

6 Q: Okay. And about how old was everybody else in the car?

7 A: Kayla was twenty-one; Blake was eighteen, Blake Griffith  
8 was eighteen and Blake Brown was older, like twenty-two,  
9 twenty-three.

10 Q: Okay. And do you remember what night y'all came down here  
11 on?

12 A: Saturday.

13 Q: Okay. And about how many nights did y'all stay?

14 A: Until Monday night.

15 Q: Okay. And was that kind of the plan originally?

16 A: No, we were supposed to leave Monday, but Kayla switched  
17 hours with somebody so we could stay an extra day.

18 Q: Okay. Now, let me ask you this, would assist your  
19 testimony to do a timeline to keep those days straight?

20 A: That's fine.

21 MS. LIVESAY: Your Honor, at this time, I'd gonna get  
22 that pad and do a timeline with this witness?

23 THE COURT: You may do so.

24 MS. LIVESAY: Can I ask her to step down, Your Honor?

25 THE COURT: You may.

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1 MS. LIVESAY: Thank you, sir.

2 THE COURT: Counsel, you're welcome to join them so that  
3 you can see what's going on.

4 MR. HYMAN: Thank you, Judge.

5 COURT REPORTER: Ms. Livesay, can you stand on the other  
6 side; I need to see your face, okay?

7 MR. HYMAN: Judge, can I stand over there?

8 THE COURT: Sure.

9 COURT REPORTER: Yes, in front of that microphone would  
10 be great please. I need to see her.

11 THE COURT: Stand where you're comfortable so that you  
12 can see the procedures.

13 BY MS. LIVESAY:

14 Q: Now you were here Saturday night through Tuesday morning  
15 approximately, Monday night, Tuesday morning?

16 A: Yes, ma'am.

17 Q: Okay. So y'all just go here ---

18 A: Late Saturday night.

19 Q: About, about Saturday night you said?

20 A: Uh-huh (affirmative response).

21 Q: Did y'all really do anything Saturday night?

22 A: No, ma'am.

23 Q: Okay. Now you woke up, now where were y'all staying so  
24 the Jury will know?

25 A: At my parents' beach house.

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- 1 Q: And so you wake up where, the beach house Sunday?
- 2 A: That's where we stayed the whole time.
- 3 Q: Okay. And when you say we, who is we; tell the Jury who
- 4 we is?
- 5 A: Blake Griffith, Kayla Houck, myself and Blake Brown.
- 6 Q: Okay. Y'all all stayed in your parents' beach house?
- 7 A: Yes.
- 8 Q: Okay. Now, were you dating either one of these boys?
- 9 A: No.
- 10 Q: Just friends with them?
- 11 A: Yes.
- 12 Q: Okay. So all four of y'all, where did you sleep at the
- 13 beach house?
- 14 A: Kayla and I slept downstairs in the master bedroom and
- 15 Blake and Blake slept upstairs in two different separate
- 16 bedrooms.
- 17 Q: Okay. So y'all get up Sunday and what do you do during
- 18 the day?
- 19 A: Just hang around. We really didn't do anything big on
- 20 Sunday. I mean, Kayla and I separated from Blake and Blake
- 21 and we went to Miyabi's that night to eat.
- 22 Q: If you don't mind, if it's confusing, just refer to this
- 23 Defendant as Griffith, Blake Griffith. So Sunday night y'all
- 24 went out to eat?
- 25 A: Kayla and I.

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- 1 Q: Okay. And where did y'all go, do you remember?
- 2 A: Miyabi's.
- 3 Q: Okay. Now did y'all go eat to with the boys Sunday night?
- 4 A: It was just us, Kayla and I.
- 5 Q: Okay. Where were they at at that time?
- 6 A: I honestly don't know. We were kind of doing their own
- 7 thing; they were kind of doing their own thing. I mean we
- 8 were all friends, but ---
- 9 Q: Now, did they have a vehicle down here?
- 10 A: Yes, they had Blake Brown's mother's car.
- 11 Q: So they had transportation?
- 12 A: Beside me, yes, ma'am.
- 13 Q: Okay. So y'all were in your car, which was what kind of
- 14 car?
- 15 A: We were in a Jeep Cherokee. Kayla and I had that car.
- 16 Q: Okay. And they had a separate car they were riding around
- 17 in?
- 18 A: Yes, Blake Brown's mother's car.
- 19 Q: Okay. Now Sunday y'all go out to eat. What did you after
- 20 that?
- 21 A: Kayla and I come back to the beach house and they come
- 22 back later on.
- 23 Q: Okay. So when you come back to the beach house, what are
- 24 you doing just ---
- 25 A: We were just hanging -- me and Kayla were just hanging out

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1 and then we went to sleep.

2 Q: And then Blake Griffith and Blake Brown get home.

3 A: Came back in Blake Brown's mother's car.

4 Q: Okay. Later on that night?

5 A: Yes, ma'am.

6 Q: Okay. Now, so most of Sunday at least from dinnertime on

7 ---

8 A: It was just Kayla and I.

9 Q: Okay. Now, how about during the day, do you remember or  
10 no?

11 A: Not much, no, ma'am.

12 Q: I know it's been a while. Okay. So, everybody stayed  
13 Sunday night in that beach house?

14 A: Yes, all four of us.

15 Q: Okay. So you stayed Sunday night?

16 A: Uh-huh (affirmative response).

17 Q: And then Monday?

18 A: Monday morning, Kayla and I woke up and our money was  
19 missing. So Kayla told them that they had to leave. So Blake  
20 and Blake packed their stuff and they went to stay at Blake  
21 Brown's mother's house. Later that afternoon we got back up  
22 with Blake and Blake, and Blake Griffith was calling Kayla,  
23 just -- everything and everything was fine. We go to Broadway  
24 at the Beach, we go to K & W and then we go back to Broadway  
25 at the Beach. That's when Kayla and I and Blake and Blake

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1 Griffith separated.

2 Q: Okay. Hold on; let's get all that straight. That's why I  
3 got this timeline here. So, Monday morning what happened;  
4 y'all were all at the beach house?

5 A: Yes. Kayla and I got -- I realized that our money was  
6 missing and we kind of got into an altercation. I don't know  
7 who took it. I figured Blake Brown took it. So, Kayla was  
8 like, well, y'all just need to get out if y'all aren't gonna  
9 give us the money. So, Blake and Blake packed their stuff up  
10 and they took Blake Brown's mother's car and they left. I'm  
11 assuming they went to Blake Brown's mother's house because  
12 that's where we went and picked them up that night to go out.

13 Q: Okay. Let's clear that up. Blake Brown's mother lives  
14 where?

15 A: In Myrtle Beach.

16 Q: Okay. And Blake Griffith's family lived where?

17 A: Greenville County.

18 Q: Okay. Now, you say Monday morning somebody has taken  
19 y'all's money?

20 A: Money, yes.

21 Q: Now, you say you assumed Blake Brown took it. Did you ask  
22 both Blake Griffith and Blake Brown ---

23 A: Yes, and Blake Brown.

24 Q: --- to leave?

25 A: Yes. Kayla did as well.

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1 Q: Okay. And ---

2 A: Or Kayla and then myself.

3 Q: Okay. And at that time, did they leave to go?

4 A: Yes, in the Buick, Blake Brown's mother's car.

5 Q: Okay. And was that before lunch?

6 A: Yes.

7 Q: Okay. And then what time do you get back up with Blake  
8 Griffith?

9 A: Later that afternoon, and Blake Brown.

10 Q: And Blake Brown. Would you say 3:00 or 4 o'clock?

11 A: 3:00 or 4:00, 5 o'clock.

12 Q: Okay. And what did you do at that time?

13 A: We go to Broadway at the Beach, just walking around,  
14 trying to have a good time then we go eat to K & W, all four  
15 of us. Then we come back to Broadway at the Beach. That's  
16 when Kayla and I separated from Blake and Blake Griffith and  
17 we went to my parents' beach house, Kayla and I, to get ready  
18 and they were at Blake's mother's house getting ready because  
19 their stuff was there because they took all their stuff with  
20 them prior that day.

21 Q: Okay. So, after y'all get together just long enough to go  
22 to Broadway at the Beach and to eat?

23 A: And to eat.

24 Q: Then y'all separate again?

25 A: Yes.

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1 Q: Okay. Now, you go back to the beach house?

2 A: Kayla and I, yes.

3 Q: For what reason?

4 A: To get ready.

5 Q: Okay. And that's why they're going back to Blake Brown's  
6 mother's house?

7 A: Yes, because their stuff was there.

8 Q: Okay. To get ready to go out again that night?

9 A: Yes, all four of us.

10 Q: Now, all day long, you ladies, hang out with Blake  
11 Griffith and Blake Brown; it looks like between Sunday and  
12 Monday when you go back to get ready ---

13 A: Uh-huh (affirmative response).

14 Q: --- for a short period of time and y'all go to Broadway at  
15 the Beach, would you say that was about right?

16 A: Yes, ma'am.

17 Q: Okay. Because here y'all go separate ways Sunday night?

18 A: Right.

19 Q: Wake up Monday morning, there's the altercation and you  
20 split ways again?

21 A: Uh-huh (affirmative response).

22 Q: Okay. So, basically for the whole trip, y'all have got a  
23 small amount of time, that afternoon Broadway at the Beach and  
24 eat dinner. Okay. So what time do y'all get back together  
25 again Monday night?

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1 A: I would say like 9:00 P.M.

2 Q: About 9 o'clock?

3 A: (Indicates affirmatively.)

4 Q: Okay. And how do y'all get back together?

5 A: Kayla and I go pick them up from Blake Brown's mother's  
6 house.

7 Q: Okay. So y'all pick up Griffith and ---

8 A: And Brown.

9 Q: --- and Brown?

10 A: Yes, ma'am.

11 Q: And you said about 9 o'clock?

12 A: Yes, ma'am.

13 Q: Okay. Tell the Jury, what is the plan that night; what  
14 are y'all going to do?

15 A: Well, we went to back to Broadway, but all the bars, you  
16 had to be twenty-one and Blake Griffith and I weren't twenty-  
17 one so we left. We rode around for a little bit and rode the  
18 strip. Then we got out and went to this Red Hot Shoppe,  
19 shopped around in there; that's where ---

20 Q: What time was that?

21 A: Like 11:00 maybe.

22 Q: Okay. Around 11:00 you go to the Red Hot Shoppe?

23 A: Yes.

24 Q: Okay. And between 9:00 and 11:00 y'all were just kinda  
25 riding around?

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1 A: Riding around, went to Broadway at the Beach, we left  
2 there.

3 Q: Okay. What do y'all do once you get to the Red Hot  
4 Shoppe?

5 A: All four of us were just looking around. Kayla and I were  
6 walking around. Blake Griffith and Blake Brown were just  
7 walking around. And then Blake Griffith purchases a knife and  
8 then we left and our intentions were really to go back to the  
9 beach house because we had to leave early that morning so  
10 Kayla ---

11 Q: I'm sorry, before you get too far. Blake Griffith  
12 purchased a knife in the Red Hot Shoppe?

13 A: (Indicates affirmatively.)

14 Q: Had you seen a knife on him prior to the Red Hot Shoppe  
15 that weekend?

16 A: (Indicates affirmatively.)

17 Q: You've got to say ---

18 A: Yes.

19 Q: Okay. So, you had seen a knife on him prior to the Red  
20 Hot Shoppe?

21 A: Both of them had knives. It wasn't just Blake Griffith.

22 Q: Okay. But you saw a knife on Blake Griffith?

23 A: Yes, but it wasn't -- he wasn't flashing it or nothing  
24 like that. He just had it like clipped on him like.

25 Q: And then he bought a knife at the Red Hot Shoppe?

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1 A: Yes.

2 Q: Okay. And then what happened when y'all leave there?

3 A: We leave there. Our intentions were to go back home  
4 because we had, I had to clean the beach house back up and we  
5 were leaving early that morning. When we passed the Afterdeck  
6 and they were like let's go, let's go, it's packed; it's our  
7 last night. So, I made a U-turn and we went back to the  
8 Afterdeck, all four of us.

9 Q: What time was that you think?

10 A: Probably midnight, 11:30.

11 Q: Okay. So, you get to the Afterdeck around midnight?

12 A: Yes, ma'am.

13 Q: Okay. And who all goes into the Afterdeck?

14 A: Kayla, Blake Brown, Blake Griffith and myself.

15 Q: Okay. Now, when you go into the Afterdeck, is there  
16 somebody standing at the front?

17 A: Yes, and nobody -- I remember Blake Brown getting patted  
18 down, but we got let into a side door because we didn't have  
19 any money to pay for the cover fee to get in. They checked my  
20 ID and they checked Kayla Houck's ID, but I don't remember  
21 them checking Blake Griffith's and Blake Brown's ID, but we  
22 all got in but Kayla and myself walked in prior, before Blake  
23 Griffith and Blake Brown walked in.

24 Q: Okay. If you don't mind, have a seat and I'm gonna take  
25 some more testimony. So y'all get to the Afterdeck about 12

1 o'clock?

2 A: Yes, ma'am.

3 Q: Okay. Now let me back up just a little bit. When y'all  
4 came to the beach, did you know anybody down here?

5 A: No.

6 Q: Did you have any friends down here?

7 A: No.

8 Q: Did Kayla have any friends that she met up with down here?

9 A: No.

10 Q: Okay. To your knowledge, did Blake Griffith have any  
11 friends he met up with down here?

12 A: No. The only person that we knew from down here that  
13 lived down here was Blake Brown.

14 Q: Okay. Now, when y'all went into the Afterdeck ---

15 A: Yes.

16 Q: Okay. Did you see anybody you recognized?

17 A: No, ma'am.

18 Q: Did Kayla see anybody she recognized?

19 A: No, ma'am.

20 Q: Okay. To your knowledge, did Blake Griffith see anybody  
21 he recognized?

22 A: No, ma'am.

23 Q: Okay. So, none of y'all knew anybody in that Afterdeck?

24 A: No, ma'am.

25 Q: Had you ever been there before?

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1 A: No, ma'am.

2 Q: Okay. To your knowledge, had Kayla or Blake Griffith been  
3 there before?

4 A: To my knowledge, no, ma'am.

5 Q: Okay. Now tell the Jury once you get in there, what do  
6 you do?

7 A: We get in there. Kayla and I pretty much are on our own.  
8 Blake Griffith and Blake Brown are pretty much on their own.  
9 Kayla and I are dancing. We see them a couple of times. We  
10 dance a couple of times with them. I mean, everybody was  
11 having a fun time. Like, I didn't see Blake Brown or Blake  
12 Griffith get mad; I didn't see them frustrated with each  
13 other. I didn't see any altercations whatsoever like all four  
14 of us really were just having a good time. We weren't always  
15 together, but when we did get together a couple of times, we  
16 were all just having fun. Kayla and I were ready to go and we  
17 couldn't find them.

18 Q: I'm sorry. Before let me back up. When you saw -- about  
19 how much time did you spend with Blake Brown and Blake  
20 Griffith?

21 A: Less than fifty percent of the time in there.

22 Q: While you were in the Afterdeck?

23 A: Yes.

24 Q: Okay. And about how long were y'all in the Afterdeck?

25 A: I would say an hour and a half, two hours.

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1 Q: Okay. Did, do you have any idea what they were doing when  
2 they weren't with you in the Afterdeck?

3 A: No, ma'am.

4 Q: Okay.

5 A: We really weren't watching to see what they were doing.

6 Q: Okay. When you saw them, were they looking like they knew  
7 somebody there?

8 A: No, ma'am.

9 Q: Okay. So, when you saw them, they were together?

10 A: Uh-huh (affirmative response).

11 Q: Okay. At any point, did you see that they had separated?

12 A: No, ma'am.

13 Q: Okay. Now, when you say I think Monday night, I'm sorry,  
14 Sunday night y'all were going out to eat?

15 A: Yes.

16 Q: Okay. And you say Blake Brown and Blake Griffith were  
17 together; did they leave together that night?

18 A: Yes.

19 Q: In Blake Brown's mom's car?

20 A: Yes.

21 Q: Okay. And they came back together?

22 A: Yes.

23 Q: Okay. And when they left Monday, they left ---

24 A: They left together.

25 Q: Okay.

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- 1 A: They were always together.
- 2 Q: That whole weekend?
- 3 A: Yes.
- 4 Q: Okay. When you saw them in the club, were they together?
- 5 A: Yes.
- 6 Q: Okay. Now, do you remember what they were wearing at the  
7 Red Hot Shoppe?
- 8 A: Blake had on -- Blake Griffith had on yellow shorts and a  
9 gray Abercrombie & Fitch shirt and Blake Brown had on these  
10 plaid blue shorts and a tall white T-shirt.
- 11 Q: Now, when you saw them in the club, what did they have on?
- 12 A: At first Blake Griffith still had on his gray shirt, but  
13 by the end of the club, I seen him just in a wife-beater and  
14 his shorts and Blake Brown was in just a wife-beater and his  
15 shorts.
- 16 Q: And when you say a wife-beater, I know what you mean ---
- 17 A: It's a white wife-beater.
- 18 Q: White and like a tank top?
- 19 A: Yes.
- 20 Q: Okay. So, a white wife-beater, which is a white tank top  
21 and shorts?
- 22 A: Uh-huh (affirmative response). Yes, ma'am.
- 23 Q: And that's what both of them had on?
- 24 A: Both of them had on.
- 25 Q: At the club?

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- 1 A: Yes.
- 2 Q: Okay. Now earlier they had had shirts on?
- 3 A: Yes, ma'am.
- 4 Q: Okay. Now, before we get too far along on you leaving the  
5 Afterdeck, are you aware that there was surveillance in the  
6 Red Hot Shoppe?
- 7 A: No.
- 8 Q: Okay. Have you seen a surveillance tape since then?
- 9 A: Yes.
- 10 Q: Okay. Were you on that surveillance tape?
- 11 A: Yes.
- 12 Q: Who else was on that tape?
- 13 A: Kayla Houck, Blake Griffith and Blake Brown.
- 14 Q: Okay. Just wanted to be clear. So, all four of y'all  
15 showed up in the Red Hot Shoppe?
- 16 A: In the Red Hot Shoppe, yes.
- 17 Q: Okay. And that video, to your knowledge, is accurate and  
18 has never been altered and that's what happened that day?
- 19 A: No, that was accurate.
- 20 Q: Okay. Now y'all leave the Red Hot Shoppe and you've seen  
21 that tape ---
- 22 A: Yes.
- 23 Q: --- and y'all are on it ---
- 24 A: Yes.
- 25 Q: --- and you were wearing what you wore that night?

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1 A: Uh-huh (affirmative response).

2 Q: They're wearing what you just told me they were wearing --

3 -

4 A: Uh-huh (affirmative response).

5 Q: --- which is the T-shirt, the shorts?

6 A: The shorts, yes.

7 Q: Okay. You say then they get to the club, you see them  
8 again, not when you first get there?

9 A: Right.

10 Q: They're still wearing T-shirts?

11 A: Yes.

12 Q: Okay. And later on in the night, would you say, is when  
13 you see them again and they're in a white wife-beater, both of  
14 them?

15 A: White wife-beater, both of them.

16 Q: Okay. Did you see them take their shirts off?

17 A: No, ma'am.

18 Q: Okay. Now, what happens? You're in the nightclub you say  
19 -- I'm sorry, I'm gonna bring you back to speed -- you were  
20 saying y'all were ready to leave?

21 A: We were ready to leave.

22 Q: Okay.

23 A: We couldn't find them. We looked for probably five or ten  
24 minutes trying to find them. So, we just walk out because we  
25 don't know where they are. We walked everywhere looking for

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1 them. I was calling Blake Griffith's phone trying to find  
2 them and he finally answered and he was like we're coming;  
3 we'll be out there in a minute. So Kayla and I ---

4 Q: Before, I'm sorry. I don't want to interrupt you, but how  
5 long were y'all out there in the car before ---

6 A: Before ---

7 Q: --- before that conversation?

8 A: Five minutes, ten minutes.

9 Q: And you could not find them and you looked for them?

10 A: No, ma'am.

11 Q: Okay. Now if you don't mind, I'm gonna show you some  
12 pictures of the Afterdeck, but was that a big nightclub?

13 A: I mean, it wasn't small, but it wasn't like huge and it  
14 really wasn't like packed out. So ---

15 Q: Okay.

16 A: --- we didn't go in the bathroom, so I don't know if they  
17 were in the bathroom or not, but we could not find them.

18 Q: About how long did you look for them?

19 A: About ten minutes.

20 Q: Okay.

21 A: We walked everywhere.

22 Q: Okay. So everywhere but like the men's bathroom?

23 A: Right.

24 Q: Okay. And so for ten minutes in this nightclub you're  
25 looking for them?

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1 A: (Indicates affirmatively.)

2 Q: Okay. Now, is there any way to view the entire downstairs  
3 in the nightclub?

4 A: Yes, Kayla and I -- this man actually asked us to walk  
5 upstairs where you could like, I don't know, it was a  
6 different type of bar area up there and we were even looking  
7 down to see like maybe if we'd see them walking and we didn't  
8 see them still.

9 Q: Okay. So, you're ---

10 A: And that's when we left, was when we walked back  
11 downstairs and we walked out the door, Kayla and I.

12 Q: So, you looked everywhere for about ten minutes ---

13 A: Uh-huh (affirmative response).

14 Q: --- and you don't see them?

15 A: Yes.

16 Q: Okay. And now before this, is that when you see them in  
17 their wife-beaters?

18 A: Yes.

19 Q: Okay. So, you look for them for about ten minutes and say  
20 well we're just gonna go out there, outside?

21 A: Yeah, because we were ready to leave.

22 Q: Okay. Then you wait for how long before you call him?

23 A: We were calling them as we were walking to the car, but we  
24 didn't really get them on the phone until after we got in the  
25 car.

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1 Q: Okay.

2 A: And Blake just said okay, we're coming, we're coming. So,  
3 Kayla and I moved the Jeep from where we were parked near  
4 Eagles and moved it towards the front door.

5 Q: Okay.

6 A: And we were waiting for about five more minutes and we  
7 were calling them again and Blake was like okay, we're coming.  
8 I want y'all come back in here though; it's popping; let's  
9 come back in here. We were like no, we're ready to go. We  
10 have to leave early in the morning and he was like okay,  
11 that's fine, we're coming. And after that ---

12 Q: Okay. So, y'all had this conversation and moved the Jeep  
13 to the front door?

14 A: Yes.

15 Q: Okay. Do they come out at that point?

16 A: No.

17 Q: Okay. About how much, how much longer were you sitting in  
18 ---

19 A: Not even five minutes.

20 Q: Okay.

21 A: Is when people were coming out the door.

22 Q: Okay. Now, how many times do you talk to them from  
23 outside the club, just that once?

24 A: Yes.

25 Q: Okay. Now, another five minutes, so you've been outside

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1 at this point about ten minutes?

2 A: Ten or fifteen minutes.

3 Q: Okay. So, you definitely have not seen them within that  
4 ten or fifteen minutes?

5 A: No, ma'am.

6 Q: Okay. So, then you see what while you're waiting in the  
7 car?

8 A: While we're waiting in the car, the last time I talked to  
9 Blake Griffith in the club, people were busting out the doors,  
10 one guy was actually being helped carried out. I get up -- I  
11 get out of the car because I'm in the passenger seat; Kayla  
12 Houck was driving. I'm confused like, What's going on? Then  
13 all of a sudden I see Blake Brown just run out the door and  
14 take off, doesn't hesitate to look around, just runs off.

15 Q: Just a little more detail. You see people running out of  
16 the club?

17 A: Uh-huh (affirmative response).

18 Q: Are these people you know?

19 A: No.

20 Q: Okay. Does anybody appear to be injured?

21 A: Yes.

22 Q: Okay.

23 A: I seen two different people injured when they were coming  
24 out.

25 Q: Okay. Do you know where they're injured at when you see

1 them come out?

2 A: Not one of them. I just seen one of them holding like his  
3 head like that and I'm like, okay, what happened? I was  
4 worried because I didn't know really what happened and I know  
5 Blake Griffith and Blake Brown are still in there.

6 Q: Did you see anybody bleeding when they came out of the  
7 club?

8 A: Yes.

9 Q: Okay.

10 A: Both of them.

11 Q: Okay. How many people did you see bleeding?

12 A: I seen two people bleeding.

13 Q: Okay. And you saw them bleeding from where?

14 A: Well, one of them was being helped carried out and like  
15 people were like holding him right here.

16 Q: Okay.

17 A: The other one, I seen myself, he was holding his head like  
18 freaking out.

19 Q: Okay. So, you know at least two people were bleeding?

20 A: Yes.

21 Q: Okay. And all these people are running out?

22 A: Yes.

23 Q: Okay. And then what do you see?

24 A: And then I see Blake Griffith walking out and he's just  
25 walking to the car and he walks around to the driver's side

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1 and he said to come, what ---

2 Q: Okay. Before you get that far, I'm sorry. I got to make  
3 sure we cover everything. When you see him walk out, tell the  
4 Jury how he appears?

5 A: Invincible like nothing happened. Like he had the trauma  
6 look on his face but then again he didn't. And he was just  
7 walking like he wasn't worried about anything and he walked  
8 around to the driver's side door and he said come get me down  
9 the street and I was telling him to get in the car because I  
10 didn't know what happened, like I was worried for him. I've  
11 known him for so long. I was like, okay, what's going on and  
12 I said did you have anything to do with this and he said yes  
13 and that's when he took off running.

14 Q: Okay. Now when he walked out of the club, did you see --  
15 did you have a clear look at him?

16 A: Yeah.

17 Q: And what was he wearing then?

18 A: The pastel yellow shorts and the white wife-beater tank  
19 top.

20 Q: Okay. And you looked right at him?

21 A: Yes.

22 Q: Okay. And in fact you talked to him?

23 A: Yes.

24 Q: Okay. Did you see any blood coming from him?

25 A: No.

- 1 Q: Anywhere?
- 2 A: Huh-uh (negative response). He didn't have any blood on  
3 him at all.
- 4 Q: Okay.
- 5 A: And I would see it because it was white and yellow.
- 6 Q: Okay.
- 7 A: It was not like red and black.
- 8 Q: Did he appear to be injured in any way?
- 9 A: Not that I seen.
- 10 Q: Okay. Now, how was his demeanor when you talked to him  
11 and you saw him, about how long did you see him when he came  
12 out of the club before he took off running?
- 13 A: Not even a minute.
- 14 Q: Okay. So, in that short period of time, at any point when  
15 he walked out of the club, what was his demeanor?
- 16 A: Angry.
- 17 Q: Okay. And was he projecting that anger at you or anybody  
18 around; who, if anybody?
- 19 A: Not towards me, no.
- 20 Q: Okay.
- 21 A: Huh-uh (negative response).
- 22 Q: Now, did you see him take off running?
- 23 A: Uh-huh (affirmative response), yes.
- 24 Q: Which direction does he take off running?
- 25 A: I think it was south.

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- 1 Q: Okay. Did he have a phone on him that night?
- 2 A: Yes.
- 3 Q: He did?
- 4 A: Yeah.
- 5 Q: And you had a phone?
- 6 A: He called me and so did Blake Brown.
- 7 Q: Okay. Before we get there, did you ever call 911?
- 8 A: I didn't call 911, no.
- 9 Q: Okay.
- 10 A: People were already doing that.
- 11 Q: Okay. When he came out, did he ever tell you to call 911?
- 12 A: Huh-uh (negative response).
- 13 Q: Did you ever see him reach for his phone?
- 14 A: No, not that I can remember, no.
- 15 Q: Okay. Do you know -- did he open the door to your car?
- 16 A: Yes.
- 17 Q: Do you know why?
- 18 A: He said to come get him down the street; I don't know if
- 19 he was trying to be secretive about it or what but...
- 20 Q: Okay.
- 21 A: And then he shut the door.
- 22 Q: Okay. I don't know if he was just hesitant to get in the
- 23 car or not, I don't know.
- 24 Q: Okay. And then he takes off running?
- 25 A: Uh-huh (affirmative response).

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1 Q: Okay. Does he call you again?

2 A: Uh-huh (affirmative response).

3 Q: Okay. About how long after he takes off running does he  
4 call you?

5 A: Like ten minutes, I mean, I don't really know for sure a  
6 timeframe.

7 Q: Okay. And tell the Jury what conversation transpired when  
8 you were talking to him?

9 A: He wanted me to come get him and he said that he was at  
10 the beach house and so, of course, the cops and officers are  
11 all there now and so I had to get in the car with one of the  
12 police officers and we rode to my parents' beach house so I  
13 could, I guess, identify him to yes that's Blake Griffith but  
14 he wasn't there. So then the police officer and I came back  
15 to the Afterdeck scene.

16 Q: Okay. Now, how many times did he call you that you  
17 remember after he had took off -- after he took off running?

18 A: Two or three times, but I didn't answer all of them.

19 Q: Did you answer the first time he called?

20 A: Huh-uh (negative response).

21 Q: About how many times did he call before you finally picked  
22 up?

23 A: The third time because Blake Brown was blowing my phone up  
24 too. Honestly, I didn't care about him; I was worried about  
25 Blake Griffith.

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- 1 Q: Okay. Because he was your friend?
- 2 A: Yes.
- 3 Q: Okay. Now, did you tell him the police were there?
- 4 A: Yes.
- 5 Q: You did tell Blake the police were there?
- 6 A: Yes.
- 7 Q: Okay. And what did he say?
- 8 A: I honestly don't remember.
- 9 Q: Okay. You just remember him saying the beach house and
- 10 you telling him that the police were there?
- 11 A: I didn't tell him that the police were at my beach house,
- 12 no.
- 13 Q: Okay. You just told him they were there at the Afterdeck?
- 14 A: Yeah, I was like, the police are here.
- 15 Q: Okay. Now, when he took off running ---
- 16 A: Uh-huh (affirmative response).
- 17 Q: In the direction he took off running, if a herd of people
- 18 took off running after him, would you have seen it?
- 19 A: Yeah, because it would have been right by my car or my
- 20 mother's car.
- 21 Q: Okay. And did you see a herd of people take off running?
- 22 A: No.
- 23 Q: Okay. Now, when you were in the club, were you drinking?
- 24 A: I had one drink.
- 25 Q: Okay. Did you see Kayla or Blake Griffith drinking?

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- 1 A: I seen Blake Griffith and Blake Brown drink prior, but I  
2 really didn't pay attention if they were drinking in the club.
- 3 Q: So, all of y'all were there kind of drinking as well?
- 4 A: Uh-huh (affirmative response).
- 5 Q: Okay. Now, when y'all went in that club that night, did  
6 Blake Griffith have a knife on him?
- 7 A: I'm assuming he did. I seen one clipped on his shorts.
- 8 Q: And about -- well, how much time transpired between the  
9 Red Hot Shoppe and when y'all got to the Afterdeck?
- 10 A: About twenty minutes, not long.
- 11 Q: Okay. Did you see him put his hand on the knife and carry  
12 it out of the Red Hot Shoppe?
- 13 A: Yes.
- 14 Q: Okay. Okay. Did you, when you were in your Jeep, did you  
15 ever see a knife in the jeep?
- 16 A: I wasn't paying attention because Kayla and I were in the  
17 front seat and Blake and Blake were in the back.
- 18 Q: Okay. So after that ---
- 19 A: I really weren't turning around seeing what they were  
20 doing, no.
- 21 Q: Okay. But after Blake Griffith took off running, did you  
22 get back in the car?
- 23 A: No, Kayla and I stood there because we didn't know what to  
24 do.
- 25 Q: Okay. Okay. Now when you, were you out there walking

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1 around waiting for the police?

2 A: Yeah, we never left the scene, Kayla and I.

3 Q: Okay. When you were out there walking around, did you see  
4 any knives on the ground anywhere?

5 A: No.

6 Q: Okay. When you were in the club did you ever see a knife?

7 A: No.

8 Q: Okay. Now did you give the police a voluntary statement

9 ---

10 A: Yes.

11 Q: --- that morning? And is what you told the police that  
12 morning the same thing you're telling this Jury?

13 A: Yes.

14 Q: Okay. And is that the truth about what happened and what  
15 you remember that weekend and that night?

16 A: What I remember, yes, ma'am.

17 MS. LIVESAY: Can I approach the witness, Your Honor?

18 THE COURT: You may.

19 MS. LIVESAY: Your Honor, I'm gonna go ahead and get  
20 these marked. You want to mark them all as one or each  
21 separate?

22 COURT REPORTER: Separate.

23 BY MS. LIVESAY:

24 Q: I'm showing you, Marianna, what's been marked as State's  
25 Exhibit Number Two. Do you recognize who's in that

1 photograph?

2 A: Yeah, that's Kayla Houck and myself.

3 Q: Okay. And is that a photograph from that night?

4 A: Yes.

5 Q: Okay. And that's what y'all were wearing that night?

6 A: Yes.

7 Q: Okay. Now, when you saw the surveillance camera at the  
8 Red Hot Shoppe?

9 A: We had that on.

10 Q: Okay. Same thing?

11 A: Uh-huh (affirmative response).

12 MS. LIVESAY: Your Honor, at this time, I want to put in  
13 State's Exhibit Number Two as State's Evidence Number Two and  
14 publish it to the Jury?

15 MR. HYMAN: No objection.

16 THE COURT: You may do so.

17 MS. LIVESAY: Thank you, Your Honor.

18 STATE'S EXHIBIT NUMBER TWO

19 ADMITTED INTO EVIDENCE

20 BY MS. LIVESAY:

21 Q: Now ---

22 THE COURT: You gonna publish at this time?

23 MS. LIVESAY: I'm sorry, Your Honor?

24 THE COURT: I say are you gonna publish at this time?

25 MS. LIVESAY: No, sir, just one second. I'm gonna go

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1 through all of them and then publish them.

2 THE COURT: Okay. That's fine. I remind the foreperson  
3 that these objects will be with you in the jury room during  
4 your deliberation too. But you may publish it at such time as  
5 you think appropriate. Go ahead.

6 MS. LIVESAY: Thank you, Your Honor.

7 BY MS. LIVESAY:

8 Q: I'm showing you now what's been marked as State's Exhibit  
9 Number Three. I want you to look at that picture. Is that  
10 the night at the Afterdeck?

11 A: Yes.

12 Q: And do you see anybody in that picture you recognize?

13 A: Yes.

14 THE COURT: Have you shown these pictures to Defense  
15 counsel?

16 MS. LIVESAY: Yes, sir, Your Honor.

17 THE COURT: You've seen them?

18 MR. HYMAN: I have, Your Honor.

19 THE COURT: All right.

20 A: That's Blake Brown and that's Blake Griffith.

21 BY MS. LIVESAY:

22 Q: Okay. And when you saw them in the nightclub, was that  
23 what they were wearing?

24 A: Yes.

25 MS. LIVESAY: Okay. Your Honor, at this time I'd ask to

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1 put State's Exhibit Number Three into evidence?

2 THE COURT: You may do so.

3 MS. LIVESAY: Thank you, Your Honor, and publish it at  
4 the appropriate time.

5 THE COURT: Yes.

6 STATE'S EXHIBIT NUMBER THREE

7 ADMITTED INTO EVIDENCE

8 MS. LIVESAY:

9 Q: I'm showing you now what's State's Exhibit Number Four;  
10 you recognize anybody in that picture?

11 A: That's Blake Brown.

12 Q: Okay. Now, was that the night of the Afterdeck?

13 A: Yes.

14 Q: Is that ---

15 A: That was there, yes.

16 Q: Okay. Is that what he was wearing when you saw him?

17 A: Yes.

18 MS. LIVESAY: Okay. At this time, Your Honor, I wish to  
19 place State's evidence, I'm sorry, State's Exhibit Number Four  
20 into evidence?

21 THE COURT: You may do so.

22 STATE'S EXHIBIT NUMBER FOUR

23 ADMITTED INTO EVIDENCE

24 BY MS. LIVESAY:

25 Q: Thank you, Your Honor. Now, I'm showing you now what's

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1 been marked as State's Exhibit Number One; do you recognize  
2 that person?

3 A: That's Blake Brown at the Afterdeck.

4 Q: Okay. And had he had that tattoo that entire night?

5 A: That 843?

6 Q: Yes.

7 A: Yes.

8 MS. LIVESAY: Okay. Your Honor, at this time, I wish to  
9 place State's Exhibit Number One into evidence and publish it  
10 to the Jury?

11 THE COURT: You may do so.

12 STATE'S EXHIBIT NUMBER ONE

13 ADMITTED INTO EVIDENCE

14 MS. LIVESAY: And can ask her to step down, Your Honor?

15 THE COURT: You may do so.

16 MS. LIVESAY: Thank you.

17 THE COURT: You've seen these pictures to which she's  
18 referred?

19 MR. HYMAN: I have, Your Honor.

20 THE COURT: All right.

21 BY MS. LIVESAY:

22 Q: Marianna, if you don't mind, tell the Jury who this is a  
23 picture of?

24 A: Kayla Houck and myself.

25 Q: And was this the night of the -- or I'm sorry, the night

1 or morning of September 8th?

2 A: Yes.

3 Q: And this was at the Afterdeck?

4 A: Yes.

5 Q: Okay. Now it's just you and Kayla in this picture; is  
6 that correct?

7 A: Yes.

8 Q: Okay. And did y'all spend most of your time together that  
9 night?

10 A: Uh-huh (affirmative response)

11 Q: Okay. And that's what y'all were wearing?

12 A: Yes, all night.

13 Q: I'm gonna ask you to step up a little bit because you're  
14 gonna have to show the Jury. Do you recognize anybody in this  
15 picture?

16 A: This is Blake Brown and this is Blake Griffith.

17 Q: Okay. Now ---

18 A: At the Afterdeck.

19 Q: If you don't mind so the Jury can, what is Blake Griffith  
20 wearing?

21 A: The pastel yellow shorts and the white wife-beater tank  
22 top and Blake Brown is wearing the blue plaid shorts with the  
23 white wife-beater tank top.

24 Q: Now, is that what you saw them in that night?

25 A: Yes.

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MARIANNA MAYS - DIRECT BY LIVESAY

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1 Q: And is this them that night at the Afterdeck?

2 A: Yes.

3 Q: And they're -- just so everybody's clear, they're the two  
4 guys in the background?

5 A: Yes, those two on the end.

6 Q: Okay. Now, this is hard to see as well. Who's that  
7 standing in the background?

8 A: Blake Brown.

9 Q: Okay. And is that what you saw him wearing that night?

10 A: Yes, ma'am.

11 Q: Now, I want you to look real close in that picture. Can  
12 you tell what color those shorts are with the guy standing  
13 beside him?

14 A: They're pastel yellow shorts like Blake Griffith had on.

15 Q: And that's those right there beside him?

16 A: Right there in the photograph.

17 Q: So, that's them standing together?

18 A: Yeah, it is.

19 Q: Now I know those are all background shots. Do you  
20 recognize who that guy is?

21 A: That's Blake Brown.

22 Q: And was that the night of the incident?

23 A: At the Afterdeck, yes, ma'am.

24 Q: Now, I don't -- I'm sorry, go ahead and have a seat,  
25 Marianna, thank you.

1 A: Up here or out there?

2 Q: Yes, please. Now, out of those four pictures, I see Blake  
3 Brown and Blake Griffith together in two out of the four; is  
4 that right?

5 A: Yes.

6 Q: Now, in any of those pictures, are you with Blake Brown or  
7 Blake Griffith?

8 A: No, ma'am.

9 Q: Okay. Is Kayla with one of them?

10 A: No, ma'am.

11 Q: Okay. Just you and Kayla are in one picture together; is  
12 that right?

13 A: And then the rest were them except for one with just Blake  
14 Brown.

15 Q: Okay. Did you remember that picture being taken?

16 A: Kayla and myself, yeah.

17 Q: You do?

18 A: Uh-huh (affirmative response).

19 Q: Okay. It looked very posed, that's why I was asking you.  
20 One second. One second, Your Honor. One more question, Your  
21 Honor.

22 I'm gonna show you that picture one more time. Can she  
23 step down one more time, Your Honor?

24 THE COURT: She may.

25 MS. LIVESAY: I'm sorry. These are small pictures I've

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MARIANNA MAYS - CROSS BY HYMAN

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1 got.

2 BY MS. LIVESAY:

3 Q: Now if you don't mind, tell the Jury who that is in the  
4 yellow shorts and the sweatshirt?

5 A: Blake Griffith.

6 Q: And do you see anything in his pocket in this picture?

7 A: A knife.

8 Q: And had you seen that knife before?

9 A: Yes.

10 Q: Where had you seen it?

11 A: At the Red Hot Shoppe.

12 Q: Thank you. You may have a seat.

13 A: Uh-huh (affirmative response).

14 MS. LIVESAY: I don't have any further questions, Your  
15 Honor.

16 THE COURT: Mr. Hyman?

17 CROSS EXAMINATION OF MARIANNA MAYS BY MR. HYMAN:

18 Q: Marianna, it's nice to finally see you. We've talked  
19 before on the phone. Now, maybe I misheard something, but she  
20 just asked you of the two of the four pictures is Blake  
21 Griffith in them and you said yes?

22 A: Uh-huh (affirmative response).

23 Q: Which -- I see him in this one.

24 A: Right there.

25 Q: Okay. Where's he at in this one because I don't see him?

- 1 A: No, he's not in that one.
- 2 Q: Okay.
- 3 A: He's right there. You can see his yellow shorts.
- 4 Q: So, you know by half of a leg that's him?
- 5 A: Yeah, because I remember his outfit that night.
- 6 Q: Now, you had said, you had said earlier that you didn't  
7 spend a whole lot of time with Brown, but you knew Blake  
8 pretty well. But it sounds to me from your statements here  
9 that you may have an opinion on Brown. You said you didn't  
10 care about him; you cared more about Griffith?
- 11 A: Uh-huh (affirmative response).
- 12 Q: Did y'all have any problems with Brown while y'all were,  
13 while y'all were down there?
- 14 A: Yeah, I think he's the one that took my money.
- 15 Q: You think so?
- 16 A: Uh-huh (affirmative response).
- 17 Q: So, you don't think that it was Griffith?
- 18 A: No, and he -- Brown just had a cocky attitude and I only  
19 knew Brown for maybe two weeks before we went on this beach  
20 trip.
- 21 Q: Did you have any reason to believe that Griffith took your  
22 money?
- 23 A: No.
- 24 Q: None. Okay. Now as far as the time that y'all were down  
25 here, did y'all have any other problems with Brown?

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MARIANNA MAYS - CROSS BY HYMAN

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1 A: No.

2 Q: Was there any, any time Brown brought people over?

3 A: He brought two people over either Saturday night or Sunday  
4 night.

5 Q: Now on that timeline, I think it was Saturday night or  
6 excuse me, Sunday night is when you went to Miyabi's; is that  
7 right?

8 A: Right.

9 Q: So you don't know if it was Saturday night or if it was  
10 Sunday night. So, if Brown was to say he brought people over  
11 both nights, would that be, would that be wrong?

12 A: I'm sorry?

13 Q: So, if Brown was to say that he brought people over on  
14 Saturday night and Sunday night, would that be wrong?

15 A: It was just one of the nights, but I can't remember  
16 exactly which night it was.

17 Q: So the first night y'all were there, Brown did not bring a  
18 girl home?

19 A: Not that I remember, no, but I remember a girl being there  
20 -- it was Sunday night because she was there Monday morning  
21 when I figured out my money was missing.

22 Q: Well, was there any point when Brown and the rest of y'all  
23 ended up going to a Waffle House?

24 A: Yes.

25 Q: What was that about?

- 1 A: Blake Brown was mad because either he stole the sunglasses  
2 from somebody or somebody stole sunglasses from him.
- 3 Q: Now, did Griffith have anything to do with any of that?
- 4 A: No.
- 5 Q: Now during any of that, was that any of Blake Griffith?
- 6 A: No, he sat in the car.
- 7 Q: So, he didn't try to get out and fight anybody or do  
8 anything like that?
- 9 A: No, none of us did except Blake Brown.
- 10 Q: Did Blake Brown try to fight somebody at that point?
- 11 A: Uh-huh (affirmative response).
- 12 Q: Okay.
- 13 A: But it never happened.
- 14 Q: It never happened?
- 15 A: Huh-uh (negative response).
- 16 Q: But you're saying that Blake Griffith, we'll just call him  
17 Griffith, didn't try to get out and fight somebody?
- 18 A: Right.
- 19 Q: Now you said that you did see Griffith at the nightclub,  
20 right?
- 21 A: Uh-huh (affirmative response).
- 22 Q: Was he dancing?
- 23 A: We all were.
- 24 Q: So y'all were having a good time?
- 25 A: All of us were.

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- 1 Q: At any point, did you get up in one of the cages?
- 2 A: Kayla and I and this girl we met there.
- 3 Q: Did Blake ever get in the cage with you?
- 4 A: No.
- 5 Q: You sure about that?
- 6 A: Yeah.
- 7 Q: But at one point, you were in the cages, y'all were all  
8 dancing and having a good time?
- 9 A: Yeah, and Blake and Blake were actually watching us for a  
10 little while dance in the cage.
- 11 Q: Now when -- and you testified earlier as far as that you  
12 called him and say, hey, I'm ready to go and he said it's  
13 popping in here. Now what does that mean?
- 14 A: It means he didn't want to leave, he was having a fun  
15 time.
- 16 Q: What does it's popping mean; does that mean ---
- 17 A: It's jumping and he's having a good time.
- 18 Q: Gotcha. Now as far as that goes, did he sound mad?
- 19 A: No.
- 20 Q: Did he sound like he was ready to fight somebody?
- 21 A: No.
- 22 Q: Did he sound like he was ready to stab somebody?
- 23 A: No.
- 24 Q: Sound like he was ready to pick a fight?
- 25 A: He -- none of us looked aggravated or angry that night.

State v. Griffith  
MARIANNA MAYS - CROSS BY HYMAN .

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1 Q: Everybody was just having a good time?

2 A: Yeah.

3 Q: Did y'all go to the Afterdeck in order to get in a fight?

4 A: No.

5 Q: Did you think that he did?

6 A: No.

7 Q: You think that he went there with the sole purpose of  
8 stabbing somebody?

9 A: (Indicates negatively.)

10 Q: She has to take ---

11 A: No, sir. Huh-uh (negative response).

12 Q: All right. When he comes out of the club and you said he  
13 comes up to your car?

14 A: Yes.

15 Q: I think you first said that he ran outside, ran out of the  
16 club?

17 A: Blake Brown ran out the club; he was gone.

18 Q: And you never talked to him until he called you?

19 A: No.

20 Q: All right. And when he called you, where was he at?

21 A: He was -- one time he was running, Blake Brown, that's who  
22 we're talking about, right?

23 Q: Blake Brown, right.

24 A: And then the second time he called me, the cops asked me  
25 to put him on speaker phone and told he, told me he was headed

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MARIANNA MAYS - CROSS BY HYMAN

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1 to my beach house. I said okay, stay there, we'll be on the  
2 way.

3 Q: Okay. Now, as far as that goes, once the cops get to the  
4 beach house, is that when they arrest Brown?

5 A: Yes.

6 Q: That you know of?

7 A: Yeah, I seen it.

8 Q: Okay. Now were you in your car when he came up to it?

9 A: No, I was outside of my car ---

10 Q: Outside your car.

11 A: --- on the passenger side.

12 Q: Where, let's just say that this Bible right here is your  
13 car. It's pointed this way and this is, this would be the  
14 driver's seat.

15 A: Yes, and this is the Afterdeck.

16 Q: Okay.

17 A: And this is the car.

18 Q: Uh-huh (affirmative response).

19 A: Kayla Houck was driving, I was in the passenger seat, the  
20 passenger side would be facing the Afterdeck.

21 Q: Okay.

22 A: Blake Griffith walked around to the back of the driver's  
23 side.

24 Q: Okay. So, you had a chance though when he walked around  
25 to the back of the driver's side ---

State v. Griffith  
MARIANNA MAYS - CROSS BY HYMAN

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- 1 A: I seen him visibly, yes.
- 2 Q: You saw him completely head to toe?
- 3 A: Yes.
- 4 Q: And did you see any blood on his hands?
- 5 A: No.
- 6 Q: Did you see any blood on his white shirt?
- 7 A: No.
- 8 Q: How about his yellow shorts?
- 9 A: No.
- 10 Q: Now Brown, you said he ran out?
- 11 A: I never seen him. I seen him run out, but I never seen
- 12 him close and personal, no.
- 13 Q: So, you didn't get to see if he had blood on him?
- 14 A: No.
- 15 Q: Okay. Now were there other people there that had on wife-
- 16 beaters; is that what you called it or a tall T-shirt?
- 17 A: Not that I remember besides just them. I really wasn't
- 18 paying attention to other people.
- 19 Q: This was a picture taken at the Afterdeck that night.
- 20 What's that guy wearing?
- 21 A: A wife-beater.
- 22 Q: Is that Blake Brown?
- 23 A: No.
- 24 Q: Is that Blake Griffith?
- 25 A: No.

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1 Q: This guy have tattoos?

2 A: Uh-huh (affirmative response).

3 MR. HYMAN: Your Honor, I'd like to mark this as Defense  
4 Exhibit?

5 THE COURT: All right, sir. You seen this photograph,  
6 Ms. Livesay?

7 MS. LIVESAY: No objection, Your Honor.

8 THE COURT: All right.

9 MR. HYMAN: Your Honor, I'd also like to publish this to  
10 the Jury.

11 THE COURT: You may so it's entered as a Defense Exhibit.

12 DEFENDANT'S EXHIBIT NUMBER ONE

13 ADMITTED INTO EVIDENCE

14 BY MR. HYMAN:

15 Q: And again, that's not Blake Brown or Blake Griffith?

16 A: No.

17 Q: Did you see people running around the nightclub without  
18 any shirts on?

19 A: Not that I remember, no.

20 Q: How about girls with no shirts on; do you remember that?

21 A: This one girl that worked there, she was painted like in a  
22 body type paint suit but other than that, I wasn't really  
23 paying attention or worried about anybody else.

24 Q: Now you had stated earlier that you didn't think it was  
25 that crowded; is that what you were saying?

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MARIANNA MAYS - CROSS BY HYMAN

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1 A: Not compared to what I'd been in before at other places.

2 MS. LIVESAY: May I see what he's showing her, Your  
3 Honor.

4 MR. HYMAN: Any objection?

5 MS. LIVESAY: None.

6 BY MR. HYMAN:

7 Q: These are all pictures of the nightclub that night. Can  
8 you identify them; is that what it looked like that night?

9 A: Uh-huh (affirmative response). Yeah, that was the  
10 Afterdeck.

11 Q: Okay. Does it look relatively dark and crowded?

12 A: Yeah.

13 Q: Would you say that that one is crowded?

14 A: Yeah.

15 Q: How about that one?

16 A: Yeah.

17 Q: Okay. And how about this one right here?

18 A: Yeah.

19 Q: And my question is, is let's just say that you were  
20 looking for them and maybe they were walking around. With it  
21 being that dark and that crowded, could you have walked  
22 somewhat by them and not seen them?

23 A: Possibly, yeah, it could happen.

24 Q: Doesn't necessarily mean they were in the bathroom is what  
25 I'm saying, correct?

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MARIANNA MAYS - CROSS BY HYMAN

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1 A: Right. But we couldn't find them for like ten minutes.

2 MR. HYMAN: Judge, I'm gonna move to mark these as  
3 Defense Exhibits Two, Three, Four, Five and Six?

4 THE COURT: Okay. They are admitted without objection  
5 from the State.

6 MS. LIVESAY: Without objection, Your Honor.

7 DEFENDANT'S EXHIBITS TWO, THREE, FOUR, FIVE AND SIX

8 ADMITTED INTO EVIDENCE

9 BY MR. HYMAN:

10 Q: Did you ever see Blake Brown over the weekend doing any  
11 drugs?

12 A: Uh-huh (affirmative response).

13 Q: What was he doing?

14 A: I didn't personally see him do it, but I know he had  
15 cocaine on him.

16 Q: Okay. That's Blake Brown?

17 A: Yes.

18 Q: Okay. Did you ever see Blake Griffith, well, did you ever  
19 see him at any time that night making any advances, gestures,  
20 or anything like that to other people?

21 A: At the Afterdeck?

22 Q: At the Afterdeck?

23 A: No.

24 Q: Or anytime y'all were there?

25 A: No, I -- other than the money altercation, everything was

1 fine between all four of us.

2 Q: And again the money altercation you said you believe was  
3 Blake Brown?

4 A: Yeah.

5 Q: Court's indulgence. Just a couple more questions. Do you  
6 know whether or not my client started a fight?

7 A: No, I wasn't in there.

8 Q: You know whether he stabbed anybody?

9 A: I was never told that he did it, no...

10 Q: Do you know if he cut anybody or anything like that?

11 A: I don't know.

12 MR. HYMAN: No further questions.

13 THE COURT: All right. Any redirect, Ms. Livesay?

14 MS. LIVESAY: Just a couple, Your Honor.

15 THE COURT: All right.

16 REDIRECT EXAMINATION OF MARIANNA MAYS BY MS. LIVESAY:

17 Q: Now, Marianna, who did Blake Griffith spend most of his  
18 time with while y'all were down here; was it you and Kayla or  
19 was it Blake Brown?

20 A: More Blake Brown.

21 Q: Okay. So the majority of the time he was with Blake  
22 Brown?

23 A: Yes, ma'am.

24 Q: Not with y'all?

25 A: No, ma'am.

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MARIANNA MAYS - REDIRECT BY LIVESAY

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1 Q: Okay. And how long had you known him?

2 A: Blake Brown or Blake Griffith?

3 Q: Blake Griffith?

4 A: I'd say between ten years now.

5 Q: Okay. And are you the one that drove him down to the  
6 beach?

7 A: Yes.

8 Q: Okay. But he mostly hung out with Blake Brown?

9 A: Yes.

10 Q: Okay. And they mostly rode around in Blake Brown's  
11 mamma's car?

12 A: Yes.

13 Q: Okay. Now, I'd showed you those pictures?

14 A: Uh-huh (affirmative response).

15 Q: But I know you noticed it's probably hard to see?

16 A: Uh-huh (affirmative response).

17 Q: Is, is there a height difference between Blake Brown and  
18 Blake Griffith?

19 A: Blake Brown is taller.

20 Q: Who's taller?

21 A: Blake Brown.

22 Q: Okay. And Blake Griffith is the shorter of the two?

23 A: Shorter one, yes.

24 Q: Okay. Now, you said earlier that Blake Griffith called  
25 you and said he was at the beach house; is that right?

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MARIANNA MAYS - REDIRECT BY LIVESAY

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1 A: He told me to go to the beach house, Blake Brown, I mean  
2 Blake Griffith.

3 Q: Okay. And you told him the police were there; is that  
4 right?

5 A: The police were with me, not at the beach house.

6 Q: Right, at the Afterdeck?

7 A: Yes.

8 Q: All right. And did you go to the beach house to see if he  
9 was there?

10 A: With the police officer, yes, and he wasn't.

11 Q: Okay. So, did Blake Brown call you and tell you I'm going  
12 to the beach house?

13 A: Yes.

14 Q: Okay. Did you go look for him at the beach house?

15 A: Yes.

16 Q: Was he at the beach house?

17 A: He was there. That's where he got arrested.

18 MS. LIVESAY: No further questions, Your Honor.

19 MR. HYMAN: Nothing from the Defense.

20 THE COURT: You may come down. Thank you.

21 Call your next witness.

22 MS. LIVESAY: Thank you, Your Honor. At this time the  
23 State calls Mike Luczaj to the stand.

24 THE COURT: All right.

25 CLERK: Sir, please raise your right hand and place your

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MIKE LUCZAJ - DIRECT BY LIVESAY

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1 left hand on the Bible?

2 MIKE LUCZAJ, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please state your full name and spell your last  
5 name?

6 MR. LUCZAJ: Michael Lawrence Luczaj, L-U-C-Z-A-J.

7 DIRECT EXAMINATION OF MIKE LUCZAJ BY MS. LIVESAY:

8 Q: And how old are you?

9 A: Forty-six.

10 Q: And where do you currently live?

11 A: In Myrtle Beach, South Carolina.

12 Q: And what is your job here in Myrtle Beach?

13 A: I run Beachmonkey.com, it's a website. We take photos in  
14 clubs and bars and events.

15 Q: Okay. And so you're taking photographs at the nightclubs  
16 here in Myrtle Beach?

17 A: Yes, ma'am.

18 Q: And were you taking photographs at the Afterdeck in 2000  
19 -- in September of 2009?

20 A: Yes, ma'am.

21 Q: And have you seen some of the photographs you took?

22 A: Yes.

23 Q: And did you take all of the photographs that night?

24 A: Yes.

25 Q: So, there was not like -- I guess it's a company

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MIKE LUCZAJ - DIRECT BY LIVESAY

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1 Beachmonkey?

2 A: Uh-huh (affirmative response).

3 Q: So, there was not two photographers?

4 A: No, just me that night.

5 Q: Okay. I'm gonna show you what's been marked as State's  
6 Exhibit Five, Six, Seven and Eight?

7 A: Okay.

8 Q: Now these have been blown up. Would you look at them ---

9 A: Sure.

10 Q: --- and tell the Court whether or not they've been  
11 altered in any form or fashion?

12 A: No, these are all just the photos I took.

13 THE COURT: Mr. Hyman, I'm assuming that you've seen  
14 these photographs?

15 MR. HYMAN: Your Honor, I believe they're just blown up  
16 versions of the photos; they're just blown up.

17 A: Yeah, they're just blown up.

18 BY MS. LIVESAY:

19 Q: So, they have not been altered in any other form or  
20 fashion?

21 A: No.

22 Q: And these are the pictures you took?

23 A: Yes.

24 MS. LIVESAY: Your Honor, at this time, I'm gonna  
25 introduce these as State's Evidence Five through Eight and

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MIKE LUCZAJ - DIRECT BY LIVESAY

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1 publish them to the Jury?

2 THE COURT: You may do so.

3 STATE'S EXHIBITS FIVE THROUGH EIGHT

4 ADMITTED INTO EVIDENCE

5 THE COURT: Please take a look at them and pass them  
6 around. They will be with you during your deliberations.  
7 Proceed.

8 MS. LIVESAY: And, Your Honor, those are blown up  
9 versions of the one's that have already shown.

10 THE COURT: I understand..

11 BY MS. LIVESAY:

12 Q: Now, Mike, about how many pictures did you snap that  
13 night?

14 A: Probably like 150, 200 maybe; I don't remember the exact  
15 amount.

16 Q: Okay. 150 to 200?

17 A: Uh-huh (affirmative response).

18 Q: Okay. And what hours were you working that night?

19 A: That night I think it was 10:00 to 1:00..

20 Q: Okay.

21 A: Or 11:00 to 2:00; something like that.

22 Q: Okay. And is that the usual?

23 A: Uh-huh (affirmative response).

24 Q: Okay. And when you're going around snapping photos, are  
25 you just snapping photos of everybody and anybody?

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MIKE LUCZAJ - DIRECT BY LIVESAY

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- 1 A: Yeah, I walk up to everybody and say, hey, you want a free  
2 picture and they'll say yes or no.
- 3 Q: Okay. And do you normally show them the pictures  
4 sometimes.
- 5 A: Uh-huh (affirmative response). Ninety percent of the time  
6 I do that.
- 7 Q: Okay. Now and you took about 150 or 200 at the Afterdeck?
- 8 A: Uh-huh (affirmative response).
- 9 Q: Okay. Now, were you still there when the fight broke out  
10 ---
- 11 A: Uh-huh (affirmative response).
- 12 Q: --- and the boys were stabbed?
- 13 A: Yes.
- 14 Q: Okay. So you were still at the Afterdeck?
- 15 A: Uh-huh (affirmative response).
- 16 Q: Did you see anything that night?
- 17 A: No.
- 18 Q: Okay. Did you see how many boys were injured?
- 19 A: No.
- 20 Q: Okay. Now, did you hear what the suspects looked like or  
21 the persons of interest?
- 22 A: They just told me they had tattoos and since I had some  
23 photos, you know, and I was looking at my photos for anybody  
24 with a bunch of tattoos.
- 25 Q: Okay. And you were just trying to help the police out?

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MIKE LUCZAJ - CROSS BY HYMAN

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1 A: Uh-huh (affirmative response).

2 Q: Okay. And about how many pictures did you show the police  
3 that you thought met this description of the boys?

4 A: Just two.

5 Q: Okay. So out of that 150 to 200 snaps you took, you only  
6 saw a couple that met the description ---

7 A: Uh-huh (affirmative response).

8 Q: --- of the suspects?

9 A: Yes.

10 Q: Okay. And did you show those pictures to the police?

11 A: Uh-huh (affirmative response).

12 Q: Okay. And you gave them a statement that night?

13 A: No, I didn't show -- I just gave them a copy of the  
14 photos; I didn't really give them a statement at all.

15 Q: Okay. Okay. And is everything you said here today the  
16 truth?

17 A: Yes.

18 Q: Okay. And those photographs I just put into evidence,  
19 those are the photographs you took?

20 A: Yes.

21 MS. LIVESAY: Okay. No further questions, Your Honor.

22 THE COURT: Mr. Hyman.

23 CROSS EXAMINATION OF MIKE LUCZAJ BY MR. HYMAN:

24 Q: Your Honor, just briefly. So you took photos that night  
25 and you picked one that you said it might've been the suspect;

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BY THE COURT

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1 was that that picture?

2 A: I took two of them. One was that guy and then the other  
3 was the other one with the fingers up in the air.

4 Q: Now, as far as what happened during this, do you have any  
5 knowledge about that?

6 A: No.

7 Q: So you didn't see any of this firsthand?

8 A: No.

9 Q: So as far as your testimony, it is simply that you took  
10 photos that night?

11 A: Correct.

12 Q: Okay. No further questions, Your Honor.

13 THE COURT: Anything further?

14 MS. LIVESAY: Nothing further, Your Honor.

15 BY THE COURT:

16 THE COURT: You may come down. Can this witness be  
17 excused?

18 MS. LIVESAY: Yes, that's what I was gonna ask, Your  
19 Honor, please.

20 THE COURT: You are excused. I thank you.

21 Next witness please.

22 MS. LIVESAY: Thank you, Mike.

23 Your Honor, can we approach?

24 THE COURT: Yes, ma'am.

25 (REPORTER'S NOTE: A bench conference was held off the record

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1 in the presence of the Jury but out of hearing of the Jury.)

2 THE COURT: Call your next witness.

3 MS. LIVESAY: Thank you, Judge. At this time, could we  
4 call Ashley McNeill to the stand?

5 THE COURT: Mr. Hyman is agreeable we will proceed with  
6 this witness while your client has just stepped out ---

7 MR. HYMAN: I don't believe Ms. McNeill is in the  
8 courtroom now is she?

9 THE COURT: Is it agreeable to proceed with this witness?

10 MR. HYMAN: Yes, Your Honor.

11 THE COURT: All right. Go ahead. Swear the witness.

12 MS. LIVESAY: Your Honor, she's on her way up.

13 THE COURT: I understand.

14 Has somebody gone to get your witness?

15 MS. LIVESAY: Yes, sir, Your Honor, my victim advocate  
16 has gone to get her. They had them in separate rooms since  
17 they were all sequestered.

18 THE COURT: Ms. Livesay, I'm gonna honor your request to  
19 adjourn here at a quarter till 5:00 and suggest that you get  
20 better organized for in the morning. You say you had another  
21 witness that you wanted -- the IT man was not available this  
22 afternoon?

23 MS. LIVESAY: Well the, other witness is here, Your  
24 Honor. She's just sequestered in a different room.

25 THE COURT: Well you say she's here, but we're -- I got a

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1 jury here that I don't want to waste their time now. This  
2 shouldn't take that long to bring a witness up.

3 MS. LIVESAY: I understand, Your Honor. This is her  
4 here, Ashley McNeill.

5 THE COURT: That's fine.

6 CLERK: Ma'am, please raise your right hand and place  
7 your left hand on the Bible.

8 ASHLEY MCNEILL, HAVING BEEN

9 SWORN TESTIFIES AS FOLLOWS:

10 CLERK: Thank you. Please state your full name and spell  
11 your last name.

12 MS. MCNEILL: My name is Ashley McNeill, M-C-N-E-I-L-L.

13 DIRECT EXAMINATION OF ASHLEY MCNEILL BY MS. LIVESAY:

14 Q: And, Ashley, tell the Jury how old you are?

15 A: I'm twenty-two years old.

16 Q: Okay. And are you currently working or in school?

17 A: I'm employed and I just graduated.

18 Q: Okay. And have you, where are you from?

19 A: I'm from Myrtle Beach, South Carolina.

20 Q: Okay. And how long have you lived in Horry County?

21 A: Off and on for the past all my life.

22 Q: And were you living in Horry County in September of 2009?

23 A: I was.

24 Q: Okay. And were you at the Afterdeck around September 8th  
25 of 2009?

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1 A: Yes.

2 Q: Okay. And do you remember what happened that night?

3 A: Yes.

4 Q: If you don't mind, start off by telling the Jury first  
5 about what time do you remember getting there?

6 A: I remember getting there may be around like 9:00 or 10  
7 o'clock.

8 Q: And had you had anything to drink or under the influence  
9 of any drugs when you got there?

10 A: No drugs, no alcohol.

11 Q: Okay. And how about when you got there?

12 A: No, none at all.

13 Q: You didn't have anything to drink?

14 A: No, I didn't drink at all that evening.

15 Q: Okay. And about how long were there?

16 A: After it happened I believe we left around 4:00, maybe 5  
17 o'clock that night.

18 Q: Okay.

19 A: Or in the morning, I'm sorry.

20 Q: Okay. And had you been to the Afterdeck before?

21 A: Yes.

22 Q: Okay. So, you were pretty familiar with it or somewhat  
23 familiar?

24 A: Yes..

25 Q: Okay. Now, if you don't mind, tell the Jury what happened

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1 the night you were there on September 8th.

2 A: Me and my girlfriend showed up. We were just hanging out  
3 and just, we just saw the people is what we do, socialize. We  
4 don't really dance so we just stood around and watched certain  
5 -- just people socializing. And we were standing on the steps  
6 of the Afterdeck and I felt someone behind me so I looked  
7 behind me and I saw two boys in white wife-beater shirts and  
8 one was holding a knife. So, we told the bouncer and we saw  
9 the boys throughout the floor.

10 Q: Ms. McNeill, if you don't mind?

11 A: Yes, ma'am.

12 Q: You say one was holding a knife?

13 A: Yes.

14 Q: Both were wearing wife-beaters?

15 A: Yes.

16 Q: Was there one that was taller or shorter than the other  
17 one?

18 A: Yes.

19 Q: Was it the taller or shorter one holding the knife?

20 A: The shorter one.

21 Q: Okay. And how did you know it was a knife?

22 A: Because I've seen knives before and I'm familiar with what  
23 they look like.

24 Q: And was the blade out?

25 A: Yes, it was.

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ASHLEY MCNEILL - DIRECT BY LIVESAY

1 Q: And when you say holding it, was he holding like this --  
2 do you remember -- or swinging or can you describe how he was  
3 holding it?

4 A: Yes, it was more around his waist and he was playing with  
5 it.

6 Q: Okay.

7 A: Swinging it and showing it off.

8 Q: And was this early on when you got there or later on; do  
9 you remember?

10 A: It as probably mid; I'm not familiar with the time.

11 Q: Okay. You had been there for a little while?

12 A: A little bit.

13 Q: Okay. And did you see anybody else there with a knife  
14 out?

15 A: No.

16 Q: Okay. And you went and told the bouncer; is that right?

17 A: Yes.

18 Q: Okay. And why did you tell the bouncer?

19 A: It's what you do.

20 Q: Okay. And what happened next?

21 A: I just remembered seeing them on the dance floor, walking  
22 straight through people. They weren't communicating and they  
23 weren't dancing, they were just walking straight and then I  
24 saw them stop around where a friend of mine was standing and  
25 then my friend was dancing and he had accidentally bumped into

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1 them and they gave a look to him, a look at him and then  
2 things just broke out into a brawl and ---

3 Q: The two guys that you saw with the white-beaters, the  
4 shorter one with the knife, did you know them?

5 A: No.

6 Q: Had you ever seen them before?

7 A: No.

8 Q: Okay. And about how, how long did you get a look at them,  
9 like a minute, an hour?

10 A: It was only a few minutes that I saw them.

11 Q: Okay. So not very long?

12 A: Not at all.

13 Q: Have you seen them since that time?

14 A: No, I have not.

15 Q: So, you remember they were both wearing wife-beaters?

16 A: Uh-huh (affirmative response); yes.

17 Q: Now were they standing like single file beside each other;  
18 tell the Jury how were they standing?

19 A: They were standing directly behind me and they were  
20 standing side by side.

21 Q: Okay. So like shoulder to shoulder like one's hear and  
22 the other one is right over here?

23 A: Yes, ma'am.

24 Q: Okay. And if you don't mind, tell the Jury you turned  
25 around and looked, you see them, now how close were you to

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1 these guys?

2 A: They weren't very far behind me. I was on a step and then  
3 they were on a step back behind me.

4 Q: Okay. Would you say from me to you or would you say from  
5 that table to you?

6 A: From -- definitely from me to you.

7 Q: Okay. So, from me to you is how close you were standing  
8 to them?

9 A: Yes.

10 Q: Okay. And they were standing directly behind you or to  
11 the side?

12 A: They were almost directly behind me.

13 Q: Okay. Now, and then you went and told the bouncer; is  
14 that correct?

15 A: Yes.

16 Q: Okay. Now, the other guy, could you see his hands, the  
17 taller guy?

18 A: I wasn't paying attention because I was looking at the  
19 knife.

20 Q: Okay. You just saw the knife and immediately kind of took  
21 off?

22 A: Yes.

23 Q: Okay. And what did the bouncer do, anything?

24 A: I believe he turned around and after that I don't know.

25 He turned around and walked in opposite direction and I don't

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1 know after that because around that time, well not around that  
2 time, but ---

3 Q: Okay. So when you told him, he turned around and walked  
4 off?

5 A: Yes.

6 Q: Okay. So then what do you do; do you go back to the same  
7 place you were at?

8 A: Yes.

9 Q: Okay. When you go back to that place, are the guys with  
10 the two wife-beaters still standing there?

11 A: No, they take off.

12 Q: Okay. They had left?

13 A: Yes.

14 Q: Okay. Now you said that those two guys bumped into your  
15 friend?

16 A: Yes.

17 Q: Okay. And it was the same two guys that was standing  
18 behind you?

19 A: Yes.

20 Q: Okay. Now who is your friend that you're referring to?

21 A: D.J.

22 Q: Okay. Now, how crowded was the club that night?

23 A: It was pretty crowded.

24 Q: Okay.

25 A: There were a lot of people there that night.

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1 Q: Okay. But you could see D.J.?

2 A: Yes.

3 Q: Okay. Did you know anybody that D.J. was standing with?

4 A: A few people, yes. Tom, Alex, just a few people.

5 Q: Okay. Now you're saying he's your friend. How well do  
6 you know D.J. or did you know D.J.?

7 A: Not very well.

8 Q: Okay. How did you really know him?

9 A: Just mutual, going to friends' houses and seeing him at  
10 clubs every once in a while.

11 Q: Did you have his phone number?

12 A: No.

13 Q: Did you know where he lived?

14 A: No.

15 Q: Okay. So you weren't close enough you'd call him up and  
16 ask him to do stuff with him?

17 A: No.

18 Q: Y'all would just be at this same social gatherings?

19 A: Exactly.

20 Q: Okay. And did you see anybody else that you recognized  
21 standing near D.J.?

22 A: No.

23 MS. LIVESAY: Your Honor, can I approach the witness at  
24 this time?

25 THE COURT: You may.

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1 BY MS. LIVESAY:

2 Q: And I'm showing you now what's been marked as State's  
3 Exhibit Number Twelve; do you recognize it?

4 A: I do.

5 Q: Okay. And is this an accurate layout of the Afterdeck?

6 A: It is.

7 Q: And would this assist you in your testimony?

8 A: It will.

9 MS. LIVESAY: Your Honor, at this time, I'm gonna put  
10 State's Exhibit Number Twelve into evidence and use it for  
11 demonstrative purposes.

12 THE COURT: You may do so.

13 STATE'S EXHIBIT NUMBER TWELVE

14 ADMITTED INTO EVIDENCE

15 BY MS. LIVESAY:

16 MS. LIVESAY: At this time I'm gonna ask her to step  
17 down, Your Honor, so she point out this stuff on the chart.

18 THE COURT: And, Mr. Hyman, you may come around so that  
19 you can view this testimony and co-counsel, you're welcome to  
20 do the same if you choose to.

21 BY MS. LIVESAY:

22 Q: Now this is an accurate reflection of the downstairs of  
23 the Afterdeck; is that correct?

24 A: That's correct.

25 Q: Okay. So these, this is a cage over here, like a bamboo

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1 type cage?

2 A: Yes.

3 Q: This is another cage and when I say cage, something  
4 somebody gets in ---

5 A: Yes.

6 Q: --- and dances?

7 MR. HYMAN: Your Honor, I'm gonna object to leading. Is  
8 Ms. Livesay testifying or the witness?

9 MS. LIVESAY: That's fine, Your Honor, I'll correct it.

10 BY MS. LIVESAY:

11 Q: Now where were you standing when you saw the guy with the  
12 knife?

13 A: I was on this step right here.

14 Q: Okay. So this is a step, this is a step, dance floor.

15 A: Yes, ma'am.

16 Q: Okay. Now, where was the guy with the knife standing?

17 A: Directly behind me on this next step.

18 Q: And he's the shorter guy?

19 A: Yes.

20 Q: Where is taller guy standing?

21 A: To the right of him.

22 Q: Okay. So show me, right over here?

23 A: Yes.

24 Q: In the same vicinity?

25 A: Yes.

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- 1 Q: Okay. Now, where do you remember D.J. standing at that  
2 time?
- 3 A: Just right around this area next to the cage and speakers  
4 here.
- 5 Q: Okay. So, kind of this corner area over here?
- 6 A: Yes,
- 7 Q: Okay. Now you say you went and told the bouncer?
- 8 A: Yes.
- 9 Q: Where was the bouncer standing?
- 10 A: He as probably right around here, where the cages are.
- 11 Q: Okay. And you say when you told him, he walked off?
- 12 A: Yes.
- 13 Q: Okay. You know where he was walking to.
- 14 A: No, I don't.
- 15 Q: Okay. Then after you tell him, where do you walk back to?
- 16 A: To the same area I was right on that step.
- 17 Q: Okay. Now do you see that the two guys with the wife-  
18 beaters again?
- 19 A: No.
- 20 Q: Okay. You don't see them again that night after you  
21 walked back here?
- 22 A: I do after then, but they weren't in that spot ---
- 23 Q: Okay.
- 24 A: When I went and stood there.
- 25 Q: Where did you see them when you got back to this spot?

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1 A: Walking back this way and then again, they were walking  
2 through the dance floor.

3 Q: Okay. Now, was this dance floor crowded?

4 A: It was.

5 Q: Okay. And what were people doing on the dance floor?

6 A: Dancing, flipping around, maybe talking to one another,  
7 just in their own little groups individually.

8 Q: Okay. And when you see the two guys with the wife-beaters  
9 on the dance floor, what were they doing?

10 A: They just walking straight, not, not talking to anyone,  
11 just kind of bumping through people and not there for a social  
12 interaction.

13 Q: Okay. Now when they're walking through the dance floor,  
14 are they walking like single file?

15 A: Yes.

16 Q: Okay. You know, when it's crowded ---

17 A: Yes.

18 Q: Okay. And one's walking behind the other?

19 A: Yes.

20 Q: Do they ever start dancing at any point or speaking to  
21 anybody?

22 A: No, ma'am.

23 Q: Okay. And then where is D.J. at that point?

24 A: They're still right here.

25 Q: Okay. Now you say you see the guy with the knife, you go

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1 over here, tell the bouncer, come back and you're still  
2 standing there hanging out?

3 A: Yes.

4 Q: Okay. During that timeframe, did you ever see D.J. and  
5 this crowd ever move from this area?

6 A: No.

7 Q: Okay. So the two guys, so I'm clear, with the wife-  
8 beaters, are coming through here?

9 A: Yes.

10 Q: Pretty crowded?

11 A: Yes.

12 Q: Okay. Now where do you see them go to?

13 A: Right behind the group of people where DJ is at, right  
14 there.

15 Q: So D.J. is standing here and he -- what does it look like  
16 he's doing?

17 A: I believe at this point he was probably dancing and  
18 goofing off with his friends at that time.

19 Q: Did it look like these people around him were his friends?

20 A: Yes.

21 Q: Okay. Now do you know Robert Penna?

22 A: I do.

23 Q: Okay. Do you know Ryan Palmer?

24 A: I do not.

25 Q: Okay. Do you know the two people with the wife-beaters?

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- 1 A: I do not.
- 2 Q: Okay. So, you don't know any of this crowd in here?
- 3 A: No.
- 4 Q: So you, you come through and you say they're standing,  
5 D.J. and his group and the people it looks like he's talking  
6 to, are along in here; is that right?
- 7 A: Yes.
- 8 Q: Okay. Now, show me again where you see the see the two  
9 guys with the wife-beaters?
- 10 A: It was all right, right here behind the group.
- 11 Q: Okay. Behind this group of boys?
- 12 A: Yes.
- 13 Q: Okay. What do you see next?
- 14 A: D.J. accidentally bumps -- everyone falls into each other  
15 and he turns around, kind of apologetic and these guy's just  
16 standing there and ---
- 17 Q: Who was just standing there?
- 18 A: The shorter guy -- well, both of the guys, they were both  
19 standing there and ---
- 20 Q: The two guys with the wife-beaters?
- 21 A: Yes, ma'am.
- 22 Q: Now are they the same two guys you saw back here?
- 23 A: Yes, they are.
- 24 Q: The same one that had the knife out?
- 25 A: Yes, ma'am.

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- 1 Q: Okay. Now you had to be pretty attentive to notice D.J.  
2 over here, is that right?
- 3 A: Yes.
- 4 Q: Did you ever see a knife pulled out of this group of  
5 people, D.J. or anybody else?
- 6 A: No, no one had a knife, but the two boys.
- 7 Q: Now, so you say you see D.J. bump somebody?
- 8 A: Uh-huh (affirmative response).
- 9 Q: And it's one of the guys that you saw up here with the  
10 wife-beater?
- 11 A: Yes.
- 12 Q: Okay. What do you see next?
- 13 A: I don't, just punching -- the next think I know people  
14 were punching and a big fight broke out.
- 15 Q: Now let me ask you this. How close would you say it is  
16 from this step where you're standing to where D.J. and this  
17 group is? I mean, I know it's hard to say two or three feet.  
18 You tell me when to stop when you think I'm about where D.J.  
19 was standing from you that night.
- 20 A: I can just say from here to that, that empty chair, that  
21 first empty chair.
- 22 Q: Right here?
- 23 A: Yes.
- 24 Q: Okay. And were there a lot of people between you and him?
- 25 A: Somewhat, yes.

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ASHLEY MCNEILL - DIRECT BY LIVESAY

1 Q: Okay. Now let me ask you this much, you've already  
2 testified you're standing on this step up here?

3 A: Yes.

4 Q: Okay. And D.J. is down here on the dance floor?

5 A: Yes.

6 Q: Okay. So, you're actually standing above D.J. and his  
7 friends looking down?

8 A: Yes.

9 Q: Okay. So can you kind of see over a lot of these people?

10 A: Yes.

11 Q: Okay. So you see them you say come up from behind?

12 A: Yes.

13 Q: Do you see them say anything?

14 A: No.

15 Q: Okay. And what is the next thing you see?

16 A: Just

17 Q: Okay. What do you do then?

18 A: I kind of just go into shock. I'm not used to seeing  
19 blood, so I just go into shock and the next thing I knew, D.J.  
20 is on the ground.

21 Q: Okay. Where was he on the ground at?

22 A: Same area, right in here.

23 Q: Okay. And what did you do?

24 A: I walked outside and ---

25 THE COURT: Have her take the witness stand again.

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ASHLEY MCNEILL - DIRECT BY LIVESAY

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1 BY MS. LIVESAY:

2 Q: Now you said you walked outside?

3 A: Yes.

4 Q: What did you see going on outside?

5 A: At that point, they had taken D.J. outside and put him on  
6 the ground and trying to give him CPR, mouth-to-mouth.

7 Q: Who did you see injured?

8 A: I only saw two people injured.

9 Q: And where were they injured out, could you tell?

10 A: Yes.

11 Q: Where were they injured at?

12 A: D.J. was around the abdomen area and the guy that I helped  
13 was right in the rib area.

14 Q: Now, so you saw definitely people bleeding?

15 A: Yes.

16 Q: Okay. But you, did you offer, did you give anybody CPR?

17 A: No.

18 Q: Okay. So you were not that close ---

19 A: No.

20 Q: --- to the injury?

21 A: No.

22 Q: Did you ever apply force to any of the boys that were  
23 injured to help their wound?

24 A: Yes.

25 Q: Okay. Who was, where were you applying the force to?

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ASHLEY MCNEILL - DIRECT BY LIVESAY

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1 A: Right in the abdomen area right here.

2 Q: Okay.

3 A: To the rib.

4 Q: Okay. Now I'm gonna show you what's been marked as

5 State's Exhibit Eleven, Ten, Eleven; I'm sorry, Nine, Ten and  
6 Eleven?

7 A: Okay.

8 MS. LIVESAY: I've already shown this to Mr. Hyman, Your  
9 Honor.

10 BY MS. LIVESAY:

11 Q: Do you recognize who that is in the picture?

12 A: That's me.

13 Q: Okay. And look at all three; is that you in all three?

14 A: Yes.

15 Q: Okay. And was that you September 8th, 2009 from the  
16 Afterdeck?

17 A: Yes.

18 Q: Okay. So that's exactly what you were wearing?

19 A: It is.

20 MS. LIVESAY: Okay. Your Honor, at this time, I move to  
21 put these into evidence and publish them to the jury?

22 THE COURT: You may do so. Mr. Hyman, you say has seen  
23 these photographs?

24 MS. LIVESAY: Yes, sir, Your Honor.

25 THE COURT: All right.

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1                    STATE'S EXHIBITS NINE, TEN, AND ELEVEN

2                    ADMITTED INTO EVIDENCE

3 BY MS. LIVESAY:

4 Q: So, this is you at the Afterdeck that night?

5 A: Yes.

6 Q: Now, it appears you have something on you in this picture;  
7 do you know what that is?

8 A: Blood.

9 Q: Do you know how you got that blood on you?

10 A: I'm not aware.

11 Q: But you were out there assisting?

12 A: I was and it may have been from rubbing up against someone  
13 or my helping with the wound.

14 Q: Okay. Now were you out there until the police got there?

15 A: Yes, I was outside the entire time.

16 Q: Okay. And the club was pretty crowded?

17 A: Yes.

18 Q: Were there a lot of people trying to aid the people that  
19 were bleeding?

20 A: Yes.

21 Q: Okay. So they were -- there were people there trying to  
22 help?

23 A: Yes.

24 Q: Okay. Now, did you call 911?

25 A: No.

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1 Q: Okay. Did you see anybody else call 911?

2 A: Yes.

3 Q: Okay. So, you do know that there were other people  
4 calling 911?

5 A: Yes.

6 Q: Okay. And did the police get there?

7 A: Yes.

8 Q: Okay. Did the ambulance get there?

9 A: Yes.

10 Q: Okay. Now, did you give a voluntary statement to the  
11 police?

12 A: Yes.

13 MS. LIVESAY: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 BY MS. LIVESAY:

16 Q: Ashley, do you recognize what I'm showing you now?

17 A: Yes.

18 Q: And what is it?

19 A: It is my statement to the police the night of the  
20 accident, yes.

21 Q: Okay. And when did you give that statement?

22 A: 4:18 A.M. on September 8th.

23 Q: Okay. And was that the morning it happened?

24 A: Yes, it is.

25 Q: So you gave this statement. It looks like you said, what

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1 time, 4:18 A.M. in the morning?

2 A: Yes, ma'am.

3 Q: Okay. And was that around the same time those pictures  
4 were taken?

5 A: Yes.

6 Q: Okay. Now, did you give this statement that night, I mean  
7 that morning?

8 A: Yes.

9 Q: Did you ever leave the scene and then come back and give  
10 it?

11 A: No.

12 Q: Okay. So you gave it immediately?

13 A: Yes.

14 Q: Okay. Now have you looked at it?

15 A: Yes.

16 Q: Okay. And is that statement, is that the same thing that  
17 you're here telling us today?

18 A: Yes.

19 Q: Okay. And what you're telling us here today is that the  
20 truth?

21 A: Yes.

22 Q: Okay. And you do not know these two guys back here?

23 A: No.

24 MS. LIVESAY: One second, Your Honor. Nothing further  
25 from this witness, Your Honor.

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ASHLEY MCNEILL - CROSS BY HYMAN

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1 THE COURT: Mr. Hyman.

2 CROSS EXAMINATION OF ASHLEY MCNEILL BY MR. HYMAN:

3 Q: Hello, Ashley, how are you doing?

4 A: Good.

5 Q: Now, Ashley, you've given quite a few statements though;

6 is that correct?

7 A: Yes.

8 Q: You gave a statement that night 4:00 A.M.?

9 A: Uh-huh (affirmative response).

10 Q: Give another statement to an investigator named Carmen

11 Mureddu?

12 A: I did.

13 Q: Did you give another statement to another investigator?

14 A: I did.

15 Q: And did you give a statement to my investigator ---

16 A: I did.

17 Q: --- who is right there? And is it your testimony today

18 that all those statements are exactly the same?

19 A: Yes.

20 Q: So, if you had told Carmen Mureddu that you didn't see who

21 was stabbing who and you couldn't see the knife, that would be

22 incorrect?

23 A: Could you repeat the question?

24 Q: If you gave a statement to Carmen Mureddu saying that you

25 could not see the knife and was not, you were not able to

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- 1 determine who stabbed whom?
- 2 A: Yes.
- 3 Q: Is that correct?
- 4 A: Yes.
- 5 Q: Now as far as telling the bouncer, is it your testimony  
6 today that you told the bouncer or that somebody else told the  
7 bouncer?
- 8 A: Someone else did.
- 9 Q: Okay. Now you just testified a couple of minutes ago that  
10 you told the bouncer?
- 11 A: Me and my friend told the bouncer.
- 12 Q: Who really told the bouncer?
- 13 A: My friend.
- 14 Q: Is she here?
- 15 A: No.
- 16 Q: And you don't know the bouncer's name, do you?
- 17 A: No.
- 18 Q: Could you, could you tell him -- I mean, could you point  
19 him out if you saw him?
- 20 A: No -- I mean, yes, I could.
- 21 Q: They haven't asked you to do that though, have they?
- 22 A: No.
- 23 Q: Now, as far as your testimony, you've got better eyesight  
24 than I do obviously, but you're saying that you saw my client  
25 standing next to his codefendant with a knife out; is that

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1 correct?

2 A: Yes.

3 Q: Okay. And at the same time, you see D.J. and then at the  
4 same time you're also seeing -- going and telling the bouncer;  
5 is that right?

6 A: Yes.

7 Q: All of this is going on at the same time?

8 A: Around the same time.

9 Q: So are you watching my client the whole time?

10 A: Not the entire time, but I kept seeing him throughout the  
11 night.

12 Q: Well, my client comes back up -- now, when you say you see  
13 the knife, has it been your statement the whole time that it  
14 was him or you may be told some people that you didn't  
15 necessarily know which one of them it was?

16 A: When I was caught off guard, I may've said I did not  
17 remember.

18 Q: But you didn't know when it was that had the knife out?

19 A: When I was caught off guard, yes.

20 Q: Okay. When you were caught off guard, meaning that you  
21 weren't prepped?

22 A: No, I was caught off guard in my driveway.

23 Q: Now, as far as this goes, when you saw them, the two  
24 codefendants and she asked you a couple of times, walking out  
25 this way, you said they were walking single file trying to get

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1 through everybody; is that right?

2 A: Yes.

3 Q: Okay. Did you see a knife in either one of them's hand at  
4 that point?

5 A: It wasn't -- I couldn't see below -- I could probably see  
6 shoulder length up.

7 Q: But you weren't -- you didn't see a knife at that point?

8 A: Huh-uh (negative response).

9 Q: Did you see a knife when they came up here to these two  
10 guys?

11 A: No, sir.

12 Q: At any point during the actual fight did you see a knife?

13 A: No, sir.

14 Q: Okay. Now, and I may have misunderstood you, you said you  
15 went out and helped somebody that was stabbed in the ribs; is  
16 that right; is that what you said?

17 A: Yes.

18 Q: Okay. And who was that that you said you helped that was  
19 stabbed in the ribs?

20 A: I didn't know his name at the time, but through time I've  
21 learned it was Ryan.

22 Q: Which one?

23 A: Robert, I'm sorry, Robert.

24 Q: Which one's Robert; is he on the left or the right?

25 A: The left.

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1 Q: Okay. So can you point on yourself where you were  
2 applying pressure?

3 A: It was around this region?

4 Q: Okay. Right there?

5 A: Yeah, around this region.

6 Q: So, it wasn't in the back; those are two different  
7 regions?

8 A: They are two different regions. I can't remember.

9 Q: Okay.

10 A: But I believe it was that area.

11 Q: Now, it's your testimony though that you didn't see them  
12 bump anybody else?

13 A: No.

14 Q: Okay. So if somebody else was to come up later and say  
15 they bumped into me, that wouldn't be true; it's not what you  
16 saw?

17 A: True.

18 Q: If somebody was to testify at a later point and say they  
19 didn't bump D.J., they bumped me, that's not true; is that  
20 what you're saying?

21 A: Can you rearrange the question?

22 Q: If somebody else was to testify at a later time in this  
23 trial that D.J. never got bumped; there was never a shoulder  
24 bump, that it actually happened to somebody else. You're  
25 saying that that couldn't be true?

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1 MS. LIVESAY: Your Honor, I believe that question is  
2 misleading.

3 THE COURT: Ask her what she saw.

4 MR. HYMAN: And, Judge, that's what I'm saying.

5 THE COURT: Well, no that's not exactly the way you're  
6 framing that question. Rephrase the question so she can  
7 understand it.

8 BY MR. HYMAN:

9 Q: Did you see anybody else get bumped?

10 A: No.

11 Q: Now when you talk about bumped, are you talking about a  
12 shoulder bump; is that what you're talking about?

13 A: No. Dancing accidentally rubbing up against somebody and  
14 one of the boys, the boys with the wife-beater shirts were  
15 just standing behind them waiting to get bumped.

16 Q: Okay. So, they were just waiting to get bumped?

17 A: They were waiting to get bumped.

18 Q: Okay. What color shorts were they wearing; do you  
19 remember?

20 A: It was too dark.

21 Q: It was too dark?

22 A: I couldn't -- all I remember is the wife-beater shirts.

23 Q: Okay. So you wouldn't remember yellow shorts; it was too  
24 dark for that?

25 A: It was.

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1 Q: But you saw a black knife; is that what you said?

2 A: I saw a blade.

3 Q: Okay. What color was the blade?

4 A: Silver.

5 Q: The blade was silver?

6 A: From my memory, yes.

7 Q: Well, that's what I'm trying to find out. Your memory is  
8 that you don't know what color the shorts were, but you  
9 remember that the blade was silver?

10 A: Right.

11 Q: Okay. Again it's your testimony that you held, you held  
12 pressure here because that was where the guy was stabbed?

13 A: From what I remember.

14 MR. HYMAN: Okay. Your Honor, no further questions.

15 THE COURT: Any redirect, Ms. Livesay?

16 MS. LIVESAY: Just a couple, Your Honor. Can I approach  
17 the witness, Your Honor?

18 THE COURT: Certainly.

19 REDIRECT EXAMINATION OF ASHLEY MCNEILL BY MS. LIVESAY:

20 Q: Ashley, do you -- these are the two statements that I know  
21 about that Mr. Hyman just referenced one to Carmen Mureddu and  
22 one voluntary statement?

23 A: Yes, ma'am.

24 Q: Okay. These are the only two I'm familiar with. Have you  
25 given another statement?

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1 A: One of the DA Solicitor's approached me in my driveway. I  
2 was caught off guard and she asked me a few questions.

3 Q: Who, who was in your driveway?

4 A: One of their, one of their people; I don't know who it  
5 was.

6 Q: One of Mr. Hyman's investigators?

7 A: Yes.

8 Q: Okay. Was in your driveway?

9 A: Yes.

10 Q: When was this?

11 A: Friday, December -- January 3rd.

12 Q: Okay. And did she ask you to write anything down?

13 THE COURT: January 3rd of what year please?

14 A: 2014.

15 THE COURT: Okay. Thank you.

16 A: You're welcome.

17 BY MS. LIVESAY:

18 Q: So it was not Ms. Hobb, my investigator, the lady with  
19 blonde hair?

20 A: No, ma'am.

21 Q: Okay. And it definitely was not me?

22 A: No, ma'am.

23 Q: Okay. Now did she ask you to do a written statement?

24 A: No, ma'am.

25 Q: Okay. So nothing is in writing that you wrote down?

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1 A: No, ma'am.

2 Q: Okay. And I'm gonna ask you to look at this statement  
3 that you gave 4:18 A.M. September 8th right after it happened.  
4 Now did you mention seeing a knife in that statement?

5 A: Yes.

6 Q: Okay. And that's the statement that you did; it's your  
7 written statement?

8 A: Yes.

9 Q: Okay. And that's the statement that Mr. Hyman was just  
10 asking you about that you gave Ms. Mureddu; are you familiar  
11 with that?

12 MR. HYMAN: Your Honor, I'm gonna object: That's not a  
13 statement, it's specifically a report from Ms. Mureddu.

14 THE COURT: Rephrase your question.

15 MS. LIVESAY: I'm sorry, Your Honor, I thought he called  
16 it a statement.

17 THE COURT: That's what I thought, but call it whatever  
18 it is.

19 BY MS. LIVESAY:

20 Q: It's a report now, Ms. McNeill, it's not your statement  
21 apparently.

22 A: Yes, ma'am.

23 Q: Did you give Ms. Mureddu a statement?

24 A: I did.

25 Q: Okay. Could you glance through this and tell me if you

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1 mentioned to Ms. Mureddu you saw a knife that night?

2 A: Yes.

3 Q: Okay. And that was, that report -- and she did that  
4 interview on October 6th, 2010?

5 A: Yes.

6 Q: Okay. So, you mentioned the knife, that you saw a knife  
7 on September 8th, 2009?

8 A: Yes.

9 Q: Okay. And then when she talked to you October 6th, 2010,  
10 you again told her you saw a knife?

11 A: Yes.

12 Q: Okay. So when you gave a voluntary statement that night,  
13 you said I saw a knife?

14 A: Yes.

15 Q: When Carmen Mureddu came and interviewed you said, I saw a  
16 knife?

17 A: Yes.

18 Q: Okay. Have you ever told anybody you saw a gun?

19 A: No.

20 Q: Okay. Nothing other than a knife?

21 A: Nothing other than a knife.

22 Q: Okay. Now you told us you saw the knife in somebody's  
23 hand; is that correct?

24 A: Yes.

25 Q: Okay. And you saw two guys standing together?

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1 A: Yes.

2 Q: Okay. Whose hand was the knife in?

3 A: The shorter guy's.

4 Q: Okay. And is that what you told us in the past?

5 A: Yes.

6 Q: Okay. Now, if you don't mind, I'm gonna ask you to look  
7 at these pictures from the Afterdeck. I'm sorry, I'm looking  
8 for the ones of the club that Mr. Hyman put into evidence.

9 Thank you.

10 Ashley, this is a picture that night in the Afterdeck.

11 A: Okay.

12 Q: Do you recognize that as the Afterdeck?

13 A: Yes.

14 Q: Is that what it looked like that night?

15 A: Yes.

16 Q: Okay. So, would you say, can you, can you tell what color  
17 everybody's shirt is in that picture?

18 A: No.

19 Q: Okay. So, it was a little dark in there?

20 A: Yes.

21 Q: It was dark in there. Now the statement that you gave  
22 this Jury today, was that the truth?

23 A: Yes.

24 Q: Okay. And you don't know the Defendant, do you?

25 A: No.

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1 Q: And you don't know the two guys in here today, do you?

2 A: No.

3 Q: Now and this happened back in 2009; is that correct?

4 A: Yes.

5 Q: Okay. Now in your statements, did you ever talk about  
6 aiding anybody outside the Afterdeck?

7 A: No, ma'am.

8 Q: I can show them to you again if you do need to refresh  
9 your memory?

10 A: Aiding?

11 Q: Yeah, like helping somebody that was out there bleeding?

12 A: Yes.

13 MS. LIVESAY: Okay. No further questions, Your Honor.

14 THE COURT: Any redirect or recross rather?

15 MR. HYMAN: No, Your Honor.

16 THE COURT: You may come down. Thank you, ma'am.

17 Do you have another witness we can take tonight?

18 MS. LIVESAY: I should, Your Honor. Give me one second?

19 THE COURT: Okay.

20 MS. LIVESAY: Yes, sir, Your Honor.

21 THE COURT: Let's go ahead.

22 MS. LIVESAY: Thank you, Your Honor. At this time the

23 State calls Robert Bullock to the stand.

24 THE COURT: All right, ma'am.

25 Mr. Foreman, we'll take this witness and then quit for

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1 the evening.

2 CLERK: Sir, please raise your right hand and place your  
3 left hand on the Bible.

4 ROBERT BULLOCK, HAVING BEEN

5 SWORN TESTIFIES AS FOLLOWS:

6 CLERK: Please state your full name and spell your last  
7 name.

8 MR. BULLOCK: Robert Bullock, B-U-L-L-O-C-K.

9 DIRECT EXAMINATION OF ROBERT BULLOCK BY MS. LIVESAY:

10 Q: And, Mr. Bullock, where do you currently live?

11 A: Cartersville, Georgia.

12 Q: Okay. And how old are you?

13 A: Twenty-nine.

14 Q: Okay. And where were you living back in September of  
15 2009?

16 A: In Little River, South Carolina.

17 Q: Okay. And where were you working at?

18 A: I was working at the Afterdeck.

19 Q: Okay. And how long had you been working at the Afterdeck?

20 A: A month or two; I'm not sure exactly when I started over  
21 there.

22 Q: More than one night?

23 A: Yes, ma'am.

24 Q: Okay. And what were your responsibilities at the  
25 Afterdeck?

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1 A: I worked the security guards, the floor to make sure there  
2 were no fights, many problems that need taken care of before  
3 they got out of hand.

4 Q: Okay.

5 A: Or try to.

6 Q: Okay. So you were kind of just scanning the room?

7 A: Yes, ma'am.

8 Q: Okay. Were you drinking that night?

9 A: No, ma'am.

10 Q: Were you under the influence of any drugs or alcohol?

11 A: No, ma'am.

12 Q: Okay. And about what were the hours you were working that  
13 night?

14 A: I believe I arrived around 8:00 or 8:30 and I think I left  
15 around 3:00 or 3:30 in the morning, the following morning.

16 Q: And are you familiar with what the inside of the Afterdeck  
17 looks like?

18 A: Yes, ma'am.

19 Q: Okay. I'm gonna show you what's in State's evidence  
20 Number Twelve. Is that an accurate depiction of what the  
21 dance floor and the cages look like in the Afterdeck?

22 A: Yes, ma'am.

23 Q: And is that what they looked like when you were working  
24 September 8th, 2009?

25 A: Yes, ma'am.

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1 Q: Okay. Now if you don't mind, tell me a little bit about  
2 what the inside of the Afterdeck looked like that night; was  
3 it crowded, was it dark, was it light?

4 A: It had lights, flashing lights. It wasn't too crowded.  
5 You could see down the walkways on the side going up towards  
6 the stage. There weren't too many people at the tables that  
7 are behind the dance floor. There were a good bit of people  
8 on the floor, but it wasn't crowded; it wasn't packed in there  
9 like everybody just -- elbow room or anything like that.

10 Q: Okay. So you could see; it wasn't so packed you couldn't  
11 scan the room and see everybody?

12 A: Right; yes, ma'am.

13 Q: Okay. And do you remember how many bouncers were working  
14 that night?

15 A: I would say anywhere between ten to fifteen, maybe; I'm  
16 not sure.

17 Q: Okay. Now do you remember that night if a fight broke out  
18 that night?

19 A: Yes, ma'am.

20 Q: Okay. Now if you don't -- if you don't mind, tell the  
21 Jury what you saw that night?

22 A: I was standing off by the bathrooms. There's the gilded  
23 cage, then you have the speaker box and then a gilded cage on  
24 the other side by the Waterway.

25 MS. LIVESAY: Your Honor, if you don't mind, can he step

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1 down and use that diagram for his testimony?

2 THE COURT: He may if it will be helpful to the Jury.

3 MS. LIVESAY: Thank you, Your Honor.

4 THE COURT: Mr. Hyman, I invite you to come around so  
5 that you can hear his testimony if you care to.

6 BY MS. LIVESAY:

7 Q: And this is an accurate representation?

8 A: Yes.

9 Q: Okay. If you don't mind, first start off telling the Jury  
10 where you were standing again?

11 A: Back in this area.

12 THE COURT: It may be better for him to stand on the  
13 other side so he can be speaking to my Court Reporter. Isn't  
14 that better for you, Ms. Kay?

15 COURT REPORTER: Yes, sir. Thank you. I want to make  
16 sure she hears this testimony.

17 A: Back in this area there's tables and there's a bathroom  
18 here and then you go out towards the entrance. I was standing  
19 back over in this area.

20 BY MS. LIVESAY:

21 Q: Okay. And what did you see?

22 A: I saw two guys here. They were, they acted like they,  
23 they were ---

24 Q: What did they look like first?

25 A: They wife-beaters on.

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1 THE COURT: Can he come back to the chair now? Can you  
2 come back; have you finished using the diagram?

3 MS. LIVESAY: Well, he's gonna tell me what he saw.

4 THE COURT: Okay. Go ahead.

5 MS. LIVESAY: I'm sorry; are you having trouble hearing?

6 THE COURT: No, no. I just want to make sure my Court  
7 Reporter hears. Go ahead.

8 A: I saw two gentlemen standing here wearing wife-beaters,  
9 short hair, shorts. They, they acted like they were  
10 aggressive. We call it mean muggin where you're just looking  
11 at somebody like there's just something that's bothering you,  
12 maybe somebody did something to you and then they crossed the  
13 whole room.

14 BY MS. LIVESAY:

15 Q: Now, were these two guys, one shorter or taller, both the  
16 same?

17 A: One was a little bit shorter, not exactly the same height,  
18 just a little bit shorter.

19 Q: Okay.

20 A: Really close-cut haircuts. I saw them over here in this  
21 area. One guy had his hands in his pockets.

22 Q: Right here?

23 A: Yes, ma'am. They both looked like they were throwing gang  
24 signs is what they say. And they just -- they just keep  
25 getting aggravated; it seemed like that. So, I asked someone

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1 that was stationed over here to come over and watch them with  
2 me because it looked like something was about to happen  
3 whether it was a fight or whatever. I asked him then -- he  
4 was a little bit of a smaller guy -- to go around over in this  
5 area -- there was a guy named Kevin over here -- to come back  
6 around and we're gonna take a look at these guys and make sure  
7 everything's gonna be fine. By the time it took him to get  
8 over here, the guys are starting walking down the steps here  
9 towards the fight area, which I saw the fight happen here.

10 When I check to see if he'd been over ---

11 Q: Okay. Right in here or right over here?

12 A: Right in this area.

13 Q: Okay.

14 A: When I checked to see if he had already got to the other  
15 security officer, security guard, the fight had already broken  
16 out. So, that's when I went down and started pulling people  
17 off and as I was taking people out I noticed a bloody shirt on  
18 the floor and then I saw the victim laying on the mezzanine of  
19 the night club.

20 Q: Where did you see the victim laying?

21 A: It was outside ---

22 Q: Okay.

23 A: --- under the mezzanine, it's like the little deck before  
24 you walk into a hotel or building.

25 Q: Okay. And you saw the guys with wife-beaters right here?

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- 1 A: Right around this area, yes, ma'am.
- 2 Q: Okay. And where did you see them walk to?
- 3 A: They walked straight down through here, but then that's
- 4 whenever I went to check to see if Adam, I believe his name
- 5 was, got Kevin to come back around to keep an eye on those
- 6 guys.
- 7 Q: Okay. Did you see anybody approach these guys?
- 8 A: No, ma'am.
- 9 Q: Okay. And you say you saw them walk onto the dance floor?
- 10 A: Yes, ma'am.
- 11 Q: And you didn't see anybody approaching them?
- 12 A: No, ma'am.
- 13 Q: And their demeanor was kind of mean muggin'?
- 14 A: Yeah, just ---
- 15 Q: Where were they looking over at; just tell me where they
- 16 were looking over, could you tell?
- 17 A: I had watched them for a little bit earlier. I mean, they
- 18 hadn't been standing there long, but it was kind of like they
- 19 were scanning the whole crowd. I don't know if they were
- 20 looking for that one person or one group of people, but it's
- 21 just like it was towards everybody.
- 22 Q: Okay. And -- okay. And they walked down here?
- 23 A: Yes, ma'am.
- 24 Q: Where were you walking to?
- 25 A: I was standing back here. I kinda moved over this way

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1 when they started walking down for Kevin to come over and when  
2 the fight started, I actually came down this way to start  
3 breaking up the fight, pulling people out of there because it  
4 was just like a big brawl.

5 Q: Okay. Have a seat, Robert.

6 Now, do you remember whether or not anybody got injured  
7 in that fight?

8 A: I knew of one person that was stabbed and then he actually  
9 passed away at the club. I don't know if it was inside or  
10 after he had been moved outside, but that was the only injury  
11 I ever knew about.

12 Q: Okay. And was your view to these guys, was it a bunch of  
13 people in between you and them, the two guys with wife-beaters  
14 or did you have a clear view of them?

15 A: No, it was a clear view.

16 Q: Okay. Did you see, just yes or no, did you see anybody  
17 else acting like that in the club that night as far as mean  
18 muggin people?

19 A: Yeah, I mean not, not at the same time, but yes, ma'am.

20 Q: Okay. About how long did it take for the fight to break  
21 out when those two boys with wife-beaters walked down those  
22 steps?

23 A: It seemed like it was a couple of seconds. I, I turned to  
24 look to see if Adam was over by Kevin to bring them back over  
25 there and by the time I turned to look back it was a big

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1 brawl.

2 Q: Okay. And when they were on the steps, were they standing  
3 side by side?

4 A: Yes, ma'am.

5 Q: Okay. And one was taller than the other?

6 A: Yes, ma'am, the shorter guy was closer to me.

7 Q: Okay.

8 A: So that's how I got ---

9 Q: One, one was taller and one was shorter?

10 A: Yes, ma'am.

11 Q: Okay. Now, do you remember seeing these two guys at the  
12 club that night?

13 A: No, ma'am.

14 Q: You do not?

15 A: No, ma'am. Not that I can recall.

16 Q: Okay. And about how long had you been doing security?

17 A: Just when I started working at the Afterdeck for about a  
18 month or two.

19 MS. LIVESAY: Okay. One second, Your Honor. No further  
20 questions, Your Honor. Actually I'm sorry, one more thing.

21 May I approach the witness?

22 THE COURT: You may.

23 BY MS. LIVESAY:

24 Q: Do you recognize what I'm showing you now?

25 A: Yes, ma'am; that's my statement.

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1 Q: Okay. And when did you give it?

2 A: On the 14th of September.

3 Q: Okay. And who did you give it to?

4 A: I believe it was, I don't know if it was the police  
5 station or if it was my boss. It might've been my boss that  
6 turned them in; I can't remember.

7 Q: Okay. And what you said in that statement, is that what  
8 you told the Jury today?

9 A: Yes, ma'am.

10 Q: Okay. And what you told the Jury today, was that the  
11 truth?

12 A: Yes, ma'am.

13 MS. LIVESAY: No further questions, Your Honor.

14 THE COURT: All right. You may examine.

15 CROSS EXAMINATION OF ROBERT BULLOCK BY MR. HYMAN:

16 Q: Mr. Bullock, good evening now, it's kinda late now. Now,  
17 you said you'd worked at the Afterdeck now for how long by  
18 this point?

19 A: About a month or two.

20 Q: Now did y'all get training sessions and stuff like that?

21 A: We had a training session at the DJ booth beforehand to,  
22 just to kinda go over how we should take care of things.

23 Q: Now, do y'all have like stations, like you, you're in  
24 charge of this side and they're -- somebody else is ---

25 A: Yes, sir.

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1 Q: --- Adam's over here and did you say Kevin?

2 A: Kevin was more down towards, I guess, there were like  
3 bleachers, yes, ma'am -- yes, sir.

4 Q: The -- as far as this cage up here, so you would've been  
5 the one right here?

6 A: I would've been back over in this area.

7 Q: Would anybody else have been right here?

8 A: Not for security. They may have been down here by the  
9 stage.

10 Q: But this area right here was your area?

11 A: Yes, sir.

12 Q: All right. Now you said that you saw the two guys  
13 standing here kind of mean muggin. Now, you said that one of  
14 them was fumbling in his pockets or had his hands in his  
15 pockets?

16 A: Yes, sir.

17 Q: Is that unusual?

18 A: Not really, he might have been playing with some change or  
19 checking his phone.

20 Q: Now back then were people allowed to smoke in the  
21 Afterdeck?

22 A: I believe so, yes, sir. It was an open, there were like  
23 no walls and it was all open.

24 Q: So, he could have been getting a lighter or cigarettes or  
25 anything like that?

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- 1 A: Could've been; that's why I didn't approach them and ask  
2 them what was going on.
- 3 Q: All right. Now, did anybody come up to you and say, hey,  
4 you need to check those guys out?
- 5 A: I believe one girl come up and said that they were gonna  
6 start some trouble.
- 7 Q: Uh-huh (affirmative response).
- 8 A: And I told her I was already watching them and already had  
9 someone else watching them with me.
- 10 Q: Did she say that one of them had a knife out?
- 11 A: Not that I recall.
- 12 Q: Now, if somebody came up to you and said, hey, that guy's  
13 got a knife out; what would you do?
- 14 A: Try to get him out there safely without causing any  
15 incident.
- 16 Q: Would you have acted a little differently than you did if  
17 somebody had a knife out?
- 18 A: Yes, sir.
- 19 Q: That would've been pretty immediate, correct?
- 20 A: Yes, sir.
- 21 Q: Okay. So, nobody came up to you and said, hey, there's a  
22 guy over with his knife out?
- 23 A: No, sir.
- 24 Q: And again, you were the one working this area, right?
- 25 A: Yes, sir.

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1 Q: Okay. Now, as far as your training and kind of tell me,  
2 I'm a whopping five-eight tall, so I'm obviously not a  
3 bouncer, but when it comes to your training, what do they tell  
4 you to do when you're breaking up a fight?

5 A: You are not allowed to hit the person; it's definitely  
6 against the law. But to break up a fight, you want to try to  
7 wrap them up to keep them from hitting anyone else if they're  
8 already fighting. If they're not fighting and they're pushing  
9 around, you separate them. You don't get them towards each  
10 other; you get them away from each other, try to get them to  
11 calm down. Hopefully, the incident didn't go far enough to  
12 kick them out, but if it does, you ask them to leave politely.  
13 If they don't, then you escort them out, either take them by  
14 the arm. If you have to be aggressive with them, wrap them up  
15 and take them out.

16 Q: Did you have to get aggressive with any of these people?

17 A: After the fight broke out?

18 Q: Uh-huh (affirmative response).

19 A: There was a couple of people -- I didn't know who they  
20 were; they were all just fighting. I got down there and was  
21 pulling them off and I actually did have to wrap one guy up  
22 and take him out because he was still hitting people,  
23 blindsiding them afterwards and that's when I noticed the  
24 victim outside.

25 Q: So, blindsiding people?

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ROBERT BULLOCK - CROSS BY HYMAN

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- 1 A: Uh-huh (affirmative response).
- 2 Q: Now was it this guy?
- 3 A: No, sir, they were already gone as far as I know. The,  
4 the two guys that I saw I didn't see them in the club until I  
5 had walked outside.
- 6 Q: Okay. So, the people you wrapped up that were still  
7 hitting and throwing punches and everything were not Blake  
8 Griffith and Blake Brown, the two guys in the wife-beaters?
- 9 A: No, sir.
- 10 Q: All right. Now you said a couple of minutes ago that when  
11 this thing popped off, it was a brawl?
- 12 A: Yeah, it looked like a big -- you ever watch the cartoons  
13 like a big brawl, people just throwing ---
- 14 Q: Tumbleweed.
- 15 A: Right.
- 16 Q: Now, would you say six people?
- 17 A: I would say six or more definitely.
- 18 Q: Six or more people. Okay. So what if we say maybe eight  
19 people; would that be accurate?
- 20 A: I guess you could say eight people, yes, sir.
- 21 Q: Were there people on the ground?
- 22 A: I didn't notice anybody on the ground. I didn't even know  
23 -- I didn't even know anyone was hurt until after I had  
24 escorted one of the, one of the fighters outside.
- 25 Q: Did you see a knife at any time?

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ROBERT BULLOCK - CROSS BY HYMAN

1 A: I didn't see a knife at any time, no, sir.

2 Q: Okay. So as far as you know it was a bar brawl?

3 A: It was just a fight, yes, sir.

4 Q: Okay. Now, at places like the Afterdeck, do fights  
5 happen?

6 A: Occasionally.

7 Q: Occasionally. Now, I mean, and, what would you call it a  
8 bar fight then, a nightclub fight?

9 A: Don't misunderstand me, it wasn't as big -- that was the  
10 biggest one I've seen. Usually, it's one or two guys or two  
11 or three guys fighting.

12 Q: So, if there was only two guys, the wife-beaters, that  
13 would insinuate then the other guys were against them; is that  
14 right?

15 A: I don't know if they were against them. I mean, if you  
16 see a fight in a bar, sometimes people just jump in just to  
17 fight. I don't know why, it's just something that people do.

18 Q: Now as far as that goes, though, some people just like to  
19 fight?

20 A: Yes, sir.

21 Q: Is that what you're saying?

22 A: I'd say so, yes, sir.

23 Q: Now, have you seen that at the Afterdeck before or any  
24 other nightclubs before?

25 A: No, sir, it was usually somebody disrespected somebody or

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1 hey, you're talking to my girlfriend or you're dancing with my  
2 girlfriend, something like that.

3 Q: But as far as the jumping in thing. Let's just say you  
4 know, me and my buddy are fighting two other guys. So, you're  
5 saying those guys just like to do it sometimes want to  
6 broadside somebody?

7 A: Sometimes, yes, sir.

8 Q: Now you said you saw one guy who was night one of the  
9 wife-beater guys broadsiding people; is that right?

10 A: Actually I, I had pulled one of the guys off that used to  
11 work with us and I told him, why are you fighting; you used to  
12 work here. And that's when another guy, didn't even know who  
13 he was, just came from the tables and just clocked him.

14 Q: Okay.

15 A: So, I let him go. This was after the major fight has  
16 already ended, you know, I've got him off to the side and he  
17 come up and just clocked him. I don't know if he had hit his  
18 friend or something like that beforehand. That's when I let  
19 him go and took him outside and that's whenever I saw the  
20 victim outside.

21 Q: But it's your testimony that besides my client and his  
22 codefendant and the two gentlemen sitting back there and the  
23 unfortunate young man that died, besides those guys, there  
24 were obviously other people involved in this?

25 A: As far as I know, I don't know who knew who during the

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1 fight. I just saw a big fight.

2 Q: So it would be more than three on two is what I'm saying?

3 A: It looked like there was more than three on two. To me it  
4 looked like it was just a brawl.

5 Q: Okay. As far as -- I noticed something as far as the  
6 wristbands. What did the wristbands mean there?

7 A: The wristbands were if you were of age to drink, I  
8 believe, and if you didn't have a wristband -- I can't  
9 remember if they did X's. I think it was no wristbands you  
10 weren't allowed to drink at all.

11 Q: Okay.

12 A: So, twenty-one and up you had the wristband.

13 Q: So, like this guy appears to have a watch on but no  
14 wristband?

15 A: Right.

16 Q: So he would not be able to drink?

17 A: Yes, sir.

18 Q: But I don't see any X's on his hands. So, is it, is it  
19 your testimony though, when you're working as security for  
20 stuff like that, you generally try to grab the people who are  
21 being the aggressor; is that kind of the general rule?

22 A: Not necessarily the aggressor. You want to get the  
23 aggressor away even if you do take the one that's being hit  
24 and wrap them up it gives the guy that's hitting the guy even  
25 more chance to hit him and hurt him.

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1 Q: When you wrap a guy up, he's probably not the one getting  
2 hit?

3 A: I would try to. You try to break it up; you try to get  
4 them away from a person. If they just keep going then you got  
5 to wrap someone up and hopefully you have backup there to help  
6 you out.

7 Q: Well, let's just say that one guy was getting the better  
8 of another one and another guy came in; would you try to grab  
9 that other guy before he could do any damage?

10 A: We would try to break up the fight before it even started,  
11 but if someone was coming in to blindside somebody, I would  
12 probably grab the guy that's, that's getting aimed for to get  
13 him out of the way of being hit is what I would try to do.  
14 I'd put myself in between those two so that the guy that's  
15 coming to blindside him could not hit him.

16 Q: Right. And have you seen fights before when people may  
17 not, maybe didn't have black eyes and stuff like that and  
18 still were involved in fights?

19 A: Yes, sir.

20 Q: Do you know if there was a cover charge that night?

21 A: I don't recall. I'm not sure.

22 Q: Did y'all normally have a cover charge?

23 A: Every now and then the, the, our manager would say, okay,  
24 there's no cover charge. We had TV personalities come in and  
25 they would do a cover charge for that, of course, because

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1 they're gonna bring more people, but I'm not sure if they had  
2 one that night.

3 Q: Yeah, and I think y'all did have a promoter that night; do  
4 you remember?

5 A: I believe we had a promoter.

6 Q: Taylor Burt; do you remember if it was Taylor Burt?

7 A: I'm not sure.

8 Q: Now, as far as the promotion though, do you remember what,  
9 what y'all's promotion was on Monday, what it was called?

10 A: No, sir.

11 Q: You don't remember if it was called Monday Mayhem?

12 A: Maybe, I'm not sure.

13 Q: Okay. And again, in your statement that you gave the  
14 police, you said at that time you hadn't seen knives or  
15 anything like that?

16 A: No, sir.

17 MR. HYMAN: No further questions, Your Honor.

18 THE COURT: Any further redirect?

19 MS. LIVESAY: No, sir, Your Honor.

20 THE COURT: All right. You may come down.

21 Can this witness be excused from his subpoena?

22 MS. LIVESAY: Yes, sir, Your Honor.

23 THE COURT: You are excused.

24 BY THE COURT:

25 THE COURT: All right. Now's a good time to break for

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1 stand.

2 MS. LIVESAY: We are, Your Honor.

3 THE COURT: Okay. All right. Is there anything further  
4 from the State?

5 MS. LIVESAY: No, sir.

6 THE COURT: Mr. Hyman, anything further from the  
7 Defendant?

8 MR. HYMAN: Your Honor, just briefly. Since the  
9 witnesses are sequestered, I would just ask that you ask the  
10 people who have already testified as well as the victims in  
11 this case not to talk to any upcoming witnesses since it is  
12 your order they be sequestered.

13 THE COURT: I will do -- I will do that.

14 MS. LIVESAY: That's fine. We understand that, Your  
15 Honor. And here's the deal, we're keeping them in separate  
16 parts so some people we have to walk down the hallway to get  
17 people.

18 THE COURT: That's fine, but to the extent possible,  
19 when, when you get your next witness ready, get that next  
20 witness closer so we can move on.

21 MS. LIVESAY: We will, Your Honor.

22 THE COURT: All right. I'm concerned about the Jury  
23 getting agitated waiting between witnesses.

24 All right, Mr. Hyman, somewhat reluctantly given a murder  
25 case, I'm going to let the Defendant stay out on bond, but I

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1 want somebody from you or your staff to personally escort him  
2 down so I won't have to hear that somebody's screaming at  
3 somebody or looking tough at somebody.

4 MR. HYMAN: Judge, I understand that. I'll walk him down  
5 myself.

6 THE COURT: I've heard it a thousand times.

7 MR. HYMAN: Yes, sir.

8 THE COURT: And I do that to protect the Defendant's  
9 interest.

10 MR. HYMAN: I understand that. He's unfortunately in the  
11 restroom, again..

12 THE COURT: I understand that and I'm accommodating him  
13 and you as to that issue as best I know how.

14 MR. HYMAN: I appreciate that, Judge.

15 THE COURT: All right. Let's be ready to go now at 9:30  
16 and have that IT here at 9 o'clock ready to go.

17 Thank you, gentlemen, have a good afternoon.

18 (RECESS - 5:55 P.M.)

19 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

20

21

22

23

24

25 END OF DAY ONE.

1     **(January 7, 2014)**

2     (REPORTER'S NOTE: The following takes place outside the  
3     presence of the Jury.)

4     BY THE COURT:

5             THE COURT: Good morning, ladies and gentlemen, please be  
6     seated.

7             Is the State ready to proceed?

8             MS. LIVESAY: Yes, sir, we are.

9             THE COURT: Defendant ready?

10            MR. HEWITT: Yes, Your Honor, one thing just very briefly  
11     if you don't mind. I see some new faces behind our table and  
12     some new faces behind the State's table. I just ask you  
13     remind that any fact witnesses are not to be in the courtroom;  
14     that no one is allowed to circulate testimonial information to  
15     other fact witnesses.

16            THE COURT: I understand that. I assume my order of  
17     sequestration is being followed. What says the State?

18            MS. LIVESAY: Yes, sir, Your Honor. The only people that  
19     are here that is under subpoena is Joe Beeson and he's gonna  
20     be the first witness I call. I've got him here to speed it  
21     up.

22            THE COURT: Okay.

23            MS. LIVESAY: But these other people back here, my  
24     understanding is none of them are under subpoena; they are  
25     just here for support.

1 THE COURT: All right. You got any of your witnesses  
2 here? Are any of your folks witnesses in this case?

3 MR. HYMAN: Your Honor, we do have on the witness list my  
4 client's mother and father, but they're not fact witnesses as  
5 to what happened here. They will be more ---

6 THE COURT: No, I'm gonna permit them to stay in.

7 All right. Other than that, are we now ready to proceed?

8 MR. HYMAN: Yes, Your Honor.

9 THE COURT: Thank you for calling that to my attention,  
10 Counsel.

11 Bring my jury in.

12 And thank you for having your first witness available.

13 MS. LIVESAY: No problem, Your Honor.

14 (REPORTER'S NOTE: Jury enters courtroom. 9:49 A.M.)

15 THE COURT: Ladies and gentlemen, I trust that the ham  
16 biscuits were satisfactory to everybody. Okay. All right.  
17 We're ready to proceed. Call your next witness, please,  
18 Solicitor.

19 MS. LIVESAY: Yes, sir, Your Honor. At this time the  
20 State calls Joseph Beeson to the stand.

21 CLERK: Please raise your right hand and place your left  
22 hand on the Bible?

23 JOSEPH BEESON, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Speak into the microphone, state your full name

1 and spell your last name?

2 MR. BEESON: My name is Joseph Beeson, B-E-E-S-O-N.

3 DIRECT EXAMINATION OF JOSEPH BEESON BY MS. LIVESAY:

4 Q: And, Mr. Beeson, if you don't mind, tell the Jury about  
5 how old you are?

6 A: I'm thirty-one years old.

7 Q: Okay. And where are you currently living?

8 A: Raleigh, North Carolina.

9 Q: Okay. And where were you living September of 2009?

10 A: In Myrtle Beach, South Carolina.

11 Q: Okay. And where were you working at that time?

12 A: At the Red Hot Shoppe on Seventh Avenue North.

13 Q: Okay. And what were your responsibilities when you were  
14 working at the Red Hot Shoppe?

15 A: I was the manager of the Red Hot Shoppe. I made sales,  
16 run the store, do a little bit of everything.

17 Q: Just what did you normally do on a daily basis?

18 A: Maintain, you know, the store, sell stuff, make orders.

19 Q: Okay. And what was the Red Hot Shoppe, what did it --  
20 what kind of items did it sell?

21 A: It was a boutique, like a gift store, sells everything you  
22 can think of.

23 Q: Okay. And were you working there on or around September  
24 7th, 2009, that night?

25 A: Yes, ma'am.

1 Q: Okay. And do you remember that night?

2 A: Yes, ma'am.

3 Q: Okay. And did the Red Hot Shoppe at that time have  
4 surveillance cameras?

5 A: Yes, ma'am.

6 Q: Okay. And have you seen the surveillance tape from that  
7 night?

8 A: Yes, ma'am.

9 Q: Okay. And were you on the tape?

10 A: Yes.

11 Q: Okay. And what happened that night, is that a recording  
12 of what happened that night on the surveillance tape?

13 A: Yes.

14 Q: Had it been altered in any form or fashion?

15 A: Not at all.

16 Q: Okay. Now, if you don't mind, tell the Jury what happened  
17 that night that was caught on that surveillance tape?

18 A: Two young men and two young women came into the store.  
19 The girls went off and did their own thing with the clothes  
20 and whatnot. The guys came and looked at some weapons, you  
21 know, swords and knives and stuff like that and one of them  
22 purchased a knife.

23 Q: Make sure you speak up?

24 A: One of them purchased a knife and paid for it and went  
25 about their business.

1 Q: Okay. And do you remember what knife was purchased?

2 A: Yes, ma'am.

3 Q: Okay. And if I showed you a picture of it, would you  
4 recognize it?

5 A: Yes, ma'am.

6 THE COURT: These pictures have been previously shown to  
7 Defense Counsel?

8 MS. LIVESAY: They have, Your Honor, and they've already  
9 been sent to them in discovery.

10 THE COURT: All right. That's fine.

11 MR. HYMAN: No objection.

12 THE COURT: All right, sir.

13 MS. LIVESAY: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 MS. LIVESAY: Thank you.

16 BY MS. LIVESAY:

17 Q: Mr. Beeson, I'm showing you what's been marked as State's  
18 Exhibit Number Thirteen and Number Fourteen. If you don't  
19 mind, you're looking at State's Exhibit Number Fourteen; what  
20 is that a picture of?

21 A: The knife that I sold to the young man.

22 Q: Okay.

23 A: Or a knife like it.

24 Q: Okay. That's a copy of the same knife you sold?

25 A: The same exact knife, yes, ma'am.

1 MS. LIVESAY: Okay. Your Honor, at this time, the State  
2 wishes to place this in evidence and publish it to the Jury at  
3 the appropriate time?

4 THE COURT: You may do so and may publish as appropriate.  
5 Go ahead.

6 MS. LIVESAY: Thank you, Your Honor.

7 STATE'S EXHIBIT NUMBER FOURTEEN

8 ADMITTED INTO EVIDENCE

9 BY MS. LIVESAY:

10 Q: At this time, I'm showing you State's Exhibit Number  
11 Thirteen and do you recognize that knife?

12 A: That's the same knife.

13 Q: Okay. And under here, is this the counter from the Red  
14 Hot Shoppe?

15 A: Yes. Yes, I was there when this picture was taken I  
16 believe. Yes.

17 Q: Okay. And is this the knife counter?

18 A: Yes.

19 Q: And is that the counter where this knife came out of?

20 A: Like directly under where it's at.

21 MS. LIVESAY: Okay. Your Honor, at this time the State  
22 asks to place Thirteen into evidence and publish it to the  
23 Jury?

24 THE COURT: You may do so.

25 MS. LIVESAY: Thank you.



1 THE COURT: Have you, have you seen this surveillance  
2 tape?

3 MR. HYMAN: Yes, Your Honor.

4 THE COURT: All right, sir.

5 MS. LIVESAY: Okay. Can we drop this, Your Honor, so we  
6 can play it?

7 THE COURT: You may.

8 MS. LIVESAY: And if you don't mind, I'm gonna ask him to  
9 step down so he can show who he saw or who he sold the knife  
10 to?

11 THE COURT: If it will be helpful to the Jury, I will  
12 permit it.

13 MS. LIVESAY: Thank you.

14 STATE'S EXHIBIT NUMBER FIFTEEN

15 ADMITTED INTO EVIDENCE

16 BY MS. LIVESAY:

17 Q: And, Mr. Beeson, when you're looking at that tape, can you  
18 recognize those boys walking in?

19 A: Yes, ma'am.

20 MS. LIVESAY: Okay. Go ahead and send it down for me  
21 please.

22 (REPORTER'S NOTE: State's Exhibit Fifteen played for the  
23 Jury. Not transcribed herein.)

24 BY MS. LIVESAY:

25 Q: That's the Red Hot Shoppe?

1 A: Yes.

2 Q: Okay. Mr. Beeson, do you recognize those boys?

3 A: Yes, ma'am.

4 Q: Who are they?

5 A: The smaller guy is the guy that bought the knife and the  
6 other one is his friend.

7 THE COURT: Have him talk louder. The Court Reporter  
8 can't hear him.

9 MS. LIVESAY: I'm sorry.

10 A: That was the smaller, the shorter guy was the guy that  
11 bought the knife.

12 Q: Okay. What's the guy wearing that you sold the knife to?

13 A: What was he wearing?

14 Q: What is he wearing so the jury can be clear.

15 COURT REPORTER: Ms. Livesay, can we move him in front of  
16 the microphone please.

17 THE COURT: Have him come where she can hear him please.

18 MS. LIVESAY: Just stand right here and you can use this  
19 microphone.

20 A: He's wearing shorts and sunglasses and a gray shirt right  
21 there.

22 BY MS. LIVESAY:

23 Q: Now, what counter is that at?

24 A: There's like safe cans and, and scales, stuff like that in  
25 there.

1 Q: Do you recognize that lady?

2 A: Yes, that's Sharon; I worked with her.

3 Q: Is that you behind the counter?

4 A: Yes, ma'am.

5 Q: And is that the counter with the knives?

6 A: The second one over is the one he purchased the knife  
7 from, not the one I'm standing in front of; where they are  
8 right now.

9 Q: Is this still at the knife counter?

10 A: Yes.

11 Q: Is that the guy you sold the knife to?

12 A: Yes, ma'am.

13 Q: Is that the last time you saw them that night?

14 A: Yes, ma'am.

15 Q: Go ahead and have a seat, Mr. Beeson. I have a couple  
16 more questions for you.

17 Mr. Beeson, I'm gonna show you what's been marked as  
18 State's Evidence Nineteen, I'm sorry Sixteen for through  
19 Nineteen. Please look through those and tell me if those are  
20 still shots from that surveillance camera?

21 A: Yes, ma'am.

22 Q: And are those shots of the boys that you sold the knife  
23 to?

24 A: Yes, ma'am.

25 Q: And exactly, tell the Jury so we're clear, which guy did

1 you sell the knife to that night?

2 A: The shorter guy with dark hair and sunglasses.

3 Q: Okay. And what color, can you tell what color his shirt  
4 is?

5 A: Gray.

6 MS. LIVESAY: Okay. Your Honor, at this time, I wish to  
7 place these into evidence and publish them to the Jury.

8 THE COURT: You may do so.

9 STATE'S EXHIBIT NUMBER SIXTEEN THROUGH NINETEEN  
10 ADMITTED INTO EVIDENCE

11 BY MS. LIVESAY:

12 Q: And if you don't mind, Mr. Beeson, is that an accurate  
13 shot of them coming in that door?

14 A: Yes, ma'am.

15 THE COURT: You may hand it to them and permit them to  
16 pass it around if they care to.

17 MS. LIVESAY: I will, Your Honor. Just wanted to let  
18 them get a quick glance.

19 THE COURT: Okay.

20 BY MS. LIVESAY:

21 Q: And is this a shot of them in there as well?

22 A: Yes, ma'am.

23 Q: At the Red Hot Shoppe and that's State's Evidence Number  
24 Eighteen and again you sold the knife to the boy in the gray  
25 shirt?

1 A: Yes, ma'am.

2 Q: Was he the same guy with the sunglasses on?

3 A: Yes, he is.

4 Q: Now this is State's evidence Number Seventeen, do you  
5 recognize that boy?

6 A: That's him.

7 Q: That's the guy you sold the knife to?

8 A: Yes, ma'am.

9 Q: Now State's Evidence Number Sixteen, you recognize that  
10 guy?

11 A: Same guy.

12 Q: Okay. Same guy you sold the knife to?

13 A: Yes, ma'am.

14 Q: Okay. And these are all still shots off of that  
15 surveillance camera?

16 A: Yes, they are.

17 Q: Okay. Now I'm gonna show you now what's been marked as  
18 Defense's Evidence Number One. The white guy with the tattoos

19 ---

20 A: Uh-huh (affirmative response).

21 Q: Was he in there with them that night?

22 A: I'm not ---

23 Q: He doesn't look familiar to you?

24 A: Not at all.

25 Q: Do you recognize him?

1 A: No, ma'am.

2 Q: Was he on that surveillance tape?

3 A: He doesn't look familiar to me.

4 Q: Okay. But these guys definitely look familiar to you?

5 A: Yes.

6 Q: But this guy does not?

7 A: No.

8 Q: Now, this picture -- I'm showing you now, State's Evidence  
9 Number Thirteen. In the background you can see -- would you  
10 say that's the other knives that were in the counter?

11 A: That's the other knives, yes, ma'am.

12 Q: Okay. And you got this out of that knife counter?

13 A: Yes, ma'am.

14 Q: Okay. Now, are you familiar with like what they call an  
15 Old Timer pocket knife?

16 A: Yes, ma'am.

17 Q: Okay. And can you give me a little description what it  
18 looks like?

19 A: Like an Old Timer?

20 Q: Uh-huh (affirmative response).

21 A: It's usually small, you open the blade and they like lock,  
22 sometimes they got two knives in them or something like that.

23 Q: Does it normally have a clip on it or no?

24 A: No; huh-uh (negative response).

25 Q: Just like about, how long would you say it was, about that

1 long?

2 A: Yes, ma'am.

3 Q: Okay. Now, did you sell those Old Timer pocket knives in  
4 there?

5 A: There's a few ---

6 Q: Okay.

7 A: --- like that in there. There's a couple of cases, I  
8 don't know if they still have them there, but there wasn't  
9 very many of them, in like a thousand knives and maybe five of  
10 them were like the ones you're talking about.

11 Q: But you did have those in there?

12 A: Yes, ma'am.

13 Q: Those Old Timers?

14 A: Uh-huh (affirmative response).

15 Q: That's what my daddy carries. Now, how about like a Swiss  
16 Army knife, are you familiar with that?

17 A: Yes, ma'am.

18 Q: Did you sell those in there?

19 A: I think we may had a style of those or something like  
20 that, yeah.

21 Q: Okay. So, you had something, when you say the style, what  
22 do you mean?

23 A: Maybe not a real Swiss Army knife knockoff or something  
24 like that, yeah.

25 Q: Maybe two or three different little things on it?

1 A: Yeah, yeah.

2 Q: Isn't that normally what a Swiss Army knife has?

3 A: Yes, ma'am.

4 Q: Two or three little things on it. And you had something  
5 like that in that store?

6 A: Yes, ma'am.

7 Q: Okay. So you had those type knives, the Old Timer pocket  
8 knife, and something like a Swiss Army knife; all those were  
9 sold in that store?

10 A: Yes.

11 Q: Okay. Do you remember talking to the police?

12 A: Homicide?

13 Q: I'm sorry?

14 A: Homicide?

15 Q: Yes?

16 A: Yes, ma'am.

17 Q: And did you tell them what you've told us here today?

18 A: Yes, ma'am.

19 Q: Okay. And did you actually give them that knife to show  
20 them that's what you sold that night?

21 A: I gave them a knife just like that, yes, ma'am.

22 Q: Okay. For them to take a picture of it?

23 A: No, they took it. They kept it.

24 Q: Okay. And that's the same knife you sold?

25 A: Same exact knife, yes, ma'am.

1 Q: So, when they came to you, you remembered those two guys?

2 A: Uh-huh (affirmative response).

3 Q: And that's the knife you sold them?

4 A: Yes, ma'am.

5 Q: Okay. And what you're telling us today is what you told  
6 the police then?

7 A: Yes, ma'am.

8 Q: Okay. Now, did you talk to the police the next day or  
9 like the next ---

10 A: It was like -- I mean, I'm not really sure of the  
11 timeframe, it was a month or better after ---

12 Q: Okay. That would have been the same month?

13 A: Yeah.

14 Q: Okay. But a year definitely hadn't been passed?

15 A: Hadn't been passed?

16 Q: No, I'm sorry, a year hadn't passed?

17 A: No.

18 Q: Had six months passed?

19 A: No. I mean, I don't really remember how long it was, but  
20 I'm sure it wasn't that long.

21 Q: But you remember it being pretty close in time?

22 A: Yeah.

23 Q: And when you talked to the police you still remembered  
24 those two guys and that knife?

25 A: Yeah.

1 Q: Okay. But the picture that I showed you that's marked as  
2 Defendant's Evidence Number One, that white guy; do you  
3 remember that picture?

4 A: That picture, I don't know, yeah ----

5 Q: This picture here?

6 A: I don't ---

7 Q: That guy doesn't look familiar? ..

8 A: Not at all. I'm not saying that the other two guys if I  
9 seen them right now, their faces, I would, but I mean I  
10 remember that night and I remember that guy coming in with the  
11 sunglasses and the little short guy and the taller guy. I  
12 mean I remember specifics about the night, I don't know the  
13 guy.

14 Q: Right. So you remember the taller guy and the shorter  
15 guy; you know that right?

16 A: Yeah.

17 Q: How would you describe the way that shorter guy was  
18 acting?

19 A: Kind of thuggish and -- I mean they weren't angry or  
20 anything.

21 MS. LIVESAY: Okay. Give me one second please. Nothing  
22 further from this witness, Your Honor.

23 THE COURT: Mr. Hyman.

24 CROSS EXAMINATION OF JOSEPH BEESON BY MR. HYMAN:

25 Q: Mr. Beeson, had you ever seen either one of those guys

1 before?

2 A: No, sir.

3 Q: The guy in the white shirt, I was noticing during the  
4 video, you and he looked like you talked a good bit; do you  
5 remember any of that, what your conversation was about, the  
6 taller guy?

7 A: Just shooting the breeze. I mean, that's my job. My job  
8 is to make friends, talk to people.

9 Q: I noticed that the shorter guy ---

10 A: Yeah.

11 Q: --- followed the taller guy over to the knife counter; do  
12 you remember that?

13 A: Okay.

14 Q: Now, you said that they didn't act angry or anything like  
15 that?

16 A: Not at all.

17 Q: Were they joking around with each other?

18 A: Yeah.

19 Q: Were they joking around with you?

20 A: Yeah.

21 Q: I notice the taller guy looked like he bought something  
22 else; do you remember what else he bought?

23 A: I'm not sure.

24 Q: Was that jewel -- the counter that you were at ---

25 A: There was, it was either silver necklaces or bracelets.

1 Q: So not earrings or anything like that?

2 A: It could have been some earrings.

3 Q: Could've been?

4 A: Yeah.

5 Q: But they, they bought other things other than just a

6 pocket knife?

7 A: Yeah.

8 Q: Okay. So now as far as the pocket knives, now ---

9 A: I don't know if the shorter guy, I don't think the shorter

10 guy bought anything but the pocket knife.

11 Q: But they went in there to buy other things other than just

12 a pocket knife?

13 A: Yeah, they were just hanging out.

14 Q: Now, were the girls walking around looking at stuff?

15 A: Yeah, they were looking at -- we sold like lingerie and

16 that sort of stuff like that and they were looking at clothes

17 and shoes and stuff like that.

18 Q: Now, as far as that shop, do you sell knives to multiple

19 people?

20 A: Yeah.

21 Q: Okay. You said that you may have a couple Old Timer type

22 knives like that?

23 A: Yeah.

24 Q: Are those your best sellers?

25 A: Not at all.

1 Q: Not at all. Is it because generally those are older  
2 people that maybe have those?

3 A: I don't think I've ever sold one.

4 Q: Okay. The, you know, I grew up and my daddy and I carried  
5 yellow handled Cases, that was Horry County.

6 A: Yeah, that's Horry County.

7 Q: That's right. But as far as there, did y'all sell mostly  
8 knock-off kind of knives?

9 A: I would ---

10 Q: Were you carrying Case knives?

11 A: No, huh-uh (negative response). If we had a name brand  
12 knife, they were name brand knives. A lot of them were just  
13 cheap Chinese, you know ---

14 Q: And I don't mean knock off like as in ---

15 A: --- mass produced knives, yeah.

16 Q: That's what most of them were just kind of mass, and by  
17 knock off, I don't mean something that says it's a Gerber, but  
18 it's not really a Gerber. I mean something that may look like  
19 a Gerber, but it's not a Gerber?

20 A: Oh yeah, yeah.

21 Q: So that was kind of what y'all sold there. Did you have,  
22 you know, sheath knives, you know what I'm talking about?

23 A: Yeah, big blade hunting knives.

24 Q: Switchblade knives; did you have those?

25 A: We had those, yes.

1 Q: And that's not what he bought?

2 A: No.

3 Q: Okay. What he bought was a pocket knife, correct?

4 A: Yeah.

5 Q: Just a pocket knife that clips on?

6 A: It was a Swiss blade.

7 Q: Okay. Not a switch blade or anything like that?

8 A: No, it had a nipple on the back -- that pops out.

9 Q: Gotcha. Gotcha. Now as far as that pocket knife, what  
10 color was the blade?

11 A: Black.

12 Q: So, it wasn't silver?

13 A: No.

14 Q: Now again you said they weren't angry?

15 A: No.

16 Q: They didn't tell you, hey, we're gonna go kill someone?

17 A: No.

18 Q: And they acted like they were having a good time?

19 A: Yes.

20 MR. HYMAN: Court's indulgence. No further questions,  
21 Your Honor.

22 THE COURT: Any further redirect?

23 MS. LIVESAY: No, sir, Your Honor.

24 THE COURT: You may come down. Can this witness be  
25 excused from his subpoena?

1 You may come down.

2 Can this witness be excused from his subpoena?

3 MS. LIVESAY: One second, Your Honor, we're ready. We'll  
4 call the next witness. He can be, Your Honor.

5 MR. SPRATLIN: Yes, sir, Your Honor, he may be excused.

6 THE COURT: Thank you. Call your next witness.

7 MS. LIVESAY: Your Honor, at this time we're gonna call  
8 Ryan Palmer to the stand.

9 THE COURT: All right.

10 CLERK: Please raise your right hand and place your left  
11 hand on the Bible?

12 RYAN PALMER, HAVING BEEN SWORN

13 TESTIFIES AS FOLLOWS:

14 CLERK: Please state your full name and spell your last  
15 name?

16 MR. PALMER: My name is Ryan Palmer, P-A-L-M-E-R.

17 DIRECT EXAMINATION OF RYAN PALMER BY MS. LIVESAY:

18 Q: And if you don't mind, Mr. Palmer, tell the Jury how old  
19 you are?

20 A: I'm twenty-four years old.

21 Q: Okay. And are you currently living in Horry County?

22 A: Yes, ma'am.

23 Q: Okay. Where are you from?

24 A: I'm from Surfside Beach.

25 Q: Okay. And so you've lived here your entire life?

1 A: Originally from Pittsburg, Pennsylvania.

2 Q: Okay. And are you working or in school currently?

3 A: Currently unemployed.

4 Q: Okay. And if you don't mind tell me how old were you back  
5 in September of 2009?

6 A: Twenty, twenty years old.

7 Q: Okay. And at that time, were you living in Horry County?

8 A: Yes, ma'am.

9 Q: Okay. And do you remember around September 8th or the  
10 night of September 7th, morning of September 8th, going to the  
11 Afterdeck?

12 A: Yes, ma'am.

13 Q: And had you ever been there before?

14 A: Nope, not at all.

15 Q: Okay. That was your first time?

16 A: Yes, ma'am.

17 Q: Okay. And who did you go to the Afterdeck with, if  
18 anybody?

19 A: It was me and about roughly ten of my friends.

20 Q: Okay.

21 A: A few girls and the rest guys.

22 Q: Okay. How many girls, three or four?

23 A: Yeah, I'd say three, three girls.

24 Q: Okay. And the rest guys?

25 A: Yes, ma'am.

1 Q: How many cars did y'all take?

2 A: Two vehicles.

3 Q: Okay. And about what time did you get there that night?

4 A: I'd say right around midnight. I'd say around 12:00.

5 Q: And when you got there, did you have to pay to get in or  
6 go through security or anything like that?

7 A: There's someone at the door but as far as paying a cover  
8 fee, we never paid a cover and we also didn't get searched or  
9 there was no metal detectors or anything like that.

10 Q: Okay. Now when you went into the Afterdeck that night you  
11 were twenty, twenty-one; were you old enough to drink?

12 A: At the time I think I was just about to be twenty-one. I  
13 don't think I was twenty-one at the time, though.

14 Q: Okay. So, you were twenty at the time?

15 A: Yes, ma'am.

16 Q: Okay. So, not old enough to drink?

17 A: Right.

18 Q: Okay. Had you been drinking though before you went to the  
19 Afterdeck?

20 A: A little bit. A little bit, yeah, at the apartment.

21 Q: Now, were you able to drink once you got in the Afterdeck?

22 A: Yes.

23 Q: Okay. Now, when you went into the Afterdeck, did you have  
24 any weapons on you of any kind?

25 A: No, ma'am.

1 Q: A knife, a gun, any kind of weapon?

2 A: Nope, not at all.

3 Q: Okay. Now to your knowledge, did any of the people that  
4 you go in there have a weapon on them?

5 A: No, not at all.

6 Q: Okay. Now, when you get into the Afterdeck, it's about  
7 midnight would you say?

8 A: Yes, ma'am.

9 Q: Okay. How would you describe the Afterdeck, was it  
10 crowded, was it -- how would you describe it?

11 A: When we first had got there, it was probably -- when we  
12 first got there around midnight it probably wasn't as packed  
13 as it was towards around when this incident occurred. I'd say  
14 within a few hours a lot more people had shown up throughout  
15 the night.

16 Q: Okay.

17 A: When we had first got there, I mean, it wasn't crowded,  
18 but there was still a good amount of people for the size place  
19 it was.

20 Q: Okay. And who were, name the friends you were there with?

21 A: Let's see, it was me; by buddy, Tom Covino; my buddy, Rob  
22 Penna; Michael Parker; let's see, D.J.; Vitaly; Alex Assanto  
23 (spelled phonetically); my buddy, Nick Williamson; and that's  
24 about eight right there, so I think the rest was the other  
25 girls that were there.

1 Q: Okay. Now let me ask you this, tell the Jury what  
2 happened when you got there from the time you got there until  
3 ---

4 A: All right. So when we got there, we got in fairly easy  
5 and we actually had VIP cards handed out to every one of us  
6 and I wasn't exactly the youngest out of the group so to me it  
7 was kind of, I mean odd, that the younger kids were also given  
8 VIP cards, but it wasn't out of the ordinary I guess for a  
9 nightclub. I had never been there before though. Got there  
10 and we were roughly about I'd say an hour and we were having a  
11 good time. I mean, none of us are really, you know, out of  
12 hand at all, like wasted or anything like that. We weren't  
13 out of hand at all. And we got there and we were just  
14 checking it out and we actually, we kinda -- our group of  
15 friends all, we all kind of just hung out at that one spot by  
16 one of those cages for the most, the most part of the night.

17 Q: Okay. I'm gonna show you real quick what's already been  
18 into evidence as State's Evidence Number Twelve; would this  
19 help you with your testimony?

20 A: Yes, ma'am.

21 Q: Okay. If you don't mind, point out the area that you were  
22 standing in and your friends were?

23 A: It was just right around here.

24 Q: Okay.

25 THE COURT: Mr. Hyman, you may come around if you care

1 to.

2 BY MS. LIVESAY:

3 Q: Okay. Right in this corner right here?

4 A: Yes, ma'am.

5 Q: Okay. And so y'all were just kind of hanging out,  
6 dancing?

7 A: Yes, ma'am.

8 Q: Okay. And what else, what happened as the night moved on?

9 A: We were all there and we were all you know, in good  
10 spirits, I mean we never ever went out looking for a fight or  
11 anything like that and I went to the bathroom and on my way to  
12 the bathroom, I noticed two gentlemen walking side by side and  
13 they were just walking in my direction. So, as I am walking  
14 towards the bathroom and the two gentlemen are getting closer,  
15 I notice that within about two to three feet of walking past  
16 them that one of them, you know, was kind of in my lane almost  
17 to say and like it almost goes back to the whole walking in a  
18 high school hall. You know, if someone's walking up and you  
19 noticeably are about to see their shoulder bump into you;  
20 you're gonna give them a little bit of leeway, you know, with  
21 your shoulder just so you don't both collide, you know. And  
22 that's pretty much what happened and it wasn't a big deal to  
23 me. I was still walking proceeding to the bathroom and as I  
24 just glanced to turn around to see who might've brushed up  
25 against, the two individuals were actually did a full 180 and

1 both were facing my direction like stopped in their tracks.

2 Q: So did you give way or was it just a straight on bumping  
3 the shoulders?

4 A: Yeah, I, I tried to give way so I wouldn't hit my shoulder  
5 into anybody, but it almost seemed like the, the guy that I  
6 hit into was deliberately, you know, ran into my shoulder even  
7 with me still kind of trying to get out of the way.

8 Q: And do you remember what they looked like, those two guys?

9 A: Yes, ma'am.

10 Q: What did they look like; what were they wearing?

11 A: One was a little bit taller and the other one was, you  
12 know, the shorter one was wearing a -- it might've been a  
13 wife-beater, a white wife-beater.

14 Q: Okay.

15 A: And the taller one was wearing a white T-shirt, tall T-  
16 shirt and they were both, they both had shorts on.

17 Q: Okay. And you tried to give way and who do you bump into,  
18 the taller one or the shorter one?

19 A: The taller one.

20 Q: Okay. And then do you think anything of it?

21 A: No, not at all.

22 Q: Okay. And then you keep walking and you kinda glance back  
23 and what do you see?

24 A: Yeah, they were both, I figured to see them both walking  
25 the other direction, but they had both turned around dead in

1 their tracks staring at me as if there was a problem.

2 Q: Okay. At that time, did you say anything to them?

3 A: No, not at all. I just, I was still walking and walked to  
4 the bathroom.

5 Q: Okay. And then what happened?

6 A: And then as I get out of the bathroom, I -- honestly, I  
7 planned on seeing them out there still kind of almost waiting  
8 on me.

9 Q: Uh-huh (affirmative response).

10 A: But when I got out of the bathroom, I didn't see them at  
11 all and I walked over to my group of friends and hung out. We  
12 were probably, you know, hanging out for another fifteen,  
13 twenty minutes went by.

14 Q: So, you originally thought they would be out there waiting  
15 for you?

16 A: Yeah.

17 Q: Okay. But they weren't?

18 A: Right, I didn't see them initially when I walked out of  
19 the bathroom.

20 Q: Okay. So you walked back to your friends and then y'all  
21 hang out some more?

22 A: Yes, ma'am.

23 Q: Where were y'all hanging out at that time; show me on this  
24 diagram?

25 A: I walked, I walked directly from the bathrooms, which were

1. right around this area back here. So I was coming back this  
2 way and pretty much just walked right, right here to where we  
3 all were.

4 Q: Okay. And did y'all hang out pretty much right here the  
5 entire night?

6 A: Yes, ma'am.

7 Q: Okay. So you walked back to your friends and y'all were  
8 hanging out and then what?

9 A: About fifteen minutes, twenty minutes go by and I'm just  
10 hanging out. Everyone's hanging out having a good time still.  
11 And really didn't even think of a second thought of the two  
12 gentlemen that seemed to have a problem with me until I  
13 noticed that -- like when you get on the dance floor you can  
14 just, I mean, from my position on the dance floor, I can kind  
15 of see like back towards the walkway a little bit towards the  
16 bathroom and those two guys were staring at me from a little  
17 ways behind.

18 Q: Uh-huh (affirmative response).

19 A: And still, you know, still then I didn't think anything of  
20 it, just went about my business, we were just having fun. And  
21 pretty much about five minutes goes by and I see the two  
22 gentlemen closer. Actually, if you bring that up one more  
23 time?

24 Q: I will. Would this help you with your testimony for the  
25 rest of it, the rest of your testimony to show you what

1 happened and where you were at?

2 A: Yeah, sure.

3 Q: Okay. So, where were you then?

4 A: We were all kinda just right here, like a speaker box was  
5 right here I think and a couple, a few of us were sitting on  
6 here. I know a couple of girls were inside of the cage and  
7 the rest of us were just standing right around that general  
8 area.

9 Q: Okay. And where did you see the two guys standing when  
10 you noticed them again?

11 A: When I noticed them again, they were right here on this  
12 second step on the top and they were both shoulder to shoulder  
13 again. And at that point, when I noticed them a little bit  
14 closer again, like I pretty much looked at them and noticed  
15 that they were staring right at me constantly. So I kinda, I  
16 told -- I don't really remember who I went up to and told, but  
17 I know I went up to about one or two people out of my friends  
18 and was just like, hey, kind of just like a, you know keep an  
19 eye out kinda type deal.

20 Q: Uh-huh (affirmative response).

21 A: And after I did that, I'd say I still wasn't really, you  
22 know, worried or looking for a fight or anything so I kinda  
23 even with them standing a little bit closer, I still wasn't  
24 keeping up with their location 24/7. And so I -- five minutes  
25 later, two -- all I hear, there's someone behind me and I hear

1 it was quoted, it said, and he said, You're about to get  
2 fucked up; that's what he told me. And pretty much whenever  
3 he -- whenever I heard that behind me, I turned around and  
4 then whenever I turned around, I seen the two gentlemen and  
5 they were pretty much side by side still, but they were right  
6 behind me, directly behind me.

7 Q: The same guys that had been staring at you and bumped in  
8 the ---

9 A: Yes, ma'am.

10 Q: Okay. Now I'm gonna show you some pictures just so we can  
11 clarify who these two guys are. You see those two guys? I'm  
12 showing you what's in evidence as State's Number Three. Do  
13 you recognize those two guys in the background?

14 A: Yes, ma'am.

15 Q: Okay. These two right here?

16 A: Yeah.

17 Q: You recognize them from that night?

18 A: Yeah, yeah, that's the two guys in the background.

19 Q: Okay. And are those the two guys that bumped you?

20 A: Yes, ma'am.

21 Q: And are those the two guys that were taunting you?

22 A: Yes, ma'am.

23 Q: The same two that walked up behind you?

24 A: Yes, ma'am.

25 Q: Okay. Now, let me ask you this, I'm showing you now

1 what's been marked as State's Evidence Number One. Do you  
2 recognize that guy?

3 A: Which one, both of them or ---

4 Q: I'm sorry, the white guy with the tattoos?

5 A: No, ma'am.

6 Q: Okay. You do not recognize him?

7 A: No, not at all.

8 Q: Okay. You don't remember him at the club?

9 A: No, I don't remember that face at all.

10 Q: Okay. Now, the two guys that bumped you that night, do  
11 you see one of them in the courtroom today?

12 A: Yes, ma'am.

13 Q: Can you point him out to the Jury?

14 A: Yeah, sure (indicating).

15 Q: Okay. And was he the taller guy or the shorter guy?

16 A: Yeah, the shorter one; he was the shorter guy.

17 Q: Okay. Now, they come up behind you, these two guys?

18 A: Right.

19 Q: Okay. And you hear this, what you just said, you're about  
20 to get F'd up?

21 A: Right.

22 Q: Then what happens?

23 A: Right after I heard that and they were right directly  
24 behind me, as I turned around, at this time, a few of my other  
25 friends, they were already aware of it as well and my one

1 friend, Parker, Michael Parker, actually approached the  
2 shorter one and I even remember him like putting his hands up  
3 like, like this (indicating) and he said, hey, like, you don't  
4 want a problem or, you know, something around those lines like  
5 you don't, you know there's, you don't want a problem here,  
6 something like that. And then ---

7 Q: Now were both of them staring at you, the shorter one and  
8 the taller one?

9 A: Well, at this time, I believe the taller one was like kind  
10 of off to the side of me because I was, after my buddy,  
11 Parker, approached the one, I was kind of, you know, just  
12 watching, you know, just ---

13 Q: Where were you standing at this time when this happened?

14 A: It was, it was still in the general area, but it was kind  
15 of right down here.

16 Q: Okay.

17 A: Like instead of being up on the step right here and all  
18 that, we were kind of right down here.

19 Q: Okay. And who was right down there when this happened  
20 that you remember with your friends?

21 A: I remember it was me, me and Michael Parker, D.J., Rob  
22 and, and Vitale and it was just about us right there in that.

23 Q: Okay. And who did they walk up to that you remember?

24 A: Well, when they were already -- they had already walked up  
25 to me and approached me from behind.

1 Q: Okay.

2 A: So, whenever I heard them say that, my buddy, Michael  
3 Parker, is the one that approached the shorter one.

4 Q: And said what?

5 A: And just pretty much put his hands up and, and I remember  
6 him saying it's not worth it, or you know, we're not trying to  
7 fight or something like that, along those lines.

8 Q: And did they respond to that, the guys in the wife-  
9 beaters?

10 A: Well, the, the shorter one and Michael pretty much were  
11 just about like face-to-face like, you know.

12 Q: How close were they, from me to you?

13 A: No.

14 Q: Closer?

15 A: Yeah.

16 Q: How about if I'm standing right here, from me to you now?

17 A: Like if I was standing up like ---

18 Q: Right here?

19 A: Yeah, like chest-to-chest pretty much.

20 Q: Okay. And then what happens?

21 A: And then at that point, I really didn't figure there would  
22 be any, you know, confrontation or anything like that and then  
23 as my buddy, Parker, he, as he was telling them that or  
24 whatever, he, the shorter one, goes to like pretty much push  
25 Parker and I -- and as he goes to push Parker, I was, I come

1 up and I was on the bottom step and I was coming off the  
2 bottom step and I was just going to go -- after I saw, like I  
3 know that Parker wasn't cussing at the guy or like, you know,  
4 giving him any lip or anything like that. There was no  
5 problem coming out from my end of the situation.

6 Q: Right.

7 A: And after I saw that, I came off the step and I go to, I  
8 go to punch the shorter one.

9 Q: And who's the shorter one, this guy here?

10 A: Yeah.

11 Q: Okay.

12 A: And as I go, as I go to punch him, it was almost like I,  
13 it's almost like I stumbled off the step. My, you know, I  
14 kind of came off the step and my left foot, didn't really  
15 plant my left foot but kinda landed sideways on my foot.

16 Q: Uh-huh (affirmative response)

17 A: So when I came into them, it's almost like I kinda like  
18 barreled into them.

19 Q: Uh-huh (affirmative response).

20 A: It wasn't just like a blindsides, no one saw me coming and  
21 then it was a contact; it wasn't like that. It was almost  
22 like I came down and I like, if anything, I kinda just got and  
23 he was out of the way, you know, he moved out of the way from  
24 my body force just coming into him.

25 Q: Okay.

1 A: And as far as my ---

2 Q: So did you hit him?

3 A: Yeah. As far as my fist making contact with where I was  
4 trying to hit him or anything like that, I did make contact  
5 with him, but it wasn't, I'm pretty sure it was probably like  
6 twenty percent of the punch that may've contacted him.

7 Q: Okay. And then what happened?

8 A: Right after that as I come down off the step, it was  
9 probably one second that I felt like a nick on my head from  
10 behind me and I guess my adrenaline started pumping at that  
11 time. I really didn't feel anything. And out of my right  
12 eye, I couldn't see out of my right eye and like I'd go, I was  
13 just kinda like, I went like that and my, my hand was like  
14 full of blood. So I was, I-just started panicking right there  
15 and as I started like put my hand down as quick as I went like  
16 this and looked back up like and saw that my hand was full of  
17 blood because it was kind of dark and everything too. It  
18 wasn't bright in there or anything. As soon as I realized  
19 like my hand was full of blood and that's why I couldn't see  
20 out of my eye, like I looked up and the taller one, he  
21 actually was coming at me and because that's who I kinda was  
22 looking for. I knew there was two of them and as he was  
23 walking towards me, I pretty -- I thought that we were about  
24 to fight, you know, have to, you know, start fighting. So as  
25 he's coming towards me, despite like I couldn't see out of my

1 eye, but I was, I knew that that was the guy, one of the two,  
2 and as I go to make contact with him, I see a blade like at  
3 the last second, like right before -- we were probably less  
4 from me to you in length as we're like coming towards each  
5 other.

6 Q: Uh-huh (affirmative response).

7 A: I was like, I just barely see like the shine of a blade in  
8 his hand and so instead of me being on the offense at that  
9 point, like going to make contact with him, I kinda just went  
10 in the defense knowing like, because I thought he was gonna  
11 throw in a punch and then at the last second saw the blade.  
12 So, it kinda within a split second went from me being on the  
13 offense to flipping around being on the defense trying to just  
14 pretty much defend the knife.

15 Q: And what did you do to defend the knife?

16 A: He came -- he had it in his right hand and as he swung at  
17 me, he kinda just swung like an open swing and I put my left  
18 hand up to the, like, to pretty much just block it and he cut,  
19 he cut, he nicked one finger, but he cut the other two fingers  
20 pretty good and then that's, right after that happened, that's  
21 when I really started panicking like pretty much thought I was  
22 gonna die. I really didn't realize what was going on and ---

23 Q: What did you do then?

24 A: That was about it. I remember a security guard running up  
25 to me. I remember seeing that as I was pretty much going like

1 backing down from the guy. He was already kinda sorta walking  
2 away and that was the last glimpse I seen of his eyes I  
3 remember of him as I'm going down looking back up making sure  
4 he's not like trying to come back at me as I'm going down.  
5 And I just remember seeing his eyes as he's walking away.

6 He's like looking at me going down walking away. And then ---

7 Q: Did you pull a knife out?

8 A: No.

9 Q: Did you have a knife to pull out?

10 A: No, ma'am.

11 Q: Okay.

12 A: And yeah, as I was pretty much going down to the floor and  
13 I remember him walking away, I remember seeing a security  
14 guard coming up because I guess the security guard thought  
15 that we were both, you know, fighting each other and that was  
16 the cause of the problem or whatever and the security guard  
17 like kinda came over to me and straddled over me and at first  
18 he grabbed my arm pretty hard like as if I'm about to kick  
19 this guy out or something like that and then at the same time  
20 as he grabbed my arm and thought that I was a threat, he  
21 looked at me and like he saw my whole face was bloody and all  
22 that and at the same time I pretty much was screaming at him.  
23 I was like you know, dude I'm about to die. Like get off me,  
24 help me out, you know. And as soon as he realized that and he  
25 like kinda, his eyes got real big and he was in shock kinda,

1 he got off of me and that's when my friend, Cierra, I saw my  
2 friend, Cierra and she saw me on the ground and she just  
3 pretty much came and ---

4 Q: At that time, did you know where you were cut?

5 A: I knew I was cut in my hand, but I really didn't -- I knew  
6 there was blood coming from my head, I just really didn't know  
7 exactly. I didn't know exactly.

8 Q: When you got cut in the head, did you even see it coming?

9 A: No.

10 Q: So, it obviously happened from behind?

11 A: Right.

12 Q: Now you said your friend, Cierra, came. Was she able to  
13 help you get out of the club?

14 A: Yeah, that's when she, as soon as she came up, she just  
15 pretty much was like, Ryan, we got to get out of here and then  
16 as I got up, she just pretty much just helped me walk out and  
17 walked out, I remember walking out the front and then went  
18 over to like the neighboring building and ---

19 Q: Did you ever see what was going on with Robert Penna or  
20 Michael Parker, any of those guys when this was happening?

21 A: No, not at all.

22 Q: When you walked out of the club, did you see at that time  
23 that anybody else was injured?

24 A: Nope, not at all.

25 Q: Okay. Now, what did you do? Did you leave the club; did

1 you sit down and wait for EMS; what ---

2 A: When I, when we left out of the Afterdeck, we went over to  
3 the parking lot, like one of the other parking lots and Cierra  
4 just pretty much laid me down and there was someone out there.  
5 They took a shirt and like wrapped it around my head and I  
6 just pretty much laid down as Cierra was just trying to call  
7 911.

8 Q: Okay. So she was calling 911?

9 A: Right.

10 Q: Okay. Were you able to call 911?

11 A: No.

12 Q: What did you think at that moment? Did you have any idea  
13 how bad the injury was?

14 A: No, I just, no, not at all. I figured I was dying.

15 Q: I'm gonna show you these pictures that have been marked  
16 State's Twenty to Twenty-Seven. Would you mind looking  
17 through them and tell me if you recognize who, who that is?

18 A: Yeah, these are all me in these pictures.

19 Q: Okay. And is that your injury once it was stapled up?

20 A: Yes, ma'am.

21 Q: Okay. Now, this happened back in 2009; is that correct?

22 A: Correct.

23 Q: Looks like this picture was taken 9/16/2009; is that  
24 accurate?

25 A: Correct, yeah.

1 Q: Okay.

2 A: This one says 9/10.

3 Q: So, this was actually showing this injury about at least  
4 eight days after it actually happened?

5 A: Right.

6 Q: Okay. Now, about how big were then; were you bigger than  
7 you are now or smaller?

8 A: No, I was probably, I probably was like 5'10" and weighed  
9 about 160, 165.

10 Q: Okay. And about how big are you now?

11 A: About six foot maybe a little over six foot and I weigh  
12 like 185.

13 Q: Would you mind standing up just so the Jury can get a look  
14 at you and see what that is?

15 A: Yeah.

16 Q: So you're 185 right now?

17 A: Yeah.

18 Q: And about six feet tall?

19 A: Right.

20 Q: Okay. Thank you. Have a seat. (To the Court) Your  
21 Honor, I'm gonna place these into evidence and publish them to  
22 the Jury?

23 THE COURT: You may do so.

24 STATE'S EXHIBITS NUMBER TWENTY THROUGH TWENTY-SEVEN

25 ADMITTED INTO EVIDENCE

1 BY MS. LIVESAY:

2 Q: Now I'm sorry, can I borrow those back for just a second?

3 Now, these are all injuries to your head; is that correct?

4 A: Yes, ma'am.

5 Q: And if you don't mind, just show the Jury where that went,  
6 just today, where the cut went from?

7 A: The cut actually started at the top of my ear and then  
8 it's about six inches, six and a half inches. It started at  
9 my ear and then it went to pretty much like right around here  
10 like the top of my head. So, from like there to there  
11 (indicating).

12 Q: Okay. Now how about this picture; is this you?

13 A: Yeah.

14 Q: What's that a picture of?

15 A: Those are my fingers.

16 Q: Okay. And are those stitches in your fingers?

17 A: Yes, ma'am.

18 Q: Okay. And so the cut across your fingers were deep enough  
19 for stitches?

20 A: Yes, ma'am.

21 Q: Can you show which two fingers this is to the Jury so  
22 they'll know?

23 A: Yeah. Yeah, it's the worst, the worst two were right  
24 here. It started like right in here and then this one kinda  
25 got it right there and the top of my pinky actually got it,

1 but it wasn't, there's no nerve damage or anything on my  
2 pinky.

3 Q: Okay. And how did you get that injury, from holding your  
4 hand up?

5 A: Right, yeah.

6 Q: Okay. So there was no injuries to the back of your hand?

7 A: Right.

8 Q: Just to the front?

9 A: Yes, ma'am.

10 Q: Okay. Ryan, I'm gonna show you what's been marked as  
11 State's Exhibit Number Twenty-six. Do you know who's in that  
12 picture?

13 A: Yes, ma'am.

14 Q: Could you please tell the Court who's in that picture?

15 A: That's D.J., Vitale and Taylor Burt.

16 Q: Okay. Is Vitale a friend of yours?

17 A: Yes, ma'am.

18 Q: And how about Taylor Burt?

19 A: No, ma'am.

20 Q: Do you know Taylor Burt personally?

21 A: Personally -- I know enough about him.

22 Q: Okay. Taylor Burt, was he there with y'all that night?

23 A: He wasn't there with us, but I, I believe he was there  
24 doing something, promoting.

25 Q: Okay. He wasn't one of the boys that you came with?

1 A: No.

2 Q: Okay. He wasn't one of the boys hanging out with your  
3 crowd in the corner?

4 A: No, ma'am.

5 Q: And just so we're clear. The kid in the background here,  
6 that's D.J.?

7 A: Yes, ma'am.

8 Q: Now was that picture taken that night?

9 A: Yes, ma'am.

10 Q: Okay. At the Afterdeck?

11 A: Yes.

12 MS. LIVESAY: Your Honor, at this time, the State's gonna  
13 put in State's Exhibit Number Twenty-six into evidence and  
14 publish it to the Jury?

15 THE COURT: You may do so.

16 BY MS. LIVESAY:

17 Q: And, Ryan, if you don't mind, just right where you're at,  
18 stand up. Okay. And tell the Jury which person is Vitale?

19 A: He's the one in the plaid shirt.

20 Q: Okay. The main one and he was a friend of yours there  
21 with y'all that night?

22 A: Right.

23 Q: Okay. Now, who is the guy in the background?

24 A: That's D.J. right here, smiling in the back.

25 Q: Okay. And who is the guy in the suit?

1 A: That's Taylor Burt.

2 Q: Okay. Now is this, the guy in the suit, Taylor Burt, did  
3 he go with y'all, I mean did he arrive with y'all?

4 A: No, ma'am.

5 Q: Okay. And did he hang out with your crowd while you were  
6 there?

7 A: No, ma'am.

8 Q: Okay. So, he was just kinda walking around promoting that  
9 night?

10 A: Right.

11 Q: Okay.

12 A: Yeah, he was on the stage sometimes, too.

13 Q: Okay. But these two guys are definitely your friends?

14 A: Yes, ma'am.

15 Q: Okay. You've got their phone number, well, hung out, that  
16 kind of thing?

17 A: Yeah, we were together up there that night.

18 Q: Okay. Ryan, did you give a statement to the police?

19 A: Yes, ma'am.

20 Q: Okay. Is that it right there?

21 A: Yes, ma'am.

22 Q: Okay. And can you tell me what date that statement was  
23 taken?

24 A: 9/23/09.

25 Q: Okay. And what you said in that statement, is that what

1 you're telling the Jury today?

2 A: Yes, ma'am.

3 Q: Okay. And what you're telling the Jury today, is that  
4 what happened that night?

5 A: Yes, ma'am.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: Mr. Hyman.

8 MR. HYMAN: Thank you, Your Honor.

9 CROSS EXAMINATION OF RYAN PALMER BY MR. HYMAN:

10 Q: Now, Ryan, you said you were drinking prior to being at  
11 the Afterdeck; is that correct?

12 A: Prior, yes.

13 Q: At the Afterdeck?

14 A: I may have had -- I may have had a beer there, but I  
15 remember, I remember -- actually I don't remember drinking a  
16 lot there at all, more than maybe a couple of beer.

17 Q: When you got to the hospital, did anybody at the hospital  
18 tell you what your blood alcohol level was?

19 A: Yes, sir.

20 Q: Okay. What was it?

21 A: It was a .03.

22 Q: I don't believe that's correct. Your blood alcohol level  
23 was a .11?

24 A: Okay.

25 Q: You know what the limit is in South Carolina?

1 A: .08.

2 Q: That's right. So you were how much above that limit?

3 A: A few points.

4 Q: That's right; that's three points. Now as far as that  
5 goes, you say you didn't drink at the Afterdeck or you had a  
6 couple of beer?

7 A: Right.

8 Q: Would you say you were intoxicated when you got to the  
9 Afterdeck then?

10 A: I'd say so.

11 Q: Okay. Now did you give another statement other than the  
12 one that you gave, I can't remember what she said, was that  
13 the 29th of September?

14 A: The 23rd.

15 Q: The 23rd. Did you give another one?

16 A: I don't believe so.

17 Q: You didn't meet with an investigator with the Solicitor's  
18 Office named Carmen Murredu?

19 A: Yeah, I do remember Carmen.

20 Q: Okay. So you did give another statement?

21 A: If that was on record, I'm not sure of, but I do remember  
22 meeting with Carmen.

23 Q: But if she was to say that you told her something, would  
24 that be accurate?

25 A: Right, yeah.

1 Q: Now you said that night that you were there with D.J.;  
2 Nick -- is that Nick Williamson or Williams?

3 A: Williamson.

4 Q: Rob Penna; Tom Covino; Alex Assanto; Vitaly Ninichuk,  
5 Michael Parker and then obviously you?

6 A: That's right.

7 Q: Now, was Shane Parra (spelled phonetically) there with  
8 y'all too?

9 A: Shane Parra?

10 Q: Uh-huh, (affirmative response).

11 A: He was there, but he wasn't there with us.

12 Q: Is he the one that got you in the VIP?

13 A: No, sir.

14 Q: Who got you in the VIP?

15 A: VIP was almost handed out as if like candy almost, little  
16 cards, VIP cards.

17 Q: So, Shane Parra was there, that's nine. You know a guy  
18 named Seth Rogers?

19 A: Yes, sir.

20 Q: Was he there that night?

21 A: I believe I've seen pictures of him there as well.

22 Q: So, you never talked to him there that night?

23 A: I may have talked to him. I mean, we're friends, so if I  
24 were to see him, I would have talked to him.

25 Q: So, if he said he was involved in this fight, you don't

1 know anything about that?

2 A: No, sir.

3 Q: Okay. Now, did you see Vitaly in this fight?

4 A: No, sir.

5 Q: So, if he was to say he was involved in this fight, you  
6 don't know anything about it?

7 A: Right.

8 Q: Okay. On the night that this took place -- and like I  
9 said, you admit that you talked to Carmen Mureddu and you gave  
10 her some type of statement about this?

11 A: Right.

12 Q: Do you remember telling Carmen Mureddu that the guy that  
13 you bumped into was the taller guy?

14 A: Yes, sir.

15 Q: And not the smaller guy?

16 A: Yes, sir.

17 Q: Do you also remember telling Carmen that it was the taller  
18 guy who was mean muggin you and not the smaller guy?

19 A: At that point in time, I'm not sure if I were to just call  
20 one of them mean muggin, but it's safe to say they were both  
21 mean muggin.

22 Q: Do you remember who it was that said the, the, I think it  
23 was, you better watch out or -- no, what was it -- you're  
24 about to get fucked up; do you know which one of them said  
25 that?

1 A: They were both behind me at that time. I'm not, I'm  
2 unaware of ---

3 Q: So, if you told Carmen Mureddu that it was the taller guy,  
4 you don't remember that?

5 A: Right.

6 Q: Okay. So, would that be inconsistent with anything you've  
7 said if you told Carmen that?

8 A: What was the question?

9 Q: I'm just asking you is if you told Carmen -- I mean, this  
10 was obvious -- you gave this statement to Carmen quite some  
11 time ago?

12 A: Right.

13 Q: It's been four and a half years?

14 A: Right.

15 Q: Would your recollection probably be better ---

16 MS. LIVESAY: Your Honor, if I may, that statement was  
17 taken 2011. If he needs it to refresh his recollection, I  
18 have a copy.

19 THE COURT: You better to give it to Mr. Hyman, too.  
20 He's referring ---

21 MS. LIVESAY: Mr. Hyman is reading off of it now, Your  
22 Honor, he might can assist ---

23 THE COURT: Well if, if you've stated it incorrectly,  
24 state the correct date, Mr. Hyman, and I leave it for you to  
25 say which is the correct date.

1 BY MR. HYMAN:

2 Q: Now this is what you told Carmen.

3 THE COURT: Let's talk about what date. Is there some  
4 problem? You said 2009; she said 2011.

5 MR. HYMAN: Judge, this says 10/8/2010.

6 THE COURT: Then proceed with that statement if you care  
7 to.

8 MS. LIVESAY: Yeah, it is.

9 BY MR. HYMAN:

10 Q: Would you say your recollection of these events was maybe  
11 better 10/8/2010 than it is January 7th, 2014?

12 A: I can almost remember it just the same. So, I wouldn't  
13 say it was better back then. I have a good memory.

14 Q: Well, do you remember you told Carmen that it was -- do  
15 you remember that you told Carmen that D.J. pushed Griffith,  
16 my client; would you like to see this?

17 A: Yeah, sure.

18 Q: Why don't you read this paragraph right here; I'll give  
19 you a minute.

20 THE COURT: Is that statement in Carmen's writing or his  
21 writing?

22 MR. HYMAN: Judge, this is a typed statement.

23 MS. LIVESAY: It's the report, Your Honor.

24 THE COURT: Okay. That's fine.

25 MS. LIVESAY: It's a report that Carmen did summarizing

1 her conversation with Mr. Palmer.

2 THE COURT: That's fine. I just want the record to  
3 reflect what it is.

4 This is a report of Carmen; is that correct, Mr. Hyman?

5 MR. HYMAN: It's -- Judge, Carmen was the lead  
6 investigator before ---

7 THE COURT: Is that her report?

8 MS. LIVESAY: Your Honor ---

9 MR. HYMAN: Yes.

10 THE COURT: All right. That's fine.

11 MS. LIVESAY: Carmen was an investigator from our office.

12 THE COURT: I understand.

13 MS. LIVESAY: Okay.

14 A: What was the question?

15 BY MR. HYMAN:

16 Q: The question is, What did you tell Carmen when you met  
17 with her? You can read over that and tell me what it was.

18 A: I guess it says I said -- I said that Rob stood between  
19 the two groups and held his arms out telling them it was not  
20 worth it.

21 Q: Continue.

22 A: And Ryan said that Brown told, told him you're about to  
23 get F'd up. Ryan said that D.J. shoved Griffith back away  
24 from him and Ryan threw a punch at Griffith. The fight began  
25 and Ryan immediately felt something on the right side of his

1 head and it came from behind him. You need me to ---

2 Q: Continue.

3 A: He said that blood started to come out, immediately  
4 covered the side of his face and one eye. He said that he  
5 thought it was Brown that cut him on the head because D.J. and  
6 Griffith were next to him and he had just thrown a punch at  
7 Griffith.

8 Q: That's good. We'll question you about that what you just  
9 read. Now is that different than what you said today?

10 A: I believe so as far as the, the people involved.

11 Q: Well, you said today that Griffith was looking like he was  
12 gonna push Michael Parker and that's when you punched him?

13 A: No, I didn't say that.

14 Q: Okay. Well, then you said he pushed Michael Parker?

15 A: Yes, sir.

16 Q: Reached for Michael Parker?

17 A: Shoved.

18 Q: Okay. But what you're saying here is that D.J. pushed  
19 Griffith and, at that point, you punched Griffith.

20 A: Yeah, I've obviously mistaken Rob for Parker.

21 Q: Okay. Now, so if Rob was to testify then that he's the  
22 one who said, hey, we don't need any of this; who would be  
23 mistaken, you or Rob?

24 A: Parker said that.

25 Q: You're positive about that?

1 A: Right.

2 Q: So if it's in Rob's statement that he said that, that's  
3 inconsistent that Rob said it, not Parker?

4 A: Right.

5 Q: Now you know, as far as that night -- and, Judge, I've  
6 shown it to Counsel and she says she's gonna object to it.  
7 This was a picture off of Mr. Palmer's Facebook page. I just  
8 want to question him about the people that are in it.

9 MS. LIVESAY: Your Honor, this is gonna be something that  
10 we need to hear outside the presence of the Jury.

11 THE COURT: All right. I will do that. I'll let you go  
12 to the jury room please. Thank you.

13 (REPORTER'S NOTE: Jury exits courtroom. 11:09 A.M. The  
14 following takes place outside the presence of the Jury.)

15 THE COURT: The record will reflect that the Jury is  
16 outside the courtroom. You may proceed.

17 MS. LIVESAY: Your Honor, he's trying to introduce a  
18 photograph that I've never even seen before until today. We  
19 have had numerous pre-trial motions in this courtroom in front  
20 of Your Honor. We have asked and asked again for everything  
21 to be turned over. I sent them a letter like I do when I  
22 respond to discovery asking for reciprocal discovery. That  
23 entails anything he's planning on introducing into evidence so  
24 I can prepare for it, the same reason I ---

25 THE COURT: Do you know what he's getting ready to do, I

1 don't?

2 MS. LIVESAY: I've never seen that picture, Your Honor.

3 MR. HYMAN: Judge, this is a picture I pulled off of  
4 their -- the victim's Facebook page. It's not under my  
5 exclusive control. Anybody can go and print this.

6 MS. LIVESAY: That's fine, Your Honor. He still has to  
7 turn it over to me ---

8 MR. HYMAN: No, I do not.

9 MS. LIVESAY: --- if he's planning on using it ---

10 THE COURT: Well, I don't know what -- for what purpose  
11 do you plan on using it?

12 MR. HYMAN: Judge, I'm using this for identification  
13 purposes. Many of the people that he has said he was there  
14 with that night are in this picture.

15 THE COURT: Okay.

16 MS. LIVESAY: That's not a picture -- A, that's not a  
17 picture from the Afterdeck; B, there's no date on that  
18 picture, I have no idea when it was made ---

19 THE COURT: Let me, let me hear where he's going and then  
20 I can rule on it.

21 MR. HYMAN: Judge ---

22 THE COURT: What is the picture, Mr. Hyman?

23 MR. HYMAN: And I'll be happy to hand it up.

24 THE COURT: Well, just show it -- tell me what it is.

25 MR. HYMAN: Judge, this is a picture at another event.

1 Mr. Palmer is in it, Vitaly Ninichuk is in it, Alex Assanto is  
2 in it and Michael Parker.

3 THE COURT: And what is your purpose in asking him about  
4 this picture?

5 MR. HYMAN: Identification.

6 THE COURT: Identification of who?

7 MR. HYMAN: Michael Parker, Alex Assanto, and again  
8 Vitale Ninichuk.

9 THE COURT: You just want it are these those individuals?

10 MR. HYMAN: Yes.

11 THE COURT: What's wrong with that?

12 MS. LIVESAY: I can tell you what's wrong with it, Your  
13 Honor.

14 THE COURT: What?

15 MS. LIVESAY: He never turned that over to me before  
16 today.

17 THE COURT: I understand, but ---

18 MS. LIVESAY: If it was me up here, it would not be  
19 allowed into evidence. At the appropriate time ---

20 THE COURT: Well why, if it's for identification only,  
21 why do you object to it?

22 MS. LIVESAY: Because Michael Parker is testifying. We  
23 don't need to identify him. Vitaly is in a picture that we've  
24 already put into evidence.

25 THE COURT: Wait a minute, now. What is the purpose of

1 the identification, is there some question about ---

2 MR. HYMAN: Judge, we don't know if Michael Parker's  
3 testifying or not?

4 MS. LIVESAY: I can tell you now he is.

5 THE COURT: Wait a minute. What is the purpose of  
6 identification?

7 MR. HYMAN: Judge, we don't know if Michael Parker or  
8 Alex Assanto are participating in this and are gonna testify.  
9 He's named them as people that were there with him, one of  
10 which was involved in the fight.

11 THE COURT: But this picture was not taken at the  
12 Afterdeck.

13 MR. HYMAN: It was not. It is simply just saying who is  
14 that? I just want the Jury to know that if they're not here,  
15 to see them.

16 MS. LIVESAY: Your Honor, A, Michael Parker will be  
17 testifying.

18 THE COURT: I'm gonna exclude the photograph. It's not  
19 taken at the Afterdeck and you can examine him on cross  
20 examination about it. If that's -- I'm gonna exclude that.

21 MS. LIVESAY: But are we -- are we gonna -- are we gonna  
22 allow for that to be in evidence, Your Honor.

23 THE COURT: I said I was gonna exclude it.

24 MS. LIVESAY: Thank you, Your Honor. I just want to make  
25 sure we were clear before the Jury comes back out.

1 THE COURT: All right. Is there anything else we need to  
2 talk about before I bring the Jury back?

3 MS. LIVESAY: Just again regarding any, no questions  
4 regarding Get Wrecked, no questions regarding any prior record  
5 of the victims as bad acts or character evidence.

6 THE COURT: Well, he hasn't gone to that or I haven't  
7 heard him say that?

8 MS. LIVESAY: Just, just so we're clear since we're  
9 outside the Jury.

10 THE COURT: Mr. Hyman understands that.

11 All right. Bring the Jury in.

12 Mr. Hyman, you may ask him if he knows them, this, that  
13 and the other if you care to, but the photograph taken at some  
14 other place at some other time by some other person, not  
15 identified as to the time is not necessary in this case.

16 Bring the Jury in.

17 THE COURT: I don't mind you asking does he know him or  
18 can he identify him.

19 The Jury is apparently taking their morning break. Does  
20 Counsel need to take a break for any purpose? You all right,  
21 gentlemen?

22 MR. HYMAN: Judge, it's up to you.

23 THE COURT: No, let's stay where we are if I can get the  
24 Jury back.

25 THE COURT: Defendant, do you have some water; do you

1 need some water or anything?

2 MR. PALMER: I'm good to go.

3 THE COURT: Okay.

4 (REPORTER'S NOTE: Jury enters courtroom. 11:15 A.M.)

5 THE COURT: You may proceed. The jury is present.

6 MR. HYMAN: Thank you, Judge.

7 BY MR. HYMAN:

8 Q: So, Ryan, again, you told Carmen Mureddu back in 2010 that  
9 you didn't tell him that Griffith pushed Parker; you didn't  
10 tell her that; is that correct?

11 A: I really don't have a statement in front of me to verify  
12 what I said.

13 THE COURT: Now again, are you referring to Carmen's  
14 statement, not his statement?

15 MR. HYMAN: This is his statement to Carmen.

16 THE COURT: The document in front of him is Carmen's  
17 rendition of what occurred?

18 MR. HYMAN: That is correct.

19 THE COURT: It's not his exact statement.

20 MR. HYMAN: That's correct.

21 THE COURT: Just want the record to reflect what the  
22 document he's looking at.

23 A: Yeah, on here it says Ryan said D.J. shoved Griffith back  
24 away from him.

25 BY MR. HYMAN:

1 Q: Not Griffith shoved Parker?

2 A: Right.

3 Q: Okay. But your story is different today?

4 A: With -- no, it's the same story; it's just I involved D.J.  
5 obviously and it's something that actually was with Parker,  
6 meaning Parker, not D.J.

7 Q: Well, so again, you've got it switched completely about  
8 whose pushing who. Now you're saying today that my client  
9 pushed Parker.

10 A: Yes, sir.

11 Q: But in that you said D.J. pushed my client?

12 A: Well, see, here, I mean this, this may have been after the  
13 fact because initially when Parker put his hands up ---

14 Q: Uh-huh, (affirmative response).

15 A: --- and said we don't want any trouble; that's when your  
16 client shoved Parker and now I'm not sure if, if D.J. had  
17 shoved Griffith after the fact and the prior thing wasn't  
18 written in here. I'm not, I'm not aware of that at all.

19 Q: Well, how about this ---

20 A: Because it does seem like something's missing right there.

21 Q: When did you punch my client?

22 A: I punched him as soon as he laid hands on Parker.

23 Q: He didn't lay hands on you?

24 A: No, sir.

25 Q: So why did you punch him?

1 A: He told me I was about to get fucked up?

2 Q: Well, now you said in that Brown told him that, told you  
3 that?

4 A: At, at that time behind me, there's no telling who would  
5 have said that.

6 Q: Well, again ---

7 A: I'm not, I'm not personal friends with them. I don't know  
8 their voices as far as which one.

9 Q: Did my client ever touch you?

10 A: No, he never touched me.

11 Q: Okay. But yet you threw a punch at him?

12 A: Yes, sir.

13 Q: You said earlier you weren't looking for a fight?

14 A: Right.

15 Q: All right. So why did you get in one?

16 A: Hopefully your client can tell me that.

17 Q: I'm just wondering why if my client touches somebody else,  
18 you feel the need to try to cold cock my client and you said  
19 you fell and maybe hit him with twenty percent. Let's just  
20 say you didn't. That wasn't your intention to fall and only  
21 hit him with twenty percent was it?

22 A: No.

23 Q: No, it was your intention to blind, just blindside him,  
24 wasn't it?

25 A: No, he saw me. He saw me on the way.

1 Q: Okay. So, if he's looking this way and pushing Parker  
2 like you said and you're over here and trying to punch him,  
3 how was he seeing you?

4 A: I'm not over there at all. I'm right next to Parker.

5 Q: And again, you threw the first punch?

6 A: Yes, sir.

7 Q: You threw the first punch of this entire fight?

8 A: As far as initial contact, no, I never made initial  
9 contact.

10 Q: No ---

11 A: You mean, as far as the punch, yeah, I threw the first  
12 punch.

13 Q: You threw the first punch in this entire fight?

14 A: Yes, sir.

15 Q: All right. And you threw that at my client?

16 A: Yes, sir.

17 Q: And it's your testimony though that my client was not the  
18 one who cut you; that you saw the taller guy specifically cut  
19 you?

20 A: I never seen anybody cut me at all.

21 Q: Well, your testimony a few minutes ago was that you could  
22 see the taller guy coming at you with a knife?

23 A: That was after the fact that he'd -- I got stabbed in my  
24 head.

25 Q: That's what I'm saying. So you never saw him cut you?

1 A: No.

2 Q: In any way. But you did see the taller guy cut you; is  
3 that correct?

4 A: Right.

5 Q: Now as far as you say that y'all were walking to the  
6 bathroom ---

7 A: I, myself.

8 Q: Right. Now where, where on this -- I think we heard some  
9 testimony earlier that the bathroom is back here; is that  
10 right?

11 A: Yes, sir.

12 Q: Okay. So you were walking kinda like that?

13 A: Yes, sir.

14 Q: Okay. Where, where did y'all bump shoulders?

15 A: If this were to be a walkway and the bathroom door was  
16 like right here ---

17 Q: Uh-huh (affirmative response).

18 A: --- as I'm coming this way, the two individuals are  
19 walking this way, so I'm coming this way and that's when we  
20 bumped shoulders right there.

21 Q: Okay. Did you ever see them bump shoulders with D.J. or  
22 anything like that?

23 A: No.

24 Q: So if somebody said that she say them shoulder bump D.J.  
25 would they have been mistaken?

1 A: It's a club, I'm not, I'm not aware of every motion that's  
2 inside the facility.

3 Q: When you went over and told your friends, I think your  
4 testimony was that you went over and told them, hey, look out  
5 for this; is that right?

6 A: Uh-huh (affirmative response).

7 Q: Was D.J. among those that you told?

8 A: Yeah, I believe so.

9 Q: Did he say he had one of those guys shoulder bumping him  
10 too?

11 A: No, as I was saying, we were, we weren't concerned even if  
12 they were -- had've bumped D.J. and I would have said  
13 something, I'm pretty sure it was not on our minds at any time  
14 that night to be, you know, talking about it or making a fuss  
15 about anything like that.

16 Q: And again, it's your testimony that the only person you  
17 saw with a knife was the taller gentleman and not my client;  
18 that's what you testified to?

19 A: As I said ---

20 Q: That's what your testimony is ---

21 THE COURT: Wait a minute. You're interrupting him as he  
22 got ready to answer you, Mr. Hyman.

23 A: As I, as I saw them earlier both standing kinda taunting  
24 me, I noticed like both of their hands, this isn't saying that  
25 they both had knives, but they both had their hands in their

1 pockets and I remember them like shaking their head like this  
2 looking me as they're shaking their -- you know, hands in  
3 their pocket, you know.

4 Q: And I think actually in your statement to Carmen, you say  
5 that that was Brown that was doing that?

6 A: Okay.

7 Q: Meaning the taller guy, not Griffith. You certainly admit  
8 that the guy that you shoulder bumped into was not my client,  
9 but rather Brown, correct?

10 A: Right.

11 Q: And you told the investigator from the Solicitor's Office  
12 that it was Brown who you thought was making gestures in his  
13 pocket, not Griffith.

14 A: Right.

15 Q: Okay. So again, you never saw my client with a knife,  
16 correct?

17 A: No, sir.

18 Q: That's not correct or it is correct; you never saw him or  
19 you did?

20 A: I never saw him -- I never seen either of them with a  
21 knife.

22 Q: You already testified you saw the guy with the 843, Brown,  
23 the tall guy, when he cut you?

24 A: Right. After the incident, yeah, that is correct.

25 MR. HYMAN: No further questions at this time.

1 THE COURT: All right. Was there any redirect?

2 MS. LIVESAY: Just a couple, Your Honor.

3 THE COURT: You may proceed.

4 REDIRECT OF RYAN PALMER BY MS. LIVESAY:

5 Q: Now the statement that you gave Carmen Mureddu, is that  
6 your handwritten statement?

7 A: No, ma'am, it's actually, it's like third person. Ryan  
8 went to -- Ryan says, Ryan said that Rob, you know.

9 Q: Okay. So she's writing a summary of what you told her in  
10 y'all's conversation?

11 A: Right.

12 Q: Okay. But this definitely not a word for word  
13 transcription of the conversation you had with her?

14 A: No, ma'am.

15 Q: Okay. Now, this is a written statement; is that correct,  
16 this one you gave the police?

17 A: Yes, ma'am.

18 Q: Okay. Now in both of these statements, did you ever say  
19 anything other than those two guys walked up to you and your  
20 friends?

21 A: No, ma'am.

22 Q: Okay. Now, did you know them; had you ever seen them  
23 before that night?

24 A: No, ma'am.

25 Q: Okay. So you had, didn't know them, had never seen them

1 before that night?

2 A: No, ma'am.

3 Q: Okay. So had no reason to have a beef with them?

4 A: Right.

5 Q: Okay. Now, when they walked up to you and your friends,  
6 you said they were standing chest-to-chest; is that right?

7 A: Yes, ma'am.

8 Q: With you guys?

9 A: Well, initially when they came up behind me and told me  
10 that, after I had turned around and the rest of my friends had  
11 seen the situation prior to seeing them taunting me and all  
12 that and then realizing they were right there -- what was the  
13 question again, I'm sorry.

14 Q: I'm sorry. How close were they when you turned around;  
15 how close were they standing to you?

16 A: Two feet away.

17 Q: Okay. So from me to you?

18 A: No.

19 Q: How about now?

20 A: Yeah, from about there.

21 Q: Okay. So, when you turned around, they were standing  
22 right here?

23 A: Yes, ma'am.

24 Q: Okay. Now at that point, did you see a knife?

25 A: No, ma'am.

1 Q: Not from either one of them?

2 A: No, ma'am.

3 Q: Okay. Now, but obviously one of them or both of them had

4 knives; is that correct?

5 A: Right.

6 Q: Okay. But you didn't see it at that point?

7 A: Right.

8 Q: Okay. And you didn't have a knife?

9 A: No, ma'am.

10 Q: Okay. And it was one of your friends that said, hey, hold

11 back?

12 A: Right.

13 Q: Don't do this?

14 A: Yes, ma'am.

15 Q: Okay. Did they move?

16 A: No, ma'am.

17 Q: Did they walk away?

18 A: No, ma'am.

19 Q: Okay. Did you ever say anything to threaten them?

20 A: Not at all.

21 Q: Okay. Did it appear that they were gonna walk away from

22 y'all?

23 A: No, not at all.

24 Q: Okay. Did you feel threatened?

25 A: Yes, ma'am.

1 Q: Okay. Now, you gave a statement to the police 9/23/09;  
2 have you seen it?

3 A: I believe so.

4 Q: Okay. And in that statement, did you say that the  
5 Defendants approached you and your friends?

6 A: Yes, ma'am.

7 Q: Okay. And when you gave a statement to Carmen Mureddu  
8 October 8th, 2010, in that statement, did you tell Carmen that  
9 the Defendants approached your group?

10 A: Yes, ma'am.

11 Q: Okay. Now did you see anybody in your group of friends  
12 pull out a knife?

13 A: No, ma'am.

14 Q: Did anybody in your group of friends approach anybody that  
15 night?

16 A: No, ma'am.

17 Q: Okay. Now, what were you wearing that night?

18 A: I was wearing some jeans and like a button up short sleeve  
19 plaid shirt.

20 Q: A plaid shirt?

21 A: Yes, ma'am.

22 Q: Were any of your friends in wife-beaters?

23 A: No, ma'am.

24 Q: Okay. Did you see any of them have knives clipped to  
25 their shorts?

1 A: No, ma'am.

2 MS. LIVESAY: No further questions, Your Honor.

3 THE COURT: All right. You may come down. I assume  
4 there's no further questions from you, Mr. Hyman?

5 MR. HYMAN: Not at this time, Your Honor.

6 THE COURT: You may come down. Do not discuss your  
7 testimony with any of the other potential witnesses please.

8 Next witness.

9 MS. LIVESAY: At this time, Your Honor, the State calls  
10 Michael Parker to the stand.

11 CLERK: Sir, please raise your right hand and place your  
12 left hand on the Bible?

13 MICHAEL PARKER, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: Please be seated. Scoot up, speak into the  
16 microphone and state your full name and spell your last name?

17 MR. PARKER: Michael David Parker, M-I-C-H-A-E-L P-A-R-K-  
18 E-R.

19 DIRECT EXAMINATION OF MICHAEL PARKER BY MS. LIVESAY:

20 Q: Michael, how old are you?

21 A: Twenty-five.

22 Q: How old?

23 A: Twenty-five.

24 Q: Okay. And I'm not good at math, so how old were you in  
25 September of 2009?

1 A: Twenty-one.

2 Q: Okay. And were you living in Horry County?

3 A: Yes, ma'am.

4 Q: Where are you living now?

5 A: I'm living now just right off of Forestbrook Road, Myrtle  
6 Beach..

7 Q: Now are you from Horry County?

8 A: Originally Shelby, North Carolina, but I've been here  
9 since I was four years old.

10 Q: Okay. I know where that is; it's right near the border,  
11 right over the border?

12 A: Yes.

13 Q: Were you living in Horry County in 2009?

14 A: In 2009, yeah.

15 Q: Okay. And do you remember going to the Afterdeck in  
16 September of 2009?

17 A: Yes, ma'am.

18 Q: And do you remember what happened at the Afterdeck?

19 A: Oh, yes, ma'am, for sure.

20 Q: Who all did you go to the Afterdeck with that night?

21 A: Myself, Rob Penna, Ryan Palmer, Cierra Gordyck, Jan Tyco,  
22 my friend, D.J., David John Houghtaling, and with Tom Covino,  
23 Seth Rogers was there also; that's about who I went with.

24 Q: And about how many cars did y'all take?

25 A: We took two cars I think.

1 Q: Okay. And about what time did y'all get there?

2 A: Around 11 o'clock.

3 Q: Okay. Now at the time, if I remember correctly, and you  
4 were twenty-one?

5 A: Yes, ma'am.

6 Q: So were y'all doing a little drinking before you went to  
7 the Afterdeck?

8 A: Actually, I wasn't, no.

9 Q: Okay. And did you drink anything when you got to the  
10 Afterdeck?

11 A: Yes, I did; yes, ma'am.

12 Q: Now, would you say you had so much to drink that you were  
13 impaired?

14 A: No, not at all.

15 Q: So you were able to walk and talk and move around?

16 A: Yes.

17 Q: Okay. Now, y'all get there about -- if you don't mind,  
18 show the jury on this State's evidence Number Twelve ---

19 A: Uh-huh (affirmative response).

20 Q: About where were y'all, is this accurate about what the  
21 Afterdeck looks like?

22 A: Yeah. This cage is a little more towards the center, but  
23 yeah, the cages are towards the center but we were sitting  
24 right here.

25 Q: Okay. Okay. In this area here?

1 A: Yes, ma'am.

2 Q: Okay. Now did y'all kind of stay in that area?

3 A: The whole night.

4 Q: Okay. Y'all were just kind of hanging around?

5 A: If we were dancing, we danced right here.

6 Q: Okay. So, your group stayed pretty much right there?

7 A: We were sitting here, us guys and the girls had a table  
8 back here that we were just kinda rotating between, just right  
9 there in that corner the whole time.

10 Q: Okay. Now, did you know anybody else in the Afterdeck  
11 other than the people you came with; did you see people you  
12 recognized?

13 A: Yeah, there were some random people that we knew there,  
14 yeah.

15 Q: Right. Now what happened that night; y'all get there at  
16 about, who was hanging together; who's the crowd that's  
17 hanging together that you're there with?

18 A: Myself, Rob, D.J. and Tom were sitting on that box that  
19 was right next to the cage.

20 Q: Okay.

21 A: And you're asking like who all was right there?

22 Q: Right.

23 A: I mean Cierra and Jen were right behind us. Tom was  
24 sitting, standing talking right there to -- and I mean it like  
25 I was saying, there was other random people that we had met.

1 I mean they were just standing just for a little way.

2 Q: Okay. And what happened that night?

3 A: Just how everything started or what I saw?

4 Q: What you saw?

5 A: We were standing there and it's probably around, it's  
6 getting towards the end of the night like winding down  
7 probably about to close and ---

8 Q: Like when you say the end of the night, you mean the  
9 club's getting ready to close or the crowds thinning out?

10 A: Not so much the crowd thinning out, but about to close.

11 Q: Okay.

12 A: It's that late.

13 Q: Okay.

14 A: It's like 3 o'clock in the morning.

15 Q: Okay. But the crowd was pretty ---

16 A: Still really big.

17 Q: Okay.

18 A: Really big.

19 Q: Okay.

20 A: And we were just sitting there and I notice Ryan out of  
21 the corner of my eye like because that cage is right there in  
22 the corner.

23 Q: Uh-huh (affirmative response).

24 A: It's just like a box. So I see him on the steps just  
25 standing there and I see the two Defendants standing right

1 behind him.

2 Q: Now, do you recognize this guy?

3 A: Yeah, for sure.

4 Q: Okay.

5 A: For sure.

6 Q: Now there were two guys that you saw; is that right?

7 A: Yes, ma'am.

8 Q: Now was this guy the shorter of the two or the taller?

9 A: Shorter of the two.

10 Q: Okay. Now, when you saw them were they standing together?

11 A: Like Ryan's in the center; they're right beside him, right  
12 behind him.

13 Q: Okay. But they're together side by side?

14 A: Yeah.

15 Q: Now what, do you remember what they were wearing?

16 A: Wife-beaters, one had a white T-shirt on like over  
17 shoulder and ---

18 Q: I'm gonna show you some pictures -- if I show you a  
19 picture, you think you could pick them out?

20 A: Easily.

21 Q: You see those two guys in the background in that picture,  
22 State's evidence Number Three?

23 A: Yes, ma'am.

24 Q: Do you recognize those two guys?

25 A: For sure.

1 Q: Okay. And do you recognize which guy is this one here in  
2 the courtroom?

3 A: That one.

4 Q: Okay. If you don't mind, do you mind telling me what  
5 color his shorts are if you can tell?

6 A: Looks like a white khaki.

7 Q: Okay. And that's the shorter guy?

8 A: Yes, ma'am.

9 Q: And that's the guy that's in here today?

10 A: Yeah; yes, ma'am.

11 Q: Now, are these the same two guys that approached you and  
12 your friends that night?

13 A: Yes, those two guys.

14 Q: Okay. And this is State's evidence Number Three. Now,  
15 I'm gonna show you a picture that's been introduced as State's  
16 evidence Number One?

17 A: Yes, ma'am.

18 Q: Do you see this guy, the white guy?

19 A: Yes, I do.

20 Q: Do you know him?

21 A: Yeah. Do I personally know him?

22 Q: Yeah.

23 A: No, I do not personally know him.

24 Q: Does he look familiar to you?

25 A: Yes.

1 Q: He does look familiar but you don't know him?

2 A: I don't know him, no, ma'am.

3 Q: Now, let me show you one more picture.

4 A: Yes, ma'am.

5 Q: You recognize this guy, I'm showing you what's been marked  
6 as State's evidence Number Seven?

7 A: Yes, ma'am, for sure.

8 Q: Okay. And is that one of the guys that approached you  
9 that night?

10 A: Yes, ma'am.

11 Q: Now, is this the taller guy or the shorter guy?

12 A: The taller one.

13 Q: Now, is this the guy that Griffith was with that night?

14 A: Was with him, yeah.

15 Q: So this guy looks familiar to you, but he's not the guy  
16 that approached you that night?

17 A: Right, it is definitely the other guy that approached me.

18 Q: This guy looks familiar, but he's not the one that started  
19 any trouble with you?

20 A: No, no.

21 Q: And I'm showing you what's been marked as State's -- I'm  
22 sorry -- Defendant's Exhibit One. So, you never had any  
23 problems with this guy?

24 A: No. Like I mean, I'm saying that other -- those two  
25 people are not the same people.

1 Q: Okay. So this is the guy that approached you?

2 A: That's the guy that approached me, yeah.

3 Q: And this is State's Evidence Number Three. These are the  
4 two guys that walked up to you in the background?

5 A: Yeah.

6 Q: The ones wearing the wife-beaters.

7 A: Yeah.

8 Q: Now had you seen them with a knife before they approached  
9 you?

10 A: No, I did not.

11 Q: Did you, did you know that they had a knife?

12 A: No, I did not.

13 Q: Okay. On that night, did you have a knife?

14 A: No, ma'am.

15 Q: Okay. What were you wearing that night?

16 A: A pink button-up shirt, blue jeans, Vans shoes.

17 Q: Okay. Now, tell me, take me from the first time you see  
18 them. Where is the first time you see those two guys, the  
19 Defendant and the other guy in the wife-beater?

20 A: The first time I saw them was them standing right behind  
21 Ryan on that corner on the cage.

22 Q: And then what did you do and what did you see?

23 A: Well, I was still just sitting there; I didn't think  
24 anything of it at first. You know, I just saw Ryan over  
25 there, you know, and he walks over to us and just, you know,

1 just kind of coming back from the bathroom, you know, shaking  
2 our hands, you know, because we're having a good time. But  
3 then I see those two boys following him, you know, and he just  
4 kind of came up and nothing happened right at first, you know,  
5 and Ryan kind of walks up the steps, you know, saying hey to  
6 everybody and he walks over to Cierra, which is at the table  
7 right behind us.

8 Q: Uh-huh (affirmative response).

9 A: And they follow him straight up right behind him and ---

10 Q: And what do you do?

11 A: And what do I do? Well, that gentleman was literally the  
12 one right behind Ryan and that's what like basically got  
13 Ryan's attention to turn around, you know, I don't know what  
14 they said to him or anything like that, but I just noticed  
15 that that wasn't normal. You know what I mean?

16 Q: Right.

17 A: So I just, you know, kind of threw my hands up like guys,  
18 what's going on, you know, what's up? They didn't say nothing  
19 to me; they just were blank staring at me. It was the taller  
20 one that was staring at me. I guess I got his attention as  
21 well, you know what I mean, with me and Rob trying to diffuse  
22 whatever situation was ---

23 Q: So, you and Rob both were trying to diffuse ---

24 A: Yeah.

25 Q: --- the situation?

1 A: Yeah, for sure.

2 Q: Now, were standing closest to Ryan Palmer?

3 A: Yes, I was standing closest to Ryan Palmer.

4 Q: Okay. So, you and Robert Penna, you recognize Robert in  
5 the courtroom?

6 A: For sure.

7 Q: Okay. And these two guys are your friends?

8 A: Yes, ma'am.

9 Q: Okay. So both of them are kind of like, chill out?

10 A: Yeah.

11 Q: Okay. And what are the two guys in the wife-beaters,  
12 Griffith and his friend, are they saying anything back?

13 A: His friend wasn't saying anything back. He was just blank  
14 staring at me.

15 Q: How about him?

16 A: That gentleman -- I can't say he said anything to me.

17 Q: Okay. Did you hear him say anything to anybody?

18 A: I know he was talking to Ryan.

19 Q: Okay. And, and what was his physical demeanor; do you  
20 remember?

21 A: Like talking trash.

22 Q: Okay. So he wasn't like backing up?

23 A: No, no, chance, no.

24 Q: When you were looking at them, did they look like they had  
25 any intentions of backing away from y'all?

1 A: No, not at all.

2 Q: Okay. And had y'all been hanging in that area all night?

3 A: All night. I mean, it's basically Ryan was almost up  
4 against -- Cierra is sitting at a table, he's up against a  
5 table, you know what I mean, with those two boys coming at  
6 him.

7 Q: Okay. So y'all were saying calm down, you know -- they  
8 don't look like they're leaving.

9 A: Yeah. No, they weren't.

10 Q: So what happens next; what do you see happen next?

11 A: Basically, I get pushed down the stepway, like a big  
12 commotion.

13 Q: Who pushed you?

14 A: Honestly, I can't say who pushed me. It just came from,  
15 I'm staring at the taller gentleman; this gentleman is right  
16 here; Ryan's right here; and then somehow with -- I don't know  
17 what happened honestly right that way, but we all get like  
18 kind of shoved down this way -- well, I get shoved down this  
19 way, which pushes all of us down to the dance floor.

20 Q: Right.

21 A: So then that's when the fight broke out.

22 Q: Okay. How close were they standing to y'all when they  
23 walked up?

24 A: Like if I was standing up, the taller gentleman was right  
25 here.

1 Q: Okay.

2 A: He was, you know what I mean ---

3 Q: Yeah.

4 A: --- with us just -- almost as if they were part of the  
5 group.

6 Q: Me and you; that close?

7 A: Yeah. Oh yeah, or closer.

8 Q: Okay. And then you get shoved down and then what happens?

9 A: Well, I didn't say I get shoved down to the ground, but I  
10 get shoved.

11 Q: Okay.

12 A: So we come this way, I see that gentleman attacking him,  
13 the other gentleman ---

14 Q: Attacking who?

15 A: Ryan Palmer.

16 Q: Okay.

17 A: And I see the other taller gentleman helping, or trying to  
18 help.

19 Q: Okay.

20 A: So, that's when I got involved and got involved with the  
21 taller gentleman.

22 Q: Okay. So, you saw those two guys trying to jump on Ryan  
23 Palmer?

24 A: Yes, ma'am.

25 Q: Now, did you put your hands on anybody before you saw

1 that?

2 A: No chance.

3 Q: Okay. So, once you see the two of them jump on Ryan, what  
4 do you do next?

5 A: I instantly ran in to take care of the taller guy.

6 Q: Okay. And did you and the taller guy actually ---

7 A: Fight?

8 Q: Yes.

9 A: Yes.

10 Q: Okay. And did you see where Ryan was when that started?

11 A: He was basically on the floor on the dance floor with him.

12 Q: Okay. So, he was already down, Ryan Palmer was?

13 A: Yeah.

14 Q: And then you jump on the taller guy to keep him ---

15 A: Uh-huh (affirmative response).

16 Q: --- from jumping back on Ryan?

17 A: Exactly, because they were both trying to attack him.

18 Q: Okay. And do you hit the taller guy at that point?

19 A: Yes, ma'am.

20 Q: Okay. At that point, do you know that Ryan Palmer is  
21 bleeding?

22 A: No, I did not know he was stabbed.

23 Q: Okay. Did you see a knife?

24 A: No, no.

25 Q: Okay. You never saw a knife?

1 A: No, I was the only not to get stabbed.

2 Q: Okay. So you jump on the taller guy?

3 A: Uh-huh (affirmative response).

4 Q: What happens then?

5 A: We were fighting. Another gentleman without a shirt on

6 came around the corner. I thought honestly he was one of

7 their friends and he had his fists up like he was about to

8 fight me. It didn't seem like he was just a bouncer so we

9 didn't really fight, but we kind of scuffled and went on the

10 ground.

11 Q: Uh-huh (affirmative response).

12 A: And then what I figure is a real bouncer, you know, a

13 taller gentleman bigger, actually came and grabbed me and

14 slammed me to the ground like up the steps where we were

15 basically.

16 Q: Uh-huh (affirmative response).

17 A: And then just had me on the ground.

18 Q: Okay.

19 A: And then I saw Rob.

20 Q: At that point, who did you see?

21 A: Rob came and like checked on me as like my face was in the

22 ground.

23 Q: Did you see Ryan Palmer or D.J.?

24 A: Huh-uh (negative response), no, not at that time.

25 Q: Did you have a knife on you that night?

1 A: No, ma'am.

2 Q: Okay. Did you ever pull -- so you could not have pulled a  
3 knife; you didn't even have one?

4 A: No.

5 Q: Okay. Now, then the bouncer takes you to the ground?

6 A: Uh-huh (affirmative response).

7 Q: What happens next?

8 A: What happens next is he's pushing me towards the door. I  
9 saw the gentleman with no T-shirt on again and we get in a  
10 scuffle again, but the bouncer just grabbed me up and walked  
11 me out the door.

12 Q: And then what do you see when you get outside?

13 A: D.J. was already leaning up against the post and I just  
14 walked over to him instantly and then when I got over there I  
15 was just trying to talk to him.

16 Q: Talk to D.J.?

17 A: Talk to D.J. and then I saw Rob walk outside.

18 Q: You saw who?

19 A: Rob.

20 Q: Okay. Did you see that he was injured?

21 A: I noticed he was pale white and he wasn't saying anything  
22 at first, yeah.

23 Q: But you didn't know where he was injured.

24 A: Huh-uh (negative response); no.

25 Q: Okay. And you didn't see any blood on him at that time?

1 A: No, and I didn't know D.J. was stabbed at first and --  
2 with walking over there right at the beginning anyway, I  
3 didn't know.

4 Q: Okay. At first did you know where D.J. was injured?

5 A: No, until someone said something about putting a shirt on  
6 his side.

7 Q: Putting a shirt on his side?

8 A: Like underneath his arm right here.

9 Q: Okay. So, you didn't know where he was injured?

10 A: Huh-uh (negative response).

11 Q: Was anybody trying to aid Rob Penna and D.J. and those  
12 guys?

13 A: Yeah, I guess there was an off-duty police officer there  
14 and I believe some off-duty EMTs.

15 Q: Okay.

16 A: And they started helping.

17 Q: Were people calling 911?

18 A: Myself, Cierra -- a bunch of us were.

19 Q: Okay. Now, well did you know D.J.?

20 A: I'd say he was a best friend since the day I met him,  
21 honestly.

22 Q: Okay.

23 A: And probably about eight years.

24 Q: And how well did you know Rob Penna and Ryan Palmer?

25 A: The same. I've known Ryan longer since I was about

1 fourteen, fifteen years old.

2 Q: Okay. And so these are kinda your childhood friends for  
3 the most part?

4 A: Yes, ma'am; yes, ma'am.

5 Q: Did you know those two guys with the wife-beaters that  
6 walked up to you?

7 A: No chance, no.

8 Q: Had you ever seen them before?

9 A: No.

10 Q: Did you have any idea why they were walking up to y'all?

11 A: No.

12 Q: Did -- had you ever had a problem with them earlier that  
13 night?

14 A: Huh-uh (negative response), I didn't have a problem with  
15 anybody there that night.

16 Q: Okay. Now, when they walked up and approached, did it  
17 look like they were approaching one person in particular?

18 A: Ryan.

19 Q: Okay. Okay. So, you're not saying they ever approached  
20 you?

21 A: Yeah, they definitely didn't, they didn't like come up to  
22 me like they were following me or anything like that. You  
23 know, they were just following Ryan Palmer.

24 Q: Okay. And did they actually -- did they walk past you  
25 guys to get to Ryan Palmer?

1 A: Oh yeah, straight in front of us, right in front of us.

2 Q: Okay. Now did you ever see, did you know that Ryan had

3 bumped -- bumped into those boys earlier that night?

4 A: I hadn't heard of anything like that that night.

5 Q: Okay. So you hadn't -- you didn't see Ryan and them bump

6 shoulders at some point?

7 A: No.

8 Q: Okay. Did you see anybody else in your group approach

9 those two guys in the wife-beaters?

10 A: No.

11 Q: See them bump into them, anything, make a gesture at them,

12 anything?

13 A: No.

14 Q: Okay. Now, were you and D.J. and Ryan Palmer and Rob all

15 kind of standing together that night hanging out?

16 A: Oh yeah, yeah.

17 Q: Okay.

18 A: We were all together that night.

19 Q: And you didn't see any of those guys approach anybody in

20 that club to start a fight including the two guys with the

21 wife-beaters?

22 A: You're saying did I see them approach anybody ---

23 Q: Yeah.

24 A: --- did I see them approach anybody?

25 Q: Yeah.

1 A: Did I see them approach anybody; no, I did not

2 Q: Okay. And did y'all hang out in that same vicinity all  
3 night?

4 A: Yes, the whole night, right there in that same spot.

5 Q: Okay. Now, that night did you do a written statement ---

6 A: Yes, ma'am.

7 Q: --- to the police?

8 A: Yes, ma'am.

9 Q: Okay.

10 A: At the hospital.

11 Q: Okay. And you talked to Carmen Mureddu?

12 A: If that was the person who was at the hospital, yeah.

13 Q: And is what you told that person the same thing you're  
14 telling us today?

15 A: The exact same thing.

16 Q: Okay. And is what you're telling us today the truth?

17 A: Yes, ma'am.

18 Q: Okay. Now were you injured in any form or fashion?

19 A: No, ma'am.

20 Q: I'm gonna show you what's been marked as State's Evidence  
21 Number Six; do you recognize those two girls?

22 A: Yes, I do.

23 Q: From that night?

24 A: Yes, ma'am.

25 Q: You saw them that night?

1 A: Yes, ma'am.

2 Q: Did you see them hanging out with the two guys in the  
3 wife-beaters?

4 A: Around towards the end, yes.

5 Q: Okay. But not the whole night?

6 A: Correct.

7 Q: Now, when the two guys with the wife-beaters, this  
8 Defendant and the other guy approached y'all, did you see  
9 those two girls then?

10 A: No.

11 Q: So, they were -- you didn't see them anywhere around?

12 A: No, not during that time.

13 Q: Okay. Now, Michael, you were there kind of right in the  
14 thick of it would you say?

15 A: Yes, ma'am.

16 Q: Did you see anybody get stabbed; did you ever see a knife?

17 A: No.

18 Q: And you were never stabbed?

19 A: And I was never stabbed, no.

20 Q: Now, how long when you got out of the Afterdeck, did you  
21 see D.J. and Robert Penna and you say Robert Penna is white as  
22 a sheet?

23 A: I mean, the moment I walked out the door, there was  
24 already a commotion at D.J. because our friend, Alex, is  
25 already out there. So, I instantly went over there within

1 thirty seconds, forty-five seconds of me being out the door  
2 and then Rob came out just a few minutes late, if that, yeah.

3 Q: Now about -- were you there until the ambulance came and  
4 took D.J.?

5 A: Yeah, the whole time, yeah.

6 Q: Okay. While you were out there, did you ever see those  
7 two guys in the wife-beaters out there?

8 A: No, no.

9 Q: Okay. When you were out there around D.J. and I know it's  
10 hard for you ---

11 A: Uh-huh (affirmative response).

12 Q: But when you were out there around there, did you ever  
13 see a knife anywhere?

14 A: Not at the time, no.

15 Q: Okay. And you were out there from the time they brought  
16 D.J. ---

17 A: Yeah -- well D.J. was already out there before I got out  
18 there, but no, I did not see a knife as I'm out there.

19 Q: Okay. So, you saw no knives around D.J. or Robert Penna  
20 or anywhere outside that Afterdeck?

21 A: No. I just -- the only thing I saw that I heard about  
22 when I was out there is that they took off down the street.

23 Q: Okay. You saw this guy take off down the street?

24 A: I didn't see them take off.

25 Q: Okay.

1 A: Everyone already knew outside that they had already taken  
2 off down the street.

3 Q: Okay. Okay. Okay. But you know you never saw them when  
4 you were out there?

5 A: No.

6 Q: You never saw those two guys with the wife-beaters out ---

7 A: No.

8 MS. LIVESAY: No further questions, Your Honor.

9 THE COURT: All right, Mr. Hyman.

10 CROSS EXAMINATION OF MICHAEL PARKER BY MR. HYMAN:

11 Q: Now, Mr. Parker, you said you gave a statement at the  
12 hospital?

13 A: Yes, sir.

14 MR. HYMAN: Judge, I have a matter to take up outside of  
15 the Jury's presence?

16 THE COURT: All right. Let's go to the jury room just a  
17 moment, please.

18 (REPORTER'S NOTE: Jury exits courtroom. 11:53 A.M. The  
19 following takes place outside the presence of the jury.)

20 THE COURT: Is the jury out? All right, what's the  
21 problem?

22 MR. HYMAN: Judge, Mr. Parker says he gave a statement at  
23 the hospital?

24 THE COURT: Statement to who; I didn't hear him say to  
25 who?

1 MR. HYMAN: Well, and I don't know, that's what I'm  
2 saying.

3 THE COURT: Well, ask him?

4 MR. HYMAN: I don't have a statement from him from the  
5 hospital; that's what I'm asking.

6 MS. LIVESAY: I don't have it either, Your Honor, and I  
7 actually went to the police department last week and reviewed  
8 the investigator's complete file. There was no statement in  
9 there as well for Michael Parker.

10 THE COURT: What's your point? If they don't have a  
11 statement, they can't turn it over to you.

12 MR. HYMAN: Well, Judge, he's testified that he gave a  
13 statement.

14 THE COURT: Well, that don't mean that the State had it?  
15 You may make further inquiry. He may've talked to some nurse  
16 or somebody. I don't know who he gave a statement to; it  
17 certainly wasn't me or you.

18 A: On the back of police car.

19 BY MR. HYMAN:

20 Q: It was at the back of a police car. Did you write a  
21 statement or did you just give him a statement?

22 A: Now, I got ---

23 THE COURT: What was your answer?

24 MR. HYMAN: He's trying to remember.

25 A: It was on the back of a police car, but I, I'm pretty sure

1 I wrote it. I'm pretty sure because he had like a -- just a  
2 clipboard and I had to explain exactly what happened and  
3 everything right there.

4 THE COURT: You just gave somebody an oral statement?

5 A: No, the police officer, it was not -- it was written down

6 ---

7 THE COURT: Well, I mean you gave the police officer an  
8 oral statement?

9 MR. HYMAN: Judge, he's saying he wrote it.

10 THE COURT: Well, I'm not sure what he's saying and  
11 you're not either. You're not making the proper inquiry.

12 You talked to a police officer when?

13 A: At the hospital.

14 THE COURT: At the hospital?

15 A: Yes.

16 THE COURT: And you say on the back ---

17 A: And he had a clipboard on the back of the police car and I  
18 had ---

19 THE COURT: Outside the police car?

20 A: Outside of the police car on the trunk. We were both  
21 standing at ---

22 THE COURT: Did you give a statement or did you write a  
23 statement?

24 A: I'm pretty sure I wrote a statement that night.

25 THE COURT: You're not sure?

1 A: I'm not positive, though, but I ---

2 THE COURT: One way or the other.

3 What -- if the State's never received it, it's not gonna  
4 be introduced into evidence; what is your position?

5 MR. HYMAN: Judge, she questioned him and said, Is  
6 everything the same that you've said today, what you gave in  
7 your statement that night?

8 THE COURT: So?

9 MR. HYMAN: Judge, I don't have that statement to cross  
10 examine him.

11 THE COURT: They don't have the statement either.

12 MR. HYMAN: Well, how do they know he even gave one then?

13 THE COURT: Well, I don't know.

14 MS. LIVESAY: I didn't. I asked, Your Honor.

15 THE COURT: Pardon me?

16 MS. LIVESAY: I asked. I knew he had given one to Carmen  
17 Mureddu.

18 THE COURT: I understood you asked if he gave a  
19 statement. I don't see any -- what is your point? Are you  
20 asking for a mistrial?

21 MR. HYMAN: No, Judge, I'm not asking for that. I'm just  
22 saying ---

23 THE COURT: What are you asking for?

24 MR. HYMAN: We're entitled to any statement that was  
25 given.

1 THE COURT: It's not available she says as an officer of  
2 the Court. What you want me to do about it? She says she's  
3 never received it. She doesn't have it in her file. She's an  
4 officer of the Court. So, what are you asking that I do?

5 MR. HYMAN: Judge, I'm pretty sure I know who the officer  
6 was that took the statement.

7 THE COURT: Well, then we can ask him what he did with  
8 the statement. I don't know whether he turned it over or not.  
9 The only thing that this record is reflecting that a  
10 distinguished member of the Solicitor's Office, who is an  
11 officer of the Court, is saying to you and to me, I never  
12 received the statement, I don't have it in my file, I have  
13 nothing to turn over. Now, what is it you want me to do?

14 MR. HYMAN: Nothing more, Judge.

15 THE COURT: Okay. Bring the Jury back.

16 I don't know what to do, Mr. Hyman, if she says she  
17 doesn't have it.

18 MS. LIVESAY: And here's the deal, Your Honor. I went  
19 through and met with Neil Frebowitz last week. I looked  
20 through his entire file. There was no statement in that file  
21 from Michael Parker.

22 MR. HYMAN: Judge, it wouldn't be in Neil Frebowitz; it'd  
23 be Greg Eliason.

24 THE COURT: Sir?

25 MR. HYMAN: It would not be Neil Frebowitz it would be

1 Greg Eliason if it was at the hospital.

2 THE COURT: How about Mr. Eliason?

3 MS. LIVESAY: He has been terminated from the police  
4 department, Your Honor, so he never -- all I can say is if he  
5 took a statement, he never turned it over to the police  
6 department.

7 THE COURT: That's sufficient. And you've never seen  
8 that statement.

9 MS. LIVESAY: I've never seen it, Your Honor.

10 THE COURT: Bring the Jury in.

11 I can't give you what she doesn't have.

12 MR. HYMAN: I understand.

13 MR. HEWITT: I think the problem, Judge, was that today  
14 was just the first we've heard it and we certainly accept that  
15 response as no problem.

16 THE COURT: I understand.

17 MR. HEWITT: I don't know why we're asking questions that  
18 aren't based in evidence.

19 THE COURT: I understand. Well, she asked him if he gave  
20 a statement. She didn't say she had one.

21 Bring the Jury in.

22 I accept her statement that she doesn't have it and it's  
23 never been turned over to them. And I suspect that the  
24 officer never turned it over to them, but you may ask that --  
25 if you know who that officer is, you may certainly subpoena

1 him.

2 MR. HEWITT: We accept that too, Judge.

3 THE COURT: All right. Thank you.

4 Obviously, if they had a statement, Mr. Hyman, you're  
5 entitled to it and I'd turn it over to you.

6 All right. Bring the Jury in.

7 (REPORTER'S NOTE: Jury enters courtroom. 12:00 P.M.)

8 THE COURT: Proceed please, Mr. Hyman.

9 MR. HYMAN: Okay.

10 BY MR. HYMAN:

11 Q: Mr. Parker, now it's your testimony that you gave a  
12 statement that night, but you also met with an investigator  
13 with the Solicitor's office at other times; is that correct?

14 A: With the Solicitor's office, yes.

15 Q: So you remember meeting ---

16 THE COURT: Talk a little louder into the microphone,  
17 please, so that we can ---

18 A: Yes, sir. I'm sorry.

19 BY MR. HYMAN:

20 Q: Do you remember meeting with an investigator named Carmen  
21 Mureddu; Carmen has short hair.

22 A: Kind of heavier -- no, wait, Carmen -- I honestly don't  
23 know the names, honestly.

24 Q: That's okay. Would you agree though that you did meet  
25 with an investigator with the Solicitor's office?

1 A: Yes, I have.

2 Q: And I'm not talking about on the night this occurred, I'm  
3 talking about at a later date?

4 A: Yes.

5 Q: Okay. Now, I've got here what this is -- and this is an  
6 investigative report from Carmen Mureddu.

7 A: Uh-huh (affirmative response).

8 Q: Now, this is her rendition of what you told her when she  
9 interviewed you.

10 Your Honor, Court's indulgence while he refreshes his  
11 memory.

12 THE COURT: Sure, I understand.

13 A: Actually, this is nothing like what I had told the woman,  
14 if that's who you're talking about that came to my apartment,  
15 because she's saying things that I wouldn't even describe that  
16 way. Saying five feet from Parker; saying ---

17 Q: So, you're saying that her ---

18 A: Yeah, she's saying that I said that I shoved Griffith,  
19 which didn't even happen. That's the lady that basically said  
20 that she was -- she never said she was part of the defense,  
21 but she basically somehow got in my house and got my roommates  
22 ---

23 Q: We're not talking about her -- you're talking about my  
24 investigator; we're talking about the Solicitor's  
25 investigator.

1 A: Because I didn't say any of that.

2 Q: Well, Ms. Mureddu will have a time to tell the Jury what  
3 you said?

4 A: Parker was with the group -- I'll read the whole thing if  
5 that's what we're gonna do here. Brown is the taller  
6 gentleman?

7 Q: That's right.

8 A: This is the gist of the story, but not completely correct;  
9 I can tell you that.

10 Q: So, where it says that you shoved someone ---

11 A: Yes.

12 Q: --- and said, what's your problem ---

13 A: Yeah; I didn't shove anybody.

14 Q: So, if the investigator was to come back and say that you  
15 did say that, she'd be inaccurate?

16 A: Yeah, I'd say she'd be inaccurate because I didn't do  
17 anything but get the man's attention and just be like, is  
18 there a problem; you know, I mean, guys, we don't want to do  
19 this. You know, you don't want to do this.

20 Q: Because you got a problem and we don't want to do this are  
21 two completely different things?

22 A: Saying you got a problem? I didn't say you got a problem.

23 Q: That's what I'm saying, that's what that says. That's  
24 what the investigator says that you told her?

25 A: That I said you got a problem.

1 Q: No, like you got a problem; like what's your problem?

2 A: Saying yeah, what is the problem; what's going on; what --  
3 that's the same thing as I mean ---

4 Q: Well, that's different than saying, let's not do this.

5 A: I didn't say let's not do this. You're changing the  
6 words. I'm saying that trying to stop the thing, you don't  
7 want to do this; you don't want to do this.

8 Q: Now, as far as that goes, did you see Ryan Palmer throw  
9 the first punch?

10 A: Did I see Ryan Palmer throw the first punch, no.

11 Q: Okay. So, you didn't see that?

12 A: No.

13 Q: Okay. Did you see my client push him?

14 A: Push me?

15 Q: Uh-huh (affirmative response).

16 A: I mean, I know he ain't pushing me, but I did not see who  
17 pushed me, no.

18 Q: Well, could it have been the other guy that pushed you?

19 A: Who, the taller guy; no, because I was looking right at  
20 him.

21 Q: Okay. As far as that night you say that you recognized  
22 these two girls as hanging out with the two guys in the wife-  
23 beaters earlier in the night?

24 A: No, I said after the fact.

25 Q: After the fact?

1 A: That they were with them.

2 Q: You're saying after the fight?

3 A: I'm saying towards the end -- just like she asked me if I  
4 saw these two girls with them ---

5 Q: Uh-huh (affirmative response).

6 A: I said only towards the end of the night, that when this  
7 was going on I didn't see those two girls with them.

8 Q: And I guess that's what I'm trying to -- I'm trying to  
9 figure out when you saw them, like did you see them when you  
10 first got there?

11 A: No, I didn't see them ---

12 Q: Did you see five minutes before the fight?

13 A: No, I mean it was just after, after that situation.

14 Q: Okay. And I'm trying to say, what's the situation?  
15 You're saying after the ---

16 A: After the fight.

17 Q: So, you're saying you saw those two girls after the fight  
18 with them?

19 A: No, no, no, no. Like I noticed that they with them  
20 because they were calling him or calling them or whatever.

21 Q: Oh, okay. Now, as far as a knife in this, it's your  
22 testimony that you didn't see any type of knife or anything?

23 A: I did not, sir.

24 Q: All right. And it's also your testimony that not only did  
25 you get in a fight with Brown, you got in a fight with

1 somebody with a shirt, shirt off?

2 A: Uh-huh (affirmative response), yeah.

3 Q: Did you ever see my guy with a shirt off?

4 A: With his shirt off, huh-uh (negative response).

5 Q: Did you ever see Brown with his shirt off?

6 A: No.

7 Q: Did you ever talk to the guy that I think you said he was  
8 a black guy with his shirt off; is that right?

9 A: No, he was not a black guy; he was a white man, I'm pretty  
10 sure.

11 Q: As far as the guy with the shirt off, did you ever talk to  
12 him and find out who he was?

13 A: Never found out who he was. Later on, he said he was  
14 supposedly a bouncer, but a bouncer doesn't come up trying to  
15 fight you.

16 Q: So, you don't think he was a bouncer?

17 A: No.

18 Q: You just think he was ---

19 A: I thought he was with them.

20 Q: Okay. Just a random guy?

21 A: Yeah.

22 Q: Did other people there have their shirts off or anything  
23 like that?

24 A: I mean, there was girls with body paint, but for the most  
25 part, people had clothes on.

1 Q: Any other guys or anything like that?

2 A: No.

3 Q: Now, do you know Vitale?

4 A: Yes, I do.

5 Q: And you know Seth Rogers?

6 A: Yes, I do.

7 Q: Shane Para?

8 A: Yes, I do.

9 Q: Were all those guys there that night?

10 A: Yes, they were.

11 Q: How about Klevis Hornallie?

12 A: I know of him. Yes, he was there.

13 Q: How about Mike Vera?

14 A: Sounds familiar, but I'm not ---

15 Q: How about a guy named Ergys Berudas; do you know Ergys?

16 A: No, I don't know Ergys.

17 Q: So, again it's your testimony it was a big crowd, very

18 crowded. You got in a fight with Brown?

19 A: Uh-huh (affirmative response).

20 Q: So, you didn't ever see Griffith with a knife or Brown

21 with a knife; is that correct?

22 A: I didn't see them with a knife, no, but I already saw that

23 man struggling with Ryan.

24 Q: Okay.

25 A: And if Ryan's getting cut and there's blood on the ground,

1 there's obviously a knife.

2 Q: Ryan's already testified that he saw who cut him; it was  
3 the taller guy?

4 A: It was the taller guy?

5 Q: That's what Ryan says?

6 A: So then, they ---

7 Q: But you didn't see either one of them?

8 A: No.

9 Q: No further questions.

10 THE COURT: All right. Is there any further redirect,  
11 Ms. Livesay?

12 MS. LIVESAY: No, sir, Your Honor.

13 THE COURT: You may come down. Thank you.

14 Call your next witness.

15 A: Do you want this back?

16 THE COURT: You wish this witness to remain for possible  
17 further questioning?

18 MS. LIVESAY: He's available, Your Honor. The next  
19 witness will be Robert Penna.

20 THE COURT: Okay. Have that next witness come in please.

21 CLERK: Please raise your right hand and place your left  
22 hand on the Bible.

23 ROBERT PENNA, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please state your full name and spell your last

1 name?

2 MR. PENNA: Robert Michael Penna, P-E-N-N-A.

3 DIRECT EXAMINATION OF ROBERT PENNA BY MS. LIVESAY:

4 Q: Robert, tell the Jury how old you are.

5 A: Twenty-three.

6 Q: And how old were you in 2009?

7 A: Nineteen.

8 Q: Okay. I didn't want to try my math today. So, you were

9 nineteen when you went to the Afterdeck?

10 A: Yes, ma'am.

11 Q: Now, were you living in Horry County in 2009?

12 A: Yes, ma'am.

13 Q: Are you from this area?

14 A: No.

15 Q: Where are you from?

16 A: Hagerstown, New Jersey.

17 Q: Okay. And but you've lived here most of your life?

18 A: Yeah, since high school on up.

19 Q: And you were living here in 2009?

20 A: Yes, ma'am.

21 Q: Okay. Do you remember going to the Afterdeck?

22 A: Yes, I do.

23 Q: Okay. Now, who all did you go to the Afterdeck with?

24 A: Ryan, Parker, Cierra, D.J., a girl nicknamed Taco, Vitaly;

25 that's all I really remember.

1 Q: Okay. And about how many cars did y'all take to the  
2 Afterdeck?

3 A: We took two. We took a sedan and then the minivan.

4 Q: Okay. And about three girls, handful of girls ---

5 A: Yeah.

6 Q: --- and then the guys?

7 A: Uh-huh (affirmative response).

8 Q: Now, you're nineteen, you get there, you've never been  
9 there to the Afterdeck?

10 A: This was actually my first time at a club.

11 Q: At any nightclub?

12 A: Yeah.

13 Q: Okay. And do you ever leave at any point and come back?

14 A: Yeah, we got there and it was my first time so I was kinda  
15 like nervous and I didn't have my ID, so I left to go get it  
16 because I didn't think I could get in and I came back about  
17 forty minutes to like an hour later.

18 Q: Okay. And were you able to get in?

19 A: Yes.

20 Q: And what were you wearing that night?

21 A: A dark purple V-neck, pair of jeans and a pair of Sperry  
22 shoes.

23 Q: Okay. Now, when you left and came back, now did all that  
24 happen before the fight broke out?

25 A: Yes.

1 Q: Okay. Now, when you went to the Afterdeck that night, did  
2 you have a weapon on you?

3 A: No.

4 Q: A pocket knife, any kind of weapon?

5 A: No.

6 Q: Now, about what time do you get back that second time?

7 A: It had to be around like 1:30, maybe.

8 Q: Okay. And had you been drinking before you go to the  
9 Afterdeck?

10 A: No.

11 Q: Okay. Did you have anything to drink while you were  
12 there?

13 A: Yes.

14 Q: Okay. So, you were in there kinda drinking, hanging out  
15 with your friends. Who were you hanging out with?

16 A: Mostly Parker, D.J., and Ryan was back and forth.

17 Q: Okay. Now, is this an accurate diagram of what the layout  
18 of the Afterdeck is?

19 A: Yes.

20 Q: Okay. And where were y'all hanging out; do you remember?

21 A: We were in this area over here.

22 Q: Okay. And did y'all pretty much hangout in that vicinity  
23 all night?

24 A: Yeah.

25 Q: Okay. So, tell the Jury what happens, once you got your

1 ID, you come back to the Afterdeck, y'all are hanging out,  
2 what happens next?

3 A: Basically, I go in and I find my group of friends and I  
4 just hung out with them for a little bit and we had a couple  
5 of drinks, maybe like three or four max. I was still under  
6 the age, so I wasn't like a heavy drinker or anything.

7 Basically, we were just hanging out and dancing and we were  
8 actually having a really good time and then I noticed the two  
9 gentlemen in front of us -- I didn't see them approach us  
10 because I was kinda like doing my own thing and I kinda just  
11 like saw something going on and so I, my attention went  
12 towards that and ---

13 Q: Okay. So then, what did the two guys look like?

14 A: They were in their wife-beaters and they had baggie shorts  
15 on.

16 Q: Did you know they had -- I'm sorry -- did you know they  
17 had a knife?

18 A: I didn't know that.

19 Q: Okay. So, where did they approach you guys; where were  
20 y'all standing on this diagram?

21 A: I didn't see them approach us. I kinda just saw them in  
22 front of us.

23 Q: Okay. Where were you standing when you saw them?

24 A: I was standing like -- this is like the speaker box, I was  
25 standing like in this area and then they were kinda, kinda off

1 to the right but still in front of me.

2 Q: Okay. And so where were they at? Where were the two guys  
3 with the wife-beaters?

4 A: They were kinda off like to the right over here -- well,  
5 more towards like Ryan and Parker.

6 Q: Okay.

7 A: And then like me and D.J. were kinda like off to the left  
8 a little bit more.

9 Q: Okay. Now, if I show you a picture of those guys that  
10 night, would you recognize them?

11 A: Yes, ma'am.

12 Q: Okay. I'm gonna show you this one as well as a  
13 photograph. Which one is the easier for you to see better?

14 A: They're both pretty easy.

15 Q: Pretty clear?

16 A: Yeah.

17 Q: Okay. On this one, you recognize anybody in that  
18 photograph?

19 A: Yeah, that's Griffith on the left and Brown on the right.

20 Q: Okay. Now, did you know their names that night?

21 A: No.

22 Q: Okay. If you don't mind, is one shorter and one taller?

23 A: Yeah, Griffith is shorter and Brown is taller.

24 Q: Okay. And if you don't mind, is -- what shorts is  
25 Griffith wearing?

1 A: It looks like, like a light yellow color and then Brown  
2 had plaid.

3 Q: Okay. And this is what they were wearing that night?

4 A: Yeah.

5 Q: Okay. I'm showing the Jury now what's been marked as  
6 State's Evidence Number Five. Now, are those two boys the  
7 same boys that walked -- that you turned around and looked at  
8 and they were standing there with your group?

9 A: Yes, ma'am.

10 Q: Okay. Now, do you recognize those boys in the courtroom  
11 today?

12 A: Yes.

13 Q: Point them out to the Jury?

14 A: That's Griffith right there.

15 Q: Okay. And when you say Griffith, is he the taller one or  
16 the shorter one that you knew of that night?

17 A: He's the shorter one.

18 Q: Okay. Now, I'm showing you Defendant's Evidence Number  
19 One. Now, the white guy here with this wife-beater on, do you  
20 recognize him?

21 A: No, that, that is not Brown.

22 Q: Okay. So, this is not a guy that approached you that  
23 night?

24 A: No.

25 Q: Do you know him?

1 A: No.

2 Q: Does he even look familiar?

3 A: No.

4 Q: So, there's no doubt in your mind this is not the guy that  
5 approached you?

6 A: That's not him.

7 Q: Okay. And is there any doubt in your mind the guy sitting  
8 there was the one that you saw?

9 A: He's the one that stabbed me.

10 Q: Okay. Now, you're standing in this corner area ---

11 A: Uh-huh (affirmative response).

12 Q: --- right here and you see them for the first time?

13 A: Yes.

14 Q: Where? Over here somewhere?

15 A: More towards Ryan and Parker.

16 Q: Okay. More towards Ryan Palmer and Michael Parker?

17 A: Yes.

18 Q: Okay. Now, had you seen them at any point before that  
19 moment?

20 A: No.

21 Q: Okay. So, you had no idea why they were standing there?

22 A: No clue.

23 Q: Hadn't made -- hadn't seen them or made contact with them?

24 A: No, they didn't even say anything.

25 Q: Okay. Now, where was D.J. at? Was he anywhere near you?

1 A: He was kinda by my side, but a little bit behind me and I  
2 don't know where he went from there back and forth because I  
3 couldn't see, but I knew at one point he was behind me on the  
4 left.

5 Q: Okay. And what did you do once you glanced over there and  
6 you see the two guys?

7 A: Well, at first I kinda just observed them and they were  
8 just standing there. They weren't saying anything, they  
9 weren't like talking bad at them, they weren't doing anything.  
10 They were kinda just standing there with this look on their  
11 face like ---

12 Q: What was their overall demeanor?

13 A: Just like, just like staring you down, making you trying  
14 to feel uncomfortable and like, you know, that's -- they were  
15 trying to get something out of us basically.

16 Q: What did you do?

17 A: I -- well, first I just stood there and kinda watched and  
18 then I thought there was like something going on between like  
19 Ryan and the tall guy; I didn't know what was going on,  
20 something happened. So I -- then I noticed it was probably  
21 gonna escalate into a fight so I went over to Griffith and  
22 Parker was already like trying to like say, we don't have a  
23 problem, you know, and I basically like told Griffith, I was  
24 like, it's not worth it, you know and he had no response at  
25 all and neither did the other kid. I think at that point they

1 had too much pride to walk away and ---

2 Q: So, they didn't walk away?

3 A: They didn't say anything; they didn't walk away; they just  
4 stood there.

5 Q: Okay. And then what happened after you said it's not  
6 worth it, they don't say anything; what happens next?

7 A: They stood there for a couple seconds longer and then I  
8 don't recall if the shove came from our side or their side,  
9 but I know a punch did come from our side and basically the  
10 pushing lead to a punch and then from there the fight just  
11 escalated. And at first, it was kinda concentrated on the  
12 taller guy ---

13 Q: Uh-huh (affirmative response).

14 A: --- because he seemed like more of a threat at the time  
15 and I guess Parker kinda hand him under control, I guess. And  
16 so at that point, I turned to look for the other guy and D.J.  
17 was on my left, like I said, and as I turned it was like a  
18 split-second glimpse, I saw D.J. almost kinda like not holding  
19 his own body weight up, crouched over, laying down. There was  
20 stairs there so it was like I ---

21 Q: If you don't mind, stand up and show the Jury how you saw  
22 D.J.?

23 A: I guess kinda like (indicating) -- there are stairs here -  
24 --

25 Q: Stand right there for me.

1 A: He was kinda just like leaning on this, you know, like he  
2 wasn't lying down but there was stairs behind him.

3 Q: Okay.

4 A: And like I said, it was like a split-second glimpse and  
5 then after I made eye contact with what was going on with him,  
6 I looked to the right of him and there was Griffith.

7 Q: He was where?

8 A: He was almost like standing over D.J.

9 Q: Okay.

10 A: And then, like I said, it happened so fast. I look, I see  
11 them and instantly I just reacted, you know.

12 Q: And what did you do?

13 A: I kinda got into like a scuffle with Griffith, no punches,  
14 critical punches were landed, it was more of like an arm  
15 wrestling, kinda like pushing around stuff and there was just  
16 a big crowd, you know, just moving around and basically we  
17 both got pushed down and I feel like I kinda got the center of  
18 the hit and he kinda just got clipped. So, I was on all fours  
19 for a little bit longer before he recovered and then I never  
20 saw the knife or I never saw him stab me because it was in my  
21 back, but that's where I believe he stabbed me is when I was  
22 down on all fours.

23 Q: Okay. So you, did you ever scuffle with the taller guy?

24 A: I may have had a little contact with him because Parker  
25 was basically in front of me.

1 Q: Uh-huh (affirmative response).

2 A: So, I might've just like been holding him or something,  
3 but I never swung a punch at him or anything like that.

4 Q: Did you ever push him?

5 A: I guess it could be considered a push.

6 Q: Okay. Did he ever lay a hand on you that you remember,  
7 the taller guy?

8 A: No.

9 Q: Okay.

10 A: It was more of like I'm trying to like break it up ---

11 Q: Right.

12 A: --- kinda thing, you know.

13 Q: Right. But you never saw him swing a punch at you ---

14 A: Huh-uh (negative response).

15 Q: --- or swing a knife? And you and him never engaged in  
16 any sort of you and him fighting?

17 A: No.

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

19 THE COURT: Sure.

20 BY MS. LIVESAY:

21 Q: I'm showing you what's been marked ---

22 COURT REPORTER: Twenty-eight.

23 Q: --- thank you. It's State's Exhibit Number Twenty-eight;  
24 you recognize that?

25 A: Yeah.

1 Q: What is it?

2 A: That's my shirt.

3 Q: Is that the shirt you were wearing that night?

4 A: Yes, ma'am.

5 MS. LIVESAY: Your Honor, at this time, can I place  
6 State's Exhibit Number Twenty-eight into evidence and publish  
7 it to the Jury?

8 THE COURT: You may do so.

9 STATE'S EXHIBIT NUMBER TWENTY-EIGHT

10 ADMITTED INTO EVIDENCE

11 BY MS. LIVESAY:

12 Q: Now if you don't mind, step down, Mr. Penna. I need you  
13 to stand on this side so you can talk in the mic.

14 This is the shirt you were wearing that night; is that  
15 right?

16 A: Yes, ma'am.

17 Q: Okay. Now, do you see any holes in the front?

18 A: No.

19 Q: Did you suffer any stab wounds in the front area?

20 A: No.

21 Q: Okay. And this is the front of the T-shirt, V-neck purple  
22 shirt?

23 A: Uh-huh (affirmative response).

24 Q: And now I want you to look on the back. Do you see any  
25 holes in the back?

1 A: Yeah, there's one right there.

2 Q: And where were you stabbed at?

3 A: On my back, right here.

4 Q: And if you don't mind, do you have a scar from that  
5 incident that night?

6 A: Yeah.

7 Q: Do you mind lifting up your shirt and showing the Jury?

8 A: Yeah.

9 MS. LIVESAY: Do you mind, Your Honor, if he just pulls  
10 and steps back there if needs to ---

11 THE COURT: It'll be all right.

12 MS. LIVESAY: --- pull his shirt up?

13 BY MS. LIVESAY:

14 Q: If you don't mind, Mr. Penna, walk right over here so  
15 they can see it. Just turn right around.

16 And that's where you got stabbed?

17 A: Yes, ma'am.

18 Q: Nothing in the front of your body?

19 A: No, ma'am.

20 Q: Okay. Did you ever see a knife? I'm sorry, if you want  
21 to take a minute to, if you don't mind. Just have a seat.

22 Now, did you have any stab wounds anywhere else?

23 A: No.

24 Q: Did you ever see a knife?

25 A: No, ma'am.

1 Q: So, you never saw a knife that entire night?

2 A: No.

3 Q: A knife that night, did you ever see one?

4 A: No.

5 Q: Okay. Did you have a weapon on you?

6 A: No.

7 Q: Okay. I'm gonna show you what's been marked as State's  
8 evidence Number Twenty-six; do you recognize the people in  
9 that picture?

10 A: Yes.

11 Q: If you don't mind, tell the Jury who those people are?

12 A: The kid smiling in the back is my friend, D.J. This is my  
13 other friend, Vitaly, and this is Taylor Burt, who is not a  
14 friend.

15 Q: Okay. Did you see D.J. get stabbed that night?

16 A: No.

17 Q: All you saw was him go to the ground?

18 A: (Indicates affirmatively.)

19 Q: Who was standing in front of him when he was on the ground  
20 or crouched down?

21 A: Griffith.

22 Q: Okay. And you know who Griffith is?

23 A: I do.

24 Q: And point him out to the Jury?

25 A: He's sitting over there in between the two men.

1 Q: Okay. Now were you, were you able to make it out of the  
2 Afterdeck that night?

3 A: Yeah.

4 Q: Okay. When you walked out, did you see D.J. again?

5 A: Not clearly, there was a lot of people like in the way.

6 Q: Okay. And was anybody helping you?

7 A: Yeah.

8 Q: Did you see Ryan Palmer?

9 A: Huh-uh (negative response).

10 Q: Okay. Now, when you were stabbed, did you -- were you  
11 able to get medical care?

12 A: From two people, yes. There was a nurse off-duty and an  
13 EMT off-duty and they both helped me.

14 Q: Did you go to the hospital that night?

15 A: Yes.

16 Q: If you don't mind, tell the Jury what kind of care and  
17 what you were treated for at the hospital?

18 A: I had surgery in my back. I had a punctured lung and  
19 maybe fractured or something ribs and, I guess I, I don't  
20 really know, I was in surgery for a while and the ---

21 Q: How long were you in the hospital?

22 A: Almost two weeks, I think, a little under two weeks.

23 Q: Okay. Now, do you know if that stab wound hit any organs  
24 in your body?

25 A: Just my lung.

1 Q: Okay. So, it punctured your lung?

2 A: Yeah.

3 Q: Now, did you have any wounds on your hand?

4 A: No.

5 Q: So, you never even saw that knife coming?

6 A: Huh-uh (negative response).

7 Q: During this altercation, at any point, did you have this  
8 Defendant on the ground?

9 A: No.

10 Q: Okay. At any point, did you have the other Defendant on  
11 the ground?

12 A: No. I mean, we were kinda side by side on the ground for  
13 a second when we got shoved over, but like I said, I was on  
14 all fours and he kinda stumbled.

15 Q: Okay. Were either one of those boys ever on the ground in  
16 a position where you were able to kick them or hit them or  
17 anything like that?

18 A: No.

19 Q: That point never happened?

20 A: Huh-uh (negative response).

21 Q: When you were able to make it out of the Afterdeck, did  
22 you ever see those two guys in the wife-beaters outside the  
23 Afterdeck?

24 A: No, actually, after I was knocked down and got back up, he  
25 was gone.

1 Q: Okay. Okay. And when you walked outside kinda on that  
2 dirt parking lot -- I'm assuming that's where you were outside  
3 in the Afterdeck?

4 A: Yeah, in front of the pillar on the left if you're coming  
5 out.

6 Q: You never saw those guys again after you were stabbed in  
7 the back?

8 A: Only on the T.V.

9 Q: And did you ever see a knife that night?

10 A: No.

11 Q: Did you ever kick anybody that night?

12 A: No.

13 Q: Did you ever have anybody on the ground just giving it to  
14 them that night, were you able to get on top of them?

15 A: Nope.

16 Q: Had you ever had a problem with either one of those guys  
17 that night before ---

18 A: No.

19 Q: --- they were standing with your group?

20 A: Not until he stabbed my friend.

21 Q: Okay. Now, do you know who all was injured out of your  
22 group?

23 A: Ryan was sliced in the head, D.J. was stabbed in the heart  
24 and I was stabbed in the lung.

25 Q: Okay. And you and Ryan survived your wounds and D.J. did

1 not; is that correct?

2 A: Yes, ma'am.

3 Q: Did you ever give a written statement to the police?

4 A: Yes, to Carmen, I believe.

5 Q: Okay. And is what you told her and what you told us the  
6 complete truth?

7 A: Yes, ma'am.

8 Q: I'm gonna show you one more picture. Do you remember  
9 seeing these two girls?

10 A: No.

11 Q: Okay. So, when you saw those two guys with the wife-  
12 beaters, you never saw these girls around?

13 A: Huh-uh (negative response).

14 Q: And when you saw them, both were in wife-beaters?

15 A: Yeah.

16 Q: But you never saw a knife that entire night?

17 A: No.

18 MS. LIVESAY: No further questions, Your Honor.

19 THE COURT: All right. Mr. Hyman.

20 CROSS EXAMINATION OF ROBERT PENNA BY MR. HYMAN:

21 Q: Mr. Penna, have you given more than one statement? You  
22 said you gave one to Carmen; did you give one to anybody else?

23 A: Not from the defense, no. Your investigator tried to come  
24 to my grandmother's house and my house uninvited and she  
25 almost made it appear like she was part of the State ---

1 Q: And I'm referring to this one?

2 A: Okay.

3 Q: That says you gave it to Frebowitz?

4 A: Okay. Me, yeah.

5 Q: So, you did write a handwritten statement for Frebowitz?

6 A: Yeah, and I guess I talked to Carmen.

7 Q: Okay. Now, you said that you drank a little bit that  
8 night; did you do any drugs or anything that night?

9 A: Not that I can recall.

10 Q: Do you know if when you went to the hospital if they did a  
11 drug screen on you?

12 A: I have no idea.

13 Q: Would you be surprised if drugs came up in your system?

14 A: Yes, I would.

15 Q: So, if the toxicology shows alcohol and marijuana, would  
16 that be inconsistent with what you're thinking?

17 A: Probably not, if that's what it says.

18 Q: Okay. Now, you gave Carmen a statement. You said you  
19 actually told Ms. Nancy Livesay that; do you remember giving  
20 her that statement?

21 A: What statement?

22 Q: Whatever statement you gave Carmen Mureddu.

23 A: I don't remember the exact statement, no.

24 Q: Okay. This is Ms. Carmen Mureddu's report. I want you to  
25 read the first line of it.

1 A: At the very top?

2 Q: Well, under your name.

3 A: Robert says he remembers very little what occurred that  
4 night and he was stabbed due to the -- stabbed due to the  
5 shock -- the extent of the injury and subsequent anesthesia  
6 and surgery..

7 Q: In any of your statements have you said my client is the  
8 one who stabbed you?

9 A: It took me a long time to kinda like come to terms with  
10 myself and remember what happened that night. I must didn't  
11 want to remember what happened but the more I thought about it  
12 the more it made sense that he was the one that stabbed me  
13 because I had no contact with Brown.

14 Q: Well, and in that it says you do have contact with Brown.  
15 You told Ms. Mureddu that you did.

16 A: And where does it say that?

17 Q: He recalls that Ryan punched one of the Defendants and  
18 Robert then began to swing at the taller one with the close to  
19 shaved head; do you remember that?

20 A: I do now that you mention it.

21 Q: So you remember throwing punches at Brown then?

22 A: I was throwing whatever I could at Brown at the time.

23 Q: I understand that. Now your scar that you got and I've  
24 never seen that scar. I've seen the pictures and it's  
25 certainly a bad scar. Is the total scar the stab wound or is

1 that the surgery scar?

2 A: No, it's, it's after the fact of being stabbed, that's the  
3 surgery I had to have.

4 Q: So, that was where they fixed the punctured lung?

5 A: Yes, sir.

6 Q: Now again, you say that you were arm wrestling kinda like  
7 that; is that what you said with my client?

8 A: It was more of a scuffle; it's hard to determine exactly  
9 what we were doing because if you've ever been in a fight,  
10 it's kinda hard to go play-by-play.

11 Q: I understand. During any of that, did you see a knife in  
12 his hand?

13 A: No.

14 Q: Okay. And you're down on all fours when you say -- you  
15 think that's when you got stabbed?

16 A: Yes.

17 Q: But you don't say that in any of your statements that  
18 that's when you got stabbed?

19 A: Well, that's what I was explaining to you before.

20 Q: Actually, in your statement you said that you didn't  
21 realize you got stabbed until somebody said you're bleeding?

22 A: Yeah.

23 Q: Is that the truth that you didn't realize you got stabbed?

24 A: Yeah, someone told me on the way out.

25 Q: So, you could have been stabbed at any point?

1 A: Not necessarily.

2 Q: Well, obviously you didn't get stabbed when you walked in  
3 the place, but I'm talking about at any point during the  
4 scuffle?

5 A: With the two gentlemen, yes.

6 Q: Okay. So if, if you were fighting with Brown and it's  
7 already been stated in court that Brown had an open knife,  
8 there's a possibility Brown could've cut you too?

9 A: No.

10 Q: Why is that?

11 A: Because he was never at my back.

12 Q: You just said that you didn't even remember fighting with  
13 Brown until I refreshed your recollection?

14 A: I don't remember exactly what contact I had with Brown,  
15 but I remember do having contact with Brown and my back was  
16 never towards him?

17 Q: Okay. So, after you have contact with him and you go  
18 towards my guy, wouldn't your back be to Brown at that point?

19 A: Not necessarily. Parker kinda had him turned towards the  
20 bar and not towards the stage anymore. So, he's basically  
21 being turned towards the bar this way and I'm going after a  
22 guy this way. So he's already over here up on the stairs.

23 Q: But again you're also saying you never saw my guy with a  
24 knife?

25 A: Correct.

1 Q: Never saw a knife in his hand when you were scuffling  
2 around?

3 A: Correct.

4 Q: In fact, if you're scuffling around and he has a knife in  
5 his hand, I mean isn't there a probability that you may get  
6 cut on your arms, your hands, anything like that if you're  
7 scuffling?

8 A: Uh-huh (affirmative response), I guess there is.

9 Q: But you didn't have any of that, right?

10 A: No.

11 Q: Another thing. Now you heard Ashley McNeil testify, that  
12 was the blonde-headed girl, she said she went and helped you  
13 and she applied pressure to your abdomen; did you have  
14 anything wrong with your abdomen?

15 A: That was actually DJ she said that about. She said my  
16 ribs.

17 Q: She actually was pointing at you when she said that?

18 A: I don't think so.

19 Q: Well, she said Rob?

20 A: I remember her specifically my ribs.

21 Q: Now, as far as the knife in question with this, you also,  
22 you do admit that Ryan Palmer threw the first punch; is that  
23 correct?

24 A: Yes.

25 Q: Okay.

1 A: Not the first point of contact, though, I didn't see that.

2 Q: You said the first punch; the first punch?

3 A: Yes.

4 Q: The first physical punch?

5 A: Yes.

6 Q: Did you see D.J. throw any punches?

7 A: No.

8 Q: Did you see Michael Parker throw any punches?

9 A: No.

10 Q: You didn't see Michael Parker throw any punches?

11 A: At the initial fight or during the fight?

12 Q: During the whole thing?

13 A: Yes, I probably witnessed him throwing a punch.

14 Q: How about Vitaly?

15 A: No, I didn't see Vitaly in the fight.

16 Q: Not at all?

17 A: Not at all.

18 Q: So, if Vitaly was to testify that he was in it or somebody

19 else was to testify he was in it, that ---

20 A: I wasn't looking at Vitaly; I was looking at your client  
21 trying to stab my friend.

22 Q: How about Seth Rogers; was he involved in it?

23 A: No.

24 Q: Now, you said looking at my client who just stabbed my  
25 friend, but you say also that you never saw a knife in his

1 hand. Did you think that my client had just stabbed him or  
2 did you think that the guy was just laying down on the ground  
3 or just weeped over.

4 A: I knew he stabbed him; because I didn't see the knife  
5 didn't mean that he didn't stab him. Who else would have  
6 stabbed him?

7 Q: I believe it was your statement that you didn't know  
8 anybody was stabbed until you got it in the back until  
9 somebody told you that you had been stabbed?

10 A: How am I supposed to know he was stabbed if I didn't know  
11 he had a knife?

12 Q: You just said that; you said I knew he was stabbed. Did  
13 you know he was stabbed or not?

14 A: I didn't know he was stabbed.

15 Q: So, you didn't know if my client had a knife or anything  
16 like that?

17 A: Correct.

18 Q: So, that's my whole point. You didn't see my client with  
19 a knife and you don't know for sure that my client stabbed  
20 anybody, correct?

21 A: I know your client stabbed my friend and me.

22 Q: But you never saw a knife. You didn't see him do that and  
23 you didn't see him stab you. So, how is that that you know  
24 that?

25 A: I guess you're just gonna have to take my word for it.

1 MR. HYMAN: No further questions, Your Honor.

2 THE COURT: Anything further direct?

3 MS. LIVESAY: Just a couple, Your Honor, to clear some  
4 things up.

5 REDIRECT EXAMINATION OF ROBERT PENNA BY MS. LIVESAY:

6 Q: Now, when you said you saw D.J. go down to the ground ---

7 A: Yes.

8 Q: You showed the jury how it happened.

9 A: Uh-huh (affirmative response).

10 Q: Was there anybody else standing around other than this  
11 Defendant?

12 A: Not in close proximity enough to stab him.

13 Q: Okay. This is the only guy that was standing close enough  
14 to do it?

15 A: Yes, ma'am.

16 Q: Okay. And then D.J. went down -- okay?

17 A: Uh-huh (affirmative response).

18 Q: When you were outside, was D.J. walking around?

19 A: No.

20 Q: Okay. Did you ever see him get up and walk again after  
21 that?

22 A: No.

23 Q: When he went down then, did you ever see him get up again?

24 A: No.

25 Q: Okay. And this is the only guy you saw in his close

1 próximity?

2 A: Yeah.

3 Q: Okay. Now, you said you didn't see this guy with a knife;  
4 is that correct, either one of them?

5 A: No, I didn't see a knife at all.

6 Q: Okay. But you know that you weren't stabbed until you got  
7 in a scuffle with this guy; is that right?

8 A: Yes.

9 Q: Now was anybody else in your close proximity other than  
10 this Defendant?

11 A: Besides maybe a bouncer, no.

12 Q: Okay. So you know after you saw him in front of D.J.,  
13 D.J. never got up again; is that right?

14 A: Yeah.

15 Q: And you weren't stabbed until you got in a scuffle with  
16 him; is that right?

17 A: Yes.

18 Q: Okay. And you say you didn't see the knife. I'm showing  
19 you now what's been marked as State's, I'm sorry, State's  
20 Evidence Number Five. Do you see anything clipped to his  
21 yellow shorts?

22 A: There is a knife clipped to his yellow shorts.

23 Q: Okay. So, certainly because you didn't see it, doesn't  
24 mean he didn't have it; is that right?

25 A: Exactly.

1 Q: Because it's in his pocket that night; is that correct?

2 A: Yes.

3 Q: Okay. And that picture was taken before he got in that  
4 scuffle with y'all; is that correct?

5 A: Yes, ma'am.

6 Q: Okay. Did those boys have any reason to be standing near  
7 your group; did anybody know them?

8 A: No.

9 Q: So, they had no reason to be standing near y'all?

10 A: No.

11 Q: Did they try to engage you in any kind of friendly  
12 conversation?

13 A: No.

14 Q: Did it look like they had any intentions of walking away  
15 from you that night voluntarily?

16 A: No, and they had the chance.

17 MS. LIVESAY: No further questions.

18 MR. HYMAN: Your Honor, just briefly on recross.

19 RECCROSS EXAMINATION OF ROBERT PENNA BY MR. HYMAN:

20 Q: Can you read for the Jury this paragraph?

21 MS. LIVESAY: Your Honor, what's -- can I ask what he's  
22 showing him?

23 MR. HYMAN: This is Carmen Mureddu's statement. Carmen  
24 Mureddu's.

25 MS. LIVESAY: Can we clear it up because we keep using

1 statement but this is actually a report that Carmen did that  
2 summarizes her conversation with Mr. Penna.

3 THE COURT: Please refer to it as appropriate.

4 BY MR. HYMAN:

5 Q: Okay. The investigative report by Carmen Mureddu of your  
6 statement.

7 A: Robert said that he and his friends were standing around  
8 talking in the same location already mentioned by Ryan. He  
9 was with D.J., Ryan and several others. He said the  
10 Defendants came over ---

11 MS. LIVESAY: Your Honor, are we putting that statement  
12 into evidence, Carmen's report?

13 THE COURT: No. No, he's refreshing his memory.

14 MS. LIVESAY: Okay. Well, does he need to read it out  
15 loud to refresh his memory?

16 A: I think it would be better to refresh my memory if I read  
17 it to myself.

18 THE COURT: You may do that.

19 A: Okay.

20 THE COURT: Let him refresh his memory and then you can  
21 ask him the appropriate question, Mr. Hyman.

22 Can we save time by you pointing to him the ---

23 A: I'm finished.

24 THE COURT: Okay. That's fine. Now you may proceed.

25 BY MR. HYMAN:

1 Q: At any point during that entire investigative report right  
2 there, does the investigator acknowledge that you said  
3 anything about seeing D.J. bent over?

4 A: He noticed -- it all happened very fast. He noticed D.J.  
5 and Griffith to his side and started to swing at Griffith.  
6 That's a little less detail than I gave you.

7 Q: Okay. That's a lot less detail. Don't you think the  
8 investigative report would have a detail like that in there?

9 MS. LIVESAY: Your Honor, if I may, he may have thought  
10 that was important but to get -- that's Carmen's report. He  
11 wrote a written a statement.

12 THE COURT: You let him, let him, let him answer the  
13 question.

14 A: These reports seem very brief considering all the other  
15 ones.

16 BY MR. HYMAN:

17 Q: Does it say anything in it about you being on all fours?

18 A: No.

19 Q: Does it say anything about you knowing that he was stabbed  
20 until somebody told you?

21 A: No.

22 Q: Did you know you were stabbed until somebody told you?

23 A: No.

24 Q: Okay. So, when you just told her you knew you were  
25 stabbed when you were on all fours, that's not necessarily

1 true?

2 A: Say it again?

3 Q: You just told me you didn't know you were stabbed at all  
4 until somebody said, hey, you're bleeding?

5 A: Yeah.

6 Q: Okay. So -- but you just told her you knew you were  
7 stabbed when you were on all fours?

8 A: I didn't.

9 Q: Okay. That's what you just said to her?

10 A: I didn't know I was stabbed until someone told me I was  
11 stabbed.

12 MR. HYMAN: No further questions.

13 THE COURT: All right. You may come down. Thank you.

14 A: Thank you, sir.

15 MS. LIVESAY: Your Honor, can I ask just one question on  
16 redirect?

17 THE COURT: You may.

18 MS. LIVESAY: Thank you.

19 REDIRECT EXAMINATION OF ROBERT PENNA BY MS. LIVESAY:

20 Q: Mr. Penna, I'm gonna show you a statement from Horry  
21 County Police Department. Is that your handwriting?

22 A: Yes, ma'am.

23 Q: Okay. You want to ---

24 THE COURT: All right. Has this statement been turned  
25 over to the ---

1 MS. LIVESAY: Yes, sir.

2 THE COURT: All right.

3 BY MS. LIVESAY:

4 Q: Now, in that statement, do you say anything about seeing  
5 D.J. drop?

6 A: I saw D.J. and we stuck together. I saw him in the corner  
7 of my eye drop and then I attacked the short male with dark  
8 hair, dark brown hair.

9 Q: Okay. So, you told on September 22nd that you saw D.J. go  
10 down?

11 A: Yes, ma'am.

12 Q: And then you jumped on this guy right here?

13 A: Yes, ma'am.

14 Q: Now, the statement that Mr. Hyman was going over with you  
15 right then, did you see it?

16 A: Yeah.

17 Q: Is that your written statement?

18 A: No.

19 Q: Is that a transcript of the statement you gave Carmen  
20 Murredu?

21 A: It's a brief summary of that statement.

22 Q: Thank you. No further questions, Your Honor.

23 THE COURT: All right. You may come down.

24 Next witness please.

25 MS. LIVESAY: Your Honor, at this time the State calls

1 Renee Hardwick.

2 THE COURT: All right. Have her come around.

3 MR. HEWITT: Judge, can I raise something real briefly.  
4 We've been going at it pretty hard for a while. I don't know  
5 if the jury would appreciate a short break ---

6 THE COURT: Well, they've had two. I think they're all  
7 right. They'll let me know.

8 MR. HEWITT: Okay.

9 THE COURT: Thank you. And if the jury so advises me,  
10 I'll deal with it. Thank you, though.

11 CLERK: Please raise your right hand and place your left  
12 hand on the Bible?

13 RENEE HARDWICK, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: Please state your full name and spell your last  
16 name?

17 MS. HARDWICK: Sharon Renee Hardwick, H-A-R-D-W-I-C-K.

18 DIRECT EXAMINATION OF RENEE HARDWICK BY MS. LIVESAY:

19 Q: Ms. Hardwick, where do you currently work?

20 A: Horry County 911.

21 Q: And how long have you been there?

22 A: In that particular position twenty-three-plus years.

23 Q: Okay. And what are your responsibilities at 911?

24 A: I'm the Deputy Director in charge of day-to-day  
25 operations, make sure equipment is handled, employee issues,

1 keeper of the records from our different systems.

2 Q: Okay. So, you're basically a supervisor over 911?

3 A: Correct.

4 Q: Okay. Now, if you don't mind telling the Jury a little  
5 bit about how 911 calls come in and how they're kept.

6 A: All of our calls are recorded by law; we're required to  
7 keep a recording of them. And they come directly into us from  
8 the telephone company's network and we are able to transfer  
9 them if it's out of our jurisdiction. So, that's basically  
10 how it works with their wireless or wire-line.

11 Q: And are the recordings kept as a part of your business, as  
12 911 business?

13 A: Yes, by law for sixty days.

14 Q: Okay. And are they kept in such a form or fashion where  
15 they cannot be tampered with?

16 A: Yes, they are. They are on CD's or DVD's and we have the  
17 access directly from the machines in our department, which is  
18 secured.

19 Q: So, they are kept in the normal course of business?

20 A: Yes.

21 Q: Okay. Now I'm gonna show you what's been marked as  
22 State's Exhibit Number Twenty-nine. Do you recognize what I'm  
23 showing you?

24 A: Yes.

25 Q: And have you listened to that tape?

1 A: I have.

2 Q: Okay. And has that tape been altered in any form or  
3 fashion?

4 A: No.

5 Q: And was this call taken by one of the 911 operators in  
6 Horry County?

7 A: That was employed with us, yes.

8 Q: Okay. And you recognized who that operator was?

9 A: I did.

10 Q: Okay. Has it been kept in the course of business and to  
11 the point of today? Has it be altered in any form or  
12 fashion?

13 A: No, but we probably we don't have the original, but what  
14 you have is provided by our office and has not been -- what  
15 I've listened to has not been altered.

16 MS. LIVESAY: Your Honor, at this time, I want to put in  
17 State's Exhibit Number Twenty-nine into evidence and publish  
18 it at the appropriate time.

19 THE COURT: You may do so. You have a copy of this in  
20 your possession, have you not, Mr. Hyman?

21 MR. HYMAN: Yes, Your Honor.

22 THE COURT: It is admitted into evidence and you may  
23 publish it later.

24 STATE'S EXHIBIT NUMBER TWENTY-NINE

25 ADMITTED INTO EVIDENCE

1 MS. LIVESAY: Thank you. No further questions for Ms.  
2 Hardwick.

3 THE COURT: All right. Mr. Hyman, any examination?

4 CROSS EXAMINATION OF RENEE HARDWICK BY MR. HYMAN:

5 Q: Just -- Ms. Hardwick, as far as that, is it all the 911  
6 calls or is it one 911 call or what is that?

7 A: No. No, it's two calls and we have one received and was  
8 taken by a male employee and one by a female employee and so  
9 it's not all the calls we got -- do you mean at the same time,  
10 that night?

11 Q: Right, were there a bunch -- there was obviously a bunch  
12 of calls that night?

13 A: We would have given what was specifically asked of use was  
14 the 911 calls related to that incident that was known to be at  
15 the Afterdeck.

16 Q: So, it's your testimony there's two calls on that; is that  
17 what you're saying?

18 A: Yes, there's a, there's a person calling and then there's  
19 a bouncer and security calling as well.

20 Q: Do you know who the first person calling is?

21 A: I don't think they -- my recollection, no, from when I  
22 listened to the tape -- I don't know that they have his name.

23 Q: Do you know if it was a male or a female that called?

24 A: I want to say

25 Q: I'm just wondering. You said that you heard it and it

1 wasn't tampered with. I'm just wondering ---

2 A: I mean, it's obvious that it's a continuous flow of a  
3 call, from thirty years of doing this job, that it's a  
4 continuous flow of a conversation that happens between the  
5 person who takes these calls and the person -- the people that  
6 call us.

7 Q: Gotcha.

8 THE COURT: Are you questioning the authenticity?

9 MR. HYMAN: No, Your Honor, I was just trying to find out  
10 who was on the call log. I had multiple calls and ---

11 THE COURT: I understand but ---

12 MR. HYMAN: No further questions.

13 BY THE COURT:

14 THE COURT: All right. You may come down and it's about  
15 1 o'clock.

16 Mr. Foreman, ladies and gentlemen, let's take the lunch  
17 break at this time. Please be back ready to go at 2:30.

18 That'll give you an hour and a half. Thank you, Mr. Foreman.

19 Remember my admonition, now, don't discuss the case not  
20 even among yourselves.

21 (REPORTER'S NOTE: Jury exits courtroom. 12:52 P.M. The  
22 following takes place outside the presence of the jury.)

23 MS. LIVESAY: Your Honor, is there any issue with  
24 excusing Michael Parker?

25 THE COURT: I have none. Does the State -- the Defense,

1 to the Jury, make those changes please.

2 MS. LIVESAY: Yes, sir.

3 (REPORTER'S NOTE: Jury enters courtroom. 2:44 P.M.)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 All the jurors are present. You may proceed with the  
6 calling of your next witness.

7 MS. LIVESAY: Thank you, Your Honor. At this time, the  
8 State calls Kenneth Muth to the stand.

9 CLERK: Sir, please raise your right hand and place your  
10 left hand on the Bible.

11 KENNETH LEE MUTH, HAVING BEEN DULY  
12 SWORN TESTIFIES AS FOLLOWS:

13 CLERK: Please state your full name and spell your last  
14 name?

15 MR. MUTH: Kenneth Lee Muth, M-U-T-H.

16 DIRECT EXAMINATION OF KENNETH LEE MUTH BY MS. LIVESAY:

17 Q: Mr. Muth, how old are you?

18 A: Forty-five.

19 Q: And where are you from?

20 A: All over the place. Right now I live in North Myrtle  
21 Beach.

22 Q: Okay. And where were you living in 2009?

23 A: At that time I was in North Myrtle Beach.

24 Q: Okay. And where were you working in September of 2009?

25 A: I was the Assistant General Manager for the Dollhouse and

1 the Afterdeck.

2 Q: Okay. And how long had you been working there for the  
3 Afterdeck and the Dollhouse?

4 A: At that point in time, here about two, two and a half  
5 years.

6 Q: Okay. And if you don't mind, just tell the Jury a little  
7 bit about what your responsibilities were, kind of what you  
8 did on a day-to-day basis?

9 A: Daily operations consistent of hiring, firing, taking care  
10 of the employees that were there, taking care of all the  
11 finances that went through the building and making sure that  
12 everyone was, you know, doing their jobs as they were supposed  
13 to.

14 Q: And were you working at the Dollhouse/Afterdeck on or  
15 around September 8, 2009?

16 A: Yes, ma'am, I was.

17 Q: Okay. Now, if you don't mind, explain to the Jury is the  
18 Afterdeck and the Dollhouse right there together?

19 A: They are -- it is actually one complete building. There  
20 are entrances out in front to both buildings that are  
21 separate. There is an entrance and an exit in the back where  
22 the two buildings are connected so you can go from one to the  
23 other.

24 Q: Okay. So, if you were working at the Dollhouse, you had  
25 access to the Afterdeck and vice versa. It's right there in

1 one building; it's not like you get in your car and go?

2 A: No, it's one building.

3 Q: Okay. Now, do you remember what happened on or around  
4 September 8th of 2009?

5 A: I absolutely do.

6 Q: Okay. And did you have an occasion to call 911 that early  
7 morning 2 or 3 o'clock?

8 A: Yes, ma'am, I did.

9 Q: Okay. And if you don't mind, tell the Jury from the  
10 beginning what you remember seeing and happening that night.

11 A: At the time in question, one of our entertainers was  
12 leaving the building. I was actually walking her out to her  
13 car, which was parked right in the front of the building in  
14 between the Afterdeck and the Dollhouse. She got into her car  
15 and I started walking backwards. One of my employees from the  
16 Afterdeck came running up behind me and started pointing, they  
17 yelled that's the guy right there, that's the guy that did  
18 this. And I looked up and I saw the gentleman standing by the  
19 vehicle that they came in and he was throwing -- looked like  
20 appeared to be throwing some things into the car and at that  
21 point in time, I, I looked at him, I said, hey, come here just  
22 a minute, let me talk to you and he started walking away from  
23 me. So, I followed him, I said, hey, I just want to talk to  
24 you, come here. And at that point, he took off down the road  
25 and I started running after him. In the process of chasing

1 him, I grabbed my phone, I dialed 911 and told the dispatcher  
2 what was going on and that I was in a foot chase with the guy  
3 that I was informed perpetrated this crime.

4 Q: Okay. Now, have you heard your 911 tape?

5 A: I have.

6 Q: Okay. And is that your voice on the tape?

7 A: Yes, ma'am, it is.

8 Q: And is that your phone call?

9 A: Yes, ma'am, it is.

10 Q: Has it been altered in any form or fashion?

11 A: Not to my knowledge.

12 Q: Okay. Now had you seen that boy earlier that night, the  
13 boy that you took off running after?

14 A: I did.

15 Q: Okay. If you don't mind, tell the Jury when you first  
16 came in contact with him and how you came in contact with him.

17 A: When they, when they first arrived to the club, they -- I  
18 was actually standing out front of the Dollhouse talking to my  
19 front-door host and my valet. The car pulled up and there was  
20 two females in the front, two males in the back. One of the  
21 gentlemen leaned out the window and said -- asked me how much  
22 it cost to get in. I explained to him what the fees were,  
23 what the age requirements were, and one of the, one of the  
24 areas in question was if you were a local to the Myrtle Beach  
25 area, we will let you in for free as long as you are over

1 twenty-one years of age. And at that point in time, he leaned  
2 out the window and stuck his forearm out the window and he  
3 said, yeah, I'm local, right here it says it, 843 and he had  
4 843 tattooed on him.

5 Q: Okay. And do you remember, I know it's been awhile back  
6 but can you remember what kind of car was it; was it an SUV;  
7 was it ---

8 A: It was an SUV.

9 Q: How many people were in the car?

10 A: There were four people in the car.

11 Q: Was it -- could you tell how many females, how many males?

12 A: There were two females in the front and two males in the  
13 back.

14 Q: Okay. And that car, is that the same car you saw that guy  
15 run to later on that night?

16 A: He did not run to it. When I saw him he was standing  
17 there; the door was open.

18 Q: Okay.

19 A: The driver's rear door was open and he was standing there.

20 Q: Okay. And after the one guy showed you 843, did you have  
21 any further conversation with him standing there?

22 A: No, they drove off and ---

23 Q: What did you do?

24 A: I walked over to the Afterdeck. I told my, the guy was in  
25 charge over there, the manager that was in charge, I said, you

1 know, here's some people that are coming in. You need to be  
2 aware of what's going on. Be very careful. They just -- I  
3 just have a really bad feeling about this one.

4 Q: Okay. Right from the beginning?

5 A: Yes.

6 Q: Okay. Now you've already heard your 911 tape; is that  
7 correct?

8 A: That is correct.

9 MS. LIVESAY: Your Honor, at this time, I'm gonna publish  
10 it to the Jury?

11 THE COURT: You may do so. Mr. Hyman has heard it.

12 (REPORTER'S NOTE: State's Exhibit Twenty-nine is played for  
13 the Jury. Not transcribed herein.)

14 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

15 **(On the Record.)**

16 BY MS. LIVESAY:

17 Q: Now, Ken, did you make that call while you were chasing  
18 the guy?

19 A: I did, yes.

20 Q: And how did you get into the cab or how did that come  
21 about?

22 A: The, the cab driver actually across the street and he saw  
23 us running so he drove over and told me to get in when in fact  
24 I actually just jumped up on the cab and was kind of hanging  
25 on directing him to follow the guy. We went down behind the

1 -- on the Golf Shoe Store on the south side of the store, the,  
2 the suspect ran down the south side; we went around the north  
3 side in the parking lot and that's where he went down into the  
4 kudzu.

5 Q: Okay. And what's on the other side of that kudzu?

6 A: The Waterway.

7 Q: Okay. And how would you describe behind the, you said he  
8 ran behind the golf shop, golf shoe shop?

9 A: It is kudzu; it's thick. It's like running through briars  
10 without the needles.

11 Q: And that's where you lost him?

12 A: Yes.

13 Q: You didn't run into those woods after him, or the kudzu?

14 A: No, I did not.

15 Q: Now, are you familiar with that area?

16 A: Yes, ma'am, I am.

17 Q: I'm showing you now what's State's Exhibit Thirty; are you  
18 familiar with this North Kings Highway ---

19 A: Yes, ma'am.

20 Q: --- Afterdeck area, shoe store area?

21 A: Uh-huh (affirmative response).

22 Q: Would this help you layout your testimony as to where you  
23 chased him from and to?

24 A: I can tell you exactly where I did it from this.

25 MS. LIVESAY: Your Honor, at this time, I place in

1 State's Exhibit Thirty into evidence for demonstrative  
2 purposes?

3 THE COURT: You may do so.

4 STATE'S EXHIBIT NUMBER THIRTY

5 ADMITTED INTO EVIDENCE

6 BY MS. LIVESAY:

7 Q: If you don't mind, Mr. Muth, do you mind stepping down so  
8 you can show the Jury?

9 A: Okay.

10 Q: I'm gonna let you stand on this side so you can talk into  
11 the microphone. Now, this is North Kings Highway here,  
12 correct?

13 A: Yes, it is.

14 Q: Okay. And is this the Afterdeck/Dollhouse building?

15 A: Yes, it is.

16 Q: Okay. And is this the ---

17 A: That would be the Golf Shoe Stores of America.

18 Q: That long kind of roof?

19 A: Uh-huh (affirmative response).

20 Q: Okay. And if you don't mind, show the Jury where, where  
21 you first saw him.

22 A: It would've been right here in the parking lot, right in  
23 the front of the buildings. The car was facing south so the  
24 passenger, the rear passenger door was open and that would be  
25 where I confronted him at first. He started to walk out

1 towards the road and I followed him. I asked him to come over  
2 and talk to me and then he took off the road heading this  
3 direction. We ran all the way up this way and the Golf Shoe  
4 Store right here, he ran down on this side of it and went  
5 behind it where we came in on this side and went looking for  
6 him back in here. He ran down somewhere in this vicinity and  
7 that's where we lost him.

8 Q: Now, were you, I'm sorry, go ahead and have a seat back  
9 down, Mr. Muth. Now, are you familiar with what's behind the  
10 golf shop?

11 A: Yes.

12 Q: There's some kudzu and then the Waterway?

13 A: It is very, very thick and then the Waterway.

14 Q: Okay. And is it a clear walk through that kudzu right to  
15 the Waterway or is there a drop?

16 A: There is a drop. I wouldn't -- I estimate probably about  
17 six to eight feet; it goes down pretty good. I can't say as  
18 if it's a cliff.

19 Q: Right.

20 A: But it drops off pretty good.

21 Q: Okay. And just so we can show the Jury, this is where you  
22 chased him from?

23 A: Yes.

24 Q: To this location?

25 A: Yes.

1 Q: And this long black area here is the Intracoastal  
2 Waterway?

3 A: Yes, ma'am.

4 Q: Okay. And he ran from this golf store in here somewhere?

5 A: Somewhere in behind there.

6 Q: Okay. And could you see the Waterway from where you were  
7 standing?

8 A: It, it was dark. It's very thick I could not -- if I went  
9 and looked for water, yes, I would have been able to, but I  
10 didn't look for water.

11 Q: Okay. And about what time -- I say at night but really  
12 this was really early morning about what time was it; do you  
13 remember?

14 A: To the best of my recollection it was probably somewhere  
15 between 2:00 and 3:00 A.M.

16 Q: Okay. In the morning?

17 A: Yes, ma'am.

18 Q: Okay. So, it was pitch dark outside would you say?

19 A: The sky was dark; there's plenty of street lights, so it  
20 wasn't completely blacked out.

21 Q: Okay. Now was there any light that you remember near  
22 those woods where he ran into?

23 A: Just our flashlights.

24 Q: Okay. Now, if you don't mind telling me, how many people  
25 were en route after him; were you the only one or were there

1 five men?

2 A: When I started running after him, you know, people just  
3 came and, and helped me out. The taxi driver, there was a,  
4 there was another gentleman, he -- at the time he worked for  
5 Secrets, which is across the street and he was actually  
6 driving up and saw what was going on so he kinda, he veered  
7 over and came in the parking lot.

8 Q: Had he already ran in the woods by that point?

9 A: At that point, yes.

10 Q: Okay.

11 A: And I, I told the other gentleman what happened and he was  
12 helping us look for him.

13 Q: Did you have a clear shot of him running down that  
14 sidewalk?

15 A: Oh, absolutely. I was pretty close in behind him.

16 Q: Okay. And at -- were you yelling anything or saying  
17 anything to him while you were chasing him?

18 A: The only thing that I was doing was talking on the phone.

19 Q: Okay. Did he ever turn around and look back at you?

20 A: When he, when he first took off, yeah, he, he looked back  
21 to see if I was still following him.

22 Q: And were you?

23 A: Yeah, absolutely.

24 Q: Okay.

25 A: While we were running, he -- and main, the main reason

1 that I picked up my phone to call 911 was because he started,  
2 he started reaching for a little pocket that he had on the  
3 side of his swim trunks and ---

4 Q: What you mean reaching for his pocket?

5 A: As he was reaching down, there was a pocket on his pant  
6 leg and he kinda reached down for it and I thought, okay, if  
7 this guy did do a stabbing, he might have another knife. I  
8 need some help.

9 Q: Okay. Now when you're running after him, do you ever see  
10 him drop anything?

11 A: He -- I did not see him drop anything.

12 Q: Okay. You just saw him reach in his pocket?

13 A: Just -- well, just kind of reach down and scratch it. He  
14 didn't -- I did not see him grab anything.

15 Q: Okay.

16 A: I did not see him drop anything.

17 Q: Okay. Was it enough to give you hesitation?

18 A: Yes.

19 Q: Okay. So once you see him grabbing down at his pocket,  
20 what do you do then?

21 A: At that point, that's when I picked up my phone and dialed  
22 911 and you heard the phone call.

23 Q: Okay. And then you finally get down to the golf store; do  
24 you see him run into the woods?

25 A: He was, he was already in there before we came around the

1 building. So, no, I did not. I saw the area that was  
2 trampled down ---

3 Q: Okay.

4 A: --- to where you could tell something had just went down  
5 through there.

6 Q: Okay. Now, you described him pretty close with the  
7 shorts, the color of the shorts, the white tank top, he's tan,  
8 you obviously got a good look at him. Did you see any  
9 injuries on him when you were chasing him?

10 A: No, I did not. No, absolutely not.

11 Q: Now, did he appear to be injured when he was running?

12 A: No, he did not.

13 Q: Okay. Now, would you classify him just hauling butt or  
14 would you say it was a light jog, a fast walk; how would you  
15 describe how fast he took off?

16 A: He was running at a high rate of giddy-up.

17 Q: So, it was definitely more than a light jog?

18 A: Yeah, I mean, I was giving it everything I had. We were  
19 running.

20 Q: Okay. And nothing seemed to be impeding his ability to  
21 take off and run that fast?

22 A: He -- nothing he took off, he actually ran out of his flip  
23 flops that he was wearing.

24 Q: Okay. So, whatever shoes he was wearing, he ran out of  
25 those and he kept rolling?

1 A: Uh-huh (affirmative response).

2 Q: Okay. Now, did you do a statement for the police?

3 A: I did.

4 Q: Okay. And that statement that you gave the police, is  
5 that the same statement that you're telling us today?

6 A: Yes, to the best of my recollection.

7 Q: Okay. Is what you're telling us here today the truth?

8 A: Yes, ma'am.

9 Q: Okay. I want you to take a look around the courtroom. Do  
10 you recognize the guy that you were chasing that night?

11 A: The gentleman in the suit over here with the yellow shirt  
12 on; it appears to be him.

13 Q: Okay. And that was the guy you chased from the Afterdeck  
14 that night in the yellow shorts and the white tank top?

15 A: Yes, I believe it is.

16 Q: Now, at any point, did he slow down from the time you took  
17 off to the time he got in the woods?

18 A: No.

19 Q: Okay. Now, when you were first in the Afterdeck, what was  
20 going on before you took off after him; do you remember?

21 A: Prior to running out, I was actually in the Dollhouse; I  
22 was not in the Afterdeck.

23 Q: Okay.

24 A: I walked out of the Dollhouse to escort one of our  
25 entertainers to her car.

1 Q: Okay. Did you go back to the Afterdeck after you finished  
2 up behind the Golf Shoe Store?

3 A: Yeah, once I had an opportunity to get back over there, I  
4 walked over to see what was going on and there was actually,  
5 you know, the, the ---

6 Q: What did you see when you got back?

7 A: The gentlemen that was -- there was one guy laying on the  
8 ground, he -- there was some people performing CPR on him;  
9 the, there was another guy there that they had sat down  
10 against a wall who had, I guess, had also been stabbed, that's  
11 what they told me; and there was another gentleman that he was  
12 walking around and I, I guess he had gotten hit in the leg.

13 Q: So, you saw at least three injured people when you went  
14 back?

15 A: Yes.

16 MS. LIVESAY: No further questions, Your Honor.

17 THE COURT: Mr. Hyman.

18 CROSS EXAMINATION OF KENNETH MUTH BY MR. HYMAN:

19 Q: Is it Mr. Muth or Mr. Muth?

20 A: It's Muth.

21 Q: Muth. Okay. I want to pronounce it right. The statement  
22 that you prepared, who did you prepare that for? I notice  
23 it's not on a ---

24 A: I do not remember who I prepared it for. I'm -- at that  
25 time, I would have to say I was told to write a statement.

1 Q: Were you told by your boss to write a statement?

2 A: It is a possibility. I, I really -- I don't remember. I  
3 would say that my, my boss probably told me that he needed a  
4 statement. So, you know, I wrote a statement to the best of  
5 my recollection of everything.

6 Q: Now, you say that you saw Mr. Griffith pretty well?

7 A: Uh-huh (affirmative response).

8 Q: You said you saw him good enough to tell that he didn't  
9 have any injuries?

10 A: Correct.

11 Q: Did you see any blood on him at all?

12 A: I did not.

13 Q: Did you see a knife in his hand or anything like that?

14 A: I did not.

15 Q: Did you see blood on his hands, blood on his shirt ---

16 A: I did not.

17 Q: --- blood on his pants, nothing like that?

18 A: No.

19 Q: All right. Now, you said that -- I think your statement  
20 and correct me if I'm wrong but I thought your statement was  
21 when you walked outside, somebody else said, hey, that's the  
22 guy, stop him?

23 A: That is correct.

24 Q: Did the guy just say that's the guy or did he yell it?

25 A: Oh, he was yelling it; he was screaming it. He actually

1 -- I was facing him, the Defendant and my guy actually almost  
2 jumped over my back and threw his finger out and was pointing,  
3 hey, that's him, that's him.

4 Q: Who was your guy?

5 A: His name was Mike. He was an older gentleman. Don't ask  
6 me where he's at because we lost track of him a long time ago.

7 Q: Did he do a statement that you know of?

8 A: I have no idea if he did or not.

9 Q: Okay. Did Mike go with you after him?

10 A: No, he did not.

11 Q: So, he's jumping over your back but he stopped?

12 A: When I started walking towards him and saying, hey, come  
13 here, I need to talk to you.

14 Q: Now, are you positive that he was wearing flip flops? You  
15 said he was wearing flip flops and matter of fact, he ran out  
16 of the flip flops; is that correct?

17 A: Yes. I, I'm pretty sure that he was wearing flip flops  
18 and ran out of them.

19 Q: Okay. But you didn't see him discard anything or throw  
20 anything away?

21 A: No, I did not. The only thing that I saw was when he was  
22 standing next to the car, he was making -- when I said come  
23 here I need to talk to you, he was making, you know, hand  
24 gestures as if he was throwing something into the car.

25 Q: Now, were you aware of any other Defendant in this or

1 anybody else, a person of interest?

2 A: The only thing that I knew was the gentleman that had the  
3 tattoo on his arm that I talked to at the beginning of the  
4 evening, he was not there. The car was parked out in front of  
5 the club and there was only one person at the car at that  
6 time.

7 Q: When -- as far as when you did this statement, this  
8 statement has nothing about your first time you meet this  
9 people. Why does, why does that not have anything in there  
10 about that? Do you need to look back at it?

11 A: Yeah, I'd like to look at it.

12 (REPORTER'S NOTE: Witness is handed document to review.)

13 A: Okay. What was your question again?

14 Q: My question was -- you made a statement on the stand that  
15 when they first arrived, you said they were in a dark SUV and  
16 you remembered the SUV and you remembered the guy the 843  
17 tattoo. My question is why is this the first time that you're  
18 saying that rather than the statement?

19 A: I, I really don't understand what, what you're getting at.

20 Q: I'm just asking you ---

21 A: I haven't read through the entire statement. I don't  
22 remember everything in here. Did I not write it in here?

23 Q: No.

24 A: Okay. This, this is not the first time that I've made the  
25 statement. I've made it numerous times now. I know that you

1 haven't heard me.

2 Q: As far as your first interaction with this vehicle. Did  
3 you talk to Mr. Griffith at all?

4 A: No.

5 Q: You only talked to the other person?

6 A: Correct.

7 Q: So, you're -- and I guess what I'm asking is your  
8 implication that somebody might be trouble when you haven't  
9 even met or talked to him was meant for somebody else?

10 A: It would just -- the whole situation. I didn't like the  
11 situation.

12 Q: Two girls and two guys?

13 A: Just the communication and the way that they were acting,  
14 I didn't really like it.

15 Q: But you're saying he didn't communicate to you at all?

16 A: No, not to my recollection, he didn't.

17 Q: Let me see that statement.

18 No further questions, Your Honor.

19 THE COURT: Any further redirect?

20 MS. LIVESAY: Just one real quick, Your Honor.

21 REDIRECT EXAMINATION OF KENNETH MUTH BY MS. LIVESAY:

22 Q: Just so I'm clear, after you saw the two boys and the two  
23 girls, the way they were acting concerned you to the point you  
24 mentioned it to somebody else; is that correct?

25 A: That is correct.

1 Q: Okay. And you took notice of who was in that car so you  
2 could remember when you saw them again, couldn't you?

3 A: Yes.

4 Q: Okay. Now, do you necessarily have to say something to  
5 somebody to communicate with them?

6 A: No, not necessarily, body language speaks volumes.

7 Q: Okay. Sometimes, just somebody's demeanor can tell you  
8 what's going on?

9 A: That is correct.

10 MS. LIVESAY: No further questions, Your Honor.

11 MR. HYMAN: Your Honor, one quick recross.

12 RECCROSS EXAMINATION OF KENNETH MUTH BY MR. HYMAN:

13 Q: Who did you call and tell?

14 A: I didn't call anyone, I walked next door to the Afterdeck  
15 and told the guys that were at the front door as well as the  
16 guy who was managing that night.

17 Q: And do you remember their names?

18 A: The guys at the front door, no, I don't. The manager was  
19 Graham Hopel (spelled phonetically).

20 Okay. No further questions.

21 THE COURT: You may come down. Thank you.

22 Can this witness be excused from his subpoena?

23 MS. LIVESAY: Please, Your Honor.

24 THE COURT: You may do so. Thank you.

25 Next witness.

1 MS. LIVESAY: At this time, Your Honor, the State calls  
2 Randall Ghent to the stand.

3 THE COURT: All right.

4 MS. LIVESAY: I'm sorry, Your Honor, we'll call Jim  
5 Chatfield to the stand.

6 THE COURT: Pardon me?

7 MS. LIVESAY: He's right back there. We'll call Jim  
8 Chatfield to the stand.

9 THE COURT: All right.

10 CLERK: Sir, please raise your right hand and place your  
11 left hand on the Bible.

12 JAMES MARK CHATFIELD, HAVING BEEN  
13 DULY SWORN TESTIFIES AS FOLLOWS:

14 CLERK: Thank you. State your full name and spell your  
15 last name?

16 MR. CHATFIELD: James Mark Chatfield, C-H-A-T-F-I-E-L-D.

17 DIRECT EXAMINATION OF JIM CHATFIELD BY MS. LIVESAY:

18 Q: Sergeant Chatfield, where are you currently employed?

19 A: The Horry County Police Department.

20 Q: Okay. And how long have you been employed there?

21 A: About thirty years.

22 Q: And what kind of training have you undergone through  
23 continuing legal education and being a police officer?

24 A: Over thirty years of training, driving, supervision, a  
25 multitude of training, ma'am.

1 Q: Okay. And what are your current responsibilities?

2 A: I'm assigned to the major crimes division, basically the  
3 Homicide Crimes Division. I'm a Senior Detective.

4 Q: Okay. And where were you assigned in 2009?

5 A: I was the Uniform Patrol Sergeant for the South Precinct C  
6 Squad.

7 Q: Okay. And were you working on or around the morning of  
8 September 8th, 2009?

9 A: Yes, ma'am, I was.

10 Q: Okay. And did you have an occasion to respond to the  
11 Afterdeck?

12 A: Yeah, around sometime after 2 o'clock, I was dispatched to  
13 the Afterdeck. I was down at the Murrells Inlet section of  
14 Horry County and I responded to a stabbing and basically a  
15 fight in progress.

16 Q: Okay. And when you got there, what did you see?

17 A: Well, I was a supervisor and I was the first one there.  
18 It was roughly four hundred people there and out of, just out  
19 of control, basically out of control.

20 Q: Did you see any people injured?

21 A: Yes, I saw a young man laying down and there was a big  
22 gentleman performing CPR on him. Blood was, I believe, coming  
23 from his chest area and he was on his back.

24 Q: Okay. Now, you say you were the first officer to respond;  
25 is that correct?

1 A: Yes, ma'am; I had a corporal and two patrolmen.

2 Q: Okay. And at that time, was there a person of interest  
3 already?

4 A: Yeah. When I got there, I was told there was the two  
5 people involved in an altercation. I didn't know who did what  
6 and I was advised they were on the run.

7 Q: Okay. And did you actually speak to Blake Griffith over  
8 the phone?

9 A: Yes, a time later I had his girlfriend's phone and  
10 somebody that identified his self as Blake Griffith told me  
11 that he was out at a beach house, I'm assuming, in Garden City  
12 and I passed on the information.

13 Q: Okay. So, you talked to somebody on the phone that  
14 identified themselves as Blake Griffith?

15 A: Yes, ma'am.

16 Q: Okay. And you got that phone from one of the girls that  
17 was with him that night?

18 A: Yeah, I believe; yes, ma'am.

19 Q: Okay. And you learned -- did you learn they were all  
20 staying together at a beach house?

21 A: That's what I was advised; yes, ma'am.

22 Q: And that, so he phoned a young lady that he had been  
23 staying with at the beach house?

24 A: Yes, ma'am.

25 Q: Okay. At that time, she handed the phone over to you?

1 A: Yes, ma'am.

2 Q: Okay. Did you tell him at that time you were a police  
3 officer?

4 A: Yeah, I identified who I was.

5 Q: Okay. Did you tell him you were at the Afterdeck?

6 A: Yes, ma'am.

7 Q: Okay. And what did he say?

8 A: He was at that location at a beach house.

9 Q: Okay. Did you send an officer and that young lady to the  
10 beach house to pick him up?

11 A: Yes.

12 Q: Okay. And why did you send her, for identification  
13 purposes?

14 A: Yes, ma'am.

15 Q: Okay. When you sent those officers and that girl, was he  
16 indeed at the beach house?

17 A: I was advised he wasn't at the beach house.

18 Q: Okay. And you were, were you on the scene when they got  
19 back?

20 A: Yes, ma'am, I was, I left the scene a little bit to go a  
21 mile or two up the road and back, you know, just looking for  
22 both people, both as I called it, the prime suspects, yes,  
23 ma'am.

24 Q: Okay. While you were there on that scene, did they ever  
25 return back to the Afterdeck?

1 A: No, ma'am.

2 Q: Okay. Did Blake Griffith ever return to the Afterdeck?

3 A: No, ma'am.

4 Q: Okay. Was he at the beach house where he said he would  
5 be?

6 A: No, ma'am.

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

8 THE COURT: Mr. Hyman.

9 CROSS EXAMINATION OF JIM CHATFIELD BY MR. HYMAN:

10 Q: Is it still -- is it Sergeant?

11 A: Senior Detective, sir; yes, sir.

12 Q: As far as -- what time of the morning did y'all get a call  
13 on this?

14 A: Sir, I'm not sure of the exact time. I want to tell you  
15 around 2:30 or 2:40.

16 Q: Okay. So, as far as if it was 2 o'clock or if it was 1:50  
17 or anything like that, that wouldn't be accurate when a 911  
18 call would've been ---

19 A: Sir, it could've been, but what I -- our Beach Patrol used  
20 to go in at 2 o'clock and I would've had a unit right there  
21 and that's basically what I've -- sir, it could've been ten  
22 till, 1:50.

23 Q: How long did it take y'all to get there when y'all got a  
24 call?

25 A: It took a while, sir.

1 Q: Thirty minutes, forty-five minutes?

2 A: It took -- I'm not sure, sir.

3 Q: When you got there, you said it was -- I think your word  
4 was chaos; is that what you said?

5 A: Yes, sir.

6 Q: Were people in the crime scene?

7 A: Yes, sir.

8 Q: Trampling?

9 A: Yes, sir.

10 Q: Were witnesses being let leave?

11 A: Sir, yes, sir. I was one person to four hundred, yes,  
12 sir, they were -- yes, sir.

13 Q: Okay. Now as far as, as when you got there you were the  
14 only officer there; is that right?

15 A: Yes, sir, I believe there was an EMS -- medical folks  
16 usually station -- they won't go in; yes, sir

17 Q: So the medical staff ---

18 A: Uniformed officers, sir.

19 Q: You were the only uniform officer?

20 A: Yes, sir.

21 Q: Okay. Now as far as, as that goes, how long were you  
22 there until other uniform officers got there?

23 A: Probably, ten minutes.

24 Q: Ten minutes, okay. Now, so we're talking forty-five  
25 minutes to an hour at this point, something like that?

1 A: We're talking a little bit of time, sir, I'm not sure  
2 exactly.

3 Q: All right. Now, do you remember taking any statements?

4 A: No, sir, I, I didn't have time to take any statements.

5 Q: What were you doing? You said you didn't have time to  
6 take statements, what were you doing?

7 A: Supervise. I had four guys that worked under me and not  
8 to mention unfortunately all the rest of the calls. I  
9 supervise between North Myrtle Beach city limits into the  
10 Georgetown County line. I was still trying to handle  
11 everything, sir.

12 Q: So you had stuff going on other than just the Afterdeck?

13 A: Yes, sir.

14 Q: Even when you got there, you weren't able to do a whole  
15 lot as far as investigation?

16 A: Yes, sir.

17 Q: Okay. Just arrived to, I guess, be someone on the scene?

18 A: Yes, sir.

19 Q: Okay. Now, as far as my client and his Codefendant, did  
20 you ever see them?

21 A: No, sir.

22 Q: At any point?

23 A: No, sir.

24 Q: Did you ever interview them?

25 A: No, sir.

1 Q: Okay. And it's your testimony that you didn't take any  
2 witness statements from anybody else?

3 A: Yes, sir.

4 Q: Okay. And it's also your testimony that it took a good  
5 while, forty-five minutes to an hour to get there?

6 A: Sir, I'm not sure on forty-five minutes to an hour, but  
7 driving about 110 from Murrells Inlet, it took a little bit,  
8 sir.

9 Q: But again the crime scene was chaos?

10 A: It was a mess.

11 Q: No -- nobody taping anything off, doing anything like  
12 that?

13 A: No, sir.

14 Q: Do you remember if anybody was cleaning anything up?

15 A: Yes, sir, to my recollection, I didn't see anybody  
16 cleaning up but I was told that somebody mopped up some blood,  
17 but I didn't see it, sir.

18 Q: Inside the club?

19 A: Yes, sir.

20 MR. HYMAN: Okay. No further questions, Your Honor.

21 THE COURT: You may come down. Thank you.

22 A: Thank you, Your Honor.

23 MS. LIVESAY: Hold on one second, Your Honor, I'm sorry.

24 THE COURT: Please call your next witness.

25 MS. LIVESAY: Just one more question, Your Honor.

1 THE COURT: Oh, I'm sorry, you have another question?

2 MS. LIVESAY: Yes, sir. It's okay.

3 REDIRECT EXAMINATION OF JIM CHATFIELD BY MS. LIVESAY:

4 Q: Sergeant Hatfield, you were there long enough, though, to  
5 take this phone call from the person that identified  
6 themselves as Blake Griffith?

7 A: Yes, ma'am.

8 Q: Okay. And that person who called obviously said I'll be  
9 at the beach house?

10 A: Yes, ma'am.

11 Q: And he called the girl that he had stayed at the beach  
12 house with?

13 A: Yes, ma'am.

14 Q: Okay. And you said what, I'm Horry County Police  
15 Department?

16 A: Yeah, I just identified I was Sergeant Chatfield, I'd like  
17 to talk to you.

18 Q: Okay. Did he ever say please send somebody to help me;  
19 come get me I've been assaulted; please help me?

20 A: No, ma'am.

21 MS. LIVESAY: No further questions, Your Honor.

22 THE COURT: All right. You have another question?

23 MR. HYMAN: No, Your Honor.

24 THE COURT: You may come down. Thank you.

25 A: Thank you, Your Honor.

1 THE COURT: Next witness.

2 MS. LIVESAY: Thank you, Your Honor. At this time the  
3 State calls Randall Ghent to the stand.

4 THE COURT: All right. Have Mr. Ghent come around  
5 please.

6 CLERK: Sir, please raise your right hand and place your  
7 left hand on the Bible?

8 RANDALL GHENT, HAVING BEEN DULY SWORN  
9 TESTIFIES AS FOLLOWS:

10 CLERK: State your full name and spell your last name?

11 MR. GHENT: John Randall Ghent, G-H-E-N-T.

12 DIRECT EXAMINATION OF RANDALL GHENT BY MS. LIVESAY:

13 Q: Now, that is Sergeant, correct?

14 A: Yes, ma'am, it was.

15 Q: Okay. I just wanted to make sure I had the rank correct.  
16 How long have you been with Horry County PD?

17 A: At the current moment a little over sixteen and a half  
18 years.

19 Q: Okay. And about what kind -- what kind of training have  
20 you undergone through the police department?

21 A: Over the years, a graduate from the South Carolina  
22 Criminal Justice Academy, had several classes involving man  
23 tracking and bloodhound tracking and so forth.

24 Q: Okay. Just about a little bit of everything?

25 A: Yes, ma'am.

1 Q: Okay. And what are your current responsibilities at the  
2 police department?

3 A: I am a Lieutenant particularly over the North Precinct,  
4 Deputy Precinct Commander over the Patrol Division.

5 Q: Okay. And what were your responsibilities in 2009?

6 A: I was on -- that particular year I was a Road Supervisor,  
7 a Sergeant on C Squad and my responsibility was to just  
8 oversee and supervise the guys under me.

9 Q: Okay. And that night you were working September --  
10 morning, I say night/morning about 2:00-3:00 in the morning --  
11 were you working that night around September 8th of 2009?

12 A: Yes, ma'am; I was.

13 Q: Okay. And did you have an occasion to respond or assist  
14 in an incident that happened at the Afterdeck?

15 A: Yes, ma'am.

16 Q: Okay. Please tell the Jury about that?

17 A: On that particular night in question, we were -- had got  
18 an assistance request from the South Precinct Supervisor,  
19 Sergeant Chatfield and myself and a couple of other units  
20 responded on the west side of the Waterway, in the area of  
21 Waterway Golf Resort, I believe, and we were looking for a  
22 person of interest at that time and just assisted in trying to  
23 locate that, that person.

24 Q: Okay. And if you don't mind, would this, I'm gonna show  
25 you State's Evidence Number Thirty. Would this help show the

1 Jury where you responded to?

2 A: Yes, ma'am.

3 Q: Now, if you don't mind, you mentioned the golf course; is  
4 this the golf course here?

5 A: Yes, ma'am; it is.

6 Q: And is this an accurate map of that area?

7 A: Yes, ma'am.

8 Q: Okay. And is this the Waterway here?

9 A: Yes, ma'am.

10 Q: Is this Kings Highway?

11 A: Yes, ma'am.

12 Q: Okay. Is this Afterdeck?

13 A: Yes, ma'am.

14 Q: Okay. And Golf Shoe Store is somewhere up in here?

15 A: Yes, ma'am.

16 Q: Okay. Now, where did you respond to?

17 A: We come in on this dirt road here and come in the backside  
18 and kind of come in from this area here.

19 Q: Okay. And what information did you have that made you  
20 respond to that particular area?

21 A: We had learned that the person of interest had possibly  
22 swam the Waterway and knowing somewhat of the area that we had  
23 figured out that if he had swam anywhere adjacent to the crime  
24 scene, it would have put him somewhere close to the Waterway,  
25 Waterway Golf Resort.

1 Q: Okay. And what did you do or what did you and everybody  
2 else there do first to try to find him?

3 A: We just kind of canvassed the area looking to see if we  
4 saw anything suspicious such as anybody that just stood out  
5 that early in the morning or any type of tracks and kinda just  
6 left it at that for the moment.

7 Q: Okay. And after you did that, what did you do next?

8 A: We -- I did discover a set of fresh tracks going across  
9 the golf course. It was kind of heavy dew that morning and  
10 once we kind of discovered that there was only one set of  
11 tracks, kind of just backed down and secured the, the whole  
12 area and called for the dog team.

13 Q: Okay. And did the dog team arrive?

14 A: They did, yes, ma'am.

15 Q: Okay. And were y'all able to use the dog and the tracks  
16 to track the Defendant from the Waterway to where he was  
17 located?

18 A: Yes, ma'am.

19 Q: Okay. And if you don't mind, can you show them that map  
20 where y'all tracked him from?

21 A: Yes, ma'am.

22 Q: Okay. Thank you. If you don't mind, stand up so they can  
23 see?

24 A: Sure.

25 Q: I'm gonna -- okay, if you don't mind, show us -- and these

1 are woods over here? I know this map is sometimes, these are  
2 woods and this is the golf course?

3 A: Yes, ma'am.

4 Q: And this is the Waterway?

5 A: Yes, ma'am.

6 Q: Okay. Using those as the reference, please show the Jury  
7 where you tracked him from?

8 A: Well, we discovered, or I discovered a set of fresh  
9 footprints in the dew right about this area here and we, like  
10 I say, we had learned that a person of interest had possibly  
11 swam the Waterway and those set of tracks in the dew were  
12 coming -- were coming close to that adjacent area and we put  
13 the dog on this close to the Waterway here on this set of  
14 tracks and the dog took the scent and we left out and went a  
15 little bit north here and then kind of doubled back this way  
16 and wound up right about in this area, in this wooded area  
17 here probably thirty yards, if that, into the woods.

18 Q: Okay. And you found him in those woods?

19 A: Yes, ma'am.

20 Q: Okay. And would you say those woods are thick?

21 A: Moderately thick, yes, ma'am.

22 Q: Okay. And thirty yards, just, I mean I have trouble,  
23 thirty yards is how far into the woods from you to, can you  
24 show us in the courtroom?

25 A: It would be a little further than that door.

1 Q: Further than that door?

2 A: Yes, ma'am.

3 Q: Okay. So, it would definitely be further from where you  
4 are out that backdoor?

5 A: Yes, ma'am.

6 Q: Okay. And that's into the woods?

7 A: Yes, ma'am.

8 Q: Okay. Now, you're familiar with this area, right?

9 A: Yes, ma'am.

10 Q: If you're on foot, is there another way to get from this  
11 sidewalk here, this area, to this golf course without swimming  
12 the Waterway?

13 A: Not, not at that time of day, no, ma'am.

14 Q: Okay. And when you first came on the scene, was it dark  
15 outside?

16 A: Yes, ma'am.

17 Q: Okay. And about what time did you get on the scene?

18 A: I believe it was around 3:00 in the morning I think.

19 Q: Okay. And what time of daylight or daylight break was it  
20 that time of year for y'all to see the tracks?

21 A: Well, about that time it was -- if I remember correctly,  
22 it was just beginning daybreak, probably 5:00-5:30 maybe.

23 Q: Okay. And you didn't see anybody on the golf course?

24 A: No, ma'am.

25 Q: Okay. Nobody was out in the open where you would be able

1 to locate them?

2 A: No, ma'am.

3 Q: Okay. Now, were you able to locate Blake Griffith in the  
4 woods?

5 A: Yes, ma'am.

6 Q: Okay. I'm gonna show you what's been marked as State's  
7 Exhibit Thirty-one and Thirty-two. Do you recognize what I'm  
8 showing you?

9 A: Yes, ma'am.

10 Q: Who's in that picture?

11 A: The Defendant, myself, the dog handler, Officer Elliott,  
12 and the bloodhound, Red.

13 Q: Now, is that the location you found him at?

14 A: Yes, ma'am.

15 Q: Is that where that picture was taken?

16 A: Yes, ma'am.

17 Q: Okay. Now, is that how you found him?

18 A: He was laying down when we found him.

19 Q: Okay.

20 MS. LIVESAY: Your Honor, at this time I'm gonna put  
21 State's Thirty-one and Thirty-two into evidence and publish it  
22 to the Jury.

23 THE COURT: You may do so.

24 STATE'S EXHIBIT NUMBER THIRTY-ONE AND THIRTY-TWO

25 ADMITTED INTO EVIDENCE

1 BY MS. LIVESAY:

2 Q: Now I notice, and I'm assuming you do, in that picture, he  
3 only has some boxer shorts on?

4 A: Yes, ma'am.

5 Q: Is that how you found him?

6 A: Yes, ma'am.

7 Q: Okay. Now, did you find a T-shirt or a wife-beater  
8 anywhere near him?

9 A: No, ma'am.

10 Q: Did you find a pair of shoes close to him?

11 A: No, ma'am.

12 Q: Okay. Were you able to find his shorts close by?

13 A: Yes, ma'am.

14 Q: Okay. About how close were his shorts from where he was?

15 A: Not far at all. I'd say twenty yards maybe, if that.

16 Q: Okay. Did you find a knife anywhere on him?

17 A: No, ma'am.

18 Q: Okay. Now you tracked those footprints from coming out of  
19 the Waterway into the woods; is that correct?

20 A: Yes, ma'am.

21 Q: Okay. So, you were basically walking the same route he  
22 took?

23 A: Yes, ma'am.

24 Q: Okay. Did you find a knife anywhere along that path?

25 A: No, ma'am.

1 Q: Okay. Any kind of weapon at all?

2 A: No, ma'am.

3 Q: Did you find a wife-beater anywhere along that path?

4 A: No, ma'am.

5 Q: Did you find a T-shirt anywhere along that path?

6 A: No, ma'am.

7 Q: A pair of shoes?

8 A: No, ma'am.

9 Q: Now, normally for the dog to track someone, y'all try to  
10 give, if I'm correct, I mean, some clothes or something for  
11 them to smell to track off of?

12 A: If we have it, yes, ma'am.

13 Q: Okay. And did you have, had anybody found any clothes to  
14 give that dog for the Defendant's scent?

15 A: Not initially, no, ma'am.

16 Q: Okay. Not until you found the shorts?

17 A: That's correct.

18 Q: Okay. So going into this, you didn't have a wife-beater,  
19 a T-shirt or anything like that?

20 A: No, ma'am.

21 Q: Okay. Now, about what time were you called out? Do you  
22 need your report to refresh your memory on the time?

23 A: Yes, ma'am, please.

24 Q: Now, looking at that report, about what time were you  
25 called out?

1 A: In reference to the dog team?

2 Q: Yes, sir?

3 A: The current time would have been 4:45 in the morning.

4 Q: Okay. And does the time show what time y'all responded  
5 just to the area prior to you even deciding to get the dog  
6 out?

7 A: It would appear that we would have had personnel from the  
8 dog team on the scene just, just after 4:45.

9 Q: Okay. So, at 4:45 had it already started getting light?

10 A: Apparently so. I don't really recall.

11 Q: Okay. Do you remember what time you were initially called  
12 or dispatched for assistance?

13 A: Let's see, around 2:55 A.M.

14 Q: Okay. So, at 2:55 A.M. is when you were initially called  
15 out?

16 A: Yes, ma'am.

17 Q: Okay. Now, is that when you started driving and just  
18 showing up down this path was around 2:55?

19 A: Yes, ma'am.

20 Q: Okay. So around 2:55, 3 o'clock A.M., that is when you  
21 are now going to this area to start looking for the Defendant?

22 A: Yes, ma'am.

23 Q: Okay. And y'all are there at 2:55, 3 o'clock just  
24 canvassing the area?

25 A: Yes, ma'am.

1 Q: Which means just several of y'all looking up and down?

2 A: Yes, ma'am.

3 Q: Okay. And you were not able to locate him at that point?

4 A: No, ma'am.

5 Q: Okay. And you got the dog out there at 4:55, which is  
6 about 5 o'clock?

7 A: Yes, ma'am.

8 Q: Okay. So from 3:00 to 5 o'clock there are officers out  
9 there in, in this area right here?

10 A: Yes, ma'am.

11 Q: Looking for that Defendant?

12 A: Yes, ma'am.

13 Q: Okay. In fact, this is the road, just so we're all clear,  
14 this is the road here you drove in on?

15 A: Yes, ma'am.

16 Q: Okay. So, y'all are all in this area looking for the  
17 Defendant at around 3 o'clock in the morning?

18 A: That's correct; yes, ma'am.

19 Q: Okay. How many people would you say were out there  
20 looking for him?

21 A: Probably five or six, at least.

22 Q: Uniformed officers; have a uniform on?

23 A: Yes, ma'am, with the exception of a couple of  
24 firefighters.

25 Q: Okay. So, y'all -- was the fire truck out there?

1 A: Yes, ma'am.

2 Q: Okay. So, you had the fire truck out there and four or  
3 five police officers?

4 A: Yes, ma'am.

5 Q: Okay. For at least two hours?

6 A: Yes, ma'am.

7 Q: Okay. And you never see him. And is that why then you  
8 decide to call the dog team out?

9 A: Yes, ma'am.

10 Q: So, that's two hours later, about 5 o'clock the dog team  
11 comes out?

12 A: That's correct.

13 Q: Okay. Now, about what time does it, does it say on your  
14 report that he was actually apprehended and y'all wrapped that  
15 situation up or does it say?

16 A: We concluded everything at 7:00 A.M. that morning.

17 Q: Okay. About how long did it take you once you got the dog  
18 out there to find the Defendant?

19 A: Not long at all. I'd say probably within an hour.

20 Q: Okay. About an hour?

21 A: Yes, ma'am.

22 Q: Okay. So, y'all are out there, fire truck, police  
23 officers, for at least three hours before you finally locate  
24 him?

25 A: Yes, ma'am.

1 Q: Okay. Now, were you with the dog team when he was first  
2 located?

3 A: Yes, ma'am.

4 Q: Okay. Now this picture is an exact picture of how he  
5 looked?

6 A: Yes, ma'am.

7 Q: In fact, is that you there holding him?

8 A: Yes, ma'am; that's me.

9 Q: Okay. Okay. Now, when you first came up on him, how did  
10 he appear?

11 A: He was -- he appeared to be asleep.

12 Q: Okay. And then he woke up; did y'all wake him up?

13 A: Yes, ma'am, after we woke him up; yes, ma'am.

14 Q: Okay. Now, is it unusual in your -- you say sixteen years  
15 of experience?

16 A: Yes, ma'am.

17 Q: That when y'all are tracking somebody for them not to have  
18 their clothes on when you find them?

19 A: It's very common; yes, ma'am.

20 Q: Okay. So, it's not unusual when y'all are tracking  
21 somebody to find somebody without their shirt; they've shed a  
22 lot of their clothes by the time you get to them?

23 A: That's correct.

24 Q: Okay. And most of the time when you get the dog out, you  
25 need a good scent for that dog to pick up and find somebody;

1 is that right?

2 A: Yes, ma'am.

3 Q: Okay. Now, when you look at this picture here -- and of  
4 course you were out there with him, so you know better than  
5 anybody does -- was he bleeding from any wounds?

6 A: The only thing I could tell was just where he had been  
7 into the brush or the wooded area.

8 Q: So, he was scratched up from running through the woods?

9 A: Yes, ma'am.

10 Q: And probably through whatever before he got in the  
11 Waterway?

12 A: Probably, yes, ma'am.

13 Q: Okay. So, but you didn't see any puncture wounds?

14 A: No, ma'am.

15 Q: Okay. Did you see a broken nose, busted lip, anything  
16 like that?

17 A: No, ma'am.

18 Q: How about a black eye?

19 A: Not that I recall, no, ma'am.

20 Q: When you stood him up, which I'm assuming you did since  
21 you're holding on to him, was he able to stand up?

22 A: Yes, ma'am.

23 Q: Was he able to walk out of the woods?

24 A: Yes, ma'am.

25 Q: Okay. So, he didn't have so much when you found him as a

1 busted lip?

2 A: Not that I recall; no, ma'am.

3 Q: Okay. Now was EMS out there?

4 A: We did call for them, yes, ma'am.

5 Q: Okay. So, they were out there as well?

6 A: Yes, ma'am.

7 Q: Did you see EMS check him out?

8 A: Yes, ma'am, briefly.

9 Q: Okay. And did they put him in the back of the squad car

10 and take him to Conway Medical Center?

11 A: Not that I recall, no, ma'am.

12 Q: Okay. So, they just briefly checked him out and then he

13 was taken into custody?

14 A: Yes, ma'am.

15 Q: Okay. But he definitely did not leave with EMS?

16 A: Not that I recall, no, ma'am.

17 Q: Okay. He definitely didn't have any injuries that needed

18 further medical care?

19 A: Not that I could see; no, ma'am.

20 Q: Okay. Now, these scratches on him, across his chest and

21 what not, they look like something come from running in the

22 woods?

23 A: Yes, ma'am, from maybe crossing through briars or

24 thistles.

25 Q: Okay. Because if you notice, don't they look like they're

1 kinda, this one's going down, this one's going ---

2 MR. HYMAN: Objection, leading.

3 THE COURT: Wait a minute. Follow the rule, please.

4 MS. LIVESAY: That's fine, Your Honor.

5 BY MS. LIVESAY:

6 Q: So the only thing you were able to find after tracking him  
7 from the Waterway over the golf course thirty yards into the  
8 woods were was the Defendant in his boxer shorts and his  
9 shorts laying about twenty yards from him?

10 A: That's correct; yes, ma'am.

11 Q: No shirt of any kind?

12 A: No, ma'am.

13 Q: No shoes of any kind?

14 A: No, ma'am.

15 Q: And no knife?

16 A: No, ma'am.

17 Q: When you -- you say when you found him, he was out there  
18 sleeping?

19 A: He appeared to be; yes, ma'am.

20 Q: Okay. And when he finally rustled up, how did he appear;  
21 what was his demeanor?

22 A: The best way to describe it is probably, maybe in shock.

23 Q: Okay. Shocked to see you?

24 A: Possibly, yes.

25 Q: Okay. But you wouldn't, would you use any other word

1 other than shocked?

2 A: No, ma'am.

3 Q: Okay. Did he look glad to see you?

4 A: No, ma'am.

5 MS. LIVESAY: No further questions, Your Honor.

6 THE COURT: Mr. Hyman.

7 CROSS EXAMINATION OF RANDALL GHENT BY MR. HYMAN:

8 Q: Is still Sergeant?

9 A: Lieutenant, now.

10 Q: Lieutenant, now?

11 A: Yes, sir.

12 Q: Congrats.

13 A: Thank you.

14 Q: As far as, as when you came upon my client, did he try to  
15 run from you?

16 A: No, sir.

17 Q: Did he resist at all?

18 A: No, sir.

19 Q: Now, Ms. Livesay made a point about his short and his  
20 other clothing. Did he looked like he tried to hide his  
21 shorts?

22 A: No, sir.

23 Q: In fact were they laying in the service road right where  
24 he went into the woods?

25 A: Pretty, pretty close yes, sir.

1 Q: As far as his body, are you a doctor?

2 A: No, sir.

3 Q: Are you a nurse?

4 A: No, sir.

5 Q: Do you know if somebody's been hurt or anything like that  
6 and can check them out?

7 A: No, sir.

8 Q: Okay. Now, it appears that you were, you were called at  
9 2:55; is that correct; is that what your testimony is?

10 A: That's correct.

11 Q: Okay. So you went straight from there, got the dog or did  
12 y'all go first on the 17 side of the Waterway?

13 A: No, we never went on the east side of the Waterway.

14 Q: So, you remained on the west side at Waterway Hills?

15 A: That's correct.

16 Q: Okay. And as far as when that occurred, unless my client  
17 can jump very far, he obviously swam?

18 A: Yes, sir.

19 Q: Is that correct?

20 A: Yes, sir.

21 Q: Now, did you find anything in his shorts?

22 A: Yes, sir.

23 Q: What was in his shorts?

24 A: I don't know; I never touched his shorts.

25 Q: Do you remember if there was a cell phone?

1 A: I don't recall, no, sir.

2 Q: Okay. If he swam across the Waterway with his cell phone,  
3 do you think it would be able to be used?

4 A: I would say not probably.

5 Q: Okay. Again, you said he was sleeping; it wasn't as if he  
6 was hiding?

7 A: He appeared to be asleep.

8 Q: Okay. And again, his shorts were a short way away from  
9 him, actually more visible than he was?

10 A: Yes, sir.

11 Q: Out in the middle of a service road?

12 A: Well, close to the wooded area, yes, sir, if I remember  
13 correctly.

14 Q: But along the service road?

15 A: Which went right up to the wooded area, yes, sir.

16 MR. HYMAN: No further questions, Your Honor.

17 THE COURT: All right, sir.

18 MS. LIVESAY: Just a real quick one, Your Honor, I  
19 promise, less than a minute.

20 REDIRECT EXAMINATION OF RANDALL GHENT BY MS. LIVESAY:

21 Q: Sergeant Ghent, you're familiar with this, this area here?

22 A: Yes, ma'am.

23 Q: Okay. About the distance as well?

24 A: Yes, ma'am.

25 Q: Okay. About how far would you say it is from this

1 Afterdeck to up here to this shoe store across the Waterway

2 ---

3 MR. HYMAN: Your Honor, I'm gonna object. This is, this  
4 is redirect not her direct.

5 THE COURT: Well, no, it's consistent with your  
6 examination. I'll permit it. Go ahead.

7 MS. LIVESAY: Thank you, Your Honor, just real quick.

8 BY MS. LIVESAY:

9 Q: From here, this is the Afterdeck, about how far would you  
10 say, if you know, if you don't that's okay. About how far  
11 would you say would be up this highway to the shoe store,  
12 across this waterway, across this golf course and about thirty  
13 yards in the woods?

14 A: I'd say at least a half a mile, three quarters of a mile.

15 Q: And that includes the swim and everything?

16 A: Yes, ma'am.

17 MS. LIVESAY: Okay. Thank you, Your Honor, no further  
18 questions.

19 THE COURT: All right. You may come down.

20 A: Thank you, sir.

21 MS. LIVESAY: Can he be excused?

22 THE COURT: Yes.

23 MS. LIVESAY: Thank you.

24 THE COURT: Call your next witness.

25 MS. LIVESAY: Ryan Seipt, Your Honor, S-E-I-P-T.

1 CLERK: Please raise your right hand and place your left  
2 hand on the Bible?

3 RYAN SEIPT, HAVING BEEN SWORN  
4 TESTIFIES AS FOLLOWS:

5 CLERK: Please state your full name and spell your last  
6 name?

7 MR. SEIPT: Ryan Seipt, last name is S-E-I-P-T.

8 DIRECT EXAMINATION OF RYAN SEIPT BY MS. LIVESAY:

9 Q: Where are you currently employed?

10 A: Horry County Police Department.

11 Q: Okay. And how long have you been there?

12 A: Seven years..

13 Q: Okay. And what kind of training have you undergone with  
14 the police department?

15 A: I graduated from the South Carolina Criminal Justice  
16 Academy and we receive training every year in-service and  
17 legal updates and stuff.

18 Q: And what are your current responsibilities at the police  
19 department?

20 A: I'm in Uniform Patrol Division, we respond, first  
21 responders.

22 Q: Okay. And what were your responsibilities in 2009?

23 A: The same.

24 Q: Okay. And were you working on or around September 8th of  
25 2009?

1 A: Yes, ma'am.

2 Q: Okay. About what time did you come on?

3 A: I came on at 5:45 A.M.

4 Q: Okay. And where did you respond to when you first got on?

5 A: When I got on duty, my supervisor called me and let me  
6 know that there had been a homicide during the night and that  
7 somebody had gone across the Waterway into my sector, sort of  
8 my responsibility, and that they had a perimeter and that I  
9 was to go down there and help with the perimeter and help  
10 catch the suspect.

11 Q: Okay. Can you show me on this map I'm showing you now,  
12 State's Evidence Number Thirty, can you -- are you familiar  
13 with this area?

14 A: Yes, ma'am.

15 Q: Can you show the Jury and me where you responded to?

16 A: I was on this side of the Waterway.

17 Q: Okay. Near the golf course?

18 A: Yes, ma'am.

19 Q: Okay. And what was your responsibility at that time?

20 A: Right then was to make a perimeter so that he couldn't get  
21 by where I was because we were trying to catch the guy.

22 Q: Okay. And did he get by where you were?

23 A: No, ma'am.

24 Q: Okay. And did you, were you the one that took him in  
25 custody?

1 A: Yes, ma'am.

2 Q: Okay. And when you did, did you also take his shorts?

3 A: Yes.

4 Q: Okay. And did you place them into evidence?

5 A: Yes.

6 Q: Along with everything that was in his pockets?

7 A: Yes, ma'am.

8 Q: Okay. Now everything you collected from him, you know,  
9 including the shorts, went into evidence; is that correct?

10 A: Yes.

11 Q: Okay. Do you remember collecting a shirt or anything like  
12 that from him?

13 A: A shirt, no.

14 Q: Okay. And if you had of you would have put it into  
15 evidence?

16 A: Yes.

17 Q: Is that correct?

18 A: Yes, ma'am.

19 Q: Okay. If you don't mind, look in here and tell me if you  
20 recognize those?

21 A: Yes.

22 Q: Did you put those in evidence?

23 A: Yes, ma'am.

24 Q: Okay. And are those the shorts you got that were  
25 collected near Blake Griffith?

1 A: Yes, ma'am.

2 MS. LIVESAY: Your Honor, at this time, the State wishes  
3 to place into evidence State's Number Thirty-three and publish  
4 it to the Jury.

5 THE COURT: You may do so.

6 MS. LIVESAY: Thank you.

7 STATE'S EXHIBIT NUMBER THIRTY-THREE

8 ADMITTED INTO EVIDENCE

9 BY MS. LIVESAY:

10 Q: So, these were the shorts you took into evidence?

11 A: Yes, ma'am.

12 Q: I'm gonna lay them right up here. Now the things that  
13 were found in his pockets, you placed those into evidence as  
14 well?

15 A: Yes, ma'am.

16 MS. LIVESAY: Your Honor, I think what we probably need  
17 to do is just mark all this stuff as one, are you okay with  
18 that?

19 THE COURT: I am.

20 MS. LIVESAY: Thank you, Your Honor.

21 THE COURT: As long as the Court Reporter is.

22 MS. LIVESAY: Your Honor, can I use this table to put  
23 these items on?

24 THE COURT: You may do so.

25 MS. LIVESAY: Thank you, it's several of them.

1 BY MS. LIVESAY:

2 Q: Now, I'm showing you what's been marked as State's Exhibit  
3 Number Thirty-five. You mind looking in there and telling me  
4 if you recognize it?

5 A: Yes, ma'am.

6 Q: And did you get that out of the Defendant's shorts that  
7 night?

8 A: Yes, ma'am.

9 Q: And put it into evidence?

10 A: Uh-huh (affirmative response).

11 MS. LIVESAY: Okay. At this time, Your Honor, we wish to  
12 place State's Exhibit Number Thirty-five into evidence and  
13 publish it to the Jury.

14 THE COURT: You may do so.

15 MS. LIVESAY: Thank you.

16 STATE'S EXHIBIT NUMBER THIRTY-FOUR AND THIRTY-FIVE

17 ADMITTED INTO EVIDENCE

18 BY MS. LIVESAY:

19 Q: And do you recognize the items in this bag?

20 A: Yeah; yes, ma'am.

21 Q: And are these the items you got out of his shorts?

22 A: Yes, ma'am.

23 Q: And these are the items that you put into evidence?

24 A: Yes, ma'am.

25 Q: And so everything that you collected off him that night

1 was put into evidence?

2 A: Yes, ma'am.

3 Q: And everything -- these shorts and everything in these two  
4 bags are everything you collected?

5 A: Yes, ma'am.

6 Q: Thank you. You mind stepping down? I want you to  
7 identify these items that you had taken off of him.

8 A: Cell phone.

9 Q: Okay. It looks like that's been taped. Oh, this is like  
10 a little cover for it. Do you have a pocket knife?

11 A: No, I usually do.

12 Q: See if you can get that off for me. Is that his cell  
13 phone that was taken out of his pocket?

14 A: Yes, ma'am.

15 Q: And are these the other items that were taken out?

16 A: Yes, ma'am.

17 Q: So these sunglasses?

18 A: Yes -- and a watch.

19 Q: A watch?

20 A: Yes, ma'am.

21 Q: Some gum; is that right?

22 A: Yes, ma'am.

23 Q: Some peach White Owl cigarillos?

24 A: Cigarillos, yes.

25 Q: I don't even know what that is. Some gum and a lighter.

1 A: Yes, ma'am.

2 Q: So everything on this table is what you collected out of  
3 his pockets?

4 A: Yes.

5 Q: And then these shorts are what you collected nearby?

6 A: Yes, ma'am.

7 Q: Okay. But this is everything that was collected off his  
8 shorts?

9 A: Yes.

10 Q: Okay. And there was nothing on his person that was  
11 collected?

12 A: No.

13 Q: Okay. Thank you. Have a seat. I've got a couple more  
14 questions. Did you find a knife in his pocket?

15 A: No.

16 Q: Okay. And if there had been a knife clipped to his  
17 pocket, you would have placed it into evidence?

18 A: Yes, ma'am.

19 Q: Was there a knife clipped to the pockets of his shorts  
20 anywhere?

21 A: No.

22 Q: Okay. But all this stuff was in his pocket including this  
23 pack of gum?

24 A: Uh-huh (affirmative response).

25 Q: Okay. Now, do you remember what he looked like when you

1 placed him into custody?

2 A: He was wearing boxer shorts. I know that he had some --  
3 that he was dirty. He had some superficial scratches on him  
4 that we had EMS check out, but ---

5 Q: Okay. Is this an accurate picture of what he looked like?

6 A: Yes.

7 Q: Okay. Now did you have EMS check him out before you took  
8 him into custody?

9 A: I believe he was in handcuffs and they checked all his  
10 wounds to make sure he was okay. So he was detained when EMS  
11 looked at him.

12 Q: Okay. So, he was checked out?

13 A: Yes, ma'am.

14 Q: Okay. And did they tell you it was okay to take him on?

15 A: Yes, ma'am.

16 Q: Okay. Now when you saw him, was he bleeding from  
17 anywhere?

18 A: Just scratches, no; it was nothing serious.

19 Q: Okay. Those scratches looked like maybe they came from  
20 the woods?

21 A: It appeared to be, yes.

22 Q: Okay. Did he have any puncture wounds anywhere?

23 A: No.

24 Q: Was he bleeding anywhere from the face, bloody nose,  
25 bloody lip, black eye?

1 A: I don't believe so, no.

2 Q: Okay. How, about how long did it take EMS to check him  
3 out?

4 A: They were close by. The fire trucks and everything were  
5 already out there so it was within minutes. Cause it usually  
6 takes a while, so I remember it was pretty quick.

7 Q: Just a few minutes?

8 A: Uh-huh (affirmative response).

9 Q: Did he appear to have any trouble walking to your vehicle?

10 A: No.

11 Q: Okay. Did he appear to be in any pain or discomfort?

12 A: No, he just seemed really tired.

13 Q: I'm sorry?

14 A: He seemed really tired.

15 Q: Real tired?

16 A: Yeah.

17 Q: Okay. But no pain or discomfort?

18 A: No.

19 Q: Okay. And not bleeding from anywhere?

20 A: No.

21 Q: No bruising anywhere you saw like a black eye or anything?

22 A: No, I would've put that in my report. I don't remember  
23 that at all.

24 Q: Okay. But do you remember, was it light outside when you  
25 put him into custody?

1 A: It was, yes, it was beginning to be light, yes.

2 Q: Okay. Now were you just on the perimeter when they were  
3 looking for him?

4 A: Yes, it was a golf course so we knew there was a wooded  
5 area in-between like where the Waterway is and there's a  
6 wooded area on the golf course. I was on the golf course side  
7 of it just outside of the wood line so that's where I stood so  
8 that I had a clear view and he wouldn't pass the wood line ---

9 Q: Okay. Did you ever take any kind of weapon into custody  
10 that came off that Defendant?

11 A: No, ma'am.

12 Q: Okay. Can I show you a picture? I'm showing you what's  
13 been marked as State's Evidence Number Three. You see the  
14 yellow shorts in that picture?

15 A: Yes.

16 Q: Do you see anything clipped to the shorts?

17 A: Yes.

18 Q: Okay. What does it look like?

19 A: I mean it appears to be like a knife clip.

20 Q: Okay.

21 A: Because I usually carry one.

22 Q: Okay. Clipped to these yellow shorts?

23 A: Uh-huh (affirmative response).

24 Q: But you definitely didn't see anything clipped when you  
25 found them?

1 A: No, ma'am.

2 Q: Did you do anything else to assist in this investigation  
3 once you placed these shorts and these items into evidence?

4 A: No, ma'am; that was it.

5 MS. LIVESAY: No further questions, Your Honor.

6 THE COURT: Mr. Hyman.

7 CROSS EXAMINATION OF RYAN SEIPT BY MR. HYMAN:

8 Q: As far as, as my client goes, you picked him up in  
9 Waterway Hills Golf Community -- Golf Course; is that correct?

10 A: Yes, sir.

11 Q: Now when he got in the car, do you remember if he made any  
12 statement to you about being chased?

13 A: No, I don't remember.

14 Q: You don't remember that in your car?

15 A: No, sir.

16 Q: How about any statement in your car about his head  
17 hurting?

18 A: No, I don't remember that either.

19 Q: We'll get to that in a second. As far as the stuff that  
20 you found again, the phone right here?

21 A: Yes, sir.

22 Q: Did you try to cut it on or anything like that?

23 A: No, I wouldn't have done that.

24 Q: Do you think it would have cut on?

25 A: Probably not, if it was in the water.

1 Q: So you found it, it was obviously damaged from the water?

2 A: Yeah, I wasn't ---

3 Q: Were the shorts wet when you found them?

4 A: They were damp, yes.

5 Q: Still damp?

6 A: Uh-huh (affirmative response).

7 Q: Now, did you pick up the shorts or did the blood hounds  
8 team pick up the shorts?

9 A: The blood hound team showed me where they were because per  
10 their policy, they don't normally touch anything.

11 Q: I understand. So, when you picked up the shorts, they  
12 were wet?

13 A: Damp, yes, sir.

14 Q: Okay. And if the phone is damaged and it's been wet, you  
15 can't make any calls from it, correct?

16 A: Probably, probably not.

17 Q: Now I heard you say that you carried a pocket knife with a  
18 clip on it?

19 A: Usually, yes, not today.

20 Q: Okay, gotcha. As far as my client telling you his head  
21 hurt or that he was being chased in your car, do you have any  
22 reason to dispute that or you just don't remember that?

23 A: I honestly don't remember him saying that.

24 Q: But he could have said that in your car?

25 A: It's a possibility, but if he would've said that, we would

1 have tried to get him more treatment. I mean, I know that for  
2 a fact.

3 Q: So if he said it in your car ---

4 A: If he said he -- EMS had already looked at him so they  
5 thought he was fine. I assume, I mean that's a lot for me to  
6 remember.

7 Q: Well, EMS checked him out in your car, correct?

8 A: We took him out of the car to -- EMS actually pulled up  
9 behind me and we took him out of my car and they looked at him  
10 outside the car.

11 Q: Well what about as far as him telling you he had been  
12 chased?

13 A: I don't remember that.

14 Q: You don't remember that; okay.

15 MR. HYMAN: Court's indulgence. No further questions,  
16 Your Honor.

17 THE COURT: All right. You have any redirect?

18 MS. LIVESAY: No, sir, Your Honor. Can he be excused?

19 THE COURT: He may. Come down please.

20 Next witness.

21 MS. LIVESAY: Your Honor, at this time the State calls  
22 Heather Brummett to the stand.

23 THE COURT: Okay. Have her come around please.

24 Mr. Foreman, ladies and gentlemen, after this witness,  
25 we'll take a short afternoon break.

1 CLERK: Please raise your right hand and place your left  
2 hand on the Bible.

3 HEATHER BRUMMETT, HAVING BEEN SWORN  
4 TESTIFIES AS FOLLOWS:

5 CLERK: State your full name and spell your last name?

6 MS. BRUMMETT: Heather Brummett, B-R-U-M-M-E-T-T.

7 DIRECT EXAMINATION OF HEATHER BRUMMETT BY MS. LIVESAY:

8 Q: Ms. Brummett, how long have you been employed -- I'm sorry  
9 -- where are you employed?

10 A: The Horry County Police Department.

11 Q: How long have you been employed there?

12 A: Since February of '05.

13 Q: Okay. And what kind of training have you undergone in the  
14 police department?

15 A: I did basic training, basic law enforcement, then of  
16 course when I came into crime scene, I went to a three-week  
17 internship with SLED to learn how to be a Crime Scene  
18 Investigator and I've had numerous other crime scene related  
19 courses on-site at different locations and online as well.

20 Q: And what are your current responsibilities?

21 A: Crime scene, we're also attached to our evidence section  
22 so we assist with evidence processing and trace part of  
23 evidence and then, of course, crime scene related duties. We  
24 respond to crime scenes and also handle things at the office  
25 as well.

1 Q: And what were your responsibilities in 2009?

2 A: The same.

3 Q: Okay. And were you working on or around September 8th of  
4 2009?

5 A: Yes, I was.

6 Q: Okay. And while you were in crime scene, did you have an  
7 occasion to assist in the murder that happened at the  
8 Afterdeck?

9 A: Yes, I did.

10 Q: I'm gonna show you some pictures and I'm gonna ask you if  
11 you can identify these pictures?

12 A: Okay.

13 Q: If you don't mind, look through these ---

14 THE COURT: Have these pictures been shown to Defense  
15 counsel?

16 MS. LIVESAY: Yes, sir, Your Honor.

17 THE COURT: All right.

18 BY MS. LIVESAY:

19 Q: Thirty-six through Forty-seven; tell me if you recognize  
20 them?

21 A: Yes, I do.

22 Q: And are those pictures of the Defendant, Blake Griffith?

23 A: Yes.

24 Q: Okay. And have they been altered in any form or fashion?

25 A: No.

1 MS. LIVESAY: Your Honor, at this time the State wishes  
2 to place these photographs into evidence and publish them to  
3 the Jury?

4 THE COURT: You may do so.

5 MS. LIVESAY: Thank you.

6 STATE'S EXHIBIT NUMBER THIRTY-SIX THROUGH FORTY-SEVEN

7 ADMITTED INTO EVIDENCE

8 MS. LIVESAY: And, Your Honor, can I ask her to step down  
9 so she can show what she's getting a picture of?

10 THE COURT: You may do so.

11 MS. LIVESAY: Thank you.

12 BY MS. LIVESAY:

13 Q: If you don't mind, Ms. Brummett ---

14 THE COURT: And, Mr. Hyman, you may join them if you care  
15 to.

16 MR. HYMAN: Thank you.

17 Q: Now, Heather, what's this a picture of?

18 A: This is just front-on photograph of Mr. Griffith. That's  
19 standard, we always do that. That's normally like one of our  
20 first photographs.

21 Q: Okay. And when you took this picture, did he appear to  
22 have any injuries on his face?

23 A: No.

24 Q: Black eye, bloody nose, busted lip, any of that?

25 A: No, none of that.

1 Q: And was this taken shortly -- was it taken at the police  
2 department?

3 A: It was taken at the police department.

4 Q: And was this taken after he was apprehended?

5 A: Yes.

6 Q: Okay. Because he doesn't have a shirt on, correct; looks  
7 like he's got ---

8 A: He's wearing a Tyvek suit, which is things that we use for  
9 -- on other scenes. So a lot of times we'll give defendants  
10 those to put on when we need their clothing.

11 Q: Okay. So, if he didn't have shirt, y'all would've given  
12 him that so he'll have something on?

13 A: Right.

14 Q: Now, is this Blake Griffith?

15 A: Yes.

16 Q: And what is this a picture of?

17 A: That's a photograph of his back.

18 Q: Okay. And does he appear to have any injuries on his  
19 back?

20 A: No.

21 Q: Okay. No puncture wounds, no anything like that?

22 A: No.

23 Q: Okay. And are those, I'm assuming, his boxer shorts?

24 A: Yes.

25 Q: Okay. Is this Blake Griffith?

1 A: Yes, it is.

2 Q: Okay. And what's this picture showing?

3 A: It's just a closer photograph of his back. There's a few  
4 scratches and stuff on his back.

5 Q: Okay. Were any of these major wounds?

6 A: No.

7 Q: Who's this a picture of?

8 A: Blake Griffith.

9 Q: Okay. And what is this a picture of?

10 A: His chest and stomach area and it again just shows just  
11 minor scratches.

12 Q: Okay. And does he have any major wounds or anything on  
13 his chest area, neck, anything like that?

14 A: No.

15 Q: Okay. Now, can y'all, if there is major medical issue,  
16 can y'all bring them to the police department or do you have  
17 to take them to EMS first?

18 A: They have to be seen by EMS first.

19 Q: Okay.

20 A: And then, of course, by a physician if it's serious before  
21 they come to the police department or the jail.

22 Q: Okay. And what's this a picture of?

23 A: His hands. Again, that's a standard photograph; we always  
24 take a photograph of the front and the back of the hands.

25 Q: Okay. And what are you looking for on the hands?

1 A: Injuries, defensive wounds, any kind of markings on the  
2 hands.

3 Q: Okay. And did you put this on him?

4 A: No, I did not.

5 Q: Okay. So, when he got to the police department, he still  
6 had his wristband on?

7 A: Yes.

8 Q: Okay. And his watch?

9 A: Yes.

10 Q: Okay. Now, if you don't mind, just very briefly tell the  
11 jury, you say defensive wound, what is a defensive wound?

12 A: Defensive wounds can be on the back of the hands or the  
13 front of the hands. Typically, if someone is striking at you,  
14 you're gonna put your hands up first. So you're gonna have  
15 some type of scratches or abrasions or something on either of  
16 your wrists or on the back of your hands, like I say,  
17 sometimes the palms.

18 Q: Okay. So it's just when somebody's coming at you hold up  
19 like this or immediately cover like this?

20 A: Right, exactly.

21 Q: Okay. Now, I'm showing you State's Evidence Number Forty-  
22 two; tell the Jury what that's a picture of?

23 A: Of Blake Griffith's hands and palms.

24 Q: Okay. So, you're looking at this picture, do you see any  
25 defensive wounds on his hands, the backs of his hands or the

1 palm of his hands?

2 A: No, I don't.

3 Q: Okay. Now, in any of the pictures that we've seen so far,  
4 have you seen any defensive wounds?

5 A: No.

6 Q: Now, this is State's Evidence Number Forty-one. Do you  
7 recognize -- what is this a picture of?

8 A: This is his left shoulder with some other minor scratches  
9 and there's a scale there also. We use that sometimes to show  
10 how long an injury is.

11 Q: Okay. Now, I'm showing you State's Evidence Number Forty,  
12 who's that?

13 A: This is Blake Griffith. This is his leg and there's some  
14 minor scratches here and most of this blood is dried blood, so  
15 that's not really a scratch; it's just where the blood has  
16 dried on his leg.

17 Q: And this kind of a downward scratch here?

18 A: Yes, it is.

19 Q: I'm showing you State's Thirty-nine; what is that a  
20 picture of?

21 A: That's like the inside of his right arm, his elbow area  
22 showing additional scratches.

23 Q: Now, are these defensive wounds?

24 A: No.

25 Q: They look like anything even like a defensive wound?

1 A: No.

2 Q: And it looks like there's one here and several in here; is  
3 that right?

4 A: Yes, that's correct.

5 Q: I'm showing you State's Evidence Number Thirty-eight;  
6 what's that a picture of?

7 A: That I believe is his right arm, the front of his right  
8 arm.

9 Q: Okay. You see any major injuries there?

10 A: No, again scratches.

11 Q: Okay. Now when we look at this next picture, or this  
12 picture, I'm sorry, I'm gonna hold this one back up. Can you  
13 have a defensive wound here or along in here?

14 A: Yes, you can.

15 Q: And is that from kind of holding your arm up like that?

16 A: Yes.

17 Q: Do you see any of these wounds on this Defendant?

18 A: No, I don't.

19 Q: This is State's Evidence Number Thirty-seven?

20 A: That's the inside of his left arm.

21 Q: Okay. And what do you see there?

22 A: Just again, minor scratches on the bend of the arm and the  
23 forearm.

24 Q: Now, I'm showing you State's Number Thirty-six.

25 A: Again minor scratches of the left -- the left side of the

1 neck and shoulder area.

2 Q: Okay. Any major wounds there?

3 A: No.

4 Q: If you don't mind, Ms. Brummett, have a seat. I've got a  
5 few more questions for you. Now, when you first, looking at  
6 those pictures, it appears that when you took the picture, he  
7 showed up in some boxer shorts, a wristband and a watch; would  
8 you say that's accurate?

9 A: To the best of my knowledge, yes.

10 Q: Okay. No shirt?

11 A: That I recall, no, no shirt.

12 Q: Okay. If he had had a shirt, would you have either taken  
13 into evidence or taken a picture of it?

14 A: Yes.

15 Q: Now, if he had any major wounds of any kind, would you  
16 have made sure to take a picture of that?

17 A: Yes.

18 Q: And were there any major wounds?

19 A: No.

20 Q: Okay. Now, about how long -- about how many pictures did  
21 you snap?

22 A: I honestly don't remember. Probably between twenty and  
23 thirty.

24 Q: Okay. Numerous?

25 A: Right.

1 Q: Okay. So, when you're taking pictures like we just saw  
2 face, every kind -- every part of the body to make sure you  
3 cover everything?

4 A: Yeah.

5 Q: Go ahead.

6 A: We take everything front and back, overall photographs of  
7 face, arms, legs and then up close photographs, of course,  
8 using a scale like you saw in the photographs.

9 Q: Okay. And I'm assuming when you're taking these pictures,  
10 you're in some sort of room with him?

11 A: Yes, we are.

12 Q: Okay. And probably taking twenty pictures of all parts of  
13 the body probably took what ten, fifteen minutes, maybe more?

14 A: Yes.

15 Q: Okay. While you were in that room with him, did he appear  
16 to be in any pain or discomfort?

17 A: No, not that I remember.

18 Q: Okay. And if he had been in any pain or discomfort, would  
19 you have notified somebody, EMS, physician, hospital,  
20 somebody?

21 A: Absolutely.

22 Q: Okay. And did you notify anybody?

23 A: No.

24 Q: Okay. Did you see any wounds that needed any sort of  
25 care?

1 A: No, I did not.

2 Q: Okay. And if you had've, would you have taken a picture  
3 of it?

4 A: Yes.

5 Q: Okay. And while you were in the room with him then was he  
6 able to stand up, move around, respond to whatever you were  
7 asking him to do?

8 A: Yes, he did comply.

9 Q: Okay. So he was responsive with whatever questions you  
10 had?

11 A: Yes.

12 Q: Or asked him to do?

13 A: Right.

14 Q: Okay. So, he definitely was not injured to the point he  
15 couldn't stand up and move around?

16 A: That's correct.

17 Q: Okay. He was definitely of sound mind to be able to  
18 respond to whatever you were asking him to do?

19 A: Yes, he was.

20 Q: Okay. Now, did you collect anything else to assist with  
21 this murder case?

22 A: Yes, I did collect some buccal swabs from him, which is  
23 swabs from the inside of your cheek.

24 Q: Okay. And did you collect any from Blake Brown?

25 A: Yes, I did.

1 Q: Okay. And did you have consent to take those swabs from  
2 both Defendants?

3 A: Yes, from both Defendants.

4 Q: Okay. And when you take a swab, that's just swabbing the  
5 inside of the mouth -- is that correct -- or where are you  
6 swabbing?

7 A: Yes, we use the swabs that's two -- it's like a Q-tip that  
8 you use to clean out your ears. They're in a sterile  
9 container. You open the container, swab the inside of the  
10 cheek, put it in a sterile box with their name sealed the ends  
11 and the date and time.

12 Q: Okay. And a lot of times when you do this are you looking  
13 to match that DNA up with something to assist in the  
14 investigation of the case?

15 A: Yes, but most of the time when it's collected we don't  
16 know if there's any DNA present at the initial scene so it's  
17 just collected whenever we're talking to individuals as a  
18 precautionary thing to help with the case in case it's needed.

19 Q: Okay. And do you as a routine collect fingerprints?

20 A: Yes. Yes and no. It depends on the case. In certain  
21 cases where we know fingerprints are not needed, we do not  
22 collect them. However, it's an unknown case or whether  
23 fingerprints could possibly be needed, then yes, we collect  
24 fingerprints.

25 Q: Okay. And are you looking to match a fingerprint on a

1 weapon or if it's a burglary case on the outside of a window?

2 A: Yes.

3 Q: Okay. But in order to do that, don't you have to have a  
4 weapon to compare and to be able to get a print off of?

5 A: Yes.

6 Q: Okay. And in a stabbing case, wouldn't you need the  
7 weapon as well to assist in and to find out if there's any  
8 blood on the weapon?

9 A: Yes, we would.

10 Q: Okay. And if there was blood on the weapon, would you be  
11 able to -- would that assist you in matching who the blood  
12 belongs to?

13 A: Yes, we could swab it and send it to SLED for possible  
14 processing.

15 Q: Okay. And could you swab the weapon for fingerprints?

16 A: We could test the weapon for fingerprints, yes, and see if  
17 there was any of value.

18 Q: Okay. And in fact there's multiple things when you have  
19 the weapon that you can do to assist in an investigation; is  
20 that correct?

21 A: Yes, there is.

22 Q: How long would you say you've been doing crime scene  
23 investigation?

24 A: A little over seven years.

25 Q: Okay. And about how many cases have you worked? I know

1 it's a lot, just give me an estimate, maybe a year, how many  
2 are you working?

3 A: Maybe in a year I would say about fifty.

4 Q: Okay. Fifty a year?

5 A: At least.

6 Q: Okay. And you're collecting evidence as the crime scene  
7 investigator?

8 A: Yes, that's correct.

9 Q: Okay. And would you say it's more helpful to have the  
10 weapon or less helpful?

11 A: It is more helpful.

12 Q: Okay. Because you're able to collect evidence off that  
13 weapon?

14 A: Most times, yes.

15 Q: Okay. But without it you can never swab for anything,  
16 DNA, get fingerprints, nothing?

17 A: No.

18 Q: Ms. Brummett, one more question. In certain cases, do you  
19 take blood samples, say like in a felony DUI case?

20 A: Yes, I believe they do take them to the hospital. I do  
21 not collect blood samples from anyone, but the hospital can.

22 Q: So, in certain cases blood is collected from the Defendant  
23 to find out alcohol level, drug level, that kind of thing?

24 A: Right. It's usually not used for crime scene related  
25 purposes; however, for alcohol levels and stuff it is.

1 Q: Okay. Now, do you know if there's a time limit on how  
2 quick you have to collect it?

3 A: I'm not familiar with that, no.

4 Q: Okay. Would you say if you did collect it, it would tell  
5 you what was in that person's blood?

6 A: It could. I'm not familiar on the times, but I know there  
7 are time limits and there's a certain breakdown as to how  
8 quick alcohol or any other type of narcotic can come out of  
9 your system and it depends on your weight and again the time.  
10 So, I know it is helpful, but I don't know the time limit.

11 Q: Okay. But there is a time limit?

12 A: Yes.

13 Q: Okay. And certainly the quicker you get it the better?

14 A: Yes.

15 MS. LIVESAY: No further questions.

16 THE COURT: Mr. Hyman.

17 CROSS EXAMINATION OF HEATHER BRUMMETT BY MR. HYMAN:

18 Q: Is it Brummett; is that it?

19 A: Yes, sir.

20 Q: I want to pronounce it right. Now, Ms. Brummett, it's  
21 your testimony that these aren't all the photos that you took?

22 A: Yes, that's correct.

23 Q: Okay. Did you also take photos of the Codefendant?

24 A: Yes, I did.

25 Q: Did you notice any injuries on him?

1 A: He did have some injuries, yes.

2 Q: In fact, did he go to the hospital?

3 A: Honestly, I don't know if he went to the hospital or not.

4 Q: Now, isn't it true that you not only take photos like this  
5 for defensive, but also offensive ones?

6 A: Yes, that is true.

7 Q: Okay. And does he have any offensive wounds on him,  
8 swollen knuckles, anything like that from fighting?

9 A: No, not that I could see.

10 Q: Okay. It doesn't look like he hit anybody and his  
11 knuckles got swollen?

12 A: No.

13 Q: Now down here on the other one can you say, can you see  
14 what this is down here?

15 A: I believe that was dried blood.

16 Q: Could that be some type of small cut he had gotten on his  
17 hands or what?

18 A: Possibly. If it was a cut, I would have photographed it.

19 Q: Well, you did photograph it, though?

20 A: I'm sorry. I would've taken another close photograph.

21 Q: As far as right here, do you see where it looks as if he  
22 has any offensive wounds here?

23 A: No.

24 Q: Now again it's your testimony that this is not all of the  
25 photos?

1 A: Yes, that's correct.

2 Q: Now, you can't photograph any wounds that might be on his  
3 head where he has hair; is that correct?

4 A: Yes, unless there's a laceration or a cut, no.

5 Q: Not a bruise, anything like that that's covered with hair  
6 obviously you can't photograph; is that correct?

7 A: Yes, that's correct.

8 Q: Okay. Now, do you know anything about Mr. Griffith  
9 telling the patrolman who brought him to you about his head  
10 hurting?

11 A: No, I honestly don't know anything about the case other  
12 than I was asked to photograph and swab both Defendants, which  
13 is what I did.

14 Q: No further questions, Your Honor.

15 THE COURT: All right. Can this witness come down and be  
16 excused?

17 MS. LIVESAY: She can, Your Honor.

18 THE COURT: All right. Come down and you are excused.

19 BY THE COURT:

20 THE COURT: Mr. Foreman, let's take a short break.  
21 You've been here very patiently since 2:30 and we want to  
22 start back as soon as the foreman says they're ready. Thank  
23 you.

24 (REPORTER'S NOTE: Jury exits courtroom. 4:26 P.M.)

25 THE COURT: All right. Gentlemen, ladies, let's take

1 THE COURT: My view is that the doctor can explain the  
2 contents of those pictures adequately for the Jury to  
3 understand them and they are somewhat gruesome. So, if the  
4 doctor explain them satisfactorily, I'm satisfied.

5 Bring the Jury in.

6 (REPORTER'S NOTE: Jury enters courtroom. 4:49 P.M.)

7 THE COURT: You may resume your examination.

8 MS. LIVESAY: Thank you, Your Honor.

9 DIRECT EXAMINATION OF DR. EDWARD LEROY PROCTOR, JR. BY MS.

10 LIVESAY:

11 Q: If you don't mind Dr. Proctor, tell the Jury you're  
12 currently working?

13 A: I am a self-employed pathologist currently working at  
14 Grand Strand Regional Medical Center.

15 Q: Okay. And is that in South Carolina?

16 A: Yes, it is in Myrtle Beach.

17 Q: Okay. And how long have you been licensed to practice  
18 your profession?

19 A: Thirty-plus years.

20 Q: Okay. And just briefly tell the Jury a little bit about  
21 your educational background that qualifies you as a  
22 pathologist?

23 A: I received my college degree at Clemson University;  
24 Medical University of South Carolina for my M.D. Degree; did a  
25 combined clinical and anatomic pathology residency in the

1 United States Army at Walter Reed Army Medical Center; and was  
2 Chief Clinical Pathology at Fort Bragg, North Carolina and  
3 completed my requirements for forensic pathology and I am  
4 Board Certified in both anatomic, clinical and forensic  
5 pathology.

6 Q: Okay. And what are your duties as a pathologist?

7 A: Well, as pathologist in my current practice, we run the  
8 clinical lab which is chemistry, blood bank and all those  
9 areas; plus I do anatomic pathology which is surgical  
10 pathology, looking at biopsies and that kind of stuff; and I  
11 also do forensic pathology, which is medical legal  
12 investigation of death.

13 Q: Okay. And that includes autopsies?

14 A: That is correct; uh-huh (affirmative response).

15 Q: Okay. And about how, how many autopsies have you  
16 performed?

17 A: Probably in the neighborhood of 5000-plus.

18 Q: Okay. And if you don't mind, is that a specialty?

19 A: Forensic pathology is a sub-specialty in which you can  
20 become Board Certified through the American Board of  
21 Pathology, which I have met the requirements and have been  
22 Board Certified.

23 Q: Okay. And have you ever been qualified as an expert in  
24 pathology?

25 A: Yes, ma'am.

1 Q: And about how many times?

2 A: A lot, probably several hundred.

3 Q: Okay. And in the courts of South Carolina?

4 A: Yes, ma'am.

5 MS. LIVESAY: Okay. Your Honor, at this time I'm gonna  
6 ask that we recognize Dr. Proctor as an expert in his field?

7 THE COURT: I do so recognize Dr. Proctor as an expert in  
8 his field, he having testified in my court on many occasions  
9 and the other courts in this state. He is an expert in this  
10 field.

11 MS. LIVESAY: Thank you, Your Honor.

12 THE COURT: Do you care examine him on his ---

13 MR. HEWITT: I absolutely agree with that.

14 MR. HYMAN: No, Your Honor, I don't care to ---

15 THE COURT: Okay, thank you.

16 BY MS. LIVESAY:

17 Q: Dr. Proctor, during September of 2009, did you have a  
18 occasion to perform a autopsy on David John Houghtaling?

19 A: I did.

20 Q: Okay. And do you or did you do a report ---

21 A: I did.

22 Q: --- in that case?

23 A: I did.

24 Q: Okay. And if you don't mind, start off by giving a  
25 general description to the Jury?

1 A: Of the autopsy or what I ---

2 Q: What you saw?

3 A: Okay. I was contacted by the Deputy Coroner of Horry  
4 County, Tamara Willard, regarding a possible dispute in which  
5 someone was stabbed and asked if I would do an autopsy, which  
6 includes taking the clinical history, we do external  
7 examination. I examined the body of this man approximately  
8 nineteen years old, just over six feet tall, weighed probably  
9 200 pounds or above and in the course of my external  
10 examination notice a stab wound in the left chest area.

11 This was followed by an internal examination, which ---

12 Q: If you don't mind, Doctor, let me back up just a little  
13 bit?

14 A: Okay.

15 Q: Did you see any injuries to the face?

16 A: I did not; no, I did not.

17 Q: Bruised, busted lip, broken nose, any of that?

18 A: No.

19 Q: Would it have been noted in your report if you did?

20 A: It would have.

21 Q: Okay. So, no injuries to the face or the head?

22 A: No, ma'am.

23 Q: Okay. Now, how about the arms and the hands; you notice  
24 any injuries there?

25 A: I specifically stated in my autopsy report there were no

1 defense wounds about the hands.

2 Q: Okay. And if you don't mind, you said defense wounds,  
3 tell the Jury what you mean by defense wounds?

4 A: Defense wounds occur when someone is involved or is about  
5 to be attacked or be in any kind of altercation where you  
6 throw your hands up to ward off whatever's coming at you.

7 Q: And did he have defense wounds?

8 A: He did not.

9 Q: Okay. And just as to the, like I say, extremities, how  
10 about the legs and feet; you see any injuries?

11 A: No.

12 Q: Okay. How about to his back?

13 A: No, I did not.

14 Q: Okay. So, the only injury you saw was the stab wound to  
15 his chest?

16 A: That's correct.

17 Q: Okay. And at that time, did you follow up as to the cause  
18 of death through that stab wound?

19 A: What follows from that is an internal examination in which  
20 we open the body and examine all of the internal organs and in  
21 the case of wounds, bullet wounds, stab wounds or what not,  
22 establish the direction of the wound and see what it  
23 penetrated and things that it did. This wound penetrated the  
24 left chest wall at about the third rib interspace, laterally.  
25 It passed in a left to right posterior direction striking the

1 left upper lung lobe. The heart sits at an angle in the chest  
2 with the right side sort of rotated up so it caught the right  
3 ventricle of the heart and it caught the aorta as it came  
4 through.

5 Q: So it hit the lungs, the heart and the aorta?

6 A: And the aorta; that is correct.

7 Q: Okay. And looking at that, was that the opinion that the  
8 reason of his death?

9 A: Well, what that did would cause significant injury in  
10 which there was a massive amount of bleeding from both the  
11 heart and the aorta, bleeding from the lungs, it filled up the  
12 pericardial sack with blood as well as the chest cavities with  
13 blood, yes. So that he exsanguinated as a result of the  
14 wounds, yes.

15 Q: Okay. And if you don't mind, I'm gonna show you some  
16 pictures that's already been marked. It's gonna be Fifty,  
17 Fifty-one, Fifty-two, Fifty-three and Fifty-four. Do you  
18 recognize those pictures?

19 A: Yes, ma'am.

20 Q: And are those pictures of David John that you did the  
21 autopsy on September 2009?

22 A: These are.

23 Q: Okay. And did they represent the wound?

24 A: Yes, ma'am.

25 Q: Okay. And that wound on that first picture, that was the

1 entry point before it hit the lung, the heart and the aorta?

2 A: That is correct.

3 MS. LIVESAY: Your Honor, I wish to publish these to the Jury  
4 and place them into evidence?

5 THE COURT: You may do so.

6 STATE'S EXHIBIT NUMBER FIFTY THROUGH FIFTY FOUR

7 ADMITTED INTO EVIDENCE

8 BY MS. LIVESAY:

9 Q: Now, there's also a picture in here -- (To the Court) Can  
10 I ask Dr. Proctor to step down to go through these pictures  
11 with the Jury?

12 THE COURT: You may.

13 MS. LIVESAY: Thank you.

14 BY MS. LIVESAY:

15 Q: If you'll stand on this side and into the microphone. I'm  
16 showing now State's Evidence Number Fifty; is that the wound?

17 A: That is correct. That's the wound in his left lateral  
18 chest going in this direction.

19 Q: Okay. And this was the only wound you saw?

20 A: That's correct.

21 Q: Okay. The only entry wound?

22 A: Correct.

23 Q: Now, would you say this is a puncture wound?

24 A: This is a stab wound, which is not a blunt force injury,  
25 it is characterized as an incised wound where the actual sharp

1 point of the knife entered.

2 Q: Okay. And is that a different wound than if you see one  
3 that's been sliced in a forward fashion.

4 A: Well, a, a, slashing wound is also an incised wound which  
5 you see an elongated cut, but this is actually just a puncture  
6 with a very sharp object.

7 Q: Okay. And if you don't mind, it went in here; is that  
8 correct?

9 A: That's correct. It went in on the left side.

10 Q: Okay. And then show the jury what, how the ---

11 A: It came in on the left side, passed left to right,  
12 slightly posterior catching as it comes forward and through,  
13 the ventricle of the heart as it's rotated over and the aorta  
14 as it comes all right there in one spot.

15 Q: So, it would've went straight through here?

16 A: It went straight through, yes, ma'am.

17 Q: Okay. Now, this is a picture, State's Evidence Number  
18 Fifty-one?

19 A: That's correct.

20 Q: Is that a puncture wound?

21 A: That is a stab wound and it shows it's about a three  
22 centimeter stab wound and it just, it just demonstrates the  
23 entrance sight.

24 Q: Okay. This is State's Evidence Number Fifty-two, the  
25 picture of his hand; do you see any defensive wounds?

1 A: There are no defense wounds there. That looks like it may  
2 be a defensive wound, but when you look closely that is just  
3 blood that's caked on the hand.

4 Q: Okay. But that is definitely not any type of defensive  
5 wound?

6 A: That is not a defensive wound, no, ma'am.

7 Q: Just blood from maybe somewhere?

8 A: Whatever.

9 Q: Okay. Now this Defense Number -- I'm sorry -- State's  
10 Evidence Number Fifty-three; you see a defensive wound on that  
11 hand?

12 A: No, these were described -- these are old resolving  
13 abrasions that, just basically third, one, two, three, right  
14 finger.

15 Q: No major injuries though?

16 A: No, that's old.

17 Q: And that's definitely not a defensive wound?

18 A: That's old. That was not fresh at the time.

19 Q: Okay. And this is just another picture of that stab  
20 wound; is that correct ---

21 A: Closer up of the stab wound.

22 Q: Showing the exact location?

23 A: That's correct.

24 Q: Okay. Thank you, Dr. Proctor. I've got a few more  
25 questions for you.

1 Now, as part of the autopsy, do you pull back the scalp?

2 A: We do.

3 Q: Okay. And what are you looking for when you pull back the  
4 scalp?

5 A: As part of a forensic autopsy, we always remove the brain  
6 and take a look and when we reflect the scalp, we look for  
7 evidence of any bruising, we look at the calvaria, which is  
8 the hard bone of the skull for any fractures and then, of  
9 course we examine the brain to see if there's blood in the  
10 head or any fractures.

11 Q: Okay. And when you say you're looking for that, that's if  
12 somebody hits you in the head, but you see no injury on the  
13 surface?

14 A: I did not.

15 Q: Okay. And but when you pulled the scalp back, if there is  
16 an injury you will see it then?

17 A: Sometimes, yes, you can.

18 Q: Okay. And did you see any injuries in this case?

19 A: I did not.

20 Q: Okay. Now I'm gonna ask you a few questions about CPR.

21 The type of injuries that this young man suffered, was there  
22 any other type of care to give him other than CPR?

23 A: I don't practice clinical medicine, but on, on a scene  
24 like this, someone was down and not breathing, you don't have  
25 much choice. You have to, to have any chance to keep this man

1 alive, you have to get profusion to the brain.

2 Q: Okay.

3 A: Whatever blood is present, you have to get it to the brain  
4 so they can get oxygen to the brain.

5 Q: Okay. That's what CPR does?

6 A: That's what CPR does.

7 Q: Okay. So, if you're just on the scene and he's not  
8 breathing, there's no other care to give him other than CPR?

9 A: Not immediate care that I know of, not unless you're right  
10 there in the parking lot of a hospital and can roll him in or  
11 something like that.

12 Q: Okay. Now, with this kind of wound, would you say at, to  
13 have any chance of survival, you would've had to have  
14 basically been in the parking lot of the hospital?

15 A: To survive this type of wound, this, this wound, when it  
16 puts a hole in the aorta, every time that heart beats, it just  
17 gushes whatever is in the left ventricle of that heart every  
18 beat throws it out. It would -- you know I can't give you  
19 minutes or seconds, but a wound like this would've been very  
20 unlikely that they could have saved this man.

21 Q: Okay. And you said -- let me grab this picture again. I  
22 know you showed us on you. This area here -- it went in here;  
23 is that correct?

24 A: That's correct.

25 Q: And through that one entry wound it hit the heart, the

1 aorta and the lung; is that correct?

2 A: That's correct.

3 Q: Okay. And the heart is sitting somewhere in here?

4 A: The heart is in the mid portion of the chest angled  
5 slightly to the left with the left upper lung lobe actually  
6 laying over the top of the heart, sort of like this. So, the  
7 heart itself is more angled towards the left than it is on the  
8 right. So it's ---

9 Q: Okay. And the, the wound -- I believe, it was the aorta,  
10 I'm not sure, you tell me. Could you actually stick your  
11 finger through one of the wounds?

12 A: Well, the wound itself, once things are open, you never  
13 stick your finger through a wound because you can make wounds.

14 Q: Right.

15 A: But once everything was open and exposed, we could  
16 actually run our finger and lay it through the lung and  
17 actually into the heart and up to the aorta, yes.

18 Q: Okay. And that helps you with the path of the wound; is  
19 that correct?

20 A: We, we always try to determine the path either using our  
21 finger or using a probe device, once we can see everything.

22 Q: Okay.

23 A: Never, you never do it sight unseen because you can always  
24 make wounds that are not real.

25 Q: Okay. And there's no doubt in your mind that this is a

1 stab wound?

2 A: That's a stab wound.

3 Q: Okay. Now, just by looking at the wound, can you tell  
4 what caused this wound?

5 A: It was caused by some sort of very sharp object that the  
6 edges of that thing, if I remember from my report, when you  
7 pose the edges, it's about a three centimeter edge. That does  
8 not necessarily give you the dimension of the knife and there  
9 -- if you look at that, there are no hilt marks or anything on  
10 the knife so that you could use it for identification or  
11 matching up to a certain knife. The other thing is you cannot  
12 judge what type of knife does that by the depth of the wound.  
13 You just can't do it.

14 Q: Okay.

15 A: Because when you put pressure -- you know it takes about  
16 two pounds of pressure to penetrate the skin with a knife.  
17 And once ---

18 Q: Two pounds of pressure just to penetrate ---

19 A: Two pounds of pressure to penetrate the skin and after  
20 that once you've penetrated the skin, you're into the soft  
21 lungs and other visceral organs so it's even less than that.  
22 So if, if I thrust a knife at anyone in this courtroom, I  
23 could take a two-inch pocket knife and if somebody's, you  
24 know, you can pretty much put it halfway through them. So you  
25 can't judge the length and depth of a wound as to what size

1 knife did it either.

2 Q: Okay. It all depends on the pressure and the situation?

3 A: About the only true way to determine what type of knife or  
4 object it was is for a piece of it to actually break off in  
5 bone so that you can match it up or it makes a actual groove  
6 into the cartilage or a piece of bone where you can match it  
7 to the groove, which in this case, we did not see anything or  
8 we would've kept those pieces.

9 Q: Okay. So there was no way to match a knife, any knife, to  
10 this wound?

11 A: It's very difficult.

12 Q: Okay. Very difficult?

13 A: Yes, ma'am.

14 Q: Because of lot of it, like you say, depends on the  
15 pressure?

16 A: It depends on -- it depends on the pressure, it depends on  
17 a lot of different factors. How was the victim, was the  
18 victim pulling away, was the victim turning into, you just  
19 don't know.

20 Q: Okay. Now, let me ask you this: If I was standing still  
21 and you're telling me it takes about two pounds of pressure --  
22 just say I'm just standing here ---

23 A: Uh-huh (affirmative response).

24 Q: Just to penetrate the skin, how much pressure are we  
25 talking to hit three major organs?

1 A: Not much more than that.

2 Q: Okay. Now, would you say any stab wound in this area  
3 right here is a death strike?

4 A: Not -- it just, it depends. Had that particular wound in  
5 this gentleman here been more superficial and hit just the  
6 lung and had come up above and missed the heart or the  
7 structures around the heart, that would have been a serious  
8 wound, but he would not have, you know, it would not have been  
9 a fatal wound necessarily.

10 Q: But this stab wound went straight through?

11 A: It went, it hit -- unfortunately, it hit vital organs or  
12 vital structures as well as vital organs.

13 Q: Okay. And would you say that path was straight through?

14 A: It came in left to right, slightly posterior superior to  
15 hit all the structures.

16 Q: Okay. Now you talked a little bit before about -- do  
17 y'all do a toxicology report?

18 A: Yes, ma'am.

19 Q: Okay. And did you do one in this case?

20 A: We, as part of every forensic autopsy, we draw blood and  
21 we do a blood/drug screen and blood ethanol.

22 Q: And was there alcohol in this victim's blood?

23 A: The blood ethanol was 47 milligrams per deciliter  
24 converting it to grams percent or as you would on the  
25 Breathalyzer .047.

1 Q: Okay. And you would say just for roughly, .08 is the  
2 legal limit?

3 A: That's correct.

4 Q: So, it was less than legal limit?

5 A: Less than legal limit.

6 Q: Okay. And what would you say, what kind of effect would  
7 you say with that kind of blood alcohol level?

8 A: Not a whole lot unless this was someone who never drank.  
9 So, again if it's someone who was a regular consumer of  
10 alcohol that's, that level is not a lot.

11 Q: Okay. So, most people you wouldn't even notice at .04?

12 A: Probably would not.

13 Q: Okay. Anything else in the toxicology?

14 A: The blood drug screen was positive for marijuana and  
15 marijuana metabolites.

16 Q: Okay. And can you tell how much marijuana?

17 A: No, the screen that we do doesn't really quantitate.

18 Q: Okay. And let me ask you this, what kind of effect would  
19 you expect that to have on somebody?

20 A: Again, highly variable based upon frequency of use.

21 Q: Okay. Does marijuana notoriously rip people up or calm  
22 them down?

23 A: It's supposed to be a depressant.

24 Q: Okay. And how about alcohol?

25 A: Alcohol in enough quantity, same thing.

1 Q: Okay. Now, did you do a toxicology on anybody else  
2 involved in this case?

3 A: The only involvement I had in this case whatsoever was  
4 this forensic autopsy.

5 Q: Okay. Now I'm gonna show you some more pictures, Dr.  
6 Proctor, real quick. I'm showing you now what's been marked  
7 as State's Evidence Number Forty-two. It's already into  
8 evidence. That's Blake Griffith's hands; you see any defense  
9 wounds there?

10 A: No, ma'am.

11 Q: Okay. I'm showing you now State's Evidence Number Forty-  
12 three. That's the top of Blake Griffith's hands; you see any  
13 defense wounds or any kind of wounds there?

14 A: No, ma'am.

15 Q: Okay. I'm showing you a picture, State's Exhibit Number  
16 Forty-seven. It's a picture of Blake Griffith's face; you see  
17 any wounds there?

18 A: No, ma'am.

19 Q: Thank you. I show you what's been marked as State's  
20 evidence Number Forty-four. You see any stab wounds or major  
21 injuries there?

22 A: I see what appear to be just some very superficial  
23 abrasions in the midchest area, but no, no stab wounds.

24 Q: Okay. Superficial abrasions?

25 A: Yes, ma'am.

1 Q: Okay. Now, I'm showing you what's been marked as State's  
2 evidence Number Forty-five, a picture of Blake Griffith's  
3 back. You see any stab wounds or major wounds there?

4 A: No, again all I see here is on his left shoulder blade  
5 area what may be a couple of superficial abrasions, but ---

6 Q: Okay. So you, you're an expert and you're telling us  
7 looking at this, these pictures, you see no injuries?

8 A: Based on if I was shown these pictures as part of an exam  
9 or something, that would be what I would say.

10 Q: Okay. And the only thing you saw were some superficial  
11 scratches; is that right?

12 A: On those pictures you showed me, yes, ma'am.

13 Q: Okay. Now when you look at just the outside, you see  
14 anything that looks a death strike or a death stab wound  
15 there?

16 A: Nothing on those, no.

17 Q: Okay. Now, we talked a little bit about defensive wounds.  
18 Okay. We normally expect to see them when somebody raises  
19 their hands; is that right?

20 A: You may or may not.

21 Q: Okay.

22 A: It just all depends on where the hands are in relation to  
23 what's coming at a person.

24 Q: Okay. Let's say a fight breaks out. If somebody's hit in  
25 the head, you might not be able to see it superficially, but

1 you may be able to see it under the scalp?

2 A: That's correct.

3 Q: Did you see any kind of injury on the victim like that  
4 that showed that he had been hit in the head?

5 A: The only, the only injury I saw in this gentleman here was  
6 the stab wound to the chest.

7 Q: Now, the picture of him, his, his face is blacked out in  
8 that picture. Did you see one injury to his face?

9 A: As described in my report, no.

10 Q: And when you mean no injuries, you mean not a bloody nose,  
11 not a bruise?

12 A: I did not see any injury.

13 Q: Nothing there led you to believe he had been in any sort  
14 of fist fight?

15 A: I -- based on what I have seen, I can't say that he was  
16 not -- or was or was not in a fist fight, but I did not see  
17 any evidence that he sustained any type of contusion or  
18 abrasion or other injury, only, the only injury I saw on this  
19 young man was that one wound.

20 Q: Okay. And when you say that, you mean not even a bruise?

21 A: I did not see any, any bruising, no, ma'am.

22 MS. LIVESAY: No further questions, Your Honor.

23 MR. HYMAN: Your Honor, very briefly.

24 CROSS EXAMINATION OF EDWARD LEROY PROCTOR, JR. BY MR. HYMAN:

25 Q: Now, on your toxicology report you said blood alcohol was

1 .047?

2 A: That's correct.

3 Q: Now, the legal limits is .08 on a twenty-one-year-old; is  
4 that correct?

5 A: That's correct.

6 Q: And this gentleman was not twenty-one; I believe he was  
7 nineteen?

8 A: It says he's nineteen.

9 Q: Now, looking at these photos right here, I know you said  
10 that you could not say whether -- or whether somebody --  
11 whether Mr. Houghtaling was or was not in the fist fight.

12 A: Uh-huh (affirmative response).

13 Q: Does anything in here say whether he was or was not and  
14 this is Mr. Griffith?

15 A: No.

16 Q: Now, as far as these, you did not examine Mr. Griffith  
17 though, did you?

18 A: No, sir.

19 Q: These are just a couple of photos that you've been shown,  
20 correct?

21 A: That's correct.

22 MR. HYMAN: Your Honor, I have no further questions.

23 THE COURT: All right. Dr. Proctor may come down. Can  
24 he be excused from his subpoena?

25 MS. LIVESAY: Yes, please, Your Honor.

1 THE COURT: Good morning, Mr. Foreman, ladies and  
2 gentlemen.

3 The Jury is present. You may proceed.

4 MS. LIVESAY: Thank you, Your Honor. At this time, the  
5 State calls Robert Deal to the stand.

6 CLERK: Please raise your right hand and place your left  
7 hand on the Bible.

8 ROBERT DEAL, HAVING BEEN SWORN  
9 TESTIFIES AS FOLLOWS:

10 CLERK: Thank you. State your full name and spell your  
11 last name?

12 MR. DEAL: Robert David Deal, Jr., D-E-A-L.

13 DIRECT EXAMINATION OF ROBERT DEAL BY MS. LIVESAY:

14 Q: Mr. Deal, where are you currently working?

15 A: I'm currently employed with the City of Charleston Police  
16 Department as a Community Action Team Member. I've been with  
17 them for about three years. However, due to operational  
18 readiness of the Air Force, I've been recalled to duty and I  
19 am currently assigned to the 317th Airwing, underneath the  
20 315th, 437th Air Squadrons out of Charleston, South Carolina.

21 Q: And how long have you been in Charleston?

22 A: I've been in Charleston a little over four and a half  
23 almost five years.

24 Q: Okay. And did you work at Horry County Police Department?

25 A: Yes, I worked at Horry County Police Department until

1 November of 2010, where I voluntarily left to seek employment  
2 with the City of Charleston.

3 Q: Okay. And what were your responsibilities when you worked  
4 for Horry County Police Department?

5 A: My last assignment with Horry County Police Department was  
6 as a Crime Scene Investigator. I was responsible for  
7 assisting the different detective divisions and processing  
8 scenes to include homicides, shootings, burglaries, anything  
9 that they deemed necessary that there was evidential value.  
10 We would come out and collect evidence and process that  
11 evidence, either package it for SLED or process it in-house  
12 for ---

13 Q: And what kind of training did you have in order to do  
14 crime scene investigation?

15 A: Over my time with the Crime Scene Unit, I trained with the  
16 FBI at Quantico. I've also trained with private companies  
17 throughout the state. I've probably got over, I would  
18 probably say about four hundred or five hundred hours in  
19 training and been sworn as an expert in crime scene  
20 preservation, crime scene processing, both in General Sessions  
21 and Federal Court.

22 Q: Okay. And how about how crime scenes would you say you  
23 worked while you were at Horry County?

24 A: I'd probably have to estimate it at well over eight  
25 hundred.

1 Q: How many?

2 A: Eight hundred.

3 Q: Okay. And did you work the crime scene of 2009 in  
4 September at the Afterdeck?

5 A: Yes.

6 Q: Okay. And if you don't mind, tell the Jury just briefly  
7 how you get involved in any investigation?

8 A: Any time there's an incident being in this case an  
9 altercation at the Afterdeck or any other place, I have a  
10 supervisor who is notified by dispatch whose been told by the  
11 on-scene supervisor that they need crime scene or they need a  
12 detective to come out. Once my supervisor deems it meets the  
13 criteria for us to respond out, we get a phone call and then  
14 we have a response time to get to that scene where we then  
15 meet the on-scene supervisor who kind of walks us through what  
16 they've done, what they've ascertained about what's happened  
17 and then we speak with a detective at that time, who is also  
18 responding and we then proceed with the processing of the  
19 scene.

20 Q: Okay. And is that the way you were notified in this  
21 particular case?

22 A: Yes, in this incident, my supervisor at the time, Peter  
23 Cestare notified me by phone and advised me that I needed to  
24 respond to the Afterdeck to process the scene.

25 Q: Okay. And do you know about what time you got there?

1 A: I know it was early in the morning. I would have to refer  
2 to my report as it's been a while since that took place.

3 Q: And could you -- would you like to see your report as a  
4 refresher?

5 A: Yeah, that would be great.

6 Q: This is the report.

7 (To the Court) Your Honor, I'm just showing him this so  
8 he can refresh his memory. I know it's been a while.

9 THE COURT: I understand.

10 A: Yes, and in the notification section, it states that on  
11 the 8th day of September of 2009 at 3:25 in the morning.

12 BY MS. LIVESAY:

13 Q: Okay. And when you got there, just tell the Jury a  
14 little bit about what you saw as soon as you got there?

15 A: When I arrived on scene, there were several vehicles.  
16 The establishment was clearing out a lot of the patrons. The  
17 road officers had established a crime scene barrier. A lot of  
18 people see the crime scene yellow tape, that's one of their  
19 main objectives is once they have an established scene, it's  
20 to put that tape up and start documenting areas and try to  
21 secure it as best possible for us to get there to preserve any  
22 evidence that's there. I arrived on scene; I spoke with the  
23 on-scene supervisor. He kind of gave me a little bit of a  
24 rundown of what was going on. At that time, it was kind of  
25 drizzly. It was dark so a lot of the photographs when I was

1 taking them, we had to use different flashes and stuff to try  
2 to make them where they were more visible, but the scene was  
3 secured. A lot of patrons out of the club were being escorted  
4 out and once I got into the facility, it was cleared out.

5 Q: Okay. And when you say you arrived on scene, you mean the  
6 Afterdeck?

7 A: That's correct.

8 Q: Okay. Now, was anybody already cleaning up when you got  
9 there?

10 A: When I first started looking into the Afterdeck,  
11 management had advised that they had done some cleaning. You  
12 know, they -- not everybody is apt to understand that, you  
13 know, there is evidence that needs to be preserved and they  
14 were following the Afterdeck management's policy and  
15 procedures of cleaning up and stuff because they were also  
16 shutting down after the incident, so -- and we had to case  
17 that operation until we got down with our ---

18 Q: And when you first got there, once you observed  
19 everything, did you begin your investigation by going inside  
20 the Afterdeck?

21 A: Yes, once I -- once we had gotten verbal consent from the  
22 Afterdeck management to go in and collect any evidence that we  
23 needed to, typically as our forensics, we start from the  
24 outside and work our way inside because outside is more, it's  
25 got more elemental problems in case it rains and people

1 trampling the area. So I started processing the exterior of  
2 the property because the interior had been secured and I  
3 started working my way in.

4 Q: Okay. So, you actually started from the outside of the  
5 Afterdeck?

6 A: That's correct.

7 Q: Okay. And tell the Jury what you did to begin your  
8 investigation of the outside of the Afterdeck?

9 A: Typically, what we'll do is we'll do like a panoramic  
10 photo, photography collage of the outside. What we're trying  
11 to do is capture the scene as we see it once we get on the  
12 scene. Obviously, we are not there when the incident took  
13 place, but we try to capture what we can even though things  
14 are changing. In this situation, there was a lot of vehicles  
15 still in the parking lot that stretched from the Afterdeck  
16 north and south in the different parking lots. So I took  
17 photographs of those parking lots to kind of document the  
18 vehicles. We were also taking measurements and sketch kind of  
19 their location and distance. Also, we'll collect anything  
20 that we think is possible evidential value that was possibly  
21 in the parking lot. And I believe in this situation, it was  
22 brought to our attention there were several blood pools in the  
23 parking lot that we did process.

24 Q: Okay. And by processing the parking lot, what did you do?

25 A: When we process -- like say for instance a blood pool in

1 this situation, basically what we'll do is we'll photograph  
2 it. We take photographs at three different levels. That way  
3 you kinda have a good view of where it's at in the whole scene  
4 all the way up to up close and then, additionally, we'll take  
5 photographs of it with scale, which means we'll put a ruler  
6 out, that way we can have a good understanding of the  
7 measurement of how big the blood pool is and so forth. Once  
8 we've photographed it and we documented it on our sketch, we  
9 typically take two DNA swabs, they're like Q-tips but very  
10 long ends and we'll swab that material, and in this case, the  
11 blood pool to collect it, which is then dried and placed into  
12 a container, which is sealed.

13 Q: Okay. And I'm showing you what's been marked as State's  
14 Exhibit Number Seventy-one. Do you recognize it?

15 A: Yes, that's the photograph I took and it's the front  
16 entrance of the Afterdeck.

17 Q: Okay. And that's how it looked the night you got there?

18 A: That is correct.

19 MS. LIVESAY: Okay. Your Honor, at this time, could I  
20 place State's Seventy-one into evidence and publish it to the  
21 Jury?

22 THE COURT: You may do so.

23 MS. LIVESAY: Okay.

24 STATE'S EXHIBIT NUMBER SEVENTY-ONE

25 ADMITTED INTO EVIDENCE

1 BY MS. LIVESAY:

2 Q: So this is just a snapshot to show exactly what building  
3 you went in?

4 A: That's correct.

5 Q: And this is the Afterdeck?

6 A: That's correct.

7 Q: It's the front entrance. Now when you got there and you  
8 were investigating, had the crowd cleared?

9 A: Yes, as I arrived on scene, like I said, the patrons -- a  
10 lot of the patrons were clearing out. The road officers, the  
11 responding officers were -- would detain some of the ones that  
12 had witnessed things and agreed to, you know, talk to us and  
13 all that stuff, but the majority of the people had left.

14 People that didn't witness it or people that just didn't care  
15 to help, you know, they had already exited and left the area.

16 Q: Okay. Now where did you start investigating and  
17 processing once you processed the parking lot and the outside  
18 of the Afterdeck?

19 A: Once I got done processing the exterior of the Afterdeck,  
20 I then ---

21 Q: Let me ask one -- I'm sorry -- did your exterior  
22 processing of the Afterdeck include looking in the trashcans?

23 A: Yes, as I entered into the Afterdeck, like any probably  
24 major bar, they have big fifty-five gallon drum style,  
25 Rubbermaid trashcans out front where people can discard their

1 drinks and all that as they leave. It was brought to my  
2 attention by Sergeant Squires at the time, he was the Sergeant  
3 over violent crimes, he advised me that someone, one of the, I  
4 think, the bouncers or somebody said that there was some  
5 clothing inside the trashcan. During a thorough inspection of  
6 the trashcan, I did find several articles of clothing. A lot  
7 of them were covered in different concoctions and drinks and  
8 stuff like that, but they were processed for blood and any  
9 type of evidence that we could find on them.

10 Q: I'm gonna show you what's been marked as State's Exhibit  
11 Sixty-two and Sixty-three. Do you recognize those pictures?

12 A: Yeah, these are the photographs I took and State's Exhibit  
13 Sixty-two would be what we would consider just a general shot  
14 showing the contents and then State's Exhibit Number Sixty-  
15 three, as you can see, there's an evidence marker. It's a  
16 yellow number, which indicates as we process and collect  
17 evidence, that keeps us a log of what we're looking at, but  
18 yeah that's the clothing that was in the trashcan.

19 MS. LIVESAY: And can I place Sixty-two and Sixty-three  
20 into evidence, Your Honor, and publish it to the Jury?

21 THE COURT: You may.

22 MS. LIVESAY: Any objections? No.

23 STATE'S EXHIBIT NUMBER SIXTY TWO AND SIXTY-THREE

24 ADMITTED INTO EVIDENCE

25 BY MS. LIVESAY:

1 Q: Mr. Deal, as to Sixty-two, do you see a, a cut or a hole  
2 in that shirt?

3 A: Yeah, it appears to be a cut or tear of some sort in  
4 probably about the center portion of that shirt.

5 Q: Okay. And the rest looks to be wet, is that right?

6 A: That's correct. And like I said, being that it was in the  
7 trashcan, it could've been a multitude of different things,  
8 but we always swab it and make sure that we collect some type  
9 of evidential value off of it. That way once it's given to  
10 SLED that they can kind of tell us.

11 Q: So the general picture is a purple shirt?

12 A: That's correct.

13 Q: It looks like blood on the back?

14 A: Without, we do -- we'd have to do a what we call a field  
15 test type test and -- when looking at the presumptive of the  
16 blood. I believe in this we did get a field test of which we  
17 then collected a standard sample by swabbing again and we sent  
18 that off to SLED for more evaluation.

19 Q: That shirt was taken into evidence?

20 A: That's correct.

21 Q: Okay. So, it's a shot of a purple shirt with a hole in  
22 the back?

23 A: That's correct.

24 Q: Okay. Would you say it looks a lot like this one?

25 A: Yes, it does.

1 Q: Now, once you looked in the trashcan and did a complete  
2 processing of the outside including the parking lot, where did  
3 you go next to investigate?

4 A: I then entered into the, the night -- the establishment,  
5 took some general shots, photographs of the scene. That way I  
6 could have a good reference. I was also shown by the  
7 responding officers, you know, some areas where there was some  
8 blood inside the club. At that time, again I photographed  
9 those spots, did a different stage of the photography on them  
10 and then I did a close-up with a scale and then collected also  
11 samples of those to be evaluated.

12 Q: Okay. I'm gonna show you what's been marked as State's  
13 Seventy, Sixty-nine, Sixty-seven, Sixty-six, Sixty-five,  
14 Sixty-four; look through those pictures and tell me if you  
15 recognize them?

16 A: Yeah, these are all photographs that I, I took inside the  
17 establishment and to elaborate, also ---

18 THE COURT: Counsel for the Defense has seen these  
19 photographs?

20 MS. LIVESAY: Yes, sir, Your Honor.

21 THE COURT: Very well.

22 THE COURT: I've showed him all these before I marked  
23 them.

24 A: State's Exhibit Sixty-six is again a photograph of where  
25 we would have collected a sample of ---

1 BY MS. LIVESAY:

2 Q: Hold on. Before you go any further, I need to get that  
3 into evidence.

4 Your Honor, at this time, I'm gonna move to put those  
5 photographs into evidence?

6 THE COURT: You may do so.

7 MS. LIVESAY: And publish them to the jury?

8 THE COURT: You may do so.

9 MS. LIVESAY: Thank you.

10 STATE'S EXHIBIT NUMBERS SIXTY-FOUR, SIXTY-FIVE,

11 SIXTY-SIX, SIXTY-SEVEN, SIXTY-NINE AND SEVENTY

12 ADMITTED INTO EVIDENCE

13 BY MS. LIVESAY:

14 Q: If you don't mind Officer Deal, do you mind stepping down  
15 so you can show them what you were trying to get a picture of?

16 THE COURT: Have him talk into the mic to the extent  
17 possible so my Court Reporter can hear it please.

18 A: As I was saying, when we go, when I went into the  
19 establishment, basically what I'm looking at trying to do is  
20 establish a good pictorial review like when -- so, basically,  
21 we'd shoot photographs of different angles inside the club and  
22 in this situation, it was brought to our attention that there  
23 was some blood on the steps here. So this what we considered  
24 wanting maybe a midrange shot showing the blood on, on the  
25 steps. This would be like a distant shot showing a general

1 area of the establishment. This is also just showing some of  
2 the event-type stuff that's going on and also looking into the  
3 area where the blood was collected from a distance.

4 BY MS. LIVESAY:

5 Q: Now, if you don't mind, I'll show you -- if you don't  
6 mind, where is the blood?

7 A: This right here, if you, it's kind of hard to see, but if  
8 you try to see this Rockstar energy drink type signage, if you  
9 look directly down beside it looks like I guess a little Tiki  
10 type area, there's some blood there by that vent that we were  
11 looking at trying to figure out what it was. And this ---

12 Q: Was this the corner here?

13 A: It's like a step up.

14 Q: Okay.

15 A: So on a deck area. In this photograph, this is showing  
16 where I collected a sample, evidential marker number eight,  
17 and also in this photograph you'll see like the north end and  
18 that gives us kind of a general direction. That way if, if  
19 we're talking later or trying to discuss inside the bar, we  
20 know where -- kind of which direction, but yes, you can see  
21 we've got some blood here we collected from. And these are  
22 just more shots showing that general area.

23 Q: Now if you don't mind, this is the cage here?

24 A: Yes, ma'am.

25 Q: Cage here, cage here, but do you remember, or do I need to

1 the pictures showing, there's another cage right in front of  
2 this one?

3 A: I believe there was four cages in this establishment where  
4 they -- I guess, they would dance and stuff.

5 Q: Okay. And you collected a sample from right here?

6 A: That's correct.

7 Q: Okay. Now I'm gonna show you one thing before we go to  
8 the next picture, just hold right there, Mr. Deal. You  
9 remember the inside of the Afterdeck well enough to remember  
10 this dance floor and the four cages?

11 A: Yes, ma'am.

12 Q: Okay. And if you don't mind, show the Jury on this  
13 diagram where you collected the sample of blood from?

14 A: The sample was right here where it's articulated here on  
15 the map, Number Eight.

16 Q: Okay.

17 A: Which would match up to the evidence part.

18 Q: So now looking at those pictures, where you collected that  
19 blood is right here on this diagram?

20 A: That's correct.

21 Q: And it's actually marked Number Eight?

22 A: Yes.

23 Q: To coincide with what you marked there?

24 A: The evidential marker, that's correct.

25 Q: Thank you, Mr. Deal. I'm sorry, I keep calling you Mr. is

1 it Mr. or Sergeant or?

2 A: Mr. is fine.

3 Q: Okay. And the last picture is just a picture from just so  
4 -- it's hard to get a reference point but you see that picture  
5 there?

6 A: Yeah, this picture is dictating, I guess, the stage area,  
7 the two cages there.

8 Q: So, that picture is looking from here towards the stage?

9 A: That's correct.

10 Q: Okay. And how about that next one? I'm sorry; let me  
11 hold this up for you.

12 A: Yeah, this is just another angle looking down toward the  
13 floor, correct.

14 Q: Now did, was there any other blood collected that you  
15 collected from inside, from inside that club; any other slides  
16 of blood you collected from inside the club?

17 A: Inside the club, no.

18 Q: Okay. So, just that blood, the swabs there and taking the  
19 snapshot. Did you do anything else to process the inside of  
20 the club?

21 A: The inside, no.

22 Q: Okay. Was there anything else to do to process the  
23 inside?

24 A: Not in this situation. This is not one of your mass type  
25 scenes. There was a very limited scene to what we had. I

1 mean, we understood there was an altercation and then -- where  
2 a knife was used. We found the blood. A search of the whole  
3 area and that was the only major blood pool we found other  
4 than what we found on the exterior.

5 Q: Okay. And that blood was pooled on the step and a little  
6 above the step; is that correct?

7 A: That's correct.

8 Q: Okay. Let me ask you this. Are you familiar with blood  
9 spatter?

10 A: I have a basic understanding of a spatter, the principles  
11 of it.

12 Q: Okay. And I asked you a little bit earlier about the  
13 inside of the club, okay. Is it hard to do a lot as far as  
14 crime scene when you have three hundred people running through  
15 the crime scene?

16 A: It's -- it makes it more difficult. There's still  
17 evidence there that can be collected. Obviously, if we had a  
18 scene of one person versus three hundred, it would be a lot  
19 easier. With this situation, in this case, it was, it looked  
20 like it was isolated right there at that spot. So ---

21 Q: You say that spot, what do you mean?

22 A: Right there by the cage where we collected that blood  
23 sample. That's, so there wasn't a lot of spread out scene  
24 whereas if you had something possibly like a shooting where  
25 you have casing going in different directions, there would be

1 more potential for it to be altered or possibly jeopardized  
2 due to casings being kicked. In this situation where you only  
3 have blood that was being collected, it was pretty much in  
4 that certain spot. Reviewing it, I didn't see footprints in  
5 it or anything like that. So it was, it appeared to be and to  
6 my best of my recollection, a non -- you know, it wasn't messed  
7 with, tampered with or anything that would cause it not to be  
8 pure.

9 Q: Okay. Now, after you investigated the inside of the club  
10 and taking pictures, taking evidence from the outside, the  
11 shirt, taking some samples out of there, what did you do next  
12 as part of your investigation?

13 A: After doing that, I would always review with the detective  
14 because they're always gathering information as we're  
15 processing the scene that may be pertinent to our case. In  
16 this situation, we knew of another location where possibly  
17 that the Defendant had gone to or was going to, had been at,  
18 so the detective had asked me to ride with him to that  
19 location to process for any possible, you know; clothing,  
20 blood evidence or anything like that.

21 Q: Okay. And before I get too far as to where you processed  
22 next, when you collected those samples from the club, did you  
23 then seal them up? Tell the Jury exactly how they're sealed  
24 and where they go to for -- to protect the integrity?

25 A: Once the blood swabs are collected, they're placed into

1 like a white carton and they are sealed with evidence seal  
2 tape. That way you know if they've been popped open or  
3 anything because the tape is very sensitive. So you would  
4 know if they'd been tampered with. That tape is also  
5 initialed and dated by the person collecting the sample, which  
6 would have been me, until it is then processed by SLED and  
7 then SLED then does their own seal to show that the chain of  
8 custody hasn't been tampered with.

9 Q: Okay. And do you label those slides so SLED knows where  
10 that swab came from?

11 A: Yes, to help them in processing -- because SLED gets our  
12 basic report. They also get the incident report about the  
13 incident. They'll take that information and they'll look at  
14 the carton and on our, on the cartons they have lines where  
15 you can fill out the description of where you're collecting.  
16 That way they have a general idea of what they're testing and  
17 where it was collected from. That way they -- it better helps  
18 them determine exactly what type of sample they have.

19 Q: Okay. And to your knowledge, was any of the swabs  
20 tampered with in any form or fashion between the time you  
21 swabbed and sealed it and put it into evidence?

22 A: No. In this incident and primary with -- when crime scene  
23 personnel are sent out, once I collect a swab, seal the boxes,  
24 I then package them for evidence but I also package them for  
25 SLED. So, that way, once it's packaged, it is my chain of

1 custody all the way through till where it's being transported  
2 to SLED for evaluation.

3 Q: Okay. And where was the next, where was the next place  
4 you processed to assist in this investigation as the crime  
5 scene investigator?

6 A: Referring -- referring to my report, it was [REDACTED]  
7 [REDACTED], North Myrtle Beach. I believe it was  
8 the Palm Keys Hotel.

9 Q: Okay. And did you collect any evidence from that  
10 residence?

11 A: We did a search of the residence that revealed there was  
12 possibly what appeared to be a red substance on the railing  
13 outside the location. A presumptive test revealed that it was  
14 not blood.

15 Q: Okay.

16 A: So evidential value, we didn't find anything pertinent to  
17 this case.

18 Q: Okay. So you didn't collect anything from that residence?

19 A: No.

20 Q: Okay. Now, did you ever process a vehicle?

21 A: Yes, I did. I processed the Jeep Grand Cherokee and that  
22 was at the Afterdeck in the parking lot.

23 Q: Okay. And I'm showing you what's been marked Fifty-eight  
24 through Sixty-one. Tell the Court if you recognize those  
25 pictures?

1 A: Yes, these are the photographs that I took of the Jeep  
2 Grand Cherokee in the parking lot of the Afterdeck.

3 Q: Okay. And is this an accurate picture and nothing was  
4 moved around and you just snapped a shot?

5 A: That's correct.

6 MS. LIVESAY: Your Honor, at this time, I wish to place  
7 these into evidence and publish them to the Jury?

8 THE COURT: You may do so.

9 MS. LIVESAY: Okay.

10 STATE'S EXHIBIT NUMBER FIFTY-EIGHT THROUGH SIXTY-ONE

11 ADMITTED INTO EVIDENCE

12 BY MS. LIVESAY:

13 Q: So this first picture is just a general picture of the  
14 outside of the vehicle?

15 A: That's correct. When we photograph vehicles, like you see  
16 probably on a sales ad for a vehicle. We take them from all  
17 different angles. That way we can capture all the details of  
18 the vehicle.

19 Q: Okay. And why was this Jeep processed; do you know?

20 A: From my understanding from one of the detectives, it  
21 belonged to on the patrons at the club that knew the Defendant  
22 and that there was clothing items in the vehicle belonging to  
23 the Defendant.

24 Q: Okay. I'm showing what's been marked as State's evidence  
25 Number Fifty-nine?

1 A: That's correct. That would be a general shot of the trunk  
2 of the Jeep showing the evidential markers, showing the  
3 clothing. The person in the vehicle wanted to relinquish all  
4 the clothing. She didn't want to have any connection or have  
5 any responsibility for the clothing so we went ahead and took  
6 it into our custody.

7 Q: Okay. And I'm showing now what's been marked as State's  
8 evidence Number Sixty; that was taken from the vehicle; is  
9 that right?

10 A: That's correct.

11 Q: And whose name is on that bag?

12 A: It looks like it says Blake Griffith.

13 Q: Now, the next picture, State's Evidence Number Fifty-  
14 eight. What is that?

15 A: That's just a general photograph. Prior to putting any  
16 type of evidence placard or placement down, we always take a  
17 general shot of the area before we put these things because  
18 technically putting the evidence -- indirectly it contaminates  
19 the scene. So, we want a clean shot with nothing that we've  
20 added to it and that's what that is.

21 Q: Okay. And what else did you do as part of your crime  
22 scene investigation?

23 A: After collecting all the evidence and packaging it and  
24 getting it prepared for any type of further evaluation by  
25 SLED, we, we do up a report, a sketch and document anything

1 and that's just to protect us any way we can throughout this.

2 Q: And once you wrapped up the scene, did you attend the  
3 autopsy as part of the crime scene investigation?

4 A: That's correct.

5 Q: Okay. And if you don't mind, tell the Jury what you did  
6 as -- in attending the autopsy?

7 A: Part of our duties as a crime scene investigator is to  
8 assist Dr. Proctor, who is the pathologist at Grand Strand in  
9 photographing what he finds and the body. In doing so, we  
10 would document anything that Dr. Proctor deems evidential to  
11 him in his, I guess, evaluation of -- for the incident. So,  
12 basically we'll take general photography -- photographs of the  
13 body from all different angles and then any wounds that Dr.  
14 Proctor deems needs to be photographed. In addition, we  
15 photograph any scars, marks, tattoos, anything like that that  
16 may be pertinent for identification and so forth. And then  
17 any of that evidence, anything that we find at the autopsy  
18 that needs to be collected is then released from Dr. Proctor  
19 to me or the crime scene investigator and then we process that  
20 and send it and secure it into evidence.

21 Q: And did you take pictures?

22 A: Yes, I did.

23 Q: Okay. Now, did you collect any evidence from the autopsy  
24 such as swabs?

25 A: Referring back to my report, yes, I did. In this, in this

1 case, as any case, we always collect DNA from the decedent.  
2 That way we have a pure sample to test it against anything  
3 that we find at the scenes and, and in this situation, we did  
4 collect two DNA blood swabs from the decedent's heart because  
5 that's the most purest sample and that was then packaged and  
6 sent to SLED for evaluation against any other evidence that we  
7 had collected.

8 Q: Okay. And just for chain purposes, once you took that  
9 swab, sealed it up, was it tampered with or was this seal ever  
10 broken between when you took it and when you put it into  
11 evidence?

12 A: No, it wasn't.

13 Q: Okay. Now, is that general protocol to take a swab from a  
14 victim for DNA purposes?

15 A: Yes, and, in pretty much all, and it's, it's just how they  
16 standard, SLED has a lot of policies or procedures and I, I  
17 can't go into too much depth because that's their area of  
18 specialty, but yeah, it is a standard practice by our  
19 department at the time to take blood samples for DNA. That  
20 way we knew we had a pure sample from the decedent.

21 Q: Okay. And let me ask you this much, as a crime scene  
22 investigator, do you sometimes use the DNA from the victim to  
23 try to match that DNA to DNA found off of a weapon?

24 A: That's correct. Whenever we type -- anytime we have a  
25 weapon of any sort, knife, gun, pipe, anything like that,

1 sometimes it's hard to, as you've probably seen on TV, to get  
2 a fingerprint. I guess TV likes to show, there's always  
3 fingerprints and that's not always true. We have had very  
4 good success of doing what they call touch DNA and that's the  
5 reason why we collect DNA samples from as many people and  
6 definitely from the decedent that we can because anytime we  
7 have a weapon or any type of object that we want to try and  
8 see who has had contact with it, we swab it for touch DNA.  
9 Touch DNA has had a high rate of being very reliable and  
10 getting hits back from SLED, so that's the reason why we  
11 collect DNA swabs.

12 Q: Okay. And so if there was the victim's blood on a murder  
13 weapon, whether it be from a pistol from being pistol-whipped  
14 or stabbed with a knife, you could take that blood you took  
15 from the autopsy and actually compare it to, if any blood, on  
16 that weapon?

17 A: That's correct and that's one, that's one of the steps  
18 that we always do and always request when we send samples up  
19 to SLED.

20 Q: Okay. And is that why it's a normal protocol to take DNA  
21 from the victim?

22 A: That's correct.

23 Q: Okay. Now, let me ask you this much. Did you take any  
24 DNA swabs from a weapon or from a knife in this case?

25 A: Referring back ---

1 Q: Would you like to look at the evidence record to refresh  
2 your memory?

3 A: That would be, yes, that would be good. Yeah, in this  
4 situation -- in this case, a, a knife was found and it was  
5 swabbed. The handle of the knife was swabbed and along with  
6 the blade. Typically when we swab the handle, we'll swab the  
7 exterior and also the inner side of it because, like anything  
8 else, I don't know if you've ever looked, it's probably got  
9 lint or something inside that handle, which is always a good  
10 place to find just any type of remnants of anything. So we'll  
11 swab the handle and also the inner side of, of the handle.

12 Q: Okay. If you don't mind, tell the Jury how that knife is  
13 described?

14 A: It's described as a green Mossy Oak folding knife.

15 Q: Okay. You swabbed the blade?

16 A: Yes, I did.

17 Q: Okay. And that was described as a green Mossy Oak knife?

18 A: That's correct.

19 Q: Okay. I'm showing you what's been marked as or in  
20 evidence as State's Evidence Thirteen, State's Evidence  
21 Fourteen. Is that a green Mossy Oak knife? You see ---

22 A: It's a -- it's a -- maybe on the blade -- with these seals  
23 it's hard to see exactly but it looks like that's the Mossy  
24 Oak emblem on the blade there and it's a darker color.

25 Q: Okay. But does it say Mossy Oak?

1 A: I don't see it on here. Let's see -- but I don't see  
2 Mossy Oak on there.

3 Q: It does not say Mossy Oak?

4 A: Huh-uh (negative response).

5 Q: Okay. And it looks black to me?

6 A: Yeah, it's a darker color. I mean, depending on the  
7 printing capabilities; it's a dark in color knife.

8 Q: Okay. But you definitely don't see Mossy Oak written on  
9 it?

10 A: No, I do not.

11 Q: Now, let me ask you this, when you're looking at the  
12 records, was a green Mossy Oak knife taken into evidence?

13 A: Looking at the evidence chain that you provided, yes, that  
14 will show that it was taken in.

15 Q: One second, Your Honor. I'm showing you what's been  
16 marked as State's Number Seventy-two?

17 A: Yes; that's correct.

18 Q: Is that a green Mossy Oak knife?

19 A: That is definitely a green Mossy Oak knife.

20 Q: Okay. And was that the knife that was taken into  
21 evidence?

22 A: Again, with these seals, I would have to concur, yes.

23 MS. LIVESAY: Okay. Now this, Your Honor, at this time,  
24 can I put State's Evidence, I'm sorry, State's Exhibit Number  
25 Seventy-two into evidence?

1 THE COURT: You may.

2 MS. LIVESAY: Thank you.

3 STATE'S EXHIBIT NUMBER SEVENTY-TWO

4 ADMITTED INTO EVIDENCE

5 BY MS. LIVESAY:

6 Q: Now looking at this knife, does that say Mossy Oak?

7 A: Yes, it does say Mossy Oak.

8 Q: Is that a green knife?

9 A: Yes, it is.

10 Q: Is that the knife you swabbed?

11 A: Yes.

12 Q: Okay. Now I'm gonna show you this picture again that's  
13 been marked as State's Number Thirteen.

14 A: Uh-huh (affirmative response).

15 Q: Now, looking at that, that's certainly not the same knife,  
16 is it?

17 A: No, that's not even the same style.

18 Q: Okay. So, did you ever swab that knife?

19 A: No, I did not.

20 Q: Was another knife, to your knowledge, ever taken into  
21 evidence?

22 A: Not that I recall.

23 Q: And you say you swabbed this knife; is that correct?

24 A: That's correct. I swabbed the blade and also the handle.

25 Q: Okay. And if you don't mind, tell the Jury why did you do

1 that?

2 A: Basically when we swab that type of -- we're trying to  
3 determine ownership. Obviously, if a weapon is used, say a  
4 knife, we're hoping to find the decedent's or the victim's  
5 blood on the blade showing that that's the actual weapon that  
6 was used. We also look at -- the reason why we swab the  
7 handles is try to find the ownership, possibly who owned the  
8 knife, who possessed the knife at the time of the incident and  
9 that's the reason why we swab those items.

10 Q: Okay. But you need the knife to swab it to find out if  
11 the blood of the victim is on the blade and whether the touch  
12 DNA of the Defendant is on the handle; is that right?

13 A: That's correct.

14 Q: But without a knife, you will never have that evidence; is  
15 that correct?

16 A: That's correct.

17 Q: And you've been doing crime scene investigation for how  
18 long?

19 A: I started crime scene investigation back in 2005, late  
20 2004 into 2005 and then on till ---

21 Q: Would you say it is more helpful in your investigation as  
22 a crime scene investigator to have the weapon, whether it be a  
23 knife, a gun, any weapon?

24 A: It's always helpful because that way you can definitely  
25 when you have -- say in a gun situation, and you have a

1 projectile that you recovered from the decedent. It's always  
2 to be able to connect it to. Having -- not having that weapon  
3 is just like I guess a link in a chain that if you don't have  
4 that link you just, your chain is not truly connected. So  
5 being able to have the knife in this situation in establishing  
6 the different evidential value, yes, it was very crucial to  
7 this.

8 Q: Okay. And in fact though in a gun type situation, just as  
9 an example, if I rack a gun, it actually leaves marks on that  
10 cartridge, doesn't it?

11 A: That's correct. When you chamber a round there is  
12 different things on the firearm that leave impressions on the  
13 casing when, when it's then fired, you have the firing pin  
14 indent which is all very unique and also the extractor on a  
15 firearm leaves a distinguishing mark on the casing. So yes,  
16 we don't have -- all weapons have some sort of mark that they  
17 leave behind. Say a knife, you can probably look at the  
18 puncture wound and be able to tell if it was a serrated knife  
19 versus just a blade. So, that's another reason why it's  
20 better to find those weapons.

21 Q: And just like you were saying, even when you rack the gun,  
22 it actually leaves marks on that cartridge so you can match  
23 the two together?

24 A: That's correct. You can evaluate the extracting marks on  
25 the casing to the extractor on the firearm.

1 Q: So, there's numerous evidence on a gun or, like you say, a  
2 knife that can give you information to assist in that  
3 investigation?

4 A: That's correct; there's a lot of tell-tale signs and  
5 stuff.

6 Q: Including matching that knife with whoever was holding the  
7 knife or whoever's blood is on the knife?

8 A: That is correct. It's showing the ownership by using  
9 touch DNA.

10 Q: Did you collect that green Mossy knife from the scene?

11 A: No, it was not collected from the scene.

12 Q: Okay. Can you look at the evidence records and tell us  
13 where it was collected?

14 A: That's correct.

15 Q: Can I refresh your memory with the evidence record?

16 A: Most certainly.

17 Q: And as crime scene investigator, you have access to all  
18 the evidence; is that correct?

19 A: That's correct.

20 Q: And you're making the decision who sends what to SLED; is  
21 that correct?

22 A: It's typically a joint decision between myself and the  
23 detective. We'll sit down and we'll look over the evidence.  
24 Typically, the detective relies heavily on us because we kinda  
25 see things a little differently, but we also their input

1 because they're also talking with witnesses and everything  
2 else and they may have a little bit of information that could  
3 assist us in determining what goes. Typically in a homicide  
4 situation, we always try to send as much, as much evidence as  
5 possible. That way we don't miss over anything.

6 Q: And looking at this evidence sheet, does it tell you where  
7 that knife was located at?

8 A: The location I recovered from was [REDACTED]  
9 in North Myrtle Beach. It was recovered on the 8th of  
10 September.

11 Q: And do you remember processing that location?

12 A: Yes, originally on -- it was the secondary crime scene  
13 that we processed after leaving the Afterdeck.

14 Q: Okay. And do you know if there was another car that was  
15 processed?

16 A: Not that I recall, no.

17 Q: Okay. But it is possible that another car was processed?

18 A: Most definitely. During any type of an investigation,  
19 sometimes detectives will obtain search warrants for numerous  
20 vehicles that they deem might be part of a scene or part of a  
21 case. Even if we don't process it, they will obtain search  
22 warrants. That way at least they can look into it and  
23 ascertain ownership and so forth.

24 Q: Okay. So, that knife was not directly collected from you,  
25 correct?

1 A: That's correct.

2 Q: You just know from the records that it was put into  
3 evidence?

4 A: That's correct.

5 Q: And it was collected somewhere around that location either  
6 in it or at a vehicle at that location?

7 A: That's correct. That report shows that I processed it.

8 Q: But what you do know is you did swab it?

9 A: That's correct.

10 Q: And that there was only one knife put into evidence?

11 A: That is correct.

12 Q: Okay. And you know this knife here was never put into  
13 evidence or swabbed?

14 A: That's correct.

15 MS. LIVESAY: No further questions, Your Honor.

16 THE COURT: Mr. Hyman.

17 CROSS EXAMINATION OF ROBERT DEAL BY MR. HYMAN:

18 Q: Is it Mr. Deal or Sergeant Deal?

19 A: Mr. Deal is fine, sir.

20 Q: Okay. Now, as, as far as this knife right here, this is  
21 not anything y'all took into evidence though, is it?

22 A: That is nothing I took into evidence.

23 Q: Okay. So, you don't know anything about this knife or  
24 anything like that?

25 A: No, sir.

1 Q: Do you know anything about the facts as far as what  
2 occurred that night or anything like that?

3 A: The only thing that it was given to me -- and this is part  
4 of our process when we arrive on scene as I spoke about  
5 earlier is I'll talk to the responding officers and they kinda  
6 give me a rundown of what they were told. It's not maybe the,  
7 the purest explanation of what transpired but it's basically  
8 what -- they're getting bits and pieces from witnesses and  
9 people that were there and that's what, you know, that's what  
10 I'm given then I begin to process the scene.

11 Q: You don't interview witnesses though, correct?

12 A: No, sir, I don't.

13 Q: Who was the investigator on this?

14 A: I believe the case agent was Detective Neil Frebowitz.

15 Q: Okay, Detective Frebowitz. Now, as far as this knife, you  
16 said you're not sure where it came from; is that correct?

17 A: I knew it came into evidence and that record that was  
18 shown to me shows that I processed the knife for DNA on the  
19 blade and on the handle.

20 Q: Now, if you were processing it on the blade or a handle,  
21 where would you wipe on the blade or the handle?

22 A: Basically, the way I would do is ---

23 Q: Is it like a Q-tip?

24 A: It's like an oversized Q-tip; it's got a very long handle  
25 and a tip. And basically what we would do is because I have

1 two, two areas that I'm looking at trying to get stuff from,  
2 is I'd swab the blade and then typically what I would do is  
3 flip because you're only rubbing one side of the Q-tip, I'd  
4 flip the Q-tip and rub the other side and I would do the same  
5 thing when it came to the handle.

6 Q: Okay. So, you don't take apart the knife; do you rub  
7 inside like the little ---

8 A: Yeah, that's what I was talking about earlier when I would  
9 do the handle basically, as anyone that's got a knife, you  
10 always find lint and all types of stuff inside.

11 Q: Right.

12 A: And I would also swab in there when I collected the handle  
13 as one unit.

14 Q: So, you don't know if this knife though, if whoever did  
15 have it, had time to clean it or anything like that?

16 A: That's correct. You don't know because I didn't know -- I  
17 did not initially collect it from the scene, so I don't know  
18 if it's been altered, tampered with or anything like that.

19 Q: Do you even know who the knife belonged to?

20 A: I would have to refer back to, you know -- personally,  
21 ownership, no, I do not know who bought the knife or who  
22 possessed it.

23 Q: Now, when you arrived at the scene, do you remember what  
24 time it was?

25 A: It was like 3:25 in the morning I believe it was -- oh,

1 I'm sorry, I arrived 4:23. I was notified at 3:25.

2 Q: 4:23?

3 A: Yeah.

4 Q: So, approximately that would be two and a half hours, you  
5 said 4:23, two hours ---

6 A: I got notified at 3:25 and I got there at 4:23, so less  
7 than an hour.

8 Q: Okay. Approximately, two and a half hours after when the  
9 incident occurred?

10 A: Without referring to the actual incident report, right.

11 Q: I understand. Now, when you got there, were there still a  
12 lot of people there?

13 A: There was some patrons still -- like I was saying, when I  
14 arrived on scene the establishment was getting people out.  
15 There were some people standing around and -- in the parking  
16 lot, but inside the club there's no patrons inside other than  
17 the staff that was working. Most of the, I guess the patrons  
18 that were there were on the outside.

19 Q: Did you originally do most of your work outside or inside?

20 A: I always, because of weather -- because once you're  
21 inside, anything inside can pretty much be secured. The  
22 outside is what's critical in case of weather factors and  
23 stuff like that. So, basically I initiate outside; that's  
24 correct.

25 Q: Did you ever go and do Buccal swabs on Mr. Palmer or Mr.

1 Penna?

2 A: I did not collect any oral swabs from anybody. Now, I'm  
3 not saying that other detectives or other people may have  
4 collected anything, but me personally, no.

5 Q: So, to your knowledge, there was no blood or Buccal swabs  
6 taken from either of the victims?

7 A: Without looking at all the evidence chains, I wouldn't be  
8 able to answer that, but from my knowledge, no, I don't know.

9 Q: Now, you said that when you got there, it was obvious that  
10 the Afterdeck had been doing some cleaning; is that correct?

11 A: That's correct.

12 Q: What type of cleaning were they doing?

13 A: There was -- I can remember there was the bouncers and I  
14 guess the staff was throwing stuff in trashcans, they were  
15 already trying to mop the area inside the club. Cause like I  
16 said, the way it appeared is as they were getting patrons out,  
17 they were gonna shut down once we got done doing what we  
18 needed to do. So, they were trying to get themselves set up  
19 to close down.

20 Q: Were they throwing the trashcans out and stuff like that?

21 A: They weren't throwing trashcans out; they were just  
22 throwing everything into the trashcans. They had them because  
23 we were able to stop them in time. Because if we, you know,  
24 if the detectives and myself hadn't have seen what was going  
25 on, them trying to clean up, potentially yes, but at that

1 time, no, they weren't tossing trashcans out; they were just  
2 tossing everything into the trashcans.

3 Q: Okay. And I've seen pictures of the trashcan, but do you  
4 remember the trashcan?

5 A: Yeah, the trashcan was at the front door. We -- it would  
6 be one of the trashcans in the establishment as you walked out  
7 you could discard whatever you were drinking or eating and  
8 there was just, like I said, probably about a fifty-five  
9 gallon Rubbermaid type trashcan.

10 Q: But you don't know what happened to the trashcans that  
11 were inside?

12 A: We looked through -- any trashcans that were still inside  
13 the club that I could see and was, you know, in the scene,  
14 were searched, nothing, but anything -- if they didn't have  
15 any evidential value, we didn't collect anything out of it, we  
16 didn't deem it necessary.

17 Q: Were you specifically searching in the trashcans or  
18 somebody else?

19 A: The initial trashcan where we found the clothing, Sergeant  
20 Squires, as I mentioned earlier, he was the violent crime  
21 supervisor at that time, he was just kind of poking with his  
22 flashlight, saw it, stopped and notified me. Anytime we  
23 process a scene, if I might -- I might be working in place A,  
24 we're gonna have detectives talking to people, we're gonna  
25 have people walking around and their job is just to kind of

1 keep their eyes open, head-on-a-swivel type situation. That  
2 way if they see something, they can bring it to my attention.  
3 That way it's collected correctly and properly and that's what  
4 happened here with that clothing. Detective Squires was  
5 looking around and saw some stuff in the trashcan and brought  
6 it to my attention.

7 Q: But as far as inside, you don't remember going through a  
8 trashcan?

9 A: No, nothing was brought to my attention there.

10 Q: Now again, you don't know my client?

11 A: No.

12 Q: You didn't go do anything with him?

13 A: No.

14 Q: Okay. Did y'all ever do any fingernail, anything like  
15 that on anybody?

16 A: I personally did not do anything. In the autopsy,  
17 basically what we would do is Dr. Proctor would examine and I  
18 don't want to get into his because that's a whole different

19 ---

20 Q: He's already testified.

21 A: Okay. That would be something that was left up to us to  
22 discuss and if we deemed necessary we would. I don't, in that  
23 situation, reviewing my autopsy chain, I don't see any  
24 scrapings.

25 Q: So, as far as that goes, you don't know of any other

1 fingernail scrapings, anything like that for DNA that was  
2 taken from the unfortunately deceased young man or the two  
3 other victims?

4 A: That's correct.

5 Q: And so you were there the entire time with Dr. Proctor?

6 A: That's correct.

7 Q: And did you take all of the photos as far as Dr. Proctor's  
8 office?

9 A: That's correct. I am the ultimate photographer for Dr.  
10 Proctor.

11 MR. HYMAN: Judge, I have a matter to take up outside of  
12 the presence of the Jury.

13 THE COURT: All right. I'll let you go to the jury room  
14 please.

15 (REPORTER'S NOTE: Jury exits courtroom. 10:46 A.M. The  
16 following takes place outside the presence of the jury.)

17 BY THE COURT:

18 THE COURT: Is the door closed?

19 CLERK: Yes, sir.

20 THE COURT: Yes, sir, Mr. Hyman.

21 MR. HYMAN: Your Honor, Mr. Deal has testified -- and  
22 I'll show you this, excuse me, to Nancy and to Martin. Your  
23 Honor, we're gonna ask Mr. Deal to identify this. We would  
24 like to mark it for identification purposes only.

25 THE COURT: What is it?

1 MR. HYMAN: Judge, I have no further questions.

2 THE COURT: Well, do that in the presence of the jury.  
3 Bring the jury please.

4 Now, let's don't have any cross on that issue at this  
5 time.

6 MS. LIVESAY: Yes, sir, Your Honor.

7 THE COURT: I want you to rest in the presence of the  
8 jury, Mr. Hyman.

9 MR. HYMAN: Thank you, sir.

10 (REPORTER'S NOTE: Jury enters courtroom. 10:53 A.M. The  
11 following takes place in the presence of the Jury.)

12 THE COURT: All right. Mr. Hyman, you gonna proceed?

13 MR. HYMAN: Just two quick questions.

14 CONTINUATION OF CROSS EXAMINATION OF ROBERT DEAL BY MR. HYMAN:

15 Q: Again, you don't know if the knife was cleaned or anything  
16 like that prior to you ever getting it?

17 A: No, sir.

18 Q: And again, as far as your knowledge you don't know if any  
19 other DNA evidence was taken from either of the victims or  
20 anything like that?

21 A: That is correct.

22 MR. HYMAN: I have no further questions, Your Honor.

23 THE COURT: Any redirect?

24 MS. LIVESAY: No, sir, Your Honor.

25 THE COURT: You may come down. Thank you.

1 Can this witness be excused from his subpoena?

2 MS. LIVESAY: Yes, sir, Your Honor. At this time the  
3 State wishes to call Matthew Fitts.

4 THE COURT: Okay.

5 CLERK: Please raise your right hand and place your left  
6 hand on the Bible?

7 MATTHEW FITTS, HAVING BEEN SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: State your full name and spell your last name?

10 MR. FITTS: Matthew Graham Fitts, F-I-T-T-S.

11 DIRECT EXAMINATION OF MATTHEW FITTS BY MS. LIVESAY:

12 Q: And if you don't mind, where were you working in 2010?

13 A: I was working for South Carolina Law Enforcement Division  
14 in the Forensic, DNA/Serology Department.

15 Q: Okay. And what were, what were your responsibilities in  
16 that department?

17 A: We typically would receive evidence from crime scenes.  
18 This would consist of traditionally body fluids, blood, semen  
19 or saliva, hair and this evidence we would receive and we  
20 attempt to develop DNA profiles from those. We would also  
21 receive standards from individuals and develop DNA profiles  
22 from them and we would compare those DNA profiles to either  
23 include or exclude someone as a possible contributor to that  
24 item of evidence.

25 Q: Okay. And you don't mind, tell the Jury a little bit

1 about your education to be able to perform that responsibility  
2 at SLED?

3 A: I received my Bachelor's in Science Degree and PhD Degrees  
4 from Clemson University in Microbiology. I worked three years  
5 at Saint Jude's Research Hospital in the Department of  
6 Immunology; five years at the National Institutes of Health in  
7 the Laboratory of Molecular Genetics. I joined SLED's  
8 laboratory in 1995. I worked for them for approximately  
9 fourteen years then I joined Clemson University and was  
10 director of their molecular diagnostic laboratory and now  
11 currently I'm at Claflin University and Orangeburg Department  
12 of Public Safety where we are setting up a regional forensic  
13 DNA lab that I'm the director of.

14 Q: Okay. And how long have you worked at SLED?

15 A: Approximately fourteen years.

16 Q: Okay. And did you do any continuing legal education while  
17 you were at SLED?

18 A: Yes, I did.

19 Q: Okay. Have you ever testified in Court as an expert  
20 before?

21 A: Yes, I have.

22 Q: How many times?

23 A: I would approximate fifty times.

24 Q: Okay. And in the Courts of South Carolina?

25 A: Yes.

1 MS. LIVESAY: Your Honor, at this time, I wish to have  
2 Mr. Fitts recognized as an expert in his field as a Forensic  
3 Scientist.

4 THE COURT: I so recognize him as an expert and conclude  
5 that his testimony is appropriate for the Jury to consider  
6 under proper instructions by the Court.

7 MS. LIVESAY: Thank you, Your Honor.

8 BY MS. LIVESAY:

9 Q: Mr. Fitts, at this time, are you familiar with the DNA  
10 analysis that was done L09-12370?

11 A: Yes, I am.

12 Q: Okay. And if you don't mind, on that case, tell the Jury  
13 what items were submitted to SLED?

14 A: The items submitted were swabs, Item 1, swabs from  
15 suspected blood pool in parking lot; Item 2, swabs from steps  
16 inside of the dance club; Item 3, swabs from suspected blood  
17 smear on hand railing; Item 4, oral swabs from Blakeley Brown;  
18 Item 5, oral swabs from Joshua Griffith; Item 6 were swabs  
19 from a knife blade; Item 7 were swabs from a knife handle; and  
20 Item 8 were swabs from David Houghtaling. Did I pronounce  
21 that correctly?

22 Q: I think.

23 A: Houghtaling.

24 Q: Yes, I believe so. H-O-U-G-H-T-A-L-I-N-G?

25 A: Correct.

1 Q: Now once you get all those items, what do you do next?

2 A: Well, once, once I get the items, if they believe that  
3 there's as some of these items descriptions said, that they  
4 thought that this might be blood, we'll run a serology test to  
5 determine whether in fact it is blood and if it is blood, then  
6 we'll go to the DNA analysis and then the other items, such as  
7 oral swabs or swabbings from a knife where we're just either  
8 trying to look whether skin cells have, have, you know,  
9 transferred to the knife, these swabs will just go straight to  
10 DNA analysis. But the items with suspected blood, we would  
11 run serology tests to determine whether blood was present or  
12 not.

13 Q: Okay. So the only DNA, the standard, which is a swab that  
14 you get that was sent in was from D.J., the victim in the  
15 case, Blake Griffith and Blake Brown, Joshua Griffith is the  
16 way it's listed?

17 A: Joshua Griffith.

18 Q: Joshua Griffith, Blake Brown and D.J. Houghtaling, the  
19 victim?

20 A: That's correct.

21 Q: Okay. Those are the only three standards you were looking  
22 to make a comparison to these items that were sent?

23 A: That's correct.

24 Q: Okay. And did you compare those standards to the other  
25 items submitted?

1 A: Yes, I did.

2 Q: Okay. And if you don't mind, I'd like to go through each  
3 item and you tell us about your result. And the first item  
4 was a blood pool in the parking lot of the Afterdeck; were you  
5 able to match up that blood pool?

6 A: I did develop a DNA profile from that item of evidence,  
7 Item 1 and it was from a non-identified male individual. It  
8 did not match any of the three individuals that I received  
9 standards from.

10 Q: Okay. And how about the swab from the steps inside the  
11 Afterdeck?

12 A: Those were, that was Item 2. We did develop a, I did  
13 develop a DNA profile from that and it matched the DNA profile  
14 of David Houghtaling.

15 Q: Okay. And if you don't mind, do you put a quantitative  
16 number on those results?

17 A: Yes, I do. It, it -- the probability of just randomly  
18 matching that DNA profile in the population is 1 in 2.1  
19 quadrillion.

20 Q: So it was 1 in 2.1 quadrillion chances it matched anybody  
21 other than D.J.?

22 A: That's correct.

23 Q: Okay. And that was the blood listed as inside on the  
24 steps at the Afterdeck?

25 A: That's correct.

1 Q: Now, there was also a blood smear on a handrail; were you  
2 able to get a DNA profile from that swab?

3 A: On that particular swab, I tested it for the presence of  
4 blood and it was negative for the presence of blood so it did  
5 not go on to further analysis.

6 Q: Okay. Now the last item, I believe, was a swab off the  
7 Mossy, the green Mossy knife, the knife blade and the knife  
8 handle; that's Item 6 and 7. Were you able to develop a  
9 profile on those swabs?

10 A: Item 6, which was the swab from the knife blade, I  
11 developed a partial profile, which was, if there was not  
12 enough information there to reliably interpret anything from  
13 that profile.

14 Q: Okay. And how about Item 7?

15 A: The Item 7, this was actually -- the profile that was  
16 developed from there, we could tell that it was a mixture of  
17 more than one individual, but there was a major contributor to  
18 this mixture and the DNA profile of the major contributor  
19 matched the DNA profile of Blakely Brown.

20 Q: Okay. And that was the swab taken off the handle of the  
21 knife?

22 A: That's correct.

23 Q: Okay. Now did you analyze any of the other items in this  
24 case?

25 A: No, I did not.

1 Q: And you never received a standard from Robert Penna or  
2 Ryan Palmer?

3 A: No, I did not.

4 Q: Okay. So it is quite possible that the blood in the  
5 parking lot could have matched theirs, but there was no  
6 standard to compare it to?

7 A: That's correct.

8 Q: But the one standard that matched up was for D.J., the  
9 victim, David John, it was his blood on the steps inside the  
10 Afterdeck; is that correct?

11 A: That's correct.

12 Q: Okay. And you were able to develop a profile on the  
13 green, Mossy knife handle and that matched Blakely Brown?

14 A: That's correct.

15 Q: Now, there was one more. When you get an unidentified  
16 sample like the blood in the parking lot, do you, what do you  
17 do with that, do you put it in any sort of index to try to  
18 figure out who it belongs to?

19 A: It, if it's, if it's a sample that they, that may be, may  
20 be contributed by the suspect in the crime, and if that's the  
21 case, then that DNA profile is entered into our State DNA  
22 Database, which is also uploaded into the National DNA  
23 Database called CODIS. So that profile was loaded into the  
24 State Database and the National Database.

25 Q: Okay. But it never came up with a match, not to this

1 date?

2 A: And that I would not know because the databasing  
3 laboratory is another arm of the forensic DNA laboratory and  
4 they would only get the reports whether a hit was made or not.  
5 I don't get those reports.

6 Q: And that's because there's some confidential information  
7 as to who's in CODIS.

8 A: Correct.

9 Q: Okay. Now but you are sure that none of the blood,  
10 whether inside at that Afterdeck or the pool that was found in  
11 the parking lot, none of that blood belonged to Blakely Brown  
12 or Joshua Griffith?

13 A: That's correct.

14 MS. LIVESAY: Nothing further from this witness, Your  
15 Honor.

16 THE COURT: Mr. Hyman.

17 CROSS EXAMINATION OF MATTHEW FITTS BY MR. HYMAN:

18 Q: Dr. Fitts; is that correct?

19 THE COURT: Let me -- we've, you've admitted as to the  
20 chain in this matter, have you not?

21 MS. LIVESAY: I'm sorry, Your Honor?

22 THE COURT: The chain?

23 MS. LIVESAY: Your Honor, my understanding was they  
24 consented to the chain.

25 MR. HYMAN: We did.

1 THE COURT: Just as long as the record reflects that.

2 MR. HYMAN: Yes, sir.

3 THE COURT: The Defense has consented to the chain of  
4 custody. All right. That's fine.

5 BY MR. HYMAN:

6 Q: In regards to your findings on that, do you find anything  
7 on the knife with Joshua Griffith?

8 A: No, I did not.

9 Q: Okay. Now when you have a partial, does that mean that  
10 there is some evidence found, but it's not enough to, to  
11 fully, I guess analyze; is that ---

12 A: To make an appropriate comparison. When we try to develop  
13 a DNA profile, we look at fifteen different genetic sites in  
14 your DNA that we make a comparison with and when I say a  
15 partial profile, it means out of those fifteen sites that we  
16 looked, looked at, we maybe only have one or two sites  
17 actually develop. So, we would only have one or two sites or  
18 less at times to make a comparison and you cannot make an  
19 accurate comparison with that little information.

20 Q: And now the partial was found on the blade; am I correct  
21 in that?

22 A: Yes, it was.

23 Q: Okay. And you certainly don't want to make a mistake on  
24 DNA or anything like that so you don't try to guess on a  
25 partial; is that correct?

1 A: That's correct.

2 Q: Okay. Now, when it comes to this knife, when it was  
3 found, how you received it or anything, you don't even know if  
4 it came from or where it came from or anything like that, do  
5 you?

6 A: No, I don't.

7 Q: Could -- if someone was to thoroughly clean their knife,  
8 can it remove DNA?

9 A: There are methods, you know, some better than others, some  
10 methods would be more efficient at, at cleaning it from, you  
11 know, containing any skin cells or DNA and other methods  
12 probably would be less efficient.

13 Q: Let's say I take this knife and I take it home and I want  
14 to clean it, pour alcohol on it, pour bleach on it, scrub it  
15 real good and close it back up and put it in my pocket knife  
16 or put it in my pocket. Would it still maintain the touch DNA  
17 from when I did that and put it in my pocket?

18 A: The odds are if there was something as thorough as you  
19 said, if you bleached it, alcohol, you did that type of  
20 thorough cleaning, you know, the, the less likely it would be  
21 that we would be able to develop a profile.

22 Q: But if I without gloves on, after cleaning it, I dried it,  
23 closed it with my hands, nothing else?

24 A: Uh-huh (affirmative response).

25 Q: And put it in my pocket, would it maintain my skin DNA?

1 A: Yes, you would have some of your skin DNA on there, yes.

2 Q: And suppose you had never examined the knife or anything  
3 like that, you were just given swabs, you wouldn't know if it  
4 had been cleaned or anything like that?

5 A: No, I would not.

6 MR. HYMAN: No further questions.

7 THE COURT: Anything in redirect?

8 MS. LIVESAY: Just one redirect, Your Honor.

9 THE COURT: Ma'am?

10 MS. LIVESAY: Just one quick question.

11 REDIRECT EXAMINATION OF MATTHEW FITTS BY MS. LIVESAY:

12 Q: Mr. Fitts, even if you clean it with bleach or alcohol,  
13 there's still a chance you can get evidence off of it, isn't  
14 it?

15 A: There's a chance.

16 Q: Okay. But if you don't have the knife at all, then  
17 there's absolutely no chance; is that correct?

18 A: Yes.

19 Q: Okay. You gotta at least have it to be able to make a  
20 comparison?

21 A: He would have had to have handled it to transfer some skin  
22 cells.

23 Q: Okay. But you would have to at least have a knife to swab  
24 it to get that evidence off of it, wouldn't you?

25 A: I'm sorry, are you talking about me personally?

1 Q: Any investigation?

2 MR. HYMAN: Your Honor, I'm gonna object. He's, he's  
3 here to testify as to his findings.

4 THE COURT: No, sir, I'll let ---

5 MS. LIVESAY: I'm just asking him ---

6 THE COURT: I understand the question. He can answer it.

7 MS. LIVESAY: Thank you, Your Honor.

8 BY MS. LIVESAY:

9 Q: Now science has gotten pretty good, would you say, about  
10 collecting evidence?

11 A: Yes.

12 Q: Okay. Even if you bleach the knife now, there's even,  
13 there's still some chance you can get evidence off of it; is  
14 that correct?

15 A: That's correct.

16 Q: Even when people wash their clothes, there's still some  
17 chance you can get evidence off of it; is that correct?

18 A: That's correct.

19 Q: Okay. Really the only way that there's absolutely no  
20 chance you can collect evidence is if you don't have any of  
21 those items; is that correct?

22 A: That's correct.

23 MS. LIVESAY: No further questions.

24 MR. HYMAN: Judge, just one question on redirect.

25 THE COURT: Sure.

1 RE-CROSS EXAMINATION OF MATTHEW FITTS BY MR. HYMAN:

2 Q: On this evidence, you have a positive match with Blakely  
3 Brown, correct?

4 A: Are we talking about Item 7?

5 Q: That's correct.

6 A: That's correct.

7 Q: And you have a partial but you just don't have enough to  
8 determine what that is?

9 A: That's correct.

10 Q: And it's negative for my client, Blake Griffith?

11 A: For Item?

12 Q: Joshua Griffith?

13 A: No, I'm not drawing a conclusion at all from, from the  
14 partial profile.

15 Q: But from your findings, it is negative for Joshua  
16 Griffith, Joshua Blake Griffith?

17 A: Not for, no, I am not drawing any conclusion as to who  
18 that could be from Item 6.

19 Q: I'm not referring to the partial. I'm just referring to  
20 in your findings, did you find anything with Joshua Griffith  
21 on that knife; and I'm not referring to the partial?

22 A: No.

23 THE COURT: All right. You may come down.

24 MS. LIVESAY: Thank you, Your Honor.

25 THE COURT: Can this witness be excused?

1 MS. LIVESAY: Yes, please, Your Honor.

2 THE COURT: Thank you. Next witness.

3 Yes, ma'am.

4 MS. LIVESAY: Your Honor, at this time, the State calls  
5 Klevis Horanlli.

6 THE COURT: All right. Have him come around please.

7 CLERK: Sir, please raise your right hand and place your  
8 left hand on the Bible.

9 KLEVIS HORANLLI, HAVING BEEN  
10 SWORN TESTIFIES AS FOLLOWS:

11 CLERK: State your full name and spell your last name?

12 MR. HORNALLIE: Klevis Horanlli, the last name, H-O-R-A-  
13 N-L-L-I-E.

14 DIRECT EXAMINATION OF KLEVIS HORANLLI BY MS. LIVESAY:

15 Q: And, Klevis, where are you currently living just, in  
16 general?

17 A: I'm sorry?

18 Q: Where are you currently living?

19 A: Myrtle Beach, South Carolina.

20 Q: Okay. And where were you living in 2009?

21 A: Same place.

22 Q: Okay. And were you working?

23 A: Of course.

24 Q: Okay. Where were you working?

25 A: I think it was Pomodoro's, I was a waiter at Italian

1 restaurant.

2 Q: Okay. And if you don't mind, make sure you speak into the  
3 mic so everybody can hear you?

4 A: I'm a little bit sick so it's like...

5 Q: Okay. Now, had you ever been to the Afterdeck?

6 A: Of course.

7 Q: More than one time?

8 A: Uh-huh (affirmative response).

9 Q: Had you been there on or around September 8th of 2009?

10 A: Uh-huh (affirmative response).

11 Q: Okay.

12 THE COURT: Don't say uh-huh, please answer yes or no.  
13 We can't put uh-huh in the record.

14 A: It's my first time in the courtroom.

15 THE COURT: I understand but please say yes, sir. I  
16 understand.

17 A: Yes, Your Honor.

18 BY MS. LIVESAY:

19 Q: So you were there on September 8th, 2009?

20 A: Yes..

21 Q: Okay. Now about what time did you arrive at the Afterdeck  
22 that night?

23 A: If I'm not mistaken, most of the time when we go it's  
24 normally about midnight, 12:00, 11:30-ish.

25 Q: Okay.

1 A: It can be sometimes after 12:00, but most of the time  
2 about midnight all the time.

3 Q: Okay. And who did you go to the Afterdeck with?

4 A: It was a friend of mine, just me and him and we met up  
5 with another person. It was me and my friend, Ergys, when we  
6 go over there met up with my friend, Mike Vera and then once  
7 you get inside there, you got plenty of buddies.

8 Q: Okay. Had you been drinking before you went to the  
9 Afterdeck?

10 A: Oh, yeah.

11 Q: Had you been drinking once you got to the Afterdeck?

12 A: Uh-huh (affirmative response).

13 Q: If you don't mind, tell the Jury what you remember that  
14 night happening at the Afterdeck from the time you got there.

15 A: From the time I, excuse me, from the time I got there, the  
16 first thing we did is we went to the bar. We got a couple of  
17 drinks. We got invited to VIP; it was top of the pool area.  
18 On the VIP it was nobody but one of our friends, we didn't  
19 know nobody in that VIP except him, so we go inside there. We  
20 just kinda like hanging out. I realize there's some few guys  
21 in there that does not like us being there. So we just minded  
22 our own business. Somehow the guys approached us and they try  
23 to like fight us and, you know, once the bouncers realize the  
24 whole situation was handled and being controlled. We got  
25 escorted outside. They got escorted outside. In the

1 meantime, we try to escalate the situation with these guys to  
2 make sure we're not gonna have any beef or anything. So we  
3 squashed the fight, the other guys are asked to leave the  
4 place. So I remember looking at the taxi when that got  
5 escorted and, in the meantime, we're outside. There was a  
6 couple of gentlemen that came close to us and was one short,  
7 one tall, dressed up like a little bit thuggish, I don't know  
8 if guys understand that, but baggy clothes, big pants. You  
9 know, us, most of time you go in a club everybody looks nice,  
10 dressed up, crispy. And they approached us, mostly to me, I  
11 want to say, with an idea of we seen what you done up there,  
12 if you need any help, we are for you; if somebody just kind of  
13 says that, kind of like not scares you, but it's like wait a  
14 second, what? And we're like no, I'm okay. It's like, nah,  
15 if you do and need any help, we'll help you out. And I  
16 remember, I'm sorry -- and I remember one of the gentlemen  
17 lift up his shirt and if I'm not mistaken, I seen a knife.  
18 Now once we seen that, he's like, okay, we need to get out of  
19 here because most of the friends we hang out with, we don't  
20 walk around with no weapons or anything like that. So the  
21 owner was approaching to us so we leave this gentleman and  
22 says like no, we're good and just walk out. The owner told us  
23 that we're allowed to go back in the club and I want to say,  
24 we get inside of the club, took a left to the VIP upstairs,  
25 went to the bar, about five minutes after that, that's all

1 situation with the stabbing happened. You see the whole crowd  
2 moved from one side to another. And once we see that  
3 happening, everybody was going out, we came downstairs, came  
4 outside and I remember seeing a gentleman on the left was  
5 stabbed in the back. There was one on the ground and one in  
6 the parking lot. At that time, I'm driving, I'm driving an  
7 Audi, a German car, so all the German cars come with a first  
8 aid kit. The first thing that came to my mind was I need to  
9 do something because I seen everybody bleeding. So I just  
10 went to the car and get my first aid kit and start helping  
11 them one by one wherever I could except the gentleman was  
12 stabbed in the heart or whatever. And nobody let me touch  
13 him, so I was like okay. And that was it. After I started  
14 helping as much as I could just with the first aid kit box and  
15 went straight back to, I want to say, club there and then from  
16 there to the house.

17 Q: Now, the two guys that approached you, were those the guys  
18 that you got in an altercation with upstairs?

19 A: No, this was a completely different crew.

20 Q: Completely different guys?

21 A: Yeah.

22 Q: Okay. Had you ever seen them before?

23 A: That was a one time. After that I never seen them before  
24 or after.

25 Q: Okay. And how would you describe their demeanor when they

1 approached you?

2 A: I mean, I know one was short and one was taller than the  
3 other one.

4 Q: Did they approach you together, both of them?

5 A: They approached together, but the one was, he seemed like  
6 he was the leader of the two of them, you know. He was trying  
7 to show that he's tough, I want to say, trying to show that,  
8 you know, I'm-ready-to-die-for-you type of thing and I don't  
9 even know this guy.

10 Q: Okay. Now were both of them thuggish?

11 A: Uh-huh (affirmative response).

12 Q: Both of them dressed alike?

13 A: Uh-huh (affirmative response).

14 Q: Both of them approached you together?

15 A: Both approached but only one was speaking.

16 Q: Okay. But the other guy didn't say anything different?

17 A: No.

18 Q: Okay. And did he appear to be with this other guy, did  
19 they appear to be there together?

20 A: Together.

21 Q: Okay. But they were not the same guys that you got in the  
22 fight with?

23 A: Of course not.

24 Q: Okay. And about how long did you talk to those guys?

25 A: Man, it was fast because I was just thinking about how we

1 got into an argument with these guys and these guys are coming  
2 to me trying to help me out and it's like I just want to get  
3 inside.

4 Q: Did you know what they meant help you out do what?

5 A: If I get into a fight, they'll be there for me and they  
6 will beat the crap out of the people that want to fight with  
7 me or get stabbed, I don't know. I'm pretty sure they was  
8 trying to help me out if I get into a fight, we'll-ride-and-  
9 die-for-you type of thing because -- most of the time only  
10 your closest friends don't do that. I mean, got two guys that  
11 you never met before that want to help you out when you get  
12 into a fight, it's kinda like awkward like. How you gonna  
13 approach to me like that; I don't even know you?

14 Q: Okay. Did you try to engage them in conversation or did  
15 you immediately walk away?

16 A: I tried to cut the conversation as short as possible. I  
17 kept telling, I'm good, I'm good. So, we just kinda like;  
18 let's walk away.

19 Q: Okay. So you didn't turn around and start talking to  
20 them?

21 A: No, they came to us and then once I heard -- just like  
22 let's go.

23 Q: Okay. And when you say us, about how many of you and your  
24 friends were standing out there?

25 A: I want to say no more than five.

1 Q: Okay. And y'all were just kinda standing there in a group  
2 trying to get back in?

3 A: We're just waiting for the owner because normally if it's  
4 not your fault in a nightclub when you get into a fight, you  
5 will get back inside and the people that had their fault, they  
6 will have to leave. So, we're just waiting for the owner to  
7 tell us if we're allowed to come back in or not. So, in that  
8 period of time, he did come outside and tell us we're allowed  
9 to come back in.

10 Q: Okay.

11 A: And then once I got back in, I never seen those two guys  
12 after that.

13 Q: Now, did you have a weapon on you that night?

14 A: No.

15 Q: But you did almost get in an altercation with somebody

16 A: Yes.

17 Q: But you didn't have a weapon?

18 A: No.

19 Q: To your knowledge, did any of your friends have a weapon?

20 A: We don't carry no weapons.

21 Q: Okay. Just in general or out to a nightclub?

22 A: Just all the time, we don't carry knives, we never carry a  
23 gun or anything like that.

24 Q: Now, how, how much time did you spend, would you say you  
25 spent total with those two guys?

1 A: No more than five minutes.

2 Q: Okay. Did ---

3 A: It could've been shorter than that.

4 Q: Then you walked away?

5 A: I can't remember because I was very intoxicated if I  
6 walked away or if they walked away type of thing be we just  
7 like nah, I'm good, let's go inside back in there.

8 Q: Let me ask you this now. You were drinking pretty heavy  
9 that night, correct?

10 A: Yep.

11 Q: But you remember this?

12 A: Parts of the night.

13 Q: Would you say when they approached you talking that kind  
14 of talk and looking the way they were that it heightened your  
15 senses, your awareness of what was going on?

16 A: Say that again; I'm sorry.

17 Q: Would you say that when you saw these guys and they were  
18 saying what they were saying to you, that it kinda alerted you  
19 that this might be trouble?

20 A: Yes and no. No, because I don't know, some people do  
21 things just talk than the one that will do something, there's  
22 some people that they'll talk and they're about to do  
23 something. As far as I know the way they were prepared, I'm  
24 pretty sure they wanted to impress somebody. I don't know if  
25 they wanted to impress me or somebody else, but with a doubt

1 in my mind they were up to something. If you come with  
2 something like that in a club, then you're not coming to have  
3 a good time.

4 Q: Now, did you and any of your friends, were y'all looking  
5 to get in a fight?

6 A: No, we're there to get girls only.

7 Q: Okay. And what were you wearing that night, you remember?

8 A: Oh God, that's like four years ago.

9 Q: Were you wearing a wife-beater or ---

10 A: I want to say it was probably like a button-up shirt,  
11 jeans, shoes, most of the time it would've be a plain color  
12 type clothes.

13 Q: Okay. And do you know Seth Rogers?

14 A: Seth Rogers?

15 Q: Uh-huh (affirmative response).

16 A: Probably by face. I don't know about no name.

17 Q: Okay.

18 A: It doesn't ring a bell.

19 Q: Do you think if you saw him you'd recognize him?

20 A: I'm normally better with the faces than with the names.

21 Q: Okay. So, if I brought him in the courtroom, you think  
22 you'd recognize him?

23 A: I don't know; who is this guy? Who is this gentleman?

24 Q: I'm sorry?

25 A: Who is this Seth Rogers?

1 Q: He was at the club that night. Do you think you'd  
2 recognize him if you saw him again today?

3 A: If you show to me the face I'll tell you.

4 Q: Okay. Your Honor, can I bring him in the courtroom to see  
5 if this witness can identify him?

6 THE COURT: You may do that?

7 (REPORTER'S NOTE: Mr. Rogers enters courtroom.)

8 BY MS. LIVESAY:

9 Q: You recognize this guy?

10 A: Of course.

11 Q: Okay. So you do know him?

12 A: We're club buddies.

13 Q: Thank you. Could you put him back outside? Sorry about  
14 that. So, you do know that guy?

15 A: Yes, ma'am.

16 Q: Okay. And he was at the Afterdeck that night?

17 A: I'm pretty sure. Every time we go out to a nightclub, we  
18 see him. So, he's one of those friends that you always meet  
19 around the club. It's a every-time-you're-there-he's-there  
20 type of thing.

21 Q: So, if y'all were at a club, y'all definitely speak?

22 A: Of course.

23 Q: Kinda talk a little bit?

24 A: We'd probably buy each other drinks all night long, that  
25 could happen.

1 Q: Now, that night, did you, did you ever talk to Carmen  
2 Mureddu or anybody from our office about what happened that  
3 night?

4 A: No, ma'am.

5 Q: You did not?

6 A: Who's Carmen?

7 Q: I'm sorry. She's a lady from our office. Did somebody  
8 ever call you and talk to you about this incident?

9 A: They did come to my house and made a couple of phone calls  
10 about the situation.

11 Q: Okay.

12 A: I did have a few people to come to serve a subpoena.

13 Q: Okay.

14 A: And I think the last time was a lady that I never seen  
15 before. She came and asked me if I'm gonna show up to Court  
16 type of thing.

17 Q: So you've had people from the Defense as well come?

18 A: Yeah, there was -- I don't know who they were. I didn't  
19 ask no questions but there was quite a few people that were  
20 coming in and out and asking me if I'm the witness da-da-da-  
21 da-da.

22 Q: Okay. And is what you told this Court the truth today?

23 A: Of course.

24 Q: And have you told anybody anything other than the truth  
25 about what happened that night?

1 A: The truth and nothing but the truth.

2 MS. LIVESAY: Nothing further from this witness, Your  
3 Honor.

4 THE COURT: Mr. Hyman.

5 CROSS EXAMINATION OF KLEVIS HORANLLI BY MR. HYMAN:

6 Q: Klevis, I'm gonna hand you a photo here; just mark it for  
7 identification purposes right now as Defense Exhibit Number  
8 Eight.

9 DEFENDANT'S EXHIBIT NUMBER EIGHT

10 MARKED FOR IDENTIFICATION

11 Q: You know who's in this photo?

12 A: Of course.

13 Q: And who's in it?

14 A: It's me and my friends.

15 Q: Who's your friends?

16 A: You got me, Mike, Ergys and, if I'm not mistaken, Seth  
17 Rogers.

18 Q: Do you know when that was taken?

19 A: Probably the same night that situation happened.

20 Q: Okay.

21 A: It had to be second floor.

22 Q: That's when you were in VIP?

23 A: This was -- well, the VIP is by the pool. Then you've got  
24 a bar right next to it. So we're hanging out by the bar and  
25 then we end up in the VIP room.

1 Q: Is that the group you were with when you had a  
2 confrontation?

3 A: It was just without him, without Seth. Whenever I the  
4 argument with the guys, he was not in VIP.

5 Q: Did Seth come up with y'all later?

6 A: We met him at the club.

7 Q: But was Seth -- Seth was not in the argument?

8 A: No. So does Mike.

9 Q: Mike was in the argument?

10 A: No.

11 Q: So, it was just you and Ergys?

12 A: Yes, sir.

13 Q: And where is Ergys now?.

14 A: He's living Myrtle Beach.

15 Q: Okay. Now, do you remember giving a statement to Carmen?  
16 She asked you that but you didn't ever really answer it.  
17 Carmen Mureddu is one of their investigators.

18 A: Okay.

19 Q: She has short hair?

20 A: Short hair?

21 Q: Uh-huh (affirmative response)..

22 A: What about it?

23 Q: Well, I'm just asking ---

24 A: Did I give her a statement?

25 Q: Yes, did you give a statement to her?

1 A: There was -- did she come by my house because there was  
2 people that did come in and out and they were asking about the  
3 situation, you know what I mean?

4 Q: Well -- so are -- would you say that you probably did meet  
5 with one of their investigators?

6 A: If they did come over to the house and I didn't know about  
7 it, probably.

8 Q: If they came over to your house and you didn't know about  
9 it or did know about it?

10 A: I didn't know about it because there was people that I  
11 didn't know if it was investigators or they're officers, but  
12 there were people asking me questions all the time.

13 Q: Now, you said earlier that you were pretty intoxicated; is  
14 that accurate?

15 A: Yes, sir. I pregame before I go into the club.

16 Q: So, as far as intoxicated on a scale of one to ten?

17 A: Drunk as hell.

18 Q: Really drunk. Okay. In fact, I think you told Carmen  
19 that the guys that came up to you had baggie shirts and baggie  
20 pants on; is that right?

21 A: Yes, sir.

22 Q: Okay. Baggie shirts?

23 A: Yes, sir.

24 Q: Now, and in fact I think you said you only think they're  
25 the same just based on somebody else's description that these

1 were the same guys?

2 A: The guys that approached me, yeah. They were dressed like  
3 -- I don't know how to describe, like thuggish.

4 Q: Like I said, baggie shirts ---

5 A: Baggie pants.

6 Q: Boat shoes, like that ---

7 A: Like a little like ghetto kind of style. I never looked  
8 at the shoes; I don't know.

9 Q: But you said y'all were crisp; is that right?

10 A: Yes, sir.

11 MR. HYMAN: Judge, I'm gonna move to put this into  
12 evidence and publish it to the Jury at this time.

13 THE COURT: Any objection?

14 MS. LIVESAY: No objection, Your Honor.

15 THE COURT: Pardon me?

16 MS. LIVESAY: No objection.

17 THE COURT: You may do so.

18 DEFENDANT'S EXHIBIT NUMBER EIGHT

19 ADMITTED INTO EVIDENCE

20 BY MR. HYMAN:

21 Q: Now, have you ever told anybody at any interviews before  
22 about possibly seeing a knife?

23 A: A few people.

24 Q: Anybody with the Solicitor's office?

25 A: No.

1 Q: Okay. You didn't tell any policemen or anything there?

2 A: I think it was people that came to the house probably,  
3 outside there ---

4 Q: I'm talking about that night. Did you talk to any  
5 policemen that night?

6 A: No, sir.

7 Q: After this, did you just leave?

8 A: What I did was I helped the kids with the first aid.  
9 Nobody came to ask any questions type of thing. I was very  
10 intoxicated so I just kinda like got inside the car and left.

11 Q: Did you drive and leave?

12 A: Oh, yeah.

13 Q: You think that was a good idea if you were real  
14 intoxicated?

15 A: That's why I got a DUI on my license.

16 Q: Okay. But Seth Rogers, who's in the picture with you, you  
17 couldn't remember his name?

18 A: No.

19 Q: Okay.

20 A: Like I said, the people that you meet in the club,  
21 normally only the faces you can remember because you're  
22 already intoxicated when you meet them.

23 Q: Gotcha. Do you remember if the guy that was talking to  
24 you saying this was -- how tall do you think he was, 5'10",  
25 5'11"?

1 A: I can't recall that but I know one was short and one was  
2 tall.

3 Q: Okay. Do you remember if the tall one was the one that  
4 was talking to you? If you can't remember that's fine?

5 A: It's one of those things that you see somebody one time  
6 only and you can never kinda like figure out how they look  
7 like.

8 MR. HYMAN: No further questions, Your Honor.

9 THE COURT: All right. You may come down.

10 MS. LIVESAY: Your Honor, at this time, the State calls  
11 Seth Rogers.

12 THE COURT: Okay. Let's take a break. The Jury's been  
13 out here very patiently all morning. I'll let you take a  
14 break.

15 Mr. Foreman, let her know when you're ready to come back  
16 and let's start back as soon as we can. Let's take about a  
17 ten-minute break.

18 MR. HYMAN: Thank you, Judge.

19 (REPORTER'S NOTE: Jury exits courtroom. 11:32 A.M.)

20 (RECESS 11:32 A.M.)

21 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

22 (On the Record - 11:52 A.M.)

23 THE COURT: State ready to proceed? Be seated, please.

24 MS. LIVESAY: Yes, sir, Your Honor.

25 THE COURT: Defendant ready?

1 (REPORTER'S NOTE: Jury enters courtroom. 11:53 A.M.)

2 THE COURT: You got your next witness ready, Ms. Nancy?

3 MS. LIVESAY: We're ready, Your Honor.

4 THE COURT: Okay.

5 Call your next witness please.

6 MS. LIVESAY: Thank you, Your Honor. At this time the  
7 State calls Seth Rogers to the stand.

8 THE COURT: Okay.

9 CLERK: Raise your right hand and place your left hand on  
10 the Bible?

11 SETH DANIEL ROGERS, HAVING BEEN SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: State your first full name and spell your last  
14 name?

15 MR. ROGERS: It's Daniel Rogers.

16 DIRECT EXAMINATION OF SETH DANIEL ROGERS BY MS. LIVESAY:

17 Q: Mr. Rogers, how old are you?

18 A: Twenty-two.

19 Q: Okay. And I don't want to do the math, so how old were  
20 you in September of 2009?

21 A: Eighteen.

22 Q: Eighteen. And were you living here in Horry County?

23 A: Yes, ma'am.

24 Q: Okay. And did you have an occasion in September of 2009  
25 to go to the Afterdeck?

1 A: Yes, ma'am.

2 Q: Okay. And do you remember what happened that night?

3 A: Yes, ma'am.

4 Q: Okay. Now, you were eighteen, so had you been drinking  
5 before you got there?

6 A: No, ma'am.

7 Q: How about when you got there?

8 A: No, ma'am.

9 Q: Now, did you know people at the club?

10 A: Yes.

11 Q: Okay. Just from knowing other locals?

12 A: Yes, ma'am.

13 Q: Okay. Do you remember seeing Klevis at the club?

14 A: Yes, ma'am.

15 Q: Okay. If you don't remind -- if you don't mind, please  
16 tell us what you remember from that night.

17 A: I watched Klevis and a few of my other friends being  
18 thrown out that night after they got into an altercation in  
19 the VIP part and so I walked out behind them to see what was  
20 going on. And while we were standing outside we were  
21 approached by two guys.

22 Q: And do you remember what they looked like?

23 A: Yes, ma'am.

24 Q: What did they look like?

25 A: One was a taller white male. He had 843 tattooed on the

1 side of his hand right here.

2 Q: Okay.

3 A: And one was a little bit shorter, a darker skinned guy and  
4 he had a collar rocker tattooed across his chest like this.

5 Q: Okay. And what was the shorter guy wearing for you to be  
6 able to see that? What do you call that a collar ---

7 A: He was wearing a white wife-beater.

8 Q: Rocker?

9 A: Yes, ma'am.

10 Q: What was he wearing?

11 A: A white wife-beater.

12 Q: Okay. And do you see that guy in the courtroom today?

13 A: Yes, ma'am.

14 Q: Could you point him out to the Jury? Okay. I'm gonna

15 show you a picture that's been marked as State's, just a

16 second. This picture is already in evidence as State's

17 evidence Number Forty-four. Is that tattoo what you called

18 the collar rocker?

19 A: Yes, ma'am.

20 Q: And Blake Griffith is the guy you saw with this collar

21 rocker on?

22 A: Yes, ma'am.

23 Q: And you say you saw another guy with 843 tattooed on his

24 hand; is that correct?

25 A: That is correct.

1 Q: Okay. I'm showing you now State's Evidence Number One;  
2 does that look familiar to you?

3 A: Yes, ma'am.

4 Q: That's the guy? So that's the guy with 843 and the  
5 Defendant today is the one with the collar rocker?

6 A: That's correct.

7 MR. HYMAN: Your Honor, I object to leading.

8 THE COURT: Follow the rule, please. Thank you, Mr.  
9 Hyman.

10 BY MS. LIVESAY:

11 Q: You walked out there and who all was standing out there  
12 when you first walked out there?

13 A: My friends, Ergys, Klevis and Mike.

14 Q: Okay. Any why did you walk out there?

15 A: Because they were being escorted out by security.

16 Q: Okay.

17 A: And I was going to see what happened.

18 Q: Okay. And you get there and you're talking to them?

19 A: Yes, ma'am.

20 Q: What happens?

21 A: After we were standing there talking for a moment, we were  
22 approached by both of them and then they proceeded to tell us  
23 that, the tall white male proceeded to tell us that they were  
24 the two realest mother fuckers we were going to meet and they  
25 were ready to kill a mother fucker.

1 Q: Okay. And were both of them standing there together?

2 A: Yes, ma'am.

3 Q: Okay. And what was the taller guy wearing?

4 A: He had a white tall-T.

5 Q: Okay. So that means a long T-shirt?

6 A: Yes, ma'am.

7 Q: And the other guy had on a wife-beater?

8 A: Correct.

9 Q: Okay. And what was the short guy doing when he was saying  
10 that?

11 A: He was just standing there.

12 Q: Okay. Were they standing side by side?

13 A: Yes, ma'am.

14 Q: And did they walk up to you together or did one walk up  
15 and the other ---

16 A: They walked up together.

17 Q: Okay. And when you state, say they're standing side by  
18 side, they were standing out here and just directly right  
19 beside you?

20 A: That's correct.

21 Q: Okay. So, it wasn't single file?

22 A: No.

23 Q: Okay. Had you seen those guys before?

24 A: No, ma'am, I did not recognize them from beforehand.

25 Q: Never seen them before?

1 A: No.

2 Q: Did you know them?

3 A: No.

4 Q: Did you know why they approached you?

5 A: No, ma'am, they just randomly came up to us.

6 Q: Okay. Did anybody else approach you like that that night?

7 A: No, ma'am.

8 Q: Did anybody else approach you out there in the parking lot

9 other than those two?

10 A: No, ma'am.

11 Q: What would you say their overall demeanor was?

12 A: They were looking for trouble, for sure.

13 Q: And how did you respond when they said that to you?

14 A: We just brushed it off because we thought it was strange

15 that two people just come up and start saying things like that

16 to us. So, we were just kinda like, yeah, okay, you know get

17 away from us; we're really not trying to talk to you.

18 Q: Okay. And was Klevis standing in that group, too?

19 A: Yes, ma'am.

20 Q: Okay. About how many people were standing there in that

21 group?

22 A: Altogether, six.

23 Q: Okay. So, it was kind of a little group meandering around

24 when they walked up.

25 A: (Indicates affirmatively.)

1 Q: How close are they standing to you?

2 A: Two feet, maybe four or five feet.

3 Q: Okay. And did you say anything back to them?

4 A: No.

5 Q: You didn't engage them in any conversation?

6 A: No, ma'am.

7 Q: Okay. What happened next?

8 A: After that, we had to wait outside because the club owner  
9 had to take the other people that my friends got in the  
10 altercation with out from VIP and then ---

11 Q: So these, the other guys, these guys that approached you  
12 were not the same guys involved in the altercation?

13 A: No.

14 Q: Okay.

15 A: They walked back into the club and then about five minutes  
16 later we were allowed to walk back into the club after they  
17 had taken the other people from VIP out.

18 Q: Okay. So, the Defendant and his friend walked back in the  
19 club?

20 A: That is correct.

21 Q: Okay. And y'all were out there for about how much longer?

22 A: About five more minutes.

23 Q: Okay. So these guys were never kicked out; they just  
24 walked out there like you did to get involved?

25 A: Yes, ma'am. That's correct.

1 Q: Okay. Now what happened then?

2 A: We walked back into the club and when I walked through the  
3 front doors, I see like a lot of commotion going on so I ran  
4 up there to see what was happening and at that point, it had  
5 already been -- started breaking up, people had started to  
6 scatter and I noticed my friend, Vitaly had the taller white  
7 male on the ground subduing him and then when he let him go,  
8 we looked over and saw D.J. on the stairs.

9 Q: Okay. Did you see the short guy, Blake Griffith in that  
10 club again when you walked back in there?

11 A: No, I did not.

12 Q: Okay. What else did you see?

13 A: We ran out front of the club -- I'm sorry.

14 Q: That's okay.

15 A: And so Vitaly picked him up and we ran out front of the  
16 club.

17 Q: Picked up D.J.?

18 A: Yes.

19 Q: I know it's hard. Where was he laying when you picked him  
20 up?

21 A: On the stairs.

22 Q: Okay. And was he on the stairs by the cage?

23 A: Yes.

24 Q: Okay. And then what happened?

25 A: Then the taller white male came outside and was looking at

1 D.J.'s body and then the Defendant came right behind and said,  
2 we gotta ---

3 MS. LIVESAY: Your Honor, can we take just a minute to  
4 give just a minute to collect himself?

5 THE COURT: Sure. Let him collect himself.  
6 You gave him some water, did you not?

7 MS. LIVESAY: Yes, sir.

8 THE COURT: You feel like you're ready to continue or you  
9 want me to take another break?

10 A: I'm ready.

11 THE COURT: You sure?

12 A: Yes, sir.

13 THE COURT: If you feel like at any time you need to  
14 stop, just let me know and we'll let the Jury go out and let  
15 you rest a minute.

16 A: Yes, sir.

17 THE COURT: All right.

18 A: I'm fine. I'm ready.

19 THE COURT: That's fine.

20 A: So after the white male was standing there looking at  
21 D.J.'s body, then the Defendant came running out and said we  
22 gotta go, we gotta go and they proceeded to run out of the  
23 parking lot and then I turned my attention back to my friends.

24 BY MS. LIVESAY:

25 Q: Okay. Did they ever look, did you ever see this guy look

1 down at D.J. or anybody else that was injured?

2 A: The Defendant right here?

3 Q: Yes.

4 A: No.

5 Q: Okay. And but you did see him take off running?

6 A: Yes, ma'am.

7 Q: Okay. Now you said somebody said, we gotta go, we gotta  
8 go; who was that?

9 A: The Defendant.

10 Q: Okay. Did you say anything else to him?

11 A: No, ma'am. At that point, I didn't know what had just  
12 happened. I was kinda in shock.

13 Q: Okay. Do you remember at that time what he was wearing  
14 still or no?

15 A: The -- who?

16 Q: The shorter guy, Blake Griffith, the guy sitting there?

17 A: I do not remember what he was wearing at that moment, no.  
18 It was really quick.

19 Q: Okay. All you remember is just him saying we gotta go, we  
20 gotta go and taking off?

21 A: Yes, ma'am.

22 MS. LIVESAY: Your Honor, the Defendant has an objection  
23 regarding one of the victim's pictures. Can we send the Jury  
24 out to argue it?

25 THE COURT: Yes, I'll let you go out for just a moment

1 and then we'll take a look at it. Thank you. I'll be calling  
2 you right back.

3 (REPORTER'S NOTE: Jury exits courtroom. 12:05 P.M.)

4 Let me see the pictures. Let me see the pictures,  
5 please.

6 MS. LIVESAY: Your Honor, this is just to show the size  
7 of the victim at that time.

8 THE COURT: You keep talking using the word victim. I  
9 assume you're referring to this ---

10 MS. LIVESAY: Oh, I'm sorry.

11 THE COURT: When you keep referring to the Defendant.

12 MS. LIVESAY: The deceased victim.

13 THE COURT: What's the objection?

14 MR. HYMAN: Judge, I've never gotten that. I mean, we  
15 have other ---

16 THE COURT: Well, it's a photograph.

17 MR. HYMAN: I understand and I just told her, I've never  
18 gotten that. That's all I said.

19 MS. LIVESAY: Your Honor, I got it off his Facebook page.

20 THE COURT: Got it off whose Facebook page?

21 MS. LIVESAY: The victim's Facebook page. It's a public  
22 record; anybody can get on there and look at it.

23 THE COURT: Well, look at it and see if you have any  
24 objections. It's simply a photograph of the victim in the  
25 case.

1 MS. LIVESAY: Your Honor, this is ---

2 MR. HYMAN: I guess my objection is what's, what is the  
3 purpose? I mean is it ---

4 MS. LIVESAY: Your Honor, the purpose is to show his  
5 size. If I understand correctly in opening, Mr. Hyman told  
6 the Jury that his client was 145 pounds. So, I'm showing this  
7 to show the size of the victim. Obviously, because he's  
8 deceased, I have no other way of doing it.

9 THE COURT: I'll permit that.

10 MS. LIVESAY: Thank you, Your Honor.

11 THE COURT: Bring the jury back. We could have saved  
12 some time if y'all had come to the desk and told me about  
13 that.

14 Bring the Jury back.

15 Did somebody tell the Jury I want them back?

16 COURT REPORTER: Yes, sir, she's gone to get them.

17 THE COURT: Mr. Hyman said he didn't object at that time;  
18 he said he hadn't seen it, but that's okay.

19 (REPORTER'S NOTE: Jury enters courtroom. 12:07 P.M.)

20 THE COURT: All right. The Jury is present, proceed.

21 MS. LIVESAY: Thank you, Your Honor.

22 BY MS. LIVESAY:

23 Q: Mr. Rogers, if you don't mind, were you good friends with  
24 D.J.?

25 A: Yes, ma'am.

1 Q: Was he at the club that night?

2 A: Yes, ma'am.

3 Q: If I showed you a picture of him from that night at the  
4 club, would you recognize him?

5 A: Yes, ma'am.

6 Q: This is State's Evidence Number Twenty-six?

7 A: Yes, he's over -- he's right here.

8 Q: Okay. So, he's not these two guys?

9 A: No.

10 Q: He's the guy in the background?

11 A: That's correct..

12 Q: Okay. And this, I'm showing the jury State's Evidence  
13 Number Twenty-six and the witness has picked the guy in the  
14 background and that's D.J.

15 And who's the guy in the plaid shirt?

16 A: That's Vitaly.

17 Q: Okay. And who is the guy in the suit?

18 A: Taylor Burt.

19 Q: Okay. Now you can't really see what D.J.'s body looks  
20 like in this picture. I'm showing you now what's been marked  
21 as State's Exhibit Number Seventy-three. This is a picture,  
22 does that accurately describe what he looked like during that  
23 time as far as size?

24 A: Yes, ma'am.

25 Q: Okay. And is that D.J.?

1 A: Yes, ma'am.

2 Q: Okay. And that's accurate of how big he was during that  
3 time?

4 A: Yes, ma'am.

5 MS. LIVESAY: Your Honor, at this time, we move to put  
6 Number Seventy-three into evidence and publish it to the Jury?

7 THE COURT: You may do so.

8 STATE'S EXHIBIT NUMBER SEVENTY-THREE

9 ADMITTED INTO EVIDENCE

10 BY MS. LIVESAY:

11 Q: So, he wasn't any fatter, taller, this is what he looked  
12 like during that time?

13 A: Yes, ma'am.

14 Q: How would you describe D.J.'s body; was he big, small,  
15 fat, skinny?

16 A: Skinny.

17 Q: Muscular guy?

18 A: Not really, no.

19 Q: Now, do you go to the gym?

20 A: Yes, ma'am.

21 Q: Did you go to the gym back in 2009?

22 A: No.

23 Q: Okay. And how about D.J., was he one of those people that  
24 went to the gym?

25 A: No.

1 Q: Okay. One second, Seth. Just one more question. How was  
2 D.J. dressed that night?

3 A: How was he dressed that night?

4 Q: Uh-huh (affirmative response); do you remember?

5 A: I'm pretty sure he was wearing jeans, flip-flops and a  
6 flannel.

7 Q: Okay. He was wearing ---

8 A: Jeans, flip-flops and a flannel.

9 Q: Okay. And what were you wearing, do you remember?

10 A: I had on jeans, a black shirt and black shoes.

11 Q: You've got a good memory. There's the picture there,  
12 that's you?

13 A: Uh-huh (affirmative response).

14 Q: And that's Klevis on the other end?

15 A: Correct.

16 Q: Okay. Now, did you have a knife on you that night?

17 A: No, ma'am.

18 Q: Did you have a weapon of any kind?

19 A: No, ma'am.

20 Q: Okay. And who did you go with to the club?

21 A: I met my buddy, Shane, there.

22 Q: Okay. So, you kinda showed up by yourself?

23 A: That's correct. I drove alone, yes.

24 Q: Okay. I'm sorry?

25 A: I drove alone.

1 Q: Okay. So you just, you went to the club to meet somebody  
2 there?

3 A: Yes, ma'am.

4 Q: Okay. And but you knew D.J.?

5 A: Yes.

6 Q: And he happened to be there?

7 A: Yes, ma'am.

8 Q: Were you planning to meet him there?

9 A: No..

10 Q: Okay.

11 A: They just happened to be there.

12 Q: How about Klevis, did you plan to meet him there?

13 A: Yes.

14 Q: Okay. So, you knew all those people?

15 A: Uh-huh (affirmative response).

16 Q: Okay. To your knowledge, did D.J. have a weapon on him?

17 A: No, ma'am.

18 MS. LIVESAY: No further questions, Your Honor.

19 THE COURT: Mr. Hyman.

20 CROSS EXAMINATION OF SETH DANIEL ROGERS BY MR. HYMAN:

21 Q: Seth, how did you know D.J., Vitaly and Rob Penna and  
22 Michael Parker?

23 A: I've known them through mutual friends since I was about  
24 thirteen years old, something like that.

25 Q: Did you meet anywhere?

- 1 A: In particular, the skate park.
- 2 Q: Okay. Did y'all used to go to concerts together and stuff  
3 like that?
- 4 A: Sometimes.
- 5 Q: What type of concerts did y'all go to?
- 6 A: I mean, all different kinds. There's nothing really  
7 specific.
- 8 Q: Okay. Did y'all go to like hard core music concerts or  
9 anything like that?
- 10 A: Sometimes.
- 11 Q: Okay. Now, it's your testimony today that you didn't get  
12 thrown out with Vitaly, Ergys and Mike; is that correct?
- 13 A: Vitaly was not with us.
- 14 Q: I'm sorry, not Vitaly, Klevis. I'm getting the names  
15 confused. Klevis, Mike and Ergys?
- 16 A: This is correct.
- 17 Q: So you're saying that you did not get thrown out?
- 18 A: That's correct.
- 19 Q: So you were just waiting outside with them?
- 20 A: No, I walked out behind them.
- 21 Q: Okay. Now, as far as that goes, if you gave a statement  
22 to someone else that you did get thrown out with them, would  
23 that be incorrect?
- 24 A: That would be incorrect.
- 25 Q: Okay. Now, when you came back in and you saw Vitaly, who

1 I think you pointed out on this photo right here. Now, you  
2 said Vitaly had one of the gentlemen on the ground?

3 A: That is correct.

4 Q: How did he have him?

5 A: In a choke hold.

6 Q: Okay. Did you do anything at that time?

7 A: Did I do anything?

8 Q: Did you kick him?

9 A: Yes.

10 Q: You did kick the guy on the ground?

11 A: That's correct.

12 Q: How many times do you think you kicked him?

13 A: Maybe twice.

14 Q: Did you see anybody else kicking him?

15 A: Yeah, but I couldn't tell you who it was.

16 Q: Okay. So Vitaly has him on the ground, you're kicking him  
17 and you see somebody else kicking him?

18 A: That's correct.

19 Q: Okay. Now, as far as going there that night, you said you  
20 were going to meet Klevis or Vitaly?

21 A: I didn't say I was meeting either one of them, I said  
22 Shane.

23 Q: Shane who?

24 A: Parra.

25 Q: Shane Parra. Now, was Shane up in VIP?

1 A: No.

2 Q: Okay. Who else were you meeting there that night?

3 A: Just him.

4 Q: So, you weren't there to meet D.J., Ryan, Rob, any of  
5 them?

6 A: I did not know they were there.

7 Q: Okay. How about Tom Covino; do you know Tom, too?

8 A: Yes, I do.

9 Q: Do you know Michael Parker?

10 A: Yes, I do.

11 Q: Do you know if all of those people that were there that  
12 night?

13 A: Yes, they were all there.

14 Q: Did you give any statements that night?

15 A: I did give a statement that night, yes.

16 Q: Okay. Where did you give that statement?

17 A: At the hospital.

18 Q: Okay. And I don't happen to have that statement. Maybe  
19 they didn't provide it; I'm not sure. Did you give any other  
20 statements since then?

21 A: A lady came to my house.

22 Q: Okay.

23 A: And got a statement from me, yes, about a month ago now, I  
24 believe.

25 Q: How about anybody else? Did you ever meet up here at the

1 Solicitor's Office and give any other statements or anything  
2 like that?

3 A: I did give a statement to the Solicitor, yes.

4 Q: How tall was D.J. do you think?

5 A: 5'10" maybe, 5'11", something like that.

6 Q: He wasn't taller than that?

7 A: Do what?

8 Q: I said he wasn't taller than that?

9 A: I mean, he could've been. I can't give you an exact like  
10 height.

11 MR. HYMAN: Judge, I have a photo here that I believe the  
12 State's objecting on as far as that goes?

13 THE COURT: Come forward and let's -- I don't want to  
14 waste the Jury's time.

15 (REPORTER'S NOTE: A bench conference was held off the record  
16 in the presence of the Jury but out of hearing of the Jury.)

17 MR. HYMAN: No further questions, Your Honor.

18 THE COURT: All right. Thank you.

19 Any further redirect?

20 MS. LIVESAY: No, sir, Your Honor.

21 THE COURT: All right. You may come down. Thank you.

22 Next witness.

23 MS. LIVESAY: Your Honor, can we approach regarding a  
24 scheduling matter?

25 THE COURT: Pardon me?

1 successfully done so. But I appreciate your consideration in  
2 the matter.

3 MS. LIVESAY: Your Honor, at this time, the State calls  
4 Rusty Crocker to the stand.

5 THE COURT: All right.

6 MS. LIVESAY: Thank you.

7 CLERK: Please raise your right hand and place your left  
8 hand on the Bible?

9 DAVID CROCKER, HAVING BEEN DULY SWORN  
10 TESTIFIES AS FOLLOWS:

11 CLERK: State your full name and spell your last name?

12 MR. CROCKER: David Crocker, C-R-O-C-K-E-R. Rusty is a  
13 nickname.

14 DIRECT EXAMINATION OF DAVID CROCKER BY MS. LIVESAY:

15 Q: Okay. And I can see you're Horry County Police  
16 Department?

17 A: Yes, ma'am.

18 Q: And what rank are you at the police department?

19 A: I'm a detective.

20 Q: Okay. And how long have you been with Horry County?

21 A: I've been with the Horry County Police Department since  
22 2001.

23 Q: Okay. And if you don't mind, tell the Jury a little bit  
24 about the training you've undergone to be a police officer and  
25 while you were at Horry County?

1 A: I started my career with Conway Police Department in 1995.  
2 I graduated from the South Carolina Criminal Justice Academy.  
3 I have received training in just about every facet of law  
4 enforcement. I have worked in patrol division. I have worked  
5 as a detective in what's known as the property crimes division  
6 in handling theft and burglary and things like that. I have  
7 worked in the violent crimes division, which handles violent  
8 crimes, homicides, rapes. And I'm currently assigned to the  
9 narcotics division for the Horry County Police Department and  
10 I am assigned to the U.S. Drug Enforcement, excuse me, the  
11 U.S. Drug Enforcement Administration Task Force out of  
12 Florence, South Carolina.

13 Q: Okay. And what were your responsibilities in 2009?

14 A: I was assigned as a detective in the violent crimes  
15 division.

16 Q: Okay. And that's murders, rapes, any violent crime?

17 A: Yes, ma'am.

18 Q: And did you have an occasion to assist on the murder that  
19 happened in the Afterdeck?

20 A: Yes, I did.

21 Q: Okay. And if you don't mind, tell the Jury how you got  
22 involved and what you did to assist in that investigation?

23 A: I was awakened by a phone call from the supervisor at that  
24 time, which is Sergeant Chip Squires. He stated that there  
25 had been a stabbing at the Afterdeck in Restaurant Row near

1 Myrtle Beach and asked if I would come and assist, excuse me,  
2 come and assist with the investigation as they had a lot of  
3 witnesses and a lot of stuff going on. It's common practice  
4 that there is a detective on call, who handles on call, but  
5 anytime they have a major incident, a homicide or a shooting  
6 or something of a large nature, they'll call several people  
7 out to it and sometimes everybody out to it. The night in  
8 question, he called and stated there was a victim at Grand  
9 Strand Regional Medical Center and would I be able to come in  
10 and respond there and I did, I did so.

11 Q: Okay. And where did you first originally respond to?

12 A: I responded originally to Grand Strand Medical Center.

13 Q: Okay.

14 A: At his request and at that time, upon my arrival there at  
15 the ER, I was informed by the ER staff that the victim had  
16 passed away, was deceased.

17 Q: And then after you found that information out, what did  
18 you do?

19 A: As soon as I found that out, I called Sergeant Squires and  
20 informed him of what had taken place and the, there was a  
21 crime, one of the crime scene units was on the way to the  
22 hospital to see if there was any evidence collection related  
23 to the deceased and he asked that I respond to the Afterdeck.  
24 So, I left there and went to the Afterdeck.

25 Q: Okay. Now, once you were at the Afterdeck, what did you

1 do?

2 A: When I arrived at the Afterdeck, there were several  
3 detectives there meeting, discussing what had taken place. I  
4 had very little information. Basically, I, you know, they  
5 called and said there was a stabbing; please go to the  
6 hospital. I went there. After we found out the gentleman was  
7 deceased I responded to the Afterdeck to assist in any way  
8 they needed me to. When I arrived there, there were several  
9 detectives there including Sergeant Squires and he informed me  
10 that one of the suspects in the case had a phone conversation,  
11 a telephone conversation with a female, who was their friend  
12 and associate had arrived there with them, and that one of the  
13 suspects was calling her on her phone and requesting that she  
14 come to the beach house where they were staying at to meet him  
15 because he was, he wanted to get picked up, get his stuff, he  
16 was leaving and going back to Greenville.

17 Q: Okay. And what was the plan after this phone call and who  
18 is, who is the name of that suspect?

19 A: That was Mr. Brown.

20 Q: Okay.

21 A: And the Sergeant Squires spoke with the female who had  
22 accompanied both of the individuals there. She gave consent  
23 for, to use her vehicle. Sergeant Squires asked if I would  
24 drive her vehicle, it was still dark outside, would I drive  
25 her vehicle to the location, they would follow in their

1 unmarked cars to see if Mr. Brown would indeed meet with --  
2 would be there, would be where he said he was gonna be because  
3 obviously they, we needed to take him into custody. So I  
4 agreed to, to drive her vehicle.

5 Q: Okay. So, you drove her vehicle to what location?

6 A: I drove her vehicle to the beach house that they were  
7 staying in North Myrtle Beach, which was around the 38th, 39th  
8 Avenue area across from the, in the area, across from the area  
9 of the Harley Shop towards the ocean, .

10 Q: Okay. And you were driving her vehicle because Blake  
11 Brown had indicated he would be at that beach house?

12 A: That's correct.

13 Q: Okay. And you drove her vehicle to the beach house. Was  
14 he there?

15 A: The beach houses sit in the middle of a block, but they  
16 had their own kind of private drive. It's like several  
17 smaller houses and they're duplex style, you have one on each  
18 side. I turned in because initially I missed the first turn.  
19 I turned in coming from the ocean side. When I turned in  
20 there was a vehicle there at the residence. There were two  
21 people sitting in the vehicle. When I pulled up, I seen Mr.  
22 Brown exit the, who I later learned was Mr. Brown, but he fit  
23 the description that was given to me. As I'm pulling up in  
24 her vehicle, the other cars have not pulled in behind me yet.  
25 The passenger door of the vehicle opens and Mr. Brown exits

1 and begins to approach toward the, the Jeep Cherokee that I'm  
2 driving that belongs to this female person that he knows. As  
3 soon as he steps away from the vehicle, there's a female in  
4 the driver's seat. I immediately exited in the Cherokee and  
5 drew my duty weapon and pointed it at him and immediately  
6 ordered him to get down on the ground, lay prone and he  
7 complied with my orders. At the same time the other  
8 detectives who were following me, either they pulled up and  
9 they're getting out, they're walking to the driver's side of  
10 the vehicle to take this female into custody because at this  
11 point, it's an officer safety issue. We're out in the dark  
12 and we know that we have one of these identified suspects from  
13 there. So, he is handcuffed and, and taken into custody. The  
14 female driver who was Mr. Brown's mother was also at that  
15 point handcuffed and taken into custody and when the doors of  
16 the vehicle were, the door of the vehicle, the passenger door  
17 of the vehicle where Mr. Brown got out was open. So, walking  
18 around to clear the vehicle, to make sure there's nobody  
19 laying in the back seat or anybody else occupying the vehicle,  
20 that's when I observed a, a Mossy Oak style knife that was  
21 sitting in the passenger floorboard, kind of up against the  
22 rocker panel where the door would have closed. It's a what  
23 they call the A-pillar, which is where your door and the side  
24 of the car come together and you've got a lip where the carpet  
25 rolls up on the kicker panel right there and it was sitting

1 right there.

2 Q: Okay. And I'm showing you now what's been marked as  
3 State's Evidence Number Seventy-two. You got a copy of that?

4 A: Yes, ma'am, I do.

5 Q: Is that the knife you collected?

6 A: Yes, it is.

7 Q: Okay. And tell the Jury again where you collected that  
8 knife from?

9 A: It was sitting in the passenger side of the vehicle where  
10 Mr. Brown had just exited from. Obviously, when he saw the  
11 Cherokee, he could not see who was in it because their vehicle  
12 was almost facing me when I turned in. So my headlights are  
13 on and he can't see so he had no idea it was me until I exited  
14 the vehicle and told him who I was. This is, was laying in  
15 the passenger floorboard area of where he just exited from the  
16 passenger side.

17 Q: Okay. Now, was anybody else in that car other than Blake  
18 Brown and his mom?

19 A: No, ma'am.

20 Q: Okay. Now, was there anybody else apprehended at that  
21 beach house?

22 A: No, ma'am.

23 Q: Okay. And did you even see anybody else at that beach  
24 house?

25 A: No, ma'am.

1 Q: Okay. And about what time would you say it was at that  
2 point?

3 A: It was, it was early morning. It was still dark but it  
4 wasn't coming on to dawn, so it would have probably been in  
5 the neighborhood of 3:00, give or take thirty minutes or so.  
6 It may have been as late as 4:00, but it was around that  
7 timeframe.

8 Q: Okay. And is that the only knife you collected?

9 A: Yes, it is.

10 Q: Okay. Now, I'm showing you what's been marked as State's  
11 Evidence Number Fourteen, another picture, State's Evidence  
12 Number Thirteen. Do you see that picture?

13 A: Yes.

14 Q: Is that the same knife?

15 A: No, ma'am; its' not.

16 Q: Okay.

17 A: You can see that the blades are different immediately.

18 Q: Did you ever find this knife in that car?

19 A: No, ma'am. No, ma'am.

20 Q: Okay. And to your knowledge, was this knife anywhere in  
21 that vicinity?

22 A: No, ma'am.

23 Q: And to your knowledge, was this knife ever collected?

24 A: No, not to my knowledge.

25 Q: Okay. So, this knife was collected right by Blake Brown?

1 A: Yes, ma'am.

2 Q: My, my knowledge of this case is very compartmentalized  
3 because I dealt with Mr. Brown and once he was taken into  
4 custody and that was taken by me, I was pretty much done with  
5 the investigation at that point. I was just assisting.

6 Q: This is one knife and this is a completely separate knife?

7 A: Yes, ma'am, it's immediately apparent by the blade.

8 Q: And this was the knife found off Blake Brown?

9 A: Yes.

10 Q: And this knife was not collected?

11 A: It was not collected by me, no.

12 Q: And Blake Griffith was never found in that area at that  
13 time?

14 A: No, ma'am.

15 Q: Do you recall how far it is from the Afterdeck to that  
16 beach house?

17 A: It's, it's several miles. The Afterdeck is almost at the  
18 Lake Arrowhead Road area. In order to get to that area where  
19 the beach houses were, like I said, in the 3800 block, maybe  
20 39th of South of North Myrtle Beach; it's several miles up 17  
21 to get there.

22 Q: Okay.

23 A: It's probably three or four.

24 Q: I'm gonna show you a map real quick. Are you familiar  
25 with that area?

1 A: Yes, ma'am.

2 Q: Okay. This is State's Evidence Number Thirty I'm showing  
3 you. The Afterdeck address has been marked right here; are  
4 you familiar with this?

5 A: Yes.

6 Q: Okay. Now, that beach house that you went and met Blakely  
7 Brown at, this is the Waterway, just so we're oriented.

8 A: Yes, ma'am.

9 Q: Is it on this side of the Waterway?

10 A: It's on this side of the Waterway; it's not on the map  
11 because the maps too short.

12 Q: Right.

13 A: But you would have traveled north and traveling north you  
14 would have turned right or east towards the ocean to go to the  
15 beach house. The beach house sat between Kings Highway, which  
16 is 17, and the ocean itself.

17 Q: Okay. So, any area over here would be opposite?

18 A: That would be completely opposite, on the opposite side of  
19 the Intracoastal Waterway.

20 Q: Okay. Now, at that time of night, would there have been  
21 any way to get across this waterway?

22 A: Not, not in that area, no, ma'am, not without a boat  
23 unless you're gonna swim.

24 Q: Okay. But the beach house that they were staying at was  
25 definitely in this direction?

1 A: Yes, ma'am, it was definitely up here well off your map  
2 here.

3 Q: Okay. Now, for officer safety, did you kinda -- did all  
4 of you kinda do a protective sweep of that area to make sure  
5 nobody jumped out?

6 A: Yes, we, as soon as the, the two people that we had, Mr.  
7 Brown and his mother, as soon as they were in a prone position  
8 and safe position, where they can, you know, we can monitor  
9 their movements, the vehicle is immediately cleared, and two  
10 detectives that were also on the scene went into the house  
11 with the female's permission because it's some of her family's  
12 house.

13 Q: Right.

14 A: To conduct a protective sweep of that location and no one  
15 was found in the house.

16 Q: Okay. And was anybody else found at that location?

17 A: No.

18 Q: And nowhere near that location?

19 A: No.

20 Q: Okay. And no other knife was found in or near that  
21 location?

22 A: Not to my knowledge, no, ma'am.

23 Q: How long did you stay or how long did you assist in the  
24 investigation?

25 A: It, it's, when you have a large investigation going on,

1 there's a lot of things that are having to be done. There's  
2 one case detective that it's his case, but there are a lot of  
3 hands, a lot of movement going on and so you may end up doing  
4 small things even though you're finished with this aspect, you  
5 may doing something as small as having to sit with one of the  
6 people that has been arrested or stand outside of the door if  
7 they're in an interview room just to make sure that they don't  
8 get up and run away or they don't try to harm themselves or  
9 somebody else. So, you can be there anywhere, sometimes you  
10 can be told to go home as soon as you're done and sometimes  
11 you can have to stay to help with paperwork and things of that  
12 nature. But even once my part of the investigation was  
13 finished with Mr. Brown at that point, there were still  
14 administrative things that needed to be looked over that I  
15 helped with and I was there, I mean, then daylight came up and  
16 we went to the police department. So ---

17 Q: Okay. So, when you went to the police department daylight  
18 was coming up?

19 A: Oh yes, yes, ma'am.

20 Q: Okay. So you were out there for what, at least two or  
21 three hours between the hospital, the Afterdeck and that beach  
22 house?

23 A: At least, yes, ma'am.

24 Q: At least three hours or two hours?

25 A: I would imagine probably closer to three total.

1 Q: Okay. So, for three hours you were between the Afterdeck  
2 and I'm sorry, started off at the hospital, the Afterdeck and  
3 this beach house?

4 A: Yes, ma'am. There, there's a pretty good time frame  
5 there. I mean the incident has to happen, I live in Conway  
6 and they call and wake me up and I get up, get dressed and  
7 then obviously drive in a hurry to the location. So, yes,  
8 it's a least three hours.

9 Q: Okay. Did you ever go back to the hospital?

10 A: No, ma'am.

11 Q: Okay. So, most of your time was spent either at the  
12 Afterdeck or on 17 going to the beach house?

13 A: Yes, ma'am.

14 Q: Okay. Kind of back and forth between that area?

15 A: Yes, ma'am.

16 Q: Did you ever see Blake Griffith?

17 A: No, ma'am. I never came into contact with Mr. Griffith  
18 through the entire case.

19 Q: Okay. And you were out there in that area at least two or  
20 three hours?

21 A: Yes, ma'am.

22 MS. LIVESAY: No further questions, Your Honor.

23 THE COURT: Mr. Hyman.

24 CROSS EXAMINATION OF DAVID CROCKER BY MR. HYMAN:

25 Q: Mr. Crocker -- and it's Detective Crocker; is that right?

1 A: Yes, sir.

2 Q: Okay. Now, you said that you were not the lead  
3 investigator on this case, that you had I think you said a  
4 small portion of that to do. Who was the lead detective on  
5 this case?

6 A: The lead detective was Detective Frebowitz, Neil  
7 Frebowitz.

8 Q: Was there somebody else kinda maybe second or was it just  
9 him?

10 A: Well, he's the lead investigator but when you have an  
11 issue like this, it's a collaborative effort. Everybody plays  
12 a part. Some other detectives that would have been called and  
13 made it there before me would've played a bigger part. As I  
14 said, this is the Afterdeck. I live north of Conway between  
15 Conway and Aynor. So, by the time I get called, the guys that  
16 are living closer to the beach would be there; they would be  
17 taking a more active role in the investigation as opposed to  
18 someone like me, who lives farther out that it takes them  
19 longer to get there.

20 Q: Do you know some of the other detectives that were there  
21 that night?

22 A: Sergeant Chip Squires was there. I'm trying to remember  
23 who all was there. There was -- by the time I had got there,  
24 the one that the Assistant Solicitor from the Solicitor's  
25 Office was there. And I don't recall Sergeant, well, Sergeant

1 Troxell, Tim Troxell now; he was a detective at the time and I  
2 know he was there.

3 Q: So, Detective Troxell and Detective Frebowitz were also  
4 there?

5 A: Yes, sir, there were a crew there.

6 Q: And Detective Frebowitz was the lead investigator?

7 A: Yes, sir.

8 Q: Okay. Now, you said that you didn't have any contact at  
9 all with my client, Blake Griffith?

10 A: No, sir, not that I recall.

11 Q: The only contact you had was with Blake Brown?

12 A: Correct.

13 Q: And that was when Blake Brown called and said he would  
14 meet the girls at the beach house?

15 A: That's correct.

16 Q: And then you went to the beach house; is that correct?

17 A: That's correct.

18 Q: And was it obvious from when you got up to the beach house  
19 that Brown, not Griffith again, but Brown had not walked  
20 there?

21 A: He was in a vehicle. I mean, I can't speculate as to  
22 whether he walked or not, but when I arrived, he was in a  
23 vehicle

24 Q: It was obvious that he had gotten there in a vehicle?

25 A: It was obvious he was sitting in a vehicle when I arrived.

1 I can't tell you how he got to the beach house.

2 Q: And you said he was with his mother; is that correct?

3 A: That's correct.

4 Q: All right. Obviously, in a vehicle with his mother he  
5 could have possibly driven there with his mother?

6 A: That is a distinct possibility, yes, sir.

7 Q: And you found that knife, excuse me, this knife in his  
8 mother's car?

9 A: It was in the, in his mother's car in the passenger area  
10 where he just exited from.

11 Q: Okay. Where he had just exited from?

12 A: Yes.

13 Q: And again, you had absolutely no contact at all with my  
14 client?

15 A: No, sir, I never saw Mr. Griffith.

16 MR. HYMAN: No further questions, Your Honor.

17 THE COURT: All right.

18 MS. LIVESAY: No further questions, Your Honor.

19 THE COURT: You may come down.

20 A: Thank you, sir.

21 MS. LIVESAY: Your Honor, at this time, the State rests.

22 THE COURT: All right, sir.

23 I'll let you go to the jury room just a moment. I'll be  
24 calling you right back out. Thank you.

25 (REPORTER'S NOTE: Jury exits courtroom. 3:41 P.M. The

1 following takes place outside the presence of the Jury.)

2 MR. SPRATLIN: Your Honor, before we hear the motions,  
3 may Detective Crocker, who just testified, may he be relieved  
4 from his subpoena?

5 THE COURT: He may. That's fine.

6 MR. HYMAN: No objection from the Defense.

7 THE COURT: All right. Are there any motions at this  
8 stage?

9 MOTIONS:

10 MR. HEWITT: Yes, Your Honor, in fact, absolutely. I'm  
11 gonna handle these. Judge, at this time, we do move to  
12 dismiss all four indictments; that's the indictment for  
13 murder, the two indictments for assault and battery with  
14 intent to kill, and the indictment for conspiracy to commit  
15 murder. I ran through this over lunch. It's gonna take about  
16 four minutes and I would appreciate being able to go through  
17 it and I'll be happy to let the State have a response and  
18 because it's my motion, I'm entitled to the last word, I  
19 believe and I'd like a brief reply.

20 Judge, I know you know the elements of murder and you  
21 know the elements of assault and battery with intent to kill  
22 and conspiracy to commit murder. I just want to touch on a  
23 couple of things. Number one, as you know, murder and assault  
24 battery with intent to kill require malice ---

25 THE COURT: Now you understand that this is, this is the

1 end of the State's case and the Defense has already put up  
2 some testimony in this case.

3 MR. HEWITT: I'm not ---

4 THE COURT: You think you're entitled to make this motion  
5 at this stage already having put up testimony?

6 MR. HEWITT: Judge, the Defense has not offered ---

7 THE COURT: Yes, you did. Yes, you specifically, I said  
8 is this defense, he said yes and put it in the record with the  
9 first officer that testified. Isn't that right, Mr. Hyman?

10 MR. HYMAN: Judge, I haven't called any witnesses.

11 THE COURT: No, sir, but you put something in the record.

12 MR. HYMAN: Judge, I'm not following what exactly you're  
13 saying, for identification, is that what you're saying?

14 THE COURT: No, sir, you put it in the record as Defense  
15 Exhibit; you did it twice.

16 MR. HEWITT: Judge, I'm aware of no law, no case under  
17 the statute ---

18 THE COURT: Go ahead, I'll hear from you.

19 MR. HEWITT: Okay. Both murder and assault and battery  
20 with intent to kill, as you know, require malice aforethought  
21 and conspiracy to commit murder requires the same thing; two  
22 people agree to commit an unlawful act. At the directed  
23 verdict stage -- again I know you know this, but I want to put  
24 it into the record. You know we look at all the evidence and  
25 the inferences from the evidence in the light most favorable

1 to the State and this is not an any evidence standard, it's  
2 not that they put one thing on the scales of justice; that's  
3 not enough. You have to ask in the light most favorable to  
4 the State whether there is substantial evidence that  
5 reasonably tends to prove the guilt of the accused. Put  
6 differently, whether a reasonable juror could find beyond a  
7 reasonable doubt that my client committed murder or assault  
8 and battery with intent to kill and this is a circumstantial  
9 evidence case, which is different that direct evidence.  
10 Circumstantial evidence requires the evidence conclusively and  
11 exclusively point to the guilt ---

12 THE COURT: Well, I disagree with you that it's solely  
13 circumstantial, but you may proceed.

14 MR. HEWITT: Okay, perhaps you heard something I didn't,  
15 but I'm gonna try and hit the high notes on this evidence and  
16 we'll see where we are. What I'm gonna do now is pass you and  
17 my Co-counsel is gonna pass it to the State, four cases of ---

18 THE COURT: I'm familiar with all those cases.

19 MR. HEWITT: Well, I'd still like to give them to you and  
20 your Clerk if you'd like to review them.

21 THE COURT: You may do so.

22 MR. HEWITT: The first three, Your Honor, are murder  
23 cases where the Supreme Court of this State and one of them is  
24 a recent case involving a trial in Horry County where the  
25 Supreme Court said it was error for the Trial Court to fail to

1 direct a verdict in the Defendant's favor in a circumstantial  
2 evidence case. Now those cases are obviously distinguishable  
3 factually, but I submit to you they're do not materially  
4 distinguishable.

5 Here's what I got from the evidence we've been through  
6 and this is in day three, what we have on malice. A witness  
7 said my client was acting aggressive, eyeballing people. One  
8 of the witnesses yesterday said that my client was talking  
9 trash before this fight began, but another one of their  
10 witnesses, there's a conflict in the evidence here, Robert  
11 Penna said there was no smack talk. Whether there's smack  
12 talk or not, as far as I know, the law is that words are not  
13 enough. So I'm having a real hard time getting to the malice  
14 when the testimony is that he was eyeballing somebody and  
15 might have been talking trash.

16 Our theory in the case obviously is that at most, this is  
17 mutual combat. Here's the evidence on that, Ryan Palmer said  
18 I thought we were about to fight so I went on offense when I  
19 saw Blake Brown with a knife, I shifted to defense. Robert  
20 Penna said that my client and Blake Brown, who was the  
21 Codefendant, has now pled guilty, Robert Penna said he thought  
22 they had too much pride to walk away and couldn't say who  
23 started the fight and knew that someone on his side threw the  
24 first punch.

25 Michael Parker said that he, Michael Parker, put his

1 hands up and my client might have raised his hands to push  
2 somebody and Michael Parker said he couldn't say who threw the  
3 first punch.

4 On knives, Ryan Palmer said Blake Brown had one and the  
5 best we've got is Mr. Palmer said my client was standing near  
6 D.J. when he thinks D.J. got stabbed and then supposedly  
7 stabbed D.J., folded up the knife, put it in his pocket, then  
8 got in a fight with Mr. Palmer and managed not to get blood on  
9 anything.

10 Judge, I'm a patient fellow. We've been here for three  
11 days. We've had twenty witnesses. This is a five-year-old  
12 murder case. I've learned three things after listening to all  
13 this. Number one, this poor fellow died and I'm sorry he's  
14 dead; number two, he died because he got stabbed in the heart;  
15 and number three, a reasonable juror could not, based on this  
16 evidence, find my client guilty of murder, conspiracy to  
17 commit murder or assault and battery with intent to kill  
18 beyond a reasonable doubt. Judge, it is not there.

19 THE COURT: What do you say about manslaughter?

20 MR. HEWITT: Judge, he wasn't charged with manslaughter.

21 THE COURT: Well, that's lesser included of murder.

22 MR. HEWITT: And the indictment, I don't believe, Judge,  
23 necessarily includes that. If we charge murder to the Jury  
24 and there's evidence to support voluntary or involuntary ---

25 THE COURT: I understand that. All right. Let me have,

1 you've heard the contention of Defense Counsel. Let me hear  
2 the State's position.

3 MR. SPRATLIN: Your Honor, addressing first the issue of  
4 mutual combat, mutual combat requires mutual agreement to  
5 fight on equal terms. The evidence in the record today are  
6 that the Defendant and his Codefendant were armed. There is  
7 no evidence in the record to show that these victims had any  
8 weapons. So, thus the fight would not have been on equal  
9 terms, two people pulling out a deadly weapon against unarmed  
10 people does not equal mutual combat. I do not believe the  
11 Defense is correct in their statements that this case is in  
12 fact a case of mutual combat.

13 Furthermore, regarding the Defense motion on malice, Your  
14 Honor, there is plenty of evidence in the record to show  
15 malice aforethought. Malice aforethought can be formed in an  
16 instant. The evidence in the record shows the Defendants  
17 entered that bar, that they bought a knife before coming to  
18 the bar and this Defendant purchased the knife before coming  
19 to the bar, was armed with that knife while in the bar,  
20 proceeded to go outside in an altercation that didn't even  
21 involve them and go up to two separate people who testified,  
22 Klevis, whose last name escapes me, and Seth Rogers; went up  
23 to both of them and offered to assist them in a fight. And in  
24 fact, according to Seth Rogers, said someone's gonna die  
25 tonight and even showed a weapon. Obviously, Your Honor, that

1 could be to inclination that these guys went to the club with  
2 the intent to hurt somebody.

3       Furthermore, Your Honor, the evidence shows that at the  
4 scene of the actual incident involving where D.J.  
5 unfortunately passed away, that you had from Ashley McNeil,  
6 second witness who testified here in Court back on Monday, you  
7 had her say that that man was armed with a knife. That man  
8 had a knife out moments before the fight occurred. That man  
9 and his Codefendant walked up to the other boys who were  
10 backed into a corner just sitting around having a good time.  
11 Those two boys walked up to them, verbal altercation, physical  
12 altercation, where something erupted, knives were used, D.J.  
13 was killed, Mr. Penna was stabbed, Mr. Palmer was sliced.

14       THE COURT: Let me say this to you, Counsel. There's a  
15 plethora of testimony in this case, if believed, first that  
16 your client purchased a knife before he got there. There is  
17 abundant testimony, if believed, that Brown and him acting  
18 together wanted to start a fight. There's testimony that the  
19 deceased or his friends had no weapons and that your person --  
20 and he was identified as having a knife strapped to his waist.  
21 All of this is for the Jury to consider. Not only did he get  
22 a knife allegedly in preparation for the trouble, but he and  
23 Brown, through some testimony, looked for trouble and that's  
24 clear. I don't say that it happened; I'm saying there's  
25 testimony to that effect. This at this point is clearly a

1 question for the Jury. I'll hear your motions at the end of

2 ---

3 MR. HEWITT: That's fine. I'd just like to put it -- I  
4 understand your ruling and respect it if that is a ruling.  
5 I'd just like to put my reply on the record.

6 THE COURT: You may do so and I appreciate that.

7 MR. HEWITT: Thank you very much. Judge, I think some  
8 of the evidence and I don't hang any intent on anybody, but  
9 some of the evidence that was submitted to you by the State,  
10 there will be argument was not accurate. Seth Rogers  
11 testimony was that Blake Brown ----

12 THE COURT: Well, it may or may not have been accurate.  
13 My position is it was presented to the Jury.

14 MR. HEWITT: Judge, I submit to you that were you to  
15 review the facts of those three cases that I provided you  
16 with, you would see that there is no material difference  
17 between the circumstantial evidence in those cases ---

18 THE COURT: You've got more, you keep saying  
19 circumstantial. You've got more than circumstantial. You've  
20 got one, that your client purchased a knife; two, he was seen  
21 with the knife strapped on his; and three, one of the  
22 Defendants by inference indicated that he was the one, your  
23 client was the one that hit him in the back and there was,  
24 there was that testimony too.

25 MR. HEWITT: Judge, I'm not trying to argue with you.

1 THE COURT: I know. You're not arguing with me, but I'm  
2 just telling you what -- I'm not saying is true; I'm saying  
3 it's before the Jury.

4 MR. HEWITT: I understand.

5 THE COURT: And you understand the hand of one is the  
6 hand of all and there's plenty of testimony that Brown with  
7 your client at his side was attempting to create some  
8 difficulty. You heard the testimony.

9 MR. HEWITT: I did hear that, Judge. It's news to me  
10 that silence is evidence of conspiracy. The last case I  
11 handed you is a case that involves ---

12 THE COURT: Well, no, there's a little more than silence.  
13 Not only was there silence, the testimony is that your client  
14 came forward with Brown when he started mouthing looking for  
15 trouble and he stood side by side, the big man and the little  
16 man. Not only was he silent, he came forward according to the  
17 testimony with Brown.

18 MR. HEWITT: Judge, my -- again my intention is not argue  
19 with you.

20 THE COURT: Oh, I understand that.

21 MR. HEWITT: I just want to put this into the record.

22 THE COURT: No, and I appreciate your position. No,  
23 you're not arguing with me.

24 MR. HEWITT: You're exactly correct. We do not dispute  
25 that a knife was purchased, that my client purchased that

1 knife. That's never been in dispute. Never been in dispute  
2 that they went to the club; never been in dispute that there  
3 were knives involved; never been in dispute that there was a  
4 -- never in dispute that a guy died.

5 THE COURT: Is there any, is there any, is there any  
6 dispute that he and Brown went forward and started mouthing  
7 about I'm not gonna use the language?.

8 MR. HEWITT: That is in dispute, but we don't get to look  
9 at that because that's not in evidence yet.

10 THE COURT: It is in evidence.

11 MR. HEWITT: No, sir, we haven't presented the case in  
12 ---

13 THE COURT: No, it's in evidence what Brown said. I'm  
14 not gonna use that terrible language that he allegedly used.

15 MR. HEWITT: Right. Just ---

16 THE COURT: That's in evidence.

17 MR. HEWITT: --- just two things very quickly. Number  
18 one, they're, no one has testified that they saw my client  
19 brandish a knife during that fight. That makes this a  
20 circumstantial evidence case. And maybe I just have my  
21 dictionary definitions wrong, but I always thought that direct  
22 evidence is I saw somebody do something. There is direct  
23 evidence that my client bought a knife.

24 THE COURT: There is some evidence by one of the  
25 witnesses who indicated that your client was at his back and

1 he had to be the one that struck him; you don't remember that  
2 testimony?

3 MR. HEWITT: I do remember that testimony. Of course, I  
4 also remember that person said, Well, I don't know when I was  
5 stabbed in their same testimony and when pressed by my Co-  
6 counsel, whether my client stabbed him, he said I think you'll  
7 just have to take my word for it, which is not good enough for  
8 me, obviously.

9 THE COURT: I understand you ---

10 MR. HEWITT: I understand your ruling and I appreciate  
11 you letting me put that on the record.

12 THE COURT: And I'll hear you in detail at the end of the  
13 defense case.

14 MR. HEWITT: Yes, sir.

15 THE COURT: And I thank you for your comments; they are  
16 well taken and I'll review these cases that you submitted  
17 during the evening.

18 Now is it appropriate at this time for me to discuss with  
19 the Defendant his right to testify or not testify or do you  
20 prefer that I do it at a later time. What you say, Mr. Hyman?

21 MR. HYMAN: Probably at a later time, Judge.

22 THE COURT: All right. Now, what time is it?

23 LAW CLERK: 3:54.

24 THE COURT: Are we ready to proceed?

25 MR. HEWITT: We are, Judge, I think we need a brief

1 minute to confer about who we're gonna call first if that's  
2 okay?

3 THE COURT: Sure, that's fine. Let it be as quick as  
4 possible though, please?

5 MR. HEWITT: Yes, sir.

6 (REPORTER'S NOTE: There is a brief break in the record for  
7 counsel to prepare.)

8 MR. HYMAN: Judge, we're ready when you are.

9 THE COURT: All right, sir.  
10 Bring my jury in please.

11 (REPORTER'S NOTE: Jury enters courtroom. 4:02 P.M.)

12 THE COURT: All right, sir. At this time you may  
13 proceed.

14 MR. HYMAN: Your Honor, the Defense would call Carmen  
15 Mureddu.

16 CLERK: Please raise your right hand and place your left  
17 hand on the Bible.

18 CARMEN MUREDDU, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Please state your full name and spell your last  
21 name.

22 MR. MUREDDU: Carmen Mureddu, M-U-R-E-D-D-U.

23 DIRECT EXAMINATION OF CARMEN MUREDDU BY MR. HYMAN:

24 Q: Ms. Mureddu, can you tell this Jury, please, where you're  
25 currently employed?

1 A: I'm currently employed at the Horry County Sheriff's  
2 Office as a Lieutenant.

3 Q: Okay. And prior to that employment, where were you  
4 employed at?

5 A: I was an investigator for the Fifteenth Circuit  
6 Solicitor's Office.

7 Q: So, you were an investigator for the Solicitor's Office  
8 here?

9 A: Yes, sir.

10 Q: Okay. And did you investigate this case?

11 A: A portion of it, yes, sir.

12 Q: Now as far as, as your experience, I know you're had quite  
13 a bit of experience. Do you mind telling the Jury what your  
14 experience in law enforcement is?

15 A: I started in law enforcement in 1984 in Miami, Florida.  
16 From there I went to work in Oregon as a police officer, a  
17 narcotics officer and homicide detective and then Chief of  
18 Police of Surfside Beach Police Department and then finally  
19 the last two jobs that I've had here with the Solicitor's  
20 Office and at the Sheriff's Office.

21 Q: In your time as a, a investigator with the Solicitor's  
22 Office dealing with this case, did you actually interview  
23 quite a few witnesses?

24 A: Yes.

25 Q: Do you remember when you interviewed these witnesses,

1 what, what year it was?

2 A: It was, my report is dated March 2011 so it was on or  
3 about that, prior to that.

4 Q: Okay. Prior to that or up until that date?

5 A: Yes.

6 Q: Is that correct? Okay. Do you remember as far as your  
7 recollection and I don't know if you have a copy of your  
8 report; do you have that copy?

9 A: I do.

10 Q: Okay. Now if you were to interview someone and make a  
11 report on that, generally speaking, would that report be  
12 accurate as to what you were told?

13 A: Yes.

14 Q: So as far as your report, you don't make stuff up and put  
15 in there?

16 A: No, I don't.

17 Q: Did you happen to interview a young lady -- well,  
18 actually, let's talk about Ashley McNeil. Did you happen to  
19 interview her?

20 A: Yes, I did.

21 Q: Okay. Now Ashley, Ashley McNeil, when you interviewed  
22 her, do you remember who she said that she helped outside?

23 MS. LIVESAY: Your Honor, if I may, wouldn't anything she  
24 said be hearsay?

25 THE COURT: It is hearsay unless she testifies.