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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-GS-26-05243
Appellate Case No. 2016-001385

State of South Carolina Respondent,

v.

Heather Elizabeth Sims Appellant.

RECORD ON APPEAL - Volume 1

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James Chatfield Horry County Police Department

DOCKET NO. 2013-GS-26- 05243

The State of South Carolina

County of Horry

Donna E. Elder

13H04238

COURT OF GENERAL SESSIONS

November, 2013 TERM

ARREST WARRANT NUMBER

2013A2610700761

CDR: 0116 16-03-0010, 0020

DOA: 8/23/2013

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Heather Elizabeth Sims
W/ F
3558 Old Reaves Ferry Rd
Conway, SC 29526-7318
DOB: 1981-10-06
SSN: 248635554

Foreperson of Grand Jury

Date:

ATTORNEY: Martin, L. Morgan

VERDICT

Indictment for

Murder

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

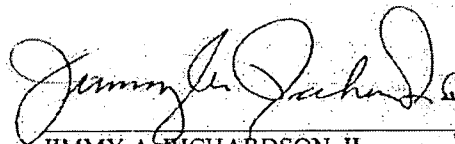
At a Court of General Sessions, convened on November 22, 2013, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Heather Elizabeth Sims did in Horry County, on or about August 11, 2013, willfully, feloniously, and intentionally kill the victim, David Sims, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about August 11, 2013 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
HORRY COUNTY
2015 NOV 20 PM 9:16
MELANIE HUGHES WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

The State of South Carolina,

Plaintiff,

vs.

HEATHER ELIZABETH SIMS,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

VERDICT

2013-GS-26-05243

1. _____ We, the jury, find the Defendant, Heather Elizabeth Sims, **guilty** of murder.

☒ We, the jury, find the Defendant, Heather Elizabeth Sims, **not guilty** of murder.

OR

2. ☒ We, the jury, find the Defendant Heather Elizabeth Sims, **guilty** of voluntary manslaughter.

_____ We, the jury, find the Defendant Heather Elizabeth Sims, **not guilty** of voluntary manslaughter.

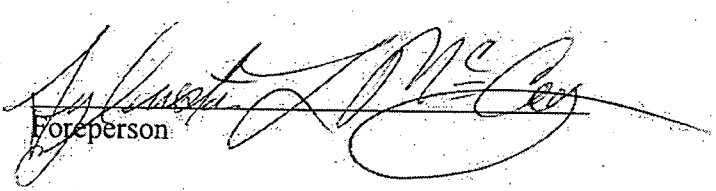
OR

3. _____ We, the jury, find the Defendant Heather Elizabeth Sims, **guilty** of involuntary manslaughter.

☒ We, the jury, find the Defendant Heather Elizabeth Sims, **not guilty** of involuntary manslaughter.

Date: November 20, 2015.

Conway, SC


Foreperson

FILED
HORRY COUNTY
2015 NOV 20 PM 9:16
MELANIE HUGGINS, MARO
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

HEATHER CAUSEY SIMS,

Defendant.

IN THE COURT OF GENERAL
SESSIONS

CASE NO. 2013-GS-26-05243

**ORDER DENYING MOTION FOR A
NEW TRIAL OR ALTERNATIVELY
TO ALTER THE SENTENCE**

HORRY COUNTY
2016 JUN 28 AM 9:07
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter is before the Court on Defendant's Motion for a New Trial or alternatively Defendant's Motion to Alter the Sentence. After careful consideration, Defendant's motions are denied.

This Court has taken extra time in deciding this matter due to the severity, sensitivity, and magnitude it might have on the persons involved. More specifically, this Court has agonized over this decision as a result of the impact it would have on the Defendant's child.

According to the thirteenth juror doctrine, This Court has the authority to grant a new trial. "The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict." *Folkens v. Hunt*, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267 (1990). Similarly, a new trial may be granted if the verdict is inconsistent and reflects the jury's confusion. *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983). "As the thirteenth juror, the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009). However, this Court heard all the evidence presented at trial and believes that

the evidence justifies the verdict. Additionally, This Court does not think the verdict to be inconsistent and nor does it reflect confusion of the jury. Therefore, This Court cannot in good conscience grant a new trial based on the thirteenth juror doctrine.

Furthermore, the grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Umhoefer v. Bollinger*, 298 S.C. 221, 379 S.E.2d 296 (Ct.App.1989). See also *Boozer v. Boozer*, 300 S.C. 282, 387 S.E.2d 674 (Ct.App.1988) (Court of Appeals has no power to review trial court's ruling unless it rests on basis of fact wholly unsupported by evidence or is controlled by error of law). In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Umhoefer*, supra.

Lastly, the authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). Furthermore, a judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. *Wasman v. United States*, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d. This Court has considered all of the information that might reasonably bear on the proper sentence and has decided that the original sentence is the appropriate one, given the crime committed.

This Court believes that its ruling is supported by adequate facts and as such did not abuse its discretion. Therefore, Defendant's motions for a New Trial and alternatively to Alter the Sentence is denied.

IT IS SO ORDERED.


Judge Cordell Maddox, Jr.
10th Judicial Circuit

Anderson, SC
~~June~~ ~~April~~ 20, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2013A2610700761

STATE OF SOUTH CAROLINA)

VS)

HEATHER ELIZABETH SIMS)

**MOTION FOR JNOV, RENEWED,
MOTION FOR DIRECTED VERDICT,
AND, IN THE ALTERNATIVE, MOTION
TO MODIFY SENTENCE**

This motion is filed pursuant to Rule 29(a), S.C.R.Crim.P.

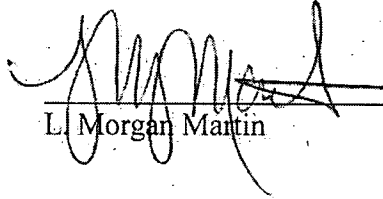
It was error to charge Voluntary Manslaughter. There was no middle ground between the competing theories of the case. The State's theory was one of premeditated murder; the Defendant claimed she acted in self-defense while in fear of imminent bodily injury or death. There was no evidence or suggestion of an intentional, deliberate killing that was done in a sudden heat of passion under an irresistible urge to do violence. This unsupported charge allowed a compromised verdict that was not based on the evidence. Accordingly, the Defendant moves this Court for JNOV and a directed verdict on Voluntary Manslaughter.

In addition, the Defendant also resubmits all previous arguments, objections, and motions. She understands the Court has considered these arguments and rejected them. She nevertheless wishes to preserve all issues for appeal.

Finally, and in the alternative, the Defendant asks the Court to reconsider and modify its sentence to include a significantly shorter term of confinement. Such a sentence would be justified for several reasons including, but not limited to, the Defendant's lack of any criminal history, the non-existent likelihood of recidivism, and the extenuating circumstances of this tragedy which involved an assault on her by the deceased.

Respectfully submitted,

LAW OFFICES L. MORGAN MARTIN, P. A.



L. Morgan Martin

Dated: November 24, 2015

FILED
HOBBS COUNTY
2015 NOV 25 AM 11:12
MELANIE HODGINS HARRIS
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

The State of South Carolina,

v.

Heather Elizabeth Sims

IN THE COURT OF GENERAL SESSIONS
2013A2610700761

**MEMORANDUM ON MOTION
TO MODIFY SENTENCE**

Defendant offers the following arguments in support of her motion to reduce the sentence:

The acquittal on the murder charge represents a rejection of the State's theory of the case, which was that Defendant maliciously killed her husband and then injured herself in an effort to cover-up the crime. Given this elimination, the only potential basis for a voluntary manslaughter charge would have to be a finding Defendant was assaulted by her husband and shot him after she "lost control."

The appropriate sentence in such circumstances is a minimal sentence. There are serious problems with sustaining a voluntary manslaughter verdict based on these facts,¹ but notwithstanding those problems, the verdict can only be explained by inferring the jury believed Defendant was assaulted by her husband but did not respond to the episode of domestic violence properly. This was not a trivial assault: Defendant's wounds included a stab wound that was 3 centimeters (which is more than an inch) deep.

With this reasoning in mind, Defendant asks the Court to consider:

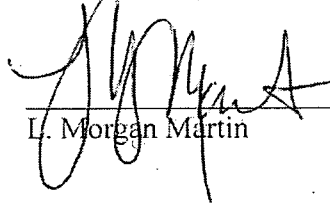
- The law allows a two-year sentence.
- Defendant has no criminal record.
- Defendant is a medical professional with advanced education whose job involves providing healthcare to the general public.
- The letters supporting Defendant that have been submitted to the Court.
- Defendant is the sole surviving parent of a young child.

¹Those issues are outlined in the memo supporting Defendant's motion for a new trial.

- Any sentence will be followed by two years supervised release, making probation unnecessary.
- Defendant's conviction will likely deprive her of her career, including the fulfillment and substantial earnings from that career.
- There is no need for "rehabilitating" Defendant given the circumstances of the crime, and thus, no chance of rehabilitation in South Carolina's correctional system.
- The jury wanted the Court to be lenient and show Defendant mercy.

Respectfully Submitted,

LAW OFFICES OF L. MORGAN MARTIN, P.A.



L. Morgan Martin

Dated: January 8, 2015

FILED
Horry County
2016 JAN 13 AM 8:23
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

STATE OF SOUTH CAROLINA

VS

HEATHER ELIZABETH SIMS

) IN THE COURT OF GENERAL SESSIONS
) 2013A2610700761
)

)
)
) **MEMORANDUM IN SUPPORT**
) **OF MOTION FOR NEW TRIAL**
)

The principal issue is whether the court erred in charging the jury on the lesser-included offense of voluntary manslaughter. Voluntary manslaughter requires some evidence Defendant acted in a sudden heat of passion, which the Supreme Court has defined as an uncontrollable impulse to do violence. *Cook v. State*, Op. No. 27596 (S.C. Sup. Ct. filed Dec. 9, 2015) (Shearouse Adv. Sh. No. 48 at 12, 16) (quoting *State v. Niles*, 412 S.C. 515, 522, 772 S.E.2d 877, 880 (2015)).

All agree the jury charges are governed by the evidence presented at trial. Everyone also agrees, as the Supreme Court explained in *State v. Starnes*, that charges of voluntary manslaughter and self-defense are not mutually exclusive and that it is possible for the evidence to justify both charges. 388 S.C. 590, 597, 698 S.E.2d 604, 608 (2010).

Where Defendant and the State disagree is the question whether there was any evidence presented in *this* trial tending to reduce the killing the State so vigorously claimed was murder. The State says there was such evidence, but the State's memorandum never identifies it.

We could examine fear, for the court may recall Defendant's testimony that she was afraid during the fateful encounter with her husband. Yet, we know from *Starnes* that "fear does not end the inquiry" because the fact that someone was afraid does not necessarily constitute evidence the Defendant lost control and succumbed to an uncontrollable impulse to do violence.

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MELANIE HUBBARD
CLERK OF COURT

Id. at 598-99, 698 S.E.2d at 609. *Starnes* rejected the argument that the presence of fear warranted a voluntary manslaughter charge. The Court explained Mr. Starnes either shot with malice aforethought or in self-defense. *Id.* at 599, 698 S.E.2d at 609; see also *State v. Dickey*, 394 S.C. 491, 504, 716 S.E.2d 97, 103-04 (2011) (Pleicones, J., concurring) (only evidence is Defendant, admittedly acting out of fear, acted in deliberate and controlled manner).

We could examine the fact of a struggle: the court may recall Defendant's testimony that her husband grabbed her phone from her immediately before he confronted her with a knife.

But the fact of a struggle does not necessarily qualify as evidence Defendant shot her husband because her reason had been dethroned. If it did, the court would need to charge voluntary manslaughter every time there was any sort of struggle, an odd conclusion when the fact that a Defendant was attacked tends to make a self-defense case better, not worse.

It should not be surprising that there is no evidence of an uncontrollable impulse to do violence. Nobody tried that case. The State made the decision to indict Defendant for murder and built its evidence around proving deliberate actions with cool reflection. The State offered life insurance as a financial motive even though the evidence showed Defendant's earnings far exceeded her husband's. The State also alleged Defendant planned the encounter in advance and manipulated the crime scene to cover up a pre-planned killing. The State did this even though the evidence showed Defendant (a) shot only one time, cf. *Niles* and *Cook* (voluntary manslaughter did not apply even though Defendants fired multiple shots); (b) called for help immediately after the shooting; and (c) administered CPR in an effort to save her husband's life. The State had no incentive to offer evidence Defendant struck the fatal blow because she lost control of her actions. Had the State done so, it would have seriously undermined the credibility

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of its chosen theory, which was murder.

Defendant had the same disincentive. Her theory—which has the advantage of being true—was self-defense. A Defendant would obviously rather be convicted of manslaughter than murder, but in some circumstances when a Defendant adamantly claims self-defense (as *this* Defendant does), the Defendant's evidence will, by logical necessity, be inconsistent with manslaughter. It would seem dishonest for a Defendant to spend one breath claiming "I shot my husband as a reaction when he lunged at me with his knife," only to later say "I intentionally killed husband because my will was overcome by an irresistible urge to kill him." Those statements are at odds with each other.

The Supreme Court has cautioned lawyers against taking isolated facts and turning them into broad statements of law. *Starnes*, 388 S.C. at 597, 698 S.E.2d at 608. Respectfully, that is the approach the State is taking here. The presence of fear or the fact of a struggle do not mandate a manslaughter instruction. As the Supreme Court explained last week, see *Cook* (Shearouse Adv. Sh. No. 48 at 16), the question is whether the facts of *this case* support a finding that Defendant shot in a sudden heat of passion. They do not.

Defendant continues to resubmit all her previous objections and motions in order to protect those issues for further review. This memorandum's failure to discuss those objections and motions should not be construed as waiving them. Those arguments are incorporated by reference.

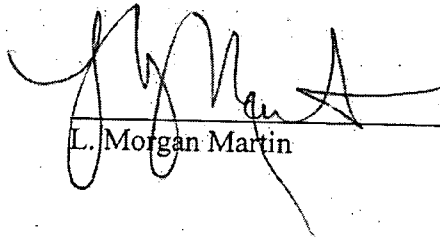
Defendant also acknowledges the precedent explaining there is no motion for "JNOV" in a criminal case. *State v. Follin*, 352 S.C. 235, 258, 573 S.E.2d 812, 824 (Ct. App. 2002). Defendant's motion is technically a motion for a new trial, which is the only post-trial motion

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JANIS WARD

allowing the court to examine the absence of any evidence of guilt. *State v. Taylor*, 348 S.C.
152, 159, 558 S.E.2d 917, 920 (Ct. App. 2001).

Respectfully submitted,

LAW OFFICES L. MORGAN MARTIN, P. A.



L. Morgan Martin

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Horry County
2016 JAN 13 AM 8:23
MELANIE HUGGINS-WARD
CLERK OF COURT

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2013-GS-26-05243

3
4 **VOLUME I of V**

5 November 9th - 20th, 2015
6 **B E F O R E:** The Honorable J. Cordell Maddox

7 STATE OF SOUTH CAROLINA
8 Plaintiff,
9 vs.
10 HEATHER ELIZABETH SIMS,
11 Defendant.

12
13 **APPEARANCES:**

14
15 Nancy Livesay, Esq.
16 For the Plaintiff/State.

17 L. Morgan Martin, Esq.
18 For the Defendant.

19 Official Court Reporter:
20 Natalie Dahl, RPR

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1 about the third time of me saying don't do that
2 anymore. Boy, it is bad when it happens. You all act
3 nice. This is a bad case.

4 MR. MARTIN: We're going to get along fine.

5 THE COURT: I know. See you all at 9:30. You
6 have my cell phones if you need me.

7 MR. MARTIN: Am I correct, is the plan in the
8 morning -- what time is the jury coming back?

9 THE COURT: 9:30.

10 MR. MARTIN: We're going to go into opening
11 statements at 9:30, 10 o'clock, whatever?

12 THE COURT: 10 o'clock.

13 MR. MARTIN: Thank you.

14 (Whereupon, the proceedings for November 9, 2015
15 concluded. The following was had on November 10, 2015
16 out of the presence of the jury at 10:45 a.m.)

17 THE COURT: I do appreciate everyone's patience.
18 I'll ask everyone to come in. I want to make a new
19 opening statement before I bring the jury in.

20 As a general statement, I was a part of this case
21 back during the summer, late summer. I sat and
22 listened to it for a week. I understand it is an
23 emotional case. I understand there are very strong
24 emotions involved in this case. Once you enter this
25 room, those emotions need to be kept to yourself. If

THE COURT AND ATTORNEYS

1 you just can't stand it, then you are welcome to walk
2 out and do whatever you want to do, but while you are
3 in this courtroom, and while this jury is here, I
4 don't want to hear any comments, any whispered
5 statements.

6 There are certain judges in South Carolina -- I'm
7 not one of them -- who will lock the court doors and
8 prohibit people from talking at all. I believe that
9 that is a little extreme, but we have a jury here, and
10 I've heard stuff, okay. If I can hear it, they can
11 hear it. So there should be no teetering, laughing,
12 derision, gasps, anything like that. Again, I know
13 you are all humans, if you can't stand it, excuse
14 yourself. But, on the other side of that coin, I've
15 met with the deputies and gave them the authority on
16 their own to remove you from the courtroom if they
17 hear something that I don't. And then what will
18 happen is you'll be removed, on the break we'll bring
19 you up here and find out what the problem was and let
20 the deputies explain themselves, but I trust them.
21 I've gotten to know them very well during the times
22 here. I've been here, and I trust them, and so I'm
23 going to believe what they say, okay. If everybody
24 can live with that, stay; if you can't, now is the
25 time to go because I'm getting ready to pull this jury

THE COURT AND ATTORNEYS

1 in. Okay.

2 What I'll do -- we need to take up a brief issue
3 that we've talked about off the record. We don't need
4 to repeat all of this, but you can, for the record,
5 state what you need to state.

6 MR. MARTIN: Judge, I had moved and asked the
7 Court to prohibit introduction of any life insurance
8 policy on David Sims where Heather Sims was
9 beneficiary. I produced a case State versus Douglas
10 and State versus Vermillion, State versus Beck. I
11 believe that a reading of those cases indicates that
12 in order for them to be admissible as motive, that
13 there has to be evidence that -- in the record that
14 the defendant beneficiary was aware of the policy laws
15 in existence or was issued. I contend that that
16 cannot be established. Ms. Livesay says that she can
17 establish that through text or data communications,
18 and I would simply ask that she provide that to the
19 Court, and that the Court review that before you rule
20 on that matter. Because I think that is critical, and
21 I know she says she has it, but I, frankly, haven't
22 seen it. I think you need to see it before you rule.

23 THE COURT: All right. Well, in the back, Ms.
24 Livesay, you did tell me that you had that foundation;
25 is that correct?

THE COURT AND ATTORNEYS

1 MS. LIVESAY: Yes, sir, Your Honor, my
2 understanding is that Mr. Morgan -- I'm sorry, Mr.
3 Martin believes that we need to show that, in fact,
4 his defendant knew that he had the life insurance
5 policy. I do have a witness that is going to take the
6 stand that is going to show information, including
7 conversations between this defendant and the victim,
8 showing that she knew that that policy existed. The
9 policy was taken out sometime in June or July. He
10 only made one payment, and then she shot him August
11 the 11th. The insurance was in place.

12 The State intends to prove that she knew that
13 policy existed, and that she was the sole beneficiary.
14 The policy amount was for \$750,000. In fact, they are
15 actively seeking to obtain the death benefit from that
16 policy. I do not plan on getting into that fact, just
17 the issue that she knew the policy existed, it did
18 exist and the amount of money.

19 THE COURT: Okay. As we discussed very fully in
20 the back, I think that the case law is pretty clear
21 that it comes in for the purposes of motive. There is
22 some case law that even says that it might come in at
23 the judge's discretion, even though the person doesn't
24 know the policy exists. But I'm trusting her, just
25 like I'm trusting you as an officer of the court. I

THE COURT AND ATTORNEYS

1 know you want me to see what she's got. You said in
2 the back when we were talking -- I mean, if you get up
3 and say something to this jury that you can't prove,
4 they'll hold it against you all day, and I assume you
5 both know that.

6 MR. MARTIN: Again, I'm going -- I guess I don't
7 want to use the word "caution the Court," but I
8 haven't seen that as the fact -- the policy was
9 applied for June 23rd -- June 8th, excuse me. The
10 policy was issued and only became effective
11 July 23rd, I believe it is. So those were two
12 different things, and the ability to establish that is
13 critical. Sometimes I think what Ms. Livesay reads
14 into something may be different than what it is, so
15 I'm asking the Court to be careful.

16 THE COURT: And I'll tell you that the Court is
17 always careful.

18 MR. MARTIN: Okay.

19 THE COURT: Sometimes too careful, but I
20 understand.

21 MS. LIVESAY: For the record, I do plan on
22 bringing up the policy in the opening statement.

23 THE COURT: Like I said, if the -- Trial Advocacy
24 101 is don't tell the jury anything that you are going
25 to prove that is ultimately not allowed in or you

THE COURT AND ATTORNEYS

1 can't prove. So I'm assuming that you can lay the
2 foundation for the insurance policy. I'm not ruling
3 on it now because you have to lay that foundation, but
4 when the time comes, time comes. We might proffer it
5 at the time. Okay.

6 We had some other issues we dealt with in the
7 back. I don't think we have to deal with them now.
8 We agreed that we are going --

9 MS. LIVESAY: My understanding, Your Honor, is
10 that issue is resolved and you have ruled that the
11 prior 911 call is coming into evidence?

12 THE COURT: I think it came into evidence during
13 the stand-your-ground, didn't it? I know I read --
14 yeah, and I'm allowing that in. The other issue we'll
15 deal with at a later date. I'm not foreclosing you at
16 this time. You obviously know how I feel, but I'll
17 give you the right to set a record. I want to run
18 this as fair as possible for the defendant and for the
19 State. I understand that lawyers' jobs sometimes are
20 to do everything they can to make me make a mistake (so
21 that on appeal some judge will tell me I made a
22 mistake, that's fine. I have pretty thick skin. I
23 want to reiterate, I don't have thick skin for people
24 who talk during court or who make statements that the
25 jury might hear. I cannot say that enough. So,

THE COURT TO THE JURY

1 please, don't embarrass yourself by being jerked out
2 of here by a deputy.

3 All right. I'll bring them in, swear them in and
4 then I have about 10, 12 minutes of just preliminary
5 instructions on how we're going to proceed, and then
6 you all can begin your openings. Bring them in.

7 THE COURT: One last thing. You better not have
8 a phone. If you have it, cut it off. If it rings or
9 buzzes, it's mine. I have a big box of them at home.

10 (The jury enters at 11:07 a.m., and the
11 following is heard in the presence of the jury.)

12 THE COURT: Ladies and gentlemen, before we swear
13 you in, as I told you yesterday, court time is very
14 different. I promise you we were all ready. We had a
15 technical issue that was no one's fault. You know,
16 after I basically told you that we would never start
17 when I said we would, because we had that technical
18 issue, now you know I'm telling you the truth. Court
19 time is just different, but I'm sorry for the delay,
20 and we're going to get started. First we need to
21 swear you in.

22 (Whereupon, the jury panel was sworn.)

23 THE COURT: Ladies and gentlemen, we're starting
24 the case today of the State versus Heather Elizabeth
25 Sims, and the charge is murder. I want to repeat

THE COURT TO THE JURY

1 something I said twice yesterday. What I read from is
2 an indictment. It is literally this piece of paper
3 you will have with you. In our system, the criminal
4 process starts with an indictment. The fact that a
5 person has been indicted literally has no bearing on
6 their guilt or innocence. In fact, when you begin
7 your discussions, you should never mention the fact
8 that they have been indicted.

9 Quite frankly, an indictment is just a piece of
10 paper. Unfortunately, it has an official sounding
11 word, and judges worry that sometimes jurors might
12 give it too much creditability. You will see it sets
13 out the reasons we are here. Please, again, you
14 should never discuss that fact.

15 Now, I want to talk to you for about 10 minutes
16 and we'll get to the opening statements. I want to
17 tell you some of the things that have concerned me
18 about trials over the last 14 years or so, and then I
19 want to tell you about our roles. First, I want to
20 tell you I've grown very concerned in the last 10
21 years about the influence of television, and I told
22 you yesterday, my mother really does think this is an
23 exciting thing, everything happens quick and there is
24 something exciting happening every moment. That is
25 just not true. This is a place of honor. It is by

THE COURT TO THE JURY

1 its very nature a search for the truth, and as a
2 result, we go overboard to make sure that the
3 decisions made in this court are correct, and that
4 takes time.

5 Any time a lawyer objects, I'm going to send you
6 out of the courtroom, for obvious reasons. When I
7 send you out, they are going to be arguing two
8 positions, and I have to make a decision about which
9 position is correct. I'll send you out of the
10 courtroom so you don't hear arguments. I promise you,
11 at some point during this trial I will send you out of
12 the courtroom, you'll sit back there for 15, 20
13 minutes come back in, and then there will be another
14 objection, and I'll send you back out. That is just
15 the way it goes.

16 Testimony in this case is going to be extensive.
17 Everybody that is going to testify will sit up here
18 and testify. It will be slow and deliberate, and it
19 is purposely that way. The reason I tell you that is
20 I've watched jurors and seen them get frustrated with
21 the speed or lack of speed in a trial. I want to tell
22 you right now, this is not what you see on television.
23 So be prepared for that, and be prepared you have to
24 pay attention every minute because something -- if
25 it's being testified to, it is important. It may not

THE COURT TO THE JURY

1 be exciting, but it is important. So as I told you
2 yesterday, we spent all day whittling that large group
3 basically to you 12 and three alternates that we trust
4 to do as you are supposed to do.

5 Now, in this case, you and I have different
6 roles. You are the judge of the facts. You will
7 listen to the testimony you hear from this witness
8 stand. You will review any documents that have been
9 introduced into evidence, and you will have to
10 determine what the facts are. One of the things you
11 will have to determine is the credibility of the
12 witnesses. Credibility, under the law of South
13 Carolina, simply means believability. You have to
14 determine who are you to believe. You can believe
15 everything that a witness says from this witness
16 stand, or believe nothing what they say. You can take
17 a portion of a witness' testimony and believe it, and
18 disregard the remainder of that. You are the only
19 people in the courtroom that can determine what the
20 facts are in this case. I tell you that because,
21 again, our roles don't cross.

22 If at any point during the course of the trial
23 you think I have an opinion about a fact -- I have a
24 temper. If my face turns red, if I raise my voice, if
25 I inadvertently make a face and give you some

THE COURT TO THE JURY

1 impression that I believe or disbelieve a witness,
2 disregard it. My opinion about the facts in this case
3 means nothing. You are the only people that can
4 determine what the facts are. Likewise, you're the
5 judge of the facts, and I'm the judge of the law.

6 I have to make decisions during the course of the
7 trial on legal matters, which would be the objections.
8 You will have to take the decisions I make, legal
9 decisions, as the law in this case. One of the most
10 difficult parts of this trial, at least for
11 attention-span purposes, will be the last thing I do,
12 which is I will read to you the law in this case. It
13 is called the final charge. For a lot of good
14 reasons, judges in South Carolina read the charge to
15 you. I will tell you that the charge is probably
16 going to be 30, 35 pages long. That will be the law
17 that I've determined that applies to this case. You
18 have to take that law as the facts -- as the law in
19 this case. You can't go back and wish the law was
20 different or think it may be different or think I made
21 a mistake. You have to take the law as I give it to
22 you, apply it to the facts as you determine them to
23 be, and then reach your verdict, okay.

24 As I said, we've got an indictment here. The
25 defendant pled not guilty. At this point she is not

THE COURT TO THE JURY

1 guilty. There is an old way judges in this state have
2 been describing it this way for a long time, and I
3 like it. She has a robe of innocence or righteousness
4 over her shoulders at this point. She is innocent as
5 she sits there. The only people in this world that
6 can strip her of that robe of innocence or
7 righteousness is you. After you have heard all of the
8 evidence, and after I charge you on the law, after you
9 made a decision, then, and only then, can that robe of
10 innocence or righteousness be stripped.

11 Our Constitutional guarantees are not just words.
12 You in this country are innocent until proven guilty,
13 and the State has the burden of proving each and every
14 element of this charge, so remember that. I'll charge
15 you that again at the end, but I want you to
16 understand that now. As we sit here, she is not
17 guilty and will only be found guilty if you find her
18 guilty, after you heard all of the witnesses and the
19 charge.

20 Now, in a few minutes you'll hear opening
21 statements. Opening statements are an opportunity for
22 the lawyers to tell you a little bit about their case.
23 They are not evidence. In other words, you shouldn't
24 consider them the same as you consider testimony.
25 After the opening statements, you will hear witnesses.

THE COURT TO THE JURY

1 Those are evidence and should be considered that way.
2 At the end of this case, the lawyers will give you a
3 closing argument. Again, that is not evidence, but it
4 is an opportunity for them to argue their position.

5 I told you I would send you out of the room.
6 Don't get mad at the lawyers if they object; that's
7 their job. I actually have watched a lot of juries,
8 and I'll be watching you, and at some point someone
9 will just roll their eyes. I can tell they are
10 irritated because a lawyer objects. That is what they
11 do. That is what they are supposed to do.
12 Unfortunately, that is one of the reasons why you have
13 to leave the room, so I can make a decision.

14 If you sit back there longer than you think you
15 should, and you want to get angry at someone, get
16 angry at me; don't get mad at the lawyers who
17 objected.

18 In addition to being the judge of the law, I have
19 to manage the courtroom, and that is what I'll do. I
20 will do my best to keep it running, but in a case like
21 this where there is so many witnesses, I promise you
22 there are going to be delays that are just long. If a
23 delay is going to be too long, I'll let you know that
24 you are going to be back there for awhile.

25 I told you during jury selection that if any of

THE COURT TO THE JURY

1 you needed a break at any time, just raise your hand,
2 get my attention. Once I see your hand, I'll stop in
3 the middle of a sentence, whoever is talking, and send
4 you out; that is not a problem. We're concerned about
5 your comfort and also concerned about your needs. So
6 raise your hand, get my attention and I'll let you go.
7 We will take breaks.

8 We've started late because of this problem, so
9 we'll push you a little bit this morning, but we will
10 take breaks every hour-and-a-half, two hours. I
11 suspect that this morning we'll go until 1:00 and then
12 take a lunch break, which we'll do every day at 1:00,
13 if we can. I'll do my best to take breaks at natural
14 times, so between witnesses or things like that. As I
15 told you, again, there is going to be publicity about
16 this case, guaranteed. As I told you yesterday, one
17 of the reasons I did it was because there was no
18 publicity much yesterday. You can't read, listen to
19 or watch anything about this case. My advice to you,
20 quite frankly, is not to watch the news for the next
21 two weeks. I meant what I said yesterday, you will
22 know more about this case than anybody in the world.
23 There is nothing that you can learn from any publicity
24 on this case. Likewise, it is a new development, but
25 any search on the Internet or attempt to investigate

THE COURT TO THE JURY

1 this case on your own is a violation of your oath. As
2 I said yesterday, I will ask you nicely, and then I
3 ordered you not to do that. Do not do that, because I
4 guarantee you will read something that is incorrect.
5 You will know what is correct because you'll hear it
6 all here.

7 Mr. Chairman, as I told you, if you have any
8 problems, let me know and we'll deal with them that
9 way. At the end of the case, as I said, there will be
10 additional requirements, and I'll tell you a little
11 bit about that.

12 Lastly, what I'll tell you is that in this case,
13 as I said, the State has a burden of proving their
14 case. They have to prove their case beyond a
15 reasonable doubt. I'm sure the lawyers will tell you
16 that, and there is a long definition of reasonable
17 doubt that I will give you at the end of this case.
18 The shortest definition of reasonable doubt is proof
19 that leaves you firmly convinced of the defendant's
20 guilt. That is a one-sentence definition of
21 reasonable doubt. I will have a much longer one, but,
22 remember, this defendant is innocent until the State
23 proves that she is not and removes that robe of
24 righteousness from her shoulders.

25 Last thing I will tell you again, do not talk

OPENING STATEMENT - MS. LIVESAY

1 about this case or deliberate at any time until you
2 have finished listening to all of the witnesses;
3 again, for obvious reasons. Talk about anything -- if
4 anybody tries to contact you, talk to you about this
5 case in the hallways or at home, you let me know and
6 they will be spending a little time over at one of the
7 facilities here in town. You should not be bothered
8 because of your jury service, and I will guarantee you
9 will not be bothered. But if there is any problem,
10 Mr. Foreman -- I think I called you chairman --
11 Mr. Foreman, you let me know about it.

12 FOREPERSON: Yes, sir.

13 THE COURT: All right. Yes, ma'am.

14 MS. LIVESAY: I'm Nancy Livesay and the
15 prosecutor in this case. You are here for a murder
16 case; I want to let you know right off the get-go in
17 case there is any question about it. Now, what is
18 murder in the State of South Carolina? It is exactly
19 what you would think it would be. It is a killing of
20 another with malice aforethought. What does that
21 mean? That means you have killed someone else, and it
22 is an unjustified killing. You have killed them with
23 malice and some form of premeditation.

24 Now, premeditation can be just a mere second. It
25 does not have to be months, days or years. It can be

OPENING STATEMENT - MS. LIVESAY

1 a mere second. It is as soon as you form that thought
2 to take another person's life and it is not justified.
3 The thing about this case is, do we have a killing?
4 Yes. There is no doubt about it. David Sims was shot
5 with a 9-millimeter handgun right in the chest, right
6 here in the chest (indicates). I'll tell you, is this
7 a who-done-it case? I will go ahead and tell you
8 right off the bat, it is not. We are not trying to
9 figure out in this courtroom who killed that man. We
10 already know who killed him, Heather Sims, the woman
11 sitting at that table. So go ahead and mark that off.
12 We have a killing of another, and we know who did it,
13 we know Heather Sims did it.

14 Now, how do we know? She's going to tell you in
15 the 911 tape, and she's going to tell you in her
16 statement to the police that she shot him. No doubt
17 about it. So we have a killing of another. The
18 question in this case is, is this a justified killing,
19 or is this a murder? That is the question. It is not
20 who did it, it is just merely whether or not this is a
21 murder, or this woman was acting in some form or
22 fashion of self-defense.

23 Now, I'm telling you that I'm going to put up a
24 case that presents that this man was murdered. Now,
25 in this particular case, like in a lot of murder

OPENING STATEMENT - MS. LIVESAY

1 cases, the devil is in the details. I'm going to tell
2 you in a broad brush what happened. This woman shoots
3 her husband, David Sims, in their home. Not just in
4 their home, but in the bathroom in their house. She
5 calls 911. The police come, EMS comes. What did they
6 see right away? They see the victim laying in the
7 bathroom with a knife in his hand. They see this
8 defendant with a puncture wound in her side and some
9 scratches on her arms; that is the big picture. She
10 calls 911, police come out, he's laying dead, knife in
11 his hand, she has scratches on her arm and a puncture
12 wound.

13 Now, that is the broad picture. That is what
14 goes on. Now, when you look deeper, when you start
15 investigating the details of the case, when you start
16 listening to the details, what do you find? Was 911
17 called? Yes, she did call 911. But when you listen
18 to the tape, do you hear a woman screaming frantic,
19 I've been stabbed, I'm in fear of my life, I have shot
20 this man? No, that is not what you are going to hear.
21 I'll tell you, if that is what you are waiting to
22 hear, you will not hear it in this case.

23 You will hear a woman that gets on the phone with
24 911 and says I need EMS, there's been an argument, my
25 husband was coming at me with a wrench, and I shot

OPENING STATEMENT - MS. LIVESAY

1 him. That is what you'll hear right off the bat. You
2 won't hear a word about a knife or I've been stabbed,
3 I have a puncture wound, you won't hear any of that.
4 I will tell you, you do hear it later on. The
5 question is when do you hear it? You hear it after
6 the dispatcher calls back and says, You've been
7 stabbed with a knife? Then all of a sudden you hear
8 the defendant say, Oh, yeah, a knife, a knife or a
9 wrench, I don't know. Then, that is when you start
10 noticing the details. That is when you start noticing
11 this may not be what she wants it to appear, that she
12 has called 911 frantically.

13 When you listen to the tape, you don't hear
14 anything about a knife until the dispatcher mentions
15 the knife. Pay close attention. Then, you don't hear
16 anything about her being stabbed until minutes into
17 the conversation, after she realizes he was shot in
18 the chest and he is now turning blue. All of a sudden
19 you hear, I've been stabbed, too. Not only that, but
20 she knows a lot about this wound, and you'll hear
21 about that. She'll tell you it is not bad. I've been
22 stabbed, but it is not bad. That is what she'll tell
23 the 911 dispatcher, and you will hear it. You will
24 hear right off the get-go this may not be what she
25 wants it to appear to be when you look at the details.

OPENING STATEMENT - MS. LIVESAY

1 Then, after you hear that 911 call, you are going
2 to hear that the police came, like they were supposed
3 to. They responded. You will hear a lot in that
4 call. That is a long 911 call. You will hear a whole
5 lot going into the call. I'm not going to get into
6 the details, but you will hear "wrench" and then
7 you'll hear, yep, yep, yep, that sounds better,
8 "knife," and then you'll hear "wrench or a knife."
9 Then you are going to hear her dad show up and tell
10 her to quit wiping up the scene. It is a crime scene,
11 quit wiping it up. That is what you are going to
12 hear. This man is laid out, shot with a 9-millimeter,
13 and she's in there wiping up stuff. That is what
14 you're going to hear.

15 Now, you also are going to hear the police show
16 up. They show up to the scene. They see this man
17 laid out (indicates), on the floor, shot dead in the
18 chest with a 9-millimeter and he has a knife in his
19 hand. Now, when you look close, you will notice the
20 knife is in his hand, but you will also notice, uh-oh,
21 uh-oh, when we look a little closer, here we go again,
22 you will notice that his hand is covered in blood.
23 The only injury he has is from his chest, so how did
24 this blood get on the hand? How could that be? How
25 could that be? It is a natural reaction, it's

OPENING STATEMENT - MS. LIVESAY

1 transfer. Bam, just like that (indicates). He was
2 shot, bam, just like that, natural reaction. Just
3 like if you cut yourself, bam, just like that. That
4 is why there is blood on his hand. Bam, just like
5 that (indicates).

6 The problem is she put the knife in that hand.
7 How do you know that? Because it is hard to be
8 holding a knife and like this (indicates), and get
9 blood all over your hand. Can't be both. Cannot be
10 both. You will notice there is no blood up here on
11 this man's hand. Like if he was holding the knife,
12 bam, just like that. No blood there, just on the palm
13 of his hand. That is what you will see when you look
14 close. There is a problem there. When you look close
15 at the details, that knife is in the same hand that
16 that blood is in. But that is not the only problem
17 with the knife, that is just one. When you look
18 closer than that, you will find not only is that knife
19 now -- that blood, after he went, bam, and now what in
20 the world, now there is a knife there. He was able to
21 do like this (indicates), fall back and the knife
22 still laying there? That is only part of the problem.

23 Part 2 is the knife is upside down in his hand.
24 It is an optical illusion, at most. When you look at
25 the pictures, you are going to see his hand laid out

OPENING STATEMENT - MS. LIVESAY

1 and you are going to see the knife laying in his hand.
2 What they are going to tell you is that when you close
3 your hand, when the knife is laid like that, the blade
4 is upside down, pointing up, not down. Another
5 detail. Another detail. You have to pay attention to
6 it. Things are not what they appear when you look
7 close.

8 Now, you have these issues about the knife. You
9 have these issues about it doesn't add up. So did she
10 put the knife in his hand? You will get to hear about
11 that. The police responded to the hospital to talk
12 with her, find out what is going on. Now, when they
13 are still at the scene, what did they find at the
14 scene? They found the knife laying in his hand, wrong
15 hand, upside down, but then you have to look at the
16 murder weapon. He was shot with a 9-millimeter, still
17 on scene. When you look closer at the gun, what do
18 you find? The gun is registered to a guy named Mike
19 White, not Heather Sims, not David Sims. When you
20 look closer at the gun, what else do you find? Only
21 two bullets in the gun, not a full clip, just two,
22 just enough to kill somebody. Then when they search
23 the house, what else? Do they find any 9-millimeter
24 bullets like you would expect? Huh-huh, they did not.
25 All they found was the 9-millimeter with two bullets.

OPENING STATEMENT - MS. LIVESAY

1 No other 9-millimeters in the house anywhere, just
2 this gun with just enough bullets to kill someone and
3 registered to neither Heather Sims or David Sims.

4 When you look closer, what else is found? Her
5 phone is found in the house. She used this phone at
6 some point to call her dad to come over to help her
7 wipe the scene up. But then where is the victim's
8 phone? Like any case, a story is told by listening or
9 looking at two parties, the defendant and the victim.
10 So we want to see what is on her phone, and we want to
11 see what is on his phone, because now he is dead. So
12 we are now looking for some form or fashion of
13 something to see what this man is saying, what is on
14 his phone, what is going on.

15 Then you'll find the police are finally able to
16 obtain his phone, shocked, days later. It was nowhere
17 to be found that night, nowhere. They searched the
18 house like they would in any murder scene looking for
19 evidence. They do a complete search of the home.
20 Where is his phone? No one finds it that night. When
21 the phone finally does show up, guess what, the phone
22 had been reset back to factory settings by the
23 defendant. What does that mean? That means no
24 information was recovered off of his phone, no one.

25 When we got that phone back, absolutely nothing

OPENING STATEMENT - MS. LIVESAY

1 was on the phone. It had been completely reset back
2 to factory settings. So when you start looking, start
3 scratching the surface, you find that, indeed, this is
4 nothing what she wants you to think it is. It is
5 nothing what it appears to be. No information off of
6 that phone. She wipes it.

7 When you go to the hospital, we get to interview
8 her and talk to her. Now, at that time there was
9 definitely something about the knife already. As soon
10 as you walk in, the police says, oh, this doesn't look
11 quite right. We have a man in here, blood in his
12 hand, the knife is upside down, it is a kitchen knife,
13 absolutely nothing else out of order, no sign of an
14 altercation, nothing is turned over, the house is
15 immaculate, bathroom is immaculate, and there is
16 something odd about this knife. So the police know
17 that going to the scene, going to talk to her at the
18 hospital.

19 Now, when you talk to her at the hospital, the
20 police, you get to hear that interview. The question
21 is, what happened, and basically what the hell is up
22 with the knife in this hand? What you will hear from
23 her in the beginning is, I don't know. Could you have
24 touched it? I don't know. And then you will hear
25 Detective Chatfield say we have all of these forensics

OPENING STATEMENT - MS. LIVESAY

1 now, we're looking for DNA, looking for fingerprints,
2 and then, oh, I could have moved it. It is very
3 possible I moved it. Very possible I moved it. He
4 says, well, do you think you could have just put it
5 back in his hand? That's possible, uh-huh. That's
6 possible. While I was doing CPR, somehow I moved the
7 knife, put a knife in his hand and I'm wiping down the
8 scene. So a lot is going on.

9 When you hear the interview, she will tell you,
10 yes, it's possible I moved that knife. Yes, it is
11 very, very possible I moved the knife. Chatfield
12 finally asked her, did it fall far from his body, a
13 foot? No, not that far. Inches? Uh-huh, probably
14 inches. Inches, uh-huh, yes, and then it got moved
15 back into his hand. Now, while she's sitting up there
16 at the hospital talking about I put the knife in his
17 hand -- she says possibly put the knife in his hand,
18 she's injured, and that's important. When you first
19 arrive, the man is dead and she's in there saying I've
20 been stabbed. You have to look at every aspect, not
21 only his injuries or the knife in his hand, not only
22 the issues with the gun, but this woman is saying,
23 indeed, I have been stabbed. I have been injured. I
24 was in fear for my life.

25 So these injuries are important, no doubt about

OPENING STATEMENT - MS. LIVESAY

1 it. So when you look closer at the injuries, uh-oh,
2 we have a problem again. They are not what she wants
3 you to think they are. They are not what she wants
4 you to believe they are. This is not even that
5 complicated. You don't have to be a doctor to figure
6 it out about these injuries. You are going to see
7 pictures of her arm, first of all. You are going to
8 see cuts on her arm, no doubt about it. You will see
9 cuts on her arm that she's trying to tell you came
10 from an altercation.

11 The first problem, every cut is straight and
12 meticulous, bam, bam. Every single one of them. None
13 of them are this way. None of them are jagged. Very
14 meticulous, striped, every single one. And this is
15 supposed to be in some altercation for her life, but
16 yet the scratches on her arm are just as straight as
17 you can possibly cut them. I mean, as good as any
18 surgeon I'm sure, just like that. Doesn't look like
19 anything from an altercation.

20 It is not only the issue that they are straight,
21 that is not the only problem, the only other problem
22 is that they are not that way and this way and look
23 like they are from some altercation; that is only part
24 of it. Second part is every single one is
25 superficial. Not one is really any deeper than the

OPENING STATEMENT - MS. LIVESAY

1 other. All three are perfectly straight cuts on her
2 arm; that is the second thing.

3 The third thing, when you look close at the arms,
4 what you will notice is not only is that there, but
5 when you look close -- and we'll show you the
6 wounds -- you'll see she's got three. What you will
7 see is on one of them there is just a light scratch,
8 and then right over that light scratch there is
9 another one just a little deeper, right over the same
10 mark. You are going to notice on the wound up here,
11 scratch up here, it is very light and then it gets a
12 little deeper again, and then lightens back up again.
13 That is what you are going to see. That is what she
14 is trying to tell you happened in that altercation,
15 that he hit her just one time very lightly, and in the
16 struggle for her life, he hit her again the same exact
17 place, but just a little deeper. That is what she
18 wants you to believe. And I'm telling you, those are
19 not the kind of wounds you see in an altercation.
20 Those wounds can only come from somebody who is
21 standing still and who is meticulously, basically,
22 drawing them on her arm; that is what I'm telling you.
23 You are going to see the pictures, so you will see
24 that light scratch, and then you'll see the same
25 scratch a little deeper, a practice round. Second

OPENING STATEMENT - MS. LIVESAY

1 one, it wasn't deep enough so, we'll go back over it
2 one more time.

3 You are also going to see a puncture wound --
4 actually two puncture wounds; that is interesting,
5 too. She has two puncture wounds. A doctor says it,
6 surgeon says it. He comes in and she has two puncture
7 wounds. She goes to another doctor, same thing. Now,
8 the first puncture wound, not like the scratch on the
9 arm, you can barely see it, but it is there. You can
10 barely see that puncture wound. The second puncture
11 wound is a little deeper, a little deeper. So you
12 have two puncture wounds. One is barely there, again
13 practice strike, and then the second one is a little
14 deeper.

15 When you look close at the details, we have her
16 shirt. We took the shirt from the hospital, because
17 it is evidence, and we took her pants and the victim's
18 clothes. And, oh, when you look at her shirt, there
19 is only one hole in her shirt. One hole, two puncture
20 wounds. So you have another problem there. You have
21 another problem there. I'll show you the shirt.
22 They'll testify about it, and the medical records will
23 say two puncture wounds, one hole in the shirt. So
24 you have another issue.

25 When you see the puncture wound, you are going to

OPENING STATEMENT - MS. LIVESAY

1 see that is a superficial wound. Again, another
2 superficial wound. She goes home -- they put
3 something like Neosporin on it, and they send her
4 home. Nothing more on her than all superficial
5 wounds. They are not only important because of the
6 issues I just pointed out, but they are important
7 because there is not one wound on this woman that is
8 not in a place she could not get to herself. You are
9 not going to see one bruise or one nick on this
10 woman's back or anywhere else that she cannot easily
11 get to.

12 Something else about that puncture wound that is
13 interesting. When you hear her talk in the 911 tape,
14 you will hear, He got me, too. He got me, too. Did
15 you hear that, he got me. And you'll hear the
16 dispatcher, He is coming, too? No. No. He got me.
17 Is that in the recording? He got me, too. Did you
18 get that? He got me, too. That wasn't on her mind
19 right away, that wasn't on her mind until later on.
20 She will tell you that she knows all about that wound
21 in the 911 tape. She's going to tell you it's not
22 bad, it's not bad at all. It is not bad at all, that
23 is what she tells the 911 dispatcher. I will tell
24 you, I've been at home and I've been trying -- in
25 fact, I did it recently -- I was trying to get a

OPENING STATEMENT - MS. LIVESAY

1 little pill out of a little thing for my dog. I was
2 taking the knife trying to carve it out and it slipped
3 and got my finger. I can go ahead and tell you, I
4 went all to pieces, all to pieces. It is because when
5 you look, you have no idea how deep that wound is.
6 When you look, blood is coming out, you cannot see how
7 deep the wound is. You cannot see. That is what
8 makes it so scary. When you prick your finger or
9 anything, when you are in the kitchen and cut
10 yourself, that is what is so scary, you cannot see how
11 deep that wound is. I've done it before cutting
12 stuff. When you cut, you know, you cut, but there is
13 no way to decipher how deep is this wound.

14 I'll be the first to tell you that when I hit my
15 finger, I was clearing Doctor's Care, clearing out the
16 whole bunch to get my finger looked at. The scary
17 thing is you don't know how deep it is, and that is
18 just on a finger in the kitchen. You do not know,
19 that is why it is so spooky when you cut yourself.
20 There is no way to look in there and say it is this
21 deep, it's not deep. You can't tell.

22 This woman is going to tell you, and you will see
23 the pictures. She was punctured in her left side, not
24 in her finger. She was punctured in her left side.
25 The thing about a puncture is you don't know how deep

OPENING STATEMENT - MS. LIVESAY

1 it is. You don't know. You look at it and see blood
2 coming out. You have no idea. But she knew. She
3 tells the 911 operator, it's not that bad. It's not
4 that bad. Don't worry about me, it's not that bad.
5 I'm here to tell you, she knew it wasn't that bad
6 because she was the one that inflicted that wound, and
7 she knew she was not going to do anything to hurt
8 herself. She knew she was going to do just enough so
9 there was a wound there, and that wound is almost as
10 good as the ones on the arm, just a small little
11 puncture, no jagged edges, not to the side, not to the
12 left, not deep, just superficial, just enough to shed
13 a little blood. She knew more about that wound than
14 anybody, because she knew she wasn't going to do
15 anything too bad, so she tells the operator, yeah, he
16 got me, but it ain't that bad. It's not that bad.
17 You will find out she's exactly right, it is not that
18 bad, it was a superficial wound. Here is the fact,
19 bam, just like that. It is as deep as it went. Every
20 wound on her body is a superficial wound.

21 So when you look at the wounds, I'm asking you to
22 think about it. Does this seem like a wound from an
23 altercation, a woman who is in fear for her life? Is
24 that what a few scratches and a perfect puncture
25 wound, not one jagged edge on anything and not one

OPENING STATEMENT - MS. LIVESAY

1 life-threatening wound, is this what she's trying to
2 make it out to be? Or -- or, does it make more sense
3 that she shot this man in the bathroom? Now, he's in
4 the bathroom. There is no outlet from this bathroom.
5 Like most bathrooms in the house, no outlet. She's
6 going to tell you, I was standing at the threshold. I
7 back up from the threshold, and I shoot him. So she's
8 in the bedroom, which is right outside from an exit to
9 the outdoors. So I'm here to tell you she's standing
10 in this doorway. He is trapped in the bathroom. The
11 only way he's getting out is to pass her standing
12 there with a 9-millimeter.

13 Now, there is an exit. Here is the bedroom, you
14 walk out into the bedroom and, bam, there is an exit
15 right there to the right. She's standing in that
16 bedroom with a 9-millimeter. He's trapped in that
17 bathroom. Bam, she shoots him. I'm here to tell you
18 the evidence will show that when she shoots him, that
19 man is trapped in that bathroom unarmed. No
20 altercation, because there is no sign of an
21 altercation, not one thing is turned over in the
22 bathroom. When you see the pictures, it is unnerving.
23 Not one thing turned over. Even look at the mats.
24 Not even the mat is moved up, nothing. I mean that
25 bathroom is clean, perfect, nothing knocked over. No

OPENING STATEMENT - MS. LIVESAY

1 sign of an altercation. So there has not been an
2 altercation in that bathroom. She shoots him unarmed
3 in that bathroom. She shoots him, she realizes, oh,
4 hell. Oh, hell, I have shot this man, and basically I
5 have to change this. This cannot turn out like this.
6 What you will also notice is she'll tell you, I
7 backed up and shot him. She does, right in the chest.
8 The bullet hole is through-and-through, right through
9 here, bam, comes out the back, left side. Now, the
10 bullet did go through-and-through, so where did the
11 bullet end up? The first place most people look, I
12 look when I go to a crime scene, the wall behind the
13 victim, windows behind the victim, anything behind the
14 victim to see where the bullet went. I'm going to
15 tell you that the bullet did not go in the wall. It
16 did not go through the window. It went into the
17 bathtub. The bathtub, like most bathtubs, sits about
18 3 feet off of the floor. Didn't go straight through
19 the wall, it went down into a bathtub sitting 3 feet
20 off the floor. That tells you a little bit more about
21 what this case is. Is it more than what it appears to
22 be? I'm here to tell you that she shot that man,
23 unarmed, in that bathroom, dead center in the chest.
24 There was never an altercation. That man never had a
25 weapon in his hand. She freaked out, went, got a

OPENING STATEMENT - MS. LIVESAY

1 knife, probably not going to cut herself originally,
2 but then once she thought about it, she says, oh,
3 hell, shot in the chest, turning blue, I better at
4 least scratch myself a couple of times, make it look
5 like there was some sort of an altercation. Then she
6 puts the knife down, calls her dad. You will hear Dad
7 tell her to stop wiping this, stop wiping that. She's
8 in there trying to wipe the scene up, trying to cover
9 up what really happened, trying to present something
10 as if she was acting in self-defense, trying to cover
11 her tracks. She is in there, obviously, hiding his
12 phone, because we never find it. Then, whatever is on
13 the phone, I don't know -- she must have thought it
14 was something damaging because she reset the phone
15 back to factory settings so we could not get anything
16 off of that phone, nothing.

17 Now, the question is what makes sense? That this
18 woman shot an unarmed man in that bathroom, put the
19 knife in his hand, which is why it's in the wrong hand
20 upside down. That is why. That explains why that
21 evidence is there like that. The question is, why did
22 she shoot him? Why? That is a question. What is
23 going on in her mind to have done this, murder this
24 innocent man? You are going to find out that the two
25 of them were having marital problems. They were not

OPENING STATEMENT - MS. LIVESAY

1 getting along. They were on a brink of a divorce.
2 They were on the brink of what divorce carries,
3 sharing custody of the child, possibly alimony that
4 she has to pay. You will find out the divorce was not
5 an option for this woman. That was not an option for
6 this woman.

7 You also are going to find out that shortly
8 before she shot this man, he took out a life insurance
9 policy. When you look close at that, who is the
10 beneficiary? Lo and behold, the same woman sitting
11 right there, that is who the beneficiary is. When you
12 look close, you see that. You find out that that man
13 made one payment on that policy before she shot him.
14 When you look close, that is when the details unravel.
15 That is when you see there is more to this picture
16 than what they want to tell you. You are going to
17 listen to a lot of evidence. You are going to see a
18 lot of pictures. You are going to hear her 911
19 statement and her statement in the hospital. I'm
20 going to ask you, this woman is on trial for murder.
21 This 35-year-old man is not coming back. He's not.
22 His family has lost him forever. I ask you to listen
23 to every detail on that 911 tape. I ask you to listen
24 closely, because like I told you, there is a lot going
25 on that she's telling the 911 caller. If you listen

OPENING STATEMENT - MS. LIVESAY

1 close, there is a lot going on in the background as
2 well.

3 Listen to every detail, every picture we show
4 you, look at every detail in those pictures. This
5 case is all about the details. When you scratch the
6 surface, it is when you find the truth what happened
7 that day. You find this is nothing short of a murder,
8 a malice, malicious, intentional murder and a woman
9 that has worked very hard to cover it up. You are
10 going to find every step of the way she is trying to
11 get her story straight, she is trying to cover up the
12 truth. You are going to hear on the tape her dad
13 coming to the scene, just like I told you, because
14 they live right behind them, her parents live right
15 behind them. This woman wants to tell you she's in
16 such fear, nowhere to go, yet she was the closest to
17 the door. He was trapped. She was right across --
18 not even the street, but the same yard as where her
19 parents lived, and she took this man's life. I'm
20 asking you to pay attention to every detail, because
21 the details are what uncover the truth in this case.
22 Thank you for your time.

23 THE COURT: Yes, sir.

24 MR. MARTIN: If it pleases the Court.

25 THE COURT: Yes, sir.

OPENING STATEMENT - MR. MARTIN

1 MR. MARTIN: Pay attention to every detail, and I
2 hope you do. Before I get to it, let me point out one
3 detail that Ms. Livesay, in her version of what
4 occurred, forgot to tell you about. There was a knife
5 that she was talking about. A knife like this, I'll
6 try to draw it, a blade like that. It was there at
7 the crime scene, by in large, on the floor, but
8 touching the edge of his hand. You know what you do
9 when you got weapons like that and you are trying to
10 figure out who stabbed who, that is what they are
11 trying to figure out. You get some -- what do they
12 call it -- DNA from the individual, and they test it.
13 Whose DNA is on that knife handle? David Sims' DNA
14 was on that knife handle. Heather Sims' DNA was not.
15 His touch DNA, meaning skin, and we'll get into the
16 details, but skin from having the knife. If you touch
17 this, there will leave DNA. If you do this, hold a
18 knife, then you'll leave touch DNA. Blood on that
19 knife handle, David Sims' blood. Why didn't she tell
20 you about that if she wants you to look at every
21 detail?

22 Now, you know, listening to that opening
23 statement over there reminded me of something. You
24 know, I thought what I would say to you, and we've
25 been working on this case for over two years, and

OPENING STATEMENT - MR. MARTIN

1 they've been working on it for over two years. Some
2 lawyers say what am I going to say, how do I present
3 this, but I'll tell you one thing that struck me that
4 I hadn't thought of before. What a great date
5 December 15, 1791 was. You know what happened that
6 day, December 15, 1791? On the motion of Patrick
7 Henry, they ratified the Bill of Rights to protect
8 citizens, like Heather Sims, from the government
9 apparatus. One of those amendments said you are
10 entitled to a trial by a jury. Because if she wasn't
11 entitled to a trial by jury, they would already would
12 have hung her on nothing but speculation.
13 Speculation. They have -- since August 11th, 2013,
14 they have searched, looked, took cell phones,
15 computers, talked to high school boyfriends,
16 everything in the world they could find to try to
17 prove this fairy tale they are promoting to you. I
18 want you to listen to every detail, every syllable. I
19 want you to do that, because I promise you, every
20 issue that she brought up, that she is basing her case
21 on will be adequately responded to.

22 Heather, come here. This is Heather Sims. You
23 are going to -- you've heard a little bit about her.
24 You will hear a lot more about her over the next few
25 days. Maybe this case will be over this week, I don't

OPENING STATEMENT - MR. MARTIN

1 know. I hope it is not two weeks, but Heather here is
2 my client. You were sworn in as a juror yesterday,
3 November 9, 2015. I bet you will never forget that
4 day when this is over. You have an opportunity -- you
5 have an opportunity. You control the destiny, the
6 lives. You have more power than the president of the
7 United States over this girl and her family.

8 Heather Sims is a wonderful person. She is what
9 you would want your children to be. She has spent her
10 whole life in pursuit of goodness and the right thing.
11 And based on the speculation and the
12 something-don't-look-rights from some police officers,
13 she has been brought before you and charged with
14 murder. This indictment -- the judge is right -- this
15 is what it is worth, nothing. Come back and have a
16 seat.

17 By the way, I think I told you, but let me back
18 up and catch my breath and start where I wanted to
19 start. First of all, congratulations to you for
20 getting seated on this jury. I know when all of you
21 got an invitation to come a few weeks ago you said, my
22 goodness, I have a lot of things to do, don't need to
23 be here, but here you are. It is with that in mind
24 that you are sworn in to try the facts of this case.

25 I'm Morgan Martin. I've been practicing law -- I

OPENING STATEMENT - MR. MARTIN

1 think I was a lawyer November 9, 1978, what, 35 years
2 ago. I never had the opportunity to represent a finer
3 person than Heather Sims. I never had what I thought
4 was probably a more important calling in my life as a
5 lawyer than to stand here and defend her against these
6 accusations. Over here with Heather -- let me tell
7 you, Mary Ashley Martin Bellamy is my law partner and
8 my daughter, married to Scott Bellamy who is an
9 attorney here. Alex Hyman is an attorney over in
10 Conway. They are here to try to help me do this
11 right, do the best I can for Heather Sims. With that
12 in mind, I want to talk about my opening statement a
13 little bit.

14 An opening statement is an important part of a
15 trial. Ms. Livesay took some 40 minutes telling you
16 about her case, and I applaud her for that. You need
17 to know as much as you can know about the facts in
18 this case, because presumably you know nothing other
19 than what you've heard so far, or you know very
20 little. You need to know more than anybody.

21 The lawyers and law enforcement, and everyone
22 else, has been working on this case for the past two
23 plus years. We know a lot and sometimes we assume you
24 know what we know, but you can't. Sometimes you'll
25 hear things repeatedly, and you need to sometimes get

OPENING STATEMENT - MR. MARTIN

1 it all right. This is a very important case, and it
2 is a very important part of the case, because we want
3 you to know as much about this case as we can. I
4 can't probably cover everything in my opening
5 statement, but I want to lay out to you what the
6 evidence in this case is going to show.

7 The one thing I would say to you is I have
8 evaluated what we have done here. This is an SOS
9 case. That has many connotations in it, but in this
10 case, the judge told you -- the judge told you -- one
11 of the last things the judge told you was the
12 definition of reasonable doubt, was that evidence will
13 prove, which firmly convinces you of the defendant's
14 guilt. Evidence of proof. The evidence points to the
15 innocence of Heather Sims. The State's case,
16 prosecution's case, starts with suspicion, that it
17 didn't likely have, and then they get opinions from an
18 expert or two about these wounds, whether they are
19 self-inflicted or not, and then they have some
20 speculation as to what happened. I would say to you,
21 they can't prove what they say happened, which is by
22 the way, murder, the intentional, willful killing of
23 another human being with malice aforethought, and
24 oftentimes premeditation, which she says is present in
25 this case.

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1 So that is that Heather here is an out-and-out
2 murderer, cold blooded, caught him by surprise, shot
3 him dead. Why? I guess they'll prove that to you as
4 we go on. But the facts of the matter is that is not
5 true. The facts of the matter is that is not true.
6 That is speculation on their part. Speculation.
7 Speculation. Speculation, the forming of a theory
8 without firm evidence; that is what they have. And
9 from that, the verdict in this case would not be
10 guilty. The judge will charge it. In a case like
11 this, the question is they must prove to you beyond
12 each and every reasonable doubt the guilt of the
13 accused, or it is an obligation on the part of a jury
14 to find the defendant not guilty. They won't do that
15 in this case. They can't do it, because she's
16 innocent.

17 Now, what they did do is they set about to twist,
18 interpreted the way they wanted to to try to make
19 something out of nothing, make something out of
20 nothing. For example, the knife was laying the wrong
21 way. How is a knife supposed to lay? If I have a
22 knife and I am getting ready to assault you with it,
23 is there a particular way I have to hold the knife?
24 Blade up, or blade down? No. Police are suspicious,
25 and maybe that is what they should be. But know now

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1 that this happened on August 11, 2013. Detective Jim
2 Chatfield there went to the hospital, talked to her
3 for an hour and 36 minutes. You will get to hear it.
4 When he got through, he didn't arrest her for murder.
5 They investigated and saw the scene, but they didn't
6 arrest her for it. They arrested her two weeks later
7 after they did whatever, I don't know.

8 Once again, I don't think there is any question
9 in this case, a lot of pushing going on, you need to
10 look at it, it needs to be done, this, that and the
11 other, so they did and they finally charge her. Let's
12 talk about, again, in a case like this -- let me move
13 this out of my way a little bit. Who is involved and
14 what is involved? Again, you don't know a lot about
15 it. The one thing is you see Jim Chatfield when he
16 questioned Heather at the hospital that night. She's
17 right, there is a 911 call. I want you to listen to
18 it, and you can tell from listening to that call that
19 this is not a murder. You will listen to the 911 call
20 and she did go to the hospital, police were there.
21 She was treated. They questioned her for an hour and
22 36 minutes. She didn't ask for a lawyer, waived any
23 rights she had. She talked freely. She tried to
24 answer their questions, and she did answer their
25 questions. They took DNA from her with her

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1 permission, did it all. They asked if she would take
2 a polygraph, she said, yeah. All of that stuff. All
3 of that, and then she -- what they have done is they
4 want to come in here and they want to parse every
5 syllable that the girl uttered in what was, obviously,
6 the most traumatic event of her life.

7 Heather was 33 years old. She grew up here in
8 Conway. Her mother and father are -- Ronnie Causey
9 back here in the courtroom with her. She went to
10 Conway High School. Not trying to brag on her, but
11 you have to say what is true. She graduated with
12 honors. She always wanted to go to nursing school;
13 she did that. She finished nursing school, went over
14 to Florence to Francis Marion, which was part of the
15 MUSC nursing school. When she finished there, she
16 went to Charleston, and she is today a nurse
17 anesthetist, CRNA. She is the next thing to a doctor,
18 so she knows about injuries and wounds and probably
19 what the deal was with that, that is why; not because
20 she inflicted it herself. She worked hard her whole
21 life. She has done the right thing her whole life.
22 She has absolutely done --

23 MS. LIVESAY: Judge.

24 THE COURT: Yes, ma'am.

25 MS. LIVESAY: How much information are we going

OPENING STATEMENT - MR. MARTIN

1 to get in through opening statements as far as her
2 character?

3 THE COURT: Overruled. Go ahead.

4 MR. MARTIN: She has done the right thing. She
5 was employed at Loris Hospital, McCleod Hospital
6 system. She's a good girl. 2010, she met David Sims.
7 Let me back up, maybe that was 2009 when she met David
8 Sims, one or the other. I think they were married
9 December 10th, 2010. He was from Florence. 35
10 years old, evidence will show. Her first marriage;
11 his third marriage. I'm telling you all of this
12 because I want you to know about her. If I'm telling
13 you too much, I apologize, but I think you need a feel
14 for what is going on, because you have decisions to
15 make. They lived for a few months over in Florence,
16 and they moved here in 2011, I believe it was. They
17 moved in with her mother and father and stayed there
18 for awhile. They built a home -- she is right -- next
19 door adjacent to family property of the Causey
20 property. They moved into that house in 2012. She
21 got pregnant shortly thereafter. There was a child,
22 J.D. , born to the marriage March of 2013. They
23 began having marital troubles. There was marital
24 troubles off and on, as you might expect. Throughout
25 the marriage, different problems, this kind, that

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1 kind, marriage counseling, but it got more severe in
2 June, July and August 2013.

3 Heather sought marriage counseling. They went to
4 marriage counseling. They prayed. She prayed. She
5 bought books. She wanted this marriage to work. The
6 stresses, strains, the marriage deteriorated. There
7 were arguments, not necessary violence on any
8 occasion, but on this Sunday, August 11th, David
9 Sims lost it, in an argument and he came after her with
10 a knife. You will see the evidence. They have all
11 the pictures and will lay it out to you.

12 It was a Sunday afternoon, 6 o'clock roughly,
13 here in Horry County. No alcohol, no drugs, an
14 argument. You will hear her tell the story of what
15 occurs. You will know why she was texting
16 back-and-forth with the mother about mundane things.
17 She was drawing a tub of water. The water was in the
18 bathtub, sitting in the bathroom. She says in her
19 statement, 911 and otherwise, he came in there to work
20 on the toilet with -- what she called -- a wrench, a
21 knife. That went from working on the toilet to
22 we're-going-to-talk-now. This was a pressure that
23 apparently had been building in him, not only for that
24 day, but there had been arguments and silence for
25 weeks and months, and maybe even a couple of years,

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1 and it erupted that day. That is why she got the gun.

2 Heather is not the kind of girl to just get a
3 gun. They were gun people, to some extent. David,
4 maybe he had his concealed weapon permit, I don't
5 know. Heather took the course, but I don't think got
6 the permit. There were guns in the house, in the car,
7 guns available. America is a gun world these days.
8 What happened was -- she will tell you what happened
9 in the 911 call and in the hour-and-a-half statement
10 she made. Now, can you -- can you say she made a
11 mistake, spoke incorrectly throughout any of that?
12 Yeah. Think of the state of mind that child was in if
13 she's telling the truth.

14 Now, if she's not telling the truth, according to
15 them, there shouldn't be any problems with frantic
16 episodes, because this is a premeditated, deliberate
17 murder, planned out, and he was executed. Nothing
18 could be further from the truth. They want to parse,
19 divide, question -- and here is the scary thing --
20 twist everything to look the worse instead of giving
21 the benefit of the doubt.

22 If she made a mistake, it is because she's
23 guilty, as opposed to stunned, confused, hysterical.
24 Another thing, Ms. Livesay says to you -- this got
25 their attention -- she said to the 911 operator, He

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1 came at me with a wrench, and I shot him. Well,
2 really what she says is, He came at me with a wrench
3 and tried to stab me -- and tried to stab me. My
4 husband and I got into an argument, and he had a
5 wrench in his hand and he tried to stab me. She
6 didn't tell you that, did she? I thought he was going
7 to kill me. He was calling me a bitch. I need
8 somebody here.

9 Now, is that different than he had a wrench?
10 Now, talking about the wrench, because what happened
11 -- what the police found there and what she later will
12 tell you is what he had was a pair of needle nose
13 pliers to work on the toilet, which wouldn't flush
14 properly. Maybe the chain was too long. She called
15 it a wrench. So maybe that means she's guilty because
16 she didn't know the difference between needle nose
17 pliers and a wrench. I suggest and hope to you that
18 that is not accurate, but in this case, that is what
19 you are going to hear, and that is what you will have
20 to deal with.

21 The State's case, as best as I can tell, and I
22 probably don't know everything they know, hopefully I
23 do because they are supposed to turn it over to me,
24 but there is always sometimes a surprise here or
25 there, but look at what their case is based on. She

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1 laid it out to you in her version, but I think it
2 boils down to the fact that they want you to
3 believe -- and they have an expert that they went up
4 to the shores of Lake Michigan to get to come down
5 here to tell you that, in his opinion, the wounds are
6 self-inflicted. Of course, you know what people say
7 about opinions, and the only thing I say is it is
8 different than evidence or proof. It is a thought
9 based on a fact.

10 If they call him to testify, we'll talk to him
11 about that. We have an expert that says these are
12 classic self-defensive wounds, that they are not
13 self-inflicted. It may be impossible for anyone to
14 say with any specificity to the extent you could
15 convict or not, whether certain wounds are or are not,
16 but you will get to look at all of that; that is what
17 it is based on.

18 She was cut, scratched, bruised, stabbed --
19 punctured, stabbed. You will hear about what is
20 superficial, and what is not. You will get to look at
21 all of that. Then, it all boils down to -- I'm
22 telling you -- past that their interpretation of what
23 things she said like "wrench" instead of "knife" in
24 that first breath to 911 means, that kind of stuff.
25 That is what they are going to be talking to you

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1 about. They are going to be talking to you about.

2 Let's see, what else did she say? Cell phones,
3 they claim she hid his cell phone. I think the
4 evidence will be that that is not clear. Police
5 didn't ask anyone about his cell phone that night.
6 The evidence will be that the police did not ask her
7 about his cell phone that night. They didn't ask
8 anyone else about his cell phone that night. They
9 turned the house, the scene, whole shoot and the
10 shebang back over to the Causey family at 1:00 a.m. on
11 August 12th and said we're through, you probably
12 ought to have someone clean the house up.

13 Later in the week, they come back and, oh, where
14 is the cell phone. Then they say, well, she wiped the
15 cell phone. She didn't wipe the cell phone. These
16 are two cell phones, and the evidence will show were
17 in her names with Verizon, and that two days after
18 this occurred, she tried to use the cell phone,
19 because the police had her cell phone. She needed a
20 cell phone. Everyone thinks they need a cell phone
21 every moment of the day. She didn't know the password
22 to the phone and, apparently, no one else did either,
23 so she called, how can I use it? You have to reset
24 it, and there can be expert testimony about that.
25 Once you reset it, what is on the cell phone cannot be

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1 recovered. I believe the evidence would be, even if
2 you don't reset it, if you have the cell phone, if the
3 police had it and they don't have the password, you
4 cannot get any information out of it. Guess what,
5 addressing that point, that point alone, they got her
6 cell phone -- and I don't know what would be on the
7 cell phone that makes any difference in this case, and
8 I don't think the police do either. It is an
9 afterthought of "what if." They got her cell phone,
10 and that night -- they didn't take a computer out of
11 the house. They came back three days later and they
12 get a computer. They come back two weeks later and
13 get another computer. They have downloaded and
14 searched and turned and twisted and they have tried to
15 find something to prove to you that this was murder.
16 See what they present you. Yet, they want to talk
17 about there was a cell phone that she's responsible --
18 she left the house. They took her out of the house to
19 the hospital, and the police did whatever they wanted
20 to in that house for the next -- until 1:00 a.m. They
21 took picture after picture. Anything that was
22 important, they took a picture. Even things that were
23 not important, they took a picture. They looked and
24 could do whatever, and now if they don't have
25 something or see something, oh, it is her fault. It's

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1 her fault.

2 She's kneeling over his body doing CPR. By the
3 way, she dealt with this, as you will hear, for 23
4 minutes before anybody came. Please, please, is
5 someone coming? Is someone on the way? Please, oh
6 David. EMS is staged within 200 yards of her house
7 because there is a substation there, but they can't
8 come until the police get there to secure the scene.
9 Agent DelPercio, it took him 23 minutes to get there.
10 Then they'll say, well, he appeared dead when I got
11 there. Well, it took 23 minutes. I mean, that is not
12 their fault. I don't know why the police officer was
13 in Carolina Forest. But I'm saying, you know, you
14 listen to all of that, listen to the tape, listen to
15 all of it, see what it sounds like and see where it
16 comes from.

17 Then, when they get there, the knife is laying
18 the wrong way. The cell phone, which we don't have a
19 clue whether there was anything on it. By the way,
20 cell phone, E-mail, text, anybody he knew, they have
21 looked at -- they had access to the phone, to his
22 family, friends and family. There is nothing there,
23 just once again part of the fairy tale that is being
24 spun to hope that you will convict her. It's not
25 right. Thank God we have a jury to hear these cases.

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1 The gun was registered to Mike White. Okay.
2 Well, you'll hear that the evidence in the case is
3 that Mike White, that the Causey family has known for
4 years, does work for the family occasionally and for
5 her father, Ronnie. Mike gave the gun to Ronnie nine
6 years ago, and he gave it to Heather, and, yes, it is
7 registered in Mike White's name. I mean is that part
8 of the theme that she used a specific gun that weren't
9 (sic) registered to her to do it so she could hide?
10 She called 911. She called 911. So maybe she'll
11 explain to us the significance of which gun was used
12 and wasn't used, or the significance that the gun was
13 in the bathroom instead of the nightstand. That is
14 what Heather says, she moved the gun into the bathroom
15 because they had a baby moving around, and though the
16 baby wasn't old enough to get to the gun, she just
17 decided she did not want the gun in the bottom of the
18 drawer of the nightstand. I bet they find something
19 strange about that before this is over.

20 It is an accumulation of these questions that are
21 raised that they try to turn into evidence, and there
22 is a difference between the two. I hope you can
23 follow me as we do that, and I hope we are not boring
24 you. As the judge said, there is two things about
25 being here this week that you found out already. One

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1 is you are a very important part of this process, and
2 number two, if you are in a hurry, you are in the
3 wrong place.

4 Another thing that I'll talk about, what we rely
5 on in defending Heather, is the fact that, number one,
6 the 911 call and the statement itself is corroboration
7 of her innocence. The DNA on this knife, if she
8 stabbed herself, where is her DNA? With the
9 imagination they got, they can probably conjure up
10 some theory about how that happened, but no credible
11 explanation for how that happened. The other thing is
12 she told them -- and I think this is very important --
13 she told them -- hand me that diagram of the house
14 over there. She told them that night, within an hour
15 of this happening, at the hospital, she explained how
16 it happened, okay. And so these are contemporaneous
17 statements with how it occurred. I want you to see
18 this a little bit, because I think it is important.
19 You will hear Detective Chatfield had not been to the
20 house when he questioned her, so he didn't understand
21 -- and rightfully -- it's not his fault he didn't go
22 there because he went to the hospital to talk to her
23 but he didn't necessarily understand the layout of the
24 house. As she was trying to explain what happened,
25 what she was talking about, it caused repeated

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1 questions and all of that. So from the very
2 beginning, I want you to have some idea of the house
3 we're talking about.

4 It is a new home. It is a relatively nice home.
5 Let me find my way around it here. This is the best
6 way, though. It is upside down. Most of the comings
7 and goings is out of the back door of the house. I
8 want everyone to see. This is the back door, carport
9 is here, come in the back door, master bedroom and
10 then adjacent to the master bedroom is a large
11 bathroom. This picture on here you see here where the
12 police say they found Mr. Sims' body laying inside of
13 the bathroom by the vanity. Let me move down again.
14 This is the diagram. Most people come in the front
15 door, Highway 905, Old Reeves Ferry runs out across
16 the front of the house. You come into a carport, back
17 door, kitchen over that way, den this way, laundry
18 room here. You come into the master bedroom, and you
19 go into a master bathroom. Again, so you can see it,
20 back door, master bedroom, bathroom.

21 Now, I point that out to you because I want you
22 to have some idea of the layout of the house, because
23 Ms. Livesay says she had him trapped in the bathroom
24 and she shot him. Now, let's talk about the evidence
25 you will hear in connection with that. I believe the

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1 most important evidence you will hear is what Heather
2 told them that night. She laid it out, even drew a
3 diagram, Detective Chatfield, because he couldn't
4 picture in his mind what we're talking about, and she
5 said that I was sitting here, over here on the tub,
6 and I was texting with my mother; this is in the
7 statement that you will hear. They will play it for
8 you. He was around here, and the baby -- there was a
9 baby here in the den. She had been texting
10 back-and-forth with her mother about missing a baby
11 shower, or something, within 20 minutes of this event.
12 Tub of water, water still in the tub. You will see --
13 I can't show everyone at the same time. I should use
14 some of that technology, but I don't know how.

15 She is here, and he comes in with tools to work
16 on the toilet over here. Essentially, instead of
17 doing that, he turns to confront her. She will also
18 tell you in that statement that their relationship had
19 deteriorated like it was, that Sunday was not a good
20 day for them. Maybe both woke up in a bad mood, at
21 least she thinks he did. They went down to Bass Pro
22 and Ruby Tuesdays for lunch. They came home about
23 1:30, 2 o'clock. They argued some.

24 She will tell you that he kept saying, You are
25 nothing but a liar. What are you talking about? You

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1 will find out soon enough. That kind of stuff, back
2 and forth. She decides she doesn't want to argue
3 anymore, she says in the statement, that the marriage
4 counselor said sometimes it takes two to argue, so
5 sometimes just don't participate. So she was silent.
6 He was insistent -- Heather, Heather -- about talking.
7 She will say in the statement, David, wait until
8 tonight when we get the baby to sleep. We need to
9 talk, but I can't do that with the baby here, and just
10 wait. No, now. Wait. No. And silence for a few
11 hours, it seems. He comes in. It starts here. He
12 has the knife and the pliers in his hand. She comes
13 up to get her cell phone, which she says was charging
14 on the vanity there, and he snatches the phone, tries
15 to get the phone, struggles over the phone. He gets
16 it, and it is on from there.

17 There is, in fact, she had moved the gun from
18 this nightstand here to the top drawer of this vanity,
19 and that is where it was. She was fearful of him, and
20 that is where they were. She reached in and got the
21 knife (sic) and said, David, you are scaring me, stop.
22 You ain't going to do nothing with that G-D thing,
23 whatever. He's got the knife. According to her, he
24 approaches her with the knife, and she is backing out
25 of the bathroom into the bedroom, and when he is

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1 pursuing her -- so to say that he (sic) had her (Sic)
2 trapped, once again, is an interpretation on what was
3 going on.

4 When they got here, as he was somewhere near the
5 threshold, he lunged at her with a knife in his right
6 hand and stabbed her, and she shot just like that, one
7 time. It did, sadly and regretfully, strike him in
8 the heart. According to her, he stopped, stood up,
9 started backing into the bathroom. She went looking
10 for a phone immediately, and she called 911. When she
11 came back in to see what was going on, because she did
12 not know exactly where she had hit him or what
13 happened. She found him here, and you can hear --
14 listen on the 911 call, to her voice change when she
15 realizes the condition he's in.

16 Now, I tell you all of that to tell you this, a
17 couple of things -- oh, and the other thing is the tub
18 is back here, okay. The tub is back here (indicates).
19 There will be pictures showing you. If you look
20 through the bedroom, if you are standing in the
21 bedroom near where she says she was standing, you can
22 look straight into the tub, okay. Why is that
23 important? Well, here is why. Because she's telling
24 them what happened -- and she doesn't have to. She
25 could have said -- and I believe if she were the cold,

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1 calculator killer that she is portrayed to be here,
2 she would have said, I think I need my lawyer if you
3 want to question me. She didn't do that. With her in
4 the hospital, naked, except for a robe they had on
5 her, IVs hooked up to her, monitors all around, they
6 grilled her for an hour and 36 minutes. You'll hear
7 it.

8 She draws a diagram and tells them, I'm here just
9 inside the bedroom, and they may want to do a nuance
10 was she 2 feet? 3 feet? 4 feet? I bet she don't
11 know exactly how many feet she was. Would you? Would
12 you? Would you remember where you were two -- anyway,
13 she lays it out to them. I'll draw it for you. We're
14 here, gun is here, he is backing up. I'm roughly
15 here, he's there, I shoot and it happens. Okay. Now,
16 that is totally and wholly consistent with what anyone
17 will tell you of the crime scene they found in that,
18 number one, they got pictures, crime scene
19 photographs, that will show this chair that was
20 sitting adjacent to where she was standing has got the
21 expended shell cartridge in it. Automatic Ruger
22 pistol, shell kicks up and out. The police found it.
23 Maybe they claim she planted it there, I don't know.
24 Let's see if they can prove that. But it wound up
25 there, so consistent with what she told them on a spur

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1 of a moment on what happened.

2 Then you will see that the bullet is in this tub
3 back here. It is actually 23 inches, not 3 feet. But
4 you'll see the bullet hole there. It is in a direct
5 line with where she said she was. It is consistent
6 with -- consistent with what she says happened. It is
7 lower, because the evidence will be that the bullet
8 entered his body at 50 centimeters from the top of his
9 head, or approximately 56 inches from the floor, okay.
10 But in this instance, when the bullet -- the bullet
11 goes through the body, and you never know how it flies
12 after it passes through the body, it loses energy,
13 dives a little bit, but there is nothing inconsistent,
14 but, yet, it is totally consistent that she's here,
15 he's here -- and this is the interesting part -- she
16 says that he comes at her with a knife in his right
17 hand, okay. They will present evidence to you that --
18 from the autopsy that -- in fact, the autopsy shows
19 that the bullet entered along here. Now, it didn't go
20 straight through-and-through and out the middle of the
21 back. It traveled from right to left and entered --
22 or exited at this corner part, which is one thing
23 consistent with his body being turned in a fashion to
24 put his right arm in position to cut her.

25 Also, they will tell you -- though the

OPENING STATEMENT - MR. MARTIN

1 pathologist who did the autopsy did not offer an
2 opinion as to the angle of the bullet through the
3 body, and by that I mean, you know, if this is the
4 body, it enters here and came out a little lower, and
5 apparently it did. Again, that is their expert that
6 comes up to 20 degrees, and he'll tell you it was a
7 guess. It was traveling somewhat lower. Again, I'll
8 suggest to you, consistent with if you are -- body is
9 leaned over in some fashion, like this, and you are
10 shot, okay, straight through-and-through, but then you
11 stand up, there will be an angle there.

12 I say all of that to say to you it is consistent
13 with her contemporaneous account of what happened.
14 They tried to come up with a theory that he was on his
15 knees and all of that when she shot him, but they
16 won't go there, because they know they couldn't prove
17 that. It was not murder. It was not premeditated
18 murder. That girl doesn't have it in her to do
19 anything like that. She worked her whole life. She
20 was a CRNA, certified nurse anesthetist at Conway
21 Hospital. She made a very good salary, and we'll get
22 into the details of that if you want. They had a
23 child, four months. She had a new home. Insurance
24 money? She didn't need insurance money. No motive to
25 that. It is a red herring, maybe this had something

OPENING STATEMENT - MR. MARTIN

1 to do with it. Red herring. No financial trouble.
2 No need for money. She made a good living. She had a
3 family to help her. She's the only child of those
4 people. If you are a young married couple and you
5 have a child, most people want life insurance, don't
6 they? I bet they try to use it before this is over.

7 The natural thing, you know, that any financial
8 planner will tell you, you need life insurance. You
9 get those mailings saying in the mail you need life
10 insurance, and you have Mr. Jacobs that sells life
11 insurance in Conway forever. I bet that they will say
12 that normal act of a young person, him taking a life
13 insurance policy, is evidence that she is not telling
14 the truth about the manner in which he died.

15 So you see why it is important that we have a
16 jury to look at these things and talk about these
17 things? I don't know how long I've been talking,
18 probably some people are getting antsy. I can't tell
19 you the responsibility that I feel to adequately
20 defend this girl, but it is what I do, and I'm proud
21 to be here for her today. I want to be sure that I
22 say the right thing. It is pretty easy in this case,
23 because I want the truth.

24 You know, so often if you stand where I do as a
25 criminal defense lawyer, the State uses the arguments

THE COURT

1 I'm trying to muddy the water, trying to confuse
2 things, I'm trying to misinterpret the facts. Oddly,
3 the roles are reversed. I'm trying to get the facts
4 out there and tell you. They are trying to raise
5 questions about the facts and say, but that don't look
6 right. What about this? They have questions they
7 don't have answers to.

8 I appreciate you being here. If I failed to say
9 something in the past hour that I should have said,
10 I'll regret it later, but we have a lot of time to
11 talk about it the rest of this week. I hope I have
12 been able to give you a thumbnail sketch of what we're
13 talking about. You need to know, because you don't
14 know much. We looked at it, thought about it, turned
15 it upside down, magnified it every which way. But it
16 is important that you know from the very beginning
17 before you hear the evidence that starts a context to
18 put it in. I think between what I have told you and
19 what Ms. Livesay has told you, I think we have done
20 that. I appreciate your service. All we're looking
21 for is a fair trial, and I believe that when you have
22 heard this case, it will be clear to you that there is
23 no sufficient evidence to convict this child -- and at
24 my age, she's a child -- of murder. Thank you.

25 THE COURT: If you would all approach over here

THE COURT

1 for just a second.

2 (Whereupon, a bench conference was had.)

3 THE COURT: Ladies and gentlemen, what we're
4 talking about is, as I said, when I can, I'll take a
5 natural break. The first piece of testimony you will
6 hear is a tape from the 911, and that will take over a
7 half an hour. Rather than have you sit through that
8 and send you to lunch, I'll send you now. It is a
9 little earlier than I normally do. It is 10 til 1:00.
10 It is a natural break, and I'll try to do that. I'll
11 ask that you be back by 2:00, if you can. That gives
12 you a little over an hour. I know that is hard to do,
13 especially at this time of day. If you are a little
14 late, don't get in a wreck coming back, but as soon as
15 you get back, we'll try to be started. Don't discuss
16 the case. Keep your badges on, and we'll see you back
17 here a little after 2:00. Thank you.

18 (The jury exits at 12:51 p.m., and the
19 following is heard out of the presence of the jury.)

20 THE COURT: Anything we need to take up before we
21 leave?

22 MS. LIVESAY: Nothing from the State.

23 MR. MARTIN: Not that I'm aware of.

24 THE COURT: And the tape is about a half an hour?

25 MS. LIVESAY: Yes, sir.

THE COURT

1 THE COURT: Audio only?

2 MS. LIVESAY: Audio, yes, sir. And there will be
3 dispatch notes, but, yes, sir.

4 THE COURT: Right. Okay. Have a good lunch.
5 Thank you.

6 (A lunch recess was taken.)

7 THE COURT: Two things I need tell the jurors.
8 Apparently, they've requested to take notes, and I'll
9 tell them they can't take notes. We do have five
10 smokers who apparently have been on the verge of
11 beating each other up in the jury room, so I have
12 expressed to them that now that we've started this
13 thing, that there will be more regular breaks and they
14 can go smoke. I literally had one juror one time
15 almost lose his mind one time because he was stuck in
16 a room, and I didn't realize he was a smoker. Okay.
17 You can bring them in.

18 (The jury enters at 2:27 p.m., and the
19 following is heard in the presence of the jury.)

20 THE COURT: We found her a seat actually in the
21 room; you are included now.

22 Ladies and gentlemen, two things. I know you
23 asked about notes. You cannot take notes. There is
24 some reasons for it. Some of them are logical, some
25 make no sense. At the end of this trial, when it is

SHARON RENEE HARDWICK - DIRECT EXAMINATION

1 all over, I'll come back and speak to you personally
2 off the record and explain it, but please don't take
3 notes.

4 I also understand there are five smokers, I was
5 told that by one juror. Now that we have started and
6 we can -- we have a little more of a schedule, we'll
7 give you all enough breaks so you are not climbing the
8 walls or beating each other. If you need a break for
9 any reason, raise your hand.

10 Ms. Livesay.

11 MS. LIVESAY: Thank you, Your Honor. At this
12 time the State calls Renee Hardwick to the stand.

13 (RENEE HARDWICK, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name.

16 WITNESS: Sharon Renee Hardwick, H-A-R-D-W-I-C-K.

17 DIRECT-EXAMINATION

18 BY MS. LIVESAY:

19 Q Where are you currently employed?

20 A Horry County 911.

21 Q How long have you been employed there?

22 A 25 years with 911.

23 Q What are your current responsibilities?

24 A I'm the deputy director overseeing the day-to-day
25 operations, equipment needs, problems, custodian of

SHARON RENEE HARDWICK - DIRECT EXAMINATION

1 records, over personnel.

2 Q Okay. And what was your position back in August
3 of 2013?

4 A I was deputy director then, too.

5 Q If you don't mind, tell the jury a little bit
6 about exactly what 911 does.

7 A Our responsibility is to answer emergency calls
8 that come in on 911 and 10 digit lines. Also we're
9 responsible to dispatching emergency assistance, first
10 responders, police, fire, EMS and any other needs.
11 We're there for the taxpayers, so.

12 Q Are those calls to 911 recorded?

13 A They are.

14 Q And how long does 911 keep the call? Is there a
15 certain retention time period?

16 A There is. By state law it is 60 days.

17 Q So the tape is kept for 60 days?

18 A Correct.

19 Q And are records kept about every call that is
20 made to 911?

21 A Any call for service that we send out response
22 for, yes. We enter them into a computer aided
23 dispatch, also known as a CAD system, but we do get
24 calls for information that we do not actually make
25 official records of.

SHARON RENEE HARDWICK - DIRECT EXAMINATION

1 Q Okay. So some calls come in, but they are not
2 considered emergency calls?

3 A Correct.

4 Q Now, how are the records kept at 911? Are they
5 kept in a way where they cannot be tampered with?

6 A Yes. Computer records are on servers that are
7 under security of the federal laws and regulation. We
8 don't have access to those servers to change any
9 document. We can add comments, but cannot take
10 anything out or change it.

11 Q How about the recordings, are they kept in a
12 fashion that they cannot be tampered with?

13 A They are on a server as well that our personnel
14 doesn't have access to. It's a closed network, so no
15 other network is in it.

16 Q So both the CAD report, which are the notes the
17 dispatcher is taking; is that correct?

18 A Yes.

19 Q And the calls are kept in such a form that they
20 cannot be tampered with?

21 A Correct.

22 Q Now, are you familiar with the fact that 911 was
23 called on August 11, 2013 for an Old Reaves Ferry Road?

24 A I am.

25 Q Have you heard that call?

SHARON RENEE HARDWICK - DIRECT EXAMINATION

1 A I have.

2 Q And to your knowledge, has that call been
3 tampered with in any form or fashion?

4 A No.

5 Q Have you seen the CAD report or the notes that
6 the dispatcher made about the call?

7 A I have.

8 Q And have those notes been tampered with in any
9 form or fashion?

10 A No. They are time stamped as well.

11 Q Okay. Now, I'll show you, first, what is marked
12 as State's Exhibit 3 and State's 4.

13 (State's Exhibits 3 and 4 marked.)

14 Q (MS. LIVESAY) Tell the Court do you recognize
15 what those are?

16 A Yes. This is labeled a UDT search, which is a
17 printout of our CAD system.

18 Q Yeah, you can open it up.

19 A And this is a CD that was provided upon a
20 request.

21 Q Yes, ma'am. Have you heard the call?

22 A I have.

23 Q Is that call a complete and accurate depiction of
24 the recording from that call?

25 A Yes.

SHARON RENEE HARDWICK - DIRECT EXAMINATION

1 MS. LIVESAY: Your Honor, at this time the State
2 moves to put State's evidence -- State's Exhibit 3 and
3 4 into evidence and publish it to the jury.

4 THE COURT: Any objection?

5 MR. MARTIN: No.

6 THE COURT: Without objection.

7 MS. LIVESAY: One second, Your Honor.

8 THE COURT: All right.

9 (State's Exhibits 3 and 4 admitted.)

10 Q (MS. LIVESAY) While we're getting that tape
11 cranked up, I have a couple more questions. Do you
12 know the defendant or her family in this case?

13 A I do know her parents.

14 Q Okay. And if you don't mind, how long have you
15 known her parents?

16 A Probably before I was a teenager.

17 Q Okay. Do you know them in any form or fashion
18 through your work?

19 A I do.

20 Q And how do you know them through your work?

21 A Mr. Causey was a state constable for many years,
22 and I started at the police department and knew him
23 from that -- or know him from that as well.

24 Q Okay. And so you know him through him being a
25 state constable?

SHARON RENEE HARDWICK - DIRECT EXAMINATION

1 A Yes.

2 Q So you worked with him through you being a
3 dispatcher and him being around the police department?

4 A Correct.

5 Q And would you say everybody at the police
6 department knows that 911 calls are recorded?

7 A Yes.

8 Q And the victim's family, David Sims, do you know
9 them?

10 A I do not.

11 Q Do you know the victim in any form or fashion?

12 A I do not.

13 (A brief pause in the proceedings.)

14 MS. LIVESAY: Your Honor, if you could give us
15 one second, we're having a little trouble pulling this
16 up.

17 THE COURT: Sure.

18 (A brief pause in the proceedings.)

19 (State's Exhibit 4 is published to the jury.)

20 Q (MS. LIVESAY) I'll show you State's Exhibit No.
21 3. Tell the jury again what that is.

22 A It's labeled "UDT Search." It is a printout of
23 the CAD, the information put into it that is date and
24 time stamped.

25 Q Does that indicate the notes that the dispatcher

SHARON RENEE HARDWICK - DIRECT EXAMINATION

1 took?

2 A Yes.

3 Q Is that an exact transcript of the copy?

4 A Of the notes that they put in, yes.

5 Q I'm sorry?

6 A It is not --

7 Q It is not a full transcript?

8 A It's the notes that they put in as they are
9 talking to the person on the phone.

10 Q So is that just kind of the highlights for them
11 to keep track of what is going on as the call is coming
12 in?

13 A Correct.

14 Q And about what time did that call come into 911?

15 A 6:13 p.m.

16 Q And what phone number did it come in from?

17 A (843) [REDACTED].

18 Q Is that a landline or cell phone?

19 A A landline.

20 Q Does it come in as to the address that that
21 landline belongs to?

22 A Yes.

23 Q What is the address that that landline belongs
24 to?

25 A [REDACTED] Old Reaves Ferry Road.

SHARON RENEE HARDWICK - CROSS-EXAMINATION

1 MS. LIVESAY: No further questions for this
2 witness.

CROSS-EXAMINATION

3
4 BY MR. MARTIN:

5 Q "CAD" stands for what?

6 A Computer Aided Dispatch.

7 Q Computer Aided Dispatch?

8 A Yes, sir.

9 Q Is one of those made in every case?

10 A Every call for service that we send assistance
11 for.

12 Q Okay. Now, did you at my request check your
13 records to see if there were any other calls?

14 A I did.

15 Q On the 11th, from that number?

16 A Yes, sir. I did. Sorry, I got ahead of you.

17 Q That's all right. And were there?

18 A No, sir.

19 Q And did you check for some cell phone numbers
20 that I asked you about?

21 A Yes, sir.

22 Q The cell phone number of Heather Sims or David
23 Sims?

24 A Yes, sir.

25 Q Was there any calls from the telephone of David

SHARON RENEE HARDWICK - CROSS-EXAMINATION

1 Sims or Heather Sims?

2 A No, sir.

3 Q That day, August 11?

4 A No, sir.. Correct.

5 Q You are the records custodian?

6 (Defendant's Exhibit 17 marked.)

7 Q (MR. MARTIN) I'll show you Defense Exhibit No.
8 17, and ask if you can identify that for me.

9 A Yes, sir. It is a detailed event, is the way it
10 is labeled, LPD, and there's a case number that follows
11 that, law enforcement, police department, 120731077131.
12 This is a narrative.

13 Q Is that a CAD report?

14 A It is a CAD report.

15 Q Okay. Just as there was a CAD report related to
16 the call of August 11th, 2013, without identifying
17 exactly what that is, is that a CAD report of a
18 previous call to 911?

19 A Yes, sir.

20 Q What is the date on that call?

21 A July 31, 2012, 9:08 p.m.

22 Q What telephone number?

23 MS. LIVESAY: Briefly, is this document into
24 evidence?

25 THE COURT: Not yet.

SHARON RENEE HARDWICK - CROSS-EXAMINATION

1 MR. MARTIN: I'm getting the identification, how
2 it is relevant.

3 Q (MR. MARTIN) What telephone number did it come
4 from?

5 A (843) [REDACTED].

6 Q Which is the same as the August 11th number
7 that the call came from?

8 A Yes, sir.

9 Q All right. Thank you. Now, just to be sure
10 we're clear about it, the CAD report is, in fact, just
11 the highlights of what is said, correct?

12 A Correct.

13 Q For example, we just listened to the 911 tape,
14 which was some 23 minutes long, and then State's
15 Exhibit No. 3 is the CAD report, which simply provides
16 some highlights of whatever was said during that call
17 by the caller?

18 A Correct.

19 Q Now, the other thing is you said that the 911
20 calls, the audio we just heard, are retained for only
21 60 days, by state law 60 days?

22 A Yes, sir.

23 Q Okay. Now, the call that was made on -- that you
24 described earlier, Defense for identification 17, dated
25 July 31st of '12, do you know whether there was an

SHARON RENEE HARDWICK - CROSS-EXAMINATION

1 audio of that call available at the time it was
2 requested?

3 A No, sir.

4 Q Do you know how long it would have been
5 available?

6 A I cannot tell you exactly because we're required
7 by law to keep them 60 days. Am I going to tell you it
8 is exactly 60 days? No, sir.

9 Q So my question to you would be, is it likely that
10 by August 11th of 2013 that the audio from the
11 July 31st, 2012 call would no longer have been viable
12 for us to get?

13 A Yes, sir, that is true.

14 Q That we could not get that audio?

15 A Correct.

16 MR. MARTIN: That is all I have.

17 THE COURT: Redirect?

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

19 THE COURT: Thank you. You may step down.

20 WITNESS: May I be excused?

21 THE COURT: Any objection to her being excused
22 from her subpoena?

23 MS. LIVESAY: None from the State.

24 MR. MARTIN: I want to have her available maybe
25 for later, but certainly not to stay here in the

TOM DELPERCIO - DIRECT EXAMINATION

1 courtroom.

2 THE COURT: Yeah, just make sure you are
3 available by 911.

4 MR. MARTIN: If that is a problem, we'll talk
5 about it.

6 WITNESS: No, sir.

7 THE COURT: Thank you, ma'am.

8 MS. LIVESAY: State calls Tom DelPercio to the
9 stand.

10 (State's Exhibits 5 through 18 marked.)

11 (TOM DELPERCIO, having been duly sworn,
12 testified as follows:)

13 DIRECT-EXAMINATION

14 BY MS. LIVESAY:

15 Q Where are you currently employed?

16 A Currently employed with the Horry County Police
17 Department.

18 Q Okay. And how long have you been employed with
19 the police department?

20 A 17 years.

21 Q What are your current responsibilities?

22 A Currently I'm the sergeant of the Major Crimes
23 Division, robbery/homicide unit.

24 Q What were your responsibilities in August of
25 2013?

TOM DeLPERCIO - DIRECT EXAMINATION

1 A Patrol sergeant for the north precinct of the
2 Horry County Police Department.

3 Q If you don't mind, tell this jury about what a
4 patrol sergeant does.

5 A We are responsible for supervising the patrol
6 officers in each precinct. I'm assigned to north
7 precinct. We're responsible for assisting them in
8 calls, supervising and directing them, management time
9 sheets, evaluations and other things.

10 Q I noticed today you are in a suit. In August of
11 2013, were you in a suit or were you wearing a uniform
12 at that time?

13 A I was in uniform patrol.

14 Q So you were in a marked vehicle?

15 A Yes, ma'am, Tahoe.

16 Q And did you have an occasion to respond to Old
17 Reaves Ferry Road on August 11, 2013?

18 A I did.

19 Q If you don't mind, tell this jury a little bit
20 about that.

21 A We received a call for service on August 11 for
22 the address on Old Reaves Ferry Road. I was the
23 closest responding unit at that time. Our shift
24 started at 17:45 hours, quarter to 6:00, approximately
25 30 minutes before this call came out. The north

TOM DeLPERCIO - DIRECT EXAMINATION

1 precinct incorporates areas from Highway 501 Business
2 and Highway 90, areas on Old Reaves Ferry, all the way
3 to Little River and out to portions of Myrtle Beach, is
4 where the north precinct corporate is, probably over
5 300 square miles.

6 My officers were spread out. I was the closest
7 to respond. I was in the Carolina Forest area,
8 responded to the call. When I arrived to the call, I
9 was met outside by Mr. Causey. We went into the back
10 door, entered through a back door that led kind of to
11 like a mud room between the kitchen and the master
12 bedroom, traveled to the left to the master bedroom.
13 At that point, I was facing the doorway into the
14 master bathroom, and I could see the deceased's feet,
15 stepped in. Ms. Causey's was -- Ms. Sims was
16 performing what appeared to be chest compressions on
17 the deceased.

18 Q Now, you came into the call, was it still
19 daylight?

20 A Yes, ma'am.

21 Q Still daylight. And you were greeted by who
22 first?

23 A Ronnie Causey.

24 Q Do you know Ronnie Causey?

25 A I'm an acquaintance of him through the police

TOM DELPERCIO - DIRECT EXAMINATION

1 department.

2 Q So you know him through your job?

3 A Yes, ma'am.

4 Q Through the police department?

5 A Yes, ma'am.

6 Q Did you see him at the police department?

7 A Yes, ma'am.

8 Q So you get to the house, then you immediately
9 come to the room, come inside through a back door or
10 side door --

11 A Back door off the carport, I believe.

12 Q Okay. When you come into the house, you turn
13 which direction, do you remember, right or left?

14 A Left.

15 Q And what room are you immediately in?

16 A Traveled a few feet through like a hall and
17 immediately in the master bedroom.

18 Q And then you went into what room?

19 A The on-suite or master bathroom.

20 Q So you come in from an outside door, and
21 immediately to the left you are in the master bedroom,
22 which has the master bathroom inside?

23 A Correct, after a few steps.

24 Q Okay. So you see -- as soon as you walk in to
25 the bathroom, what do you see?

TOM Delpercio - DIRECT EXAMINATION

1 A Immediately to my left, in front of a vanity, was
2 the deceased. His feet were facing towards me. He was
3 on his back. His left arm was laying outward, right
4 arm was over his head. He appeared to have what
5 appeared to be a paring knife laying partially in it.
6 Ms. Sims was doing what appeared to be chest
7 compressions, visibly upset. There was a 9-millimeter
8 Ruger handgun on the vanity directly in front of her.
9 I moved that for officer's safety. Tried to secure the
10 integrity of the scene the best I could. It was not
11 too far into that that EMS and one of the other
12 officers arrived.

13 At that point, Ms. Sims was escorted to get aid
14 for her -- whatever injuries she had. At that point,
15 I placed the gun back on the vanity, if memory serves,
16 and snapped some photographs. EMS entered to see if
17 they could render aid. After an initial examination,
18 it was confirmed that he was deceased.

19 Q Let me ask you this. How many scenes have you
20 gone to when someone is dead at the scene?

21 A At least -- at least 40, 50 scenes at that point.

22 Q Okay. Now, when you go in, tell this jury how
23 did the victim look when you walked in and saw him?

24 A The victim was ash in color, eyes were partially
25 opened, had some type of crustation or white film

TOM DELPERCIO - DIRECT EXAMINATION

1 around his mouth.

2 Q You say she's over on top of him doing chest
3 compressions?

4 A Yes, ma'am.

5 Q Now, is she pounding on his chest like this
6 (indicates)?

7 A The compressions at that point, when I walked in,
8 I estimated that they were not as vigorous as I
9 remember CPR training to be.

10 Q So she's over him, nonetheless?

11 A Yes, ma'am. She was kneeling almost against the
12 body, if not against the body, on top of the chest area
13 with her hands.

14 Q Now, you come in then, you then got her out of
15 the bathroom?

16 A Again, it's been a little while ago, but if
17 memory serves, I didn't immediately stop her from doing
18 CPR until I knew medical aid was on scene. You don't
19 have someone stop unless there is someone to take over
20 and start. At that point I also wanted her to get care
21 for her injuries. I wasn't sure of the seriousness of
22 the injuries at that time.

23 Q So you don't stop her, you wait until the medics
24 get there?

25 A Yes, ma'am, which I believe was less than a

TOM DELPERCIO - DIRECT EXAMINATION

1 minute. The call came in as one subject was shot and
2 the other had been stabbed, so at that point I wasn't
3 sure of the seriousness.

4 Q Once they get there, they take her out of the
5 room?

6 A I believe she was guided out into the bedroom
7 where Mr. Causey was and EMS were. I believe some EMS
8 started to treat her, and then Chief Thompson and
9 another EMS came in to look at the scene.

10 Q When the medic comes in, does he immediately jump
11 on the victim and start doing CPR?

12 A No. If memory serves, they didn't start CPR at
13 all. They hooked him up.

14 Q Did they do anything to treat him at the scene?

15 A The only thing I remember is hooking him up to an
16 electronic device to see if there was any signs of
17 life.

18 Q I'm sorry?

19 A They hooked him up to an electronic device, EKG
20 or EG, whatever they use, to see if there was any signs
21 of life, and at that point they said there wasn't any
22 signs.

23 Q So when they get there, they don't do any CPR,
24 they don't do any life-saving tactics?

25 A Not that I remember, no, ma'am. I believe it was

TOM Delpercio - DIRECT EXAMINATION

1 past that point.

2 Q So they just hooked some leads to him and see at
3 that point there is no activity?

4 A Yes, ma'am.

5 Q Now, you say you snapped some photographs; is
6 that correct?

7 A Yes, ma'am. That's correct.

8 Q Would you recognize the photographs I showed you?

9 A Yes, ma'am.

10 Q First of all, did you ever touch the knife?

11 A No.

12 Q Okay. Did you ever see while you were in
13 bathroom anybody touch the knife?

14 A No.

15 Q So when you come in and you take these
16 photographs, you're the first one there?

17 A Well, Ms. Sims was there in the room.

18 Q As far as law enforcement.

19 A Yes, I was the first one there, yes, ma'am.

20 Q And you are there making sure that nobody is
21 tampering with the scene?

22 A I spent several years in investigations before
23 going back to patrol as a supervisor. One of the
24 biggest things we're taught is the safety and integrity
25 of the scene, however so slight.

TOM DELPERCIO - DIRECT EXAMINATION

1 Q So you -- after being in investigation for
2 several years with the police department, you knew how
3 important it was to preserve the integrity of the
4 scene?

5 A Yes, ma'am. Absolutely.

6 Q Did you touch anything?

7 A I touched the gun, 9-millimeter gun.

8 Q Where did you move that?

9 A I initially moved that to the ledge behind the
10 tub where I could keep it away from anyone's reach.

11 Q Did you move it back to where you found it?

12 A I did.

13 Q Did you touch anything else?

14 A No, ma'am.

15 Q Did you wipe anything up?

16 A No, ma'am.

17 Q Did you add anything to this scene?

18 A No, ma'am.

19 Q Did you take anything away from the scene?

20 A No, ma'am.

21 Q Now, if I show you some pictures, could you
22 recognize these as the pictures from that night you
23 responded on April (sic) 11th of 2013?

24 A I believe so, yes.

25 Q If you don't mind, I'll show you these pictures.

TOM DELPERCIO - DIRECT EXAMINATION

1 For this court reporter, do you mind looking and
2 telling her what exhibit number it is and what it is a
3 picture of?

4 A Absolutely.

5 Q Thank you.

6 A First photo is Exhibit 5. It is an overall
7 picture of the master bedroom.

8 Q Is that the way it appeared on August the 11?

9 A I believe that is the way it appeared. Second
10 picture is Exhibit 6, and is the doorway into the
11 on-suite or master bathroom from the master bedroom.

12 Next picture is Exhibit 7, that is a picture of
13 the deceased victim in front of the vanity.

14 Next picture is Exhibit 8, that is a closer-up
15 picture of the vanity.

16 Exhibit 9, a closer picture of Mr. Sims.

17 Picture 10 is a close-up picture of Mr. Sims'
18 hand with the knife.

19 Picture 11 is another picture standing directly
20 over the top of Mr. Sims.

21 This is marked Picture 8, another picture
22 directly over Mr. Sims.

23 Next picture is marked -- let me make sure it
24 doesn't have an exhibit --

25 Q That is not one of her marks, I'm sorry.

TOM DeLPERCIO - DIRECT EXAMINATION

1 A Okay. Well, then when I said that one that is
2 Exhibit 18, I think.

3 Next is 12, picture of the left midsection of
4 Heather Sims.

5 No. 13 is an overall picture of Heather Sims on
6 the gurney before she left the incident location.

7 Exhibit 14 is an overall picture of the kitchen
8 of the house.

9 I believe that is 15, a picture of a lanyard on
10 top of the island counter that was located on the
11 floor at one time.

12 Picture 16 is a view of the knife block on top of
13 the kitchen counter in the kitchen.

14 Picture 17 is a closeup picture of the knife
15 block on the kitchen counter.

16 Q Is that how everything appeared that night?

17 A That is not in order, but that is the photos I
18 took.

19 MS. LIVESAY: We offer 5 through 18 into
20 evidence.

21 THE COURT: Any objection?

22 MR. MARTIN: Let me look at them.

23 (A brief pause in the proceedings.)

24 MR. MARTIN: Judge, can we approach one second?

25 THE COURT: Sure.

TOM DELPERCIO - DIRECT EXAMINATION

1 (Whereupon, a bench conference was had.)

2 THE COURT: For the record, I'll let you reserve
3 your objection until we take a break, and we'll put it
4 on the record then. With the objection reserved,
5 we'll allow you to.

6 MS. LIVESAY: Thank you, Your Honor.

7 Q (MS. LIVESAY) Mr. DelPercio, some of these
8 pictures are of the bedroom, some are of the bathroom,
9 some are of the kitchen; would you agree with that?

10 A Yes, ma'am.

11 Q Now -- and all of these pictures are accurate on
12 how it looked when you came in; is that correct?

13 A Yes, ma'am.

14 Q Did you see anything knocked over in that house
15 anywhere?

16 A No, ma'am. There was no signs of a struggle in
17 that residence.

18 Q Did you see anything even out of place in the
19 house?

20 A Other than the deceased, why we were called
21 there, no, ma'am.

22 Q Did you see anything in the bathroom broken,
23 knocked over, the mat pushed back, anything like that.

24 A Again, other than why we were there, there was no
25 other signs.

TOM DelPERCIO - DIRECT EXAMINATION

1 Q So other than him laid out dead, there was no
2 sign of an altercation?

3 A No, ma'am.

4 Q Okay. Now, Mr. DelPercio, if you don't mind,
5 we'll put these pictures up here so the jury can see
6 them. If you don't mind, I would like you to go
7 through these pictures with the jury and tell them what
8 they are a picture of.

9 A Yes, ma'am.

10 Q These are the same ones as these pictures, so
11 I'll look right along with you.

12 A That is the master bedroom as I entered from the
13 doorway of it.

14 Q Were those covers pulled back like that when you
15 showed up?

16 A I took that picture while I was there. I don't
17 believe anybody -- I don't know if someone....

18 Q So when you were there, one side, near the
19 cradle, those covers were pulled back like that?

20 A I'm not a hundred percent sure. I didn't pay
21 attention to the covers. That is how it was when I
22 took the picture, but that was after I initially went
23 in, and that was taken after Ms. Sims was removed to
24 the hospital.

25 Q So when you took this picture on August 11, that

TOM DELPERCIO - DIRECT EXAMINATION

1 is the way everything appeared?

2 A Yes, ma'am.

3 Q Now, tell the jury what are we looking at now?

4 A That is a picture from the entry just walking
5 into the master bedroom. Looking immediately to your
6 right, that is the master bathroom, and that is the
7 legs of Mr. Sims on the floor in the master bathroom.

8 Q Can you tell what that is in that white chair?

9 A It appears to be a remote control or cell phone
10 or cordless phone, I'm not sure which.

11 Q Can we look at the next picture, please? If you
12 don't mind, tell the jury what this is a picture of.

13 A That is a picture of David Sims in front of the
14 vanity. You can see a slight part of the doorway, that
15 is the doorway initially looking in. I had climbed up
16 on part of the tub to take an overall picture of the
17 scene.

18 Q Is that exactly how he appeared when you walked
19 in that night on August 11th?

20 A Yes, ma'am.

21 Q Had you moved or touched anything on the victim's
22 body?

23 A No, ma'am.

24 Q Now, what are we looking at in this picture?

25 A That is a picture of the vanity that Mr. Sims is

TOM DELPERCIO - DIRECT EXAMINATION

1 directly below that area.

2 Q Did you ever touch that cell phone sitting on the
3 vanity?

4 A No, ma'am.

5 Q Did you ever touch that charger for the cell
6 phone?

7 A No, ma'am.

8 Q Do you see another cell phone on the vanity other
9 than that one with the gray case?

10 A No, ma'am. That is an overall picture, or
11 concentrated on the upper portion of Mr. Sims.

12 Q When we're looking at this picture of Mr. Sims,
13 is that how you saw the knife in his hands?

14 A Yes, ma'am.

15 Q Was that blood on his hands when you got there?

16 A Yes, ma'am.

17 Q Is that blood on his chest?

18 A Yes, ma'am, it appears to be.

19 Q Did you see any other injury on him other than
20 the gunshot wound.

21 A No, ma'am. I didn't search the body, but, no,
22 ma'am.

23 Q So when you walked in, this is exactly how he
24 appeared?

25 A Absent Ms. Sims kneeling in front of him, but his

TOM DELPERCIO - DIRECT EXAMINATION

1 body was not moved.

2 Q If you look at this picture, do you see there is
3 a little -- looks like a wipe through the blood by his
4 hand?

5 A By the finger?

6 Q Uh-huh.

7 A Yes, ma'am.

8 Q Did you wipe anything?

9 A No, ma'am.

10 Q Did you touch anything around his hand?

11 A No, ma'am.

12 Q Did you move the knife closer or further away?

13 A No, ma'am.

14 Q Now, this is a picture of Mr. Sims' hand?

15 A That's correct, right hand.

16 Q Is that identically how it appeared the night you
17 saw him?

18 A Yes, ma'am, absolutely.

19 Q Do you see by his hand and thumb area it looks
20 like a smear on the blood?

21 A On the floor by his thumb, yes, ma'am.

22 Q Did you ever touch that, move his hand or wipe
23 anywhere around that?

24 A At no time did I touch the deceased at all.

25 Q So you never moved his hand?

TOM DeLPERCIO - DIRECT EXAMINATION

1 A No, ma'am.

2 Q Did you ever see his hand move while you were
3 there?

4 A No, ma'am.

5 Q Did you see EMS move his hand?

6 A No, ma'am.

7 Q Did you see anyone touch that knife?

8 A No, ma'am.

9 Q Whose foot is that on the knife?

10 A My foot above the knife, it is not on the knife.

11 The foot on the left I believe is that of Chief

12 Thompson with the fire department, and there is another

13 EMS worker. That is about the time they were checking

14 the leads.

15 Q Whose other foot is that?

16 A Chief Thompson's to the left, and mine over by
17 the knife.

18 Q So he is standing right there beside him?

19 A He is, there. I had placed my foot there to
20 protect the integrity of the scene so it would not get
21 moved.

22 Q So if you would have moved that knife or touched
23 it, he would have seen you?

24 A Yes, ma'am.

25 Q And did you ever actually put your foot on that

TOM DELPERCIO - DIRECT EXAMINATION

1 knife?

2 A No, ma'am. I did not make contact with it, I
3 just wanted to shield the barrier around it so no one
4 would get close to it and move it.

5 Q That is Chief Thompson standing right there
6 beside you?

7 A I believe that is his right foot, yes, ma'am.

8 Q Now, his left hand being straight out, did you
9 ever move his left hand?

10 A No, ma'am.

11 Q Did you ever move anything around him, shirt,
12 anything?

13 A No, ma'am.

14 Q And you see that blood on his shirt?

15 A Yes, ma'am.

16 Q Is that where she was pushing on his shirt, that
17 area?

18 A It was in that area. I don't know if she had
19 contact with the blood, but it was in that area.

20 Q When you showed up, was that blood already on his
21 chest like that?

22 A I believe it was, yes, ma'am.

23 Q She was standing over that particular area doing
24 CPR?

25 A Her knees were between his waistline and

TOM DeLPERCIO - DIRECT EXAMINATION

1 underarm.

2 Q Where were her hands?

3 A On his upper chest area.

4 Q And that blood was on that shirt? You didn't put
5 it there?

6 A No, ma'am, blood was on the shirt.

7 Q What is this a picture of?

8 A Ms. Sims was going to be transported to the
9 medical center. Again, from experience in
10 investigations, I wanted to get a picture of her wounds
11 as I had seen it, or as closely to the time I arrived,
12 get pictures of her. That is a picture of her left
13 abdomen area with what appears to be puncture marks.

14 Q Where was this taken?

15 A While she was on a gurney in the kitchen area
16 like between -- right after you leave the master area,
17 there is a like a hall with like a mud room and then
18 the kitchen area, and I believe she was in the gurney
19 right there in that area.

20 Q So she is still in her house?

21 A Yes, ma'am.

22 Q When you walked in, those were the clothes she
23 had on?

24 A Yes, ma'am.

25 Q When you walked in, you snapped a pictures of

TOM DELPERCIO - DIRECT EXAMINATION

1 this injury you saw?

2 A That picture was not taken until after she was
3 placed on the gurney just before getting ready to leave
4 for transport for EMS moments later, moments after I
5 arrived.

6 Q So she is in her house still on the gurney?

7 A Yes, ma'am.

8 Q And these are the clothes she had on?

9 A Yes, ma'am. That is an overall picture of Ms.
10 Sims on the gurney still inside her residence.

11 Q I'm looking around, that is in her house on the
12 gurney?

13 A Yes, ma'am.

14 Q You are taking a picture of just her as a whole?

15 A An overall picture of the victim (sic).

16 Q So you are taking a picture of her arms. Did you
17 see any injuries on her right arm while you were in the
18 house?

19 A At the time of the picture, the only injury I
20 observed was the one on her abdomen.

21 Q So that was the only one you thought was worthy
22 of taking a picture of?

23 A Yes, ma'am.

24 Q That was the most noticeable?

25 A Yes, ma'am.

TOM DELPERCIO - DIRECT EXAMINATION

1 Q Had she wiped her hands or washed her hands while
2 you were there?

3 A Not that I saw, but she was escorted out of the
4 bedroom for treatment, and I stayed in the other part
5 of the house for awhile taking pictures, but not that I
6 know of.

7 Q So these pictures -- this is her on the gurney in
8 her house before she is taken into the rescue squad?

9 A That's correct.

10 Q However her hands look now, that is an accurate
11 depiction of that night?

12 A Yes, ma'am.

13 Q At that time, you didn't even see any injuries on
14 her arm?

15 A I didn't notice any injuries of her arm, no,
16 ma'am.

17 Q Can we look at her hands a little closer? If we
18 can't -- that is the way her hands looked like when you
19 saw her?

20 A Yes, ma'am.

21 Q So do you see any noticeable blood on that hand?

22 A It doesn't appear to be, ma'am. I don't know if
23 it is a shadow or something in her palm or not.

24 MR. MARTIN: Judge, I'll object again to the
25 questioning of whether or not he saw that, unless he

TOM DELPERCIO - DIRECT EXAMINATION

1 knows.

2 THE COURT: Yeah, I think he just said he didn't
3 know.

4 MS. LIVESAY: He's describing what is in the
5 pictures.

6 THE COURT: You asked if it was blood. Ask him
7 if he knows whether or not. Do you know?

8 WITNESS: No, I do not, Your Honor.

9 THE COURT: Sustained.

10 MS. LIVESAY: Okay.

11 Q (MS. LIVESAY) Do you notice -- can you see her
12 arm?

13 A I can see her left arm.

14 Q Were you -- was there any bruising on the arm
15 that you saw?

16 A Not that I noticed.

17 Q Red marks?

18 A Again, not that I noticed.

19 Q So that is how she looked that night?

20 A Yes, ma'am.

21 Q And that hand is how her hand appeared that night
22 she's still in the house, right, on the gurney?

23 A Yes, ma'am.

24 Q Can we get a shot of her other arm? Okay. That
25 is her right arm?

TOM DELPERCIO - DIRECT EXAMINATION

1 A That is her right arm, yes, ma'am.

2 Q That is how it looked that night?

3 A Yes, ma'am.

4 Q And you took a picture of possibly whatever might
5 be on her arm or hand, or might not be there; is that
6 correct?

7 A I see what appears to be scratches or lacerations
8 on her right arm now. I don't remember seeing them
9 that night. I was just taking an overall of her.

10 Q Let me ask you this. If you had seen any other
11 injuries on her, would you have tried to document them
12 by taking a picture?

13 A Absolutely.

14 Q So you were trying to document, to the best of
15 your ability, the injuries you saw on her that night?

16 A Yes, ma'am.

17 MS. LIVESAY: Can we see the next picture?

18 Q (MS. LIVESAY) Is this the kitchen?

19 A The kitchen, yes, ma'am.

20 Q Is this picture taken that night?

21 A Yes, ma'am.

22 Q Did you see anything out of place in the kitchen,
23 anything unusual to you?

24 A It was -- I was made aware that there is a
25 lanyard. If you look to the left on the island, I was

TOM DELPERCIO - DIRECT EXAMINATION

1 made aware by somebody from fire and rescue -- I don't
2 remember who -- that that was picked up between the
3 island and the cabinet on the floor and laid there. So
4 I photographed that. And, also, I observed that the
5 knife block in the 11 o'clock position on the counter
6 next to what appeared to be a toaster oven had a knife
7 or two missing, and it appeared to be the same knives
8 that was in the deceased's hands.

9 MS. LIVESAY: Can we see the next picture,
10 please?

11 Q Is this the lanyard?

12 A That would be the lanyard that I was directed
13 that was picked up and moved.

14 Q That was the only thing you saw out of place in
15 the house?

16 A Yes, I never saw it on the floor. I took that
17 picture because I was told it was on the floor.

18 Q Had that lanyard been cut?

19 MR. MARTIN: Objection, unless he knows.

20 THE COURT: Ask if he knows. If he doesn't --

21 A Yeah, I have no knowledge if it was cut or not.

22 MS. LIVESAY: Okay.

23 Q (MS. LIVESAY) What are we looking at in this
24 picture?

25 A That is a further view a few feet back from the

TOM DELPERCIO - DIRECT EXAMINATION

1 knife block on the kitchen counter.

2 Q What is in that chair, do you know?

3 A Appears to be a diaper bag.

4 Q Can we see the next pictures? And how about
5 that?

6 A That is a close-up of the knife block. I noticed
7 that the knife in the bathroom appeared to be from the
8 missing slot where the paring knife would be in that
9 knife block, and I thought it would be important to
10 photograph that.

11 Q How many knives did you see in the bathroom?

12 A Just the one.

13 Q Now, do you know whether or not this kitchen had
14 a dishwasher?

15 A I don't -- I didn't see a dishwasher, but it was
16 a very nice kitchen, so I'm sure it did.

17 MS. LIVESAY: Can we go back one? Back one more.
18 Back one more.

19 Q This is the kitchen here. Do you see a
20 dishwasher in there? If you don't, it's okay.

21 A I don't know if it is a dishwasher up to the
22 right of the sink; I can't tell what it is.

23 Q You only saw one knife laying out in the
24 bathroom?

25 A Yes, ma'am.

TOM DELPERCIO - DIRECT EXAMINATION

1 Q Did you see a knife laying out anywhere in the
2 kitchen?

3 A No, ma'am.

4 Q If you had seen it laying out, would you have
5 taken a picture of it?

6 A Yes, ma'am.

7 Q So there were two knives missing from the knife
8 block; is that correct?

9 A That is correct.

10 Q You only saw one laying in the bathroom?

11 A Yes, ma'am.

12 Q And you didn't see another one laying out
13 anywhere else?

14 A No, ma'am.

15 Q Okay. Do you remember whether or not you saw
16 another cell phone laying out anywhere in the house?

17 A I don't ever remember seeing another cell phone,
18 and, again, I would have photographed it if I had.

19 Q So the only cell phone you remember seeing in the
20 house when you got there was the one phone sitting on
21 the vanity of the bathroom, that gray phone?

22 A That is correct.

23 Q And that is the only cell phone you remember
24 seeing that night?

25 A Yes, ma'am.

TOM DELPERCIO - DIRECT EXAMINATION

1 MS. LIVESAY: Can we turn the lights back on for
2 these people. Thank you.

3 Q (MS. LIVESAY) Now, that picture you took of the
4 defendant in the gurney, is that picture accurate of
5 how she appeared that night?

6 A Yes, ma'am.

7 Q And that picture of the victim laying in the
8 bathroom, is that picture accurate of how it looked
9 that night?

10 A Yes, ma'am.

11 Q And that picture of the knife in his hand, is
12 that accurate as how it looked that night?

13 A Yes, ma'am.

14 Q If you had seen any other wounds on her, other
15 than that little wound we saw and some light scratches
16 on her arm, would you have documented them?

17 A Yes, ma'am.

18 Q How did you know about this wound? Did she tell
19 you? Did you see it? How did that come about?

20 A I was advised through communications that she had
21 been stabbed. I don't remember if I asked her or she
22 showed me, but I knew she had a puncture wound.

23 Q I know her shirt was up to show you the puncture
24 wound?

25 A That's correct.

TOM DELPERCIO - DIRECT EXAMINATION

1 Q Did she indicate to you any other injuries on
2 her?

3 A No, ma'am, not that I remember -- no. She was
4 hysterical at the time.

5 Q You took those picture we just went through?

6 A Yes, ma'am.

7 Q Is that normal practice to try to snap pictures
8 when you first get there?

9 A Again, it's normal practice -- I've been a police
10 officer for 22 years, 17 with county police and spent
11 half of that time in investigations. A lot of times
12 scenes are compromised after people have been around.
13 When emergency medical services -- their main goal is
14 life saving, and sometimes scenes can get moved around
15 or whatever. So it was important to me, and common
16 practice, if I go to a major incident to try to
17 photograph before anyone got in there to mess with the
18 integrity of the scene.

19 Q So sometimes you put up police tape?

20 A That is correct.

21 Q And that is to protect the integrity of the
22 scene?

23 A Yes, ma'am.

24 Q And the scene, that is where you collect the
25 evidence?

TOM Delpercio - DIRECT EXAMINATION

1 A That is what the scene is. When we roll tape
2 out, we always go bigger than we need to, again, to
3 protect the integrity, so we can then work our way in
4 and collect the evidence we need to collect.

5 Q So you snapped -- those particular pictures, you
6 snapped to make sure you had, indeed, a picture of how
7 everyone looked when you first got there as the first
8 policeman on the scene?

9 A Yes, ma'am. Absolutely.

10 Q And those pictures you took of the bathroom and
11 things in the bathroom, that is what you deemed
12 important in this case to take pictures of?

13 A Yes. That is what I initially viewed when I came
14 in. I knew that once the suspect went to the hospital
15 and we had the scene secured, that CSI, the crime scene
16 investigator, would come in and do a more thorough
17 search, take more pictures and everything. That is
18 just an observation of what I saw and how it was when I
19 first arrived.

20 Q I know you said earlier when you showed up you
21 saw Ronnie Causey, and you knew Ronnie?

22 A Yes, ma'am.

23 Q When you walked into the bathroom and saw David
24 Sims laying there, did you know who David was?

25 A No, ma'am.

TOM DELPERCIO - DIRECT EXAMINATION

1 Q Did you know anybody in his family?

2 A No, ma'am.

3 Q When you were in the bathroom, Sergeant

4 DelPercio, I noticed there were pictures of the victim
5 and a picture of the vanity with the gun on it, and the
6 phone on it?

7 A Yes, ma'am. Yes, ma'am.

8 Q You noticed there was nothing really out of
9 place; is that correct?

10 A That is correct.

11 Q When you were in the bathroom, did you see any
12 sort of rag or towel with blood on it?

13 A No, ma'am.

14 Q If you had seen that, would you have taken a
15 picture of it?

16 A Yes, ma'am.

17 Q Did you see any kind of cloth that had blood on
18 it, that looked like it was used to wipe some blood off
19 of something?

20 A No, ma'am.

21 Q So you didn't see any kind of cloth or rag in
22 that bathroom with blood on it?

23 A No, ma'am.

24 Q You went into some of the other rooms in the
25 house; is that correct?

TOM DELPERCIO - DIRECT EXAMINATION

1 A I was in the kitchen area, the little hallway
2 room area, master bedroom, master bathroom.

3 Q So you stayed in that area closest to where he
4 was shoot?

5 A Yes, ma'am.

6 Q Okay. Did you see anywhere in that area a rag or
7 a cloth that had blood on it?

8 A No, ma'am.

9 Q If you had seen it, would you have taken a
10 picture of it?

11 A Yes, ma'am.

12 Q I noticed there was a picture of the entranceway
13 into the bathroom; do you remember that picture?

14 A Yes, ma'am.

15 Q And there was -- do you remember there was a
16 picture of the victim with a lot of blood around him?

17 A Yes, ma'am.

18 Q Do you remember whether or not there was blood on
19 that bathroom door?

20 A No, ma'am.

21 Q You don't remember, or --

22 A I don't remember.

23 Q Now, were you in here when we played the 911
24 tape?

25 A Yes, ma'am.

TOM DELPERCIO - DIRECT EXAMINATION

1 Q Did you see any pliers or a wrench anywhere
2 around that victim?

3 A I did not photograph it. If memory serves, there
4 was a pair of needle nose pliers on the back of the
5 toilet, if memory serves, but I never photographed it.

6 Q They were on the --

7 A On the tank lid of the toilet.

8 Q Could you see the toilet in those pictures we
9 looked at?

10 A No, ma'am.

11 Q So there is actually like a little wall between
12 the vanity and the toilet?

13 A Yeah. Probably four, five feet away towards his
14 head, towards the wall. I believe there is a little
15 privacy wall.

16 Q And the pliers were sitting on top of the tank?

17 A Yes, ma'am, that's correct.

18 Q Now, there was a vanity with the phone and the
19 gun?

20 A Yes, ma'am.

21 Q And the knife was in his hand?

22 A Yes, ma'am.

23 Q But the pliers were nowhere on that vanity?

24 A No, ma'am.

25 Q And they were nowhere on the floor around the

TOM DelPERCIO - DIRECT EXAMINATION

1 victim?

2 A No, ma'am.

3 Q They were on the other side of that privacy wall
4 on top of the toilet?

5 A On top of the tank lid of the toilet, yes, ma'am.

6 Q Now, Sergeant DelPercio, after you took the
7 pictures and you kind of secured the scene, did you do
8 anything else like collect any evidence and take any
9 evidence from the scene?

10 A No, ma'am. With the patrol division, that is not
11 our function. We lock it down and hold the integrity
12 and let the Crime Scene investigators do that.

13 Q So what you told this jury is everything you did
14 when you were out there as a sergeant of patrol?

15 A Up to that point, yes, ma'am.

16 Q Did you do anything else to further this
17 investigation? Did you participate any further after
18 August 11th?

19 A No, ma'am. You know, write an incident report,
20 stayed on scene to help with crowd control after the
21 investigators got there, but nothing directly with the
22 investigation.

23 Q What you told this jury, is what is in your
24 police report?

25 A Yes, ma'am.

TOM DELPERCIO - CROSS-EXAMINATION

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

2 THE COURT: Yes, sir.

3 MR. MARTIN: Can we pull those pictures back up
4 of the scene?

5 CROSS-EXAMINATION

6 BY MR. MARTIN:

7 Q All right. Now, Sergeant DelPercio, I have some
8 more questions for you, but I want to go over these
9 photographs first. First of all, are these pictures
10 that you are showing us here, are those all of the
11 photographs you took?

12 A I'm not sure if there is any others or not. I
13 believe there may be another picture I took, and I
14 didn't know if it was up there or not, but where the
15 medical leads were actually hooked to the victim, but I
16 don't -- this is the series of pictures that I took.

17 Q You are not sure whether there were any
18 additional ones or not?

19 A I don't believe -- no, sir, not sure.

20 Q Do you think there were?

21 A Without going back through the series, there may
22 have been one picture that I didn't see that I took
23 after EMS hooked the medical leads on Mr. Sims, an
24 overall picture of him with those on there.

25 Q Overall picture with him with the leads?

TOM DELPERCIO - CROSS-EXAMINATION

1 A Yes, sir.

2 Q You or no one else were in it --

3 A Just him, yes sir. I don't believe there were
4 any other pictures other than, and that maybe in this
5 series. I don't remember if I saw it or not.

6 Q We'll see. But you don't recall any other, other
7 than that one?

8 A No, sir.

9 Q And, of course, this is a picture as you walk in
10 to the bedroom from entering in the back door and
11 turning left and through the mud room?

12 A There is a short hall, and that is the bedroom
13 door, yes, sir.

14 Q If you notice, there is a nightstand over by the
15 bed, unmade bed, that there -- did you notice the
16 telephone receiver that was there?

17 A No, sir.

18 Q Didn't pay any attention, just snapped the
19 picture?

20 A Yes, sir. It is a technique called "Walking Into
21 The Scene," you take overall pictures.

22 Q Okay. Whose camera did you take these pictures
23 with?

24 A I believe it was Corporal Lee's camera. I
25 believe you can hear me ask for his camera on the 911

TOM DELPERCIO - CROSS-EXAMINATION

1 calls as we're entering the area, because my battery
2 was dead. We have CoolPix cameras.

3 Q So you didn't take these immediately upon getting
4 there, but soon after getting there?

5 A Yes, sir. Yes, sir.

6 Q And you arrived at 6:33, according to the time
7 log; do you think that is correct?

8 A That is approximately the time, yes, sir.

9 Q And of course Brandon Lee was not there; you were
10 the first one there?

11 A He was right there behind me.

12 Q Came in right behind you?

13 A Yes.

14 Q And right behind him came the EMS folks?

15 A I believe they were simultaneous, yes, sir.

16 MR. MARTIN: Give me the next pictures, please.

17 Q That is the scene that you see as you go into the
18 bathroom?

19 A Correct. These pictures were taken after I
20 already had been in the bathroom. These pictures were
21 taken after -- either while Ms. Sims was being treated,
22 or after she had left.

23 Q That is a good point. Just to be sure I'm clear,
24 this picture was taken well after you got there, maybe
25 after Ms. Sims went to the hospital?

TOM DELPERCIO - CROSS-EXAMINATION

1 A Yes, sir. Within minutes.

2 Q And the initial picture we just looked at was the
3 same, maybe?

4 A Absolutely. Yes, sir, that was after.

5 Q This is just showing what you walked into, so to
6 speak?

7 A Yes, sir.

8 Q Of course that chair to the right, there is a
9 telephone in it, correct?

10 A It appears to be, yes.

11 Q And we're looking straight through to the tub?

12 A That's correct.

13 Q Did you see the bullet hole in the tub?

14 A I did not.

15 Q You didn't see that?

16 A No, sir. Only thing I noticed about the tub is
17 that it did have water in it, I did notice that.

18 Q Tub did have water in it?

19 A Yes, sir.

20 Q Of course you have seen photographs of the bullet
21 hole in the tub since that time, I suppose, or maybe
22 not?

23 A I don't recall.

24 Q All right. But, anyway, you did not see it, but
25 that is a tub -- in other words, you walk straight into

TOM DELPERCIO - CROSS-EXAMINATION

1 the bathroom door from the bedroom, and if you keep on
2 walking straight, you walk into the tub?

3 A That's correct.

4 MR. MARTIN: Give me the next picture, please.

5 Q (MR. MARTIN) All right. And when was this
6 picture taken?

7 A I don't know if that one was taken after that
8 last one. There is a picture that is similar to this
9 one that I took when I first got there. After Ms. Sims
10 went out with EMS, I took pictures, and then I did a
11 series of pictures where I took another picture. I
12 don't know if this is the one after we went in, or the
13 first one I took. I believe this is going to be the
14 first one I took, because it doesn't have the medical
15 leads on his abdomen.

16 MR. MARTIN: So show me the next picture, please.

17 Q All right. There is a towel there on the right
18 of the vanity; is there not?

19 A It is either a towel or a tissue out of a box of
20 tissues. I can't tell what it is. It might be a
21 towel. A white object, looks like cloth or paper.

22 Q You didn't look at it while you were there?

23 A No, sir.

24 Q You didn't pick it up and examine it?

25 A No, sir.

TOM DELPERCIO - CROSS-EXAMINATION

1 Q Don't know if it had any blood on it or not?

2 A No, sir.

3 Q You took a picture of it anyway just by
4 happenstance? I guess it was laying there --

5 A I took an overall picture of the vanity, the cell
6 phone and the gun are to the left of the sink.

7 Q When you got there, you said that you came in,
8 and Ms. Sims was there on her knees?

9 A Correct.

10 Q And she was up against his body, so to speak?

11 A Kneeling along his side, yes, sir.

12 Q And she was doing some sort of compression,
13 although not as vigorous as you have seen earlier?

14 A As I remember my CPR training.

15 Q And she was clearly hysterical?

16 A She was upset, yes, sir.

17 Q In your words, hysterical?

18 A Yes, sir. Well, at the time I took the picture
19 on the gurney, yes, sir.

20 Q And when you came in, you talked about you moved
21 the gun?

22 A Yes, sir.

23 Q And the reason you moved the gun was what?

24 A Officer's safety.

25 Q What now?

TOM DELPERCIO - CROSS-EXAMINATION

1 A Officer safety and safety of all others in the
2 room.

3 Q And safety of you, from whom?

4 A Anybody. When I go to a crime scene, I don't
5 want anyone to have a loaded gun but the police.

6 Q Again, at that point, there is no one in the
7 bathroom but you?

8 A No, sir. When I arrived on the scene, Ms. Sims
9 was in front of Mr. Sims.

10 Q Did you move the gun before she got out of the
11 bathroom?

12 A Yes, sir.

13 Q And so you moved the gun, set it over by the tub?

14 A Set it on the ledge of the tub, yes, sir.

15 Q Ledge of the tub?

16 A Uh-huh.

17 Q And do you remember thinking that you took some
18 pictures while that gun was moved, and then took more
19 after you moved it back?

20 A I believe that I was confused from my report. I
21 believe in my report I stated I took overall pictures,
22 and after that I said I moved the gun, but I believe
23 what that was is I moved the gun when I first went in
24 for officer safety. I didn't take any pictures until
25 Ms. Sims left. As soon as she left with EMS outside of

TOM DELPERCIO - CROSS-EXAMINATION

1 the room, before they tried to work on him, I placed
2 the gun exactly where it was, and took an overall
3 photograph.

4 Q And we'll talk about your report in a minute,
5 but, again, what I'm asking you now is, do you have a
6 recollection whether you took any pictures with the gun
7 moved over to the tub, or not?

8 A I don't believe so.

9 Q You don't think you did?

10 A I don't think I took any pictures.

11 Q If you put it in your report that you did, that
12 was just a mistake?

13 A Yes, sir. When you wrote the report after an
14 incident like this, you type about all the details and
15 change these. On the computer, I failed to move that
16 line where it needed to be.

17 Q I mean, no problem, but sometimes people make
18 mistakes about exactly what happened or what they saw
19 or did, don't they?

20 A Mistakes are made. I'm a hundred percent sure of
21 this incident.

22 Q That having been said --

23 MR. MARTIN: Go to the next picture, please.

24 Q (MR. MARTIN) All right. Now, you see, as Ms.
25 Livesay pointed out to you appeared, there appear to

TOM DELPERCIO - CROSS-EXAMINATION

1 be some smudges around his hand, right?

2 A Yes, sir.

3 Q Now, that knife there, is that knife on the
4 floor?

5 A I believe the tip where the blade is on the floor
6 and the handle is resting on his forefinger, cradled in
7 his forefinger.

8 Q So if I said that knife is in his hand, I might
9 well be correct?

10 A Yes, sir.

11 Q If I say that knife is on the floor, that
12 wouldn't be incorrect, would it?

13 A No, sir.

14 Q All right.

15 MR. MARTIN: Next picture, please. Next picture,
16 please.

17 Q (MR. MARTIN) All right. Now, you say you never
18 moved the knife?

19 A I never moved the knife.

20 Q Why did you move the gun, but never moved the
21 knife?

22 A Because the gun was a threat to me right there.
23 She was doing compressions there. If she would have
24 reached for that knife -- he was obviously deceased.
25 If she would have reached for the knife, I didn't

TOM DELPERCIO - CROSS-EXAMINATION

1 consider that to be an officer threat as I did the gun.

2 Q And I'm not saying you did, but I'm thinking my
3 way through this. The reason you do it for officer
4 safety, there is a gun and a knife, and you clearly say
5 you moved the gun for officer safety. Would it have
6 been reasonable if you also would have removed the
7 knife for officer safety?

8 A No, sir. At that point, being the only officer
9 there, I weighed that the integrity of that scene and
10 evidence was more important than the safety. I didn't
11 feel the knife was a threat to me.

12 Q Not to argue, but in reality, there was no one
13 threatening you with a gun either, was there?

14 A Nobody gave me a threat directly to me, sir, but.

15 Q She was hysterical. Her daddy was in the other
16 room. You got her immediately out. I think what you
17 did is probably right, I'm not saying that, but I guess
18 what you are saying is if you have two weapons there,
19 if someone wanted to assault you, they could have done
20 it with a gun or the knife?

21 A You can be assaulted with anything, yes, sir.

22 Q Right. You say you have your foot over it, but
23 not on it?

24 A That's correct.

25 Q It looks like it is on it; are you sure?

TOM DELPERCIO - CROSS-EXAMINATION

1 A I'm a hundred percent sure.

2 Q How are you one hundred percent sure?

3 A I did it purposely to protect the integrity. If
4 I would have put my boot on top of the blade, it would
5 have messed up the integrity of the scene.

6 Q From who did you do it to protect the integrity
7 of the scene from?

8 A EMS was in there attempting to see if there was
9 signs of life. I didn't want anyone to get towards
10 that area. I was shielding that area with my foot.

11 Q Did you stay there and keep your foot in that
12 position the entire time the EMS people were there?

13 A I don't know about the entire time they were in
14 the room, but until they were done dealing with the
15 deceased, yes, sir.

16 Q How long was that?

17 A Minute, minute-and-a-half, if that.

18 Q Let's think about this. You are saying that EMS
19 people were only in there for a minute?

20 A No, sir. I said from the time they came up and
21 hooked up the leads to him and showed there was no
22 signs of life, however long that took, I stood like
23 that.

24 Q Any leads hooked up to him in this picture?

25 A I can't see the other half of the body. Not that

TOM DELPERCIO - CROSS-EXAMINATION

1 I see in this picture, no, sir.

2 Q That is Philip -- I mean EMS sergeant -- and
3 might not be sergeant -- but Chief Thompson with EMS,
4 that is his shoe?

5 A I believe that is his tennis shoe.

6 Q Looks like he is standing in some of the blood
7 scene, too. There wasn't a weapon there, but, again,
8 you see that area in that picture by Mr. Sims, in his
9 armpit there, in his left -- left arm?

10 A Yes, sir.

11 Q That looks like it's been run through or smudged
12 or wiped?

13 A There appears to be blood smear, yes, sir.

14 Q Just like the one by his right hand, right?

15 A Appears to be smudges.

16 Q Of course, again, when you came in, Heather Sims
17 was on her knees by him trying to help him, it
18 appeared, didn't it?

19 A She was on her knees where the blood smear is
20 under his left arm, yes, sir.

21 Q Of course she was there 23 minutes waiting on you
22 to come; we know that, don't we?

23 A Yes, sir.

24 Q So she probably moved around in there a good bit,
25 didn't she?

TOM DELPERCIO - CROSS-EXAMINATION

1 A Can't testify to what she was doing.

2 Q But suffice it to say --

3 MR. MARTIN: Give me the next picture, please.

4 A There is a lead attached to his lower abdomen in
5 that picture.

6 Q (MR. MARTIN) In that picture, yeah. You took
7 these pictures obviously over some minutes?

8 A Moments, yes, sir.

9 Q Maybe 10 minutes or so while this was going on?

10 A I don't recall the exact time.

11 MR. MARTIN: Next picture, please. Back up.

12 Back up to the other one for a minute.

13 Q (MR. MARTIN) All right. Do you see the area
14 there around Mr. Sims' left forearm?

15 A Do I see the area.

16 Q Let me point out what I'm pointing out to be sure
17 what you see. You see this area right in here
18 (indicates)?

19 A Yes, sir.

20 Q It looks like there is some sort of wipe or
21 something gone through the blood that had splattered
22 there?

23 A It appears so.

24 MR. MARTIN: The next picture, please.

25 Q (MR. MARTIN) So you said about -- I guess to

TOM DELPERCIO - CROSS-EXAMINATION

1 document what wounds you saw?

2 A That's correct.

3 Q How many wounds do you see there?

4 A Appears to be two.

5 Q Where is the second?

6 A Appears to be a small puncture wound 2 inches to
7 the right.

8 Q Where? Let me go up there and you show me where
9 it is at. (Indicates)

10 A Move your hand more. Go right. Right. Up.
11 Right there.

12 Q That is what you are talking about (indicates)?

13 A Yes, sir.

14 Q Do you see any other wound?

15 A Other than the one to the left of that one, no,
16 sir.

17 Q And of course you are not telling me -- you
18 didn't examine to determine whether that was a wound,
19 stab wound, or not, did you?

20 A No, sir. It appeared that they were small
21 puncture or scratches. I know that is where she said
22 she was stabbed.

23 Q In the lower left abdomen?

24 A Right.

25 Q She didn't say how many times she was stabbed,

TOM DELPERCIO - CROSS-EXAMINATION

1 did she?

2 A No, sir.

3 MR. MARTIN: Show me the next picture, please.

4 Now, blow that one up a little bit.

5 MS. POP: What area of focus, sir?

6 MR. MARTIN: Right arm.

7 Q (MR. MARTIN) When you testified earlier, you
8 said you didn't see any other cuts or scratches on her
9 other than the ones on the stomach?

10 A Not until the picture was up, no, sir.

11 Q What that tells me is you don't recall them, but
12 they were there, weren't they?

13 A Yes, sir.

14 Q Clearly, they are there?

15 A Yes, sir. Absolutely.

16 Q Of course that day you didn't -- you didn't see
17 them that night, but they happened to show up in your
18 picture?

19 A Yes, sir. I didn't see them that night.

20 Q All right.

21 MR. MARTIN: The next one.

22 Q (MR. MARTIN) The lanyard there, someone told you
23 they picked it off the floor and put it up there?

24 A That's correct.

25 Q And so you took a picture?

TOM DELPERCIO - CROSS-EXAMINATION

1 A Yes, sir.

2 Q You didn't take a picture of everything in the
3 house. Did you take any pictures of the outside of the
4 house?

5 A I think there was one picture off the porch going
6 in the back door, but I didn't see that in the series.

7 Q All right.

8 MR. MARTIN: Give me the next picture. Next one
9 -- wait, back up.

10 Q (MR. MARTIN) See those baby bottles?

11 A I do, sir.

12 Q Do you see where it is still wet, appears it may
13 be paper towel that is wet or whatever?

14 A Yes, sir. Appears that way.

15 MR. MARTIN: Next picture.

16 MS. POP: That is the last one.

17 MR. MARTIN: Start over for me. I have one other
18 -- hold right there. Thank you. Thank you.

19 Q (MR. MARTIN) Ms. Livesay asked you if there was
20 a rug or something pushed up or out of the way. Was
21 there a rug in that bathroom to be pushed up or out of
22 the way?

23 A Not that I remember, sir.

24 Q Do you see anything there in that bathroom such
25 as a plant, a chair, stool, anything that there is to

TOM DELPERCIO - CROSS-EXAMINATION

1 be pushed over or knocked over in the event of a
2 struggle?

3 A Not in that photograph, no.

4 Q Ain't nothing there, is there?

5 A Again, not in that photograph.

6 Q So why are we focusing whether or not there was
7 any signs of a struggle by things being knocked over
8 and pushed over if there is nothing there to be knocked
9 over or pushed over? Do you know the answer to that?

10 A No, sir.

11 Q Now, that is the commode we see in the
12 background?

13 A That's correct.

14 Q And you say there were pliers there on that lid
15 on the back of the commode?

16 A Yes, sir. I believe there was a set of needle
17 nose pliers.

18 Q But you didn't take a picture?

19 A No, sir.

20 Q So you didn't take a picture of everything that
21 was relevant to the case?

22 A At that time, I didn't think the pliers were
23 relative to the case.

24 Q If you didn't think they were relevant at the
25 time, there is no need to take a picture?

TOM DELPERCIO - CROSS-EXAMINATION

1 A That's correct.

2 Q Why did you think they weren't relevant, just out
3 of curiosity?

4 A At that time?

5 Q Uh-huh.

6 A Because they were there as if they were repairing
7 the toilet or fixing something on the back of the
8 toilet. They were several feet away from the deceased.
9 They never came into play while I was there.

10 Q And of course the wall you are describing is the
11 wall we see there literally between the toilet and the
12 vanity?

13 A That's correct.

14 Q It doesn't protrude out in any particular
15 fashion?

16 A No, sir.

17 MR. MARTIN: That is all I have for pictures,
18 thank you. We can turn the lights back on.

19 Q (MR. MARTIN) Now, to back up with you, Sergeant
20 DelPercio. I am curious, there was no one closer to
21 that house than you that night? I'm assuming there
22 wasn't, or they would have gone?

23 A Yes, sir. I was in Carolina Forest.

24 Q Carolina Forest.

25 A That area is about the furthest area out of the

TOM DELPERCIO - CROSS-EXAMINATION

1 north precinct, outer edge of the north precinct.

2 Q I'll show you what is marked for defense
3 identification --

4 MS. LIVESAY: Can I look at that?

5 THE COURT: If you would show it to her.

6 MS. LIVESAY: Okay.

7 Q (MR. MARTIN) It was marked for identification as
8 Defendant's 16, and ask if you can identify that?

9 A Yes, sir. It appears to be a picture of Mr.
10 Sims.

11 Q And who?

12 A Appears to be Chief Thompson.

13 Q Who would have taken that picture?

14 A Me, sir.

15 Q You don't recall taking that picture?

16 A No, sir.

17 Q You are not trying to trick us, just hard to know
18 it all.

19 A Yes, sir.

20 Q So the fact that you don't remember it, that
21 doesn't mean you are lying to us, does it?

22 A No, sir.

23 Q Does that accurately depict what you observed
24 Chief doing and standing there that day?

25 A Yes, sir.

TOM DELPERCIO - CROSS-EXAMINATION

1 Q Now, let's go back a moment. Let me show you....

2 (Defendant's Exhibit 18 marked.)

3 Q (MR. MARTIN) I'll show you what is marked for
4 identification Defendant's 18.

5 A A copy of my incident report from that evening.

6 Q When did you do that?

7 A Sometime that night shift following this initial
8 event.

9 Q This has a time on it, doesn't it?

10 A It occurred --

11 Q Date entered -- or what is that? Right up here.

12 A Yes, sir. Appears to be -- oh, my glasses --

13 3:43 or 2:43 a.m.

14 Q You don't have your glasses?

15 A No, sir. 3:43.

16 Q 8/12, so that would have been -- this happened on
17 the 11th about 6 o'clock?

18 A So about half way through my shift, that same
19 shift.

20 Q Early morning hours of the next --

21 A Yes, sir.

22 Q Look through that with me, or just look through
23 it yourself for a moment, because I want to ask you
24 again about the photographs that you took.

25 A Yes, sir.

TOM DELPERCIO - CROSS-EXAMINATION

1 MS. LIVESAY: Is that in evidence, or are we just
2 going to --

3 MR. MARTIN: I'm going to let him review it and
4 then ask him about it.

5 THE COURT: You are going to have him identify
6 it?

7 MR. MARTIN: Yeah -- well, he's already
8 identified it.

9 Q (MR. MARTIN) Identify it for us.

10 A This is a copy of the incident report I wrote.

11 MR. MARTIN: Defendant's 18 for identification.

12 Q And, again, it's --

13 A Copy of the incident report.

14 Q All right. And does it not say in here that you
15 went in and that you observed the scene, and that you
16 moved the gun and you took some pictures?

17 A Yes, sir.

18 Q And then that you put the gun back, and you took
19 more pictures?

20 A Yes, sir. Would you like me to explain that?

21 Q Yeah.

22 A In preparing this report, you type the details of
23 what you remember and then you -- it is on a computer.
24 You move stuff around. I initially moved the gun for
25 officer safety before I took pictures. When I was

TOM DELPERCIO - CROSS-EXAMINATION

1 creating my report, I remember taking pictures, typed
2 that in, and then moved on to moving the gun and
3 whatever else, and then again I put I photographed the
4 scene. I can only say it is an error in my report that
5 I put I photographed before I removed the gun.

6 Q This is the official police report?

7 A Yes, sir.

8 Q And it clearly reads that you moved the gun and
9 took the first photographs or pictures?

10 A That's correct.

11 Q And then that you moved the gun back, and you
12 took more pictures, right?

13 A Yes, sir.

14 Q The fact of the matter is, we don't have those
15 pictures or we don't have any pictures that were taken
16 when the gun was moved, do we?

17 A I don't believe there is any pictures to have.

18 Q None to have even though your report says there
19 is?

20 A I believe I failed to move that line down
21 underneath the moving of the gun.

22 Q Do you remember talking to me over at the
23 Solicitor's Office on September 23, 2014?

24 A Yes, sir. We had a meeting, yes,, sir.

25 Q Do you remember telling me the same thing you did

TOM DELPERCIO - CROSS-EXAMINATION

1 then, the same thing that you put into your report
2 about having taken pictures -- initial pictures with
3 the gun moved, and then putting it back and taking more
4 pictures, which we have? Do you remember telling me
5 that is what happened?

6 A I remember telling you I would look to see if
7 there was any photographs with the gun moved, and upon
8 reviewing that and rereading the report, I don't
9 believe that there is any pictures to find. I believe
10 it was an error in my report.

11 Q So I agree what you told me at the time is I'll
12 go back and look for those pictures, right?

13 A Yes, sir.

14 Q You didn't tell me at that time it was a typo or
15 typing problem or some deal with the computer that was
16 the problem, it was you would go back and see if you
17 could find those pictures?

18 A That's correct.

19 Q How long did you stay there that night? Do you
20 remember what time you left the Sims' house that night?

21 A It was late. I know we stayed to help control
22 the media and the crowd and things like that. Probably
23 somewhere between 10:00 and 11 o'clock I left to go
24 back on patrol duties. And then I guess after
25 everything slowed down is when I headed back to the

TOM DeLPERCIO - CROSS-EXAMINATION

1 precinct to type the report.

2 Q Are there any other pictures that you took that
3 you haven't told me about?

4 A I'm not aware of any that I haven't told you
5 about. Any ones I haven't told you about, I didn't
6 realize I took, sir.

7 Q Is it possible that you took some more pictures
8 that you -- that haven't been introduced today or that
9 you didn't tell me about?

10 A There may be more overall shots. I don't know.
11 I don't have all the pictures. It is possible, yes,
12 sir.

13 Q Is it very possible?

14 A I'll just say it is possible.

15 MR. MARTIN: That is all I have.

16 MS. LIVESAY: Redirect, Your Honor.

17 THE COURT: All right.

18 REDIRECT-EXAMINATION

19 BY MS. LIVESAY:

20 Q Do you remember meeting with Morgan at the
21 Solicitor's Office?

22 A Yes, ma'am.

23 Q He called you?

24 A Yes, ma'am.

25 Q And he asked to meet with you?

TOM DELPERCIO - CROSS-EXAMINATION

1 A Yes, ma'am.

2 Q Did you meet with him?

3 A Yes, ma'am.

4 Q Did you go through the report with him?

5 A Yes, ma'am.

6 Q Did you tell him then what you are telling us
7 today?

8 A Yes, ma'am.

9 Q You documented in that report that you moved the
10 gun; is that correct?

11 A That's correct.

12 Q If you had moved the knife, would you have
13 documented that in the report?

14 A Yes, ma'am, absolutely.

15 Q And why did you move the gun?

16 A At the time it was a threat to everybody there.

17 Q And then you moved it back?

18 A Yes, ma'am, when everybody was out, I went out
19 back.

20 Q That was documented in your report?

21 A Yes, ma'am.

22 Q In the report you wrote -- what was it -- on the
23 12th at 2:50 something in the morning?

24 A 2:50 or 3:50. I believe it was 3:50 -- 2:50, I'm
25 sorry.

TOM DELPERCIO - CROSS-EXAMINATION

1 Q That is the report that Morgan Martin just showed
2 you?

3 A Yes, ma'am.

4 Q Have you ever documented that you moved the
5 knife?

6 A No, ma'am.

7 Q Did you ever move the knife?

8 A No, ma'am.

9 Q If you moved it, would you have documented it?

10 A Yes, ma'am.

11 Q Now, he asked you some pictures about the
12 bathroom; do you remember that?

13 A Yes, ma'am.

14 Q And he asked you about a picture, particularly
15 about the knife in the victim's hand, could that be in
16 his hand, could that be considered on the floor; do
17 remember that?

18 A Yes, ma'am.

19 Q I'm showing you State's evidence No. 9?

20 A Yes, ma'am.

21 Q And we won't turn the projector on. It is too
22 late to turn the lights off. I'm showing the picture
23 now to the jury. Would you consider this knife inches
24 from the victim?

25 A No.

TOM DELPERCIO - CROSS-EXAMINATION

1 Q Okay. So under no circumstances is it inches
2 from the victim?

3 A It is making contact with the victim.

4 Q Okay. Now, you said earlier that she was
5 hysterical; do you remember that?

6 A Yes, ma'am.

7 Q And you said you knew her daddy from the police
8 department?

9 A That's correct.

10 Q You had seen him inside the police department
11 working --

12 MR. MARTIN: Objection. I'm going to object at
13 this time to the relevance of the line of questions
14 about her daddy.

15 MS. LIVESAY: He's already answered he saw him in
16 the police department.

17 MR. MARTIN: Let me finish. I object to this
18 question, and I will object to further questions and
19 ask that those already asked be stricken from the
20 record related to that this officer knows her daddy,
21 Ronnie Causey, and had he seen him around the police
22 department as being irrelevant to this case.

23 THE COURT: All right. Ladies and gentlemen,
24 I'll send you out. You have been sitting here for
25 awhile. Please don't discuss this case, and we'll

TOM DELPERCIO - CROSS-EXAMINATION

1 bring you back in as soon as we finish it, but it will
2 be long enough for you to go outside and stretch.

3 (The jury exits at 4:20 p.m., and the
4 following is heard out of the presence of the jury.)

5 THE COURT: All right. Okay. Your question is
6 you have seen him around -- have you seen him around?

7 MS. LIVESAY: Your Honor, all I'm trying to clear
8 up is how he knows Ronnie Causey. He already
9 answered -- Renee Hardwick put on that he's a state
10 constable. He said that in the 911 tape. Tom
11 DelPercio already said, yes, I know him, seen him in
12 the police department. It is very relevant because
13 she and him are in there wiping down the scene, which
14 makes it very relevant. It also is relevant as to
15 bias. Mr. Martin is trying to make it look like this
16 man moved the knife or done something to manipulate
17 the scene, when the truth is he is a friend of her
18 dad. He has no reason to manipulate the scene; if
19 anything, he's erring on their side.

20 THE COURT: Instead of -- just ask him if he
21 knows him.

22 MS. LIVESAY: If he knows him, and how he knows
23 him?

24 THE COURT: And how. You were asking about
25 walking around, it is just a way -- so overruled.

TOM DELPERCIO - CROSS-EXAMINATION

1 I'll allow her to ask how he knows, but -- if he knows
2 him and how he knows him, and that should be a quick
3 answer.

4 MR. MARTIN: The relevance of it is, what?

5 MS. LIVESAY: What did you say?

6 MR. MARTIN: The relevance of it is, what?

7 MS. LIVESAY: What?

8 MR. MARTIN: The relevance.

9 MS. LIVESAY: I think it always comes into play,
10 A, as to bias. This man knows Ronnie Causey. He
11 doesn't know the victim's family. Mr. Martin is
12 trying to make it look like this man moved the knife
13 or manipulated the scene. If anything, this man is
14 friends with this family. He has no reason to
15 manipulate the scene. He is erring on their side.

16 Second, the relevance is that she's in there
17 wiping down the crime scene, and he sees it. He never
18 mentions one word to this officer, hey, look, I just
19 want you to know, here is a rag, this was wiped down,
20 this has gone on. Ironically, that is left out.

21 THE COURT: All you can do is ask him -- I mean,
22 it is a factual issue, did you know this man.

23 MS. LIVESAY: Yes.

24 THE COURT: That's it. Ask that, and that is it.
25 Take a break.

TOM DELPERCIO - REDIRECT EXAMINATION (CONT.)

1 (A recess was taken.)

2 THE COURT: Have a seat. Have a seat. You can
3 bring them in.

4 (The jury enters at 4:47 p.m., and the
5 following is heard in the presence of the jury.)

6 THE COURT: You can continue.

7 REDIRECT-EXAMINATION (CONT.)

8 BY MS. LIVESAY:

9 Q Sergeant DelPercio, I asked you earlier do you
10 know Heather Causey? Do you know her dad, Ronnie
11 Causey?

12 A Yes.

13 Q How do you know him?

14 A Through the Horry County Police Department.

15 Q When you got to the scene, did you recognize him?

16 A Yes.

17 Q When you got to the scene -- I already asked you
18 one time, but I'll make sure I'm clear -- did you see
19 any kind of rag with blood on it?

20 A No, ma'am.

21 Q And if you had seen it, would you have documented
22 it?

23 A Yes, ma'am.

24 Q Did anybody, when you arrived, Ronnie or Heather,
25 I know she was hysterical, did they mention to you the

TOM DELPERCIO - REDIRECT EXAMINATION (CONT.)

1 fact that --

2 MR. MARTIN: Objection. This line of questioning
3 has been handled on direct and cross. It is not
4 proper on redirect.

5 THE COURT: Sustained.

6 Q (MS. LIVESAY) Sergeant DelPercio, when you came
7 in the house, you already knew Ronnie. You come in --

8 MR. MARTIN: Objection. Asked and answered.

9 MS. LIVESAY: I haven't even asked the question.

10 THE COURT: Let her ask the question first.

11 MS. LIVESAY: Thank you, Judge.

12 Q (MS. LIVESAY) You walk in, did anybody mention
13 or tell you that something had been wiped down in the
14 house?

15 MR. MARTIN: Objection, same question.

16 THE COURT: It is the same question. I mean, it
17 is probably not proper for redirect.

18 Q (MS. LIVESAY) Did you document whether or not
19 anything had been wiped down in the house before you
20 got there?

21 MR. MARTIN: Objection.

22 THE COURT: Wait a minute. Before he got there?

23 MS. LIVESAY: Yes. Was it documented in his
24 report that anything had been wiped down.

25 THE COURT: That is okay, because of the

TOM DELPERCIO - REDIRECT EXAMINATION (CONT.)

1 question, but lightly.

2 MS. LIVESAY: We've shown him the report.

3 THE COURT: Right. You can ask that.

4 Q (MS. LIVESAY) Did you document in your report
5 that somebody had told you something had been wiped
6 down in that bathroom?

7 A No, ma'am.

8 Q If you had been made aware of that, would it have
9 been documented in your report?

10 MR. MARTIN: Objection, calls for speculation.

11 MS. LIVESAY: Speculation.

12 MR. MARTIN: What would you have done,
13 speculation.

14 THE COURT: Her question was if he had been told,
15 would he have put it in there; that is overruled.

16 MS. LIVESAY: Yes. Thank you.

17 THE COURT: You can ask him -- to be honest with
18 you, ask him if it was in there, you can ask him if he
19 would have put it in there if he was told, and let's
20 move on.

21 MS. LIVESAY: It is just a follow up on the fact
22 he's seen the report.

23 THE COURT: I understand.

24 Q (MS. LIVESAY) If you had been made aware of
25 that, is that something you would have documented in

TOM DeLPERCIO - REDIRECT EXAMINATION (CONT.)

1 your report?

2 A Yes, ma'am.

3 Q Did you document that in your report?

4 A No, ma'am.

5 Q Did you document the fact that anything had been
6 wiped down in the house?

7 A No, ma'am.

8 Q Did you take a picture of a bloody rag?

9 A No, ma'am.

10 Q Did you document whether or not one was --

11 MR. MARTIN: Objection. Again, I object to this
12 line of questioning, asked and answered on direct and
13 improper for redirect examination.

14 THE COURT: I'll give you a little leeway, both a
15 little leeway, but this is redirect, and if we want to
16 stay here for three weeks, we can keep it going, but
17 you have to keep it to redirect. I'll allow you to
18 ask that question.

19 Q (MS. LIVESAY) Did you document whether or not
20 something had been wiped down?

21 A No, ma'am.

22 Q Did you document anything about a bloody rag?

23 A No, ma'am.

24 Q If you had seen it, would you have documented it?

25 MR. MARTIN: Objection. Again -- again, she

TOM DELPERCIO - REDIRECT EXAMINATION (CONT.)

1 asked the same question over and over.

2 THE COURT: He's answered that. That is asked
3 and answered. Go ahead.

4 Q (MS. LIVESAY) Now, the pictures you took, did
5 you see those up on the screen?

6 A Yes, ma'am.

7 Q And did you take pictures of kind of the area
8 from where you entered into the bathroom?

9 A Yes, ma'am.

10 Q And you took pictures, again, of things that you
11 felt like needed to be documented?

12 A Yes, ma'am.

13 Q And that was to protect the integrity and what
14 everything looked like when you got there?

15 A Yes, ma'am.

16 Q Now, do you take pictures of things so you don't
17 have to remember every detail?

18 A Yes, ma'am.

19 Q This way, it is not a question of if you remember
20 or not; this is the picture, this is what it looks
21 like?

22 A That's correct.

23 Q And then you did a report relatively close in
24 time, didn't you?

25 A Few hours, yes, ma'am.

TOM DELPERCIO - REDIRECT EXAMINATION (CONT.)

1 Q And is that, again, to help you document what you
2 saw at the scene?

3 A Yes, ma'am.

4 Q I think I remember us talking about this, but I
5 want to make sure, because I know there was a big deal
6 about the pictures, when the pictures were taken and in
7 what order. Who was the first person that arrived on
8 the scene?

9 A I was the first law enforcement officer on the
10 scene.

11 Q When you got there, who was at the house?

12 A Heather Sims, the deceased and Ronnie Causey.

13 Q Okay. Now, did you know whether or not anybody
14 other than those two had been in the house?

15 A No, ma'am.

16 Q So if they had, and they had removed something
17 from the house, you wouldn't know anything about it?

18 MR. MARTIN: Objection. I object to this whole
19 line of questioning. It is not proper for redirect
20 examination.

21 MS. LIVESAY: Your Honor, I'm just asking him to
22 clarify whether or not he was the first one on the
23 scene.

24 MR. MARTIN: No, that is not the only thing she
25 asked.

TOM DELPERCIO - REDIRECT EXAMINATION (CONT.)

1 MS. LIVESAY: We know from the tape in evidence
2 that there was somebody else, her mom, that came to
3 the house and left. I'm just asking him, did he know
4 about that.

5 THE COURT: Ask him that question.

6 MS. LIVESAY: Thank you.

7 THE COURT: Ask him that question, because it is
8 already in.

9 Q (MS. LIVESAY) Did you know whether or not
10 anybody else had come in that house and left?

11 A No, ma'am.

12 Q Okay. If you did, would you have documented it?

13 A Not necessarily.

14 Q Okay. So that is not something that you felt
15 would be important?

16 A It didn't seem relevant if there was or wasn't.
17 I was called there for the incident.

18 Q So you are just there documenting what you see?

19 A Correct.

20 Q Okay. How long were you on scene again?

21 A Several hours.

22 Q Did you ever see anyone leave that house? Did
23 anyone remove any items from the house while you were
24 there; do you remember?

25 MR. MARTIN: Objection. Again, now think about

TOM Delpercio - REDIRECT EXAMINATION (CONT.)

1 that question, how would he know if anybody else
2 removed anything from the house while he was there?

3 THE COURT: Sustained. You need to ask him if he
4 knows, and if he doesn't know --

5 MS. LIVESAY: I will, Your Honor.

6 Q (MS. LIVESAY) Do you know whether or not, while
7 the police were there, if anything was taken out of
8 that house and given to either Ms. Sims or somebody
9 else, a third-party other than the police?

10 A No, ma'am.

11 Q Did the crime scene tape go up while you were
12 there?

13 A I believe that was being done while I was in the
14 house, after I had been there a little while, after
15 officers were on scene. I did not put the tape up.

16 Q Did you see the tape up?

17 A Yes, ma'am. When I left the location, I had to
18 cross the tape.

19 Q What was taped in? What was inside the crime
20 scene?

21 A A good portion of the entire outer of the house,
22 a good portion of the yard, not just at the door. It
23 was a perimeter -- I don't know how big the property
24 line is, but the whole perimeter, I believe, of the
25 outside of the house was taped off.

TOM DELPERCIO - REDIRECT EXAMINATION (CONT.)

1 Q What is that for, again?

2 A Again, we're taught to secure the scene bigger,
3 and we can always move it in. You won't want to secure
4 it small and then there may be evidence outside. So
5 you want to secure it big, and then shrink it down as
6 necessary.

7 Q So everything in there is considered part of the
8 crime scene?

9 A Right. At that point, yes, ma'am. And a lot is
10 kept to see who is crossing the tape to protect the
11 scene.

12 Q Did you search the house or look inside or
13 anything, or were you just there to snap the pictures
14 and --

15 A No, ma'am, I never did any type of search, no,
16 ma'am.

17 Q So you never actually participated in a search?

18 A No, ma'am.

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

20 MR. MARTIN: I don't have any more questions, but
21 I want to introduce 16, 17 and 18.

22 THE COURT: Yeah, and I need to make sure -- how
23 about coming and looking and making sure that all of
24 these exhibits are right and in. We'll do it at the
25 end, too. We're making sure, because there was one or

JURY OUT - OBJECTIONS

1 two that -- just double check. I've got the --

2 MS. LIVESAY: I do have an objection on a couple,
3 if we need to excuse the jury, I apologize, but I have
4 an objection.

5 THE COURT: Ladies and gentlemen, don't get too
6 comfortable. This is a two-minute time, and court
7 time is really two minutes.

8 (Whereupon, the jury exits at 4:58 p.m., and the
9 following is had out of the presence of the jury.)

10 THE COURT: Yes, ma'am.

11 MS. LIVESAY: I do have an objection on
12 Defendant's 17, that is the 911 dispatch notes, and
13 the objection is, A, he cannot put those into evidence
14 through Tom DelPercio. So he either needs to recall
15 the witness, or bring someone up, because now I can't
16 cross-examine the witness that is knowledgeable about
17 these notes. Although it is convenient to enter the
18 evidence after the witness steps down and I can't
19 cross-examine her, it is rather problematic.

20 THE COURT: Wasn't this done when she was here?

21 MS. LIVESAY: These are the dispatch notes from
22 when Renee Hardwick was up. And, conveniently, I
23 don't know if you remember, he asked her a few
24 questions and he never entered it into evidence, so I
25 never inquired or asked any questions, but now, of

JURY OUT - OBJECTIONS

1 course, he wants it into evidence now that I can't ask
2 any questions about it; she's no longer on the stand.

3 THE COURT: We didn't let her go, that was part
4 of the reason. So if you want her to come back, we
5 will.

6 MR. MARTIN: Certainly I can do that, but let me
7 say that as far as the objection, I did present it --
8 she was on the stand, and she could have questioned
9 her about State's Exhibit 20 then. I can get her
10 back.

11 THE COURT: Hold on a minute. She asked is that
12 an exhibit, and you said, yeah. And, look --

13 MS. LIVESAY: I asked him plainly, Is it
14 evidence, he said, no, so I never inquired.

15 THE COURT: Let me ask you this, and I don't want
16 you to give away too much, what would you want to ask
17 her about it?

18 MS. LIVESAY: I would like to ask her why Heather
19 Sims called 911, and it is up there, because he won't
20 give me my phone back.

21 MR. MARTIN: Put it into evidence. It is better
22 than her recollection. She can read it. If I put it
23 into evidence, you can pick it up and read it to them.

24 MS. LIVESAY: Here is my objection.

25 THE COURT: Technically, you are right.

JURY OUT - OBJECTIONS

1 Sustained. If you want to call her -- is she still
2 here?

3 MR. MARTIN: Is Renee still here? Tell her she
4 needs to come back.

5 THE COURT: Tell her to be back for a few
6 minutes, yeah.

7 MS. LIVESAY: We're putting Page 1 of 2, not the
8 whole report? You want the whole report?

9 MR. MARTIN: Let me see what the whole report is.
10 I don't have an objection, but I don't know what the
11 page is.

12 THE COURT: Everything is in, is that right?

13 MS. LIVESAY: No further questions for Sergeant
14 DelPercio.

15 MR. MARTIN: I think that is the second page,
16 Nancy. I believe this is the second page.

17 THE COURT: I want to be sure, and the court
18 reporter and I talked, we want to be sure we have
19 everything in with each witness. The photos for 5
20 through 18, are you agreeing they should be admitted?

21 MS. LIVESAY: I remember asking them to be moved
22 into evidence.

23 THE COURT: At the end of the day -- at the end
24 of the day, 5 through 18 -- at the end of the day,
25 before we leave.

JURY OUT - OBJECTIONS

1 MS. LIVESAY: So I'm clear, the only thing now
2 that is in evidence is 16 and 18, defense.

3 (Defendant's Exhibits 16 and 18 admitted.)

4 THE COURT: I don't know how long it will take
5 this poor lady to get back up here. Your next witness
6 is how long?

7 MS. LIVESAY: My next witness is Scott Thompson,
8 and I don't -- I don't know how long it will take
9 Renee either, but I'm not recalling her.

10 THE COURT: I know. What about Mr. Thompson?

11 MS. LIVESAY: Half an hour.

12 MR. MARTIN: I would think.

13 THE COURT: So we can do him without pushing, and
14 then we'll get her back up here, and we'll deal with
15 her then. I'm going to tell them that we're going to
16 be about 5:40.

17 (The jury enters at 5:06 p.m., and the
18 following is heard in the presence of the jury.)

19 THE COURT: For your planning purposes, we'll
20 probably go to 5:30, 5:40. We have one more witness,
21 and maybe one short one. I hope that is okay with
22 everyone. Call your next witness.

23 MS. LIVESAY: The State calls Chief Thompson to
24 the stand.

25 (SCOTT THOMPSON, having been duly sworn,

SCOTT THOMPSON - DIRECT EXAMINATION

1 testified as follows:)

2 THE CLERK: State your name for the record.

3 WITNESS: Scott Thompson, T-H-O-M-P-S-O-N.

4 DIRECT-EXAMINATION

5 BY MS. LIVESAY:

6 Q Where are you currently employed?

7 A Horry County Fire and Rescue.

8 Q How long have you been employed there?

9 A 25 years.

10 Q And what kind of training have you undergone to
11 do fire and rescue, and as you have been with fire and
12 rescue?

13 A Started as EMT basic, paramedic since 1992,
14 advanced pre-hospital care, also firefighter.

15 Q And what are your current responsibilities?

16 A Today I'm the interim fire chief, so I run the
17 department.

18 Q And what were your responsibilities in August of
19 2013?

20 A I was shift supervisor for C shift.

21 Q And do you remember on August 11th of 2013
22 responding out to Old Reaves Ferry Road?

23 A I do.

24 Q Do you remember about what time you responded to
25 Old Reaves Ferry Road?

SCOTT THOMPSON - DIRECT EXAMINATION

1 A Sometime after 6 o'clock. I was at the station
2 on Highway 90 and heard the call dispatched.

3 Q I'm assuming it was still light outside?

4 A It was light.

5 Q When you arrived to the residence on Old Reaves
6 Ferry Road, do you immediately go in?

7 A No, ma'am. Our units were staging for police to
8 arrive. The report was there was a shooting and a
9 stabbing, potential was for two patients.

10 Q About how long do you remember that you were
11 waiting for the police to arrive?

12 A I didn't respond initially. The initial report
13 was just a shooting. A few minutes later, they had the
14 information out to our people that there was also a
15 stabbing, so that is when I responded. I arrived just
16 after the second police unit pulled into the driveway,
17 so I wasn't there waiting very long.

18 Q And, eventually, did the police show up?

19 A Oh, yeah. They were there when I got there. The
20 second police unit was turning in as I was arriving in
21 the area.

22 Q Now, when you arrived to Old Reaves Ferry Road,
23 did you recognize that house?

24 A I was familiar with it, yes.

25 Q How were you familiar with that house?

SCOTT THOMPSON - DIRECT EXAMINATION

1 A I had known Ronnie Causey for a good part of my
2 life. We had mutual friends. He is a friend of my
3 dad's. I had been on the property before for various
4 cookouts and things.

5 Q And so you get there, and do you realize before
6 you find out whose house you are going to?

7 A I did not know. I knew the general area of the
8 address. I did call dispatch to see what the situation
9 was, and they told me.

10 Q And then you arrived to the scene?

11 A Yes.

12 Q Now, do you actually go into the house?

13 A I did.

14 Q When you go into the house, who was in the house
15 at that time?

16 A Ronnie Causey let me in the back door under the
17 carport and wanted me -- directed me to the master
18 bedroom and entered there. Heather was sitting on a
19 chest of some type at the foot of the bed, and I heard
20 Tom DelPercio, who I know -- or knew then -- and I
21 heard his voice in the bathroom.

22 Q So when you get there, you immediately see Ronnie
23 Causey?

24 A Yes. He let me in the back door.

25 Q He let you into the house through the back way?

SCOTT THOMPSON - DIRECT EXAMINATION

- 1 A Yes.
- 2 Q And do you take a left, or a right?
- 3 A I took a left.
- 4 Q And you go immediately into the bedroom?
- 5 A Couple of steps.
- 6 Q And then you are in the bedroom?
- 7 A Yes.
- 8 Q And then you look into the master bathroom?
- 9 A Yes.
- 10 Q Who is in the bedroom at this point? Before you
- 11 even entered the bathroom, who is in the bedroom that
- 12 you can remember?
- 13 A Just Heather. Ronnie was out in the hall. He
- 14 had their dog, black lab I believe, and he was going
- 15 to --
- 16 Q He guided you in, and Heather is in the bedroom
- 17 sitting down, standing up?
- 18 A She's sitting.
- 19 Q Okay. And then you immediately go where?
- 20 A Well, I made eye contact with her. I noted that
- 21 she was conscious. She could look at me. She was
- 22 talking. She was crying. I made a determination that
- 23 she was not critically injured at that point. I could
- 24 see someone's feet that was laying down in the
- 25 bathroom.

SCOTT THOMPSON - DIRECT EXAMINATION

1 Q Do you enter the bathroom?

2 A I went in the bathroom.

3 Q When you enter the bathroom -- so you go in and
4 see that she's conscious, up and talking, and she's
5 crying. So you immediately then are looking to see if
6 there is someone more in need of care?

7 A Right. There was someone behind me, an EMS
8 supervisor was also pretty close behind me. I told her
9 to check Heather, and I went into the bathroom.

10 Q When you go into the bathroom, what do you see?

11 A I see Tom DelPercio. He has a camera in his hand
12 and talking on the radio, and he's taking pictures of
13 who I now know as David Sims laying on the floor, on
14 his back, next to a vanity, blood on his shirt, very
15 ash in appearance. He appeared to be deceased.

16 Q So as soon as you walk in, you look to the left,
17 see him laying there, and you immediately know he's
18 deceased?

19 A It was a pretty good indication.

20 Q Just so this jury knows and the Court knows, how
21 many -- I know there is so many, but give me an
22 estimate of how many times you have responded out to
23 shootings, stabbings?

24 A 25 years? Hundreds.

25 Q So as soon as you walk in, you know right away

SCOTT THOMPSON - DIRECT EXAMINATION

1 he's deceased?

2 A I had a pretty good feeling that that was the
3 case, yes.

4 Q So you don't do any CPR or anything?

5 A I assessed him and checked for a pulse, there
6 wasn't one. He wasn't breathing.

7 Q Did you hook up any leads to confirm?

8 A Becky, the EMS supervisor, came in behind me.
9 She had the cardiac monitor, and I said we don't need
10 that, but we put it on anyway, just to verify, and it
11 was flat, no cardiac rhythm.

12 Q So you get there, he's already ashy. You don't
13 do CPR. You can already tell that, more than likely,
14 go straight to see if there is any pulse, any faint
15 feel of any sign of life; there is not. So you put the
16 leads on him to confirm, and you find, again, that
17 there is no heartbeat, no pulse, no chance for life?

18 A Right.

19 Q Now, when you are in the bathroom, you said
20 earlier that Sergeant DelPercio is in the bathroom?

21 A Yes.

22 Q What was he doing?

23 A Taking pictures.

24 Q Was there anybody else in that bathroom at that
25 time other than Tom DelPercio, Sergeant DelPercio, and

SCOTT THOMPSON - DIRECT EXAMINATION

1 the victim?

2 A No.

3 Q Now, when you walk into the bathroom, you see
4 Sergeant DelPercio taking the pictures. You look to
5 the left, see the victim; is that correct?

6 A That's correct.

7 Q Do you remember whether or not there was a knife
8 in the victim's hand?

9 A There was.

10 Q I'll show you a picture because -- let me ask you
11 this. How many scenes have you been to, between that
12 one and today, between August 2013 to today?

13 A Several, couple dozen.

14 Q Would you say a hundred?

15 A Probably not. That is not my primary duty right
16 now. I'm more administrative than I was at that time,
17 but I have been to some scenes, yes.

18 Q So now that you are in a more supervisory role,
19 you still respond to some scenes?

20 A Yes.

21 Q If I showed you a picture, could you remember
22 whether or not that is the way you saw David that
23 night?

24 A Yes.

25 (A brief pause in the proceedings.)

SCOTT THOMPSON - DIRECT EXAMINATION

1 Q (MS. LIVESAY) I'm showing you now what is marked
2 as State's Evidence No. 7; do you remember that?

3 A Yes.

4 Q Is that how he appeared when you saw him?

5 A Yes.

6 Q There is some items on the vanity, do you
7 remember those items being there when you got there?

8 A On the vanity was a phone and handgun.

9 Q I'm showing you now, and I'll show the jury,
10 publish them State's Evidence No. 7.

11 (State's Exhibit 7 published to the jury.)

12 Q (MS. LIVESAY) When you walked in, this is how
13 you recall the victim looking?

14 A Yes.

15 Q And when you walk in, Sergeant DelPercio is in
16 there snapping pictures?

17 A Yes.

18 Q Do you remember whether or not Sergeant DelPercio
19 ever touched that knife?

20 A He did not, while I was there.

21 Q I'll show you now what is put into evidence as
22 State's Exhibit No. 11; do you recognize that?

23 A I do.

24 Q Do you recognize whose foot is in that picture?

25 A The one on the right would be mine, and the one

SCOTT THOMPSON - DIRECT EXAMINATION

1 on the left is Tom's.

2 Q Okay. And do you see in this picture Sergeant
3 DelPercio's foot is over the knife?

4 A Yes.

5 Q Did you ever see his foot touch that knife?

6 A No.

7 Q Did you ever see him move that knife?

8 A No.

9 Q Did you ever touch that knife?

10 A No, ma'am.

11 Q Now, when you get in, Sergeant DelPercio is on
12 the scene?

13 A Yes.

14 Q Is there any other law enforcement on the scene
15 when you get there?

16 A There was another officer there that I do not
17 know and don't recall his name. I remember he was
18 pretty new. He was outside doing the perimeter,
19 securing the perimeter, when I went in to check on the
20 patient.

21 Q So when you get, there is one officer outside?

22 A Yes.

23 Q And Sergeant DelPercio is inside?

24 A Yes.

25 Q So you are then the second person to arrive on

SCOTT THOMPSON - DIRECT EXAMINATION

1 scene and enter the house from a fire/rescue/law
2 enforcement standpoint?

3 A Yes.

4 Q Did you see Sergeant DelPercio drive up?

5 A No.

6 Q So you don't --

7 A I saw the second vehicle.

8 Q So you were the second one to enter the house?

9 A Yes.

10 Q Now, do you remember seeing the -- I know it has
11 been awhile -- a cell phone and begun on the vanity?

12 A Yes, I do.

13 Q Do you remember seeing a pair of pliers or a
14 wrench anywhere around the victim?

15 A I do not.

16 Q Now, when you were looking at the victim, do you
17 remember blood being in the victim's hand?

18 A I do.

19 Q Do you remember whether or not the knife was in
20 the same hand that the blood was in?

21 A It was.

22 Q As an EMS worker, did you see any other injuries
23 on this victim other than the gunshot wound?

24 A I did not.

25 Q Did you see the entrance wound on the victim?

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1 A I did.

2 Q And can you tell me where he was shot, where the
3 entrance wound was?

4 A It was in the chest, sternum area.

5 Q On me, right in here (indicates)?

6 A Right.

7 Q Now, when you went into the house, you went in
8 through the back door, entered through the master
9 bedroom going to the bathroom; is that correct?

10 A Yes.

11 Q Do you remember if there was a way to get -- a
12 door to get from the bathroom outside?

13 A I do not.

14 Q So there was only one doorway that led into the
15 bathroom?

16 A As far as I remember.

17 Q And that was from the bedroom, to the bathroom?

18 A Correct.

19 Q No other doorway to get out of that bedroom -- I
20 mean that bathroom, I'm sorry?

21 A No.

22 Q When you went into the bathroom, you noticed
23 these things. By any chance, did you notice anything
24 broken or knocked over in the bathroom?

25 A I did not.

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1 Q Did you see anything out of place at all in the
2 bathroom?

3 A Other than the patient, no.

4 Q Now --

5 A I did notice the bathtub was full of water.

6 Q Did you go through the kitchen area?

7 A Not on the way in; I did on the way out.

8 Q On your way out, you went through the kitchen
9 area. Did you see anything in the kitchen area broken,
10 out of place, anything like that?

11 A The only thing I noticed that was out of place
12 was a black string or lanyard of some kind laying on
13 the floor, and one of my firefighters picked it up and
14 put it on the counter, and I went back and made sure
15 that Sergeant DelPercio knew that, because we are not
16 supposed to disturb things. It didn't appear to belong
17 there, he just absent mindedly picked it up.

18 Q Did you say anything to the EMS worker?

19 A Oh, I did, yes.

20 Q What did you say?

21 A I told him he shouldn't be doing that, we are in
22 a --

23 Q Why is that?

24 A Well, it is a crime scene, and we have
25 procedures. We work with the police department. They

SCOTT THOMPSON - DIRECT EXAMINATION

1 come and do training for us and in-service. We learn
2 about it in our medical training classes that, you
3 know, preservation of evidence is important, and that
4 could have had something to do with what went on in the
5 house; we don't know what happened there, so don't
6 touch it.

7 Q Did you let anyone know that it had been touched?

8 A Oh, yes.

9 Q Who did you tell?

10 A Sergeant DelPercio, and I told, I believe it was,
11 Detective Frebowitz, who arrived later, that there was
12 a black cord that had been moved and laying on the
13 kitchen floor.

14 Q But it was not in the bathroom?

15 A No.

16 Q On the kitchen floor?

17 A On the kitchen floor.

18 Q Because it was touched, you wanted to be sure
19 that someone knew it had been touched and moved?

20 A Yes.

21 Q And that is something you are trained and
22 knowledgeable about, do not touch anything in the crime
23 scene, do not move anything?

24 A Unless there is a life safety issue, we don't
25 touch it.

SCOTT THOMPSON - DIRECT EXAMINATION

1 Q Now, when you were in the bathroom, you saw that
2 picture I showed you; that is how it looked when you
3 arrived?

4 A Yes.

5 Q And you didn't notice anything out of place?

6 A (Witness nods head.)

7 Q When you were in the bathroom, did you see a rag
8 or cloth of any kind that had blood on it in the
9 bathroom?

10 A I don't remember seeing anything like that.

11 Q And how many cell phones do you remember seeing
12 in the bathroom?

13 A Just the one on the vanity.

14 Q I'll show you State's Evidence No. 7; is that
15 what you remember?

16 A Yes.

17 Q Is that how that vanity looked?

18 A Best of my recollection, yes.

19 (State's Exhibit 7 published to the jury.)

20 Q (MS. LIVESAY) You don't remember seeing any kind
21 of rag with blood on it?

22 A I do not.

23 Q Now, you said you walked in and saw David Sims;
24 did you know David Sims?

25 A I did not.

SCOTT THOMPSON - DIRECT EXAMINATION

1 Q So that was the first time you ever saw him?

2 A If I had ever met him before, I did not remember
3 it.

4 Q Maybe once?

5 A Maybe. I mean, I had been to that property
6 before, and I know some of the family members. I may
7 have bumped into him, but I didn't remember him.

8 Q Okay. How long did you stay on scene?

9 A In the house, I was only there a few minutes. On
10 the scene, I was there for several hours, because I did
11 know some of the family, and we were just talking.

12 Q Do you remember the tape being up?

13 A Oh, yes.

14 Q And the tape, do you remember where the tape was
15 around? Was it around the bathroom or house?

16 A Around the house. There was a fence -- there is
17 like a split-rail fence that parallels the driveway,
18 driveway to another piece of property, and the house,
19 and it was from there, down around the carport, and
20 then back up into the front yard.

21 Q So it definitely enclosed the entire house?

22 A Yes, it did.

23 Q And you were there kind of hanging out, around,
24 for several hours?

25 A Yes.

SCOTT THOMPSON - DIRECT EXAMINATION

1 Q Now, while you were there, did you ever take
2 anything out of the house and give it to anyone?

3 A I did. I believe it was Heather's aunt asked me
4 to help get some things for the baby -- the baby.

5 Q Go ahead.

6 A I believe it was Heather's aunt. Someone asked
7 me that -- the baby had gone to Ronnie and Sandra's
8 house at some point, and they didn't have formula or
9 clothes or diapers or anything, so I walked to the edge
10 where the tape was and spoke with the young officer who
11 then talked to the detective, who spoke to me and said
12 I'll be right back. He went inside and came back and
13 said he wasn't going to let me go in, he would bring me
14 what I needed.

15 Q What did he bring you?

16 A Diaper bag, and it had a couple of bottles in it.

17 Q I'm showing you State's Evidence No. 14; do you
18 recognize that bag?

19 A Yes, that's the bag.

20 Q What is that?

21 A The diaper bag.

22 Q The diaper bag you took out of the house?

23 A Yes, it is.

24 Q Who did you give it to?

25 A Someone with the family. I can't remember

SCOTT THOMPSON - DIRECT EXAMINATION

1 exactly. There was a few people there, and they needed
2 it, so I just turned it over to them.

3 Q And the diaper bag sitting across from the knife
4 block?

5 A Yes.

6 Q And that is the diaper bag you handed over to a
7 family member of Heather Sims?

8 A Yes.

9 Q I'll show this jury now what is marked as State's
10 Evidence No. 14.

11 (State's Exhibit 14 published to the jury.)

12 Q (MS. LIVESAY) Did you ever look in that diaper
13 bag before you handed it off?

14 A I did not, but I was watching through the door
15 while they were getting it, and one of the officers was
16 taking pictures of it.

17 Q So you saw officers snap a picture and give it to
18 you?

19 A Inside, opened it, took a picture, put bottles in
20 out of the refrigerator, and then they handed it to me.

21 Q Okay. Now, have you seen the pictures that I
22 showed you today, have you seen them before?

23 A Yes, I believe so.

24 Q And when did you see them?

25 A I don't know the exact date, but I saw them in

SCOTT THOMPSON - DIRECT EXAMINATION

1 Morgan Martin's office.

2 Q So all of these pictures I've shown you, you have
3 seen and already gone through with Mr. Martin?

4 A We went through them, yes.

5 Q At his office?

6 A Yes.

7 Q And do you remember how long ago that was?

8 A I do not.

9 Q It's okay. Was it this year?

10 A I don't know, to be honest with you.

11 Q Okay. But it was before this month, I'm
12 assuming?

13 A Yes. Oh, yes, it's been sometime ago.

14 Q So months?

15 A Few months backs, yes.

16 Q Did he show you the same pictures that I showed
17 you?

18 A I believe so. I don't remember all of them, but
19 I do remember seeing these pictures.

20 Q And these look familiar that I showed you?

21 A They do, yeah.

22 Q Did you ever indicate to him that that was not
23 how the scene looked when you got there?

24 A I don't believe so.

25 Q So did you tell him the same thing you have told

SCOTT THOMPSON - DIRECT EXAMINATION

1 us today?

2 A As far as I know.

3 Q Have you ever told anybody that that knife was
4 moved?

5 A No. No. I do believe I told him in a
6 conversation we had, at the fire station, it was prior
7 to the picture meeting where we looked at the pictures,
8 that the knife may have been in his left hand, but I
9 couldn't remember.

10 Q Did you tell someone was there taking pictures?

11 A Oh, yes. Yes. I mean, I believe I said it --
12 pretty sure it was in his left hand, but Sergeant
13 DelPercio was snapping pictures, so whatever the
14 pictures show will tell you what way it was. I was
15 trying to picture it in my mind, how it was and how he
16 was laying. It was on my left, but not his left. I
17 was looking over the top of him.

18 Q So if you are looking straight at him, the knife
19 is --

20 A The knife was on my left side.

21 Q Right. But you told him that somebody was there
22 taking pictures?

23 A Yes.

24 Q And did you indicate whether or not that person
25 had moved anything?

SCOTT THOMPSON - DIRECT EXAMINATION

1 A No.

2 Q And did you tell him whether or not you had moved
3 anything?

4 A I didn't move anything.

5 Q And when you were looking at those pictures he
6 showed you, was that pictures from that night?

7 A It was the shoes I had on. My attire was I was
8 wearing blue shorts and a T-shirt and Nike tennis
9 shoes, that's what I had on.

10 Q So you were actually in the picture?

11 A Yes.

12 Q Did he show you that picture that Sergeant
13 DelPercio had his foot over the knife?

14 A Yes.

15 Q And did you tell him what you told us today, that
16 that foot never touched the knife?

17 A Yes, just over it, covered it.

18 Q And have you said anything to anybody other than
19 that knife was never touched while you were there?

20 A As far as the knife being touched?

21 Q Yes.

22 A No.

23 Q Now, do you recall -- now that you looked at the
24 pictures -- what hand the knife was in?

25 A It was in his right hand.

SCOTT THOMPSON - DIRECT EXAMINATION

1 Q And do you remember it being in the same hand
2 that the blood was in?

3 A I do, because when I went over to check his
4 pulse, it was right under my eyes as I was leaning down
5 over the top of him, and that's where it was. I mean,
6 there was blood in the hand.

7 Q I'm going to show you now what is State's
8 Evidence No. 18. Would you say that that knife was
9 inches away from that victim?

10 A No.

11 (State's Exhibit 18 published to the jury.)

12 Q (MS. LIVESAY) You never saw a bloody rag
13 anywhere in that bathroom, that you remember?

14 A No, ma'am.

15 Q You never saw a wrench or a pair of pliers
16 anywhere near the victim?

17 A I don't remember seeing that.

18 Q Did anybody indicate to you while you were there
19 whether or not somebody had wiped something off at the
20 scene?

21 A No.

22 Q One more question. When you got there, the only
23 two people, outside of law enforcement that were there,
24 were Heather Sims and her daddy, Ronnie Causey?

25 A Yes.

SCOTT THOMPSON - DIRECT EXAMINATION

1 Q And was she removed from the scene by EMS?

2 A Yes.

3 Q Okay. Did her daddy stay on the scene, or did he
4 also leave?

5 A He and I were the last people out of the door,
6 besides the police officers or Sergeant DelPercio. We
7 left him in the house. As she was going out, we were
8 coming behind the wave -- we had several people there,
9 numerous units responded. We didn't know how many
10 patients we were going to be dealing with, so the crew
11 that was attending to her was taking her out the back,
12 and then there was my team, who worked actively
13 involved in patient care, and then Ronnie and myself
14 going out. That is when the string thing happened.

15 Q So when you -- when she left, basically you all
16 filed out right after?

17 A Yes.

18 Q Do you remember whether or not that house was
19 clean, the part you saw?

20 A It was very clean.

21 Q How would you describe the bathroom?

22 A It was very tidy, clean. Obviously there was
23 blood on the floor.

24 Q Around the victim?

25 A Around the victim, but otherwise it appeared to

SCOTT THOMPSON - DIRECT EXAMINATION

1 be clean. The whole house seemed clean.

2 Q Did you see any blood anywhere other than around
3 the victim?

4 A Heather had blood on her where it went through --
5 I saw on her full body, when I walked through and made
6 eye contact with her, she had blood on her pants and
7 maybe her shirt. But on the floor or anywhere else, I
8 didn't notice any.

9 Q Did you notice any blood on the bathroom door?

10 A I did not, no.

11 Q So you didn't see a bloody handprint or anything
12 like that on the door?

13 A I did not.

14 Q Did you see a bloody handprint anywhere in the
15 bathroom?

16 A I don't recall a bloody handprint.

17 Q So you don't recall seeing anything like that in
18 the bathroom?

19 A I don't.

20 Q But you recall seeing blood on the victim's hand?

21 A Yes.

22 Q But no blood on the door, and no blood anywhere
23 else?

24 A On the floor around him, and then she had some on
25 her.

SCOTT THOMPSON - CROSS-EXAMINATION

1 Q But you didn't see any blood on the door, vanity,
2 anywhere other than the floor around him?

3 A Right.

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

5 CROSS-EXAMINATION

6 BY MR. MARTIN:

7 Q Mr. Thompson, let me ask you in connection with
8 this. Now, when you went there, one of the last
9 questions you were asked was did you see a bloody rag.
10 Now, of course I'm assuming in reality you are not
11 there to -- your priority is not to look for evidence
12 or bloody rags, but to render assistance to a patient
13 who needs assistance?

14 A That's correct.

15 Q So you didn't pick up any towels and look at them
16 to see what was on them, did you?

17 A No, sir.

18 Q And let me ask you this. She also asked if there
19 was a towel there, would you have seen it and looked at
20 it. Now, you and I, from talking to each other about
21 this case, agree that sometimes your mind plays trick
22 on you?

23 A Yes, sir.

24 Q Don't it?

25 A It can.

SCOTT THOMPSON - CROSS-EXAMINATION

1 Q Sometimes we think we remember something this
2 way, and we find out, in reality, we don't remember it
3 correctly, don't we?

4 A Yes, sir.

5 Q Matter of fact, that happened to you in this
6 case?

7 A It did.

8 Q It did. We talked, and there was talk about
9 whether or not the knife that was involved was in the
10 right hand or left hand, and I found out at the
11 substation near Carolina Forest, and you graciously
12 cooperated with me like you have with everybody, I took
13 a statement from you about what happened, right?

14 A Yes, sir.

15 Q And then, of course, I showed you that statement,
16 and you agreed it was correct and signed it and went
17 off on it, right?

18 A Yes, sir.

19 Q At that time you said that your recollection was
20 that the knife was in or at the deceased's left hand,
21 didn't you?

22 A I did.

23 Q If you had never seen a picture, you would still
24 believe it was in the left hand, wouldn't you?

25 A I would -- probably.

SCOTT THOMPSON - CROSS-EXAMINATION

1 MS. LIVESAY: For the record, there is a
2 statement out there. I don't have a copy of it, but
3 that's fine, whatever Chief Thompson says.

4 MR. MARTIN: And I do have -- and he has a copy
5 of it.

6 A I mean I do remember saying, and I believe it is
7 in there, that while I thought it was in the left hand,
8 the sergeant was taking pictures, so it should clear
9 all of that up.

10 Q (MR. MARTIN) And I'm not arguing with you?

11 A Right. Right. Right.

12 MS. LIVESAY: If Mr. Martin has a copy of that
13 statement now, I would appreciate it.

14 THE COURT: If you have it --

15 MR. MARTIN: He has a copy of it. Right?

16 WITNESS: I don't have a copy with him.

17 THE COURT: She can only take one person at a
18 time and, quite frankly, I go first. Do you have a
19 copy?

20 MR. MARTIN: I do. I have one now, but I'm going
21 to use it.

22 THE COURT: Okay. Let her look at it first,
23 okay.

24 MR. MARTIN: Okay.

25 Q (MR. MARTIN) You are a sergeant; is that right?

SCOTT THOMPSON - CROSS-EXAMINATION

1 A Technically, I'm deputy chief, but I'm interim
2 fire chief for another week or so.

3 Q Deputy Chief, have you not shown Ms. Livesay a
4 copy of your statement?

5 A I don't know that I have.

6 Q She knew you gave me a statement, you told her,
7 didn't you?

8 A Yes. Yes, I did.

9 Q You haven't hid that from her, have you?

10 A Oh, no, sir. No, sir.

11 MR. MARTIN: Should I go ahead and look at the --
12 wait for her to look at the statement.

13 THE COURT: I think you can go ahead. I didn't
14 mean to be --

15 MS. LIVESAY: I would like a little time, Judge.
16 It is a handful of pages, 10, 15 pages.

17 THE COURT: All right.

18 (A brief pause in the proceedings.)

19 (Defendant's Exhibit 19 marked.)

20 (A brief pause in the proceedings.)

21 MS. LIVESAY: I've looked over it. I guess I
22 can't keep this copy?

23 MR. MARTIN: I need it for now.

24 Q (MR. MARTIN) Again, I think I told you I had
25 given you a statement. Let me show you the statement,

SCOTT THOMPSON - CROSS-EXAMINATION

1 so I can you ask you a little bit about it. You gave
2 me a statement because I had gone out and asked you
3 what you remembered, and that was -- don't worry about
4 it, I'll let you look at it later, but I had gone out
5 to talk with you, and this was before anybody had any
6 pictures, right?

7 A Developed? Yes.

8 Q They took pictures, obviously. We have your foot
9 in it, so we know you were there, but we talked about
10 all of it, and we talked about several things that
11 haven't been talked here in court today, but one was if
12 you -- do you recall what hand the knife was in, okay.
13 Again, you can find it in there if you want to, because
14 I don't want to misstate, but, essentially, what you
15 said was as best as I can recall, it would have been in
16 the left hand?

17 A I believe that is right.

18 Q Do you want to find it -- look through there
19 until you find it. Do you want me to help you try to
20 find it?

21 A I want to say it was in his left hand.

22 Q Say that again?

23 A I want to say it was in his left hand.

24 Q Does it say anything else about it there? I
25 don't want to cut you off.

SCOTT THOMPSON - CROSS-EXAMINATION

1 A Laying on the floor -- that was your word. Mine,
2 His hands were up like above, you know, around his
3 head, like -- both hands, if I remember right --

4 MS. LIVESAY: Are we putting the statement into
5 evidence, since he is now reading off the statement,
6 or does he have a question? I'm not sure where this
7 is going.

8 THE COURT: Ask him a question.

9 MR. MARTIN: I did ask him a question.

10 MS. LIVESAY: What was it?

11 MR. MARTIN: The question was, what did you say
12 when I asked you about what hand the knife was in?

13 A Okay. I want to.

14 Q (MR. MARTIN) He kept on reading, and I didn't
15 want to cut him off, but.

16 THE COURT: Just answer that.

17 Q (MR. MARTIN) The bottom line is, we talked about
18 it, and I said, hey, remember what hand the knife was
19 in, or by, or whatever, and you said, what?

20 A I want to say it was in his left hand.

21 Q And that is because your memory was telling you
22 at that time, after you thought about it, I think left
23 hand, right? Right?

24 A That is what I said.

25 Q All right. Now, we have the pictures, and I

SCOTT THOMPSON - CROSS-EXAMINATION

1 asked you to come by my office so I could show them to
2 you?

3 A Yes, sir.

4 Q And we looked at them, didn't we?

5 A Yes, sir.

6 Q And the pictures they had was showing the knife
7 was in his right hand, correct?

8 A Correct.

9 Q And even had your foot in the picture with the
10 knife there?

11 A Yes.

12 Q So what that tells us is that the knife probably,
13 I guess, it was in his right hand or laying on the
14 floor, partially in his right hand, at the time you
15 were there, but you thought it was his left hand,
16 didn't you? Right?

17 A Correct.

18 Q You didn't lie to me about that?

19 A No, sir.

20 Q You didn't tell me to mislead me, did you?

21 A No, sir.

22 Q It was an inadvertent mistake, wasn't it?

23 A Yes, sir.

24 Q And sometimes people trying to honestly and
25 accurately recall what they saw, get it wrong, don't

SCOTT THOMPSON - CROSS-EXAMINATION

1 they?

2 A I suppose so.

3 Q Because the brain is not a video recorder that
4 records everything and retains it, is it?

5 A No, sir.

6 Q Who would you think was under more stress that
7 night, you or Heather Sims?

8 A I would say Heather.

9 Q While we have your statement here, and it is no
10 big deal, but since we're talking about it, we have
11 that picture with Sergeant DelPercio's foot on, slash,
12 over the knife?

13 A Yes, sir.

14 Q And I asked you about that in that statement.
15 Let me see if I can help you find it. Let me show you
16 something. We were talking and I asked you about
17 whether or not anybody had touched the knife in front
18 of you or put a foot on the knife, or whatever; do you
19 remember?

20 A Yes.

21 Q What did you tell me?

22 A You want me to read that?

23 Q Yeah. Refresh your recollection, or if you would
24 rather read it, either way you want to do it.

25 A I know what he did, because he put his foot there

SCOTT THOMPSON - CROSS-EXAMINATION

1 to -- what I took -- as a protective measure.

2 Q What you took as a protective measure?

3 A Yes.

4 Q And as a matter of fact, you said that he had his
5 toe on the knife, didn't you?

6 MS. LIVESAY: Your Honor, this witness has said
7 more than one time that his foot never touched the
8 knife, and I'm not sure how many times Mr. Martin can
9 ask him about his foot being on the knife before we
10 decide that that is not what this witness is saying,
11 but that is what he's saying. This witness testified
12 that that foot never touched the knife. Nobody ever
13 touched the knife. Mr. Martin keeps asking about his
14 foot being on the knife, there is nothing in
15 evidence --

16 THE COURT: He's asking about his statement. I
17 mean, I think -- I'll allow you to ask him what his
18 statement says about it one more time.

19 MR. MARTIN: She is right, that is what everybody
20 has said, and this is the first question I asked about
21 what he told me when we talked.

22 Q (MR. MARTIN) Did you not tell me,
23 Mr. Thompson --

24 A It says, His foot on it as if, you know, like, to
25 protect me.

SCOTT THOMPSON - CROSS-EXAMINATION

1 Q Had his foot on it as if to protect me, right?

2 A Yes. Yes.

3 Q Again, I don't think it matters whether he had it
4 on it or not, but just as an example, you told her he
5 had his foot over the knife, right? You told me he had
6 his foot on the knife?

7 A That's what it says.

8 Q Okay. The truth of the matter is, if we're going
9 to be clear about it, you aren't really sure whether he
10 touched it or touching it, are you?

11 A I'm pretty sure that it never touched it.

12 Q Your memory is better now than it was -- anyway.
13 Okay. Now, let me talk about a couple of things with
14 you. The -- when you got there, you went in, saw
15 Heather Sims. What condition was she in, not
16 physically, but mentally and emotionally?

17 A She was distraught, I would say, very emotional.

18 Q Very emotional, very distraught?

19 A Yes.

20 Q And you didn't examine her yourself, but you let
21 someone else tend to her?

22 A Yes.

23 Q Could you hear Heather in the background from
24 where you were?

25 A She told me when I walked in to help him.

SCOTT THOMPSON - CROSS-EXAMINATION

1 Q She said what?

2 A Help him.

3 Q You sent someone to help her, did you not?

4 A I did.

5 Q And you heard her telling that person to do what?

6 A Actually, that person came into the bathroom

7 behind me, and when I turned around, she said she

8 doesn't want me, she wants me to help you. I didn't

9 hear it specifically until --

10 Q It was clear to you that her concern -- Heather's

11 concern at that time was for you folks to try to help

12 her husband, fair enough?

13 A That is fair, yes, sir.

14 Q Now, talking about what you recall, and I don't

15 think you can recall, but I just want to see, do you

16 remember what towels were in that bathroom now that we

17 are here? You were asked, did you see a towel. Do you

18 remember what towels, handtowels or body towels, were

19 in that bathroom that night when you went in there?

20 A I don't remember.

21 Q You don't, do you?

22 A No.

23 Q So if you don't remember what was there, then you

24 didn't pick up any of the towels and examine them, did

25 you?

SCOTT THOMPSON - CROSS-EXAMINATION

1 A Oh, no, sir.

2 Q If you didn't see them and didn't examine them,
3 you don't know whether there was any blood on any of
4 them, do you?

5 A I don't.

6 Q And you, likewise, wouldn't know whether there
7 was any of this aspiration that had come out of him in
8 the CPR if, in fact, she was doing CPR, it was on that
9 towel either, did you?

10 A I don't remember a towel.

11 Q Do you recall that in that bathroom -- if you
12 walked in the bathroom and then walked over towards the
13 toilet area, do you remember there was a stand-up
14 shower on the right?

15 A I didn't get past the patient.

16 Q Didn't pay any attention?

17 A I didn't get that deep into the bathroom.

18 Q All right. So if you say you didn't see a towel
19 with blood on it, that is a little misleading about
20 whether or not there was one with any blood on it,
21 because you weren't looking for one with any blood on
22 it, were you?

23 A No, sir.

24 Q All right. Okay. Matter of fact, don't know
25 what towels were in there, right?

SCOTT THOMPSON - CROSS-EXAMINATION

1 A Correct.

2 Q Now, she also asked you about somebody taking a
3 bag for the baby out. As I understand your testimony,
4 you kind of orchestrated that by talking to a family
5 member, going to the back door and telling the
6 detective what they wanted?

7 A Yes, sir.

8 Q Was that Detective Jonathan Martin, or do you
9 recall?

10 A I am pretty sure it was Frebowitz.

11 Q You think it was Neil Frebowitz?

12 A (Witness nods head.)

13 Q You said somebody was taking pictures of it
14 there?

15 A I don't know who had a camera, but I did see a
16 camera.

17 Q You saw someone taking pictures?

18 A It was a big camera. It wasn't a little one.

19 Q We're talking a real camera?

20 A Yes, sir.

21 Q They took pictures of the bag and whatever was in
22 it before they handed it to you?

23 A Yes, sir.

24 Q You don't know whether that was Jonathan Martin
25 or not?

SCOTT THOMPSON - CROSS-EXAMINATION

1 A I don't.

2 MR. MARTIN: One second, Judge.

3 Q (MR. MARTIN) Let me ask you this in closing.

4 You are an EMS guy and you are trained in CPR and you
5 have performed CPR?

6 A Yes, sir.

7 Q When is the last time you actually did a CPR,
8 that you can remember?

9 A On a victim?

10 Q Yeah.

11 A I don't know. Probably six, eight months ago.

12 Q Okay. You have done it and you are familiar with
13 it, right?

14 A Yes, sir.

15 Q And if Heather is doing CPR -- let me ask you
16 this. If you come into this scene that you did and you
17 find the deceased as he was, but he is not deceased,
18 and you are taking efforts to save him, are you going
19 to be worried about disturbing the crime scene at that
20 time, or are you going to be worried about saving him
21 as a priority?

22 A The priority would be to save him, yes.

23 Q Okay. And so if Heather is, in fact, giving him
24 CPR as a nurse anesthetist, which she would know how to
25 do, and she is focused on trying to help him, it is

SCOTT THOMPSON - CROSS-EXAMINATION

1 reasonable that she wasn't worried about disturbing the
2 crime scene, wouldn't it?

3 A I suppose it would.

4 Q You wouldn't be? I mean, you wouldn't mess up
5 anything unintentionally, but if you had to get in
6 there and get into the area to perform CPR, that is
7 what you would do, right?

8 A Yes.

9 Q And so if you look at where he is in the
10 photographs and you see smudges around a hand, a right
11 hand, left forearm, in and around where the body is as
12 though someone was down there doing CPR, would that
13 strike you as abnormal, or expected?

14 A Smudged areas?

15 Q Yeah. If you drop down to your knees, you would
16 have been down here to do CPR?

17 A Yes, sir.

18 Q What are you going to get into when you do that?

19 A Whatever is down there.

20 Q What was down there on this floor?

21 A Yes, sir.

22 Q What was it?

23 A There is blood down there.

24 Q Blood, okay. And if you get down in there, you
25 are going to smudge it some, aren't you?

SCOTT THOMPSON - CROSS-EXAMINATION

1 A Oh, yeah.

2 Q If you reach over to do this (indicates), you may
3 smudge more area, right?

4 A Yes, sir.

5 Q If you are reaching over here to get a rag, you
6 might hit something else and disturb the crime scene,
7 would you not?

8 A Yes, sir.

9 Q Okay. Do you see anything there other than that
10 with regards to anything being disturbed there that
11 night?

12 A Did I?

13 Q Yeah.

14 A (Witness nods head.)

15 Q As to anything being knocked over, what was there
16 in that bathroom to be knocked over?

17 A I don't recall anything.

18 Q Do you recall the dog bed being on the floor?

19 A Yes, sir.

20 Q Okay. And, again, I believe you said, I'll be
21 sure, you didn't see any blood anywhere other than
22 right there by the deceased?

23 A Other than what was on Heather's clothes.

24 Q And she was clearly injured, right?

25 A I didn't examine her.

SCOTT THOMPSON - CROSS-EXAMINATION

1 Q You saw blood on her?

2 A She had blood on her.

3 Q Came from her or him?

4 A I asked my paramedic if she was hurt and he said,
5 yes, and I said let's take her to the hospital then.

6 Q And if you are performing CPR on a person, do you
7 do it in this position (indicates), generally?

8 A Generally.

9 Q And you get your hand over, and you do this
10 (indicates)?

11 A Correct.

12 Q You clamp your hand one on top of the other; is
13 that the way they teach you?

14 A Yes, sir.

15 Q You don't take both hands and do this, do you
16 (indicates)?

17 A No. That is not really.....

18 Q The way you do it, you take this hand like this,
19 and you put the palm down and compress (indicates); is
20 that right?

21 A That's correct.

22 Q Now, you don't do it with the tips of your
23 fingers?

24 A No, your hand.

25 Q So there's not going to be blood on the tips of

SCOTT THOMPSON - CROSS-EXAMINATION

1 your fingers necessarily performing CPR, is there?

2 A Hopefully you don't get blood on you at all.

3 Q Hopefully you don't get blood on you at all. The

4 other thing I want to ask you about is this area of

5 your foot -- let me turn this way. This area of your

6 foot (indicates), if you are barefoot and down on a

7 tile floor and performing CPR like this, what do you

8 think might happen to your toes?

9 A They probably would get abrasions on them.

10 Q Did you see any abrasions on Heather's toes that

11 night?

12 A I didn't examine Heather.

13 Q But you might get abrasions on your toes, right?

14 A Yes, sir.

15 Q Let me show you what is marked as Defendant's

16 Exhibit 28.

17 MS. LIVESAY: Can I see it, Your Honor? He

18 remembers seeing that?

19 MR. MARTIN: I'm going to show it to him.

20 Q (MR. MARTIN) I'll show you what is marked for

21 identification as Defense 28. You've never seen that

22 before?

23 A No, sir.

24 Q But it is pictures of two feet, right? You don't

25 know whose feet it is?

SCOTT THOMPSON - REDIRECT EXAMINATION

1 A I don't know who they belong to, no.

2 Q Does the abrasions you see on these toes remind
3 you of anything?

4 MS. LIVESAY: Can this witness identify whose
5 feet those are?

6 THE COURT: He said he can't, and that requires
7 too much speculation.

8 MR. MARTIN: That is all the questions I have for
9 Mr. Thompson.

10 REDIRECT-EXAMINATION

11 BY MS. LIVESAY:

12 Q Mr. Martin was asking you about when you were
13 trying to get down and save somebody's life and trying
14 to do CPR, that is basically what you do for a living;
15 is that correct?

16 A Yes, ma'am.

17 Q How many times in the process of doing that have
18 you grabbed a rag and started wiping off a bathroom
19 door or wiping any door around you?

20 A Never.

21 Q Okay. So when you are down doing CPR trying to
22 save someone's life, it doesn't cross your mind to pick
23 up a rag and rub blood off of a bathroom door or
24 anywhere else?

25 A No.

SCOTT THOMPSON - REDIRECT EXAMINATION

1 Q Let me ask you this. When you go to a scene and
2 trying to save someone's life, how many times does it
3 occur to you to pick up a knife and move it and put it
4 in their hand.

5 MR. MARTIN: Objection.

6 MS. LIVESAY: He has already asked.

7 THE COURT: Stop. What is the objection.

8 MR. MARTIN: I object that it assumes facts not
9 in evidence.

10 MS. LIVESAY: Oh, I guess the facts are in
11 evidence that she was moving this hand and moving
12 that?

13 THE COURT: Wait. Wait. Hold on. Here is the
14 deal, when I say wait, wait. I'll send you out for
15 two minutes. Please don't discuss the case.

16 (The jury exits at 6:04 p.m., and the
17 following is heard out of the presence of the jury.)

18 THE COURT: What fact do you think it assumes not
19 in evidence?

20 MR. MARTIN: That knife was moved from the floor
21 to his hand -- excuse me for not standing.

22 THE COURT: What was your question?

23 MS. LIVESAY: His questions -- he got back on the
24 floor and he said, Are you moving their hand like
25 this, how about moving this, how about wiping here.

SCOTT THOMPSON - REDIRECT EXAMINATION

1 None of those facts were in evidence. That scenario
2 is not even in evidence. If we're going to hit on any
3 points of evidence, let's hit on the fact she was
4 taking his phone out of his pocket and she was putting
5 a knife in his hands.

6 THE COURT: What he asked was would he have done
7 it, and that was his question. When you are doing
8 this, would you have had time to do this.

9 MS. LIVESAY: Yes. Yes.

10 THE COURT: So what is your question of him?

11 MS. LIVESAY: My question is, when you are down
12 there -- that is what Mr. Martin asked -- and you are
13 focused on saving someone's life, are you worried
14 about this, worried about the crime scene? My
15 question is, are you putting a knife in the victim's
16 hand? Are you taking a phone out of the victim's
17 pocket? Are you doing these things while trying to
18 perform CPR? Mr. Martin already asked, Are you moving
19 the hand this way, are you wiping blood here, are you
20 doing this, and I'm following up on that line of
21 questioning.

22 THE COURT: You are following up, but you are
23 going a little bit further. Go ahead.

24 MR. MARTIN: Well, the objection -- I didn't
25 object to the first one, but let me preface this

SCOTT THOMPSON - REDIRECT EXAMINATION

1 correctly. First of all, I didn't ask questions about
2 what was not in evidence. Ms. Livesay put pictures up
3 and talked about -- with her witness -- the smudges
4 and wipes around the hands and floor.

5 THE COURT: Right, and the tiles.

6 MR. MARTIN: That was in evidence. The 911 tape
7 is in evidence, doing CPR, and all of that. When she
8 says -- she asked the question, well, do you usually
9 pick up a weapon and put it back in a hand, that fact
10 is not in evidence that that ever occurred. That may
11 be her imagination. It may be her speculation. It
12 may be what happened, but it is not in evidence, and
13 that is a prejudicial question and improper question.

14 When -- when -- just as -- and I let it go -- the
15 wiping of the door. He's never performed CPR in his
16 own house and he's never sat there for 24 minutes
17 waiting on the police, and he knows, you can't
18 physically do CPR the whole time. Going back to she's
19 asking questions about facts not in evidence, and I
20 object.

21 MS. LIVESAY: It was never in evidence that while
22 this woman was doing CPR she moved his arm, that never
23 has been in evidence, never put in evidence. Mr.
24 Martin got down here and did, How about if you wipe
25 right here. Nobody said anything about that woman

SCOTT THOMPSON - REDIRECT EXAMINATION

1 wiping anything off the floor or moving his arm.

2 THE COURT: It certainly has been insinuated that
3 there was wiping from the pictures. I mean, there
4 were questions about smudges and....

5 MS. LIVESAY: Yes. And there is also questions
6 about the knife being moved in his hand, and Mr.
7 Martin asked, Could this picture be considered the
8 knife in his hand, could this picture be considered
9 the knife on the floor. So it also is in evidence
10 about her moving the knife, or where the knife was.

11 THE COURT: No. That issue, I think, to that
12 question, was whether his foot was on the knife or
13 just protecting it. I think it is too much to ask
14 this fellow whether or not when he's performing --
15 because his questions were all directed at his
16 experience, whether he would have time to place a
17 knife in someone's hand. I mean, I know that is the
18 theory, and I think there will be other people.

19 MS. LIVESAY: I'm wondering, if in the course of
20 CPR, like Mr. Martin said, are you moving this or
21 wiping this, I would like to know is this man putting
22 knives in people's hands when he's performing CPR? Is
23 that something he's focused on? Is that something he
24 needs to do to save a man's life? That is what I want
25 to know.

SCOTT THOMPSON - REDIRECT EXAMINATION

1 THE COURT: I think it is late. That question --
2 I don't think that question is completely logical.
3 You can ask if he has to use both hands for CPR, but
4 don't go into knives and telephones.

5 MS. LIVESAY: I'll ask if he moves items around
6 while he's performing CPR, is that his focus?

7 THE COURT: You can ask if that is his focus, or
8 if it is to get the heart beating. But then stop it
9 there, because we have -- let me ask you. I see she's
10 back. How long are we going to have the 911 operator
11 up here? Is it just to identify that (indicates), or
12 do you have questions?

13 MS. LIVESAY: Renee Hardwick? I'm not calling
14 her back up. Mr. Martin has to call her in his case.)

15 THE COURT: I thought we got her back up here
16 to --

17 MR. MARTIN: Let me say, Judge. Again, not to
18 belabor, but I don't have to call her for that to be
19 put in evidence. She identified it, and it can be
20 moved into evidence without her here, if you think you
21 weigh --

22 MS. LIVESAY: It can't be moved in without me
23 cross-examining the witnesses.

24 THE COURT: That is why we asked -- I thought we
25 were bringing her back. Aren't you here? I know she

SCOTT THOMPSON - REDIRECT EXAMINATION

1 was here.

2 MS. LIVESAY: We agreed that Mr. Martin would
3 bring her back. I'm not bringing her back.

4 MR. MARTIN: I never agreed to bring her back.
5 You said get her back to testify.

6 THE COURT: Because --

7 MR. MARTIN: We're arguing about nothing.

8 THE COURT: We are arguing about nothing. We've
9 been arguing about nothing a lot, and I'm tired of it.
10 The deal was, this was not introduced into evidence.
11 It was specifically requested, Is this an exhibit or
12 introduced into evidence? So far, it is not in
13 evidence. Her objection was you couldn't introduce it
14 through that other witness, and I thought we were
15 calling her back to get this in? I thought you agreed
16 to that? If I made that mistake, we called her -- I
17 mean you can turn --

18 MR. MARTIN: I'm happy for her to get it. I
19 can't call a witness at this stage, obviously. If she
20 wants to cross-examine her, call her back and we can
21 do that, but I'll say it is not necessary to enter
22 into evidence. The evidence is that the exhibit has
23 been identified, foundation has been laid and the only
24 question is, is it admissible? And the answer is,
25 yes, and you don't need a witness to do it. I've done

SCOTT THOMPSON - REDIRECT EXAMINATION

1 it hundreds of times.

2 THE COURT: I understand, but she wanted to ask
3 questions.

4 MR. MARTIN: She can call her back and ask.

5 MS. LIVESAY: No, sir. I asked Mr. Martin, when
6 he was doing the document, Is this in evidence? Are
7 you putting this into evidence? He said plainly then
8 said, no. That is why I never made any inquiries of
9 her. After she is off the stand, then he wants to get
10 up here and say now is a good time to put it in
11 evidence.

12 THE COURT: Well, hundreds of times in my legal
13 career I agree with other lawyers to put things in
14 evidence without calling someone to authenticate. I
15 thought we were bringing this poor lady back to
16 authenticate this document. I -- if that is not what
17 we're doing and she's here, can we let her go home? I
18 mean, Mr. Martin, I guess you have to call her in your
19 case.

20 MR. MARTIN: I guess so.

21 THE COURT: That is fine with me. Where is she?
22 You know what, I'll take the blame. I thought there
23 was an agreement, go home and enjoy whatever is on TV
24 now, okay. I'm sorry.

25 MS. HARDWICK: No problem.

SCOTT THOMPSON - REDIRECT EXAMINATION

1 THE COURT: Bring them back in. You can ask just
2 about the hand, no phones or knives. I make very good
3 notes and have a pretty good memory, that is weird,
4 and I have a transcript.

5 (The jury enters at 6:14 p.m., and the
6 following is heard in the presence of the jury.)

7 THE COURT: Thank you for your patience. All
8 right, yes, ma'am.

9 Q (MS. LIVESAY) Two real quick questions. Chief
10 Thompson, you have been asked several times, so I want
11 to be sure I'm clear and the jury is clear. Did you
12 see anybody move that knife?

13 A No.

14 Q Did you see Sergeant DelPercio put his foot on
15 the knife?

16 A No.

17 Q So the only thing you ever saw him do was put his
18 foot over the knife?

19 A Yes.

20 Q This picture here, State's Evidence No. 9, is
21 that how you saw the victim?

22 A Yes.

23 Q Do you see blood on the victim's hand?

24 A I do.

25 Q Where is the blood at?

SCOTT THOMPSON - REDIRECT EXAMINATION

1 A In the palm of his hand.

2 Q Do you see any blood on the top of his fingers?

3 A No.

4 Q So you just see blood for --

5 MR. MARTIN: I object, because I can't see the
6 top of his hand, so I object to asking that question
7 and him answering it.

8 MS. LIVESAY: Can I clarify?

9 THE COURT: Please do.

10 Q (MS. LIVESAY) Can you see the top of his
11 fingers?

12 A Part of them, yes. Last part of the digit on at
13 least three of them.

14 Q Where do you see the blood on this man's hand?

15 A In the palm.

16 Q Do you see it anywhere else?

17 A No.

18 Q So State's Evidence No. 9, I'll show it to the
19 jury.

20 (State's Exhibit 9 published to the jury.)

21 Q (MS. LIVESAY) So all the blood you see is on the
22 inside of his hand?

23 MR. MARTIN: Object, improper redirect
24 examination.

25 THE COURT: I'll allow it, because....

SCOTT THOMPSON - REDIRECT EXAMINATION

1 MS. LIVESAY: I will clarify.

2 THE COURT: Yeah.

3 Q (MS. LIVESAY) I want to be clear for the jury
4 and for Mr. Martin. Can you see this part of that
5 man's hand in this picture?

6 THE COURT: By that, she's referring to the top
7 of the fingers.

8 MS. LIVESAY: Yes.

9 A On three of them.

10 Q (MS. LIVESAY) You see that part (indicates)?

11 A Yes.

12 Q Do you see any blood on that part?

13 A No.

14 Q So when you are looking at this man's hand, you
15 only see blood on the palm?

16 A Yes.

17 Q I'm showing now State's Evidence No. 9.

18 (State's Exhibit 9 published to the jury.)

19 Q (MS. LIVESAY) Tell this jury, did you see any
20 injury on this victim other than the gunshot wound?

21 A No.

22 Q Did you see any other injury, any injury in his
23 hand?

24 A No.

25 Q So the only place he was bleeding out of was the

SCOTT THOMPSON - REDIRECT EXAMINATION

1 entrance wound and the exit wound of that gunshot?

2 A That is all I saw.

3 Q The only blood you see on this picture is on the
4 inside palm part of his hand?

5 A Yes.

6 Q Okay. Now, here is a better picture State's
7 Evidence No. 10; is that how you saw him?

8 A Yes.

9 Q And, again, do you see any blood on this part of
10 that man's hand, and I'm pointing to the part of his
11 fingers outside. Do you see any blood there?

12 A No.

13 Q Where is the only place you see blood on his
14 hand?

15 A In the palm, wrist part, upper part of the wrist
16 there.

17 Q All the way up you see that blood there?

18 A Yes.

19 MS. LIVESAY: I'm showing them now State's
20 Evidence No. 10.

21 (State's Exhibit 10 published to the jury.)

22 Q (MS. LIVESAY) So all of the blood you see --

23 MR. MARTIN: Objection. This is not proper
24 redirect, but I have not objected because I want it
25 over with, but she's asking repetitive questions over

SCOTT THOMPSON - REDIRECT EXAMINATION

1 and over again, and I object to it.

2 THE COURT: If your question is all the blood --

3 MS. LIVESAY: I am not asking the question yet.

4 THE COURT: What is your next question?

5 MR. MARTIN: I have one now.

6 Q (MS. LIVESAY) Is that the way you remember
7 seeing it?

8 A Yes, ma'am.

9 Q This is the way you remember seeing the knife in
10 his hand?

11 A Yes.

12 Q Do you remember seeing her wounds?

13 A No.

14 Q So you never looked at her wounds?

15 A No. When I got back out of the bathroom, she was
16 being attended to by other paramedics.

17 Q Now, Mr. Martin asked you a question about the
18 dog bed being in the bathroom; do you remember that?

19 A He asked if I saw a dog bed.

20 Q Do you remember seeing a dog bed?

21 A Yes.

22 Q Let me show you -- I think there is a picture in
23 here of that dog. This is State's Evidence 6; does
24 that look familiar?

25 A Yes.

SCOTT THOMPSON - REDIRECT EXAMINATION

1 Q So that would be a dog bed right there in the
2 bathroom?

3 A Yes.

4 (State's Exhibit 6 published to the jury.)

5 Q (MS. LIVESAY) So when you walked in, you saw
6 this dog bed by the tub?

7 A I really wasn't focused on that. I was looking
8 at the victim, the patient, as I assumed he was....

9 Q Did you see anybody move this dog bed in the
10 bathroom?

11 A No.

12 Q So it was in there when you got in there?

13 A Yeah.

14 Q No one put it in there other than someone that
15 lived in the house?

16 MR. MARTIN: I object. Again, he wouldn't know
17 who put it in there.

18 MS. LIVESAY: I can rephrase it.

19 THE COURT: Yeah.

20 Q Did you see anyone from law enforcement put this
21 dog bed in the bathroom?

22 A No.

23 Q Now, Mr. Martin made a good point when he was
24 talking to you. He said sometimes -- I don't know if
25 you remember this -- seems like our mind plays tricks

SCOTT THOMPSON - REDIRECT EXAMINATION

1 on us; do you remember that?

2 A I do.

3 Q I'm showing you State's Exhibit -- State's

4 Evidence No. 18; does that look familiar?

5 A Yes.

6 Q Is there anything to you that is odd about that
7 knife?

8 A In his hand?

9 Q Is there anything odd about it to you?

10 A I've never seen a dead person holding anything
11 before.

12 Q How many scenes have you been to?

13 A Hundreds.

14 Q So when you walk in, you never saw anything like
15 this?

16 A Not to my recollection.

17 Q A dead person with a knife laying in his hand
18 like that?

19 A Correct.

20 Q How about the way the blade is facing down, does
21 that strike you as odd?

22 A Um, no, not really, as it lays there.

23 Q So, to you, if you were looking at this picture,
24 nothing about the way the knife is laying there, other
25 than you never seeing the knife laying in a victim's

SCOTT THOMPSON - REDIRECT EXAMINATION

1 hand, that you've ever responded to, there is nothing
2 about it that seems unusual?

3 A Other than that, I mean, no.

4 Q Other than the fact you have been to hundreds of
5 scenes, and you've never seen a dead person holding a
6 knife like that?

7 A Correct.

8 Q That is the only thing that catches your
9 attention about this picture and I'm seeing --

10 MR. MARTIN: Objection, asked and answered
11 repeatedly. How long are we going to do it?

12 THE COURT: It has. One more time.

13 MS. LIVESAY: I'm clarifying, for the record,
14 Defendant's Evidence 8.

15 THE COURT: I get it. Overruled. One more time.

16 Q (MS. LIVESAY) 18 is the picture I am showing
17 you?

18 A Okay.

19 (State's Exhibit 18 published to the jury.)

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

22 THE COURT: Normally, I would never allow this,
23 but you have one or two questions coming to you, if
24 you want it, on recross, at your own peril.

25 MR. MARTIN: At my own peril.

SCOTT THOMPSON - RECROSS-EXAMINATION

RECROSS-EXAMINATION

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BY MR. MARTIN:

Q One thing I want to ask you is, if you look at the exhibits that she had shown you, which I didn't see it, but, again, we're talking about the blood, you see on State's Exhibit No. 18 blood, you see on the hand; would you not agree that that blood is primarily in the upper palm and in the crease of the wrist of the hand; is that fair?

A That's fair.

Q And then you would agree with me as far as -- and of course the knife, as far as being in his hand, you would agree with me that the knife is on the floor and laying in his hand, but not he's not holding it in his hand, is he?

A Not particularly.

Q You would agree with me that you are not a pathologist, and you are not an expert in crime scene analysis, are you?

A No, sir.

MR. MARTIN: That is all I have.

THE COURT: To be fair, and like I said, if you have something in regards to what he just asked.

MS. LIVESAY: I don't have anything, Your Honor.

THE COURT: All right. Thank you. You can step

COURT AND ATTORNEYS

1 down. You are done.

2 Sometimes I know I'm lying to you, most of the
3 time I don't. I didn't think I was lying to you when
4 I told you that you would be out of here over an hour
5 ago. Sorry, it is just the way it is. We're through
6 for the day. If you would, you don't need to be here
7 until 9:45 in the morning. I have a conference call
8 at 9:30 that has to do with my personal family issue.
9 Be here at 9:45. Don't talk about the case. I don't
10 expect -- do you have someone coming tomorrow?

11 MS. LIVESAY: (Nods head.)

12 THE COURT: We may go late tomorrow night, about
13 this time, but it will be the last night, and there is
14 special reasons for it. It is neither here nor there.
15 Don't watch anything, please. I'll see you in the
16 morning. Don't discuss the case.

17 (The jury exits at 6:27 p.m., and the
18 following is heard out of the presence of the jury.)

19 MR. MARTIN: I picked up an exhibit that was
20 marked 28 in the last hearing and referred to it on
21 the record as "28," and it is not in this case.

22 COURT REPORTER: It's not even marked.

23 MR. MARTIN: It's not marked. Of course it
24 weren't (sic) introduced, and it weren't shown.

25 THE COURT: I'm not concerned about it.

COURT AND ATTORNEYS

1 MR. MARTIN: I have two of them, one which I did
2 mark. I picked up the wrong one. It is 19 in this
3 trial.

4 THE COURT: State's 5 through 18, we had an
5 off-the-record discussion, and there was an objection
6 to some of those pictures. I said that -- I'll admit
7 those. For purposes of the record, they are admitted.

8 (State's Exhibits 5 through 18 admitted.)

9 MR. MARTIN: What I said, and I'll put it on the
10 record, I had an objection to the photograph with the
11 hand. I don't know the number now. Let's look at it
12 right quick. It was No. 9. Exhibit No. 9, in that it
13 was, for some reason, the way the camera took the
14 picture, it was redder and more graphic, and I
15 objected to that because there was an identical
16 photograph that was less graphic.

17 THE COURT: And that was overruled. So for her
18 records, that is all in.

19 COURT REPORTER: Thank you.

20 MR. MARTIN: I need to talk with you and Nancy
21 for a minute.

22 THE COURT: You all need to quit arguing.

23 (Whereupon, the proceedings for November 10, 2015
24 concluded and the following was had November 11, 2015
25 out of the presence of the jury in Volume II).

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2013-GS-26-05243

3
4 **VOLUME II of V**

5 -----
6 November 9th - 20th, 2015
7 **B E F O R E:** The Honorable J. Cordell Maddox
8 -----

9 STATE OF SOUTH CAROLINA
10 Plaintiff,
11 vs.
12 HEATHER ELIZABETH SIMS,
13 Defendant.
14 -----

15 **APPEARANCES:**

16 Nancy Livesay, Esq.
17 For the Plaintiff/State.

18 L. Morgan Martin, Esq.
19 For the Defendant.

20 Official Court Reporter:
21 Natalie Dahl, RPR
22
23
24
25

COURT AND ATTORNEYS

1 THE COURT: Thank you for your patience. As I
2 told you, I had a personal problem with my mother. I
3 had to have a conference call with my father and
4 brothers and sisters, and it ain't over yet. Looks
5 like when I finish Friday, I'll go home to Anderson
6 and then change clothes and go to Knoxville. I know
7 you feel sorry for me. You all are ready?

8 MS. LIVESAY: Yes, sir. We wanted to give her
9 just one minute so she could mark all those pictures.
10 I think there is about 45 of them, and if Morgan wants
11 to take a look at them while she's marking them, that
12 might make it quicker.

13 THE COURT: I'm going to tell the jury what we've
14 discussed in the back, that our goal is to finish
15 1 o'clock on Friday, because there is no way we can
16 finish this week and, quite frankly, they aren't used
17 to sitting here; we all are. I think you all have
18 made a good decision there. I'm going to tell them it
19 is their decision to make them look good to this jury,
20 when, in fact, it is not, I'm all building you all
21 (laughing).

22 MR. MARTIN: Well, we're all totally supportive
23 of it.

24 THE COURT: I know you're supportive of it.

25 (A pause in the proceedings.)

COURT TO THE JURY

1 (State's Exhibits 19 through 65 marked.)

2 THE COURT: Anything we need to take up before we
3 begin?

4 MS. LIVESAY: No, Your Honor.

5 MS. MARTIN: No.

6 MR. HYMAN: He just stepped out.

7 (A brief pause in the proceedings.)

8 THE COURT: Okay. Bring them in.

9 (The jury enters at 10:42 a.m., and the
10 following is heard in the presence of the jury.)

11 THE COURT: Good morning, ladies and gentlemen.
12 First, I want to tell you that I don't know whether
13 there are any veterans on this jury, but I have a
14 brother that is career military and my father-in-law
15 that spent 30 years in the Marine Corps, and my father
16 was in the Army. So today is a special day, and I
17 thank you for your service, if you served. I suspect
18 there are some. Thank you.

19 Two other things I want to tell you. One of the
20 reasons I want to tell you one is to explain why you
21 have been sitting back there. I spent several years
22 of my life thinking I could be a professional fighter,
23 and learned real quick -- if you look at my nose --
24 you know why I didn't, but one of the things they tell
25 you is the punch you don't see coming is the one that

COURT TO THE JURY

1 hurts the worse, or the one you don't feel and find
2 out about later. We had a huge punch that no one saw
3 coming that has been avoided, and I will tell you that
4 the lawyers in this case -- when I told you the other
5 day that they were good lawyers, they are. They
6 worked out something that would have been quite a
7 delay, and I appreciate that.

8 The other thing -- and I'll tell you now so that
9 you don't get too frustrated, we've talked -- this
10 case -- there was some thought we could finish this
11 case if we went into Saturday. It appears, to me,
12 that that is not possible, and under any set of
13 circumstances we have to go next week. As a result of
14 that, while we do this for a living and are used to
15 sitting in court rooms, I know you aren't. So what
16 we're going to plan to do -- and, again, you have seen
17 how time works -- we're going to plan to stop about
18 1 o'clock on Friday. The reason is, I want to give
19 you as much of a break as you can. It also allows me
20 to go home. I mean, quite frankly, I need to do that.
21 But the lawyers are worried about the fact that you
22 just may be worn out from listening from all of this
23 stuff. So if we can work it out, that is the plan,
24 and we'll see how things go. But for your own
25 personal planning, I think you can anticipate being

JILL DOMOGAUER - DIRECT EXAMINATION

1 out of here pretty soon after lunch on Friday, and
2 we'll start Monday morning and go most of next week.

3 If there was any way we could finish this case by
4 going Saturday and Sunday, I've done it before and I
5 would do it, but we can't. Working on Veterans Day is
6 enough. Again, thank you for your service.

7 Okay. Yes, ma'am.

8 MS. LIVESAY: At this time, the State calls Jill
9 Domogauer to the stand.

10 (JILL DOMOGAUER, having been duly sworn,
11 testified as follows:)

12 THE CLERK: State your full name and spell your
13 last.

14 WITNESS: Jill Leigh Domogauer,
15 D-O-M-O-G-A-U-E-R.

16 DIRECT-EXAMINATION

17 BY MS. LIVESAY:

18 Q Where are you currently employed?

19 A I'm currently employed with Horry County Police
20 Department.

21 Q How long have you been employed there?

22 A I've been an Horry County police officer for
23 approximately seven years.

24 Q And how long have you been in law enforcement, in
25 general?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A Been in law enforcement for approximately almost
2 16 to 17 years.

3 Q And tell this jury what kind of training you've
4 had to begin law enforcement and through your career in
5 law enforcement?

6 A I started my career young. I was not old enough
7 to be a police officer, so I was a dispatcher. I then
8 graduated the Criminal Justice Academy, basic law
9 enforcement training, and throughout my career I have
10 had several -- training on forensic science,
11 photography, latent print examination, medicological
12 death investigation, death investigations, forensic
13 science, latent fingerprints, blood spatter. I have an
14 Associate's Degree of Applied Science in criminal
15 justice.

16 Q Tell this jury what your current position is at
17 Horry County Police Department?

18 A My current position is I'm a crime scene
19 investigator, lab investigator.

20 Q What was your position in August of 2013?

21 A Crime scene investigator.

22 Q If you don't mind, tell this jury a little bit
23 about what a crime scene investigator does?

24 A Crime scene investigator, we have various
25 different hats and jobs to do, anywhere -- ranging from

JILL DOMOGAUER - DIRECT EXAMINATION

1 processing evidence turned in by our officers or other
2 agencies. We respond to crime scenes, document crime
3 scenes via photographs, sketches, notes. We also
4 collect evidence, preserve evidence, package evidence,
5 transport evidence. Sometimes if -- depending on the
6 case you are investigating, you may have to go to
7 secondary scenes, such as a hospital or autopsy, and
8 document those things as well.

9 Q Okay. And did you have an occasion to assist in
10 this case we're here today for?

11 A Yes, I did.

12 Q Did you respond to Old Reaves Ferry Road on
13 August 11 of 2013?

14 A Yes, I did. I was on-call. That was my call
15 week, and I received a call of service from my
16 supervisor to respond.

17 Q Is that the normal protocol?

18 A Yes, it is. When you are on-call, you pretty
19 much take any calls given to you through that span.

20 Q If you don't mind, about what time did you
21 respond to this scene at Old Reaves Ferry Road?

22 A May I refer to my notes, please?

23 Q Sure.

24 MS. LIVESAY: She's referring to her report,
25 which we've already turned over to him.

JILL DOMOGAUER - DIRECT EXAMINATION

1 THE COURT: Thank you.

2 A I arrived on the scene approximately 20 hours,
3 which is 8 o'clock military time.

4 Q (MS. LIVESAY) If you don't mind, tell the jury a
5 little bit about what you did as soon as you got
6 there.

7 A Once I get on the scene, I assess the outside
8 area of the scene. I found the scene to be, what I
9 considered, to be secured. There was crime scene tape
10 on a good portion of the outside of the property. The
11 house was completely inside the tape. I had a
12 uniformed patrol officer with a crime scene log
13 standing post. I was briefed by responding officers,
14 and I believe a detective on scene, on what had
15 transpired on the scene prior to my arrival.

16 I then -- when I crossed the tape, I put myself
17 in the crime scene, even though I'm not in the house,
18 I'm across the tape. I began taking my exterior
19 photographs of the residence and the property area.

20 Q Okay. And so as soon as you get there, you start
21 documenting the outside of the residence?

22 A Yes. I make a notation of how I see it, what I
23 see, and I also do photographs as well.

24 Q Okay. So when you get there, the tape is already
25 up, you come in and you immediately start documenting

JILL DOMOGAUER - DIRECT EXAMINATION

1 what you see on the outside of the house?

2 A Yes.

3 Q What did you do next to further your
4 investigation?

5 A In this particular case, when I first got there,
6 I was advised we had consent to search, so I entered
7 the residence using a second backdoor entrance. There
8 was an entrance to the carport, and then another
9 entrance. I used the other entrance that goes right
10 into the living room, and I did what is called a
11 courtesy walk-through. I wanted to see what kind of
12 equipment I may or may not need inside the scene, also
13 just to kind of get a general perspective of what I'm
14 working with. I took a couple -- you know, maybe some
15 overview interior photographs. I did a walk-through,
16 which led me to the master bathroom. I looked around
17 there. Some things, in my opinion, didn't match up
18 with what I was briefed with. I then decided to
19 contact my lieutenant, my lieutenant also walked
20 through, and at that time I decided to back out and no
21 longer work on a consent to search. I obtained a
22 search warrant.

23 Q So you then go in, something doesn't look quite
24 right, so you immediately decide I better get a search
25 warrant?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A Yeah, I stopped what I was doing.

2 Q Did you go in the house until that search warrant
3 was signed?

4 A After I left the house -- after I did my initial
5 walk-through, like I said, I had my lieutenant do the
6 same thing, we conferred, I backed out. I left my
7 notebook and some things inside the residence, and I
8 just backed out completely. I didn't touch anything,
9 move anything, I just left.

10 Q Okay. And, ultimately, was a search warrant
11 signed for you to go in and search the house?

12 A Yes.

13 Q Is that when you went in again to process the
14 scene?

15 A I re-entered the home and continued my
16 documentation and photograph and, ultimately, ended up
17 processing the scene, yes.

18 Q I'm going to show you a picture of a sketch
19 marked as State's Exhibit No. 65.

20 MS. LIVESAY: This is the sketch we sent you.

21 MR. MARTIN: I don't have any problem as long as
22 -- it says it is not to scale, and I'm assuming it is
23 produced in that way, so I don't have a problem with
24 it.

25 THE COURT: All right. Assuming that is true,

JILL DOMOGAUER - DIRECT EXAMINATION

1 okay.

2 Q (MS. LIVESAY) First, did you do this sketch?

3 A Yes, that's one of my sketches.

4 Q So you recognize this sketch?

5 A Yes. It is a computer generated sketch of my
6 field notes.

7 Q Is this sketch to scale?

8 A No, it is not.

9 Q So this is just a general layout of the house?

10 A Pretty much somewhat of a floorplan, so you can
11 pretty much see certain items to relevancy of rooms,
12 but not to scale.

13 MS. LIVESAY: At this time the State is wishing
14 to move evidence in, State's Evidence No. 65.

15 THE COURT: Subject to his objection to scale,
16 okay, it is introduced 65.

17 (State's Exhibit 65 was admitted.)

18 Q (MS. LIVESAY) Do you mind stepping down so we
19 can go through this with the jury? Tell the jury,
20 first, where you entered the residence?

21 A I entered the residence -- there are two back
22 doors, and I entered it using the rear back door here.

23 Q So when you entered the residence, take us
24 through the house.

25 A I entered the residence. I was immediately in

JILL DOMOGAUER - DIRECT EXAMINATION

1 the living room type of area. I did a couple initial
2 photographs of some, you know, some of the rooms as I'm
3 walking into them, nothing direct, nothing, you know,
4 major, other than overview photographs.

5 THE COURT: If you could, she's having a hard
6 time hearing when you turn.

7 MS. LIVESAY: Let's step back up here. Here's a
8 microphone.

9 MS. DOMOGAUER: It doesn't look like a
10 microphone. Is this okay?

11 COURT REPORTER: Yes. Yes.

12 A I'm in the kitchen area. It is an opening, there
13 is no doors or anything; it is like a hallway.

14 Q Could you speak up a little louder?

15 A I'm sorry.

16 Q Oh, you're fine.

17 A I go through the little hallway, you are right
18 there in the little hallway. There is another
19 secondary back door that leads to the carport area
20 behind the house. If you go a little further down the
21 hallway, maybe a couple of steps, you are right there
22 at the entrance of the master bedroom. I then went
23 into the master bedroom and took overall photographs
24 and notes. I turned, I could see the master bathroom,
25 I could see the victim's feet, took some overview

JILL DOMOGAUER - DIRECT EXAMINATION

1 photographs. I entered in carefully into the master
2 bathroom. Being careful where I stepped, observing
3 there was some blood on the floor and areas of that
4 nature, I walk into the bathroom, I take some overall
5 photographs. I do a general look-over, and at that
6 point in time, I stop what I was doing, backed out of
7 the house the same way I came in, and waited for a
8 search warrant.

9 Q Did you ultimately get a search warrant?

10 A Yes, a search warrant was obtained. As I'm
11 backing out of the house, like I said, my equipment, I
12 had a notebook with me, I believe I left that on the
13 ledge of the tub, and I backed out. No one else was in
14 the house. I sealed it down and just waited.

15 Q And when you went in the second time, did you
16 search the entire house?

17 A Throughout the process of the evening, yes.

18 Q So you went in and looked at all of these rooms
19 in this entire house, walked through the entire house?

20 A Yes.

21 Q Okay. If you didn't mind, point out to this jury
22 the exits to the house, how can you get out of the
23 house, and get into the house?

24 A Okay. Right here is what you consider a
25 traditional front door of the residence. Back here you

JILL DOMOGAUER - DIRECT EXAMINATION

1 have two rear doors of the residence, and I believe
2 those are the only doors I saw to the residence.

3 Q Okay. Now, when you come in, this is a door
4 here?

5 A Yes, there is. There is a carport, an overhang
6 carport. This door is by the carport. There is kind
7 of like a little brick porch or step area around this
8 door, and that is where that is.

9 Q Okay. When you come through these two doors, you
10 take a left to go into this master bedroom?

11 A Yes, you would take a left.

12 Q So this door here, you come through a little
13 hallway, and when you take a left, you are immediately
14 in the master bedroom?

15 A A couple of steps, yes.

16 Q Okay. Now, is this the master bathroom here?

17 A Yes.

18 Q Is there any exit outside of this bathroom to get
19 out of the house?

20 A There is no exterior exit, no. You would have to
21 go through interior rooms to get to the exits of the
22 residence.

23 Q Okay. So the only doorway in and out of this
24 bathroom is this doorway here?

25 A That would lead out, yes, ma'am. There is a

JILL DOMOGAUER - DIRECT EXAMINATION

1 suite that has closets -- that goes to a closet, there
2 is no way out of that closet, so the only way you can
3 go is through the bathroom door into the master bedroom
4 and out of the master bedroom to get to an interior
5 door of the residence.

6 Q Okay. Now, tell the jury about what this is
7 here?

8 A That is a chair in the master bedroom. When you
9 do a sketch -- like I said, I'll remind you, this is
10 not to scale. There is no approximate sizes and
11 measurements. That is not what this is about. It's
12 just a general formation of where things would be if
13 you were to see it. I revised this sketch. My
14 original sketch had a chair up here. I slid it down to
15 a place where it is supposed to be per a photograph.
16 But, again, not to scale search. So this would be, I
17 guess, like an arm chair type of chair.

18 Q And are the pictures going to show this chair?

19 A Yes, they will.

20 Q Now, I noticed you have some numbers and some
21 marks here. If you don't mind, so the jury will know,
22 tell them what these indicate.

23 A The red lines you see there with numbers indicate
24 evidence that I've identified and collected.

25 Q And did you document all of this by taking

JILL DOMOGAUER - DIRECT EXAMINATION

1 photographs?

2 A Photographs, a freehand sketch that day --

3 photographs, notes, things like that, yes.

4 Q If you don't mind, just so when we show the
5 photographs, when you walk into this master bedroom,
6 what is this here? What is this documenting?

7 A That's a nightstand.

8 Q And what is this?

9 A A bed.

10 Q And then what is in here?

11 A Another nightstand.

12 Q So you have a bed and then a nightstand on each
13 side?

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q Is that correct?

18 A Yes.

19 Q Now, what is this documenting here?

20 A It is like a dresser type of thing, maybe another
21 little table or like a basinet kind of thing, and
22 another table off to the side.

23 Q So this is the nightstand, and this is kind of
24 like a crib, slash, basinet type of piece furniture,
25 and here is another piece of bedroom furniture?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A Yes.

2 Q If you don't mind, have a seat and I'll show you
3 pictures.

4 I'll show you Pictures 19 through 64. They've
5 already been marked. Mr. Martin has already seen
6 them. Do you mind looking at them and tell the Court
7 if you recognize the picture, and if it was something
8 you took, and if it was taken, indeed, on
9 August 11th? Go ahead and breeze through all of
10 them and let us know.

11 A (Witness examines documents.) Sorry.

12 THE COURT: Take your time.

13 (A brief pause in the proceedings.)

14 Q (MS. LIVESAY) Do you recognize those pictures?

15 A Yes, I do.

16 Q Are those documentation of that crime scene on
17 August 11th of 2013?

18 A Yes, they are.

19 MS. LIVESAY: Your Honor, at this time the State
20 wishes to put State's Exhibits 19 through 64 into
21 evidence.

22 THE COURT: Any objection?

23 MR. MARTIN: Without objection.

24 THE COURT: Without objection.

25 (State's Exhibits 19 through 64 admitted.)

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q (MS. LIVESAY) Investigator, do you mind, we're
2 going to put these pictures on the screen, and do you
3 mind going through and telling this jury what you are
4 documenting in those pictures?

5 A Yes, ma'am.

6 Q Investigator, what is this a picture of here?

7 A I came to the back door entrance and turned to my
8 left and just took a shot of when you come into that
9 back door that I made entry through, you have the
10 living room to the right, and this is the area you have
11 to the left.

12 Q I've got this here. This is coming into the
13 master bedroom?

14 A That would be the hallway from the kitchen that
15 goes into the master bedroom.

16 Q And this is just the kitchen area here?

17 A You have a kitchen area with an island area.
18 There is no wall separating to the living room, it is
19 just an open space of the living room, some other
20 bedrooms, a formal dining in front of the house.

21 Q So as soon as you walked in the door, you turned
22 to the left and took this picture?

23 A Yes, I did.

24 MS. LIVESAY: Can we see the next one, please?

25 Q And this is a shot of what?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A I'm now standing in the area where the -- that
2 second door by the carport is. I've gone through the
3 kitchen, I'm down that little hallway area, and to my
4 left, as I'm facing the master bedroom, there is a
5 second back door, little area where I guess you put
6 your shoes or whatnot, hang up your keys and whatnot,
7 and then right there a couple of steps further, you are
8 into the entrance into the master bedroom.

9 Q Just so we're clear. This here is the master
10 bedroom?

11 A Yes, it is. That is what I identified as the
12 master bedroom.

13 Q If you turn to the left right here, this is an
14 exit out of the house?

15 A That is an exterior door, yes.

16 Q In fact, do you see that mirror in the picture
17 right here (indicates)?

18 A Yes.

19 Q Can you see the window from that door and the
20 reflection?

21 A Yes, I can.

22 Q Okay. So you come in here, and if you take a
23 left, you go immediately out of the house?

24 A You can, yes, ma'am.

25 Q If you keep going straight, you go right into the

JILL DOMOGAUER - DIRECT EXAMINATION

1 master bedroom?

2 A Yes, ma'am.

3 MS. LIVESAY: Can we see the next picture?

4 Q (MS. LIVESAY) Okay. Now, is this the master
5 bedroom here?

6 A It's me standing right before I cross the
7 threshold of the master bedroom, yes, ma'am.

8 Q So this is as soon as you walk into the master
9 bedroom?

10 A I haven't made it in yet. I'm still outside.
11 It's right there at the doorframe. I take photographs
12 as -- I take a step, take a picture, take a step, take
13 a couple pictures.

14 Q Is this how it looked when you walked in on
15 August 11, 2013?

16 A Yes, ma'am.

17 MS. LIVESAY: Can we hit the next one, please?

18 Q (MS. LIVESAY) Is this the way it looked on
19 August 11th, 2013?

20 A Yes, it is. I'm now inside that threshold of the
21 door.

22 Q Is this how the bed looked?

23 A Yes. I observed the bed had one side made, and
24 the other side appeared as the covers were turned down
25 as if you were laying in it or getting out of it.

JILL DOMOGAUER - DIRECT EXAMINATION

1 MR. MARTIN: Let me ask one question. Is it
2 possible as we go through these photographs without a
3 lot of trouble to say what number of evidence exhibit
4 they are? In other words, this is 22.

5 MS. LIVESAY: I'm sorry?

6 MR. MARTIN: What I'm trying to say is, when she
7 talks about a photograph, I would like to have it into
8 the record, the number of the exhibit, if there is a
9 way we can do that without slowing the process down.

10 MS. LIVESAY: I can do that.

11 MR. MARTIN: She started at 19, so I think we can
12 -- if we can say Exhibit 20, what is this.

13 THE COURT: If you can do that, that would help.
14 It would help for the record.

15 Q Can you see them good enough here? I have a
16 flashlight on my phone.

17 A I can't see the numbers, I'm sorry. I have a
18 phone, it is just turned off.

19 THE COURT: Well, I'll tell you what --

20 WITNESS: Oh, wait a minute. Wait a minute.

21 THE COURT: I was getting ready to do that.

22 WITNESS: I've got some McGiver keys.

23 MR. MARTIN: And I have a flashlight here.

24 THE COURT: All right, she's got it. That thing
25 will blind us all.

JILL DOMOGAUER - DIRECT EXAMINATION

1 A I believe the photograph we are looking at now is
2 No. 22.

3 Q (MS. LIVESAY) This is the way the bed looked
4 when you came in?

5 A Yes, it was.

6 MS. LIVESAY: Can we see the next one, please?

7 Q Now, is this what you were showing us in the
8 sketch?

9 A She had a nightstand, like you saw in the other
10 photograph, a nightstand, a little circular type of
11 table over there, a crib and like a dresser type of
12 furniture, and then I believe there is like another
13 piece of furniture behind me, or something like that.

14 Q And just for the record, what number is this?
15 Can you see it on the back of the picture?

16 A We're now looking at No. 23.

17 Q And can you see what this is here on the -- on
18 this little table?

19 A Yes, that is a cordless phone docking.

20 Q That is where you put the phone to -- like a home
21 phone?

22 A You could put a cordless phone in there for
23 charging, yes, ma'am.

24 Q Were these covers like this when you came in?

25 A Yes, ma'am, they were turned down in that

JILL DOMOGAUER - DIRECT EXAMINATION

1 fashion.

2 Q And in this crib here, were these pillows in
3 here?

4 A Yes, ma'am.

5 Q And so this is the little table in the sketch?

6 A Uh-huh.

7 Q The crib and this piece of furniture here we saw
8 on your sketch?

9 A Yes, ma'am. And I believe a little further there
10 might be another piece of furniture.

11 Q And this is the way it appeared on August 11,
12 2013?

13 A Yes, ma'am.

14 Q Did you see this table knocked over or anything
15 on this table knocked over?

16 A No, ma'am.

17 Q Anything knocked over, broken?

18 A No, ma'am.

19 Q How about along in here, anything broken, knocked
20 over in here, the lamp, anything like that?

21 A No, ma'am.

22 MS. LIVESAY: Can we see the next picture,
23 please.

24 Q Is this the entranceway to the bathroom?

25 A Yes, ma'am, it would be.

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1 Q Is this the white chair you were showing us
2 earlier?

3 A Yes, ma'am, it is.

4 Q And this is how it was on August 11, 2013?

5 A Yes, ma'am, it is.

6 Q It was catty-corner against this wall?

7 A I would describe it catty-corner, yes. It is not
8 sitting flush or at a 90 degree angle, it is in the
9 corner.

10 Q Right. Kind of turned this way?

11 A Yes.

12 Q Let me ask you this. This doorway here, is this
13 the only doorway into the bathroom?

14 A I'm sorry. For the record, we're looking, I
15 believe, at 24, I apologize. Yes, ma'am.

16 Q So this is the only doorway to get in and out of
17 this bathroom?

18 A Yes, ma'am.

19 Q This is just looking straight into the bathroom.
20 What is this here?

21 A Those would be the feet and shin type areas of
22 the victim.

23 MS. LIVESAY: Can we see the next picture,
24 please?

25 Q (MS. LIVESAY) Do you recognize this? What

JILL DOMOGAUER - DIRECT EXAMINATION

1 number is this?

2 A Yes. This is Exhibit No. 25.

3 Q And is this that white chair we were just looking
4 at?

5 A Yes, ma'am.

6 Q Okay. And what is this here in the chair that
7 you took a picture of?

8 A It's a cordless phone receiver, the actual phone.

9 Q Okay. So this is just the headset for that phone
10 that was on that little table?

11 A The handset, yes, ma'am.

12 Q Now, this chair is white. Did you see any blood
13 at any time on this chair?

14 A No, ma'am.

15 MS. LIVESAY: Can we see the next picture,
16 please?

17 Q This is still that white chair; is that correct?

18 A Yes, ma'am.

19 Q What number is this picture?

20 A Oh, man. We're looking at No. 26.

21 Q Now, what were we looking at right here?

22 A It's a picture of the one side of the chair.

23 There is a spent shell casing I observed in that area.

24 Q If you don't mind, tell this jury exactly how

25 this casing works when it comes to a gun. Is this the

JILL DOMOGAUER - DIRECT EXAMINATION

1 part that is shot out the front, is this ejected out of
2 the side?

3 A No -- I'm sorry, I apologize. When you have a
4 firearm, semi-automatic or even a revolver, you have
5 what is called a bullet. The bullet is composed of
6 many parts. You have a bullet that will travel down
7 the barrel of a firearm. You have gun powder that is
8 inside of it, and then you have what it is cased in,
9 which is what is called a casing or cartridge. A lot
10 of people called them cartridges. When the firearm is
11 fired, and in this particular case it is a
12 semi-automatic, that spent casing will be ejected from
13 the gun, and the magazine will auto feed another round
14 into the chamber, if there is rounds in the magazine.

15 Q So this ejects out of the gun once it is fired?

16 A Yes, it does. MS. LIVESAY: Next picture,
17 please.

18 Q Is this the doorway to the bathroom?

19 A We're looking at No. 27. Yes, it is. I'm closer
20 to the bathroom entrance.

21 Q Now, this is looking straight into the bathroom;
22 is that correct?

23 A Yes. I'm standing like you would walk into a
24 bathroom.

25 Q So when you are looking in, you are looking

JILL DOMOGAUER - DIRECT EXAMINATION

1 straight here?

2 A Yes, ma'am.

3 Q Now, if you don't mind, tell me what this is.

4 A Well, you have a dog bed, a bathmat, a tub and
5 then this is what is called my natural vision. I can
6 only see on the opposite wall there a vanity with a
7 stool, mirror. I can see the victim's limbs, and that
8 is all you could naturally see from the position I'm at
9 right now.

10 Q So this is a little chair, a little stool?

11 A Yes, like a stool.

12 Q Is this a piece of furniture here you sit at?

13 A I would call that like a makeup vanity, or a
14 vanity.

15 Q And is this a mirror sitting on it?

16 A I believe so, yes, ma'am.

17 Q And are these just some items sitting here on the
18 bathtub?

19 A Toiletry type items, yes, ma'am.

20 Q Was any of this stuff here knocked over?

21 A No, ma'am.

22 Q No?

23 A Just how I saw it, is how you are seeing it now.

24 Q And this bathmat, is that how you saw it?

25 A Everything is just how I saw it.

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1 Q This mirror is still standing up just like that?

2 A Yes, ma'am.

3 Q How about this stool, was that knocked over, or
4 was that sitting up like that?

5 A Everything is like I saw it, standing up and
6 sitting up like that.

7 Q Now, when you come through this doorway and turn
8 to the right, what do you see?

9 A When you make entrance to the doorway and clear
10 the doorway, to the right of you is like a walk-in -- I
11 would call it a his-and-her closet, that is how I would
12 describe that.

13 Q Okay. So when you come in and take a right, you
14 are in a closet?

15 A You would take a step and you would be inside a
16 walk-in type of closet.

17 Q And if I come in here and take a left, what do I
18 see?

19 A You are going to see a larger vanity sink area,
20 an area where the commode is, toilet is, area where a
21 walk-in shower is, and this little nook here where you
22 have that little vanity there. It is the rest of the
23 bathroom.

24 Q So when you walk in, to the left is basically the
25 rest of the bathroom area, your toilet, your shower,

JILL DOMOGAUER - DIRECT EXAMINATION

1 your vanity; and when you walk in and take a right,
2 basically, that is just the walk-in closet area?

3 A You would take a step and you would be entering
4 the walk-in closet area.

5 Q Next picture -- hold on. Before you -- this door
6 here, when you walked in, did you see any blood on this
7 door?

8 A No, ma'am.

9 Q You did not?

10 A No, ma'am.

11 MS. LIVESAY: Can we see the next picture?

12 Q Just so we're clear, what picture is this, I'm
13 sorry, so we can document it for the Court.

14 A No. 28.

15 Q So this is after you came in the bathroom, and
16 now we're looking to the right?

17 A Yes.

18 Q Did you open this door, or was this door opened
19 when you got there?

20 A Everything is how it was when I got there.

21 Q Okay. So you documented it just how you saw it?

22 A Yes, ma'am.

23 Q So when you walk in, this door is already opened?

24 A It is in that position, yes, ma'am.

25 Q Now, this is a better picture of this door. Did

JILL DOMOGAUER - DIRECT EXAMINATION

1 you see any blood on this door?

2 A No, ma'am.

3 Q Did you see any blood on this door?

4 A No, ma'am.

5 Q And this is the white chair we were talking about
6 earlier?

7 A Yes. That is the master bedroom right there
8 through that doorway.

9 Q Okay. And this is the white chair that had the
10 casing on this side right here?

11 A Yes, ma'am.

12 Q And the phone?

13 A Yes, ma'am.

14 Q What are we looking at here? Is this the closet?

15 A That is a closet, yeah. I took some overalls of
16 the closet. I did take a picture of this side. The
17 closet was very neat and orderly. I wish mine looked
18 like that. There was an area over here where you had
19 some clothes that weren't neatly put up or folded like
20 the rest of the closet was, so I just took a picture of
21 that.

22 Q What are you documenting in this picture?

23 A Pictures No. 29, I apologize. Just that. I just
24 took a picture of -- I, of course, would call this "his
25 side," khaki pants, male clothing, couple shirts and

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1 shorts aren't hung up. They are down, not folded, or
2 kind of folded-ish. Everything was very neat in that
3 closet.

4 Q Let me ask you this. How would you describe
5 overall that bedroom we just saw? Dirty? Neat?

6 A I would describe the overall condition of the
7 house as impeccable. It was very neat and very
8 orderly.

9 Q You are documenting here that these clothes are
10 kind of balled up here, and the rest of them are all
11 hung up?

12 A They are not as the others. They are not neat.

13 Q Can we see the next picture? What are we looking
14 at here?

15 A This is Picture No. 30. When you go right into
16 the closet, you have a partition, it has a mirror and
17 it would separate the two sides. This would be going
18 into the "her side".

19 Q So you have his -- his clothes are over here?

20 A It appeared to be, yes, ma'am.

21 Q Men's clothing?

22 A Men type of clothing is over there.

23 Q And then you got this mirror, and then you got
24 women's clothing?

25 A It appeared to be woman's clothing, yes, ma'am.

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1 Q You didn't take a picture of any clothes that
2 were down or bundled up together over here?

3 A No, ma'am.

4 Q No? Yes?

5 A No. I took another picture on the back side of
6 the closet. There was some clothing in a bag; I don't
7 know if it was to put away for seasonal or whatever,
8 but, again, everything was very neat and orderly.

9 MS. LIVESAY: Can we see the next picture,
10 please?

11 Q Okay. This is as you come into the bathroom and
12 you look to the left; is that right?

13 A No. This picture is actually -- I'm in the
14 closet.

15 Q So you are standing in the closet door looking
16 out.

17 A Yes, ma'am.

18 MR. MARTIN: And the exhibit number?

19 A I'm sorry. I thought I said it; I said it in my
20 head. It is State's Exhibit 31.

21 Q And if you don't mind, tell us what we're looking
22 at here. What is this over here?

23 A It is a walk-in shower.

24 Q And are these some towels hanging up?

25 A Yes. I don't know whether you want to say

JILL DOMOGAUER - DIRECT EXAMINATION

1 handtowels or washcloths on the top of the ledge. You
2 had some towels on a towel rack on the outside wall
3 there. Again, a shower mat or floor mat, a baby
4 sleeper cradle type of thing. You can see the
5 beginning part of the toilet, the victim and the
6 vanity, sink vanity, we'll call it that.

7 Q Okay. So what is this here?

8 A Cell phone.

9 Q And can you tell in this picture what that is
10 beside the cell phone?

11 A Gun.

12 Q And what is this here?

13 A I believe you are pointing to the cell phone
14 cord.

15 Q Was this towel hanging up just like this?

16 A The one on the ring is hanging up, yes. If you
17 come on this side, you can't see from this particular
18 picture there is one on the other side as well, and
19 there is a washcloth on the counter right there on the
20 other side of the sink.

21 Q Okay. When you got here, this is how the
22 bathroom looked?

23 A Yes, ma'am.

24 Q Were any of these drawers open, out, anything
25 disturbed amongst these drawers?

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1 A The only drawer I took a note to was if you go
2 towards on the toilet side -- not the furthest drawer,
3 but the second drawer, lower drawer, was slightly open.

4 Q How about any of these along in here?

5 A No, ma'am.

6 Q Any of those drawers opened at all?

7 A No, ma'am.

8 Q None of them opened?

9 A No, ma'am.

10 Q Was this turned over?

11 A No, ma'am.

12 Q Was this mat in any way disturbed?

13 A It is exactly how you are seeing it, is how I saw
14 it, right there in place.

15 MS. LIVESAY: Can we see the next picture?

16 Q (MS. LIVESAY) What are we looking at here?

17 MR. MARTIN: Exhibit No.?

18 A Picture No. 32, state's Exhibit No. 32. This is
19 the toilet area.

20 Q (MS. LIVESAY) And what is this sitting on top of
21 the toilet?

22 A A pair of needle nose pliers.

23 Q This is where they were when you got there?

24 A Yes, ma'am.

25 MS. LIVESAY: Can I see the next picture, please.

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1 Q Okay. Now, what number is this?

2 A State's Exhibit No. 33.

3 Q What am I looking at in here?

4 A If you walk in a room and look to one side, you
5 are seeing what you see. This would be me looking on
6 the other side, just turning my head, and I would turn
7 my camera with me, naturally. You see the same baby
8 cradle type of thing, the shower, and now you see more
9 of the bathtub and the little nook with a stool and the
10 mirror.

11 Q Was anything knocked over or disturbed here?

12 A No, ma'am. Everything is how you see it in the
13 picture.

14 Q Were any of the drawers coming out?

15 A I don't believe so, no, ma'am.

16 Q So everything was neat in place?

17 A Yes, ma'am.

18 MS. LIVESAY: Can I see the next picture?

19 Q (MS. LIVESAY) Show me what I'm looking at here.

20 A We're looking at State's Exhibit No. 34. When
21 you come in, you can see the closet area over there.

22 Q Right here?

23 A Yes. You have a floor mat, bathmat, dog's bed,
24 and that would be the bathtub. You've got some water
25 -- there is some water in the bathtub, decorations --

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1 not decorations, but designs, pieces in the corners,
2 and some toiletry items right there in the front by the
3 faucets and the handles.

4 Q Was anything -- did anything looked turned over
5 or disturbed in any way on this bathtub?

6 A Nothing looked turned over. There was an area of
7 disturbance.

8 Q Okay. Okay. And I know that -- did you take any
9 measurements of this bathtub?

10 A Yes, I did.

11 Q Do you remember about how tall this bathtub was?

12 A Do you mind if I refer to my notes for exact?

13 Q Yes.

14 A I would say it was approximately 22-and-a-quarter
15 (sic) inches high.

16 Q How tall?

17 A 20-and-a-quarter inches high, approximately.

18 Q I'm sorry?

19 A 20-and-one-fourth inches high.

20 Q And if you don't mind, can you give me some idea
21 on me about how far that would come up? About right
22 here?

23 MR. MARTIN: I object. They can give her a ruler
24 if they want to.

25 THE LIVESAY: It's just an idea for the judge.

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1 THE COURT: If she thinks she can do it, but, you
2 know, it would help if you had a ruler.

3 Q (MS. LIVESAY) You saw this bathtub when you were
4 there?

5 A Yes, ma'am.

6 Q Would you say it was as tall as my waist?

7 A No, ma'am.

8 Q How about right here, to my knee?

9 A Possibly.

10 Q But definitely not as tall as my waist?

11 A No, ma'am.

12 Q Somewhere below my waist?

13 A I would say, yes, ma'am.

14 Q So if -- somewhere below here (indicates)?

15 A Yes, ma'am.

16 Q Just for the jury. So here is my waist,
17 somewhere below this area (indicates)?

18 A Yes, ma'am.

19 MS. LIVESAY: Can I see the next picture, please.

20 Q (MS. LIVESAY) What is this?

21 A Looking at State's Exhibit No. 35.

22 Q What is this sitting here?

23 A That is my notebook.

24 Q Was all of this stuff along in here?

25 A Yes, ma'am, it was.

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1 Q This dog bed was, right here?

2 A Yes, ma'am.

3 MS. LIVESAY: Can I see the next picture?

4 Q (MS. LIVESAY) What are we looking at here? What
5 picture number?

6 A Picture No. 36, or State's No. 36.

7 Q And what is this here?

8 A This is a closer picture of the faucet, faucet
9 handles that -- toiletry item. And if you can see, if
10 you look downward towards the marble ledge of the
11 bathtub where the porcelain, or whatever the bathtub is
12 made out of, and by the handle, that is a bullet hole.

13 Q Okay. So what you're telling me is this is where
14 the bullet entered?

15 A The bathtub.

16 Q And this was the only hole you found where the
17 bullet entered, other than the victim?

18 A Well, other than the victim, yes, ma'am.

19 Q All right. But nowhere else in the house shows
20 anything other than this one hole here?

21 A Yes, ma'am.

22 MS. LIVESAY: Next picture.

23 Q (MS. LIVESAY) What are we looking at here?

24 A State's Exhibit No. 37.

25 Q If you don't mind, when you showed up, were any

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1 of these drawers here open?

2 A No, ma'am. You can see the one drawer that has a
3 little piece of something right there.

4 Q So this is the only one?

5 A Yes. It's slightly cracked, slightly opened.

6 Q And this is how it looked?

7 A It looks exactly like it is in the picture.

8 Q Okay. And none of these other drawers along in
9 here looked like they had been opened?

10 A They were closed when I got there, ma'am.

11 MR. MARTIN: Objection. Objection. How can she
12 testify if they looked like they had been opened?

13 THE COURT: Ask her if they were opened, and
14 sustained on that.

15 Q (MS. LIVESAY) This drawer here, what do you see?

16 A I see a small item. You can see it slightly
17 cracked.

18 Q Like someone opened it and closed it, and it got
19 caught up?

20 A I can tell you it was in that position when I got
21 there.

22 Q Okay. Now, how about these, are any of these
23 drawers even slightly cracked?

24 A No, ma'am, they are closed.

25 Q Now, we're looking at a full picture of this

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1 vanity; is that correct?

2 A Yes.

3 Q Okay. And you've searched this entire bathroom?

4 A Well, not at that moment, but throughout my
5 investigation, yes, ma'am.

6 Q Did you find a bloody towel, cloth or rag
7 anywhere around this vanity?

8 A No, ma'am. You can see the two towels that are
9 hanging there.

10 Q Right here?

11 A Yes, ma'am.

12 Q And how about this one?

13 A Oh, that is like -- like a washcloth.

14 Q Right here?

15 A That is like a handtowel, yes, ma'am. Those were
16 looked at and inspected, both sides of it, turned over.
17 I also -- like you remember seeing at the shower, there
18 was some towels and washcloths there, those were also
19 looked at...

20 Q When you got there, this cord was plugged in?

21 A Everything is how you see it now, yes, ma'am.

22 Q This is how it looked?

23 A That is how it looked, yes, ma'am.

24 Q This phone was just sitting there on the vanity?

25 A Yes, ma'am.

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1 Q And is this the gun here?

2 A Yes, ma'am, it is.

3 Q And you didn't see any bloody cloth or towel on
4 this vanity or around this vanity?

5 A No, ma'am.

6 Q How about in the bathroom?

7 A The bathroom was searched throughout the
8 investigation. I did not locate any items.

9 Q Just so I'm clear, did you ever take or find a
10 cloth with blood on it in the bathroom?

11 A No, ma'am.

12 Q Now, is this the only phone you saw in the
13 bathroom?

14 A Yes, ma'am.

15 Q Now, do you see this over here?

16 A Are you referring to the gun?

17 Q Yeah. Right here, what is this; do you know?
18 You can't tell?

19 A I don't know what you are pointing at.

20 Q Sorry. To the left, beside the cord (indicates).
21 You can't tell?

22 A I would say it is something you have on your
23 bathroom counter.

24 Q Was it turned over?

25 A No, it is standing up. It has Q-tips or

JILL DOMOGAUER - DIRECT EXAMINATION

1 something.

2 Q Were any of these towels torn down or in any way
3 disturbed?

4 A Other than the washcloth that was on the counter,
5 everything is neatly hanging.

6 Q Can I see the next picture, please. What number
7 is this?

8 A State's Exhibit No. 38.

9 Q What are we looking at here?

10 A I see a cell phone, a firearm, a cord, jar of
11 Q-tips.

12 Q And this is a closer picture of this drawer; do
13 you see that?

14 A Yes, ma'am.

15 Q Does that drawer look cracked or open to you?

16 A It is closed.

17 Q Anything up here look disturbed?

18 A No, ma'am.

19 MS. LIVESAY: Can I see the next, picture?

20 Q When you walk in this bathroom and turn to the
21 left, is this how everything appeared?

22 A Approximately, yes, ma'am. Oh, I'm sorry, hang
23 on a second. We're looking at Picture 39, Exhibit 39.

24 MS. LIVESAY: Can I see the next picture, please?

25 Back up one, I'm sorry, if we can.

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1 Q (MS. LIVESAY) So this is an overall shot of this
2 victim?

3 A One of them, yes, ma'am.

4 MS. LIVESAY: And can we get a closer-up shot,
5 the next one?

6 MS. POP: You want something zoomed on this?

7 MS. LIVESAY: I'm sorry, just go to the next
8 picture, sorry.

9 Q (MS. LIVESAY) What number is this?

10 A State's Exhibit No. 40.

11 Q Now, you have a marker marking this. What are
12 you trying to show here or documenting?

13 A I'm documenting some areas of blood spatter. You
14 have drops and what looks to be a smear.

15 Q And what are these here?

16 A I would call those drops, droplets.

17 Q So you are telling me these are blood droplets?

18 A Yes, ma'am.

19 Q And you are telling me this is a smear?

20 A Yes, ma'am.

21 Q And what exactly do you call a blood droplet, so
22 the jury will know?

23 A A droplet can be various different shapes, but it
24 is pretty much what -- it is self-explanatory, a drop.
25 It can be circular, it can be oval, that kind of thing.

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1 MS. LIVESAY: Can I see the next picture, please?

2 Q (MS. LIVESAY) What are we looking at here that
3 you marked?

4 A Looking at State's Exhibit 41.

5 Q What are we documenting?

6 A Same thing, just areas of blood, where you have
7 blood droplets, maybe smears. Also, the numbers can
8 represent areas which I swabbed and collected blood
9 samples from the floor.

10 Q Do you see what I'm looking at here?

11 A On the jeans?

12 Q Yes.

13 A That's blood.

14 MS. LIVESAY: Next picture, please.

15 Q You've documented here -- I'm sorry, what picture
16 is this?

17 A State's No. 42.

18 Q What are you documenting here with this No. 3?

19 A I'm referring to my notes to be sure. I'm
20 documenting a black handled Cuisinart knife 4-inch
21 blade.

22 Q Is this how you saw the knife when you came in?

23 A Yes, ma'am.

24 Q Now, is this the way the knife appeared when you
25 came in?

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1 A Looking at State's Exhibit No. 43, yes, ma'am.
2 There is a series of photographs. This is a picture
3 where I have a marker on it, but this is -- the knife
4 is still in the same position when I walked into the
5 bathroom.

6 Q When you came in, did you see this on his palm?

7 A Yes, ma'am.

8 Q Now, can you see the outside of his fingers?

9 A I can see that area there, yes, ma'am.

10 Q Did you see any blood along in here?

11 A No, ma'am, I don't believe I did.

12 Q You did not? Did you see any injuries along in
13 here (indicates)?

14 A Just looking at the way I'm looking at it now,
15 no. Throughout the investigation, I do take a closer
16 look at the hand and examine it. But, no, I do not see
17 anything there.

18 Q What is the only wounds you saw on that victim?

19 A At the time I came in there, I saw a hole in his
20 shirt. Again, throughout my investigation, I examined
21 the body, and there was a gunshot wound.

22 MS. LIVESAY: Can I see the next picture, please?

23 Q Are you documenting here the blood in the hand?

24 A We're looking at State's Exhibit No. 44. I'm
25 documenting the picture -- I'm documenting the hand,

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1 blood in the hand. I also -- the No. 8 will indicate
2 an area of the hand a little bit further towards the
3 palm, I collected a swab of the inside of the hand.

4 MR. MARTIN: I'm sorry. I'm sorry. You
5 collected what?

6 WITNESS: A swab.

7 MR. MARTIN: From where?

8 WITNESS: The hand.

9 THE COURT: I believe you said inside of the
10 hand, right?

11 WITNESS: Well, you see my "L," the heel of the
12 palm, I guess is a better saying, heel of the palm.

13 MS. LIVESAY: Next picture.

14 Q (MS. LIVESAY) What are we looking at now?

15 A State's Exhibit No. 45.

16 Q What is this a picture of?

17 A Picture of the firearm.

18 Q And what does this signify for you here?

19 A The gun is in a cocked, the hammer back, is the
20 most common term, but it is cocked.

21 Q That means what?

22 A If you have a semi-automatic, you can have a
23 double-action or single-action. When you have a
24 double-action and fire it once, the hammer will stay
25 cocked to make a quick tap, less trigger pull. It is

JILL DOMOGAUER - DIRECT EXAMINATION

1 in that position now.

2 Q So when it's cocked -- when you pull the trigger,
3 that means it goes bang?

4 A Well, it goes bang without it, but you don't have
5 to pull so hard as you do to initially -- if the hammer
6 was back in the normal position, you pull it once, it
7 is going to fire a round, cock the hammer, squeeze the
8 trigger with a lesser pull than the first time.

9 Q Okay. Let me ask you this. When we look close
10 at this gun, do you see this part here I'm showing you?

11 A That is the slide.

12 Q Is that where the casing ejects from?

13 A That little opening there, you see a little bit
14 of a difference, that would be where a cartridge casing
15 could have ejected from that weapon, yes, ma'am.

16 MS. LIVESAY: Could I see the next picture,
17 please?

18 Q (MS. LIVESAY) What are we marking and
19 documenting in this picture?

20 A We're looking at pictures -- State's No. 46.

21 Q What is this a picture of?

22 A Cell phone.

23 Q Did you see any visible blood anywhere on this
24 phone?

25 A No, ma'am.

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1 Q Can I see the next picture. What are we looking
2 at here?

3 A State's Exhibit No. 47.

4 Q What is this a picture of?

5 A Needle nose pliers on the back of the toilet.

6 Q Did you see any visible blood on these pliers?

7 A Not that I could see, no, ma'am.

8 Q When you saw them, is this the way they looked?

9 A Yes, ma'am.

10 Q This is an overall shot of the bathroom with
11 everything marked; is that correct?

12 A We're looking at State's Exhibit No. 48. Yes,
13 ma'am, after I locate items of interest, I will number
14 them and I will try to take pictures where you can see
15 where they are compared to something that is
16 stationary, like the vanity or the doorway, just so you
17 can see, you know, what I'm seeing. The markers kind
18 of help you.

19 Q If you don't mind, correct me if I'm wrong, I
20 want to be sure I'm clear, we're documenting here blood
21 droplets and a blood smear between his legs?

22 A I'm documenting there are forms of blood spatter
23 on the floor, yes, ma'am.

24 Q And you are documenting here some more blood
25 droplets?

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1 A Yes, ma'am, and also areas which I swabbed the
2 floor.

3 Q And you are documenting up here, the knife?

4 A Yes, ma'am, along with the area of the hand I
5 swabbed.

6 Q And this is documenting the blood from the hand
7 that you swabbed?

8 A Yes, ma'am.

9 Q Okay. And this is documenting the phone?

10 A Yes, ma'am.

11 Q And the gun?

12 A Yes, ma'am.

13 Q If you had seen anything else, like another phone
14 or another knife or a bloody rag, would you have
15 documented that?

16 MR. MARTIN: Objection, calls for speculation as
17 asked.

18 MS. LIVESAY: It doesn't call for speculation,
19 either she would have documented it or wouldn't.

20 THE COURT: Ask her -- I would be happy to answer
21 that. Just ask her that question.

22 MS. LIVESAY: I will.

23 Q (MS. LIVESAY) Do you document the evidence that
24 you find at a crime scene?

25 A Yes, I do.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q Is this showing us that you have documented the
2 evidence you have collected from this crime scene?

3 A Some of the items I collected, yes, ma'am.

4 Q Okay. And around this area here, if you had seen
5 another cell phone, would you have documented it?

6 A Well, yes.

7 MR. MARTIN: Here is my objection. That is
8 speculation. If she wants to ask her what the policy
9 is for what they do, I don't have an objection to
10 that, but just to ask that question, would you have
11 done this, if that, that calls for speculation and I
12 object.

13 THE COURT: Well, she's asking her what she would
14 do. I'll allow the question. That is fair a fair
15 question if you are asking what she, personally, would
16 do. Overruled. Go ahead.

17 MS. LIVESAY: Thank you, Your Honor.

18 Q (MS. LIVESAY) If you had seen a second cell
19 phone, other than this one, would you have documented
20 it just like you documented this one?

21 A Yes, I would have.

22 Q And was there a second cell phone in that
23 bathroom?

24 A No, ma'am.

25 Q Now, you documented these -- blood here, blood

JILL DOMOGAUER - DIRECT EXAMINATION

1 here, blood here. If you had seen a rag with blood on
2 it, would you have documented it just the way you
3 documented here?

4 A Yes, ma'am, I would have.

5 Q And did you see a rag with blood on it?

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

7 Q And do you see here where you documented the
8 knife in his hand?

9 A Yes, ma'am.

10 Q If you had seen another knife in this bathroom,
11 would you have documented it?

12 A Yes, I would have.

13 Q Was there a second knife in the bathroom?

14 A No, ma'am.

15 MS. LIVESAY: Can I see the next picture?

16 Q (MS. LIVESAY) Again, is this the white chair we
17 saw earlier?

18 A State's Exhibit No. 49. Yes, it is.

19 MS. LIVESAY: Can we see the next picture,
20 please?

21 Q (MS. LIVESAY) What do you document here?

22 A State's Exhibit No. 50. I'm documenting the
23 spent cartridge casing, shell casing.

24 Q And everything you've documented is a piece of
25 physical evidence; did you collect it?

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1 A Yes, ma'am, I did.

2 Q Did you collect this shell casing?

3 A Yes, ma'am, I did.

4 MS. LIVESAY: Can I see the next picture, please?

5 Q (MS. LIVESAY) What are you documenting here?

6 A You can see just a little bit by the handle.

7 Q Right here?

8 A That gold dot right there.

9 MR. MARTIN: Exhibit what, please?

10 A I'm sorry, yes, sir. Exhibit 51. Thank you.

11 I'm documenting a recovered projectile. That would be

12 a -- projectile is the bullet.

13 Q (MS. LIVESAY) So this was the bullet that
14 entered this home?

15 A The fired portion of it, yes, ma'am.

16 Q And you got it from out of here?

17 A Yes, ma'am, I did.

18 Q And is that the hole?

19 A That is the hole the bullet went into. I had to
20 remove a panel on the front and go under it to get it.

21 MS. LIVESAY: Can I see the next picture, please?

22 Q (MS. LIVESAY) Is this how his shirt looked?

23 A State's Exhibit No. 52. Everything is exactly
24 how I saw it, ma'am, yes, ma'am.

25 Q Did you ultimately find a hole in the shirt to

JILL DOMOGAUER - DIRECT EXAMINATION

1 document?

2 A Yes, ma'am, I did.

3 Q What is this?

4 A State's 53.

5 Q What is this a pictures of?

6 A A picture of a hole that is located with a
7 L-scale around it for measurement.

8 Q Okay. So this is the hole in the shirt?

9 A That circular area, yes, ma'am.

10 MR. MARTIN: Point that out for me again, the
11 hole in the shirt.

12 WITNESS: Right there.

13 MR. MARTIN: Right there? Okay. Thank you.

14 Q (MS. LIVESAY) That was the hole in the shirt?

15 A That is the hole I located, yes, ma'am.

16 Q Is that hole consistent to the entrance wound?

17 A It would be consistent to an entrance wound, yes,
18 ma'am.

19 MS. LIVESAY: Can I see the next picture.

20 Q What are we looking at here?

21 A State's Exhibit No. 54.

22 Q What are we showing in this picture?

23 A That is my hand that is gloved. I lifted the
24 shirt up to examine the victim's abdomen and chest
25 area. I located a gunshot wound to the chest.

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1 Q Okay. So we're looking here now at the entrance
2 wound?

3 A Yes.

4 Q And that is a shot of kind of his upper body so
5 we can tell where this is in conjunction to his head
6 and his waist?

7 A Partially, yes, ma'am.

8 Q And this side, this side -- right about in the
9 middle almost?

10 A Almost, yes, ma'am.

11 MS. LIVESAY: Can I see the next picture? Go
12 back one, I'm sorry.

13 Q Just so I'm clear, in conjunction to where the
14 bullet is, this is the hole?

15 A That is a gunshot wound, yes, ma'am.

16 MS. LIVESAY: Can I see the next picture?

17 Q What are we looking at here? I did this in black
18 and white.

19 A Yes, ma'am. During my investigation, I also
20 examined and processed some of the body on scene. I do
21 a roll of the victim to find any other injury. I did
22 locate a gunshot wound on the back that is consistent
23 with what is called an exit wound.

24 Q Okay. So this is showing that it went through
25 the front and out the back, and here is the wound?

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1 A Yes. In that general area, yes, ma'am.

2 Q So this bullet went through him, and then into
3 the bathtub?

4 A Yes, ma'am.

5 Q And you ultimately recovered it from the bathtub?

6 A Yes, ma'am, I did.

7 Q Do you remember -- and I know it has been awhile
8 and this is a detailed question, do you remember about
9 how tall David was?

10 MR. MARTIN: Objection.

11 THE COURT: Hold on. If she says she remembers,
12 that is okay. I assume that was your objection?

13 MR. MARTIN: Well, I mean, there's a report that
14 can tell you exactly how tall he was. It's just the
15 guesstimation I was objecting to, but whatever.

16 THE COURT: I understand. You can ask if she
17 knows; if she does, that's fine.

18 Q (MS. LIVESAY) I don't expect you to know exact
19 height, but do you remember about how tall David was?

20 A I don't recall.

21 Q You do not?

22 A No, ma'am.

23 MS. LIVESAY: Can I see the next picture?

24 Q (MS. LIVESAY) What are we looking at here?

25 A State's Exhibit 56.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q Is this the bedside table that's documented?

2 A It is the nightstand area. If you first come
3 into the room, you are actually facing -- directly
4 across from you is a nightstand. This would be that
5 nightstand. There's another dog bed, on that side is
6 the made-up portion of the bed you saw earlier, but
7 that is that nightstand we were looking at.

8 Q So as soon as you walk into the bedroom, you are
9 looking straight at this nightstand here?

10 A Yes, ma'am.

11 MS. LIVESAY: Can I see the next picture.

12 Q What is this a picture of?

13 A An open drawer of that nightstand. That's
14 directly....

15 Q Okay. So this is just a drawer in that
16 nightstand?

17 MR. MARTIN: Excuse me, but exhibit what?

18 A I'm so sorry. Thank you so much. Exhibit 57.

19 Q (MS. LIVESAY) This is what was in that
20 nightstand?

21 A Yes, ma'am -- well, that particular drawer, yes,
22 ma'am.

23 MS. LIVESAY: Can I see the next picture?

24 Q (MS. LIVESAY) Is this the gun from that
25 nightstand?

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1 A State's Exhibit 58. Yes, ma'am, it is.

2 Q Do you see what I'm looking at right here? Does
3 that indicate to you whether or not that gun is loaded
4 or unloaded?

5 A Yes, ma'am. That indicates to me that that gun
6 has rounds in it; it's loaded.

7 Q Now, were you able to determine who owned this
8 gun?

9 A You can see the serial number visible right there
10 in that photograph. I ran the serial number through
11 the Alcohol Tobacco and Firearms, better known as ATF,
12 and I did a trace on who purchased the weapon.

13 Q Who did this gun belong to? Who was it
14 registered to?

15 A Can I refer to my notes?

16 Q Yeah, sure.

17 A Purchaser was Heather Elizabeth Causey.

18 Q Who?

19 A Heather Elizabeth Causey.

20 Q So this gun here belongs to Heather Causey?

21 A Yes, ma'am.

22 Q Do you see what I'm looking at? Does that
23 indicate whether or not the gun is loaded, can you
24 tell?

25 A Yes, ma'am. Those little shiny pieces are the

JILL DOMOGAUER - DIRECT EXAMINATION

1 end of bullets. The gun is loaded.

2 Q Now, is this a revolver or a semi-automatic?

3 A This is considered a revolver.

4 Q Okay. And what is the difference in how this gun
5 works, and the one we saw on the bathroom vanity?

6 A There is several differences, but one of the most
7 obvious differences, if I fire a revolver, the casing
8 is staying inside the weapon, it's staying in that
9 wheel. I have to manually eject that. A
10 semi-automatic, when you fire that, the gun, through a
11 mechanism, ejects the casing.

12 Q So when you shoot this gun, there is no casing
13 that comes out of it?

14 A No, ma'am. The casing would be inside of it.

15 Q There is no slide that slides back to eject the
16 casing?

17 A No, ma'am. It's a wheel.

18 Q Okay.

19 MS. LIVESAY: Can I see the next picture?

20 Q (MS. LIVESAY) What is this a picture of?

21 A State's Exhibit No. 59. This is the other
22 nightstand on the other side of the bed where you saw
23 the covers turned over, and the area where the crib was
24 with the pillows in it.

25 Q So this is the side closest to this cradle?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A Yes. Also the side closest to the bathroom, yes,
2 ma'am.

3 Q So this side -- this bedside table is closest to
4 the master bathroom?

5 A Yes.

6 Q Now, is this the bed?

7 A Yes, ma'am.

8 Q So just so I'm clear in the layout of the room,
9 if you wanted to get to the other nightstand, you have
10 to come out of the bathroom and go around this bed to
11 get to this night stand?

12 A You would have to go by the bed, yes, ma'am.

13 Q But this nightstand here, you are telling me, you
14 come right out of bathroom and you can get to this
15 nightstand?

16 A Turn right and walk to it, yes, ma'am.

17 MR. MARTIN: Judge, I've tried to be lenient, but
18 she's leading her witness continually, and I have to
19 object to it at some point in time.

20 THE COURT: All right. If you can, try not to
21 lead. I know we want to try to get through this, but
22 do your best not to lead.

23 Q (MS. LIVESAY) Let me ask you something,
24 Investigator. Out of this nightstand and the other
25 one, which one is closest to the bathroom?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A This nightstand here that we're seeing on the
2 picture.

3 Q Now, before we show the next picture, I want to
4 ask you, you remember seeing that 9-millimeter in the
5 bathroom?

6 A Yes, ma'am.

7 Q And that, indeed, was a 9-millimeter?

8 A 9-millimeter Ruger, yes, ma'am.

9 Q Did you look in all of those vanity drawers in
10 the bathroom?

11 A I searched the residence, yes, ma'am.

12 MR. MARTIN: I'm sorry, she did what?

13 WITNESS: Searched the residence.

14 MR. MARTIN: Well, that is not responsive to the
15 question.

16 A Yes, I searched the bathroom.

17 Q (MS. LIVESAY) If you don't mind, tell this jury,
18 when you search the bathroom, other than the bullet in
19 the 9-millimeter and the one in the bathtub, did you
20 find any other 9-millimeter bullets?

21 A No, ma'am.

22 Q Did you find a case that holds a 9-millimeter
23 anywhere in that bathroom?

24 A No, ma'am.

25 Q Did you see any evidence of any kind that

JILL DOMOGAUER - DIRECT EXAMINATION

1 belonged to that 9-millimeter in the bathroom, a case,
2 bullets, anything?

3 A No, ma'am.

4 Q Did you ultimately find a case for the
5 9-millimeter?

6 A Yes, ma'am.

7 MS. LIVESAY: Can we see the next picture?

8 Q (MS. LIVESAY) What are we looking at now?

9 A State's Exhibit No. 60.

10 Q What is this a picture of?

11 A Open drawer of the nightstand that we just saw
12 previously.

13 Q So this is the bottom drawer of that nightstand?

14 A Yes, ma'am. The drawer has a .38 caliber
15 bullets, other cases and a Ruger case.

16 Q So this says "Ruger" on it; you see that?

17 A Yes, ma'am.

18 Q And these clips are up?

19 MR. MARTIN: I object --

20 THE COURT: Hold on a minute.

21 MR. MARTIN: Object to the leading.

22 Q (MS. LIVESAY) Were these clips up when you saw
23 this?

24 A Everything as how you see it is how I saw it. I
25 just opened the drawer and took a picture.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q Okay. So when you opened the drawer, it looked
2 exactly like this?

3 A Yes, ma'am. Before I did anything, after I open
4 the drawer, I take a picture.

5 Q Do you see -- or can you see what kind of bullets
6 these are?

7 A Yes, ma'am. The box says .38. I also looked
8 inside the box, and they are .38.

9 Q Did you find any 9-millimeters in this drawer?

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

11 Q Did you find a box of 9-millimeters anywhere in
12 that house?

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

14 Q Did you find any evidence that a 9-millimeter was
15 in the house, other than this case in this bedside
16 table?

17 A Other than the 9-millimeter on the counter, no,
18 ma'am.

19 MS. LIVESAY: Can I see the next picture?

20 Q (MS. LIVESAY) What are we looking at now?

21 A State's Exhibit No. 61.

22 Q What is this?

23 A After I photographed the inside of the drawer,
24 how I found it, I then opened -- or just lifted the lid
25 basically -- of that gray case, and I took another

JILL DOMOGAUER - DIRECT EXAMINATION

1 picture. You see an empty spare magazine. You see the
2 cut-out area where you would put a firearm.

3 Q So this is where the gun belongs?

4 A It's where a gun could be, yes, ma'am.

5 Q And these are the snaps up here?

6 A Yes, ma'am.

7 Q These are the .38s?

8 A Yes, ma'am.

9 Q Okay. Now, did you look at and find out who this
10 gun belonged to?

11 A I also completed a --

12 MR. MARTIN: I object. Let me say this, Judge.

13 Again, to clarify who the gun belonged to is a
14 different question than who the gun was registered to,
15 so I ask that that distinction be made.

16 THE COURT: If you would, rephrase it.

17 MS. LIVESAY: I can rephrase it.

18 Q (MS. LIVESAY) First, let me be clear, Jill.

19 Every gun -- let me ask you this. Does every gun have
20 a serial number?

21 A Most every gun, yes, ma'am, once it's passed a
22 certain date. There are old guns, antiques or certain
23 rifles that no longer have it.

24 Q Do you use that serial number to find out who the
25 gun is registered to?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A I use the serial number to find out who purchased
2 the weapon.

3 Q Who did the serial number of the revolver come
4 back to?

5 A The serial number of the revolver indicated that
6 a Heather Elizabeth Causey purchased that weapon.

7 Q So the revolver that shoots -- what caliber of
8 gun is that revolver; do you know?

9 A A .38.

10 Q What bullets are these?

11 A .38.

12 Q So there was a .38 in there, and .38 bullets in
13 the house for that gun?

14 A Yes, ma'am.

15 Q Now, did this gun have a serial number?

16 A Yes, ma'am, it did.

17 Q Just like the other gun?

18 A Yes, ma'am, it did.

19 Q And did you look up to see who that serial number
20 belonged to?

21 A I did an ATF trace on that weapon and found out
22 who purchased that weapon.

23 Q And whose name came back on this gun?

24 A Let me refer to my notes. Purchaser of the
25 weapon was a Michael David White.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q So it was not David Sims or Heather Sims?

2 A No, ma'am.

3 Q It was a Mike White?

4 A Purchased the weapon, yes, ma'am.

5 Q And this is the case that belonged to that gun
6 (indicates)?

7 MR. MARTIN: Objection. Again....

8 MS. LIVESAY: Can I see the next picture, please?

9 THE COURT: Please don't lead.

10 Q (MS. LIVESAY) This is just another picture of
11 that drawer?

12 A Yes, ma'am, it's one of the top drawers.

13 Q Showing some lady's items?

14 MR. MARTIN: Exhibit No., I'm sorry?

15 WITNESS: Oh, I'm so sorry, thank you.

16 MS. LIVESAY: Can I see the next picture?

17 Q (MS. LIVESAY) What are we looking at here?

18 A Looking at State's Exhibit No. 63. It is a
19 picture of the kitchen.

20 Q Is this a picture of the kitchen?

21 A It is a picture of the back wall of the kitchen,
22 yes, ma'am. You see items on the counter, and this is
23 the condition in which I saw it.

24 Q Okay. Is this how it looked when you came in?

25 A Yes, ma'am.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q Now, let me ask you something. When you were in
2 that kitchen, did you happen to notice whether or not
3 that kitchen had a dishwasher?

4 A There was no dishwasher in the kitchen.

5 Q Sorry?

6 A There was no dishwasher in the kitchen.

7 Q So there was no dishwasher in this kitchen?

8 A Not at that time, no, ma'am.

9 Q Did you see any dirty dishes in this sink?

10 A I had seen where dishes had been washed, but no,
11 dirty dishes currently in the sink. I believe the sink
12 was clean.

13 Q And was there anything else dirty or out of place
14 in this kitchen?

15 A I wouldn't say anything was out of place. She
16 obviously had bottles that had been freshly washed and
17 were drying on a paper towel and on a drying rack. I
18 did observe the knife block. The knife block had two
19 knives missing from it. On the island counter, you had
20 that broken lanyard thing, but other than that, that
21 was....

22 Q And how would you describe that knife in the
23 victim's hand in the bathroom; is that a pocket knife,
24 kitchen knife?

25 A I would describe that as a paring knife.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q Okay.

2 MS. LIVESAY: Can I see the next picture, please?

3 Q What are we looking at here?

4 A That is a knife block from the kitchen. It's a
5 Cuisinart knife block with Cuisinart knives, a knife
6 set. You have two knives missing. One of the slots
7 can be believed to be the paring knife slot.

8 Q So two slots are missing?

9 A Yes, ma'am.

10 Q There is no dishwasher?

11 A No, ma'am.

12 Q You didn't see another knife in the sink?

13 A No, ma'am. It appears you have a slot for a
14 paring knife, and a slot for a steak knife. And, no, I
15 did not find another knife in the kitchen area at all.

16 Q So you show up, two knives are missing. Were you
17 ever able to locate the second knife?

18 A No, ma'am, I was not.

19 MS. LIVESAY: Can I see the next picture? Are we
20 done? Thank you. We can turn the lights back on.

21 Q (MS. LIVESAY) Those pictures were the bathroom
22 basically, the bedroom and the kitchen?

23 A I would classify those pictures as overall scene
24 pictures, various locations and things.

25 Q And just so this jury knows, did you collect any

JILL DOMOGAUER - DIRECT EXAMINATION

1 evidence from anywhere else in the house?

2 A I collected evidence from the bedroom, collected
3 evidence from the bathroom, the master bathroom and I
4 collected an item from an upstairs office.

5 Q So nothing from the nursery, nothing from the
6 guest room, nothing from the dining room?

7 A No, ma'am.

8 Q So everything you collected was basically -- or
9 the vast majority was right there in the den -- sorry,
10 right there in the bathroom?

11 A Master bedroom, master bathroom.

12 Q Master bedroom and master bathroom. And you
13 looked upstairs and downstairs?

14 A I searched the entire residence during my time
15 there.

16 Q And just so this jury knows, because before I
17 started doing this, I didn't appreciate this. When you
18 say you searched the house, you are actually opening
19 all of those drawers and going through it?

20 MR. MARTIN: Objection. Objection. She is
21 leading the witness repeatedly, and I'm not trying not
22 to prolong this, but she knows better than that, and
23 she's trying -- I object to that. And, no, that's not
24 what she did. She knows she didn't open every drawer
25 in that house.

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1 THE COURT: All right. Here's the deal.

2 Sustained. Ask her what she did and we'll let her --

3 MS. LIVESAY: I will.

4 Q (MS. LIVESAY) Did you look in the drawers of the
5 house?

6 A Yes, I did.

7 Q And is that what you normally do when you go and
8 execute a search warrant?

9 A Yes, it is.

10 Q So that is not out of the norm?

11 A No, it's not.

12 Q When you get a search warrant for a house, it
13 gives you that right to search every aspect of the
14 house, up and down?

15 A Yes, ma'am.

16 Q And did you search every aspect of this house?

17 A Yes, ma'am.

18 Q The question I have is, how many cell phones did
19 you remove from the house?

20 A I removed one cell phone from the house.

21 Q And you looked -- how many people helped you
22 search that house?

23 A We had myself, my lieutenant.

24 Q You all were the two crime scene people there
25 looking?

JILL DOMOGAUER - DIRECT EXAMINATION

1 A Yes, ma'am.

2 Q Did either of you that night find another cell
3 phone?

4 A There were old models, no longer powdered up. I
5 don't think they even had batteries in them. There was
6 a phone in the kitchen drawer, an old style phone.

7 Q But never another working, using cell phone?

8 MR. MARTIN: Objection. I object. It is
9 leading. She don't know what she saw was working or
10 not. I'm tired of this.

11 MS. LIVESAY: Your Honor --

12 THE COURT: Wait. One at a time. Go ahead and
13 finish your objection.

14 MR. MARTIN: I object. She's continually leading
15 and -- and putting into evidence her thoughts as
16 opposed to this witness' testimony, talking about
17 well, they weren't working. Well, she don't know
18 whether they're working or not, but I'll get to
19 cross-examine her about that, but I object to
20 continual leading when it's not right.

21 THE COURT: Just ask her if she knows they were
22 working. If she says yes, then -- wait a minute. If
23 she says yes, she can answer; if she says no, she
24 can't.

25 Q (MS. LIVESAY) Did you ever find a second cell

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1 phone you collected?

2 A No, ma'am.

3 Q And if there was another one in there that you
4 saw, that you felt was in use and had evidentiary
5 value, would you have collected it?

6 MR. MARTÍN: Object. That is a leading question.

7 MS. LIVESAY: Would you have collected it, it is
8 yes or no.

9 THE COURT: Hold on. Hold on. You all, please,
10 don't make me do what I did yesterday, or worse. One
11 at a time. Finish your objection.

12 MR. MARTIN: Judge, listen, I don't know that
13 what she's asking is critical at all, but -- but she
14 continually leads her witnesses and I have been
15 extremely tolerant with that, but, you know, it puts
16 me in a position of having to stand up and object
17 every time if you let her continue to do it, and I
18 object to it.

19 MS. LIVESAY: Let me just clarify for Mr. Martin.
20 "Would you" is either yes or no. Leading would be
21 leading to one answer in particular, not an answer of
22 yes or no. I'm asking her, Would she have collected
23 it; it is either yes or no, that is not a leading
24 question.

25 THE COURT: Ask your question again. The

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1 question can't be leading. It cannot lead to an
2 answer. So I agree with you, "would you, yes or no,"
3 as long as that is the extent of it.

4 MS. LIVESAY: Yes, sir.

5 THE COURT: But the foundation question is, Do
6 you know X, and then would you have done X. Watch it.

7 MR. MARTIN: Well, again -- again, "would you do
8 it" is leading. There is another way to ask that
9 question, and I know the difference between what is
10 leading and what's not leading, but I'll let her
11 finish now no matter what she says, I think -- I
12 think.

13 THE COURT: Well, I know the difference, too.
14 But, go ahead.

15 MS. LIVESAY:

16 Q (MS. LIVESAY) Would you, Investigator, have
17 collected a second phone if you saw one that you
18 thought had evidentiary value?

19 A Yes, I would have.

20 Q And did you collect a second phone?

21 A No, I did not.

22 Q Did you ever collect a rag or a cloth with blood
23 on it?

24 A No, I did not.

25 Q Would you have collected it if you found one?

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1 A Yes, I would have.

2 Q Did you ever find that second knife in the house?

3 A No, I did not.

4 Q Now, earlier, you showed us a picture with items
5 marked showing that they were evidence; do you remember
6 that?

7 A Yes, ma'am.

8 Q Did you actually collect those items and place
9 them into evidence?

10 A Yes, I did.

11 (State's Exhibits 66 through 69 marked.)

12 Q (MS. LIVESAY) I'll show you State's Evidence 66,
13 67, 68 and 69. Do you recognize these items?

14 A Yes, I do. Those are items I collected that day.

15 Q If you don't mind, tell this Court what this is?

16 A Semi-auto--

17 Q I'm sorry, first tell just the Court, is that
18 what you collected from the scene?

19 A Yes, it is.

20 Q Are all of these items what you collected from
21 the scene?

22 A Yes, they are.

23 MS. LIVESAY: Your Honor, at this time the State
24 wishes to put 66 through 69 into evidence.

25 THE COURT: Any objection?

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1 MR. MARTIN: No.

2 THE COURT: Without objection.

3 (State's Exhibits 66 through 69 admitted.)

4 Q (MS. LIVESAY) Now, if you don't mind stepping
5 down.

6 MS. LIVESAY: Is that a okay with you, Judge?

7 THE COURT: That's fine with me, sure.

8 Q (MS. LIVESAY) Tell the jury what this is.

9 A That is a 9-millimeter Ruger I collected from the
10 scene that day.

11 Q I'm going to point it down, and if you don't mind
12 -- what is this here?

13 A That is the slide, and the breach of the slide is
14 in the out position, open position; that is why it
15 looks like it does instead of a gun -- it's all closed
16 up.

17 Q Okay. Okay. And is this where the shell casing
18 ejects from?

19 A This area here.

20 Q And correct me if I'm wrong, when you fire this
21 gun, the slide comes back just like this, and the
22 casing ejects to the right?

23 MR. MARTIN: Well, Judge, again, she's not a
24 firearm expert. Some of this is basic common
25 knowledge, but she's not a firearm expert as to this

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1 gun, or any other gun.

2 THE COURT: Ask her if she knows what happens.

3 If she does, she can answer; if not --

4 MS. LIVESAY: Certainly.

5 Q (MS. LIVESAY) How long have you been in law
6 enforcement?

7 A Over 17 years.

8 Q How long have you been firing guns?

9 A Approximately over 17-, 15-year-time frame?

10 Q Do you carry a gun every day?

11 A Yes, I do.

12 Q So do you appreciate how a gun works?

13 A Yes, I do.

14 Q If you don't mind, tell the jury what kind of gun
15 you carry?

16 A With the agency I work for, I carry a Glock
17 Generation 422, automatic pistol.

18 Q So that gun works similar to this, then?

19 A Yes. I also have carried a Beretta firearm,
20 which is similar to that gun more than my Glock. It
21 has a cocking hammer and de-cocking hammer.

22 Q So if you don't mind, just the bare brass of how
23 it works, tell this jury what happens when you fire
24 this gun.

25 A When you fire it the first time, there is going

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1 A That is a live round that I recovered from the
2 chamber of that firearm.

3 Q If you don't mind, tell this jury how many rounds
4 were in this gun?

5 A That was it, ma'am.

6 Q So two rounds, one fired and the one that was
7 still left in the chamber?

8 A You have a spent casing and a live round that's
9 in the chamber, the magazine was empty.

10 Q Okay. Let me ask you this. Can this gun and
11 this magazine hold more than two, 9-millimeter bullets?

12 A I believe so, yes, ma'am.

13 Q But only two were in this gun?

14 A Only one was in that.

15 Q And then one was fired?

16 A There was a spent casing in the master bedroom.

17 Q So the only thing that was recovered that would
18 be used or in a 9-millimeter was this shell casing from
19 the white chair and this live round?

20 A And the projectile.

21 Q And the projectile.

22 A And the weapon itself, yes, ma'am.

23 Q So two bullets and one 9-millimeter?

24 A One live bullet, a casing, projectile and the
25 weapon.

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1 to be a lot of tension on the trigger, the hammer will
2 go back, the slide will go back. As the bullet -- the
3 pin hits the bullet, and it is fired. The slide opens
4 up, the projectile will go as the slide goes back, and
5 the casing will eject out of weapon.

6 Q So the casing ejects?

7 A It eject from that area.

8 Q And the bullet comes right out of here?

9 A Yes, it does.

10 Q When it slides back, it slides back just like
11 we're looking at it now?

12 A Yes, ma'am.

13 Q Now, I'm showing you State's Evidence 68. Tell
14 this jury what that is.

15 A This is that spent cartridge casing I collected
16 from the chair.

17 Q So that is what ejected out of here?

18 A I believe to be so, yes, ma'am.

19 Q I'm showing you State's Evidence 69. Tell this
20 jury what we're looking at here.

21 A What you're looking at here -- my box is marked
22 and everything -- is the projectile I recovered from
23 the bathtub area, underneath the bathtub.

24 Q And this is Evidence No. 67. Tell this jury what
25 this is.

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1 Q Thank you, Investigator. Now, when you collected
2 the 9-millimeter, did you look for any other
3 9-millimeter bullets in the house?

4 A Yes, I did.

5 Q And did you find any?

6 A Not inside the house, I did not.

7 (State's Exhibits 70 and 71 marked.)

8 Q (MS. LIVESAY) I'll show you State's Exhibit 70
9 and 71, do you recognize what I'm showing you?

10 A Yes, I do.

11 Q And what are those this?

12 A It is a paring knife and a pair of needle nose
13 pliers that I collected from the scene.

14 MS. LIVESAY: Your honor, at this time we wish to
15 move 70 and 71 into evidence.

16 THE COURT: Any objection?

17 MR. MARTIN: I'm sorry, I wasn't listening. What
18 is it?

19 THE COURT: Knife and the pliers.

20 MR. MARTIN: No, I have no objection.

21 THE COURT: Without objection.

22 (State's Exhibits 70 and 71 admitted.)

23 MS. LIVESAY: Can I ask you to step down?

24 MR. MARTIN: Now, Judge, I don't know what this
25 line of questioning is, but I would like to -- as far

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1 as talking about what is on the knife or not, that
2 knife has been to SLED a time or two and examined, and
3 so the condition it is in now well may not have been
4 what it was at the time. I don't know what the
5 question is.

6 THE COURT: Me neither, but we'll see. Go ahead.
7 You are not going to ask her about what is on the
8 knife, are you?

9 MS. LIVESAY: I'm not going to.

10 THE COURT: Ask her what is on the knife?

11 MS. LIVESAY: No. No. Just for her to tell me
12 what this -- she put that on the knife (indicates).

13 THE COURT: I get it, okay.

14 Q (MS. LIVESAY) First of all, let me ask you, that
15 right there -- let me ask you, what is this?

16 A I identified those as a pair of needle nose
17 pliers.

18 Q If you don't mind, tell the jury where you got
19 the pliers from.

20 A Those are the pliers you saw in my picture on the
21 back of the toilet lid.

22 Q These were the pliers on the toilet lid?

23 A Yes, ma'am.

24 Q Tell this jury what we're looking at now?

25 A That is the knife from that scene that I

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1 collected from the master bathroom that was resting in
2 the victim's hand.

3 Q If you don't mind, tell this jury -- there is a
4 black substance on the knife, if you don't mind, tell
5 this jury what that is?

6 A The black substance on the knife is --

7 MR. MARTIN: I'm sorry, but I can't hear her
8 again.

9 A I'm sorry. The black substance on the knife is
10 a chemical I use, Amido Black, for processing, for
11 certain things.

12 MS. LIVESAY: This is the microphone here if you
13 want to stand closer. Is this one better for you?

14 COURT REPORTER: This one is better(indicates).

15 MS. LIVESAY: This one is better for her.

16 THE COURT: You said Amido Black that you use for
17 certain substances?

18 WITNESS: Processing certain substances.

19 THE COURT: All right.

20 Q (MS. LIVESAY) And if you don't mind, tell this
21 jury why you put that on the knife.

22 A I use Amido Black to process proteins and it also
23 enhances latent prints. The day of the incident, the
24 way the knife was resting, I saw on the blade it
25 appeared to be an impression of a latent fingerprint

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1 detail that was sideways, as if I had placed it with my
2 thumb there.

3 Q Show them what you mean.

4 A (Indicates.) In this vicinity area here, I don't
5 know if it is on this exact side, but in general, this
6 down portion where my hand is, I saw an impression that
7 I believed to be a latent fingerprint on the knife.

8 MR. MARTIN: I'm sorry, where? Latent impression
9 where?

10 A I would have to look exactly, but in an
11 approximate area would be in this area here
12 (indicates).

13 Q (MS. LIVESAY) So you saw a print along in here?

14 A Along that approximate area, yes.

15 Q And the way the print was on the knife indicated
16 to you --

17 MR. MARTIN: Objection. Objection. She's
18 leading again.

19 MS. LIVESAY: I'm asking what it indicated to
20 her.

21 THE COURT: Well, ask her that. Ask her what it
22 indicated.

23 Q (MS. LIVESAY) Did it indicate --

24 THE COURT: If anything. Go ahead.

25 Q (MS. LIVESAY) Did that print on the knife

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1 indicate to you if the finger was in this direction,
2 this direction? Did it indicate anything about the
3 direction of the fingerprint?

4 A When looking at the knife -- and, again, I'll
5 have to look at my notes to give you exact side, but if
6 I were to hold it like this, how my tip is going
7 sideways and downward type, is how I saw that print.

8 Q What did you do once you see that on the blade of
9 the knife?

10 A The day of the scene, I processed the knife a
11 little bit on the scene, but once I saw that, I didn't
12 process anything on that particular side of the knife
13 that day. I packaged it accordingly in suspension not
14 to disturb anything until we can get in back to our lab
15 setting and go through it properly for documentary
16 purposes, for further chemical analysis and further
17 documentation.

18 Q If you don't mind, tell this jury how you further
19 processed this knife.

20 A On the scene, one side of the knife I swabbed the
21 blade with one swab, swabbed the handle. On the side
22 where I recognized the latent print, I did nothing.
23 When I got back to my lab setting, I swabbed the blade
24 area to be careful not to interfere with any of the
25 area which I saw the latent print. When you shine a

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1 light obliquely, you see an impression of a
2 fingerprint, not to get anywhere near that area. I
3 then swabbed the handle of that area, and then it was
4 given a, what's called Amido Black sprayed bath, rinsed
5 with Amido Black, which is a chemical stain, then
6 rinsed with water and then further examined again.

7 Q If you don't mind, tell this jury what does Amido
8 Black indicate to you? Why do you use it?

9 A Amido Black can indicate several things. It can
10 enhance or darken fingerprints and most of the proteins
11 in blood.

12 Q So would blood be something that Amido Black
13 could indicate?

14 A Blood would be a substance Amido Black could
15 indicate, yes, ma'am.

16 Q And did you put Amido Black on both sides of the
17 blade?

18 A The entire knife was saturated with Amido Black.

19 Q So where it is black indicates to you, what?

20 A Where it's stained is protein.

21 Q So this is one side of the knife?

22 A Yes, that is the non-label side, ma'am.

23 Q Now, what's interesting is the --

24 MR. MARTIN: Objection to commentary.

25 THE COURT: Yeah. I agree. Go ahead.

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1 Q (MS. LIVESAY) Do you see anything here?

2 A A little bit right here and there, ma'am

3 (indicates).

4 Q Does this look anything like the other side of
5 the knife?

6 A No, ma'am, it does not.

7 Q Did you put the substance on both sides exactly
8 the same?

9 A Yes, ma'am.

10 Q How about the handle?

11 A Yes, ma'am, the handle was done.

12 Q So did you process the entire knife?

13 A Yes, ma'am, I did.

14 Q Thank you, Investigator. I have a couple more
15 things, if you don't mind.

16 THE COURT: Can you move that knife?

17 (State's Exhibits 72 and 73 marked.)

18 Q (MS. LIVESAY) What is this?

19 A Hard case of the phone that you saw in one of the
20 pictures on the counter. This has a case number which
21 is assigned to this particular case, and a description
22 of the item.

23 Q What is the item?

24 A The description -- the handwritten description of
25 the item is "iPhone 5 from Heather Sims." It also has

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1 what is called an evidence control label that has a
2 case number, and a designated item number, bar code and
3 a description, "white/gray iPhone with charger."

4 MS. LIVESAY: Your Honor, at this time the State
5 moves State's 72 and 73 into evidence.

6 THE COURT: Any objection?

7 MR. MARTIN: Without objection.

8 (State's Exhibits 72 and 73 admitted.)

9 Q (MS. LIVESAY) So I'm going to show this jury,
10 this is what you collected from the house?

11 A It was put together, but yes, ma'am.

12 Q And this is --

13 A The phone from the counter.

14 Q Cover?

15 A That's the cover for it.

16 Q And this is the phone that was in --

17 A Yes, ma'am, it was.

18 Q Is this what was laying on the counter?

19 A Yes, ma'am. That was the particular items that
20 was laying on the counter.

21 Q And did you see any visible blood? So this phone
22 was in this cover?

23 A Yes, ma'am. It was in a hard case, and then a
24 rubber OtterBox. When it's together, it looks like
25 this (indicates).

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1 Q Did you see any visible blood anywhere on the
2 cover?

3 A No, I did not.

4 Q No visible blood on that cover? Did you notice
5 any visible blood on that phone cord that was in the
6 picture?

7 A No, ma'am, there was none.

8 Q Okay. Do you remember seeing any visible blood
9 on the 9-millimeter?

10 A I saw some, yes, ma'am.

11 Q And if you don't mind --

12 / MR. MARTIN: That last question was visible blood
13 on the what?

14 WITNESS: The 9-millimeter.

15 Q (MS. LIVESAY) Can you show me where you saw that
16 on, the gun at?

17 A I can do my best, yes, ma'am.

18 Q I'm showing you now State's Evidence No. 66. If
19 you don't mind, stand up and show this jury about where
20 you saw the blood on this gun?

21 THE COURT: And just for their safety, this gun
22 is unloaded and locked.

23 WITNESS: It is in a slide-lock position, and
24 there is a gun lock through it, which even if I did
25 snap this by accident, it will not close. It is an

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1 unloaded firearm (indicates).

2 THE COURT: Okay. Go ahead.

3 A I found it in the grip region area over here.

4 There might be some over in this area over here.

5 Q (MS. LIVESAY) So around the slide area, and in
6 here?

7 A The grip area alongside here.

8 Q Did you do any further processing on the phone,
9 or did you just collect it?

10 A This particular phone, I just collected it.

11 Q And the gun, I didn't ask you earlier, did you do
12 any further processing on this gun other than collect
13 it?

14 A On scene, I did what's called touch DNA swabbing
15 of the grips and the trigger on scene. I did those
16 swabs, collected the swabs, collected the firearm, and
17 that is my extent with the gun.

18 Q Now, I notice this is in a box and there's some
19 different writing on it. Was this gun and these items
20 ever sent anywhere for further testing?

21 A They were sent to the State Law Enforcement
22 Division, otherwise known as SLED, for other forensic
23 testing that they do there in their facilities, that
24 they have training to do.

25 Q So you send that off for further testing?

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1 A Yes, ma'am.

2 Q So we talked a little bit about the fingerprint
3 on the knife. Was further investigation or testing
4 done to figure out whose fingerprint that was?

5 A I do have a background with latents. I visually
6 looked at the print after processing, and I did not
7 see, for me, enough detail in the pattern of ridges to
8 make a clear identification. It was also verified by a
9 secondary party, one of my co-workers goes behind me
10 and checks the work and sees what conclusions he has,
11 and his conclusions matched mine.

12 Q Ultimately, you were not able to determine who
13 that fingerprint belonged to?

14 A No.

15 Q Did you ever swab that side of the knife looking
16 for touch DNA?

17 A Yes, I did.

18 Q Do you remember if that house had a washer and
19 dryer?

20 A Yes, it did. It was in that little hallway area
21 by the master bedroom.

22 Q And did you look in the washer and dryer?

23 A I looked in that room, yes, ma'am. There was
24 like a tool bag, I looked in that. I looked in some of
25 the drawers. I looked in the washer. I looked in the

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1 dryer.

2 Q Did you find any cloth, clothing, anything with
3 blood on it?

4 A I found nothing there.

5 Q Now, did you ultimately collect victim's clothes?

6 A The victim's clothes were collected by another
7 officer. They were turned into me. This was my case,
8 so everything comes to me for packaging and transport
9 to further places.

10 Q While you were on scene, did you look for any
11 evidence in the victim's pockets, or anything like
12 that?

13 A I did -- before the body was removed for
14 transport, I did feel and search the pockets of the
15 clothing.

16 Q Is that normally what you would do?

17 A Yes. I searched the pockets and garments. If I
18 can't get my hands in there, then I feel the outer area
19 to see if I feel anything hard, sharp, or whatever it
20 might be. If it is an item that I want to remove, I
21 want to seal it with the body bag.

22 Q Did you check this victim's pockets?

23 A Yes, I did.

24 Q Tell this jury what, if anything, you found in
25 his pockets?

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1 A I don't believe I found anything in his pockets.

2 Q Do you know what is in here?

3 A Yes, ma'am, I do.

4 Q What is it?

5 A The victim's shirt I collected during autopsy.

6 (State's Exhibit 74 marked.)

7 Q (MS. LIVESAY) I'm showing you now State's
8 Exhibit No. 74; do you recognize it?

9 A Yes, ma'am.

10 Q What is it?

11 A The shirt that David was wearing.

12 Q Does it show the entrance wound and the exit
13 wound?

14 A Yes, ma'am, it does.

15 MS. LIVESAY: At this time, the State wishes to
16 put State's Evidence No. 74 into evidence.

17 THE COURT: Any objection?

18 MR. MARTIN: That is what?

19 THE COURT: Shirt.

20 MR. MARTIN: Whose shirt?

21 MS. LIVESAY: David's.

22 MR. MARTIN: I'm assuming she laid the chain
23 where it's been the entire time? As long as she's
24 done that, I have no objection. She collected it,
25 what did she do with it?

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1 THE COURT: Tell us, for the record, where it's
2 been since the day --

3 WITNESS: I have collected that shirt, that shirt
4 -- collected the shirt during autopsy, and it was
5 dried in our office, stored in our office. It has
6 been transported to the State Law Enforcement
7 Division. I -- it was brought back and secured back
8 in our custody, and brought to court on cases.

9 THE COURT: Okay. Any objection to that?

10 MR. MARTIN: Well, I don't know what they did
11 with it at SLED, that is probably irrelevant.

12 THE COURT: Do you know what they did with it at
13 SLED?

14 WITNESS: I can tell you I turned it into SLED,
15 and the SLED person will have to tell you what they
16 did to it; I'm not quite sure.

17 MS. LIVESAY: The cuttings is what Mr. Martin is
18 talking about.

19 THE COURT: SLED is coming?

20 MS. LIVESAY: If Mr. Martin is bringing them. I
21 may bring them; I have not made that decision yet.

22 MR. MARTIN: Well, let's just wait to put it into
23 evidence until they get here. I don't mind her
24 telling what it is and talking about it.

25 THE COURT: So you want to mark it as an exhibit?

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1 MS. LIVESAY: I'm putting it into evidence just
2 to show the shirt and the entrance wound and exit
3 wound.

4 THE COURT: At this point, I'll allow it to be
5 introduced into evidence. Before it goes back, if
6 there is a question -- so over the objection I'll
7 allow it.

8 (State's Exhibit 74 admitted.)

9 Q (MS. LIVESAY) At this time State's Evidence No.
10 74; Investigator, do you recognize this?

11 A Yes, I do.

12 Q These numbers here indicate, what?

13 A Those numbers appear to be a SLED lab number and
14 initials. What they indicate, I can't tell you.

15 Q Okay. Now, do you know where the entrance wound
16 is on this shirt?

17 A Yes, ma'am, I do.

18 Q And I'm going to turn the shirt over. Can you
19 see the exit wound on this shirt?

20 THE WITNESS: Excuse me, sir.

21 THE COURT: That's okay.

22 Q (MS. LIVESAY) Can you point that out to the
23 jury?

24 A Yes, I can.

25 Q I'll ask you to step down. If you don't mind,

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1 show them on this shirt where the entrance is.

2 A Right above my fingernail (indicates).

3 Q Can you indicate to them on the back where the
4 exit is?

5 A A little hard to see through the plastic. Right
6 here, again, above my fingernail (indicates).

7 Q You marked it there to indicate where the exit
8 wound was?

9 A I put an L-scale there for photograph and took
10 photographs of it, both sides.

11 (State's Exhibits 75 through 80 marked.)

12 Q (MS. LIVESAY) Do you recognize 75?

13 A Yes. They are the pants I collected at autopsy.

14 Q So these are the victim's jeans?

15 A Yes. I'm sorry, they were collected at autopsy
16 from the victim's body.

17 Q Did you put these into evidence?

18 A Yes, ma'am, I did.

19 MS. LIVESAY: Your Honor, the State wishes to put
20 State's Exhibit No. 75 into evidence.

21 THE COURT: Same objection?

22 MR. MARTIN: It is the same.

23 THE COURT: Observe the objection. It is
24 admitted.

25 (State's Exhibit 75 admitted.)

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1 Q (MS. LIVESAY) I'm showing you State's Exhibit 76
2 and 77; do you recognize that?

3 A Yes, ma'am, I do.

4 Q Whose shirt does this belong to?

5 A It was turned into me and labeled under the shirt
6 belonging to Heather Sims.

7 Q And State's 77; do you recognize these?

8 A Yes, I do.

9 Q And who do these pants belong to?

10 A Items that were collected and turned into --
11 stated to be the pants or capris of Heather Sims.

12 MS. LIVESAY: The State moves to put 76 and 77
13 into evidence.

14 THE COURT: Subject to the same objection.

15 MR. MARTIN: Well, again, and let me say for the
16 record. I have no objection if the foundation is
17 properly laid; in this case, they have not. For
18 example, Heather's clothes, Jill did not take custody;
19 she got them from somebody else. So I have no
20 objection if they lay the foundation. I think
21 Chatfield got the pants, maybe I'm wrong. But the
22 foundation hasn't been laid, so there is my objection.

23 MS. LIVESAY: I can lay a foundation. It
24 shouldn't take but a couple of questions.

25 THE COURT: Yeah, lay a foundation. I mean, I'm

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1 making an assumption here that the foundation is
2 either going to be laid....

3 MS. LIVESAY: Yes.

4 Q (MS. LIVESAY) Investigator, who turns these
5 clothes into you?

6 A Detective Chatfield.

7 Q Was he the lead detective on this case?

8 A I believe he is, yes, ma'am.

9 Q And did you in any form or fashion alter these
10 clothes or do anything to change them?

11 A I just hung them up to dry, so, no, ma'am.

12 Q And have they been kept in law enforcement
13 custody since you took them into evidence?

14 A Yes, ma'am, they were taken into custody. They
15 have been transported to the State Law Enforcement
16 Division, but they are a law enforcement entity and
17 lab.

18 Q When you got these clothes, did you document
19 them?

20 A Yes, ma'am.

21 Q And are these the clothes that you documented as
22 Heather Sims' clothes?

23 A Yes, ma'am.

24 MS. LIVESAY: Your Honor, at this time the State
25 moves 76 and 77 into evidence.

JILL DOMOGAUER - DIRECT EXAMINATION

1 MR. MARTIN: I have the same objection. She
2 can't testify to what Chatfield did. She can't
3 testify to what people at SLED did. Again, she's
4 called them, I'll call someone from SLED. Once the
5 foundation is laid, I have no objection to them, but I
6 do think at this time the proper foundation hasn't
7 been laid.

8 MS. LIVESAY: Your Honor, if I may. This is not
9 DNA evidence. It is does not require a strict chain.
10 She has laid out who had custody of the clothes and
11 that, indeed, she took them into evidence.

12 THE COURT: Well, I'm going to make a big
13 assumption here and assume that a SLED agent is going
14 to come. I'm allow it to be introduced into evidence,
15 and then we may have to deal with my mistake at a
16 later date, but it's in now, and I understand your
17 objection completely.

18 (State's Exhibits 76 and 77 admitted.)

19 Q (MS. LIVESAY) If you don't mind, you collected a
20 lot of evidence in this case. Did you document what
21 you collected and how you processed it?

22 A Yes, ma'am, I did.

23 Q If you don't mind, tell this jury what you
24 collected and anything you processed, please tell them
25 how you processed it.

JILL DOMOGAUER - DIRECT EXAMINATION

1 A Okay. I'm going to be referring to my notes, if
2 that is okay?

3 THE COURT: That's fine.

4 A On the initial scene, of course, I photographed
5 and sketched various items. I also took measurements
6 of physical items, as the victim's body, along with
7 collecting the phone, the charger -- let me go through
8 a list of everything I collected first, that might be
9 easy. I collected a spent casing of WCC spent
10 cartridge casing, 10 caliber stand from master bedroom,
11 white chair. I did no other processing of that
12 particular item on scene. I did no other further
13 processing of that item. That item was sent to another
14 agency, the State Law Enforcement Division.

15 I collected from the scene master bathroom a
16 9-millimeter Ruger Model P95DC bearing Serial No.
17 31218431 containing an empty magazine and one live
18 round chamber in the round, a 9-millimeter from the
19 master bathroom counter.

20 While on scene, I did touch DNA swabbing of the
21 grips and the trigger. After that, I collected the
22 item. The item was then stored and then transported
23 to the State Law Enforcement Division for further
24 ballistic testing.

25 Q (MS. LIVESAY) Just so I'm clear, when you find

JILL DOMOGAUER - DIRECT EXAMINATION

1 the gun and you collect it, it has one live round in
2 it?

3 A Yes, ma'am. It had one live round in the
4 chamber, a 9-millimeter round.

5 Q And that is the only round in the gun?

6 A Yes, ma'am.

7 Q Okay. And, again, you looked into, as part of
8 your investigation, who that gun was registered to?

9 A I looked into who purchased the weapon.

10 Q And then what else -- I'm sorry, what else did
11 you collect?

12 A While I was on scene, I did a swab of the trigger
13 of that 9-millimeter and a grip swab of touch DNA from
14 that 9-millimeter. I then packaged the weapon and
15 collected it. I did no other testing on the firearm.
16 The firearm was submitted to the State Law Enforcement
17 Division for further ballistic testing.

18 Q Okay.

19 A I collected a black handled Cuisinart knife,
20 4-inch blade, from the master bathroom. Of course all
21 of these items I'm collecting I have photographed, I
22 have measured prior to any kind of collection or prior
23 to any kind of processing.

24 After the knife was documented and measured, I
25 removed it and examined it. I did not observe blood

JILL DOMOGAUER - DIRECT EXAMINATION

1 on the handle side of the knife, however, a small
2 amount of blood was on the tip of the knife. I then
3 processed the knife by swabbing the handle of the
4 knife on the label side of Cuisinart, and the blade
5 side of the Cuisinart. I observed what appeared to be
6 fingerprint on the non-label side, and did not swab
7 that side at this time. I then packaged it in
8 suspension to where nothing can touch it, rub it or
9 move it, and transported it back to our lab.

10 Q So this is when you saw the fingerprint on the
11 blade of the knife?

12 A When I was on the scene, yes, ma'am.

13 MR. MARTIN: Objection. Again, objection. There
14 is no testimony that there was a fingerprint on the
15 knife. She said what appeared to be evidence of the
16 print. So the characterization of it as a fingerprint
17 is improper, and I object.

18 THE COURT: Sustained. Correctly ask -- restate
19 it.

20 Q (MS. LIVESAY) So you see it at the crime scene,
21 and you process it, to some extent, at the crime
22 scene; is that correct?

23 A Yes, ma'am, I did; at the crime scene, yes.

24 Q Tell this jury what else you do to the knife as
25 part of your process.

JILL DOMOGAUER - DIRECT EXAMINATION

1 A After the knife is collected and I then bring it
2 back to the police department, like I was saying
3 earlier, I then bring it into the lab with better
4 lighting, look at it under a light with oblique
5 lighting to see any kind of ridge detail that would be
6 indicative of a fingerprint. I saw presence of that.

7 I then swabbed the area very carefully not to
8 interfere with anything of that area where I saw
9 ridges. I then swabbed the blade side of that and the
10 handle portion of that, the non-label side, which I
11 did not do on the scene, but I'm doing now in the lab.
12 I then did a call for an Amido Black bath, or I
13 sprayed it with Amido Black; it's a stain.

14 After the stain, it is rinsed. After that, you
15 examine it again to see if any of the ridges came out
16 a little more to be better visualized or photographed
17 or examined any further. At that time, the ridges
18 were still of not enough detail to make any kind of
19 identification. You can see they were there,
20 partially, but you can't at -- I could not make an
21 identification. I also had a verifying entity,
22 another person, look at that, and he made his own
23 conclusions, and the knife was then packaged. The
24 swabs were submitted to the State Law Enforcement
25 Division.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q Okay. Did you ever swab the area where the
2 fingerprint was?

3 A I believe I did touch DNA.

4 Q Just so I'm clear --

5 MR. MARTIN: Wait a minute. Her answer to the
6 last question was, what? I couldn't hear.

7 THE COURT: Can you restate that?

8 WITNESS: I have to look back on my notes.

9 MS. LIVESAY: What did he ask, I'm sorry?

10 MR. MARTIN: Her answer, I couldn't hear it.

11 MS. LIVESAY: Oh, her answer. I thought she said
12 touch DNA.

13 COURT REPORTER: Yes, she did.

14 MS. LIVESAY: That's what she said?

15 MR. MARTIN: She swabbed the ridges for touch
16 DNA; is that what she said?

17 WITNESS: I swabbed prior to -- prior to, I
18 swabbed after the Amido. In the area where that
19 particular item was, I don't believe I swabbed. I
20 would have to look back on notes.

21 Q (MS. LIVESAY) If you don't mind, tell us, did
22 you ever swab in the area where the fingerprint was?

23 A I don't believe I -- I did above it, in that
24 general vicinity, but I did not go where the actual
25 ridges were.

JILL DOMOGAUER - DIRECT EXAMINATION

1 Q So just around that area?

2 A Around that area, yes, ma'am.

3 Q Now, what did you do next?

4 A Well, if we want to go back to the scene, I
5 collected a phone and the charger. I looked at the
6 items. I checked them out, and they were packaged. I
7 didn't do any further testing on those items. I got to
8 the black handle pliers in the master bathroom. The
9 pliers -- the tips and the handles were swabbed on
10 scene for touch DNA or any DNA. I visually examined
11 them. Upon my visual examination, I didn't see
12 anything; however, I did swab them on scene. They were
13 packaged and transported.

14 Q We keep saying "swab." If you don't mind, when
15 you say you swabbed this knife, show this jury what you
16 mean.

17 A When swabbing an item, I would take a sterile
18 pack of swabs. There is two in one container. I take
19 my container and make sure it is not open or breached
20 of any kind. Once I inspect the swab container, I then
21 set that aside. With this particular item, when you
22 are doing dried substances or touch, you use sterile
23 water. For each swab, I have a sterile water tube. I
24 bring my tube out, I inspect it and make sure it is
25 sealed. I then would open my swabs, moisten my swabs,

JILL DOMOGAUER - DIRECT EXAMINATION

1 and in this particular case, I moistened my swabs and
2 do swabbing of the area. I did basically four swabs,
3 handle and blade of each side. I would do one side
4 there, and the second swab in my pack, I would go over
5 that area again. That is considered a wet lift and dry
6 lift, because I moistened the first swab.

7 Again I would do the same thing over here. I
8 would, again, get a different set of swabs, make sure
9 they are sterile and they haven't been breached or
10 opened. I would get another amulet of water to use
11 for that set, and do the same process. And I do that
12 each time I swab, using fresh packs of swabs. There
13 is only two in a packet and fresh sterile water about
14 this big. Again, all of these items are sealed; I
15 have to open the seal to do it.

16 Q If you don't mind, show us -- I don't think I'm
17 clear on it -- what side did you see the fingerprint
18 on?

19 A The non-label side.

20 THE COURT: The alleged fingerprint. What she
21 thought was a fingerprint.

22 MR. MARTIN: Well, again, there is a couple of
23 things. First, this has been gone over three times
24 already.

25 THE COURT: I know. I understand.

JILL DOMOGAUER - DIRECT EXAMINATION

1 MR. MARTIN: Again, Ms. Livesay may not be clear
2 on it, but I am. I object to the repetitive nature of
3 it. Secondly, again, obviously no one testified it
4 was a fingerprint.

5 THE COURT: Right.

6 MS. LIVESAY: Jill can obviously identify a
7 fingerprint as a crime scene investigator. She does
8 fingerprinting, that is her job.

9 MR. MARTIN: But she didn't say that is what it
10 was.

11 THE COURT: I don't think she said that yet, so
12 ask her if a fingerprint --

13 Q Did you see a fingerprint on the knife?

14 A I --

15 MR. MARTIN: Wait a minute, now. I didn't hear
16 her. I can cross-examine her, but I didn't hear her
17 say anything.

18 THE COURT: Let her answer.

19 MS. LIVESAY: I thought we've been talking about
20 fingerprints and ridge detail for 30 minutes, I'm
21 sorry.

22 THE COURT: She said what appeared to be a
23 fingerprint and, literally, we have never identified
24 it -- hold on, ma'am -- we never identified this
25 fingerprint. Would you tell us if that is a

JILL DOMOGAUER - DIRECT EXAMINATION

1 fingerprint or not?

2 WITNESS: It has the ridge characteristics of a
3 latent fingerprint. No identification could be made
4 from that item.

5 MR. MARTIN: Let me be sure. It had the
6 characteristics of latent ridge detail?

7 THE COURT: Latent fingerprint, but no
8 identification could be made. Thank you.

9 Q (MS. LIVESAY) Which side did you see that on?

10 A Let me refer back to my notes. Non-label side.

11 Q Show us on the knife.

12 A This knife, if you look at it, has two sides.

13 One side has the name Cuisinart. I would identify that
14 as being the "label side." The other side doesn't have
15 it, so I would identify that as being the "non-label
16 side."

17 Q And you saw -- sorry. What exactly did you see,
18 so we're clear on it?

19 A I saw a circular oval type of impression when
20 shining the light obliquely on the silver blade. I saw
21 what appeared to be a latent print with ridge detail in
22 that area.

23 Q Where did you see it?

24 A On the blade of the non-label side.

25 Q Did you see anything like that on any other part

JILL DOMOGAUER - DIRECT EXAMINATION

1 of the knife?

2 A No, ma'am.

3 Q Okay. And show us -- because there is some
4 question about that side of the knife. What did you
5 swab on that particular side of the knife?

6 A On the day of the scene, I didn't do nothing on
7 that side. I waited until I got back in my lab where
8 it could be handled differently with better light and
9 everything else, instead of holding a flashlight and
10 trying to hold the swab all at the same time. You
11 bring it into a lab setting with better lighting to
12 where you can, you know, look at things so you don't
13 disturb anything.

14 Q If you don't mind --

15 MS. LIVESAY: Do you have a question?

16 MR. MARTIN: I'm trying to hear. I can't hear
17 from back there, I'm sorry.

18 Q (MS. LIVESAY) If you don't mind, tell this jury
19 how you processed it once you got back to the lab, so
20 we're clear on it?

21 A When I processed it back at the lab, I again took
22 it to a lab with different lighting, shined the
23 flashlight, such as this, in an oblique manner, which
24 would show up -- it is an investigative tool that I
25 have done on several scenes to see if you can find a

JILL DOMOGAUER - DIRECT EXAMINATION

1 fingerprint on a surface. You shine a light obliquely
2 to it. I saw what appeared to be a latent print.
3 Prior to doing any other processing, while holding this
4 by a magnifier, I carefully, using that sterile swab
5 method that I told you about, did that on this side not
6 to interfere with that area.

7 After I did the handle and then the blade, I then
8 did what is called an Amido Black rinse, or spray
9 down, of this entire item. That is then -- it sits
10 there for a couple of seconds or so -- I don't know
11 exact time -- and then it is rinsed. It is a stain,
12 so you want it to sit on there for a minute, but then
13 you want to get it quickly rinsed off.

14 Q Let me ask this. So Amido Black -- just so I'm
15 clear -- does it come out as a spray? Is it a powder,
16 something you brush on?

17 A You can get Amido Black in various ways. I
18 particularly --

19 Q How was this knife processed?

20 A A spray.

21 Q So (indicates)?

22 A Kind of like a squirt bottle, not aerosol.

23 Throughout the entire time, there is photographs being
24 taken of the item.

25 Q Okay. And after you got done processing the

JILL DOMOGAUER - DIRECT EXAMINATION

1 knife, tell us what else you processed as the crime
2 scene investigator and collected?

3 A Well, again, if we want to jump back to the
4 scene, after the knife, I collected the handle --
5 pliers on scene. I swabbed the plier tips and the
6 handles of the pliers using the same sterile method.

7 Q What else?

8 A I collected various different swabs of blood on
9 the floor around the victim or near the victim. I
10 collected the blood from the hand of the victim. I
11 then took a panel off of the tub and searched the tub,
12 recovered a projectile. I did nothing on the scene
13 with the projectile other than photographed it. It was
14 then packaged and submitted to the State Law
15 Enforcement Division, another lab.

16 I searched the residence, including doors and
17 cabinets and other rooms of the residence. I also
18 collected a spec -- Speco technology recorder of the
19 outside cameras, security surveillance, of the
20 residence.

21 Q When you get to the house, tell the jury about
22 that, because we didn't show any pictures of the
23 outside of the house. What are you talking about now?

24 A What I'm talking about is a black -- I guess it
25 is a recorder. There was a box in the upstairs office

JILL DOMOGAUER - DIRECT EXAMINATION (CONT.)

1 area, but when you come to the residence, it had
2 outdoor cameras.

3 THE COURT: Ladies and gentlemen, this witness
4 isn't going to finish before lunch. She won't finish
5 before lunch, and you had no breaks. So we're going
6 to break for lunch now. I'm going to try to hold that
7 as steady as I can at 1 o'clock. You all have been
8 very good. I really thought one of you would have
9 raised your hands. I want to repeat, if you need a
10 break, raise your hand. I mean, I'm not asking one
11 question, I'm just going to stop and say we're taking
12 a break, and it happens all the time. But I meant
13 that.

14 Please don't discuss this case. Don't look at
15 any publicity in any form or fashion. If anyone tries
16 to talk to you about your jury service, let me know.
17 I'll see you back here at 2:30.

18 (The jury exits at 1:01 p.m., and the
19 following is heard out of the presence of the jury.)

20 THE COURT: That was a selfish break. I need a
21 break. I'll see you back here at 2:30.

22 (A recess was taken.)

23 THE COURT: All right. Bring them in.

24 (The jury enters at 2:49 p.m., and the
25 following is heard in the presence of the jury.)

JILL DOMOGAUER - DIRECT EXAMINATION (CONT.)

1 THE COURT: In case you are already being filled
2 with dread, we're not going to go until 6:40 tonight
3 again, so don't worry about it. If you need a break,
4 you haven't done it yet, but raise your hand. I'm not
5 going to be the one to take a break, even if I need
6 it. I'm hoping one of you all will raise your hands.
7 Okay. Yes, ma'am.

8 MS. LIVESAY: Thank you, Judge, just a couple
9 more questions.

10 Q (CONT. BY MS. LIVESAY) I'll show you what is
11 State's Exhibit No. 79; do you recognize that?

12 A Yes, I do.

13 Q What is it?

14 A Speco recording device.

15 Q And was this collected from the Sims' home that
16 night?

17 A I collected it in the office area of the home.

18 MS. LIVESAY: At this time, the State wishes to
19 put State's Exhibit No. 79 into evidence.

20 THE COURT: Any objection?

21 MR. MARTIN: No objection.

22 THE COURT: Without objection.

23 COURT REPORTER: Nancy, there actually three
24 things marked in that box.

25 MS. LIVESAY: It's just the power cord and -- do

JILL DOMOGAUER - DIRECT EXAMINATION (CONT.)

1 you want to see it?

2 THE COURT: I think her concern is there is more
3 than one thing in there, but the only thing you are
4 introducing --

5 MS. LIVESAY: This is a -- yeah, it's a
6 surveillance system, so all of this is together.

7 COURT REPORTER: It is 78, 79 and 80.

8 THE COURT: Okay. We just want to keep it
9 straight.

10 MR. MARTIN: Each piece is marked separately, is
11 that --

12 MS. LIVESAY: It's a power cord that powers it up
13 and a mouse.

14 (State's Exhibits 78 through 80 admitted.)

15 Q (MS. LIVESAY) Investigator, when did you take
16 this out of their home?

17 A I took it out of the home the day of the incident
18 -- or when I was there.

19 Q And that was on or around probably late that
20 night, around the 11th, maybe even into the early
21 morning of the 12th?

22 A If I'm recollecting, it was probably -- it had
23 already turned past midnight by then, probably the
24 12th.

25 Q So it was later in the night?

JILL DOMOGAUER - DIRECT EXAMINATION (CONT.)

1 A Early morning of the next day.

2 Q And about -- do you remember how long you were at
3 the house processing, looking, searching?

4 A Several hours.

5 Q Okay. Okay. That's fair enough. Let me ask you
6 this, did you collect any blood from anywhere in the
7 house other than the bathroom?

8 A No, I did not.

9 Q Did you see and document any blood droplets or
10 blood spatter or any kind of blood anywhere in the
11 house other than the bathroom?

12 A No, I do not see it anywhere else.

13 Q So the only place you saw blood was either in the
14 bathroom or on something in the bathroom?

15 A Yes, ma'am.

16 Q Now, Investigator, did you do a report?

17 A Yes, I did.

18 Q Did your record include all of the things you did
19 as part of your investigation?

20 A Yes, it.

21 Q Have you told this jury about the items that are
22 in your report?

23 A Yes, I have.

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

25 THE COURT: All right. Yes, sir.

JILL DOMOGAUER - CROSS-EXAMINATION

CROSS-EXAMINATION

1
2 BY MR. MARTIN:

3 Q The report contains everything you did in
4 connection with this case; is that what you just said,
5 right?

6 A Approximately everything, yes, sir.

7 Q Well, there's a difference between everything and
8 approximately. You just told her it contained
9 everything that you did. Does it contain everything
10 you -- I'm assuming that since you told them that,
11 that's true, right?

12 A Yes.

13 (Defendant's Exhibit 20 marked.)

14 Q Okay. Now, let me go back, Jill, and talk to you
15 a second about -- I noticed you said you got to the
16 house about 8 o'clock. Let me show you what is marked
17 for identification as Defendant's Exhibit 20, which is
18 the crime scene log. I'll ask you if you would review
19 that to refresh your memory on what time you signed in?

20 A I signed in at 7:30.

21 Q So it doesn't make much difference, but it was
22 7:30 instead of 8:00, right?

23 A I didn't go into the house.

24 Q You didn't go into the house until when?

25 A About 8:00.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q Well, how did you sign the crime scene log?

2 A When you cross the tape, you are in the yard.

3 Q But, again, you got there about 7:30, right?

4 A Approximately, yes, sir.

5 Q And you were there until 1 o'clock in the

6 morning?

7 MS. LIVESAY: Can I see that real quick?

8 Q (MR. MARTIN) And you were there until 1 o'clock
9 in the morning?

10 A I have a sign-out time on that sheet.

11 MS. LIVESAY: Are you trying to put it into
12 evidence?

13 MR. MARTIN: No. No. Just using it to refresh
14 her memory.

15 Q (MR. MARTIN) I asked you what time you would
16 have left; can you use that to refresh your memory?

17 A I would have left what is considered inside the
18 scene of the residence about 1 o'clock.

19 Q So 7:30 or 8:00 until 1:00, right?

20 A I might have still been outside where my vehicle
21 was past 1 o'clock.

22 Q But I guess you signed the crime scene log on the
23 way out at 1:00?

24 A If I'm out of the house.

25 Q So you are there from, roughly, 8:00 to 1:00,

JILL DOMOGAUER - CROSS-EXAMINATION

1 five hours, right?

2 A I guess, yes, sir.

3 Q All right. And Mr. DelPercio -- the 911 call was
4 at 6:13, Mr. DelPercio got to the house, the crime
5 scene log says, at 6:33. So I got --

6 MS. LIVESAY: I'm sorry, is it in evidence that
7 DelPercio got there at 6:30 through this witness, or
8 recalling --

9 THE COURT: Hold on. Finish your question
10 because -- is it in evidence that --

11 MS. LIVESAY: Yes.

12 THE COURT: And you say it is?

13 MR. MARTIN: DelPercio testified to it, that is
14 all I'm saying. Let me -- I can ask the question this
15 way.

16 MS. LIVESAY: If I can, I think I'm confused.
17 Are you asking her if he got there at 6:30, or are you
18 just making that statement?

19 MR. MARTIN: No. No. That's not what I asked.

20 Q (MR. MARTIN) Let me ask it this way. If
21 DelPercio got there at 6:33, and you got there at
22 8:00, say, then there is about an hour-and-a-half that
23 transpires before you get there, correct?

24 A Yes, sir.

25 Q And before you get there, of course, several

JILL DOMOGAUER - CROSS-EXAMINATION

1 policemen get there ahead of you, would you agree with
2 that?

3 A Whatever the log says who was there before me.

4 Q And, obviously, numerous EMS people are there
5 before that time; are they not?

6 A Yes, sir.

7 MR. MARTIN: And I will go ahead and enter into
8 evidence --

9 MS. LIVESAY: Your Honor, if I can. First of
10 all, I don't know how familiar Mr. Martin is with
11 these sheets, but I'm very familiar with them. These
12 sheets don't necessarily indicate that these people
13 went in the house at that time. These sheets
14 indicates that they have breached the crime scene tape
15 at some point. So if he's trying --

16 MR. MARTIN: What I was saying --

17 THE COURT: One at a time. Let her finish.

18 MS. LIVESAY: So in order for him to indicate
19 this is evidence, for one, he would have to
20 authenticate, in fact, who did this sheet and what met
21 the requirements of them signing this sheet. That
22 sheet is something they do. If you breach that crime
23 scene tape, you then sign in. It doesn't mean that
24 you have gone into the house, it doesn't mean you have
25 gone into the bathroom; it just means that you have

JILL DOMOGAUER - CROSS-EXAMINATION

1 gone within the crime scene tape.

2 MR. MARTIN: Well, it sounds like she's
3 authenticated it for us, then.

4 THE COURT: Well, let me ask -- it has a sticker
5 on it, doesn't it?

6 MR. MARTIN: It's Defendant's Exhibit No. 20,
7 yep.

8 THE COURT: Let me see. Ma'am, if he asked you
9 some foundation questions about this, are you familiar
10 with this form?

11 THE WITNESS: I've seen it before. I'm not the
12 one who filled it out.

13 THE COURT: Are you familiar with what it means
14 and how it is filled out?

15 THE WITNESS: For the most part how I would fill
16 it out, yes, sir.

17 THE COURT: Lay a little bit of foundation.

18 Q (MR. MARTIN) Let me ask you. You are -- what is
19 your official title?

20 A I'm a crime scene forensic investigator.

21 Q Crime scene forensic investigator?

22 A Yes, sir.

23 Q And, of course, along with that, you are not an
24 expert witness, but you are a crime scene investigator?

25 A Yes, I am.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q And you go to crime scenes on occasion?

2 A Yes, sir.

3 Q And you are familiar with what a crime scene
4 entry log is, aren't you?

5 A Yes, sir.

6 Q What is it?

7 A It's a log that uniform patrol keeps, or whoever
8 responds there, keeps on who crosses the threshold of a
9 certain area of a scene.

10 Q Okay. And let me show you Exhibit No. 20 and ask
11 you what that is?

12 A It is a crime scene log that we use.

13 Q And where is the crime scene log generally kept?
14 Let's say at a place like the Sims' residence, where
15 was the crime scene log located throughout the evening
16 of the evening of the 11th?

17 A I can tell you it was located on the outside of
18 the residence in the yard area by an officer when I was
19 there. From that point, I don't know where he was or
20 it was.

21 Q You signed it when you left, I assume?

22 A Yes, sir.

23 Q Where was it when you left?

24 A With that officer.

25 Q Where was that?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A In the yard area.

2 Q Who was that officer?

3 A I don't know his name. Can't read his
4 handwriting on the signature.

5 Q What a crime scene log is for is to document -C

6 MS. LIVESAY: Your Honor, if I may. Is he now
7 defining what a crime scene log is to her?

8 THE COURT: Yeah. I understand your objection.
9 Just ask a question,

10 MR. MARTIN: First of all, I have her on
11 cross-examination, so I can lead her.

12 THE COURT: I know you can lead. I know you can
13 lead, but you were getting ready to testify.

14 MR. MARTIN: Well, okay.

15 Q (MR. MARTIN) What is a crime scene log supposed
16 to be? What is the purpose of a crime scene log?

17 A To me, a purpose of a crime scene log is to tell
18 you who was there.

19 Q And in layman's terms, obviously that's what it
20 is, you keep a list of who was there, they sign in when
21 they got there, and sign out when they leave, right?

22 A Yes, sir.

23 Q So that you know who was there, when they got
24 there, and what time they left, right?

25 A Yes, sir.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q Okay. Is this a crime scene log for the case
2 that you have testified about for the last few hours?

3 A Yes, it is.

4 MR. MARTIN: I move to enter it into evidence.

5 THE COURT: Over your objection, I'm going to
6 allow it. You can redirect. I mean, I understand
7 your point is this doesn't show that people were in
8 the house, correct, and that is your concern?

9 MS. LIVESAY: My first objection is she can't
10 say, indeed, anything about this document, other than
11 this is a crime scene log, that particular signature
12 is mine, and that's it. She can't tell who started
13 it. She can't tell when it was started. She can't
14 tell anything about the document.

15 THE COURT: And I won't let him answer (sic)
16 those questions. But your concern, I assume, that
17 that presumed that people were in the house, not just
18 crossing the crime scene tape?

19 MS. LIVESAY: My concern is a crime scene log is
20 when you breach the tape. He is trying to say that
21 all of these people went to the bathroom, and I can
22 tell you that's not true.

23 THE COURT: If he tries -- I don't think he's
24 trying to say that, but if he does, object and I'll
25 stop him, because that's obviously not what it says.

JILL DOMOGAUER - CROSS-EXAMINATION

1 MS. LIVESAY: Because -- and here's the thing,
2 Your Honor. It is obvious that this document doesn't
3 have Ronnie Causey's name on it, who we know was at
4 the house. It doesn't have Sandra Causey's name on
5 it, who we know was in the house. So I just don't
6 know where we're going with this document.

7 THE COURT: Well, I don't either. You can
8 continue. I mean, I'll allow you to ask questions
9 until she objects.

10 MR. MARTIN: And I move to enter into evidence a
11 crime scene --

12 THE COURT: And I'm allowing it to be introduced
13 into evidence over her objection.

14 (Defendant's Exhibit 20 admitted.)

15 Q (MR. MARTIN) Now, let me show you State's
16 Exhibit No. 20, and ask you if you can tell me how
17 many Horry County Fire and Rescue workers are listed
18 on this document as having been to the crime scene
19 area, wherever, that night?

20 A I can only tell you for certain --

21 MS. LIVESAY: Your Honor, she doesn't know who
22 was in that area. All she can testify to is their
23 name is on the list.

24 THE COURT: I literally think that is what she
25 was getting ready to say, so overruled. Go ahead.

JILL DOMOGAUER - CROSS-EXAMINATION

1 MS. LIVESAY: And here's the thing, again, that
2 list, he keeps saying "crime scene," these are just
3 people that entered into the tape. These are not
4 people that went into the bathroom.

5 THE COURT: I get it.

6 Q (MR. MARTIN) Well, what I want to say -- what
7 does that read right there on State's Exhibit No. 20?
8 What does it read? "Crime Scene Entry Log," right?

9 A Yes, sir.

10 Q I'm not making that up, am I?

11 A No, sir.

12 Q That's printed on the document, isn't it?

13 A Yes, sir.

14 Q Okay. All right. So let me ask you, again, how
15 many EMS names appear on that sheet?

16 A I only recognize one name as --

17 Q You see here "Horry County Fire and Rescue," and
18 the lines drawn?

19 A There is no line.

20 Q Well -- all right. Let me ask you, you know
21 Becky Pavilack?

22 A That's the only person I know.

23 COURT REPORTER: I can't hear, I'm sorry.

24 THE COURT: You need to speak up.

25 Q (MR. MARTIN) Let's do it this way. Come down

JILL DOMOGAUER - CROSS-EXAMINATION

1 with me. Let's show the jury and get through this.

2 State's Exhibit No. 20 is what?

3 A A crime scene log form.

4 Q All right. And here, the way that thing -- you
5 have a place to print names, don't you?

6 A Yes, you do.

7 Q Matter of fact, here is your name, Line 18, Jill
8 Domogauer, isn't it?

9 A Yes, it is.

10 Q And we talked about you went in at 7:30, it says?

11 A I crossed the tape.

12 Q Crossed the tape at 7:30, all right. And left
13 the tape at 1 o'clock?

14 A Yes.

15 Q All right. And, obviously, you went on in the
16 house at some point in time?

17 A Yes, sir.

18 Q Because you went through every room in the house?

19 A I went through the house, yes, sir.

20 Q Every room in the house, is what you testified to
21 earlier, right?

22 A Yes, sir.

23 Q Now, this first list we have here says "initial,"
24 right?

25 A Yes, sir.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q And the second line says "depart," right?

2 A Yes, it does.

3 Q HCFR, what does that stand for?

4 A Horry County Fire and Rescue.

5 Q And in layman's term, that is the ambulance
6 people, like Scott Thompson that testified yesterday?

7 A It's people with Horry County Fire and Rescue.

8 Q Okay. And then over here, we have a "time in,"
9 don't we?

10 A Yes, sir.

11 Q And here we have a "time out"?

12 A Yes, sir.

13 Q And then for fire and rescue, we've got -- you go
14 down to line -- there is 11 lines in which the time end
15 for 11 people was, what? 18:35?

16 A That is what it looks like, yes, sir.

17 Q And the time out was what?

18 A It looks like 18:48.

19 Q And, certainly, you don't know how many of those
20 people went into the house or did not, do you?

21 A No, I don't.

22 Q Don't know how many went into the bathroom or
23 not, do you?

24 A No.

25 Q Could have been one of them? Could have been all

JILL DOMOGAUER - CROSS-EXAMINATION

1 of them, right?

2 A I don't who.

3 Q You don't know. But, normally, fire rescue, EMS
4 workers, are there to work on, who?

5 MS. LIVESAY: Your Honor, if I may, is she in
6 fire and rescue, or is she in crime scene
7 investigation?

8 THE COURT: If she doesn't know the answer, she
9 can say I don't know. But, I mean, go ahead. Ma'am,
10 if you don't know an answer, say I don't know. If you
11 know, you can answer.

12 A I don't know what all of them would be doing
13 there.

14 Q (MR. MARTIN) And, listen, I'm not trying to
15 trick you now. This is a police document that we got,
16 so I'm just trying to get the picture painted here
17 that we did have 11 EMS people sign in at the crime
18 scene, didn't we?

19 A You have one recognized as Horry County Fire,
20 there is no line here, and these are left blank.

21 Q Well, you wouldn't deny that those were Horry
22 County Fire and Rescue workers, would you?

23 A I don't who they are. I don't recognize the
24 names. I would fill a crime scene log out differently
25 than how that's filled out.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q I got you. And then let's go down to the Horry
2 County Police Officers, you probably know them. Tom
3 DelPercio testified; he was there, right?

4 A Yes, sir.

5 Q And he stayed until 11 o'clock, according to this
6 log?

7 A Yes, sir.

8 Q And Brandon Lee came at 18:34, and left at 18:51,
9 according to this log, didn't he?

10 A That's what the log says, yes, sir.

11 Q And Jonathan Martin, he was there with you that
12 night, right?

13 A Yes, sir.

14 Q And he is 7:16 to -- what time?

15 A Either 23:30 or 23:36.

16 Q Yep. Pete Cestare was in there?

17 A Yes, sir.

18 Q Showed up at what time? 19:30?

19 A 19:30.

20 Q Okay. All right. Even the solicitor came out
21 there, right? You know Jimmy Richardson, you know who
22 that is?

23 A Yes.

24 Q Who is it?

25 A He's the solicitor.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q Who is Travis Hyman?

2 A I think he is a solicitor, too.

3 Q All right. You can have a seat. My point is --
4 and of course we don't -- my point is, there are many
5 people who get to that house before you do, right?

6 A Yes, sir.

7 Q And you don't know who went into the house or the
8 bathroom before you did, do you?

9 A No, I do not.

10 Q Okay. Now, the house -- are you aware that the
11 house was released at 1 o'clock in the morning back to
12 the Causes -- Heather and her family?

13 A I'm not familiar what time exactly it was
14 released.

15 Q You are not familiar with that? Hard to remember
16 unless you document it, right?

17 A I can look at my notes.

18 Q Yeah, look at your notes there.

19 A I don't know. I don't think I have a time.

20 Q Well, let me back into it this way with you, and
21 I'll get you something to help your memory in a minute.
22 Do you agree with me that the house, and anything in
23 the surroundings, were released back to the family at 1
24 o'clock; you would not disagree with that, would you?

25 A I don't know the time. I know it was released

JILL DOMOGAUER - CROSS-EXAMINATION

1 back. The time, I'm not sure.

2 Q And what time would you approximate -- since you
3 left at 1 o'clock, what time would you approximate that
4 that occurred?

5 A I didn't say I left at 1 o'clock. I left an area
6 at 1 o'clock. I might have still have been on the
7 property.

8 Q What time did you leave the property?

9 A I would have to get a log to tell you
10 approximately or a more exact time.

11 Q Do you have that documented in your notes?

12 A Not in notes I have with me, sir.

13 Q Ma'am?

14 A Not in the notes I have with me.

15 Q All right. Would it be fair to say then that you
16 didn't document everything in that report, wouldn't it?
17 Ma'am?

18 A The time I left, it's -- the time is not in the
19 report, but it is documented with traffic or CAD
20 reports or other items.

21 Q All right. So it is documented somewhere, and
22 all you can say is it was turned back over to the
23 Causey -- Heather Sims' family that night?

24 A It was turned over either to the family or a
25 representative of the family.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q And that means, when it is turned over, that the
2 Horry County Police Department has turned it back over
3 to whatever family it is, to do with as they see fit;
4 isn't that right?

5 A I would say so, yes.

6 Q And that means that, at least for the night or
7 before anything around it is disturbed, which you
8 wouldn't want disturbed, you have done what you want to
9 do, and you have now said, okay, we're through, it's
10 yours, right?

11 A I would say so, yes, sir.

12 Q And that was done that night?

13 A Early the next morning.

14 Q Early next morning hours, be it 1 o'clock,
15 2 o'clock, 12:30, somewhere in that range; would you
16 agree with that?

17 A Sometime the next morning, yes, sir.

18 Q Now, as far as searching the house, you said you
19 got a search warrant; do you know what time that search
20 warrant was signed?

21 A Let me refer to my notes. 21:45 hours.

22 Q What time is that?

23 A I'm sorry, that's 9:45.

24 Q 9:45. You know that Heather Sims signed the
25 consent to search that house at 7:30 that night; did

JILL DOMOGAUER - CROSS-EXAMINATION

1 you know that?

2 A Yes, I did. I was aware of that.

3 Q So that was done by Detective Chatfield, who was
4 at the hospital with her, wasn't it?

5 A They said there was a consent to search.

6 Q And that was at 7:30, right?

7 A It was signed, I believe, before she left the
8 premise, before I got there, yes, sir.

9 Q Did you have anything to do with getting that
10 signed?

11 A No, sir.

12 Q Who told you it was signed?

13 A During my briefing, the detectives told me we had
14 a consent to search.

15 Q And I'm assuming you went ahead and searched?

16 A I started taking my initials and walking through,
17 and I backed out.

18 Q You didn't -- okay. So with a consent, you
19 backed out?

20 A Yes.

21 Q But there is no question she consented to the
22 search of the house?

23 A No, sir. No, sir.

24 Q And then you had testified that you searched the
25 house over the next five hours, thoroughly?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A Myself and Lieutenant Cestare.

2 Q And who else?

3 A Lieutenant Cestare.

4 Q Anyone else help you and Lieutenant Cestare go
5 through the house?

6 A I know myself and Lieutenant Cestare.

7 Q Do you know whether anybody else helped you?

8 A I'm not aware.

9 Q Jonathan Martin was there at the house, wasn't
10 he?

11 A When I saw Jonathan Martin, he was outside.

12 Q You never saw him in the house?

13 A Not that I'm aware of, no.

14 Q He didn't help you and Mr. Cestare search the
15 house?

16 A I didn't see him.

17 Q Okay. All right. And, of course, you testified
18 on direct that you searched every room in the house?

19 A Yes, sir.

20 Q Looked in every drawer in the house?

21 A I looked through drawers, every drawer in certain
22 rooms and opened drawers in other rooms.

23 Q Well, I understood -- and I'm not trying to play
24 catchy with you here, okay, I'm just trying to be sure
25 that I understand. I understood you to testify with

JILL DOMOGAUER - CROSS-EXAMINATION

1 Ms. Livesay that you looked in every drawer in the
2 house; is that right or wrong?

3 A That's correct.

4 Q So you looked in every drawer in the house?

5 A That is correct.

6 Q And if you saw anything of any interest, you
7 would have taken a picture of it?

8 A Yes, sir.

9 Q You even looked in the washer and dryer?

10 A Yes, sir.

11 Q Looked in each closet in the house?

12 A Yes, sir.

13 Q You searched the house thoroughly, you and Mr.
14 Cestare, inside and out, every cabinet, every drawer,
15 washer and dryer, everything, right?

16 A Yes, sir.

17 Q Okay. Obviously, that would include kitchen
18 drawers?

19 A Yes, sir.

20 Q Which drawers did you search in the kitchen? Do
21 you have a photograph here of the kitchen?

22 A I can tell you I searched every drawer and
23 cabinet in the kitchen.

24 Q Every drawer and cabinet, okay. Where are the
25 drawers and cabinets in the kitchen? Let me show you

JILL DOMOGAUER - CROSS-EXAMINATION

1 what's marked as State's Exhibit No. 19 and ask you if
2 that depicts the kitchen area?

3 A It depicts part of it, yes, sir. You have
4 cabinets and drawers by the counters.

5 Q In that picture, where would the drawers have
6 been -- obviously some of the cabinets -- you looked at
7 all of these cabinet drawers on 38 and all the kitchen
8 drawers on 38?

9 A Yes.

10 Q What, if any, drawers other than that would you
11 have looked at?

12 A There is a cabinet over here. I believe there is
13 more drawers over here.

14 Q Are there drawers in the island?

15 A I can't recall. If there were, I did look in
16 them.

17 Q If you did, you did look in them?

18 A Yes, sir.

19 Q Did you see the knife drawer in the island
20 drawer?

21 A I don't recall.

22 Q Did you document that in your report, that there
23 was a drawer full of knives in the kitchen?

24 A I didn't document in my report.

25 Q Do you recall it today?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A I'm not quite sure.

2 Q And that is fair enough, because it is impossible
3 to remember exactly what you did two years and three
4 months ago unless you had it documented, isn't it?

5 A I agree.

6 Q Did you document in your report that you looked
7 in every drawer and cabinet in that house, Jill?

8 A I don't believe I documented verbatim in that
9 form that I did that.

10 Q Now, you were shown pictures of a knife block,
11 and there were two knives missing, right?

12 A Yes, sir.

13 Q And we talked about that thoroughly. You didn't
14 see that knife anywhere else in the house, is what you
15 testified to?

16 A I didn't see any knife that matched that set.

17 Q Were you looking for a knife that matched that
18 knife in the bathroom? That night, while you were
19 there, were you looking for a second knife?

20 A Yes, I did.

21 Q You did? Why?

22 A Because there were two knives missing.

23 Q And did you know that that knife drawer there was
24 full of knives, did you take a picture of it?

25 A I didn't see anything that matched that set, so,

JILL DOMOGAUER - CROSS-EXAMINATION

1 no, I did not.

2 Q Did you take a picture of the knives in that
3 drawer to document it?

4 A No, I did not.

5 Q Did you inventory the knives there in that
6 drawer?

7 A No, I did not.

8 Q Do you recall whether or not the knife that
9 matched the knife that was not in the butcher block was
10 in that drawer, or not?

11 A I would say it was not, sir.

12 Q No, not what I would say. Can you tell this
13 jury, under oath, that you looked at every knife in
14 there, and that that knife wasn't there?

15 A I scanned the drawer, I didn't see a knife that
16 was similar or matching that set.

17 Q You didn't even remember the drawer was there,
18 how can you say you looked through it?

19 A I looked through the kitchen drawers. Obviously,
20 there is going to be a silverware drawer, knife drawer,
21 junk drawer.

22 Q Well, I'm interested now. I'm interested in why,
23 if you are looking for knives -- there was a
24 dishwasher -- no dishwasher there, so they weren't
25 there, right? But if you are specifically looking for

JILL DOMOGAUER - CROSS-EXAMINATION

1 a second knife -- which I don't think you were -- why
2 didn't you inventory the knives that were in there if
3 it is a big deal?

4 MS. LIVESAY: Your Honor --

5 THE COURT: Hold on a minute. Yes, ma'am.

6 MS. LIVESAY: I appreciate Mr. Martin either
7 thinks or doesn't think what she was looking for, but
8 why doesn't he ask her what she was looking for
9 instead of just assuming I don't think you were
10 looking for a second knife? Why doesn't he just ask
11 her, Were you looking for a second knife?

12 THE COURT: Well, I'll allow him -- I mean, you
13 can go ahead. You need to get to the question. I
14 understand.

15 Q (MR. MARTIN) All right. All right. You said
16 you documented everything you did in your report;
17 didn't you say that?

18 A Yes, I did.

19 Q And did you document -- take your time and look
20 at it -- and did you document looking through a knife
21 drawer?

22 A No, I did not.

23 Q All right. So it's not true either that you
24 documented everything, or that you looked through the
25 knife drawer, is it?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A It's not true?

2 Q Well, it can't be both. You can't have
3 documented everything in your report. And, you know, I
4 don't know that you should have, but you said you did,
5 okay. So now we're supposed to hinge on every word you
6 say so, again, if you didn't document it in your
7 report, and you documented everything you did in your
8 report, then why is that not in your report?

9 MS. LIVESAY: Your Honor, I'm confused. Is he
10 asking --

11 MR. MARTIN: I object whether she's confused or
12 not.

13 THE COURT: Yeah, I mean, let her answer it. I
14 mean, I think what you are asking is if you documented
15 everything in the report, why isn't that drawer not
16 documented; is that correct?

17 MR. MARTIN: Yeah, that's the question.

18 THE COURT: If she can answer --

19 MS. LIVESAY: So he's asking why she didn't
20 document two knives were missing?

21 THE COURT: No. I think why she didn't document
22 a particular drawer.

23 MS. LIVESAY: Okay.

24 THE COURT: I won't -- I'll let her answer for
25 herself. Go ahead, you can answer that.

JILL DOMOGAUER - CROSS-EXAMINATION

1 MR. MARTIN: Do you want me to start over?

2 THE COURT: No.

3 Q (MR. MARTIN) And, again, I do want to just get
4 through this without belaboring everything. Again,
5 you did testify that you -- you testified to this
6 several times you documented everything you did in
7 your report; is that true? That is what you said here
8 in court earlier under oath.

9 A Yes.

10 Q And you also say now that you did or you think
11 you looked into a knife drawer, correct?

12 A Do you mind if I look at my report?

13 Q No, I don't mind. It may be in there. If you
14 find it, I just -- that's what I want to know.

15 (A brief pause in the proceedings.)

16 A Actually, sir, I stated -- would you like me to
17 read it?

18 Q Sure.

19 A I observed baby bottles freshly washed and drying
20 in a black -- and drying in a -- I also observed a
21 black in color knife block on the kitchen counter left
22 of the sink with two knives missing. I searched all
23 the drawers in the kitchen --

24 Q Slow down. You observed a knife block, starting
25 there.

JILL DOMOGAUER - CROSS-EXAMINATION

1 A I observed a black in color knife block in the
2 kitchen counter left of the sink area with two knives
3 missing. I searched all of the drawers in the kitchen
4 and was unable to find any of the missing knives. One
5 of the missing knives is located in the bathroom.

6 Q Did you take a picture of that drawer?

7 A No.

8 Q With the knives that you looked through?

9 A No.

10 Q And why would you not do that if you are
11 documenting things that were important to you?

12 A It wasn't in there.

13 Q Well, you could prove it wasn't in there if you
14 had a picture of it, so let me ask you this. Let me
15 show you what is identified as Defense Exhibit 23; what
16 is that?

17 A It is a picture of a thermostat.

18 Q All right. And you took that picture?

19 A I believe I did, yes, sir.

20 Q But you didn't take a picture of the knife drawer
21 you looked in?

22 (Defendant's Exhibit 21 through 26 marked.)

23 I'll show you what is marked as Defense Exhibit
24 No. 21; did you take that picture?

25 A It's an overall picture of a room.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q What room?

2 A The nursery.

3 Q Picture of the nursery?

4 MS. LIVESAY: Can I get a quick look?

5 Q (MR. MARTIN) Did you discern that that had
6 anything to do with the case you investigated?

7 A No, it didn't.

8 Q Took a picture of it, right?

9 A It's an overall picture, yes, sir.

10 MR. MARTIN: Do you want to take them with you?

11 MS. LIVESAY: I saw them, thank you.

12 Q (MR. MARTIN) But you didn't take a picture of
13 the knife drawer?

14 A No, sir.

15 Q You didn't take a picture of the sink, inside of
16 the sink, to see what was in it?

17 A I looked in the sink.

18 Q Do what?

19 A I looked in the sink.

20 Q You looked in the sink? Didn't take a picture of
21 that?

22 A No, sir.

23 Q And if you -- if you took a picture of all of
24 these other things, Jill -- and, again, you say you did
25 go through every drawer in the house, right?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A Yes, sir.

2 Q But you obviously didn't take all of the evidence
3 that night that you wanted to get, because you did not,
4 but other detectives went back; am I right about that?

5 A After I left?

6 Q Not that night, on August 15th, for example?

7 A There were secondary or other searches I didn't
8 participate in.

9 Q So there was a search on that night, and there
10 was a search on the 15th, and there was a search on
11 the 23rd, correct?

12 A I can tell you about that night.

13 Q All right. Well, you know -- matter of fact,
14 it's in your report.

15 A Oh, yeah, I'm sorry.

16 Q It's in your report, isn't it?

17 A Yes, sir.

18 Q Does your report reflect what was taken as
19 evidence from the house on the 15th?

20 MS. LIVESAY: Your Honor, just for the record,
21 this investigator did not participate in that search.
22 What's documented in that report was told to her by
23 the people that did participate in the search.

24 THE COURT: Okay.

25 A Yes, sir, it does.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q (MR. MARTIN) What was taken on the 15th?

2 A It was reported to me that a black in color
3 iPhone.

4 Q What else?

5 A One Levano computer tower.

6 Q Laptop?

7 A No, computer tower.

8 Q Computer tower?

9 A Yes, sir.

10 Q And how about on the 23rd, what was taken then?

11 A Copy of a phone bill and a laptop, white MacBook
12 laptop.

13 Q Another computer, laptop computer?

14 A A laptop.

15 Q Okay. Those were taken into custody and had been
16 with law enforcement since that time, right?

17 A I believe they might have been examined by
18 forensics, but, yes.

19 Q I said law enforcement has it, still has them, as
20 a matter of fact; is that right?

21 A Yes, sir.

22 Q Now, let me ask you this. Do you remember, I
23 believe, testifying about blood on a handgun?

24 A Yes, sir.

25 Q And you saw blood on the handgun?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A I could visibly see some on there, yes, sir.

2 Q And you noted that in your report, right?

3 (A brief pause in the proceedings.)

4 A Yes, sir.

5 Q This is the same handgun we're talking about
6 here, which is -- it has an exhibit number on it
7 somewhere.

8 A It's on the box lid, inside the box lid.

9 Q 66, okay. Of course that blood is not visible on
10 the handgun today, is it?

11 A No. That firearm has been examined.

12 Q It's been examined. But it was visible that
13 night, right?

14 A Yes, it was.

15 Q And you took a swab of it and sent it to SLED to
16 determine whose blood it was, right?

17 A I took a swab of the area, yes, sir.

18 Q But there is none on it today as you have it in
19 court, is there?

20 A To be honest with you, there could be faint
21 traces on there, but you can't visibly see anything on
22 there.

23 Q Well, and that's another thing, sometimes when
24 you say you don't see blood, it doesn't mean that there
25 isn't blood there, does it?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A Depends on the surface you are looking at.

2 Q For example, your report says that you didn't see
3 any blood on the handle of the knife, but when it went
4 to SLED and tested, we do know that there was blood on
5 the handle of the knife.

6 A It's black.

7 Q Simply meaning, you couldn't see it, that's all
8 I'm saying. The whole point is sometimes you don't see
9 blood, even though there is blood there, because of
10 either the color or the faintness of it, or whatever;
11 agree?

12 A I would say so, yes, sir.

13 Q The cell phone, let's talk about the cell phone
14 for a minute. There seems to be an interest in a
15 second cell phone or David's cell phone. Were you
16 looking for a second cell phone that night?

17 A I searched the body. I searched other areas.

18 Q I guess what I'm asking you specifically is, not
19 that you should or you shouldn't have, but obviously
20 you were just getting there, working on the case, were
21 you -- Ms. Livesay asked you repeatedly about if you
22 saw a phone. I'm asking you, when you were doing a
23 search, were you looking for a second cell phone
24 specifically?

25 A I was looking for his phone.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q All right. And on that point, you or Mr.
2 Cestare -- or who was it at the house that kept calling
3 Jim Chatfield as he was questioning Heather?

4 A I don't know, sir.

5 Q Do you know that somebody was doing that?

6 A No, sir.

7 Q Did you call Chatfield or ask anybody else to
8 call Chatfield and ask her if she knew where David's
9 cell phone was?

10 A No, sir.

11 Q Why were you looking for it?

12 A I was told he had a phone.

13 Q Who told you he had a phone?

14 A I can't remember.

15 Q Most everyone has a phone, if he had a phone.
16 But in regard to this particular investigation, why
17 were you looking for it?

18 A That would be something of interest.

19 Q Did you put anywhere in that report that you
20 looked for it, but could not find the cell phone?

21 A I don't believe I did.

22 Q Okay. So you are looking for it, but couldn't
23 find it, but you didn't document that; is that fair?

24 A I know when I examined the body, that was one of
25 the things I was looking for, whatever he had in his

JILL DOMOGAUER - CROSS-EXAMINATION

1 pockets or anything.

2 Q You say he didn't have anything in his pocket?

3 A Not that I can recall.

4 Q Did you document in the report that he had
5 anything in his pocket? And I don't think you did.

6 A No, I don't believe I did.

7 Q You testified, when Ms. Livesay questioned you,
8 that he didn't have anything in his pocket?

9 A I don't recall him having anything in his
10 pockets.

11 Q You don't recall him having his wallet in his
12 pocket?

13 A I remember seeing his wallet. I don't know if it
14 was in his pocket or not.

15 Q Where do you recall seeing it?

16 A I didn't put it in my report, sir.

17 Q I'll show you what is marked for identification
18 as Exhibits 24 and 25 and ask you if you can identify
19 those?

20 A A Social Security card and a driver's license.

21 Q Those are photographs you took that night at the
22 crime scene?

23 A Yes, sir. It appears to be crime scene. It is
24 the marble counter.

25 Q And as you point out, those were taken there in

JILL DOMOGAUER - CROSS-EXAMINATION

1 the bathroom where the body was, laid out on the marble
2 counter?

3 A I believe it is in the bathroom. I'm not sure
4 where it's at. It's just too close up.

5 Q But that looks -- you would agree with me that it
6 looks like the marble counter there in the bathroom
7 that the gun is on and the cell phone is on?

8 A Looks similar to it, yes, sir.

9 Q So you found those items. And where did you find
10 them to take a picture of them?

11 A I don't recall.

12 Q Is it reasonable that they would have been in his
13 pocket along with his wallet?

14 A I don't recall where they were.

15 Q You wouldn't disagree with me when you said you
16 found nothing in his pocket, but that you might be
17 wrong about that; wouldn't you agree with me on that?

18 A I'm not going to say I agree with you on that.

19 Q What would you say?

20 A I don't recall.

21 Q If you don't recall, is it entirely possible that
22 those items were in his pocket?

23 A I suppose it could be possible.

24 Q Okay. His wallet could have been in his pocket,
25 right?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A I don't recall.

2 Q Did you take any of these items into evidence,
3 items you photographed, Social Security card and
4 driver's license?

5 A I would have turned them over to the coroner.

6 Q You turned them over to the coroner?

7 A They need that information.

8 Q You didn't take them into evidence?

9 A I'm not quite sure that I did.

10 Q Didn't take a wallet into evidence?

11 A I don't believe so, no, sir.

12 Q In fairness to you, it is just about impossible
13 to remember exactly what you saw, observed or did that
14 night two years and three, four months ago, isn't it?

15 A Everything I did? No.

16 Q So when an officer, like you, doing the best they
17 can do, to tell it like they remember it, make
18 statements like I looked through every drawer in the
19 house, that may or may not be 100 percent accurate;
20 would you agree with me?

21 A That is accurate.

22 Q That you looked in every drawer of the house?

23 A Yes, sir.

24 Q Did you document that, that I looked in every
25 room and every drawer in the house in there?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A I don't think I listed it in such a fashion, but
2 I did list in there I went through several drawers in
3 certain rooms.

4 Q Went through what now, I'm sorry?

5 A Drawers in certain rooms. I know I documented
6 some rooms in there, yes.

7 Q Did you see a Browning safe in the house?

8 A No, sir.

9 Q You did go through every room of the house, you
10 said?

11 A In the inside of the house.

12 Q Inside of the house. You didn't see a Browning
13 safe?

14 A Not that I can recall, no, sir.

15 Q Didn't take a picture of a Browning safe, did
16 you?

17 A No, sir.

18 Q Let me show you what is marked for identification
19 as State's Exhibit 26 and ask if you can identify that?

20 A It is the trashcan next to the toilet in the
21 master bathroom.

22 Q Did you go through that?

23 A Yes, I did note.

24 Q What was in it?

25 A Like, trash.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q Did you document in your report what was in that
2 trashcan?

3 A Other than trash, no, I don't think I was
4 specific.

5 Q Did you say trash in there? I'm not going to
6 make you look through the whole thing now.

7 A I'm not sure if I did and I want to answer you
8 correctly.

9 Q I know you do, and I don't want you to read the
10 whole report now. Here's what we'll do, if you find
11 when you get through testifying that you put I looked
12 through this trashcan and other trashcans in the house,
13 just have Ms. Livesay let me know, okay?

14 A Okay.

15 Q Now --

16 MR. MARTIN: Judge, I move to enter into evidence
17 Exhibits 26, 21, 23, 25 and 24.

18 THE COURT: Any objections?

19 MS. LIVESAY: Are they the same ones I saw
20 earlier?

21 MR. MARTIN: Yes.

22 THE COURT: Without objection.

23 (Defendant's Exhibits 21, 23, 24, 25 and 26
24 admitted.)

25 Q Let me show you what is Defendant's Exhibit 21.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Come down with me, if you would. This is a photograph
2 of what, now?

3 A An angle of the nursery.

4 Q So you took pictures throughout the house, right?

5 A Yes.

6 Q And this is a picture of the wall in the nursery
7 and a crib in the nursery?

8 A Yes, sir.

9 Q What does that inscription on the wall read?

10 A I have to put it closer, I'm sorry. For this
11 child I have prayed and the Lord has granted the desire
12 of my heart.

13 Q Did you take that picture for any particular
14 reason?

15 A I was taking overalls.

16 Q Just taking pictures of what --

17 A Overalls. I just captured that.

18 Q Can you find for me in the pictures that you have
19 there -- I want to go back with you just a minute. You
20 said in going through the house you found some -- an
21 old or some old cell phones; is that true?

22 A I remember -- I can vividly recall at least one.

23 Q And, again, I ask you, did you make a note of
24 that in your report?

25 A No, I did not.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q So once again, you didn't document everything
2 then, right?

3 A I didn't document everything I did.

4 Q Now, which drawer do you see -- you are saying
5 now that you saw one, or more than one?

6 A I can vividly recall one.

7 Q What room of the house was that in?

8 A Kitchen.

9 Q Kitchen. What drawer was it in?

10 A Do you mind if I look at my pictures?

11 Q No, I don't mind.

12 A This one right here (indicates).

13 Q Top drawer? Come down and show the jury that.

14 A In this set of drawers here I can recall it was
15 in this set. Whether it was the top drawer, the
16 secondary drawer, I'm not quite sure, but I know it was
17 in this set here, in this set here.

18 Q In the first drawer you think; if not that, then
19 the second drawer?

20 A I can't recall which one, but it was when I
21 searched this area here.

22 Q Cell phone?

23 A An old model cell phone.

24 Q Did you -- you didn't take it?

25 A No, sir.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q And you didn't photograph it?

2 A No, sir.

3 Q But you were looking for cell phones now?

4 A I powered it on and checked it, and it was not
5 operable.

6 Q You powered it on?

7 A I couldn't power it on; it didn't work.

8 Q Wait a minute. Wait a minute. I thought you
9 said you powered it on?

10 A I attempted to power it on.

11 Q Attempted to power it on. And it was dead?

12 A It did not work.

13 Q Well, I guess if my phone dies and it is laying
14 there, and the old phone may be dead, you just
15 attempted to turn it on, and it seemed to have no
16 power?

17 A I recall checking it, and I don't believe there
18 was a sim card or anything in it, as if you were to
19 take an old phone and put in the drawer because you got
20 a new one.

21 Q You didn't photograph that phone?

22 A No, sir.

23 Q And you didn't inventory that phone in your
24 report?

25 A No, sir.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q But you are certain that there was a cell phone
2 in that drawer?

3 A Yes, sir.

4 Q Go back, if you would. One last question now.
5 Do you remember now seeing anything else in his pocket
6 besides the driver's license and Social Security card,
7 which I would assume was in his wallet? Do you
8 remember seeing anything else in his pockets there?

9 A I don't recall seeing anything in his pockets.

10 Q You don't know where you got his wallet from?

11 A I'm not quite sure.

12 Q Exhibit 31, look at that for me. Is that 31?

13 A Yes, sir.

14 Q Now, when you were going through that house, were
15 you looking for a towel with blood on it specifically?

16 A Specifically, no.

17 Q And did you collect the towels that were in that
18 bathroom to be analyzed?

19 A No, I did not.

20 Q How many towels were there in that bathroom?

21 A I will say approximately -- you can see in this
22 photograph approximately seven towels of some sort.

23 Q To narrow that down, the towels that are not
24 hanging up, be they bath towels, hand towels or
25 washrags, how many do you see in Exhibit 31 that are

JILL DOMOGAUER - CROSS-EXAMINATION

1 not hanging, but are laying on something?

2 A I see one that appears to be a washcloth on the
3 counter.

4 Q Look for me over by the shower, what is that on
5 the top of the shower wall?

6 A They appear also to be two washcloths that are
7 set there by the towel that are hanging up.

8 Q What color are they?

9 A Brown.

10 Q Did you take a look at those?

11 A Yes, I did.

12 Q Did you photograph them?

13 A I photographed them like that, yes, sir.

14 Q No. Did you photograph them -- lay them out and
15 photograph them so that we could see what was on it?

16 A No, I did not.

17 Q Did you spread out the one that was on the vanity
18 there?

19 A Yes, I did.

20 Q Did you take a picture of it so we could see it?

21 A No, I did not.

22 Q Again, did you document in your report that you
23 did that with these three hand towels and/or
24 washcloths?

25 A I don't believe I did.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q You are going off of memory?

2 A I didn't want to read my whole --

3 Q I'm not trying to make you read it or trick you,
4 just asking you questions.

5 A No, I don't see it in there, sir.

6 Q Don't see anything on that?

7 A No, sir.

8 Q Let me have you look at State's Exhibit No. 23
9 and tell us what that is a pictures of?

10 A One side of the master bedroom.

11 Q And on that side of the master bedroom, you took
12 a picture of the nightstand.

13 A I took a general picture of that area. I wasn't
14 really focusing on anything.

15 Q I understand that. But you happened to capture
16 in that photograph the nightstand?

17 A Yes.

18 Q Let me show you what is marked as Defendant's
19 Exhibit No. 22 and ask you if that's a blown-up picture
20 of the nightstand in that photograph, which is Defense
21 Exhibit -- State's Exhibit 23?

22 A It appears to be, yes, sir.

23 Q And that's the same one you took a picture of a
24 gun case in the bottom drawer?

25 A It's the same nightstand, it appears to be.

JILL DOMOGAUER - CROSS-EXAMINATION

1 MS. LIVESAY: Can I see what she's looking at?

2 MR. MARTIN: Sure.

3 MS. LIVESAY: Is this one she took?

4 MR. MARTIN: It is a blow-up of one of hers.

5 MS. LIVESAY: Okay. If she can recognize it.

6 Q (MR. MARTIN) Jill, can you read -- do you see
7 what -- do you or do you not see what appears to be a
8 book laying on that nightstand?

9 A I see a couple of books.

10 Q What can you make out about the title of the one
11 book?

12 A The only thing I can make out is it appears, to
13 me, the number "5".

14 Q The number "5". Okay. That it is. Come down
15 with me here.

16 MS. LIVESAY: Your Honor, if I may ask what the
17 relevance is?

18 MR. MARTIN: Well, the picture is already in
19 evidence. What the relevance is it shows a book there
20 that Ms. Sims bought a few weeks before about five
21 love languages.

22 MS. LIVESAY: All we know is that that book was
23 in the house. We don't know whose book it is. So I
24 guess we're testifying it was in the house?

25 THE COURT: It was in the house, yeah.

JILL DOMOGAUER - CROSS-EXAMINATION

1 MR. MARTIN: I think the picture indicates it was
2 in the house, and not only that --

3 Q (MR. MARTIN) Not only was it in the house, what
4 room?

5 A Master bedroom.

6 Q And it was where in the master bedroom?

7 A On the top of that one nightstand.

8 Q Do you know whose side?

9 A I would have to give you my opinion.

10 Q Don't give me it.

11 A Okay.

12 Q But, here, you see -- is this the photograph
13 we're talking about here?

14 A Yes.

15 Q You took that?

16 A I took a scaled version of it.

17 Q And it's hard to see. They will have to get
18 their hands on it to see it. You can have a seat.

19 MR. MARTIN: I move to enter into evidence, if I
20 haven't, Exhibit 22.

21 THE COURT: Any objection?

22 MS. LIVESAY: You're putting that in evidence?

23 That's fine. No objection, Your Honor.

24 (Defendant's Exhibit 22 admitted.)

25 Q (MR. MARTIN) You did take the cell phone laying

JILL DOMOGAUER - CROSS-EXAMINATION

1 on the bathroom vanity that belong to Heather Sims?

2 A I took that phone at the time, I didn't know who
3 it belonged to.

4 Q Did you swab it to see if there was any blood on
5 it?

6 A I visually looked at it and didn't see any blood
7 on it.

8 Q Did you swab it?

9 A No, I did not.

10 Q Why?

11 A I visually examined it.

12 Q You visually examined the knife handle and didn't
13 see any blood on it, but you swabbed it?

14 A Phone is white, white and light gray.

15 Q Did you take a picture of the back of the cell
16 phone?

17 A No, I don't believe I did.

18 Q Let me ask you, the diagram of the house that was
19 entered into evidence, did you prepare this diagram,
20 State's Exhibit 65?

21 A That is one of my diagrams, yes, sir.

22 Q When did you prepare that one?

23 A That diagram was done on October 19, 2015. It is
24 a revised diagram.

25 Q Why did you revise it?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A I moved something to where it looked more like it
2 did in the picture.

3 Q And what was that?

4 A The armchair in the master bedroom.

5 Q Did you change anything else in there?

6 A No, sir, I did not.

7 Q Of course, the best evidence where the chair is
8 are in the photographs you took, right?

9 A In the photographs.

10 Q Now, for what it's worth, let me show you what is
11 marked as --

12 (Defendant's Exhibit 27 marked.)

13 Q (MR. MARTIN) Now, 27 is what, Jill?

14 A Original computer sketch.

15 Q And it's identical to the other one -- come down
16 and let's let the jury look at this. Now this is --
17 this is identical to the exhibit that Ms. Livesay
18 introduced earlier with the exception that it
19 depicts the chair in a different location?

20 A Yes. The chair in that diagram has been moved
21 down.

22 Q You didn't think you did it accurately to begin
23 with?

24 A It's a not-to-scale diagram.

25 Q But it's still a not-to-scale diagram.

JILL DOMOGAUER - CROSS-EXAMINATION

1 A Oh, yeah, I agree, it's a not-to-scale diagram.

2 Q So why did you change it? That is what I'm
3 trying for figure out, why did you do a different
4 diagram about two years later?

5 A The revised diagram shows the chairs were closer
6 in this area than way up here.

7 Q What does that have anything to do with anything?

8 A It doesn't.

9 Q Okay.

10 MR. MARTIN: I move to enter into evidence 27.

11 THE COURT: Any objection?

12 MS. LIVESAY: No, sir.

13 THE COURT: Without objection.

14 (Defendant's Exhibit 27 admitted.)

15 Q (MR. MARTIN) Now, one thing we didn't talk about
16 is there are windows in that bathroom, are there not?

17 A Yes.

18 Q The windows in the bath, master bathroom, are
19 over the tub right?

20 A I believe so.

21 Q And then there's a window out at the end of the
22 house which is depicted in your photographs?

23 A Yes, sir.

24 Q You got one right there, don't you?

25 A The toilet and a window on the back wall. Here

JILL DOMOGAUER - CROSS-EXAMINATION

1 is a better picture.

2 Q State's 33 depicts the window there at the end of
3 the house and in the bedroom, right?

4 A Bathroom.

5 Q Now, you talked about the gun that you checked,
6 the .38 caliber pistol that was in the nightstand --
7 nightstand furthest from the bathroom?

8 A Yes, sir.

9 Q And you say that was purchased by Heather Causey
10 in 2010?

11 A I can tell you it was purchased by Heather
12 Causey. The purchase date is August 2, 2010.

13 Q August of 2010. Did you check and find out that
14 she, in fact, had purchased two of those guns?

15 A I checked that gun and the gun in the bathroom.

16 Q Are you aware of any other guns that was on owned
17 by David Sims or Heather Causey?

18 A I believe there were some guns in the vehicle.

19 Q And whose vehicle? Mr. Sims' vehicle?

20 A A vehicle.

21 Q Let's not waste a lot of time looking. My point
22 is this -- well, let me ask you this. Was any vehicles
23 searched that night while you were there?

24 A The vehicles in the driveway.

25 Q The vehicles in the driveway?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A Vehicles in the carport.

2 Q They were both searched that night?

3 A Yes, sir.

4 Q Photographs taken of them?

5 A I believe so.

6 Q And who did that?

7 A Lieutenant Cestare.

8 Q Were there any items of evidence taken out of
9 either of those vehicles?

10 A Not that I can recall. Not that I had noted.

11 Q Were you present when that was done?

12 A I believe I was in the house.

13 Q Cestare was the one who did that, not you?

14 A Yes.

15 Q And he did it that night before you all left the
16 house?

17 A Yes, sir, I believe so.

18 Q But you don't know what was in them, because you
19 didn't participate in that?

20 A No, sir.

21 MR. MARTIN: Just a moment, Your Honor.

22 (A brief pause in the proceedings.)

23 Q (MR. MARTIN) Let me ask you about the knife and
24 what you thought was ridge detail of fingerprints on
25 the knife. Now, the knife was taken back to the

JILL DOMOGAUER - CROSS-EXAMINATION

1 police department, I believe your report says on the
2 back pages, on August 15th, which is two days later.
3 You processed the non-label side of that knife; is
4 that correct?

5 A Yes, it does.

6 Q And you were not -- of course you can take the
7 fingerprint, I guess, as the work you do? If there is
8 a fingerprint on something, you can check for
9 fingerprints?

10 A I can -- if you have a fingerprint there, I can
11 recognize that there is a fingerprint, a latent print
12 there, a partial print, a smudge, something with ridge
13 detail.

14 Q All right. And if you do actually find a
15 fingerprint that is readable, then you can lift it and
16 send it off to have it analyzed to determine whose
17 fingerprint it was?

18 A It would depend on surface. There is a lot of
19 variables.

20 Q I know, but let's suppose the reason you checked
21 it would have been that if you found a fingerprint on
22 that knife, obviously important to you, because you
23 didn't want to disturb it, you needed to get it back to
24 the lab, and in the best of all circumstances, you
25 would have been able to lift a print, if there was a

JILL DOMOGAUER - CROSS-EXAMINATION

1 readable print there, and then you would have done what
2 with it?

3 A It would have been analyzed.

4 Q By who?

5 A We have two people analyzing. I would have been
6 able to analyze if there was enough there, but before
7 anything is decided, you have a secondary person to
8 also look.

9 Q You don't send them to SLED to determine who the
10 fingerprint matches?

11 A No, we do not.

12 Q You do that yourself?

13 A We have an investigator who is certified.

14 Q To do what?

15 A Latent print examiner.

16 Q Who is that?

17 A Senior Investigator Robbie Caulder.

18 Q Is Ravie (sic) the one you talked to about this?

19 A Robbie.

20 Q Robbie, I'm sorry. Robbie is the one who you
21 talked to about what you had here?

22 A When we processed, he was in there with me.

23 Q But you weren't able to find a readable print?

24 A It was only a partial.

25 Q Insufficient detail for a determination?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A It wasn't enough.

2 Q Did you take a photograph of that print?

3 A We attempted to take photographs.

4 Q Where are they?

5 A I don't have them here with me, but they are in
6 the file.

7 Q So you took fingerprints of what was there -- I
8 mean, photographs of it?

9 A We took photographs of the knife. I took
10 photographs -- we took photographs of the knife.

11 Q And what I'm trying to figure out now is if there
12 is a print there that is anywhere close to readable,
13 you can take a photograph of that, can you not?

14 A You can attempt to, yes, sir.

15 Q Did you preserve what you saw there by
16 photographs?

17 A I attempted to, yes.

18 Q And I believe you said on direct examination that
19 you photographed the entire processing of that knife
20 including the Amido Black test you did on it?

21 A Let me clarify that, stages.

22 Q Stages?

23 A Stages of the processing is photographed.

24 Q So you have those photographs somewhere?

25 A I don't have them here with me today.

JILL DOMOGAUER - CROSS-EXAMINATION

1 Q But somewhere?

2 A Yes.

3 Q Okay. Okay. And will you get those for me?

4 A If you need them.

5 Q If ms. Livesay says it's okay, will you get them
6 for me?

7 A If you need them.

8 Q Okay. That would have whatever prints or
9 photographs there was of this print you say you saw?

10 A They have photographs. You might not have seen a
11 print on the photograph.

12 Q Now, what you did -- wait a minute. Back up.
13 Back up. You -- if you can -- if you can analyze a
14 fingerprint to determine that that print matches my
15 finger, then you have the capability of photographing
16 that print there at Horry County Police Department,
17 don't you?

18 A Not every surface can be photographable.

19 Q If you can -- well, a surface -- if a print would
20 be left on, you can photograph?

21 A You can photograph the surface. The print might
22 not show on the photograph.

23 Q I got you. I got you. Why wouldn't it show. If
24 it is there and you can see it with the naked eye, why
25 couldn't you photograph it?

JILL DOMOGAUER - CROSS-EXAMINATION

1 A You would attempt to photograph it.

2 Q I understand that, but why wouldn't it show? I
3 mean, all the fingerprint things I've seen you can take
4 a picture and blow it up and show it to the jury, here
5 is the print, here is Morgan Martin's print, they
6 match, he's the Man. And if you all do your print
7 reading there at the Horry County Police Department,
8 then I'm assuming you have the capability to take a
9 picture that is readable.

10 MS. LIVESAY: Your Honor, does he have a
11 question?

12 THE COURT: I think he is getting to it.

13 Q (MR. MARTIN) Whatever you got, you got?

14 A Yes, sir.

15 Q Did you talk to Jim Chatfield that night?

16 A I don't recall. I did a walk-through, I believe,
17 maybe with him.

18 Q Do you recall asking Chatfield or anybody else to
19 ask Heather about a second knife or a cell phone you
20 say you were looking for?

21 A I did not, no.

22 Q You know now that they were in constant
23 communication with Jim Chatfield while he was talking
24 to her, and that he would take breaks and go outside to
25 confer with the people on the scene, and then come back

JILL DOMOGAUER - REDIRECT EXAMINATION

1 in and ask her questions; are you aware of that?

2 A I wasn't aware of that.

3 Q Do you have a copy of the autopsy in your file?

4 A Not in this particular file, no, sir. I have one
5 over there.

6 MR. MARTIN: Just one minute, Your Honor.

7 (A brief pause in the proceedings.)

8 MR. MARTIN: That is all I have at this time.

9 (REDIRECT-EXAMINATION

10 BY MS. LIVESAY:

11 Q Do you remember Mr. Martin asking you a lot of
12 questions about the phone?

13 A Yes, ma'am.

14 Q And do you remember me asking you questions about
15 the phone?

16 A Yes, ma'am.

17 Q I don't think we've ever cleared it up, but it is
18 documented in your report, so we can clear it up now.
19 Did you all ever find that phone, or did somebody from
20 the Causey family finally turn it over to you? Is it
21 documented in your report?

22 MR. MARTIN: I object. I object.

23 MS. LIVESAY: We've been --

24 THE COURT: Let him finish the objection. Yeah.

25 MR. MARTIN: Whatever the deal was with the phone

JILL DOMOGAUER - REDIRECT EXAMINATION

1 that was in that drawer, she has witnesses to testify
2 to, but not this witness, because she wasn't involved
3 in it. It would be hearsay for her to testify as to
4 that phone.

5 THE COURT: Well, I'll tell you what, ladies and
6 gentlemen, I'm going to send you out. It is time for
7 a break anyway. We'll do this while you are out. You
8 can take the five out, because when you come back, we
9 have a short witness.

10 MS. LIVESAY: We have a witness. I'm not going
11 to say it's a short witness. I'm going to say it's a
12 witness we can start and finish in the morning.

13 THE COURT: We'll go to 5:15 or so, but go ahead
14 and take your break now. Don't discuss the case.

15 (The jury exits at 4:08 p.m., and the
16 following is heard out of the presence of the jury.)

17 THE COURT: That was a great answer, by the way.

18 MS. LIVESAY: No such thing as a short witness.

19 THE COURT: No. Hold on. We're still working,
20 so everybody have a seat or leave. What is your
21 objection?

22 MR. MARTIN: She's asking her to testify to
23 hearsay.

24 MS. LIVESAY: Your Honor, you know, it is so odd
25 that that is his objection, because when we were up

JILL DOMOGAUER - REDIRECT EXAMINATION

1 here, I actually objected, because he had her testify
2 about a search that Pete Cestare did, and that
3 objection was overruled. She then testified to what
4 Pete collected. So I believe now we've opened that
5 door, we've gone into that search that she didn't
6 participate to, so now let's find out, what is
7 documented in the report; indeed, it was a search, but
8 that is not how they came about the phone. The phone
9 was finally handed over by a family member.

10 THE COURT: Well, the reason I allowed the
11 questions about the report is the report is what it
12 is. She's a forensic investigator. Tell me, what's
13 the answer to your question?

14 MS. LIVESAY: I can tell you. I can tell you.
15 It is documented in the report, and Mr. Martin asked
16 just about that search warrant that it is documented
17 in, and it is -- it clearly says they showed up and
18 Ronnie Causey handed them the phone and said, by the
19 way, there is nothing on it, here you go.

20 MR. MARTIN: My objection is, of course, I think
21 that is true, she can call witnesses to say that, but
22 it is hearsay for this witness to say that.

23 MS. LIVESAY: It was hearsay when he asked about
24 the second search. He opened that door.

25 THE COURT: Here is the deal. Here is the deal.

JILL DOMOGAUER - REDIRECT EXAMINATION

1 MR. MARTIN: It doesn't matter --

2 THE COURT: Doors are still closed. I'll allow
3 you to ask that question because it's in the report.

4 MS. LIVESAY: Okay. Thank you.

5 THE COURT: All right. You all take a break, 10
6 minutes or so.

7 MR. MARTIN: I will have a few more questions on
8 this, please, please.

9 (Whereupon a break was taken.)

10 THE COURT: You may be seated.

11 MR. MARTIN: Judge, let me ask you to read the
12 report -- the section of the report that Nancy wants
13 to ask Jill about, and certainly some of that I don't
14 think is admissible, but I want you to look at it
15 before we get the jury in here.

16 THE COURT: Where is it?

17 MR. MARTIN: Jill has it. Read the last
18 paragraph she's talking about there.

19 (A brief pause in the proceedings and a bench
20 conference was had.)

21 THE COURT: Bring them in.

22 (The jury enters at 4:34 p.m., and the
23 following is heard in the presence of the jury.):34

24 THE COURT: Ladies and gentlemen, as I said,
25 we're going to go another 45 minutes. We are not

JILL DOMOGAUER -- REDIRECT EXAMINATION

1 going to have another 6:40 night, I promise.

2 REDIRECT-EXAMINATION

3 BY MS. LIVESAY:

4 Q Do you remember me asking you about the victim's
5 phone?

6 A Yes, I do.

7 Q Do you remember Mr. Martin asking you questions
8 about the victim's phone?

9 A Yes, I do.

10 Q Tell this jury, was that phone found by the
11 police department, or did somebody from the Causey
12 family finally hand it over?

13 A It came -- it was recovered. The police
14 department recovered it.

15 Q Who handed that phone over to the police
16 department?

17 MR. MARTIN: Objection. Objection. She said the
18 phone was recovered, not handed over, and that is --
19 there is a difference.

20 MS. LIVESAY: I'll rephrase it.

21 THE COURT: Wait a minute. Wait. You can ask
22 her how it was recovered.

23 Q (MS. LIVESAY) How did the phone finally get to
24 the police department?

25 A I know it was recovered on August 15 during a

JILL DOMOGAUER -- REDIRECT EXAMINATION

1 secondary search.

2 Q Do you know how it was recovered?

3 A I do not.

4 Q Is it documented in your report?

5 MR. MARTIN: Objection.

6 THE COURT: If she said she didn't know, and
7 since we talked about this, I wouldn't go any further.

8 MS. LIVESAY: Okay.

9 Q (MS. LIVESAY) Let me talk a little bit about
10 your report. Do you document absolutely every minute
11 you are in the house in your report?

12 MR. MARTIN: I object to that. She asked her
13 about that on direct, and that is improper redirect
14 examination.

15 THE COURT: She asked about it on direct, and
16 then you asked some questions. I'll allow you to ask
17 one question, because you are going to the drawers,
18 right? Go ahead.

19 MS. LIVESAY: Thank you.

20 Q (MS. LIVESAY) Do you document every minute that
21 you are in that house in your report?

22 A No, I do not.

23 Q Now, Mr. Martin asked you did you look in every
24 room in the house; do you remember that?

25 A Yes, I do.

JILL DOMOGAUER -- REDIRECT EXAMINATION

1 Q Was there any area of that house locked that you
2 couldn't get into?

3 A I believe there is like a storage area and
4 carport, like a storage area, is what I would call it.
5 The door was locked.

6 Q And was that door locked?

7 A It was locked when I was there.

8 Q Did you go into that room?

9 A I would have had to do damage; no, I did not.

10 Q So you didn't go into that room?

11 A No, I did not.

12 Q Because the door was locked?

13 A Yes, ma'am.

14 Q Was there any other part to the house you didn't
15 go into?

16 A No. No, ma'am.

17 MS. LIVESAY: No further questions.

18 MR. MARTIN: Nothing further.

19 THE COURT: You can step down.

20 MS. DOMOGAUER: May I be excused?

21 THE COURT: Yes.

22 MR. MARTIN: Judge, I do want her excused for
23 today, but I do want her available in the event I
24 would need her for the rest of this trial.

25 THE COURT: Yeah, just -- they have your number,

BRANDON LEE - DIRECT EXAMINATION

1 they'll call you and give you plenty of notice, trust
2 me. I know we can't finish the next witness. If you
3 want to call them and get 30 minutes in, that is fine.

4 MS. LIVESAY: The State calls Brandon Lee to the.
5 Brandon Lee.

6 (BRANDON LEE, having been duly sworn,
7 testified as follows:)

8 THE CLERK: State your full name and spell your
9 last name.

10 WITNESS: Brandon Lee, L-E-E.

11 (State's Exhibits 81 through 83 marked.)

12 DIRECT-EXAMINATION

13 BY MS. LIVESAY:

14 Q Where are you currently employed, Mr. Lee.

15 A Horry County Police Department.

16 Q How long have you been employed there?

17 A Approximately nine years.

18 Q And what are your current responsibilities?

19 A I'm a supervisor in the north precinct.

20 Q And what were your responsibilities in August of
21 2013?

22 A I was a supervisor in the north precinct at the
23 rank of corporal.

24 Q Did you have an occasion to respond to a call on
25 Old Reaves Ferry Road on August 11, 2013?

BRANDON LEE - DIRECT EXAMINATION

1 A I did.

2 Q Do you remember about what time you responded to
3 that call?

4 A It was right at the shift change, so
5 approximately around 6- to 7 o'clock in the afternoon.

6 Q And when you got there, who was the first person
7 you saw?

8 A When I got on scene, the first person I saw was
9 Mr. Causey.

10 Q And you see him, and tell this jury what happens
11 next. Do you go into the house?

12 A I did. I went into the house through the back
13 door, and I was led into the bedroom.

14 Q Who led you in there?

15 A Mr. Causey told me where it was at.

16 Q You go into the bedroom, and what do you see in
17 the bedroom?

18 A Heather was in the bedroom whenever I arrived.

19 Q Okay. And was there any other law enforcement
20 there?

21 A Sergeant DelPercio was there.

22 Q Anybody other than Sergeant DelPercio?

23 A As far as law enforcement?

24 Q Yes, sir.

25 A No, ma'am.

BRANDON LEE - DIRECT EXAMINATION

1 Q So you were actually the second law enforcement
2 officer on the scene?

3 A Yes, ma'am.

4 Q Did you go into the bathroom?

5 A I did not.

6 Q And why didn't you go into the bathroom?

7 A Because I was the second officer, and I was just
8 assisting and I was -- my primary focus was Ms. Sims.

9 Q Okay. I'm going to show you real quick, I think
10 this is Defendant's Evidence No. 20. Can you look
11 through that list and tell me if your name is on the
12 list?

13 A Yes, ma'am, it is.

14 Q Your name is on this list; is that correct?

15 A It is.

16 Q But you never went to the bathroom?

17 A I did not.

18 Q Why is your name on this list?

19 A Because I went into the crime scene, which was
20 the part that was taped off.

21 Q Okay. So if you enter any part of that crime
22 scene, which was basically the entire house, your name
23 got put on that list?

24 A Yes, ma'am.

25 Q So you go in there, you don't go into the

BRANDON LEE - DIRECT EXAMINATION

1 bathroom. Do you look into the bathroom?

2 A I looked into the bathroom. I did not cross the
3 threshold of the bathroom.

4 Q Who did you see in the bathroom?

5 A Sergeant DelPercio.

6 Q And what else did you see in the bathroom?

7 A I saw Mr. Sims laying on the floor. I don't know
8 if I saw his whole body. I know I saw approximately
9 waist down.

10 Q So you didn't get good enough to even look
11 around?

12 A I did not.

13 Q Okay. At that time, did you collect any evidence
14 or touch anything?

15 A I did not.

16 Q Okay. So you are there just to assist?

17 A Just to assist.

18 Q Now, did you really -- did you do any
19 investigating at the house at all?

20 A No.

21 Q But after -- did you go anywhere after you left
22 the house?

23 A I did.

24 Q Was that to assist with this case?

25 A It was.

BRANDON LEE - DIRECT EXAMINATION

1 Q And if you don't mind, tell this jury what you
2 did next to assist in this case?

3 A I was instructed by my sergeant to go to the
4 hospital where Ms. Sims was being transported. On the
5 way out, I instructed an officer that worked for me to
6 start putting up the crime scene tape, because he was
7 the third police officer to arrive.

8 Q So you are then in a supervisory role telling
9 someone else to put the crime tape up, and then you are
10 going with the defendant to the hospital?

11 A Yes, ma'am.

12 Q And did you, in fact, go to the hospital?

13 A I did.

14 Q At that time -- let me ask you this first. When
15 you go to the hospital, when you see her, is she
16 restrained in any form or fashion?

17 A No, ma'am.

18 Q While you were at the hospital with her, did you
19 ever handcuff her or restrain her in any form or
20 fashion?

21 A No, ma'am.

22 Q Now, when you get to the hospital, how does she
23 appear?

24 A At the time hospital?

25 Q Yes, sir.

BRANDON LEE - DIRECT EXAMINATION

1 A At the hospital, she was cooperative. She was
2 calm at times, and upset at times.

3 Q Okay. Now, when you were at the hospital with
4 her, did you see her injuries?

5 A I did.

6 Q And did you snap a picture of her injuries?

7 A I did.

8 Q I'll show you a picture -- actually, three
9 pictures. I'm showing you what is labeled State's
10 Exhibit 81, 82 and 83. If you don't mind, look at
11 these pictures and tell me if you recognize them, and
12 if these are the pictures you took at the hospital?

13 A They are.

14 Q Is that how her injuries appeared at the
15 hospital?

16 A They did.

17 MS. LIVESAY: And if you don't mind, I'll move 81
18 through 83 into evidence.

19 MR. MARTIN: Without objection.

20 THE COURT: Without objection.

21 (State's Exhibits 81 through 83 admitted.)

22 Q (MS. LIVESAY) I'll have Ms. Pop put them on the
23 screen so we can see what we're looking at together.

24 MS. LIVESAY: Can you blow that up just a tad?

25 Q (MS. LIVESAY) Okay. You see this injury here?

BRANDON LEE - DIRECT EXAMINATION

1 A Yes, ma'am.

2 Q Is that what you were taking a picture of?

3 A It was.

4 Q How about this, do you see anything right there?

5 A I see a mark on the picture.

6 Q Is this all you documented in this area?

7 A That is what I took a picture of.

8 Q And this the hospital gown and this is her in the
9 hospital?

10 A It is.

11 MS. LIVESAY: Can I see the next picture, please?

12 Q (MS. LIVESAY) This is, again, her in the
13 hospital?

14 A It is.

15 Q Is this the injury you are documenting?

16 A On her thumb, yes, ma'am.

17 Q Is this the way --

18 MS. LIVESAY: Can you blow that up for me,
19 please. There you go.

20 Q (MS. LIVESAY) Is this what you documented here?

21 A That is what I took a picture of, yes, ma'am.

22 Q Is she holding her finger up like that so you
23 could take a picture?

24 A I don't remember if she was holding it up. She
25 was holding it for me to take a picture, yes, ma'am.

BRANDON LEE - DIRECT EXAMINATION

1 Q So she was cooperative?

2 A She was cooperative.

3 Q And she was showing you her injuries?

4 A She was.

5 Q And you were taking pictures of her injuries?

6 A I was.

7 MS. LIVESAY: Can I see the next picture? Can
8 you blow that up so we can get a look at it?

9 Q Are you documenting these scratches here?

10 A Yes, ma'am, that is what I took a picture of.

11 Q I'm sorry, these injuries here?

12 A Yes, ma'am.

13 Q So you are documenting this injury?

14 A Yes, ma'am.

15 Q And you are documenting this injury here?

16 A Yes, ma'am.

17 Q And this one is a little darker right there?

18 A Yes, ma'am.

19 Q So we have one, and then this one here, and this
20 one a little deeper; you see those three?

21 A I do.

22 Q So you see three different marks?

23 MR. MARTIN: Again, she leads, Judge. I object
24 to the leading.

25 THE COURT: Don't lead, just ask what he sees.

BRANDON LEE - DIRECT EXAMINATION

1 Q (MS. LIVESAY) What do you see, Mr. Lee, Sergeant
2 Lee -- sergeant or corporal?

3 A Corporal.

4 Q Corporal Lee, I'm sorry. Go ahead.

5 A In this picture, I do see the three marks.

6 Q On her arm?

7 A On her arm, and the zoomed in portion, that's
8 what I see.

9 Q Can we see that lower mark as well? Okay. And
10 then you are documenting this injury here?

11 A Yes, ma'am.

12 Q Can we go back? It looks like, again, is she
13 holding her arm out like that for you to take a
14 picture?

15 A Yes, ma'am. She was cooperative.

16 Q Did she show you her injuries?

17 A She did.

18 Q I notice we only have three pictures. Did she
19 show you any other injuries?

20 A She did not show me any other injuries.

21 Q If she had shown you any other injuries, would
22 you have taken pictures of them?

23 A Yes, ma'am.

24 Q Those are only three pictures you took of the
25 injuries?

BRANDON LEE - DIRECT EXAMINATION

1 A Those are the only three pictures.

2 Q Did you take any pictures of any bruising?

3 A I did not. I only took three pictures.

4 Q And if you had saw any bruises, would you have
5 taken pictures of them?

6 A If I had seen any other injuries -- I was
7 assisting Detective Chatfield, and if I would have seen
8 any other injuries, I'm sure we would have taken
9 pictures of them.

10 Q And these are the only three you took?

11 A That is the only three I took.

12 Q Okay. Wonderful. When you were at the hospital
13 with her, were you present when she gave a statement?

14 A I was present during the recorded statement, yes,
15 ma'am, during most of it.

16 Q Did you actually engage and ask her some
17 questions?

18 A I believe I asked her a couple of questions.

19 Q Have you listened to that recording?

20 A I've listened to the part until Lieutenant
21 Cestare arrived, and then I left.

22 Q Do you hear your voice on the recording?

23 A I do.

24 Q Do you hear Detective Chatfield's voice on the
25 recording?

BRANDON LEE - DIRECT EXAMINATION

1 A I do.

2 Q Were you present when she was read Miranda?

3 A I was.

4 Q I'm showing you State's Exhibit No. 1; do you
5 recognize that?

6 A Yes, ma'am.

7 Q What is that?

8 A Advisement of Miranda Rights form.

9 Q And whose signature is on it?

10 A Looks like Heather Sims'.

11 Q And did she indicate that she wanted to talk to
12 police?

13 A She did.

14 Q And did she, in fact, talk to the police?

15 A She did.

16 Q And when she talked to you, did she appear to be
17 impaired in any form or fashion?

18 A No, ma'am.

19 Q And were her questions responsive -- sorry. Were
20 her answers responsive to your questions?

21 A Yes, ma'am. She was very cooperative.

22 Q Now, were you there when Chatfield read her
23 Miranda?

24 A I was.

25 Q So he advised her both verbally and in writing?

BRANDON LEE - DIRECT EXAMINATION

1 A He did.

2 MS. LIVESAY: Your Honor, at this time I would
3 ask to move State's Exhibit 1 into evidence.

4 MR. MARTIN: No objection.

5 THE COURT: Without objection.

6 (State's Exhibit 1 admitted.)

7 Q (MS. LIVESAY) I'll show you a CD of her
8 statement. Have you heard this statement?

9 A I've heard most of the statement, yes, ma'am.

10 Q Were you present when Chatfield was interviewing
11 her?

12 A I was.

13 Q And was that recording a recording of the
14 conversation that you and Chatfield and Heather Sims
15 had that day in the hospital?

16 A The recording that I listened to, yes, ma'am.

17 Q And did she ever ask for an attorney while you
18 were there?

19 A She did not.

20 Q Did she ever act like she did not want to talk
21 with you?

22 A No, ma'am. She was very cooperative.

23 Q And she was cooperative the whole time?

24 A She was.

25 Q Was her statement freely and voluntarily given to

BRANDON LEE - DIRECT EXAMINATION

1 the police?

2 A I think so.

3 MS. LIVESAY: Your Honor, the State moves State's
4 2 into evidence.

5 THE COURT: Any objection?

6 MR. MARTIN: Well, no. I'm thinking -- who
7 recorded it? Did he record it, or Chatfield?

8 MS. LIVESAY: Sorry?

9 MR. MARTIN: Who recorded the statement, him or
10 Jim Chatfield?

11 MS. LIVESAY: Yes, but he was present.

12 MR. MARTIN: No objection.

13 THE COURT: How long is it?

14 MS. LIVESAY: A little over an hour.

15 THE COURT: Okay. Well, let's do that tomorrow.

16 MS. LIVESAY: I'm sorry?

17 THE COURT: Let's do it tomorrow.

18 MS. LIVESAY: We can do it first thing in the
19 morning.

20 THE COURT: Yeah. It's a good time to stop,
21 then?

22 MS. LIVESAY: Yes.

23 THE COURT: All right. Ladies and gentlemen, I
24 don't mean to be a liar sometimes, but, by golly,
25 every day? My mama would whoop me, so I'll let you go

COURT AND ATTORNEYS

1 home 10 minutes early, but we prepared to start
2 listening to a disk in the morning. Be here at 9:30,
3 and as you know, we always do something first, so get
4 comfortable in there and we'll get to you about 9:45.
5 Don't talk about the case, read anything, watch
6 anything or listen to anything concerning this case,
7 and I'll see you tomorrow.

8 (The jury exits at 4:54 p.m., and the
9 following is heard out of the presence of the jury.)

10 THE COURT: As much as I wanted to get to it, I
11 just couldn't do it. They already are staring at me
12 like I'm the biggest liar that they've ever seen so
13 far. Okay. Tomorrow we will do that first, and then
14 what else, generally? Who else do you have tomorrow?

15 MS. LIVESAY: Your Honor, he'll take at least a
16 couple hours, I'm assuming, and I'm not sure yet who
17 I'll call next.

18 THE COURT: If we are still going to shoot for
19 1 o'clock Friday, and I hope we are, your expert is
20 coming when?

21 MS. LIVESAY: My expert probably will not testify
22 tomorrow.

23 THE COURT: But not Friday, because.

24 MS. LIVESAY: They will both be here today later
25 on, and possibly -- depending upon how long this

COURT AND ATTORNEYS

1 takes -- but I don't anticipate getting to them
2 tomorrow.

3 THE COURT: But my concern is if we're going to
4 be gone at 1:00 Friday, there is no way we can get to
5 them -- I mean, they are a day, right?

6 MS. LIVESAY: Yes, sir.

7 MR. MARTIN: Let me say, Judge, not necessarily.
8 I'm in favor of a lot of things, but, you know, I'm
9 getting concerned that this may take three weeks now.
10 If we -- you know if -- again, I don't -- I'm not
11 opposed to stopping 1 o'clock Friday, which I know you
12 want to do, but I can't imagine we will finish the
13 State's case this week.

14 THE COURT: I assumed that we wouldn't. I mean,
15 obviously we're going to have to go tomorrow night
16 longer. I mean the 1 o'clock thing is not so much to
17 help me, but as I said to you earlier this morning,
18 these people need a break. They already worked on a
19 holiday. It is a way to allow them to have something
20 to look forward to. I told them that, but if we're
21 talking about bringing an expert in Friday, I better
22 tell them tomorrow to forget it. I mean, that is why
23 we talked this morning. I thought we were pretty
24 clear on that. The experts are going to be here, but
25 not testify?

COURT AND ATTORNEYS

1 MS. LIVESAY: Hopefully, Your Honor, the expert
2 -- my hope is that they could go up Friday and be
3 done -- or at least one of them could go up Friday
4 and, obviously, we would be nearing the end of my case
5 once these experts start going up -- near, not the
6 end, but near the end.

7 THE COURT: We're on the record. We were off the
8 record when we had this conversation this morning and,
9 again, I thought -- and I'm not blaming anyone -- but
10 I thought we were all looking toward giving them a
11 longer weekend knowing that we were going to be going
12 all of next week probably. Are you telling me you
13 don't think that can happen now? It's okay. I mean,
14 if it can't -- if the experts are here tomorrow.

15 MS. LIVESAY: The experts are not going to be the
16 last witnesses I call. There will be a few witnesses
17 after the experts testify, just for scheduling
18 purposes. So even if we get them done Friday, I will
19 still have a few people to call after that.

20 THE COURT: Realistically, do you think you can
21 call your witnesses Friday morning and we be finished
22 at lunch, because you are the one that has to keep
23 them here all weekend if we stop after direct?

24 MS. LIVESAY: My hope is to get at least one
25 expert done on Friday.

COURT AND ATTORNEYS

1 THE COURT: Okay. I would pick the shortest one.
2 I'm not going to tell them I lied to them again, but I
3 mean, you know, we've pushed them pretty hard, believe
4 it or not. We're used to this; they are not. I can
5 tell you now that watching them and some of the
6 behaviors, I mean, they are tired, and by Friday, they
7 are going to be tired of all of us. I can tell you
8 that right now. I'm still going to push for Friday at
9 1:00. I don't want to cause you great expense by
10 keeping a witness here all weekend, but, quite
11 frankly, as we said this morning off the record,
12 stopping at 1:00 and stopping at 4:30 or 5:00 isn't a
13 big difference.

14 MS. LIVESAY: No, sir. I can tell you -- I do
15 not believe looking at my witness list it is going --
16 it is not like if we end Friday at 1:00 or 5:00, that
17 that is the end of my witnesses. It will still roll
18 over into next week.

19 THE COURT: My concern is -- and given that fact,
20 that is why I said 1:00 and 5:00 doesn't make a
21 difference. My concern is now you are going to have
22 witnesses that are being paid sitting around all
23 weekend. If that doesn't bother you, it doesn't
24 bother me, and it won't bother them. You understand
25 my problem?

COURT AND ATTORNEYS

1 MS. LIVESAY: Yes, sir.

2 THE COURT: So think about that and we'll figure
3 it out, okay. I'll see you all at 9:30.

4 (Whereupon, the proceedings for November 11, 2015
5 concluded. The following proceedings were had on
6 November 12, 2015 out of the presence of the jury.)

7 (Defendant's Exhibits 28 through 36 marked.)

8 THE COURT: We had conversations off the record
9 and I won't go into all of them. Let me say this.
10 I'm going to let you try your case, but I would urge
11 all of you all to hurry and be as direct as possible.
12 I'm not going to stop, you know, some sort of -- ask a
13 question, let him answer and then move on. I'm going
14 to tell them that we're going to go a little later
15 tonight, because I'm going to hold to the 1 o'clock
16 thing tomorrow. I told them that. Your all's concern
17 is your case, and I'm concerned about them as
18 anything, and I don't want to lose them. I'm a little
19 concerned about that, so I'll give them a bone and
20 tell them 1 o'clock, because I think they would riot
21 at this point, they are frustrated. But that is not
22 you all, and that is not this case. I mean. I try a
23 case every week. These people don't have any idea
24 what this is like, and they are always going to be
25 frustrated. I talk to jurors after every case off the

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1 record, and they always ask me why I don't hurry
2 things up. Well, you know, can't hurry the tide. I
3 made that up. You can bring them in. I know we have
4 students here, that is fine. Make sure your phones are
5 off. Welcome to the courtroom.

6 (The jury enters at 10:10 a.m., and the
7 following is heard in the presence of the jury.)

8 THE COURT: Before you start. Good morning,
9 ladies and gentlemen. I want to tell you the same
10 thing that I've said here. I have spent a lot of time
11 watching jurors over the years, and I understand that,
12 as I told you, you would be -- you might be frustrated
13 with the speed of this process. I can only tell you
14 that while you all are here for this process, this is
15 the late as it is, and I understand you are
16 frustrated. I promised you, we would take breaks
17 every hour-and-a-half. That was my intention. I'm
18 not doing that for reasons that are apparent. I think
19 that we're going to be here through the end of next
20 week, there is no doubt about it. I'm still holding
21 to leaving at 1:00 in the morning (sic), because it
22 isn't going to matter, that four hours. I'm trying to
23 give you something for being here yesterday. It won't
24 -- we couldn't stay here until 10:00 tomorrow night
25 and finish this week, so understand that. Understand

COURT AND ATTORNEYS

1 that I'm keeping an eye on you. You all hide it
2 pretty well, but this is the way it goes.

3 So I appreciate what you are doing, we all do. I
4 appreciate the fact that you pay attention. I never
5 had a case like this that I haven't had to ask one
6 juror to please wake up, and that is the way it is.
7 There is always one guy that works until 10:00 and is
8 napping, so thank you for your patience and
9 understanding. As I told you at the beginning, when
10 this is all over, I'll come back and speak to you
11 personally about the trial. If you ask me any
12 questions, I can almost write out what your questions
13 will be, and it will all be clear at that time, but
14 you have a job to do, and I appreciate the fact you
15 are doing it. okay..

16 MS. LIVESAY: Thank you, Your Honor.

17 DIRECT-EXAMINATION (CONT.)

18 BY MS. LIVESAY:

19 Q Corporal Lee, just to get us back on track where
20 we were yesterday, do you recall being in the hospital?

21 A I do.

22 Q Do you remember having an occasion to talk to
23 this defendant along with Mr. Chatfield?

24 A I do.

25 Q And were her answers responsive to your

COURT AND ATTORNEYS

1 questions?

2 A They were.

3 Q Did she ever indicate to you that she did not
4 want to talk to police?

5 A She did not.

6 Q And that statement was recorded?

7 A It was.

8 Q And that was the statement I showed you yesterday
9 that is now in evidence?

10 A The recording, yes, ma'am.

11 MS. LIVESAY: Your Honor, at this time the State
12 wishes to publish that statement to the jury.

13 THE COURT: No objection?

14 MR. MARTIN: It is in evidence.

15 THE COURT: So no objection?

16 MR. MARTIN: Has it been entered in?

17 THE COURT: It's in.

18 MR. MARTIN: I have no objection.

19 THE COURT: All right. Are you going to cut the
20 lights out again?

21 MR. MARTIN: There is no video.

22 THE COURT: Just sound, right?

23 MR. MARTIN: Yes.

24 THE COURT: All right.

25 (State's 2 published to the jury.)

COURT AND ATTORNEYS

1 Q (MS. LIVESAY) Corporal Lee, what time did the
2 defendant sign this, does it say?

3 A I believe that is 20:09, the best I can read, it
4 looks like.

5 Q That is military time. What is that when I look
6 at my watch?

7 A 8:09 p.m.

8 Q So about 8:09, 8:29?

9 A It looks like 8:09. It is hard to read.

10 Q So sometime around 8 o'clock?

11 A Sometime around 8 o'clock.

12 Q So this statement was taken sometime around 8
13 o'clock?

14 A Yes, ma'am.

15 Q Do you remember about what time you responded to
16 the house?

17 A It was sometime between 6:00 and 7:00 p.m., right
18 at shift change. I come on at 5:45 p.m.

19 Q So this statement was taken approximately, maybe,
20 an hour or hour-and-a-half before the shooting had
21 taken place?

22 A After.

23 Q After, yes, I'm sorry. After.

24 A Yes, ma'am.

25 Q So this was taken about an hour or

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1 hour-and-a-half after she shot him?

2 A Approximately, yes, ma'am.

3 Q Okay. Okay. Did she -- we just listened to the
4 tape, and you were there. Did she sound hysterical on
5 that tape to you?

6 A She did not.

7 Q At any point, to you, did she seem confused by
8 any of the questions you were asking her?

9 A There was maybe one time we had to ask a question
10 a couple of times, but, no, for the most part she
11 didn't seem confused.

12 Q If you don't mind, tell this jury what indicates
13 to you that she seemed a little confused during those
14 particular questions?

15 A We were asking -- seemed like we were asking the
16 same question because the answers weren't making sense
17 to us, so that is maybe the only part that -- I don't
18 know if she was confused. She seemed to understand
19 what we were saying.

20 Q Okay. And so you were asking the same question
21 to try to figure out exactly what had happened?

22 A To make it make sense to us.

23 Q Okay. Now, was she restrained at any point in
24 that hospital?

25 A She was not.

COURT AND ATTORNEYS

1 Q Okay. So you never put handcuffs on her, and you
2 didn't see anybody else put handcuffs on her?

3 A I did not.

4 Q When you first got there, if you don't mind, when
5 did you first come in contact with this defendant?

6 A At the hospital, or at the house?

7 Q At the hospital.

8 A At the hospital? She was -- when I came there,
9 she was already in a room. She was in a -- the
10 emergency room.

11 Q At any point did they take her out for further
12 testing and bring her back?

13 A At some point they took her to get some kind of
14 scan, I guess. I don't know the terminology. She did
15 take her somewhere.

16 Q So at some point, they take her to get a scan,
17 and then they bring her back to the room?

18 A Yes, ma'am.

19 Q And the interview starts sometime a little bit
20 after 8 o'clock?

21 A Yes, ma'am.

22 Q And what time did the interview finish up?

23 A It said it on the recording. I don't know the
24 exact time.

25 Q But sometime about at least an hour, would you

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1 say?

2 A I would say at least an hour. Probably more.

3 Q So definitely sometime after 9 o'clock?

4 A After 9 o'clock, I would say.

5 Q Now, during the time you were there, was anybody
6 in there prepping her for surgery or getting ready for
7 surgery or getting ready for anything like that while
8 you were in there?

9 A Not that I was aware of.

10 Q So you never saw anybody come in there and do
11 anything like that?

12 A No. There was nurses in and out, but I didn't --
13 don't know what they were doing.

14 Q Now, there were several questions asked, and we
15 had looked at her pictures before; do you remember
16 that?

17 A Those pictures --

18 Q That you took.

19 A Yes, ma'am.

20 Q Did you hear on the interview when you are asking
21 her about the injuries?

22 A I did.

23 Q And if you didn't mind, do you mind stepping down
24 so we can point out what injury you all are referring
25 to?

COURT AND ATTORNEYS

1 A (Witness complies.)

2 Q Do you remember hearing Chatfield saying about,
3 It looks like that is where the slide caught you?

4 A Yes, ma'am.

5 Q Do you know which injury he was referring to?

6 A I do.

7 Q I'll give you all three pictures, and tell me
8 which one.

9 A The thumb injury he was referring to.

10 Q I'll hold this. This is State's Evidence No. 82
11 we're showing to the jury.

12 (State's 82 published to the jury.)

13 Q So when he's talking about it looks like your
14 finger got caught in the slide, this is the injury that
15 you all are sitting there looking at?

16 A That is what he was referring to.

17 Q Now, he also refers -- there is a lot of talk
18 about do you think he got you there with the pliers,
19 that puncture, you think he got you there with the
20 knife; which wound is he talking about?

21 A The puncture wound would be this one.

22 Q And this is what I'm showing the jury, State's
23 Evidence No. 83. Is this how the wound looked when you
24 were there?

25 A When I was there, yes.

COURT AND ATTORNEYS

1 (State's 83 published to the jury.)

2 Q (MS. LIVESAY) While you were there, did you ever
3 see a nurse or a doctor come in to sew this wound up?

4 A I did not.

5 Q Okay. Did you see anybody come in to staple the
6 wound shut?

7 A Not while I was there.

8 Q Did you see anybody come in and even put a
9 Band-Aid on this wound?

10 A I didn't see it when I was there.

11 Q So the whole time you were there, this is the way
12 it looked?

13 A That's the way it looked.

14 Q It was not actively bleeding or anything like
15 that?

16 A She was -- she lifted her gown for me to take
17 that picture. It was covered most of the time.

18 Q Now, there is also a point when Chatfield is
19 talking about how many times he had got her before she
20 got the gun; do you remember that? How many times did
21 he hit you with that knife, and he says, On your arm
22 there, and she says, Three times; do you remember that?

23 A I do.

24 Q What were you all looking at when that question
25 was going on? This picture?

COURT AND ATTORNEYS

1 A Her arm, yes, ma'am.

2 Q I'm showing you, the jury, now what is in
3 evidence as State's 18 -- sorry, 81. So these are --
4 when she tells you, and you are sitting there talking,
5 she says he got me three times, this is what she's
6 talking about?

7 A That's the marks she was referring to.

8 Q And is this how they appeared when you showed up?

9 A That is how they appeared when I was there.

10 Q At any point when you are with her, does a nurse
11 or doctor come in to sew these scratches up?

12 A I didn't observe that.

13 (State's 81 published to the jury.)

14 Q (MS. LIVESAY) And she says that she was hit with
15 that knife three times, and these are the three times?

16 A That is what she was referring to on the audio.

17 Q And you didn't see anyone come in and sew these
18 up?

19 MR. MARTIN: Objection. She's asked that -- that
20 is the third time.

21 THE COURT: Yeah, sustained. Asked and answered.

22 MS. LIVESAY: Just making sure, Your Honor.

23 THE COURT: Understand.

24 Q (MS. LIVESAY) Have a seat, Corporal Lee. I have
25 a couple more questions for you.

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1 A (Witness complies.)

2 Q Now, when you went to the house that night, did
3 you know who lived there?

4 A I did not.

5 Q Okay. Now, did you -- do you know Heather
6 Causey?

7 A I do not.

8 Q Heather Causey, this defendant?

9 A I do not.

10 Q And do you know anyone in her family?

11 A Not that I'm aware of.

12 Q Now, what was your role as far as in this
13 investigation? Were you a primary officer assisting?
14 What were you?

15 A I was a backup officer. I was second on scene.
16 I was there just to assist at the scene with preserving
17 the crime scene. Any major incident like that, the
18 patrol, we just preserve the crime scene, try to help
19 any way we can. At the hospital, I was just assisting
20 Detective Chatfield.

21 Q Okay. Did you do a report in this case?

22 A I did not.

23 Q Why didn't you do a report?

24 A Because I was just the backup officer. I was
25 just assisting. I was not primary on the scene, and I

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1 was not the investigator investigating and asking most
2 of the questions. I was just there as backup.

3 Q Is that the protocol in the police department, if
4 you are just assisting, not to do a report?

5 A In most cases, if you are just backup, that is
6 normally the protocol.

7 Q Now, I noticed that interview -- would you say it
8 was at least an hour long, if not more?

9 A Probably more.

10 Q I noticed in that interview you asked her a lot
11 about the injuries that we've seen pictures of. I
12 didn't hear any questions about any bruising on her;
13 why was that?

14 A I didn't observe anything except for the three
15 injuries I took pictures of, and I wasn't aware of any
16 other injuries.

17 Q So she never told you about any other injury or
18 any bruising?

19 A She did not.

20 Q Now, I don't have a picture of her face at the
21 hospital, but did you see any marks on her face?

22 A If I would have seen any other injuries, I would
23 have taken pictures of them.

24 Q And you didn't take any other pictures?

25 A I did not.

COURT AND ATTORNEYS

1 Q Once you left the hospital, Corporal Lee, did you
2 do anything else to assist in this investigation?

3 A The pictures that were on my camera, I attached
4 them to the police report, and that was the only thing
5 I did after I left the hospital.

6 Q And when you were at the house, did you collect
7 any evidence?

8 A I did not.

9 MS. LIVESAY: No further questions.

10 THE COURT: I'm going to give you a break before
11 we start the next process. We're going to go later
12 tonight. This will be a 10-minute break, and then
13 we'll begin cross-examination. Don't discuss the
14 case.

15 (The jury exits at 12:03 p.m., and the
16 following is heard out of the presence of the jury.)

17 THE COURT: Let's take 10 minutes.

18 (A recess was taken.)

19 (Whereupon, a bench conference was had.)

20 THE COURT: Okay. For the record, what we'll do
21 is, I'm going to let you finish up your
22 cross-examination -- your next witness is a long
23 witness, right?

24 MS. LIVESAY: I have Jamie Green from SLED I have
25 to do next because he has a trial in Charleston. He's

COURT AND ATTORNEYS

1 leaving straight from here, and then we'll call Pete
2 Cestare.

3 THE COURT: Which is the long one?

4 MS. LIVESAY: Yes.

5 THE COURT: Okay. So I'll order supper for this
6 jury, and I'll tell them that now and watch them
7 either riot or say it is okay, so that we can go until
8 maybe 8:00. Again, because we told them we're leaving
9 at 1:00, we have to leave at 1:00 tomorrow. I just
10 don't want them to be too upset. For your all's
11 sake -- look, I believe if -- believe it or not, I'm
12 doing it for you all. Call them in and I'll tell them
13 that now so they know understand where the day is
14 headed.

15 (The jury enters at 12:33 p.m., and the
16 following is heard in the presence of the jury.)

17 THE COURT: Ladies and gentlemen, I want to try
18 to tell you everything I know. Here is my plan, and I
19 need for you, Mr. Foreman, at the lunch break to tell
20 me if this is a problem for anybody time wise. We are
21 leaving at 1:00 tomorrow. We have a lot to get in
22 between now and 1:00. At this point I'm going to go
23 ahead and give you your lunch break right at the
24 1 o'clock hour, but I think I'll order dinner and go
25 to about 8:00. You know, at the break, Mr. Foreman,

BRANDON LEE - CROSS-EXAMINATION

1 if you would, let me know if that causes anyone
2 problems with family or anything like that. And,
3 look, if it does, tell me. I am very interested in --
4 I told you what I'll do tomorrow. I'm going to stick
5 to that. It is causing trouble, but that is the way
6 it is, but I want to make sure that it doesn't cause
7 too much trouble. Going to 8:00 makes sense, so we'll
8 order you supper, and I'm sure it's not going to be
9 the most nutritious thing, because it is either pizza
10 or Chick-fil-A, but we'll let you choose, and then
11 we'll give you a half hour to sit there and eat, and
12 then go. I'm sorry, it is just I have a certain
13 number of days I have to work with, and we're pushing
14 it, okay. Yes, sir.

CROSS-EXAMINATION

15
16 BY MR. MARTIN:

17 Q You're not the lead investigator in this case,
18 are you?

19 A I'm not.

20 Q Who was?

21 A Jim Chatfield I believe.

22 Q Jim Chatfield right back here (indicates)?

23 A I think so.

24 Q The statement they just took and played, he was
25 the one who was responsible for taking the statement;

BRANDON LEE - CROSS-EXAMINATION

1 was he not?

2 A He was.

3 Q You were, in fact, an afterthought to come by and
4 help, to the extent you could?

5 A I don't know about "afterthought." Maybe I was
6 assisting him.

7 Q That is a better word. You came in to assist
8 him, right?

9 A I did.

10 Q And Detective Chatfield had not been to the
11 residence of that home when he questioned Ms. Sims, had
12 he?

13 A I don't know where he had been. I'm assuming he
14 probably had not.

15 Q All right. You went by the house, and you didn't
16 see him there, did you?

17 A I didn't see him there.

18 Q You met him at the hospital, and that is where
19 she was, right?

20 A That's correct.

21 Q As to the length of the statement, it was an hour
22 and 34 minutes, because there is a transcript which
23 says that it started at 8:06, and ended at 9:41; would
24 you agree with that, or do you want to look at the
25 statement?

BRANDON LEE - CROSS-EXAMINATION

1 A That sounds pretty accurate.

2 (Defendant's Exhibits 37 through 39 marked.)

3 Q And so would you agree with me then for one hour
4 and 36 minutes that you, Chatfield and Pete Cestare
5 interrogated that girl?

6 A We did speak to her for, roughly, that long.

7 Q Would you call it speaking to or an
8 interrogation? Don't worry about it.

9 A We asked her questions.

10 Q You asked her questions, okay. And did you -- in
11 your opinion, did you get to ask her all of the
12 questions that you wanted to?

13 A I believe so.

14 Q And you went to the hospital there. Were you
15 there when she consented -- signed a consent form --
16 well, I believe you were because your name is on it.
17 She signed the consent form for the police to search
18 her house?

19 A She did.

20 Q She did that in your presence, didn't she?

21 A She did.

22 Q Didn't hesitate at all?

23 A Did not. She was very cooperative.

24 Q And then when you asked about talking to her --
25 let me ask you this. Do you remember them getting her

BRANDON LEE - CROSS-EXAMINATION

1 out of the CT scan from the hospital so she could sign
2 that consent search so they could get the searching of
3 that house?

4 A I'm not sure of your question.

5 Q Do you remember that they brought her -- that you
6 and Detective Chatfield asked that they take her out of
7 the scan room so that she could sign that consent form;
8 do you remember that?

9 A I don't.

10 Q But she signed it, right?

11 A She signed it.

12 Q And then you asked if you could question her, and
13 she agreed, didn't she?

14 A She did.

15 Q She did not ask for a lawyer?

16 A She did not.

17 Q She was cooperative?

18 A She was.

19 Q You told her she didn't have to give you a
20 statement, didn't you?

21 A I believe that is in the Miranda.

22 Q She was dressed in a hospital gown, no clothes
23 on, just a hospital gown?

24 A That's correct.

25 Q Who was in there with her; you and Chatfield, and

BRANDON LEE - CROSS-EXAMINATION

1 who else?

2 A Who else was in there the entire --

3 Q I know Pete Cestare came, but during that
4 hour-and-36-minute questioning, who was with her
5 besides one, two or three police officers?

6 A Whenever Lieutenant Cestare came, I left.

7 Q But my point is, at the time that the majority of
8 the questions was going on, it was you, Detective
9 Chatfield and Heather?

10 A That's correct.

11 Q And let me ask you this. Did you fellows ever
12 consider letting her be treated, released from the
13 hospital and get some clothing on before you questioned
14 her?

15 A I was there assisting. I don't know what was
16 considered.

17 Q Don't you think that would have been reasonable?

18 A Are you asking my opinion?

19 Q Yeah.

20 A I think someone was shot, and I think we were
21 trying to find out what happened.

22 Q Right. Are you aware of the SLED policy that
23 police officers involved in shooting somebody, that
24 they will not question him until he's had 24 hours to
25 collect his thoughts and ask him to give a statement.

BRANDON LEE - CROSS-EXAMINATION

1 until at least 72 hours; you are familiar that, aren't
2 you?

3 THE COURT: Hold on a minute.

4 MS. LIVESAY: I have an objection. Because, for
5 one, I'm not sure, A, that that is the SLED policy.
6 I've never heard of that until right then.

7 MR. MARTIN: Doesn't mean it is not policy.

8 MS. LIVESAY: And, B -- I'm not saying -- I'm
9 just saying I have never heard of it in all of my --

10 THE COURT: Sustained. Sustained. That is not
11 relevant. Go ahead.

12 Q (MR. MARTIN) At any rate, you questioned the
13 young lady. She was there, IV tubes in her arms. We
14 hear the blood pressure cuff going on and off during
15 the statement, and she was as cooperative with you as
16 she could be, wasn't she?

17 A She was.

18 Q Did she ever refuse to answer anything?

19 A She did not.

20 Q All right. Did she -- at any time during this
21 statement, did you ask her about the location of any
22 cell phones?

23 A Did I ask her that?

24 Q Yeah.

25 A I did not.

BRANDON LEE - CROSS-EXAMINATION

1 Q Did Chatfield ask her that?

2 A I don't recall him asking that.

3 Q And the statement is in evidence, isn't it? The
4 point is -- and let me ask you this. Who is it that
5 kept calling? Were they calling you, or Jim Chatfield?

6 A No one called me. They were calling Detective
7 Chatfield.

8 Q Do you know who was calling him?

9 A Not every time, I don't. I know who called him
10 one time.

11 Q Who called him one time?

12 A I believe on the recording it was Neil Frebowitz.

13 Q Neil Frebowitz. But he took several calls during
14 these statements that he took, right?

15 A I believe so.

16 Q And he would question her, get a call, go out,
17 come back in and ask more questions, went out again,
18 came back in and asked more questions, right?

19 A That's correct.

20 Q And did you stay in the room with her while he
21 was -- while he was outside talking to somebody else?

22 A I believe there was one time I did step out of
23 the room, maybe twice. I don't recall the exact
24 number, but I didn't stay there the entire time, if
25 that is what you are asking.

BRANDON LEE - CROSS-EXAMINATION

1 Q Hard to recall exactly from that long ago, isn't
2 it?

3 A Every single little detail, yeah.

4 Q It is. And you didn't make a report in this
5 case, did you?

6 A I did not.

7 Q And did you hear her sobbing during those times
8 that Chatfield was out there? Were you in there any of
9 those times when the girl was sobbing?

10 A I don't recall that she was sobbing.

11 Q She tried to hold her composure to answer your
12 questions, didn't she?

13 A I don't know what she was trying to do. She was
14 cooperative.

15 Q Did you see her at the house?

16 A Yes.

17 Q You testified that you entered her house and you
18 would describe her there as being frantic or
19 hysterical, wouldn't you?

20 A I don't know if she was frantic or hysterical.
21 She was visibly upset, is how I would describe it.

22 Q And you testified earlier that you saw her at the
23 hospital and that she fluctuated between being quiet
24 and crying; is that right?

25 A I don't know that I said quiet. I may have.

BRANDON LEE - CROSS-EXAMINATION

1 Q How would you describe it, then?

2 A She was cooperative, is what I said.

3 Q But you talked about her demeanor, and I don't
4 want to belabor the point, but I wrote it down. You
5 made a comment about the fact that at times she
6 appeared to be -- choose the words you want to,
7 composed, quiet, or in control, and at times she seemed
8 upset or crying; would you not agree that's accurate?

9 A That's accurate.

10 Q All right. And, now, did they arrest Heather
11 Sims that night?

12 A I did not see them arrest her that night. I was
13 not there if that happened.

14 Q Did you hear anybody ask her about a second knife
15 of any kind that night?

16 A I don't recall on the recording.

17 Q Now, it is true that the police officers at the
18 house were in constant contact with Detective Chatfield
19 by cell phone, right?

20 A I'm not sure.

21 Q Well, wait a minute. How many times did they
22 call him?

23 A I don't know the exact number.

24 Q Well, Jim would know how many times they called
25 him, wouldn't he?

BRANDON LEE - CROSS-EXAMINATION

1 A I don't know what he knows.

2 Q Now, let me ask you. If I knew they were going
3 to call Jim Chatfield, I probably wouldn't have many
4 questions for you, but I don't know whether or not they
5 are because they introduced a statement through you, so
6 I'm going to have to ask you a few questions, okay?

7 A I understand.

8 Q So I'm asking you, again, whether you took the
9 calls or not, you knew that the police were in constant
10 communication by cell phone with Chatfield, who was
11 asking the questions, right?

12 A I would have to -- I don't know. I don't know
13 who was calling him. I know who called him one time; I
14 answered the phone. I didn't ask who called him every
15 other time.

16 Q Okay. All right. You were there -- going back
17 to her condition. Do you remember her telling you and
18 Detective Chatfield at Page 38, Line 36, of that
19 statement, I just feel numb.

20 A I would have to look at it.

21 Q Look at it.

22 A You have it in your hand.

23 Q Do I have it? I'm sorry.

24 A Where did you say it was at?

25 Q 38, Line 36.

BRANDON LEE - CROSS-EXAMINATION

1 A (Witness examines document.) I do see that.

2 Q I just feel numb, right?

3 A That is what it says.

4 Q Without me taking every line and every page in
5 this statement, let me ask you this. Do you not recall
6 her saying many, multiple times, It's just a blur?

7 A I do recall that.

8 Q Okay. Now, would you agree with me that somebody
9 -- let me ask you this. Have you ever been involved in
10 a shooting?

11 A Luckily, I have not.

12 Q Never shot anybody?

13 A Haven't had to shoot anyone.

14 Q Never been present when anybody else was shot?

15 A I don't think so.

16 Q So you don't know, but would you agree that that
17 would be -- even if you, as a police officer, had to
18 shoot somebody -- that that would be a traumatic
19 situation for you?

20 MS. LIVESAY: Your Honor, that is a huge call for
21 speculation. Would you agree if you were in a
22 shooting? I mean, I'm not sure where we are going
23 with that.

24 MR. MARTIN: I'll ask it again.

25 THE COURT: No. No. No. I understand him. Ask

BRANDON LEE - CROSS-EXAMINATION

1 him another question.

2 Q (MR. MARTIN) Let me ask you this. Can you
3 understand, as a person, that Heather Sims might have
4 at times not been in the best control of any and all
5 of her mental faculties, inasmuch as she was
6 interrogated by two police officers within an
7 hour-and-a-half of the time she had just been involved
8 in an altercation and the shooting death of her
9 husband; would you agree that that is a pretty
10 traumatic situation for that young lady?

11 A I'm not sure what you are asking me.

12 Q I'm asking you, do you think that is a traumatic
13 situation for a young lady like her to have gone
14 through what she says she went through?

15 A Yes.

16 Q Okay. Now -- and in addition to that, would you
17 agree with me that at times the questions Detective
18 Chatfield asked her were confusing?

19 A I thought they were pretty clear, for the most
20 part.

21 Q Would you agree with me that the fact that he had
22 not been to the house to see the location of the
23 bedroom, the bathroom, the door, the vanity, the tub
24 and all of that, made it more difficult for him to
25 understand what she was trying to explain to him?

BRANDON LEE - CROSS-EXAMINATION

1 A At times, yes.

2 Q And as a matter of fact, she was so cooperative,
3 she agreed to draw you a sketch or a diagram, didn't
4 she?

5 A She did.

6 Q And that has been -- let me hand to you -- and
7 what is marked as Defendant's 38 for identification,
8 Is that it?

9 A It does look like it.

10 Q Did you give her the pen to do that, or did he,
11 or who?

12 A I don't recall exactly who gave her the pen.

13 Q And what she told you throughout that hour and 36
14 minutes about the locations of where it started, where
15 she was and all of that is consistent with that drawing
16 she gave you, is it not?

17 A Could you repeat the question?

18 Q Her statement for you -- let me back up and ask
19 it this way. There was a lot of questions asked of
20 her, right?

21 A I think so.

22 Q And a lot of the questions were, what I would
23 call, compound questions; would you agree with that?
24 Do you understand what I mean by that?

25 A I don't.

BRANDON LEE - CROSS-EXAMINATION

1 Q Well, you ask a question, and then before you
2 give a chance to answer, you ask another question, and
3 before you give a chance to answer, you ask another
4 question, and then eventually you let them answer,
5 compound questions. We lawyers do that sometimes.

6 A I don't think a lot of them were like that, if
7 that's what you are asking. There were some maybe that
8 were like that, yes.

9 Q And, of course, we have found out that lawyers
10 aren't the only one that can ask a lot of questions and
11 ask the same one over and over from this, didn't we?

12 A I'm not sure.

13 Q Let me ask you this. Let me show you -- turn to
14 Page 40 of the statement. As for example, look at Page
15 40.

16 A Okay.

17 Q Look at the Line 6; you see that?

18 A I do.

19 Q All right. Let me read that to you, and you
20 count the questions that she's asked in that question
21 before she is given an opportunity say anything.

22 Okay. What I'm getting at is, is it possible
23 that you used your hands where the knife was moved out
24 a little bit, like if it was here? Was it possible
25 that you flipped against the wall? Or is it possible

BRANDON LEE - CROSS-EXAMINATION

1 that you kicked it against the wall like how -- tell
2 me how -- tell me how when you were doing the CPR -- I
3 was not there -- tell me how was his body laying? Was
4 he on the ground? Tell me where the knife was. Where
5 was the knife? Tell me what hand was the knife in,
6 left or right?

7 How many questions is that before he took a
8 break?

9 A I would consider that a compound question.

10 Q Count them for me. How many? Do you want me to
11 go through it again?

12 A Sure.

13 Q Let me ask you this -- I count seven. You look
14 at it and see how many questions he asked her before he
15 gave her a chance to answer.

16 (A brief pause in the proceedings.)

17 Q (MR. MARTIN) Stop. Where you are? How many do
18 you have?

19 A There is several.

20 Q There is several. Which one is she supposed to
21 answer?

22 A I'm assuming he was wanting answers to all of
23 them.

24 Q All right. Can you see how she might be confused
25 about what he's wanting her to answer?

BRANDON LEE - CROSS-EXAMINATION

1 A In that specific question, possibly, yes.

2 Q And, again, I'm not going to go through all of
3 that with you, but would you not agree -- and if you
4 want to, you can look at it -- but would you not agree
5 with me that there are multiple places throughout this
6 document where he does that same thing? I'm not saying
7 to do it intentionally to do anything wrong, that's the
8 way he does it, I guess, but do you not agree that
9 there are multiple times that she is barraged with
10 questions like that?

11 A I do see a couple.

12 Q Okay. Did you or Chatfield ask her that night if
13 she was willing to take a polygraph, didn't you?

14 A I believe Detective Chatfield asked her that.

15 Q And she said she would, didn't she?

16 A She did.

17 Q Now, without going over the whole statement, and
18 I have gone over it, I want to ask you this. Would you
19 agree with me that the statement that she gave you was
20 basically a consistent statement about what happened?

21 A You are asking me if the entire statement was
22 consistent?

23 Q I'm talking about the core of what she said
24 happened. I know you all asked her 58 times, Was the
25 knife at this point in time in the left hand or the

BRANDON LEE - CROSS-EXAMINATION

1 right hand, and could she possibly have touched the
2 knife. I'm not talking about all of that equivocation.
3 I'm talking about in terms of what happened between she
4 and her husband that day, would you not agree with me
5 that it was consistent?

6 A I think there was some discrepancies.

7 Q What?

8 A What was the discrepancies?

9 Q Specifically. Give me one of them.

10 A I think there was a discrepancy how she got the
11 cuts or scratches on her arm.

12 Q She told you how she got them, didn't she? She
13 told you that she got them -- that he did it with a
14 knife or the pliers when they were standing in front of
15 the vanity?

16 A She backed up and told us that.

17 Q She backed up, all right. Did you -- when you
18 asked her where she got them, she told you where she
19 got them, didn't she?

20 A Whenever we pointed them out to her, she did tell
21 us.

22 Q That is another thing. Let me ask you this. Did
23 she come up to you at any point in time and say, hey,
24 hey, look at these, get a picture of these? Didn't
25 happen that way, did it?

BRANDON LEE - CROSS-EXAMINATION

1 A I wouldn't say she came up to me, no.

2 Q You asked her to let you take a picture of her
3 arms, didn't you?

4 A I asked her if I could take a picture of her
5 injuries, yes, sir, I did.

6 Q You asked her. She weren't asking you to take
7 them. You asked her if you could take them, didn't
8 you?

9 A That's correct.

10 Q All right. Stomach as well. Bruises, if she did
11 have any bruises -- if she got any bruises in that
12 altercation with her husband an hour-and-a-half before,
13 you are smart enough there is know there wouldn't be
14 any bruising manifesting at the hospital that night,
15 aren't you?

16 A I have seen it before. I think everyone is
17 different.

18 Q Everybody is different, yeah. Let me ask you
19 this. Taking the statement, she told you during that
20 statement that she and her husband had been having
21 serious marital problems and seeing a counselor, right?

22 A That's correct.

23 Q That they had argued that day, and he wanted to
24 talk and she wouldn't talk, right?

25 A I believe that is what she said.

BRANDON LEE - CROSS-EXAMINATION

1 Q That she had -- would not talk throughout the
2 day, right?

3 A That's correct.

4 Q That she had washed the baby bottles and was
5 trying to get everything straight so that when the baby
6 got to sleep, they could talk, right?

7 A That's correct.

8 Q And that she had washed the baby bottles, the
9 freshly washed baby bottles were over there, and you
10 talk about washing knives too, and that she had gone
11 into the bathroom to get a bath, right?

12 A I believe that is what she said.

13 Q And there was water in the tub, wasn't there?

14 A I didn't see it.

15 Q You didn't see that? That he came in to work on
16 the toilet, right?

17 A That's what she said.

18 Q And that he had a wrench and a knife with him,
19 right?

20 A Correct.

21 Q And that instead of working on the toilet or
22 tinkering with the toilet, he started an argument with
23 her, right?

24 A I don't know if that was exact words she used.

25 Q Well, okay. He said, We are going to talk now;

BRANDON LEE - CROSS-EXAMINATION

1 right?

2 A That sounds accurate.

3 Q Yeah. And that she -- something came up about
4 the counselor's appointments, and she was a liar and
5 she was trying to show him something with the phone,
6 and she went to get the phone, and that he wound up
7 getting the phone from her, right?

8 A I think she did say that he got the phone from
9 her.

10 Q And that she had her phone charging over on the
11 bathroom vanity, and that the two of them confronted
12 each other there in front of the vanity, right?

13 A I think so, yes.

14 Q All right. And that he grabbed the phone, and
15 something, and turned around and he still had either
16 the knife or the pliers in his hands, right?

17 A That's what she said.

18 Q And that he became very irate, and he started
19 swinging one or both of them in front of her, and that
20 is how she got these scratches on her arms, she put
21 them up between him and her, right?

22 A I don't know if she ever said she put them up. I
23 don't know if that is what she said.

24 Q Well, we'll let the jury listen to that statement
25 again if they want to. You wouldn't disagree with

BRANDON LEE - CROSS-EXAMINATION

1 that, would you?

2 A That she said she put her arm up?

3 Q That she said that she had put her arms up at
4 some point in time as he was slinging or waiving a
5 knife in front of her?

6 A I don't recall that.

7 Q And that she became scared and frightened, do you
8 remember that?

9 A I do remember that.

10 Q And that there was a pistol in that top drawer,
11 and that she got it out, right?

12 A Correct.

13 Q And that she backed away from him and was backing
14 into the bedroom, right?

15 A Correct.

16 Q And that he was coming after her with a knife in
17 his right hand, right?

18 A She said knife or wrench or pliers, I don't
19 know --

20 Q Well, if you go back and read the statement, that
21 she's talking about at those times, she does say knife,
22 and then you keep saying, Is it possible -- Chatfield
23 kept saying, Is it possible it was what turned out to
24 be the needle nose pliers? And then she says, well,
25 possibly, but I thought it was the knife; is that not

BRANDON LEE - CROSS-EXAMINATION

1 right?

2 A I believe at one point that is what was said,
3 yes.

4 Q And that -- and you -- you know, we don't have a
5 video of it, but she says at some point in time in that
6 statement that he goes from doing this, to doing this
7 (indicates); do you remember that?

8 A I remember her saying that.

9 Q And I'm asking you, is it not correct that her
10 movements were that he went from doing this, to doing
11 this (indicates)?

12 A I don't recall her motions.

13 Q You don't recall that?

14 A I don't.

15 Q You don't recall that?

16 A I don't.

17 Q What do you think she was doing? Just take a
18 guess. What do you think her motions were?

19 A I don't know.

20 Q And that he came after her with the knife, and
21 she shot him, right?

22 A I believe that is what she said.

23 Q Now, that's what I'm talking about. That is --
24 that is what she tried to tell you all happened from
25 the beginning to the end, right?

BRANDON LEE - CROSS-EXAMINATION

1 A I believe that story was somewhere in there, yes,
2 sir.

3 Q Never wavered on that story? Now, details about,
4 well, which hand was the knife in and where did it come
5 from, and all of that, there was a lot of that, but
6 what I'm talking about is my story, what happened was
7 that. Because Detective Chatfield, in your presence,
8 on two occasions, at least once in your presence, and
9 you might have been gone the second time, so let me ask
10 you this. Is it not possible that you went and got the
11 knife and he just had the pliers and you got scared and
12 shot him and thought that might not look good so you
13 went and got the knife, and she said, No, no, that's
14 not what happened. Do you remember that?

15 A I do.

16 Q And so she never changed her story about the
17 fundamentals of what transpired, which was, she was in
18 her own home, wasn't she?

19 A She was.

20 Q And nobody has an obligation to retreat or leave
21 their own home, do they?

22 MS. LIVESAY: Your Honor, I'll not sure.

23 THE COURT: Hold on.

24 MS. LIVESAY: If now he's asking a question to
25 Corporal Lee as if he's an attorney, or?

BRANDON LEE - CROSS-EXAMINATION

1 MR. MARTIN: No. I'm asking as a witness.

2 MS. LIVESAY: Or a question about what happened
3 that night?

4 THE COURT: I don't think it is proper to ask a
5 legal question, but go ahead and rephrase it.

6 MR. MARTIN: Okay. So it's not proper for either
7 one of us to ask a witness a legal question
8 henceforth? I'm good with that if that is the rule.

9 THE COURT: Let me tell you, it depends, but not
10 now.

11 Q (MR. MARTIN) Okay. Let me ask you this. She
12 told you -- again, going back -- that that is what
13 happened. This happened in her house, right? And his
14 house. Her house and his house, the house that they
15 lived in together, right?

16 A Right.

17 Q And Chatfield tried to tell her, Well, maybe you
18 went and got the knife after the fact, right?

19 A I believe he did ask her that, yes.

20 Q And she denied that from the getgo, right?

21 A Correct.

22 Q And she told you fellows that she was scared, and
23 she got the gun. And then you stated, Well, you could
24 have left if you wanted to. Right?

25 A I believe that is what Detective Chatfield said.

BRANDON LEE - CROSS-EXAMINATION

1 Q Yeah. But, now, what she was telling you was, at
2 the time you all were saying you could have left if you
3 wanted to, is that she was under attack by her husband,
4 right?

5 A Are you asking if she was under attack?

6 Q I'm asking you, is that not what she told you?

7 A I don't think she ever told me she was under
8 attack.

9 Q Well, pick the word. That he was lunging at her
10 with a knife; what do you call that?

11 A I don't think she ever used the word "lunged".

12 Q Well, that he was coming at her with a knife like
13 this. I mean, pick a word you are comfortable with,
14 but that he was trying to cut her with a knife, stab
15 her with a knife; isn't that what she told you?

16 A She did say he was coming at her with a knife.

17 Q All right. And so then the thought was, well,
18 okay, maybe you should have just turned around and
19 left, and she said -- and she probably wishes she would
20 have now -- but the point of the matter is that she was
21 under attack or assault or --

22 MS. LIVESAY: Your Honor. Nobody has said that
23 she is under attack. In her statement she didn't even
24 say she was under attack. I'm not sure where it is
25 coming from.

BRANDON LEE - CROSS-EXAMINATION

1 THE COURT: The statement speaks for itself. He
2 can ask him a question about it, and he can answer the
3 question. Go ahead. Overruled.

4 Q (MR. MARTIN) Again, I want to get through it. I
5 don't want to belabor it. But, again, my point to you
6 is that she was in the midst of her husband, she says,
7 trying to harm her with a knife at the time she shot
8 him, right?

9 A That is what she said.

10 Q And let me ask you. Do you remember -- and you
11 may not, don't tell me -- that she says that when --
12 after this happened, that she got the phone and called
13 911, and she came back into the bathroom and she put
14 the gun on counter before she went down to her husband;
15 do you remember that, or not?

16 A I don't know if I recall that exact event.

17 MR. MARTIN: Just one minute, Judge.

18 Q (MR. MARTIN) Let me ask you this. Again, I know
19 that you are not the main guy who took the statement,
20 and you probably didn't anticipate getting into all of
21 this when you met Jim Chatfield that night, but the
22 key things they kept talking about in that statement
23 was, is it possible -- do you remember the first
24 question, is it possible that you touched the knife;
25 do you remember that?

BRANDON LEE - CROSS-EXAMINATION

1 A Do I remember him asking her that?

2 Q Yeah.

3 A Yeah, I do.

4 Q And she saying it is possible?

5 A Yes.

6 Q But would you not agree that the theme of her
7 statement throughout was, is it possible you touched
8 it, is it possible you moved it, and she said on
9 several occasions that, That's possible, I don't
10 recall; if I did, it was inadvertent. Do you remember
11 that?

12 A I think she did say that at point, yes. Yes,
13 sir.

14 Q Do you remember yourself asking her why was your
15 focus on the knife? Do you remember that?

16 A I do.

17 Q Do you remember what she told you?

18 A I would have to look back to see the exact
19 answer.

20 Q Would you -- and we can, but would you agree that
21 her answer was, My focus was not on the knife, my focus
22 was on him. Do you remember her saying that?

23 A I do.

24 Q Would you agree with me -- and I know you haven't
25 counted them, but the statement is in evidence -- that

BRANDON LEE - CROSS-EXAMINATION

1 she told you and Officer Chatfield on at least ten
2 occasions in that statement that she was frightened and
3 she was scared, and that's why she got a gun, and
4 that's why she shot him?

5 A I haven't counted them. I don't know how many
6 times.

7 Q One last question. Do you remember her making a
8 statement to you, when you were trying to get details
9 of exactly what was said or where the knife was, or
10 where this or that was that, It all happened so fast,
11 it's hard to recall; do you remember that?

12 A I remember her saying that, yes.

13 Q Does that sound reasonable to you?

14 A I would say it sounds reasonable.

15 Q Do you remember her saying several times in that
16 statement talking about the dog? The dog was in the
17 bathroom and she was trying to get her dog out, and the
18 dog was there. Nobody asked about the dog, but do you
19 remember her talking about the dog on several
20 occasions? Do you remember that?

21 A I remember her talking about the dog; I don't
22 know how many times.

23 Q Were you there when -- were you there when they
24 got her to give DNA samples?

25 A I was not.

BRANDON LEE - REDIRECT EXAMINATION

1 Q You were gone then?

2 A I was.

3 Q Do you remember on Page 31 of that statement when
4 they asked her -- Chatfield asked her why didn't she
5 just leave, that she said she had run from him before,
6 and he caught her?

7 A I would have to see the statement. I don't
8 remember her saying anything about being caught.

9 Q Do you remember her saying that I've run from him
10 before?

11 A I believe I remember that, yes.

12 MR. MARTIN: That it is all I have.

13 THE COURT: Anything on redirect?

14 MS. LIVESAY: Just two, and then I know I've got
15 to get Mr. Green out.

16 REDIRECT-EXAMINATION

17 BY MS. LIVESAY:

18 Q Did you see David Sims that night, the victim?

19 A I saw -- I don't know -- I didn't go in and see
20 his whole body, but I saw parts through the doorway.

21 Q So you saw he was -- enough to see he was laid
22 out in the bathroom?

23 A Yes.

24 Q Could he give you a statement?

25 A No.

BRANDON LEE - REDIRECT EXAMINATION

1 Q So everything Mr. Martin went over about what
2 happened that night, that just came from his client,
3 the defendant, didn't it?

4 A Yes.

5 Q And she was sitting up there with some scratches,
6 not so much as even a bandaid on her; is that right?

7 MR. MARTIN: I object, that is not proper
8 redirect examination. Here we go again.

9 THE COURT: Well, this isn't a presidential
10 debate. "Here we go again" is not proper.

11 MS. LIVESAY: I'll stay away from it. I just got
12 two more questions, and then I'm going to be done.

13 THE COURT: Please do.

14 Q (MS. LIVESAY) He asked you a lot of questions
15 about how long that interview was; do you remember
16 that?

17 A Yes.

18 Q Did she ever tell you what she was wiping off in
19 the bathroom before the police got there?

20 MR. MARTIN: I object to that. Well, no, go
21 ahead. But I have other questions on it.

22 THE COURT: Well, you're not going to get a
23 chance so you better object. If you are going to
24 object, object.

25 MR. MARTIN: No. Answer it.

BRANDON LEE - REDIRECT EXAMINATION

1 THE COURT: All right. Go ahead.

2 Q (MS. LIVESAY) In that time, over an hour when
3 she's telling you all of these things that are going
4 on, did she ever mention to you what she was wiping
5 down in the bathroom?

6 A She did not.

7 Q Did she ever mention to you what she did with his
8 phone?

9 A She did not say anything about a phone.

10 Q So she never mentioned what she did with the
11 victim's phone?

12 MR. MARTIN: I object. Asked and answered.

13 THE COURT: Asked and answered. Go ahead.

14 MS. LIVESAY: Nothing further.

15 THE COURT: You can step down. You have one
16 witness you have to call?

17 MS. LIVESAY: Real quick.

18 THE COURT: We'll do this witness and give you a
19 lunch break, and then as I said, we'll go....

20 MS. LIVESAY: Can he be excused?

21 THE COURT: I'm sure he wants to be.

22 MR. MARTIN: Well, I don't want to excuse him
23 from my subpoena. I don't think I'll need him, but
24 this is turning out to be long.

25 THE COURT: Keep in touch in case you are needed,

PETE CESTARE - DIRECT EXAMINATION

1 fault, but we'll do the best we can. Thank you for
2 your patience.

3 Call your next witness.

4 MS. LIVESAY: The State calls Lieutenant Pete
5 Cestare to the stand.

6 (State's Exhibits 84 through 103 marked.)

7 (PETE CESTARE, having been duly sworn,
8 testified as follows:)

9 THE CLERK: State your name and spell your
10 last.

11 THE WITNESS: Pete Cestare, C-E-S-T-A-R-E.

12 DIRECT-EXAMINATION

13 BY MS. LIVESAY:

14 Q Lieutenant Cestare, if you don't mind, tell this
15 jury where you are currently employed?

16 A I'm employed with the Horry County Police
17 Department.

18 Q How long have you been employed there?

19 A Just short of 13 years.

20 Q Okay. And what kind of training have you
21 undergone with the police department to become a
22 policeman?

23 A I started out as a policeman in 1981 in New York
24 City. I worked my way up to through ranks there, going
25 through the police academy and so forth, several

PETE CESTARE - DIRECT EXAMINATION

1 training classes to a detective commander when I
2 retired. I subsequently moved down here, was sent to
3 the South Carolina Academy, and I've attended numerous
4 courses all around the country ranging from the
5 Department of Justice, the FBI, New York City Office,
6 chief medical examiner, Federal Law Enforcement
7 Training Center in Georgia, and I'm certified as a
8 state instructor.

9 Q If you don't mind, tell this jury what your
10 current responsibilities and title is at Horry County
11 Police Department?

12 A I'm a lieutenant in the Criminal Investigations
13 Division for the Horry County Police Department, and
14 since I have been employed, I have been in charge of
15 the Crime Scene Investigations Unit and the Property
16 and Evidence section.

17 Q What were your responsibilities on or around
18 August 11, 2013?

19 A Supervisor for Criminal Investigations and Crime
20 Scene Investigations.

21 Q And on that day, did you have an occasion to go
22 to Old Reaves Ferry Road for a case?

23 A Yes, ma'am, I did.

24 Q And if you don't mind, tell this jury a little
25 bit about responding to that house on Old Reaves Ferry

PETE CESTARE - DIRECT EXAMINATION

1 Road.

2 A I was notified by our dispatcher, 911 dispatch,
3 that we had had a shooting. I believe I was told it
4 was domestic related at a residence on Old Reaves
5 Ferry, and that one subject was deceased at the
6 residence. At that point, I notified one of my crime
7 scene investigators, Jill Domogauer, to respond, and I
8 left my residence and headed towards Reaves Ferry Road.

9 Q Do you remember about when you responded out?

10 A I believe I arrived there somewhere around
11 7:30 in the evening.

12 Q When you got there, tell this jury what you saw.

13 A When I got to the scene, the crime scene tape had
14 been placed up. I -- there was several police units on
15 scene there. I was approached by Sergeant DelPercio,
16 the first responding officer, the patrol supervisor
17 that was on shift that day. He briefed me what he had
18 come into, told me that he arrived there --

19 MR. MARTIN: Objection as to what he told him.

20 THE COURT: Yeah, sustained.

21 MS. LIVESAY: This is not for the truth of the
22 matter asserted, it is just to show the furtherance of
23 his investigation.

24 THE COURT: Just ask him what he did and --
25 without --

PETE CESTARE - DIRECT EXAMINATION

1 Q (MS. LIVESAY) What did you do next?

2 A After speaking with Sergeant DelPercio, I gloved
3 up and put on protective boots and so forth. I entered
4 into -- onto the crime scene tape, went to the
5 residence. I had been told that we had consent to
6 search the residence. I went into the back door of the
7 residence. I entered through the living room door.
8 There is two doors in the back of the house, one off
9 the carport, one off of the living room. I entered
10 through the living room door. I looked briefly to my
11 right, was standing pretty much at the crest of the
12 living room, slash, kitchen area. Sergeant DelPercio
13 was immediately behind me. He led me from that point
14 into -- through the kitchen through a short hallway
15 into the master bedroom and ultimately to the master
16 bathroom, which is off of the master bedroom.

17 Q As soon as you went in, what did you do?

18 A I stopped at the threshold of the doorway from
19 the bedroom into the bathroom. There was an armchair,
20 beige in color or white in color armchair immediately
21 to my right. I observed the phone in the chair, and I
22 observed a spent casing in the chair. I looked into
23 the bathroom. From that point, I could see feet of
24 what I later found out was the male victim. In looking
25 straight ahead towards where the tub is, and I call it

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1 a garden-style tub, with a window directly behind it, I
2 could see what appeared to be a hole in the tub, in the
3 area near the faucet.

4 I stepped slightly into the bathroom, I would say
5 maybe two steps or so into the bathroom where I could
6 see beyond the vanity sink counter, which was
7 immediately to my left. I could see the entire floor
8 area and the victim laying on the floor there. At
9 that point, on the counter -- on the bathroom counter
10 I observed an iPhone in a gray and white case, a
11 charger cord that appeared to be for that type of
12 phone that was plugged into the wall, but not plugged
13 into the phone. I observed the gun that Sergeant
14 DelPercio had told me was on the counter, on the
15 counter where he told me where it would be.

16 The gun was cocked. I could see the hammer back
17 on the weapon. I looked on the floor, and I could see
18 the victim laying there. He was face up with his
19 right hand above his head, and his left arm extended
20 straight out from the side of his body. There was
21 blood evidence all over the floor, as well as on the
22 victim. I observed a knife partially laying in the
23 victim's hand with the handle of it partially laying
24 in his hand with the blade of the knife resting on the
25 floor, and it struck me as odd because --

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1 MR. MARTIN: Objection.

2 THE COURT: What is your objection?

3 MR. MARTIN: I think he's getting ready to render
4 an opinion as what struck him as odd, and the
5 foundation hasn't been laid that he's qualified as a
6 crime scene recreationanalyst (sic) in order to give
7 that opinion, and I object to it. He's offering
8 opinion now, not facts.

9 THE COURT: He needs to stick with what he saw,
10 not what he thought about what he saw.

11 MS. LIVESAY: I think he was going to tell us
12 what he saw.

13 MR. MARTIN: No. No..

14 THE COURT: Wait a minute. What is it?

15 MR. MARTIN: He said what he saw. He said, And
16 it struck me that, and that is getting into an
17 opinion.

18 THE COURT: I get it. I get it. I understand.
19 He can't say that. Ask him what he saw; that's what
20 he can say.

21 Q (MS. LIVESAY) What did you see?

22 A In the victim's right hand was a knife. The
23 lower portion of the handle of the knife was resting on
24 the victim's hand, the blade of the knife was resting
25 on the floor. There was blood in the palm of the

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1 victim's hand. There was some blood, from what I could
2 see, on the tip of the knife, and the knife was upside
3 down in his hand.

4 Q If you don't mind -- do you mind showing us --
5 you said the knife was upside down; do you mind showing
6 us what you mean by "upside down"?

7 A Fine.

8 Q First of all, let me introduce a picture that you
9 took, Mr. Cestare. Actually, first, do you remember
10 how this knife was laying, partially in the hand and
11 partially on the floor?

12 A Yes, ma'am.

13 Q And did you snap a picture of that?

14 A I did. I snapped several pictures as I came into
15 the residence.

16 Q Do you mind looking at these pictures and letting
17 me know if these are the pictures you snapped that
18 night?

19 A Yes, ma'am.

20 Q Okay. Wonderful. And if you don't mind, for
21 this lady here, go through and let her know what number
22 you are looking at, and whether or not this is the
23 picture you snapped.

24 A Okay. State's 103 is a photo I took, and it is a
25 photo standing in the bedroom looking into the

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1 bathroom. In the photo, you can also see the chair and
2 the victim's feet. Can I show the photo?

3 Q Not yet, no. Just go through them all first, and
4 just tell her whether or not these are the ones you
5 took, and then we'll go through them.

6 A State's Exhibit 102 is a picture of the victim
7 lying on floor, and this photo shows the phone that I
8 mentioned sitting on the counter, the handgun sitting
9 on the counter cocked, and the cord that is plugged
10 into the wall, but not plugged into the phone, as I had
11 mentioned.

12 State's 101 shows the knife in the victim's hand
13 and blood in the palm of the victim's hand.

14 State's Exhibit 100 is a close-up photo of the
15 blood on the victim's hand and the knife resting in
16 the victim's hand and on the floor.

17 State's 99 is a picture of the hole that I
18 observed in the rim of the tub right near the faucet.

19 State's 98 is a picture of needle nose pliers
20 that I observed on the top of the tank of the toilet,
21 which was further into the bathroom.

22 Q Are those all the pictures you snapped from the
23 scene?

24 A Yes, ma'am, I believe it is.

25 MS. LIVESAY: Your Honor, at this time the State

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1 wishes to put 98 through 103 into evidence.

2 MR. MARTIN: No objection.

3 THE COURT: Without objection.

4 (State's Exhibits 98 through 103 admitted.)

5 Q (MS. LIVESAY) Earlier you made the comment, and
6 we've seen, pictures of this knife in his hand, and
7 you made the comment the knife was upside down. Do
8 you mind stepping down and explaining to these people
9 what you mean by that?

10 A That's fine.

11 Q Okay. And here is the knife here already in
12 evidence.

13 A All right. If I may refer to the picture?

14 Q You may. It's already in evidence. Here is
15 State's -- let me look at the back of it real quick --
16 No. 101?

17 A The knife is in -- I can show the picture?

18 Q Yes.

19 A The photo shows the way I observed the knife that
20 evening when I walked into the bathroom. The way it
21 shows the knife sitting, it is in the right hand, and
22 the right hand is kind of facing this way, if you look.

23 MS. LIVESAY: Can they stand up so they can see
24 me? Is that going to be a problem?

25 THE COURT: It's not a problem with me if it's

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1 not a problem with them. They might want to stand up.

2 A Come on up. It will be easier if I do it on me.

3 Q (MS. LIVESAY) So the blade is down pointing more
4 towards his head; is that correct?

5 A Yes.

6 MR. MARTIN: Judge, can I take a picture of this?

7 THE COURT: If you want to.

8 MR. MARTIN: Okay.

9 Q (MS. LIVESAY) Now, if you don't mind, this way,
10 the knife, there is nothing about it that looks upside
11 down, so what do you mean?

12 A If I were to hold the knife, it is upside down.

13 Q So when you stand up, the blade is actually
14 pointing up?

15 A Uh-huh (indicates).

16 Q Thank you. I've already put into evidence this
17 picture, and this jury already has looked at it. Do
18 you see any blood in the palm of the hand that is
19 holding the knife?

20 A Yes, I do.

21 Q I cannot see an injury in his hand. Is there an
22 injury in his hand?

23 MR. MARTIN: Objection.

24 A No, there's not.

25 THE COURT: Hold on.

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1 MR. MARTIN: He's not qualified to testify
2 whether -- let me finish -- whether there is an injury
3 in his hand. There is a hundred pictures of his hand
4 in evidence for this jury to look at and make that
5 determination. Again, he's not an expert to testify,
6 first of all, did he examine that hand? Did he wash
7 it off? Did he check it? And I object to it.

8 THE COURT: So noted. Overruled. But you need
9 to ask him only what --

10 MS. LIVESAY: I'm just going to ask him did he
11 see an injury.

12 THE COURT: Hold on. That's fine. Ask him did
13 he see an injury. Go ahead.

14 Q Did you see an injury in the victim's hand?

15 A No, I did not.

16 Q Where was the only spot you saw blood coming from
17 on the victim?

18 A At this time, all I could see was blood on the
19 center mass of the chest, and blood from underneath
20 him. I did not manipulate him at all at that time.

21 Q Did you see any blood on his left hand?

22 A If I can refer to the pictures?

23 Q I don't think we have a picture of his left hand.

24 A Without reviewing, you know, a full body picture,
25 I would not want to make an answer on that now.

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1 Q It's okay. If you don't mind, do you mind going
2 through these pictures with the jury?

3 A Sure.

4 MS. LIVESAY: Just the first group, if you don't
5 mind. Let's just do the first six.

6 Q What are we looking at here?

7 MR. MARTIN: Can I have the exhibit number?

8 THE COURT: Do you have your flashlight?

9 MR. MARTIN: The officer had a flashlight.

10 Q What are we looking at, Lieutenant Cestare?

11 A That is a picture standing in the, bedroom,
12 master bedroom of the residence, looking at the chair
13 and looking further on into the bathroom where I could
14 see the victim's feet. That's the chair that I spoke
15 of.

16 Q Right here?

17 A Yes, ma'am. There is a cell phone in that chair,
18 and out of the picture is a spent casing.

19 Q And what is this?

20 A That is a dog bed that was next to the garden tub
21 in the bathroom.

22 Q Were you in here for the statement that was
23 played earlier?

24 A Yes, ma'am.

25 Q Did you hear any mention about this bathroom and

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1 whether the dog was allowed in the bathroom?

2 A I did.

3 MR. MARTIN: Objection.

4 THE COURT: What's your objection?

5 MR. MARTIN: I'm sorry. Go ahead.

6 MS. LIVESAY: Statement against party opponent,
7 Your Honor.

8 THE COURT: Okay. Well, he -- go ahead.

9 A I'm sorry, the question?

10 Q Do you remember hearing the statement earlier
11 this morning; were you in here?

12 A Yes, ma'am.

13 Q Do you remember hearing anything about this
14 bathroom and whether or not a dog was allowed in the
15 bathroom, and if that door was shut or not?

16 A Yes, ma'am, I did hear it.

17 Q What was your understanding from that statement?

18 A That the bathroom was off limits to the dog.

19 Q But was this dog bed in here when you got here?

20 A Yes, it was.

21 Q When I'm looking straight, is this a straight
22 shot into the bathroom?

23 A What is a straight shot, yes, ma'am.

24 Q So when you are looking straight into the
25 bathroom, this is what you are looking at right here?

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1 A Yes.

2 Q This window and the tub?

3 A Yes, ma'am.

4 MR. MARTIN: Again, what was the exhibit number,
5 for the record, the previous testimony about photos
6 was about?

7 A Can I have those pictures?

8 Q I'm sorry, that probably would help you.

9 MS. LIVESAY: Can I see the next picture, and can
10 we blow that up just a little bit?

11 THE WITNESS: That exhibit -- I'm sorry, the one
12 we just had up was 103.

13 MR. MARTIN: 103, okay.

14 Q Now, what are we looking at here, Lieutenant
15 Cestare?

16 A That is State's Exhibit 102. That is the victim
17 as I saw him on the floor and as I observed blood on
18 the chest and underneath the victim. You can see a
19 wire hanging down from the countertop, that is the cell
20 phone wire that I saw connected into the outlet.

21 MS. LIVESAY: Can I see the next one, please?

22 Q What is this up here?

23 A That's the top of the counter, and that is the
24 gray and white iPhone that I had mentioned was on the
25 counter -- excuse me, handgun with the hammer back. It

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1 was cocked.

2 MS. LIVESAY: Can I see the next picture, please?

3 Below that up just a little bit for -- this part here,
4 the hand and the knife.

5 A That is State's Exhibit 101, and that's the way I
6 observed his right hand and the knife partially laying
7 on the hand with the blade on the floor.

8 Q Would you say this knife was a few inches or
9 inches away from the victim?

10 A No, ma'am. It's resting on his hand.

11 Q And is this the blood that you saw on his hand
12 here?

13 A Yes, ma'am, it is.

14 MS. LIVESAY: Can I see the next picture, please?

15 Q Okay. Is this how you saw his hand that night?

16 A Yes, ma'am. That is State's Exhibit 100. That's
17 how I saw the knife as backwards in his hand -- not
18 backwards, but upside down.

19 Q Can you see the blood in the palm of his hand?

20 A Yes, I can.

21 Q Okay. Now, can you see on top of his fingers,
22 right here?

23 A Yes.

24 Q Do you see any blood there?

25 A No, I do not.

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1 MS. LIVESAY: Can I see the next picture, please?

2 Q What are we looking at here?

3 A That is State's Exhibit 99. That is the hole
4 that I saw in the tub directly adjacent to where the
5 faucet would be for that tub.

6 Q Let me ask you this --

7 MS. LIVESAY: What is the next picture?

8 MS. POP: The pliers.

9 MS. LIVESAY: What is it?

10 MS. POP: The pliers.

11 Q Is this where the bullet entered the tub?

12 A Yes, ma'am. Later on in the evening I determined
13 that the bullet entered the tub through that hole.

14 Q Was this the middle of the tub, or a little to
15 the left or right; where was this on the tub?

16 A I would say it is more to the left of center.

17 Q Okay. When I'm standing in the threshold and
18 looking at the bath tub, is that bullet straight ahead
19 in front of me?

20 A Slightly to the left.

21 Q So slightly to the left?

22 A Yes, ma'am.

23 Q So not straight in front of me?

24 A No, ma'am.

25 Q Do you remember about how high that tub was off

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1 the ground?

2 A I can give you an approximate. It was
3 approximately 21 inches to the top of the marble
4 surface that the garden tub sits into.

5 Q Let me ask you this. If I took a string -- like
6 this laser, if I just hold my arm straight out like
7 this, would I hit the tub?

8 A No. No, ma'am. You would be hitting the window.

9 Q So I would have to hold the laser down like that?

10 MR. MARTIN: Objection. Objection. He can
11 testify as to what he saw, but now he's opinionating
12 in crime scene reconstructing, and I object.

13 THE COURT: Ladies and gentlemen, let me send you
14 out for about two minutes. Don't discuss the case.

15 (Whereupon, the jury exits at 3:49 p.m., and the
16 following is had out of the presence of the jury.)

17 THE COURT: I think your question is going to be
18 if she had shot straight, would the bullet have gone
19 down to the 22-inch height?

20 MS. LIVESAY: And that's that. The only thing
21 I'm asking is the real basics. I'm not looking to
22 reconstruct the scene.

23 THE COURT: Ask your question.

24 MS. LIVESAY: I'm just looking to say, If I put
25 my arm straight out, would I hit the tub?

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1 THE WITNESS: No.

2 MS. LIVESAY: Okay.

3 MR. MARTIN: Well, and let me just say, I object
4 to the relevance of that, because that assumes there
5 is something for it to pass through on its way there,
6 which may or may not direct its path of travel. That
7 is my only problem, is that -- that is not relevant.
8 That question that she just asked is not relevant. By
9 the way, you don't need anybody to say that, the
10 pictures are in evidence.

11 THE COURT: All right. Here's the deal. I'll
12 going to let her ask it, but I'm also going to let you
13 ask him if a bullet passing through a body --

14 MR. MARTIN: Well, he don't know. He don't know
15 the answer to that. That is why he shouldn't be
16 answering this question.

17 THE COURT: I'm going to let him.

18 MR. MARTIN: He's not qualified to determine what
19 a bullet does as it passes through a body, that I've
20 heard so far.

21 MS. LIVESAY: I haven't said anything about a
22 bullet.

23 THE COURT: It is the very definition, went
24 through a body. So the fact that it was shot
25 straight, who knows what happened to that bullet as it

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1 tumbled through the body, I think that is his
2 objection, in a nutshell. I'm not sure he can answer.

3 MS. LIVESAY: I understand. I'm not even getting
4 into a bullet. All I'm asking is if I reach straight
5 out and hit this laser, and I'm standing in the
6 bathroom, would I hit the tub?

7 THE COURT: I know, but that is a smart way of
8 asking -- nobody shot a laser, they shot a bullet.

9 MS. LIVESAY: I understand. And that's something
10 that Mr. Martin, I'm sure, will bring out in
11 cross-examination.

12 THE COURT: You know what, I'll let you ask the
13 question. It concerns me, but at this point -- bring
14 them back in. I'll give you some leeway here. You
15 sure you want to ask that question? It is fraught
16 with danger, as many things are. If you don't need
17 it, I wouldn't travel this guy -- I mean this witness.
18 Because you do have an expert coming who could testify
19 to that; it would be better suited for him.

20 MS. LIVESAY: Yes, sir.

21 THE COURT: Mr. Martin, you are hearing all of
22 this. I'm not doing this off the record and I'm not
23 giving advice, I'm just trying to keep everything as
24 clean as possible.

25 MR. MARTIN: I understand, Judge.

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1 (The jury enters at 3:52 p.m., the following
2 is heard in the presence of the jury.)

3 THE COURT: Thanks, ladies and gentlemen.

4 Q Lieutenant Cestare, we were just talking about
5 the bathtub and where you found the bullet hole. Did
6 you find a bullet hole anywhere else in the house?

7 A No, I did not.

8 Q Did you find a bullet hole in the window behind
9 the tub?

10 A No, there was none.

11 Q You heard the statement earlier played. Did you
12 ever find a pair of pliers in the house?

13 A Yes, ma'am.

14 Q Where did you find them?

15 A There were several. There was a pair in the
16 bathroom on top of the toilet tank, and later on,
17 during the course of the search of the residence, there
18 were pliers found in the laundry room, I guess you
19 would call it.

20 Q Let me ask you this. Did you search the entire
21 house or go through the entire house?

22 A Yes, ma'am, with the exception of two areas --
23 three areas that night. I did not search the vehicles
24 out in the carport, and I did not enter a locked room
25 off of the carport. There was no -- there didn't

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1 appear to be any reason that evening.

2 Q When you went through the house, did you ever see
3 -- because I know we've talked about pliers and tools
4 -- did you ever see a tool set or a bunch of tools, or
5 any tools in the house?

6 A Yes, ma'am. There was tools in that laundry
7 room.

8 Q And did you see wrenches, pliers? What did you
9 see in there?

10 A Your typical home tool kit, wrenches, pliers,
11 screwdrivers, things of that nature. Things you
12 normally keep in the home for repair.

13 Q You did actually find a pair of pliers in the
14 bathroom?

15 A Yes, ma'am.

16 Q Where were they?

17 A They were needle nose pliers, and they were on
18 top of the toilet tank.

19 Q I'm showing you what has been in State's Evidence
20 No. 98; do you remember that picture?

21 A Yes, ma'am.

22 Q Is this a picture of the pliers on the toilet?

23 A That's the picture of the pliers on the toilet in
24 the master bedroom, yes -- master bathroom, I'm sorry.

25 Q Do you see anything in that bathroom knocked over

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1 or broken?

2 A No, I did not.

3 Q You snapped these pictures at the house when you
4 first came in; is that right?

5 A That's correct. I took those pictures on my cell
6 phone.

7 Q And why did you document those particular
8 pictures?

9 A As I stated earlier, I was advised that we had
10 consent to search the residence. I was informed by 911
11 that I was responding to a domestic related death
12 investigation. Once I got into the house and made my
13 way from that back door into the master bedroom,
14 observed the phone, casing in the chair, looked into
15 the bathroom, at that point I snapped some pictures,
16 asked where the other party from the house, Ms. Sims,
17 was, they told me she was transported to the hospital.
18 I asked which hospital, and they told me Grand Strand.
19 I spoke with Investigator Domogauer. Her and I did a
20 walk-in of the same area of the house, the master
21 bedroom, master bathroom, and at that point I
22 determined I wanted a search warrant to go further on
23 the residence.

24 Q Okay. Now, tell this jury -- because you were in
25 here earlier and you heard the statement, and you

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1 actually went to the hospital, didn't you?

2 A I did.

3 Q That is you on the recording?

4 A It is.

5 Q And she was completely cooperative, gave you
6 consent to search?

7 A Not to me, yes, but consent was given to
8 somebody.

9 Q Okay. Then why did you get a search warrant?

10 A Because I felt looking at the scene --

11 MR. MARTIN: Objection. I don't know what the
12 relevance of why he got it -- I don't know what his
13 answer is going to be. He got -- he had consent. He
14 got a search warrant so he could search the house and
15 be sure, I guess, they were doing it properly, but I
16 don't want any opinions about what he saw as result.

17 THE COURT: I think her question was if she gave
18 consent and did she voluntarily.

19 MS. LIVESAY: Yes.

20 THE COURT: Overruled.

21 MR. MARTIN: The question why did they get a
22 search warrant if they had consent.

23 MS. LIVESAY: I would like to know, Your Honor.

24 I mean, obviously this man has been doing it 18 years.

25 THE COURT: You can ask it.