

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

THADDEUSS STARKS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
County of Richland) 07-GS-40-9503
)
)
The State of South Carolina,)
)
)
vs.) TRANSCRIPT OF RECORD
)
Thaddeus Starks,)
)
Defendant,)

October 8th - 12th, 2007
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JUDGE AND A JURY.

APPEARANCES:

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DOLLY J. GARFIELD, ASSISTANT SOLICITOR
Attorneys for the State

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KAREN TRACY
Official Court Reporter

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1 THE COURT: All right. Solicitor, call your case.

2 MS. SHIPLEY: Thank you, Your Honor. May it please
3 the Court. The State of South Carolina calls the case of
4 the State vs. Thaddess Starks with the charge of murder
5 under warrant 2007-GS-40-9503.

6 For the Solicitor's Office, Vanessa Shipley and Dolly
7 Garfield will be prosecuting the case. For the defendant,
8 Michael McMullen from the defense bar, private defense
9 bar, will be representing the defendant.

10 THE COURT: Is the State ready to proceed?

11 MS. SHIPLEY: Yes, sir, Your Honor.

12 THE COURT: Is the defense ready to proceed?

13 MR. McMULLEN: Yes, sir.

14 THE COURT: All right. I understand there are
15 several -- you can be seated. Several matters of a
16 pretrial nature that need to be taken up by the Court
17 prior to the actual beginning of the trial.

18 Is it satisfactory to both the State and the
19 defendant to seat this jury and then take up the matters
20 that need to be heard prior to the actual testimony?

21 MS. SHIPLEY: The State is in agreement, Your Honor.

22 MR. McMULLEN: Yes, sir.

23 THE COURT: All right.

24 MR. McMULLEN: That's fine.

25 THE COURT: Any voir dire on the part of the State?

1 MS. SHIPLEY: Just the reciprocal questions from the
2 defense, Your Honor.

3 THE COURT: All right. Any voir dire on behalf of
4 the defense?

5 MR. McMULLEN: No, sir, just your standard.

6 THE COURT: The standard voir dire?

7 MR. McMULLEN: Yes, sir.

8 THE COURT: Ten and five. Everybody understand that?
9 (There was no response).

10 Ready for the jury?

11 MS. SHIPLEY: Yes, sir.

12 MS. GARFIELD: Yes, sir.

13 THE COURT: Ready for the jury, Mr. McMullen?

14 MR. McMULLEN: Yes, sir.

15 THE COURT: Bring the jury, please.

16 (The bailiff complied).

17 THE COURT: Ms. Shipley, where did this allegedly
18 take place?

19 MS. SHIPLEY: [REDACTED] [REDACTED] [REDACTED] in Eastover, Your
20 Honor.

21 THE COURT: Converse?

22 MS. SHIPLEY: [REDACTED]. I wrote it down on the
23 witness list for the State, Your Honor.

24 THE COURT: I see it.

25 MS. SHIPLEY: Yes, sir.

1 (Most of the jurors entered the courtroom).

2 (Pause).

3 THE COURT: Is Carlyle Weeks here, Carlyle Weeks?

4 (There was no response).

5 THE COURT: Send a deputy.

6 THE BAILIFF: Sir?

7 THE COURT: Send Jessie to go get him.

8 (Pause).

9 (Juror Weeks entered the courtroom).

10 THE BAILIFF: The jurors are all present.

11 THE COURT: Yes, sir. See, if you don't show up, I
12 got the big guy right here. He's going to come get you.

13 Good afternoon, ladies and gentlemen.

14 MR. McMULLEN: Good afternoon to you.

15 THE COURT: Welcome to the Court of General Sessions.
16 This is the criminal division of our Court system. We
17 call the civil division the court of Common Pleas. We
18 call the criminal division the court of General Sessions.
19 These are names that have been with our court system since
20 Colonial days.

21 I tell jurors frequently, like so many other things
22 in South Carolina, we don't change things very easily. So
23 those of you who are selected on this jury today will be
24 sitting on a criminal case.

25 I'm going to tell you a little bit about it in just a

1 minute. It's the case of State vs. Thaddess Starks. I'm
2 going to introduce Mr. Starks to you in a minute, and I'll
3 tell you what the charges are.

4 Before I even do that, I do need to tell you that
5 when anybody, any individual, is named and charged with a
6 crime in the State of South Carolina, Richland County, or
7 in this United States, for that matter, they are only
8 charges that are brought against them.

9 They are always -- I'll explain this in more detail
10 in just a minute. They are always presumed to be innocent
11 of the charges until proven guilty by the State beyond a
12 reasonable doubt to a jury, so that's certainly one of the
13 reasons why we need a jury to decide this issue today.

14 Now, as you probably know, the -- any case that's
15 prosecuted by either what's known in some states as the
16 District Attorney or State's Attorney -- here in South
17 Carolina, we call our prosecuting entity the Solicitor's
18 Office.

19 You may have met your Solicitor this morning. I'm
20 not sure if he was at the initial roll call, Mr. Barney
21 Geise.

22 Mr. Geise will not be actually prosecuting the case
23 today. Two of the -- his Assistant Solicitors will be
24 prosecuting the case. I'm going to introduce them to you
25 now. They are Ms. Vanessa Shipley and Ms. Dolly Garfield.

1 I'll ask if any member of the jury panel or any
2 member of your family is related to Ms. Vanessa Shipley or
3 Ms. Dolly Garfield or if you have -- or if you are a
4 personal acquaintance of theirs or are related to them in
5 any way. If so, please stand.

6 (There was no response).

7 Thank you very much, counsel, ladies, counsel.

8 Before I go through this question and answer period,
9 let me point out one thing. When I call and ask you if
10 you can respond to any of these questions, I'm going to
11 ask you to identify yourself by juror number. Everybody
12 look down, get your juror number.

13 The reason for this is we are just conducting sort of
14 an experiment this year in Richland County. We found that
15 jurors would prefer it, particularly in criminal cases, to
16 be identified by number only, not by name.

17 Now, that -- some people don't mind whether their
18 names are known or not, but we just thought we would do
19 this this year.

20 We found that over the course of the year that jurors
21 sort of liked that. They would rather be sort of, not
22 anonymous, but they at least be identified only by number
23 and not by name, particularly in criminal courts. I don't
24 think it makes that much difference.

25 If you will, if you respond to any of the questions

1 that I ask you, please respond -- please stand so the
2 juror -- the court reporter can hear your name, I mean
3 your number, and respond to the question accordingly.

4 Now, I asked if any member of the jury panel was
5 related by blood, connected by marriage or employment or
6 close personal acquaintance of either of the two attorneys
7 that are going to be handling the case today.

8 I also need to know if any member of the jury panel
9 is related by blood, connected by marriage or employment
10 or a close personal acquaintance of Mr. Barney Geise, the
11 actual Solicitor for this district, for this Fifth
12 Judicial Circuit. Any member of the jury panel know
13 Mr. Geise, have any connection with him?

14 (There was no response).

15 Any member of the jury panel have any connection with
16 any member of the staff of the Fifth Judicial Circuit
17 Solicitor's Office, whether you know anybody that works in
18 there or have any connection.

19 Yes, sir, and your juror number, please?

20 PROSPECTIVE JUROR: 146.

21 THE COURT: All right. And Mr. One--- I'm going to
22 try it this way, Mr. 146.

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: What is your connection?

25 PROSPECTIVE JUROR: I am -- I've met members of the

1 Fifth Judicial Circuit staff socially at different
2 functions.

3 THE COURT: All right. And let me ask you this,
4 Mr. 146, would that fact in any way interfere with your
5 ability to give both the State and the defendant a fair
6 and impartial trial?

7 PROSPECTIVE JUROR: No, it would not.

8 THE COURT: You feel you could be fair to both
9 parties in this case, even though you have some
10 relationship with the Solicitor's Office?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: All right. Thank you very much. Anybody
13 else?

14 (Pause).

15 Go ahead. I don't have a jury list, so I don't know
16 who you are either. Usually I have a jury list so I can
17 make some notations.

18 All right. Let me ask, follow up that thought. Does
19 any member of the jury panel have any connection with the
20 Solicitor's Office?

21 Because the Solicitor's Office regularly not only
22 represents law enforcement but has a lot of close contact
23 with law enforcement and has to deal on a day-to-day basis
24 with law enforcement, I need to know if any member of the
25 jury panel or any member of your family is involved in law

1 enforcement. That could be anything from the Solicitor --
2 I mean from the Richland County Sheriff's Office, the
3 Columbia Police Department, Forest Acres Police
4 Department, any military police force or S.L.E.D. or
5 F.B.I., any type of law enforcement agency that either you
6 or a member of your family or a close personal
7 acquaintance are involved with. If you'll please stand
8 and let me know.

9 Yes, sir, on the front row your number, please?

10 PROSPECTIVE JUROR: 124.

11 THE COURT: 124, yes, sir.

12 PROSPECTIVE JUROR: I'm currently interviewing and
13 received a provisional employment to the F.B.I.

14 THE COURT: F.B.I.?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: All right. Let me ask you, Mr. 124,
17 would that fact in any way interfere with your ability to
18 give both the defendant and the State a fair and impartial
19 trial in this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you very much.

22 And number 146?

23 PROSPECTIVE JUROR: I am Assistant County
24 Administrator and do work on a daily basis with the
25 Solicitor's Office and the local police force.

1 THE COURT: Okay. Again, would that fact in any way
2 interfere in your ability to give the State and the
3 defendant a fair and impartial trial?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: All right. Yes. Lady with the black
6 dress on.

7 PROSPECTIVE JUROR: I'm number 37.

8 THE COURT: Number 37.

9 PROSPECTIVE JUROR: My husband is employed by the
10 Just Care center. He's a transportation officer.

11 THE COURT: All right. Would that fact in any way
12 interfere with your ability to give both the State and the
13 defendant a fair and impartial trial?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Thank you, Madam 37.

16 Yes, ma'am, red dress?

17 PROSPECTIVE JUROR: Juror number 167. My father is a
18 federal judge, Social Security Administration, Circuit
19 Court for South Carolina.

20 THE COURT: Your father --

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: -- is a federal judge?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: In South Carolina?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Really?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Okay. What's his name?

4 PROSPECTIVE JUROR: I'm...

5 THE COURT: You're not going to tell me?

6 PROSPECTIVE JUROR: No, sir. I will if you call me
7 up. Chances are you know him.

8 THE COURT: Chances are. All right. Madam 167,
9 would that fact in any way interfere with your ability to
10 give both the State and the defendant a fair and impartial
11 trial?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Thank you very much, juror 167.

14 Yes, ma'am?

15 PROSPECTIVE JUROR: Juror 168.

16 THE COURT: 168.

17 PROSPECTIVE JUROR: And my husband is an Associate
18 Warden for the Department of Corrections.

19 THE COURT: All right. Would that fact in any way
20 interfere with your ability to give both the State and the
21 defendant a fair and impartial trial?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Thank you very much, ma'am.

24 The lady with the green dress?

25 PROSPECTIVE JUROR: Juror 157. My brother is a

1 constable.

2 THE COURT: In Richland County?

3 PROSPECTIVE JUROR: Richland County.

4 THE COURT: Would that fact in any way interfere with
5 your ability to give both the State and the defendant a
6 fair and impartial trial?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: All right. Thank you very much.

9 Yes, sir?

10 PROSPECTIVE JUROR: 257.

11 THE COURT: 257.

12 PROSPECTIVE JUROR: My brother-in-law works for the
13 A.T.F.

14 THE COURT: All right. Did?

15 PROSPECTIVE JUROR: Does.

16 THE COURT: Does. All right. Would that fact in any
17 way interfere with your ability to give both the State and
18 the defendant a fair and impartial trial?

19 PROSPECTIVE JUROR: It would not.

20 THE COURT: Thank you very much.

21 All right. Ladies and gentlemen, I'm going to ask
22 you sort of an extension of that one, one other question.
23 Any member of the jury panel a regular contributor to or
24 supporter of groups which has as their primary function or
25 concern the promotion of law enforcement or victim's

1 rights?

2 Let me give you some examples of what I'm talking
3 about. Any member -- and this could be whether you're a
4 contributor to or actually support as a volunteer things
5 like Mothers Against Drunk Driving or Students Against
6 Drunk Driving or Citizens Against Violence or Sister Care
7 or things like the Trooper's Association or the Sheriff's
8 Association. Any of these groups that you either
9 volunteer for or contribute to on a fairly regular basis
10 that you can think of.

11 In other words, any member of the jury panel has a
12 regular type -- part of your life contribute to those
13 groups or volunteer for those groups?

14 Ms. one---

15 PROSPECTIVE JUROR: Fifty---

16 THE COURT: --67.

17 PROSPECTIVE JUROR: State Trooper's Association and
18 the Rape Abuse and Incest National Network.

19 THE COURT: All right. Let me ask you this. You
20 donate to the Trooper's Association?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. Now, I ask juries all the
23 time, did you get a little sticker to go in your car?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Have you ever gotten a traffic ticket?

1 PROSPECTIVE JUROR: I've been to traffic court twice.

2 THE COURT: You what?

3 PROSPECTIVE JUROR: Traffic court twice, not in
4 Richland County, back in Texas.

5 THE COURT: Oh, but you didn't have that sticker on
6 your car in Texas, did you?

7 PROSPECTIVE JUROR: Yes and a Federal Judge plate.

8 THE COURT: Well, you just shot my whole theory,
9 ma'am.

10 PROSPECTIVE JUROR: I'm sorry, Judge.

11 THE COURT: If you had contributed and gotten the
12 sticker, I thought that gave you a free pass.

13 PROSPECTIVE JUROR: No, sir, it doesn't.

14 THE COURT: Thank you very much --

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: -- Ms. 167.

17 Yes, sir?

18 PROSPECTIVE JUROR: 269, sir.

19 THE COURT: 269.

20 PROSPECTIVE JUROR: I also occasionally give to the
21 Trooper's Association.

22 THE COURT: All right. I'm not going to ask you the
23 same question.

24 PROSPECTIVE JUROR: Well, I've got it, but I never
25 put it on my car.

1 THE COURT: I would do that if I were you.

2 PROSPECTIVE JUROR: Sir?

3 THE COURT: I would do that if I were you, especially
4 if you drive as fast as I do.

5 All right. Thank you very much, sir.

6 All right. Ladies and gentlemen, as I explained
7 earlier, the defendant in this matter today is
8 Mr. Thaddess Starks. I'm going to ask Mr. Starks if
9 you'll stand with your attorney, please.

10 (Complies.)

11 Mr. Starks, I need to ask if any member of the jury
12 panel is related by blood or marriage or a close personal
13 acquaintance of Mr. Thaddess Starks. If so, please stand.
14 Anybody know Mr. Starks?

15 (There was no response).

16 Mr. Starks is represented in this matter today by
17 Mr. Michael D. McMullen, an attorney practicing here in
18 Columbia. I'll ask if any member of the jury panel is
19 connected by marriage -- related by blood or connected by
20 marriage or employment or a close personal acquaintance of
21 Mr. Michael D. McMullen or have perhaps been represented
22 by him in the past or being represented by him presently,
23 any member of the jury panel?

24 (There was no response).

25 All right. Thank you very much.

1 What I hold in my hand, ladies and gentlemen, is what
2 is known as an indictment. This is merely the formal
3 document by which a case is brought into court and an
4 individual is asked to answer to certain charges contained
5 in the indictment.

6 As I explained to you a little bit earlier, this
7 indictment is not proof of anything. It's not evidence of
8 anything. It is merely the document by which the charges
9 are brought and an individual is brought to answer for
10 those charges.

11 They're not what I'm going to tell you about this
12 indictment. I'm going to read it to you. It's not
13 evidence of anything.

14 Mr. Starks is presumed innocent at the beginning of
15 this trial, and he is presumed innocent throughout the
16 length of this trial until a jury finds him guilty, if at
17 all, of the charges contained in the indictment.

18 Now, when I read the indictment to you, it is not to
19 imply or infer anything about whether these allegations
20 are supported by evidence. That would have to be proven
21 to a jury before a defendant could be convicted.

22 The indictment charges Thaddess Starks in Richland
23 County on or about October 12, 2006, which is just about
24 exactly a year ago, at [REDACTED] [REDACTED] [REDACTED] in Eastover;
25 that Mr. Starks did willfully and with malice aforethought

1 kill one Alphonzo Cleveland by means of a stab wound and
2 that the victim died as a proximate result thereof. The
3 indictment is for murder.

4 Now, I need to ask if any member of the jury panel
5 knows anything about this case, heard anything about this
6 case, saw anything in the news about this case, heard
7 conversation at a church or a gathering place of anybody,
8 any other comments from anybody about this case. We need
9 to know if anybody, as I say, knows anything about it and
10 that might be -- have some bias one way or the other.

11 So I'll ask, does any member of the jury panel know
12 anything or heard anything about this case before today?
13 Anybody?

14 (There was no response).

15 Any member of the jury panel know or have any
16 relationship with Mr. Alphonzo Cleveland, the deceased?
17 Any member of the jury panel?

18 (There was no response).

19 Let me ask if any member of the jury panel or any
20 member of your family has ever been the victim of a
21 violent crime? Any member of your family, any member of
22 the jury panel or any member of your family ever been the
23 victim of a violent crime? If so, please stand.

24 All right. The lady on my left, number?

25 PROSPECTIVE JUROR: 174.

1 THE COURT: Yes, ma'am.

2 PROSPECTIVE JUROR: I need to ask you a question.

3 THE COURT: Certainly.

4 PROSPECTIVE JUROR: If you would define "violent".

5 THE COURT: Well, if it's a crime that resulted in
6 some sort of law enforcement action or prosecution -- if
7 you'll tell me what it is, if you can, if you feel
8 comfortable.

9 PROSPECTIVE JUROR: Yeah.

10 THE COURT: And are you speaking of yourself or a
11 member of your family?

12 PROSPECTIVE JUROR: A member of my family.

13 THE COURT: All right.

14 PROSPECTIVE JUROR: Immediate family, yeah.

15 THE COURT: All right. Can you tell me just briefly
16 what it is, and how long ago it took place.

17 PROSPECTIVE JUROR: It was about seven years ago.
18 Three boys beat up my son, strong arm robbery, and they
19 were all underage.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: It was sent to this courthouse.

22 THE COURT: Juvenile Court perhaps?

23 PROSPECTIVE JUROR: But I was not allowed to be
24 present because the boys were underage.

25 THE COURT: Okay. Well, I would -- I would consider

1 that a violent crime. Yes, ma'am, thank you very much.

2 Oh, let me ask you, Ms. 174, the same question I
3 asked several other jurors. Would that fact and that life
4 experience of yours in any way interfere with your ability
5 to give both the State and the defendant a fair and
6 impartial trial in this case?

7 PROSPECTIVE JUROR: No, it would not affect it.

8 THE COURT: Thank you very much.

9 The lady in the white blouse.

10 PROSPECTIVE JUROR: 277.

11 THE COURT: Yes, ma'am.

12 PROSPECTIVE JUROR: My sister-in-law was shot and
13 killed.

14 THE COURT: Who was?

15 PROSPECTIVE JUROR: My sister-in-law.

16 THE COURT: Your sister-in-law. How long ago, ma'am?

17 PROSPECTIVE JUROR: Two years ago --

18 THE COURT: All right.

19 PROSPECTIVE JUROR: -- this past September. She was
20 shot and killed.

21 THE COURT: In this area?

22 PROSPECTIVE JUROR: Yes, sir, Richland County.

23 THE COURT: Would that fact in any way interfere with
24 your ability to give the State and the defendant a fair
25 trial?

1 PROSPECTIVE JUROR: I -- I think it might be.

2 THE COURT: All right. Thank you very much, Ms. 227.

3 Yes, sir?

4 PROSPECTIVE JUROR: 269, sir.

5 THE COURT: Yes, sir.

6 PROSPECTIVE JUROR: My family was attacked in an
7 attempted robbery. My father was hit over the head with a
8 gun but not shot, which he recovered, back in 1973.

9 THE COURT: Seventy-three?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Would that life experience of yours in
12 any way interfere with your ability to give both the State
13 and the defendant a fair and impartial trial?

14 PROSPECTIVE JUROR: I don't think so, sir.

15 THE COURT: Thank you very much.

16 Anybody else?

17 (There was no response).

18 Any member of the jury panel or any member of your
19 family ever been accused, this is the opposite, of
20 committing a violent crime? Any member of the jury panel
21 or any member of your family ever been accused -- and
22 again, by that I mean to the point of law enforcement
23 involvement and perhaps even the matter being brought to
24 court, that sort of thing? Any member of the jury panel
25 or any member of your family ever been accused of

1 committing a violent crime? If so, please stand.

2 Ms. 227?

3 PROSPECTIVE JUROR: Yes, sir, 277.

4 THE COURT: 277, I'm sorry. I thought it was 227.

5 In that same incident?

6 PROSPECTIVE JUROR: No. My husband was charged with
7 a felony, a rape, and this is in 1978.

8 THE COURT: All right. Thank you very much, Ms. 277.

9 Yes, ma'am?

10 PROSPECTIVE JUROR: Juror 126. Would you define
11 family, how close?

12 THE COURT: Well, cousins. I guess that's about as
13 far as I can go.

14 PROSPECTIVE JUROR: I had a nephew charged with
15 vehicular homicide.

16 THE COURT: How long ago?

17 PROSPECTIVE JUROR: About ten years ago.

18 THE COURT: All right. Thank you very much, ma'am.

19 Would that fact in any way interfere with your
20 ability to give both the State and the defendant a fair
21 and impartial trial?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Thank you very much. Anybody else?

24 All right. Ladies and gentlemen, I'm going to read
25 to you a list of potential witnesses in this case. Again,

1 the same question applies to all. Is any member of the
2 jury panel related by blood, connected by marriage,
3 employment or close personal acquaintance of any one of
4 the following potential witnesses.

5 If any of these witnesses are present, I'll ask do
6 you stand and face the jury: Deputy John Carwell with the
7 Richland County Sheriff's Office. Anybody know
8 Mr. Carwell?

9 (There was no response).

10 Deputy Johnson Haddock; Deputy Stephanie Watford;
11 Investigator Kevin Isenhoward; Investigator David Linfert;
12 Investigator Ray Livingston. All of these are with the
13 Richland County Sheriff's Office. Investigator Stan
14 Richards. Is that Captain Stan Richards?

15 MS. SHIPLEY: No, sir, investigator.

16 THE COURT: Investigator.

17 Dr. Stanton Kessler. Where is -- where is -- where
18 is he?

19 MS. SHIPLEY: Palmetto Richland Memorial Hospital.

20 THE COURT: Palmetto Richland Memorial Hospital.

21 Timothy Cornish; Kimothy Cornish; Monica Watkins;
22 Betty Ann Cleveland. This is Ms. Cleveland at the back.
23 Sergeant Randy Strange with the Richland County Sheriff's
24 Department; Jennifer Blair, 911; Dr. John Barron Richland
25 County Sheriff's Office; Tena Goff, Richland County

1 Sheriff's Office; investigator Darrell Tucker, Richland
2 County Sheriff's Office; Sergeant Miles Weaver, Richland
3 County Sheriff's Office; investigator Anna Bailey,
4 Richland County Sheriff's Office; Connie Cleveland
5 Caldwell; Investigator Michael Poole, Richland County
6 sheriff's office; Dr. Theodore Faber of the West
7 Columbia -- practices in West Columbia with the South
8 Carolina Neurological Associates.

9 All right, ladies and gentlemen, I described to you
10 who the participants in this trial would be and told you
11 what the indictment is in this case.

12 I need to ask now if any member of the jury panel
13 after --

14 MS. SHIPLEY: Your Honor, if you -- there's one more
15 name that was not read out on the witness list.

16 THE COURT: I'm sorry?

17 MS. SHIPLEY: Jeanne Shaw or Shull.

18 THE COURT: Shaw?

19 MS. SHIPLEY: S-H-U-L-L.

20 MR. McMULLEN: It's on the right column.

21 THE COURT: Oh, right there it is. I'm sorry.

22 MS. SHIPLEY: Thank you.

23 THE COURT: It's not in the right -- not in the same
24 column.

25 Jeanne Shull, Alvin -- works -- apparently works at

1 the Alvin S. Glenn Detention Center.

2 Does any member of the jury panel know of any reason,
3 based on what I've told you, what you know now, that you
4 feel you could not give both the State, except Ms. Juror
5 277, any other member of the jury panel feel that they
6 could not sit fairly and listen to this case, decide this
7 case in a fair and impartial manner?

8 Any member of the jury panel feel just because the
9 nature of the charges or the people involved that there
10 was some reason why you could not give both the State and
11 the defendant a fair and impartial trial? Any member of
12 the jury pool?

13 (There was no response).

14 Anything further from the State?

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

16 THE COURT: Anything further from the defense?

17 MR. McMULLEN: No, sir.

18 THE COURT: Madam Clerk, give us a jury, please.

19 THE CLERK: Yes, sir.

20 THE COURT: Approach the bench counsel.

21 (WHEREUPON, a bench conference was held in the
22 Presence, but not within the hearing, of the jury).

23 THE CLERK: Ladies and gentlemen of the jury panel,
24 as I call your number if you'll please come to the
25 microphone, state your number only, and your occupation.

1 Number five.

2 (Jose Alicea, white male).

3 PROSPECTIVE JUROR: Juror number five, I work for the
4 South Carolina Department of Education.

5 THE CLERK: What says the State?

6 MS. SHIPLEY: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. McMULLEN: Please swear the juror.

9 THE CLERK: Please have a seat in the jury box.

10 THE BAILIFF: Watch your step for me, please.

11 THE CLERK: Number 117.

12 (Shomarick Hiller, black male).

13 PROSPECTIVE JUROR: Juror 117, and I work for U.P.S.

14 THE CLERK: What says the State?

15 MS. SHIPLEY: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. McMULLEN: Please swear the juror.

18 THE CLERK: Please have a seat in the jury box.

19 THE BAILIFF: Watch your step there for me, please.

20 THE CLERK: Juror 257.

21 (Brandon Sullivan, white male).

22 PROSPECTIVE JUROR: Number 257, Target Corporation.

23 THE CLERK: What says the State?

24 MS. SHIPLEY: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. McMULLEN: Please excuse the juror.

2 THE CLERK: Please have a seat in the back of the
3 courtroom.

4 Number 113.

5 (Amber Hess, white female).

6 PROSPECTIVE JUROR: Juror 113, I work for Lowes Home
7 Improvement.

8 THE CLERK: What says the State?

9 MS. SHIPLEY: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. McMULLEN: Please excuse the juror.

12 THE CLERK: Have a seat in the back of the courtroom.
13 Number 232.

14 (Tyreak Rogers, black male).

15 PROSPECTIVE JUROR: 232, Tyreak Rogers, South
16 Carolina Mentor.

17 THE CLERK: What says the State?

18 MS. SHIPLEY: I'm sorry, South Carolina what?

19 PROSPECTIVE JUROR: Mentor.

20 MS. SHIPLEY: Please excuse the juror.

21 THE CLERK: Have a seat in the back of the courtroom.
22 If you'll just remember to state your number only,
23 please.

24 Number 251.

25 (Sharon Smith, black female).

1 PROSPECTIVE JUROR: 251, I'm working in a church
2 counseling center.

3 THE CLERK: What says the State?

4 MS. SHIPLEY: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. McMULLEN: Please swear the juror.

7 THE CLERK: Please have a seat in the jury box.
8 Number 296.

9 (Candida Wright, Hispanic female).

10 THE BAILIFF: Watch your step there for me, please.

11 PROSPECTIVE JUROR: 296, I work for the Department of
12 Mental Health.

13 THE CLERK: What says the State?

14 MS. SHIPLEY: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. McMULLEN: Please swear the juror.

17 THE CLERK: Please have a seat in the jury box.

18 THE BAILIFF: Watch your step there for me.

19 THE CLERK: Number 188.

20 (Eric Moser, white male).

21 MR. McMULLEN: What's the number?

22 THE CLERK: 188.

23 PROSPECTIVE JUROR: Juror 188, Eric -- I work in
24 civil engineering.

25 THE CLERK: What says the State?

1 MS. SHIPLEY: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. McMULLEN: Please excuse the juror.

4 THE CLERK: Please have a seat in the back of the
5 courtroom.

6 Number 200.

7 (David Olexa, white male).

8 PROSPECTIVE JUROR: Number 200, retired school
9 psychologist.

10 THE CLERK: What says the State?

11 MS. SHIPLEY: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. McMULLEN: Please swear the juror.

14 THE CLERK: Please have a seat in the jury box.

15 THE BAILIFF: Watch your step there for me, please.

16 THE CLERK: Number 157.

17 (Janet Lonkey, white female).

18 PROSPECTIVE JUROR: Juror 157, I work for
19 Westinghouse.

20 THE CLERK: What says the State?

21 MS. SHIPLEY: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. McMULLEN: Please excuse the juror.

24 THE CLERK: Please have a seat in the back of the
25 courtroom.

1 Number 255.

2 (Matthew Stroud, white male).

3 PROSPECTIVE JUROR: Number 255, I work for Companion
4 Property & Casualty.

5 THE CLERK: What says the State?

6 MS. SHIPLEY: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. McMULLEN: Please swear the juror.

9 THE CLERK: Please have a seat in the jury box.

10 THE BAILIFF: Watch your step for me, please.

11 THE CLERK: Number 174.

12 (Jeanne McGee, white female).

13 PROSPECTIVE JUROR: 174, I work for the South
14 Carolina Department of Mental Health.

15 THE CLERK: What says the State?

16 MS. SHIPLEY: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. McMULLEN: Please excuse the juror.

19 THE CLERK: Please have a seat in the back of the
20 courtroom.

21 Number 19.

22 (Ben Beaver, white male).

23 PROSPECTIVE JUROR: Juror number 19. I'm a Lutheran
24 pastor.

25 THE CLERK: What says the State?

1 MS. SHIPLEY: Please present the pastor.

2 THE CLERK: What says the defense?

3 MR. McMULLEN: Please swear the juror.

4 THE CLERK: Please have a seat in the jury box.

5 THE BAILIFF: Watch your step for me, please.

6 THE CLERK: Number 126.

7 (Rosemary Hurd, white female).

8 PROSPECTIVE JUROR: Juror 126. I work for.

9 Shakespeare, customer service and tech support.

10 THE CLERK: What says the State?

11 MS. SHIPLEY: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. McMULLEN: Please swear the juror.

14 THE CLERK: Please have a seat in the jury box.

15 THE BAILIFF: Watch your step up here for me, please.

16 THE CLERK: Number 278.

17 (Lynn Watson, white female).

18 PROSPECTIVE JUROR: Number 278. I'm a homemaker.

19 THE CLERK: What says the State?

20 MS. SHIPLEY: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. McMULLEN: Please swear the juror.

23 THE CLERK: Please have a seat in the jury box.

24 THE BAILIFF: Watch your step up here for me, please.

25 THE CLERK: Number 298.

1 (Gary Yon, white male).

2 PROSPECTIVE JUROR: Juror 298, physician's assistant,
3 Department of Defense.

4 THE CLERK: What says the State?

5 MS. SHIPLEY: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. McMULLEN: Please swear the juror.

8 THE CLERK: Please have a seat in the jury box.

9 THE BAILIFF: Watch your step up here for me, please.

10 THE CLERK: Number 158.

11 (Latrice Love, black female).

12 PROSPECTIVE JUROR: Number 158, I work for Fed Ex.

13 THE CLERK: What says the State?

14 MS. SHIPLEY: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. McMULLEN: Please swear the juror.

17 THE CLERK: Please have a seat in the jury box.

18 THE BAILIFF: Watch your step up here for me, please.

19 THE CLERK: Number 116.

20 (Sandra Hillary, black female).

21 PROSPECTIVE JUROR: Juror number 116. I work for
22 Palmetto Healthcare.

23 THE CLERK: What says the State?

24 MS. SHIPLEY: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. McMULLEN: Please swear the juror.

2 THE CLERK: Have a seat in the jury box.

3 Number 96.

4 (Amey Guider, black female).

5 PROSPECTIVE JUROR: Number 96, Cooper Power Tools.

6 THE CLERK: What says the State?

7 MS. SHIPLEY: Please excuse the juror.

8 THE CLERK: Please have a seat in the back of the
9 courtroom.

10 Number 293.

11 (Aubrey Wolfe, black male).

12 PROSPECTIVE JUROR: Number 293, Blue Cross Blue
13 Shield.

14 THE CLERK: Does the State challenge for cause?

15 MS. SHIPLEY: Yes. Please excuse the juror.

16 THE COURT: Whoa, whoa, whoa. On what basis?

17 Approach the bench.

18 MS. GARFIELD: Okay.

19 THE COURT: Approach the bench.

20 MS. SHIPLEY: Oh I'm so sorry. I didn't realize we
21 had reached the alternates, Your Honor.

22 THE COURT: Yes, ma'am.

23 MS. SHIPLEY: I apologize. I didn't count.

24 THE COURT: The question is does the State challenge
25 for cause?

1 MS. SHIPLEY: Okay. Beg the Court's indulgence.

2 (Pause).

3 Your Honor, may we approach?

4 THE COURT: Yes, ma'am.

5 (WHEREUPON, a bench conference was held in the
6 Presence, but not within the hearing, of the jury).

7 THE COURT: The State does not challenge for cause?

8 MS. SHIPLEY: That's correct, Your Honor.

9 THE CLERK: What says the defense?

10 MR. McMULLEN: We accept the juror.

11 THE CLERK: Please have a seat in the jury box.

12 THE BAILIFF: Watch your step up here for me, please.

13 THE CLERK: Number 275.

14 (Amanda Warnick, white female).

15 PROSPECTIVE JUROR: Juror 275. I work for Lexington
16 Medical Center.

17 THE CLERK: What says the State?

18 MS. SHIPLEY: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. McMULLEN: Please accept the alternate.

21 THE CLERK: Please have a seat in the jury box.

22 THE COURT: Any objection to the jury selection
23 process?

24 MS. SHIPLEY: No, Your Honor.

25 THE COURT: From the defense?

1 MR. McMULLEN: No, sir.

2 THE COURT: All right. All right. Ladies and
3 gentlemen of the jury panel that were not selected on this
4 jury, I'm going to ask you to return now to the jury
5 assembly room for further instructions.

6 I do want to say this, though: I want to thank you
7 for coming here. I want to thank you for your service
8 this week.

9 I may or may not see you during the latter part of
10 the week. I think this trial will last at least a day or
11 two, maybe more. I don't know.

12 But on behalf of the judicial system, all the
13 litigants that are here this week, that are busy this
14 week, involved, I hope you -- I do want to wish you well.

15 I thank you very much for your service, and you're
16 now excused to return to the jury assembly room.

17 (Whereupon, the unselected members of the jury
18 qualification panel left the courtroom.)

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, there are a number of procedural matters that I
21 need -- this is Monday, and we're just getting started.

22 There are a number of procedural matters that I need
23 to take up with the attorneys before the actual trial
24 starts. So I think the most efficient use of our time
25 would be to excuse you now, and ask you to be back in the

1 jury room at 9:30 in the morning.

2 The bailiffs are going to show you where your jury
3 room is. In the morning when you return, please come
4 directly to the jury room, not downstairs to the jury
5 assembly room because we'll just have to come looking for
6 you. So if you will return to the jury room in the
7 morning.

8 I ask you to do several things at this time, or at
9 least in the morning, or in the evening. First off, I'm
10 going to ask you not to discuss this case with anyone
11 else, including your family or anyone else that may for
12 some reason have some knowledge about the case.

13 It may be improper to talk about the case. You have
14 heard very little about it. You heard -- you know about
15 what I know about it at this point.

16 It will be improper for you to start discussing it
17 with anyone else outside the courtroom or courthouse or
18 among yourselves when you return to the jury room in the
19 morning. I'm going to ask you not to bring it up and talk
20 about it.

21 The second thing I'm going to ask you to do is when
22 you return to the jury room in the morning, I'm going to
23 ask you to select one of your members to be the foreperson
24 of the jury. That person will occupy the seat now
25 occupied by the gentleman with the blue shirt on and will

1 maintain it throughout the rest of the trial.

2 The rest of the seats don't have any names on them.
3 I'm just going to ask you to be comfortable where you will
4 see and hear.

5 The witnesses will be positioned in this box right
6 here to the left in front of you. The attorneys will be
7 speaking from this area right here, what is known as the
8 well of the courtroom. So I just want you to be
9 comfortable, seated where you feel most comfortable.

10 The third thing I'm going to ask you to do is have a
11 pleasant evening. We'll see you at 9:30 in the morning.
12 Have a pleasant evening.

13 Thank you very much.

14 (WHEREUPON, the jury left open court at approximately
15 3:58 p.m.)

16 THE COURT: All right. Counsel, any matters of a
17 pretrial nature that need to be ruled on prior to
18 commencement of the trial?

19 MS. SHIPLEY: Yes, sir, Your Honor. From our
20 pretrial meeting, our conference chamber meeting, the
21 State indicated that it was seeking to request the Court
22 not allow in any statements made by the defendant to law
23 enforcement, as well as the eyewitness about acting in
24 self-defense, as that is self-serving hearsay.

25 Your Honor, we rely on the Rules of Evidence, Rule

1 number 802, as well as 801(c) indicating that basically,
2 Your Honor, a statement tending to expose the declarant,
3 and offered by the declarant to exculpate the accused is
4 not admissible unless corroborating circumstances clearly
5 indicate the trustworthiness of the statement.

6 We also rely on State vs. Cheeseboro in which the
7 Court, the Supreme Court of South Carolina, upheld the
8 trial court's ruling that a letter written by the
9 defendant in Cheeseboro which was -- contained
10 self-serving hearsay was not admissible.

11 We also rely on State vs. Terry which cites State vs.
12 Doctor, and I'll go ahead and hand both up to the defense
13 and to Your Honor.

14 THE COURT: It's amazing how many principles of law
15 the State vs. Cheeseboro stands for.

16 MS. SHIPLEY: It is amazing, Your Honor.

17 In the State vs. Terry, Your Honor, the Court held in
18 that case that self-serving hearsay is inadmissible unless
19 there is independent corroboration.

20 In this case the only individual that knows what
21 happened in that house is the defendant, as our victim is
22 deceased.

23 There is no corroborating testimony to his version of
24 the facts. Everything he states to law enforcement, as
25 well as to the eyewitness in this case, or the witness

1 that the victim ran to for help, all tends to show the
2 defendant from the onset was giving his version of the
3 facts claiming self-defense.

4 If the defendant wants to go into the statements he
5 made to law enforcement, he's going to have to take the
6 witness stand and make his claim of self-defense on the
7 witness stand and subject to cross-examination where his
8 credibility can be judged by this jury as any other
9 witness in this case.

10 THE COURT: Tell me what the -- factually, statements
11 made by the defendant to whom?

12 MS. SHIPLEY: Okay. The first witness he said
13 something about self-defense to is a witness by the named
14 of Timothy Cornish.

15 Mr. Cornish was at home when this incident happened.
16 He was actually -- had spoken to the victim 45 minutes
17 before he was stabbed by the defendant.

18 The defendant and the victim had been arguing all
19 evening. The defendant basically got permission from his
20 mother to live in the residence. His mother is married to
21 the victim, Alphonzo Cleveland -- or was married to the
22 victim, Alphonzo Cleveland.

23 The victim had called the police out to the scene
24 asking the officers to evict the defendant from the
25 residence; that he did not want him living there.

1 Officers --

2 THE COURT: This is the next door neighbor, right?

3 MS. SHIPLEY: And the next door neighbor witnessed
4 that officer coming, and that's Officer Carwell, to the
5 scene.

6 Then he left indicating -- the officer left because
7 he was able to corroborate from Betty Ann Cleveland that
8 the defendant actually did have permission to reside in
9 the residence and explained the eviction process to the
10 victim.

11 THE COURT: Okay. All right. I'm just trying to
12 figure out who, he said what to.

13 MS. SHIPLEY: Okay. The first witness he encounters
14 after the stabbing is the next door neighbor, Timothy
15 Cornish.

16 THE COURT: All right. And he says --

17 MS. SHIPLEY: He says --

18 THE COURT: -- it's self-defense.

19 MS. SHIPLEY: He says that he -- he tells Timothy
20 Cornish that the victim kicked in his door and that he
21 slapped him, and that he then stabbed him --

22 THE COURT: Okay.

23 MS. SHIPLEY: -- in response to being slapped.

24 THE COURT: Okay.

25 MS. SHIPLEY: When the Officer Carwell, Deputy

1 Carwell, arrives to the scene, he encounters the defendant
2 on the porch. The defendant tells Officer Carwell, "He
3 kicked in my door. He slapped me, and so I stabbed him."

4 THE COURT: Okay.

5 MS. SHIPLEY: And he tells Investigator Isenhoward
6 after he was Mirandized that the victim kicked in his
7 door, backhanded him, and then he stabbed him.

8 THE COURT: Okay.

9 MS. SHIPLEY: When questioned about whether or not
10 the victim was armed, he said, "No. I could not see any
11 weapon."

12 When questioned about his -- any physical conditions,
13 the defendant told him that he was unable to defend
14 himself because of preexisting injuries --

15 THE COURT: Okay.

16 MS. SHIPLEY: -- referring to the '92 incident.

17 THE COURT: Three statements.

18 MS. SHIPLEY: Three statements.

19 THE COURT: All right.

20 MS. SHIPLEY: And I believe he also did call 911,
21 made a statement to the 911 dispatcher about his
22 stepfather kicking in the door, and that he stabbed him
23 and his stepfather left.

24 THE COURT: Okay. What's the defendant's position?

25 MR. McMULLEN: May it please the Court.

1 First of all, Your Honor, I would say that these
2 statements are given while the declarant is under the
3 stress of the situation.

4 What the solicitor didn't talk about was the timing
5 of all of these statements, and I believe it's fair to say
6 they were all within about 15 minutes of one another --

7 THE COURT: All right.

8 MR. McMULLEN: -- of the stabbing. One of the
9 statements was a present sense impression to 911. By its
10 very nature, that is an emergency call. It was happening
11 while -- the call was placed while the decedent was still
12 alive.

13 The dispatcher who sent medical attention and sent
14 the police made a note that Mr. Starks -- that somebody
15 said he had cut, had been cut, another call.

16 THE COURT: He had to cut? That's what you said?

17 MR. McMULLEN: Yes, sir. I think that, certainly,
18 the State would be trying to introduce these statements as
19 not in response to the custodial interrogation if they
20 weren't self-serving.

21 If they were damaging to the defendant's case, they
22 would be trying to admit them. These are statements made
23 to law enforcement officers who are there investigating
24 the case.

25 In their performance of that duty, they asked him

1 certain questions, and he responded. They later
2 Mirandized him, but he was not under oath or under arrest
3 at the time he made the statement.

4 They also go toward his then-existing mental or
5 emotional physical condition. By definition the one, the
6 third statement about his physical condition pretty much
7 would seem to fit that.

8 THE COURT: Well, if he could admit self-serving
9 declarations, that would be clear in many, many, many,
10 many cases. The defendant says, "I didn't do it" or "I
11 was attacked."

12 MR. McMULLEN: I'm almost interested to --

13 THE COURT: All of --

14 MR. McMULLEN: I'm sorry, sir.

15 THE COURT: Go ahead.

16 MR. McMULLEN: I'm almost interested to see how the
17 State would prove their case without those statements.

18 THE COURT: Well, they're asking that they be
19 excluded.

20 MR. McMULLEN: That's one I sure didn't anticipate.

21 THE COURT: Okay.

22 MR. McMULLEN: Perhaps the Court could withhold
23 ruling on this until the statements come up in the course
24 of the trial.

25 MS. SHIPLEY: Your Honor, every witness that we're

1 calling has had -- at least at the scene had contact with
2 the defendant.

3 All of these statements are self-serving. They are
4 not statements against interest in any manner. Also, in
5 State vs. Cheeseboro when the defense tried to argue
6 during an appeal that it should have been let under -- the
7 statement made by that defendant should have been let in
8 under another rule, the court found it was still
9 inadmissible hearsay because it was offered for the truth
10 of the matter asserted.

11 This statement made by the defendant is clearly this
12 statement offered for the proof of the matter -- the truth
13 of the matter asserted in his statement that he was
14 affecting in self-defense.

15 If he wants to get on the witness stand and claim
16 self-defense, that's his right, and I think it's
17 preventing him from doing that.

18 THE COURT: I understand.

19 MS. SHIPLEY: We're not going to put up his defense
20 for him, Your Honor.

21 THE COURT: That's classic hearsay. The question is
22 whether for some reason it should not -- it shouldn't be
23 admitted as some --

24 MR. McMULLEN: Well, one --

25 THE COURT: -- exception to hearsay.

1 MR. McMULLEN: Well, one statement is -- it's a
2 statement of legal significance, which is to say he
3 admitted the stabbing.

4 THE COURT: All right. I'll -- I think they are
5 hearsay, but I'll look at it, give you a definitive ruling
6 in the morning.

7 MR. McMULLEN: Okay.

8 THE COURT: What's next?

9 MS. SHIPLEY: The next matter is a Lyle matter, Your
10 Honor. It was brought to my attention, I have also shared
11 with the defense, that this was not the first time this
12 defendant had stabbed this victim.

13 The State intends to call Connie Caldwell to the
14 witness stand to testify about a prior stabbing involving
15 the same parties.

16 May it please the Court?

17 THE COURT: Yes. Yes.

18 MS. SHIPLEY: May I call the witness?

19 THE COURT: Well...

20 MS. SHIPLEY: Or would you like me to --

21 THE COURT: Well, you just -- you're telling me --
22 why is that -- why should that be admissible --

23 MS. SHIPLEY: To show --

24 THE COURT: -- under Lyle?

25 MS. SHIPLEY: -- intent. The State, Your Honor --

1 THE COURT: Intent for what?

2 MS. SHIPLEY: Well, the State has the burden of
3 proving that the defendant stabbed the victim with malice,
4 with that intent in his mind with malice, and we have the
5 burden of proving all the critical elements of the crime,
6 which include intent --

7 THE COURT: Which means --

8 MS. SHIPLEY: -- which gets it under Lyle.

9 THE COURT: -- if he did it before, he's bound to
10 have done it this time.

11 MS. SHIPLEY: I'm sorry, Your Honor.

12 THE COURT: If he did it before --

13 MS. SHIPLEY: Well, if he gets up on the witness
14 stand and says he did not intend to kill him or he did not
15 mean to kill him or it was accidental.

16 THE COURT: That's different.

17 MS. SHIPLEY: All right. Well, Your Honor, we still
18 have the burden of proving the intent and that this was
19 not the first occasion.

20 I'm sure the defense is going to make a big deal of
21 the fact of who the aggressor was in this case. So we're
22 anticipating that during cross-examination of the State's
23 witnesses, the defense is going to make it clear to the
24 jury that our victim happened to be intoxicated during
25 this occasion, and therefore, try to pin the victim as the

1 aggressor.

2 We will then have the burden of proving that this
3 defendant was the aggressor, and is the one who intended
4 to kill him --

5 THE COURT: Well, you got that burden anyway. That's
6 your burden. It doesn't mean you can bring up prior
7 offenses. I mean...

8 MS. SHIPLEY: Well, according to the State vs. Lyle,
9 the State is allowed to rely on prior bad acts, especially
10 if they involve the same parties, Your Honor.

11 THE COURT: Under 404.

12 MS. SHIPLEY: Under 404(b) in order to prove intent.

13 THE COURT: I know what 404 stand for.

14 MS. SHIPLEY: We have case law, Your Honor, State vs.
15 Pierce and also more specifically, State v. Sweat in which
16 the Court -- the Supreme Court I believe it was -- no,
17 Courts of Appeals upheld the trial court's decision to let
18 in Lyle evidence to show intent on behalf of the defendant
19 on that case.

20 THE COURT: I know that. I know that. That's one of
21 the exceptions, but that doesn't necessarily mean every
22 case that you can show that somebody did something before,
23 they can -- you can produce it as evidence in this case.
24 You have got to prove that he did it in this case.

25 MS. SHIPLEY: Yes, sir, Your Honor.

1 THE COURT: Not that he did it before.

2 MS. SHIPLEY: We plan on doing that, but in case
3 there's any questions -- I'm sure the defense will be
4 cross-examining all of our witnesses concerning the
5 demeanor of the victim.

6 THE COURT: Well, I'll -- I'll rule on that when it
7 comes up.

8 MS. SHIPLEY: Okay.

9 THE COURT: I'm not a big fan of Lyle issues to prove
10 the case that we're hearing today.

11 MS. SHIPLEY: The next matter, Your Honor, is the
12 victim has a 1978 conviction for involuntary --

13 THE COURT: Seventy-eight?

14 MS. SHIPLEY: Yes, sir. We respectfully request the
15 Court not allow the defense to go into that conviction in
16 any fashion or form in case it --

17 THE COURT: A '78 conviction for what?

18 MS. SHIPLEY: Involuntary manslaughter. It involved
19 a vehicle accident, according to the family.

20 THE COURT: A vehicular accident?

21 MS. SHIPLEY: Vehicular accident.

22 THE COURT: What's the defense's position on it?

23 MS. SHIPLEY: The reason why I'm anticipating that,
24 Your Honor, if the defense is claiming self-defense, I
25 don't want them to be allowed to use that conviction in

1 order to show any sort of state of mind by the defendant
2 that he had a reasonable apprehension of great bodily
3 injury due to that factor.

4 THE COURT: What's the defendant's position on that?

5 MR. McMULLEN: We don't intend to use that.

6 THE COURT: Good.

7 MS. SHIPLEY: Also, I did provide the defense with
8 the rap sheet concerning Timothy Cornish, and he has no
9 crimes -- or convictions of dishonesty on his rap sheet.

10 THE COURT: Is that -- is the record settled as to
11 everybody?

12 MS. SHIPLEY: One, we'll have to get with
13 Ms. Cleveland about her issues, if she has got anything.
14 I have not pulled anything on her. The rest of our
15 witnesses are law enforcement witnesses, Your Honor, and a
16 doctor.

17 THE COURT: Okay.

18 Yes?

19 MR. McMULLEN: As far as Mr. Cornish, I was just
20 given his rap sheet. Although he has no convictions, he
21 does have a pending charge being prosecuted by this
22 Solicitor's Office for criminal domestic violence of a
23 high and aggravated nature.

24 THE COURT: So --

25 MR. McMULLEN: I would want to go into that as

1 being --

2 THE COURT: You would?

3 MR. McMULLEN: Well, it's a potential reason for him
4 to come in here and testify favorably for the State. It
5 shows bias on his part.

6 THE COURT: I don't think so. I don't think so.
7 It's not -- I mean, he's not guilty of anything. I mean,
8 he's just charged, right?

9 MR. McMULLEN: Yes, sir. He has got a pending charge
10 being prosecuted by this office that's asking him to
11 testify in this case.

12 THE COURT: It probably happens a lot.

13 MS. SHIPLEY: It's kind of hard to do, Your Honor.

14 Your Honor, under Rule 609, I believe that --

15 THE COURT: It's -- it's not.

16 MS. SHIPLEY: It's not relevant.

17 THE COURT: Or admissible.

18 MR. McMULLEN: I certainly accept the Court's ruling.

19 THE COURT: Sir?

20 MR. McMULLEN: I certainly accept the Court's ruling.

21 THE COURT: All right. Anything else?

22 MS. SHIPLEY: That's all from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. McMULLEN: Yes, sir.

25 I respectfully move to preclude the use of the term

1 "victim" to refer to the decedent in this case. The
2 defendant concedes that he inflicted a wound in the chest
3 of Mr. Cleveland on October 12th, 2006 at [REDACTED]
4 [REDACTED].

5 He says that it was in self-defense. There's a
6 defense of habitation. This is not a case where we
7 concede a crime was committed and the identity is in
8 question.

9 What we say, Your Honor, is that [REDACTED]
10 is not a crime scene, and Mr. Cleveland is not a victim
11 unless and until the jury finds that he's a victim.

12 I did draft a motion in support, a memorandum in
13 support of that.

14 THE COURT: Any objection?

15 MS. SHIPLEY: Yes, sir, Your Honor.

16 THE COURT: Okay. That's all I wanted to know.

17 MR. McMULLEN: What we're asking for specifically,
18 Your Honor, is that he either be called Mr. Alphonzo
19 Cleveland or Mr. Cleveland or decedent.

20 The [REDACTED] should, we say, not be called a "crime
21 scene". Instead of we ask that they be called by their
22 individual names.

23 THE COURT: What's the State's position?

24 MS. SHIPLEY: With all due respect, Your Honor, it is
25 what it is. It's a criminal case in criminal court. You

1 have already referred to Thaddess Starks as the defendant.
2 You have already referred to Alphonzo Cleveland as the
3 victim. There is absolutely no prejudice to anybody.
4 Some -- we have to call them something, Your Honor.

5 THE COURT: Well, we can call him the decedent.
6 There is no -- I read the indictment. I didn't call him
7 the victim. The indictment read "the victim".

8 Call him the decedent, the deceased, the decedent. I
9 have no problem with "crime scene". That's -- apparently
10 some crime was committed there, whether it was
11 self-defense or not, I don't know.

12 Refer to him as the "decedent".

13 MS. SHIPLEY: I'll try my best, Your Honor. I've
14 never been restricted, so I apologize in advance if I
15 slip, but I'll make sure I call him the decedent.

16 THE COURT: That's good. I'm sure you'll be able to
17 carry that out, Ms. Shipley.

18 MR. McMULLEN: I'll help remind her.

19 THE COURT: We don't need it to be a bone of
20 contention throughout the trial. I'll grant him that.

21 MS. SHIPLEY: Okay. Also, one last thing, Your
22 Honor, Mr. McMullen and I met last week concerning all of
23 the discovery.

24 I believe he has got everything. I turned over the
25 D.N.A. report, the final report, and I believe

1 Mr. McMullen is stipulating to the chain of custody so
2 that all of those chain witnesses won't be -- have to --
3 won't be called to testify.

4 THE COURT: All right. Do you need to mark any
5 exhibits?

6 MS. SHIPLEY: Not yet, Your Honor.

7 THE COURT: All right. Anything further?

8 MR. McMULLEN: Not at this time, no, sir.

9 THE COURT: 9:30.

10 MS. SHIPLEY: Thank you, Your Honor.

11 THE COURT: Is he on bond?

12 MR. McMULLEN: Yes, sir. May he remain on bond?

13 THE COURT: Well, I don't know.

14 MS. SHIPLEY: Your Honor, we respectfully request
15 that bond be revoked. The State has called this case.

16 THE COURT: Wait, just wait.

17 Does he have bonding company?

18 MR. McMULLEN: Yes, sir.

19 THE COURT: Who is his bonding company?

20 MR. McMULLEN: Say the name of the bonding company.

21 THE DEFENDANT: Yes, sir. My wife, my wife has all
22 that.

23 MS. LEVY: Kenny Glover.

24 MR. McMULLEN: Kenny Glover in Orangeburg.

25 We can get him. We can get a letter, if needed.

1 THE COURT: All right. Kenny Glover, anybody know
2 Kenny Glover?

3 MS. LEVY: He's a bail bondsman in Orangeburg?

4 WOMAN IN AUDIENCE: Yes.

5 MS. LEVY: They're not in business anymore that I
6 know of. They didn't respond to any of the estreatments
7 that we did in August.

8 MR. McMULLEN: I wouldn't tell the Court --

9 MS. LEVY: I'm not taking a position.

10 THE COURT: I know.

11 MS. LEVY: I'm just telling you.

12 MR. McMULLEN: I would suggest to the Court that
13 Mr. Starks has had to be here for three role calls. He's
14 never been late.

15 THE COURT: Well...

16 MR. McMULLEN: He's been here on time.

17 THE COURT: He's in jeopardy now.

18 MR. McMULLEN: And...

19 THE COURT: If there's some -- if there's some
20 assurance he's going to be here, which is like a -- which
21 is a bonding company or some -- I'm not going to --

22 MR. McMULLEN: May I have until five o'clock to get
23 something from Glover?

24 THE COURT: Well, he's going to be held in custody.

25 MR. McMULLEN: Yes, sir.

1 THE COURT: And --

2 MR. McMULLEN: Could I get something?

3 THE COURT: I don't know. I don't know what you can
4 do. We tend to think of these things in advance.

5 MR. McMULLEN: Yes, sir.

6 THE COURT: He's in custody until there's a bonding
7 company that it was --

8 MR. McMULLEN: It was my understanding, sir, that the
9 bondsman was actually on the State's witness list and is
10 subpoenaed to be here.

11 THE COURT: The bondsman has to be here and assure
12 the Court that he will produce the defendant tomorrow
13 morning.

14 MR. McMULLEN: Yes, sir.

15 THE COURT: We don't have that. The only way I can
16 assure his presence is to let law enforcement take him
17 into custody.

18 MR. McMULLEN: If we can get something to the Court
19 to do that --

20 THE COURT: Well, if, if, if. I don't know. Right
21 now he's in custody.

22 MR. McMULLEN: Yes, sir.

23 (WHEREUPON, State's Exhibits Nos. 1 - 39 were marked
24 for identification only.)

25 (There was an overnight recess).

1 (WHEREUPON, State's Exhibits Nos. 40, 41, 42 were
2 marked for identification only.)

3 THE COURT: Is the State ready to proceed?

4 MS. SHIPLEY: Yes, sir, Your Honor.

5 THE COURT: Is the defense ready to proceed?

6 MR. McMULLEN: Yes, sir.

7 THE COURT: After considering the matters, pretrial
8 matters, discussed yesterday afternoon, I think the Court
9 needs a proffer of the Lyle evidence.

10 MS. SHIPLEY: Yes, sir.

11 THE COURT: Before I can -- I understand what you --
12 what you told me, but I think -- I think I need to hear
13 that evidence before it's -- before I can make a ruling on
14 that.

15 MS. SHIPLEY: Yes, sir. Would you like for me to do
16 that now?

17 THE COURT: Yes, ma'am.

18 MS. SHIPLEY: Or -- okay, thank you.

19 THE COURT: Unless you tell me -- when was that
20 witness going to be called?

21 MS. SHIPLEY: Not today, Your Honor.

22 THE COURT: Not today. We could perhaps do it
23 another time.

24 MS. SHIPLEY: Okay.

25 THE COURT: A more convenient time.

1 MS. SHIPLEY: Yes, sir.

2 THE COURT: I just thought it might help everybody if
3 we do it in advance. All right.

4 MS. SHIPLEY: If perhaps we could take it up after
5 we're done for the day.

6 THE COURT: That would be fine.

7 MS. SHIPLEY: Okay.

8 THE COURT: If that suits your schedule.

9 MS. SHIPLEY: Yes, sir, Your Honor.

10 THE COURT: All right. Secondly, as to the -- these
11 -- what the State describes as self-serving declarations,
12 it occurred to me, and I've done some research, that
13 self-serving declarations are not -- are not always
14 excluded if they are admissible under some other theory.

15 In other words, just to use a pretty perhaps poor
16 example, if I hear a shot and somebody comes running out
17 of the bedroom and says, "I just shot and killed my wife,"
18 that's an excited utterance. I think it -- and it's
19 admissible.

20 The same scenario, if I hear a shot and somebody
21 comes running out of the bedroom, a husband, and says, "My
22 wife just shot herself, and I didn't do it," that's also
23 an excited utterance, but it's self-serving but it's
24 admissible.

25 So anything within the res gestae, now that's a hard

1 thing to find, but it's the event. If it's an excited
2 utterance, it may not be as Mr. McMullen says a present
3 sense impression. It's an excited utterance. It is part
4 of the res gestae.

5 Now, the cases that the State has offered, namely the
6 Cheeseboro case, the Cheeseboro case, the statement made
7 -- a letter written by Cheeseboro months after the killing
8 of the -- in the barbershop, when Mr. Cheeseboro was
9 sitting in jail and had plenty of opportunity to fabricate
10 an exculpatory letter.

11 Likewise, in State v. Terry, the appellant gave a
12 statement almost a year -- he gave a statement to the
13 police a year after the killing of the victim in that
14 case. Again, sufficient time to have created an
15 exculpatory statement.

16 I believe the statements given under the heat of the
17 moment or the excitement of the moment are hearsay, but
18 yet would be admissible as an exception to the hearsay
19 rule.

20 So even though -- I indicated yesterday, I felt they
21 were hearsay, and I believe they were hearsay, I think
22 they fall within the exception within the res gestae.

23 Again, where res gestae starts and ends, I don't
24 know, but at least as to the statements -- if I recall,
25 the statements were given when the defendant came out of

1 his house following the deceased, who was bleeding, and
2 ended up on the neighbor's front porch where he died, and
3 the statement was made to the neighbor at that time,
4 something to do with the fact that he did it in
5 self-defense.

6 We haven't heard those statements, but that was the
7 statement given clearly within -- in my opinion, within
8 the res gestae, within the event itself and not where the
9 defendant had sufficient time to fabricate something.

10 Whether it's true or not is up to the jury to
11 believe. That's not to say -- all I'm called upon is to
12 rule on the admissibility.

13 I think that the statements made by the defendant,
14 even though they may be self-serving and exculpatory,
15 there may -- you know, he can -- he can -- he can plunge
16 the knife in and say, "I didn't mean to do it." That's
17 fine. It's up to the jury to decide.

18 It doesn't go to admissibility. I think
19 admissibility comes in under the exception to the hearsay
20 rule. There's an element, at least a presumed element, of
21 authenticity.

22 Now, I'll be glad to hear from the State as to those
23 statements, and again, we haven't -- I haven't heard them.
24 They may not be produced. I'm assuming they will only
25 come in on cross-examination of these witnesses.

1 MS. SHIPLEY: Your Honor, reading the rule, it says
2 an exculpatory -- excuse me one second. "An
3 exculpatory -- a statement tending to expose the declarant
4 to criminal liability and offered to exculpate the accused
5 is not admissible unless corroborating circumstances
6 clearly indicate the trustworthiness of the statement."

7 Your Honor, there are no corroborating circumstances
8 in this case.

9 THE COURT: Well, I don't know that.

10 MS. SHIPLEY: We still need some corroboration.

11 THE COURT: I don't know that. How about statement
12 number two and statement number three? Are they not
13 corroborating statement number one?

14 MS. SHIPLEY: No, Your Honor. That's why the -- it
15 has to be corroborated to the statement made to the
16 declarant. In other words, he's telling three different
17 people these things. There's nobody independent from him
18 saying that, as well.

19 THE COURT: Well, what about the evidence, the
20 evidence corroborate what he says.

21 MS. SHIPLEY: The evidence corroborates that the door
22 was busted in, but it also corroborates that he stabbed
23 the man, the deceased.

24 THE COURT: Well, he -- he doesn't say -- as I
25 understood it, the jury is not here. He's not saying he

1 didn't stab him, did he?

2 MR. McMULLEN: That's correct.

3 THE COURT: He's admitting he stabbed him. All
4 right. You're reading from 804?

5 MS. SHIPLEY: I'm sorry?

6 THE COURT: You're reading from what?

7 MS. SHIPLEY: I'm reading from 804(b)(3).

8 THE COURT: All right. Those are -- those are
9 statements where the declarant is unavailable. That
10 rule -- it makes sense because that -- that is -- that's a
11 Terry case. That's exactly the Terry case because it says
12 you can't make yourself unavailable by invoking your Fifth
13 Amendment rights and use a statement that you have
14 previously given to exculpate yourself. That's what it
15 says.

16 MS. SHIPLEY: And therefore, Your Honor, we're not
17 sure if he's going to assert his Fifth Amendment right or
18 not --

19 THE COURT: I don't know.

20 MS. SHIPLEY: -- at this stage, which I believe in
21 Terry, that's when once the defendant failed to take the
22 witness stand, then those statements were held
23 inadmissible because he made himself unavailable.

24 THE COURT: Right.

25 MS. SHIPLEY: And he can't try to assert a claim.

1 THE COURT: I guess we won't know that until we get
2 this case started.

3 MS. SHIPLEY: Okay. Well, Your Honor, it's my
4 understanding you're ruling you are going to find that
5 those statements are admissible under the exceptions of
6 excited utterance, just so I understand you?

7 THE COURT: Yes, ma'am. Yes, ma'am.

8 MS. SHIPLEY: Thank you, Your Honor.

9 May I confer with my witnesses before we bring the
10 jury in?

11 THE COURT: Oh certainly.

12 MS. SHIPLEY: Thank you.

13 (Pause).

14 Thank you, Your Honor. We're ready.

15 THE COURT: Is the defense ready for the jury?

16 MR. McMULLEN: Yes, sir.

17 THE COURT: Juror number 19 is the foreperson. All
18 right. Bring the jury, please.

19 THE BAILIFF: Bring the jury.

20 (WHEREUPON, the jury came into open court at
21 approximately 9:49 a.m.)

22 THE BAILIFF: The jury is present, Your Honor.

23 THE COURT: All right. Thank you. Good morning,
24 ladies and gentlemen.

25 JURORS: Good morning.

1 THE COURT: Mr. 19, I appreciate you're agreeing to
2 serve as foreperson of this jury. We're now ready to
3 commence with the trial.

4 Madam clerk, will you swear the jury, please?

5 THE CLERK: Yes, sir.

6 Ladies and gentlemen of the jury, please raise your
7 right hand to be sworn. After this oath, please
8 acknowledge by answering "I do".

9 You shall well and truly try and true deliverance
10 make, between the State of South Carolina, and the
11 defendant at bar, whom you shall have in charge, and a
12 true verdict give, according to the law and the evidence,
13 so help you God.

14 (All jurors responded affirmatively).

15 Thank you. You may be seated.

16 PRETRIAL CHARGE:

17 THE COURT: All right, ladies and gentlemen. Before
18 we begin the trial, I want to just talk to you for just a
19 minute to go over some procedural matters that will take
20 place during the course of this trial.

21 I want to tell you, to begin with, that this trial
22 probably will be different than what you might expect.
23 Many people do not have a chance to attend actual court
24 sessions as you are now doing and may think from watching
25 television or reading books or television or movies that

Pretrial charge

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1 trials are always full of a lot of drama and intense
2 action.

3 (A cell phone rang).

4 Please take the cell phones out of here.

5 Confiscate that phone, please.

6 (Complies).

7 Sorry. You can put a sign up as -- on the front of
8 the courthouse and on the front door and say, "Don't bring
9 your cell phones in here or if you do, turn them off," it
10 happens all the time.

11 Anyway, as I said, you're actually going to witness
12 an actual trial that may not be as what you might expect
13 to be full of a lot of fast action and C.S.I. and that
14 sort of thing, but some of these things may be true at
15 times but not at all times.

16 I want to remind you that this trial is a fundamental
17 part of our democracy, a search for the truth and an
18 effort to make sure that justice is done between these
19 parties.

20 Searching for the truth sometimes is a slow and
21 deliberate and repetitive process, the opposite of what
22 you may have read in books or seen on television or in the
23 movies.

24 This courtroom is a place of honor dedicated to the
25 preservation and protection of citizen's rights, many have

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1 called the greatest justice system ever devised.

2 The attorneys appearing before you are advocates for
3 the parties they represent, but first and foremost, they
4 are officers of this court sworn to uphold the integrity
5 and fairness of our judicial system and to help you in a
6 search for the truth.

7 You should expect them to be professional, competent,
8 and ethical in their representation of their client's
9 interest.

10 Remember, you also have taken an oath to try this
11 case to reach a fair and just verdict, so you are also
12 expected to be professional, reasonable, and ethical.

13 So I want to thank you at this time for accepting
14 this important responsibility of jury service and your
15 contribution to our justice system today.

16 As I mentioned to you yesterday, told you yesterday,
17 we're about to try the case of the State vs. Thaddess
18 Starks.

19 What I tell you in these opening remarks is not a
20 charge on the law as it applies to this case but merely,
21 as I said, an explanation of some of the procedure that
22 will follow during the course of the trial.

23 The defendant is charged in this indictment with the
24 crime of murder. I'll explain all of the elements of that
25 to you later, but this -- I'll remind you again this

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1 indictment is simply the charge by which the case is
2 brought into court, not in any sense any evidence of the
3 allegations it contains.

4 The defendant has pled not guilty to this indictment,
5 and the State, therefore, has the burden of proving each
6 of the elements of the crime beyond a reasonable doubt.

7 It will be your duty, ladies and gentlemen, to decide
8 whether the State has met that burden. Your purpose as
9 jurors is to find and determine the facts. You are the
10 sole judges of the facts.

11 Any time I make any comment regarding the facts, you
12 must disregard those comments. You are to determine the
13 facts from the testimony you hear and any other evidence
14 that's introduced in the Court.

15 It will be up to you to determine the inferences that
16 you feel may be drawn from that evidence. It's especially
17 important that you perform your duty of determining the
18 facts diligently and contentiously because ordinarily,
19 there is no way to correct an erroneous determination of
20 the facts by a jury.

21 On the other hand and with equal emphasis, the same
22 law that makes you the judges of the facts makes me the
23 judge of the law.

24 The law, as given to you by the Court, is the only
25 law you may consider. You must accept it and follow it

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1 even though you may disagree with it.

2 I cannot tell you what the facts are. You should not
3 disagree with me about what the law is or what the law
4 should be. Your job is to take the law as I explain to it
5 you, apply it to the facts as you find from the testimony
6 of the witnesses and other evidence that's introduced, and
7 after doing that, you will then render your verdict, a
8 true and just verdict, under the solemn oath you just took
9 as jurors.

10 Until I advise you to begin your deliberations, you
11 must not discuss this case with anyone, including your
12 fellow jurors, friends or family members or anyone
13 involved with the case, and after the case is submitted to
14 you, you must discuss it only in the jury room with your
15 fellow jurors.

16 It's important that you keep an open mind not to
17 decide any issue in this case until all of the evidence
18 has been presented, the parties have made their closing
19 arguments, and I've instructed you on the law in this
20 case.

21 It is your solemn responsibility to determine the
22 guilt or innocence of the defendant. Your verdict must be
23 based solely on the evidence as it is presented to you in
24 this trial and on the law as I instruct you at the close
25 of the trial.

Pretrial charge

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1 Now, in just a moment the Solicitor will make what's
2 called an opening statement in which the solicitor will
3 explain to you the issues of the case or at least what the
4 Solicitor thinks the issues are and what the evidence will
5 show.

6 The attorney for the defendant may also make an
7 opening statement, although is not required to do so.
8 What the attorneys tell you in their opening statements is
9 not evidence in this case. It's only their contention as
10 to what the issues are and what the evidence will show.

11 The evidence in the case will be presented to you by
12 the testimony of sworn witnesses from this witness stand
13 and any other exhibits that may be introduced during the
14 course of the trial.

15 Now, from time to time during the trial you may hear
16 one of the lawyers say something like, "Your Honor, I
17 believe we have a question of law or a matter of law to
18 discuss with you" or "may we approach the bench" or
19 sometimes I, myself, might find it necessary to excuse you
20 from the courtroom for a short period of time while the
21 attorneys and I have some discussion about the law.

22 The reason for this is you're the judges of the
23 facts. Sometimes when I am discussing matters of law with
24 the attorneys, it may be necessary for me to make some
25 comment about the facts in connection with a ruling or

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1 whether a particular law applies or does not apply.

2 Now, I'm not supposed to tell you what I think the
3 facts are, so I'll excuse you from the courtroom for a
4 short period of time while these discussions take place so
5 that in no way will you be influenced by anything I might
6 say or do in connection with the facts.

7 From time to time you may hear the attorneys object
8 to certain testimony or certain evidence. That is their
9 job. That's their responsibility.

10 We're governed by what are known as the Rules of
11 Evidence, the South Carolina Rules of Evidence. If at any
12 point in time during the trial they feel those rules are
13 being violated, it's their responsibility to object.
14 They're not trying to hide anything from you. They're
15 just following the rules.

16 Now, in determining what the true facts are in this
17 case, you must decide whether or not the testimony of any
18 witnesses is believable.

19 It will be my responsibility to rule as a matter of
20 law as to whether certain testimony is admissible but once
21 that testimony is admitted. In other words, once you hear
22 it, whether you believe it or not, is solely up to you to
23 determine.

24 In deciding whether to believe a witness, you have a
25 right to consider the interest of any witness, the bias of

Pretrial charge

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1 any witness, and the prejudice of any witness, the
2 opportunity for the witness to have seen the matters and
3 things upon which the witness may testify, and the way the
4 witness acts on the witness stand.

5 You have a right to consider anything that's in this
6 record that will help you evaluate the testimony of these
7 witnesses. That means it's your duty to pay close
8 attention to the witnesses, observe the witnesses, pay
9 close attention to the attorneys and to the court. Try
10 not to let your thoughts wander but give strict attention
11 to the testimony in the case so that at the end of all the
12 testimony after the arguments of counsel, the charge on
13 the law by the Court, you will then be in a position to
14 determine what the true facts are and apply the law to
15 those facts and thus render a true and just verdict.

16 As I indicated yesterday, Mr. Foreman, it will be
17 your added duty to preside in the jury room and be the
18 jury spokesperson here in court, if that becomes
19 necessary. It also will be your duty to write the
20 verdict, again if that becomes necessary, but I'll give
21 you further instructions about that at the conclusion of
22 the case.

23 We're now ready to begin the trial.

24 Solicitor, you may make your opening remarks.

25 MS. GARFIELD: Thank you, Your Honor. May it please

Pretrial charge

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1 the Court.

2 THE COURT: Yes, ma'am.

3 OPENING STATEMENT:

4 MS. GARFIELD: October 12th, 2006 ironically almost a
5 year ago this week. October 12th last year was one of
6 those cool evenings that we finally had in October, an
7 evening that my father would have recalled and said
8 "perfect football weather", sort of the weather we're
9 needing right now.

10 While it was a beautiful day in Richland County, it
11 turned out to be an absolute nightmare for Tim Cornish and
12 his family.

13 On that evening, Tim was at home with his wife and
14 his two teenage daughters. He was fixing hamburgers for
15 dinner. He had his windows open to enjoy the nice air.

16 His next door neighbor, Alphonzo Cleveland, who
17 everyone called "Al" and his stepson, the defendant,
18 Thaddess Starks, were the only ones home next door, and he
19 knew they had been arguing that evening. While Tim was
20 fixing hamburgers, he suddenly heard his neighbor Al yell
21 out in distress his name, "Tim, Tim".

22 Tim went outside on his front porch to find his
23 neighbor, Al Cleveland, collapsed on his front steps. Tim
24 rushed to his rescue. Tim has been in the military. He
25 knew some first aid. He yelled for his wife to call 911.

Opening - Garfield

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1 Upon examining his friend, his neighbor, he found
2 that Al had been stabbed in the chest and was losing blood
3 and was dying before his eyes.

4 About then the defendant, Thaddess Starks, runs over
5 in an aggressive manner. Tim was afraid for the continued
6 safety of Al and ordered him to go back to his home. He
7 made remarks to him, "Al busted down my door. He slapped
8 me. I stabbed him."

9 Ladies and gentlemen, Thaddess Starks is charged with
10 murder. What is murder? Murder is the killing of another
11 person with malice aforethought either expressed or
12 implied.

13 Ladies and gentlemen, I am Dolly Garfield. My
14 co-counsel sits with me at the table, Vanessa Shipley. We
15 are prosecutors here in the State of South Carolina in
16 Richland County. It is our job to prove to you beyond a
17 reasonable doubt that Thaddess Starks murdered Al
18 Cleveland.

19 First of all, as the judge just instructed you, you
20 do watch a lot of criminal shows on television. I watch
21 them myself. They're all over the place, and while those
22 television shows have a lot of the same issues that we as
23 prosecutors and criminal defense attorneys and judges who
24 sit in criminal courtrooms deal on a daily basis, the
25 difference between those cases is that this is real.

Opening - Garfield

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1 This is a real courtroom. We won't have paid actors.
2 You'll have real witnesses. You'll have a real defendant,
3 and we have a real dead person in this case.

4 We welcome the burden in this case, and we will prove
5 to you that this happened by calling several witnesses.
6 First you will hear from Tim Cornish.

7 You will hear as Tim takes that stand and relays to
8 you play-by-play of the nightmare that he and his family
9 still to this day endures. It's a memory that they never
10 will be able to erase.

11 You'll also hear from law enforcement officers who
12 will testify to what they observed when they came on the
13 scene and will tell you the remarks that the defendant
14 made to them about the slap that Al Higgins (sic) made
15 upon him that he claims justifies stabbing him in the
16 chest with a butcher knife creating a four-inch injury
17 through Al's ribs. You will also hear from an expert on
18 D.N.A., as well as a pathologist.

19 Now, ladies and gentlemen, everyone in this courtroom
20 has a job. I watched you closely as each of you put up
21 your right hand and took an oath to determine a fair
22 verdict in this case. It is our job to prove to you that
23 this case occurred, that Thad Starks is guilty of murder.

24 It's Mr. McMullen, who is seated at the defense
25 counsel, who you'll hear from next, it is his job to

Opening - Garfield

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1 defend his client to the best of his ability.

2 As the judge told you, it's his job to play referee
3 in the courtroom. He will make decisions on the law. He
4 will tell us the things we can and cannot go into.

5 Ladies and gentlemen, it is your job to listen to
6 these facts. Listen carefully to the testimony that comes
7 from these witnesses. Who has a reason to tell the truth
8 and who does not.

9 At the conclusion of this case, the State will ask
10 you to find Thaddess Starks guilty of murdering his
11 stepfather, Al Cleveland.

12 We will ask you to find him guilty of murder, to find
13 him, to show him that it is not reasonable, no reasonable
14 person can pick up a butcher knife and stab someone
15 because another person slapped them. You'll also hear
16 testimony that Al Cleveland was much smaller than the
17 defendant.

18 Ladies and gentlemen, at the conclusion of this case
19 I ask you to find the defendant guilty and to send a
20 message to Thad Starks that we, the citizens of Richland
21 County, will not tolerate murder in our community and
22 nightmares in our neighborhoods.

23 Thank you.

24 THE COURT: Mr. McMullen?

25 MR. McMULLEN: May it please the Court.

Opening - Garfield

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1 THE COURT: Yes, sir.

2 OPENING STATEMENT:

3 MR. McMULLEN: Ladies and gentlemen, I'm Michael
4 McMullen. I represent Thaddess Starks. This is Thaddess
5 Starks. This is my paralegal, Nina Thomas. We've been
6 waiting a year for this day also.

7 When people have a dispute, whether it's a big issue
8 or not, sometimes they will go to a neutral third party
9 and ask that person to settle it. We've asked 12 neutral
10 parties to settle this dispute.

11 You 12 people were selected out of the whole panel at
12 random by the computer, and then people were eliminated
13 along the way, and we were left with 12 people who don't
14 know the parties, don't know anything about what happened.

15 It's our job here today to try to -- and for the rest
16 of the week that we need to try to figure out what
17 happened, and that's your job. No one will invade that.
18 That is your province to decide what the facts are.

19 Now, we have in this country the burden of proof in
20 criminal court is beyond a reasonable doubt. The reason
21 for that, I believe, is that it's very difficult to prove
22 a negative. It's hard to prove that something didn't
23 happen. So rather, we make the State take the burden of
24 proof and prove that something did happen.

25 In civil court the question is whether something is

Opening - McMullen

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1 probable, whether it's 50 percent and just a little more,
2 whether it's likelier than not. In some other settings,
3 the burden is clear and convincing. The highest one we
4 have is beyond a reasonable doubt.

5 The presumption of innocence is like a cloak that
6 must be stripped away by the State before anyone can
7 convict them of any crime.

8 The presumption of innocence can be conceptualized.
9 If I go out in the street in the morning, pick up my paper
10 and read on the front page that John Smith robbed the gas
11 station down the street, I say to myself "That probably
12 happened. He probably did that."

13 But if I open up the paper and see my brother Paul
14 McMullen robbed a gas station, then I say, "There's no way
15 he would do that. You're going to have to prove to me
16 that he did that." That, ladies and gentlemen, is the
17 presumption of innocence.

18 The indictment is not evidence. The indictment was
19 heard by a Grand Jury that probably got about ten seconds
20 before them and passed on it, and they had a much lower
21 burden. It was whether there's a preponderance of the
22 evidence, enough to send it up. It's the jury here before
23 me that decides the facts of this case. It's, as Judge
24 Cooper said, a search for the truth.

25 Now, your service is very valuable, and we'll try

1 not to waste your time, although it won't happen in an
2 hour like a Law and Order episode. We'll try not to waste
3 it. I know Judge Cooper strives to not waste the time of
4 the jury. So if we have business to take up, a lot of
5 times you'll be sent home while we do that.

6 What the State has to show, as Ms. Justice said,
7 Ms. Garfield said, is that he -- Mr. Starks had malice
8 aforethought when he stabbed Alphonzo Cleveland.

9 Malice aforethought will be defined by the Court at
10 the end, but just to give you an idea of what to listen
11 for, it's a heart bent on darkness, an evil malicious
12 intent.

13 At the end of the trial, the judge will give you the
14 law you are to apply to the facts. Please listen to what
15 he says very carefully about that.

16 Thaddess Starks, it will be shown by the evidence,
17 lived at the address [REDACTED] in Eastover. He lived
18 there with his mother. He lived there with his
19 stepfather.

20 The stepfather was married to Thaddess' mother one
21 year after Thaddess was born. So that's about 30, 33
22 years. Thaddess was about 34 at the time.

23 Still, Thaddess, the evidence will show, referred to
24 his father as "Al" and not as "dad". He referred to his
25 stepfather that way.

Opening - McMullen

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1 They both resided in that house at the time of this
2 incident. They lived with Thaddess, the mother, Alphonzo
3 Cleveland's wife. They both had a legal right to be
4 there, as the evidence will show.

5 Mr. Cornish, who lived next door, was a friend of
6 Al's, often had drinks on the porch with Al, and the night
7 of this stabbing, this tragic stabbing, the evidence will
8 show Al went over there before being stabbed in an angry
9 manner because he was unhappy that Thaddess had moved back
10 home a couple of weeks earlier.

11 The evidence will show that Deputy Carwell was called
12 by Mr. Cleveland, the decedent, Mr. Alphonzo Cleveland,
13 was called by him, and Carwell responded to the incident
14 location.

15 At about 7:30, the call was made. Carwell got there
16 at about ten minutes to eight. When Carwell got there,
17 Alphonzo Cleveland was sitting on the front porch and said
18 in slurred speech that he basically wanted Thaddess out.

19 Carwell got on the telephone with Thaddess' mother,
20 who was at work, and Carwell determined that they both had
21 a legal right to be there. He said, the evidence will
22 show, that Alphonzo Cleveland was intoxicated but that was
23 all right because he was on his own property and that if
24 Alphonzo Cleveland wanted Thaddess Starks out, he
25 explained the eviction process, but if it's his mother's

1 house, he explained, and his mother gave him permission to
2 be there, then Thaddess could be there.

3 The evidence will show that Thaddess went into his
4 room, shut the door and lay down on his bed. The evidence
5 will show that when Alphonzo Cleveland was told by the
6 police, "We can't evict your stepson," that he became even
7 more infuriated.

8 He threw things around in the kitchen. He turned
9 over a pot of rice and sausage that he had been cooking.
10 He was screaming. These -- these sounds were heard next
11 door.

12 He went next door and asked Tim Cornish for a gun,
13 and Thaddess heard that. Thaddess is in his room on the
14 phone with his mother, telling -- and the evidence will
15 show that he was sitting there trying to avoid any further
16 trouble.

17 The evidence will show that Alphonzo Cleveland burst
18 through the locked door. You'll see the doorjamb and
19 slapped or hit or backhanded Thaddess Starks, and Thaddess
20 didn't know whether he had a gun or not. Thaddess stabbed
21 him in self-defense.

22 Thaddess stabbed him in the upper right chest area
23 one time. Whereupon, the decedent, Mr. Cleveland, ran out
24 of the room leaving a small trail of blood to where he
25 eventually passed away or collapsed next door in

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1 Mr. Cornish's yard.

2 Ladies and gentlemen, you will be instructed that a
3 person who is defending himself or defending his
4 habitation where he lives, that person has a right to act
5 on appearances. That person has a right not to wait for
6 the first blow to be struck, even though Thaddess did, but
7 they don't have to wait for their adversary to get the
8 drop on them before they act.

9 The person has the right to use the force necessary
10 under the circumstances to defend himself or his property
11 or both.

12 At the end of this trial, you will decide, ladies and
13 gentlemen, that Thaddess Starks acted reasonably under the
14 circumstances, and you will return a verdict of not
15 guilty.

16 Thank you for your attention.

17 THE COURT: All right, Solicitor. Call your first
18 witness.

19 MS. SHIPLEY: Thank you, Your Honor. May it please
20 the Court. The State calls Timothy Cornish.

21 THE BAILIFF: Place your left hand on the Bible,
22 raise your right, face the clerk.

23 TIMOTHY CORNISH, after being duly
24 sworn, testified as follows:
25

Opening - McMullen

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1 THE CLERK: Thank you. Please have a seat in the
2 witness stand and state your full name for the record.

3 THE WITNESS: Timothy Lavar Cornish.

4 DIRECT EXAMINATION:

5 BY MS. SHIPLEY

6 Q Good morning, Mr. Cornish.

7 A Good morning.

8 Q Mr. Cornish, can you tell the jury a little bit about
9 yourself? Where are you from originally?

10 A Well, I'm originally from Hopkins, South Carolina. I
11 now reside in Eastover. I'm 42 years old, married, father
12 of two.

13 Q And how long have you been married?

14 A I was married right about 21 -- about 17 years, 24
15 all together.

16 Q Seventeen years?

17 A Yeah.

18 Q And you have children?

19 A Yes, I do.

20 Q How many children do you have?

21 A Two children, two girls.

22 Q Two girls. How old are they?

23 A Nineteen and 17.

24 Q And what are their names?

25 A Kimothy and Sierra.

T. Cornish - direct (Shipley)

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- 1 Q And what's your wife's name?
- 2 A Her name is Monica.
- 3 Q Monica?
- 4 A Uh-huh.
- 5 Q And how -- where do you live?
- 6 A On the corner of Congress and Leesburg in rural lower
- 7 Richland County.
- 8 Q And what is the actual street address?
- 9 A [REDACTED] [REDACTED] [REDACTED].
- 10 Q How long have you lived there?
- 11 A Seven years, July past.
- 12 Q And before -- where do you work?
- 13 A I'm employed at the Marvin Company (phonetic) in
- 14 Columbia.
- 15 Q And what do you do for them?
- 16 A I'm a forklift driver.
- 17 Q And how long have you worked for them?
- 18 A Thirteen years.
- 19 Q Thirteen years?
- 20 A Yes, ma'am.
- 21 Q What did you do before you worked for the company?
- 22 A I had various other jobs. I was in the United States
- 23 Marine Corps.
- 24 Q And how long were you in the U.S. Marine Corps?
- 25 A About five years.

T. Cornish - direct (Shipley)

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1 Q And did you have to go on any tours of duty while in
2 the Marine Corps?

3 A Yeah. I did two combat tours in Beirut, Lebanon in
4 the '80s.

5 Q In the '80s?

6 A Yes, ma'am.

7 Q You lived at this residence seven years, you said?

8 A That's correct.

9 Q How long have you known the deceased in this case,
10 Alphonzo Cleveland?

11 A Well, I knew him since they moved out there. We were
12 the first ones in the subdivision. They moved out there
13 maybe about six months after we have did, so right about
14 six years now. I had seen them, you know, off and on.
15 Right about six years, I imagine, when this occurred.

16 Q Okay. And describe for the jury -- who -- you said
17 "they". Who is they? Who moved into that house?

18 A Mrs. Cleveland, Ms. Cleveland, and their son.

19 Q And Ms. Cleveland, is that Betty Ann Cleveland?

20 A Yes, it is.

21 Q Okay. And how do you know the defendant, Thaddess
22 Starks?

23 A I know him when he moved down there.

24 Q Okay. Did Thaddess Starks live there the entire time
25 for the whole six years?

T. Cornish - direct (Shipley)

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- 1 A No. Come and go, come and go.
- 2 Q He came and went?
- 3 A Uh-huh.
- 4 Q And how is Thaddess Starks related to Alphonzo
- 5 Cleveland?
- 6 A It's his stepson.
- 7 Q Stepson?
- 8 A Yeah.
- 9 Q Can you describe for the jury a little bit your
- 10 relationship with Al? Did you call him Al?
- 11 A Yeah.
- 12 Q Okay. Describe your relationship with Al.
- 13 A We had a pretty good relationship, make friends
- 14 pretty easily. We always do our lawns together. He liked
- 15 his gardening. We see each other a whole lot, just see
- 16 him on the weekends, you know.
- 17 Q And would you describe your relationship with Al as
- 18 more than just neighbors?
- 19 A We're friends. We're friends.
- 20 Q You were friends?
- 21 A We were friends.
- 22 Q And describe for the jury how often did -- were you
- 23 familiar with Al's routine?
- 24 A Yes, pretty much.
- 25 Q Did he go to work every day?

1 A Every day he would go to work diligently.

2 Q And what kind of things did he do around the house
3 that you witnessed?

4 A Well, he liked working in his garden, for sure. One
5 thing we have a garden, you know. He liked gardening,
6 taking care of his yard, you know.

7 Q And did he have a lawn mower that he used to ride?

8 A Yes. He had a riding lawn mower.

9 Q And what about the defendant? Were you familiar with
10 his routine?

11 A Not particularly. I seen him come and go. I've seen
12 him, you know. We got along all right. We say hey,
13 talking from time to time.

14 Q All right. Were you familiar with whether or not
15 Mr. Starks had a job?

16 A I am not exactly sure.

17 Q Okay. Did you ever witness Mr. Starks doing any work
18 around the yard?

19 A Oh yes. I've seen him cut grass from time to time.

20 Q Now, can you describe whether or not you have
21 personal knowledge of the relationship between Al and the
22 defendant, Thaddess Starks?

23 A Personal, what do you mean?

24 Q What did you witness or observe about their
25 relationship?

T. Cornish - direct (Shipley)

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1 A It was touchy sometimes. Sometimes they got along.
2 Sometimes they didn't, just like everybody.

3 Q And were you familiar with why they did not get
4 along?

5 A Well, during that time, when this occurred, I guess
6 it was because he was coming back and forth at home and
7 you know, I guess just pulling a fair share around the
8 house. I'm not trying to speak personally, but those are
9 the things I gathered from our conversations.

10 Q And did Al indicate to you whether or not he felt
11 that the defendant was pulling his fair share around the
12 house?

13 A Yeah, yeah. He didn't feel like he was.

14 Q He felt like he was not pulling his weight?

15 A Correct.

16 Q Had you heard them argue in the past?

17 A I heard some verbal confrontations in the past, yes.

18 Q Had you ever witnessed any physical confrontation
19 between the two?

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

21 Q Now, I'm going to bring your attention to the day Al
22 died, October 12, 2006. Describe for the jury what had
23 you done that day?

24 A Well, I came from work. I borrowed Al's jack,
25 rotated my daughter's tires on her car. As we were doing

T. Cornish - direct (Shipley)

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1 it, we was talking, you know, still talking. When I came
2 home, I washed my wife's truck. By that time I washed my
3 wife's truck, Mr. Starks came home. I went on in the
4 house.

5 Q Does Mr. Starks drive a car?

6 A Yes, he was at the time.

7 Q What kind of car was he driving?

8 A A Mercury Mountaineer S.U.V.

9 Q And did Al drive?

10 A No, he didn't have a license.

11 Q Now, when you got to borrowing tools from Al, did you
12 observe Al do anything, doing anything, around his house?

13 A As to me?

14 Q Was Al doing any yard work, or did you see him
15 working around the house that --

16 A That day?

17 Q Yes, sir.

18 A No, not particularly per se that day, but we always
19 go out and about doing something around in the yard.

20 Q All right.

21 A On most days.

22 Q And October 12th fell on a Thursday; is that correct?

23 A Yes, it did.

24 Q Can you describe for the jury if you would ever get
25 together with Al on Thursdays to have a couple of beers?

T. Cornish - direct (Shipley)

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1 A Yes. That's what we mainly did on Thursdays. Friday
2 was the last day we do any yard work or work in the
3 garden, have a few beers.

4 Q And where would you typically go to enjoy some beers
5 with Al?

6 A We would be on my porch or on his front porch just
7 standing around the yard.

8 Q Okay. Could you describe for the jury Al's demeanor
9 when he drank alcohol?

10 A Well, he wasn't really aggressive. He was like
11 talking a lot, you know, talking about meaningful things,
12 you know.

13 Q And on this night, did you know that Al was drinking?

14 A Yes, I did.

15 Q Okay. And did you see him drinking?

16 A Yes, I did.

17 Q Did you have a couple of beers with him?

18 A Yes, I did.

19 Q All right. I'm going to bring your attention to
20 about 7:30 that evening.

21 A Uh-huh.

22 Q Do you recall whether or not the police were called
23 out to the house?

24 A I didn't know they were called until I looked outside
25 and saw the cruiser over there.

1 Q Okay.

2 A Yeah.

3 Q So that was the first time it was brought to your
4 attention that something was going on between the two?

5 A Something was amiss there, yes.

6 Q And when you saw the cruiser, what did you do?

7 A I continued to look out the kitchen window and
8 continued doing what I was doing.

9 Q And was your window in your kitchen open at that
10 time?

11 A Yes, it was opened. I was flying birds of my
12 daughters.

13 Q I'm sorry, I couldn't hear you.

14 A I had flying birds of my daughters. I didn't want
15 smoke to get in the house.

16 Q Okay. And did you hear what was going on out in the
17 front?

18 A No. I just heard the -- I heard the arguing back and
19 forth. This was after Deputy Carwell left, it started up
20 almost immediately after the deputies left.

21 I just -- I couldn't discern anything, what they were
22 saying, but I heard voices.

23 Q And you heard voices arguing back and forth?

24 A Yeah.

25 Q As soon as the deputy left?

T. Cornish - direct (Shipley)

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1 A Started almost immediately.

2 Q Can you just -- do you remember how long the deputy
3 was there?

4 A Not offhand. Not -- I would guess anywhere from 15
5 to ten or 20 minutes, I would imagine.

6 Q Okay.

7 A I wasn't trying to be overly noseey at that time.

8 Q And so as soon as the deputies left, you had
9 testified just a minute ago --

10 A Uh-huh.

11 Q -- that the arguing started back and forth between
12 the two?

13 A (Nods in the affirmative).

14 Q Okay. Can you tell the jury about what, if
15 anything -- did you ever see Al at that point after the
16 arguing started?

17 A Well, when it started up, he was calling my name,
18 calling my name, so I -- he sounded upset, so I went
19 outside to see what he wanted. That's when I went outside
20 the first time.

21 Q And where did you meet him outside?

22 A I met him on the property boundary beside their
23 house.

24 Q Okay. And I'm going to show you a photograph so the
25 jury can understand --

T. Cornish - direct (Shipley)

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1 A Uh-huh.

2 Q -- what you're talking about. I'm showing you
3 picture number -- State's number one. Do you recognize
4 that?

5 A Yes, I do. This is my residence and the Cleveland
6 residence.

7 MS. SHIPLEY: Okay. Your Honor, at this time the
8 State would seek to introduce number one into evidence.

9 MR. McMULLEN: No objection.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit No. 1 was admitted into
12 evidence.)

13 BY MS. SHIPLEY

14 Q This was taken that night?

15 A Correct.

16 Q If you could, point on this photograph where you went
17 to meet with --

18 A I met him right here.

19 Q -- Mr. Cleveland.

20 A That's their house on the other side of the property
21 boundary. He was pacing back and forth.

22 Q He was pacing back and forth?

23 A Uh-huh.

24 Q Did you see where the defendant was?

25 A He was standing here on the porch right here.

T. Cornish - direct (Shipley)

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1 (indicating).

2 Q On the front porch of the residence?

3 A On the front porch, yes.

4 Q Okay. So you and Al are talking over here, and the
5 defendant is on the front porch of the brick house?

6 A Uh-huh.

7 Q And is this your residence?

8 A Yes, it is.

9 MS. SHIPLEY: Okay. May I publish this photograph to
10 the jury, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. SHIPLEY

13 Q You were saying that Al was pacing back and forth.

14 A I was trying to calm him down, yes.

15 Q And what exactly was he -- what was he upset about?

16 A He was saying, "This person can't talk to me like
17 this. It's my own house. It's my own house." This is
18 what he was saying. He was very agitated.

19 Q So he was complaining about being disrespected in his
20 home?

21 A Yes.

22 Q And at this time could you hear or see what the
23 Defendant Starks was doing on the porch?

24 A Yes. He was standing on the corner of the porch.

25 You know, kind of like he said, a couple of comments, kind

T. Cornish - direct (Shipley)

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1 of like -- really agitating, you know, a couple of
2 comments he was saying. I thought I'd check it out.

3 Q And he was agitating Mr. --

4 A Yeah.

5 Q He was agitating Al?

6 A Yes.

7 Q Did Al indicate to you whether or not he wanted a
8 ride?

9 A Yes, he did.

10 Q And were you able to provide him with a ride?

11 A No. I couldn't at that time because my wife was
12 handling my finances. I was most concerned with -- "I
13 can't do that right now. Just hold on. I've got to do
14 this."

15 Q And so your wife, was she on the phone with your
16 mortgage company at the time?

17 A Yes.

18 Q So you could not leave at that time?

19 A That's right.

20 Q Did you -- when you explained to Al that you could
21 not give him a ride, did you hear the defendant say
22 anything?

23 A Yes, I did.

24 Q And exactly what did you hear the defendant say,
25 verbatim, to this jury?

T. Cornish - direct (Shipley)

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1 A He said, "You punk motherfucker. You're like me.
2 You don't have anywhere to go."

3 Q And how did Mr. --

4 MR. McMULLEN: I'm sorry. I couldn't understand what
5 he said.

6 THE WITNESS: He said, "You punk motherfucker. You
7 don't have anywhere to go, just like me."

8 BY MS. SHIPLEY

9 Q "You don't have anywhere to go just like me." How
10 did Al take that kind of language?

11 A He got even more agitated.

12 Q Did Al indicate to you whether he wanted a gun?

13 A Yes, he did.

14 Q Describe for the jury what he said.

15 A He said, "Oh, Tim. He can't talk to me like this in
16 my own house. Give me a gun. Give me a gun."

17 "I can't do that. Y'all just calm down. Go about
18 y'all's business." I was like, "Calm down and talk about
19 this. Y'all just calm down," you know.

20 I got back in the house. I was like, "Y'all just
21 take it easy. Y'all calm this down and talk about
22 everything," you know. I went back in the house at that
23 time.

24 Q So they both went into the house?

25 A I went into the house. I guess they did also.

1 Q Okay. I'm going to put this in your -- this
2 microphone a little closer to you so everyone can hear
3 you --

4 A Okay.

5 Q -- and scoot up. There we go.

6 All right. So when you told them both to calm down,
7 did they calm down?

8 A I guess a little, but like I said, when I said that,
9 I went on back into my residence.

10 Q All right. And you indicated that Al was more -- he
11 got more agitated by the comments made by Mr. Starks?

12 A Yes, yes.

13 Q And describe Mr. Starks' demeanor? How was he
14 behaving?

15 A Well, he was a little calmer than Al was, but you
16 know, it wasn't calm, calm but it was a little calmer than
17 Al was, you know, after that happened.

18 Q Okay. And you indicated that Al wanted to leave, but
19 he can't drive; is that right?

20 A He could not drive, could not.

21 Q And the defendant drives what?

22 A A Mercury Mountaineer S.U.V.

23 Q Now, what did you do when you returned back to your
24 home?

25 A Closed the door and continued to cook dinner and

T. Cornish - direct (Shipley)

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1 handle business, let my wife handle business with my
2 mortgage company.

3 Q I'm sorry, I couldn't hear that.

4 A Continue handling business, let my wife handle
5 business with the mortgage company, with my wife.

6 Q I think I put the microphones too close together.
7 It's kind of getting muffled.

8 (Pause).

9 Okay. Say that again for us.

10 A I handled my business with my wife and cooking
11 dinner.

12 Q Okay.. At that time was the window to your kitchen
13 still open?

14 A Oh yes, it was. I was still frying burgers.

15 Q And I'm going to show you State's number 27 and ask
16 you if you recognize this photograph.

17 A Yes. This is my residence.

18 MS. SHIPLEY: Okay. Your Honor, at this time the
19 State seeks to introduce 27 into evidence.

20 MR. McMULLEN: No objection.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 27 was admitted into
23 evidence.)

24 BY MS. SHIPLEY

25 Q I ask you to show us in this photograph which window

T. Cornish - direct (Shipley)

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1 is the window to your kitchen?

2 A This one right here is the kitchen window.

3 Q Okay.

4 A The small one.

5 Q All right. While you're in the kitchen cooking
6 burgers for your daughters, could you hear anything coming
7 from Al's house?

8 A Not at that particular time.

9 Q When was it that you -- your attention was brought to
10 the outside? What happened?

11 A It may have been about a -- it was maybe 15, 20
12 minutes later I heard Al yelling my name in a very urgent
13 manner then. It sounded like it was coming across my lawn
14 yelling, "Tim, oh Tim, Tim, Tim."

15 I said "Oh, they're at it again over there.

16 Something don't sound right."

17 My wife said, "Tim, you better open the door."

18 I said, "Okay. Hold on." My daughter was there when
19 I opened the door. She saw him there. I said, "Quick, I
20 got to talk to him." I saw him down there sitting down.

21 I said, "Al, what's up man? What's up? What's going
22 on?"

23 He sat down. He didn't say anything, so I closed the
24 door behind him.

25 Q And where did he sit down?

T. Cornish - direct (Shipley)

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1 A On my step.

2 Q On your front steps?

3 A Yes.

4 Q And which step did he sit down on?

5 A About the fourth one from the bottom. It would be
6 about that one right there.

7 Q Right there?

8 A Or that one right there, yes.

9 Q Okay. And what did you notice about Al?

10 A Well, when I closed the door --

11 Q How was he sitting? How was he sitting?

12 A He was sitting kind of slumped over, so I closed door
13 because I'm trying to say something. I couldn't
14 understand what he was saying.

15 I closed the door behind me, went down to talk to
16 him. He became, you know, incoherent and kind of
17 unresponsive and started coughing. I went down and looked
18 a little closer. I said, "Oh, holy crap, man."

19 I saw his shirt was ribbed open. He was bleeding
20 profusely. "Holy crap, man. You've been stabbed." I
21 grabbed him and pulled him to the ground and tried pulling
22 first aid on him then.

23 Q How are you familiar with how to do first aid?

24 A Oh, I was an ex-Marine, so I have knowledge about
25 that now.

T. Cornish - direct (Shipley)

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1 Q What were you trying to do -- or what -- when you
2 said you took him down to the ground, what did you do with
3 Al on the ground?

4 A I tried to staunch the bleeding at first. I yelled
5 into the house for my daughter to send a towel out to try
6 to staunch the bleeding.

7 First of all, do that and make sure his, you know,
8 the airway stayed open, you know. After I did that, you
9 know, I told my daughters to get me a pillow.

10 By the time she went for the pillow, Mr. Starks came
11 over in a very aggressive manner like he wanted to kick
12 Mr. Cleveland again.

13 MR. McMULLEN: I would object to the
14 characterization.

15 THE COURT: Overruled.

16 Go ahead.

17 BY MS. SHIPLEY

18 Q Please repeat it. I think -- I couldn't hear the
19 last part of what you said.

20 A By the time I got the towel from my daughter and sent
21 her for a pillow and a blanket, I had him on the ground,
22 Mr. Starks came over in a very aggressive manner.

23 I mean really very -- he was very agitated, and he
24 wanted -- he was partially acting like he was wanting to
25 kick him while he was on the ground.

T. Cornish - direct (Shipley)

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1 MS. SHIPLEY: And I'm going to ask -- Your Honor,
2 permission for the witness to step down from the witness
3 stand to demonstrate what he observed?

4 THE COURT: Go ahead.

5 BY MS. SHIPLEY

6 Q If you could show the jury, pretend that Al was --
7 I'm Al on the ground.

8 A He was on the ground here. I was leaning over him.
9 Starks came from this way (indicating).

10 Q From the house?

11 A He was like this (indicating). "I'll kick you,
12 motherfucker."

13 I said, "Oh, just get back, just get back." I kept
14 after him, "Just get back, you know. Just get back for a
15 minute.

16 Q And did he obey you?

17 A He stepped back and got on his cell phone.

18 Q And before he got on his cell phone what -- did you
19 ask what happened?

20 A Yes.

21 Q And what did he say when you asked him what happened?
22 Describe your conversation.

23 A I said, "Man, what happened, man? What's going on?
24 What happened?"

25 He said, "Man, Al came over, kicked the door open and

T. Cornish - direct (Shipley)

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1 slapped me. I stabbed him."

2 Q And did -- what did you say in response to that?

3 A I said, "Man, y'all didn't have to do that. You

4 could have fought, man. You didn't have to do that.

5 Y'all could have fought, you know."

6 Q Okay. Thank you. Please have a seat.

7 (Complies).

8 Was Al able to say anything to you?

9 A No. He was unresponsive then. He could not
10 communicate.

11 Q What kind of sounds were coming from Al?

12 A Like a gurgling sound.

13 Q Okay.

14 A Excuse me.

15 Q Okay.

16 A Like in his chest. I thought his cavity was full of
17 blood, so I asked my daughter, Kimothy, to send a piece of
18 plastic bag out. I tore it, put that on there, put more
19 pressure on it.

20 Q And what was the purpose of using a plastic bag?

21 A In a chest wound, that like seals it. I laid him on
22 the side he was injured on. So if that lung is bad, the
23 other one is still clear.

24 Q And you indicated that you first noticed he was cut
25 from observing his shirt?

T. Cornish - direct (Shipley)

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1 A Yes. It was -- there was a gash like he was shot. I
2 looked down at it again. I saw the gash, and I saw blood,
3 but I turned my porch light on. I didn't see the blood,
4 so I turned the light on. I saw he had blood coming out.

5 Q I'm going to show you what's been marked State's
6 number 42 and ask you if you recognize this.

7 A Yes. That's the shirt that Al was wearing that
8 night.

9 Q Okay. And does it have -- is this his work shirt?

10 A Yes. He had on his work shirt.

11 Q And what's on his shirt?

12 A "Al".

13 Q His name?

14 A Yes, his name.

15 Q And obviously E.M.S. must have gotten ahold of this;
16 is that correct? It wasn't torn like this, right?

17 A No. They had to cut it off.

18 Q And right underneath Al's name tag, do you see --

19 A Yes.

20 Q -- any hole?

21 A Yes. It's a laceration.

22 Q Okay. And is that where you saw his wound?

23 A Yes, it is.

24 MS. SHIPLEY: May I publish number 42? We'd seek to
25 introduce it into evidence at this time.

T. Cornish - direct (Shipley)

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1 MR. McMULLEN: I have no objection.

2 THE COURT: No objection.

3 (WHEREUPON, State's Exhibit No. 42 was admitted into
4 evidence.)

5 BY MS. SHIPLEY

6 Q So right here you saw this injury?

7 A I saw the blood. I saw the injury.

8 Q Did you instruct anyone in your home to call 911?

9 A Yes. I instructed my wife when I first noticed the
10 blood and the laceration before I pulled him down. After
11 I got him on the ground, I noticed he was wheezing.

12 I told her, "You better call them again. Don't -- we
13 might lose him, man. Please call them again, you know."
14 I realized the severity of the wound then when I got him
15 on the ground.

16 Q And did -- how long do you think it took the
17 ambulance to arrive?

18 A Maybe 20 minutes, maybe 25, I would imagine.

19 Q Okay. Did the deputies arrive before the ambulance?

20 A Yes, they did.

21 Q Did any deputies assist you?

22 A Yes, a female deputy, I don't recall her name, came
23 over and assisted me with keeping him stable.

24 Q And during this time were you checking Al for a pulse
25 and blood?

T. Cornish - direct (Shipley)

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1 A Continuously, continuously. I didn't want to keep
2 touching the wound, but I kept checking his pulse. He
3 kept a pulse before they got there. It was a weak one.
4 He had a steady one, but it was very weak, you know.

5 Q And did you -- were you able to hear Al breathing?

6 A Yes, he kept breathing steadily. It was kind of
7 labored.

8 Q Uh-huh.

9 A A little gurgling, but he kept fighting.

10 Q Okay.

11 A I kept talking to him, "Just keep on. Hang in there.
12 Fight, you know."

13 Q And what was your family doing at this time?

14 A I told them to stay inside. They were standing at
15 the door looking. They were pretty much traumatized, you
16 know. They had never seen anything like that before. It
17 was pretty traumatic for them.

18 Q Was -- did you ever -- when the defendant charged at
19 Al while he was laying on the ground, did you notice any
20 injuries on the defendant?

21 A No. I could not observe any.

22 Q And did you see any -- was Al possessing any weapons
23 whatsoever?

24 A No, he was not.

25 Q In fact, I'm going to show you State's number 28, 30,

T. Cornish - direct (Shipley)

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1 and 32 and ask you if you can glance through these
2 photographs and see if you recognize them.

3 A Yes, I do. That's the blanket.

4 MR. McMULLEN: Before they're published to the
5 jury...

6 MS. SHIPLEY: If you can look through them real
7 quickly, and we'll get them into evidence.

8 THE WITNESS: The cell phone, the blanket. There's a
9 wallet --

10 MS. SHIPLEY: Okay.

11 THE WITNESS: -- like I covered him with.

12 MS. SHIPLEY: Okay.

13 (Pause).

14 Any objection?

15 MR. McMULLEN: Have you moved them into evidence?

16 MS. SHIPLEY: At this time, the State would seek to
17 introduce them into evidence.

18 THE COURT: Without objection.

19 Have they been marked?

20 MS. SHIPLEY: Yes, sir, 28, 30, 32 are now in
21 evidence.

22 (WHEREUPON, State's Exhibits Nos. 28, 30, 32 were
23 admitted into evidence.)

24 BY MS. SHIPLEY

25 Q I'm going to show you 28. Do you recognize what's in

T. Cornish - direct (Shipley)

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- 1 that photograph?
- 2 A Yes, I do.
- 3 Q What is that?
- 4 A The front step and the blanket I had to keep him --
- 5 keep him from going into shock, covered him with it, had
- 6 like a pillow and some plastic.
- 7 Q Okay. And so the blanket was to keep him from going
- 8 into shock?
- 9 A Yes.
- 10 Q What was the purpose for the pillow?
- 11 A I was trying to make sure his head stayed -- his
- 12 airway stayed open. I propped it back up like that.
- 13 Q Okay. And then the plastic bag you used to do what?
- 14 A To press on the wound, pressure the wound to put a
- 15 good seal on it.
- 16 Q Okay. And in State's number 30, do you see what's in
- 17 that photograph?
- 18 A That's Al's cell phone.
- 19 Q All right. And what about State's 32? Do you see
- 20 any other belongings of Al?
- 21 A That would be his wallet.
- 22 Q Okay. I'm going to ask you to take a look into 40
- 23 and 41. Just look inside and see if you recognize them,
- 24 and let me know when you're done.
- 25 A Forty would be his cell phone. Forty-one would be

T. Cornish - direct (Shipley)

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1 what appears to be his wallet.

2 MS. SHIPLEY: Okay. Your Honor, at this time the
3 State seek to the introduce both items into evidence.

4 MR. McMULLEN: No objection.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibits Nos. 40, 41 were
7 admitted into evidence.)

8 BY MS. SHIPLEY

9 Q Could you pull out number -- the cell phone, please?

10 A Yes, I could.

11 Q Can you turn it on, please?

12 A (Complies). Okay.

13 Q Can you please go to the last outgoing calls placed
14 by Al on his cell phone?

15 MR. McMULLEN: I'm going to object at this time to
16 that. May we approach?

17 THE COURT: Sure.

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

20 MS. SHIPLEY: Please go to the outgoing calls.

21 (Complies).

22 BY MS. SHIPLEY

23 Q And did you -- what are the last two calls placed?

24 A The last two calls -- the first one was placed at
25 (803) 730-7624.

T. Cornish - direct (Shipley)

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1 Q Okay. And can you let us know what time that, that
2 went out?

3 A This is at 9:05 on October 12th, 2006.

4 Q And the call before that one?

5 (A cell phone rang).

6 THE COURT: Take her phone. Please confiscate that
7 phone.

8 BY MS. SHIPLEY

9 Q Going back to Al's cell phone.

10 A Oh, the next one is placed to 911.

11 Q What time did you call 911 from his cell phone?

12 A It's like 8:03.

13 Q And what time did he call it?

14 A 8:03 -- or 8:53.

15 Q 8:53 p.m.?

16 A (Nods in the affirmative).

17 Q How long did that conversation or did the call last?

18 A Just give me a second.

19 (Pause).

20 That was for three minutes and eight seconds on
21 October 12, 2006.

22 Q And again the time?

23 A 8:53.

24 Q Okay. If you could, turn the phone off, please.

25 A Yes, ma'am.

T. Cornish - direct (Shipley)

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1 Q The man that came charging towards Al as he laid
2 there dying in an aggressive manner as if to kick him, do
3 you see him in the courtroom?

4 A Yes, I do.

5 Q Can you please identify him for the jury, point at
6 him?

7 A That would be Mr. Starks right here.

8 Q What is he wearing?

9 A A black striped shirt, it looks like.

10 MS. SHIPLEY: Your Honor, let the record reflect that
11 the witness has identified the defendant, Mr. Starks.

12 THE COURT: The record so reflects.

13 MS. SHIPLEY: Thank you. No further questions.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION:

16 BY MR. McMULLEN

17 Q Mr. Cornish, what training do you have in first aid?

18 A U.S. Marine.

19 Q Do all Marines get --

20 A Yes.

21 Q -- first aid?

22 A Extensively.

23 Q Would you explain that to me a little bit?

24 A That's part of your work, part of your work. That's
25 what you must know. It's a Marine's life.

T. Cornish - cross (McMullen)

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1 Q You get that in boot camp?

2 A All through training, all through training, your
3 whole career.

4 Q Who would you say gave you this training, a Sergeant?

5 A No, just a qualified corpsman. They are our like
6 doctors that travel with us, take care of us, Naval
7 corpsman.

8 Q So the man is -- Al Cleveland was sitting on one of
9 your stairs?

10 A Slunched (sic) over.

11 Q Propped up?

12 A Yeah, slunched over, propped up.

13 Q And he had a stab wound up here high?

14 A Yes.

15 Q And then you decided it would be best to lie him down
16 flat?

17 A Yes because I heard gurgling like his lung was
18 punctured. I laid him flat at an angle on his bad side,
19 the side he was stabbed on. He had his back like this and
20 his leg twisted over. I didn't lay him flat.

21 Q You gave a statement to the police, didn't you?

22 A Oh yes, I did.

23 Q You spoke to them that night?

24 A Yeah.

25 Q And then you spoke to them the next day?

- 1 A Yes.
- 2 Q Isn't that correct?
- 3 A Yes.
- 4 Q You gave a written statement?
- 5 A (Nods in the affirmative).
- 6 Q Sir?
- 7 A Yes, I did.
- 8 Q Now, in that statement, you never mentioned that Al
- 9 asked you for a gun?
- 10 A I'm pretty sure I did.
- 11 Q Would you like to see the statement?
- 12 A No. If it's not in there, I guess I did not but he
- 13 did.
- 14 Q He did?
- 15 A Yes, he did.
- 16 Q And what were his words?
- 17 A As I stated earlier, he said he can't talk, "It's my
- 18 own house, can't do nothing. It's my own house. Give me
- 19 a gun. Give me a gun," which I said I can't do that. I'm
- 20 not going to do that. I can't do that.
- 21 Q He didn't use any profanity. He just said it like
- 22 that?
- 23 A Yeah, pretty much so.
- 24 Q Well, pretty much so?
- 25 A Yeah, pretty much so.

T. Cornish - cross (McMullen)

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1 Q Were you with him the entire time that night?

2 A As in meaning --

3 Q Like between -- did you watch him the whole time?

4 A No. I didn't watch him the whole time, no, I did
5 not.

6 Q Did you know whether he went to other neighbors
7 asking for a gun?

8 A No, I do not.

9 Q Were you with him when he made the telephone calls
10 you just talked about?

11 A No, I wasn't.

12 Q Do you know whose phone number that is with a 730
13 prefix?

14 A No. I'm not sure whose number that is. In fact, I
15 do not.

16 Q Mr. Cleveland had a few drinks that night; is that
17 correct?

18 A Yes, he did.

19 Q Were they with you?

20 A He had a couple with me, yes.

21 Q How many did he have?

22 A I saw him drink two.

23 Q What -- what kind of beverages?

24 A I think they were Millers, Miller Lights, I think.

25 Q Now, you were -- you go to work at five in the

1 morning, don't you?

2 A Be there at six. I leave about five, 5:30.

3 Q And what time do you get off?

4 A I usually get home around about four, about four.

5 Q How about on Fridays?

6 A I'm off at ten on Fridays.

7 Q Ten a.m.?

8 A Uh-huh.

9 Q About the time most of us are going to work.

10 A Yeah, on a good day.

11 Q And October 12th of last year was a Thursday; is that
12 correct?

13 A Yes, it was a Thursday.

14 Q And you were -- was it a cool evening?

15 A It was a warm day. It was a very cool evening, yes.

16 Q How come you're cooking burgers indoors?

17 A Because I didn't want to cook them outside.

18 Q Because why?

19 A Because it's more convenient to come inside. I
20 didn't want to go outside to cook burgers.

21 Q All right. Your wife was on --

22 A Not when --

23 Q I'm sorry?

24 A Not when I had, you know, to go to work the next
25 morning.

T. Cornish - cross (McMullen)

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1 Q Okay.

2 A I had to clean up later.

3 Q Your wife was on the telephone while you were cooking
4 for your family?

5 A Yes, at the same time getting information from me
6 also, we both needed to.

7 Q I'm sorry?

8 A She also was getting information from me while she
9 was on the phone.

10 Q Yes, sir.

11 A So we both had to do it together.

12 Q Sir, I'm going to show you your statement.

13 A Uh-huh.

14 Q Is that a statement you gave to the police?

15 A Yes, sir, it appears to be.

16 Q You changed something on the front, did you not?

17 A Yeah.

18 Q It said that Al laid on the ground, and you changed
19 it to he was --

20 A No. I said he sat down on the porch, and I put the
21 porch step.

22 Q And you changed it to the fourth step?

23 A Yeah. He changed it. I initialed it.

24 Q And that's because you were allowed to read that
25 statement and make any changes you wanted.

- 1 A No, we were doing it together.
- 2 Q Okay.
- 3 A We were doing it together. I said, "No, no. It
4 wasn't -- when he was sitting on the porch, it was the
5 fourth step."
- 6 Q Okay.
- 7 A I wanted to be as correct as much as possible.
- 8 Q And pay attention to detail.
- 9 A Yeah, as much as possible.
- 10 Q Tell -- show me in there, read for me in there, where
11 you told him about the gun.
- 12 A (Pause).
- 13 I guess it's not in here.
- 14 Q No, sir. Why not?
- 15 A I guess I -- I guess -- I didn't omit it on purpose.
16 I guess I didn't remember at that time.
- 17 Q When did you remember?
- 18 A I guess as it went on, as it went on, as the
19 questioning went on, you know.
- 20 Q Did you ever tell the police?
- 21 A I'm pretty sure I thought I did.
- 22 Q Al had more than two beers that night, didn't he?
- 23 A He had two with me.
- 24 Q Okay.
- 25 A I can't speculate how many he had in his living room.

T. Cornish - cross (McMullen)

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1 Maybe he did, maybe he didn't.

2 Q Well, I mean, was he intoxicated?

3 A I didn't think he was intoxicated. I know he had a
4 few, but I didn't think he was intoxicated.

5 Q In fact, it was Al's habit, wasn't it, that he worked
6 all week long, and then on Thursday -- he didn't have to
7 go to work on Friday, did he?

8 A Some Fridays I think he did.

9 Q All right. But every Thursday night, end of the
10 workweek, that's when he got paid, isn't it?

11 A I -- I would imagine. I can't speculate exactly.

12 Q You don't know whether he got paid on Thursdays?

13 A No, not exactly.

14 Q How did he get back and forth to work?

15 A His wife took him, I think.

16 Q Did he dad take him that week, too?

17 A Oh, I ain't -- I'm not exactly sure.

18 Q You don't know?

19 A No.

20 Q You would have been at work that time; is that right?

21 A I have no idea.

22 Q Well, isn't it true that Al typically on Thursday
23 night would cash his check, go to the store, get at least
24 a six pack of Miller and sometimes vodka and drink it? Is
25 that all fair to say?

1 A I mean, I guess on Thursday when we, you know, were
2 sitting down having a few beers on Thursday. I'm not sure
3 what he gets, if he gets it there.

4 Q What kind of beer does he drink?

5 A Just a glass, maybe drinking a Miller that night, I
6 think.

7 Q Yes, sir.

8 A Uh-huh.

9 Q You said that Al didn't feel like Thaddess was
10 pulling his own fair share around the house?

11 A Yes.

12 Q Isn't it true that Al moved out of that house for
13 about a year?

14 A (Nods in the affirmative).

15 Q When was that?

16 A I guess it was about nine months prior, I think.

17 Q And how long was he gone?

18 A I said I think about nine months prior, I think.

19 Q Did you see him come do any yardwork during that nine
20 months?

21 A Not particularly.

22 Q Did Thad move back in during that nine months?

23 A Yes.

24 Q So he was the man of the house then?

25 A I would imagine.

T. Cornish - cross (McMullen)

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- 1 Q Well, who mowed the lawn then?
- 2 A I saw him mow the lawn.
- 3 Q Okay. So when Al left, he wasn't coming back to mow
- 4 the lawn. He wasn't contributing to the household; is
- 5 that right?
- 6 A I can't speculate.
- 7 Q Well, did you ever see him at the house do anything?
- 8 A No. I can't say that I did.
- 9 Q So no?
- 10 A No.
- 11 Q He asked you for a ride. Where did he want to go?
- 12 A I guess away from there.
- 13 Q What did he ask you?
- 14 A He just said, "Give me a ride away from here."
- 15 I said, "I can't do that right now."
- 16 Q You say that Thaddess ran up after you found Al on
- 17 the ground, Thaddess ran up in an aggressive --
- 18 A Walked up in an aggressive manner.
- 19 Q Walked up in an aggressive manner.
- 20 A Very quickly.
- 21 Q Sir?
- 22 A Very quickly.
- 23 Q All right.
- 24 A Uh-huh.
- 25 Q Now, how can you tell when someone walks aggressively

T. Cornish - cross (McMullen)

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1 versus not aggressively?

2 A Because I can see them coming pretty quickly.

3 Q All right.

4 A I could...

5 Q Well, it was an emergency situation, wasn't it?

6 A Yeah, I'd say it was. I'd say it was.

7 Q He was on the telephone, wasn't he?

8 A Not at that time when he came up. He got on the
9 phone afterwards.

10 Q You stated earlier that the first sign of trouble was
11 that you saw deputies over at the house?

12 A Yeah, earlier.

13 Q You say you did not hear them arguing before that?

14 A Not per se. I heard a little arguing, but I didn't
15 know they had called the police over there or anything.

16 Q All right. You didn't call the police?

17 A Oh no, huh-uh.

18 Q Not at that point?

19 A Huh-uh.

20 Q And you say Al called you over there; is that
21 correct?

22 A Yes.

23 Q And you say that Al was pretty excited and Thad was
24 calmer?

25 A Calmer, yes.

T. Cornish - cross (McMullen)

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1 Q Is that correct?

2 A That's correct.

3 Q Al was the one with the problem?

4 A I can't speculate on that. He was -- he was -- he
5 was a little more excited, yes, he was.

6 Q Because Thad was staying in the house, and he was
7 angry at that time?

8 A Yes, I imagine so.

9 Q Isn't that right?

10 A (There was no response).

11 MR. McMULLEN: Could I have the witness publish his
12 statement, his previous statement?

13 MS. SHIPLEY: In its entirety, Your Honor?

14 THE COURT: I don't know.

15 MR. McMULLEN: I have no problem with that, in its
16 entirety.

17 THE COURT: What's the State's position?

18 MS. SHIPLEY: We have no objection. Please ask the
19 witness to read it.

20 MR. McMULLEN: Please read your statement so the jury
21 can hear.

22 THE WITNESS: Okay. Question and answer,
23 Mr. Isenhoward. "What happened last night?"

24 "Early in the evening around 7:30, 7:45, I noticed in
25 deputies were next door. I did hear a little argument

1 over there before the deputies got there. The deputies
2 left and started back. They started back yelling almost
3 immediately. Al called me over there. I tried to calm
4 him down. Al was pretty excited. Thad was a little
5 calmer. I calmed him down and went home.

6 I continued to hear arguing for the next 45 minutes
7 to an hour. We had the kitchen window opened. I could
8 hear them through it. I heard Al calling me again with
9 more urgency. It sounded like he was coming over to my
10 house.

11 I opened the front door, and I saw him sit down on
12 the fourth step. I closed the front door. I couldn't
13 understand what he was saying.

14 I went down the steps to him. He was sitting up like
15 he was slumped over, was having trouble breathing. I
16 noticed that his shirt was torn and that he was bleeding.

17 I said to my wife, told her to call 911. He was only
18 semi-conscious. I pulled him to the ground flat. I told
19 my daughter to get a pillow and a towel. She brought them
20 to me. I put the pillow over his head -- under his head
21 and put pressure on the wound. I told my daughter to
22 bring a blanket in an attempt to stop him from going into
23 shock.

24 He was hyperventilating, so I told my daughter to
25 bring a plastic bag because I thought he was -- had a

T. Cornish - cross (McMullen)

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1 punctured -- had a lung been punctured.

2 Thaddess came over in an aggressive manner. I felt
3 like he was going to kick Al. I asked him what happened.
4 He told -- I told him to calm down.

5 He was on his cell phone. Thad said he was in the
6 room where the deputy told him to go. He said that Al
7 busted into the room and slapped him, so he got the knife
8 and stabbed him in the chest.

9 I asked to go back and stay away. I was just trying
10 to keep more pressure on Al's wound. Thaddess left and
11 went back.

12 I think -- I think that -- I think one deputy came
13 over and stayed with Thaddess, and the female deputy came
14 and helped me. Shortly after that, an ambulance came and
15 got him."

16 "Are you aware of any problem between Al and
17 Thaddess?"

18 "Yes. Yes, everyone is aware. It's not the first
19 time the police had been there. I think Al was upset with
20 the fact that Thad was going back and forth between his
21 girl and home."

22 "Have you witnessed any physical altercation between
23 the two of them in the past?"

24 "No. Just verbal."

25 "Are you aware of any physical limitation that

1 Thaddress appeared to have?"

2 "I'm not aware of anything. I noticed that he had
3 seizures. I don't know anything in depth."

4 "Are you aware of any threats between the two of them
5 in the past?"

6 "No. They just argued."

7 "How long have you known the two of them?"

8 "I've known them for about six years."

9 "How long have they been arguing like this?"

10 "I'm not sure."

11 "Do you have any -- anything else to add?"

12 "No, that's about it."

13 BY MR. McMULLEN

14 Q Now, you say in there that he was on the telephone.
15 You say he was on the telephone as he came running up in
16 an aggressive manner?

17 A I could have meant on the phone after he got there.
18 He wasn't on the phone when he came over there, yelling
19 afterwards.

20 Q Now, that statement was given --

21 A That was given.

22 Q -- the day after it happened?

23 A Yes.

24 Q And now it's almost a year later, and you feel like
25 you remember it better now than you did then?

T. Cornish - cross (McMullen)

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1 A I'd say I remember, yeah. Excuse my French but you
2 know, it's a long time. I'm trying to get it correct the
3 best I can, you know.

4 Q Yes, sir.

5 A I'm just trying to -- I'm not trying to perjure
6 myself or amend anything. I'm just trying to do the best
7 I can.

8 Q But the statement --

9 A That's what it states, that's what it states.

10 Q It says that he was on the phone?

11 A Yes. It states that.

12 Q Now, and it also says that when you told him to just
13 go back to his house, that's what he did?

14 A Uh-huh.

15 Q Is that correct, sir?

16 A He backed up some.

17 Q Well, what does your statement?

18 A It said he went back. That's what his statement
19 says.

20 Q Where did he go?

21 A He backed up and some and got on his cell phone.

22 Q And then a deputy was with him?

23 A That's later.

24 Q All right.

25 A When he got there.

- 1 Q Okay. Did he -- did he kick Al?
- 2 A No, he didn't.
- 3 Q Did he do anything aggressive?
- 4 A He stepped up harshly and left.
- 5 Q Have you noticed the size of this man?
- 6 A Yeah, I know Thaddress.
- 7 Q All right.
- 8 A I know, seen how he looks.
- 9 Q Have you ever seen him run before?
- 10 A I'm not sure.
- 11 Q Where he walks fast, it would probably look
- 12 aggressive, wouldn't it?
- 13 A I would imagine.
- 14 Q In any event, he left?
- 15 A Yes, he left.
- 16 Q Or didn't ever kick him?
- 17 A No, he did not kick him.
- 18 Q You said that Thaddress made a statement, "You punk
- 19 M.F. You don't have anywhere to go either just like me";
- 20 is that correct?
- 21 A Yes.
- 22 Q Well, why didn't you talk about that to the police?
- 23 A I guess that covered -- it covered the punk. I mean,
- 24 it was more like taunting.
- 25 Q Why didn't you say that to the police?

T. Cornish - cross (McMullen)

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1 A (There was no response).

2 Q Should the record --

3 A The statement saying -- I guess they were saying -- I
4 was saying he was on the porch talking to him. I guess I
5 didn't go into verbatim what he said, but you know, he was
6 up there talking, kind of something like that.

7 Q All right.

8 A Uh-huh.

9 Q But what you said was that Al was excited, Thaddress
10 was calmer?

11 A He was calmer, yes.

12 Q How many times did your wife call 911?

13 A Twice.

14 MR. McMULLEN: Beg the Court's indulgence.

15 (Pause).

16 No further questions. Thank you, sir.

17 THE COURT: Redirect?

18 MS. SHIPLEY: Yes, sir, Your Honor.

19 REDIRECT EXAMINATION:

20 BY MS. SHIPLEY

21 Q I'm going to show you your statement. Can you tell
22 the jury how long your statement is?

23 A As in how many pages?

24 Q How many pages.

25 A Four pages.

1 Q Okay. You testified about an hour on your direct
2 examination, correct?

3 A Yes, ma'am.

4 Q More details in your testimony than in your
5 statement, correct?

6 A Yes, ma'am.

7 Q Did you mention anything in your written statement
8 about cooking burgers for your two daughters?

9 A I put -- I did not. I wasn't --

10 Q So you didn't put all the details --

11 A Yes, ma'am.

12 Q -- of that night in your statement --

13 A Yes, ma'am.

14 Q -- is that correct?

15 A Yes, ma'am.

16 Q And again, so the jury understands --

17 A Uh-huh.

18 Q -- I had trouble hearing you.

19 A Uh-huh.

20 Q You said that Al was agitated, that Thaddress was
21 calmer.

22 A Calmer, yes.

23 Q Not that he was calm --

24 A Yes, ma'am.

25 Q -- but he was calmer than Al?

T. Cornish - redirect (Shipley)

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1 A Yes, ma'am.

2 Q And again, why did Thaddess Starks not kick Al?

3 A Because I told him to stop, get back.

4 Q Because you told him not to?

5 A The answer is yes.

6 MS. SHIPLEY: No further questions, Your Honor.

7 MR. McMULLEN: No questions.

8 THE COURT: All right. You may come down, sir.

9 Thank you very much.

10 THE WITNESS: Yes, sir, Your Honor.

11 MS. SHIPLEY: Your Honor, may this witness be
12 excused, please?

13 THE COURT: Any objection?

14 MR. McMULLEN: No, sir.

15 THE COURT: The witness is excused.

16 MS. SHIPLEY: Thank you, sir.

17 THE COURT: All right. Next witness?

18 MS. SHIPLEY: The State calls Deputy Carwell.

19 JOHN CARWELL, after being duly sworn,
20 testified as follows:

21 THE CLERK: Please have a seat in the witness stand
22 and state your full name for the record.

23 THE WITNESS: John Carwell.

24 DIRECT EXAMINATION:

25

1 BY MS. SHIPLEY

2 Q Deputy Carwell, can you tell the jury where you're
3 employed?

4 A The Richland County Sheriff's Department.

5 Q And how long have you been employed with the
6 Sheriff's Department?

7 A Four years.

8 Q And what are -- what's your title with the Sheriff's
9 Department?

10 A It's Lance Corporal.

11 Q Lance Corporal?

12 A Correct.

13 Q And what are your duties?

14 A I train new hires.

15 Q You train new hires?

16 A Yes.

17 Q And back in 2006, October of 2006, what were your
18 duties then?

19 A I was a master deputy, supervisor of -- second
20 supervisor of a squad below the corporal.

21 Q Okay. And what were your duties as a master deputy?

22 A To oversee the squad when the Corporal was out on
23 vacation, to answer calls, and train new hires, as well.

24 Q And did you also respond to calls?

25 A Correct.

Carwell - direct (Shipley)

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1 Q And what region were you assigned to?

2 A Region one.

3 Q And what -- can you describe for the jury what part
4 of Richland County region one is in?

5 A It's called the lower side. It's from -- it's
6 Garners Ferry Road, Leesburg Road, Bluff Road. It goes
7 from Olympia all the way out to the Kershaw County line,
8 Clarendon County and the Sumter County line.

9 Q [REDACTED], [REDACTED], [REDACTED], where the crime scene is
10 in this case, where was that located? Is that in Richland
11 County?

12 A Correct.

13 Q Could you describe for the jury how it is you would
14 get from this courthouse to that address?

15 A You go -- go through Olympia, get to 77, get off on
16 Leesburg Road and take Leesburg out towards 601. Congress
17 Road is just before Highway 601 in Eastover.

18 Q How long would you say the drive is from downtown?

19 A It's probably 30 minutes.

20 Q Okay. I'm going to bring your attention to October
21 12, 2006. Do you recall responding to [REDACTED] [REDACTED]
22 about 7:20 -- or 7:50 p.m.?

23 A I do.

24 Q Okay. Can you describe for the jury the nature of
25 the dispatch call? First of all, what time were you

1 dispatched to that residence?

2 A This is the first call, correct?

3 Q Yes, sir.

4 A I was -- the first call was dispatched at 9:23 -- or
5 7:23, I arrived at 7:50.

6 Q And what was the nature of the call?

7 A It was a domestic situation.

8 Q And when you arrived there, who was the first person
9 that you encountered?

10 A Al.

11 Q And that would be Alphonzo Cleveland?

12 A Correct.

13 Q And was he the complainant in the case at that time?

14 A Yes, he was.

15 Q And could you explain for the jury what Al was doing
16 when you arrived?

17 A He was sitting on the front porch kind of waiting on
18 me to get there.

19 Q And when you made contact with him, what did he
20 ask -- basically request you to do?

21 A Remove Mr. Starks from his house.

22 Q And in your notes, did you document that he was
23 speaking with slurred speech and appeared to be
24 intoxicated?

25 A I did.

Carwell - direct (Shipley)

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1 Q In fact, didn't you have a conversation with
2 Mr. Cleveland about him being drunk but that was okay. He
3 was at his home?

4 A I did.

5 Q Now, what did you do as a result of Mr. Cleveland
6 asking you to remove Mr. Starks from his home? What did
7 you do next?

8 A I then explained to him that Mr. Starks was allowed
9 to be there.

10 Q And how did you know Mr. Starks was allowed to be
11 there?

12 A Because I had gotten his I.D. and spoke to him,
13 Mr. Starks and him. I spoke to Al's wife, Mr. Starks'
14 mother and she also --

15 Q And who is that?

16 A What's that?

17 Q And who -- what is her name?

18 A (There was no response).

19 Q Is it Betty Ann Cleveland?

20 A Betty Ann Cleveland, yes.

21 Q Okay. And you called Ms. Cleveland to confirm --

22 A Confirm.

23 Q -- whether or not he was allowed to reside there?

24 A Correct.

25 Q Okay. Once you confirmed that, what did you explain

1 to Mr. Cleveland, the decedent?

2 A I explained to him that he was intoxicated, but he
3 could be at his house because he was at his residence.
4 Mr. Starks could be there because he lived there. His
5 mother allowed him to be there. I couldn't do -- I
6 couldn't make either one of them leave the location.

7 Q And at that point did you have a private conversation
8 with Al?

9 A Yes.

10 Q And where did you --

11 A I did --

12 Q -- talk to him?

13 A I pulled Mr. Cleveland outside, that's Al, and --
14 just to calm the situation. The situation wasn't really
15 threatening to me. I just brought him outside to calm him
16 down and explain --

17 Q And did you -- in fact, did you have to call for any
18 back ups or anything like that to respond --

19 A No, I canceled.

20 Q -- to the call?

21 A Two units were going, but I canceled them because I
22 could handle the situation.

23 Q Okay. And so when you talked to Al Cleveland, what
24 exactly did you discuss with him?

25 A I discussed the eviction process, and I also spoke to

Carwell - direct (Shipley)

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1 him about his job because I noticed he still had his work
2 shirt on. I was familiar with the location because I had
3 worked the Bluff Road area. I asked him how long he had
4 worked there and stuff like that.

5 Q And where did he work?

6 A Wabtec.

7 Q Wabtec?

8 A Yes.

9 Q So at that point the -- Mr. Cleveland was
10 intoxicated, loud and boisterous, not happy with the
11 stepson living there; is that correct?

12 A Correct.

13 Q Describe the demeanor of the defendant.

14 A He was calm. He was just trying to -- to say that he
15 wasn't the problem.

16 Q Okay. And at that point when you explained to
17 Mr. Cleveland all of the legal process to evict Mr. Starks
18 from his home, what were the demeanor of both parties?
19 What were they acting like?

20 A Mr. Cleveland, he understood that nothing could be
21 done, and he was kind of upset, but he understood the
22 situation.

23 Q And did he appear to calm down --

24 A Yes.

25 Q -- any in your observations?

Carwell - direct (Shipley)

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- 1 A He was calm.
- 2 Q Okay.
- 3 A He had calmed down.
- 4 Q And at that point did you leave the -- the residence?
- 5 A Correct.
- 6 Q Did you have -- did you get dispatched back to that
- 7 address later on that evening?
- 8 A Correct.
- 9 Q Can you tell the jury what time that was?
- 10 A I was dispatched -- I was dispatched at 9:03. I
- 11 arrived at --
- 12 Q And the nature of the call?
- 13 A Again, a domestic situation where someone had been
- 14 cut.
- 15 Q And did you document in your report what kind of
- 16 weapon was involved in this incident?
- 17 A Yes.
- 18 Q And what kind of weapon?
- 19 A A kitchen knife.
- 20 Q And when you arrived, can you tell the jury what time
- 21 you arrived?
- 22 A I arrived at 9:15.
- 23 Q And who is the first person that you encounter when
- 24 you get there?
- 25 A Thaddess Starks.

Carwell - direct (Shipley)

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1 Q And where is he standing?

2 A He is coming down the steps in front of [REDACTED] [REDACTED]

3 [REDACTED].

4 Q Okay. And so the 911 call is placed at 9:03 p.m.,
5 correct?

6 A Correct.

7 Q And you arrived there 12 minutes later?

8 A Correct.

9 Q And so when you get there, he is coming down the
10 steps. What -- what happened when you first encountered
11 him?

12 A I walked -- I approached him. I asked him what was
13 going on. I kind of had a general idea of what happened.
14 The first thing I was to do was to detain him.

15 I was by myself. It's officer's safety. You try to
16 detain the person and you observe the house, the incident
17 location. You try to make sure nobody goes into the
18 incident location to preserve any evidence.

19 Q And so when you arrived, you knew that he was the one
20 that had inflicted the injury, that he was not the one
21 injured?

22 A Correct.

23 Q So you detained Mr. Starks. At what point -- were
24 you waiting on anybody else to come?

25 A Yes. I was waiting on my backup unit.

1 Q Okay. And when did your backup unit arrive? How
2 long, approximately, did it take for that backup unit to
3 arrive?

4 A Five or ten minutes.

5 Q Okay.

6 A I'm not sure.

7 Q That whole time while you're waiting for the backup
8 unit -- by the way, who is the deputy, the next deputy, to
9 arrive on the scene?

10 A Deputy Watford.

11 Q Stephanie Watford?

12 A Correct.

13 Q While you're waiting on Deputy Watford, did you allow
14 anybody into that residence?

15 A No.

16 Q Did you even let the defendant back into that
17 residence?

18 A No, I didn't.

19 Q And so where did you keep him detained while you
20 waited on backup?

21 A In the front of the house.

22 Q Okay. I'm going to show you this photograph and ask
23 you if you recognize this, number two.

24 A Yes.

25 Q And what is shown in that photo?

Carwell - direct (Shipley)

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1 A [REDACTED] [REDACTED], the incident location.

2 MS. SHIPLEY: Okay. Your Honor, at this time the
3 State seeks to introduce number two into evidence.

4 MR. McMULLEN: No objection.

5 THE COURT: No objection.

6 (WHEREUPON, State's Exhibit No. 2 was admitted into
7 evidence.)

8 BY MS. SHIPLEY

9 Q And so is that the front porch where you detained the
10 defendant?

11 A Correct.

12 Q In the front lawn?

13 A Correct.

14 Q Okay. Am I pointing at it, the general area? And I
15 noticed in this photograph there is some crime scene tape
16 up.

17 A Correct.

18 Q Who put that up?

19 A Deputy Haddock.

20 Q Deputy Haddock, so when you're there, obviously, the
21 tape is not up yet?

22 A Correct.

23 Q Okay. Now, I also noticed in your report that you
24 document some matters of identification on Mr. Cleveland.

25 Can you tell the jury how old Mr. Cleveland was?

- 1 A The second time? I mean...
- 2 Q On your first -- you know, the front page of your
- 3 report you document his age and so forth?
- 4 A Oh, yes.
- 5 Q How old is he?
- 6 A Fifty-four, 54.
- 7 Q Okay. And did you note that he had any injuries?
- 8 A Yes. He had a stab wound to his right chest area.
- 9 Q And was that visible?
- 10 A Correct, through --
- 11 Q Okay. And was he using alcohol?
- 12 A Yes.
- 13 Q And where did you get his height and weight from?
- 14 A The D.M.V. files through the computer in our car.
- 15 You run his name and date of birth.
- 16 Q And how tall was the victim?
- 17 A 5'7", 152.
- 18 Q So he weighed 152 pounds?
- 19 A Correct.
- 20 Q And he was 5'7"?
- 21 A Correct.
- 22 Q Now, going down to the information concerning
- 23 Mr. Starks, you were able to get all of that information
- 24 from his driver's license?
- 25 A Correct.

Carwell - direct (Shipley)

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1 Q And what age is Mr. Starks?

2 A At the time 33.

3 Q And how much did he weigh?

4 A 350.

5 Q And how tall is he?

6 A 6'0".

7 Q Again, Al's height?

8 A 5'7".

9 Q And his weight?

10 A 152.

11 Q And his age?

12 A Fifty-four.

13 Q Mr. Starks?

14 A Age is 33.

15 Q Age is 33?

16 A Correct. His height is 6'0", and his weight is

17 350 pounds.

18 Q Now, when you arrived on the scene and you
19 encountered this man on the front porch, did you ask --
20 well, you said earlier you asked him what happened,
21 correct?

22 A Correct.

23 Q What did he tell you happened?

24 A He said he had locked himself in his bedroom in an
25 attempt to stay away from Al. Doing that, Al then kicked

Carwell - direct (Shipley)

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1 in his bedroom door and entered the bedroom and slapped
2 him on the face, and then he stabbed Mr. -- Al.

3 Q Okay. And did he indicate what he used to stab Al
4 with?

5 A A knife, a kitchen knife.

6 Q And where did he indicate to you he got that kitchen
7 knife from?

8 A He said he had it in his bedroom.

9 Q And did he indicate where on Al's body he stabbed?

10 A He just motioned the right chest area.

11 Q Okay. And once other officers arrived on the scene,
12 did -- did you go inside to the residence once Mr. Starks
13 was detained in a patrol car?

14 A Yes.

15 Q And did you learn where the knife that was used to
16 stab Al, where it was in the house?

17 A Yes.

18 Q And how did -- what did -- who told you that?

19 A He did.

20 Q Mr. Starks did?

21 A Yes, yes.

22 Q And where did you find the knife?

23 A The kitchen sink.

24 Q And once you had Mr. -- did you put Mr. Starks in the
25 patrol car while you went back inside?

Carwell - direct (Shipley)

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1 A No.

2 Q Where was he kept?

3 A Outside.

4 Q With another deputy securing him?

5 A Yes.

6 Q Did you have an opportunity to go inside the house
7 and look around?

8 A Yes.

9 Q You did?

10 A Yes.

11 Q Okay. When you had an opportunity to look at the
12 scene, did you notice any signs of struggle?

13 A Yes, I did.

14 Q Where is the first place that you noticed signs of
15 struggle?

16 A The front porch.

17 Q I'm going to show you State's No. 3 and ask you if
18 you recognize that.

19 A Yes, I do.

20 Q And what is that?

21 A A broken ashtray with cigarette butts.

22 Q And where is that located?

23 A The right side of the porch.

24 Q Okay. And is number four just a close up of the same
25 thing?

- 1 A Correct.
- 2 Q And what's in number five?
- 3 A Ashes from a grill.
- 4 Q Okay. And what side of the porch would that be
- 5 located?
- 6 A On the left far side.
- 7 Q Okay. And number six?
- 8 A Is the grill. It had fallen off the front porch.
- 9 Q Okay. And number 15, what's shown in that?
- 10 A Hot dogs and rice on the kitchen floor, along with a
- 11 salad dressing bottle, and a broom.
- 12 Q Okay. And do you see the sink in here?
- 13 A Correct.
- 14 Q And do you see a kitchen -- a knife holder, if you
- 15 will, in the corner of the room?
- 16 A Yes, I do.
- 17 Q And 16, just a close up of the floor?
- 18 A Yes.
- 19 Q And number 17, what's that?
- 20 A That is the knife in the sink.
- 21 Q Okay. And do these pictures accurately depict how
- 22 the crime scene appeared that night?
- 23 A Yes, it does.
- 24 Q Without anybody touching it?
- 25 A Yes, it does.

Carwell - direct (Shipley)

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1 MS. SHIPLEY: Your Honor, at this time the State
2 seeks to introduce number three, four, five, six, 15, 16
3 and 17 into evidence.

4 MR. McMULLEN: No objection.

5 (WHEREUPON, State's Exhibits Nos. 3, 4, 5, 6, 15, 16,
6 17 were admitted into evidence.)

7 BY MS. SHIPLEY

8 Q And so on picture number two that's already in
9 evidence, the ashtray is to the right side of the door?

10 A Correct.

11 Q Am I pointing accurately?

12 A Yes.

13 Q So that that's where the ashtray is, and what about
14 the grill? Can you use this pointer and show me where the
15 grill should have been on the porch?

16 A Right here (indicating).

17 Q Okay. And what side of the porch had it been knocked
18 over or fallen over?

19 A This side.

20 Q Okay. In the kitchen -- did you observe any efforts
21 by somebody to clean up the signs of struggle in the -- in
22 the kitchen?

23 A Yes. There was a broom and the hot dogs and rice and
24 the bottle were all in a pipe, had been swept up.

25 Q Swept up. And does that accurately depict it in

1 number 15 --

2 A Yes, it does.

3 Q -- what you observed?

4 May I publish it to the jury, Your Honor?

5 THE COURT: Yes.

6 BY MS. SHIPLEY

7 Q Then I'm showing you number 17, the knife. Describe
8 what had been done to the knife when you first saw it.

9 A There was water on the knife as if it was -- had been
10 washed off. There was still a little blood at the end of
11 the handle on the blade.

12 Q And so it appeared someone was trying to wash the
13 blood off --

14 A Yes.

15 Q -- this object?

16 (WHEREUPON, State's Exhibit No. 43 was marked for
17 identification only.)

18 BY MS. SHIPLEY

19 Q I'm going to show you what's been marked State's 43
20 and ask if you can recognize and tell us what's in there.

21 A It's the kitchen knife.

22 Q Okay. Is that the same knife in the sink depicted in
23 that photograph being passed around to the jury?

24 A I guess so.

25 MS. SHIPLEY: Okay. Your Honor, at this time the

Carwell - direct (Shipley)

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1 State seeks to introduce 43 into evidence.

2 MR. McMULLEN: Oh, I'm sorry, did he just say "I
3 guess so".

4 THE WITNESS: I said "Yes".

5 MR. McMULLEN: Okay.

6 MS. SHIPLEY: What was your answer to the last
7 question?

8 THE WITNESS: Yes.

9 MR. McMULLEN: Okay. No objection.

10 (WHEREUPON, State's Exhibit No. 43 was admitted into
11 evidence.)

12 BY MS. SHIPLEY

13 Q Did you go anywhere else inside the house, or is that
14 as far as you went?

15 A I walked in the hallway, saw the door had been kicked
16 in, but I did not go in.

17 Q You did not enter, okay. I'm going to show you that
18 photograph. The hallway, is that entering the residence
19 going left to the bedrooms?

20 A You walk into the door and the bedrooms are to the
21 right.

22 Q Okay. To the right of you, okay. I'm going to show
23 you the hallway. State's number 18, is that the hallway
24 you went down?

25 A Yes.

1 MS. SHIPLEY: Okay.

2 MR. McMULLEN: Without objection.

3 MS. SHIPLEY: Your Honor, I introduce number 18 at
4 this time.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibit No. 18 was admitted into
7 evidence.)

8 BY MS. SHIPLEY

9 Q Can you tell from this photo, or do you need to look
10 at the door?

11 A No, it's the last one on the right.

12 Q The last one on the right?

13 A Right.

14 Q And you did not go inside the room?

15 A No.

16 Q And I'm going to show you number 23 and 26 and ask
17 you if that appears to be the condition of the door as you
18 observed it that night?

19 A Yes, it is.

20 Q Okay. And does there appear to be damage to the
21 hardware and doorframe of that door?

22 A Yes.

23 MS. SHIPLEY: Okay. I'll introduce number 23 and 26
24 at this time along with 18. I forgot about that.

25 MR. McMULLEN: No objection, sir.

Carwell - direct (Shipley)

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1 THE COURT: Without objection.

2 (WHEREUPON, State's Exhibits Nos. 23, 26 were
3 admitted into evidence.)

4 BY MS. SHIPLEY

5 Q Once you observed the damage to the door and you --
6 where did you go next?

7 A I went back outside.

8 Q And do you recall where Watford, Deputy Watford went?
9 Did she go to the victim at any time?

10 A Yes, ma'am.

11 Q To the deceased at any time?

12 A Yes. When we first -- when I was first with
13 Thaddress, when she arrived, I asked her to stay with
14 Thaddress, and I went over to Al because the neighbors were
15 yelling. I had not been over there yet. Knowing that she
16 had a medical background, I then went back to Thaddress and
17 sent her over to Al.

18 Q And does she have some sort of medical background?

19 A Correct, yes.

20 Q Okay. And as part of your duties are you -- since
21 you are the first responding officer, you have to write
22 the incident report, correct?

23 A Yes.

24 Q Do you -- is it also your responsibility to call for
25 the investigators and crime scene investigators to come to

1 the scene?

2 A Yes.

3 Q Did you call a crime scene investigator to this
4 scene?

5 A Yes.

6 Q And who was that?

7 A Investigator Livingston.

8 Q Ray Livingston?

9 A Yes.

10 Q All right. And what investigator arrived to the
11 scene that evening?

12 A The investigator was Investigator Isenhoward.

13 Q And is that Mr. -- Investigator Isenhoward at the
14 State's table?

15 A Yes.

16 Q And did you learn when it was that Al was declared
17 dead?

18 A Yes.

19 Q And when did you learn of that declaration?

20 A I don't have a time but Investigator Tucker was at
21 Richland Memorial Hospital when the -- Al was pronounced
22 dead.

23 Q During your encounter with the Defendant Starks at
24 the scene, did you observe any injuries on him whatsoever?

25 A No.

Carwell - direct (Shipley)

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1 Q Beg the Court's indulgence, Your Honor.

2 (Pause).

3 And once Deputy Haddock secured the scene, were any
4 civilians or other people that lived there, for instance
5 Betty Ann Cleveland, allowed in that residence?

6 A No one is allowed.

7 Q And did you take every precaution while you were in
8 there not to disturb the scene?

9 A Yes.

10 MS. SHIPLEY: Thank you, Deputy Carwell. Please
11 answer any questions of Mr. McMullen.

12 THE COURT: Cross-examination?

13 MR. McMULLEN: Your Honor, may we have a brief break
14 just to refresh ourselves?

15 THE COURT: Cross-examination.

16 MR. McMULLEN: Yes, sir.

17 Good morning.

18 THE WITNESS: Good morning.

19 CROSS-EXAMINATION:

20 BY MR. McMULLEN

21 Q You're Master Deputy Carwell?

22 A At the time of the incident I was.

23 Q What's your rank today?

24 A Lance Corporal.

25 Q Corporal Carwell, I believe it was your testimony

1 that when you arrived, Mr. Starks was sitting on the porch
2 or -- I'm sorry. Let me start with the first time you got
3 there. When you arrived, Mr. Alphonzo Cleveland was on
4 the porch waiting for you?

5 A Yes.

6 Q Is that correct?

7 A Yes.

8 Q Was he drinking a beer then?

9 A Not at that time.

10 Q Was there a Miller can there on the ground next to
11 him?

12 A I don't recall.

13 Q Were there ashes on the front porch?

14 A The first time, no.

15 Q All right, sir. Was Alphonzo Cleveland drunk?

16 A Yes.

17 Q No question in your mind?

18 A No question.

19 Q Slurred speech?

20 A Yes.

21 Q Unsteady on his feet?

22 A He was seated at that time.

23 Q Okay. Did you see him walk it off?

24 A Yes, I did.

25 Q Did he --

Carwell - cross (McMullen)

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1 A He wasn't falling all over the place, but I could
2 tell by conversation that he had -- he was drinking.

3 Q You determined that both men were legal residents of
4 that address?

5 A Yes.

6 Q [REDACTED] [REDACTED] [REDACTED]?

7 A Yes.

8 Q In your experience, have you had to respond to a
9 number of domestic situations?

10 A Yes.

11 Q Which of the two men was more agitated?

12 A Al was.

13 Q Did he use profanity?

14 A Not that I can recall. I mean, I just -- I don't
15 recall.

16 Q Did he seem very, very angry?

17 A Not very, very. I mean, like I said, I was able to
18 handle the situation by myself.

19 Q How long did you stay there calming him down?

20 A At first I believe it was 11, ten or 11 minutes.

21 Q And when you were there, was anyone cooking rice?

22 A No.

23 Q Nothing on the stove?

24 A No.

25 Q And that was about ten minutes to eight when you

1 arrived, so it would have been a couple of minutes after
2 eight when you left?

3 A Yes.

4 Q Thaddess was calm?

5 A Yeah.

6 Q Was he drinking?

7 A No, not that I know.

8 Q Did you detect any odor of alcohol?

9 A No.

10 Q So you separated the two after -- you spoke first
11 with Thaddess' mother, with Mr. Cleveland's wife; is that
12 correct?

13 A I spoke to those -- them two first.

14 Q Yes, sir.

15 A I got that he lived there. They both lived there. I
16 had to figure that out first, and then I spoke with the
17 mother.

18 Q Did you separate the men to speak with them one at a
19 time, or did you speak to them together?

20 A Together. And then I took Mr. Cleveland outside.

21 Q Were they interrupting each other?

22 A No.

23 Q And basically, the complaint was, "I want to evict
24 him"; is that correct?

25 A Right, correct.

Carwell - cross (McMullen)

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1 Q And so you said Mr. Cleveland was wearing his work
2 shirt, and it had his name on it. You talked to him a
3 little about where he worked?

4 A Yeah.

5 Q What was your purpose in that?

6 A Just to kind of build a rapport between the two and
7 see how bad the situation really was and --

8 Q Call them down?

9 A Calm them down, ease them. Say, "Look, you're going
10 to have to deal with this if your wife wants him here and
11 he lives here."

12 Q Well, you said you had to explain the eviction
13 process to him. What would you -- what did you tell him?

14 A I didn't really -- I just told him that he needed to
15 go to a magistrate.

16 Q Okay.

17 A They're the ones that really will explain the whole
18 eviction process.

19 Q But he wasn't going to get an eviction --

20 A Right.

21 Q -- as long as the registered owner of the house --

22 A Correct.

23 Q -- would let him do that, maybe when he was sober?

24 A Correct.

25 Q You stated he appeared to calm down.

Carwell - cross (McMullen)

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1 A Yes.

2 Q In fact, knowing now -- I'm sorry. If you knew then
3 what you know now, would you have done anything different
4 the first time you were there?

5 A No.

6 Q Now, the second time you were there, what time was
7 that, about an hour later?

8 A Yes.

9 Q Give or take. You were the first on the scene?

10 A Yes.

11 Q Do you know the exact time you arrived?

12 A 9:15.

13 Q Where did you encounter Thaddess Starks?

14 A In the yard as he was coming down the steps right
15 there in front of the front porch, front porch.

16 Q Is it fair to say he waited at the door for you to
17 get there?

18 A Yes.

19 Q Inside the house?

20 A I would say he was at the door when I pulled up.

21 Q All right, sir. And you basically got there and
22 said, "What's going on?" You saw a person in the yard
23 next door lying?

24 A There was a vehicle blocking the area in front of the
25 porch from my view, where I was standing at.

Carwell - cross (McMullen)

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1 Q So you didn't know about all of that?

2 A No. I could hear people over there, commotion, but I
3 couldn't see. Something was blocking.

4 Q At that point, the first indication you had that
5 somebody had been -- I'm sorry. You were dispatched and
6 told on the way there somebody had been cut, right?

7 A Correct.

8 Q And so when you say, "What's going on," Mr. Starks'
9 reply was "A guy broke in my room, busted my door down" --
10 MS. SHIPLEY: Objection, Your Honor. Can he let the
11 witness testify, please?

12 MR. McMULLEN: Am I not allowed --

13 THE COURT: Rephrase your question.

14 MR. McMULLEN: -- to ask leading questions on cross?

15 THE COURT: Just rephrase your question.

16 Yes, you can ask leading questions.

17 BY MR. McMULLEN

18 Q What was the response Mr. Starks gave you?

19 A He stated that he was locked in his room, and Al
20 broke into his door, came in and slapped him, and he cut
21 him with the knife.

22 Q At that point you detained the defendant; is that
23 right?

24 A Yes.

25 Q And you basically secured the scene, is that --

1 A Yes.

2 Q -- fair to say? Make sure nobody else is in the
3 house? Did you pat Mr. Starks down?

4 A Yes.

5 Q Did you handcuff him?

6 A Yes.

7 Q Were his hands in front of him or behind him?

8 A At that time, it's basically get him one -- at any
9 way you can. I cannot remember if it was in the front or
10 back.

11 Q Okay. Where did you put him after that?

12 A He stayed outside.

13 Q In what place?

14 A Beside my patrol car.

15 Q All right. Did you see rice and sausage on the
16 kitchen floor at this time?

17 A When I eventually went inside, yes.

18 Q When you went inside -- well, let me just make sure I
19 understand. Did you secure the scene just enough to look
20 through every room?

21 A When the other -- when others arrived, I stayed
22 outside.

23 Q Okay. And so when others arrived, did you see rice
24 and sausage on the kitchen floor?

25 A Yes.

Carwell - cross (McMullen)

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1 Q Are you the one who put the tape up?

2 A No.

3 Q When Mr. Starks had told you that he used a knife to
4 cut Mr. Cleveland, did you locate the knife?

5 A Yes.

6 Q And that was what -- you just asked him, "Where is
7 the knife?"

8 A I asked if it was in there, if it was still in the
9 bedroom. I just said, "Is it in there? Is it in the
10 house?"

11 Q And his reply was?

12 A It was in the kitchen sink.

13 Q When you arrived, was Mr. Starks under the stress of
14 the situation?

15 A Yes. He was worried about Al.

16 Q Was he emotional?

17 A He wasn't crying. He was just -- he was wondering.
18 He wasn't sure of the incident, what happened.

19 Q Did you say he was worried about Al?

20 A Yes, sir.

21 Q The signs of struggle, that was, I believe, the
22 prosecutor's characterization of what you saw inside and
23 outside of the house. Was that the way you would
24 characterize it?

25 A Yes.

1 Q Is there also the possibility that these signs of
2 struggle were done by Al in his angry state, he threw the
3 pot of rice?

4 A It could have been.

5 Q And then when you get on the porch, if you walk out
6 of the house and stand on the porch facing the street,
7 which side of the house does Timothy Cornish live on?

8 A To the right.

9 Q And which side of the house did the ashes appear?

10 A To the left.

11 Q The opposite way?

12 A If you're walking out the door, the ashtray was to
13 the left.

14 Q To the left?

15 A If you're looking at it, it was to the right, but if
16 you're walking out the door, it was to the left.

17 Q I'm going to show you State's Exhibit 2. Do you see
18 it there?

19 A Yes.

20 Q Would you show the jury where that is?

21 A The ashtray was right here (indicating).

22 Q All right. Please let the record reflect than as the
23 officer testified, it is to the left.

24 Then I'll show you State's Exhibit 3 and 4. Do those
25 depict the left or the right of the porch?

Carwell - cross (McMullen)

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- 1 A If you're coming out the door, it's to the left.
- 2 Q All right. So this is towards the Cornish house?
- 3 A No.
- 4 Q Because these are also --
- 5 A To the other --
- 6 Q -- to the left. All right. All right.
- 7 How about State's Exhibit 5?
- 8 A That would be to the right.
- 9 Q Was that there when you were there first?
- 10 A No.
- 11 Q How about the grill, State's Exhibit 6?
- 12 A No, no.
- 13 Q This was not there when you --
- 14 A The first time, no.
- 15 Q And which side is this on?
- 16 A That is to the right.
- 17 Q As you walk out the door --
- 18 A Right.
- 19 Q -- it was towards the Cornish house?
- 20 A Right.
- 21 Q Now, these were things that could have been knocked
- 22 over by someone unsteady on his feet?
- 23 A Yes.
- 24 Q Intoxicated?
- 25 A Yes.

Carwell - cross (McMullen)

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- 1 Q Angry?
- 2 A Yes.
- 3 Q You observed the door that was kicked in?
- 4 A Yes.
- 5 Q Or knocked open somehow?
- 6 A Yes.
- 7 Q Forced open?
- 8 A Yes.
- 9 Q The doorjamb itself broke?
- 10 A Yes.
- 11 Q Would have required force?
- 12 A Correct.
- 13 Q Did Thaddess Starks give you any kind of trouble or
- 14 resistance?
- 15 A No.
- 16 Q Was he cooperative in any way, every way?
- 17 A Yes.
- 18 Q Yes?
- 19 A Yes.
- 20 Q All right. He's the one who showed you where the
- 21 knife was or told you where the knife was?
- 22 A Told.
- 23 MR. McMULLEN: I have no further questions.
- 24 Thank you.
- 25 THE COURT: Redirect?

Carwell - cross (McMullen)

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1 MS. SHIPLEY: Yes, sir, Your Honor.

2 REDIRECT EXAMINATION:

3 BY MS. SHIPLEY

4 Q Deputy Carwell, you met with Mr. McMullen last week
5 in his office --

6 A Yes, I did.

7 Q -- to prepare for this trial, correct?

8 A Yes, I did.

9 Q So you have been fully cooperative with everybody in
10 this case, correct?

11 A Yes.

12 Q The food on the floor in the kitchen, does that
13 appear to be hot dogs, rice and beans?

14 A Yes, it does.

15 Q I think Mr. McMullen said sausage, but it's not
16 important.

17 Now, is it -- how many -- when you enter a kitchen in
18 someone's residence, is it common or uncommon to see food
19 nicely swept up in a little pile in the middle of the
20 kitchen floor?

21 A Uncommon.

22 Q Okay. When you respond to a homicide and there's a
23 murder weapon involved --

24 MR. McMULLEN: Object to "murder weapon".

25 MS. SHIPLEY: It's a hypothetical, Your Honor.

1 THE COURT: Hypothetical. I'll allow it. Go ahead.

2 BY MS. SHIPLEY

3 Q Thank you.

4 And when you arrive at a murder scene and there's a
5 murder weapon involved, typically a knife, how typical --
6 is it common or uncommon for the knife to be cleaned off
7 and nicely stored in the sink?

8 A Uncommon.

9 Q Someone was cleaning up around this crime scene,
10 correct?

11 A Yes.

12 Q Who was the only person you encountered at that
13 house?

14 A Thaddess Starks.

15 MS. SHIPLEY: No further questions, Your Honor.

16 THE COURT: Anything further?

17 MR. McMULLEN: No, sir.

18 THE COURT: All right. You may come down, sir.

19 May this witness be excused?

20 MS. SHIPLEY: Yes, please, Your Honor.

21 THE COURT: All right. Without objection.

22 All right, ladies and gentlemen of the jury, let's
23 take about a 15-minute break. I'll ask you not to discuss
24 the case among yourselves while you're in the jury room.
25 We'll call you when we're ready. Just relax for a few

1 minutes, and we'll take a morning break.

2 Thank you very much.

3 (WHEREUPON, the jury left open court at approximately
4 11:46 A.M.)

5 THE COURT: We'll stand at ease about ten minutes.

6 MS. SHIPLEY: I'm sorry. I didn't hear how long the
7 break was.

8 THE COURT: Fifteen minutes.

9 MS. SHIPLEY: Thank you, sir.

10 (WHEREUPON, a short break was taken.)

11 (State's Exhibits number 34 and 39 were withdrawn by
12 the State).

13 THE COURT: Is the State ready to proceed?

14 MS. GARFIELD: The State is ready.

15 THE COURT: Ms. Garfield, are you ready to proceed?

16 MS. GARFIELD: Yes, sir.

17 THE COURT: What's your witness situation at this
18 time?

19 MS. GARFIELD: The next two are the backup officers
20 responding. I anticipate they'll be short on behalf of
21 the State. Following that is Investigator Livingston, the
22 C.S.I. investigator.

23 THE COURT: All right. We'll do the two and then
24 maybe break.

25 MS. GARFIELD: That would be fine.

1 THE COURT: Is the defense ready to proceed?

2 MR. McMULLEN: Yes, sir.

3 THE COURT: Bring the jury, please.

4 (WHEREUPON, the jury came into open court at
5 approximately 12:10 p.m.)

6 THE BAILIFF: The jury is present, Your Honor.

7 THE COURT: Solicitor, call your next witness.

8 MS. GARFIELD: Thank you, Your Honor. The State
9 calls Deputy Stephanie Watford.

10 STEPHANIE WATFORD, after being duly
11 sworn, testified as follows:

12 THE CLERK: Thank you. Please have a seat in the
13 witness stand and state your full name for the record.

14 THE WITNESS: Stephanie Watford.

15 DIRECT EXAMINATION:

16 BY MS. GARFIELD

17 Q Deputy Watford, where are you employed?

18 A Richland County Sheriff's Department.

19 Q And what are your duties with the Richland County
20 Sheriff's Department?

21 A I'm a patrol deputy.

22 Q How many years have you been with Richland County?

23 A Approximately two.

24 Q And can you explain to the jury what it entails to be
25 a patrol deputy?

Watford - direct (Garfield)

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1 A Routine patrol operations include answering calls on
2 the road. When you guys call the police, we're the ones
3 that answer the radio, the patrol deputies. We're also
4 proactive in doing traffic enforcement, making other types
5 of cases.

6 Q Were you working on October 12th of last year?

7 A Yes, ma'am, I was.

8 Q And that's regarding this incident. Do you
9 understand that?

10 A Yes.

11 Q And did you get a call to respond to the Congress
12 Road area of Eastover?

13 A Yes.

14 Q Specifically, where were you called to respond?

15 A Where?

16 Q Yes, ma'am.

17 A [REDACTED] [REDACTED] [REDACTED].

18 Q And what kind of call were you responding to?

19 A It was a domestic with a weapon involved.

20 Q When you responded on the scene, were there other
21 officers present?

22 A Deputy Carwell was the only one.

23 Q You were the second officer to respond?

24 A Yes.

25 Q And when you got there, what did you do?

1 A Deputy Carwell had Mr. Starks, was observing him. He
2 wanted to secure the rest of the scene. I stayed with
3 Mr. Starks while he went over to Mr. Cleveland next door.

4 Q I'm going to ask you to pull the microphone up.

5 A Sorry.

6 Q You're soft spoken.

7 A Sorry.

8 Q Okay. And he wanted to -- Deputy Carwell wanted to
9 do what?

10 A Observe the rest of the scene. Usually, the first
11 officer does the paperwork, so they could get a feel of
12 the whole scene.

13 Q And you were left to guard Mr. Starks?

14 A Yes.

15 Q And how long did you do that?

16 A Maybe a minute or two, not long at all.

17 Q Okay. And then what were you asked to do?

18 A I actually went over and checked on the victim,
19 Mr. Cleveland.

20 Q And who was left with Mr. Starks?

21 A Carwell had come back over by that point.

22 Q And why did you go and check on the victim?

23 MR. McMULLEN: Object to the "victim" term.

24 MS. GARFIELD: I apologize, Your Honor.

25 THE COURT: All right.

Watford - direct (Garfield)

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1 BY MS. GARFIELD

2 Q It's out of habit.

3 Did you go check on the decedent in this case, Al?

4 A Yes, I did.

5 Q And why did you go check on Al?

6 A Deputy Carwell knew that I had a little more medical
7 background, and E.M.S. was still coming to us. We didn't
8 know how long they were going to take, so he had me go
9 over and assess the situation since he had no medical
10 knowledge.

11 Q Will you share with the jury your medical background?

12 A I am a combat medic in the Army.

13 Q And what does that entail as far as training?

14 A I went through basic training and then went through
15 about a six-month course. It's -- we are the first line
16 medics on the battlefield.

17 When you're a first responder, we're also qualified
18 in the E.M.T. license in the civilian side. That's the
19 only thing that transfers over.

20 Q You were trained to respond to the very -- a
21 situation just as this?

22 A Yes.

23 Q And when you went over to check on Al, what did you
24 first do?

25 A I checked for airway and circulation. I checked the

Watford - direct (Garfield)

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1 pulse and checked to see if he was breathing.

2 Q And can you please share with the jury the results
3 that you found during your check?

4 A I found that he had no airway. There was fluid in
5 his throat to where air wasn't coming out, and I found no
6 pulse.

7 Q And for those of us who are not familiar with those
8 medical terms, can you explain to the jury exactly what
9 those findings mean?

10 A In all essence, he was not alive because he wasn't
11 breathing, and his heart wasn't beating at that point.

12 Q And could you have pronounced him dead at that time?

13 A No. I'm not qualified to pronounce the time of death
14 on a certificate.

15 Q Did the E.M.S. arrive shortly thereafter?

16 A Yes.

17 Q And did you observe them treat Al?

18 A Yes.

19 Q And what did you observe E.M.S. do?

20 A The first thing they did was the same thing I did,
21 checked his airway, checked his pulse. They then inserted
22 a -- they have the equipment. They inserted what's called
23 a manual airway into his throat to open up the airway.

24 At that point, it still had fluid in it. They were
25 using it to suction after that, but they attached an

Watford - direct (Garfield)

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1 E.K.G. that would actually read his heart to show if his
2 heart was actually putting out any electrical impulses.
3 In laymen's terms, it was flatlined, which means he didn't
4 have a heartbeat.

5 Q And did E.M.S. at that time pronounce him dead?

6 A No. They can't do that either.

7 Q And why can they not do that?

8 A It requires a medical doctor to do that.

9 Q And would that have to be someone, either a doctor on
10 the scene or someone at the hospital?

11 A Yes.

12 Q So while they're -- did they transport Al?

13 A Yes..

14 Q Where did they transport Al to?

15 A Richland Memorial.

16 Q And what would they have been doing all the way to
17 Richland Memorial?

18 A They would have hooked him up to some sort of oxygen
19 and performed C.P.R.

20 Q Until they got to the hospital?

21 A Yes.

22 Q Do you know if Al was pronounced dead at the
23 hospital?

24 A He was.

25 Q And after Al was transported to the hospital, what

Watford - direct (Garfield)

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1 did you do as far as your duties as a deputy on the scene?

2 A I went back over to [REDACTED] [REDACTED] [REDACTED] and assisted
3 Master Deputy Carwell in anything else.

4 Q Were you also asked to assist Investigator Isenhoward
5 with anything else?

6 A Yes.

7 Q And can you share with the jury what you were asked
8 to assist him with?

9 A I witnessed him giving Mr. Starks his verbal Miranda
10 rights, and I witnessed his statement.

11 Q You just said you witnessed him giving verbal Miranda
12 rights.

13 A Yes.

14 Q That's sort of a legal term. Can you explain to the
15 jury what Miranda rights are?

16 A Miranda rights let him know that he doesn't have to
17 talk to us; that he can have an attorney present. It lets
18 him know of his rights, basically, his amendment rights
19 to -- he doesn't have to talk to us. He doesn't have to
20 say anything that would incriminate himself.

21 He doesn't have to talk to us, period. He can say,
22 "I want an attorney," and we can't question him after
23 that.

24 Q Have you ever administered those rights to a suspect?

25 A No.

Watford - direct (Garfield)

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- 1 Q But you observed --
- 2 A Yes.
- 3 Q -- Investigator Isenhoward do so?
- 4 A Yes.
- 5 Q Have you been given training as far as --
- 6 A Yes.
- 7 Q -- giving Miranda rights? And did Investigator
- 8 Isenhoward give those rights, as you have been trained to
- 9 do so?
- 10 A Yes. I believe he read them off of a card.
- 11 Q Read them off, sorry?
- 12 A We have a little card that has all the Miranda rights
- 13 on it, word for word.
- 14 Q And what was his reaction?
- 15 A He said he understood them, and he wanted to talk to
- 16 him without an attorney.
- 17 Q What did you hear Mr. Starks say to Investigator
- 18 Isenhoward?
- 19 A I'm paraphrasing.
- 20 Q That's fine.
- 21 A He said that they had a verbal altercation.
- 22 Mr. Starks and Mr. Cleveland had a verbal altercation
- 23 after Master Deputy Carwell left the first time. He went
- 24 in his room, like he was told to do, locked that door.
- 25 He then said Mr. Cleveland came, kicked the door in,

1 backhanded him in the face, and he stabbed him. At that
2 point, he called. Mr. Cleveland left, and he called 911.

3 Q Did you write a report regarding what you observed?

4 A I wrote an investigative -- what's called an
5 investigative followup, yes.

6 Q And what all did you include in that followup?

7 A I included that I heard Investigator Isenhoward read
8 him his Miranda rights, and he said he wanted to continue
9 without an attorney. Do you want me to read it or...

10 Q If you can just paraphrase.

11 A Okay. He said basically what I just said. He stated
12 that he had a verbal altercation earlier in the night;
13 that he had locked himself in his room, and Cleveland had
14 kicked the door open and backhanded him in the face. At
15 that point, he grabbed a knife, stabbed him.

16 Mr. Cleveland ran out and called -- started to call 911.

17 Q He said that Al had backhanded him?

18 A Yes.

19 Q And is that what you wrote down in your statement?

20 A Yes.

21 Q And in your report?

22 A He backhanded him in the face.

23 Q Deputy, did you include anything else in your report
24 that you observed that night?

25 A As far as?

Watford - direct (Garfield)

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1 Q Like you already testified about your observations
2 with Al. Did you include that in your report?

3 A No.

4 Q And why not?

5 A It wasn't relevant. We don't always include
6 everything that happens at a scene.

7 Q Were you the officer that was assigned to write a
8 report?

9 A No.

10 Q Who was the officer assigned?

11 A Master Deputy Carwell.

12 Q Do you -- would you normally be the second deputy on
13 the scene to write a report?

14 A No.

15 Q And why did you write this report?

16 A I was asked to by Investigator Isenhoward after I
17 witnessed him reading him verbal Miranda.

18 Q Specifically about the statements that --

19 A Yes, just the statements.

20 Q Thank you, Deputy.

21 Did you have an opportunity to go inside the home?

22 A No, I did not.

23 Q When this incident occurred?

24 A I had no reason to go inside.

25 Q You primarily stayed outside?

1 A Yes.

2 MS. GARFIELD: Beg the Court's indulgence.

3 (Pause).

4 Thank you Deputy Watford. Please answer any
5 questions Mr. McMullen may have for you.

6 MR. McMULLEN: No questions.

7 MS. GARFIELD: May this witness be excused?

8 THE COURT: The witness may be excused. You may come
9 down, ma'am. You're free to go. Thank you very much.

10 Next witness?

11 MS. GARFIELD: The State calls Deputy Jonathan
12 Haddock.

13 JONATHAN HADDOCK, after being duly
14 sworn, testified as follows:

15 THE CLERK: Thank you. Please have a seat in the
16 witness stand. State your full name for the record.
17 Please spell your last name.

18 THE WITNESS: Jonathan Haddock, H-A-D-D-O-C-K.

19 DIRECT EXAMINATION:

20 BY MS. GARFIELD

21 Q Deputy Haddock, where are you employed?

22 A The Richland County Sheriff's Department.

23 Q How long have you been with the Richland County
24 Sheriff's Department?

25 A Approximately two-and-a-half years.

Haddock - direct (Garfield)

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1 Q What are your duties with the Richland County
2 Sheriff's Department?

3 A I'm a Community Action Team. I go out and assess
4 situations, find problems, and try to make decisions that
5 solve them. I also go to community meetings and crime
6 prevention.

7 Q Were these your same duties a year ago?

8 A No, ma'am.

9 Q What were your duties a year ago with the Richland
10 County Sheriff's Department?

11 A I was a patrol officer. We patrol the streets,
12 traffic enforcement, try to assert the situation. We're
13 the first responders on the scene. On certain domestic
14 situations, civil situations.

15 Q Were you working on October 12th of last year?

16 A Yes, ma'am.

17 Q And did you receive a call to be dispatched to
18 Congress Road in Eastover area of the county?

19 A Yes, ma'am.

20 Q And do you recall arriving on the scene?

21 A Yes, ma'am. I was the third unit to arrive.
22 Deputy -- Master Deputy Carwell and Deputy Watford was
23 already there. I went there to assist.

24 Q And when you got there, what did you assist them in
25 doing?

1 A I actually went over to Stephanie Watford while the
2 -- Mr. Al was laying on the ground. I walked back to
3 Master Deputy Carwell, asked what I could do. He told me
4 in this situation, an aggravated assault at the time, to
5 put crime scene tape for the lab unit to come out to take
6 pictures and do certain crime scenes, forensics they have
7 to do.

8 Q Did you have an opportunity to talk with the
9 defendant?

10 A No, ma'am.

11 Q Did you go inside the incident location?

12 A I did go inside with Investigator Livingston.

13 Q And what did you observe inside the incident
14 location?

15 A I observed the rice and the hot dogs on the floor
16 swept up in a pile. I also looked at the scene and saw a
17 knife, kitchen knife, in the sink.

18 Q How did that knife appear?

19 A It was cleaned off. If I recall what was in there,
20 there was a little bit of blood towards the handle still
21 on the blade.

22 I think I went down the hall a little bit. I
23 observed the door. I'm assuming it's the defendant's
24 door. That was open, appeared to be kicked in and went
25 back outside, taped off the -- Mr. Al's residence as the

Haddock - direct (Garfield)

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1 location where nobody could enter.

2 Q Did you go inside that bedroom where you saw the door
3 kicked in?

4 A No, ma'am.

5 MS. GARFIELD: Your Honor, may I approach the
6 witness?

7 THE COURT: Sure.

8 BY MS. GARFIELD

9 Q I just hand you some photographs that have been
10 introduced into evidence, State's Exhibit Number 2,
11 State's Exhibit Number 27. Do you recognize these
12 photographs?

13 A Yes, ma'am.

14 Q And specifically do you recognize the police tape?

15 A I sure do.

16 Q Is that the police tape that you put up when you were
17 there?

18 A Yes, ma'am.

19 Q So Deputy, your primary job when you reported that
20 night was to secure the scene?

21 A Yes, ma'am.

22 Q How long would you say you were there?

23 A Approximately probably 20 minutes, 25 minutes. It
24 wasn't long. We didn't have a lot of calls on the road.
25 There was only one other guy on the road at the time.

Haddock - direct (Garfield)

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1 Q And you left?

2 A Yes, ma'am.

3 MS. GARFIELD: Thank you, Deputy. Please answer any
4 questions Mr. McMullen has for you.

5 MR. McMULLEN: May it please the Court.

6 THE COURT: Yes.

7 CROSS-EXAMINATION:

8 BY MR. McMULLEN

9 Q Good afternoon. How are you, sir?

10 A Very good.

11 Q You said, sir, that you observed the door to the
12 defendant's room kicked in?

13 A Appeared to be kicked in, kind of cracked, it's kind
14 of a cracked frame, doorframe, as well.

15 Q When you went inside, did you do any of the
16 photography?

17 A No, sir.

18 MR. McMULLEN: I have no further questions. Thank
19 you.

20 THE COURT: Anything further?

21 MS. GARFIELD: No, sir.

22 THE COURT: The witness can come down.

23 MS. GARFIELD: Your Honor, may this witness be
24 excused?

25 THE COURT: The witness may be excused.

Haddock - cross (McMullen)

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1 Approach the bench, please.

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

4 THE COURT: All right, ladies and gentlemen, I'm just
5 trying to adjust our schedule. I know we just took a
6 break, but it appears that our next witness will be rather
7 lengthy, or at least that's what I'm understanding.

8 I don't want to run you past what we normally take as
9 a lunch hour, so I'm thinking the most efficient use of
10 our time would be to go ahead and give you a lunch hour
11 right now.

12 I'll ask you to be back in the courtroom -- or back
13 in the jury room at two o'clock. There are a couple of
14 procedural matters I do need to take up with the attorneys
15 at this point, but I'll ask you to be back in the jury
16 room at two o'clock.

17 Again, don't discuss the case among yourselves when
18 you return to the jury room or with anyone else during the
19 lunch hour. We'll see you at two o'clock.

20 Thank you very much.

21 (WHEREUPON, the jury left open court at approximately
22 12:29 p.m.)

23 THE COURT: All right, Solicitor. You indicated at
24 the beginning of the trial you had a Lyle issue you wished
25 the Court to consider.

1 MS. SHIPLEY: Yes, sir, Your Honor.

2 THE COURT: My inclination was that in order to rule
3 on that prior to the witness taking the stand, I needed a
4 proffer of that evidence.

5 MS. SHIPLEY: Yes, sir.

6 THE COURT: Are you prepared to do that at this time?

7 MS. SHIPLEY: I am, Your Honor.

8 THE COURT: All right. Call your witness.

9 MS. SHIPLEY: Thank you, Your Honor. The State calls
10 Connie Caldwell. Dominique.

11 Ms. Caldwell, come down, take the witness stand.

12 CONNIE CALDWELL - IN CAMERA, after
13 being duly sworn, testified as follows:

14 THE CLERK: Thank you. Please have a seat in the
15 witness stand. State your full name for the record.

16 THE WITNESS: Connie Cleveland Caldwell.

17 DIRECT EXAMINATION:

18 BY MS. SHIPLEY

19 Q Ms. Caldwell, how are you related to Alphonzo
20 Cleveland?

21 A I'm his baby sister.

22 Q And how many siblings did Al have?

23 A Seven brothers and three sisters.

24 Q So a big family?

25 A I mean, eight -- yeah, seven brothers, right.

C. Caldwell - in camera

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1 Q He was the eighth brother.

2 A That's right.

3 Q And do all of the siblings, Al's siblings, live in
4 Columbia?

5 A No.

6 Q Do you live in Columbia?

7 A Yes.

8 Q Did Al come and stay with you from time to time?

9 A Yes.

10 Q Why would he do that?

11 A Because of disputes that he would have between him
12 and his wife and Thad.

13 Q And the defendant?

14 A Yes.

15 Q Okay. Did you live far from [REDACTED] [REDACTED] [REDACTED]?

16 A Yes.

17 Q How far did you live?

18 A I live in the northeast area behind the Spring
19 Valley -- in the Spring Valley area.

20 Q Okay. And how long do you think the drive is from
21 Congress Road to the Spring Valley area where you reside?

22 A It would take about 30, 35 minutes on the highway.

23 Q Okay. I'm going to bring your attention to an
24 incident concerning this not being the first time Al was
25 stabbed by Thad.

C. Caldwell. - in camera

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1 A No.

2 Q The last time that he was stabbed by -- that Al was
3 stabbed by Thad, can you tell Judge Cooper approximately
4 when that was?

5 A Well, Al came to live with me in 2004.

6 Q And do you remember what time of the year of 2004 he
7 moved in with you?

8 A It had to be around September, October.

9 Q Okay. And do you have a grandchild, a grandbaby,
10 born around that time?

11 A November.

12 Q November what?

13 A Twenty-third.

14 Q Of 2004?

15 A 2004, right.

16 Q All right. So was Al living you by the time your
17 grandbaby was born?

18 A Yes.

19 Q Tell Judge Cooper why Al moved in with you at that
20 time?

21 A At that time Al moved in with me, he said that he had
22 to leave there because -- before they killed him, because
23 he had a stab wound on his left arm. He said he thought
24 he never was going to be able to use that arm again.

25 Q And when he said he had to leave then, who is he

C. Caldwell - in camera

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1 referring to?

2 A His wife and his stepson but mainly his stepson.

3 Q And did he indicate who stabbed -- who had cut him in
4 the arm?

5 A He said Thad.

6 Q All right.

7 THE COURT: He said what?

8 THE WITNESS: He said Thad, his stepson.

9 MS. SHIPLEY: Thad.

10 THE COURT: Thad.

11 THE WITNESS: Yeah.

12 BY MS. SHIPLEY

13 Q And was your brother Al -- what hand did he use to
14 write with?

15 A His left hand.

16 Q All right. And so that's where the injury was?

17 A Yes.

18 Q Did you observe the injury?

19 A Yes.

20 Q And can you describe where on his body it was?

21 A It was in the fatty part of his -- the back of his
22 arm.

23 Q Okay. And when you observed the injury, did it
24 appear to be a relatively new injury?

25 A Yes.

1 Q In other words, it hadn't all healed up yet. It was
2 still...

3 A No. It hadn't healed up, because he was still having
4 problems with it.

5 Q Okay.

6 A So I told him, I said, "Al" -- I said, "Why didn't
7 you call the police?"

8 He said he didn't want badness between him and his
9 wife, so he just let -- let it go.

10 Q And so he didn't want to involve the police so --

11 A No.

12 Q -- so it wouldn't stir up problems between he and his
13 wife?

14 A Right.

15 Q All right. And how long did he live with you that
16 time when he moved in with you September, October 2004?
17 How long did he stay with you?

18 A Until June of the next year.

19 Q June of '05?

20 A Yes.

21 Q Okay. And so he lived back at [REDACTED]
22 from June of '05 until his death?

23 A No. He got an apartment in June.

24 Q Oh, he move into the an apartment first?

25 A He moved into an apartment in Olympia.

C. Caldwell - in camera

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1 Q Oh, okay.

2 A He wasn't there no time, though.

3 Q Okay. How long do you think he lived at the
4 apartment?

5 A I think he went back to her, could have been in July.

6 Q All right. So in July of '05, he moved back to [REDACTED]
7 [REDACTED] [REDACTED]?

8 A Right.

9 Q Were you aware of whether or not Mr. Starks was
10 residing there at the time at [REDACTED] [REDACTED] [REDACTED]?

11 A Well, not at that time he wasn't there. I guess he
12 was back and forth, but Al would call me at night because
13 I -- I really stopped calling her, and you know, dealing
14 with them because I didn't want to be a part of it after
15 my mother died in 2002.

16 I wouldn't let my brother be in the streets. I
17 wanted him to keep his good job because he was a good
18 person.

19 Q And did you --

20 A And he was working.

21 Q Did you have to drive your brother to work?

22 A Every morning, yes.

23 Q Because he did not drive, correct?

24 A Did not drive.

25 Q All right. And did he indicate to you why it was

1 that Thad stabbed him in the arm, in the left arm?

2 A He said mainly the spats was he didn't want to take
3 care of Thad because he felt he was grown. He had to pay
4 most of the bills, and Thad didn't want to help with the
5 bills and whatnot.

6 It always was about food and not helping to pay the
7 bills. I would tell Al, you know, just leave, you know,
8 go on your own, but he just -- every time he tried, he
9 ended up back there.

10 MS. SHIPLEY: Okay. Beg the Court's indulgence.

11 (Pause).

12 Thank you. Nothing further, Your Honor.

13 CROSS-EXAMINATION:

14 BY MR. McMULLEN

15 Q Ms. Caldwell, did you see this stabbing?

16 A Yes.

17 Q You saw it occur?

18 A I didn't see it occur.

19 Q How do you know it did occur?

20 A Because my brother told me.

21 Q Is that the only way you know?

22 A That's the only way I know, and he saw -- he showed
23 it to me, and that wasn't the only one. It was several of
24 them.

25 Q That he showed you?

C. Caldwell - in camera

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1 A All of them.

2 Q That he told you?

3 A He told me about it.

4 Q Did he get medical treatment?

5 A No.

6 Q Did he call the police?

7 A Never.

8 MR. McMULLEN: Thank you, ma'am.

9 THE WITNESS: Uh-huh.

10 MS. SHIPLEY: Nothing further, Your Honor.

11 THE COURT: All right. You may come down.

12 THE BAILIFF: Watch your step.

13 MS. SHIPLEY: And Your Honor, the corroborating
14 witness is on the -- scheduled to testify tomorrow at nine
15 about the existence of a scar on the back of
16 Mr. Cleveland's arm, left arm, to corroborate this
17 witness.

18 THE COURT: All right.

19 What's your position, Mr. McMullen?

20 MR. McMULLEN: I would contend, sir, that when the
21 State tries to get into evidence the prior bad act, was
22 not the subject of a criminal conviction, that it must do
23 so by a clear and convincing standard.

24 The only testimony we have as to the origin of the
25 scar is Ms. Caldwell that --

1 THE COURT: I think it was more than a scar.

2 MS. SHIPLEY: It -- it was a stab wound, Your Honor.

3 THE COURT: A wound.

4 MS. SHIPLEY: Yes. She saw the wound, and then

5 Dr. Kessler will testify --

6 THE COURT: I understand. A scar indicates it was...

7 MS. SHIPLEY: Already healed.

8 THE COURT: Healed up.

9 MS. SHIPLEY: She saw it while it was still fresh.

10 THE COURT: So -- I'm sorry, I say wound. That's
11 what I understood her to say.

12 MR. McMULLEN: Yes, sir.

13 THE COURT: Okay.

14 MR. McMULLEN: Let me start over.

15 THE COURT: Go ahead.

16 MR. McMULLEN: The only indications that we have are
17 that Ms. Caldwell saw a wound and they saw the scar, and
18 there is no admissible evidence of how the wound or the
19 scar got there, then I would submit that they haven't
20 proved this prior bad act by clear and convincing
21 evidence.

22 THE COURT: What's the State's position?

23 MS. SHIPLEY: Your Honor, State vs. Fletcher, a
24 pretty similar situation. There the victim was a child
25 unable to testify as to how he or she received the prior

1 injuries from -- that were inflicted, allegedly, by the
2 parent.

3 However, despite the fact that there was no
4 eyewitness to the injury inflicted on the child, the court
5 still allowed the fact that the child was presented with
6 injuries and that there was corroborating testimony to
7 that by nurses, and we have a corroborating testimony from
8 a doctor, they still allowed that incident in, in
9 Fletcher.

10 And also, Your Honor, we have a witness that is
11 ready, prepared to testify, that her brother explained to
12 her how the injury got there and told her and she saw it,
13 saw the injury. It was fresh. That is the whole reason
14 why he moved in with her back in '04.

15 So therefore, Your Honor, we have clearly established
16 the clear and convincing burden or -- yeah, the burden, if
17 you will, or the standard, and then we also seek to
18 introduce it to show intent.

19 The State relies on --

20 THE COURT: Well, I understand the intent argument.
21 The question is whether this is clear and convincing is
22 the point he raises.

23 He hasn't raised the issue of whether it's intent
24 exception 404(b). It's clear the argument is whether that
25 was clear and convincing evidence, okay.

1 MS. SHIPLEY: Okay. Yes, sir.

2 THE COURT: That's where we are.

3 MS. SHIPLEY: The position of the State is that it --
4 that we have satisfied the standard of clear and
5 convincing.

6 We have the testimony of the sister who took her
7 brother in who moved in with her as a result of this
8 stabbing. She saw the injury, and there's corroborating
9 evidence that that scar exists in the very location that
10 she saw the injury, and Dr. Kessler is prepared to testify
11 to that to corroborate that.

12 THE COURT: I believe it's admissible under Lyle.

13 MR. McMULLEN: If I may?

14 THE COURT: Anything further?

15 Yes, sir.

16 MR. McMULLEN: I just wanted to state, Your Honor,
17 that the only evidence that the State has to show the
18 origin of this wound would be an out-of-court statement
19 offered in court for the truth of the matter asserted.
20 There is no admissible evidence to show how that wound got
21 there.

22 THE COURT: All right. Thank you. Anything further?

23 MS. SHIPLEY: Nothing further, Your Honor.

24 THE COURT: Two o'clock.

25 MS. SHIPLEY: Thank you.

1 So Your Honor, I'm allowed to call this witness then
2 this afternoon?

3 (His Honor nods in the affirmative).

4 Thank you.

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: Is the State ready to proceed?

7 MS. GARFIELD: The State is ready.

8 THE COURT: Is the defense ready to proceed?

9 MR. McMULLEN: I did want to take up one matter, Your
10 Honor.

11 THE COURT: Yes, sir.

12 MR. McMULLEN: I just feel like I need to try to make
13 a better record on that Lyle issue.

14 My first objection was that it was -- it was not
15 proved by clear and convincing evidence, and I would also
16 say that it's more prejudicial than it is probative and
17 that that prejudice -- it outweighs any probative value
18 that the State would have.

19 My contention would be that it really doesn't show
20 very much. I don't know what the intent is supposed to
21 show, but I would hope that Your Honor would conduct such
22 an analysis on the record or exclude it for that reason.

23 Also, I just fail to see how there's any admissible
24 evidence, fail to see how it's not hearsay if there's a
25 basis for its admission.

1 THE COURT: All right. Is that it?

2 MR. McMULLEN: Yes, sir. I mean...

3 THE COURT: I want to hear from the State.

4 MR. McMULLEN: Yes, sir.

5 THE COURT: I'll hear from you.

6 MR. McMULLEN: All right. Well, I don't really know
7 what they would intend to offer to show, and certainly the
8 defendant hasn't put up any -- any defense at all so far
9 other than, you know, I'm crossing people on self-defense,
10 but I don't know if they intend to show that it shows that
11 he lured somebody into the fight or what exactly they're
12 trying to use the statement to show.

13 I certainly can see the prejudicial effect it would
14 have to put a knife in Thaddess Starks' hand with the same
15 victim, especially as here where there is very little
16 evidence in the case.

17 I don't think such an error would be harmless. I
18 think it's extremely damaging if it's something the jury
19 gets to hear.

20 You know, I just keep going back to the idea that
21 there is no competent evidence that Mr. Starks inflicted
22 the wound that happened two years or so before.

23 Mr. Cleveland had more scars than just the one that
24 they're talking about. He had lots of scars on his body
25 and had apparently been in a lot of knife fights.

1 THE COURT: I don't know about that.

2 MR. McMULLEN: Well, we'll --

3 THE COURT: You may know more about that than I do.

4 MR. McMULLEN: Yes, sir.

5 He also had several stints in prison where he could
6 have received these wounds.

7 THE COURT: Where does that come from?

8 MR. McMULLEN: Well, I mean, I -- that's something I
9 would feel compelled to cross-examine anybody about.

10 THE COURT: Okay.

11 MR. McMULLEN: But just in the -- in the very
12 beginning, in the inception, I just -- like I say, I don't
13 understand what non-hearsay evidence demonstrates by clear
14 and convincing evidence that this ever happened.

15 I would just hope that Your Honor would put on the
16 record what that evidence is and would ask that a 403
17 analysis be conducted.

18 THE COURT: All right. What's the State's position?

19 MS. SHIPLEY: Your Honor, we rely on State vs. Sweat
20 cited at 606 SE2d 508. In that case the court, trial
21 court, allowed evidence of a prior bad act, which was a
22 criminal domestic violence incident in an A.B.I.K. case.

23 The reasoning that the trial court had in that case
24 is that it was admissible to prove both in that case
25 motive and intent. Here, in this case, we're trying to

1 admit it to show intent.

2 The Supreme Court, I believe it was -- the Court of
3 Appeals indicated that the State had to prove malice as an
4 element of the assault and battery with intent to kill
5 crime.

6 Motive is circumstantial evidence of the intent to
7 commit a crime when intent or state of mind is at issue.
8 State of mind is at issue any time malice or willfulness
9 is an element of the crime. Therefore, the trial court
10 properly admitted the prior incident.

11 In this case, Your Honor, the defendant's state of
12 mind is at issue, and again, the same element of malice is
13 what we are trying to establish.

14 The court went on in Sweat to determine whether it
15 was relevant. In that case it was stated that evidence
16 which assists the jury in arriving at the truth of an
17 issue is relevant and admissible unless otherwise
18 incompetent.

19 Therefore, the issue is the state of mind of the
20 defendant in establishing whether or not he acted with the
21 malicious intent that the State is required to prove
22 beyond a reasonable doubt.

23 Evidence is admissible if logically relevant to
24 establish a material fact or element of the crime. It
25 need not be necessary to the State's case in order to be

1 admitted.

2 Your Honor, the logical relevance in this case is
3 that they're claiming self-defense in that he did not have
4 malice when he -- when he stabbed the victim, and we have
5 to disprove self-defense beyond a reasonable doubt.

6 Therefore, two of the elements of the self-defense
7 claim that we have to overcome in this proof beyond a
8 reasonable doubt is the defendant's state of mind, whether
9 or not he believed he was in imminent danger of great
10 bodily injury or possible death.

11 His state of mind is the critical issue in this case,
12 Your Honor. Also, as far as the prejudicial effect for
13 your Rule 403 analysis, it's got to be unfairly
14 prejudicial.

15 Unfair prejudice means undue tendency to suggest a
16 decision on an improper basis commonly, though not
17 necessarily an emotional one.

18 Your Honor, we are simply introducing evidence of a
19 prior injury that this victim suffered at the hands of
20 this defendant.

21 We have corroborating medical testimony that this
22 victim did have a three-inch laceration to the back of his
23 left arm as the witness testified to in the testimony that
24 we proffered.

25 THE COURT: Anything further, Defense?

1 MR. McMULLEN: The -- I guess just the clear and
2 convincing standard and whether there's any admissible
3 evidence at all of the fact of whether Mr. Starks
4 inflicted the injury. To say also that any injury that
5 they claim happened two or three years ago would be too
6 remote in time to have any bearing on this.

7 I don't see how what happened two or three years
8 earlier would have to do with the defendant's intent two
9 or three years later.

10 And as I say, I don't believe the rule says that just
11 because it's relevant it gets in. In fact, the rule says
12 although relevant, evidence may be excluded if its
13 prejudicial effect substantially outweighs its probative
14 value.

15 Obviously, for him to have a knife cutting the same
16 victim in a fight would be very prejudicial, and it just
17 isn't established by any standard.

18 THE COURT: All right.

19 MS. SHIPLEY: And one last thing, Your Honor. As far
20 as the standard of proof for a prior bad act not subject
21 to a conviction, as the testimony during the proffer
22 established that the police or law enforcement was never
23 involved in that matter, the Court of Appeals stated, and
24 actually it was cited in the South Carolina Supreme Court,
25 stating, "We do not review a trial judge's ruling on the

1 admissibility of other bad acts by determining de novo
2 whether the evidence rises to clear and convincing. If
3 there is any evidence to support the admission of the bad
4 act evidence, the trial judge's ruling will not be
5 disturbed on appeal."

6 THE COURT: All right.

7 MS. SHIPLEY: We have evidence, Your Honor.

8 THE COURT: Well, here is the way I see it,
9 Mr. McMullen. I find it's very relevant. The -- you have
10 got the same weapon, same or similar weapon, by the same
11 victim. You have got the same defendant at a prior time.
12 I don't know. You say it's two or three years. I don't
13 know the elapsing of time, but assume it's two years.

14 So I find that it's relevant to the issues to be
15 discussed in this case. You can read 401 as easily as I
16 can, the definition of relevant evidence.

17 Secondly, I find it's extremely probative. It's
18 probative of this defendant's -- whether it's his intent
19 or his course of action or his relationship with his
20 father-in-law, it's probative of this incident, the
21 stabbing this time.

22 Now, is it prejudicial? Sure it's prejudicial.
23 Everything is prejudicial, but I feel that the probative
24 value outweighs the prejudicial effect of it, and again,
25 we're talking about admissibility.

1 It's -- you certainly can argue to the jury any way
2 you see fit or present any testimony you see fit as a
3 result of this ruling.

4 The -- as the Solicitor says, I believe when you
5 raise the issue of self-defense, which you have raised in
6 your cross-examination, it becomes a matter for this jury
7 to determine what was in the defendant's mind when this
8 incident took place.

9 If in the past he had done something, resolved an
10 issue with a knife, whatever happened when the prior
11 incident occurred, I think that goes to his state of mind
12 in this case.

13 Now, I find that the witness, Connie Caldwell, to be
14 credible, and even though you raised the issue of the
15 hearsay nature of the source of the cut or wound at that
16 time, it appeared to me from her testimony that he was
17 stabbed recently to her -- or near in time to her
18 witnessing the wound. I mean, she didn't talk about a
19 scar. She talked about a wound.

20 Now, can I say that that was an excited utterance?
21 Can I say that he ran from your client to his sister's
22 house?

23 It was fairly contemporaneous because he moved out at
24 the same time that she witnessed the injury, so I find --
25 I find that her testimony has a degree of trustworthiness

1 that is basically the hearsay test, is whether or not even
2 though you may say it doesn't comply exactly with the
3 rule, it does pass the credibility test, in my opinion and
4 the trustworthiness test, in my opinion. Therefore, I'm
5 going to allow it. That's -- I mean --

6 MR. McMULLEN: Which hearsay exception allows the --

7 THE COURT: I'm not here to be quizzed.

8 MR. McMULLEN: No, sir, but --

9 THE COURT: Do you understand my ruling?

10 MR. McMULLEN: Yes, sir.

11 THE COURT: All right.

12 MR. McMULLEN: I would just like to place on the
13 record that --

14 THE COURT: Go right ahead.

15 MR. McMULLEN: -- that there is no hearsay exception
16 that I'm aware of in the rules that allows someone to come
17 into court and say what someone else told them unless it
18 fits within one of these exceptions.

19 And I just -- I'm unable to discern any exception,
20 the statement, "Thaddess Starks cut me here on my arm,"
21 there's no -- there's no exception that allows that.

22 Thank you.

23 THE COURT: Anything further from the State?

24 MS. SHIPLEY: Your Honor, it could be argued as
25 present sense impression, while -- the reason why the

1 victim moved in with Ms. Connie Caldwell was due to the
2 altercation with his stepson, and that was the purpose of
3 him moving in and demonstrating and showing his sister the
4 wound. So it could be a present sense impression hearsay
5 exception.

6 THE COURT: Well, for lack of a better answer, I'll
7 accept that, and maybe you'll have to argue that at the
8 Court of Appeals. I don't know.

9 Are you ready for the jury?

10 MS. SHIPLEY: Yes, sir.

11 THE COURT: State -- is the defense ready?

12 MR. McMULLEN: Yes, sir. I just want to add briefly
13 that present sense impression must be --

14 THE COURT: Fine.

15 MR. McMULLEN: I -- one that is made while the
16 declarant is experiencing the incident.

17 Thank you.

18 THE COURT: All right. Bring the jury, please.

19 (WHEREUPON, the jury came into open court at
20 approximately 2:25 p.m.)

21 THE BAILIFF: The jury is present, Your Honor.

22 THE COURT: All right. Thank you very much.

23 Solicitor, call your next witness.

24 MS. GARFIELD: Thank you, Your Honor. The State
25 calls Investigator Ray Livingston.

1 RAY LIVINGSTON, after being duly
2 sworn, testified as follows:

3 THE CLERK: Thank you. Please have a seat in the
4 witness stand. State your full name for the record.

5 THE WITNESS: Ray A. Livingston.

6 DIRECT EXAMINATION:

7 BY MS. GARFIELD

8 Q Investigator Livingston, where are you employed?

9 A The Richland County Sheriff's Department.

10 Q How long have you been employed with the Sheriff's
11 Department?

12 A Since '95.

13 Q And what is your position with Richland County
14 Sheriff's Department?

15 A Crime scene investigator.

16 Q Is that short for C.S.I.?

17 A Yes.

18 Q Or long, I guess, for C.S.I.?

19 A It is.

20 Q And exactly with your duties with C.S.I., what does
21 that entail?

22 A Going to a crime scene, processing the crime scene.
23 That means processing for fingerprints and blood evidence
24 and just photographing the crime scene.

25 Q Basically, you're there to pick up evidence?

1 A Yes, ma'am.

2 Q How long have you been with C.S.I.?

3 A Yes, ma'am, since about 2000.

4 Q And what kind of training have you received?

5 A I received extensive training. My training started
6 off at the South Carolina Criminal Justice Academy in
7 basic course.

8 From there I went to the basic C.S.I. course, basic
9 fingerprint, photograph, basic arson investigation,
10 advanced blood stain analysis, other courses I received at
11 the University of Maryland in the homicide investigation,
12 as well as the University of Louisville, homicide
13 investigation, and with the University of South Carolina.
14 I'm also a member of the I.A.I., International Association
15 of Identification and local and national.

16 Q Part of your duties, does that entail interviewing
17 witnesses?

18 A Sometimes, not all.

19 Q And do you ever interview defendants or --

20 A No, ma'am.

21 Q -- at a crime scene.

22 A No, not at a crime scene.

23 Q Your job is simply to process the scene?

24 A Yes, ma'am.

25 Q Were you called to process the scene that we are here

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1 in court for today on October 12th of last year?

2 A Yes, ma'am.

3 Q And about -- do you remember what time you arrived at
4 the scene?

5 A Yes, ma'am. I got there at 21:50, that's 9:50.

6 Q And how many -- who all was on the scene when you
7 arrived?

8 A All the other officers were there on. The three
9 officers were on the scene already.

10 Q And as far as lay witnesses, who all was there?

11 A Pardon me?

12 Q As far as non law enforcement witnesses, who all was
13 there?

14 A Mr. Thaddress was there.

15 Q Was the deceased there at -- when you arrived?

16 A No, ma'am. He had been taken by ambulance.

17 Q To the hospital?

18 A Yes, ma'am.

19 Q Essentially, Investigator, when you got there, what
20 was the first thing you do?

21 A The first thing I did was met with the officers.
22 They explained to me what had happened and pointed out the
23 crime scene, which is the entrance to the house.

24 I took -- the initial officer walked me through the
25 house, through the crime scene, walked me through the

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1 living room area to the kitchen to the bedroom and back.

2 That way he was telling me exactly what was told to him.

3 Then I came back and wrote up my initial report, and
4 then I started -- the first thing I do is photograph, and
5 that's what I started doing.

6 Q So this crime scene that you're referring to is the
7 place where the defendant and Al, the dead person, lived?

8 A That's correct.

9 Q Okay. You said you began to photograph?

10 A Yes, ma'am.

11 Q Now, at this time, Investigator, do you disturb the
12 crime scene at all?

13 A No, ma'am.

14 Q Do you just leave it as it is?

15 A Leave it as it is.

16 Q And when you're photographing it, as well, you
17 photograph it as you see it?

18 A Yes, ma'am.

19 Q You don't change anything about it?

20 A Don't change anything.

21 Q Can you recall when you arrived, Investigator, what
22 was the first part of the location? Where essentially did
23 you begin photographing it?

24 A From the front of the house.

25 Q Okay. I'm going to show you what's been marked as,

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1 already introduced into evidence, State's exhibits two,
2 three, four, five and six. Do you recognize these
3 photographs?

4 A Yes, ma'am.

5 Q And what are those photographs of, Investigator?

6 A Of the crime scene.

7 Q And particularly, what part of the crime scene?

8 A Okay. The first one here is the front door, the
9 front area, front porch area. This one is the ashtray
10 that was broken on the porch also.

11 Another one of the front porch where the ashtray is
12 broken behind the chair. This one is where the grill had
13 taken -- was knocked off. That's the ashes that was in
14 the grill. It was on the porch also, and here is the
15 grill that was on the ground next to the porch.

16 Q Are these the photographs that you took,
17 Investigator?

18 A Yes, ma'am.

19 Q And after you photographed them, did you notice
20 anything else about the front porch?

21 A It had blood on it.

22 Q Okay. And do you recall where that would be?

23 A Right at the front door, right as you come out right
24 at the front, right at the front door.

25 Q Okay. Investigator, I'm going to hand you what's

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1 been marked for identification State's Exhibit Numbers
2 seven, eight, nine, and ten. Can you go through these one
3 by one and explain to the jury what those are photographs
4 of?

5 A The first one here is the one, two, and three. Those
6 are the blood droplets. Those are the locations of the
7 blood droplets identified by the numbers.

8 Q And who placed those numbers there, Investigator?

9 A I did.

10 Q Okay. And what's the purpose of placing those
11 numbers in the pictures?

12 A So I know exactly where those blood droplets were in
13 case we needed to go back.

14 Q And I believe you indicated there were three numbers
15 listed?

16 A Yes, ma'am.

17 Q So would that indicate there were three blood
18 droplets?

19 A Yes, ma'am.

20 Q Okay. Thank you.

21 A It could have been more, but these are the size of
22 the blood droplets here that we could take a little
23 photograph of as to -- in this photograph here, you could
24 see number one, the blood droplets in there.

25 Q Now, is that the same number one that you see in the

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1 first picture?

2 A Yes, ma'am.

3 Q That's just a closer view?

4 A Yes, ma'am.

5 Q Thank you. Please proceed.

6 A And the same as number two, blood droplet there, and
7 for number three, exactly the same.

8 Q And these are photographs that you took,
9 Investigator?

10 A Yes, ma'am.

11 Q Have they been altered in any way?

12 A No, ma'am.

13 Q Have you -- did you change anything about the scene
14 before you took the photographs?

15 A As I said, I put the numbers in there. That was it.

16 Q Thank you.

17 A Uh-huh.

18 MS. GARFIELD: Your Honor, at this time the State
19 would seek to introduce exhibits seven, eight, nine, and
20 ten into evidence.

21 MR. McMULLEN: No objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibits Nos. 7, 8, 9, 10 were
24 admitted into evidence.)

25

1 MS. GARFIELD: Your Honor, may I publish this to the
2 jury?

3 THE COURT: Yes, ma'am.

4 BY MS. GARFIELD

5 Q Investigator, pertaining to those blood droplets that
6 you found, did you do anything further in your
7 investigation?

8 A We did what we call buccal swabs, swabbed them, put
9 them in an envelope. Those are swabs that will be turned
10 in to the D.N.A. section for D.N.A. analysis.

11 Q Now, will you explain to the jury what is a buccal
12 swab?

13 A Buccal swab, it's a swab about yeah long there. I
14 don't know how long. This long (indicating). It's like a
15 Q-tip there.

16 What I would do is take sterile water put on it after
17 the blood was already dry, rub it and take it and have a
18 little container, put them in that container and then
19 submit to our D.N.A. section.

20 MS. GARFIELD: Excuse me, I need to have this marked
21 for identification.

22 (WHEREUPON, State's Exhibit No. 44 was marked for
23 identification only.)

24 BY MS. GARFIELD

25 Q Investigator, I'm going to hand you what's been

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1 marked for identification State's Exhibit Number 44 and
2 ask if you would identify this?

3 A Yes, ma'am. These are two buccal swabs.

4 Q And can you please show those to the jury?

5 A Yes, ma'am.

6 Q Are these the buccal swabs that you were referring
7 to?

8 A Yes, ma'am. These are swabs that are -- the swabs
9 are inside of the container. It has all of the necessary
10 information off -- on the back here.

11 Q And inside -- now, that box is not actually the swab,
12 is it?

13 A No. The box is not. The swab is on the inside of
14 the box there.

15 Q And you said the swab is actually like a Q-tip?

16 A Yes, ma'am.

17 Q Are those changed in any way since you submitted
18 them?

19 A They may have been checked by our D.N.A. lab.

20 Q And that is what you would have requested?

21 A I would have requested that, yes, ma'am.

22 Q Okay. Thank you.

23 Investigator, after you have taken the buccal swabs
24 and photographed the front porch of the crime scene, what
25 did you do next?

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1 A I went to the neighbor's.

2 Q To the neighbor's house?

3 A Yes, ma'am.

4 Q And what did you do there?

5 A Well, what I did, I started photographing from the
6 front lawn area towards the neighbor's house there because
7 there was blood droplets along the grass there. So I
8 photographed from there all the way to the neighbor's
9 front porch where I went over to talk with the neighbor,
10 and I found a cell phone, a wallet, a bloody towel, and I
11 believe something else, I can't recall it now, out on the
12 lawn area. I photographed, and I took into evidence, his
13 cell phone and his wallet.

14 Q Investigator, I'll hand you what's already been
15 introduced into evidence State's Exhibits 27, 28, 30, and
16 32. Do you recognize these photographs?

17 A Yes, ma'am.

18 Q And what are those photographs of?

19 A The first one is a photograph of the front porch,
20 neighbor's front porch there.

21 This one is of the steps where the defendant was
22 sitting at. If you look closer, you can see the cell
23 phone at the bottom of the steps there. That's the
24 photograph of the cell phone, which my -- taking this
25 photograph, my intention was to take the photograph of the

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1 cell phone. When I looked at it on my viewfinder, I found
2 blood on the leaf there.

3 Q If you can just point out to the jury exactly where
4 there's blood on the leaf there.

5 A Yes, ma'am. Right here and down here, this area.

6 This is a photograph of the defendant's wallet,
7 Mr. Al's wallet, and the blood area. That's where he was
8 laying at.

9 Q Thank you. In relation to those blood droplets at
10 the neighbor's house, did you collect any samples with
11 those through your buccal swabs?

12 A Yes, yes, ma'am.

13 Q And what did you do with those buccal swabs?

14 A The same as the first ones.

15 Q And what exactly?

16 A Just turn them into -- have the D.N.A. lab take a
17 look at them.

18 Q And when you say you're submitting these items to the
19 D.N.A. lab, what is your purpose in that?

20 A Just to find out whose blood it is.

21 Q Thank you. Your understanding is an analysis was
22 done?

23 A Yes.

24 Q Okay. Thank you. After you -- is that all you did
25 at the neighbor's house?

1 A No. I photographed and I collected his wallet, the
2 cell phone, and I think a towel, I believe it was, was the
3 other thing.

4 Q And what else did you do there?

5 A That was about it there.

6 Q Okay. And then after you had finished collecting
7 evidence at the neighbor's home, what did you do next?

8 A I went back, and I talked with investigators and the
9 officers, and I asked them, "Before we do anything, let's
10 get Mr. Starks out and let's photograph him."

11 Q And what was your intentions of photographing
12 Mr. Starks?

13 A With the cameras we have, the digital cameras we
14 have, I guess -- actually, we found this out. If you get
15 close enough to take a photograph, if a person has been
16 injured, you won't see it with the naked eye, but the
17 camera will bring it out where someone has been struck in
18 the face or upside the head someplace or the arm.

19 You can look at a person's hand and it will look
20 normal, but if you take a photograph, it will bring it out
21 with the lens.

22 Q Did you have the opportunity to observe the defendant
23 before you took a photograph?

24 A I only seen him briefly. Just, you know, the
25 investigators were talking with him. I walked over just

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1 to ask a couple of questions, and he was out. I didn't
2 know what they were talking about, and I seen him in those
3 terms.

4 Q Did you take a photograph of Mr. Starks?

5 A Yes, ma'am, I did.

6 Q I'm going to hand you what's been marked as State's
7 Exhibit Number 35 for identification. Do you recognize
8 this photograph?

9 A Yes, ma'am.

10 Q And what is that a photograph of, Investigator?

11 A A photograph of Mr. Starks there, Thaddess.

12 Q And once you took that photograph, did you have an
13 opportunity to view it?

14 A Yes. I looked at it.

15 Q And in that photograph, Investigator, do you observe
16 any kind of marks?

17 A No, ma'am.

18 Q Any kind of wounds?

19 A No, ma'am.

20 Q Any sort of markings?

21 A No, ma'am.

22 Q Is that the photograph you took?

23 A Yes, ma'am.

24 Q Has it been altered in any way?

25 A No, ma'am.

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1 MS. GARFIELD: Your Honor, we would seek to introduce
2 State's Exhibit Number 35 into evidence.

3 MR. McMULLEN: No objection.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit No. 35 was admitted into
6 evidence.)

7 MS. GARFIELD: Beg the Court's indulgence.

8 (Pause).

9 May I publish this to the jury?

10 THE COURT: Yes, ma'am.

11 MS. GARFIELD: Your Honor, I apologize. I believe I
12 failed to introduce, and if I didn't just to clarify the
13 record, I'd also seek to introduce State's Exhibits 27,
14 28, 30, and 32 into evidence if they are not already
15 admitted.

16 MR. McMULLEN: No objection.

17 THE COURT REPORTER: I have them in.

18 MS. GARFIELD: They're in?

19 THE COURT REPORTER: Yes.

20 BY MS. GARFIELD

21 Q After you took a photograph of the defendant,
22 Thaddess Starks, what did you do next in your crime scene
23 investigation?

24 A Well, we had to go inside the house and photograph
25 the interior of the house there.

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1 Q When you walk into the house of the front door, what
2 is the first room you walk into?

3 A It was the living room area.

4 Q Is that the first room that you expected?

5 A I talked with the officers, and they said nothing
6 took place in there.

7 Q And in your crime scene investigation background, did
8 you see anything that --

9 A Didn't see --

10 Q -- seemed appropriate --

11 A No, ma'am.

12 Q -- to investigate?

13 A I didn't see anything out of the ordinary. I looked.
14 I checked, nothing was out of the ordinary.

15 Q What would be the next room that you would have gone
16 in?

17 A That would have been the kitchen area.

18 Q And when you went to the kitchen, what did you
19 observe?

20 A Well, when we went to the kitchen, there was a pile
21 of food swept into a pile, a broom, some food was there,
22 on the floor.

23 You just looked around there. There was a pot in the
24 sink. The television was on, but it wasn't -- not a
25 program was on. It was just on like a satellite receiver

1 was on, and that was it.

2 We walked down the hallway to the bedroom, and the
3 officer showed me where the door had been -- where damage
4 was done to the door. That's where I started my
5 photographing from there, the inside -- interior of the
6 room and the outside of the door.

7 Q Was it safe to say the room was in disarray?

8 A Somewhat, not bad. Not bad. It was somewhat.

9 Q And you said there was a pile of food swept into a
10 pile?

11 A Yes, ma'am.

12 Q Did you sweep that food into a pile?

13 A No, ma'am.

14 Q Did anyone else that you know of, as far as law
15 enforcement was concerned, sweep that food into a pile?

16 A I don't believe so.

17 Q I'm going to hand you what's been marked as State's
18 Exhibits 16, 15, and 17 that have already been introduced
19 into evidence and see if you recognize these photographs.

20 A Yes, ma'am.

21 Q And what are those photographs of?

22 A One is a pile of food, and it has a -- I think a Dawn
23 dish washing detergent bottle next to it. One is of the
24 whole kitchen, a partial of the kitchen again showing the
25 food, the broom, the counter, cabinets, and the other one

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1 is of the weapon in the -- in the sink next to the pot.

2 Q What type of food seems to be in that pile on the
3 floor?

4 A Looks like rice, beans, and wieners.

5 Q And Investigator, did you see any evidence when you
6 were observing this kitchen area of anyone that had been
7 making a sandwich?

8 A Not a sandwich, no, ma'am.

9 Q Didn't see any bread laying out?

10 A No, ma'am.

11 Q No bread crumbs anywhere?

12 A No, ma'am.

13 Q No meat or condiments left out?

14 A Outside of the rice and Beanie Weenies there, that's
15 all.

16 Q That was all?

17 A That was it.

18 Q And are those photographs that you took?

19 A Yes, ma'am.

20 Q Specifically in number 17, what do you see in that
21 picture?

22 A There's a large kitchen knife and a pot that's been
23 turned upside down.

24 Q Is there anything peculiar about that knife in the
25 sink?

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- 1 A That it was wet.
- 2 Q Okay. Did you see any evidence on the knife that
- 3 could be linked to this incident?
- 4 A I couldn't right then, no, ma'am.
- 5 Q You couldn't right there?
- 6 A No.
- 7 Q Okay. No blood was found on the knife, to your
- 8 observation?
- 9 A To my observation, no, ma'am.
- 10 Q All right. What did you do with that knife?
- 11 A I took the knife into evidence, and I had submitted
- 12 it to D.N.A. to run tests on it for blood.
- 13 Q Why did you submit it to D.N.A. for tests?
- 14 A They could find the blood.
- 15 Q There was victim's blood?
- 16 A They could find it.
- 17 Q They could find it?
- 18 A Yes, ma'am.
- 19 Q You didn't observe any, but they could find it?
- 20 A Yes, ma'am.
- 21 Q Okay. Do you know how long that knife was?
- 22 A Almost, not quite, but almost eight inches there.
- 23 Q Do you often submit evidence for other tests besides
- 24 D.N.A. tests?
- 25 A Maybe for fingerprints, yes, ma'am, we do.

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1 Q In this particular case, did you submit the knife for
2 any fingerprint analysis?

3 A I couldn't because it was wet.

4 Q And is that a common, you can't get fingerprints off
5 of wet items?

6 A No. It's pretty much gone. It's greasy also.

7 Q Despite what you see on television.

8 A Yes, ma'am.

9 Q Beg the Court's indulgence.

10 (Pause).

11 Okay. Okay. Is that all you did in the kitchen,
12 Investigator?

13 A Just photograph and collected that, yes, ma'am.

14 Q Okay. After your investigation in the kitchen area,
15 where did you go, Investigator?

16 A Down the hallway to the bedroom, and I took a look at
17 the lock again. I photographed the interior of the
18 bedroom and the door and the doorjamb.

19 Q To get to the hallway, where do you have to go in the
20 house?

21 A Oh, you have to go through the den area there.

22 Q Okay. I'll hand you State's Exhibits for
23 identification 11, 12, 13, and 14. Do you recognize these
24 photographs?

25 A Yes, ma'am.

1 Q And what are those photographs of?

2 A The first one is of the den area where the T.V. was
3 on, but it just had the Dish Network sign on. No
4 programming was on there.

5 Q In that photograph, will you show the jury where the
6 hallway is that leads to the bedrooms?

7 MR. McMULLEN: Before these are published to the
8 jury, could we lay a foundation?

9 BY MS. GARFIELD

10 Q Certainly, Your Honor.

11 Investigator, will you just -- did you go -- did you
12 take all four of those photographs?

13 A I did.

14 Q And what are those pictures of?

15 A This is of the den.

16 Q Without showing them to the jury.

17 A Okay. Den, living room area, living room leading to
18 the kitchen area, and a pill bottle on the floor.

19 Q And the scene that's reflected in those pictures, was
20 that the way it looked the night that you took the
21 photographs?

22 A Yes, ma'am.

23 Q The lighting was the same?

24 A Yes, ma'am.

25 Q Anything been changed?

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1 A Nothing has been changed.

2 Q Have those photographs been altered since you have
3 taken them?

4 A No, ma'am.

5 MS. GARFIELD: Your Honor, at this time I seek to
6 introduce these pictures into evidence, State's Exhibits
7 11, 12, 13, and 14.

8 MR. McMULLEN: No objection.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibits Nos. 11 was admitted
11 into evidence.)

12 BY MS. GARFIELD

13 Q Thank you, Your Honor.

14 Now, we'll start back with number 11. If you will
15 show the jury where that hallway is that leads to the
16 bedrooms in the home.

17 A Slightly -- going past the -- excuse me, slightly
18 going past the television going back. That's in the way a
19 little bit there (indicating). You can go back in, and
20 that's where the hallway leads, back into the bedroom
21 there.

22 This one here is of the den area leading down the
23 hallway. This is the living room area here coming into
24 the house from the living room into the kitchen area.

25 Q Is that taken from the kitchen angle or from the

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1 hallway area?

2 A This is taken from the -- from the living room area
3 here looking into the kitchen.

4 Q Into the kitchen. That's fine. Thank you.

5 A And this is just a pill bottle that was on the floor.
6 I didn't know what it was for. I just took the photograph
7 here, and you can see it again here in this photograph
8 down here (indicating).

9 Q Did you collect any other evidence in this living
10 room area?

11 A No, ma'am.

12 Q Just took those photographs?

13 A Yes, ma'am.

14 MS. GARFIELD: Your Honor, may I publish these
15 pictures to the jury?

16 THE COURT: Yes, ma'am.

17 BY MS. GARFIELD

18 Q Then did you proceed into the bedroom?

19 A Yes, ma'am.

20 Q And did you have the opportunity to photograph that
21 bedroom, as well?

22 A Yes, ma'am.

23 Q And did you disturb anything in the bedroom?

24 A No, ma'am.

25 Q When you first approached the bedroom, what did you

Livingston - direct (Garfield)

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1 observe about the door?

2 A Well, we knew something had happened to the door.
3 The door had been forced. There was damage to the door
4 and to the doorframe. There were pieces of wood, and I
5 think it was a strike plate that was on the floor.

6 Q Did you have an opportunity to photograph the bedroom
7 door?

8 A Yes, ma'am.

9 Q I'm going to hand you what's been marked State's
10 Exhibit Number 24 and 25. Do you recognize these
11 photographs?

12 A Yes, ma'am.

13 Q Are those photographs of the door leading to the
14 bedroom of Thaddess Starks?

15 A Yes, ma'am.

16 Q And did you change those photographs in any way?

17 A No, ma'am.

18 Q Those are exactly the way you saw it that night?

19 A Yes, ma'am.

20 MS. GARFIELD: Your Honor, we'd seek to introduce
21 these pictures into evidence.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit Nos. 24, 25 were admitted
24 into evidence.)

25

1 BY MS. GARFIELD

2 Q At that time did you enter the bedroom?

3 A Yes, ma'am.

4 Q Who you entered the bedroom, what was the first thing
5 you observed?

6 A First, just typical bedroom. There was some -- you
7 know, the bed was partially made, and it happened the
8 light was on in there. The T.V. was on, also.

9 Q What was the lighting like?

10 A It was a light but not real bright, bright, but it
11 was a light.

12 Q Could you see someone in front of you?

13 A Yes, ma'am.

14 Q Did you change the lighting?

15 A No, ma'am, outside of when I used my flash, I assume.

16 Q And you also indicated there was a television on?

17 A Yes, ma'am.

18 Q Did you notice anything in the room as it regards --
19 was there a sandwich in the room?

20 A I didn't see one.

21 Q Was there a plate where a sandwich may have been?

22 A I didn't see one.

23 Q Did you have the opportunity to photograph this room?

24 A Yes, ma'am, I did.

25 Q I hand you what's been marked as State's Exhibits 19,

Livingston - direct (Garfield)

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1 20, 21, and 22. Do you recognize those photographs?

2 A Yes, ma'am.

3 Q What are those photographs of, Investigator
4 Livingston?

5 A The first one is of the bed, the dresser. The second
6 is some clothes hanging across, I guess, a chair. Another
7 is a bed and the night stand with a pill bottle,
8 cigarettes. It looked like a candle.

9 Q Any --

10 A And I kind of took a close up of them.

11 Q Have those pictures been changed in any way?

12 A No, ma'am.

13 Q You took those photographs?

14 A Yes, ma'am.

15 Q And that's the way the room looked that night?

16 A Yes, ma'am.

17 MS. GARFIELD: Your Honor, the State would seek to
18 introduce those photographs into evidence.

19 MR. McMULLEN: Without objection.

20 THE COURT: Without objection.

21 (WHEREUPON, State's Exhibits Nos. 19 - 22 were
22 admitted into evidence.)

23 BY MS. GARFIELD

24 Q Will you tell us what you saw that is sitting on the
25 bed in that photograph?

1 A That's the telephone.

2 Q And in this picture is that also just a different
3 view of the bed?

4 A Yes, ma'am.

5 Q Is there a telephone on that bed, as well?

6 A A telephone, yes, ma'am.

7 Q That's the same telephone as in the first picture?

8 A Yes, ma'am.

9 MR. McMULLEN: May it please the Court. Could I
10 please know which exhibits these are?

11 MS. GARFIELD: I apologize, State's Exhibits 21 and
12 19.

13 MR. McMULLEN: Thank you.

14 BY MS. GARFIELD

15 Q Uh-huh.

16 Investigator, did there appear to be any signs of
17 struggle in the room?

18 A I couldn't tell whether there was a struggle, had
19 taken place in the room because of the condition that the
20 room was in.

21 Q And when you say "the condition", what do you mean by
22 that?

23 A By the way the bed looks. There was clothes up over
24 the chairs and whatnot.

25 Q Did you observe any items broken?

Livingston - direct (Garfield)

233

1 A I didn't observe anything broken, nothing, you know,
2 out of place like an ashtray turned over or something like
3 that, no, ma'am.

4 MS. GARFIELD: Thank you. Your Honor, at this time,
5 I'd like to publish these pictures to the jury, 19, 20,
6 21, and 22.

7 THE COURT: Yes, ma'am, go right ahead.

8 BY MS. GARFIELD

9 Q Investigator, what did you do after photographing the
10 bedroom?

11 A After photographing the bedroom, we came back out,
12 talked with the officer some more, and then I did what I
13 call a walk through.

14 You get through collecting evidence you just do a
15 walk through, make sure you haven't looked over anything.
16 That's what I did here. Just start from the bedroom,
17 working my way back out to the front porch. On the front
18 porch, it came back in as if I was coming in for the first
19 time to walk the way back through.

20 Q And when you did this second run through the house,
21 did you observe anything that you had not noticed before?

22 A No.

23 Q Did you take any additional photographs?

24 A I don't believe I did, no, ma'am.

25 Q During your review of the house, do you make any sort

Livingston - direct (Garfield)

234

1 of checklist?

2 A Yes, we do.

3 Q And do you have a copy of that report?

4 A Yes, ma'am.

5 Q As you did this checklist, on the bottom of page one,
6 you indicate some D.N.A. evidence obtained. Do you see
7 what I'm talking about?

8 A Yes, ma'am. I think you went to -- go on to page
9 two, page one of section two, yes, ma'am.

10 Q And do you indicate -- what is your answer indicated?

11 A Buccal swab, two swabs, yes, ma'am.

12 Q And what exactly does that mean?

13 A That means I collected two swabs from that area, two
14 blood swabs.

15 Q But how many swabs did you collect?

16 A It was four all total.

17 Q Okay. And why doesn't it reflect four?

18 A Because I was doing it there at that scene, and then
19 I did the other two at the neighbors there.

20 Q So this is a report that may change as you walk
21 through a crime scene?

22 A As I walk through, yes, ma'am.

23 Q And did you -- should you have gone back and changed
24 that?

25 A I should have, but it was both on the -- already on,

Livingston - direct (Garfield)

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1 so I just -- I left that as is there. I can't explain it.

2 Q Would you just say that that was a mistake?

3 A I can, yes.

4 Q Investigator Livingston, did that conclude your
5 investigation in this case?

6 A Down there, yes, ma'am.

7 Q And did you proceed with any other investigation?

8 A Outside of going to the hospital and collecting
9 clothing and then taking them to our lab and putting them
10 in what we call a blood drier and drying them out, that
11 was it.

12 Q So you went to the hospital --

13 A Yes, ma'am?

14 Q -- on this case?

15 A Uh-huh.

16 Q And when you were there, what type of clothing did
17 you collect?

18 A I collected a -- brown pants, brown shirt, two black
19 shoes, and socks.

20 Q Specifically, Investigator Livingston, do you
21 recognize what's been marked as State's Exhibit Number 42?
22 You might want to put on some gloves.

23 A Are they small?

24 Q I'm sorry?

25 A What size are they?

- 1 Q What size are they?
- 2 A It should be right here, "singles"?
- 3 Q Large.
- 4 A Large.
- 5 Q Think you can do it?
- 6 A I think so.
- 7 (Pause).
- 8 It's a shirt.
- 9 Q Is that the shirt you collected from the hospital?
- 10 A Yes, ma'am.
- 11 Q And when you say you take it back to the Sheriff's
- 12 Department, what do you do with it?
- 13 A We have a drying cabinet to put it in.
- 14 Q And what's the purpose of that?
- 15 A To dry the blood off.
- 16 Q And then what do you do with that shirt?
- 17 A Submit it into evidence.
- 18 Q Thank you. You wouldn't have altered that shirt in
- 19 any way?
- 20 A No, ma'am.
- 21 Q Investigator Livingston, I hate to kind of backtrack,
- 22 but I found these photos I forgot to ask you about.
- 23 State's Exhibits 29, 31, and 33, do you recognize those
- 24 photographs?
- 25 A Yes, ma'am.

Livingston - direct (Garfield)

237

1 Q And what are those photographs of?

2 A The first one is the neighbor's steps. The second
3 one is of the blood on the vegetation just below the steps
4 where the cell phone was located, and the other one is the
5 blood and the wallet.

6 Q And are those photographs you took?

7 A Yes, ma'am.

8 Q Have they been changed in any way?

9 A No, ma'am.

10 MS. GARFIELD: All right. Your Honor, we'll seek to
11 introduce these picture into evidence.

12 MR. McMULLEN: No objection.

13 (WHEREUPON, State's Exhibits Nos. 29, 31, 33 were
14 admitted into evidence.)

15 MS. GARFIELD: May we publish them to the jury?

16 THE COURT: No objection.

17 BY MS. GARFIELD

18 Q And finally, Investigator, you said you collected the
19 knife into evidence?

20 A Yes, ma'am.

21 Q What would you have done with it at that time?

22 A I would have put it into evidence and requested a
23 D.N.A. sample be ran on it also.

24 Q I'm handing you what's been introduced into evidence
25 as State's Exhibit number 43. Do you recognize that?

1 A Yes, ma'am.

2 Q And what is that a photograph of?

3 A This is the knife that I collected.

4 Q Is that the knife you found in the kitchen?

5 A Yes, ma'am.

6 Q That was the knife that was in the sink?

7 A Yes, ma'am.

8 Q Did you have an opportunity to measure that knife?

9 A I did.

10 Q I'll hand you what's been marked State's Exhibit
11 Number 38. Do you recognize that photograph?

12 A Yes, ma'am. This is the photograph I took of the
13 knife blade.

14 Q And you took that photograph?

15 A Yes, ma'am.

16 Q Has that been changed in any way?

17 A No, ma'am.

18 MS. GARFIELD: Your Honor, we'd seek to introduce
19 State's Exhibit Number 38 into evidence.

20 MR. McMULLEN: Without objection.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 38 was admitted into
23 evidence.)

24 BY MS. GARFIELD

25 Q What measurements did you find on that knife as far

Livingston - direct (Garfield)

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1 as the blade?

2 A It was about -- not quite eight inches, just about.

3 Q Eight inches?

4 A Just about, not quite.

5 MS. GARFIELD: May I publish this photograph to the
6 jury?

7 THE COURT: Yes, ma'am.

8 BY MS. GARFIELD

9 Q Investigator, did you do anything else as far as
10 crime scene analysis on this case?

11 A No, ma'am. I think that's about it there.

12 Q Beg the Court's indulgence.

13 (Pause).

14 Investigator, just to clarify, you saw blood droplets
15 on the front porch?

16 A Yes, ma'am.

17 Q And you saw blood droplets at the neighbor's house?

18 A Yes, ma'am.

19 Q And through your investigation throughout the house,
20 did you observe any other blood droplets?

21 A No, ma'am, I didn't.

22 MS. GARFIELD: Thank you, Investigator Livingston.

23 Please answer any questions Mr. McMullen may have for you.

24 THE WITNESS: Yes, ma'am.

25 MR. McMULLEN: May it please the Court.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION:

3 BY MR. McMULLEN

4 Q So you have been employed with the Sheriff's
5 Department since '95?

6 A Yes.

7 Q And that was your second employment, wasn't it?

8 A Yes, sir.

9 Q You worked for them way before that?

10 A I did, from '74 until '81.

11 Q But you came back under the T.E.R.I. program?

12 A No. I left and went back in the military, and I
13 retired from the military and came back.

14 Q How long were you with them before?

15 A Eight years.

16 Q How long have you analyzed crime scenes?

17 A Since 2000.

18 Q That's what we commonly call them, right, when the
19 police respond and there's a cutting or something, "the
20 crime scene"?

21 A Yes, sir.

22 Q The initial officer walked you through the house. Is
23 that what you said?

24 A Yes, sir.

25 Q Who was that?

Livingston - cross (McMullen)

241

1 A Haddock, I think his name was Haddock. Yeah, hold on
2 just a minute. Was it?

3 (Pause).

4 Carwell, excuse me.

5 Q Carwell?

6 A Yeah.

7 Q Now, you said now that you went outside. There was
8 an ashtray on the porch that was broken.

9 A There was an ash -- there was an ashtray on the porch
10 that was broken. There was the container. Looking at the
11 house, I think it's to the left there, which is the
12 barbecue and the ashes on the porch there also. The
13 barbecue container was on the ground.

14 Q The grill was knocked over?

15 A Yes.

16 Q Off the porch onto the ground?

17 A Yeah.

18 Q Do you have any way of knowing how those things
19 happened?

20 A No, I don't outside of it was there and I
21 photographed it.

22 Q The ashtray that was broken, what was it made of?

23 A Some kind of ceramic, I don't know.

24 Q Is that something that you could have obtained
25 fingerprints from?

1 A I don't believe so because the ashes was all over
2 there.

3 Q Did you try?

4 A No, I didn't.

5 Q How about the grill? Did you fingerprint that?

6 A No, I didn't.

7 Q You said that there were three blood droplets. Is
8 that on -- in the front porch?

9 A There were three blood droplets on the front porch
10 that I identified large enough that I can take a good
11 photograph of and also take samples of, and that's what I
12 did.

13 Q Does that lead you to believe that the bleeding at
14 that time was not profuse; that it was just dripping a
15 little?

16 A It was just -- it wasn't a lot of blood, if you're
17 asking that. It was just a lot of little blood droplets,
18 yes.

19 Q There wasn't much blood on the knife, and when you
20 were asked earlier anything unusual about it, it was in
21 the sink, correct?

22 A Right.

23 Q And you said it was unusual because it had water on
24 it.

25 A It had water on it.

Livingston - cross (McMullen)

243

1 Q And would you expect a knife in the sink, that would
2 be odd to have water on it?

3 A I expect a knife in the sink to have water on it.

4 Q Okay. And that's what it had?

5 A Yes.

6 Q Does it make sense to you if somebody had a knife in
7 their hand, that they would put it in a sink?

8 A Yeah.

9 Q You have got to put it somewhere.

10 A Put it somewhere, yes.

11 Q You didn't see any blood on the knife?

12 A I didn't, no.

13 Q Is there any that you saw that is apparent in the
14 photographs that you couldn't see with the naked eye?

15 A If you look at my photograph on the knife you didn't
16 see any blood on it at all.

17 Q None?

18 A None.

19 Q But the lab found some?

20 A I don't know. I just put it in, and I haven't gotten
21 my request back.

22 Q But apparently -- all right. All right. Blood
23 inside the house, did you see any blood inside the house
24 at all?

25 A I didn't.

Livingston - cross (McMullen)

244

1 Q Not at all?

2 A Huh-uh.

3 Q So there was not a trail of blood leading from the
4 front porch all the way down the hall to the bedroom, not
5 that you saw?

6 A Not that I saw. If I had seen it, I would have
7 photographed it.

8 Q Okay. Do we have in evidence one of the doorjamb
9 photographs?

10 A Yes, one of them, yes.

11 Q I'm referring you to State's 24, 25. Was that door
12 forced open, was that your testimony?

13 A There was some damage to the door.

14 Q Yes, sir.

15 A Damage to the door.

16 Q But it was --

17 A And to the strike plate here. Now, this would lead
18 me to believe that somebody forced the door open here.

19 Q Is that door forced open from the outside in?

20 A No. I think it -- I think this door had to go from
21 the doorjamb to the inside.

22 Q So somebody that was inside the bedroom forced it
23 open?

24 A No, someone from the --

25 Q From the hall?

Livingston - cross (McMullen)

245

1 A Outside, right.

2 Q Now, would you consider that a sign of a struggle?

3 A No. The reason being is that I've run into cases
4 where folks have locked the doors and the only way they
5 can get in is to do it themselves, force it open.

6 Q All right. When you -- when you photograph these
7 various places, do you use any artificial lighting?

8 A I use a flash, I do, yes, sir.

9 Q You use a flash?

10 A Yes, sir.

11 Q But nothing on a tripod or --

12 A Oh, no.

13 Q Do you have a flash that's connected to the camera?

14 A Yes, I do.

15 Q Is it something you can detach?

16 A Yes, sir. I have a line, an individual line, that I
17 can also detach to -- detach from the camera, hook it to
18 it if I want to hold it at different angles there. I
19 didn't have anything to do with it that night.

20 Q Did you use it that night?

21 A No.

22 Q Did you use it that night when you photographed
23 Mr. Starks?

24 A No, I didn't.

25 Q Looking for injuries that might not appear otherwise?

Livingston - cross (McMullen)

246

- 1 A No.
- 2 Q But it was with you?
- 3 A It was with me.
- 4 Q Did you look behind the door to the bedroom?
- 5 A The only thing I looked behind the bedroom -- behind
- 6 the door in the bedroom and seen was the nightstand.
- 7 There was a candle, I believe a pack of cigarettes, and a
- 8 medical bottle that was there. That's what I photographed
- 9 at.
- 10 Q Nothing behind the door?
- 11 A No. I didn't look behind the door.
- 12 Q Did not look back --
- 13 A Did not look on the floor, no.
- 14 Q Did the bedside table appear to be knocked out of
- 15 place?
- 16 A I couldn't tell you whether it was knocked out of
- 17 place or not, you know, depending on where he kept it at,
- 18 I don't know.
- 19 Q When you walked in the room, would the door
- 20 obstruct --
- 21 A No. The door wasn't obstructed. I got a full range
- 22 view. When I opened the door, the door went opened.
- 23 Q So that table was not in the way of the door?
- 24 A No.
- 25 Q Was it sitting neatly next to the bed?

Livingston - cross (McMullen)

247

1 A It was sitting next to the bed.

2 Q How many officers walked into that house before you?

3 A I don't know, sir. I know the officer that walked in
4 there with me was Officer Carwell.

5 Q Where was --

6 A We were the only ones that walked through. Now, if
7 anyone -- before I got there, I don't know.

8 Q Did you ask?

9 A I always ask, yes, sir.

10 Q Okay.

11 A And he told me no one had.

12 Q All right. No one had?

13 A Huh-uh, outside of him. He walked through, and I
14 think it would reflect on my crime scene log and nobody
15 went into the house.

16 Q If a light was out, would you flip it on so that you
17 could take photographs?

18 A If a light was out, I wouldn't need to flip it on
19 with my flash.

20 Q How -- I mean, so that you could see.

21 A No, but I carry a flashlight with me also.

22 Q Is that what you would use instead of a light that's
23 above?

24 A Above. What I would do, if I needed to have the
25 light on in the bedroom, I would take the photograph

1 first, then turn the light on.

2 Q All right.

3 A Because I want to have it just as I found it.

4 Q And that's what you did?

5 A And that's what I did.

6 Q All right. There were three blood droplets that you
7 marked with cones, and you took swabs from two of them.

8 A Yes, sir.

9 Q All right. And then the reason you said that you
10 wanted to photograph Mr. Starks is because sometimes the
11 camera shows things that the naked eye doesn't see.

12 A Yeah, it does.

13 Q How does that work?

14 A It just -- how I found out about it is just taking a
15 photograph once and seeing it on the photograph. I always
16 try to do it, just get me a good photograph of them.
17 Sometimes you can see it, sometimes you can't.

18 Q Is it because of more lighting?

19 A No. It's because of the digital camera. They can
20 really bring it out.

21 Q How does that work? How does it bring it out?

22 A With the flash -- it just -- I guess with the skin,
23 whatever in the blood pooling under the skin, I guess it
24 would bring it out there.

25 Q All right. So your testimony is that you didn't see

Livingston - cross (McMullen)

249

1 any blood pooling under Mr. Starks' skin?

2 A Didn't see any, any strike marks on him, on
3 Mr. Starks.

4 Q All right. And you didn't use a brighter flash?

5 A No, I didn't.

6 Q And it is the additional light that helped you see
7 things that you wouldn't see otherwise?

8 A Well, the only additional light I had was my
9 flashlight.

10 Q And the flash?

11 A And the flash, right.

12 Q You photographed the living room, although the
13 officer said nothing took place in there; is that correct?

14 A That's the -- I think I photographed the living room
15 going into the kitchen area there.

16 Q Yes, sir.

17 A And he -- that's what he told me, nothing took place
18 in there.

19 Q All right. And how would he know that?

20 A I guess he had told him about it.

21 Q The kitchen, the food was in a pile.

22 A Yes, sir.

23 Q Do you know who swept it into a pile?

24 A I sure don't.

25 Q There was a broom right there, wasn't there?

- 1 A Yes, sir.
- 2 Q And a little dust pan?
- 3 A Yes, sir.
- 4 Q Did you fingerprint those items?
- 5 A No, I didn't, sir.
- 6 Q Would that have been possible?
- 7 A What, to photograph those?
- 8 Q To fingerprint.
- 9 A To fingerprint them?
- 10 Q Yes.
- 11 A No, sir, the -- but the broom handle was too small.
- 12 I couldn't get a fingerprint off of it. The dust pan, I
- 13 didn't even think to fingerprint it because if I
- 14 fingerprinted it, their fingerprints would have been on it
- 15 because they're both common in the house there. If I had
- 16 fingerprinted it, I wouldn't have gotten any more than two
- 17 of those.
- 18 Q When someone uses a dust pan, don't they generally
- 19 grip it with four fingers underneath, and they put a thumb
- 20 on top?
- 21 A They can -- you can grip a dust pan several -- that's
- 22 one way you can.
- 23 Q How do you do it?
- 24 A Around, depending on the size of the dust pan and how
- 25 it's made there.

Livingston - cross (McMullen)

251

1 Q There would have been a chance that somebody's full
2 thumbprint would have been on that dust pan.

3 A Yes, sir. There would have been a chance that
4 Mr. Al's fingerprints would have been on there or
5 Mr. Starks' fingerprints would have been on there.

6 Q We just don't know.

7 A We just don't know.

8 Q But if there was a complete fingerprint or a
9 thumbprint on that dust pan, what would that tell you?

10 A Actually, it wouldn't have told me anything. It
11 would have just told me that one of them used the dust
12 pan.

13 Q Or maybe who used it last?

14 A It could have, yes.

15 Q The oils would be fresher, wouldn't it?

16 A The oils could be fresher, but the oils can be old
17 and could maintain the fingerprint. If -- if he had to
18 use it say 15, 20 minutes prior, his fingerprints, the oil
19 wouldn't have dried yet. It would have still been on
20 there. Also Al's fingerprint, if he had used it, would
21 have still been on there.

22 Q Yes.

23 A I would have gotten both of their fingerprints, even
24 if I had done it.

25 Q If both of them used it.

1 A If both of them used it. I'm pretty sure some of
2 them -- you know, they used the dust pan and the broom, so
3 their fingerprints would have been on there.

4 Q All right, sir. And the T.V. was on?

5 A It was on but no programming was on there. You're
6 talking about the den, aren't you, right?

7 Q Yes, sir.

8 A Yes. I guess it was the Dish Network. Just that
9 sign was on it, that's it.

10 Q Okay. Did you photograph the kitchen area itself,
11 the cooking area?

12 A Yes, sir, I did.

13 Q Right where somebody would -- the countertop where
14 somebody would make a sandwich, if they were making one?

15 A I think it's in one of photographs.

16 Q Yes.

17 A I think it's in there.

18 Q I beg the Court's indulgence.

19 (Pause).

20 Well, in the interest of time, I'll keep moving. Let
21 me show you State's Exhibit 38, which is the knife.

22 A Yes, sir.

23 Q Do you not see blood on that knife?

24 A Well, it could be rust. It could be blood. That's
25 why I had the D.N.A. lab check it for me.

Livingston - cross (McMullen)

253

1 Q All right. And if it was rust or if it was blood, it
2 was not cleaned off, was it?

3 A It was not cleaned off.

4 MR. McMULLEN: May I publish this to the jury?

5 THE COURT: Yes, sir.

6 BY MR. McMULLEN

7 Q Exhibit 21, that's the bedroom of Mr. Starks, is it
8 not?

9 A Yes, uh-huh.

10 Q So is exhibit 19?

11 A Yes, sir, it is.

12 Q Would you please look at that number 21 and tell me
13 whether the table appears to have been knocked out of its
14 normal place?

15 A It is twisted, but I can't tell whether that is -- is
16 that normal for where he kept the bedroom or whether it
17 knocked out of place by a struggle or whatever. I can't
18 say. That is the way that I found it.

19 Q All right, sir. You noticed whether the lampshade
20 looks intact or not?

21 A It's intact. It may be slightly tilted.

22 MR. McMULLEN: And if I may, I'll publish this to the
23 jury, exhibit 21.

24 THE COURT: Yes, sir.

25

1 BY MR. McMULLEN

2 Q And exhibit 19, sir.

3 Let me show you exhibit 16. That shows the soap you
4 discussed earlier.

5 A It looks like dish washing detergent.

6 Q Dish washing detergent. That was on the floor,
7 apparently.

8 A Right.

9 Q Could that have produced a fingerprint for us?

10 A It could have, because it's common household items
11 that these individuals would have touched and used in the
12 household.

13 Q All right, sir. And exhibit 17 would be the knife?

14 A Yes, sir.

15 Q And that's the way you found it?

16 A Yes, sir. That's where I photographed it and then
17 collected it.

18 Q And do you see water on that knife in that
19 photograph?

20 A It was when I -- when I picked it up with my gloves.
21 It was on the knife. You're not going to see it on the
22 photograph here.

23 Q How come?

24 A I can't see the water.

25 Q Did you use a flash?

Livingston - cross (McMullen)

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1 A Yes, I used a flash.

2 Q So in some circumstances you can see better with the
3 naked eye than you can with a camera?

4 A Right. Once I picked it up out of the sink, I could
5 see the moisture on it.

6 Q All right. One of the photographs reveals there's a
7 vacuum cleaner in the living room, does it not? Do you
8 recall that?

9 A Show me the photograph.

10 Q State's Exhibit 13.

11 A Okay, yes.

12 Q Did you check the contents of that?

13 A No, I didn't.

14 Q You didn't look in the vacuum cleaner bag?

15 A No, I didn't.

16 Q Did you fingerprint the handle?

17 A No, I didn't.

18 Q If you had, would it have revealed who was the last
19 person to use the vacuum?

20 A It would have revealed who had used the vacuum, maybe
21 that night before and after. It would have revealed the
22 fingerprints of Al, Mr. Thaddess, and I think his mother.

23 I could have gotten the fingerprints from all three
24 people off of that vacuum cleaner. I could have gotten
25 the fingerprints of all three people off of that soap

1 bottle. I could have gotten the fingerprints of all three
2 people who lived at that residence off of that dust pan
3 because -- unless an outside person came in, their --
4 their fingerprints would be the ones on those commonly
5 used items in the -- in the household.

6 Q Would the last person to use the vacuum not have left
7 the prints?

8 A And the person before them would have also left the
9 prints.

10 Q Do you think people hold a vacuum cleaner
11 differently, or does everybody hold it right there at the
12 handle?

13 A It depends on how you hold the vacuum cleaner, sir.
14 I can't say.

15 Q All right, sir. How did you know that bedroom
16 belonged to Thad Starks?

17 A Because that's where the officers led me to, and I
18 guess Thadness had told them about it, Mr. Officer
19 Carwell.

20 Q There's medicine and bottles in that bedroom, is
21 there not?

22 A Uh-huh.

23 Q Did you check the name on those?

24 A No, I didn't.

25 Q All right. The light was on in the bedroom; is that

Livingston - cross (McMullen)

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1 correct?

2 A Yes.

3 Q And you stated, I believe, "it's not terribly well
4 lit." Is that what you said earlier?

5 A It wasn't a bright, bright light, no.

6 Q It was not?

7 A No, sir.

8 Q Okay. And by the time you got there, it was dark?

9 A What, nighttime?

10 Q Yes, sir.

11 A Outside, yes. It was nine o'clock at night.

12 Q There was no --

13 A Ordinary --

14 Q There was no sunlight coming in?

15 A No sunlight, no, sir.

16 Q You were asked whether there was a sandwich in the
17 room or anything like that.

18 A Yes, sir.

19 Q Did you look for a sandwich in the room?

20 A I had no reason to look for one, but I photographed
21 the room and didn't see one in there.

22 Q Nobody asked you to look for any signs of a sandwich?

23 A No.

24 Q Did they ask you to look for signs of a sandwich in
25 the kitchen?

1 A No.

2 Q Before I asked, did you remember that the vacuum
3 cleaner was there?

4 A Did I remember the vacuum cleaner was there? In the
5 photographs, yes, sir, they were there.

6 Q The condition of that bedroom, the bed has got some
7 of the sheets off of it?

8 A Uh-huh.

9 Q The table was not sitting flush against the wall.
10 The door was broken open from the outside. Those you
11 don't consider signs of struggle?

12 A Signs of struggle, I mean, that could be the way that
13 he had that bedroom for himself, the way he kept his
14 bedroom.

15 You know, I can't say that that was a sign of
16 struggle, that there was a fight in there because it
17 wasn't out of disarray or anything, just torn up like
18 somebody had struggled in a bedroom there.

19 That room looked like someone had -- had kept it that
20 way. You know, he said -- he was saying -- when I was
21 told from Officer Carwell that he was in the bedroom, so I
22 guess he was in there watching television.

23 I can't say, maybe he was laying across the bed in
24 there. I didn't see a chair for him to sit on. I
25 didn't -- I didn't see any other thing that he would be

Livingston - cross (McMullen)

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1 used to -- to sit down on that side of the bed. Maybe he
2 was lying on the bed. I can't say.

3 Q The same would be true of the kitchen and the front
4 porch, wouldn't it? If you saw rice on the floor, you
5 don't know how it got there. That in and of itself isn't
6 a sign of a struggle, is it?

7 A No, because someone could have dropped a plate and
8 swept it up there.

9 Q Someone angry could have thrown it?

10 A That's true.

11 Q The two swabs that you took from the front of the
12 house, and then there were two swabs that you took at the
13 neighbor's house; is that correct?

14 A Yes, sir.

15 Q How do we know which swabs came from where?

16 A I have to label it. The little boxes have to be
17 labeled.

18 Q So -- and your report says two were taken.

19 A Right.

20 Q Did you complete that report before or after you
21 labeled those bottles?

22 A I completed the report. The bottles were done at the
23 scene there.

24 Q Yes, sir.

25 A And the report I always complete, but I always have

1 to go back over my report. I have to go back over it
2 twice. I went over it, myself and my supervisor.

3 Q So which happened first? Did you complete the report
4 initially and then do the bottles, or did you do the
5 bottles and then do your --

6 A I did the swabs, and then I did my report.

7 Q All right. So --

8 A I think that's what you're asking me there, right?

9 Q Yes, sir.

10 A Yes, sir.

11 Q So when you completed the report, you knew you had
12 four swabs.

13 A Right.

14 Q You didn't just take two and then complete your
15 report and go next door and take more?

16 A No.

17 Q Okay. Did you test that knife in any way?

18 A I didn't test the knife in any way.

19 Q Did it appear to you to be a sharp knife?

20 A I guess it would be a sharp knife looking at the size
21 of it there and what it would be used for. I didn't pick
22 it up to see how sharp it was. I didn't test it.

23 MR. McMULLEN: Beg the Court's indulgence.

24 (Pause).

25 No further questions. Thank you, sir.

Livingston - cross (McMullen)

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1 THE COURT: Redirect?

2 MS. GARFIELD: Yes, sir.

3 REDIRECT EXAMINATION:

4 BY MS. GARFIELD

5 Q Investigator Livingston, you were asked about
6 fingerprinting the grill, fingerprinting the ashtray.

7 A Uh-huh.

8 Q Fingerprinting the broom, and fingerprinting a dust
9 pan.

10 A Right.

11 Q All right. Forget the science and logistics of
12 whether or not those items are suitable to even be
13 fingerprinted, if so, is it not possible to have found
14 both the defendant's fingerprints, as well as the
15 deceased's fingerprints?

16 A Yes, ma'am. I would have found the deceased's
17 fingerprints, Mr. Thaddess' fingerprints, and his mother's
18 fingerprints if I had dusted that.

19 Q Is there any --

20 A Those items.

21 Q If you had found fingerprints, is there any way to
22 date those fingerprints?

23 A No.

24 Q How long do fingerprints last?

25 A A long time.

1 Q Thank you. And it's not unusual to find a knife in a
2 sink.

3 A Not unusual, no.

4 Q Is it unusual to find a knife in a sink that's been
5 used as a murder weapon?

6 A Unusual.

7 Q And we were talking about everybody that was at this
8 crime scene as far as law enforcement is concerned. When
9 you got there, you said one of the first things you do is
10 ask who all was on the crime scene?

11 A Right.

12 Q Is there any sort of log that's made as to who all is
13 on the scene?

14 A Crime scene log, yes, ma'am.

15 Q Do you keep that log?

16 A Yes, ma'am.

17 Q And do you have that log with you?

18 A Yes, ma'am.

19 Q Referring to that log, who all was on the scene that
20 evening?

21 A Referring to my log, 21:15 was Officer Carwell; 21:20
22 Watford; haddock came on the scene at 21:25, and I came on
23 at 21:25 also -- 21:45, excuse me.

24 Q So at that present time when you arrived, those are
25 the only four people that had been there?

Livingston - redirect (Garfield)

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1 A Yes, ma'am.

2 Q There wasn't anyone else allowed as far as any other
3 lay witnesses?

4 A No one.

5 Q And when I say "lay witnesses", I mean people who are
6 not law enforcement officers?

7 A Right.

8 Q Would there have been allowed any family members into
9 the home?

10 A Into the home, no.

11 Q Thank you. And when you first get there, you get
12 basically a briefing from the officers on the scene
13 telling you what all has happened.

14 A Yes, ma'am.

15 Q And that briefing came to you from Deputy Carwell?

16 A Yes, ma'am.

17 Q And where would he have gotten the information about
18 what had happened?

19 A He would have gotten it from Mr. Thaddess Starks.

20 Q And there's no way he could have gotten any
21 information --

22 MR. McMULLEN: Object to the form of the question.

23 BY MS. GARFIELD

24 Q Is there any way you could have gotten the
25 information from anyone else who had been at that home?

1 A No, ma'am.

2 Q Couldn't have asked the deceased, could he?

3 A Huh-uh.

4 MS. GARFIELD: Thank you. Nothing further.

5 MR. McMULLEN: One brief?

6 THE COURT: Sure.

7 RE CROSS-EXAMINATION:

8 BY MR. McMULLEN

9 Q So Watford was there before you were.

10 A Yes, sir.

11 Q Haddock was there before you were.

12 A Yes, sir.

13 Q And Officer --

14 A Carwell.

15 Q What was her name?

16 A Carwell was the first officer.

17 Q Carwell, yes, sir. So there were three people before
18 you were.

19 A Right.

20 Q So any one of those three could have turned on a
21 light in the house; is that correct?

22 A From my briefing from Officer Carwell, he said no one
23 had been in the house there.

24 MR. McMULLEN: All right. All right. No further
25 questions. Thank you.

Livingston - recross (McMullen)

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1 THE COURT: All right, sir. You may come down.

2 Thank you very much.

3 MS. GARFIELD: May this witness be excused, please?

4 THE COURT: Any objection?

5 MR. McMULLEN: No, sir.

6 THE COURT: Without objection.

7 All right, ladies and gentlemen. Let's take a short
8 break, be about ten, 15 minutes. Just relax a few
9 minutes. Take an afternoon break. We'll call you when
10 we're ready.

11 Let's have order until the jury leaves. We have no
12 bailiffs here again. Thank you.

13 (WHEREUPON, the jury left open court at approximately
14 3:30 p.m.)

15 THE COURT: We'll stand at ease.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: Is the State ready to proceed?

18 MS. GARFIELD: The State is ready to proceed.

19 THE COURT: Is the defense ready to proceed?

20 MR. McMULLEN: Yes, sir, Your Honor.

21 THE COURT: Bring the jury, please.

22 (WHEREUPON, the jury came into open court at
23 approximately 3:54 p.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: All right. Thank you very much.

1 Solicitor, call your next witness.

2 MS. GARFIELD: Thank you, Your Honor. The State
3 calls John Barron.

4 THE CLERK: Thank you. Please have a seat in the
5 witness stand and state your full name for the record.

6 JOHN BARRON, after being duly sworn,
7 testified as follows:

8 THE WITNESS: My name is John C. Barron, B-A-R-R-O-N.

9 DIRECT EXAMINATION:

10 BY MS. GARFIELD

11 Q Mr. Barron, where are you employed?

12 A The Richland County Sheriff's Department.

13 Q And what are your duties with the Richland County
14 Sheriff's Department?

15 A I am the D.N.A. and trace analyst there in the
16 forensic sciences laboratory.

17 Q How long have you been with the Sheriff's Department?

18 A Since March of 2004.

19 Q Previous -- before your employment with the sheriff's
20 department, where were you employed?

21 A South Carolina Law Enforcement Division, otherwise
22 known as S.L.E.D., in their forensic science laboratory.

23 Q What did you do specifically there?

24 A Well, I did D.N.A. for about five years prior to
25 coming to Richland County. Prior to that, I did forensic

Barron - direct (Garfield)

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1 serology and trace evidence examination.

2 Q And when you say you do D.N.A., what does that mean?

3 A That means I analyze evidence, biological material,
4 for D.N.A. profiles.

5 Q And how many years did you do that with S.L.E.D.?

6 A Five.

7 Q So all in all, you have done that well over ten
8 years?

9 A For about eight years with D.N.A., yes.

10 Q Okay.

11 A As far as serology, that's identifying blood stains,
12 body fluid stains. I've done that for over 25 years.

13 Q And can you share with the jury what your educational
14 background?

15 A Yes. I have a bachelor of science degree in
16 microbiology from Clemson University. I've also taken
17 post graduate courses from the University of South
18 Carolina.

19 I've also taken numerous continuing education courses
20 in forensic science through forensic science professional
21 organizations and instrument companies that provide us
22 with the instruments we use to do our analysis.

23 I've performed numerous tests in forensic serology
24 and D.N.A., and I've actually testified in forensic
25 serology probably over several hundred times.

1 Prior to D.N.A. analysis and since the advent of
2 D.N.A. in the late '90s, I testified on D.N.A. analysis
3 for about -- approximately 20 times.

4 Q And have you ever been qualified in court as an
5 expert in forensic serology in D.N.A. analysis?

6 A Yes, I have.

7 Q How many times would you say?

8 A Well, each one of those times I just mentioned, over
9 200 times in forensic serology and about 20 times in
10 D.N.A.

11 MS. GARFIELD: Your Honor, at this time, I'd like to
12 introduce Mr. John Barron as an expert in this field.

13 THE COURT: Any objection on qualification?

14 MR. McMULLEN: No, sir.

15 THE COURT: All right. You may proceed.

16 BY MS. GARFIELD

17 Q Okay. Mr. Barron, can you explain to the jury what
18 exactly is serology?

19 A Well, serology involves the identification of body
20 fluids such as blood, semen, saliva. These types of
21 materials contain cells that would have D.N.A. in them,
22 which would be a strong indication that we could find a
23 D.N.A. profile.

24 Q And following up with that, what exactly is D.N.A.
25 analysis?

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1 A D.N.A. is the long chain molecule that's in most of
2 the cells of our body. It is what identifies us as human
3 beings and also us individually as a specific human being.

4 It is the same in all the tissues and cells in your
5 body, so any of those cells or tissues that we test and
6 develop a D.N.A. profile would identify you as the
7 individual if we get a full profile, or in most cases at
8 least most of the profiles are positively identified to an
9 individual.

10 It is very helpful, not only in forensic science but
11 in medical research and various types of research. It's
12 part of D.N.A. I'm sure you have heard it in the news.

13 As far as doing an identification, it's used in law
14 enforcement in criminal activity when blood is spilled.
15 In the case of a sexual assault, you have semen transfer,
16 hair transfer, tissue, if somebody scratches somebody.

17 Any type of material like that, D.N.A. profiles can
18 be developed. Most profiles are -- from evidence are
19 compared to known samples to individuals to determine
20 whether or not that D.N.A. is from that person or not.

21 Q So first you're looking for a -- just to find the
22 body fluid, and then after that you're going on to do
23 D.N.A. analysis?

24 A Correct.

25 Q Is that --

1 A In most cases, we're trying to find the body fluid.
2 In some cases like skin cells, there's really no tests,
3 but we test the material that could be touched by someone.

4 If somebody put their mouth on something like a
5 cigarette butt or a drink can, that could leave skin cells
6 from the mouth, and we just simply test it to see if
7 there's any D.N.A. there or not. If there is, then fine.
8 If not, we just don't get anything developed.

9 Q Did you have any analysis of any evidence in this
10 case regarding D.N.A.?

11 A Yes, I did.

12 Q And do you recall what you were asked to test?

13 A Yes. I was submitted swabs from the victim's hand.
14 I was submitted a known blood sample from the victim,
15 Alphonzo Cleveland. I was submitted two swabs that
16 allegedly came from the crime scene. I was submitted a
17 knife for examination to see whether or not there was
18 blood and D.N.A. present on that.

19 MS. GARFIELD: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes, ma'am.

22 BY MS. GARFIELD

23 Q I'm going to hand you what's been premarked as
24 State's Exhibit Number 44. Do you recognize this item?

25 A Yes. State's Exhibit 44 is two swab cartons that are

Barron - direct (Garfield)

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1 packaged in a heat-sealed container. These cartons
2 contain the swabs that I examined for blood and D.N.A.

3 MS. GARFIELD: And I'm going to have to get these
4 items marked. Beg the Court's indulgence.

5 (WHEREUPON, State's Exhibits Nos. 45, 46 were marked
6 for identification only.)

7 BY MS. GARFIELD

8 Q Mr. Barron, I'm going to hand you what's been marked
9 as State's Exhibit 46. Can you identify that item?

10 A Yes. State's Exhibit 46 is a manila envelope. You
11 can see the evidence tape that someone -- that it has been
12 opened, and I did open this and retrieved the swabs from
13 the victim's hands for examination for blood and D.N.A.

14 Q And those swabs would have been taken where? Are you
15 familiar with that?

16 A One swab from the left hand, one from the right hand.

17 Q Can you take that out of that bag, Mr. Barron?

18 A Take this out?

19 Q Yes, sir.

20 A I think it's taped up.

21 Q Okay.

22 A Do you want it undone?

23 Q This is the way you would have received it, and then
24 it was taped back; is that the way --

25 A Right. It was taped initially at the top here, and

1 then I cut it off and retaped it on this portion on the
2 bottom.

3 Q Thank you. And I'm going to hand you what's been
4 marked as State's Exhibit Number 45. Do you recognize
5 that?

6 A Yes. State's Exhibit 45 is a small little coin
7 envelope. This contains a dried blood sample of Alphonzo
8 Cleveland.

9 MS. GARFIELD: Your Honor, we would move State's
10 exhibits number 45, 44, and 46 into evidence.

11 MR. McMULLEN: No objection.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibits Nos. 44 - 46 were
14 admitted into evidence.)

15 BY MS. GARFIELD

16 Q Did you perform D.N.A. analysis on those items
17 mentioned?

18 A Yes, I did.

19 Q And can you just share with the Court what the
20 results of those items were?

21 A Well, first of all, each one of them before examined
22 for blood. I performed a blood screening test, a very
23 sensitive chemical test. If it's positive, it is
24 indicated with blood.

25 At that point, I would go forward to extract the

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1 D.N.A. from that and try to develop a profile. In each of
2 these cases, I did develop profiles from all those items
3 and compared them to the known D.N.A. profile from
4 Alphonzo Cleveland that was developed from his known blood
5 sample from the coroner's office.

6 Q And what were your results of those comparisons?

7 A Well, I found that the D.N.A. profile that was
8 developed from each of those items matched Alphonzo
9 Cleveland, and I developed a -- what we call a frequency
10 statistic for that.

11 This frequency statistic simply tells us how rare
12 this profile is and would be indicated -- in this case,
13 the frequency that I would expect to see this D.N.A.
14 profile in the African-American population is one in 67
15 quintillion. That's a huge number. You probably never
16 heard of it before, but it's basically 67 followed by 15
17 zeros. So it's a huge number.

18 It is several thousand times larger than -- I mean,
19 rarer than the number of people on the planet earth, so
20 it's only six-and-a-half billion people on the planet
21 earth. That's 6.5 by nine zeros, followed by nine zeros.
22 This is 15 zeros, so in -- statistically, this is a unique
23 profile.

24 Q So is it safe to say the knife (sic) that was found
25 on that knife belonged to Alphonzo Cleveland?

1 A Correct. I don't believe we talked about the knife
2 yet.

3 Q I'm sorry, the blood that was taken from the swabs
4 that you did the D.N.A. analysis on, was that found -- was
5 that consistent with Alphonzo Cleveland's blood?

6 A Yes. I mean, the D.N.A. from the blood on each of
7 these items matching Alphonzo Cleveland, it's my opinion
8 that this is Alphonzo Cleveland's blood.

9 Q And did you also have the opportunity to do any other
10 further analysis regarding this case?

11 A Yes. There was one other item that I examined. It
12 was a knife.

13 Q And I'll show you what's been already marked into
14 evidence, State's Exhibit Number 43. Do you recognize
15 this object?

16 A Yes, I do. This was a -- it looks like a kitchen
17 knife. It has my initials on the blade.

18 Q And who submitted --

19 A And on the box.

20 Q Who submitted that to you for analysis?

21 A I retrieved this from the evidence custodian at the
22 Richland County Sheriff's Department.

23 Q Was there any particular law enforcement officer that
24 requests analysis be done?

25 A Ray Livingston.

Barron - direct (Garfield)

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1 Q Thank you. And when you did the examination of this
2 knife, were you able to find a match? Were you able to
3 find any blood on the knife?

4 A Yes, I was. I did not see any visible blood on
5 there, but I did swab the blade and the handle. I did get
6 a reaction to blood. So then I proceeded then to extract
7 the swab that I used to swab off the knife blade and the
8 handle and extracted out the D.N.A. I was able to develop
9 a D.N.A. profile from that.

10 Q And what profile were you able to develop?

11 A It matched also Alphonzo Cleveland. So in my
12 opinion, that is Alphonzo Cleveland's blood on that knife.

13 Q And is there a numerical number that you can give us,
14 as well on that?

15 A Yes. In this case the knife -- although it matched
16 -- it does match Alphonzo Cleveland, it did not -- I was
17 not able to develop a totally complete profile, but the
18 numbers are one in 8 trillion. So again, it's about 1,000
19 times more than the people on the planet earth, so in my
20 opinion, that's Alphonzo Cleveland's blood.

21 Q Did you perform any other analysis?

22 A I believe that's it.

23 MS. GARFIELD: Thank you, Mr. Barron. Please answer
24 any questions the defense may have for you.

25 MR. McMULLEN: No questions. Thank you.

1 MS. GARFIELD: Your Honor, may Mr. --

2 THE COURT: You may come down. Thank you very much.

3 MS. GARFIELD: May this --

4 THE COURT: May the witness be excused?

5 (There was no response).

6 Without objection.

7 Next witness.

8 MS. SHIPLEY: Thank you, Your Honor. The state calls
9 Investigator Kevin Isenhoward.

10 KEVIN ISENHOWARD, after being duly
11 sworn, testified as follows:

12 THE CLERK: Thank you. Please have a seat in the
13 witness stand and state your full name for the record.

14 THE WITNESS: My name is Kevin Isenhoward.

15 DIRECT EXAMINATION:

16 BY MS. SHIPLEY

17 Q Investigator Isenhoward, can you please tell the jury
18 where you're employed?

19 A The Richland County Sheriff's Department.

20 Q How long have you before there?

21 A Ten years.

22 Q And where are you -- how did you start off and what
23 promotions, if any, did you get?

24 A When I first started, I actually was a security
25 officer here at the courthouse, and then I became a patrol

Isenhoward - direct (Shipley)

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1 deputy. I think you heard from some of those earlier
2 today. Then I moved up into investigations.

3 Initially, I was a burglary investigator
4 investigating house break ins. I worked in narcotics as a
5 narcotics agent and then -- and now I'm a major crimes
6 investigator. I investigate robberies and homicides.

7 Q And can you explain exactly what you do to
8 investigate homicides?

9 A Well, most of the time you're called out to the scene
10 where the line officers, the deputies, have responded to
11 where someone was found deceased.

12 Initially, I try to observe the crime scene, look at
13 everything, speak to any witnesses who are available, make
14 sure that any forensic tests are done, speak with the
15 forensics or crime scene investigators, and then try to
16 identify a suspect in a crime. Then if that does happen,
17 I try to talk with that person.

18 Q And in your career, how many times have you responded
19 to a homicide case where the suspect is right there at the
20 scene?

21 A Just a few times, two or three.

22 Q Okay. Now, when you got involved in this case back
23 on October 12, 2006, approximately when was it that you
24 arrived on the scene?

25 A I believe it was around 9:30. Let me make sure.

1 Q And you're going -- what is that that you're going
2 to --

3 A This is a case file. We put all of the reports, all
4 of the statements taken. All of my notes are in here.
5 Yeah, they -- they responded to the scene at nine --
6 excuse me, 8:30, and I got out there around nine o'clock.

7 Q Okay. Now, you arrived on the scene after all the
8 law enforcement officials have already testified got
9 there; is that correct?

10 A Yeah. That's usually the case.

11 Q Okay.

12 A Unfortunately.

13 Q And so Deputy Carwell testified he got to the scene
14 at 9:15 p.m. Did you arrive after Carwell?

15 A I did.

16 Q Okay. And did -- the address you arrived to is the
17 incident location, [REDACTED] [REDACTED] [REDACTED]?

18 A Yes.

19 Q All right. Who is the first individual that you made
20 contact with at the scene?

21 A When I go out to the scenes, and in this case I spoke
22 to Deputy Carwell, the responding officer, the one who is
23 responsible for writing the report, and I did so in this
24 case.

25 Q And Deputy Carwell briefed you on the fact that he

Isenhoward - direct (Shipley)

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1 had been out there earlier; is that correct?

2 A He did. He told me about the previous incident which
3 you heard about. He told me what his observations were in
4 that case, and then he then goes forward into when he
5 responds out the second time. He tells me about what he
6 observed when he arrived.

7 Q And any contact he made with either of the parties?

8 A Yes.

9 Q Okay. Now, when you got there, had Carwell indicated
10 to you that he had already placed Mr. Starks in detention
11 or...

12 A Yeah. He said he was holding him for me.

13 Q Okay.

14 A He -- most of them, of the deputies, try to just hold
15 the situation for us. You know, they don't want to make
16 any mistakes. They just want to hold it and then let us
17 decide what we need to do from that point.

18 When I arrived there, he was standing outside. He
19 was being held in detention. He was a very large man. He
20 was in handcuffs, so that's how he was when I found him.

21 Q Okay. And did you make contact with Mr. Starks?

22 A I did. I did. Initially --

23 Q And if you could explain for the jury, when you
24 encounter someone, a suspect in a case, in a criminal
25 case, what do you want to make sure you do before you

1 start talking to them?

2 A If it's someone who I think may be in jeopardy of
3 being charged with a crime, I advise them of their rights.
4 You hear them a lot, but we try to actually read them off
5 of a card so they're consistent with what we tell people.
6 We don't just go from memory.

7 Q And do you have that card on you today?

8 A I do have it. I carry it everywhere I go.

9 Q Okay. Can you go ahead and pull it out and exactly
10 the way you did with Mr. Starks demonstrate what you did?

11 A Okay. I tell him who I am. "I'm Kevin Isenhoward
12 with the Richland County Sheriff's Department. I'm going
13 to read you your rights, and I want you to understand
14 them. If you have any questions about either one of these
15 questions, please stop me, ask me the question. I'll try
16 to answer it. At the end, I want you to tell me what
17 you'd like to do.

18 You have the right to remain silent and refuse to
19 answer any questions. Do you understand? Anything you
20 do, say may be used against you in a court of law. Do you
21 understand? You have the right to consult an attorney
22 before speaking to the police and to have an attorney
23 present with you during any questions now or in the
24 future. Do you understand?

25 If you can't afford an attorney, one will be

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1 appointed to you before any questioning if you wish. Do
2 you understand?

3 If you decide to answer questions now without an
4 attorney present, you still have the right to stop
5 answering at any time. You also have the right to stop
6 answering until you talk to an attorney. Do you
7 understand?

8 Knowing and understanding your rights as I have
9 explained them to you, are you willing to answer my
10 questions without an attorney present?"

11 Q And how did Mr. Starks respond to that?

12 A He said he was willing to talk to me.

13 Q Okay. And so tell the jury exactly what the
14 conversation -- what conversation took place after you
15 advised him of his rights?

16 A He said that Mr. Cleveland was intoxicated, and that
17 they had been arguing all night. He again went over the
18 first incident where Cleveland called the police in an
19 attempt to remove him from the home.

20 He said that when Deputy Carwell told him that he
21 couldn't do that, he said that Mr. Cleveland was very
22 upset about that.

23 He said that after the officer left, the argument
24 continued to escalate. He says that he called his mother
25 and wanted her advice on what to do. He says that his

1 mother told him to go to his bedroom, close the door,
2 "Don't add any fuel to the fire, and I'll take care of
3 things when I get home." She wasn't able to come right
4 then. He says that he did that.

5 He said that he was hungry, so he made himself a
6 sandwich and got a knife to cut the sandwich. It says
7 that he took the sandwich on a plate with a knife and a
8 paper towel into his bedroom.

9 He says that he was in the bedroom watching T.V.
10 minding his own business when the door was forced in. He
11 says Mr. Cleveland came into the bedroom and backhanded
12 him is how he put it.

13 He says that when he backhanded him, he was afraid
14 and he took the knife. He used word "gig" him to get him
15 off of him.

16 Q Is that gig or jigged?

17 A Jigged, I'm sorry.

18 Q Okay.

19 A And I took that as meaning, you know, a very light
20 jabbing motion. That's how he was explaining to it me.

21 Q So he demonstrated for you --

22 A Yes.

23 Q -- the jig --

24 A Yes.

25 Q -- like that?

1 A Yes.

2 Q Okay. And also, you -- you mentioned the word -- he
3 used the word backhanded, not slapped.

4 A Yes. That's how he described it was he backhanded
5 him. Almost in a -- he was telling it to me in a way that
6 he was kind of disrespected. You know, it was -- I don't
7 know how to explain it, like he just slapped him like he
8 was a woman, he was an abuser or something like that.
9 That's the impression that I got.

10 Q Now, did he indicate where he was backhanded?

11 A He said --

12 Q Where on his body?

13 A In the face.

14 Q In the face, okay. And so at that point after he
15 indicated that he jiggled the -- jiggled Al with a knife --

16 A Uh-huh.

17 Q -- what did Al do next?

18 A He -- he said that Al ran out of the room and ran to
19 the neighbor's house, and then he said he called 911 and
20 told them to send an ambulance.

21 I asked him specifically was he in fear for his life
22 when he slapped him.

23 Q When Al slapped the defendant, Starks?

24 A Yes.

25 Q Okay.

1 A And he kind of stumbled, stuttered a little bit
2 over -- as if he was picking his words carefully, and he
3 said that "I'm disabled, and I can't defend myself."

4 I said, "Okay. Did you see him with any weapons in
5 his hands or anything he could, you know, hurt you with
6 badly?"

7 He said, "I couldn't see any weapons. It was dark."

8 Q And at that point after you got this statement from
9 him, are you taking notes as you talked to him?

10 A Absolutely.

11 Q Okay.

12 A I take handwritten notes, and then I'd go back and
13 type an official report.

14 Q And you did everything from your notes incorporated
15 into a typewritten report?

16 A That's right.

17 Q Okay.

18 A Sometimes I'll take a written statement from the
19 person, but he chose not to give me --

20 MR. McMULLEN: I object.

21 MS. SHIPLEY: It's okay. Let's just move on --

22 MR. McMULLEN: Your Honor, I move to strike.

23 MS. SHIPLEY: -- to the next question.

24 THE COURT: I understand.

25 MS. SHIPLEY: Okay.

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1 THE COURT: Strike that from the record. The
2 objection is sustained.

3 BY MS. SHIPLEY

4 Q Investigator, at that point after you talked to
5 Mr. Starks verbally, where was he when you were having
6 this discussion with him?

7 A Initially he was standing in front of the house, and
8 then we moved into the my patrol car.

9 Q Okay.

10 A Where I thought we would be more comfortable talking
11 to me.

12 Q Okay. And so you allowed him to sit down?

13 A Yes, uh-huh.

14 Q -- and allowed him to talk to you?

15 A Right.

16 Q All right. At that point, did you examine him for
17 any injuries?

18 A Yes.

19 Q And how did you do so? Explain for the jury.

20 A I used a flashlight. I have a flashlight, like most
21 police officers. I held it up to his face and asked him
22 if he had any injuries, was he having any pain anywhere
23 from the slap.

24 I shined it in his face, and I didn't see any
25 injuries. He did have a scar on his throat.

1 Q And that was from a -- you don't know where that came
2 from, correct?

3 A (There was no response).

4 Q Now, Starks, did you talk to him more about his
5 physical condition?

6 A Basically, he said that he had a condition where he
7 couldn't keep his balance. He said he was unstable on his
8 feet.

9 Q Did he ever say he was epileptic?

10 A There was.

11 Q In your conversations that night?

12 A He said that he suffered from seizures, I believe.

13 Q But he never said he was epileptic?

14 A No.

15 Q Okay. And at that point, did you also make note of
16 his size?

17 A Oh absolutely. He's a -- like I said, he's a large
18 man. He's -- in my estimation, like I said, he's around
19 6'1", probably over 330 pounds. That was my estimate at
20 the time.

21 Q Okay. Now, at that point when you were done talking
22 to Mr. Starks, what did you do next?

23 A After -- after I spoke with him, I placed him
24 actually inside a sheriff's patrol car and spoke with my
25 supervisors and a representative of the Solicitor's

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1 Office. I also went inside the crime scene and took a
2 look around.

3 Q Okay.

4 A Specifically, what I wanted to do was see if there
5 was anything that matched up or whether there was or
6 wasn't things that matched up with what he told me to try
7 to corroborate his statement.

8 Q And so when you went in the -- into the house, did
9 you notice the butcher knife?

10 A I did see it. I -- I don't process evidence. I try
11 to observe it, make note of it, and I don't disturb it in
12 any way.

13 I do remember that it was in the sink, and it
14 appeared that it was being washed off in some manner.

15 Q Okay. And then did you also notice any water on the
16 knife?

17 A I noticed water in the sink. I don't know
18 specifically that it was on the knife.

19 Q Okay. And I'm going to refer to page two of your
20 typewritten report, second paragraph.

21 A Okay.

22 Q Third sentence, just to refresh your memory.

23 A I did write in my notes there was water on the knife,
24 as if it had been rinsed off. So I would refer back to
25 this as being written immediately after the incident.

1 Q All right. And did you notice any blood droplets in
2 the residence?

3 A I did. There were some very light droplets in the
4 carpet. It kind of got heavier towards the front door, so
5 there was droplets, just a few near the kitchen and on the
6 carpet bleeding through this den area. I guess I would
7 call it a den, towards the hallway leading into the
8 bedroom.

9 Q If you could, just to orient the jury, when you walk
10 in through the front door of this residence, explain what
11 room you're in.

12 A When you walk in the front door, you're actually in,
13 I guess, what I would describe as a living room. There's
14 a master bedroom, I think, that leads directly into the
15 living room.

16 If you continue to walk straight, you're actually in
17 the kitchen. If you take a right, you're in a -- I guess
18 a living room area where this T.V. was, and then the
19 hallway leads out of that room to at least one bedroom in
20 particular. I spent -- obviously, I was in the bedroom,
21 Mr. Starks' bedroom.

22 Q Okay. I'm going to show you State's 13. If you
23 could look at this photograph and kind of tell us where
24 the door coming into the residence would be in this?

25 A You're actually probably standing -- when he took

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1 this photo, he's probably standing in the doorway.

2 Q Okay.

3 A This is what you see when you look in.

4 Q I see. So he's standing in the doorway as 13 is
5 taken?

6 A Right.

7 Q Now, you also indicated that you went into his
8 bedroom, correct?

9 A I did.

10 Q And did you notice anything unusual about the door?

11 A There was some -- I would describe it as light damage
12 to the -- I guess the locking mechanism to the door. It
13 wasn't as if the frame was torn down, but there were some
14 screws loose and you could see some wood exposed.

15 Q Okay. And when you went into the room, what did you
16 do to determine whose room it was?

17 A Well, you know, I'm looking at things around. Most
18 of the time, you look for mail and anything with someone's
19 name on it that would be in their room.

20 In this particular case, there was some medicine,
21 prescription medicine bottles, that I saw in there. They
22 had Mr. Starks' name on them.

23 Q And where was that medication bottle located in the
24 bedroom?

25 A I believe it was on a table, like a side table next

1 to the bed.

2 Q Okay. I'm going to show you State's number 21 and
3 ask you if you see the pill bottle.

4 A It's right here. It's beside the bed on the table.

5 Q And also, I'm going to show you State's number 22
6 closer up.

7 A Yes. That's the bottle and there's some mail
8 underneath.

9 Q And other than the bed being unmade, did you see any
10 signs of struggle inside of that room?

11 A No, I didn't. It's -- it's difficult to say.

12 Q Okay. State's number 20 you don't see any?

13 A No.

14 Q All right. Then after that, did you look for
15 anything in particular in the bedroom?

16 A Yeah. I remembered that he told me that he had
17 brought the knife to the bedroom because he was going to
18 cut the sandwich with it.

19 He said he made himself a sandwich and put it on a
20 plate and brought some napkins. Specifically, I was
21 looking for an uneaten sandwich, partial sandwich,
22 napkins, anything matching up to what he told me. I
23 didn't see anything like that in the bedroom.

24 Q So no plates?

25 A There wasn't anything.

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1 Q No paper towels?

2 A No.

3 Q No bread crumbs, nothing?

4 A No.

5 Q Also, describe the lighting when you walked into that
6 room.

7 A The T.V. was on, and there was a light -- there was a
8 ceiling fan with a light fixture attached to it, so the
9 light was on. The room was well lit at that time.

10 Q If someone were standing right in front of you,
11 perhaps within arm's reach --

12 A Uh-huh.

13 Q -- would you have been able to see that person
14 without any difficulty?

15 A Yes, yes.

16 Q Okay. Now, after you reviewed the bedroom, where did
17 you go next?

18 A I actually took -- I guess walked back out of the
19 bedroom back down this hallway back into the kitchen.

20 I also observed the rice and I guess hot dogs or
21 sausages in the floor swept into a pile. You know, I just
22 took a look at all of that. Then I went back outside and
23 spoke again with Mr. Starks.

24 Q Okay. Now, before you went to talk to Mr. Starks,
25 did you also talk to Investigator Livingston about all

1 observations at the scene?

2 A Yeah. Let me see here. When I went back outside,
3 Mr. Livingston was there. I basically told him what I
4 saw, and I tried to relay what Mr. Starks told me so that
5 he has some information about what he said. I told him
6 what I observed and what I didn't, and I just asked him to
7 take some photographs.

8 Q And so did you ask Investigator Livingston to
9 photograph Mr. Starks at that time?

10 A I did.

11 Q Okay. And I believe the photos have already been
12 introduced into evidence.

13 (Pause).

14 Well, it's in here somewhere. Regardless, the
15 photograph that's already in evidence, did you observe
16 that was the way the defendant appeared that night?

17 A Yeah. We took a photograph of him.

18 Q There it is, State's number 35. Is that how
19 Mr. Starks appeared the night of this incident?

20 A Yes. We just got him out and took a picture of him.
21 That's what he was dressed in.

22 Q Okay. Now, next did you -- based on your
23 observations of the crime scene and based on the fact
24 that -- when was it that you learned Al had been declared
25 dead?

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1 A I guess it was shortly after I spoke with
2 Mr. Livingston. I actually got a call from another
3 investigator who was helping out who went to the hospital
4 to determine what kind of condition he was in, and he told
5 me that one, that he actually had a stab wound to the
6 chest and that he had passed away as a result of his
7 injuries.

8 Q And as an investigator in a violent crime, do you --
9 what do you do next before you decide whether to charge
10 somebody?

11 A Like I said before, I obviously have supervisors and
12 I speak to them and tell them what's going on. And we
13 also confer with the Solicitor's Office, and we all decide
14 what would be the appropriate charges in the situation, if
15 any.

16 Q And what factors did you take into account in
17 deciding whether or not to charge the defendant with
18 murder?

19 A Specifically, I was concerned with the size
20 difference between the two men, size and age difference,
21 and actually, the fact that all he was saying was that he
22 slapped him.

23 He wasn't saying there were any weapons of any kind
24 involved other than the one he used. Obviously, that
25 concerned me. Also after -- well, that didn't really come

1 into play there.

2 Q Okay. And so when you got the authorization to
3 charge him with murder, can you explain for the jury what
4 it is -- how you explained it to him?

5 A Like I said, he was being very cooperative with us,
6 and he was at that time sitting in the back of one of the
7 patrol cars. The window was down, and I was having a
8 conversation him most of the night just like I am here.

9 I went over to him, and I told him that he was dead
10 and that we were going to be charging him, "charging you
11 with murder" is what I told him. He became extremely
12 distraught, I would describe it as.

13 I was actually -- I had my arm -- if this is the
14 ledge to the door, I had my arm and I'm leaning in the
15 window, basically, talking to him. He grabbed my arm with
16 both hands and actually pulled me off of my feet and
17 nearly pulled me into the patrol car window. I don't
18 think he was trying to hurt me. He was just so upset of
19 the circumstances he was in.

20 Q And by the way, how tall are you?

21 A I'm 5'11". I weigh probably 205 pounds.

22 Q Okay. So about three or four inches taller than the
23 victim --

24 A Uh-huh.

25 Q -- and the decedent, and about 50 pounds more than

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1 the decedent?

2 A Uh-huh.

3 Q Did he have any difficulty pulling you into the
4 vehicle?

5 A No. He was pretty strong. Like I said, I don't
6 think he was trying to hurt me, but I had to actually --
7 like I said, I was having to forcefully pull myself away
8 from him.

9 Q Now, after -- after he was placed under arrest, he
10 was then taken and booked; is that correct?

11 A He was. He was. I actually write up the charging
12 document, and he was taken to the detention center.

13 Q At that point did you interview or talk to any other
14 witnesses at the scene?

15 A Yeah. I spoke with -- let's see here, Mr. Cornish.
16 He lives at [REDACTED] [REDACTED] [REDACTED].

17 Q And all of the information that you gathered from
18 Mr. Cornish, was that pretty much consistent with what he
19 testified to earlier this morning.

20 MR. McMULLEN: Object to the leading.

21 THE COURT: Overruled. I think that's a fair
22 question.

23 THE WITNESS: Yeah, I mean he told me what he said
24 earlier.

25

1 BY MS. SHIPLEY

2 Q Okay. It was consistent with what was testified to
3 already?

4 A Yes, it was.

5 Q And did you, in fact, go back the next day to get a
6 written statement from Mr. Cornish?

7 A Yeah. He was -- it was getting late, and he had to
8 go to work. I told him I would return the next day when
9 he was fresher and take the actual written statement from
10 him, and I did.

11 Q All right. Also, did you make contact with Al's
12 wife, the defendant's mother, Betty Ann Cleveland, that
13 night or the next day?

14 A Yeah. They came -- I believe they came to the home
15 that night, and we -- they showed up late.

16 Q You mean she, Ms. Betty Ann Cleveland?

17 A Yes.

18 Q Okay.

19 A She came there and basically, we told her what was --
20 what was going on and tried to advise her the best I can
21 of how this -- the system worked, what was next.

22 Q Okay. And did you have another colleague of yours
23 get a written statement from Ms. Cleveland?

24 A Yeah. Like I said, it was getting late and everybody
25 was upset. I actually had, I believe, a day or two later

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1 Sergeant Randy Strange went out and actually took a
2 written statement from her about, you know, the calls and
3 stuff.

4 Q Okay. And if you could refer to her statement,
5 please.

6 A Okay.

7 Q Did she provide her cell phone number as contact
8 information?

9 A She did. She gave us the number [REDACTED]. She said
10 that's her cell phone.

11 Q At any time did the defendant, when you were
12 questioning him or talking to him, state that he was
13 suffering from a seizure at the time he stabbed Mr. Al
14 Cleveland?

15 A No. He never said that.

16 MS. SHIPLEY: Beg the Court's indulgence, Your Honor.
17 (Pause).

18 Thank you, Investigator Isenhoward. Please answer
19 any questions from the defense.

20 THE COURT: Mr. McMullen?

21 MR. McMULLEN: May it please the Court.

22 CROSS-EXAMINATION:

23 BY MR. McMULLEN

24 Q Investigator Isenhoward.

25 A Yes, sir.

1 Q What time did you arrive at that address?

2 A Like I said, I think it was around nine o'clock.

3 Q Nine?

4 A Yes, sir.

5 Q Are you sure?

6 A Uh-huh.

7 Q Who was the first on the scene?

8 A Deputy Carwell.

9 Q Do you know what time he arrived?

10 A He says in his report that he arrived at 20:30 hours
11 which is 8:30.

12 Q I'm sorry?

13 A He says in his report he arrived at 20:30 hours which
14 is 8:30 p.m.

15 Q May I approach the witness?

16 Could you identify that, please, sir? What is that
17 document?

18 A This is a document that the forensic lab uses. It's
19 a crime scene log.

20 Q And what is it there to reflect?

21 A When -- when people arrived and when they left crime
22 scenes.

23 Q Does it show what time Deputy Carwell -- I'm sorry,
24 Master Deputy Carwell then arrived at the scene?

25 A It says "time in slash out". It has one time there.

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1 It says 21:15.

2 Q What time is that in regular time?

3 A That is 9:15.

4 Q All right. And he was first on the scene?

5 A Yes, sir.

6 Q What time did you get there?

7 A I got there around nine o'clock.

8 Q So you got there 15 minutes before the first guy on
9 the scene?

10 A No. I'm not saying that. I'm saying that maybe this
11 is wrong.

12 Q I see. All right. And this is used for what?

13 A A crime scene log. It's basically to list when
14 people got there and when they left.

15 Q Why is that important?

16 A Well, you want to know who was there, specifically
17 and most importantly, who was there.

18 Q To see if anybody else went inside before you?

19 A Yes, when and where people went in.

20 Q So if that's not accurate, that's not very good.

21 A Well, we try not to have any inconsistencies, but
22 there are paperwork errors that occur.

23 Q When you arrived, was there a black Mercury
24 Mountaineer belonging to Thaddess Starks in the yard?

25 A I don't recall specifically.

1 Q You stated usually the suspect of an alleged crime
2 such as this is not on the scene?

3 A Most of the time.

4 Q Usually somebody stabs somebody. They run.

5 A Yes.

6 Q Isn't that fair to say?

7 A That is.

8 Q Not Thaddess Starks.

9 A Yeah. The exception, I would say, are domestic
10 situations.

11 Q Okay. And all of the information you have is that
12 Mr. Starks and the decedent, Mr. Cleveland, were the only
13 two in the house when the incident occurred.

14 A That's all I have.

15 Q So there would have been no one there preventing him
16 from hopping in his car and going?

17 A Not that I know of.

18 Q He's a large man, as you pointed out. Did he give
19 you any trouble?

20 A No, no. He was cooperative.

21 Q Did you learn whether Mr. Cleveland was intoxicated?

22 A Deputy Carwell told me about -- like I said, when he
23 first went out there and he basically told me he was
24 drunk.

25 Q As the case officer, did you subsequently check with

1 the pathologist?

2 A No. That had no bearing on the situation in my
3 opinion, whether or not that he was drunk.

4 Q Whether the decedent had any alcohol in his system
5 had no bearing on whether to charge anybody with anything?

6 A No, sir.

7 Q Why not?

8 A Because it just doesn't matter. I mean you -- just
9 because -- I'm sure you had some drinks. If something
10 were to happen to you, I wouldn't let that affect it.
11 What affects it is your behavior and what exactly,
12 specifically, you do in the situation.

13 Q You responded to a number of domestic situations over
14 the years, haven't you?

15 A Yes, I have.

16 Q In your experience does alcohol contribute to
17 domestic violence in this state, in this county?

18 A Some people have anger control issues when they drink
19 and so yes.

20 Q You said that the word used was "jigged"?

21 A Yes, I believe that's right. I mispronounced it at
22 first, I apologize, jigged.

23 Q Do you know that word?

24 A I actually -- I've heard it several times. It's not
25 a word I use, but like I said, I take it to mean a light

1 thrust, just kind of a peck. I don't know how else to
2 describe it. That's what I took it as.

3 Q How many times did he jig Mr. Cleveland?

4 A He tells me that he did it once.

5 Q Is there any evidence to the contrary?

6 A No.

7 Q One stab wound?

8 A One stab wound.

9 Q Where was that stab wound located on the body of
10 Mr. Cleveland?

11 A It was on his upper chest.

12 Q His upper right chest, is that --

13 A Yes, I believe so.

14 Q Check that real quick.

15 (Pause).

16 A It was, his upper right chest.

17 Q And that's about as far from his heart or any other
18 vital organs as it could be, wasn't it?

19 A I wouldn't say that, sir, as far as it could be, but
20 it's on the other side of his body.

21 Q And Al was left-handed, Mr. Cleveland?

22 A I'm not sure.

23 Q All right. Did Mr. Cornish, when you talked with
24 him, mention anything to you about Mr. Cleveland asking
25 him for a gun that night?

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1 A I don't recall him saying anything like that to me.

2 Q Did he subsequently tell you that?

3 A Not from my conversations with him.

4 Q When is the first time you heard about that?

5 A Today.

6 Q Would that have changed any decision you made?

7 A No. If he had a gun, that would be different but him
8 asking, no, I don't believe so.

9 Q How far is the bed that Thaddess Starks had in his
10 room from the door?

11 A A couple of feet, maybe.

12 Q Okay. So if the decedent burst through that door and
13 backhanded the man, is it possible that his eyesight was
14 affected by this? He could have got tears in his eyes?

15 A I -- I couldn't comment on that. I'm not sure.

16 Q You don't know if that's possible?

17 A No.

18 Q All right. And if Thaddess Starks heard
19 Mr. Cleveland asking next door for a gun, just like the
20 next door neighbor seemed to hear the conversation from
21 his vantage point, would it be reasonable to wait until
22 any weapon was produced?

23 A I think that in my -- in my opinion, if that's what
24 you're asking for, before I use deadly force, I'm going to
25 evaluate it then and there.

1 Q How much time would you take to evaluate that?

2 A Well, you generally only have a few seconds,
3 unfortunately. I've been in a situation, but I mean, you
4 have to -- you have to make sure there's a threat there.

5 Q There were, you said, about two feet between the door
6 and the bed?

7 A About that. I couldn't say exactly.

8 Q How much time would it have taken a person to travel
9 that two feet?

10 A Just probably if they were traveling quickly, a few
11 seconds, maybe not even.

12 Q But it's your testimony that if you heard somebody
13 trying to get a gun that you had been arguing with that
14 had been calling the police and then they came in the
15 room, burst through the door that was locked, smacked you
16 with the back of their hand, that you would wait and
17 assess the situation and ask or find out somehow if they
18 had a gun?

19 A Well, you're talking about a member of the household.

20 Q Yes, sir.

21 A You're not talking and an intruder from outside the
22 home so, yeah. I would have to evaluate somebody I lived
23 with day in and day out before I -- I'd do that.

24 Q Now, domestic --

25 A I would have to evaluate it.

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1 Q I'm sorry. I didn't mean to interrupt.

2 A That's okay.

3 Q What was the last thing you said?

4 A I said before I try to take any steps like that to
5 use deadly force, I've got to evaluate the situation.

6 Q All right. Now, in your experience, is it fair to
7 say that domestic violence calls are maybe the most
8 dangerous ones you go to?

9 A For the officer?

10 Q Yes.

11 A Yeah, they're pretty dangerous.

12 Q And those are between family members by definition,
13 are they not?

14 A Yes. There's a lot of emotions involved in those
15 situations.

16 Q And alcohol doesn't help?

17 A No, it doesn't.

18 Q You said that you found a trail of blood that began,
19 since you began there, at the front door, the front porch,
20 went in through --

21 A Uh-huh.

22 Q -- the living room down the hall to the bedroom door?

23 A I could see how in my notes it would appear.

24 Basically, what I was saying is that there were blood
25 droplets leading in that direction. It could have been

1 coming from either direction, but there were a few -- they
2 were real light.

3 There was only a few on the carpet in that back den
4 area and in that hallway. I didn't see any in the room or
5 on the door or anything like that.

6 Q Based on your -- I'm sorry, were you going to say
7 something?

8 A No.

9 Q Based on your observations of the blood and how there
10 were light droplets near the door --

11 A Uh-huh.

12 Q -- and then apparently more blood --

13 A Uh-huh.

14 Q -- further away from the door --

15 A Uh-huh.

16 Q -- would that lead you to believe that the fatal
17 wound was inflicted near the doorway?

18 A Yes, it's possible.

19 Q You conferred, did you not, with the crime scene
20 analyst Livingston?

21 A Yeah, I spoke to him.

22 Q And you told him what you had seen; is that correct?

23 A Yeah, I did.

24 Q Do you know why he didn't take photographs of blood
25 droplets leading from the door?

Isenhoward - cross (McMullen)

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1 A No, sir.

2 Q Do you know why he didn't even see them?

3 A I can't explain that to you.

4 Q Do you know why you didn't see any crumbs in the
5 room?

6 A There weren't any crumbs in the room.

7 Q How do you know that?

8 A I personally checked.

9 Q And you would have noticed a crumb?

10 A Well, I mean, when I say crumb, I think that everyone
11 in this courtroom has eaten a sandwich, because that's
12 what we're talking about, a sandwich, and can associate --
13 they know what is associated eating a sandwich.

14 When I say crumbs, maybe a part of the bread, a
15 plate, paper towels with mustard on it. Everyone has
16 eaten a sandwich.

17 Now, could there have been a particular small crumb
18 on the carpet, I don't know, but I didn't see any is what
19 I can tell you.

20 Q So you saw no evidence of a sandwich that had been
21 eaten in that room?

22 A No.

23 Q Would it be your belief then that no one had ever
24 eaten a sandwich in that room?

25 A I never --

1 Q Someone would have left evidence, right?

2 A Repeat that.

3 Q Well, it sounds like you expect somebody to eat like
4 the Cookie Monster where crumbs just go everywhere, but
5 the testimony, isn't it fair to say that there was a plate
6 and napkins? Wouldn't it be hard to find crumbs under
7 those circumstances?

8 A No.

9 Q Did you --

10 A I don't believe so.

11 Q Did you check the garbage can to see if there were
12 any napkins with mustard on them or anything like that?

13 A I looked throughout the room. I didn't see anything.

14 Q Okay. How about in the kitchen?

15 A I didn't independent -- I didn't see anything other
16 than that I told you, that was in the middle of the floor
17 swept up.

18 Q Was Mr. Starks nervous or excited or upset when you
19 interviewed him?

20 A Actually no, not when I got there and began to speak
21 with him. He was -- he was calm.

22 Q He wasn't shaking?

23 A I didn't notice him shaking, no.

24 Q So now, his stepfather has just passed away, is
25 bleeding next door, or the ambulance has just gone, and

Isenhoward - cross (McMullen)

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1 he's talking to you.

2 A Uh-huh.

3 Q Was he handcuffed at the time?

4 A He was.

5 Q And you were investigating a killing at that point?

6 A Uh-huh.

7 Q Would you expect him to be nervous?

8 A I would expect some people to be nervous, yes.

9 Q You said that when you asked him about it, that he
10 stumbled over his words?

11 A Uh-huh.

12 Q Is that one sign of being nervous?

13 A It could be or you could just be choosing your words
14 carefully.

15 Q All right. Would you expect someone being
16 investigated for murder to choose their words carefully?

17 A Well, I don't know. Again, I don't think you would
18 think you're being investigated for that if you didn't do
19 it.

20 You know, it wasn't like I was accusing him of doing
21 anything, actually. When I got there, he told me what he
22 had done, what had happened, and I guess he was just
23 waiting on me to evaluate the situation.

24 There wasn't a situation where I was interrogating
25 him or, you know, loud, being loud with him or anything

1 like that. It was -- I was speaking with him like I'm
2 speaking with you.

3 Q Well, but I'm not handcuffed.

4 A No.

5 Q And you didn't just read me my rights, right? I
6 mean, I don't know how you -- how do you define
7 interrogate?

8 A Well, I mean, when you're taken to a police
9 department, I guess more in a formal setting.

10 Q He was sitting in a police car.

11 A He was -- when I spoke with him, he was standing
12 outside. Then we moved into mine, which is not a marked
13 police unit. It was at the time a Chevy Trailblazer, just
14 a regular car.

15 Q The closest police station is half an hour away?

16 A Maybe a little more than that.

17 Q So that's about as close as you had to a police
18 station, isn't it?

19 A I mean, I had all night long where we could have gone
20 to the Sheriff's Department.

21 Q And you say you had all night long, but now, you
22 didn't interview the other folks. The reason you stated
23 earlier is because everybody was kind of getting tired and
24 agitated, so you waited until the next day?

25 A Well, I try to be as accommodating as I can. These

Isenhoward - cross (McMullen)

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1 people were not directly involved in the situation. They
2 had jobs. It was getting late. I was working all night.

3 I was fine, but I was trying to respect, you know,
4 them. I felt like it would be okay if I came back and
5 spoke to them the next day.

6 Q Did Thaddress Starks tell you that he had difficulty
7 keeping his balance?

8 A He says he loses his balance. He says that he felt
9 like he couldn't defend himself when I was speaking to him
10 about this.

11 Q And he made you aware that he has physical
12 limitations?

13 A That's all he said. I mean, you know. He has
14 trouble keeping his balance and that he had that injury.

15 Q He told you that he had seizures, did he not?

16 A He did say he had seizures.

17 Q He didn't call it epilepsy, did he?

18 A No.

19 Q Did you do anything to verify his physical condition
20 or strength or...

21 A Well, I feel like I evaluated it when he grabbed
22 me --

23 Q Was he --

24 A -- the strength.

25 Q I'm sorry, sir. Please continue.

1 A I just feel like that was an accurate evaluation of
2 his strength when he grabbed me and nearly pulled me into
3 the police car.

4 Q Now, isn't it true at that point he had been moved to
5 another officer's, Carwell's, cruiser?

6 A I can't remember specifically which officer. I think
7 there were two officers out there. He was in a marked car
8 at that point.

9 Q He was no longer in your --

10 A No.

11 Q -- standing outside your vehicle?

12 A No.

13 Q It was a marked car. Is that -- and he was in the
14 backseat of it?

15 A He was.

16 Q And did he not have to -- you had to roll down the
17 window to talk to him?

18 A The window was down, yeah. I was talking to him
19 through that window.

20 Q Now, who placed him in the handcuffs and placed him
21 in that car?

22 A I believe Carwell had him in the handcuffs initially
23 and then after -- excuse me. After I evaluated the
24 situation, I instructed him to place him in the car
25 because I was going to be going into the house looking at

Isenhoward - cross (McMullen)

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1 things. I felt it would be safer that way.

2 Q Were the handcuffs in front of him at that point?

3 A They were.

4 Q And you had him in two pairs of handcuffs?

5 A Yeah, his shoulders were so broad it would be nearly
6 impossible, and it would be very painful for him, I think,
7 if we were to cuff him behind his back with one pair --

8 Q Yes, sir.

9 A -- or something like that. We were still evaluating
10 the situation. We felt like he needed to be in some
11 handcuffs.

12 Q Yes, sir.

13 A We tried to accommodate him.

14 Q So if he used his right arm to grab you, his left arm
15 would have followed.

16 A Yeah, he reached like this (indicating).

17 Q He's in handcuffs o if his right arm moves, his left
18 arm moves, correct?

19 A Sure, but he's got this much -- you know, there's two
20 pairs of handcuffs so actually, he could hold them this
21 far apart.

22 Q Okay. When he was seated in the backseat of the car,
23 as we've all noticed and said at least three times, he's a
24 big man, is he not?

25 A I would consider him.

1 Q He can't just sit facing forward in the backseat, can
2 he? He had to be kind of turned to one side?

3 A I recall that he was slightly turned.

4 Q So if he was on the driver's side, he still has
5 access to that window with his right hand, doesn't he?

6 A You're talking about the driver's side rear window?

7 Q Yes, sir.

8 A Yes, he does.

9 Q Is that where he was seated?

10 A Yes, sir.

11 Q So even though his left hand would normally be
12 closest to that window, he's sitting sideways, isn't he,
13 because of his size?

14 A Not completely sideways but slightly turned, yeah.

15 Q Such that his right hand was just as close to you as
16 his left?

17 A I don't know just as but I mean, it's six of one,
18 half a dozen of another.

19 Q Do you know which hand he used to grab you?

20 A He used both.

21 Q You remember that?

22 A Yeah.

23 Q All right. And the reason he grabbed you was why?

24 A I could just tell you that -- this is my opinion. I
25 think once I told him what we were going to do, he just

Isenhoward - cross (McMullen)

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1 became distraught immediately. He started crying.

2 Q What was it you were going to do?

3 A We were going to charge him with murder.

4 Q So you told him that he was being charged or that --

5 A I told him that --

6 Q -- Al had passed away --

7 A Initially, I told him that Al had passed away and he
8 didn't --

9 Q And that's what provoked the incident, isn't it?

10 A And I tried to revisit him to, you know, tell him
11 what was happening.

12 Q So he wasn't crying for himself. He was crying for
13 Mr. Cleveland.

14 A I can just tell you he was crying.

15 Q When you told him that Mr. Cleveland died?

16 A Well, I mean you -- you could say he was crying
17 because he knew what was coming.

18 Q Well, would you look at the report you wrote. Would
19 you find the part that talks about that?

20 A What page are you?

21 (Pause).

22 Yes.

23 Q What did you write there?

24 A Read it?

25 Q If you will.

1 A "I.O." When I say I.O., it's Investigating Officer.

2 "The I.O. walked to the rear of the patrol vehicle
3 and rolled it down. The I.O. advised Starks that
4 Cleveland had died. Starks became very upset and appeared
5 grieving.

6 Starks grabbed the I.O.'s forearm and nearly pulled
7 the I.O. into the vehicle while he was crying. The I.O.
8 was unable to speak to Starks at the time.

9 After several minutes had passed, the I.O. revisited
10 Starks, and he was advised that he was under the arrest
11 for the murder of Alphonzo Cleveland."

12 Q So he was crying when he learned that Mr. Cleveland
13 passed away?

14 A He began to cry when I told him he was dead.

15 Q Did Mr. Starks call 911?

16 A I believe he did.

17 Q He inflicted one stab wound, called 911; is that
18 right?

19 A Yes.

20 Q Your report says on the first page near the bottom
21 that you estimated Mr. Starks to be around 6'1" and about
22 330?

23 A Uh-huh.

24 Q What's the next sentence?

25 A It says -- that's on the first page. Oh, it says his

Isenhoward - cross (McMullen)

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1 South Carolina D.L. lists him exactly as 6'1" -- six foot,
2 excuse me, 300 pounds.

3 Q You had his driver's license with a different height
4 and weight.

5 A Yeah, that's not uncommon. Mine is different when I
6 was...

7 Q And you found the prescription medicine bottles
8 inside the bedroom that had Mr. Starks' name; is that
9 correct.

10 A That is.

11 Q Do you know what those prescription medications are
12 for?

13 A I was trying to think back, and I don't know that I
14 recall specifically what it was. I don't know that I
15 wrote it down.

16 Q But that would have been something to consider on
17 checking his physical condition, would it not?

18 A I'm not a doctor. I don't -- I mean, I can evaluate
19 what I see, but I'm not a physician.

20 Q You sure have access to doctors, don't you?

21 A Yes, the Sheriff's Department does.

22 Q So you don't know if that medicine is for seizures or
23 stroke or what?

24 A If I did look at it, it didn't have a name on it. I
25 couldn't tell you what it was for. I'm not a doctor.

1 Q You were asked whether you found signs of a struggle
2 in the bedroom. Was your response "it's difficult to
3 say"?

4 A I said that I didn't see anything in there. It can
5 be difficult to say.

6 Q The next door neighbor you spoke with, Timothy
7 Cornish, you took a statement from him, did you not?

8 A I did. I guess it was the next day after that night.

9 Q And he was able to change that something happened on
10 the -- I thought it said ground but I believe you aid --

11 A Are you speaking about his written statement?

12 Q Yes, sir.

13 A Let me get it.

14 (Pause).

15 Okay.

16 Q Apparently, in his written statement --

17 A Uh-huh.

18 Q -- he was given an opportunity to change anything he
19 wanted to change there, wasn't he?

20 A Yes.

21 Q And he added, instead of ground of porch, he struck
22 that and wrote fourth step of porch, or you wrote that at
23 his direction?

24 A Yes.

25 Q Which one of you wrote this?

Isenhoward - cross (McMullen)

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1 A I wrote this statement.

2 Q But it's stuff he said?

3 A Yeah, we -- sometimes -- not everyone, some people,
4 have difficulty writing who we encounter.

5 Q He could have -- I'm sorry.

6 A If he choose, he could have written it himself. Most
7 people let me write it. They give me the -- tell me what
8 they want to say, and I write it down.

9 Q And you obviously gave him a chance to read this and
10 a chance to correct any inaccuracies.

11 A Once -- once we completed it, I either -- depending
12 on what they want, I read it aloud to them or hand it to
13 them and allow them to read it. He didn't want to make a
14 change.

15 Q Did you take notes, handwritten notes, when you spoke
16 to Mr. Cornish the night before?

17 A I took a few notes, yes.

18 Q Did you take any when you spoke to Timothy Cornish?

19 A Yes.

20 Q And do you have those handy?

21 A Let's see. I assume this -- is that what you're
22 talking about? I put his information.

23 (Pause).

24 Yes, sir.

25 Q Okay. Who is Phyllis Cochran?

1 A That's the name of another neighbor who wasn't
2 someone that I encountered then that night, but it was a
3 neighbor, I believe, who lived across the street from the
4 incident location.

5 Q Did you ever talk with her?

6 A I did.

7 Q And then below that, you have got the name Timothy
8 LaVaughn Cornish, [REDACTED]; is that right?

9 A I do.

10 Q All right. Now, you have written a line. I'll ask
11 you to read just from below the line. I'm sorry, two
12 lines. One says Thaddess walked over?

13 A Yes.

14 Q So Mr. Cornish told you that Thaddess walked next
15 door.

16 A When I write down these notes, it's kind of a short
17 hand. I don't go into detail.

18 Q Run is only three letters and walked is six. Why
19 didn't you --

20 A Oh, I wrote down what he told me.

21 Q He told you that night that Thaddess walked over,
22 didn't he?

23 A Yes.

24 MR. McMULLEN: Thank you. I have no further
25 questions.

Isenhoward - cross (McMullen)

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1 THE COURT: Redirect?

2 MS. SHIPLEY: Yes, sir.

3 REDIRECT EXAMINATION:

4 BY MS. SHIPLEY

5 Q Investigator Isenhoward, just to clarify the time
6 that you arrived on the scene, I'm going to show you the
7 official incident report to this case, okay.

8 A Uh-huh.

9 Q Do you see the time, the dispatch time?

10 A Yes.

11 Q Okay. What time is that?

12 A It says 21:03.

13 Q Okay. So that is -- that is 9:03 p.m.; is that
14 correct?

15 A Yes.

16 Q And dispatch is relying that information to all
17 officers, I imagine?

18 A Yes.

19 Q Okay. All right. And next to that item arrival
20 time, what is reflected in the arrival time of Carwell's
21 report?

22 A 21:15.

23 Q 9:15 p.m.?

24 A Uh-huh.

25 Q All right. And you indicated that the log was

1 inaccurate.

2 A Uh-huh.

3 Q Can you please refresh, look at the log. What time
4 does Carwell write down that he got there?

5 A He wrote down 21:15.

6 Q So that's 9:15?

7 A Uh-huh.

8 Q Okay. So this is not inaccurate. It is correct?

9 A That's correct.

10 Q Okay. I believe you might have been reading 8:30 as
11 the time the incident began.

12 A Uh-huh.

13 Q Okay. You were asked about alcohol consumption,
14 whether or not the fact that Al was drunk, whether that
15 had any bearing on your evaluation of the facts in this
16 case. Do you recall that line of questioning from
17 Mr. McMullen?

18 A I do recall that.

19 Q Okay. At any time, did the defendant indicate that
20 Al did anything other than slap him or backhand him?

21 A No, backhand is what he said.

22 Q And he told you backhand, but he told Carwell
23 slapped; is that correct?

24 A According to --

25 MR. McMULLEN: Objection unless Carwell notes -- he

Isenhoward - redirect (Shipley)

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1 was present to hear it, what was told to Carwell.

2 THE COURT: Sustained.

3 MS. SHIPLEY: All right. I'll move on, Your Honor.

4 THE COURT: All right.

5 BY MS. SHIPLEY

6 Q And when he was telling you about the movement of his
7 arm or hand with the knife, and he used the word "jigged";
8 is that correct?

9 A That's what he told me.

10 Q And while he was doing this, did he demonstrate --
11 was he animated while he's talking to you?

12 I talk with my hands. Did he demonstrate?

13 A Yeah.

14 Q Can you show this jury how he demanded jig to be?

15 A He said -- he was holding his hands, and he said, "I
16 was trying to get him off, and I jigged him." He kind of
17 did a motion like that (indicating).

18 Q So he -- he showed you jig is like this?

19 A Yes.

20 Q It's not like that (indicating)?

21 A No, that's not the way he described --

22 Q Okay.

23 A -- at all.

24 Q You were also asked about whether or not there were
25 any vital organs in the upper right chest of

1 Mr. Cleveland; that I guess the heart is on the other
2 side?

3 A Yeah, slightly to the left.

4 Q All right. Is the lung considered a vital organ?

5 A Yes, blood vessels.

6 Q You -- if you could, please, refer to your notes on
7 page two.

8 A Okay.

9 Q Actually, I apologize, page one.

10 A Page one.

11 Q Right after he talks to you about jigging, that he
12 jigged Al --

13 A Uh-huh.

14 Q -- you specifically asked him whether or not Al had
15 anything on him or any weapon when he slapped him; is that
16 correct?

17 A I did.

18 Q Did Mr. Starks ever say Al had a gun?

19 A No.

20 Q The entire night that you talked to him, did he ever
21 mention Al having a gun?

22 A He never mentioned anything about a gun or anyone
23 trying to get a gun or anything like that.

24 Q He never mentioned Al was trying to get a gun,
25 correct?

Isenhoward - redirect (Shipley)

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1 A That's correct.

2 Q Also, you were asked about criminal domestic violence
3 cases, how they are dangerous for officers to respond to.

4 A Yes.

5 Q That's because sometimes people turn on the officers,
6 correct?

7 A Yes, they do.

8 Q You were also asked about the blood, light drops of
9 blood, that you observed in the hallway. You indicated
10 they were around the front door --

11 A It would be out --

12 Q -- in the hallway of the entrance of the residence?

13 A At the front door they were a little bit heavier, and
14 then there were some droplets, very light ones, near that
15 back bin hallway area.

16 Q Okay. Did you ever see any blood in the kitchen
17 other than the one on the knife?

18 A No.

19 Q You were also asked about his -- the defendant's
20 demeanor. You had just read him his rights, correct?

21 A I did.

22 Q Did he seem nervous when you did that?

23 A No.

24 Q You also had him in handcuffs. He was already in
25 handcuffs for a good while before you read him his rights,

1 correct?

2 A That's correct.

3 Q When he's talking to you about Al being drunk and Al
4 arguing with him and him arguing with Al and how the
5 officers didn't force Al to leave or ask him to leave, and
6 that caused Al to be more angry, was he choosing his words
7 correctly when he was talking about Al being drunk and so
8 forth?

9 A Yeah. I mean, he was -- he was explaining himself to
10 me in the situation.

11 Q Okay.

12 A The best he could.

13 Q You testified on cross-examination that Mr. Starks
14 stumbled over his words, and you actually documented that
15 in your -- in your report, correct?

16 A I did.

17 Q When you asked him whether or not he was in fear for
18 his life?

19 A Yes.

20 Q He stumbled over his words.

21 A Yes..

22 Q He was calm and cooperative; is that correct?

23 A Yes.

24 Q And until you told him that --

25 MR. McMULLEN: I'm going to object to the leading

Isenhoward - redirect (Shipley)

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1 questions.

2 THE COURT: Don't lead your witness.

3 MS. SHIPLEY: Okay.

4 THE COURT: Just ask your questions.

5 BY MS. SHIPLEY

6 Q When was -- when was the first time that Al became --
7 that Mr. Starks become upset?

8 A When I told him that -- that Al had died, and he was
9 in the back of the car, the patrol car.

10 Q And this witness across the street or this neighbor
11 across the street, Phyllis Cochran?

12 A Uh-huh.

13 Q She contacted -- describe for jury how you were
14 contacted or who contacted who.

15 A Her home is actually back aways. It's across the
16 street. This is a rural area. The homes are a little bit
17 apart. She called me at the Sheriff's Department on my
18 office phone and --

19 MR. McMULLEN: I'm going to object to anything that
20 she said.

21 MS. SHIPLEY: Your Honor, he opened the door.

22 THE COURT: I don't think so.

23 BY MS. SHIPLEY

24 Q Did Phyllis Cochran become any witness in this case?

25 A No, she wasn't.

1 Q Okay.

2 A She didn't have any information specifically.

3 Q And lastly, I'm referring to handwritten notes about
4 what Mr. Cornish told you, that Thad walked over to him
5 that night?

6 A Yeah.

7 Q All right. Just so that the jury understands the
8 context, can you please read your entire paragraph?

9 A "Thad walked over and told" -- I can hardly read my
10 own handwriting.

11 "He walked over and told him that the victim kicked
12 in the door and stabbed him. Thad had a posture like he
13 was going to kick him."

14 Q Okay. So Mr. Cornish reported to you that very night
15 that Thad --

16 MR. McMULLEN: Object to the leading.

17 BY MS. SHIPLEY

18 Q -- that the defendant --

19 THE COURT: Overruled.

20 BY MS. SHIPLEY

21 Q That the defendant -- I'm clarifying, Your Honor.

22 That the defendant approached them and had a posture
23 like he was going to kick him?

24 A Yeah. He told me -- he told me -- he came over there
25 and acted like he was going to.

Isenhoward - redirect (Shipley)

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1 Q When an individual is being booked in after they're
2 arrested --

3 A Uh-huh.

4 Q -- do you fill out a form, or the person who is
5 placing the person, booking them in, fills out a form with
6 the subject.

7 A An arrest report.

8 Q An arrest report.

9 A Yes.

10 MR. McMULLEN: Judge.

11 BY MS. SHIPLEY

12 Q And who provides that information to the official
13 arresting them?

14 A The person or -- the person being arrested or an
15 official document of some sort.

16 Q Okay. I'm going to show you a document and ask you
17 if you recognize that document.

18 A Yes.

19 Q All right. What information did Mr. Starks provide
20 as to his height or weight?

21 MR. McMULLEN: Excuse me, I object. There is not a
22 foundation that the information was given to Officer
23 Isenhoward unless -- unless I'm missing something.

24 Mr. Isenhoward, Detective Isenhoward, did not
25 complete that form.

1 MS. SHIPLEY: All right.

2 Well, you were here present --

3 THE COURT: Well, he's not --

4 MS. SHIPLEY: He did not -- he did not book him in,

5 Your Honor.

6 THE COURT: What is it?

7 MS. SHIPLEY: It's a booking report.

8 THE COURT: A business record?

9 MS. SHIPLEY: Yes, sir.

10 MR. McMULLEN: And do we have the custodian of the
11 record?

12 MS. SHIPLEY: If it may lay the foundation, Your
13 Honor?

14 THE COURT: Sure.

15 MS. SHIPLEY: I'll get around that.

16 BY MS. SHIPLEY

17 Q Investigator Isenhoward, in the course of your
18 business, are there documents that are normally held in
19 your custody and control when you are the chief
20 investigator of a case?

21 A Yes, every document regarding the case.

22 Q And would those documents, such as a booking report
23 or arrest report, be of the type that is normally
24 contained in your -- in your business records?

25 A Yes, it is.

Isenhoward - redirect (Shipley)

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1 MS. SHIPLEY: Your Honor, I've laid the foundation.

2 THE COURT: What's the objection?

3 MR. McMULLEN: I'll withdraw it.

4 THE COURT: Thank you.

5 BY MS. SHIPLEY

6 Q The information as to the height and weight of
7 Mr. Starks at the time of his arrest, please tell the
8 jury?

9 A 6'0", 350 pounds.

10 MS. SHIPLEY: Thank you.

11 (Pause).

12 Thank you, Investigator Isenhoward.

13 THE COURT: Anything further?

14 MR. McMULLEN: No, sir.

15 THE COURT: Thank you very much. You may come down.
16 May the witness be excused?

17 MR. McMULLEN: No objection.

18 THE COURT: No objection.

19 All right, ladies and gentlemen, that will complete
20 the testimony for today, conclude the testimony for today.
21 We'll resume in the morning at 9:30 at which time the case
22 will proceed. The State will continue with their case.

23 Again, I'll ask you to please not discuss the case
24 among yourselves when you return to the jury room in the
25 morning or with anyone else over the evening hours. Have

1 a pleasant everything. Thank you very much.

2 (WHEREUPON, the jury left open court at approximately
3 5:14 p.m.)

4 THE COURT: We'll stand at ease until 9:30.

5 (There was an overnight recess).

6 (WHEREUPON, State's Exhibits Nos. 47, 48 were marked
7 for identification only.)

8 (State's Exhibit 37 was withdrawn by the State.)

9 MS. SHIPLEY: Your Honor, just to save the Court's
10 time, the first witness I'm calling is Dr. Kessler, and
11 then after him I'm calling Sergeant Shull. She works at
12 the Alvin S. Glenn Detention Center, and she is in charge
13 of -- she is in the professional responsibilities
14 division.

15 She is in charge when she -- of recording the
16 conversations of phone calls made by inmates out to people
17 in the community, and she is prepared to testify that she
18 is, indeed, a law enforcement official over at the Alvin
19 S. Glenn Detention Center, and that during the course of
20 her duties, ordinary course of her duties, she is
21 frequently requested by law enforcement to find
22 conversations placed by inmates at the Alvin S. Glenn
23 Detention Center to, you know, people out on the outside.

24 We seek to use her to lay the foundation to introduce
25 some conversations placed by this defendant to individuals

1 out in this community, mainly his wife and his -- a woman,
2 a friend from the family named Tina who is from Sumter.

3 He identifies himself as Thad in the beginning of
4 every conversation, so we know who is placing the call.
5 Also, I've got some case law, Your Honor, I'm sure you've
6 heard about it, some Fourth Amendment issues.

7 Your Honor, I've handed up to the Court a case called
8 United States of America vs. Van Poyck. This is cited in
9 77 F.3d, 285.

10 In that case, Your Honor, the ruling is law
11 enforcement exception applies to detention center
12 recording of telephone calls made by inmates, and that the
13 -- there is no fourth amendment expectation of privacy by
14 inmates, and also there are two exceptions to the
15 introduction of such evidence, one being law enforcement
16 purpose and the other being consent.

17 The beginning of every conversation the inmate is
18 told by a recording that your call is going to be
19 recorded, your call will be recorded, but it may be
20 subject to monitoring.

21 So that puts the caller on notice of the fact that
22 their call is being recorded and as a result, by them
23 continuing on with the conversation, they are impliedly
24 consenting to the recording of their conversation, and
25 that applies to the exception of the consent for this

1 purpose.

2 In this case that I handed up, Your Honor, the Court
3 found that there is no expectation of privacy for inmates
4 placing calls from the jail in pretrial detention, and
5 even assuming that the Fourth Amendment was triggered,
6 there are institutional security concerns that justify the
7 recording of such phone calls that render them reasonable
8 for the purposes of the Fourth Amendment.

9 In addition to that, if there is consent by the
10 inmate by continuing the conversation after being warned
11 that the call will be recorded, then of course, that is a
12 consent exception.

13 In the case also, Your Honor, the Court found that
14 the -- "The detention center in that case is a law
15 enforcement agency whose employees take all outbound
16 inmate telephone calls and that interception of these
17 calls would appear to be in the ordinary course of their
18 duties and other circuits also held that. We agree with
19 the other circuits and, therefore, conclude that law
20 enforcement exception applies to the detention center's
21 routine taping policy."

22 The defendant in Van Poyck, and for purposes of
23 Karen, the court reporter, it's V-A-N and then P-O-Y-C-K.

24 The Defendant there also challenged the taping of
25 these conversations under the Omnibus Crime Control and

1 Safe Streets Act of 1968 and the Court also found that
2 that was not violented.

3 So the State was allowed, or the prosecutor was
4 allowed, to introduce the conversations placed by that
5 defendant to family members and friends in which he made
6 the incriminating statements.

7 THE COURT: Any response from the Defendant?

8 MR. McMULLEN: Yes, sir. Good morning.

9 THE COURT: Good morning.

10 MR. McMULLEN: Your Honor, I would move to exclude
11 those on several bases. One is that although Miranda was
12 initially given at [REDACTED] [REDACTED] [REDACTED], it was never given
13 again, and Mr. Starks was in jail for quite some time
14 without the medication that he needs. The --

15 THE COURT: Well, this is not an interrogation.

16 MS. SHIPLEY: Miranda does not apply to this fact
17 scenario, Your Honor.

18 THE COURT: Well, that's -- I'm questioning
19 Mr. McMullen as to that issue. It's not interrogation.

20 MR. McMULLEN: No, sir, but he's in custody, and
21 there's nothing on the tape that says that by -- well,
22 nothing on the announcement that's made by speaking on the
23 telephone with your family members that this authorizes a
24 waiver of any rights that you have.

25 Some of the conversations, I believe, talk about his

1 trying to obtain an attorney and exercise other
2 Constitutional Rights.

3 I would argue that there is no transcript that we
4 have so that we could discern what the testimony would be.
5 So the only way for me to object to it is for me to, I
6 guess, jump up after the bell has been rung and say "that
7 was objectionable".

8 THE COURT: All right. Are you proffering the
9 testimony? I mean, do you have the testimony on tape?

10 MS. SHIPLEY: Yes, sir, and I'm not seeking to
11 introduce any conversations concerning seeking an attorney
12 or anything like that. I can specifically tell the Court
13 what conversations I --

14 THE COURT: You need to --

15 MS. SHIPLEY: -- seek to introduce.

16 THE COURT: Do you need to redact the tape?

17 MS. SHIPLEY: No. I can't redact it because it's on
18 a D.V.D. or -- a D.V.D. player, I believe it's called, a
19 D.V.D. disc. I don't plan to actually introduce the
20 entire disc.

21 I just plan to pay portions of the conversations, and
22 my paralegal, Ms. Shutters, is already aware that I'm
23 going to instruct her on which recorded conversation, the
24 date -- and each conversation, Your Honor, is labeled by a
25 number.

1 I've already documented the time in the conversation
2 where she is to go fast forward to in order to avoid
3 playing anything that would talk -- where the defendant is
4 talking about hiring -- going for bond court and so forth.

5 But specifically, Your Honor, one -- one conversation
6 that I planned to introduce is a conversation held between
7 the defendant where he identifies himself in the beginning
8 as Thad, and it's placed on October 14th, 2006.

9 The item number assigned to that phone call is
10 201247, and at 6:38 -- the whole conversation, I believe,
11 lasted nine minutes and 13 seconds.

12 Six minutes and 38 seconds into the conversation with
13 a woman named Tina from Sumter, the defendant asks whether
14 or not self-defense or accident law exists in South
15 Carolina.

16 At that point, this woman Tina clarifies the facts in
17 this case and says, "My understanding is he fell on the
18 knife, right?"

19 Mr. Starks answers, "Right."

20 That is a change in his -- in his version of the
21 facts from the scene of the crime.

22 Also, Your Honor, he talks about -- in another
23 conversation on October 14th, 2006, the item number
24 assigned to that one is 202314.

25 At two minutes and 11 seconds into the conversation

1 while he's talking to his wife -- and by the way, spousal
2 immunity does not apply in this case because they waived
3 the privacy of their conversation with the message at the
4 beginning of the conversation that their call was going to
5 be recorded.

6 Your Honor, at that time he's talking about "Get my
7 doctor to write me a note about my muscle spasms and
8 balance problems just in case," talking about his
9 self-defense claim.

10 The next conversation is October 15th, 2006. The
11 item number for that one is 143318. At four minutes and
12 49 seconds into that conversation, he says, "It would have
13 been worse had he survived."

14 Then on October 17th, 2006 the phone number -- the
15 number assigned to this conversation is 215621, and at six
16 minutes and 42 seconds into the conversation between the
17 defendant and his wife, they're talking about the
18 defendant -- why -- talking about Mr. Cleveland, "Why
19 couldn't he just calm down?"

20 She responds, "He was death struck."

21 THE COURT: He was what?

22 MS. SHIPLEY: Death struck, D-E-A-T-H, struck.

23 Then the Defendant responds, "He would talk to me,
24 tell me everything would be all right, that it ain't my
25 fault."

1 Then they start discussing the crime, the actual
2 incident, and talking about how he was stabbed, "Stabbed
3 him and then he called for Tim. He said 'Tim, Tim'.

4 He went running out the door. He left the front door
5 wide open, ran straight to Tim's house. I ran back into
6 the case and called 911 and then called you. I called
7 over -- I walked over to Tim's, and Tim said, 'You
8 shouldn't have stabbed him. You shouldn't have just --
9 you should have just fought him, man.'"

10 Then the defendant goes on to say, "He hit me, and I
11 could hardly get up. I was staggering. He was falling
12 into me. Damn, that's when the knife went up. I'm just
13 going off of that because I erased it all out of my mind.
14 I can't even see the scene anymore."

15 Then the next conversation is October 17th, 2006.
16 The item number for that one is 220706, and again, this is
17 a conversation with this wife. At one minute and one
18 second into the conversation he starts talking about, "The
19 only thing I don't understand is how he got from the room
20 to the front door with no blood. That's the only thing I
21 don't understand. Maybe he grabbed a towel."

22 Then his wife responds, "Tim didn't say he had a
23 towel."

24 Then at four minutes and 37 seconds he says, "My dad
25 told me it sounds like self-defense. It could possibly

1 get worked out. If you claim self-defense, you got to go
2 to a jury trial, though." And that's the extent of it.

3 THE COURT: Okay.

4 MR. McMULLEN: May I have just one moment, Your
5 Honor, to confer with my client?

6 THE COURT: Sure.

7 MR. McMULLEN: Thank you, sir.

8 (Pause).

9 THE COURT: Yes, sir.

10 MR. McMULLEN: May I ask for the purposes of this,
11 whether the State intends to introduce the entire
12 conversation each time or just excerpts of each one? In
13 other words, are we going to listen to nine minutes and 13
14 seconds of the first transmission or are we just going to
15 fast toward to that spot?

16 MS. SHIPLEY: We're going to fast forward to the spot
17 where the relevant conversation is taking place.

18 MR. McMULLEN: The concern I would have then, of
19 course, is if you're going to put the content of a writing
20 in, then we're entitled to ask that the whole thing get
21 put in. Like I said, there is no transcript.

22 Much of the conversations, to me at least when I
23 listened to them, are unintelligible. Slang is used and
24 strong accents. It's just hard to hear exactly what's
25 being said.

1 I know that probably goes to the -- to the weight
2 rather than to the admissibility of it. I would say,
3 though, that also it's hard for us and for the Court to
4 redact portions of this without seeing what's going to be
5 said, what's being proffered by the State.

6 If there is, let's say, hearsay within these
7 conversations, then would I be entitled to redact.

8 THE COURT: Well, just a minute ago you said you
9 wanted -- I assume under 106, you were saying that if a
10 portion was introduced, the entire matter ought to be --
11 if it's offered, then the entire transcript ought to be
12 offered --

13 MR. McMULLEN: I'm --

14 THE COURT: -- but now you're saying --

15 MR. McMULLEN: The --

16 THE COURT: -- perhaps portions of it should be
17 redacted because of hearsay matters or something else. I
18 mean --

19 MR. McMULLEN: We might --

20 THE COURT: I mean, which way do you want it?

21 MR. McMULLEN: We might be entitled under -- under --
22 in each conversation, each statement, we might want the
23 entirety of one published; whereas, we might consider the
24 -- just a portion of another might be admissible without
25 our seeking to introduce the entirety. So taking each

1 statement or each phone call separately -- you know, for
2 example, Tina from Sumter.

3 THE COURT: We have got six phone calls.

4 MR. McMULLEN: Yes, sir.

5 THE COURT: Go ahead.

6 MR. McMULLEN: For example, Tina from Sumter, I don't
7 see her on the witness list, and I'm not able to
8 cross-examine her as to why she was saying these things to
9 Mr. Starks.

10 The conversations with his wife, I would say the
11 spousal privilege would apply, talking about things like
12 self-defense with his wife. Again, there was a period of
13 time within which he was deprived of the medication that
14 he takes.

15 I think the State would have to show in some sort of
16 thing similar to a Jackson vs. Denno hearing that
17 statements were voluntarily --

18 THE COURT: There's no -- there's no evidence in this
19 record that he needed medication.

20 MR. McMULLEN: No, sir.

21 THE COURT: Why would the State have to prove that he
22 didn't --

23 MR. McMULLEN: So --

24 THE COURT: Was on this medication?

25 MR. McMULLEN: In order to show the voluntariness of

1 the -- of the conversation.

2 THE COURT: You have got to assume it's voluntary.

3 MR. McMULLEN: I thought that --

4 THE COURT: I mean, if there's no other evidence that
5 it's involuntary, I mean, that it's -- that it's the
6 result of not being on medication, I mean, there's nothing
7 in this record that says he's on medication today or then
8 or any time or for what it's for. I mean, he may be on
9 aspirin, for all I know.

10 MR. McMULLEN: Yes, sir.

11 THE COURT: I mean, in your statement that he's on
12 medication, and therefore, the State should have -- or was
13 on medication but not on medication, the State should have
14 to prove that it's a voluntary statement doesn't --

15 MR. McMULLEN: When Ms. --

16 THE COURT: I don't understand that.

17 MR. McMULLEN: When Ms. Goff from the detention
18 center takes the stand, that would be something that I
19 suppose -- she is the custodian of the records, that would
20 be something that I could inquire with her about.

21 So if she's -- we're going to proffer this, if she's
22 -- I would like to do an in camera hearing and see whether
23 the statement is voluntary or not.

24 The other objection I would have is that there's no
25 way for the Court to determine at this point whether the

1 information complies with Rule 403; whether these
2 statements are more prejudicial than they are probative.

3 THE COURT: What --

4 MR. McMULLEN: There's no --

5 THE COURT: What does that have -- why would -- what
6 brings 403 into this discussion?

7 MR. McMULLEN: Although irrelevant, any evidence may
8 be excluded if its prejudicial effect outweighs the
9 probative value. I just don't see how the Court can
10 determine whether that is true or not without previewing
11 these.

12 THE COURT: Well, I suggested a minute ago you may
13 want to proffer this evidence.

14 MR. McMULLEN: Yes.

15 THE COURT: Can you play it?

16 MS. SHIPLEY: Yes, sir.

17 THE COURT: Is that what you --

18 MR. McMULLEN: Yes, sir.

19 THE COURT: -- wish for the Court to do?

20 MR. McMULLEN: May I ask, sir, before we get too far
21 into things, for purposes of scheduling, I've got
22 Dr. Faber at some point to testify, and he's got a dental
23 appointment this afternoon at three. Apparently, it's
24 more than routine.

25 He could testify as long as he's out by three or

1 first thing tomorrow morning.

2 THE COURT: Well, without asking you to disclose
3 anything you don't want to disclose at this point, just --
4 just for scheduling purpose, do you anticipate your client
5 to take the stand?

6 MR. McMULLEN: I just --

7 THE COURT: You don't have to disclose that at this
8 point if you don't want to. He may not have made that
9 decision then.

10 MR. McMULLEN: That's the way it is, Your Honor.
11 I've been doing everything I can to delay that decision to
12 see if it's absolutely necessary.

13 THE COURT: I understand.

14 MR. McMULLEN: And also haven't, on purpose,
15 introduced any evidence in case we are able.

16 THE COURT: You came close.

17 MR. McMULLEN: That's --

18 THE COURT: And Dr. Faber would be evidence.

19 MR. McMULLEN: Well, if we need to bring him in, yes,
20 sir.

21 THE COURT: Well, let me ask, the doctor you have
22 today, that testimony, I assume, is not very lengthy.

23 MS. SHIPLEY: No, sir.

24 THE COURT: I don't know.

25 MS. SHIPLEY: It's probably about 40 minutes direct,

1 if that.

2 THE COURT: Okay. And we have cross?

3 MR. McMULLEN: I don't know how many other witnesses
4 the State has.

5 MS. SHIPLEY: I plan on calling Sergeant Shull after
6 Dr. Kessler and --

7 THE COURT: It would appear that --

8 MS. SHIPLEY: -- rest my case.

9 THE COURT: -- your witness could be up after lunch.
10 We'll have -- I assume the directed verdict motion will
11 take some time, and I would assume your doctor can get up
12 after lunch and be out of here by three. I don't know
13 what his testimony would consist of or what
14 cross-examination may be but...

15 MR. McMULLEN: I don't anticipate that both would
16 take more than an hour.

17 THE COURT: But I can anticipate, if your client
18 takes the stand, this case will not finish today. It just
19 won't finish today. That's all. Is that as close as I
20 can get?

21 MR. McMULLEN: I think so, yes, sir. Thank you.

22 THE COURT: All right. Now, let's move ahead with
23 the proffer.

24 MS. SHIPLEY: Okay. Ms. Shuttters, if you could
25 please --

1 THE COURT: I'm just trying --

2 MS. SHIPLEY: I'm sorry?

3 THE COURT: I'm just trying -- the jury is sitting
4 back there. I'm just trying to --

5 MS. SHIPLEY: Would you like to do it after
6 Dr. Kessler testifies?

7 THE COURT: Yes, that might be better. That way I
8 can send the jury to lunch and -- or give them an early
9 lunch or something.

10 MS. SHIPLEY: Okay.

11 THE COURT: All right. Ready for the jury?

12 MS. SHIPLEY: Yes, sir, Your Honor.

13 THE COURT: All right. Bring the jury, please.

14 THE BAILIFF: I'll be glad to, Your Honor.

15 (WHEREUPON, the jury came into open court at
16 approximately 10:06 a.m.)

17 THE BAILIFF: The jury is all present.

18 THE COURT: Thank you very much. I hope you had a
19 pleasant evening. You may continue with your witness.

20 MS. SHIPLEY: Thank you, Your Honor. The State calls
21 Dr. Stanton Kessler.

22 THE BAILIFF: Place your left hand on the Bible,
23 raise your right hand and face the clerk for me.

24 STANTON KESSLER, after being duly
25 sworn, testified as follows:

1 THE CLERK: Thank you. Please have a seat in the
2 witness stand and state your full name for the record.

3 THE BAILIFF: Watch your step for me, please, and
4 speak into the microphone.

5 THE WITNESS: Yes, sir.

6 My name is Stanton Coleman Kessler.

7 DIRECT EXAMINATION:

8 BY MS. SHIPLEY

9 Q Dr. Kessler, can you tell the jury a little bit about
10 your background? What exactly do you do for a living, and
11 how have you spent your whole career?

12 A I okay. I am a forensic pathologist. That's someone
13 who studies sudden unexpected death. I've done about --
14 almost 12,000 autopsies. Half of those were my own and
15 the other half were people that I trained with.

16 I was born and raised in Baltimore, Maryland, and I
17 went to medical school at the University of Maryland, as I
18 did undergraduate school. I had a degree in microbiology
19 also.

20 For years I have trained as a medical examiner. I
21 have trained pathologists. I went to the University of
22 Colorado in Denver and did undergraduate; pathology
23 training after graduating from med school.

24 I spent time in the Navy. I was a Navy urologist and
25 a Navy psychiatrist. I trained in neuropsychiatry years

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1 ago at Langley Porter. It's a hospital in San Francisco.

2 Then I went back for training at the University of
3 Colorado, and then I trained in surgical pathology, which
4 is the study of tumors, so to speak, and what comes out of
5 our bodies in St. Barnabas Medical Center in Livingston,
6 New Jersey.

7 I trained in forensic medicine at the University of
8 Miami in Miami at Jackson Memorial Hospital, Dade County
9 Medical Examiner's office.

10 I studied -- after I finished my studies, I took
11 examinations called board examinations, and I'm boarded in
12 anatomic pathology and forensic pathology. I recertified
13 my boards in October of '05 and retrained.

14 I worked at the Richland Memorial or Palmetto
15 Richland Health System since I've been here for the last
16 two years.

17 I worked initially in the Pathology Department doing
18 autopsies, and recently I had taken a position at Richland
19 memorial as an administrative physician where I look at
20 physician quality, review charts, making sure physicians
21 are doing what they're supposed to do.

22 Q And --

23 A Most of my career I spent part at the med schools
24 where I ran a training program, a fellowship program
25 training other doctors to be forensic pathologists, and I

1 retired from that in 2001.

2 Q And Dr. Kessler, have you ever testified or been
3 qualified as an expert in the field of forensic pathology?

4 A Yes.

5 Q Approximately how many times?

6 A Over 200 times.

7 Q And how long has your career been in forensic
8 pathology, approximately?

9 A Since 1975.

10 Q So 32 years?

11 A Yes.

12 MS. SHIPLEY: Your Honor, at this time I seek to
13 introduce Dr. Kessler as an expert in the field of
14 forensic psychiatry.

15 MR. McMULLEN: No --

16 MS. SHIPLEY: I'm sorry, forensic pathology.

17 MR. McMULLEN: No objection.

18 THE COURT: Without objection. Go ahead.

19 BY MS. SHIPLEY

20 Q Dr. Kessler, you mentioned that -- briefly what
21 forensic pathology was. Could you explain that for us,
22 please?

23 A General pathology is the study of what ails us, so to
24 speak, tumors, infectious diseases, autoimmune diseases,
25 H.I.V., et cetera.

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1 As a general pathologist, most of what we do is look
2 at blood, secretions from the body, urine, bile, and
3 biopsies to determine what disease someone is suffering
4 from so we can determine the proper treatment and which
5 antibiotics or which chemotherapeutic agents to use to
6 help them, help them survive. We work with internists and
7 surgeons.

8 When people pass, we perform autopsies to find out if
9 what we thought they had, they actually did have. I've
10 done a lot of autopsies in my career.

11 Forensic medicine is the side -- you have to be an
12 anatomic pathologist to be a forensic pathologist. It's a
13 branch of pathology where we study basically sudden and
14 unexpected death, somebody who is walking around normally
15 and suddenly collapses.

16 We study abuse cases, child abuse cases where
17 children are dead. We study abuse, sudden and unexpected,
18 suicides, homicides, public health threats to make sure
19 someone doesn't have Anthrax to spread it to the
20 community.

21 In doing that, the autopsies are about the same as
22 the other autopsies, as the general hospital pathology
23 autopsies, but forensic autopsies are special and you have
24 to take special training to do them because those things
25 are a little different. So that's what I did, and as I

1 said, I trained people to take boards to become forensic
2 pathologists.

3 Q And so you are board certified?

4 A Yes, and recertified.

5 Q I'm going to bring your attention to the date of
6 October 13th, 2006 at 9:30 a.m. Did you have an occasion
7 to perform an autopsy that morning?

8 A Yes, I did.

9 Q And who was the patient?

10 A The decedent was a Cleveland, Alphonzo Cleveland.

11 Q Okay. And how long was Mr. Cleveland?

12 A He was 54.

13 Q And what was his race?

14 A He was African American.

15 Q And the purpose -- when you are requested to do an
16 autopsy, who requests it?

17 A Well, the coroner will request it, the sheriff's
18 office.

19 Q Okay. And in this case, who requested the autopsy?

20 A This was the coroner's office.

21 Q All right. Now, can you please explain for the jury
22 what it is when you walk into your examination room, and
23 just walk us through what you do during an autopsy.

24 A Before we perform the autopsy, I have a little bit of
25 the history, and the coroner's assistant came to watch.

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1 To perform an autopsy, you take the decedent, put them on
2 the table. You take them out. They're usually in a black
3 bag, coroner's bag, and you look at them as is.

4 You look at any clothing that was there. You look at
5 any effects, if they are there. Often they've had
6 cardiopulmonary resuscitation. The clothes are absent,
7 what have you. You look to see if there's any unusual
8 surface anatomy that would make you think why the person
9 died. For instance, you look for gunshot wounds, stab
10 wounds, strangulation marks, tire treads, fractures, what
11 have you.

12 You look for any diseases that could be there.
13 Sometimes they have tumors that grow out from the body and
14 grow on the skins, deformities.

15 So you see if you can get an idea if there are any
16 natural or unnatural diseases just from looking at the
17 body. We then diagram these, if they're on the chart, if
18 there are any abnormalities.

19 You turn the body over. You do the same thing. You
20 remove the clothing, and then you photograph the body and
21 any areas of trauma and/or unnatural disease.

22 Q Dr. Kessler, I'm sorry to interrupt you. I just
23 wanted to go ahead and get this marked into evidence.
24 State's number 47, do you recognize that, sir?

25 A Yes, I do.

1 Q And what is that?

2 A This is one of our diagrams that I filled in on the
3 decedent.

4 Q And it involves a Mr. Alphonzo Cleveland?

5 A Yes, it does.

6 MS. SHIPLEY: Your Honor, at this time the State
7 seeks to introduce number 47 into evidence.

8 MR. McMULLEN: No objection.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit No. 47 was admitted into
11 evidence.)

12 BY MS. SHIPLEY

13 Q Dr. Kessler, I'm going to hand you a pointer. If you
14 can reach over to this diagram with the pointer and please
15 just walk the jurors through your examination of
16 Mr. Cleveland, and please speak up for the court reporter.

17 A Okay.

18 Q Would it be helpful to step down from here?

19 A I'm fine here.

20 Q Okay.

21 A This is the decedent as we saw him in terms,
22 graphically. Again, postmortem people change. They get a
23 little taller or shorter because the body relaxes. We
24 measured him at 69 inches, and of course, approximate
25 weight. We didn't have a scale at the old morgue, but

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1 it's 190 pounds approximately.

2 We he was thinner or heavier. This is basically the
3 identifying marks. We had a number here that is a medical
4 records number. He obviously received cardiopulmonary
5 resuscitation, and we have an I.D. here that you could
6 see.

7 He has an endotracheal tube in his mouth, and these
8 are signs of resuscitation. Then I do a general body exam
9 and will eliminate anything that was old that didn't have
10 anything to do with cause of death.

11 He has an old scar. It's about two inches on the
12 upper left chest. He has a long old scar here about three
13 inches on his forearm.

14 Q And, Doctor, if I could stop you right there, State's
15 48, is that a photograph of the scar on the forearm of his
16 left arm?

17 A Yes, it is. Here is a photograph of the scar, right
18 here.

19 MS. SHIPLEY: Okay. Your Honor, we introduce 48 at
20 this time.

21 MR. McMULLEN: No objection.

22 (WHEREUPON, State's Exhibit No. 48 was admitted into
23 evidence.)

24 BY MS. SHIPLEY

25 Q So this scar is right there on this diagram?

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1 A Yes.

2 Q Okay.

3 A He has a tiny scar on his thigh here. He has a site
4 here, and intravenous site. They had a catheter. They
5 were giving him fluids and/or blood or both on this side.

6 On the back on the shoulder of the left side, there
7 is an area where the skin was lighter than it should be.
8 He was a relatively dark skinned African American male.
9 There is a hypo-pigmented area. That could have been a
10 birth defect, it could have been a scar, a burn. I don't
11 know what it was, but it was something.

12 He had the neck collar on him when he came in. We
13 removed that. He has clefts in his earlobes. Clefts in
14 earlobes means the little vessels that supply blood to the
15 ears, when you get hardening of the arteries, these little
16 vessels build rapidly.

17 When you see clefts in the earlobes, it's a sign of
18 early atherosclerosis. Sort of to let you know that the
19 body probably has hardening of the arteries. We did find
20 that later.

21 Then we look for evidence of trauma. This is his
22 evidence of trauma, this little "T" mark here. I draw a
23 "T" because this is a stab wound, and although most knives
24 are single edged, there are occasional weapons like
25 daggers or paper cutters considered double edge, but this

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1 is a single edge because they put a square here or a "T"
2 mark here. That's the dull side, the square side of the
3 blade.

4 This linear sharp point here is the sharp side of the
5 blade, so that's a stab wound. Then I measured it. It's
6 15 inches down from the top of the head, and a half. It's
7 six inches to the right of the midline this way. It's
8 obliquely oriented. He was angled rather than straight
9 up, sideways.

10 It goes in about three-and-a-quarter inches, and it
11 goes in a somewhat upward direction from front to back and
12 from right to left, so it's coming this way down and up,
13 and it stops.

14 It goes into the underlying lung which sits right
15 around here. The middle of the chest is called the
16 mediastine. That's where the heart sits.

17 The heart sits, the aorta is there and the esophagus.
18 It's a tight little chamber. It somehow cut some small
19 vessels. It goes through and through a lobe of the lung,
20 and then it cuts some of these little vessels, and he gets
21 blood oozing out up into his neck. It doesn't go into his
22 heart. It goes into his mouth. He re-swallows that
23 blood, and now the blood and some other materials are
24 going into the lungs and filling the lungs up.

25 So he's suffocating from the stab wound internally,

1 and the lung space here is filling up with blood. You
2 have got a big space. It looks like a little barrel here.
3 It goes back and forth and your ribs go up and down and
4 you breathe.

5 Well, if you have something compressing a sponge-like
6 lung, like blood, that pushes down on it and the lung is
7 out. It's out of commission. It's not functional.

8 So as he's bleeding into this chest cavity, several
9 quarts of blood, he's also inhaling through his internal
10 system, his mouth, the internal portion of the mouth and
11 throat, blood into the lungs. That's basically how he
12 died.

13 When we went ahead and looked at his heart, his heart
14 was large. It had patchy fibrosis which is typical of
15 someone that age who doesn't take good care of themselves.

16 He had a liver that showed some changes, hardening
17 changes, old changes. Cirrhosis could be from chronic
18 infection, it could be from alcohol. A lot of things
19 cause cirrhosis. He had a little bit of pancreatitis, and
20 basically, that was it.

21 None of these other diseases did kill him at that
22 time, or were severe enough to kill him at that time, but
23 the stab wound in and of itself was a lethal stab wound,
24 and that's what killed him, a stab wound to the chest to
25 the right side.

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1 Q And doctor, when you were explaining the pathway of
2 this injury, did it -- did he have to -- did this injury
3 go through any of the ribs?

4 A It had to go through two ribs. It's actually -- the
5 ribs are coming around like this (indicating) going to the
6 sternum.

7 As -- it would be the first rib is here, second,
8 third, the fourth rib is here, the fifth rib is here. It
9 literally goes right through two ribs, so that takes a lot
10 of force to go through bone. This wound went through
11 bone.

12 It doesn't go all the way into the chest. It sort of
13 stops like at four inches, and the blade was, I think, an
14 8-inch blade. So if it was thrust all the way forward
15 into the chest, it would have gone all the way in. It was
16 a sharp blade. You could see the knife.

17 If you fell in that knife, it would probably have
18 gone directly through him and come out the other side.
19 That's how sharp it is, and I've seen that happen where it
20 will actually come out, the back wound side through the
21 scapula. That knife was sharp enough to have gone through
22 a scapula, so this was a thrust coming upward into the
23 chest from below and going to the left side.

24 Q And Doctor, I noticed in your report when you were
25 describing how deep the weapon went into Mr. Cleveland's

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1 lung, you put a plus or minus two; is that correct?

2 A Plus or minus.

3 Q Or four.

4 A It's four inches, plus or minus. Why is it plus or
5 minus? Okay, so we have a closed space, and we know that
6 a blade is in here, so deep.

7 We measured four inches to where the cut was, but the
8 lung is doing this (indicating). When you're breathing,
9 it's either expanding or collapses, expanding, collapsing.

10 So that lung can collapse about two inches when it's
11 exhaled. When you inhale, it fills up another two inches,
12 so that blade could have gone in another two inches or
13 maybe a little less, but at least four inches or it could
14 have been deeper.

15 So if he's exhaling, the lungs collapse. We still
16 measure four inches, if he's inhaling. So that's why we
17 put that. It's not a completely exact science, so we have
18 to go with the body mechanisms and physiology.

19 Q Okay. And, Doctor, I'm going to hand you what's
20 already been marked into evidence State's Exhibit 43. If
21 you could just demonstrate for the jury exactly your
22 findings and how far deep the object would have gone into
23 Mr. Cleveland.

24 A This knife -- again, this is the square edge. It's
25 not a sharp knife. I designated that by the cross-line.

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1 This is a sharp single-edged weapon, so it's coming in
2 like this.

3 It would go in up to four inches, which would be on
4 this knife right here, this deep. So it would have to be
5 that deep --

6 FEMALE SPECTATOR: Jesus.

7 THE WITNESS: -- to go in. As I said, it was sharp
8 knife. It went through bones. It was thrust through two
9 major bones, two ribs, and into the chest. This is sharp
10 enough it would continue forward. It would have gone all
11 the way through the other side of the chest and come out
12 through here. It's an extremely sharp knife. It's one of
13 those serrated sharp knife edges.

14 BY MS. SHIPLEY

15 Q So Doctor, if someone were to have fallen on this
16 item, you would have expected the blade to go all the way
17 through?

18 A Oh yeah.

19 Q But something stopped this blade half way?

20 A Or the end of the thrust. It could be someone --

21 Q Could have reached all the way?

22 A Couldn't reach all the way, stopped, pulled back,
23 what have you. It didn't go all the way through.

24 Q Doctor, also when you were talking about the
25 trajectory, you said it was -- if you could come down.

1 I'm sorry to make you sit down, up and down.

2 A Sure.

3 Q If you can demonstrate on me for the jury -- it's
4 kind of hard to use that. Demonstrate on me the pathway
5 of the injury.

6 A Could I use a ruler?

7 Q Sure. You'd rather use a ruler?

8 A It's a pretty sharp knife.

9 (Jurors laughing).

10 BY MS. SHIPLEY

11 Q Sure. I appreciate your concern for my safety.

12 A If we were to come this way, okay, it's coming
13 upwards. So it's going -- and here is a rib, and here is
14 another rib underneath. It went through those two bones
15 and hits the underlying lung. Then there's a middle
16 portion of your chest which starts around here
17 (indicating). That's a cavity where the heart is. It's
18 called the mediastina.

19 It's tearing some vessels and their little veins and
20 what have you. That's why the blood is mixing and coming
21 upwards. Somehow it gets into the esophagus, and he's
22 re-swallowing that. So it's coming in this direction from
23 right to left upwards and from front to back.

24 Q Okay. Thank you very much, Doctor.

25 The cause of death for Mr. Cleveland was what in

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1 your --

2 A Stab wound to the right chest perforating the right
3 lung.

4 Q And what caused him to die as a result?

5 A Well, he exsanguinated and he asphyxiated.

6 Q Exsanguinated means?

7 A He bled to death.

8 Q Okay.

9 A And I know -- I made a note in the chart that his
10 organs were very pale and bloodless. Then he's aspirating
11 blood as it's coming up into his mouth back into his
12 breathing spaces, and he can't breathe.

13 Q So he's inhaling his blood?

14 A He's inhaling his blood.

15 Q And Doctor, when -- when that happens, when
16 somebody's lung is stabbed, what -- where exactly does the
17 blood go first? Would you expect blood to spurt out right
18 away? Explain that for the jury.

19 A Well, what happens is your -- your space, your lung
20 space is -- without the lung in it, it's about two
21 liters -- two quarts, three quarts, at best.

22 It's a big space. It's like a barrel that's empty.
23 Actually, the ribs look like barrel spaces, and when
24 you're stabbed in the chest, if it doesn't go hit a
25 pumping vessel like the heart, the aorta, the blood will

1 squirt back, it will fill that space, either if you're
2 lying down or sitting up.

3 Until that space is filled, especially if your lying
4 down, it's -- it will fill this up. It will slowly rise
5 because it's not rapid bleeding. It's slow bleeding, and
6 it will fill that space. Until you sit up and move over,
7 the blood is not going to come piling out. It will be
8 dripping because what happens with a wound, the wound
9 tends to come back and close over the -- the area that's
10 been stabbed.

11 So -- and realize this again, is the comp. here, so
12 especially, even if you're sitting up, it has to fill all
13 the way up and all the way forward. So you're filling
14 this barrel before it oozes out.

15 Q And Doctor, if someone is wearing a shirt, would you
16 expect the shirt to absorb some of the blood before it
17 would start to drip onto the ground?

18 A Yes.

19 Q Also Doctor, the injury that you observed on
20 Mr. Cleveland, did it appear that the knife moved around
21 in any way? What would you expect to see if the knife
22 were jagged around inside of him?

23 A If you take a knife and jag it around, you saw that
24 sharp end of that knife near my hand, that -- if you're
25 moving around, that cuts the skin in many ways. So your

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1 stab wound, instead of being a nice clean line, has jagged
2 little three or four edges at the base. When you see
3 that, you can say the person has been moving on it. It
4 doesn't look like it just went in and out, either quickly
5 or pressing it in and out.

6 Q Okay. So there was no -- no evidence of the victim
7 moving when he was stabbed?

8 A Well, he could have been moving but the wound, the
9 knife inside his body wasn't turning around and around.
10 I've seen that on occasion.

11 Q Doctor, I'm going to show you State's number 36 and
12 ask if you recognize that.

13 A I do.

14 Q And what is it?

15 A This is a photograph I instructed the coroners to
16 take in the -- and the forensic technician to take at the
17 autopsy of the decedent's right chest showing the stab
18 wound. It shows the sharp border closest to the arm and
19 the square border closest to the neck brace that he has on
20 that's above his right nipple.

21 MS. SHIPLEY: Your Honor, at this time the State
22 seeks to introduce number 36 into evidence.

23 MR. McMULLEN: Without objection.

24 THE COURT: No objection.

25

1 (WHEREUPON, State's Exhibit No. 36 was admitted into
2 evidence.)

3 BY MS. SHIPLEY

4 Q So this was a clean in and out. Is that your
5 testimony, Doctor?

6 A Yes.

7 Q Now, Doctor, after you noted, made all your report
8 about the fatal injury, did you also examine other parts
9 of his body such as his gastrointestinal area?

10 A Yes, I did.

11 Q And can you tell this jury what was the last meal
12 Mr. Cleveland ate?

13 A Well, he had normal stomach folds. He had no ulcers
14 or tumors or any abnormalities. He had been eating --
15 let's see what he had. I think it's on this page,
16 vegetables, digested meat. When I say "meat", unless I
17 say otherwise, I mean meat, not pork, not -- because then
18 I'll say "white meat". If it's pork, I'll say "white
19 meat". If it's chicken, I'll say "white meat" and chicken
20 shreds.

21 It looked like beef, sort of dark, and vegetables and
22 some starchy material. It could have been a potato, or it
23 could have been bread or what have you.

24 Q And Doctor, how many ounces of that -- it was mixed
25 with blood; is that correct?

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1 A Yes.

2 Q And exactly how much did the contents of
3 Mr. Cleveland's stomach weigh?

4 A We don't weigh it, but it was -- let me just -- okay.

5 (Pause) .

6 Okay. 12 ounces is -- is a good bit.

7 Q 12 ounces?

8 A 12 ounces.

9 Q Okay. And have you ever in your 12,000 autopsies
10 that you have been involved in, have you had an
11 opportunity to view what a hot dog looks like when it's
12 digested?

13 A Yes.

14 Q And did this meat that you observed in
15 Mr. Cleveland's stomach appear to be a hot dog?

16 A No. Hot dogs are pink or red pink, and because
17 they're so high in fat, they don't get digested
18 immediately, and they take a long time to digest. You
19 usually see the remnants or a partially chewed hot dog, if
20 you've ever thrown up a hot dog. This is different than
21 ground meat. So this looked like ground meat as opposed
22 to a hot dog. I didn't see individual chewed pieces of a
23 hot dog.

24 Q What about did you see any evidence that
25 Mr. Cleveland had eaten any beans?

1 A No. I would have -- I would have -- we would decide
2 -- what would happen is we'll take the gastric contents,
3 and we'll wash them. All I can say, it was vegetable
4 matter. Usually, vegetable matter is green.

5 Could he have beans? Beans are starchy, but beans
6 are usually dark. So he had some kind of vegetable
7 matter. I couldn't tell what it was, but it wasn't -- it
8 didn't appear to be beans.

9 Q And, Doctor, are you familiar with how long it takes
10 for a human being to digest food?

11 A Yes.

12 Q And how long, approximately, does it take?

13 A Extremely --

14 Q If I -- if I sat down right now and ate the contents
15 that are found in Mr. Cleveland's body.

16 A As a rule of thumb, we say about two hours. That
17 could be less or more depending on how fatty the meal or
18 upset the person is, but I would think about two hours.
19 This food is being digested now.

20 Q So within the last two hours he had eaten something
21 consisting of meat, vegetables, and a starchy material?

22 A I think so.

23 Q And Doctor, have -- in every autopsy, do you send
24 blood samples or urine or any other body fluid, as well as
25 organs, to be tested or toxicology analysis?

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1 A Yes, in -- over 95 percent of the cases we do.

2 Q And was that done in Mr. Cleveland's case?

3 A Yes, it was.

4 Q Can you tell the jury the results of the toxicology?

5 A Let me see if I can get them here. We did extensive
6 toxicology as we do in all homicide cases, and we look for
7 drugs of abuse.

8 We look for opiates which are derivatives of heroin.
9 We didn't find that. We looked for cocaine derivatives.
10 We didn't find that.

11 Benzodiazepine, those are Valiums, Xanax, sedatives,
12 we didn't find that. Cannabinoids are marijuana, and we
13 didn't find any of that. Amphetamines or speed, uppers,
14 we didn't find any of those.

15 We looked for barbiturates which are pills that are
16 commonly used in people that have seizure disorders and/or
17 for sedatives. We found none of those.

18 Bencyclodine, which is a -- it's a hallucinogen. We
19 didn't find any of that. Methadone, again, is a synthetic
20 opiate. It's used for people who are on heroin to come
21 off, and we didn't find any of that.

22 The last was painkiller Propoxyphene or Darvon. We
23 found none of that. We did find alcohol, ethanol.

24 Q And how much alcohol did you find?

25 A Well, the units -- I think we measured to be 222

1 units. Let me see, 222 milligrams per deciliter.

2 Q And if I could just refer to --

3 A I mean --

4 Q -- this document right here. Would this assist you
5 in --

6 A Yes.

7 Q -- refreshing your recollection?

8 A 255 milligrams per deciliter.

9 Q And I'm terrible with liters and so forth. What
10 exactly is -- does that mean? How much alcohol was in his
11 system?

12 A Legally we're drunk if we have 80 of these units,
13 milligrams per deciliter. That's the limit here, so this
14 means that he has about three, a little more than, a tiny
15 bit more than, three times the legal limit, the limit, for
16 being drunk in his system.

17 Q And so, if you said it's -- .08 is the legal limit to
18 drive --

19 A Yeah.

20 Q -- while under the influence, correct?

21 A Yeah.

22 Q Can you tell the jury what the decimal would be for
23 this particular --

24 A Yes. This would be a 2.5.

25 Q Or a .25?

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1 A No.

2 Q 2.5?

3 A .8 is.

4 Q .8, I apologize, okay.

5 A Yeah. .8 is legal so this is 2.5. That's about
6 three times what it should be for being intoxicated.

7 Q And so Mr. Cleveland was intoxicated?

8 A Yes, he was.

9 Q And are you -- you mentioned all of these other
10 narcotics and illegal substances. He was negative for
11 everything else; is that correct?

12 A That is correct.

13 Q There was also evidence of nicotine in his system?

14 A Nicotine and continine. These are seen in -- you can
15 see it in cigarette smoke. You can see this also --
16 occasionally sometimes in coffee.

17 Q Okay.

18 A They're negligible.

19 Q I also noticed that Atropene was present. What is
20 Atropene?

21 A Atropene is a drug used in cardiopulmonary
22 resuscitation to help you with resuscitation.

23 Q And so that Atropene would have come from people
24 working on him?

25 A That's correct.

1 Q E.M.T.'s and so forth?

2 A Yes.

3 Q Are you also familiar with other types of narcotics,
4 whether legal prescription narcotics, such as Baclofen?

5 A Baclofen --

6 Q Baclofen?

7 A -- is a drug. They use that a lot in the hospital.
8 They use it for muscle spasm, back spasms. It has a
9 sedating effect, calming effect, to it.

10 Q And so that's not what was in Mr. Cleveland's --

11 A No.

12 Q -- body?

13 A It was not in his system.

14 Q Another drug I'm curious if you're familiar with is
15 Coumadin. What is that?

16 A Coumadin is Warfarin. The other name for it is --
17 they use it in rat poison, but it's also used in humans
18 for clotting, keeps your blood from clotting. It's a
19 blood thinner.

20 Q And are you familiar with a prescription drug called
21 Maxide?

22 A Maxide is a -- is a compounded drug that's used to
23 lower your blood pressure. It has an antihypertensive,
24 and it has Thiazide, a diuretic which causes you to get
25 rid of fluid, and it lowers your blood pressure.

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1 Q And this Baclofen, is it a type of medication used
2 for treating a person with epilepsy, or what is the
3 purpose of that drug?

4 A Well, I see it a lot -- they use it a lot in people
5 who have chronic spasm and pain. I see it a lot in cancer
6 patients. I see it -- it's supposed to relieve muscle
7 spasm.

8 It's like a super kind of Valium type drug. It works
9 in a different area. It works more in the muscles. As I
10 said, it has a sedating effect.

11 Q And so you would not expect aggression or something
12 like that from a person on this drug?

13 A No.

14 Q And it controls the muscle spasms?

15 A Yeah. It's used for muscles spasms.

16 Q So if you're on it, you would not suffer muscle
17 spasms?

18 A You probably wouldn't. It's to keep you calm.

19 Q Doctor, also in your expert opinion, is it possible
20 for someone who has been slapped to suffer from blurred
21 vision?

22 A It is possible if you're slapped quite hard to
23 produce either trauma to the eye directly, in which case
24 you'd see swelling or abnormal problems with vision or a
25 concussion. If you slap somebody hard enough to get a

1 concussion, then that changes everything.

2 Q And what would be the symptoms of a concussion,
3 should someone be slapped and suffer a concussion?

4 A Well, you could have weakness. You could have -- the
5 most common symptoms are headache and severe photophobia,
6 which is a reaction to light or you -- when you see light
7 and your eyes hurt because it causes headache and
8 irritability, but mostly light change problems and
9 headache.

10 Q And would a person suffering from such symptoms,
11 would they be calm and cooperative when spoken to?

12 A They would be irritated and irritable, more than
13 likely.

14 Q Okay. And you had an opportunity to view a
15 photograph of the defendant, Thaddess Starks; is that
16 correct?

17 A That is correct.

18 Q I'm showing you 35. Were you able to see -- if
19 someone were to be slapped hard enough to -- for them to
20 suffer blurred vision, what would you expect to see on
21 their face?

22 A If they were slapped in the face, you would expect to
23 see swelling, swelling around the eye, maybe a handprint
24 from the -- I mean, like you see when you slap somebody.

25 Q In that photograph are you -- do you see any evidence

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1 of that on Mr. Starks?

2 A This is from a distance, but from this distance I
3 don't see any evidence. I would like a closer shot, if
4 available.

5 Q Okay.

6 A I don't see anything from this distance.

7 Q A closer shot would assist you in making that
8 determination?

9 A Yes.

10 (WHEREUPON, State's Exhibit No. 49 was marked for
11 identification only.)

12 BY MS. SHIPLEY

13 Q Doctor, I'm going to show you another photograph,
14 State's 49 for identification purposes on, so please don't
15 publish it to the jury. Is that -- what is that, first of
16 all?

17 A It's a photograph of the decedent wearing a white
18 T-shirt.

19 Q You mean the defendant?

20 A I'm sorry, the defendant.

21 Q And is that a close up of his face?

22 A Yes, it is.

23 Q And does that assist you in viewing whether or not
24 there is any evidence of a hand mark on his face?

25 A Yes, it does.

1 Q And do you see that in that photograph?

2 A No. This is the photograph taken under light. There
3 is no evidence of swelling of the eyes, no contusions, no
4 lacerations, no trauma, no handprints, a perfectly normal
5 face.

6 Q Thank you, Doctor.

7 Doctor, I'm going to ask you a little bit about the
8 disorder of epilepsy. Explain for the jury again your
9 background in neurology.

10 A When I was drafted -- well, I went into the Navy. I
11 was a Navy neurologist, and I also worked neuropsych at
12 the Balboa Naval Hospital in San Diego, and I was
13 responsible for a ward of corpsman of 20 ill enlisted
14 officers who had come back from Vietnam. They were aired
15 back to our base.

16 I treated them, and I also ran the outpatient clinic
17 for dependents and retired, and often people would come
18 with typical problems like headaches, loss of balance,
19 epilepsy. I would have to refill their medications. I
20 saw a lot of epileptics, and I did that for a couple of
21 years.

22 Q And Doctor, so you treated patients with epilepsy; is
23 that correct?

24 A That is correct.

25 Q And Doctor, when you diagnose somebody with that

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1 disorder, what is it that is medically required in your
2 field before you make such a diagnosis?

3 MR. McMULLEN: Your Honor, I'm going to object on the
4 grounds of relevance.

5 THE COURT: Well, I don't know what it's relevant to.
6 I mean, what's the relevance?

7 MS. SHIPLEY: May we approach?

8 THE COURT: Sure.

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

11 THE COURT: You may proceed.

12 MS. SHIPLEY: Thank you, Your Honor.

13 BY MS. SHIPLEY

14 Q Are seizures a symptom of epilepsy?

15 A Yes.

16 Q Okay. All right. So tell this jury what it is that
17 you as a medical doctor would have to be sure of before
18 you diagnose somebody with epilepsy?

19 A Well, a lot of people would claim they have epilepsy.
20 Sometimes it's real, sometimes it's esoteric, sometimes
21 it's for secondary gain, insurance problems.

22 So what you would need to do, of course, is if a
23 physician witnessed a seizure, it's awfully helpful, but
24 we often don't have a the ability to do that unless
25 they're in a locked ward.

1 People with seizures usually collapse, they seize,
2 bite their tongue, pass their feces or their bladder.
3 There may have what we call an initiating thing that
4 causes the seizures, sometimes sounds can cause it,
5 smells, sometimes they get an aura. They feel something
6 is going to happen, they smell something, they hear
7 something, they imagine something, and they have a
8 seizure.

9 The seizure is very specific, as I said. It's
10 atonic, clonic movement. They shake, they usually fall to
11 the ground, and sometimes they hurt themselves.

12 The key to the whole thing is now, of course, we have
13 C.A.T. scans. We look to see if there is anything
14 abnormal with the C.A.T. scans producing a seizure, such
15 as a scar, a mark on a brain or a tumor.

16 Then we have something called an
17 electroencephalogram. This is a wave test. We put
18 electrodes on the scalp, and the person sleeps and -- or
19 is active, and you look for seizures.

20 If you have verified seizures by an
21 electroencephalogram or if you don't see any seizures, you
22 can get a drug, Alqueluous (phonetic), another drug that
23 produces -- if somebody is going to have a seizure, it
24 will make them have a seizure.

25 You look for seizures, and without a verified

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1 electroencephalograph diagnosis, you don't really have a
2 seizure. It's a brain wave. C.A.T. scan doesn't mean
3 much of anything because you can find people who have
4 strokes or old trauma and you expect them to have a
5 seizure.

6 Without a brain waive test, that's the key. You have
7 to have an electroencephalogram, commonly known as an
8 E.E.G. If you have that, then somebody has seizure
9 disorder, and they're treated with antiseizure medication.

10 Q And so seizures can be treated; is that correct?

11 A That's correct.

12 Q They can be controlled with medication?

13 A Yes.

14 Q And Doctor, for a person who is epileptic and suffers
15 from seizures, would they be allowed to drive a motor
16 vehicle if there weren't under control?

17 A No.

18 Q In other words, if someone has eye vision problems,
19 they have to get their doctor to verify that they're able
20 to drive before the D.M.V. will issue them a driver's
21 license; is that accurate?

22 A That is correct.

23 Q And what is -- is that the same for epilepsy?

24 A It's the same, exact same thing.

25 Q And once someone's seizures are controlled by

1 medication, does that have any effect and their strength
2 or their ability to balance themselves and so forth if
3 it's under control with medication?

4 A If they're under control, it shouldn't have any --
5 any problem. If anything, some of the seizure medications
6 make them more common calm, so to speak. It may have a
7 calming effect on their personality. Everyone is a little
8 different. You would have to examine -- you would have to
9 evaluate that person personally.

10 Q And so if I understand you correctly, every
11 individual reacts differently; is that correct?

12 A Every seizure is a little different. Some people
13 have seizures where they have one side of their body that
14 seizes. They tend to drop things on one side. Some
15 people have staring spells where they look off into space.

16 There are hundreds of types of seizures, and every
17 one is unique to that person. They all do show the
18 electrical discharge of a seized brain, so to speak. It's
19 a rapid discharge of seizure material seen in the brain
20 wave. Everyone is a little different.

21 Q And so would you expect a person who has suffered a
22 seizure to be able to walk over approximately 200 yards
23 and take a positioned stance in an aggressive manner?

24 A Yes. If they're not having a seizure.

25 Q If they're not having a seizure?

Kessler - direct (Shipley)

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1 A Correct.

2 Q But if they had just had a seizure, would you expect
3 that?

4 A Post -- post epiphenomenon. If they've just had a
5 seizure, they're usually out of it. They're collapsed.
6 They're lying on the ground.

7 They sort of have memory loss for that period, that
8 postictal period, and then they come to and then they get
9 better. They would probably pass the balance of the
10 bladder. They would bite their tongue. They would be
11 sweating. They would probably be on the ground. If it
12 was unwitnessed and no one else was there. If it was
13 witnessed, of course, it would be presented the person
14 just had a seizure.

15 Q Beg the Court's indulgence, Your Honor.

16 (Pause).

17 And just so I'm straight and everyone understands, in
18 your expert opinion to a reasonable degree of medical
19 certainty, what was the cause of death for Mr. Alphonzo
20 Cleveland?

21 A He died from a stab wound to the right chest
22 perforating the right lung.

23 MS. SHIPLEY: Thank you. No further questions, Your
24 Honor.

25 THE COURT: Cross-examination?

1 MR. McMULLEN: May it please the court.

2 CROSS-EXAMINATION:

3 BY MR. McMULLEN

4 Q Good morning.

5 A Good morning.

6 Q If he had received medical attention sooner, would
7 Alphonzo Cleveland be alive today?

8 A If there was a trauma unit right there ready to
9 suture him up like they have on the battlefield, he could
10 have been alive, could be. It depends on how fast they
11 got there.

12 Q Are you able to determine between the time he was
13 stabbed and the time he passed away? Are you able to
14 determine the length of time?

15 A I have no way of determining that, sir.

16 Q No way of determining that at all?

17 A I don't know exactly when he was stabbed, per se.
18 You'd have to know exactly when he was stabbed and then
19 when he was pronounced dead.

20 You could take the time that the E.M.S. arrived
21 there, which is -- I don't know how long it took them to
22 get there, and then when they pronounced him dead, but
23 that would be the extent of --

24 Q Well, if we knew when he was stabbed and we knew when
25 he died, then that would answer the question.

Kessler - cross (McMullen)

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1 A That's correct.

2 Q What I'm asking is whether a man of your
3 distinguished experience, having performed 12,000
4 autopsies, can you -- can you tell us within some
5 reasonable degree of medical certainty how long it took
6 Mr. Cleveland to pass away?

7 A Without those figures, I don't -- if you gave me the
8 figures, I could figure it out for you.

9 Q But you do agree that had he received medical
10 attention immediately, his life could have been saved?

11 A That is correct.

12 Q Would someone pressing down on this wound help?

13 A No. The bleeding is actually not from the wound
14 itself that's dangerous. The underlying one is what needs
15 to be compressed, and you can't do that. What you need to
16 do is get in there with a bunch of hemostatic clamps and
17 clamp it off, the areas that are bleeding and then suture
18 him, but you can't do that from pressing on the external
19 chest.

20 Q Basically closing the wound is the only thing that
21 would save someone's life?

22 A No.

23 Q No?

24 A Closing the lung wound, the wound in the lung. The
25 wound in the skin is inconsequential.

1 Q It's a give or take four-inch deep wound?

2 A That is correct.

3 Q And so sealing that four inches is what we're --

4 A Yes.

5 Q And that requires equipment; is that correct?

6 A It requires knowledge, skill, equipment, and
7 medications to keep them hydrated and keep them
8 replenished with blood, what have you.

9 Q If someone with a wound to their top right part of
10 their chest, as Mr. Cleveland suffered, if they're propped
11 up, is the lung going to fill more slowly or would having
12 them flat on the ground cause the lung to fill more
13 quickly?

14 A The -- either sitting up or lying down is not going
15 to matter that much. Basically, it's going to -- the only
16 thing that would matter is you would -- if you're sitting
17 up, it would take longer for you to see blood coming out
18 of that wound because it has to fill the chest. If
19 they're lying down or on their back, again you have to
20 fill a different type with the chest.

21 Q Is not one of the causes of death that there was
22 blood in the throat?

23 A Yeah. The blood is coming up from the bronchi that
24 are cut and into the chest and bleeding up and going into
25 the other side, and it's also coming through the tissues

Kessler - cross (McMullen)

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1 around the heart or around the esophagus, in that
2 neighborhood. It's hemorrhaging in there.

3 Q Would having a person's head elevated help them not
4 get choked by that blood in the throat?

5 A Unfortunately not because the two lungs are sitting
6 in the chest, and they join the bronchi, the lung tubes,
7 the air tubes. They join about here, and then they turn
8 into the trachea and they come up into the mouth.

9 Now, if you have got a connection. It's bleeding in
10 this lung filling those air tubes, well, they can come up
11 and they can go down the other side without ever having to
12 go up into the mouth.

13 It's not the mouth that's the issue. It's the
14 filling up of blood on the other side that's the bleeding
15 from that lung going into the air tubes, which is the
16 problem.

17 Q Doctor, is it your testimony that Mr. Cleveland
18 weighed 152 pounds?

19 A I think he was a lot heavier than that. I've done
20 lots of autopsies, and I don't know when that weight was
21 done, but we didn't have a scale at the old morgue, so I
22 can't tell you. He looked heavier than that.

23 Q How much did you estimate it?

24 A I estimated about 180, 190, somewhere in there.

25 Q How tall was Mr. Cleveland, 5'7"?

1 A When we measured him -- now, realize when someone
2 passes, their -- everything stretches out. All of those
3 compressions that we have with our vertebrae, as we age,
4 they make us short. We get a little taller, so he was
5 stretched out and relaxed and got about two inches taller.

6 Q How tall was he, sir?

7 A We measured him at 5'9", but that's how he was when
8 he was dead. So again, laying out on a stretcher where
9 things loosen up before they go into rigor, they can be
10 taller.

11 Q And he had 12 ounces of recently consumed food in
12 him?

13 A Yes.

14 Q So less than one pound out of your estimated 190
15 was --

16 A Well, this was the liquid weight, liquid measure
17 so --

18 Q So you didn't weigh the contents of his stomach?

19 A We don't weigh the content because we try -- we're
20 trying to tell them what's going on. People know what
21 about 12 ounces is. It's like a cup is eight ounces.
22 It's a cup-and-a-half.

23 Q And in fact, Doctor, you put on exhibit 47 -- you
24 indicated his length to be 69?

25 A Yeah.

Kessler - cross (McMullen)

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1 Q Is that in inches?

2 A 5'9".

3 Q 5'9", and you estimated his weight at 190?

4 A 190.

5 Q But that's without weighing him?

6 A We don't have a scale. We didn't have the funds to
7 have a scale. The brand new morgue we just opened in the
8 summer has a scale, so it's approximate.

9 Q And you have done 12,000 autopsies?

10 A I've done about 6,000 of my own, and when I trained
11 residents and fellows who worked under me, I was
12 responsible for their autopsies. So I had to go down
13 every day and review them and go through the cases and
14 sign off on them, so I basically was familiar with --

15 Q Did you ever have -- I'm sorry, sir.

16 A -- another 6,000, about. We stopped counting years
17 ago.

18 Q Did you ever have access to a scale to conduct your
19 autopsies?

20 A When we were in Boston, we had a scale in the morgue
21 I designed, and we weighed the bodies.

22 Q So your guess of 190 is a pretty educated guess?

23 A Yeah.

24 Q Doctor, just to make sure the T mark as you really
25 explain it, it's not the shape of the wound itself, the T.

1 at the top is to reference the adult side?

2 A That's correct.

3 Q So the sharp side was closer to the hand and the
4 adult side closer to the head?

5 A That's correct.

6 Q And it was not a jagged incision. It was a straight
7 in and out?

8 A That is correct.

9 Q Like a jigsaw?

10 A Yes.

11 Q And this mark went -- this stab went from right to
12 left?

13 A Well, somewhat right to left, yeah.

14 Q Up?

15 A Upwards, front to back.

16 Q Doctor, with an injury like this, a wound like this,
17 would you expect a knife to be covered in blood?

18 A It may or may not be. Sometimes I've seen the skin
19 close over it, and if it's a knife that is very -- some of
20 the metal pushes everything up. I would initially
21 expected the knife to be covered with blood.

22 Q Would a serrated knife have more blood on it than a
23 smooth butcher knife?

24 A They have those little teeth, if you look at it under
25 a dissected microscope. You may see it if it's not

Kessler - cross (McMullen)

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1 washed. You can clean it relatively easily, though.

2 Q If a person who is stabbed is wearing a shirt, would
3 it be possible for the shirt to take any blood off of the
4 knife?

5 A There still probably would be trace. If it wasn't
6 washed, it probably would show some trace.

7 Q Maybe not enough to see it with the naked eye?

8 A You could see it in those little -- if you looked at
9 that knife, it's serrated, but it also has those little
10 cuts in it. They don't have to sharpen it too often. If
11 you looked at that under a microscope, or not even a
12 microscope, to analyze it, you could probably see blood on
13 there if it wasn't washed.

14 Q Did you do that?

15 A No.

16 Q Looked at it under a microscope?

17 A No.

18 Q Are you able to say whether this knife was washed or
19 not?

20 A No. It's awfully clean, so from a wound like that, I
21 would expect somebody washed it.

22 Q But you don't know?

23 A I didn't process the knife, no, sir, the forensic lab
24 did.

25 Q From -- from examining the body, did you see any

1 signs of a recent struggle other than the four-inch cut to
2 his chest?

3 A No.

4 Q Four-inch deep.

5 A (The witness shakes in the negative).

6 Q What is the six inches on your chart on exhibit 47?

7 A Can you point to it, sir?

8 Q Yes, sir.

9 A Six inches to the right of midline.

10 Q Okay.

11 A That's where -- so many inches from the top of the
12 head and so many inches to the right of the midline.

13 Q Is midline the sternum?

14 A Well, the middle of the body. If you drew a line,
15 you take your nose and follow it straight down the body,
16 go down the sternum, that's the midline. So it's over the
17 right of the midline.

18 Q Somebody had to get stabbed between their shoulders
19 and the their waist. Is that about the least dangerous
20 place to stab somebody in the chest?

21 A Anywhere -- I mean, he could have cut the subclavian
22 vein or the artery, and then he would have bled out
23 rapidly so that --

24 Q Did that happen?

25 A No. It's not a good place to get stabbed, anywhere

Kessler - cross (McMullen)

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1 in the chest.

2 Q Anywhere in the abdomen or the chest?

3 A Chest, anywhere. Any of the visceral organs are not
4 places you would want to get stabbed. They're pretty bad,
5 as opposed to others.

6 Q 2.55 milligrams per deciliter.

7 A Yeah.

8 Q And that would be enough alcohol to render a person
9 unsteady on their feet.

10 A Not if they're chronic drinkers. I've seen people do
11 a lot of the things with more than that.

12 Q Was --

13 A Much higher than that.

14 Q Was there evidence that the decedent was a chronic
15 drinker?

16 A I wasn't sure. He had cirrhosis. Cirrhosis could be
17 from a lot of things. It could be from alcohol abuse or
18 it may not be.

19 Q Did the fact that he had 2.55 milligrams per
20 deciliter in his system, would that persuade you either
21 way?

22 A No. In reality, if you look at anybody either on
23 drugs or alcohol, you have to be there to see that person
24 to say whether that drug had an effect.

25 Just because they have a level doesn't mean they're

1 going to be staggering, and a lower level could put some
2 people out. A higher level in some people, they're fine.
3 So you have to physically see the person at that time.
4 It's important to observe them.

5 Q With the level of observation to Mr. Cleveland's body
6 by you, is it fair to say that he was either a chronic
7 alcohol drinker or highly intoxicated?

8 A I would say he was intoxicated. How highly,
9 that's -- again, you have to physically see them. He
10 may -- he had a level that if I had drank three times
11 that -- what we considered the legal over, I would
12 probably be pretty drunk.

13 Let's put it in dollars and cents. A beer elevates
14 your blood alcohol or a four-ounce glass of wine or a
15 one-ounce shot, okay, will elevate your alcohol level
16 about 0.02. So we're talking about 12 or 13 beers or
17 maybe glasses of wine or shots, and that's about what
18 we're talking about here.

19 I cannot drink two six packs, but some people can.
20 I've been with friends who do that, and they don't seem
21 that bad. So some -- I could drink two beers, and I'm
22 almost out, so everybody is different.

23 Q But in any event, it's three times the legal limit in
24 this state to drive an automobile.

25 A Approximately.

Kessler - cross (McMullen)

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1 Q And you wouldn't get in a car with somebody who you
2 knew had this kind of an alcohol level, would you?

3 A I look at them to see how they're doing. I mean, the
4 key again is, you know, you have got to examine these
5 people. You have got to look at them.

6 If somebody has alcohol abuse, you have got to look
7 at them to see if they can do this. Somebody who has
8 seizures, you have got to look at them to see whether they
9 have any reaction to it.

10 Some people don't have much externally, and you don't
11 know what's going on inside. So the level doesn't mean as
12 much as how they appear. If they appear staggering and
13 drunk at two drinks, which is below the level, I wouldn't
14 be driving with them.

15 Q And slurred speech is a sign of intoxication?

16 A It can be.

17 Q Baclofen?

18 A Baclofen.

19 Q Is -- did you say, sir, that's to control the
20 seizures?

21 A They use it for sedation and muscle spasms. It works
22 a little differently than Valium, but it can calm them
23 down.

24 Q It has a calming effect?

25 A And it can calm the muscles without having the C&S

1 affected.

2 Q And people who take Baclofen would be prescribed that
3 because they have muscle spasms then rather than seizures?

4 A It could be for sedation or for spasm or for both,
5 depending on -- I mean, I know -- as I said, they do a lot
6 of chart reviews and a lot of cancer patients are on it
7 because they had pain and spasm.

8 Some of them have just pain or they like it as a
9 sedating drug. So it's a relatively recent drug, and
10 people like to take drugs for different reasons.

11 Q I'm talking, Doctor, about people getting prescribed
12 the drug.

13 A Well, I'm saying you would have to find out why it
14 was prescribed and what it did. I would have to look at
15 -- if I was reviewing that, I would have to look at the
16 reason the doctor gave it, what the symptoms were and the
17 result, whether they were alleviated, made worse, made
18 better. In general, as I said, it has those two effects.

19 Q If a person had a stroke, would that affect one side
20 of their body?

21 A Usually, but sometimes there are so many areas of the
22 brain that are silent. You would have to examine that --
23 again, examine the person.

24 If there was -- that case from the turn of the
25 century, the gentleman had a spike going through his head.

Kessler - cross (McMullen)

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1 He lived for about five or six years. It was a railroad
2 spike going up there through his head. He acted totally
3 normal. You would think he would have been paralyzed. So
4 every single person is different. There are silent areas
5 of the brain, and every single brain is different. That's
6 why you need to observe them.

7 Q If a person takes Coumadin, is that for blood
8 thinning?

9 A It's to thin their blood.

10 Q Is that consistent with someone who has had a stroke?

11 A It depends. I don't know why you would have that.
12 If you -- sometimes those drugs can cause problems like
13 that, so if somebody has an infarct in their brain and
14 they're on blood thinner, it can cause a stroke. It's
15 like a super aspirin. It turns to blood thinning.

16 Q My question is whether a person could be prescribed
17 that after a stroke.

18 A More than likely they're prescribed that if they have
19 thrombi in their vessels, if they're concerned about blood
20 clots. Some are in the body, that's what they're usually
21 given for, or if you have a prosthetic device in your
22 heart which sometimes has clots associated with it or you
23 have abnormal heartbeats, they can give Coumadin or
24 something called atrial fibrillation. They give Coumadin
25 to keep the blood thin and keep clots from forming.

1 Q And Menzine (phonetic)?

2 THE DEFENDANT: Mansign (phonetic), yeah.

3 BY MR. McMULLEN

4 Q Mansign.

5 A Mansign. It's a combo drug. I think it's an
6 antihypertensive and a drug that causes diuresis, a
7 diuretic. It's used for people who have high blood
8 pressure.

9 Of course, high blood pressure more than likely is
10 associated with strokes, little strokes. People that have
11 high blood pressure tend to get strokes, small, large,
12 massive, depending on when they get them.

13 Q Is someone who has suffered a stroke more or less
14 able to see?

15 A It depends on where the stroke is. Usually, they
16 don't affect the vision. You can get a stroke from the
17 posterior occipital lobes in the visual area. That can
18 cause you to have blindness forever.

19 Q Posterior occipital lobes?

20 A That's the back of the brain.

21 Q Thank you.

22 A The brain, the entire brain, is like this huge globe,
23 and every area is like a different country, and it affects
24 another portion of the body.

25 You can get a stroke anywhere. You can get a stroke

Kessler - cross (McMullen)

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1 from cocaine that causes you to lose your vision. You can
2 get -- again, you have to observe the patient and find out
3 what causes the stroke and what happened. It could be
4 from blood loss.

5 Q A person who is slapped in the face, could they
6 immediately get water in their eyes from that?

7 A They may.

8 Q That would maybe make it hard for them to see until
9 they blinked their eyes a few times?

10 A I don't know why it would make it hard for them to
11 see, but I mean, if their eye teared up, that's possible.

12 Q What if the slap hit them on the nose, would that
13 tend to make them tear up a little bit?

14 A It could, maybe not.

15 Q Is it easier to detect discoloration on a light
16 skinned person, like you or me, than it is a dark skinned
17 person, like let's say Thaddess Starks?

18 A If the lighting is good and you can be -- it's
19 obviously easier on me, but at the same time, if it's a
20 slap hard enough to cause symptoms, you usually get
21 swelling, contusion, swelling of an eye, if we're talking
22 about the eye area.

23 The eye swells up very rapidly. You know how easy it
24 is to get a black eye. You can hit something in the
25 middle of the night and wake up with one, so these soft

1 tissues swell up rapidly. You can go through swelling,
2 inflammation, redness. In these areas usually, if you are
3 slapped in the eye, you can see blood in the eye, in the
4 white of the eye.

5 Q How about if it's not in the eye, how about if a
6 cheek gets slapped?

7 A It would swell. If it's hard enough to do anything,
8 if it's hard enough to cause symptoms, more than likely,
9 you're going to get swelling.

10 Q If it's hard enough to cause symptoms.

11 A Such as blurred vision. You would think you would
12 see swelling. I would say in 95 percent of people that
13 would have symptoms from the slap, the slap would produce
14 swelling. I mean, that's what it's doing. It's causing
15 symptoms.

16 Q How long would it take for a red mark to go away?

17 A A red mark would go away probably over -- in the time
18 it takes the blood to break down. It's a bruise. A red
19 mark is a bruise or an imprint mark, a contusion. It
20 takes maybe ten, 12 days or sometimes two to three weeks.

21 Q All right.

22 A Depending on the person.

23 Q If I stayed at recess too long and a nun slapped my
24 hand with a ruler --

25 A Yeah.

Kessler - cross (McMullen)

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1 Q -- how long is it going to take that to go away?

2 A It depends on if you got a confusion or not. If you
3 have a contusion of the skin that's broken blood vessels,
4 the blood is oozed out in the surrounding tissue.

5 Q So a slap doesn't have to cause a contusion.

6 A It doesn't have to, but if it's hard enough to cause
7 blurred vision.

8 Q I'm not asking that.

9 A Okay. Well, if it's hard enough to cause anything
10 other than just -- you can just get a red mark, and it
11 will go away immediately. Not immediately, within an hour
12 or two.

13 Q And would that be a quicker process for a dark
14 skinned person than a light skin person?

15 A No.

16 Q It would be --

17 A The process is the same. Whether you see it is
18 totally different.

19 Q That's what I'm asking. Would it be harder to see on
20 a dark skinned person than a light skinned person?

21 A More than likely, yeah.

22 Q Yes. Would a stroke cause a person sometimes to be
23 unable to move quickly?

24 A It can.

25 Q Are strokes more common in people who are overweight?

1 A Strokes are more common in people that have high
2 blood pressure. High blood pressure is associated with
3 being overweight.

4 MR. McMULLEN: Thank you, Doctor.

5 THE COURT: Redirect?

6 MS. SHIPLEY: Yes, sir.

7 REDIRECT EXAMINATION:

8 BY MS. SHIPLEY

9 Q Doctor, 69 inches is how tall?

10 A About 5'9".

11 Q So 5'9" and you approximated his weight to be 190; is
12 that correct?

13 A Approximately.

14 Q All right.

15 A He was heavy.

16 Q Doctor, in your expert opinion, someone who is 5'9"
17 and weighs 190 versus someone who is 6'0", weighs 350
18 pounds, which one is the person that you would expect to
19 have more strength?

20 MR. McMULLEN: I'm going to object.

21 MS. SHIPLEY: He's a forensic --

22 THE COURT: Some foundation for that. You said
23 strength.

24 MS. SHIPLEY: Yes.

25 THE COURT: Does he know anything about strength?

Kessler - redirect (Shipley)

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1 MS. SHIPLEY: He's a forensic pathologist, sir.

2 Are you familiar with strength, sir?

3 THE WITNESS: Yes.

4 BY MS. SHIPLEY

5 Q Are you familiar with how size can impact someone's
6 strength?

7 A Yes, simple physics.

8 MS. SHIPLEY: Did I lay the foundation, Your Honor?

9 THE COURT: Objection is overruled.

10 BY MS. SHIPLEY

11 Q Which person would you expect to have more strength?

12 A The heavier person, the taller person.

13 Q Doctor, you missed some testimony in this case.

14 Hypothetically speaking, if Mr. Cleveland runs next door
15 to his neighbor after he's been stabbed in the chest, his
16 lung has been punctured with the knife and first aid is
17 rendered to him in the following manner: A pillow -- he
18 is taken from a staircase and laid on the ground, a pillow
19 is placed under his head, a blanket is placed on him to
20 keep him from going into shock. The pillow is placed
21 under his head to open the airway of this -- for him to
22 breathe, and lastly, a plastic, piece of plastic, was
23 placed on his injury and pressure was placed on the actual
24 injury to keep it from bleeding. Any of those things,
25 would Mr. Cleveland have had a shot of surviving?

1 A No. It wouldn't have mattered. As I said, the blood
2 is coming from the cut lung pouring into the air tubes
3 from that lung going up and going to the other side, and
4 he's bleeding the same -- he's bleeding from -- the most
5 lethal thing here is the blood. He's bleeding out, so
6 he's going to go into shock, and he's going to die.
7 Unless you stop the bleeding, it's not going to matter.

8 Q Okay. And so any efforts of first aid did not
9 contribute to this man's death --

10 A Not the first aid.

11 Q -- is your testimony?

12 How much blood would you expect to find on this
13 object going in four inches into Mr. Cleveland and then
14 coming out and then placed down on a counter? How much
15 time -- would you expect to see blood on that?

16 A I would expect to see some blood on that.

17 Q Okay. Visible to the naked eye?

18 A Probably.

19 Q If the item were rinsed off in a sink, would you then
20 expect for the blood to be washed away?

21 A If it's before it clotted and dried and over several
22 hours, it would wash away easily.

23 Q If it was washed right away, would you expect it to
24 wash away the blood?

25 A Yes. It's like if you cut meat, I mean with a knife

Kessler - redirect (Shipley)

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1 and rinse it off, it's clean for next time or washed it.

2 Q I believe your testimony on cross-examination is it's
3 not a good idea to stab anybody in their chest or
4 abdominal area?

5 A Well, it's not a good idea to stab anybody, but it's
6 more lethal than the stab wound to the leg or arm. You
7 can hit an artery.

8 Q And so stabbing somebody in the arm would have been
9 less lethal?

10 A That is correct.

11 Q And you said that it's possible that Mr. Cleveland
12 consumed about 12 beers?

13 A Approximate.

14 Q .02 per...

15 A .02 per beer or -- if he's drinking beer, or per shot
16 or for a four-ounce glass of --

17 Q And I believe if it was beer, you said it would be
18 about 12 beers.

19 A Twelve, about.

20 Q And is it your testimony, also, that everybody's
21 tolerance --

22 MR. McMULLEN: I'm going to object to the leading.

23 BY MS. SHIPLEY

24 Q Okay. I'll rephrase, Your Honor.

25 Please describe to the jury the difference in

1 tolerance in alcohol among different human beings.

2 A People who drink a lot have -- their liver may make
3 an enzyme factor to break it down faster, and they don't
4 appear to be as affected by drinking as someone, myself,
5 who doesn't drink much at all.

6 So somebody would -- it's called tolerance. It's
7 seen in drugs also, an addictive drug, what have you,
8 heroin, cocaine.

9 When you develop tolerance, you can drink a lot more
10 and not show the effects of it. Your enzyme systems are
11 set up to break it down faster, and it's also -- before
12 it's even broken down, it's tied up.

13 That has nothing to do with what the amount is, and
14 the brain is more tolerant to it. This is what tolerance
15 is all about with the drugs.

16 Q And lastly, Doctor, the -- you testified on
17 cross-examination about how you would expect to see some
18 marks of redness if someone is slapped hard enough; is
19 that correct?

20 A That's correct.

21 Q If someone --

22 A Hard enough to cause their vision to change.

23 Q Okay. So if it's hard enough to cause their vision
24 to change, if they're slapped hard enough across the face,
25 across the cheek to cause their vision to blur, what would

Kessler - redirect (Shipley)

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1 you expect to see?

2 A I would expect to see swelling in the eye, edema in
3 the eye, maybe hemorrhage in the soft tissues of the eye
4 and/or hemorrhage in the white of the eye.

5 Q And in the alternative, if someone is hit -- just
6 normally slapped, just you know, across the face, not hard
7 enough to cause the type of symptoms you're just
8 describing, what would you expect to see?

9 A Probably nothing. You may see a slap mark, but you
10 may not see anything, but the same token, it's not causing
11 damage.

12 The only way you're going to get blurred vision is if
13 you damage the eye directly, in which case the eye swells
14 up like crazy and looks bad or even causes a concussion,
15 in which cause you would have trauma internally with the
16 brain. It would not just go away easily.

17 Q Okay. And your examination of the close up of
18 Mr. Starks, you did not -- what were your findings?

19 A I saw no evidence of trauma in the eye, no contusion,
20 no swelling of the soft tissue around the eye, no
21 hemorrhage in the eye, no trauma to the nose, no swelling
22 of the lips, things that would swell rapidly, and I saw no
23 bruise mark.

24 MS. SHIPLEY: Thank you very much, Dr. Kessler.

25 THE COURT: Anything further?

1 MR. McMULLEN: Thank you, briefly.

2 THE COURT: Okay.

3 RE CROSS-EXAMINATION:

4 BY MR. McMULLEN

5 Q Are you able to say to a reasonable degree of medical
6 certainty that Thaddess Starks, after looking at that
7 close-up photograph, was not slapped?

8 A I can say he was not slapped hard enough to cause any
9 physical damage.

10 Q But he could have been slapped less hard than that?

11 A Well, anything is possible.

12 Q So that would be yes?

13 A He could have been slapped less hard, but it would
14 not have caused physical injury.

15 Q All right. Isn't it true, Doctor, that a person who
16 drinks alcohol daily over a long, long, long period of
17 time actually can become intoxicated from their first beer
18 or two?

19 A I have never heard of that. I'm not aware of that.

20 Q Don't people's liver and kidneys begin to fail over
21 time and become less able to take those poisons and toxins
22 out of our blood stream?

23 A That's when they're dying from liver failure, but he
24 had no evidence that he was dying from liver failure. He
25 would have been in a hospital or been in a bed. When

Kessler - recross (McMullen)

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1 you're dying from liver failure, you're very sick.

2 Q So --

3 A You can't even get up out of bed, and usually they're
4 in comas.

5 Q So a person who is a habitual drinker doesn't
6 necessarily get more intoxicated quickly from drinking one
7 or two?

8 A Not until they go into failure, and when they're in
9 failure, they're dying. They either -- if they have very
10 high ammonia levels --

11 Q Okay.

12 A -- they -- that affects the brain and makes them
13 unconscious. In the end, in somebody who is almost
14 terminal from chronic liver disease can't drink, but I
15 don't think that's the issue here. They don't get up,
16 they don't dress. They don't take care of themselves.
17 They're very sick people.

18 MR. McMULLEN: Thank you, sir.

19 THE COURT: All right, Doctor. You may come down.
20 Thank you very much.

21 Doctor, you may be excused. Any objection?

22 MR. McMULLEN: No, sir.

23 THE COURT: Okay. All right, ladies and gentlemen,
24 let's take a morning break. I'll -- let's take probably
25 about 15 minutes. Just relax in the jury room. Don't

1 discuss the case among yourselves while you're in the jury
2 room. Thank you.

3 (WHEREUPON, the jury left open court at approximately
4 11:22 a.m.)

5 (There was a short recess).

6 THE COURT: Is the State ready to proceed?

7 MS. SHIPLEY: Your Honor, we decided to go ahead and
8 rest. The testimony, technical aspect, is confusing,
9 claim that -- the redacted portions and stuff, we're going
10 to save it for cross-examination. We're going to go ahead
11 and rest.

12 THE COURT: All right. Any motions?

13 MR. McMULLEN: Yes, sir.

14 THE COURT: All right. I think since there are
15 motions, I'll go ahead and dismiss this jury for lunch at
16 this time. Then we'll take up the motions.

17 MR. McMULLEN: Yes, sir.

18 THE COURT: Bring the jury, please.

19 MS. SHIPLEY: And also, for scheduling purposes --

20 THE COURT: Don't bring them. Hold it.

21 MS. SHIPLEY: For scheduling purposes, should we be
22 back at a certain time for your doctor to testify?

23 MR. McMULLEN: If it suits the Court.

24 THE COURT: Well, let's decide that after --

25 MS. SHIPLEY: Okay.

1 THE COURT: -- we let these people go.

2 MS. SHIPLEY: Okay.

3 THE COURT: Bring them on. Do you wish to announce?

4 MS. SHIPLEY: Yes, sir.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:47 a.m.)

7 THE BAILIFF: The jury is all present, Your Honor.

8 THE COURT: Is the State ready to proceed?

9 MS. SHIPLEY: Your Honor, at this time the State
10 rests its case.

11 THE COURT: All right. Ladies and gentlemen, that
12 concludes the State's case. That will mean the defense
13 will have an opportunity to present a defense, but there
14 will be no more testimony or evidence introduced on behalf
15 of the State at this time.

16 There are -- at this point in any trial, there are a
17 number of legal matters I need to take up with the
18 attorneys. It's ten minutes until 12. I think probably,
19 again, the most efficient use of our time would be to
20 excuse you now for the lunch hour or a little better than
21 a lunch hour.

22 There are -- as I say, there are a number of things
23 that need to be -- we need to take up on the record prior
24 to the defense's case. So I'm going to ask you to be back
25 in the jury room at 2:15. That's actually a couple of

1 hours, so I hope you can use it to your benefit.

2 We'll be working in the meantime, so you're now
3 excused for lunch. Again, don't discuss the case when you
4 return to the jury room or with anyone else over the lunch
5 hour. I hope you have a pleasant lunch period, not an
6 hour. See you at 2:15. Thank you.

7 (WHEREUPON, the jury left open court at approximately
8 11:50 a.m.)

9 THE COURT: Are there any motions?

10 MR. McMULLEN: Yes, sir.

11 THE COURT: You may proceed.

12 MR. McMULLEN: Your Honor, I respectfully move for a
13 directed verdict in this case. I understand that the
14 Court in a directed verdict setting is concerned about the
15 existence of evidence and not its weight.

16 I understand that any direct or substantial
17 circumstantial evidence which reasonably tends to prove
18 the guilt of the accused is enough for the Court to refuse
19 a directed verdict.

20 I would still move for that because murder requires
21 malice aforethought, either expressed or implied. I would
22 contend, Your Honor, that the malice in this case has not
23 been proved.

24 One definition under State vs. Bell is that malice is
25 doing the wrongful act intentionally and without just

1 cause or excuse. I would submit that that's -- the
2 evidence shows that -- that my client had just cause or
3 excuse.

4 The case of State vs. Johnson defines malice
5 aforethought as wrongful intent to injure another and
6 indicates a wicked or depraved spirit intent on doing
7 wrong.

8 I would argue, Your Honor, that there's no evidence
9 of that. The defenses that we raised of self-defense and
10 the defense of habitation, or at least the evidence in the
11 record of those things, is something that the State must
12 also negate beyond a reasonable doubt when they're -- in
13 the trial itself, but there still must be some evidence to
14 disprove each of the elements in self-defense and the
15 defense of habitation.

16 My reading of State vs. Rye, a case that was heard by
17 Judge Johnson in this courthouse, established that
18 self-defense and the defense of habitation -- I'm quoting
19 from Rye. "For the defense of habitation to apply, a
20 defendant need only establish that a trespass has
21 occurred, and that its chosen means of ejectment were
22 reasonable under the circumstances." I would suggest,
23 Your Honor, that there has been nothing in the evidence to
24 suggest otherwise.

25 The Victim's Bill of Rights, which I think was

1 introduced in the house by -- in the Senate by Senator
2 Knotts in Lexington, that Bill of Rights requires that --
3 it defines a person's dwelling house as a person with --
4 place where they have permission to be.

5 It also says that when someone enters the dwelling
6 house forcibly, that a person may assume that they are
7 there to commit a felony or for hostile reasons, and that
8 they may use such force as necessary to eject the
9 trespasser, taking about section 16-11-410 et seq.

10 The article provides in 16-11-420 that it's the
11 intent of the General Assembly to codify the common castle
12 doctrine to recognize a person's home is his castle, to
13 extend the doctrine to include an occupied vehicle in a
14 person's place of business. They find that for a
15 law-abiding citizen to protect himself.

16 THE COURT: What is the day of that act?

17 MR. McMULLEN: To protect one's home.

18 THE COURT: I said what is the date of that act.

19 MR. McMULLEN: I don't have the date, Your Honor. I
20 know that it went into effect -- I believe it went into
21 effect July of last year, so I don't have that in front of
22 me, sir.

23 THE COURT: All right.

24 MR. McMULLEN: It's got a copyright, but it doesn't
25 give a date. I could hand up the statute that I have and

1 the law right here.

2 The General Assembly in section D of 16-11-420 says
3 -- they find that a person residing in or visiting this
4 state has the right to remain unmolested and safe within
5 their homes, businesses, and vehicles.

6 In E, the General Assembly finds that, "No person or
7 victim of a crime should be required to surrender his
8 personal safety to a criminal, nor should a person or
9 victim be required to needlessly retreat in the face of
10 intrusion or attack."

11 As used in that article, section 16-11-430 defines
12 dwelling, and I would submit that's almost self-evident,
13 but the place where the testimony says Mr. Starks was is a
14 dwelling under the statute.

15 Great bodily injury, defines residence meaning a
16 dwelling in which a person resides temporarily or
17 permanently or is visiting as an invited guest.

18 I would submit that Mr. Starks had every right to be
19 in the house, according the State's testimony. If nothing
20 else, he was an invited guest, but his bedroom is -- it's
21 undisputed his bedroom -- I would submit that
22 Mr. Cleveland, for example, would not have been able to
23 give consent to search without a search warrant that room.

24 He might have been able to give consent to search the
25 entire rest of the house but not Thaddess Starks' room.

1 That room, in fact, was locked, and the evidence shows it
2 was -- the door was closed and locked and forced open.

3 Section 16-11-450 of the Protection of the Persons
4 and Property Act provides, "A person who uses deadly force
5 as permitted by the provisions of this article or another
6 applicable provision of law is justified in using deadly
7 force and is immune from criminal prosecution and civil
8 action for the use of deadly force, unless the person
9 against whom deadly force was used is a law enforcement
10 officer acting in the performance of his official duties,
11 and he identifies himself in accordance with the
12 applicable law, or the person using deadly force knows or
13 reasonably should have known that the person is a law
14 enforcement officer.

15 Your Honor, I see nothing in the record that
16 indicates anything otherwise, and so not only should this
17 case be dismissed by a directed verdict, it never should
18 have been brought because Mr. Starks was justified in
19 using deadly force under the circumstances the State has
20 shown in its case in chief.

21 There is also under 16-11-440, "A presumption of
22 reasonable fear of imminent peril when using deadly force
23 against another unlawfully entering residence, an
24 unoccupied vehicle or a place of business." I don't
25 suppose I have to read the whole act but...

1 THE COURT: I'm looking at it.

2 MR. McMULLEN: In fairness to co-counsel, they may
3 not have it in hard copy but --

4 MS. SHIPLEY: No, I have it. I'm holding it.

5 MR. McMULLEN: I'm sorry. I should have known.

6 I would just submit that we've satisfied -- the
7 evidence satisfies the protection of Persons to Property
8 Act, and I would suggest that this case should be
9 dismissed for that reason alone and as part of a directed
10 verdict motion where the State has not produced any
11 evidence to negate some of the elements of the defense of
12 habitation and the defense of self.

13 THE COURT: What's the State's position?

14 MS. GARFIELD: Your Honor, I just want to address the
15 defense of habitation argument that Mr. McMullen is
16 presenting, and I'll turn it over to Ms. Cooper.

17 It's my understanding, the defense of habitation
18 applies when you are defending your property against a
19 trespasser or when you have an invited guest in your home
20 or your property and you wish to cease that relationship,
21 you want to therefore eject that guest, and the
22 relationship then turns into one where that person becomes
23 a trespasser to the property.

24 There has been no evidence submitted by the defense
25 or anything submitted by the State that would suggest that

1 at any time was the defendant trying to eject our victim,
2 Mr. Cleveland, from those premises. So the defense of
3 habitation should not apply.

4 In Rye, the reason that that case has been overturned
5 is simply the instruction that Judge Johnson gave in the
6 defense of habitation was not adequate.

7 They felt that it needed to go elaborate more into
8 what should have been included, but as far as this case is
9 concerned, the defense of habitation, one's home and
10 premises means any unwanted intrusion through the use of
11 reasonable and necessary means of ejection.

12 First of all, we don't have that special relationship
13 between the defendant and the victim. Furthermore, it
14 hasn't been established that the actions that the
15 defendant took to the victim were reasonable.

16 A reasonable man would not have reacted in the
17 behavior that he demonstrated towards the victim. That's
18 our argument as to why we don't believe that that -- that
19 there should be a directed verdict based on the defense of
20 habitation. Nor do we believe there should be an
21 instruction of the defense of habitation unless
22 Mr. McMullen shows something in his case that we're aware
23 of.

24 I turn it over to Ms. Shipley.

25 THE COURT: Well, you address the Protection of the

1 Persons and Property Act. You use the word "trespassers".
2 That's more a term of art in the defense of habitation
3 case law. The statute says from intruders.

4 MS. GARFIELD: Yes, sir.

5 THE COURT: And attackers.

6 MS. GARFIELD: And I should have included that, as
7 well. There has been no evidence to show that
8 Mr. Cleveland was an intruder.

9 THE COURT: Did he -- did he have a right to be in
10 that house?

11 MS. GARFIELD: Yes, sir. He owned the house. He
12 lived in the house.

13 THE COURT: Well, you said two different things
14 there. Did he own the house?

15 MS. GARFIELD: It was our understanding he owned the
16 house.

17 MR. McMULLEN: There is certainly no evidence in the
18 record.

19 THE COURT: Well, that's my understanding. I just
20 asked who owned the house.

21 MS. GARFIELD: That's our understanding, he and his
22 wife owned it.

23 THE COURT: He either --

24 MS. GARFIELD: He and his wife.

25 THE COURT: Jointly owned it.

1 MS. GARFIELD: Yes.

2 THE COURT: As far as you know?

3 MS. GARFIELD: Yes.

4 THE COURT: That's your representation to the Court?

5 MS. GARFIELD: That's our understanding.

6 MR. McMULLEN: That -- we would -- I shouldn't
7 interrupt but --

8 THE COURT: Well --

9 MR. McMULLEN: -- we would be able to proffer other
10 evidence.

11 THE COURT: You know that's not true?

12 MR. McMULLEN: Yes, sir. It's in the name of
13 Ms. Cleveland, Thaddess' mother alone. In fact, the man
14 left for a while and paid nothing, and this is in the
15 record. He left for about a year and didn't in any way
16 contribute to the upkeep of that house.

17 THE COURT: Well, there's certainly no evidence at
18 this point that he was an intruder, and I think that's the
19 purpose of the Protection of Persons and Property Act.

20 I don't think the legislature ever intended for a
21 household member to be included within the definition of
22 a -- persons that are protected and given immunity by this
23 act. I mean, that's just my common sense, I believe,
24 understanding of the statute.

25 It protects people whose homes have been invaded by

1 intruders or attackers. I don't see that as being
2 applicable in this case.

3 These are -- this is -- these are household members
4 that got into an argument. So as to the defense of the
5 property act, or the Protection of Persons and Property
6 Act, I'm going to deny your motion for a directed verdict
7 on those grounds.

8 Now, let's hear about the lack of evidence of murder.

9 MS. SHIPLEY: Your Honor, we have circumstantial
10 evidence, which is just as -- carries as much weight as
11 direct evidence of the defendant committing this act.

12 He was the only person in the house right after the
13 victim runs from the residence to his neighbor's house,
14 Timothy Cornish.

15 A stab wound -- and this, by the way, was after an
16 hour-long arguing that Mr. Cornish testified he heard
17 coming from their residence after Deputy Carwell left the
18 scene.

19 But anyhow, Your Honor, the victim runs over to
20 Mr. Cornish. He has a stab wound. The defendant then
21 comes over in an aggressive manner as if to try to kick
22 the victim while he's laying there dying and makes the
23 excited utterance that he had a stab wound because the
24 victim slapped him.

25 The further physical corroboration to that, Your

1 Honor, is -- the physical evidence at the scene is the
2 knife with the victim's blood on it. We had D.N.A.
3 testimony that it was 67 quintillion, one in
4 67 quintillion that it was the victim's blood.

5 THE COURT: I don't think he denies that.

6 MS. SHIPLEY: Right.

7 THE COURT: The question is the inference of malice.

8 MS. SHIPLEY: Yes, sir, and I was getting to that,
9 Your Honor. Malice may be implied by the use of a deadly
10 weapon. Clearly, the knife in this case is the deadly
11 weapon.

12 You heard from Dr. Kessler how it -- if enough force,
13 and significant force is used, when that weapon struck
14 Mr. Cleveland, that it went through his chest, the muscles
15 in his chest, penetrated through two ribs, and then it
16 lodged into Mr. Cleveland's lung.

17 That it was done -- then pulled out in the exact
18 manner that it was put in. In other words, with
19 significant force, and that as a result, the victim died
20 as a proximate result thereof. Therefore, the elements of
21 the crime are satisfied, and it would be up to -- it is a
22 jury question.

23 In the light most favorable to the State, we have
24 presented evidence of malice through the use of the deadly
25 weapon, which is implied, and we also have expressed

1 malice in the comments or manners, actions, by the
2 defendant when he approached the victim while he was dying
3 in front of Mr. Cornish.

4 So those are actions and --

5 THE COURT: How about the physical attributes of the
6 parties?

7 MS. SHIPLEY: Okay. And I wanted to get to that, as
8 well, Your Honor. In Rye, the court held that Judge
9 Johnson's instruction on self-defense was perfectly fine.

10 I actually was going to ask the Court to instruct
11 this charge to the jury as far as it goes, "I will further
12 charge you that the relative size and ages and weights of
13 the defendant and the victim may be considered in deciding
14 the apparent or the actual need for force in self-defense
15 and the amount of that force that was needed."

16 In this case, Your Honor, we have ample evidence that
17 the victim was at least 5'7" to 5'9" in height. He
18 weighed somewhere around 140 -- 152 up to 190 in weight,
19 according to Dr. Kessler, who I would give complete
20 deference to is 190. Then the defendant's height and
21 weight is 6'0" 350 pounds.

22 On redirect of the doctor I asked him specifically in
23 his expert opinion which of the two would have more
24 strength. He testified in his expert opinion, the larger
25 of the two would have more strength, and that would be the

1 defendant.

2 Also, Your Honor --

3 THE COURT: Of course, that goes to the issue of
4 self-defense.

5 MS. SHIPLEY: And that goes to the issue of
6 self-defense and whether -- it's basically a jury issue,
7 Your Honor, whether or not a slap warrants being, having a
8 butcher knife beared into your chest, and that is a
9 question for the jury.

10 We have established the elements. In the light most
11 favorable to the State, the elements of all the -- of
12 murder, and we have also established how unreasonable the
13 defendant's actions were as far as response -- in response
14 to a slap, whether it was reasonable for him to stab
15 Mr. Cleveland.

16 So therefore, we have -- at least disprove one of the
17 elements of self-defense. He has not established it, in
18 my opinion. He has not -- he has not established his
19 claim of self-defense for our case yet, Your Honor.

20 He, first of all, has failed to establish through our
21 case whether, through cross-examination of our witnesses,
22 that his client was without fault in bringing on the
23 difficulty.

24 I made it perfectly clear through Timothy Cornish's
25 statement or testimony that this defendant was egging the

1 victim on, standing on the porch after the officers left,
2 that he was still taunting them and making the victim even
3 more agitated.

4 He was by no means obeying the officer or his mother
5 and withdrawing into his room and locking the door. That
6 was done at a later time, if you want to even believe that
7 that happened. That's his version of the facts.

8 But we have established that he was definitely
9 without fault -- I mean with fault in bringing on the
10 difficulty.

11 Obviously, the fourth element of self-defense does
12 not apply because they both had a legal right to be there,
13 and, in fact, the victim had a legal right, more of a
14 right to be there, than the defendant. That's why -- and
15 that came out through Deputy Carwell's testimony; that the
16 victim sought his assistance an hour before he was
17 murdered to get this defendant ejected from his residence,
18 and so he had more of a right to be there than this man.

19 Whether or not his name is on the deed is irrelevant,
20 but regardless, Your Honor, they were both household
21 members, and I don't believe there is a distinction to be
22 made there.

23 Whether they have a duty to retreat or not, I don't
24 believe they needed -- either one of them had a duty to
25 retreat unless -- you do have a duty to retreat if you

1 were at fault in bringing on the difficulty. That's my
2 understanding of the case law that I've read in
3 preparation for this trial.

4 So if he was at fault with bringing on the
5 difficulty, he might not be entitled to a charge of
6 self-defense in this case.

7 THE COURT: Well, the testimony elicited from
8 Mr. Cornish, and I'm just quoting the testimony.

9 MS. SHIPLEY: Yes, sir.

10 THE COURT: I has it reprinted. "What exactly did
11 you hear the defendant say verbatim? He said, you punk
12 motherfucker. You're like me. You don't have to go --
13 you don't have anywhere to go."

14 Now, if that language is such that would incite a
15 person's -- directed to do some sort of hostile action,
16 then perhaps he is not without fault in bringing on the
17 difficulty. Those might be considered fighting words. I
18 don't know. I'm not...

19 MS. SHIPLEY: It's the State's position, Your Honor,
20 and where -- I was going to get to that at a later time,
21 but self-defense should not be charged in this case,
22 period.

23 He has not -- there is no indication that he was in
24 actual danger of great bodily injury or death.

25 THE COURT: Well, that's -- that's not the issue for

1 this discussion. I mean, I think that's certainly an
2 issue that's going to have to be discussed before this
3 case goes to the jury, if indeed, it goes to the jury.

4 The defendant says that by virtue of the State's
5 testimony, a defense of self-defense -- the defense of
6 self-defense has been made, and therefore, a directed
7 verdict should be granted based on that alone.

8 MS. SHIPLEY: And in the -- the evidence in favor of
9 the State, Your Honor, in the light most favorable to the
10 State, we have clearly established a jury question as to
11 whether or not this man's actions and apprehensions of the
12 victim were reasonable, and that is a question for the
13 jury, whether or not a slap warrants a stab, and that is
14 the issue in this case, Your Honor. That is clearly a
15 jury question.

16 THE COURT: All right.

17 MS. SHIPLEY: Any time anything dealing with
18 reasonableness, that's why we pick 12 reasonable jurors to
19 decide this matter.

20 THE COURT: I understand.

21 MR. McMULLEN: May it please the Court.

22 MS. SHIPLEY: I'm sorry. I'm arguing overkill, and I
23 also wanted to rely on the State vs. Long, which is cited
24 at 480 S.E.2d 62, remarkably similar facts.

25 The stepfather in that case killed the stepson. The

1 stepfather was 29. The stepson was 21, and the stepson
2 was banging on the stepfather's door with a bat. The
3 stepfather opened the door and just flat out shot the
4 stepson while the bat was to his side.

5 In that case, a directed verdict motion was made by
6 the defense, and the court held that -- and for the same
7 reasons as Mr. McMullen, "The Appellant argues that the
8 trial judge erred by failing to direct a verdict of
9 acquittal because the evidence established self-defense as
10 a matter of law.

11 He contends he was entitled to a directed verdict on
12 self-defense because evidence presented was similar to
13 that in State vs. Hendrix. We disagree. When ruling on a
14 motion for a directed verdict, the trial judge is
15 concerned with the existence of evidence and not its
16 weight.

17 When the Court reviews the denial of a motion for
18 directed verdict, it views evidence in the light most
19 favorable to the nonmoving party," which would be the
20 State, Your Honor, "and if there is any direct or
21 circumstantial evidence which reasonably tends to prove
22 the guilt of the accused or from which guilt may be fairly
23 and logically deduced, refusal by the trial judge to
24 direct a verdict is not error."

25 It goes on to cite the four elements of self-defense.

1. It goes on to say, "However, a person attacked on his own
2. premises without fault has the right to claim immunity
3. from the law of retreat, but they have to be without
4. fault."

5. And also viewing -- they found "viewing the testimony
6. in the light most favorable to the State," as the facts
7. that I relayed to the court earlier, and the case goes on
8. to say that "self-defense can be inferred even from the
9. State's version of the evidence. The evidence of
10. self-defense is not conclusive.

11. Whether a defendant actually believed he was in
12. imminent danger of losing his life or sustaining great
13. bodily injury, and whether an ordinary person would have
14. entertained the same belief were questions for the jury.
15. Accordingly, the judge properly refused to direct a
16. verdict in the defendant's favor based on self-defense."
17. So we stand on our case.

18. THE COURT: Mr. McMullen?

19. MR. McMULLEN: May it please the Court. Just at the
20. outset, I want to make sure that I'm being quite candid
21. with the Court. 16-11-440 (B) and (A), "A presumption is
22. established about reasonable fear of imminent death or
23. great bodily injury." Then that presumption in (B) "does
24. not apply if one person against whom the deadly force is
25. used has the right to be in or is a lawful resident of a

1 dwelling."

2 I didn't mention that before, but it says "resident
3 of a dwelling, residence, or occupied vehicle including
4 but not limited to an owner, lessee, or title holder," and
5 then (2) talks about "that presumption doesn't apply to a
6 person to -- sought to be removed as a child or grandchild
7 or is otherwise in the lawful custody or lawful
8 guardianship of a person."

9 I would submit just that number (2) does not apply.
10 There's no evidence that he's the child or grandchild and
11 not under the guardianship, never was adopted or anything
12 like that, but (B)(1), I -- I just wanted to state, Your
13 Honor, that I think had Mr. Starks been anywhere else in
14 that dwelling, I wouldn't be able to make this argument,
15 but I think that -- you know, this act covers a person in
16 the place of business. It covers them in their car and/or
17 vehicle. I believe it should cover them in, let's say,
18 their personal living quarters within a larger residence.

19 I would -- I would suggest, Your Honor, that the
20 legislature would say a person is entitled to rely on this
21 castle doctrine in circumstances where the police would
22 also have to get a search warrant rather than consent from
23 the other party to enter that.

24 So if Mr. Starks' room really was his, the door was
25 closed, he had a reasonable expectation of privacy inside

1 that room.

2 His mother, the testimony was from Officer Carwell,
3 Master Deputy at the time Carwell, his mother was on the
4 phone and she said, basically, "Thaddess can stay. He
5 should go to his room," and she also told her husband that
6 he should leaved Thaddess alone.

7 The police gave the same command or suggestion, but I
8 think the mother had the right to say that because it is,
9 indeed, her property.

10 The other thing I'd suggest to Your Honor is that
11 Mr. Starks, whether he was -- whether he was responsible
12 or a participant in bringing on the difficulty, the case
13 law that I've read, and I think it might be the Bradley
14 case, talks about the person can withdraw from the initial
15 confrontation, and as long as they communicate that
16 somehow to the other party, then the -- the -- that person
17 is not culpable for bringing out the difficulty.

18 I think the case involved an armed robbery, and there
19 was testimony that the person, when confronted with force
20 or met with force by the robee (sic), that that person
21 tried to withdraw.

22 So a person who is engaged in an argument can
23 withdraw from that argument, and thereby, restore
24 themselves the right to defend themselves. I would
25 suggest the evidence shows exactly that is what Mr. Starks

1 did.

2 State vs. Hendrix says, "A man arming himself on his
3 own land in a legal manner after he has been threatened is
4 not evidence of his being at fault in bringing on the
5 difficulty."

6 I would suggest all those conditions were met after
7 Mr. Starks withdrew and went back to his room. The same
8 case, State vs. Hendrix, says "Once the right to fire or
9 strike the first blow," that's my language, "once the
10 right to fire in self-defense arises, a defendant is not
11 required to wait until his adversary is on equal terms or
12 until he has fired or aimed his weapon in order to act."

13 Mr. Starks did. He, at least, was struck once
14 according to the -- I guess some testimony, but he doesn't
15 have to have been struck once.

16 I would submit that he doesn't have to wait until his
17 assailant got the drop on him. He had the right the act
18 under the law of self-preservation to prevent that. I'm
19 paraphrasing State vs. Rash there.

20 Thank you.

21 THE COURT: All right.

22 MS. SHIPLEY: Your Honor, in State v. Long, the Court
23 distinguishes State vs. Hendrix, which Mr. McMullen just
24 referred to, because in that case the victim and the
25 defendant did not live together.

1 The victim and the defendant had a poor relationship,
2 and the victim actually returned to the defendant's
3 property where he did not have a right to be and pointed
4 a -- basically retrieved a gun after Mr. Hendrix, the
5 property owner, told him to leave and gave him fair
6 warning to back off. That is when the victim went to his
7 truck and pulled out a shotgun. At that point,
8 Mr. Hendrix fired his weapon.

9 In that case, they said that they distinguished the
10 facts from the case of State vs. Long stating that in that
11 case Mr. Hendrix was clearly in imminent danger, unlike
12 the parties here. They were close. They were actually
13 living in the same dwelling.

14 Also, Your Honor, section 16-11-440 (A), subsection
15 (A) says, "A person is presumed to have reasonable fear of
16 imminent peril of death or great bodily injury to himself
17 or another person. When using the deadly force, it is
18 intended or likely to cause death or great bodily injury
19 to another person if the person," and then it talks about
20 an intruder and so forth.

21 In this -- in subsection (B) -- with subsection
22 (B)(1), it says, "The presumption does not apply if the
23 person against whom deadly force is used," that being
24 Mr. Cleveland, "has the right to be or is a lawful
25 resident of a dwelling." So therefore, Your Honor, that

1 is exactly the category that Mr. --

2 THE COURT: Look, I've already denied his motion on
3 that ground.

4 MS. SHIPLEY: Okay, okay.

5 THE COURT: All right. Viewing -- viewing the
6 evidence in the light most favorable to the State at this
7 point in time, I must respectfully deny your motion for a
8 directed verdict.

9 All right. We'll reconvene at 2:15. Thank you very
10 much.

11 MS. SHIPLEY: Thank you, Your Honor.

12 MR. McMULLEN: Thank you.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: Ask your client to stand, please.

15 (Complies).

16 Mr. Starks, I need to explain something to you at
17 this stage of the trial. I'm going to explain to you
18 certain of your rights. If you do not understand anything
19 I say, please let me know. If you want me to explain
20 anything in further detail, please let me know. Do you
21 understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. We have now reached the stage
24 of the trial where you may present your defense. Now, I'm
25 going to explain to you your rights to testify and not

1 testify. Nobody can make you testify.

2 I advise you that you have the right to invoke the
3 protections given to you by the Fifth Amendment to the
4 constitution of the United States and a similar
5 counterpart of the provision for the constitution of the
6 State of South Carolina.

7 The Fifth Amendment to the constitution of the United
8 States provides in part no person shall be compelled in
9 any criminal case to be a witness against himself.

10 This provision of the constitutional right law means
11 that you cannot be compelled or required to testify in
12 this case. This is a right and a privilege which the law
13 extends to you. This is a personal privilege, and no one
14 can waive this right except you.

15 You have the right not to testify, but you also have
16 the right to testify. The Court will grant you the right
17 to consult with your attorney, if you have not already
18 done so, before you make this decision.

19 If you elect not to testify, your failure to testify
20 cannot be used by the State as any inference of guilt, and
21 your failure to testify cannot be considered by the jury
22 in its deliberations.

23 However, if you elect to testify and waive the
24 privilege extended to you by the Fifth Amendment to the
25 constitution of the United States, I advise you now that

1 you will then assume the role of the witness in the case
2 and you will -- any other witness in this case.

3 You will then waive or give up your constitutional
4 privilege against self-incrimination. This means if you
5 voluntarily take the witness stand and testify, you will
6 then subject yourself to the same rules that govern other
7 witnesses.

8 You may be examined and cross-examined on any
9 relevant issue in this case, including a criminal record,
10 if you have one. You may be impeached to the same extent
11 as any other witness. All of which, however, is subject
12 to the Rules of the court -- the Rules of Evidence in the
13 Courts of the State of South Carolina.

14 I further advise you that if you elect to take the
15 witness stand and testify in this case, this decision on
16 your part must be freely, voluntarily, intelligently and
17 with knowledge of the protections given to you by the
18 Fifth Amendment to the Constitution of the United States
19 and with knowledge of the consequences of your election to
20 testify.

21 Have you discussed this matter with your attorney?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you wish to consult further with your
24 attorney on this issue?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Do you understand what I have
2 explained to you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about what I
5 have explained to you?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right, sir. I'll give you -- how
8 much time do you need?

9 THE DEFENDANT: Just a minute.

10 THE COURT: Just have a seat.

11 MR. McMULLEN: Thank you, sir.

12 (Pause).

13 For the record, and for my client's edification, Your
14 Honor, at this point the State would impeach him with a
15 conviction from about three years ago, a federal
16 conviction for --

17 THE COURT: Let's state -- let me let the State put
18 on the record what record he has that are impeachable
19 offenses.

20 MS. SHIPLEY: Your Honor, although his record
21 dates --

22 THE COURT: Admissible for impeachment purposes, I
23 should say.

24 MS. SHIPLEY: Although his record does date back from
25 1990, there is actually a grand larceny from way back

1 then.

2 Within the last ten years, a crime of dishonesty that
3 had resulted in a conviction from federal -- it's a
4 federal offense.

5 On his rap sheet it reflects it's fraud, and on his
6 certified conviction that we got from the District Court
7 for the United States, it reflects that he did plead
8 guilty to one count of withholding information of a crime
9 and conspiracy to possess and utter forged securities.

10 In exchange for that, there were several counts of
11 uttering forged and counterfeit security, possession of
12 counterfeit instruments, charges that were dismissed upon
13 the Government's motion.

14 There were a total of, I believe, 17 counts. No,
15 there was total of 19 counts, and he pled to one count of
16 the withholding information of a crime of conspiracy to
17 possess and utter forged securities.

18 THE COURT: All right.

19 MS. SHIPLEY: He received a three-year sentence with
20 a probationary sentence. Special conditions, to
21 participate in four months of home confinement and also
22 participate in a drug testing or treatment. He was
23 currently under probation at the time of this crime.

24 THE COURT: Okay. Do you understand?

25 MR. McMULLEN: Yes, sir. Just so I understand it,

1 the charge is for withholding information rather than
2 saying anything untrue. Is that --

3 THE COURT: I don't really know.

4 MR. McMULLEN: Well, I'm just wondering if it's a
5 crime that is something that reflects negatively on his
6 honesty or not.

7 THE COURT: Well, it --

8 MR. McMULLEN: It would seem that an error of telling
9 something fraudulent is an act of commission, whereas not
10 telling the federal government that your uncle is doing
11 something, as is the case here --

12 THE COURT: Well, that --

13 MR. McMULLEN: -- is misprison of a felony.

14 THE COURT: I don't know that either.

15 MR. McMULLEN: I believe that's what the record is
16 for.

17 MS. SHIPLEY: I don't know the reasons. All I know
18 is I can tell the Court that the 18 counts of possession
19 of counterfeit instruments and uttering forged and
20 counterfeit securities, instruments, were dismissed as
21 part of the negotiations.

22 He was allowed to plead guilty to a withholding
23 information of a crime of conspiracy to possess and utter
24 forged securities.

25 MR. McMULLEN: My very limited experience in federal

1 court is if they had evidence of the first 18 to convict
2 him of all of those, apparently, he has got one
3 conviction, and that one conviction is for withholding
4 information rather than saying anything untrue.

5 Would the Court allow that for impeachment purposes?

6 THE COURT: Yes.

7 MR. McMULLEN: Thank you.

8 THE COURT: Yes, sir.

9 (Pause).

10 MR. McMULLEN: At this point he does not anticipate
11 testifying, Your Honor.

12 THE COURT: All right.

13 MR. McMULLEN: To be very honest, I did not
14 anticipate that we would be moving into the defense case
15 at this point. I do have a couple of witnesses that I can
16 call for the afternoon.

17 THE COURT: All right.

18 MR. McMULLEN: We would also love it if we were able
19 to start our case in the morning, if that would suit the
20 Court's time.

21 THE COURT: Well, if you call your two witnesses this
22 afternoon, I would not argue and charge today. I'd argue
23 and charge in the morning, give the jury full -- I think
24 we will work on charges to start with.

25 MR. McMULLEN: Yes, sir.

1 THE COURT: And any other motions, but I'd like to
2 have -- I don't want to dismiss the jury now.

3 MR. McMULLEN: Yes, sir.

4 THE COURT: And start up in the morning. I mean, if
5 we've got witnesses that are available...

6 MR. McMULLEN: We do.

7 THE COURT: We need to call them.

8 MR. McMULLEN: Yes, sir.

9 THE COURT: And get the testimony complete.

10 MR. McMULLEN: Yes, sir.

11 THE COURT: Of course, at this stage of the
12 proceedings, your client still -- he says now he does not
13 intend to testify. I mean, he can change his mind, too.

14 MR. McMULLEN: Yes, sir.

15 THE COURT: If circumstances change over the
16 afternoon but...

17 MR. McMULLEN: Well, I asked my paralegal to get one
18 witness here.

19 THE COURT: You had a doctor, I thought.

20 MR. McMULLEN: He's the one who can't testify -- he
21 had to be gone by three.

22 THE COURT: Oh, he's not going to be here?

23 MR. McMULLEN: No, sir. He --

24 THE COURT: Oh.

25 MR. McMULLEN: -- would have had to have testified by

1 three o'clock.

2 THE COURT: Who is -- I mean, you have -- who is --

3 MR. McMULLEN: The wife of the defendant and the
4 mother of the defendant, they're here in the courtroom.
5 They can testify, and my paralegal has gone to get
6 Jennifer Blair who is with 911 communications, unless she
7 is here. We're trying to get her here right now. She is
8 apparently on the witness list.

9 THE COURT: All right.

10 MR. McMULLEN: So we could do that if that's --

11 THE COURT: What is the State --

12 MS. SHIPLEY: If we could at least put some witnesses
13 up today, that would be great. Just so I can clarify
14 Dr. Faber is not expected to testify until in the morning?

15 MR. McMULLEN: That's right.

16 THE COURT: All right. Are you prepared to go
17 forward?

18 MR. McMULLEN: Yes, sir.

19 THE COURT: All right. Bring the jury, please.

20 THE BAILIFF: I'll be glad to.

21 MS. SHIPLEY: Oh, by the way, Your Honor.

22 THE COURT: Hold on.

23 MS. SHIPLEY: I'm sorry. The wife's name is not on
24 the witness list and not disclosed to the jury. If we can
25 make sure no one knows her on this jury, that would be

1 great.

2 THE COURT: Well, let's find out what her name is.

3 MR. McMULLEN: Natasha Starks.

4 THE COURT: Natasha Starks.

5 MS. SHIPLEY: Okay. Can I have your date of birth,
6 please?

7 THE WIFE: [REDACTED].

8 MS. SHIPLEY: [REDACTED], last name Starks.

9 THE WIFE: It's hyphenated. It's Clinton-Starks.

10 MS. SHIPLEY: Clinton-Starks.

11 THE WIFE: C-L-I-N-T-O-N.

12 MS. SHIPLEY: If I could get a date of birth for
13 Ms. Betty Ann.

14 THE MOTHER: It's --

15 MR. McMULLEN: Are we under some obligation to
16 provide the State with date of birth?

17 MS. SHIPLEY: We provided you with rap sheets.

18 MR. McMULLEN: You did?

19 MS. SHIPLEY: Yes, we did.

20 MR. McMULLEN: We need to provide the State with date
21 of birth for our witnesses?

22 THE COURT: Well, if they are -- that's the only way
23 they can determine whether your witnesses have a criminal
24 record.

25 MR. McMULLEN: I don't want to help them with their

1 case.

2 THE COURT: Well, then I'll order it. How about
3 that.

4 MR. McMULLEN: If that's the Court's ruling.

5 THE COURT: Yes, sir. Yes, sir.

6 What's her name?

7 MR. McMULLEN: Please stand and give the Court your
8 name.

9 THE MOTHER: Betty Cleveland.

10 THE COURT: Betty Cleveland. What's your date of
11 birth, ma'am?

12 THE MOTHER: [REDACTED].

13 THE COURT: Thank you very much.

14 Now, we're ready for the jury.

15 MS. SHIPLEY: Yes, sir, Your Honor.

16 THE COURT: All right. Bring the jury.

17 THE BAILIFF: I'll be glad to, Your Honor.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:39 p.m.)

20 THE BAILIFF: The jury is all present, Your Honor.

21 THE COURT: Thank you very much. I hope you had a
22 pleasant lunch, ladies and gentlemen. We're now ready to
23 continue with the trial.

24 Mr. McMullen, you may call your first witness.

25 MR. McMULLEN: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. McMULLEN: The defense calls Natasha Starks.

3 THE COURT: Come around Ms. Starks.

4 NATASHA CLINTON-STARKS, after being
5 duly sworn, testified as follows:

6 THE CLERK: Thank you. Please have a seat in the
7 witness stand and state your full name for the record.

8 THE BAILIFF: Watch your step for me, please, and
9 speak into the microphone. State your full name.

10 THE WITNESS: Natasha Monique Clinton-Starks.

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

13 THE COURT: Ladies and gentlemen of the jury, when I
14 called out the list of potential witnesses at the
15 beginning of this trial, I did not mention Mrs. Stark's
16 name.

17 I do need to know if any member of the jury panel is
18 related by blood, connected by marriage or employment or a
19 close personal acquaintance of Mrs. Natasha
20 Clinton-Starks. If so, please right your right hand.

21 (There was no response).

22 Anybody know Mrs. Starks?

23 (There was no response).

24 DIRECT EXAMINATION:

25

1 BY MR. McMULLEN

2 Q You're Natasha Clinton-Starks?

3 A Yes.

4 Q How old are you, Mrs. Starks?

5 A Thirty-four.

6 Q Forgive me for asking you that. Are you married to
7 Thaddess Starks?

8 A Yes, I am.

9 Q How long have you known Thaddess?

10 A Three years.

11 Q How long have you been married to Thaddess?

12 A Two years.

13 Q Do you have any children with him?

14 A Yes.

15 Q How many?

16 A One.

17 Q Boy or a girl?

18 A Boy.

19 Q What's his name?

20 A Tyler.

21 Q Are you familiar with his mother and his stepfather?

22 A Yes.

23 Q You knew Mr. Cleveland?

24 A Yes.

25 Q Were you on the telephone with Thaddess Starks on

1 October 12th of last year?

2 A Yes, I was.

3 Q About what time was that?

4 A It was the evening because he had -- we were together
5 earlier that day, so it was some time after six o'clock.

6 Q Where had you been together earlier that day?

7 A In Santee.

8 Q Is that where you live?

9 A Yes.

10 Q Does Mr. Starks sometimes stay in that home with you?

11 A Yes.

12 Q Was he staying in the home with you at that time?

13 A No.

14 Q Why not?

15 A We were separated.

16 Q You were still in communication, though?

17 A Yes. We were working through some marriage issues.

18 Q When you spoke to Thaddess on the telephone, what
19 were you discussing?

20 A After he came -- after he went home that day, when he
21 got there, he was just telling me about how his
22 stepfather, Al, was just -- didn't want him there, and
23 that's basically what we were talking about.

24 Q Did you hear anything in the background of that call?

25 A At one point I did.

1 Q What did you hear?

2 A I heard Al in the background -- I think Thaddress was
3 outside on the phone, and I heard Al in the background
4 yelling to the neighbor, it must have been a neighbor,
5 asking for a gun. Then I heard stuff being thrown around
6 in the background.

7 Q Asking for a what?

8 A A gun.

9 Q Do you remember his exact words?

10 A I don't remember exactly how he phrased it, but I
11 know he said something to the effect of "Give me a gun."

12 Q Was he calm sounding or what was his demeanor at the
13 time?

14 A I mean, he was upset.

15 Q Was he speaking or yelling?

16 A He was yelling because like I said, Thaddress was
17 outside on the telephone.

18 MR. McMULLEN: I have no further questions. Thank
19 you.

20 CROSS-EXAMINATION:

21 BY MS. SHIPLEY

22 Q Hi, Mrs. Clinton-Starks.

23 A Hi.

24 Q I just have a couple of follow-up questions.

25 A Okay.

Clinton-Starks - cross (Shipley)

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1 Q So you live in Santee, correct?

2 A Yes.

3 Q Can you tell the jury how old your boy was while you
4 were separated and Thad was living his stepfather and
5 stepmother -- I mean mother.

6 A He was about a month old.

7 Q So one month old. Okay. And what did Mr. Starks do
8 for a living?

9 A At the time he had gotten laid off from his job.

10 Q Okay. So he was not on any disability?

11 A At the time -- I don't remember if he was on
12 disability at the time. I know he was getting
13 unemployment.

14 Q He was getting unemployment?

15 A Yes.

16 Q Was he contributing to your household paying bills at
17 your home?

18 A Yes.

19 Q Okay. Is that why he wasn't paying the bills over at
20 the residence he was residing in?

21 A Well, he had just been back about two weeks during
22 that time.

23 Q So he's not working and you have a one-month-old
24 child at home --

25 A Uh-huh.

Clinton-Starks - cross (Shipley)

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1 Q -- and he's not --

2 MR. McMULLEN: Objection as to relevance.

3 THE COURT: Overruled. It's fair cross-examination.

4 Go ahead.

5 BY MS. SHIPLEY

6 Q And so you said on direct examination after
7 six o'clock, you're not sure exactly what time it was.

8 A It was the evening.

9 Q Evening time?

10 A Yes.

11 Q And you heard Al in the background asking for a gun?

12 A Yes, he was yelling.

13 Q And while you were on the phone with Mr. Starks, did
14 you ever hear Mr. Starks say in response -- well, did you
15 ever hear, first of all, Al asking for a ride?

16 A No.

17 Q Just the gun?

18 A Yes.

19 Q Okay. And did you ever hear Mr. Starks say, "You
20 punk M.F.er. You have got nowhere to go just like me"?

21 A I didn't hear him say that at the time, no.

22 Q Okay. How long do you think you were on the phone
23 with Mr. Starks at the time?

24 A We were on the -- we spoke a couple of times
25 throughout that evening.

Clinton-Starks - cross (Shipley)

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1 Q Okay. And can you tell the jury how it was that the
2 conversation ended with you and Mr. Starks after you heard
3 the comment from Al about, "Give me a gun. Give me a
4 gun"?

5 A Well, he said he had spoken with his mom, and he said
6 he was going to lie down in his room and go to sleep, get
7 him something to eat, go to sleep.

8 Q And your husband drives a car, correct?

9 A Yes.

10 Q Okay. Is it a Mercury Mountaineer?

11 A Yes.

12 Q It's in working operating order, correct?

13 A No, it's not, but at the time it was.

14 Q Well, you were with him earlier in the day. Did you
15 -- did he drive his car when he left Santee to go back to
16 his mom's house?

17 A Yes.

18 Q Okay. So it was working that day?

19 A Yes.

20 Q All right. And you're not aware of any restrictions
21 on your husband's license to drive, are you?

22 A No.

23 Q And also, you were not at the residence between
24 8:30 and 9:05?

25 A No.

Clinton-Starks - cross (Shipley)

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1 Q And so you don't know what happened at the scene?

2 A No, I don't.

3 MS. SHIPLEY: That's all I have, Your Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION:

6 BY MR. McMULLEN

7 Q Mrs. Starks, you were asked on cross-examination
8 whether your husband was disabled at the time from work.
9 Did he have any physical limitations you're aware of?

10 A Yes.

11 Q What are those?

12 A He has hyporeflexia in his -- on his left side.

13 Q In laymen's terms, what is hyporeflexia?

14 A He has involuntary movements where his arm jerks.

15 That's why he takes the Baclofen for that.

16 Q What is it he takes?

17 A Baclofen.

18 Q Are you aware of whether he has had a stroke?

19 A Yes.

20 Q Has he?

21 A Yes.

22 Q What were the consequences or physical results that
23 you witnessed from the stroke?

24 A I know he has -- like I said, the hyporeflexia. He
25 has involuntary movements with his left arm, his balance,

Clinton-Starks - redirect. (McMullen)

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1 and his coordination. Sometimes he will just fall.
2 Sometimes out of the tub he just falls because he'll just
3 lose his balance, equilibrium.

4 Q Has he ever spent time in a wheelchair?

5 A Yes. Before I met him he did.

6 Q So you -- but you never saw that?

7 A No.

8 Q All right. What do you do for a living?

9 A I'm a student. I'm a nursing student at Palmetto
10 Health Richland.

11 Q Does he have strength on his left side?

12 A Not a whole lot. I mean, when I had a baby, he
13 couldn't really even hold our baby with this arm. He
14 always had to hold him in the right arm --

15 Q Was he --

16 A Because his arm jerks.

17 Q Does he do anything with his left arm?

18 A Not a whole lot.

19 MR. McMULLEN: Thank you.

20 RE CROSS-EXAMINATION:

21 BY MS. SHIPLEY

22 Q Just a couple of follow up. You testified that he is
23 on Baclofen?

24 A Yes.

25 Q Okay. And that medication controls involuntary

Clinton-Starks - recross (Shipley)

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1 muscle spasms, correct?

2 A It helps control it.

3 Q And so he was on that; is that right?

4 A Yes.

5 Q And he was not in a wheelchair at the time that this
6 incident happened, correct?

7 A No.

8 Q And he had no problem driving from Santee back to
9 Eastover that day?

10 A No.

11 Q You were talking about the strength in his arms and
12 that the left arm is not as strong as the right arm,
13 correct?

14 A Correct.

15 Q What hand does he use to write with?

16 A His right.

17 Q Okay. And can you tell this jury whether or not you
18 are familiar with the fact that your husband drug an
19 officer into the police car using both hands?

20 A Am I familiar with it?

21 Q Right.

22 A I know that he said he grabbed him, but I didn't know
23 the extent prior to that.

24 Q What if I told you they were both hands?

25 A Okay.

Clinton-Starks - recross (Shipley)

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1 MS. SHIPLEY: Okay. Thank you, ma'am. No further
2 questions.

3 Thank you, Your Honor.

4 THE COURT: May this witness be excused?

5 MS. SHIPLEY: No objection, Your Honor.

6 THE COURT: You may come down, ma'am.

7 THE BAILIFF: Watch your step.

8 MR. McMULLEN: The defense calls Ms. Betty Ann
9 Cleveland.

10 THE BAILIFF: Place your left hand on the Bible,
11 raise your right hand face the clerk.

12 BETTY ANN CLEVELAND, after being duly
13 sworn, testified as follows:

14 THE CLERK: Thank you. Please have a seat in the
15 witness stand and state your full name for the record.

16 (There was no response).

17 State your name, ma'am.

18 (There was no response).

19 THE COURT: State your name for the record, please.

20 THE WITNESS: My name is Betty Ann Cleveland.

21 DIRECT EXAMINATION:

22 BY MR. McMULLEN

23 Q May it please the Court.

24 Good afternoon, Ms. Cleveland.

25 A Hi Michael.

Cleveland - direct (McMullen)

454

1 Q I'm going to ask you to please speak loud and clear
2 for the jury.

3 Ms. Cleveland, were you married to Mr. Alphonzo
4 Cleveland?

5 A Yes.

6 Q How long were you married to him?

7 A Me and him was married for 32 years, 32, 33 years.

8 Q Did you know him before that?

9 A I knew Al from the neighborhood, school,
10 neighborhood, and -- the neighborhood and school.

11 Q Where do you live now?

12 A [REDACTED].

13 Q How long have you lived there?

14 A I've been there what, I think I moved there in 2000,
15 2001.

16 Q Are you paying or buying that house?

17 A Buying.

18 Q In whose name is your home registered?

19 A Now, me and Al had a house together, and I had to --
20 we sold it, and now the one that we're in is as good as
21 mine. I got it in my name.

22 Q Is his name on it at all?

23 A No, not the one I'm in now.

24 Q And you have been there how long?

25 A We moved in 2001. It was 2000, 2001.

Cleveland - direct (McMullen)

455

1 Q Did Mr. Cleveland reside in that home with you the
2 whole time since 2001?

3 A No. He was in and out.

4 Q How -- how did that work?

5 A How that worked, we were separating. He would move
6 in with his sister and come back.

7 Q During the times he was gone, did he support you in
8 any way?

9 A None whatsoever.

10 Q What do you do for a living, ma'am?

11 A Well, now -- me and my husband, we worked together
12 for -- I worked there 14 years. He was there for 18
13 years, and I got laid off and I went to the Moncrief
14 Hospital.

15 Q Where did you work before?

16 A Me and him both worked at Wabtec.

17 Q Wabtec?

18 A Uh-huh.

19 Q Is that W-E-B-T-E-C-H?

20 A Yes.

21 Q What did you do there?

22 A I was working on the assembly line, and he was
23 working in the piston area.

24 Q In the what?

25 A I was in the assembly line. He was in the piston

Cleveland - direct (McMullen)

456

1 area.

2 Q What do they make at Wabtec?

3 A Train brakes.

4 Q And where is that located?

5 A Bluff Road.

6 Q You worked there how long?

7 A Fourteen years.

8 Q Is that where Mr. Cleveland lives -- I mean, is that
9 where Mr. Cleveland works --

10 A Yes.

11 Q -- on October 12th of last year?

12 A Yes.

13 Q What shift did he work?

14 A Third.

15 Q What time did he have to be there, and what time did
16 he get done?

17 A He had to be to work at six, six to four.

18 Q And what about -- did he work on Friday?

19 A Mostly Fridays he was off unless it's overtime.

20 Q Did he drive?

21 A No.

22 Q How did he get back and forth to work?

23 A I took him.

24 Q How did he get back and forth to work the last week
25 of his life?

Cleveland - direct (McMullen)

457

1 A Well, Tuesday -- well, Tuesday and Wednesday morning,
2 Thad took Al to work, and I picked him up.

3 Q What time were you working at that time? A year ago
4 what was your work schedule like?

5 A Okay. A year ago my work schedule, I had to be at
6 work at four, four to 11, but I asked them to let me come
7 in an hour later so that I could pick my husband up.

8 Q Four a.m. or four p.m.?

9 A At night. I worked the second shift --

10 Q Okay.

11 A -- four to 11 but they let me come in at five, but I
12 wanted to pick my husband up at 5:30. I was told they
13 would let me get off at 11:30.

14 Q So you would work an hour less than the others?

15 A Uh-huh.

16 Q And then what did you do when you left work?

17 A Come home, or you're talking about then?

18 Q That's --

19 A Come home at night.

20 Q And then the next morning, how early would you get up
21 to take Mr. Cleveland --

22 A I would get up at five so I could take my husband to
23 work.

24 Q Did you get home about midnight?

25 A Every night, yeah.

Cleveland - direct (McMullen)

458

1 Q How far out on Leesburg Road do you have to go before
2 you get to Congress Street?

3 A What, from his job or my job?

4 Q Well, let me ask it this way. You work at Moncrief
5 at the Fort?

6 A Uh-huh.

7 Q Is that right?

8 A Uh-huh.

9 Q Well, do you know where Leesburg Road and Sumter
10 Highway are, where they meet?

11 A Uh-huh.

12 Q Kind of near the V.A. Hospital?

13 A It took me about 30 minutes every night to get home.

14 Q Okay. How far out Leesburg Road is it from the V.A.
15 Hospital to get to Congress Street?

16 A It's about 20 miles -- well, 20, 20 something. Is it
17 15, 20 miles?

18 Q So it would take you about half an hour to get home
19 at night?

20 A Uh-huh.

21 Q And then how long would it take you in the morning to
22 take Al home from work?

23 A About 30 minutes, 35 minutes because he was on Bluff
24 Road. It was a little bit longer.

25 Q Did Mr. Cleveland get paid on Thursday night?

Cleveland - direct (McMullen)

459

1 A On Thursday, every two weeks.

2 Q What would you do when you picked him up on Thursday
3 night? Did you have a habit of going any certain place?

4 A Just stop and get his -- he would stop and get his
5 beer and Smirnoff.

6 Q Beer and Smirnoff?

7 A Uh-huh.

8 Q What is Smirnoff?

9 A Vodka.

10 Q Vodka?

11 A Uh-huh.

12 Q How much did he buy?

13 A Half of a pint.

14 Q How much of it would he drink?

15 A I don't know. He acted like he didn't drink because
16 he would be sleeping when I got home.

17 Q How often did you make these trips?

18 A Just about every day.

19 Q So would he buy them more before he ran out?

20 A Well, I don't know but every day he would, you know,
21 want to stop for the liquor, wanting the beer.

22 Q Did he have anybody that he drank with a lot?

23 A Yes, the neighbors. He'd be out in the yard
24 drinking.

25 Q Is Tim Cornish one of those neighbors?

1 A Yeah.

2 Q Who else?

3 A And Charles.

4 Q Who is Charles?

5 A Our neighbors on the other side of us.

6 Q He would drink with them, too?

7 A Uh-huh.

8 Q Do you drink?

9 A Yes.

10 Q What do you drink?

11 A Millers.

12 Q How much do you drink?

13 A I drink a six -- it all depends. That's on the

14 weekends.

15 Q All right. I want to talk to you about your son's

16 health. Mr. Starks suffered a stroke, didn't he?

17 A Yes.

18 Q In 1993?

19 A '93.

20 Q Since then has there been a change in his physical

21 health?

22 A Not for his left side.

23 Q What is it about his left side that we should know?

24 A You know, like if I ask him to do something for me,

25 you know, and he goes to put something together for me, he

Cleveland - direct (McMullen)

461

1 is, you know, shaking. I'll say, "Go ahead. I'll do it."

2 You know, he can't hold his balance on his left side.

3 Q What's wrong with his left side?

4 A That's where he had the stroke, on his left side. He
5 can't -- you know, he had -- like, he had a jerk to it.

6 You know, if he had a plate or something in his hand, it
7 would fall or a cup, you know. Really, I just hate to see
8 him do anything on his left side. If he takes his
9 medication, he will be steady, but he will, you know, have
10 a jerk to it.

11 Q Does he have a job now?

12 A Yes, he's working now.

13 Q Where is he works now?

14 A At Stouffer's in Gabbin, Gabbey (phonetic).

15 Q Gaffney?

16 A Gaffney.

17 Q Is that right?

18 A Uh-huh.

19 Q Do you know what he does there?

20 A He -- what, they were making the frozen foods,
21 Stouffey (sic). They make that.

22 Q Do you know whether he has to use his left arm for
23 that?

24 A He had a problem with that when he first got the job.

25 He said, "Mom, I don't know whether I can hold it",

Cleveland - direct (McMullen)

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1 because he turns the trays over, you know.

2 The supervisor or whatever there told him that, "You
3 can do it your way," because other people were saying it's
4 a certain way to do it, but his supervisor told him to do
5 it his way where he's comfortable and that way he can hold
6 it down better.

7 Q Have you seen him lose his balance?

8 A Yeah. You can push him, and he'll lose his balance.
9 He might be big, but he'll lose his balance if you push
10 him too hard.

11 Q Has he gained or lost weight in the last year?

12 A He's gained because he's aggravated and eating more
13 and I have, too.

14 Q Did you speak with Mr. Cleveland on -- during the
15 evening hours of -- on the 12th of October of last year?

16 A Yes, I did, but I picked Al up at least once.

17 Q Do you keep your cell phone with you at work?

18 A Yes.

19 Q Did you have with it with you on October 12th?

20 A I didn't have it in my cart.

21 Q In where?

22 A In my cart pocket. You know, I'm a housekeeper, and
23 we have a cart we have to push. I didn't -- I normally
24 put it in there, and I didn't that day.

25 Q Did you notice you were without it at some point?

- Cleveland - direct (McMullen)

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1 A What happened was I had some inspection. I went to
2 work thinking about the work that I got -- I got a job
3 I've got to do that day. I have got five inspections, and
4 probably that's what my mind was on most of all, the
5 reason why I didn't have my phone on because I normally
6 had it on me.

7 Q Did you notice at some point you didn't have it?

8 A After lunch there was -- well, during the lunch I
9 probably, you know, would have called home at lunchtime,
10 but one of the girlfriends came over to have lunch with
11 me. So I didn't think about it then. Then when she left
12 I thought, "Oh, it's been a long day." I went to the
13 phone.

14 Q What was the last thing you said? What did you just
15 say?

16 A I said I hadn't talked to Al all day. That's it.

17 Q Is that it?

18 A Uh-huh.

19 Q And when you say lunch, you worked from 5:30 until
20 eleven p.m.?

21 A No. We had lunch at eight.

22 Q At eight p.m.?

23 A Uh-huh.

24 Q So is that when you noticed that your phone was --

25 A Well, I noticed after lunch, but a girlfriend came

Cleveland - direct (McMullen)

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1 over to eat lunch with me. So I didn't get it then. I
2 waited until after lunch at nine o'clock.

3 Q Did you notice anything about the phone when you
4 opened it and turned it on?

5 A Al had called me about 12 times.

6 Q Is that unusual?

7 A Well, no. Not for Thursdays it's not. You know,
8 that -- I mean, I would have answered before then, if I had
9 the phone with me.

10 Q Why is that not unusual for Thursday?

11 A Well, because he -- you know, when he gets tipsy, he
12 wants to talk.

13 Q Does his personality change when he has been
14 drinking?

15 A Yeah.

16 Q All right. So -- and you said -- you said that he
17 talks more or he did talk more?

18 A Yeah. Al is a quiet person. When he did drink, he
19 would talk more.

20 Q Did you listen to the 12 messages -- or were there 12
21 messages or did you --

22 A I didn't listen. I just saw where he called. It
23 said he called 12 times.

24 Q Had anyone else called?

25 A I just seen the 12 -- well, really, I just seen the

Cleveland - direct (McMullen)

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1 12 calls. I don't know exactly who called, but I assumed
2 it was Al.

3 Q Did he have a cell phone, or was he calling from a
4 home phone?

5 A Cell phone.

6 Q So that was his number?

7 A Uh-huh.

8 Q All right.

9 A You're talking about that call?

10 Q Yes, ma'am.

11 A Yes.

12 Q Where -- do you remember when those 12 calls came in?

13 A Not exact, you know. It had to be from the time I
14 got to work, five, you know, up until nine when I got the
15 phone.

16 Q Did you speak with him?

17 A Yeah, I called.

18 Q Did you give him a call?

19 A Uh-huh.

20 Q When was that?

21 A Nine, a little after nine.

22 Q Would you tell us what he sounded like and what you
23 spoke about?

24 A He said, "I called the damn police."

25 "Called the police for what, Al?"

Cleveland - direct (McMullen)

466

1 "Damn, I told Thaddress to get out, and he said he
2 wasn't going no damn way," and he hung up.

3 Q He said what now?

4 A He said he told Thaddress to get out, and he said he
5 wasn't going no damn way.

6 Q All right. Is that it?

7 A And he called, and he hung up. I called Thad and
8 said, "What's going on?"

9 He said, "Mom, Al is running around here telling me
10 to get out, get out. I just came back down there from
11 Tasha's, and I don't have no gas."

12 I told him, "Go on and lay down. You know, get out
13 of his way. You know how Al is when he's been drinking."

14 Q He didn't have any gas?

15 A He didn't have any gas in his truck. That's what he
16 was telling me, that he would have had to get some gas.

17 Q Do you think he would have left if he had gas?

18 A Yeah. Thad would have left. He had just left from
19 Tasha's. By him not working, you know, he was low on
20 funds.

21 Q Could you tell by Mr. Cleveland's voice whether
22 Mr. Cleveland had been drinking?

23 A Yeah.

24 Q Had he been drinking on Thursday October 12th at
25 about eight o'clock when you spoke with him?

Cleveland - direct (McMullen)

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1 A That night, yeah.

2 Q Nine o'clock, was it?

3 A Uh-huh.

4 Q Could you tell how much, a lot or a little?

5 A I couldn't tell how much, but he was kind of hyped.
6 You know, I could tell he was kind of drinking because he
7 was hyped. You know, more than normal when he don't
8 drink.

9 Q Did he sound angry?

10 A Yeah, he was angry. He was upset at Thad. Yes, he
11 was. He was wanting him to go. He wanted him to get out
12 that day. I don't know why it was so special, the end of
13 the day.

14 Q You don't?

15 A Why so special that day. He never took it that far
16 before. He would go and lay down, you know.

17 Q But you could tell that this was worse than usual?

18 A Yes. He never took it that far.

19 Q And now your son was taking him to work at least the
20 last two days --

21 A Uh-huh.

22 Q -- of his life?

23 A Uh-huh. They weren't angry at all. That's what I
24 couldn't understand. That's what I can't understand. I
25 loved him. I loved Al.

Cleveland - direct (McMullen)

468

1 Q Pardon me?

2 A I loved him, my little family.

3 Q I still...

4 A I said I loved my little family, me, Al and Thad.

5 Q Excuse me just a moment, please.

6 (Pause).

7 Do you have any other children?

8 A Only one son.

9 Q Just Thad?

10 A Just Thaddress.

11 Q When you left for work at about 4:30 that day; is
12 that right?

13 A I left at 4:30 -- well, 5:30. My schedule is kind of
14 mixed up because I had changed my hours and all to take Al
15 to work. Like now I'm working from four to ten. They cut
16 hours off. I am kind of mixed up with my schedule.

17 Q When you left for work that day, was there anything
18 wrong with the door to Thaddress' room?

19 A No.

20 Q It was in what kind of condition?

21 A Good condition. It wasn't, you know, broken at all.
22 It wasn't broken at all.

23 Q When you got home what did that door, doorknob, look
24 like?

25 A Well, it was pushed in. You know, it was broke. You

Cleveland - direct (McMullen)

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1 could tell it was pushed in, broke in or whatever.

2 Q Did Thaddress have your permission to be at [REDACTED]
3 [REDACTED]?

4 A Yes, yes. I don't want to see my child on the
5 street. Now, my husband, you know, it goes for both of
6 them.

7 Q Did you consider that bedroom to be Thaddress' room?

8 A That was Thaddress' room.

9 Q And did you talk to Thaddress that night beyond what
10 you have already told us?

11 A From -- when I talked to him from the beginning, you
12 know, when he said like he didn't have gas, he called
13 after -- like, I called back again, answered.

14 He said, "I'm getting ready to call the damn police
15 again."

16 I said, "Again, Al? What's wrong with you?"

17 After that then I called Thad, and he said, "Mom, Al
18 has been cut." I said "What?" I dropped my keys.

19 My supervisors, they were on the outside. I must
20 have called a little bit before lunch or something. They
21 still -- well, they stayed out sometimes after nine.

22 They -- I just went, and I gave them the badge and
23 the keys and all. They said, "Where are you going?" I
24 said home. They wanted me to explain what happened. I
25 told them I didn't have time.

Cleveland - direct (McMullen)

470

1 I went home, and they had everything taped off. Then
2 I didn't have no idea -- Thad said cut. I had no idea it
3 was that serious. So I'm standing out there waiting on
4 Thad, you know, seeing what -- you know, what they're
5 going to do with him because I didn't have no idea what
6 was going to happen. I go to the hospital by myself, and
7 this is what I got. I didn't have no idea it was that
8 serious.

9 Q Did you get a phone call from a police officer that
10 night?

11 A I talked -- when I called Al over there -- when I
12 called home the first time and after he called the police,
13 he said he called the damn police. The police came up one
14 more time, and that's when I talked to him.

15 Q What time was that?

16 A That was the first call I made, a little after nine.

17 Q Do you know the name of the police officer?

18 A No.

19 Q Did you see the police officer in here?

20 A I don't know. I really don't know. I was so upset,
21 I don't know.

22 Q What did you and the police officer talk about?

23 A About what was going on, and he was telling me my
24 husband was upset and he wanted my son out and said -- if
25 I gave him my permission. I told him yeah, that I gave

Cleveland - direct (McMullen)

471

1 him permission to stay there. As a matter of fact, Al
2 gave him permission to Thaddess, too, so I don't
3 understand.

4 Q Did you get on the phone with either Mr. Cleveland or
5 Mr. Starks? Did the police officer hand the phone to
6 either of those gentlemen?

7 A Yeah, because I was talking to him on Al's phone.
8 See, when I called Al, the police officer was there. You
9 know, he came up during the time I was talking to Al.
10 When I said Al hung the phone up, no, he didn't hang the
11 phone up. The police officer hung the phone up.

12 I talked to him on the phone, and he said everything
13 was all right, you know. I thought everything was all
14 right. You know, so I called back. It was a little while
15 after. That's when he said he had called the police
16 again.

17 Q How long between those two?

18 A It wasn't too -- it was kind of close now. I don't
19 know exactly. It was kind of close now. It happened
20 fast.

21 Q An hour or less?

22 A It was less than an hour.

23 Q Did you come home from work after hearing about the
24 cut? Is that your testimony?

25 A It was after that.

Cleveland - direct (McMullen)

472

1 Q Do you remember what it was Thaddess said that he had
2 done?

3 A Thad said that he did what Al said. When I got home
4 and he was standing up there to the police car, he started
5 telling me something then. Before they told me, you know,
6 that I had to go to the hospital.

7 Q Okay.

8 A He was saying, you know, he was in the room and
9 slapped me, you know, and...

10 Q All right. Did you look inside Thaddess' room after
11 all of this was over with?

12 A We came back that night. No, because they wouldn't
13 even let me -- I couldn't go in the house when it all
14 happened.

15 That night my relatives that was with me, they went
16 in first. You know, they checked everything out, and then
17 they let me come in.

18 Q Did you go inside Thaddess' room?

19 A I don't think I went inside Thaddess' room until the
20 next morning, the next day.

21 Q What did you find, if anything, in the room?

22 A I found a plate on the coffee stand. The coffee --
23 you know, his nightstand. I just found it. I didn't
24 even -- I didn't even know it.

25 They said -- they said they didn't see a plate there

Cleveland - direct (McMullen)

473

1 but I seen one. My niece said that I found a plate. She
2 said the plate was underneath the bed or something. She
3 found the bed.

4 Q She found it?

5 A Yeah, Lakeisha (phonetic).

6 Q So you found it -- you saw it on the table?

7 A I saw it sitting on the night stand, but you see,
8 that night she must have went in the room when they were
9 cleaning up looking for stuff, and she just told me, she
10 said she found the plate. I know I saw it sitting on the
11 nightstand when I went in there.

12 Q Has Thaddess ever eaten a sandwich in that room?

13 A We all eat in our rooms, bedroom.

14 Q Is he a sloppy eater?

15 A (There was no response).

16 Q Does he leave crumbs all over?

17 A Thad eats all of his food.

18 (Jury laughing).

19 Q Does Thaddess possess the ability to cut a sandwich
20 with a bread and butter knife?

21 A You're saying do he normally cut it with a butter
22 knife (sic)?

23 Q Yes, ma'am.

24 A Well, I ain't never -- you know, I ain't never
25 noticed what he cut it with, you know, whether he cut his

Cleveland - direct (McMullen)

474

1 sandwich. I never really noticed. I don't really just
2 eat with him.

3 You know, I don't really -- you know, we don't --
4 Sunday maybe we all sit at the dinner table. You know,
5 after that we go our way.

6 Q If you're home, does do you make his sandwiches or
7 does he make his sandwiches?

8 A He makes his own sandwiches.

9 Q All right. So you have seen him cut one before?

10 A Sometimes he cuts his sandwich.

11 Q How does he do that?

12 A With a knife.

13 Q Does he use one hand or the other?

14 A Both of them sometimes or just one. I really never
15 paid no attention, to be serious about it.

16 Q All right. You were separated for some time before
17 this incident from Al; is that right?

18 A Yes.

19 Q Mr. Cleveland, and do you know where Mr. Cleveland
20 lived during that time?

21 A With his baby sister.

22 Q What is her name?

23 A Connie Cleveland Caldwell.

24 Q Is that the only place?

25 A I didn't -- well, he moved out from her and got him

Cleveland - direct (McMullen)

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1 an apartment, and he moved out from her and got an
2 apartment. He told me that he had an apartment, but he
3 said there wasn't no need to stay in that apartment when
4 he knew that I needed help at home, which I didn't at the
5 time because I was working two jobs and my son and
6 daughter-in-law was with me, you know, but he said he
7 wanted to come back home.

8 Q Were your son and daughter-in-law with you when your
9 grandchild was born?

10 A No, I don't think so. He was born in that August,
11 last August, and Al was there.

12 No, because when Al moved back home, they moved out.
13 They went and got an apartment or moved to Santee,
14 whatever. When Al moved back home, they moved out.

15 Q When Mr. Cleveland was not drinking, what was his
16 personality like?

17 A Al was a good man, a nice person.

18 Q A good man?

19 A You can't get two words out of him.

20 Q Was he -- would you characterize him as hardworking?

21 A He was hardworking. I don't care what he was
22 drinking, he would still go to work.

23 Q And he worked at that last job for 18 years, did you
24 say?

25 A Eighteen years.

Cleveland - direct (McMullen)

476

1 Q You used to live in another neighborhood for 26
2 years?

3 A In Bluffton Estates.

4 Q And you moved out, out of there?

5 A Yes, I did.

6 Q Did he drink every day?

7 A Just about.

8 Q Did he get drunk every day?

9 A No, not drunk every day.

10 Q Was he more intoxicated October 12th of last year
11 than usual?

12 A You know, I can't say that because to me I don't
13 really think that -- he couldn't have been, you know,
14 because from the time when he got it from four o'clock,
15 when I picked him up until this happened, he couldn't have
16 had -- couldn't have been too drunk. Al was just unusual
17 that day, for one thing.

18 Q When he wasn't living with you, do you know where
19 Mr. Cleveland spent his paycheck?

20 A When he wasn't? With him and his sister, I guess.

21 Q When he was living with his sister --

22 A Uh-huh.

23 Q -- where did he spend his paycheck?

24 A I guess with him and his sister taking care of her
25 household.

Cleveland - direct (McMullen)

477

- 1 Q Did Thaddess Starks go to high school?
- 2 A Junior high school.
- 3 Q Did he play sports?
- 4 A He played football at Dreher.
- 5 Q Was he pretty strong and healthy back then?
- 6 A Uh-huh.
- 7 Q Who is Roosevelt Starks?
- 8 A That's my brother.
- 9 Q Why does he share a last name with Thaddess?
- 10 A Because Thaddess -- I never did have a name change,
- 11 and when I had him, it was my maiden name.
- 12 Q And you're Betty Ann Starks Cleveland?
- 13 A Right.
- 14 Q You weren't married to Mr. Cleveland when you gave
- 15 birth to Thaddess?
- 16 A No.
- 17 Q Is that right? How long after?
- 18 A I think I, you know, married Al about a year and two
- 19 months or something like that.
- 20 Q Did Mr. Cleveland ever talk about adopting your son?
- 21 A No. He never did discuss it. We always tried to
- 22 have one, you know, another child.
- 23 Q Did Mr. Cleveland call Al "son", I mean, call
- 24 Thaddess "son"? Did Thaddess call Mr. Cleveland "dad" or
- 25 "father"?

1 A When they were talking among other people, "my daddy"
2 or "my son" or like that. You know, like you talking
3 about "my dad" or "my son" but not to each other, you
4 know. They'll say Thad and Al to each other, but among
5 other people, they would say "that's my son" and "that's
6 my dad" and like that.

7 Q Has he -- has Thaddeus ever spilled anything around
8 the house when he uses his left hand?

9 A All the time.

10 Q You asked him to do things around the house that
11 involved using his left?

12 A I try not to.

13 Q Why not?

14 A Because he's shaking, and I'm scared he's going to
15 waste it, you know, or mess it up.

16 Q Has he ever been declared disabled by the Social
17 Security Administration?

18 A Social Security what, was he ever getting a
19 disability check or something?

20 Q Yes, ma'am.

21 A Yeah.

22 Q Do you know why?

23 A Because of his disability, you know, because of his,
24 you know, left side stroke and seizures.

25 Q Have you seen him have a seizure?

Cleveland - direct (McMullen)

479

1 A Oh, yeah. When -- well, when he first started, he
2 didn't like taking his medicine. He wouldn't have it
3 regular then, but if he keeps his medicine in him right,
4 you know, his system, he won't have them that day.

5 Q Does that medicine make him calmer or more depressed?

6 A I don't know, Michael.

7 Q All right. Fair enough.

8 A I think it gives him an appetite.

9 (Jury laughing).

10 MR. McMULLEN: Excuse me just one moment.

11 (Pause).

12 Thank you, ma'am. Please answer the prosecutor's
13 questions.

14 CROSS-EXAMINATION:

15 BY MS. GARFIELD

16 Q Good afternoon, Ms. Cleveland.

17 A Hi.

18 Q First, I want to say I'm sorry for your husband's
19 loss.

20 You love your son very much. I know you're in a
21 difficult situation testifying today, and I just want to
22 clarify some things mostly because I have a hard time
23 hearing anybody from the witness stand.

24 On that particular day, you picked your husband up
25 from work, correct?

B. Cleveland - cross (Garfield)

480

1 A Uh-huh.

2 Q And that was a common thing you did every day, right?

3 A Right.

4 Q And Thursdays were a big day for him because he
5 didn't have to work the next day, right?

6 A Right.

7 Q It's kind of like he got an extra Friday.

8 A Oh, yeah.

9 Q And he enjoyed eating his dinner, having a few
10 drinks, and watching his television on Thursday nights,
11 correct?

12 A Right.

13 Q In fact, you told Investigator Isenhoward that's
14 something he enjoyed doing on Thursdays, right?

15 A Yeah but...

16 (Pause).

17 Yeah.

18 Q Do you remember telling Investigator Isenhoward that?

19 A That he enjoyed drinking and eating?

20 Q Just --

21 A Maybe I did. I was very confused.

22 Q Oh, this was just a couple of weeks ago when he
23 served you with a subpoena.

24 A Oh, you're talking about that answer. Okay.

25 Q Do you remember that?

B. Cleveland - cross (Garfield)

481

1 A Uh-huh.

2 Q So that Thursday was just a normal Thursday, as far
3 as you were concerned, correct?

4 A Right.

5 Q And you dropped him off to get his alcohol, and did
6 y'all get anything else besides spirits, if you will?

7 A I don't recall anything else.

8 Q Okay. Then what did you do, took him back home?

9 A Uh-huh.

10 Q And then you went on back to work?

11 A Right.

12 Q And you got to work at what time?

13 A I had to be at work at 5:30, 5:30.

14 Q And when did you discover you did not have your cell
15 phone? I'm sorry, had you left it on your cart?

16 A I left it. It was in my pocketbook. I forgot to put
17 it in my cart.

18 Q Okay. But when did you realize while you were out?

19 A On lunch break.

20 Q Lunch break. And what time is your lunch break?

21 A Eight o'clock.

22 Q Eight o'clock.

23 A Yes.

24 Q And what you realized that you had left your phone,
25 what did you do?

B. Cleveland - cross (Garfield)

482

1 A Well, a girlfriend came over to have lunch with me,
2 so I didn't bother with it then. I waited until she left,
3 and I went and got the phone and I called Al.

4 Q That's the first time you called Al?

5 A Uh-huh.

6 Q And what time would you estimate that was?

7 A It was after nine. I don't know the exact time, but
8 you know, I know it was after -- my lunch break was --
9 ends at nine.

10 Q And you know you called him after your lunch break?

11 A Uh-huh, yeah.

12 Q Is that when you realized that you had missed so many
13 calls from him?

14 A When I was -- when I called, yeah.

15 Q Okay. And how many times did you say you thought he
16 called you?

17 A How many calls did I miss? It was 12 calls.

18 Q Twelve times. Your phone popped up and said 12
19 missed calls?

20 A Uh-huh.

21 Q And you called Al, because obviously you're concerned
22 with all the missed calls. Is that why you called?

23 A Well, that and I hadn't talked with him, you know,
24 yet that night.

25 Q Okay. And when you talked to him at nine o'clock or

B. Cleveland - cross (Garfield)

483

1 right after nine o'clock, what was the substance of that
2 conversation?

3 A "I done called the damn police."

4 Q Okay. And is that when the police officer arrived
5 and you talked to him?

6 A During the time -- yeah, during the time I talked to
7 Al again, and the police -- he said let me speak to the
8 police. It went that way. I can't say exact, but it was,
9 you know, close.

10 Q So you asked to talk to the police officer?

11 A Yeah, you know, asking what was going on, and he said
12 that Al was upset because, you know, Thaddess wouldn't
13 leave.

14 Q This wasn't common, was it, for Al to call the police
15 on your son?

16 A Huh-uh.

17 Q Okay. And then after you got off the phone with the
18 police officer, when is the next time you talked to Al?

19 A I called Thad and asked him what was going on, and he
20 told me --

21 Q You called your son?

22 A Uh-huh.

23 Q Right after that?

24 A Yes, I -- yeah.

25 Q Okay. And then what did you do?

B. Cleveland - cross (Garfield)

484

1 A Then after I talked to Thad and told him to go in the
2 room and everything, he said he couldn't leave because he
3 -- you know, he was out of gas. So I called -- I went --
4 I went on back to work because I had inspections that I
5 had to do. I went on back to work, and I also called back
6 again. Al said, "I done called the damn police again."

7 Q You called Al and asked him that?

8 A Uh-huh.

9 Q Okay. Do you -- what do you know about what time
10 that would be?

11 A All of this is between -- it's at nine now and after,
12 you know.

13 Q So this would be safe to say between nine and --

14 A Yeah, it was close.

15 Q Ten?

16 A I don't -- I cannot say specific what time but it was
17 after nine.

18 Q Okay. So sometime after nine, you testified today
19 that you called Al the second time?

20 A Uh-huh.

21 Q Okay. And what was the substance of that
22 conversation?

23 A He said he had done called the damn police again.
24 After that, I called Thad. That's when he said he had cut
25 Al.

B. Cleveland - cross (Garfield)

485

1 Q And that's when you left?

2 A I got up and left.

3 Q Beg the Court's indulgence.

4 (Pause).

5 You went straight home after he told you that?

6 A I went straight home.

7 (Mrs. Garfield turns cellular phone on.)

8 Q Phones can be...

9 Okay. Ms. Cleveland, I'm going to hand you what's
10 been marked as State's Exhibit Number 40. Do you
11 recognize this?

12 A Yeah, that's me.

13 Q What is that of? Whose telephone does that belong
14 to?

15 A Huh?

16 Q Whose telephone was that?

17 A That's Al's phone.

18 Q And that's a photograph of you on his screen saver?

19 A Uh-huh.

20 Q Can you please go to his incoming calls?

21 A Wait a minute. I don't know how to work this thing.
22 Push send?

23 Q Would you be willing to let me help you since I have
24 the same phone?

25 A Yeah, I don't know.

B. Cleveland - cross (Garfield)

486

1 Q All right. That's calls. This would have been
2 incoming, okay.

3 A Okay.

4 Q All right. That number one call, that would be the
5 last call that would have come in to Al's phone.

6 A That's my number.

7 Q You don't recognize that number, okay. Would you
8 just look at the date on that. Would you press it in to
9 see the date and the time?

10 A Press what, "OK"?

11 Q I'll show you. I think it's "OK".

12 Okay, all right. What date is on that, that call
13 came in?

14 A That's 8:22, Thursday, October 12th.

15 Q So the last call, according to this telephone that
16 came in on his phone, was 8:22 p.m.; is that correct, this
17 phone shows?

18 A Yes. The last -- well, he might be on the house
19 phone then.

20 Q Okay. Now, these are the calls that came to his cell
21 phone. Does that say "incoming"?

22 A Uh-huh.

23 Q And you testified earlier that the call -- you called
24 Al on his cell phone; is that correct?

25 A I don't know. I mean, I thought he had.

B. Cleveland - cross (Garfield)

487

1 Q Okay. We'll go to the next call.

2 A That's when I went and got my cell phone.

3 Q Okay. And this is the next call. It says "number
4 two", right?

5 A That's my cell phone number.

6 Q Okay. I'm going to press it. What time does that
7 call come in?

8 A That was 7:17.

9 Q And what's the date?

10 A Okay. These calls must have been when he was trying
11 to call me those 12 times, right.

12 Q Well, no. These --

13 A I don't --

14 Q That says "incoming". That means these are calls
15 they were made to his phone. So you called him at 7:17.
16 Is that what that says?

17 A I don't know.

18 Q Ma'am, I'm asking you if that's what that says.

19 A 7:17.

20 Q And what's the date?

21 A October 12th, '06.

22 Q And what does it say below that?

23 A "Call waiting".

24 Q And do you know what that means when it says "call
25 waiting"?

B. Cleveland - cross (Garfield)

488

- 1 A (There was no response).
- 2 Q You're not familiar with call waiting?
- 3 A Huh-uh.
- 4 Q Okay. And the next phone call that comes in to Al's
- 5 phone, what date is that call coming?
- 6 A That was 8:16 again.
- 7 Q And what date?
- 8 A October 11th.
- 9 Q So according to Al's cell phone that was taken into
- 10 evidence from the ground that's close to his body, these
- 11 are the two, only two, phone calls that came in to his
- 12 phone. Is that what this is showing?
- 13 A Uh-huh.
- 14 Q Okay.
- 15 A I don't know. Maybe I'm confused but I thought...
- 16 Q Okay. Now, I'm going to his outgoing calls. These
- 17 are the calls that he would have dialed or someone would
- 18 have dialed from this phone?
- 19 A Uh-huh.
- 20 Q Is that correct? That's you're phone number?
- 21 A The first one is mine.
- 22 Q Okay. And I'm going to flip to it. What time was
- 23 that call made?
- 24 A That was nine -- 9:05.
- 25 Q Okay. And that was on October 12th?

B. Cleveland - cross (Garfield)

489

1 A Uh-huh.

2 Q Okay. So he called you?

3 A Yes, eventually.

4 Q And that's the last call he made was to you?

5 A So what you're saying, he didn't call but one time
6 off his cell?

7 Q No, ma'am. I'm just asking the last call he made in
8 his life was to you?

9 A I thought I called him.

10 Q Is that what the phone says?

11 A It says "outgoing calls".

12 Q Okay. And then there's another call to that number.
13 We're going to go through and count how many times he
14 called your number. Is that one, two, is that three?

15 A Uh-huh.

16 Q Is that four?

17 A Uh-huh.

18 Q Is that five?

19 A Six, yeah. All of these are October 12th.

20 Q That's six. Let's check and see. We're still on
21 October 12th. That's six, that's seven. Nope, that was
22 the day before.

23 So according to his phone, he made six calls to you.
24 Is that what the phone is saying?

25 A Unless somebody made the other six.

B. Cleveland - cross (Garfield)

490

1 Q But your phone showed 12 missed calls from Al.

2 That's what your testimony is.

3 A Not from Al. I said I had 12 missed calls.

4 Q I asked you, it said from Al. Okay. Are you
5 changing your testimony --

6 A Because it --

7 Q -- maybe we're just not -- maybe we're just confused.

8 A Because it --

9 Q What's your testimony?

10 A Because I seen the 12 calls. I didn't see where they
11 was from.

12 Q You had 12 missed calls?

13 A I assumed they was Al. That's what I said.

14 Q Oh, you assumed they were Al.

15 A Yeah.

16 Q Okay. I don't believe we were clear on that before.

17 So -- but your testimony still is that the first time
18 you called Al was after nine o'clock?

19 A That's what I thought.

20 Q And that's when you talked to the police officer?

21 A It was after nine, during that time.

22 Q Okay. Now, how would you explain it to the police

23 officer in his report and in his testimony in the

24 courtroom was that he arrived -- and I'm going to check

25 his incident report.

B. Cleveland - cross (Garfield)

491

1 MR. McMULLEN: Your Honor, I would object as to the
2 pitting of the witnesses.

3 THE COURT: All right. Well, don't pit -- he's
4 right. I'll sustain that.

5 BY MS. GARFIELD

6 Q Were you in the courtroom when the officer testified?

7 THE COURT: Wait a minute.

8 THE WITNESS: What courtroom?

9 THE COURT: Go ahead, yes or no.

10 THE WITNESS: You're talking about earlier? I
11 mean --

12 MS. GARFIELD: Yes.

13 THE WITNESS: -- yesterday? Yeah, I was here.

14 BY MS. GARFIELD

15 Q Have you been here for the whole trial?

16 A Uh-huh.

17 Q So you heard him when he testified that he had
18 arrived at the house around 7:30, I believe?

19 A I tell you the truth, I'm here and I'm not here, you
20 know, in my mind.

21 Q Okay.

22 A There are some things I didn't hear.

23 Q Okay. Okay. But you say that you talked to that
24 police officer after nine o'clock.

25 A I'm thinking it was after nine when I got on the

1 phone. I don't know exactly when it was. After all of
2 that happened, I just forgot about a lot of, you know,
3 stuff.

4 Q I understand. I can't -- I can't imagine what kind
5 of situation you're in, Ms. Cleveland. I know this is
6 difficult for you.

7 A Uh-huh.

8 Q Ms. Cleveland, when you got to your home from
9 Congress Street, what was the situation like?

10 A They had -- they had put yellow, you know, rope all
11 around. Then when I was outside the car, and I don't know
12 how many police cars were outside there, I don't recall
13 that, I'm just trying to find out what happened.

14 Q And but you -- were you able to speak to your son at
15 that time?

16 A Yeah. I stood there and talked to Thad before I went
17 to the hospital. Because like I said, I didn't know, you
18 know, that it was that bad or, you know.

19 Q Was your husband still there?

20 A No, Al had gone.

21 Q They had already transported him to the hospital?

22 A Uh-huh.

23 Q And what did your son tell you at that time?

24 A I don't know because I talked to him on the phone.
25 I'm like, "What happened," you know.

B. Cleveland - cross (Garfield)

493

1 Q Tell the jury what your son had told you happened.

2 A He said that Al didn't want him there, and he pushed
3 the door in and slapped him, and he cut him.

4 Q And did he tell you about why your son -- did your
5 son tell you why he had a knife?

6 A Because he had it in his bedroom cutting his
7 sandwich.

8 Q And he told you that on the phone or in person?

9 A In person.

10 Q All right. And when did you have the opportunity to
11 finally go into your home? Law enforcement wouldn't let
12 you in when you got there.

13 A After we left the house.

14 Q And was that several hours later?

15 A Uh-huh.

16 Q And is that when you noticed the plate in the
17 bedroom?

18 A I noticed the plate that morning.

19 Q Would that be the morning of the 13th?

20 A Uh-huh.

21 Q That would have been on Friday morning?

22 A Uh-huh.

23 Q And did you notice it? I couldn't hear you, and I
24 apologize. Who did you say actually found it?

25 A My niece said she found it.

B. Cleveland - cross (Garfield)

494

1 Q And -- and then did she bring it to your attention or
2 what happened?

3 A She just told me. She said -- well, we never really
4 discussed it after that, you know, after everything
5 happened. We didn't discuss it.

6 I was talking about it. I knew I had seen the plate
7 on the night stand. Everybody said they don't see a
8 plate. She said, "Well, I found the plate," you know.
9 That was recently she told me that.

10 Q Oh, just within the last few days?

11 A Yeah.

12 Q Oh. So you --

13 A I just know I saw it on the nightstand, though.

14 Q You saw it on the nightstand?

15 A Uh-huh.

16 Q But you testified that your niece said that she found
17 it on the floor?

18 A Yeah. She picked it up and put it on the nightstand.
19 When she found it, evidently she picked it up and put it
20 on the nightstand. That was the day after, you know,
21 after everything was over with, after they took their
22 pictures and everything.

23 Q And that's when all of the policemen were gone --

24 A Yeah.

25 Q -- and your husband had been pronounced dead?

B. Cleveland - cross (Garfield)

495

1 A Uh-huh.

2 Q And is that after your son had been charged with
3 murder?

4 A Uh-huh.

5 Q And who is your niece?

6 A Lakeisha.

7 Q Lakeisha?

8 A Uh-huh.

9 Q Is it there -- can you -- is there any plate in that
10 picture? I'm sorry and --

11 A It was by the nightstand.

12 Q -- let me see what number that is, State's Exhibit
13 Number 19. Do you see where that plate would have been
14 that you found?

15 A She said it was underneath the bed.

16 Q And she said she put it on the nightstand, underneath
17 the bed?

18 A Uh-huh.

19 Q Okay. Do you see anything under the bed?

20 A Well, you can't see under the bed.

21 Q All right. When did you see the knife -- I mean the
22 plate on the nightstand?

23 A I saw it the next day. Well, really, I don't know
24 whether I went in there the next morning or the 13th. I
25 don't know, but whenever I went in there, I seen a plate

1 on the nightstand.

2 Q Okay. And you --

3 A And I kind of -- I was curious about that myself
4 because they said they didn't see a plate. I said, "I see
5 a plate." I think I told Latasha, I said, "I see a
6 plate." Then I just mentioned it to Keisha when we was
7 talking about it in here. She said, "I found the plate."

8 I said, "Where did you find the plate from?"

9 She said, "On the nightstand" -- I mean, "underneath
10 the bed."

11 Q When did Keisha go into that room?

12 A I -- you know, I don't know. Like I said, I don't
13 know exactly when I went in there. Really, I said the 13,
14 but I probably didn't.

15 Q Okay. It could have been --

16 A With all of this going on, you know, I can't...

17 Q I certainly understand.

18 Can you recall about when Keisha would have come to
19 your house?

20 A Lakeisha came that night, and she came that night,
21 and she was coming every day, you know.

22 Q She came the Thursday night?

23 A Yeah, because she was at the hospital with me, and
24 she came on back home with me.

25 Q But you don't know when Keisha found that plate?

B. Cleveland - cross (Garfield)

497

1 A (The witness shakes in the negative).

2 Q And you don't know when you found that plate?

3 A Huh-uh.

4 Q Do you remember speaking with Investigator Isenhoward
5 and giving the statement the next day?

6 A I remember giving statements.

7 Q And do you remember talking about that plate to
8 Investigator Isenhoward?

9 A I told him that I found it. I mean, that I saw a
10 plate on the nightstand.

11 Q Do you remember telling Investigator Isenhoward?

12 A I remember telling him, but I don't remember when,
13 was it the next day or what.

14 Q Okay. And would you agree with me it was the next
15 day?

16 A I said, "I don't know whether it was the next day or
17 what." You know, it could have been.

18 Q Okay. I'm going to hand you your statement to
19 refresh your recollection. Would that help?

20 A (Nods in the affirmative).

21 Q You'll see at the top right corner the date and the
22 time. Can you just tell the jury when you gave that
23 statement?

24 A What, 10/13, 12:45.

25 Q And I'm sorry. My co-counsel is correcting me. You

1 didn't talk to Investigator Isenhoward. You talked to
2 Randy Strange, another officer with the Richland County
3 Sheriff's Department.

4 A Like I said, I was going through something at the
5 time. I can't give you no definite time, dates, or
6 nothing.

7 Q Okay. And I apologize if I tried to confuse you. I
8 didn't mean to, but do you remember talking to --

9 A I talked to a...

10 Q Someone with law enforcement?

11 A I talked to a lot of people.

12 Q And you remember giving a statement?

13 A Huh?

14 Q You remember giving a statement?

15 A I know I talked to a lot of people, news people and
16 everybody. I talked to a lot of people.

17 Q Do you remember being asked if you found any food or
18 knives in his room, meaning the defendant's room?

19 A I said it was a little bit of crumbs in the plate or
20 something, I remember saying.

21 Q I'm going to direct you to the second page of that
22 statement, if you'll look at the last question. If you
23 can just read that question to the jury and then read your
24 answer.

25 A It says, "Did you find -- did you find food and knife

B. Cleveland - cross (Garfield)

499

1 in Thaddess' room?"

2 Q Just read your answers to the jury.

3 A "There was empty plate and a knife. It was a small
4 knife."

5 Q I want -- I want you to read exactly --

6 A A steak knife --

7 Q -- what you wrote, okay.

8 A I can't hardly understand it. I didn't write this.

9 Q Okay. Just start -- start from the beginning.

10 A Okay. "Did you find food or knife in Thaddess'
11 room?"

12 "There were empty plate and a steak knife in his
13 room. The steak knife was near the plate. The knife had
14 stuff on it like it was cutting a sandwich, like the
15 crumbs like, you know."

16 Q Keep reading.

17 A "Stuff was hard like it" -- what's this? I don't
18 understand this.

19 Q Just please keep reading.

20 A That's all. What have you --

21 Q Go on and read the next page --

22 A Oh, okay.

23 Q -- finish the sentence.

24 A "The stuff was hard like it -- like it had been on
25 the knife for about a day."

B. Cleveland - cross (Garfield)

500

1 "Is there anything else you can tell me about this
2 accident?"

3 "Just as Al did, Thad was here." I don't understand
4 that. I think he said that.

5 Q Okay. I'll read it. You correct me if I'm wrong.

6 A Yeah.

7 Q "Just that Al didn't want Thad here because Al
8 felt that Thad should be on his own?"

9 A Yeah.

10 Q Is that what that says? And when you said you didn't
11 write this, a law enforcement officer was asking you
12 questions and writing down your answers. Is that how it
13 went?

14 A Must be, I don't know.

15 Q Is that your signature at the bottom of the --

16 A Yes, that's my signature, but I don't remember
17 writing this statement.

18 Q Okay. Let's talk about -- it's very unfortunate your
19 son suffered from a stroke at such a young age. You said
20 it was 1993?

21 A Uh-huh.

22 Q How old was he then?

23 A Young, 19. I believe he was 19.

24 Q Nineteen years old, and he has suffered problems from
25 his left side ever since?