RECEIVED
JUL 14 2017
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 4

Blake A. Hewitt # 73674
John S. Nichols # 4210
BLUESTEIN NICHOLS
THOMPSON & DELGADO
P.O. Box 7965
Columbia, SC 29202

L. Morgan Martin # 3667
LAW OFFICES OF
L. MORGAN MARTIN
1121 Third Ave.
Conway, SC 29526

B. Alex Hyman # 75416
THE HYMAN LAW GROUP
1208 Third Ave.
Conway, SC 29526

Attorneys for Appellant

William F. Schumacher, IV, # 100231
Alan M. Wilson, # 71754
S.C. ATTORNEY GENERAL'S OFFICE
PO Box 11549
Columbia, SC 29211

Jimmy A. Richardson, II, # 13632
FIFTEENTH CIRCUIT SOLICITOR'S OFFICE
PO Box 1276
Conway, SC 29528

Attorneys for Respondent

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 4

Blake A. Hewitt # 73674
John S. Nichols # 4210
BLUESTEIN NICHOLS THOMPSON & DELGADO
P.O. Box 7965
Columbia, SC 29202

L. Morgan Martin # 3667
LAW OFFICES OF L. MORGAN MARTIN
1121 Third Ave.
Conway, SC 29526

B. Alex Hyman # 75416
THE HYMAN LAW GROUP
1208 Third Ave.
Conway, SC 29526

Attorneys for Appellant

William F. Schumacher, IV, # 100231
Alan M. Wilson, # 71754
S.C. ATTORNEY GENERAL'S OFFICE
PO Box 11549
Columbia, SC 29211

Jimmy A. Richardson, II, # 13632
FIFTEENTH CIRCUIT SOLICITOR'S OFFICE
PO Box 1276
Conway, SC 29528

Attorneys for Respondent

INDEX

VOLUME 1

Orders

Indictment 1

Verdict Form 3

Order Denying Post-Trial Motions 4

Pleadings and Motions

Motion for JNOV, Renewed Motion for Directed Verdict, and, in the alternative, Motion to Modify the Sentence 7

Memo on Motion to Modify Sentence 9

Memo in Support of Motion for New Trial 11

Transcripts

Trial Transcript (excerpts) 15

Opening Statements 38

Renee Hardwick
Direct 88
Cross 95
Tom DelPercio
Direct 99
Cross 132
Redirect 161
Scott Thompson
Direct 174
Cross 197
Redirect 215
Recross 231
Jill Domogauer
Direct 238

Cross 346
Redirect 402
Brandon Lee
Direct 409
Cross 441
Redirect 469
Pete Cestare
Direct 472

VOLUME 2

Trial Transcript (continued)
Pete Cestare (continued)
Direct 495
Cross 578
Redirect 620
Werner Spitz
Direct 625
Cross 659
Redirect 696
Teresa Paulette Sutton
Direct 705
Cross 745
Dean Briggs
Direct 773
Cross 777
Joshua Tew
Direct 779
Proffered 781
Direct (Cont.) 783
Redirect 808
Lori Dudley
Direct 842
Cross 898
Redirect 915
Recross 918
Allyson Brown
Direct 920
Cross 960
Redirect 971
DeDe Richardson
Direct 972

Cross 980
Redirect 981

VOLUME 3

Trial Transcript (continued)
Carolyn Paul
Direct 983
Cross 987
Lisa Riddle
Direct 1015
Cross 1022
Redirect 1034
Renee Hardwick
Direct 1040
Cross 1044
Redirect 1049
Becky Pavilack
Direct 1050
Cross 1053
Redirect 1061
Steven Barger
Direct 1063
Cross 1070
Adrienne Hefney
Direct 1078
Cross 1094
Redirect 1118
Starlett Godwin
Direct 1125
Cross 1132
Redirect 1140
Christina Wallace
Direct 1141
Proffer 1151
Cross 1159
Redirect 1172
John Gaddy
Proffer 1177
Dean Briggs
Direct 1187

Amy Richardson
Direct 1190
Cross 1194
Redirect 1197
Kimberly Collins
Direct 1199
Cross 1237
Charlie Dorn Smith
Direct 1285
Proffer 1286
Direct (Cont.) 1287
Cross 1289
Katie Khanduja
Direct 1292
Cross 1295
Heather Sims
Examination by the Court 1305
Kerry Hodge
Proffer 1314
Heather Sims
Direct 1318
Cross 1426
Redirect 1468

VOLUME 4

Trial Transcript (continued)
Motions 1472

Teresa Yarborough
Direct 1485
Cross 1488
April Shawn Lockamy
Direct 1489
Cross 1490
Redirect 1497
Margaret Rose Sims
Proffer 1504

Motions 1509

Jury Charge Conference 1534

Closing Statements 1548

Jury Charge 1627

Jury Question No. 1 1652

Jury Question No. 2 1662

Verdict 1673

Sentence 1699

Transcript of December 16, 2015 - Post-Trial Hearing 1701

State's Exhibits

Exhibit 2 - CD Interview with Chatfield . . . . . On file with the Court
Exhibit 4 - CD of 911 Call . . . . . On file with the Court
Exhibit 96 - Photograph of Arm 1754

Defendant's Exhibits

Exhibit 4 - Photograph of Abdominal Stab 1756
Exhibit 37 - Transcript of Sims Interview 1758
Exhibit 40 - Treatise Photograph of Defensive Wound 1806
Exhibit 41 - Spitz Affidavit Excerpt 1808
Exhibit 46 - MRI Photograph 1810
Exhibit 65 - Photograph of Knife 1812
Exhibit 72 - Photograph of Arm Bruises 1814
Exhibit 78 - Text Messages 1816

Certificate of Counsel 1818

MS. LIVESAY: I want to put one thing on the record. Obviously, the last set of questions Mr. Martin went outside of my cross-examination of the defendant, and of course the danger of that is what just happened. She just testified that that was a mistake by Dr. Sciarretta and she only had one puncture wound, when her own doctor notes in the records said that when she saw her the very next day, on the 12th, she had two puncture wounds.

THE COURT: I mean, the records are what they are, and this jury heard so much that they'll be able to look at records.

MR. MARTIN: We move at this time for a directed verdict of not guilty. Again, though you have to view the evidence in the light most favorable to the State, there has to be sufficient evidence taken as a whole to submit the matter to the jury. In this case -- in this case they charged the defendant with murder, no manslaughter, no involuntary manslaughter. As I can see it, there is no evidence in this record to support a conviction for murder. There is a lot of questions that have been raised about why this, why that, why the other, but there is no evidence -- no evidence that this was the deliberate, intentional killing with malice aforethought of the deceased.

The evidence, quite frankly, is overwhelmingly to the contrary based upon the DNA testimony of Adrienne Hefney. It is clear that the DNA, both touch of the deceased and defendant, is on the knife, and I can't think of any evidence the State has raised that would bring it to this level. Even if you were to somehow believe the testimony of Dr. Spitz, it does not raise the case to the level of murder. Now, obviously, you know -- and of course, frankly, I would suggest to the Court that you shouldn't utilize any of the testimony of Dr. Spitz in that analysis anyway, because I believe it is abundantly clear from the record that Dr. Spitz was confused and, frankly, didn't know what he was talking about.

We do know from his own mouth that he's offered three opinions in this case, and two of them he admits are wrong. And once you get past him, there is absolutely no evidence, none, that comes anywhere close to establishing by a scintilla of evidence that this was murder. It is -- it really is what I said when we started this case, there is suspicions by the deceased family, which is natural, and I know they will have their feelings until the day they die, but once you get passed that, there just isn't any evidence. I think it is striking, and I would ask the

Court to direct a verdict of not guilty.

THE COURT: Okay. Well, I mean, I've heard a week of this back there in the summer, and now two weeks, and I understand your motion, you are protected for the record, but, quite frankly, I think Spitz raises factual issues that the jury has to decide, so I think they have to decide. They've listened, and I have to take it in the light most favorable to the State.

Anything else before rebuttal? How many witnesses?

MS. LIVESAY: Yes, and they'll be very quick witnesses, very quick, speedy.

THE COURT: Okay.

MR. MARTIN: We do have -- at some point in time there are a few motions -- first of all, before I forget, we have a stipulation to enter into the record about the toilet.

THE COURT: About the toilet.

MR. MARTIN: Yes. And I'm prepared to do that right now, if I can find my notes. Here it is. This is what I would propose. I haven't actually shown it, but the Court was here, but it would be that the parties agree that upon examination of the toilet within days of August 11, that the toilet did not work

properly and was in need of repair.

THE COURT: If you would agree, that is great.

MR. MARTIN: We stipulate to it, so we have to agree somehow.

THE COURT: Let her read something like that.

MR. MARTIN: Okay.

MS. LIVESAY: Can't we stipulate exactly what Pete said, that the water would run -- the water runs in my toilet, I don't know that that means it needs repair. I mean, is that a step from stipulating to, yes, there is something wrong with the toilet, to, yes, there is something wrong with the toilet and it needed to be repaired to give credibility to this story that he was in there with pliers and a knife? I think it is one thing to say, yes, to stipulate there was something wrong with the toilet. I'm not ready to go so far "and it needs repair."

MR. MARTIN: Well, Judge, while I have my witness here and proffer it, this is exactly what I proposed to the Court at that time, and it is accurate.

THE COURT: His testimony is that it was running.

MR. MARTIN: He didn't have any testimony, frankly.

THE COURT: No, his discussion with you all, and the plumber's testimony jived with him, that it was

running.

MR. MARTIN: The chain was too long, and it had to be repaired.

THE COURT: I mean, if you don't like the word "repair," use "fixed."

MR. MARTIN: That is fine, it needed to be fixed, I'm happy with that.

MS. LIVESAY: I don't know why we have to say anything about repair. I'm stipulating to something was wrong with the toilet. Why do we have for take it that one step further to try to give credibility to this story that he was in there fixing the toilet?

MR. MARTIN: Because it is the truth, and I have a witness. That is why I stipulated and didn't proffer my witness, and to the extent it is possible for me to insist on that language.

THE COURT: What he said is he had to replace the chain, right?

MR. MARTIN: It had to be fixed or repaired, the chain was too long, is what he said.

THE COURT: What about the toilet was fixed and it had to have the chain repaired, that's what happened? Chain fixed.

MS. LIVESAY: I just talked to Lieutenant Cestare -- Lieutenant Cestare was there, so can we let

him speak, because he knows and heard it running?

THE COURT: Well, here's the deal. A stipulation is a stipulation. I was a fool to think that you all could agree that it was daylight outside, that is my fault, or that the lights are turning on. I should have let the guy testify. You have to agree to it, or I'll write it. I think that what we have before us is that it was running, and this guy said I had to fix the chain. I'm not sure -- I know you are in the middle of this case. I promise you, they wouldn't care one bit whether it was running -- they just aren't going to care. If it was running, they are going to say somebody was going to fix it, it had to be a chain that had to be shortened.

MS. LIVESAY: For the record, I don't mind -- I'm ready to stipulate to what Lieutenant Cestare said, the toilet was running -- the water in the toilet was running. I don't mind saying that that was going on, but I do mind taking that next step and turning it into "and the toilet needed to be repaired." I just -- that is then giving credibility to her story, when we really don't know what the extent of it was. We know there was -- the toilet ran.

THE COURT: Let me ask you this. If your toilet is running at home, are you just going to ignore it?

MS. LIVESAY: I mean, my thing is this man didn't even know the next day, and we're jumping to the toilet needed repaired. He showed up days later.

THE COURT: It wouldn't have mattered to me if he said -- he said the same thing that he said, that it was running, and about every five to six minutes -- and that is the words used by both of them -- it would run. If it is running, it is not working properly and in need of repair. I don't mind being specific in saying the chain had to be shortened. I don't care.

MR. MARTIN: Either one of those languages will work for me, but there needs to be that second part, because that is what we agreed to before my witness left.

THE COURT: Like I said, I should have -- I mean, it had to -- the chain needed to be shortened. If you don't want to go so far -- that is what I thought you agreed on. We don't have to do that now because we have to do it before I charge the jury.

MR. MARTIN: Well, I'm forgetful.

THE COURT: I have it. We have a couple other things we have to do.

MR. MARTIN: We do. We do.

THE COURT: We don't have to do anything about redacting anything?

MR. MARTIN: Yes, you do. That is an issue.

THE COURT: You need to get busy on it because this case -- I mean, I don't know how long your witness is going to take. The question is whether you are going to do your closing arguments tonight and charge tomorrow.

MR. MARTIN: On that issue, I objected to the entry of all of that, that would cure that problem. So to say that -- and we've looked at it and I can point out some things it ought to be, but to say I have to be responsible for what they put into the record that prejudices my client when I've objected to it--

THE COURT: It is in. You talked last week about the fact that there were some very objectionable inclusions into the evidence, and you all were going to redact it.

MR. MARTIN: That is as to both. They told me -- I gave them the lines that I wanted redacted on the one, and I haven't seen that.

MS. LIVESAY: I think we have it in front of the notebook, I will. We'll redact it.

THE COURT: Maybe we can talk about using whitener and all of that.

MS. LIVESAY: Yes, that is what we'll do; that

way it doesn't bleed through. Here is the list we have from Mr. Martin.

MR. MARTIN: That is as to one. That is as to the one. There is a second that covers from January to August.

MS. LIVESAY: This one?

MR. MARTIN: That's it.

MS. LIVESAY: Yeah.

MR. MARTIN: I mean, I'm doing all I can do. She hasn't done a thing with that, and it is jam full of, frankly, things that may be just as prejudicial to her side as to mine.

THE COURT: Probably.

MR. MARTIN: But I don't want to take a chance. We worked two weeks on the trial here, and some off word here, with prejudice to either side or the other -- I'll go through it, and we have gone through it, and we've got things delineated, but what worries me is when you put a document like this in and you are trying to read every word, you will miss something sometimes. And my problem is -- both of us could pick this up and quote from it, which I will do in a closing argument, and she probably will too. But, you know, again, there is nothing -- if there were anything in it that changed the course of the

direction of the case, then she'll have a blow-up of it somewhere, okay. But then you just throw this in, and you are playing with fire on the record, and in every other way, and I've objected to all of it.

THE COURT: But it is in over your objection. Here is the thing. Do you want me to go through it and get a black ink pen? Because that is, quite frankly, beyond my job description. This is evidence that is in, and it has to be redacted before it goes back. That's the rule. It ain't going back until it is redacted. We've been talking about it for 10 days, so it has to be done. I mean, it's the same reason why at 9:15 we were up here running audio files that never got played. Hours and hours of spinning on tops for nothing. I'm just telling you, this is what I do for a living, not what they do. You have to be careful. You are going to tick them off so bad they are going to do something you don't like.

MR. MARTIN: Let's finish, and we'll put it on the record.

THE COURT: Yeah. I think there is a couple things we need to do. Do you want to do your closing tonight, or not?

MR. MARTIN: Judge, frankly, I'm torn about that, but I would say we should do what the jury wants us to

do. I will say this -- I will say this for both of us. There is a lot of evidence in the record, and a competent closing is going to take a good bit of time; that worries me. If I take 30 minutes to an hour or more, and she takes 30 minutes to an hour, who knows, the charge, it is getting late. Now, like I say, I'll -- I'm ready as far as doing it, I'm ready, but.

THE COURT: Here is how I see it. If you close tonight, and I understand you don't like that, I never liked it as a lawyer either, but then it -- if I charge them in the morning, that gives you all tonight to redact how you want to make sure that everything is there, because Natalie is concerned that some of this stuff has gotten mixed up.

MS. LIVESAY: I don't want to be a jerk, but I'll call two, three more people, and I don't know how Morgan feels, but I think we're splitting hairs when we're talking whether we're closing tonight at 7:00 or 8 o'clock, or whether first thing in the morning.

THE COURT: I thought we had two short witnesses, which puts us to 5:30.

MS. LIVESAY: Two to three.

MR. MARTIN: I'm leaving it to up to you, Judge. I think maybe the jury --

THE COURT: This is why I asked them. Look, as a

lawyer, I would never want to close at 6 o'clock on Thursday night. But as a judge, I'm telling you, these people don't do this for a living and they may want to go. Their indications for the last two weeks has been we'll go with you 'til midnight if you want.

MR. MARTIN: Whatever you want.

THE COURT: Have you looked at my charge?

MR. MARTIN: I have, and I have handed up some additional charges I want you to consider.

THE COURT: You all take time.

MR. MARTIN: And particularly the circumstantial evidence charge, I want the Court to consider mine, as well as some of the others. Again, I'm assuming that the charge you gave us included involuntary and voluntary manslaughter, but I don't see it as evidence.

THE COURT: It did. It did. It has voluntary and involuntary.

MR. MARTIN: We need to talk about whether that should be charged or not.

THE COURT: That is why I think -- get the witnesses done. We have work to do before we charge them, but I'm hesitant to give you time tomorrow to close and then do it, because I really think it will get it to this jury at 1 o'clock on Friday, which is

the worse for both of you. You don't want this jury to hurry. My charge will take 35 minutes. They'll fall asleep, so I don't want them tired. Let's see where we are after witnesses.

MR. MARTIN: In order to save time, can we talk about who those are?

THE COURT: Yeah, who are they?

MS. LIVESAY: They are going to be two ex-wives and possibly his mom, Margaret Rose.

THE COURT: Rebuttal?

MR. MARTIN: As to character?

MS. LIVESAY: Yes.

(The jury enters at 5:04 p.m., and the following is heard in the presence of the jury.)

THE COURT: Is that everyone?

FOREPERSON: Everybody.

THE COURT: You all want to keep going?

FOREPERSON: Yes, sir.

THE COURT: We have -- what will happen, we have rebuttal witnesses the State has at this time, and then we have closing arguments, which is going to require some time with you back there while we argue about it, and then the closing charge. Depending on the time, we may do closing arguments tonight and charge you in the morning, we'll see.

Yes, ma'am.

MS. LIVESAY: State calls Teresa Yarborough to the stand.

(TERESA YARBOROUGH, having been duly sworn, testified as follows:)

WITNESS: Teresa Yarborough.

DIRECT-EXAMINATION

BY MS. LIVESAY:

Q If you don't mind, spell your name for the record, your last name?

A Y-A-R-B-O-R-O-U-G-H.

Q And, Teresa, tell this jury, how old are you?

A 37.

Q And where do you currently live?

A In Florence, South Carolina.

Q And what do you do for a living?

A Family nurse practitioner.

Q If you don't mind, tell this jury how you know David Sims Junior?

A I was married to David.

Q And tell this jury when you were married to him?

A I was married to David from 2003 to 2006.

Q And if you don't mind, are you from Florence?

A Yes.

Q Where was David from?

A From Florence.

Q And what did he do for a living when you all were married?

A He did landscaping, outdoor lighting and irrigation.

Q And if you don't mind, tell the jury about what his reputation was in the community.

A He had a good reputation. Everybody that knew David liked him.

Q You were married to him for how many years again?

A We were married in 2003, separated in 2005 and then divorced 2006.

Q During the course of your all's marriage, tell this jury about David's personality. Was he somebody --

MR. MARTIN: Objection as to his personality, obviously with character witnesses there is certain character traits.

THE COURT: You can't ask personality, but you can ask those questions about --

Q (MS. LIVESAY) Was he a peaceful person?

A Yes.

Q Was there anything about him that was violent?

A No.

Q And did you all ever have any issues with

violence?

A No.

Q Now, if you don't mind, tell this jury why you all ultimately divorced?

MR. MARTIN: Objection -- I'll save it.

THE COURT: Overruled.

Q (MS. LIVESAY) Why did you all divorce?

A There wasn't one particular reason that we divorced. We were both 25 years old when we got married, so I think we were both young and immature, and during the time we were married, we both kind of grew up and grew apart, different priorities and responsibilities.

Q Now, in knowing David, in your opinion, would he have ever attacked anybody with a knife or any kind of weapon?

A No. Never.

Q And do you know David's family?

A Yes.

Q And are you still in contact with them?

A Yes.

Q And did you go to his funeral?

A Yes.

MR. MARTIN: Objection. Objection to the relevance of that.

THE COURT: I understand. You are protected for the record. Go ahead.

Q (MS. LIVESAY) And if you don't mind, tell this jury, do you want to be here?

A Yes.

Q And tell this jury, why you are here?

A I want to be here to let you know that David was not an abusive husband. I didn't want him to be painted something he is not.

MS. LIVESAY: No further questions.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MARTIN:

Q You divorced in 2006?

A Correct.

Q And you haven't lived with him since then?

A That's correct.

MR. MARTIN: That is all I have.

THE COURT: Anything?

MS. LIVESAY: No further questions.

THE COURT: You can step down.

MS. LIVESAY: State calls Shawn Lockamy to the stand.

(SHAWN LOCKAMY, having been duly sworn, testified as follows:)

THE WITNESS: My name is April Shawn Lockamy, L-O-C-K-A-M-Y.

DIRECT-EXAMINATION

BY MS. LIVESAY:

Q If you don't mind, tell this jury about how old you are?

A 33.

Q And where do you currently live?

A Lake City, South Carolina.

Q And how long have you lived there?

A Pretty much all my life, except when I lived in Florence for a few years when I was married.

Q Is Lake City close to Florence?

A About 30 minutes away.

Q Do you know David Sims Junior?

A Yes. We were married.

Q And how long were you all married?

A About two years.

Q If you don't mind, tell this jury what his reputation was in the community?

A I did not grow up in Florence, so I did not the Sims family before I met David, but he got along excellent with my family, all of my friends never had any derogatory things about him.

Q And tell this jury whether or not David had a

peaceful personality?

A Yes.

Q And was he ever violent towards you?

A No. No, ma'am.

Q And in your opinion, and in knowing him and having been married to him, in your opinion do you think he would have ever come at anybody with a knife or any kind of weapon?

A No, ma'am.

Q And why did you guys get a divorce?

A We -- I was starting back to school, so we were both very stressed, just kind of got where we did separate things, didn't have time to be together a lot because of my work and school. We kind of grew apart.

Q Did the divorce have anything to do with violence in the marriage?

A No, ma'am.

Q Did you go to the funeral?

A No, ma'am. I went to the visitation at his parents' house, but I was at work the day of the funeral.

Q Tell this jury, do you want to be here today?

A I want to do my part in helping any way I can.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Do you recall telling Candace Benton Hill that he threw me on the concrete and fractured my foot and wouldn't give me my keys so I could leave?

A No, I've never had a foot fracture in my life.

Q Your name is Shawn Sims Lockamy?

A Yes.

(Defendant's Exhibit 87 marked.)

MS. LIVESAY: Can I see?

MR. MARTIN: Can I have her identify it first?

THE COURT: Have her identify, and then show it, one or the other.

Q (MR. MARTIN) Take a look and tell me what it is.

A I do not recall this.

Q Is that your name on it?

A Shawn Sims, yes.

Q You know Candace Benton Hill, don't you?

MS. LIVESAY: I can't see it.

A She was married to one of David's friends.

Q (MR. MARTIN) And you have communicated with her by text, and that is one of those texts, isn't it, or e-mails?

A I don't know if it is a text.

THE COURT: Let her look at it, though.

(A brief pause in the proceedings.)

Q (MR. MARTIN) Mrs. Sims --

MR. MARTIN: I move to enter into evidence Exhibit 87.

MS. LIVESAY: Your Honor, I object. The woman says she doesn't recognize it.

THE COURT: Let me see. Ask her if she recognizes it.

Q (MR. MARTIN) Let me ask you this. Be it Facebook or E-mail or text, you are Shawn Sims, and that is Shawn Sims Lockamy?

A Shawn Lockamy, yes, sir.

Q And Candace Benton Hill is a friend of yours?

A Mutual acquaintances.

Q And on October 1, 2009, Candace Benton Hill, Shawn Sims, October 1, 12:20 a.m. Okay, Candace, I never thought you would be like that. First of all, you don't know everything, and I didn't break into his house. He was --

MS. LIVESAY: Your Honor, my only objection is this woman has said I don't recognize it.

THE COURT: Lay a better foundation.

Q (MR. MARTIN) That is your text, and before you answer that now, I have other -- anyway, that is your text that you sent to Candace, that is your

communication that you sent to Candace Benton Hill, isn't it?

A I do not recall sending her anything via text like this.

Q Let's leave aside texts. You know her, right?

A I do know her.

Q You had communication with her about you and David, didn't you?

A Not that I recall.

Q Well, refresh your memory with that.

A Not that I recall.

Q You don't recall telling her that he threw you to the ground and fractured your foot and took your keys so you couldn't leave?

A I never had a foot fracture.

MS. LIVESAY: The woman already said I never suffered that injury.

THE COURT: I get you. Sustained. You have to lay a better foundation with somebody.

(Defendant's Exhibits 88 and 89 marked.)

Q (MR. MARTIN) Let me show you three pages that has been marked as Defense Exhibit 89 entitled "Shawn Lockamy," and ask if you would take a look and see if you recognize that for me?

A (Witness examines document.) This is actually in

reference to -- the private investigator had already asked me about this, and I told him I did not recall, but he never could produce an e-mail that he asked me about.

Q I'm producing that to you now, and I'm asking you, while you are under oath, if you recognize that document as a communication that you sent to Heather Sims?

A No, sir.

Q You don't?

A No, sir.

Q What do you think it is?

A I don't know.

MS. LIVESAY: If I may, the woman already said your private investigator showed it to me, I don't know anything about it, now he's pressuring her. At this point, the woman is being badgered. She says I don't recognize it. She told a private investigator and Mr. Martin -- are we going to get a third person to see if she'll change her mind?

THE COURT: I don't know. That is an improper objection. You objected. Overruled. Ask her what she thinks it is, and that is it.

Q (MR. MARTIN) What is that?

A It looks to be, I guess, a Facebook, judging by

the pictures of it.

Q Whose pictures is on it?

A That's my picture.

Q Your picture. And I'm not -- I don't -- I'm not a Facebook guy, but tell me this. If you do have a Facebook, a lot of times you post your pictures on it, don't you?

A Yes, sir.

Q What do you call those, your.....

A Profiles.

Q Profile pictures. People get a new picture and they change their profile picture, don't they? And this document had your profile picture on it?

A It does.

Q Have you had trouble with anybody taking or misusing or stealing your identity on Facebook?

A I have actually had that happen twice, and so I don't use Facebook very often anymore.

Q But that particular communication, when is it dated?

A I don't see a date.

Q That one was sent to Heather Sims, right?

A Does it say? I mean, it doesn't say who it is to.

Q Let me ask you this. Did you communicate with

Heather Sims over here in any shape, form or fashion before or after she married David?

A No. Never seen her in person or had conversation with her.

Q I'll take that -- how about by telephone?

A No.

Q How about by Facebook exchanges?

A No.

Q So that is not you?

A No, sir. I do not recall these messages.

Q How in the world do you think I could get that if it weren't yours, that you sent to Heather that she printed off of her computer?

A I do not know how to answer that.

Q Doesn't have flattering things about David Sims at that time, does it?

A It does not.

MS. LIVESAY: She already said she doesn't know anything about it. I object to that going into evidence because --

THE COURT: No, it's not going in.

MS. LIVESAY: Just one question.

MR. MARTIN: I need that.

Q (MR. MARTIN) When was the last time you were married to David, Ms. Lockamy?

A We were divorced in February of 2010.
Q February 2010?
A Yes, sir.
MR. MARTIN: That is all the questions I have.

REDIRECT-EXAMINATION

BY MS. LIVESAY:
Q Do you know Heather Sims?
A No, ma'am.
Q Have you ever contacted her?
A No, ma'am.
Q Have you Facebooked her?
A No, ma'am.
MS. LIVESAY: No further questions.
THE COURT: Okay. You can step down. Anything else?
MS. LIVESAY: One more witness, Your Honor. The state calls Margaret Rose Sims to the stand.
MR. MARTIN: Your Honor, can we approach?
THE COURT: Yeah.
(Whereupon, a bench conference was had.)
THE COURT: Ma'am, have a seat. Ladies and gentlemen, I have to do something outside of your presence, go on out. It will be 15 minutes. Don't discuss the case.
(The jury exits at 5:26 p.m., and the

following is heard out of the presence of the jury.)

THE COURT: Okay. What are you going to ask her? Defense wants to proffer, because they are afraid you are going to slip by them.

MS. LIVESAY: Just an overview. I'll ask her, of course, his wanting to be peaceful, that kind of stuff, that he's from Florence, he moved to Conway to marry this woman, they lived with her parents for awhile before they moved into the house, and I'm going to ask her when she expected to see him again, and she is going to say Monday, we were expecting him to move back home with us.

THE COURT: But she's not going to say anything he said.

MR. MARTIN: Wait a minute. Wait a minute now.

THE COURT: Let her finish. Let her finish. Go ahead.

MS. LIVESAY: I'll ask her if she had any concerns for her son, and she is going to say, yes, I called him every day, I was very afraid for him being with this woman.

MR. MARTIN: Judge, it has to be proffered, first of all. This is not proper reply testimony, that is the first objection. Character, yes. Character, like anyone else, but that is not proper reply as to she

was going to expect him to be back in Florence the next day or -- or -- or now that she was fearful for him because, one, it is not proper reply testimony. Second, all of that entails hearsay to reach to that opinion. How else would they know? There is not a communication in this record from anybody, text, e-mail, otherwise, phone message about him being back in Florence on Monday. There is no way she can know that unless he told her and that -- the basis of that testimony is hearsay, because if she just said I expected him in Florence on Monday, then that is objectionable because what she expected is not relevant or based on fact. So how do you know? It has got to be because that is what he said, and it's hearsay. It is not proper redirect. It is introducing a brand new scenario into it that we are not in a position to deal with, and it is not admissible.

THE COURT: This is in reply.

MS. LIVESAY: In reply to the fact that he came in and mentioned he was asking me then do you want to separate, and then she wants to jump from that to say he went from talking about separating to going in there and fixing the toilet, when the truth is he was never in there fixing the toilet, because he had no

intentions of staying at that house. They were talking about separating. You saw the pictures, his clothes are bundled up. He is in the process of leaving this woman.

THE COURT: How would she know that if he didn't tell her? That is not admissible.

MS. LIVESAY: Your Honor, this woman got up and testified about full conversations she had with Ronnie Causey and Robert Shelley.

THE COURT: If there was an objection -- I'm trying to do -- she testified -- she can't testify about what someone who is gone can testify to.

MS. LIVESAY: I'm not using it for the truth of the matter asserted, I'm using it to show when this woman was expecting to see him again. Were you expecting to get this phone call? No, I was expecting him to be at my house Monday. And it shows --

THE COURT: If that is the question and the answer, that would be fine, but the question --

MS. LIVESAY: That's the question.

THE COURT: But the answer cannot be he was planning on moving in, because the only way she knows that is if he told her. I mean, it is to the truth of the matter asserted.

MR. MARTIN: It is.

MS. LIVESAY: It is also going towards his state of mind at that time.

MR. MARTIN: And Judge -- Judge -- Judge.

THE COURT: Yeah.

MR. MARTIN: I mean, you cannot have -- I'm only as vocal as I am because I can't believe we are having this conversation.

THE COURT: I can't either.

MR. MARTIN: But I am vehemently and adamantly objecting under hearsay and not proper for reply, and I have the case law on both of them, presence sense impression has nothing to do with this. I've handed cases up to your clerk, all right. I object to it. It is wrong, and I object to it.

MS. LIVESAY: Your Honor, if I can, he had this conversation with this woman on Saturday before he was killed on Sunday. So I think it does go towards his state of mind at that time. They have introduced that this is a violent, aggressive man that was looking to kill his wife Sunday, when the truth was that he was looking to leave and get back to Florence on Monday, that is the truth of it.

THE COURT: In all the time I've been in this case, this is literally the first time I've heard this.

MR. MARTIN: And I specifically filed a motion with the State asking for any statements that would be made by Mrs. Sims or the daughter, and nothing was given to me. Nothing. Nothing. Nothing.

THE COURT: I get nothing after one. You need to show me -- I mean, this is literally the first minute, and I understand you hold in reply, but they have to be in reply, in rebuttal.

MS. LIVESAY: This is in reply to this woman saying that night he was talking about separating from me, and the truth is he was. He was saying I'm leaving you.

MR. MARTIN: And it is hearsay.

THE COURT: I don't know how it comes in.

MS. LIVESAY: Here is the deal, Judge. He's not alive. It is a complete injustice to get up here and have this woman testify for three hours, he's laying dead in the bathroom --

THE COURT: Talk at once or I'm going to hold you in contempt. What else do I need to say to you two? After three weeks, that is what is going to happen, contempt of court, you watch. Watch me. Talk once at a time. Go ahead.

MS. LIVESAY: Thank you, Your Honor. The problem is, this woman can get up here and testify about her

state of mind, what was going on that day between her and David, and the problem is, he is dead. He does not have that option to get up here and say, no, that is not what was going on, that was not on my mind, I was planning on leaving, I was planning on being back in Florence on Monday. I feel like it is an injustice to let this woman get up and testify and give her half of the story when we have a witness that knows he was going to leave her the next day. He wasn't looking to kill her, he was looking to get away from her.

THE COURT: Do you have your motion where you asked for any statements from her? I don't have it.

MR. MARTIN: Yes. Yes. I have it somewhere. Look in my trial notebook under "motions." Let me say this while they find it. The Rules of Evidence apply for a reason. One is, injustice has nothing to do with the Rules of Evidence. I can say it is an injustice that they indicted my client, but the difference is whatever Heather Causey said, she was able to take to the stand and be cross-examined. The reason you have a hearsay rule is I can't do that. They could get up and say any and everything in the world that David felt this way, David was going to do this, David said this, and it is the reason it is objectionable.

THE COURT: I understand hearsay. You can't get in hearsay, I've said that.

MR. MARTIN: And the only reason I'm belligerent is she keeps --

THE COURT: There is no reason to be belligerent. I have said you cannot testify about what someone says, especially someone who is not here to be cross-examined, that is the very definition of hearsay.

MR. MARTIN: Again, with Ms. Livesay that means you can't -- well, what was he going to do, because that bypasses the step of hearsay, and that will happen if she's not specifically instructed.

THE COURT: I'll let her proffer the testimony, which is what we started to do. Look, it is what it is. Ask your questions, but these have to be questions you ask -- they have to be pretty blunt, but go ahead.

(MARGARET ROSE SIMS, having been duly sworn, testified as follows:)

PROFFER EXAMINATION

BY MS. LIVESAY:

Q Ms. Sims, tell the Court your relationship to the victim?

A He's my son.

Q If you don't mind, how do you know Heather Sims or Heather Causey?

A They were married. I did not know her before they were married.

Q And do you know where they lived before they got married?

A At her mom and dad's house.

Q And then where did they move after they left her mom and daddy's house?

A When they got married, they lived in his house in Florence for probably six weeks, a short time. They got married December 18th, and in February they were gone, went back to her mom and daddy's house.

Q Did he, other than that, always live in Florence or close to his family?

A Always. We were a very close family.

Q If you don't mind, tell this Court if he has a peaceful character and personality?

A Very peaceful. I don't know anybody any more peaceful than my son.

Q And do you and -- were you in contact with him around August the 11th of 2013?

A The day before, yes. On Saturday before that Sunday, we were in contact with our son every day.

Q And when were you expecting to see David again?

A On Monday he was moving in with us. He was leaving on Monday and coming to our house until he could get a place to stay.

Q And if you don't mind, tell this Court what, if any, concerns you had for your son while he was married to this defendant?

A For at least two months, or over two months -- and I told my husband, I said, I'm scared to death that Heather is going to kill David. In fact, I said I know she's going to kill him. I know she's going to kill him. I can tell you right where I was when I said it, in our bedroom. I told him, I know she's going to kill him. He would say, Margaret Rose, we know she's crazy, but she's not that crazy. He was just telling me that so I wouldn't worry as much. I called our daughter, and I told her -- she lives in Texas -- and I told her the same fear I had, and she said, Mama, I'm scared to death, too. Jimmy, her husband, and I are scared to death she's going to do that. And every morning for over two months, every morning -- and I talked to him every day. We talked every day, but I would call him crack of dawn to make sure I -- that he was okay, every morning.

One morning I couldn't get him, and I was panicking, and so I was on the way to work, and my

husband, his daddy, he would call and I would call, both until one of us got him and we knew he was okay. That last day we saw him, on Saturday, we called him to come -- his daddy was fixing one of his favorite meals, and he knew he was working Saturday, and he couldn't keep up because he had no much business going on. He was in Florence, and we asked if he could come and eat, and he did. He came and ate, but he was so sad. I've never seen him look so sad. I've never seen him look that sad. He couldn't even eat.

We were making arrangements. I knew he was coming. We talked, and he was going to come Monday, but he tried so hard to make the marriage work, because he loved Heather. He tried everything, but it was impossible. He loved J.D. so much that he just -- that was the only reason he stayed as long as he did, because he loved it more than life. So he was going to come on Monday and get everything ready, and I said you can stay as long as you want to, don't worry for a place to stay. He was coming Monday. Little did I know on Saturday, whenever he left, that that is the last time that I would see him. I can remember exactly -- I mean, I just seen him go through all of this pain, and I held his cheeks on both sides outside of his truck in the driveway, and I just

kissed him and told him I loved him, which I did every time. I said everything is going to be okay, David. Hang in there, we love you. We will see you Monday, and that is the last time we saw him. Never saw him again. Until we got that phone call on Sunday, two hours after he was -- Heather had killed him, we got this call from the coroner. I picked up -- I was -- my cell phone rang, and I didn't recognize the -- I started not to answer it, because I always know whoever calls me. I went ahead and answered, and they asked me if this was David Sims' residence, and I said, yes, and it was my cell phone and they wanted to speak to David Sims, so I gave it to my husband. I said, This evidently is a telemarketer, I don't know who it is. He answered the phone, and he was standing in front of the sink, and he said -- I heard him say, Yes. Yes. And then he just almost fell to the floor, bent over and crying. I said, What, David? What, David? What? And I held his arms, What is going on? He said, He's dead. He's dead. And he didn't have to tell me who was dead, and he didn't have to tell me who did it. I knew who it did, because I knew she was going to do it (witness crying.)

He was -- I begged and begged, I wanted to go and just hold him, be with him, and nobody wouldn't let

me. I understand that now and all, but it is your child, you know. So the next time we saw him was in his casket, the next time. And I don't know what else to say. I mean, at the funeral and visitation there was so many friends. He had so many friends that we had to have -- there were 15 pallbearers and honorary pallbearers, and it was wrapped around the funeral home. We were there for four hours.

Q And tell the Court, what is that a picture of?

A These are my children.

Q Yes, ma'am.

A That is my children. That is David and Destiny.

THE COURT: Okay. Thank you. Here is the thing. I mean, I don't want to put this woman through any objections, but that is just the rules. I didn't make them. You can't testify what someone else told her. All this other stuff she can testify to. She can't blurt out that he said he was going be moving in. I mean, he is not here. That doesn't come in. Let me say, there is a motion. It was made October 30th of 2015, we never heard it, so we're dealing with it now.

MS. LIVESAY: What is the motion?

THE COURT: For you all to give -- the motion is you all produced any and all statements of defendant orally or in writing made to Margaret Rose Sims, David

Sims or any other member of the immediate Sims family that State intends to introduce into evidence in trial.

MS. LIVESAY: My understanding was that motion was for any statements between the defendant and Margaret Rose.

MR. MARTIN: No. No.

MS. LIVESAY: Am I wrong about that?

THE COURT: It doesn't matter. She can't testify --

MR. MARTIN: We heard that Monday or Tuesday, and they said we don't have anything.

THE COURT: I know. She can testify about -- look, I'll allow her to testify how she feels, but she cannot say what he said or --

MS. LIVESAY: Can she say I was getting the house ready for him to come back on Monday?

MR. MARTIN: No.

THE COURT: That is only way she would know, no. Unless she has some other way to know it, but she can go into what she told her husband. The difference between her and Heather Sims is Heather was here for cross-examination. He's going to get cross-examined. He doesn't want to, and I'm telling you, I understand all of that, but you can't bend the rules at this

point for her to testify as to a motion to something that is hearsay. I mean there is no way to get it in.

MS. LIVESAY: I think my frustration is we are only getting one side of the story because she killed this man, and the truth is this woman is trying to say he was coming home. There was nothing about fixing the toilet. There is no way with him being deceased to get that in.

THE COURT: In every case, unfortunately -- I mean, the State has the burden of proving these things. I understand it is a huge burden, that still doesn't mean you let hearsay in, otherwise, we would still be here three, four weeks people saying what other people say. You just can't. I tried my best to keep it out, but this is bad. She can testify about all of the other stuff, just not what she was told.

Yes, sir. I see you, but I would like to finish a dang gum sentence. You are making we -- what? What? Go ahead.

MR. MARTIN: Well, Judge, you said she can testify to all of that other stuff, which concerns me. Again, I think she can testify as to the character, and if they want to introduce a picture and that, that is a character reply, but other than that, objection one for the record, under cases of State versus --

Daniel versus Tyler Trucking concerning reply testimony, He upon whom the witness lies has the burden of proof as a right to offer rebuttal testimony to that of an adversary latter witness provided, it is in the nature of true reply and not such as should have been offered in the case in chief -- in the case of chief. In this case --

THE COURT: That's what I'm worried about. What date is that case?

MR. MARTIN: It is a 1944 case, but it is the state of law, because I researched it specifically, and you might find something better, but I don't think so. I got this case for this reason, and I filed a motion to see what might be coming, for that reason. I was provided nothing. As far as what Heather Sims -- they introduced a statement into the record, that she made, that she gave to the police that night that they talked about separation. That is in there. That is nothing new for the defendant's case. That was there then.

If they have some evidence of what they are trying to put in, they should have put it in on direct, and it is improper to put it on reply. That it is objection number one. And, again, that case is Daniel versus Tyler Trucking, 205 South Carolina 333.

Secondly, she cannot, obviously, testify to hearsay, and you can't back door a blank statement that is based on hearsay, because I can't cross-examine that, so that is improper. And then in the context of those, I filed the motion asking for the discovery, and they knew all along they had this. And, again, if I didn't stand up and object and do what we are doing now, there is no telling what would be in that record. But if I understood Mrs. Sims, and I know this is a horrible situation for her and her loss is immeasurable and I can't begin to comprehend all of that, but she -- and I want to say this to you, Judge. There is in the record every text message, every e-mail, every phone call -- and there were a lot of phone calls between the two of them off and on -- but there is not one word about what we're hearing today, that I'm going to leave her, that he was scared for his life, all of that stuff. No evidence that Heather is crazy. No evidence. No evidence that she's crazy.

Then, specifically, what she asked her was -- we know she's crazy. Well, I object to that. That is not relevant, first of all, in reply testimony. If they wanted to prove that she was crazy, bipolar, mentally ill, whatever, that should have been brought up in direct so I could have brought people to rebut

that, and I got people to rebut that.

MS. LIVESAY: I don't want to get into the fact she's saying she's crazy. I agree with Mr. Martin. I'm not trying to get that in. The only thing I'm trying to get in, and what I'm trying to reply to, is he put up people and he asked these people, In your opinion, would this woman, Heather Sims, ever shoot and kill David Sims if she was not afraid for her life. If nothing else, I feel like I should be able to ask this question to this lady and find out what she says.

THE COURT: What question?

MS. LIVESAY: Whether or not she believes Heather Sims would have shot David Sims. In her opinion, was it in self-defense.

THE COURT: Wait a minute. That's fine, but this is the first time you've asked it. You ask her all of these questions. You made her sit up here in front everyone, go through this whole thing. If she had moved his furniture to her house, she can say I moved his furniture, that is how I knew. She does not know other than what he said. This question you just asked her, ask her.

MR. MARTIN: Well, Judge, before --

THE COURT: Let her ask it first. Maybe I lost

control, but I'm getting it back. Go ahead.

Q (BY MS. LIVESAY) In your opinion, do you think this defendant would have shot your son in any other manner other than in self-defense?

A Yes.

MS. LIVESAY: And she's probably going to say, yes, I feel like she would have killed him?

WITNESS: I was afraid of that two months.

MR. MARTIN: I object to that.

WITNESS: Your Honor, can I say something?

THE COURT: Hold on a minute. I know you object to it. That question is okay, because I understand you asked the same question. That is question is okay, a proper reply question. Him moving is not.

MR. MARTIN: Let me say, I agree with this, Judge, but the question ought to be -- I don't think it was posed right. If the question is, Do you believe that your son would have attacked her with a knife, that's the question. For her to answer that she believes how Heather would have shot him, then she's testifying about Heather's character as opposed to David's. I don't have an objection to the question that Nancy asked one of the wife's, which was, if I'm not mistaken, do you believe --

THE COURT: Whatever your question was equal.

MR. MARTIN: Well, that's right. My question was, Do you believe Heather would have shot him unless it was in self-defense, and I think the reverse is, Do you believe David would have ever had attacked her with a knife.

THE COURT: He's right about that.

MS. LIVESAY: That's true. I can understand that. That's reasonable.

THE COURT: So can we agree that you can ask her -- not agree. The objection is there, you cannot ask anything that causes her to reply on what she was told. She can't go into "crazy," because that is not proper.

MS. LIVESAY: I understand that. I think she knows that, but she can say I feel like he was going to kill my son.

THE COURT: If she wants to. I mean, if she feels -- this is a mother's loss. As long as nobody told her that, and I don't think listening to her, I think she had -- if she had a feeling, she had a feeling, that's just the way it is. And I understand you object, but, look, here is the problem, if you get into that other stuff, it is a mistrial.

MR. MARTIN: Let me tell you, Judge, and I'm telling you, I don't doubt they don't want that.

THE COURT: I'm not giving it to them.

MR. MARTIN: I hate to say this, but it is true, you bring that jury back out here, there is no telling what is going to be asked, and no telling what is going to be said, and I want specific questions, specific answers right now, or we're running a heck of a risk.

THE COURT: I know we're running a heck of a risk, but I have to treat you like adults and attorneys, and if you ask a question, I'll be listening real careful and I'm going to have to stop. I hate to do it. He don't want to do it, and I don't want to do it.

WITNESS: See, now I don't know what I'm supposed to say.

THE COURT: Me either. And, you know, me and you are sitting up here looking at them the same way.

MS. LIVESAY: Give me some time to talk to her.

THE COURT: I will. Look, I hate to be so mad at you all, but you have to shut up, just shut up when the other person is talking. Take five minutes. Let me make sure.

(A recess was taken.)

THE COURT: You should order a copy of the transcript and read how many times you talked over

each other, interrupted me, interrupted each other. In fact, it might be ordered, so you get to type this transcript after all. But the rule is she can come up -- you cannot interject in the last witness in reply to this sudden issue of him moving back. She can't testify about that. She can testify about what she told her husband. It is close, but it is proper reply because what the defendant testified to, but she cannot testify about anything that requires her to gather that information via hearsay, period. I have mistried criminal cases during closing arguments. You need to look at the rule about what happens if the mistrial is as a result of the State. You just -- just making you aware as I can be, and you need to read the civil contempt rule, because I'm going to start charging a fine every time you talk over me or each other, and that is not a joke either. He's looked up the rule, I have it right here. I'm telling you that now, giving you warning. I don't have to tell you how much. I can tell you about it at the time. I realize I would have to have a hearing later on, but that is fine. Can you do that?

MS. LIVESAY: Due to the circumstances, Judge, we're not going to call Mrs. Sims. We just won't call her.

THE COURT: I'm not saying you can't call her.

MS. LIVESAY: I know, but we think it is best at this point not to call her.

THE COURT: Okay. You are telling me my blood pressure went to 400, but now you are not going to call her?

MS. LIVESAY: Sir?

THE COURT: You sent my blood pressure to 400 over 200, and now you're not going to call her? I understand, it is a dangerous thing to do.

MS. LIVESAY: I just don't want to -- it is hard to get any witness with the emotions flying like they are.

THE COURT: I'm so sorry you had to come up here and proffer. These rules probably don't make any sense to you. They have been a core function of the court since 1750, and they don't make a lot of sense sometimes, but they are here. I'm sorry you had to do that. I would do anything to avoid making you have to testify, and then my ruling keep you off the stand. You can believe that, I hope you do, it's true.

MR. MARTIN: There are some matters to put on the record. I don't know where we are now.

THE COURT: Are you going to call any more witnesses? Is that it?

MS. LIVESAY: Yes, sir, but just for the record, my intention is to show the picture to the jury, just to show this is David Sims.

THE COURT: That picture of her sister and -- that is fine. I mean, I assume you object, but it is overruled. That is fine. God help you, you wanted to be a judge. It ain't worth it (laughing). We still have to redact. Where are you on that? How long will it take you to do that? I know you have to read it.

MS. POP: I'm in the middle of doing this book. I'm not sure about this thumb drive over here, and I'm not sure about that document there, but a couple of hours, but I'll put these ladies to work, too.

THE COURT: Can you do your closing without that stuff? I'm inclined to give you a break and let you get your thoughts, do closing and let us do all of this stuff that has to be done, and charge and let them get it tomorrow. It is not ideal or what I want to do, but I don't know any way around it.

MS. LIVESAY: If at all possible, what I would like to do, and I'll do whatever, I can do tonight, tomorrow, but if I had my preference, I would like it if we could redact all of that stuff tonight, and that way, when we get up here in the morning, there is not going to be an issue, A, about whatever is said out of

the documents, we know we're on the same page. Once we get up in closing, whatever is said, is said. It really can't be taken back. So I would rather for us to be on the same page on what is not going to be said out of those documents before we get up and start talking to the jury. I just know there's been a lot of disagreement up to this point.

THE COURT: Yes there. More than I have ever seen, ever. Ever. In maybe 600 trials, I've never seen anything like it.

MS. LIVESAY: I just know that if I -- there's been a lot of disagreements, even over small stuff, and I just don't want to get up there and say something or have Morgan say something and there be a disagreement about whether or not that was permissible, because once it is said in front of the jury, that's it. I know he plans on taking stuff out of the Cellebrite, I'm assuming. I know I do.

MR. MARTIN: I probably will and -- but I don't know that anything that I would take out -- that I would talk about would be any of the things that I want out, obviously. I've talked to Ms. Pop, there is certain things that most of us want out. It will take time to be sure that it is done. We've worked on -- can we do the closing arguments tonight? I'll do

whatever you want to do, but, you know, I don't know that we accomplished much of that as opposed waiting, unless, you know, you were arguing and charging.

THE COURT: I would have to charge in the morning anyway, because after a long day, they are not going to listen to me read 40 pages and not go to sleep.

MR. MARTIN: Whatever you say.

THE COURT: I think they'll be happy if I send them home, but I don't see any other way because you have a couple hours of work ahead of you.

MS. LIVESAY: My fear is, because there has been -- like I say, we can't seem to really, honestly, agree on, really, anything at this point. I feel like --

THE COURT: I agree with you.

MS. LIVESAY: Okay. So I'm hesitant to jump up and do closing when I know there is some -- I mean a lot of volumes of documents out there and something being said and Morgan jumping and saying, hey, I object to that.

THE COURT: Do you expect you can do all of this tonight and reach an agreement on things tonight?

MR. MARTIN: Well, what I'm willing to do is -- let me say this. I, and we -- what you are talking about, Judge, so you are clear, you have two sets

of --

THE COURT: Oh, I know.

MR. MARTIN: One of them I have looked at. I've had Mary Ashley looking at it, Alex looking at it, and I took to the State a couple days ago what I thought should come out of that. Ginger has that, and I think she's found some additional things that she wants out, which I don't think I'll have any objection to whatever she -- there is just some things that shouldn't be in there. So I don't think that one is a problem. That can be done relatively swiftly tonight.

The other one is a little more of a problem, and there is two problems with it, Judge. The format in which it is printed, it's not a complete document. It just won't print it any other way, apparently. I don't know why that is, but it is. It is -- Heather, you tell me -- I mean Ginger, tell me if I'm wrong, that is the one that is the e-mail search of the word "David" from January 13 to August 13. Now, I objected to that, and one reason I didn't put it in the record is because if you do the name search "David," then you get a lot of incomplete unsequenced, uncontext statements, and I believe that it's objectionable. I really don't know why we want all of that in. I would think --

THE COURT: I understand why she tried to put it in, but if you don't need it in now, I would go in and cut what you want. I'll give you all tonight to do it. I don't want to do it, because I really think when I tell the jury they have to come back tomorrow that they're going to.....

MR. MARTIN: Judge, I'm happy for you to ask the jury, as long as you explain the situation we have.

THE COURT: I would have to send them to dinner and tell them you all go eat dinner and come back. I will tell you this, I bet you everything I own they want to stay here. I don't own that much anymore because it all has been taken. I don't mind asking, but that is the indication I've gotten. They are ready to go. They don't want to go home. They didn't want to go home the other night when we stayed until 10:00. They were willing to stay until midnight or 1:00.

MS. LIVESAY: I can't speak for Mr. Martin, and I'll do whatever. Would I rather close in the morning? Yes, but I am here tonight, so if we're going to do it tonight, I'm fine with that, too.

THE COURT: But you still have a couple of hours' worth of work before you can close.

MS. LIVESAY: Yes. We're working now.

MS. POP: Are these two things the same?

MR. MARTIN: This is the electronic copy of this, so there is two things to work on.

MS. LIVESAY: This is the electronic copy, Judge.

MS. POP: I can't delete off of that. Do you hear me, Nancy?

MR. MARTIN: Judge, what these ladies are telling us, what they got is they got the hard copy, which wouldn't print out in a complete form.

THE COURT: Unless you use a longer sheet, right? Ginger, can't you use a longer legal sheet to print everything out?

MR. MARTIN: Lori says no.

MS. RICHARDSON: Some of them are the electronic version in Word format so you can delete. It is not the same Cellebrite format.

(A discussion was had off the record.)

MR. MARTIN: They tell me that we've been through this document (indicates) and have -- we've marked -- we've been through the second one as well and have the places we want deleted. I'm still scared to death of it.

THE COURT: I understand. I mean, this is a mine field. How do you want me to communicate with this jury? Do you really want me to do what they want me

to do?

MR. MARTIN: I think they need to understand that if they do that, they may get the case at 9:30 tonight.

THE COURT: I don't have a problem telling them that, or we come back at 9:00 a.m. and they would get it probably, realistically, at 11:30.

MR. MARTIN: Yep.

THE COURT: You want me to talk to them, or do you want me to bring them in here?

MS. LIVESAY: I'm fine with whatever you all want to do.

MR. MARTIN: I don't care, Judge. I would just go talk to them. I mean, you can tell them. Obviously, I wouldn't mind the rest, but I'm happy to go forward. Last night was a long night.

(Whereupon, a bench conference was had.)

THE COURT: I mean, looking at the clock, legitimately, by the time you agree to the stipulations, that means they have to agree on a stipulation, too, so you have to work that out. Stipulation means they agreed upon. So that and the redactions would put us legitimately until 7:30 -- I'm sorry, Kay Hearn, it will take us until 7:30. You need to listen. It will be 7:30 before we can start.

7:30 to 8:30 for closing, 8:30 to 9:00, and then reply would be 9:30 before they got this case. To be honest with you, as frustrated as I've been, this is a murder trial, and I don't want to hurry them in their decision, either side. Both sides deserve to have a fresh jury. I don't like it, that's not what I wanted to do. I don't even have a hotel room tonight, but that is okay. I'll bring them in and tell them to be here at 9:15 in the morning, because I'm betting you need more time than you think. We'll argue and charge at 9:15; is that okay?

MR. MARTIN: Yes, Judge.

THE COURT: And you can get everything done, including the stipulation?

Bring them in. I'll take the heat for it. The other thing is there is holes in this exhibit list. You have a lot of work. That is why I'm not making you close tonight.

(The jury enters at 6:19 p.m., and the following is heard in the presence of the jury.)

THE COURT: Well, here is what we have to do. I'm going to have to send you home. Tomorrow morning at 9:15 you will be hearing the closing from the attorneys. Here is our problem. It will -- I would have to send you to dinner because they have 45

minutes worth of work to get everything ready to present, that would get us to 7:30. Then you have three closing arguments, that has this case getting to you at 9:45 at night. I mean, I understand that doesn't sound bad, but the truth of the matter is we've invested a lot of time and sweat and energy and anger in this case, and it deserves having you all listening to it. I really thought we would finish tonight. Everyone said we would, and I really thought we would. We could, but it would 10 o'clock, and you might be here until 5 o'clock in the morning. I've stayed with jurors until 4:30 in the morning, and it is not pleasant, trust me.

So for the last time, I will tell you not to read anything, listen to anything or watch anything regarding publicity in this case. You will get this case at 9:15 tomorrow. They will close, do their closing arguments and I will immediately go into reading to you about 40 pages worth of the law in this case. Like I told you, I have to tell you the law, and at that point you'll begin your deliberations. There is no more witnesses. That is it. You are not going to have to listen to any more except from the lawyers and from me. It is bad English, but you know what I'm saying. So have a good night. I'll see you

at 9:15. Be ready to work.

MR. MARTIN: Your Honor, may we approach one second before they leave?

THE COURT: Sure.

(Whereupon, a bench conference was had.)

THE COURT: 9:15 tomorrow. I'll see you.

(Whereupon, the jury exits at 6:21 p.m., and the following is had out of the presence of the jury.)

THE COURT: Here is what you have to do tonight. You have to agree on a stipulation, or I'll do it tomorrow morning. That has to be published to them before your closing. You have to redact all of this stuff, and you need to get with Natalie to make sure the record is clear. Those are the only three things I have on my list. Can you do that?

MS. LIVESAY: Yes, sir.

MR. MARTIN: I don't know if we can agree on the toilet because you can tell us -- I'm going to write something now, I don't know that she'll agree, and I --

THE COURT: I think it would be correct to say it is stipulated that the toilet was running every four to five minutes and required a shortening -- lengthening of the chain. That is the truth. I know you -- here is the deal. I understand you don't want

to get near anything that puts those pliers and knife near the toilet. I understand. I get it, but the stipulation is that it was running and it had -- I'm trying to get away from "repair."

MS. LIVESAY: If I can, I would rather have "repair" than getting into all of the details.

THE COURT: He said "repair," and you didn't want repair. So sounds like you are in agreement. Write it out, and I'll publish it before closing.

MR. MARTIN: I have it written out right now.

MS. LIVESAY: Let me see.

THE COURT: Go ahead. Like I said, I'm not insane, I expected the same results.

MR. MARTIN: The parties have agreed to stipulate that upon examination of the toilet it did not work properly and that it needed repair.

THE COURT: What do you want to change, seriously?

MR. MARTIN: She says she is okay with that. I thought she did, I'm sorry.

MS. LIVESAY: Here is the thing. If this is -- I do not -- I object to the issue of needing repair. I don't mind upon examination of the toilet it did not work properly, but obviously I want it stopped there, because all I'm agreeing to is the toilet didn't work

properly.

THE COURT: I thought you didn't want the chain stuff, just repair?

MS. LIVESAY: I just want it to say is upon examination of the toilet it did not work properly, period. I don't know why we have to have part two that it needed repair.

MR. MARTIN: Goodness gracious. I'm tired. The reason is that is what we agreed to when I had my witness on the stand, and now it changes.

THE COURT: I thought you did. Here is the deal. It is going to be -- I'll make it as simple as possible. They have stipulated that the toilet was running and needed to be repaired at some point -- I mean it didn't need to be repaired that day. It had to be repaired at some point in time to work properly, how about that?

MS. LIVESAY: If the Court feels like the stipulation should include that it needed to be repaired, I understand. I'm objecting, but I understand.

THE COURT: I think that is just the way it is.

MR. MARTIN: I'll let -- I'll hand it to you.

THE COURT: I never thought I would be here Thursday night talking about toilet chains. Parties

agree to stipulate upon examination of the toilet it did not work properly and that it needed to be repaired. I know you've objected. I'll put that in, that is the stipulation.

You all have to redact and get with her about this stuff.

MR. MARTIN: Judge, when do you want to put my one objection about the video for the record? I'm happy to do it --

THE COURT: Which one?

MR. MARTIN: I objected to any video, and we said we would --

THE COURT: Outside video?

MR. MARTIN: Yeah, that.

THE COURT: We can do it now, put it for the record, because it is in.

MR. MARTIN: It is in, and you said you would hear it later.

THE COURT: You are talking about the video from the outside?

MR. MARTIN: Yeah. Yeah. Yeah. And the objection is that it was introduced in twofold. Number one, I believe in order for it to be introduced into evidence, it had to be done so by a forensic video analyst who is certified under FBI guidelines to

download and to enter into evidence -- evidence that was trustworthy enough for admission into evidence. Specifically, we offered into the record the affidavit of my client, Grant Fredricks, in which he goes through an explanation, which is very difficult for me to put into words, but simply means that predictive images are produced instead of realtime images, and that only one in every 30 images contains fully refreshed information; therefore, only 3 percent of the images accurately represent a single moment in time. Almost 97 percent of the images represent a montage of different moments in time and, therefore, do not fully represent what they purport to show. That is the basis of the objection, and I would move to enter into evidence the affidavit from Mr. Fredricks.

MS. LIVESAY: I adamantly object that going into evidence. We have never allowed for affidavits to go into evidence in a murder case. I have no way of cross-examining this man about anything that he is saying. He's trying to basically discredit the video with this affidavit from someone I never talked to.

THE COURT: I agree. Your objection is on the record. We talked about this off the record. There was discussion off the record -- again, so this record

is correct -- about the entrance, and I decided it should come in even though it is digital and only captures 3 percent, it is a fair representation of what is going on. So you are protected.

MR. MARTIN: I understand, Judge. And the rule -- but, again, until Rule 901 as to authentication, and the rule as to relevance it has not been authenticated under Rule 401, 402 and 403. Thank you.

(Whereupon, the proceedings concluded for November 19, 2016, and the following was had on November 20, 2016 out of the presence of the jury.)

THE COURT: Anything we need to go over -- I assume you object?

MS. LIVESAY: Yes, sir, I do have some objections.

THE COURT: Put them on the record.

MR. MARTIN: First of all, Judge, you have a final format of it?

THE COURT: Yeah, it is what you all have. I mean, we have to argue whether voluntary and involuntary and direct and circumstantial evidence. What is your objection from the State?

MS. LIVESAY: First of all, I have objections to the charges that was submitted by the defense

attorney. It looks like they went through a handful of cases and pulled out a sentence here and there. The State objects to including any of that in the charges.

THE COURT: Which one are you talking about, though, I mean in particular?

MS. LIVESAY: He asked for right to arm oneself if harm is threatened, words accompanied by hostile acts, right to act on appearances, malice, burden of proof, State must disprove self-defense beyond a reasonable doubt.

THE COURT: Don't you agree with that?

MS. LIVESAY: I don't want any of those read.

THE COURT: You agree with self-defense, with the boiler plate language?

MS. LIVESAY: The only issue I have, Your Honor, as to -- the only I issue I have as to the jury instructions you handed us yesterday, before we get to the suggested ones, the first thing I had was that we are reading involuntary manslaughter to the jury. I don't believe there is any evidence in the record that would suggest that this was in any form or fashion accidental. I don't believe there is anything in the record to suggest that the jury could come back and find anything for involuntary manslaughter.

THE COURT: Let's talk about mine now, because I've looked at all of these. I understand, and I assume, Mr. Martin, you want me to plead murder or nothing?

MR. MARTIN: Yes.

THE COURT: I've looked at all of the cases and gone back through my notes. I know you both disagree, but I think both the voluntary and involuntary are in the record, and I don't think I really need to go back through the record. There is testimony from the defendant herself she pulled the weapon up and it just kind of went off. And like I said, I understand you both disagree and the supreme court can tell me I'm wrong, but there are cases that are very specific about if you charge voluntary, you need to charge involuntary if the facts are sufficient. So my charge is murder, voluntary and involuntary, and the self-defense charge, that is in my boiler plate language I think is correct. I went through and read it. There is some -- a little verbal differences, but basically this is boiler plate language. Are we all are agreeing that the State has a burden of proving self-defense beyond a reasonable doubt? I mean, we agree that is the law in this state?

MR. MARTIN: I do.

THE COURT: The rest I understand. Look, I'm going to put them as part of the record. I get it, and if I'm told I'm wrong, that's fine.

MR. MARTIN: Judge, when it is my turn, I want to talk about the ones I handed up to you.

THE COURT: Go ahead.

MR. MARTIN: First of all, for the record, I don't see evidence in the record for voluntary or involuntary manslaughter, but I understand your ruling. Secondly, if you are going to charge those, I ask you charge my Jury Charge No. 1, which is right to arm oneself if threatened by the death of the decedent is an accident, then the defendant is entitled to a verdict of not guilty. Because if you are going -- and that is the case law, McCaskall. If you are going to get into involuntary manslaughter, that is a natural consequence of that that you ought to charge the possibility of an accident.

THE COURT: Okay. Like I said, I understand. I have gone through them all, but you can put it on the record. I think my boiler plate is exactly on point with the law. So, 1, over your objection, I won't charge.

MR. MARTIN: No. 2 is hostile acts, which I believe is part of your charge.

THE COURT: It is.

MR. MARTIN: So I wouldn't argue with you about that. No. 3 is right to act on appearances, which I believe is also in your charge.

THE COURT: That's what I'm saying, there is verbal differences, but it is all in there.

MR. MARTIN: If there is verbal differences, I probably like mine better.

THE COURT: I know you would.

MR. MARTIN: Can I ask you to charge mine?

THE COURT: No. You can ask me. I'm not, but that's okay. I'll make all of these part of the record for both of you, so it is all complete.

MR. MARTIN: Jury Charge No. 4 is malice, burden of proof that the State must prove malice aforethought beyond a reasonable doubt. I would ask that that be charged. I know you've got it in the general malice charge, but I would ask that that be charged in addition. Jury 5 is what you are going to charge, and if not, please tell me now, that is the State must prove self-defense beyond a reasonable doubt.

THE COURT: That is in there. And before we go into it, you agree that is the law, right? Because you object to his charge, and his charge is basically mine. Do you agree you have the duty to disprove

self-defense beyond a reasonable doubt?

MS. LIVESAY: Your Honor, I do not want that in there, because I believe my only duty is to prove her guilt of murder beyond a reasonable doubt.

THE COURT: Right. But when they raise the defense of self-defense, that shifts the burden back to you; don't you agree?

MR. MARTIN: That is the case law, Judge. I mean, that's clear.

MS. LIVESAY: That's fine, Your Honor.

THE COURT: Okay. Okay. I mean, look, like I said, you all put in the record everything you want. I want to be sure the record is clear, because truth of the matter is mistakes have been made and will be made. Yes, sir.

MR. MARTIN: The next one is Jury Charge 6, use of force and repelling force for protecting oneself cannot be required to make a nice calculation as to the degree of quantity or amount of force that may be necessary to defend oneself, we ask that be charged.

THE COURT: And like I said, I'm going to charge mine, but you are protected for the record.

MR. MARTIN: I charge you that the threats of life of well-being of the defendant, the defendant has the right to lawfully arm herself in self-defense, and

that at the death of the decedent is an accident -- that is the one I just went over with you.

THE COURT: Right.

MR. MARTIN: You already charged involuntary manslaughter. Character charge, I ask you to charge under the case of State versus Lyle and State versus Green that the evidence of good character and good reputation may in and of itself create a doubt as to the guilt and should be considered by the jury along with all other evidence.

And, Judge, I have -- I've asked for that and received that charge in numerous cases, because it is clear in the law.

THE COURT: Which one are you talking?

MR. MARTIN: No. 12, good character.

THE COURT: Oh, okay.

MR. MARTIN: I'll hand it to you.

THE COURT: I have it right here.

MR. MARTIN: That is the law, Judge.

THE COURT: Do you object to that?

MS. LIVESAY: I do object.

THE COURT: Why? Tell me why.

MS. LIVESAY: In this particular case, Your Honor, I don't believe this would be an appropriate charge. The only I thing that went into evidence was

that she had a reputation for truthfulness and peacefulness, and I do believe that issue is already covered in the jury instructions we already have. That is covered under "prior difficulties," and it goes into then the aspect of reputation and prior violence by the victim, threats by the victim, and I think that is covered in that aspect of the jury instructions. I do not believe this would be appropriate to add to these jury instructions.

MR. MARTIN: Judge, my argument simply is in every case in which you enter evidence of good character, it is the basic fundamental law of the State of South Carolina that you are entitled to a charge, State versus Lyle, State versus Green, and it is what it is.

MS. LIVESAY: Your Honor, all he's done is taken one sentence out of a case, that doesn't entitle it to be in the jury instructions.

THE COURT: I don't have that case in front of me, but.

MR. MARTIN: I can get it to you in a heartbeat.

THE COURT: Get it for me, and we'll move on and go back to this one.

MR. MARTIN: That is it, Judge, for me.

THE COURT: Okay. What do you want to change in

my boiler plate language?

MS. LIVESAY: The thing I have first is that as to the victim's violent reputation, I don't believe there was any testimony that the victim in this case had a violent reputation, so the State would ask for that to be removed.

THE COURT: Where is that?

MS. LIVESAY: Under....

THE COURT: Self-defense?

MS. LIVESAY: Prior difficulties. The aspect of the charge is under prior difficulties, and it says victim's violent reputation.

THE COURT: That is the self-defense portion. See, it is not numbered, which is an issue. Hold on just a second. I got it. You are protected for the record, but I think that one is questionable and is direct and indirect evidence. There is cases on each side, but I'll let you put your record in, though.

MS. LIVESAY: The second issue I have is under the duty of retreat, under "premises," it says if the defendant was on her own premises, the defendant had no duty to retreat before acting in self-defense. In this particular case, the victim and the defendant were on their own premises, so I ask that it be added that if the defendant and the victim were on their own

premises, the defendant had no duty to retreat, because the victim did not have a duty to retreat either in these particular cases when it is domestic.

THE COURT: I understand why you want that, but she's the only one charged, so I'll leave it the way it is. Anything else?

MS. LIVESAY: No, sir.

MR. MARTIN: Judge, one thing I didn't ask you about. As to your charge, I had read it and I submitted to your clerk the case concerning the charge on circumstantial evidence. State versus Logan is a case which -- 2014, I believe -- that the supreme court recently added that the defense could request and should be entitled to additional language to the boiler plate language you have in your charge, and so I would ask that that be charged as well.

THE COURT: I don't have a problem with it. I mean, I don't think it makes any difference. Any objection to that?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: Okay. So I will charge -- I'll add that sentence to direct and circumstantial. I understand neither one of you are happy.

MR. MARTIN: This is the good character case.

THE COURT: This is Lyle. I think that is the

law. I mean, I'll put that in there. That is the only one I'll add. I'm -- we can't print, so I have to manually put this direct and circumstantial evidence in. Listen carefully, because I'll give you a right to have me correct it. We're kind of hamstrung without the ability to print. I'll bring them in a second, but I have to print one last thing I'll. I need to tell them the stipulation, that is the first thing I'll do, and then you'll open and close, State.

MS. LIVESAY: Yes, sir, Your Honor.

THE COURT: Give me two minutes. Let me find out about this printer.

MR. MARTIN: I'm not clear. They are opening, or not?

THE COURT: I think she said, yeah.

MR. MARTIN: That is what I understood, but I want to be sure.

THE COURT: You are all opening your close, right?

MS. LIVESAY: I'll go last. I'm waiving the first opening on the law.

THE COURT: Okay. Give me two minutes. Let me find out about the printer situation. You all need to really speak up. It's hard to hear when your back is

over there. I understand the set up in the room is different. I'm making this a Court's exhibit, jury charges, and as soon as I read the stipulation, which is the first thing I do when they walk in, I'll make that an exhibit.

Let me tell you -- here is to the people in the audience. Once they finish their closing, we'll take a short break because I have to give them the opportunity to go to the restroom and whatever, because when I start my charge, you have to stay here, so that is just the way it is. You have to stay in the room. If you feel like you won't be able to stay here, for whatever reason, that's the time to leave. You can stay during the closing arguments and, quite frankly, for people who have interest in this, the jury charge is 30 pages long and very dry. As I'll tell them, it is my duty to charge it and make sure they don't fall asleep. That is the problem with reading to people. So I'll give you that opportunity before I begin the charge. Are you ready?

MR. MARTIN: Judge, I don't know that that machinery will work -- we're going to see if it will work anyway.

THE COURT: I've been asked to tell you again that there cannot be any outbursts or conversation

during closing. I don't have the emotional attachment you do, but I've been involved in this and I understand how high emotions run, but you can't make any noise and, unfortunately, they'll make you leave, so don't test them. Do you think it is working?

MR. MARTIN: I think so.

THE COURT: Lord help us.

MR. MARTIN: If it's not, I can do without it. It's not a big deal.

THE COURT: Bring them in.

(The jury enters at 9:38 a.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, you have been more than patient and we've reached that time when we'll hand the case to you for a decision. First, as a part of this case, I want to tell you that it is -- should be considered by you a fact that upon examination of the toilet, it did not work properly and it needed repair. That should be considered by you as a fact. You talked about a stipulation, that is all on the record.

To you, thank you for the Alka-Seltzer, cold thing, I'm overdosing on it now.

The parties have the opportunity to charge -- I mean to argue their case. There is closing arguments.

I told you at the beginning the closing arguments, they should not be considered by you as evidence, but it is an opportunity, just like the opening statements, for the lawyers to argue their position and sway you in their position. Don't consider it as evidence as was admitted through the witnesses or through any of these documents, but you can consider giving any weight you want it to do -- or want to give it.

At the end, I will have to take a short break, because once I start reading my jury charge, we'll have to get straight through it, unless there is an emergency. I told a lot of juries that I've read to people, children and juries, and my children went to sleep, and you all can't. So when you take your break, stretch and be ready for me to read about 30 pages of the law. There is good reason -- for obvious reasons -- that it is read to you. It is the same in every court in the State of South Carolina. It is very difficult to make sure that's correct if you don't read it, so I apologize. I apologize to every jury. I understand how hard it is to listen, but as I told you, and I'll tell you at that time, that is the law you have to apply to this case.

During the closing statements, if you need a

break for any reason, raise your hand, that is not a problem. We'll take a break after the closing statements, so don't panic. Thank you again for your patience. Yes, sir.

MR. MARTIN: If it please the Court. Mr. Foreman, ladies and gentlemen of the jury. I'm told that every closing statement -- good closing statement -- ought to begin with thanking the jury for their attendance here and presence here and willingness to serve on the jury, and I think that is more than appropriate in this case. I never anticipated that this case would last as long as it has, but it has. Your ability to be here each day, set aside what is going on in what I know are busy lives. Everybody has a busy life today in what they do. We live in a fast-paced world, instant communication, cell phones, computers. You can work from home, work from the street, do it all. We have all sorts of data evidence in this case, and to have to sit, as you have, these days and listen to the lawyers ask questions -- well, we appreciate it on behalf of Heather and her family, and I know the State of South Carolina. Thank you very much.

Let me say, without question, this is a most important decision you have coming up, and mine will

be the last words that you hear in the defense of Heather. I walked with her through this for two years and three months or so, and I'm going to talk awhile, and I hope not longer than you want me to, but I really sometimes don't know when to quit.

You know, psychologists tells us that by this stage of the trial 80 percent of the jurors have their minds made up. Probably true. I don't know for sure, but you know the problem with a lawyer like me is you want to be sure you've done all you can, that you've asked the right questions, enough questions, because there is no second chance in a deal like this. Your verdict is final. There is no appeal from your decision. If the judge makes a mistake, he can appeal it. Lawyers make a mistake, it can be appealed. But once it comes to facts, your decision cannot be appealed. You make a mistake, it is a mistake for eternity. It is a heavy burden you have, but by the same token, the law is set up in such a fashion that, hopefully, it doesn't make it that hard for you to make a decision in a criminal case, because unlike a civil case where the scales of justice can be tipped ever so slightly, 51 to 49 percent, and you find for that side, in a criminal case there must be proof beyond a reasonable doubt of the guilt of an

individual.

The judge will tell you what reasonable doubt is and lots of definitions, hesitation to act, facts that leave you firmly convinced of the guilt of the accused, but the bottom line we have putting it is any close call goes to the defendant. I don't think this is a close call, but it really doesn't matter what I think, it is what you think. You know they say there's three baseball umpires talking and one says, I call them like I see it. The other one said, Not me, I call them like they are. And they looked at the third, How about you? He said, They ain't nothing until I call them, and that is what this is. It ain't nothing until you call it. It doesn't matter what the prosecutor thinks happened. It doesn't really matter what I think happened. It is what you think happened that matters.

Another thing I want to say to you that I noticed, if you saw me -- and if you look, you did, my staff, and even my client on a cell phone or iPad, we were working. You know, I said in the today's world they bring up something like "blue Luminol," Google it just like that, what is it, where do you find it. I wanted you to know we were not being inattentive or nonchalant or lackadaisical. I might have them

looking up something for me, and that is one advantage of the world we live in today.

When I started practicing law, we didn't have anything like that. We hardly had a copy machine. It was a different world, but now everything is instant. If they bring up a case, I pull it up just like that. Bring up a term, pull it up just like that. Peritoneal cavity, fingerprint latent, all of that, you pull it up. So I just want you to know that if you saw that, it's because I had someone looking something up for me, nothing to do with inattentiveness or unconcern for what is going on, because I promise you, nobody -- nobody can be more concerned about my client and her family about the predicament she's in. This is a life and death game. This is an all-or-nothing game. They have brought her here and placed her in the shadow of the penitentiary for the rest of her life on the case you got, and it is scary that that can be done. It's scary that that can be done.

So bear with me, and if I talk too long, please don't hold it against anybody. There is so much to say here, and I could have called a lot more witnesses, Ronnie Causey, Sandra Causey, Mike White. They could have called Jim Chatfield. They could have

called the same witnesses, but there comes a time when you have to bring these to a closing, and I think you all probably think that that time ended before it did, but you want to be thorough, and I feel like in this particular case, that unlike a lot of cases, instead of the State bringing you evidence that I had to try to refute, they raised questions that I've had to try to answer. They've raised questions that I had to try to answer.

Now, the problem with that is if that's what they've got, a bunch of questions, they should never ask you to convict that girl. You don't convict people because you are suspicious based on opinions, which lead to speculation. Speculation can never reach that level of beyond a reasonable doubt or evidence which leaves you firmly convinced, you can't get there like that. You can't get there like that. That is not what we're about, and that is not what we're doing here.

Now, I do feel like I have to take enough time to -- and I keep saying that, because I think juries get tired of hearing lawyers talk. I know you think we ask too many questions, and sometimes we do ask the same question over and over and over, but this is my last time to talk to you about this.

They've charged Heather with murder. The judge will do all the charging, but murder is the intentional killing of another person with malice aforethought. And in this case, they claimed the position, from what I can tell -- and, you know, one thing is I still don't know exactly where they are coming from. That worries me a little bit. I'll sit down and Ms. Livesay will get up and ask a bunch more questions and put her spin and interpretation on what is said or what the facts are, which I think sometimes her interpretation is a misinterpretation. But it seems to me that their case is that Heather shot and killed her husband for insurance money, that's all there was to it, that she set out on that plan months, years in advance, had carried it out on August 11th right there in her own home. If that weren't the idea, there is no reason to introduce the insurance policy, and I'll talk about that policy in just a minute. So that is where they're going. Not that it was anything but murder, and they say, We'll prove to you beyond a reasonable doubt each and every reasonable doubt that the defendant is guilty of willfully, feloniously, premeditatedly and with malice aforethought shooting and killing David Sims.

Let me say right now. The loss of the life of

David Sims is a great human tragedy. I can't imagine the immeasurable pain that his family suffered to deal with that. You know, words don't talk about that kind of thing. I feel embarrassed to even talk about it here, because I know I don't have a clue. At the same time, maybe to a lesser degree, maybe not, Heather suffered the same loss in this particular case. It is a great tragedy, what happened here. Of course life is full of great human tragedies, unnecessary things. But to compound the tragedy by convicting Heather on the case they brought you would raise the tragedy to, again, a place that it doesn't need to go.

Now, the judge is going to charge you voluntary manslaughter, involuntary manslaughter, a bunch of terms like that, voluntary manslaughter, international killing of another human being and malice aforethought for an official legal provocation, whatever that means. Involuntary manslaughter is accidental or negligent killing of another individual in doing an unlawful act. He will get into all of this. This case is neither one of those. I don't think they should charge it. They said she murdered him cold blooded for no reason other than insurance money, and they accepted the burden of proving that to you, and they haven't done that, and I'll tell you why. I'll

tell you why.

The last part of the law regarding this is we raised defense of self-defense. Everyone really knows what self-defense is, because it is genetic in you. Everybody has a DNA of self-preservation. It is the most basic of human instincts. You strike at me, I'll attempt to defend myself. Everybody has got that. That is why it is a defense. You cannot place a person in fear that you are going to kill them, or even seriously injure them, without them having a right to act with enough force to prevent that from happening, and they don't have time to reasonably calculate every matter that comes in there. The elements of self-defense are -- the classification of that is that you are without fault in bringing on the difficulty; that you are in fear for your safety; that the fear is reasonable. If people aren't at home, there is a fourth element of you need to exit, if you can, to avoid it.

At home -- if you are at home, as Heather was, you don't have the obligation to retreat before you act. That's important, because she was here. Our position, we believe the testimony is, that Heather didn't have that opportunity. Now, I would assume Ms. Livesay will tell you -- based on the questions she

asked -- Heather should have left. She had him in the bathroom. She could have got to the door. She should have turned her back and left. Of all the charges, the judge will charge you specifically that you do not have to take any action which may further increase the danger to you. You have the right to act. You have the right to act on appearances.

Listen. Listen. I've tried many self-defense cases where there was no injuries at all, none. No injuries at all. Generally, if you wait, it is too late. If you wait, it is too late. Do you remember Werner Spitz, who I will talk about, I had introduced the picture of the individual who had the self-defense wounds on the arm and scratches on the face, and it is in evidence. He said, Well, that guy died. He did, apparently, because he couldn't defend himself. That is what this is about, and in this case, self-defense is the defense. It is the justifiable reason that we're here.

Now, I want to go through with you -- FiFi, if you can -- I'll try to show you pictures. I'm not good with technology. We don't have a lot of it, and I'm not going to spend much time on it. If this thing don't work, it won't slow me down one bit, because I'll move it and tell you what I want to tell you what

I want to tell you, and then it will be the last time I tinker with a television in the courtroom, but maybe it will work for me, so we'll see.

If we can go over those photographs now starting with No. 1. I want to tell you what I believe the story of this and the way it goes. Number 1, who are we dealing with Heather? What kind of person is Heather Causey Sims? I submit to you she's the real deal. She's the real deal. She wanted a child. For this child, I have prayed and the Lord has granted the desires of my heart. According to the State, she was plotting this murder when she fixed that nursery. I don't know, but I'm telling you with nobody looking, no one telling her what to do, this is what that girl did. This is what she did in her nursery. You heard the people come and talk about her. You could sense and feel the depth of the knowledge and the compassion that they have for her. She worked. She worked. She did this, she did -- what did Katie Brim tell you? She is what I hope my child will grow up to be. I can tell you, I've never been happier to stand in a courtroom to try to defend somebody.

I told you at the start of this trial November 9th was a day you should write down, and you probably believe me now if you didn't believe me

then. But that is the day I was sworn in as a lawyer. Lawyers catch a lot of flak, and we deserve a lot of flak, Don't scream, call Akim, and the whole nine yards. But I tell you, there are times when people need lawyers. There may be a time when you need a lawyer. You know the State, they got something from somebody that said the day after this happened, You ought to call Morgan Martin. I think that was intended to say, well, they are thinking about getting a lawyer, they did something wrong.

Let me tell you. She did need to call a lawyer, because they have come after her. They -- I called it in opening statement, they came after her with the entire government apparatus, the entire government apparatus. The funny thing is that Horry County Police Department, they've been up here, called some of them, didn't call some of them, but they've come up here and they have -- SLED, they didn't call the SLED lady, and I'll talk about that in a minute. But they have computers, cell phones, e-mails, texts. They questioned old boyfriends from tenth grade. They have done everything in the world they could to find some evidence to show you that this was more than what it was, and they have failed. They have been after her, and there is times I believed this is bordered on a

persecution as opposed to a prosecution. Be that as it may, she's had no choice but to defend herself.

Go to the next one.

I have this picture here because it has the kitchen sink and the baby bottles there. She's washing baby bottles getting ready for tomorrow. You heard all of that. Got that nursery, getting ready for that baby, and they claim she's already decided, I guess, this is the day that I'm going to kill him for no reason.

Go to the next picture.

And at the same time, I put this in there. There is a blow-up of that photograph in there. Again, I guess, Five Love Languages. She bought that book in the last couple of weeks. Five Love Languages, that is what is on her nightstand the night before and the day it happens. They may well tell you -- and I think I heard them say -- that was a part of a very clever plan of hers, and she weren't interested in saving the marriage or doing any of that, she was interested in killing him and making it look like she was going to counseling. Really? Really? Really? Go to the next one -- back to the first one.

This one, again, I want to show you, because I think this begins to show that this -- Heather's

statement to the police about what happened is totally consistent with what the police found when they got there, totally consistent. And that is important because generally if someone is lying about the way something occurs, there is a big red flag somewhere that she's wrong. They told something that ain't right. Something really don't make sense. It is nothing about where was a cell phone or hiding a towel, it is big deal.

In this case she told you that they were in the bathroom. He came after her, she backed out here and he was somewhere near the threshold of the doorway when the gun was fired. You have all the pictures there, but this one let's you see the things that are consistent and the things that allowed Dr. Kim Collins to tell you she believed it is consistent. There is the shell casings found in this chair, which ejected out to the right. The blood starts just inside the door, backs around that corner. The shot did go straight through that door and into the tub, all consistent. Phone charge is plugged up there in the bathroom, water in the tub, all consistent with what she says happened.

Go to the next one.

Again, there is the bathroom. You have the

charger there. You have the gun where she said she laid it. They have the cell phone there. You have the towers over here at one time. Big question is the towels. She hid things. I don't know what they are going to say. She hadn't told us what they are going to say. The case is almost over and they are still trying to figure out what they are going to tell you, in my opinion.

Now, this is all consistent with what the girl said both on 911 and here, and so I don't forget, because I forget a lot of things I want to say. The gun, the gun is here. Part of this case is parsing the words of Heather. Tried to stab me with a wrench. Got you, you lying woman. Well, is that the truth? Just to show you now a couple of things that I think are important. If you want the nuance and split camel hairs like that, DelPercio -- Officer DelPercio told you he moved the gun, and then put it back. Probably did, and that's fine. He also wrote in his report and told you when I moved the gun, I took photographs. I moved the gun back and took more photographs. He tells me upon cross-examination -- which is a great finder of the truth, by the way -- that that was wrong, he did not do that. He did not do that. That he believed that he did not take a picture after he

removed the gun and wrote it in the report, remember, and it was on the wrong line and trying to space it, and that is okay, because everyone does make mistakes, but they are trying to hang Heather with that kind of business. He's done it, and he's not in the frantic, emotional situation she's in. He made a mistake. He wrote it in the report wrong, that's it.

Another thing. Scott Thompson, Deputy Pavlick, two EMS people that came there, they told you that when they saw them, they left, I talked to them a few weeks later trying to find the gun, and they thought the knife was in his left-hand. They tried to crucify Heather about exactly where was the knife. Did you possibly move it? Was it inches, foot? Those people who come after the fact get confused about what the facts are.

Go to the next one.

Water in the tub. Sitting on the tub, texting with my mom, you know, charging the phone, cut the water off. It is consistent with what the young lady said happened, and that is what these are.

Is that the last one? What else -- I'm going to go through these pictures so I can get the thing out of the way. Go to this one. I have to jump around and talk about the cell phone. A lot has been made of

the cell phone, as if that is evidence of her guilt. I'll tell you, again, that is no evidence of guilt upon which you can convict someone of hunting raccoons much less murder. It is another question they raised. I told you they would raise questions, and I'll try to answer them for you.

If you remember, the police officer said -- both Ms. Domogauer and Mr. Cestare -- they went back that night and searched that house, every drawer, every nook, cranny, everything. They didn't find David's cell phone. Of course they didn't make any notes about that. There is an old Chinese proverb that the palest ink is clearer than the best memory. I have no notes, no phone, but they remember now. It's not put anywhere, but they remembered. Well, what they find out later is that Ronnie Causey found the phone right here the next day. Heather got it, and we'll talk about that. Then, when the police come back on Friday, Ronnie is there. He talked to them and gives them the phone because now they are asking for it and tell them this is where it is, and they took a picture of it.

Think about this. Heather told you she didn't have any old cell phones. She didn't have any old cell phones. That is the phone. That's the phone.

There is a good chance it is the phone. I mean, I can't know for sure. You can't know for sure, but think about it. Isn't it strikingly strange that his phone was in the drawer that they said they saw a phone, but it was an old phone, they didn't take a picture of it, they didn't document it, that's the phone in all likelihood? That doesn't really matter one way or another in this case, but it is one of those things. I'm telling you, they are making mistakes all along the way, and that is where you come from.

Another thing is the wallet. Ms. Domogauer testified that these things were in that sock drawer, not a word about the wallet, and then took a picture, and from there she gave them to the coroner. I don't know whether she did or didn't. I know one thing, police apparently -- driver's license, put it back in the wallet, put it all in that drawer.

Think about this -- and there is chaos in a place like this when something happens. You see the video and all of the EMS workers going out. There is nine of them. Nine of them trooping out with Heather when she went. Police officers everywhere. At that point in time, this is not a bathroom. I don't know if anyone thought -- and I don't think they did -- the

phone had anything to do with anything. Wouldn't it be just like anybody to take the phone and wallet, put them here in this drawer, and somebody move it? But Heather was gone. Now, I only thing that up because, again, they are making a big deal about it.

Now, this is what you call evidence. This is what you call evidence. Whose DNA, blood and touch, was on the knife? It was David's. Whose DNA was not on the knife handle? Heather's. They specifically checked that. They specifically took her DNA. And she did -- that night, got her there, consent to search my house, I don't need a lawyer, I'll talk with you, here is my DNA. They got it and checked it and this was going to be proof who had the knife. David had the knife. David had the knife. Did they bring that evidence to you? Their SLED agent? Who had to bring that to you? Is that important? They didn't want you to know that.

I don't know what the theory will be, well, there is two knives, she wiped off a knife, put another knife over there, wiped her DNA, turned the knife over, wiped her DNA, but his on. I mean, if you believe in Santa Clause, you can believe in anything. But we aren't here with Santa Clause, and the Easter Bunny is not going to hop through this courthouse if

you sit here 'til Easter day. This is evidence.

Werner Spitz is the height of speculation, if not deceivable, and I'll talk about that in a minute. I wanted you to see that. I think I'm through with my slide show, even though I could show you a hundred, and you would be happy to see them.

As soon as she can, I'll have her move it out of my way.

Again, it's consistent with what Heather said happened, that's the point I'm trying to make to you. Let's talk a little bit about in this case what was the evidence, or not the evidence. In our opinion, we are the ones that brought the facts to you, okay. First of all, I'm going to talk about it. 911 call, and you have it into evidence, okay. You will be able to hear it and rehear it, for what it is worth. What I would say to you is, you don't have to look much further than that and the DNA on the knife handle to find her not guilty. She is, without a doubt, frantic, hysterical, not in control of all of her mental or physical faculties at that time, and it's there. You can hear it.

Now, they are going to nuance everything that is said. In there they pick out she said "wrench" instead of "knife." I think that is understandable in

the scheme of what was going on, and when you took all what she said as a whole. They'll say there is evidence in there that she's, quote, wiping the blood. She is thus, then, manipulating the scene. She's embarked on her efforts, I guess, to stage this deal.

One thing nobody ever mentioned yet is -- and she said she did, and she told you why she did, or thinks she did. I don't know if she remembers today everything that happened that day. What difference does it make? What difference if there was a spot of blood on that door that DNA proved to be hers or in David's in this place where it happened? It doesn't make any difference. Didn't hide anything by doing that. And then Ronnie, somewhere in there it says that her daddy comes and he says wipe the blood off the door. You listen to that. You can hear that, I think, I don't know, it is hard to hear it, but there is a word before. You can hear her dad telling her right around that time, before and after, don't touch anything, don't wipe anything, it is a crime scene. See, there is a different perspective people have. To Heather, that is not what this was. That is not what this was. Her dad had enough police constable in him that he's having these thoughts, but she's not worried about all of that. She's like Scott Thompson, the EMS

person, would be if they thought there is a chance to save a life, they are not worried about touching the knife or smudging the blood, this or that. They are worried about saving a life, that is what Heather was trying to do. Their nuance of picking statements and words and things out of context trying to contrive a story, it is a dangerous, dangerous story.

Heather's statement, again, is consistent as it can be. Now, you've got it in there if you want to listen to the hour and 36 minutes when the police officers took time and questioned her as hard as they could. If you read it, is there places in there where one time she says, I possibly moved it and the next time, I moved it? Probably so. But put yourself in that position. You have -- is it possible? You heard the question, Is it possible? Was he up against the wall, and is it possible you moved this -- I mean things like that -- where was the knife. It's hard to do all of that, but there is one thing for sure. There is a consistent theme and story, very consistent theme and story, about what happened, and in spite of their best efforts to get her to say something different, it was a blur. If any of you have been through -- and maybe you have or haven't -- but if any of you have ever been through an emotional, traumatic

situation, anything like what she did, and your breathless and you sit down after that, you don't know exactly everything that was said or done. Your mind is not a video recorder that does it that way, and that is just a fact.

They try to say it is not. It is demanding too much of anybody. Her story was consistent throughout, that he came to work on the toilet, and the toilet needed working on, the judge just told you that. They got into it. He turned on her with a knife. She got the gun, I'm scared, David, stop, don't do this. He was in a way I've never seen him, in a rage. I backed up, backing up. He lunged at me, and I shot him. That is what she has said from the beginning to the end, and she has been questioned over and over and over. That is another thing, she got on the witness stand to testify, and she didn't have to do that.

I don't think they proved her case. A lot of times lawyers don't put his client on the stand to make them prove their case. Any time you get on the witness stand, you get a good lawyer like Ms. Livesay, and you are nervous. Do you think Heather was nervous? How would you feel? How would you be? Everybody watching them, lawyers working two years to trick you. Every word you say. She got up on the

stand and told you the best she could what happened.

This DNA evidence, I just went over that. Again, one thing I want to tell you, if they come up and talk about this weren't there and that weren't there, we saw blood here, didn't see blood there, this and that. Once Heather left there, they are in charge of that crime scene. You don't think they would move something, smudge something, wipe something off? Yeah. They are human like everyone else. Don't try to put all the responsibility on her for everything. What we do know is the DNA evidence speaks so loudly that I can't hear you when you say he didn't have the knife. That is why they do that. That is why we have DNA. Seems consistent.

I think the autopsy report is in evidence and you heard both -- I mean Dr. Collins testified that in this case that the -- obviously the position of a body has a lot to do -- if you and I are standing here one-on-one and I turn like this or leaning like this or like this, all of that will have something to do with angle through the body. If you are here, here, here, nobody knows. Heather doesn't know exactly what happened. Nobody knows. But this is, by in large, extraordinarily consistent with the facts that she says happened, which is, he's coming through the door,

she's in the bedroom, she shoots, it goes through and again -- again, extraordinarily consistent, if he lunges at her with a knife in his right hand, is his body not twisted in this manner so that a straight-through shot comes out the left side of his back and into the tub? That's the kind of thing they got to get her on if she were lying, but she's not.

Body slumped a little bit and might have something to do with, angle, crouched a little bit, you never know. The bullet did -- I did my best to get things in here to help discover the facts in this case. We have a diagram over there that measured at the foot and angles, this, that and the other. It is extremely consistent. You get it back there, look at it as to what she said happened. The bullet drops to some degree, but we don't know exactly what angle it was fired from, and it's consistent. If it weren't, they would have brought someone to tell you it weren't consistent.

Dr. Spitz, the reason it got to a jury is the opinion of Werner Spitz. Opinion is an opinion, and it is evidence. It is all the evidence, frankly, that they got, that this was anything but what exactly what Heather said it was. So let's see how credible Dr. Werner Spitz is. He don't know the difference

between minimal fat and minimal fat stranding. You probably do now if you didn't before. I didn't either. I didn't think it made a difference. Dr. Spitz, I don't know if they have his 9-pound book in here or not, but he is an older guy, and there might have been a time when he knew what he was talking about, but it's passed. He's become a rental witness, where he runs from state to state living off his reputation testifying in cases, and that's okay. But let me tell you, there is an obligation to know what you are talking about, as Dr. Collins does, and number two, that you tell the truth. His testimony is here. You remember him walking down with that knife and he had it just like this, strutting back and forth from one end to the other. How deep did he say that wound was? 3 millimeters. 3 millimeters. Now, are you sure about that? Yes, I am. Are you as sure about that as your opinion that the wounds were self-inflicted? Yes, I am. Okay. 3 millimeters. You know what, they weren't 3 millimeters. 35 millimeters, inch-and-a-half -- inch-and-a-third, inch-and-a-half. Now, someone can say that ain't a big deal, it is superficial. Well -- well, it is a big deal now. It is a big deal for two reasons. Number one, it is an indication that these wounds

weren't self-inflicted, that the stab wound was that deep. No. 2, it is an indication that Werner Spitz was offering an opinion that it is not worthy of belief. When Joshua Tew testified -- and there is a picture of that in evidence, which I should have put on the screen. I can walk through and find every one of them, and I guess it would take more time than you want me to take, but you took at it. Joshua Tew testified it was 35 millimeters, and he had on the computer and showed where it was. You can measure it. It wasn't in the original medical records because Dr. Michael Brown, who the State could have called to refute if they wanted to -- you ain't seen him because it is 35 millimeters.

Three, according to Dr. Spitz, and 35 according to fact. They put him up here to testify. They've had those medical records since before I had them. They could have got a radiologist to read them. Dr. Spitz just got a radiologist to read it for him before he got up here and testified to a falsehood, which was his opinion. Can you convict her with evidence like that? I hope not, because this is a scary world if you can.

Another thing, Dr. Spitz offered three opinions in this case. One of them was a 3 millimeters wound.

He's wrong. He's only a thousand percent wrong, only a thousand percent. He offered an opinion -- another theory of theirs when they got a hold of him was that Mr. Sims was on his knees when she shot him in an effort to make it all the more sinister. They abandoned that theory when we got talking about it. But he offered an opinion in this case in a sworn affidavit to cause this angle, 20-degree angle, which no one said it was 20 degrees but him anyway, and he didn't do the autopsy and he didn't talk to the doctor that did. The shooter was upright. The victim was down on his knees. This is evident from the reenactment and the blood spatter on the back of the legs, WS.

It took a long time to get it out of him, but he finally admitted on the witness stand that that was wrong. So there is two of his opinions that we know, and we don't have to speculate were wrong. He's got one more, self-inflicted. Upon that, they can jump up and down and run around this courthouse and stand on their head and throw snowballs in July about where the cell phone was and where this was and, you know, this text message and divorce is not an option, that is the only evidence they've got, and it's not good evidence. It's not worthy of belief. He didn't even know where

Heather was stabbed, chest, abdomen. It is sad in a way, but it's scary that he would get up there and say those things. Scary. Scary. Scary.

I hate to the tell you I've got more, that is some of the same stuff there. Let me talk about the questions, and I've been talking for 40 minutes here. Again, I apologize if I talk too long, but I'm scared to sit down, that is all I can tell you. There was a judge that used to tell the jury, Billy Graham can't keep people's interest over 15 minutes. If you are better than Billy Graham, keep talking. I don't think I'm better than Billy Graham, but I have a lot more of dexterity than most of the time when he was preaching.

I don't know if they claim if there is two knives somewhere, she hid some of them. I have to cover this, because when I sit down, I don't get a chance to come back and straighten out anything. I hope between the 12 of you, if there is any misinterpretation going on, you can straighten them in your mind.

How did they explain David's blood on the knife, David's blood, David's touch DNA? Remember what Adrienne Hefney told you, you wouldn't necessarily get DNA by picking this up, but if you grip something and hold it, cut yourself, stab yourself, if you do that kind of stuff, that is when you are likely to leave

DNA. Whose DNA was on it? I don't know, but the question was, well, she hid the cell phone, she hid a towel and then a second knife. There is absolutely no proof of that. But those are the questions that they brought up that they've tried to answer, and I think we tried to answer the cell phone for you.

Again, you know, in hindsight, in the best of all worlds, it would have been better if she didn't try to use David's cell phone, but you have to remember, at this time Heather weren't arrested for anything until 12, 14 days later. The police left uncontroverted at 1 o'clock that morning, told the Causey family we're through, it's yours and suggested you ought to clean it up. Didn't say anything about don't touch this, don't preserve this. If you see this, bring it to us. They had it, and according to them, they searched it inside out, every drawer down to the washer and the dryer, trash can, the whole nine yards. What we do know is the evidence -- there was no inside video, and we wish there was, but there is an outside video camera, and we know from that -- they played portions of it -- but Heather did not leave after this occurred. Nobody went out. Her dad came in, walked out talking with the police. Her mom came, got the baby, you saw that. The police come, nobody is

slipping out of that house. Whatever was in that house, was in that house unless, again, you have the most brightest of imaginations that somebody managed to get something out. It just isn't true. You can tell from Heather's voice she's in no condition to be manipulating, plotting, hiding because she don't have to. There is none of that to do.

She got the phone two days later. She called Apple, and this stuff is confusing, but I don't understand what you can do on a computer and stuff. Apparently, with an iPhone 5 you can -- if you don't know the pass word, you can't get into it. The police can't get into it. Apple -- Apple can't get into it. You have to reset it, and when you reset it, whatever is on the phone is deleted, or to borrow one of their favorite words in trying to twist this thing, "wipe it." She wiped the phone. She didn't wipe the phone. She had them reset the phone so she could use it.

Then there is evidence that she went on the computer, and they say that she was trying to hide something to get into David's e-mail account, iTunes account, whatever those things are. She explains what she was doing there, I was trying to get the stuff back on the phone. One thing they didn't tell you, they didn't tell you anything that she deleted out of

any of those computers in an effort to hide anything. You cannot -- you cannot base a case on such speculation.

The misspeaking of 911, I talked about. The wiping of the blood, I talked about that. The gun in the drawer. Okay. Well, we don't understand -- essentially saying it doesn't make sense, and we don't understand that the gun was taken off to -- out of the drawer and put in the bathroom drawer. Well, some people might say I wouldn't have done that, other people might say I would have done that. Somebody would say you wouldn't under any stretch of the imagination move that gun because a four- or five-month-old baby was beginning to scoot or crawl, he couldn't get into it, and if he could, he couldn't get into those latches. Well, everyone is different when it comes to that. I can tell you that especially the older I get, the more I worry. When I was younger I don't worry much. I was invincible, as they might say. Life has taught me that odd things happen, and I've always been scared to death of guns, and I never wanted a gun in my house when my kids were little. To this day, I have now for the first time in my life a grandchild who is young, and just the mere thought that he might get within 10-foot of a gun if something

happened had me hiding everything I could find by the time he could.

But for whatever reason, she explained I moved the gun because I thought it -- go ahead and do that, it was a safe thing to do. We close that door. The dog likes to get in there, and we close the door and thought it was a safe place for it. Those are in the text messages. Oddly enough -- how would you like to have every text you sent for the last five years, every text and e-mail you sent for everyone to look at. You know what, the worse you saw, the worse they could find is a statement in a conversation with someone that divorce is not an option. Remember she mentioned that to you in opening statement? I guess that is the supremacy of the case, because Heather text someone, Divorce is not an option. But did you hear the rest of what she said? We have to sort this out. This should be the happiest time of our life.

That wasn't brought up. That wasn't a literal statement that divorce is not an option, I will murder him first. You see what they are doing? Is that fair? It is a literal statement, you know. That is not an option. I said that to my children a lot, and the next day it became an option when they did what they wanted to do. I probably said to my wife at some

point in time, Divorce isn't an option. You know, we say a lot of things, and all of you have been in relationships, you know that sometimes arguments can go from 0 to 60 in three seconds flat. That is not evidence. It is out of the question. That is another question. Too many questions. They are providing no answers.

Talk about fairness here. When they rested their case they wanted to leave you with the impression that Heather was at the hospital after they questioned her -- or while they were questioning her, or whatever, that isn't clear to me and doesn't make a bit of sense, when that picture was taken, but the one thing we know is Heather didn't have her cell phone. The phone you see in the picture is her daddy's cell phone. He weren't in there when the police were talking with her. He had his phone texting with Robert Shelley and calling Star Godwin to say Heather wouldn't be at work the next day. None of that is a big deal, but they raised it, so I felt I had an obligation to understand what was going on there. So what was going on? Amy Richardson told you, I called Heather's mother, who then tried to reach her daddy and say they are posting nasty, bad things on Facebook, you all need to do something about it. That

is why Heather, after they've interviewed her, is having -- she's not surfing Facebook to check and see whose changed their profile picture, like Shawn Lockamy must have done. Maybe she shouldn't have messed with it, but her mama, friends said you need to do this, so she's trying to find the password. You can see on the records, and they introduced that day where they are sending the message to her phone, This is your pass code. You know one of the most aggravating things with computers is? You have to know your passwords and codes. I can't remember them to save my life. I had to change my computers in my office about two weeks, but I couldn't remember the password to my office computers.

Eating a sandwich, nibbling on a sandwich. I called Chrissy Wallace to answer that for you. What did she tell you? Heather was required to eat before they would discharge her. Evidence of her guilt? No. Evidence of her nonchalance? No. Just another question and, frankly, not a fair question; that is what is sad, not a fair question. Again, Adrienne Heafny, who called her to testify about DNA? The DNA on the pants of Heather's knees was hers and David's and simply indicates she was trying to perform CPR. There's been -- I don't know if they have attacked

that directly, but at least indirectly and probably will attack it after I sit down. She wasn't doing CPR, because that doesn't fit within the scheme that she would be killing him for life insurance, because you don't want him to make it, do you? But she's doing CPR. She's doing CPR. She did CPR -- let me find it. Ah, I did find it. She did it until she rubbed the skin off of her toes, like Scott Thompson told you that he scuffed his shoes in CPR. Did she self-inflict that? How about the bruises on her knees, on her knees up and down, up and down, frantic, maybe bumping the door? On her arm? Well, she's lying because she doesn't know how they got there. Ever bruised yourself and not know where it came from exactly when you see it.

Another thing, did you see bruises on her that night? Of course doctors and experts have testified about it, but you know from your common knowledge bruises show up at different times on people, in different ways, in different things. All I can tell you is it happened sometime that night in the altercation.

Another thing, if this is what they say it is and she intended to kill him to collect life insurance, or just because she hated him, whatever, why did she just

shoot one time? There's two bullets, if you really want to see someone dead you can shoot more times and plan. You know, in most self-defense cases people shoot four, five times and that becomes a question why you shot so much, why. Why didn't she shoot again? That is not what it was. She shot because she was scared. She shot because in that moment that self instinct of preservation happened, and the gun went off and David died.

Again, we talked about this, because a lot of questions was asked why that gun, why Mike white, that kind of thing. I don't know what difference it makes, and maybe we'll find out, but that is the kind of thing we're talking about.

Dr. Tew explained about the depth of that wound, fat stranding, how close it was. Kim Collins told you how close this was to real trouble, real trouble. But yet it was self-inflicted? Now, this is what I told you early, this is Spitz' opinion versus DNA on the knife and consistent with the statement. Kim Collins testified, and I'll submit that Ms. Collins knows what she is talking about.

I've been talking for an hour. Anybody needs a break, all you have to do is say so. I have just a few minutes more I want to share a few things that

need to be talked about. Kim Collins testified about the wound, depth of it, consistency of the angles and that these wounds are classic self-defense wounds. They are not self-inflicted. They are in the place -- where they aren't deep enough. They would have gotten, or at least she thought they were going to get deeper, but in any way, it is self-defense. Spitz' own books have the same wounds. He drew them on his arm. I never could understand that, but he has them on his arms as though you can't see them. You can see them. I don't know what they were doing. Anyway, this is what it was.

Couple other things. Allyson Brown testified, her friend Allyson. Interesting witness. But at the end of the day, she don't add anything to the occasion. She had a few different variations about what Heather, she says, told her in bits and pieces about this, but, again, at the end of the day it was the same thing. One thing I heard was, well, the cell phone went across the phone and David had to get it. I don't know who is in a better position to know that, Heather or Allyson, but I know that that phone is in evidence, and that is a non-skid case on that phone. I don't think it is sliding anywhere much. They want to say he went to get the gun and then when he got the

phone, she went and got the gun to shoot him. Before you can stand before a jury and spin a fairy tale, you can say whatever you want to, but it has to be proven from there, or it doesn't need to be thought about.

The last thing I want to talk about, and I think it is the last thing, life insurance. They produced the policy. That is in evidence. Apparently, that is the reason and motive for what happened here, but again I say to you, the content of the evidence says that's not true. There is texts back and forth in May and June, and maybe early July, I'm checking on life insurance, you need to check on life insurance, we need to get that straight. I want it all in a book. If you get tired of me talking about it, all of these things -- guess what, she deleted those texts. She deleted "divorce is not an option." We found out that 85 percent of the texts is deleted. Everyone deletes the texts on their phone. If they can't find it on the phone, they find it anyway. It is not evidence of anything, so once again, it is a misinterpretation.

They want to say Heather manipulated the scene and I'm saying they are manipulating the facts. Again, life insurance for a 35-year-old young man with a family is what you need. I had to talk about Heather's financial situation and David's situation

since that is the allegation they are making. When you look, Heather did not need life insurance proceeds to live a good, solid, comfortable life. She essentially earned in three, four years what that policy was worth. There is no evidence she knew that the policy was in effect. They can speculate on that, but she didn't know. Ms. Paula came, never talked to Heather about the life insurance. The policy was there on the dash of the truck. You have that picture in evidence, and oddly enough, the police didn't get it.

Police were thinking their way through it a little longer. They would go back and get a little more and go back and get a little more. Obviously, they didn't get what they wanted the first night they were there; they didn't do that.

We talked about the fact that they have a baby now. David has debt associated with his old house, work, truck. Life insurance is a natural and good thing. Lori Rabon has life insurance. I have life insurance. In this case there is no motive. Heather had life insurance. At this point in time, you know, Allyson knew a lot, threw in a lot of stuff there. Threw in that Heather didn't go to ask about the cell phone that day. You know there is a lot of horrible

implications that come up with a case like this, but the evidence says that animosity between the families was instant. What do you do? Do you go? Do you don't go? You are caught between the devil and deep blue sea, you are going to be criticized whatever you do. If you do go, it's going to be, Can you believe that she came to the funeral. In an effort to make this less awkward for everybody, she chose not to, and then what argument do they have? Do you think this was ever off her mind? Do you think there is a day that goes by that she don't think about this? She named her child J.D. , would you name the child after a man you didn't care for and love, a man you were planning to kill for life insurance money so you would have to say it every day of your life? It doesn't make sense. If that was her plan, would you shoot him at your home on Sunday afternoon with a baby in the house, a baby she clearly, dearly loves, prayed for? If she's as clever as they say they say she is, she wouldn't have ever done it. Would you have done it and brought the whole forces of the world down around you where you would be indicted for murder, held up and ridiculed, speculation, can't work? It makes no sense.

They brought the ex-wives to testify. An

interesting testimony. It was his third marriage, I don't know what that means. Some extent that means he has trouble being married. I don't know if it is his fault or the wives' fault. But I don't think it is relevant at the end of the day. They said they didn't have any trouble with him. Of course, by now, he is in the third marriage. They are married, they have miscarriage, build a house and they have a baby -- I don't know. I know that people lose it sometimes. I know that this was an extremely stressful situation, and I think a situation in which resentment and stress and problems had been building up. It wasn't the best for all situations for David. We all know this. They are young, they're in love and I think they do love each other. We put pictures in evidence. They put the picture of David and his sister up. That is a ploy they do while I'm talking to get you to look at that picture hoping to undercut anything I have to say. He was a handsome, young man. He was big, young man, 6'2", 250 pounds.

He lost it. You know, Heather won't talk -- probably nothing more irritating than wanting to talk and the other one won't talk. Maybe he didn't intend for it to go like it did, but one thing goes to another. This is what happened, and this is what the

evidence shows happened. It is just this, just this. Shawn Lockamy got up to testify and she said she does not recall an e-mail that she sent saying that David threw her to the concrete and fractured her foot, but it did have her picture, and she was Shawn Sims Lockamy (sic). I think when I confronted her, she fell into that category of, well, this is my story and I'm sticking to it.

I'm going to close in just a second. I have people reminding me of things that I forgot to say. I know you are sad to do this. I can't remember it all, and as soon as I sit down, I'll think of something else. But, again, the fact that on the day of the funeral that she went to have dinner, Red Lobster, is somehow supposed to convert into absolute -- well, murder. Murder. That means she's guilty of murder. I don't know what you are supposed to be doing in those days, but I think you can tell Heather grieved. She's grieved.

I'll tell you what else -- is put into evidence -- they went to a marriage counselor, and Heather promoted that every step of the way. We entered the phone records into evidence here that on July 24th where there -- you got the text messages that are back and forth between her and -- between her

and David about the baby's christening and changing that. Heather told you, and there is text messages in there, you should see between Heather and David's mother, where she calls or texts her and asks do you want me to change it. If you want me to change it, I'll change it. And then she is calling the prayer network at 7:45 in the morning. She's calling numerous marriage counselors. They are listed on here, Christian marriage counselors on July 24th. They say -- and she's buying books. You know in today's world getting a receipt isn't trouble anymore. We can get receipts from anywhere, any time, anyhow. I did ask her to get receipts. I believe the fact that she's trying to save her marriage is evidence that she did not commit a murder. They see that as she's laying a trail to protect and cover herself when they can't prove a case of murder anyway. So it is an interpretation of the evidence, I guess. But that is here, Five Love Languages on the bed.

We have pictures here of Heather as she grew up through her life. I got them on a disk, but I won't take time to show them to you. They got into evidence. The life insurance text and all of that stuff, divorce is not an option. I say to you it is all taken out of context in an effort not to find the

truth, but to cloud the truth in order to get where they want to get.

I am going to close. I've stood with her for the past two years and three months, and this has been a nightmare. It's been a nightmare for a lot of people, but it's been a nightmare for Heather Sims. She's persevered because she's innocent, and she knows she's innocent. She has raised her child. She loved her child. She's hasn't been able to work. As I told you, she knows she's innocent. She talked to the police, let them tape her when she testified. She's done all she can do. She's done all she can do. I've tried to do all I could do, because I'm scared. I've been coming in this courtroom for a long time, and when there is people like this, I still get scared. I don't know if I said the right thing. I don't know if I opinioned you by saying the wrong thing.

I have talked for an hour and 10 minute, and I'm satisfied you want to quit, and I'm going to. This will be over soon. You will reach a verdict I imagine sometime today, and the only question remaining is when Heather's family goes home, will she go home with them back to her child? Anxious hearts are going to await your decision.

You know, there is an old Indian proverb or story

about an old man, wise man, in the tribe and a couple young boys who wanted to fool him all the time and see if they could outsmart the wise man. They came up with a plan to do just that. They went out to the forest and they captured a little bird, tiny wren bird. They came up to this thought, Here is what we'll do. We'll go to him and we'll hold the bird in our hand and we'll ask him, is the bird dead, Old Wise man, or is the bird alive? And if he says the bird is dead, we'll open our hand and let him fly away and prove he's not so smart after all. If he says the bird is dead, we will crush him to death in our hand and we will say he's dead, you were wrong. So they did that, and the old man looked at them and said, My son, the bird is in your hands. He's in your hand. Heather is now in your hands. Thank you.

THE COURT: Ladies and gentlemen you are going to hear from the State. Do you need a break? We'll take 10 minutes and come back. Don't discuss the case.

(Whereupon, the jury exits at 11:20 a.m., and a recess was taken.)

THE COURT: All right. Everyone calm down. Bring them in.

(The jury enters at 11:33 a.m., and the following is heard in the presence of the jury.)

THE COURT: You'll hear from the State, and then we'll take a break. And I understand you're tired of taking breaks, but that is the last break before I read this to you. Yes, ma'am.

MS. LIVESAY: Ladies and gentlemen, I start every closing with some advice my mom gave me years ago, because I feel it was the best advice she could have ever given me, and I use it every day that I'm doing this job, and that is what is important are the facts, nothing but the facts. When I used to talk to her all the time, she used to tell me all the time, I want to hear nothing but the facts. That is why this case for me is a clearcut murder case, because when you shave away that this woman is a nurse that works in Loris, was a Homecoming Princess in Conway, what you see at the end of the day is she murdered David Sims. These pictures introduced earlier, and Mr. Martin rolled around and let you look at them, these are not facts. Before I came up here, I looked again at the murder statute. Nowhere there did it have an exemption for a nurse or a doctor or a judge or a lawyer. There is no exemption for that. It doesn't matter. When you look at the facts, you see clearly what the evidence shows, and it comes directly from her mouth, and it comes directly from the crime scene.

He wants you to believe all of these people have a suspicion, and I will give you -- in the beginning when you hear the 911 tape you have a suspicion, and that is all you have at that time. There is something suspicious going on. There is something suspicious about this situation, and that is where this case starts. You are suspicious, and that is why police officers further investigate. When you hear Robert Shelley from the stand, he told you I used to be an investigator. You mean you don't just walk up and take somebody's word on their reputation? No, we investigate.

In the beginning all we had was a 911 tape, that is where we start. Yes, it was suspicious, that is why we were further investigating. What was suspicious about that tape? I want you to listen to what I believe -- this is a portion of the tape, it is not all of it. If you want to hear the entire tape, it is in evidence, you can listen to it back in the jury room. But I want you to hear these portions that raise suspicion.

(Published to the jury.)

MS. LIVESAY: You can't deny when she first calls 911 she says, He's coming at me with a wrench. It cannot be denied. Those are the first words that

start this investigation. She never said anything about a knife until after the 911 operator puts that in her mind. Why is that important? Because you don't even know she's cut with a knife until minutes into the call, then she says, oh, he got me, too. He got me, too. But don't worry, it's not bad. It's not bad. That is important, because there is no way -- no way this woman could have known anything about the severity of the puncture wound but that she created it herself. She knew it was not that bad, because she knew how far she had put that knife in. She knew she wasn't going to do anything to really be hurt. That's how she knew it wasn't really that bad.

You heard from an expert and radiologist that said we cannot tell how deep the wound is until we do a CT scan, that is how you know how deep it is. We cannot look at it by the sheer eye and tell how deep it is. But she knew how deep it was. She knew how deep her wound was because she created it. Now, then, you hear later on in the tape her saying, Well, he dropped the knife. Listen to the 911 tape. Where is the knife? He dropped it right there where he dropped it. And then a minute later when her dad gets in, oh, the knife is in the hand. The knife is still in his hand. It went from dropped on the floor, to in his

hand. Then you hear him telling her to wipe the blood off the door. Don't wipe that, stop wiping that, and then a few minutes later you hear, Wipe the blood off the door. Is that enough to convict this woman? No. No. No. And I'm not going to tell you it is. I'm going to tell you it is suspicious. I'm going to tell you that is why we scratched the surface and looked a little further. That is why we were interviewing her in the hospital.

No one is trying to convict her on that tape. No one. That is the mere beginnings of how this got started. When we went to the hospital and this investigation was furthered, what did we see? You did not hear this hysterical woman. When she was interviewed, it was 8:30. Listen to the tape, how many times do you hear her hollering, screaming, being hysterical or even really crying? How many times do you hear that? None. None.

Mr. Martin wants to get up here and tell you you don't know how you would be in a traumatic situation. Well, this woman was cool as a cucumber. Listen to the tape. There is nothing hysterical about this woman. This was an hour-and-a-half after she shot her husband. There was nothing hysterical. Now, he wants you to dismiss that tape because why? Why dismiss it?

Because she's in there talking about, yeah, I possibly moved the knife, uh-huh, uh-huh, while I was doing CPR I possibly moved that knife. And then we were trying to get the story straight. Was it a wrench, knife what was it? Don't know. I'm pretty sure it was a knife. Listen to the tape. It's been awhile.

At first it's I'm not sure, I think he had one weapon, if you would. At one point it is the pliers, at one point it is the knife. Again, can't get her story straight. Can't get her story straight. If it was the truth, you don't have to worry. The truth is the truth. It is on the 911 tape, and it is that at the hospital, but not for her.

Now, I want to talk about that hospital, because that is where we see her wounds. I want to tell you that Dr. Spitz doesn't know what he's talking about. I'm here to tell you I'm no doctor, but I'm showing you for the record State's Evidence 81. Look at that wound. Look at the second cut. It is a hesitation mark every day of the week. I'm not even a doctor and I had sense enough to consult one and say what is this, why is it like that, why is there a lighter wound and then a darker one? She cut herself that first time, but it wasn't deep enough, that was the problem. It wasn't (indicates), um, one more time to

make it bleed a little bit. Look at these wounds. You don't need a doctor to tell you there is something suspicious and squirrely about these wounds. When you consult a doctor, that is when you confirm what this is, a hesitation mark.

Now, this wound right here has got to be the best. This wound here, again, she don't know if it is from the slide, or from the gun. I'm going to submit to you every day of the week that mark is from the slide. In fact, if you look close, you see a little circling right there from the hammer coming back on the 9-millimeter. Dr. Spitz told you that. Detective Chatfield told you that. Are you sure that didn't come from the slide? It look likes it came from the slide. And then, yeah, maybe it did. Jamie Green told you when the slide comes back, if you are not used to shooting a gun or semi-automatic, this is what happened, what happens. They brought in someone, Kim Collins, to tell you this was from a knife wound. Every day of the week this is from the slide of that gun.

When you start looking at her wounds, you see there is something more than just suspicion here. Every single one of those wounds were superficial. They brought a radiologist to try to tell you it is

32.5, it is 35 millimeters, this and that. Everyone in the medical records said it was superficial, everybody. They sent this woman home without even so much as a bandaid. He wants to get in here and tell you, oh, it is 33 centimeters or 33 millimeters. Why is he doing that? Ask yourself, why is he doing that? Why? Because it doesn't make any sense that she is in an altercation with a 250-pound man and she came out with three perfect scratches. None of these even had a jagged edge, and one superficial puncture wound, that is why.

They want you to believe that she was in there fighting for her life, and she came out with I mean three perfect straight line scars. That is what they want you to know. Doesn't make sense. Ask yourself, just because we're in this courthouse doesn't mean we cannot use our commonsense, doesn't mean two people are in there fighting and he hits her three times, perfect lines, and once over the same line. One puncture wound, only superficial. Only superficial.

When we are at the hospital talking to her, what do we learn? Again, this is more than mere suspicion. We have a woman in here sitting with three perfect scratches, and what the doctor saw was two puncture wounds. I can tell you why she came in here and told

you, no, there was just one puncture wound, just one puncture wound. I can tell you that because they had to fix this problem here, State's 76. The medical records -- a trauma surgeon at Grand Strand looked at this woman. She went and had a CT scan done. It is not just some regular nurse procrastination nurse, it was a trauma surgeon who saw two wounds and saw a CT scan.

Why did she tell you there was only one wound? They had to fix this problem there, there is two puncture wounds, but only one wound in the shirt. Only one wound in the shirt even though there is two puncture wounds. I know the problem. I know the problem. Once we picked up the shirt from the hospital after talking to the doctor and talking to her, there you go.

Now, we have a little more. Now, we're seeing evidence that this is nothing the way she said it was. And then when you look closer, there is a deeper problem. If you notice, she said, yeah, then I stuck my finger in the hole. You can listen to any of that testimony again, and so that made the hole bigger. I stuck my finger in it, and that is what made it bigger. She had to tell you that because her wound is only a half a centimeter, which doesn't match this

hole. That is why she had to tell you that. This is not a hole from a half a centimeter, that is not it.

So then they had to tie up that loose end. Well, we know that prosecutor, we know she'll catch that one. We know the police will catch that one, so we better jump in front of it and tell these people I stuck my hand in it and that is how it got bigger. That is all we have at the hospital.

Then we go and look at the house. That is when we start looking for the evidence. We only know -- already know this woman is not being truthful; we know it from the 911 tape. We know it from the hospital. We know it from her wounds, and we know it from her clothes. Right off the bat we know she's not being truthful. She lied on the 911 tape, couldn't get her story straight. For some reason she's wiping stuff down, moving stuff around. She gets to the hospital, cant' get her story straight again, wrench, knife, I don't know, I couldn't see this. And then when -- she's smart, very smart. As soon as she sees she's tripped up, it is all a blur. It is all a blur. It happened so fast, it is all a blur. Then it is all a blur. She's very smart, no doubt about it. But once we see her at the hospital and hear the story, we already know this woman is not truthful. You already

know it. Already know these wounds are not wounds you find in an altercation. No one cuts anybody three straight times, perfect straight lines, in an altercation; it does not happen that way. All the same way, bam, bam, bam. The man would have to be a surgeon to create such cuts, and that is on someone standing completely still. There is no way that in an altercation that man cut her three perfect times, no jagged edges, exact same depth and perfect lines. It is impossible; it did not happen.

So we already know she's lying right from the get-go right at the hospital. We know she's lying. Then you are wondering why. Why is she lying? Why is she creating this story why? Why? Why is she lying? We know she's lying because none of the evidence is matching. But why? When you go to the scene, you see then, really start seeing not only that she shot this man, so we're already halfway there for murder. She's killed him. It is when you go to the scene that you see the malice, that you see the premeditation. That is when you see it. There is no denying from that blood spatter expert that we consulted in the evidence from the scene that this man went to his knees. He leans forward, and then somehow he gets straight back, nobody knows how. Nobody knows how, but all we know

is he goes to his knees, leans over and somehow gets thrown straight back. And they want you to believe in commonsense -- when you think about it, they want you to believe this man was shot, and the injuries, he was shot straight in the chest nothing. It's nothing but a death wound every day of the week. A death wound, shooting to kill. There is no doubt about it. It went through his heart and lung. That is what Mr. Martin doesn't want to tell you about. She shot right through the heart and through the lung, and he immediately dropped to his knees. Think about that. Think about what that looks like. He dropped to his knees, and then the blood starts pooling and dripping on the back of his jeans. He is sitting there on his knees with that blood dropping on the back of his jeans. Think about that. Think about what that looks like. And then he starts to slump over, slumping forward, and then somehow ironically he ends straight back hand above his head with a knife still in his hand. There is no way in hell that knife stayed in his hand. No way. No way. No way when you look at the palm of his hand that he ever -- ever was holding that knife, ever.

Those are the facts you cannot deny. He went to his knee after he grabbed his chest, and we know that.

The reason he has jumped on this poor little Allyson from Conway is because she was confiding in her friend. Allyson said, What did you do when you shot him, and she looked at her and said, He said, Oh, my God (indicates), and grabbed his chest. I'll submit to you that that is true. That there is no doubt in my mind he grabbed his chest. No doubt about it. It is a human reaction.

He grabs his chest, and then he immediately goes to his knees. He is on his knees long enough in that bathroom that the blood is now dripping on the back of his jeans, and then at some point he slumps over, losing blood, going down. These people want you to believe such craziness as the fact that this man was still holding this knife, grabbed his chest with the knife, fell to the floor, a tile floor, hard tile floor in a bathroom, his arm swings back and moves again, all the while he's still holding that knife. I'm telling you, it never happened that way, and the evidence shows it. There is nothing suspicious about blood spatter; it is hard evidence. This man went to his knees and went down. Why is that important? What is so malicious about that? You don't know until you start thinking more about what is going on in that bathroom.

Dr. Spitz told you you do not die immediately. You don't. You're shot. You are losing blood. Your body is made to survive, so he doesn't die immediately. That is why he is upright on his knees for sometime. That's when you start seeing how malicious this is. She has shot him, and he is down on his knees bleeding. She is running around to put a knife in his hand.

Then you saw the picture of blood on his pocket. Then she is down there going through his pocket to get his phone out. That man is laid out on the floor, died a horrific death at 35 years old, and this woman is scurrying around putting a knife in his hand and pulling a gun -- I mean a phone out of his pocket. Why is she doing that? Why? Why would you do that? The only answer is that she's covering up an awful, horrific murder. Why? Why is she scurrying around going through his pockets? This man is laid out bleeding to death, and this woman that he had walk up here and tell you, Anybody would want her to be your little girl. This woman is down there going through his pockets, getting a phone out of the pocket while he's there bleeding to death. She's there putting a knife in his hand, wiping blood off the door. Why? Putting pliers back on the toilet. Why?

At this point she's covering up a murder, and she knows it. She knows without a shadow of a doubt that she murdered that man. She knows it. That's why she was covering it up. You have no reason to do that but that you know -- you know you've done something wrong. When you look there, you already know that she's done something wrong. You already know that she knows she's done something wrong.

Then you start looking further. Where did this gun come from? This is the murder weapon. This is a key piece of evidence. Where did it come from? Oh-ho, oh-ho, this is trouble here. It came from a guy named Mike White. And when you look closer, you see oh-ho, it only had two bullets, not a full clip, not no bullets, just enough to kill a man. Think about that. She grabbed a gun that was registered to another man that, ironically, was ready to go with two bullets. And then you see how malicious this is getting. You see the mark on her hand which tells you she's not familiar with this gun. This is a gun that she's never shot before. She's not familiar. That's why that slide hit her in the hand.

Now, you have her using a gun that she's never used before registered to the handyman with just two bullets. But, you know, as bad as that is, you really

don't appreciate how malicious this woman is until you see where the gun came from. When I look at this picture, State's Evidence No. 60, this shows you where the gun came from. When you think about it in the beginning you're like, well, everybody keeps their gun in a nightstand, either in a box like this or just in the nightstand. Doesn't seem so bad. It doesn't seem so bad until you realize that she has walked from the bathroom, turned her back on the victim, who she claims to be afraid of, walks over to the drawer, opens the drawer, gets the gun out, comes back to the bathroom and catches him trapped in that bathroom. That is when you see premeditation. That is when you see it. Every step she took to get that gun while he was trapped in the bathroom -- or in the bathroom, not believing she was going to do anything, gets the gun out. Every step back to that bathroom is premeditation. As soon as she goes to get that gun, you have premeditation, every step of the way. Every step that is what is on her mind. She catches him in the bathroom. He has nowhere to go, and he's unarmed -- unarmed. He never had that knife. He never had that knife, and she shot him.

Now, when you look closer at this picture -- when you look closer at the picture, I'll suggest there is

more evidence in this picture than just the fact she keeps the gun. I'll suggest that there is evidence, without a doubt, that she went and got it out of this drawer. There is no way this woman kept this gun in this drawer. It is full of Q-tips, a black bag and a remote. This drawer here is where she wants you to believe, in an immaculate house that she keeps a loaded gun there. Why are they telling you that? Because they don't want to tell you the truth, which is she walked into that bathroom (sic) and got that gun. She walked to that bedside table and got it, unclamped it and got it out. They don't want you to know that, because that is premedication. That is nothing short of malice.

When you look at this picture and you see where she keeps her gun, it is like everything else in this case, it is not until you look closer and in front of the drawer that you see she walked up to that drawer and got the gun out. How do you know that? I'll suggest to you that there is a footprint in front of that drawer. I want everyone to get a good look at that picture and look at what I'm looking at. Look at what Ms. Pop is looking at. When you look, you see the only thing off in that immaculate, clean house is that barefoot, that sweaty barefoot causing that

imprint on the floor in front of the drawer. That is where she got that gun.

If you don't mind, Ms. Pop, show them where we're looking, or where I'm looking right there. Right there in front of the drawer. Right where she kept that gun registered to Mike White with two bullets. Right there showing you that she went to that drawer unclamped it and got it out. Now, that is important because that shows you without a doubt this was nothing short of premeditation every step to that drawer and every step back. Thank you, Ms. Pop. Thank you, Bobby.

MR. MARTIN: Judge, I have an objection.

THE COURT: Ladies and gentlemen, I need to send you out. Don't go back to the room. It will take a second.

(The jury exits at 12:05 p.m., and the following is heard out of the presence of the jury.)

MR. MARTIN: Well, the objection is that she's making a statement about facts that are not in evidence. The picture is in evidence. There is no evidence, whatsoever, and I can't see anything on it, but there is no testimony at all about a footprint or anyone verifying that in the evidence, and that is not the first thing. There is several things that she's

testifying -- I say testifying, but arguing facts that are not in evidence, and that is improper.

THE COURT: I understand your objection. I mean, the picture is in evidence and she can -- that's fine. I'll leave it at that. Bring them back in. You are protected for the record.

(The jury enters at 12:06 p.m., and the following is heard in the presence of the jury.)

THE COURT: You can continue. Thank you.

MS. LIVESAY: Thank you, Your Honor. That evidence shows that she went and got that gun. When you put that picture together, you see that, for whatever reason, she picked that day. I'm going to suggest to you because he was saying are we going to separate. He was saying, I'm going to leave. She went and got that gun, shot him, he falls to his knees, slumped over, blood on the pocket of his jeans. He falls back while he's on that floor laying there. I don't know, was he alive or dead at that point? I don't know. I can only hope that his last thought was not her digging through his pockets and putting a knife in his hand.

But even then, there was work to be done for this defendant, because it is not easy to cover such a malicious killing. So once she gets the phone, she

has it, and we know that because the police didn't find it. This crowd wants you to believe, oh, the phone was there, but we didn't collect it. The first things we collect now are the victim's phone and the defendant's phone. They are vital, important. That is where we get 99 percent of the information of what is going on. So she had to hide the phone before the police got there.

Still, it wasn't enough, because we may find the phone. We may execute another search warrant. So that is when she decided to call Apple and wipe all the information off of the phone. It is absolutely ludicrous for these people to tell you a nurse that makes $150,000 a year cannot get another phone. I want you to think about that. That is absolutely ridiculous to believe that this woman cannot get another phone, and her only outlet is to wipe all of the information off of his phone. Then, even then it wasn't good enough. It wasn't good enough then because iPhones have Apple accounts, so if backed up, the phone or you used your Apple account, oh-ho, might be some information up there, the police may find it, we're still investigating.

On the 13th, this man has not even be buried yet, on the 13th, and she is up there getting his

phone wiped and on his computer trying to get into his e-mail and his Apple account. That is what she said on the 13th. They want you to believe she's so hysterical and traumatic, but she's upstairs -- picture what this looks like -- the woman is upstairs sitting on his computer trying to reset the pass codes, on the phone with Apple wiping his phone. Think about that. More stuff to cover up this murder. If she did not maliciously kill him, she would not have to cover up all of the information.

Now, she's going through his accounts trying to reset the password, but she didn't have to worry about it because he hadn't backed up his phone in a long time, so she got lucky there. But we were able to find out that he was recording conversations, and she was recording conversations. I asked her about that on the stand. When I asked her about those recordings, I want you to think about how quick she was to say I found out that out last night, I had recorded some of his conversations, and immediately she said I found that out last night. That tells you right there this woman knew that a recording was going that night. Nothing drives you to take a phone out of someone who is bleeding on the floor like that. That is what drives you to get down there in a bloody

pocket and start digging it out.

She saw that phone was recording. He had been recording her conversations. That very day she told you he was like, Are we going to separate? What is going on? Are we going to separate? So I guarantee you that phone was gone, and then she had no choice. She can't turn it off. She didn't have the password to get the recorder off, so then it is completely frantic. She's got to get rid of it somehow. Where the phone was and why we couldn't find it, I have no idea. I don't know if Sandra Causey took the phone back to the house. Don't know if Ronnie Causey took the phone to their house. I don't know if she hid it so good in the house that we didn't find it. I don't know. At the end of the day, it doesn't matter. At the end of the day, we didn't find it. At the end of the day it tells you there was something on it that would have nailed this shut, and that would have to hear exactly what was going on in that bathroom. That is why she hid that phone, so no one could find it. She got it back out and wiped all the information off the phone.

Mr. Martin wants to get up here and tell you how nice she is. We've seen a lot of pictures of her from high school. We've seen some pictures of her

graduating from nursing school. We have seen a lot of those kinds of items. Now, what amazes me is that this woman has lived in Conway her entire life. Her family has lived in Conway her entire life, and these people can't find one person, not one person, to come up here and say one nice thing about this woman. She is on trial for murder, and you can't scrounge up one person that actually lives around you to come up here and say something nice about you? She had somebody from her work and somebody from Spartanburg.

Now, who did we bring? We brought two people we felt like spoke volumes about the victim, David Sims, his ex-wives. Two people that he had divorced came up here and testified for this man. That is the kind of guy he is. They wanted to get up here and tell you he's been married twice. Her attorney kept saying over and over, he's been married twice to dirty up his character. Those two women came up here. They don't live in Conway. They drove from Florence and Lake City where they live to come up here and say I wanted to come, I wanted people to know he's not a violent guy. He is not the person she's portraying to you. That says volumes. He wants to dirty these women up, but at the end of the day, they were sitting right there behind his family. Both of those women went to

his funeral and visitation, both of these women wanted to come up here and say he's not that guy she's saying he is. It never bothered her that he had been married twice, of course, because she knew that before until she shot him, and then it is what a jerk he is because he's been married twice. None of that mattered until she shot him.

I submit they want to dirty these women up because, let's face it, if there is anyone you have contention with, it is with an ex-boyfriend, with an ex-wife. Normally divorces are ugly. Normally those people know your dirtiest secrets, and at some point cannot stand you, let's be honest. Those are normally the people that have ugly things to say about you, and these women have nothing ugly to say about that guy, nothing. That speaks volumes about his character.

She wants you to believe that he is some malicious guy cussing me, treating me bad. She took the stand. Guess what? Her phone is still in tact. Her Cellebrite is still in tact. You saw it, it is a great big notebook. The best they could come up with was a text about him disciplining the dog. Disciplining the dog, that is the best they can come up with. They want you to believe that he's some awful wife beater guy. They don't have one text, one

string of text out of 4,000 pages to say that. They don't have one text out of all of those pages, out of notebooks and notebooks and notebooks to indicate that. Nothing.

I submit to you that if there was anything, a shred of anything of him cussing her, saying anything ugly like I'm going to whip your ass when you get home, you better be ready, none of that is up there. None of it. There is not one threatening text up there. If it was, they would have shown it to you. That character evidence important because it shows you who the primary aggressor is. It shows you a little bit about these two people. It shows you this is not a malicious man, not a man cussing her. She had all the power in that relationship, all of it. She owned the house, controlled the phone, that was her daddy's land. She lived right across the yard from her parents. She controlled every aspect of what went on. Every aspect. They want to tell you that she's malicious and she's some victim. It could not be further from the truth, and the truth is it was the other way around. She had all of the control. As soon as he was going to leave her, she was going to lose it, and she didn't have her plan in place yet, she snapped and shot him.

Now, what plan did she want to get in place? What plan, because it is obvious from the evidence of that day that was not the day she thought she was going to shoot him, everything was too in a rush. But what plan was she getting in place? Mr. Martin brought up a CD on relationships. I want you to see that Evidence No. 80, a Books a Million receipt back from 7/28/2013, because as we all know, everybody keeps up with receipts when they are buying books like the Five Love Languages from Books a Million, out of your every day course of going grocery shopping and shopping, uh, keep this one. We always keep this one. Keep this one. Always keep that receipt from August 6th, 2013, got that one. 80 percent of her messages were deleted, but we still have this one that she bought this CD.

In July, it is marriage counseling, marriage counseling. The dates are so important. You don't see any of this crap going on before July. And then these phone calls are really so telling. I mean -- I mean when I look at these -- when you look at them, it is almost comical. She gets up, for whatever reason, on 7/24, and let's be honest, the smart thing would have been for her to sprinkle the phone calls throughout. Call one one day, call somebody else the

next day, sprinkle them throughout, but instead she decides on the 24th to just call five, six counselors, pepper the phone records. Look how hard I'm trying. Look how hard I'm trying. All the sudden after he has life insurance, she's all over it now. All the documentation showing how much she loves him. How much she wants to save the marriage.

You can look through all of this evidence we have up here, and I want you to. I can already tell you, you ain't going to find a shred of this going on before the insurance was in place, not a shred. If you look close at these records, she's calling someone on the Island of Palms and someone in Ohio for this counseling that she wants. All the calls are back to back. None of this is going on before he has life insurance. Look through all the evidence. None of it is going on. That policy goes in place, and all of a sudden, this is going on.

Now, she was up here telling you it was not about the money. It was never about the money. That is what she told you. I want you to go back, and it is in evidence, and look at State's Evidence No. 113. Look at these text messages. For somebody that is not all about the money, she is -- excuse my language -- aggravating the hell out of him to get an insurance

policy. That is all she can worry about from May to June to the beginning of July until he finally gets the policy. For somebody that is not all about the money, she certainly is worried about it. She certainly is worried about him getting this policy. If it is not all about the money, don't worry about it. Why worry about it? Why are you texting him May, June, July? Why are you worrying? She says in some of them, I'm sorry, I know it seems like I'm nagging you, which gives you a reflection of what's going on. That doesn't make sense. If it is not all about the money, why are you so worried? Why do you want a copy of the policy to put in a notebook? Why are you at home taking his blood pressure so he can get a preferred rate? That tells you this is on this woman's mind. The dates are so telling. The dates are so telling.

That policy went into effect July 23rd. Think about that. This man has been walking around this earth for 35 years with nothing wrong with him. He's a landscaper out moving and doing, and this man for 35 years has worked and nothing has happened to him. They had been together since 2010 dating, and 2011 married. So they had been together for years, at least two, three years, and nothing had ever happened

to this man. Nothing.

All of a sudden, three weeks after she's worrying him about this policy and he gets it, all of a sudden he's shot dead in his own home with no witnesses around in the bathroom. Think about that. They've been together for years. This is not a new relationship, and this man doesn't make it three weeks after that policy goes in place. Three weeks. He made one payment for that policy to go in place, one payment, and she shot him dead three weeks later. He's 35 years old. 35 years old.

Two things, and I'm not going to get into it if, but Mr. Martin wants to completely discredit Dr. Spitz, who told you those wounds are self-inflicted. This man wrote the book on forensic pathology. There is no doubt this man knows what he's talking about. In fact, I honestly did not have this book early on, and it was actually Mr. Martin that loaned me his, that is how I came across this book. This man knows what he's talking about. He came in here and showed you how deep those wounds were. He told you they were self-inflicted. He doesn't need to come to Conway, South Carolina and testify. This man has plenty going on. He wrote the book. He's a world renown pathologist. He doesn't need to come here and testify

for the money. This man knows what he's talking about, so don't let him tell you that. But he believes that he can discount the guy that wrote the book with some forensic pathologist that works at Newberry Pathology and Associates.

I asked her, well, have you read this man's book? You are very familiar, did you bring a book? No. In fact, the attorney that brought her up here didn't even use pages from anything this woman had ever written. Nothing. I'm going to suggest to you that is because no one is reading what this woman is writing. No one cares. Nobody is buying her books, or whatever the hell she's writing. She came up here from Newberry Pathology Associates trying to discredit a man who wrote the book that is used all over the world about pathology, that is who they brought up here.

He knew those wounds were self-inflicted, and he told you. He even showed you when you do like this, you don't see the wounds (indicates). Where they are at doesn't even make sense. This lady, this defendant nurse, not nurse; Homecoming queen, not Homecoming queen, she murdered that man. It does not matter that she's a nurse. It does not matter her daddy is a state constable. It does not matter she lives in a

big house. There is no exception for that. He wants to bring you a bunch of pictures to nullify the fact that she's killed this man, to give you some sense that her life is worth more than his. He's just a landscaper. This woman, look at all what she is, that is what he wants you to believe, that her life is more important than David Sims', and it's not. There is no exemption for this woman and what she's done. It does not matter if she's educated or uneducated, black or white. It doesn't matter. There is no exception for that.

At the end of the day, when you look at the evidence, when you listen -- and I ask you to do it, please. I know it's been two weeks, but this case is important to everybody in here. These people over here, Margaret Rose Sims and David Sims, this is their day, too. They've been waiting two years as well. They've been tortured. You want to talk about tortured, these people have been tortured. They lost their son. These people want their day in court, too. They want their son to have his day in court, and today is it. I'm going to ask to look back over this. Nobody in here is trying to mix words. No one in here is trying to convict her on a 911 tape. When you look at all the evidence, you see this woman is nothing

short of guilty of murder at the end of the day; those are the facts. None of this other stuff matters. She walked in that bathroom and killed him and every shred of evidence points to it. She killed him in cold blood, and every step she took after she did it confirms she, herself, knew she killed that man, and every step she took was to cover it up and save herself. At the end of the day, she is guilty of murder.

Now, he wants to tell you some story about a bird and a question, and whether or not she's going to go home to her child. First of all, this is not a death penalty case. No one is trying to hang anyone in here, okay. This is not a death penalty case. No one is trying to hang this woman. No one is trying to do anything of the sorts, so don't be fooled by that. Don't go back there and let him put a burden on you that is not your burden. Your burden is to go back, listen to all of the evidence, look at all of the evidence and decide whether or not she killed this man. It was malicious premeditation, however slight. Even though it is that walk to the nightstand, it is premeditation. As soon as she made her mind up to pull the trigger, it was premeditation. As soon as she decided to take his life, it was premeditation.

I'm going to ask you to look, listen to everything you want to. Look at what the law says. At the end of the day, it is an unjustified killing. I'm going to ask you to find this woman guilty. At the end of the day, justice is blind. It is enforcing what the law is, and I'm asking you today to look at nothing but the facts and make your decision.

Now, all of this evidence is here, all of these medical records are here. Look through it all. At the end of the day, I suggest to you there is not even a close call that this woman is guilty of murder. Thank you for your time.

THE COURT: Ladies and gentlemen, we've reached a point where I have to charge you on the law. As I said, I'm going to give everybody who is here, in the audience, a chance to leave, because once I start, I have to finish, so this will be your last break after two weeks. I can't tell you how much I appreciate your patience. Take one last break. If they need to go downstairs, they might as well. Don't talk about the case. I'll bring this in and read it to you. Thank you.

(Whereupon, the jury exits at 12:33 p.m., and the following is had out of the presence of the jury.)

THE COURT: This is strictly a 15-minute break.

If you need to leave, now is the time to do it. You can come back after I finish my charge, but cannot leave during the charge. Thanks.

(A recess was taken.)

MR. MARTIN: I move, again, that the Court consider just the charge of murder with no argument made by the State relevant to any of those other charges, in my opinion, and I think the evidence is thin, if any, and again ask the Court to not charge voluntary or involuntary manslaughter.

THE COURT: Okay.

MS. LIVESAY: It doesn't matter whether there was an argument made. The case law says whether or not there are facts in the record that would justify reading voluntary and involuntary and those are in the record.

THE COURT: I understand why you made that motion, but I'll deny it. Interesting thing is on our judge's test we have to take every six years, this is always a question. I'm going to charge what I have, and you should have everything in writing there.

MR. MARTIN: I have to get Ms. Sims in here.

THE COURT: You all have looked at the verdict form; is that good with you all?

MS. LIVESAY: I'm good with it. I saw it. It

looks like every one I've seen.

MR. MARTIN: What will you instruct them as in terms of what their verdict is in terms of signing all three of them?

THE COURT: That they have to do one or the -- there has to be one.

MR. MARTIN: Just one of them?

THE COURT: Yeah, I'll make that real clear. That it is why we did the "or" in big font. Before you open the door, I want to be sure the defendant is here. Is she out in the hall?

MR. MARTIN: She's just coming in.

THE COURT: I just didn't want that picture to be in their minds.

I'll give you one last time to look at everything up here. I have had a lot of bad experiences. Make sure that everything that is in, is going back.

MR. MARTIN: We need to at least, on all of it, but I'm not sure what they are putting in in terms of the two documents we were working on.

THE COURT: You had a disk that we were going to substitute -- that was number -- early on.

MR. MARTIN: Yeah, that's with the CAT scan.

THE COURT: Yeah.

(Whereupon, the jury enters at 12:54 p.m., and

the following is had in the present of the jury.)

THE COURT: Ladies and gentlemen, you have heard all the testimony that you are going to hear, and when you begin your deliberations, you are going to have all of the evidences when you begin deliberations.

Let me tell you briefly why I hinted on why we all read this. When I first became a judge 14 years ago, the best judge in the state, with an IQ double mine, I had to sit with him for four weeks, and he started a case like this, and in his head got defendant and State mixed up. I've done it so many times, I have to make myself read it. The danger is that you mix things up. It was 14-and-a-half years ago, and he has now passed on, but I always have remembered -- and I knew it, everyone in the courtroom knew it. He got all the way through and then had to bring the jury back in and reread it. That is why you are subjected to me reading this.

You all have been an amazing jury, and normally I would never say this, but if you need a break -- normally once I start this, I finish. I assume that you all have been here for two weeks, away from your families, and you going to want me to finish, too. But if you need it for some reason,

raise your hand, and based upon your service, I will give you a break. But having said that, I will now read to you the law of this case. As I told you early on, during the course of this trial, my law clerk and I have been passing back and forth the final charge, and that is what we finally came up with.

I want to remind you that the fact that the defendant was arrested, charged and indicted in this case, is not evidence. It should not be considered by you as evidence in any way in this case. You have an indictment, and it is just a piece of paper that begins this process, but it should never be discussed and never should be taken as evidence in this case. It has a stamp that says "true bill," that means nothing to you either.

Ladies and gentlemen, I charge you that the defendant has pled not guilty to this indictment, and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of a crime for which the indictment was issued, unless the

guilty was proven by evidence satisfying you, the jury, of that guilt beyond a reasonable doubt. That presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on the evidence satisfying you of that guilt beyond a reasonable doubt.

As I told you, presumption of innocence is like a robe of righteousness and is placed about the shoulders of the defendant, and it remains about her shoulders until you strip it from her based upon your decision that the State has proven their case beyond a reasonable doubt. I charge you that the presumption of innocence is not a mere legal theory, it is not just a legal phrase. It is a substantial right to which every defendant is entitled to unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

What is reasonable doubt? I told you at the beginning, reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act; that is what reasonable doubt is. It is inside your head, and I can't tell you exactly what it is, but it is the kind of doubt that would cause a reasonable person to fail to act, or to act.

I also charge you that evidence of a good character and good reputation may in and of itself create a doubt as to guilt and should be considered by you, the jury, along with all the other evidence in this case in determining the guilt or innocence of the defendant.

Now, I want to remind you of a couple of things. You and I have had certain duties to perform. As a trial judge, it is my responsibility to preside over the trial, and I've also had the duty of ruling on the admissibility of evidence offered during this trial. You should consider only the evidence as is admitted in this trial when you begin your deliberations, and as I said, you'll have it with you in the jury room.

There have been many times you had to leave this room as we argued over the admission of evidence. Anything admitted into evidence will have a stamp or tag, you can consider that. Anything that was mentioned that was not admitted into evidence, you should not in any way consider. As I said earlier, you and I have had very different roles to play. I'm the judge of the law. I know for a fact in this case that I have turned red and probably expressed my emotions, you should disregard that. I mean, I told you at the beginning to disregard it. I didn't

realize it would be that apparent that you might have to disregard it. What I think about the facts in this case should mean zero to you; never discuss it. You and I have roles that never cross. I'm the judge of the law, and that is what I've done. You are the judge of the facts, and that is what you are getting ready to do. You have to take the law as I give it to you, take it back there, apply it to the facts as you determine them to be, and that is how you reach your verdict.

Now, the law as I'm giving it to you now, is the law of this case. You should not consider the law different because you think it is different, or because you wish it were different. This is the law of the case, and this is what you have to apply.

Now, ladies and gentlemen, I charge you there are two types of evidence which are generally presented during a trial. There is direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts of circumstances leading to the existence of a fact. Crimes may be proven by circumstantial evidence in this state. The law makes no distinction between the weight or value to be given

circumstantial evidence, as opposed to direct evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If the circumstances merely portray the defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or some definition of the two.

Necessarily, as part of your role, you must determine the credibility of witnesses in this case. I told you at the beginning of the case credibility under the law simply means believability. You can believe everything that a witness said from this witness stand, or you can disbelieve it all. You can take a portion of the witness' testimony and believe it will, and disregard the remainder. That is up to you. I can't tell you who to believe and who not to believe. But you should consider whether or not a witness had the ability to know what they've testified to. You can also look at their demeanor on the

witness stand, make a decision internally and as a group to determine whether or not these witnesses had credibility or simply whether or not they should be believed.

Ladies and gentlemen, I charge you that the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists where witnesses have been called "expert witnesses." A witness who by education or experience has become an expert in some art, science, profession or calling may state an opinion as to relevant and material matter in which the witness claims to be an expert, and may also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case, and like the other evidence, give it the weight that you think it deserves. If you decide that an opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given to support the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the expert's opinion in their entirety. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because a witness is an expert. Further, you are not required

to accept an expert's opinion even though it is not contradicted.

In order to establish criminal liability in this state, I charge you that criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by you, the jury, from the circumstances surrounding the situation. There is no way to prove criminal intent within a mathematical certainty. There is no way we can enter the brain or mind of another person and determine what their intent was. So I charge you that the law says that criminal intent may be inferred from the circumstances shown to have been -- to have existed at the time. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way other facts are established, by taking into consideration the acts of the parties and all of the facts and circumstances of the case.

Criminal intent in this state is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based upon the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or inference to duty or consequences that is considered by the law to be the equivalent of criminal intent.

Ladies and gentlemen, I charge you the defendant in this case is charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill-will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an jury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time that the act is committed; therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be expressed or inferred. These terms of "expressed" and "inferred" do not mean

different kinds of malice, but merely the matter in which malice may exist, that is either by direct evidence or by inference from the facts and circumstances which are proved. Expressed malice is shown when a person speaks words, which express hatred or ill will for another, or when a person prepared beforehand to do the act, which was later accomplished. For example, lying in wait for a person or another act of preparation going to show that the deed was within the defendant's mind would be expressed malice.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. I charge you that in this state a deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instruments is used as a deadly weapon depends on the facts and circumstances of each case. I charge you in this state the law has determined that a pistol is a deadly weapon.

Now, the defendant has raised the defense of self-defense. Self-defense is a complete defense, and if it is established, you must find the defendant is not guilty. The State has the burden of disproving

self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant guilty. The following elements are required to establish self-defense.

One, the defendant must be without fault. First, the defendant must be without fault in bringing about the difficulty. If the defendant's conduct was a type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing about the difficulty and would not be entitled to an acquittal based on self-defense. Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter, and which did actually contribute to the physical encounter.

The second element of self-defense is that the defendant was actually in imminent danger of death or seriously bodily injury, or that the defendant

actually believed that she was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed she was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the defendant actually was or believed she was in imminent danger of death or serious bodily injury, you should consider all of the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim.

I charge you that the defendant does not actually have to show that she was in danger. It is enough that the defendant believed she was in imminent danger, and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The defendant has a right to act on appearances, even though the defendant's belief may have been mistaken. It is for you, the jury, to decide whether the defendant's fear of immediate danger or death or

serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

I charge you that words accompanied by hostile act may, depending on circumstances, establish self-defense. Evidence of prior difficulties between the defendant and the victim may be considered by you in determining or deciding whether a threat existed. Whether the defendant had reason to believe a threat existed, and how serious that threat was. I charge you that the relevant sizes, ages and weight of the defendant and the victim may be considered by you in deciding the apparent or actual need for force in self-defense and the amount of force needed.

The reputation of the victim as a violent person may be considered in deciding whether there was need for force, whether the defendant had reason to believe there was a need for force, and whether deadly force was reasonably necessary. Prior instances of violence by the victim may be considered in deciding whether the defendant actually believed she was in imminent danger of death or serious bodily injury, or was actually in imminent danger. Threats made by the victim may be considered in determining whether the defendant actually was or believed she was in imminent danger.

Finally, the final element of self-defense is the defendant had no other probable way to avoid the danger of death or serious bodily injury other than to do the acts the defendant did in this particular instance. I charge you that if the defendant was on her own premises, the defendant had no duty to retreat before acting in self-defense. I charge you the defendant had no duty to retreat if by doing so the danger of being killed or suffering serious bodily injury would increase. I charge you that a person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily injury. Therefore, in self-defense, the defendant has a right to use force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has a right to use so much force as appeared to be necessary for complete self-protection in which a person of ordinary reason and firmness would have believed to have been needed to prevent death or serious bodily harm.

If you find that the State has failed to prove beyond a reasonable doubt that the defendant committed murder, you may consider whether the State has proven

beyond a reasonable doubt that the defendant committed voluntary manslaughter. To prove voluntary manslaughter, the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Sudden heat of passion may through a time affect a person's self-control, temporarily disturb a person's reasoning. The sudden heat of passion must be the type that would make an ordinary person unable to coolly reflect on his actions or her actions and would produce an uncontrollable influence to do violence.

Sufficient legal provocation must be the type that would make a person of ordinary reason and caution to become enraged and lose control temporarily. The provocation needed for voluntary manslaughter must come from some act or related to the victim -- lack of or related to the victim. In other words, the victim has to commit the act. Words alone, however vulgar and insulting, are not enough to be legal provocation. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt threat, some threatening act or any other

act which would have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled, or if there was enough time between the provocation, if any, and the killing from the passion of the unreasonable person to cool, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off, you should consider all of the circumstances surrounding the killing. You may consider the nature of the provocation, if any, the defendant's mental and physical state and the circumstances and relationships between the parties.

Finally, if you find that the State has failed to prove beyond a reasonable doubt the defendant committed voluntary manslaughter, you may consider whether the State has proved beyond a reasonable doubt that the defendant committed involuntary manslaughter. To prove involuntary manslaughter, the State must prove beyond a reasonable doubt that the defendant unintentionally killed the victim without malice, but while engaged in an unlawful activity, not naturally intending to cause death or great bodily harm, or that the defendant unintentionally killed the victim

without malice while engaged in a lawful activity with reckless disregard for the safety of others.

I charge you that "unintentional" means that the defendant did not intend for anyone to be killed or seriously injured. I charge you that reckless disregard for the safety of others is more than a mere negligence or carelessness. Mere negligence or carelessness is a failure to use a care that a person of ordinary reason would use under the same circumstances.

Recklessness is a conscious failure to use ordinary care. Reckless disregard for the safety of others means you are not interested in the consequences of your actions or the rights and safety of others. If a person knows, or should know, that ordinary care requires certain precautions be taken for the safety of others when used in a dangerous instrumentality, such as a gun, but that person fails to use those precautions without concerns, the person's actions are considered reckless.

For your benefit, we are five pages away, so give me that.

The State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of death. Proximate cause is a direct cause. It is the

immediate cause. It is the efficient cause. It is that cause without which the death of the victim would not have resulted. There must be a chain of causation from the time of the injury inflicted by the defendant until the time of the victim's death. Proximate cause does not necessarily mean that it would occur immediately prior to the death -- or that it had occurred immediately prior to the death. There may be more than one proximate cause. The defendant's acts may be regarded as a proximate cause if it is a contributing cause of the death of the victim. The fact that another cause also contributes to the death of the victim does not relieve the defendant from responsibility.

The defendant's act need not be the sole cause of the death, but must be a proximate cause or contributing to the death of the victim. It is not a defense in this state to show that the victim might have been recovered had he been treated according to the most approved surgical and medical standards available, or as a reasonably prudent doctor would have treated in the case, or even by showing that the treatment was negligent.

If, however, the death was caused not by the wound or the injury that the victim had, but caused by

the gross, erroneous, willful, deliberate treatment, the defendant would not be liable. In other words, negligence on the part of someone else would not relieve the defendant from liability if the injury was the proximate cause of the victim's death.

All right. Ladies and gentlemen, you have three verdicts you can reach in this case. Mr. Foreman, I'll hand you the verdict form. Let me say this. It goes without saying, but something had to be first, so I prepared the verdict form -- or the law clerk has -- and we have "guilty" ahead of "not guilty" on each one of these three choices. You can only find one of these three choices -- actually, there needs to be another one. I'm going to have to change it, but I'll tell you what it is going to say. It gives you the choice of: We the jury find the defendant guilty of murder. Or: We the jury find the defendant not guilty of murder. You will deal with that one first. Then, if you don't believe they met their burden for murder, you go to No. 2: We the jury find the defendant, Heather Sims, guilty of voluntary manslaughter. Or: We the jury find the defendant, Heather Sims, not guilty of voluntary manslaughter. That it is the second one. If you don't find that they met their burden there, you move to the third.

So my point is it is only one you have to make a decision. If you find it not guilty, you move to the second one. If you find not guilty on that one, you move to the third. You have to do it sequentially for it to make sense.

And as I said, Mr. Foreman, this is when your duties become a little more important. If there is a problem in the jury room or a question about my jury charge, I can recharge you on any part of this. I cannot give you to take back with you, which is a source of great consternation, but I can't. I'm losing my voice, you can tell. I know you are tired. If you need me to reread or recharge anything that I've just told you, I'll be happy to bring you in and recharge you.

Mr. Foreman, if you ask me a question about something, have a question, write it out. If the law allows me to respond, I'll bring in a response. If the law prohibits me from responding, I'll bring you in and tell you I can't give you the answer to that question. Ask me any question and I'll tell you whether I can or can't.

Your verdict must be unanimous; that is you have to agree on this verdict. As I said, I know you have been here for a long time. This is the most important

thing you have to do. We all led up to this point over the course of two years and many weeks of preparation, so I will do anything I can to help you get through this, and for that reason, and because your verdict is so important, if you need me to reread the whole thing, I'll do whatever you want.

As I said, you'll have the indictment with you, all of the evidence. For the last time, I'm going to send you back to the jury room and ask you not to begin your deliberations. At this point in the trial, the law requires me to ask the parties to determine whether or not I misread something or they've asked me to add something, I'll do it. Most likely I'll send you the evidence back in a few minutes. There is a chance I misread something because of my voice, and if so, I'll bring you back and reread it.

Don't begin your deliberations until we send you the evidence back, and Bobby will bring it to you. Knock on the door when you reach your verdict. Thank you.

(The jury exits at 1:21 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Subject to your previous objections, I know you both -- did I misread anything? If I did, I'm happy to do it. My voice is about gone.

MS. LIVESAY: No issues from the State, Your Honor.

MR. MARTIN: No issues about the charge, Judge. I, myself, am not clear, and I am concerned the jury may not be clear about the verdict form and how they do it.

THE COURT: Actually, I'm going to bring them in and explain it. They have to reach it sequentially. I'll make sure I go over it again. It is guilty or not guilty of one, then move to two and then three.

MR. MARTIN: I mean, they do that, but, for example, if they find not guilty for murder and they do not find guilty of anything else --

THE COURT: They will check not guilty. It is a little confusing, because it should have: We find the defendant not guilty of --

MR. MARTIN: I'm sitting here -- here is the -- is it less confusing if you put it on three forms?

THE COURT: Probably not. I understand. I never liked these verdict forms. I like the old way when you would write on the back of the indictment, guilty. But I think that would be more confusing. I'll bring them in and explain it one more time, because it is confusing. I'll tell them that they have to deal with murder, involuntary and involuntary sequentially, and

if they find the defendant not guilty of all three, then they've reached their verdict.

MR. MARTIN: I also ask that you charge the jury that the fact there are three offenses there doesn't carry any weight that she should be found guilty of anything, that is just the way the form is.

THE COURT: Yeah. Bring them back in, I'll explain it to them.

(The jury enters at 1:25 p.m., and the following is heard in the presence of the jury.)

THE COURT: Thanks. I'm not going to reread anything to you, but my voice was almost gone at the end, and I want to be sure of something. Both parties wanted me to do this to make sure you understand. I think it is self-explanatory, Mr. Foreman, but this verdict form has three separate verdicts on it. I could have given you three pieces of paper, but it doesn't seem to make sense.

I put in large font one or two or three. There is a place to find the defendant guilty of each of the charges, or not guilty. The fact that there is three charges does not mean you have to find her guilty of anything. As I was telling them, I used to think it was ridiculous to tell a jury that guilty came before not guilty just because something had to come first.

I left that out after a jury charge one time and the jury asked me that question, so to cover the bases, you have to address each one of these sequentially. If you find the defendant not guilty of all three, then she's not guilty of anything. I think it is clear. Obviously, it caught me by surprise because I'm used to verdict forms that have "or not guilty of any charge." I think it is clear, if you find not guilty of all three, they are not guilty. If you are guilty with one, then we'll deal with that. Just trying to be careful at the last minute. That is the last time you come in, and last time I'll talk to you until you ask me a question or deliver a verdict so I'll send you back. I need to keep both alternates in the hall, and I'll talk to them. Again, don't begin your deliberations until Bobby and the deputies bring you all the stuff and the verdict form and the indictment, this will be with it. Thanks.

(The jury exits at 1:27 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Before you all come up and look this last time, let me make an observation for your benefit. I don't know how this is going to turn out. I have no idea, but I think the general public sometimes loses sight of the fact we're all here for

the same reason, and that is to do justice. The rules and regulations often times seem archaic and nonsensical, but they are there for a reason. I think you both did a good job. I have no reason to say that because I've been so mad that I wanted to throw you through a wall, but you both did a good job, and it is what it is at this point.

I say that to get to this point. When you come back in here to hear this verdict, and I'll tell you before, you cannot make any sound. I've done so many of these, and I tell people that. I don't want to have to deal with someone who is upset, no matter what the verdict is. So, please, don't let us end our two weeks with someone being arrested because they violated that.

Look at this and make sure it is going back, because it is going back with these forms. Double check; is that what you want:

COURT REPORTER: Yes, sir, most definitely.

(Defendant's Exhibits 85-86 admitted.)

(The exhibits were gone through with the Court Reporter, the State and Defense, and an agreement was reached on the evidence that was admitted and going back to the jury room.)

(The jury deliberates at 2:01 p.m.)

(The following is had out of the presence of the jury:)

THE COURT: Question one from the jury. They said: We need video from home and 911 tape.

My understanding is they can only watch the video in here?

MS. LIVESAY: Yes, sir, because of the way we spliced it. We played portions of it. If we sent it back there, there would be no way to control what they see and what they don't see.

THE COURT: Okay. Only thing is I hate for them to watch it in here with people watching it.

MR. MARTIN: I don't think you have any choice, though.

THE COURT: What about the 911 tape?

MS. LIVESAY: We can bring it out and play it, or send a laptop and tell them to listen to it back there.

MS. POP: They might be able to play it on the video.

(A discussion was had off the record.)

MR. MARTIN: I don't want him in the jury room, but if he can hook it up, I don't care. Ask the jury what they want. The problem with it is we had the time off of it, I mean. The problem with that is

someone has to be -- play it for them, they can't just do that.

THE COURT: How long is the total video clips you all showed? It wasn't but --

MS. POP: I would say 20 minutes.

MR. MARTIN: Probably 20 minutes.

MR. HYMAN: We can always clear the courtroom.

THE COURT: We may have to.

MS. LIVESAY: As to the 911 tape, do you want to send the laptop and they can listen to it?

THE COURT: I would rather have them do anything they can in the back.

MR. MARTIN: Tell them that you could send the computer back to listen to that while this is being set up.

MS. LIVESAY: This will take us a few minutes.

THE COURT: All right. Bring them in and I'll ask.

MR. MARTIN: Wait a minute, I'm getting my client here.

THE COURT: Hold on. Hold on.

MR. MARTIN: She'll be here momentarily.

THE COURT: I'm going to send this back, and when they leave, I'll send the computer with the 911 tape, and I'll tell them you are setting up the video. Can

you get that set so that they are not fiddling around with your computer? Put that in and get it ready to hit play? I'm going to bring them in, and I'll tell them I'm sending the 911 tape back with them while we set up Speco.

MR. MARTIN: One question is, do they want to watch all of the footage, or not?

THE COURT: Yeah, I'm going to tell them -- I am assuming they want to watch all of it, but.

(The jury enters at 3:02 p.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Foreman, I have a note that says we need the video from home and the 911 tape; is that correct?

FOREPERSON: Yes, sir.

THE COURT: Apparently, the video from home can only be seen in here, so we'll send you back with the 911 tape and a computer, and they'll get it so you just have to hit play. While you are there listening to that, they will put back up this Speco thing and get the segments that were shown. Is there a particular segment on there that you are more interested in, or the whole video?

FOREPERSON: We were trying to get a time line from the first time you see David.

THE COURT: So you need to watch the -- tell you what. I'll give you the -- it is about 10, 15 minutes. You have that computer ready? All they have to do is hit play?

MS. POP: I'm going to make sure.

THE COURT: I think what you will have is you'll hit play and listen to it, and we'll bring you back in as soon as they can set it back up. That is the problem. Kind of news to me, quite frankly. Okay. You listen to that as many times as you want. As soon as we get this hooked up, we'll get you back in that second.

(The jury exits at 3:04 p.m., and the following is heard out of the presence of the jury.)

MR. MARTIN: What I was going to say is, you know, you have to do it like the last time, in and out.

THE COURT: You all are going to do it exactly as in trial?

MS. LIVESAY: Yes.

THE COURT: For the record, they originally watched it from the spectrograph, or whatever it is, but the fellow that worked on that is not here, so it's been reduced to a disk, and it is just the portions you showed. So he just basically said I'm

going to burn a disk in case you need it?

MS. POP: It was burned onto Ms. Livesay's external hard drive. If we use this other equipment, it is going to entail a whole lot of technical stuff. We can play the same videos.

THE COURT: Keep the time out. I'll explain to them that -- the problem is when we originally watched it, we sent them out, and there was a clear delineation between seconds.

MR. MARTIN: You are going to have to do that again, there is no question about that.

THE COURT: This is the first one?

MS. POP: Yes.

THE COURT: And if I sent them out and brought them back in, you can bring the next one up?

MS. LIVESAY: Yes, in like a minute's time on this drive.

MR. MARTIN: Was there two or three clips?

MR. HYMAN: Three.

THE COURT: You have to be real quiet when they are watching. There can't be anything other than what was said. I'm going to explain to them this has been burned to a disk, and you just need to point to me when exactly, and I'll send them out.

So for the record, this has been burned to a

disk. It is not from the Spectra Vision, but we'll recreate it as closely as possible.

MR. MARTIN: Judge, I guess my thought is this needs to be clear, there is no time line or synchronization for them to have on this, and they need to understand you play one clip and jump right to the second one, that that is --

THE COURT: Normally, I wouldn't send them out, but I don't want them to think it is continuous.

MR. MARTIN: And tell them that, too, so they don't think it is a continuous clip.

THE COURT: I don't think I can add to it.

MR. MARTIN: I don't want you to add to it.

THE COURT: We'll make them go out.

MS. LIVESAY: It is only going to take a minute.

THE COURT: We sent them out for about two minutes.

MS. LIVESAY: Are we -- are we doing Pete's part of the testimony?

THE COURT: Just playing it.

(The jury enters at 3:30 p.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Foreman, here is what we're doing, and this is somewhat of a surprise to me, but originally this was played directly from the

surveillance camera, the Speco -- whatever.

FOREPERSON: Right.

THE COURT: What they've done is burned the shown videos to a disk so we could show it straight through, but it would appear to be sequential, so I'm not going to do that. I'll do exactly what we did before. When we finish a segment, I'll send you out. I don't have to do that, but it is not sequential, so we'll recreate it as much as possible so that you understand that there is no running picture, that these are segments of a longer videotape.

FOREPERSON: I think what we were trying to get to was -- is there any way to tell at what time --

THE COURT: No, sir. And I can save you from watching it if that is your question. I know what your question is, and that is not in evidence, no, sir. Do you still want to watch it?

JUROR: A time was mentioned.

FOREPERSON: There is no way to see a tape with the time?

THE COURT: No, sir. No, sir. That is not in evidence, and that is the problem.

MS. LIVESAY: Your Honor, Pete did testify as to --

THE COURT: That is not what they want to hear.

They want to see the video. Tell you what. Go back, and if you are looking only for time on this video, it is no time. It was exactly how was shown. If you want something else, I'll bring you back in and give it to you.

FOREPERSON: Yes, sir.

(The jury exits at 3:33 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Look, what they are obviously looking for is to sync up. That was not in evidence, so.

MS. LIVESAY: Can we -- the only thing I know to do is play back Pete's testimony so they will know -- Pete testified this is 5:55 to 6 o'clock --

THE COURT: They didn't ask for that.

MR. MARTIN: That was the problem of introducing it to start with.

MS. LIVESAY: I thought they were asking for the time?

THE COURT: They are, but they are trying to sync that up with the audio tape, which you all tried to do, and I wouldn't let it in. Let's see if this is it. What worries me about that question, and they perceive this as a sequential, continuing flow of audio and in segments, and that concerns me. If they are trying to go back and time it, which is what they

are trying to do, it concerns me that they think this is starting at one and going sequentially to 20 minutes.

MR. MARTIN: That is my problem, because there is -- we know this is 15 to 20 minutes in there and so, you know, it would seem, to me, evident at some point in time if they keep inquiring -- even the windows that were given is because it is not possible to sync the times accurately.

THE COURT: I just tell them that is not in evidence on this.

MS. LIVESAY: The tape at once? Can we not just play this with Pete's testimony, or no?

THE COURT: No. They can ask for Pete's testimony, but it can't be recreated differently. That is the problem. Let's see what they say. They are trying to do something that you all tried to do, and they just can't do it.

(The time is 3:36 p.m., and the jury continues to deliberate.)

(The following is had at 4:04 p.m. out of the presence of the jury.)

THE COURT: Got another question. Guilty charge must be unanimous, but does a finding of not guilty on a particular charge have to be unanimous as well

before moving on to another charge?

The answer to that is, yes. I'm not even sure what that means. I'll just tell them, yeah. I mean, if your finding is unanimous, it has to be unanimous. Bring them on in. By the way, it is written by someone other than the foreman, for what it is worth.

MR. MARTIN: That's interesting -- not really. I don't know.

THE COURT: Signed by him, but not written.

MR. MARTIN: He's the one with a secretary (laughing).

(The jury enters at 4:06 p.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Foreman, the question is: We understand that a guilty charge must be unanimous, but does a finding of not guilty on a particular charge have to be unanimous as well before moving onto another charge? Is that the question?

FOREPERSON: Yes.

THE COURT: The answer to that is, yes. So to move down, you have to unanimously do away with the one you are dealing with to move on. So, yes. All right. Let me know if you need anything else.

(The jury exits at 4:07 p.m., and the following is heard out of the presence of the jury.)

4:07 p.m.

THE COURT: I couldn't go too far. All right.

(Jury continues to deliberate at 4:07 p.m.)

(The following is had at 4:58 p.m. out of the presence of the jury.)

THE COURT: All right. I think -- they've got something crossed out, which gives me a little idea what they want. They crossed out, Need to have the reading of the charge of murder. And then underneath they crossed it at "needs to have the reading of the charges again to be clear." So I suspect they don't want all the gibberish about presumption of innocence, but they do want the murder, voluntary and involuntary, I think.

MR. MARTIN: Judge, I would request that if you are going to charge it, that you charge again self-defense.

THE COURT: I would do that, yeah. I mean, I'll ask if they want all of it, or the charges and the self-defense. I think that has to be in there. Whether they want presumption of innocence, I'll just ask the foreman like I did before. Unless you all object to it?

MR. MARTIN: No objection.

THE COURT: Any objection?

MS. LIVESAY: No objection. Whatever the Court deems appropriate.

THE COURT: Let me get to that part. Bring them in and I'll ask them.

(The jury enters at 5:01 p.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Foreman, I'm reading this question, and then you ask something -- you have crossed out "need to have the reading of the charge of murder," and then under that it says "need to have a reading of the charges again to be clear."

FOREPERSON: Yes, sir.

THE COURT: Do you need the entire charge, or charge for murder, voluntary and involuntary?

FOREPERSON: Just those three.

THE COURT: Everyone raise your hand if you agree. Everyone raised their hand. All right.

Ladies and gentlemen, I charge you the defendant has been charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill-will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to inflict an injury or under the circumstances that the law will

infer an evil intent. Malice aforethought does not require that malice exists for a particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. The term "expressed" and "inferred" do not mean different kinds of malice, but merely the manner in which malice may be shown, that is either by direct evidence or by inference from the facts and circumstances which were proved.

Expressed malice is shown when a person speaks words which express hatred or ill will of another, or when the person prepared beforehand to do the act, which was later accomplished. For example, as I said, lying in wait for a person or any other acts of preparation going to show that the deed was within the defendant's mind; that would be expressed malice. Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon, and I think I told you the gun was a deadly weapon.

Voluntary manslaughter, if you find that the State failed to prove beyond a reasonable doubt the

defendant committed murder, you may consider whether the State has proven beyond a reasonable doubt the defendant committed voluntary manslaughter. To prove voluntary manslaughter, the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter.

Sudden heat of passion may for a time affect a person's self-control and temporarily disturb a person's reasoning. The sudden heat of passion must be the type that would make an ordinary person unable to coolly reflect on his actions and would produce an uncontrollable impulse to do violence.

Sufficient legal provocation must be the type that would make a person of ordinary reason and caution to become enraged and lose control temporarily. The provocation needed for voluntary manslaughter must come from some act or related to the victim. Words alone, however vulgar and insulting, are not enough to be legal provocation. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt threatening act

which would have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation of voluntary manslaughter.

If the heat of passion had cooled or there was enough time between the provocation, if any, and the killing for the passion of a reasonable person to cool, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off, you should consider all of the circumstances surrounding the killing. You may consider the nature of the provocation, if any, the Defendant's mental and physical state, and the circumstances in relationships between the parties.

If you find that the State has failed to prove beyond a reasonable doubt that the defendant committed voluntary manslaughter, you may consider whether the State has proved beyond a reasonable doubt that the defendant committed involuntary manslaughter. To prove involuntary manslaughter, the State must prove beyond a reasonable doubt that the defendant intentionally -- excuse me, unintentionally killed the victim without malice, but while engaged in an unlawful activity, not naturally intending to cause death or great bodily harm, or that the defendant

unintentionally killed the victim without malice while engaged in a lawful activity with reckless disregard to the safety of others.

"Unintentional" under the law means that the defendant did not intend for anyone to be killed or seriously injured. Reckless disregard for the safety of others is more than mere negligence or carelessness. Mere negligence or carelessness is the failure to use the care that a person of ordinary reason would use under the same circumstances. Recklessness is a conscious failure to use ordinary care.

Reckless disregard for the safety of others means you are not interested in the consequences of your acts or the rights and safety of others. If a person who knows or should know that ordinary care requires certain precautions be taken for the safety of others when using a dangerous instrumentality, that that person is a person who fails to use those precautions without concern, the person's actions are considered reckless.

The State must also prove beyond a reasonable doubt that the defendant act was a proximate cause of the death. As I told you, proximate cause is a direct cause. It is an immediate cause. It is an efficient

cause. It is that cause without which the death of the victim would not have resulted. There must be a chain of causation from the time of the injury inflicted by the defendant, until the time of the victim's death.

Proximate cause does not necessarily mean that it occurred immediately prior to death. There may be more than one proximate cause. The defendant's act may be regarded as a proximate cause if it is to be the contributing cause of the death of the victim.

The defendant has raised a defense of self-defense. Self-defense is a complete defense, and if it is established, you must find the defendant not guilty. The State has a burden of disproving self-defense by proving beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant guilty.

The following are required to establish self-defense. First, the defendant must be without

fault in bringing on the difficulty. If the defendant's conduct was a type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would be expected to bring on a physical encounter and which did actually contribute to the physical encounter.

The second element is that the defendant was in imminent danger of death or serious bodily injury, or that the defendant actually believed she was in imminent danger of death or serious bodily injury. If the defendant was actually in danger of imminent death, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury.

If you defendant believed she was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person or of ordinary firmness and courage would have the same belief. In deciding whether the defendant was or believed she was in imminent danger of death or serious bodily injury,

you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim. The defendant does not have to show that she was actually in danger. It is enough that the defendant believed she was in imminent danger, and a reasonably prudent person with ordinary firmness and courage would have had the same belief. The defendant has a right to act on appearances, even though the defendant's beliefs may be mistaken. It is for you to decide whether the defendant's fear of immediate danger or death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

I charge you that words accompanied by hostile acts may, depending on the circumstances, establish self-defense. I also charge you that evidence of prior difficulties between the defendant and the victim may be considered in deciding whether a threat exists, whether a defendant had a reason to believe that the threat existed and how serious that threat was.

I also charge you that the relative sizes, ages and weight of the defendant and the victim may be considered in deciding the apparent or actual need for

force and self-defense and the amount of force needed. The reputation of the victim as a violent person may be considered in deciding whether there was a need for force, whether the defendant had reason to believe there was a reason for force, and whether deadly force was reasonably necessary. Prior instances of violence by the victim may be considered in deciding whether the defendant actually believed she was in imminent danger of death or seriously bodily jury, or was in imminent danger. Threats made by the victim may be considered in determining whether the defendant actually was or believed she is in imminent danger.

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular circumstance. I charge you that the defendant, if she was on her own premises, the defendant has no duty to retreat before acting in self-defense. I also charge you that the defendant has no duty to retreat if by doing so the danger of being killed or suffering serious bodily injury would decrease.

Finally, I charge you that a person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death

or serious bodily harm; therefore, in self-defense the defendant has a right to use the force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has a right to use so much force as appeared to be necessary for complete self-protection in which a person of ordinary reason and inference would have believed to have been necessary to prevent death or serious bodily harm.

And you see why we read these things. That is exactly what I told you before. Now, if you need anything else charged, I'll be happy to do so, or if you need me to read it again, it is not a problem at all. Go back, Mr. Foreman, and if you need me to charge you again, read slower, I will. Thank you.

(The jury exits at 5:13 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Any objection to that from the State?

MS. LIVESAY: No, sir.

THE COURT: Defense?

MR. MARTIN: The only question is to charge reasonable doubt again.

THE COURT: If they -- I understand. You are protected for the record, but I think they wanted

those charges, but you are protected. I'll let you know.

(Jury continues to deliberate at 5:14 p.m.)

(The following was had at 6:54 p.m., out of the presence of the jury.)

THE COURT: Thanks. Have a seat. They have a verdict. All right. When they come back, as I said, I really don't want to have any trouble, so no clapping, sighs, any kind of outward expression of feeling. I mean, I understand this is an emotional case, but just can't be tolerated. So we'll you have taken out, okay. Nothing. Bring them in.

(The jury enters at 6:56 p.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Foreman, I understand you have a verdict?

FOREPERSON: Yes, sir.

THE COURT: If you would, hand it to the bailiff, and he'll hand it to me. Thank you. All right. You can publish it.

THE CLERK: Indictment 2013-GS-26-5243, State of South Carolina, County of Horry versus Heather Elizabeth Sims. We, the jury, find the defendant, Heather Elizabeth Sims, not guilty of murder.

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 involuntary manslaughter.

Dated November 20, 2015. Signed by foreperson Sylvester McCoy, Juror 217.

Ladies and gentlemen of the jury, if this is your verdict, so signify by raising your right hand. Thank you.

THE COURT: All right. Ladies and gentlemen, I'll send you back. I'll be back to talk to you in about one minute, but I'll be back in the room by myself, and as I told you during this whole time, I'll talk to you as bluntly as I can. All right.

(The jury exits at 6:58 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Any motions before I go back? I assume you would renew your motion for directed verdict?

MR. MARTIN: Notwithstanding the verdict.

THE COURT: And the 13th juror, et cetera. You made all of those very completely, and I'll accept those. Okay.

I'm going to go talk to them, and I usually give them a couple of options. If you can get everything

filled out, I'll be back in a minute, and then I'll let you -- obviously you'll get a chance to say your peace before I make a decision. I'll be right back.

(A recess was taken.)

(Certain members of the jury who wanted to be present entered at 7:28 in the jury box.)

THE COURT: Okay. Yes, sir.

MR. MARTIN: Your Honor, I would -- I know you said you noted my motion heard, but for the record, I would like to renew my motion again at the end of the State's case for a directed verdict at this time, and again for a directed verdict of not guilty, or a judgment notwithstanding the verdict of not guilty.

I would also move to enter into the record the -- asking the Court to renew or review its motion -- or its decision in the stand-your-ground hearing that was had, and that there was insufficient evidence at that time to send the matter to the jury and directed verdict stage, and now, again, at the end of the trial for, again, a directed verdict of not guilty or a judgment notwithstanding the verdict as is.

THE COURT: Or for me to set aside the verdict as a 13th juror?

MR. MARTIN: Or set aside the verdict as a 13th juror.

THE COURT: Obviously, I'm going to overrule those.

Do you have anyone that wants to speak and, Mr. Martin? I'll let you and the defendant come up and talk to me.

MS. LIVESAY: Yes, sir. I have three people that want to speak from the family.

THE COURT: Let me say this before they come up. These jurors have worked very hard. Do not contact these jurors, period. They don't want to be contacted, so please don't. They are not happy.

I'll be happy to hear from anyone. Give us your full name.

MARGARET ROSE SIMS: Margaret Rose Sims. First of all, I want to say to God be the glory. He is the God of justice, and justice has been served. No words could ever express the impact that Heather's actions has had on my husband and me, his sister and her family, his aunts, uncles, cousins and all of his relatives, as well as all of the many, many friends and our friends.

Where to start to say how our lives have been affected by this senseless, selfish murder committed by Heather. Again, there are no words that could ever begin to describe the unbearable hurt, the type of

hurt that is permanent and can never be fixed. Heather's senseless, selfish motive planning an ultimate, deliberate, calculated murder of our son is beyond comprehensive. To add insult to the worse act anyone could ever commit, Heather, in an attempt to get away with it, tried to defame David by claiming that by his own violence was the cause of it all, when everyone who knew David in the slightest way knew he was a kind, loving, considerate, laid-back, easy-going, calm, peaceful person who did not have a violent bone in his body and would never hurt anyone, much less his wife, the mother of his child.

Your Honor, like I said on the stand yesterday, I knew she was planning to kill him, and she did. You see, we'll never spend another Christmas with our son, another Thanksgiving with our son, another Easter, another Father's Day or Mother's Day, not another day with our son. We'll never get to hug him again, kiss him again, see his infectious smile that would light up a room ever again.

Little did we know on Saturday, August 10, 2013, the day before Heather murdered our son, that we would never -- that that would be the last time we would see him or hear him say I love you, as he did at the end of every conversation, and the last word we said to

each other every time we saw him.

Your Honor, when Heather took our son's life, she took ours as well, and our lives are now forever changed. Although our family will never be complete here on Earth, we will be in Heaven. We are asking you, Your Honor, to give her the maximum sentence for such a heinous crime.

THE COURT: Thank you. I know it is tough. Give us your full name, that has to be done.

DESTINY STUDZINSKI: Destiny Studzinski. Do I have to spell it?

THE COURT: Yeah, sure, if you would.

DESTINY STUDZINSKI: Okay. S-T-U-D-Z-I-N-S-K-I. I'm David's sister. And justice has been served, and we thank -- we are very thankful the evidence spoke. I'm so thankful, because we, as a family, have not been allowed to speak for him as it has been considered hearsay. Well, I would like to speak for him now. David was my only brother -- I'm sorry (crying).

THE COURT: It's okay. Take your time.

DESTINY STUDZINSKI: We were so close; our whole family always was. We shared everything. We talked or texted daily. When I moved to Texas seven years ago, it changed nothing. There were multiple texts

all day long, always waited on his corny jokes or crazy voice mails where he called and pretended to be someone else. He was my son's Uncle David, as he was almost three, and that is how he pronounced it, when she murdered him. We already had his third birthday party planned in South Carolina at my parents' so we could share it with family and friends.

Instead of David being there, my son asked, Where's Uncle David? My husband and I had to try to explain he was in Heaven, so at three, Walker, our son, was sending balloons to heaven for David. Now, to this day -- and he's five -- any time he has a balloon, he always let's one go, and he asks, Mommy, can we go to Heaven and see Uncle David.

David was not and has never been a violent person, ever. Of the two of us, I'm much more the aggressive one. Even before David married Heather, I begged him not to. I just had a feeling, and after he did, from about a year in, he was in misery, until she murdered him. My mom would call and say, I'm scared to death that she's going to do something, that she's going to kill him. We would say, I don't think she's that crazy. I know she's off, but I don't think she's that crazy, but she did.

He was leaving. He was leaving -- and I can say

that now -- he was leaving her on Monday, and she killed him on that Sunday. He was so concerned about J.D. . She was so controlling and would not let him have anything to do with him hardly, wouldn't let him bring him to Florence. She didn't want us around him, and that is why he stayed. My mom was trying to get everything in order so he would know that he could see his son.

So if anyone is in the abusive situation here, it is definitely not her; it is was my brother. She took him away from his hometown, took him away from us, his family, took him away from his friends. She moved him down there with her family, and that is how she wanted it. She wanted nothing more to do than to have her house. It was always her house, on her land. It was her baby. It was her life. She knew if he left, he would get visitation, so in that text message, I suggest that that was correct, divorce was not an option for her. She murdered him on August 11, 13 -- 2013, and on that day, she not only took away from me my brother, she took my parents away as well, because they have not, and they never will be the same.

Our family is forever changed thanks to her actions and her decisions. We will never have another Thanksgiving, Christmas or birthday with David. We've

already missed all of those holidays since August of 2013 while she's been out living her life. We had to grieve and be quiet.

Your Honor, I ask that you give her the maximum sentence. While it would not bring my brother back, it will be justice for David, and that is all we can control at this point, and that is what we ask.

THE COURT: Thank you.

DESTINY STUDZINSKI: Thank you.

THE COURT: Give me your name.

DAVID SIMS: David Sims, S-I-M-S.

THE COURT: Thank you.

DAVID SIMS: Victim's father. Your Honor, I would like to start by quoting Psalms 99:4, God is mighty, he loves justice. We thank God justice has been served.

On Sunday night, August 11, 2013, our lives changed forever. Never did I imagine when I answered the phone at approximately 8:20 that night that I would hear the most dreaded news a parent could ever imagine, when the person on the line identified himself as Deputy Coroner with Horry County, I knew it was not going to be good news.

When I heard the word "coroner," the next thing I expected to hear was David had been killed in a wreck.

Never, ever did I expect to hear that he was shot and killed by his wife and that he had stabbed her, but that she was going to be all right. I knew that he stabbed her was nothing but a lie, as he was not that kind of person. I did not believe the part of Heather shooting him because his mama -- I did believe the part of Heather shooting him, because his mama had been telling me over and over and over every day, for at least two months, that she was afraid that Heather was going to kill David. In fact, she told his sister, and she was afraid of -- she told his sister what she was afraid of, and his sister said that she and her husband also were afraid of her killing him, too.

I would always tell his mama, She's crazy, but she's not that crazy, knowing all along that I felt she was capable of doing that too, but I did not relay my feelings to her, hoping that she would not worry as much. This selfish, self-centered, self-serving and senseless life changing act that Heather committed is just unbelievable. How could anyone take anyone's life, and especially for reasons that Heather did? She was so obsessed with their son, and she didn't want to share him with his own father, a father that most mothers dream of having for their child. He was

so proud him. He wanted to be involved in every aspect of his life. He wanted to help with all of his needs such as bathing, dressing, feeding helping in every way that he could, as well as carrying him to places with him.

How can anyone take another life, and especially for the reasons that Heather took our son's life? It's just incomprehensible. How selfish can any one person be? How can she take David's life, the loving father of their four-and-a-half-month-old son, our son whom we loved more than life itself, and Destiny's brother who she loved dearly? He had so many friends and relatives who lost someone who meant the world to them.

Now it has been over two years and three months, 831 days, since Heather murdered our son. She has put us through hell every single day since. She shows absolutely no remorse and has never expressed any regret for what she did until yesterday when she was on the stand, when she said she felt our pain. That is impossible.

David, on occasions, he went to Ronnie, Heather's father, to help on several occasions with the way Heather was acting towards him. He told David he could not get involved, that if Heather found out that

David reached out to him, it would make things worse. How much worse could it have gotten than Heather murdering David? What she did was nothing less than cold, calculated murder.

Heather, we wonder every single day, did David see you pointing the gun at him and you then immediately shot him in cold blood, or did you -- or did he -- or did he see you pointing the gun at him and he went to his knees trying to dodge the bullet, but was unsuccessful, or did he go to his knees begging for his life, and then you shot him in cold blood? And you claim to be a Christian.

As I said earlier, you are the most selfish, self-centered person I've ever known. David did everything in his power to be a good husband to you, but you would not let him. All he ever wanted was to be loved and have a family he could love and provide for, but, no, according to Heather, everything was hers.

He told us numerous times how she told him it was her house, her land, her baby, so forth, that everything was hers. The night that we got the horrible news that Heather murdered him, friends and loved ones began pouring into our house to comfort and mourn with us. No one could believe this happened to

David. They knew he was not capable of hurting anyone, as Heather was trying to claim self-defense. He was the kindest, most loving, laid-back, easy-going person in the world. He cared about others and would give anybody the shirt off of his back. David was even an organ donor, and Heather even took that from him when she murdered him.

That night about 1:00 a.m. his mom and I finally laid down and we talked, cried and we prayed the rest of the night. As a ray of light peeked through the blinds, it hit me like a ton of bricks, and I said, Margaret Rose, you know what Heather did to David? She took him out of a living hell with her and sent him straight to Heaven into the arms of his Lord and Savior where he would have no more sorrow, tears or heartache.

We know without a shadow of a doubt that we will see him, and we will all spend eternity together with him and our Lord and Savior.

Your Honor, we will never, ever again on this Earth see our son or hear his voice. I'll never celebrate another birthday again, never celebrate a holiday, never spend another day with him again on this Earth. He and I never will be able to hunt, fish or do any of the things father and sons love to do

together. Heather reached in our hearts and ripped them out leaving just barely enough to keep us going, and then she decided that was not enough, so she took the rest of our hearts by keeping our grandson, J.D. , away for us, except very few supervised visitations. She and her parents seem to forget our grandson is all we have left of our son, and that they do not own him.

In closing, I would like to say that in our house my wife has 20 pictures of David in our den, 12 pictures in our kitchen and breakfast room, and six pictures of David in our bedroom and closet. That is a total of 38 pictures I see every single day, but of all the pictures throughout the house and all of our wonderful memories of our son, the one thing that sticks out in my mind and I can't seem to get it out is my son's cold lifeless body lying in that casket (crying).

Your Honor, since Heather murdered David I saw the life of his mother being sucked out of her body every day. She is not the same person she was prior to this senseless and selfish death. Heather has given us a life sentence without our son, Your Honor, and I'm asking that you give her the maximum sentence allowed. Thank you.

THE COURT: Thank you. Anything else?

MS. LIVESAY: Nothing further from the State.

THE COURT: Yes, sir, happy to hear from anyone.

MR. MARTIN: Excuse me?

THE COURT: I'll hear from anyone.

MR. MARTIN: Heather's mother wants to speak, Your Honor.

THE COURT: Okay. You have to give us your name, I'm sorry, you have to do that now.

MR. SANDERS: Sandra Causey, C-A-U-S-E-Y, and I'm not prepared to do this.

THE COURT: That's okay.

SANDRA CAUSEY: I don't have any papers written up, because I know I respect the jury's decision. I respect the Court with all my heart, but I know my daughter is innocent (crying). There is not a shadow of doubt in my heart about that. Heather has never hurt anyone. She has never had an enemy in her life. She has always, always been a good person, and she still is. I respect the Sims, I respect the things that they feel. We've grieved too, I want you all to know that. I know you roll your eyes, and I feel the hatred that you have for Heather and for her daddy and I, and I forgive you for that, I do. But they didn't see Heather. They didn't know Heather. They were

never here to see her. We embraced David as a son of ours, we really did. We loved him. We took him as part of our family, and Heather loved him with all of her heart. She still loves David.

Two weeks after she met David, she came to me and she was crying and she said, Mama, I thought God had forgotten about me. Heather has always been a woman of faith, always trusted God and always had faith in God. And she was crying and she said, Mama, I thought God had forgotten about me. I thought I would never find anybody I could give my whole heart to. I thought God left me out, because she spent so many years working on her degree and working on her career. She was so focused, and she didn't just finish school, she finished school with honors in every school she was in. She was in a Christian school. She went to Conway High her freshman year. She didn't know anybody. She didn't grow up with the kids in the high school, but yet when she was a senior, they voted for her as Homecoming queen. I know that doesn't sound like much, but for them to vote for her and not even know her, they didn't attend grammar school with her. I had young people come to me when Heather was a senior and tell me, Ms. Causey, you have done such a wonderful job raising your daughter. Everybody knows

who Heather is. Heather is true to herself. She loves everybody. She gets along with everybody. She doesn't look down on people that are less fortunate than her. She doesn't look down on people that are not as part smart as her. She loves people. She was voted best all around senior year. Heather has always, always made her daddy and I proud of her.

Getting back to the time when she first met David, she said, Mama, I can give David my whole heart, and she did. She gave him her whole heart. Now, I saw Heather and David probably more than anybody in this room because I took care of J.D. when she went back to work. Heather was a wonderful mother. That little boy loves her. He's two years and eight months. He screamed every day this week when she had to leave him. He ran to the window this morning and he watched her drive out of the driveway, and he cried and he cried. He said, I'm going, Mommy. I'm going, Mommy (crying). He is at the age that he doesn't need to be separated from her. She has always been a good person, and she still is, but I took care of J.D. while she worked, and I saw David and Heather on pretty much a regular basis. I saw them a lot more than David saw Heather.

I'm going to tell you, we saw a change in David,

Ronnie and I both, but we didn't interfere. We knew Heather loved him, but David had an indifference about him. He was -- he was mad acting all the time and just had a chip on his shoulder, and I couldn't figure out what was wrong, but I knew something was wrong; on the other hand, Heather was beaten down. She was beaten down emotionally. She was beaten -- she was like a little hurt puppy, and the last time I saw David -- I want you to know this. I was going to take the stand. I asked Morgan to put me on the stand, but Heather didn't want me to get up there. This is how protective she is.

The last time I saw David was on Friday night before this happened. David was never home. He was gone all the time. He came in most nights after dark, and when Heather was on-call, David was not there to help with the baby. One or two times during the whole month of July and part of August he actually was there to take care of J.D. . The rest of those times I had to go and take care of him while Heather had to go back to the hospital. The reason I know this is I took notes on my phone. I would put his schedule down, when he ate, when he drank, when he slept. I know from the hours I was up there, but David had a lot of opportunities to be a dad. He didn't have to

take J.D. to Florence. Heather didn't mind him going to Florence.

THE COURT: Make comments to me. That is okay.

SANDRA CAUSEY: I'm sorry. Anyway, I knew that Heather loved David, and I knew that she was beaten down, that is the only way I can describe it. Since his death, I found out what was going on, and it just broke my heart, but we still love David. Heather has grieved. We have grieved. But, Judge, the last time I saw him, I went back to take care of J.D. while they went to the Colemans, and Heather was in the kitchen. She was washing bottles -- is it okay for me to tell you this?

THE COURT: Sure.

SANDRA CAUSEY: She was washing his bottles like she always did. The baby took a bath in the sink, and she had to get the sink cleared. The tub fit in the sink. And I went in and David was in the back. We had followed him, we were behind him down 905 coming home. I didn't know it was him, but Ronnie, Sandra, David is going to get in a wreck. He is going to get himself killed or a ticket if he don't slow down. He was in and out of traffic swerving, swerving and this was -- he was on his way home.

But, anyway, Heather was washing dishes. I came

in, and her hair was wet and it was up. She was dressed, but I could tell she had been crying. I didn't know, you know, I didn't ask or anything, but she said to me, I didn't have time to finish getting dressed. I said, Well, Baby, why didn't you call me, I would have stayed and let you have time. She said, It is okay. She turned around back to the sink, and I said, Well, Darling, it don't matter, you're still beautiful whether your hair is wet or dry, and David was in the bathroom. He was sneaking up behind the door. The light was off, and he was trying to eavesdrop. I don't know, he just acted like he was always -- I don't know.

Anyway, I looked up and I saw him, and I said, Isn't she beautiful, David? He looked at her and he said, I guess I am beautiful, aren't I. The way he looked at her, Judge, it sent chills down my body. I couldn't -- I couldn't even speak. Anyway, I just want you to know that J.D. needs his mother. He needs her. We need her. I just beg you -- I beg you to consider my daughter and this little boy.

THE COURT: All right.

MR. MARTIN: Just a couple short folks, Your Honor.

MR. HOWELL: Pastor Howell, H-O-W-E-L-L. I'm

Heather's pastor and the family's pastor. I have known Heather since she was about nine years old. I taught Bible studies in their home, and soon after that they became a part of my church. I've known Heather that many years. I know the jury has to make their decision on what they are given, and I'm not questioning any of that. But I know in my heart of hearts that this young lady loves God. I would say that Mr. Sims won't be on the jury to tell us whether or not she gets into Heaven. I have known her Christian life and walk with God. She thought she was in danger or she would have killed no one. I've known her all of these years, been her pastor, been there when they were sick, been there when they needed me. I dedicated the baby. We did that, changed it a couple of times for the convenience of the Sims, and they didn't come to the baby's dedication, but that is okay.

I would ask you, in knowing Heather and her walk with the Lord -- and one thing I've been the proudest of is from the time it happened, she has been in church, very active. This past Sunday she asked me for a chance to speak, and she spoke a testimony, even so well thought of in this area that just a month or so ago a guy got killed on a motorcycle, and I did the

major part of the funeral, but they asked Heather to speak at the funeral, is how the community and the town feels about her. We love her and ask you to be as lenient as you can. We ask that, and you are in our prayers. Thank you.

THE COURT: Thank you, sir.

MR. MARTIN: One other short one.

KAREN STAPLES: Your Honor, I'm Karen Staples, nurse practitioner. Heather has been my patient for several years now, and I also can speak to the fact of how highly skilled she is and how gentle and caring she is with her patients. I do know that there is a long waiting list right now for people who really wanted to get her back to work so they could have an elective surgery, because she is just that much of a gift from God to our community and our hospital system. I personally feel this is a great mischaracter of justice, but we shall see. I ask you to be as lenient as possible.

THE COURT: Thank you.

KATIE KHANDUJA: Your Honor, Katie Khanduja. Heather didn't have any brothers or sisters. She was an only child, so I can considered her a sister, especially after my sister passed away. Any time I was in need or going through a hard time or needed

prayer, I always called Heather. I always called the Causey family, that is who I called. This time when I needed prayer, it was them that I needed prayer for.

Your Honor, Heather has a good soul, she has a good spirit. People love her as I love her. We have been in the courtroom with her for three weeks, and I know people in this courthouse have seen the spirit and love of Heather as well. I ask, Judge, please be lenient on my friend. Her son needs her. Her parents have to go home tonight and tell that son that Mama is not coming home (crying). I ask that you remember all the good you've heard of her and seen of her from where you sit, and I love her with all my heart. If I could take your place, Heather, I would. Thank you, Your Honor.

THE COURT: Thank you.

MR. MARTIN: I think Heather would like to say a word, and obviously I would, too.

THE COURT: Yes, ma'am.

HEATHER CAUSEY SIMS: I'm so sorry that August 11, 2013 ever happened. I loved David, and I loved his family no matter what they think. David was my heart, and when our son was born, I made another place for him in my heart. But I loved my family and I wanted nothing more than to have a family with David for our

child (crying). I wanted our child to be in a happy home with the two of us. If that wasn't possible, I mean, that was okay, but I wanted to give our marriage the best opportunity that I could for our child, more than anything.

What happened that day was not planned. It was never planned. It wasn't in heat of passion. I was scared. I was scared. I would never have done this if I wasn't scared, but I respect the jury's decision. Your Honor, my child doesn't have a family, and I have to deal with that every day, but now my child only has his mother. They are right, he's going to be wondering where I am. I'm not worried about myself, but I do worry about him. I just want you to know that this was not -- this was not anything that I wanted (crying). This was not anything that I planned. This was not anything that happened out of anger, and I just ask that you be lenient.

I'm not a violent person. My child is now fatherless and motherless, and I just ask that you be lenient.

THE COURT: Okay. Thank you. Yes, sir.

MR. MARTIN: Your Honor, obviously you know a lot about this case. You've seen and heard a lot, and so I wouldn't belabor any of that. I will say that, you

know, I'm so concerned about the fact that cases like this sometimes you have compromised versions. I know the jury had the toughest job of all. I feel for them. I know this is difficult on them, difficult on you, but I would say that in terms of sentencing Heather that, obviously, this offense which they've convicted her of carries a wide range of sentence, and you know that as well as I do. They did that because obviously it was determined that there are cases in which the judge uses that discretion to factor in what he knows, what he feels, and most of all, I think in this case the defendant herself.

I meant what I said when I have never been prouder to stand and defend anyone than I have Heather. I have stood in this courthouse a lot of times. This is one of the soberest and saddest of days for everybody.

THE COURT: Yeah.

MR. MARTIN: For everybody. There is no question about it. Shakespeare says that earthly powers does like God's become and mercy seasons justice. A sentence on the minimum end of this scale is appropriate in this case. And I believe that Heather -- sending her to the penitentiary for a long period of time helps no one. The punishment has

already been extravagant to a large degree and will remain with her every day that she lives. I simply ask that the Court keep in mind that there is a range of sentence. We believe in this case a sentence on the lower end of that scale is appropriate. I made all of the motions I can make with you. I just hope that this is one of those instances when mercy seasons justice.

THE COURT: All right. Thank you, sir. You can come up here. Let me just say -- and I'm not going to belabor any of this, but it is interesting to me to sit up here and listen to good men of faith on separate sides have absolutely completely opposite positions, and that causes me a lot of worry. These families have better get right with each other, for what it is worth, or this baby is going to be standing here one day; that is what worries me. The child doesn't have a father. The mother has to be punished, and I want to say very clearly in front of this jury, they did a great job. I told them in the back that the punishment was solely mine. Several of them asked me to be merciful, which is unusual. I think they were concerned about this child. I think everyone in this courtroom is. I'm urging you two families, who obviously really have problems, you better unite for

this child, or you are going to regret it. That is all I can say.

I do want to make real clear to the jury, as I told them, this is my decision, don't worry about this, again. I think you did a great job and, quite frankly, I think you made the right verdict.

The jury having found her guilty of voluntary manslaughter, obviously it is a huge bracket of 2 to 30; is that right?

MR. MARTIN: It is.

THE COURT: Two is minimum. Please don't ruin this last minute, anybody do or say anything.

The sentence of the Court is 25 years provided upon the service of 10 years, balance suspended for probation for five.

I'm doing that for a very specific reason. Basically, based upon what that jury said to me and, again, it is my decision completely, but I respect the facts that you sat and listened to. I'm comfortable with that sentence. It is my sentence. Please don't think another thing about it. I hope for this child's sake you can do what you have to do. Be grownups. I suspect the sentence doesn't make anybody happy. They want more, you want two. You'll get out and have a life. This young man will never live again, never

have another breath or hug his child. What I'm telling you is this child is the most important thing, period.

All right. That is the order of the Court. Thank you very much. Sheriff, you all going to take them out in separate groups? Let me -- let me -- hey, I've done my job. Let me tell you all something. You all hate each other. I understand it. I have children. I've sat here and watched you hate each other. It is just a stunning thing to see from my vantage point. For what it is worth, I don't think this young man would want that, and I don't think this child would want it. I don't think she wants it. You have got to put that aside. I mean, you are all people of faith. That is what I'm saying, you are all literally people of faith, and in good conscious told me exact opposite stories.

So I just ask and beg you to put that aside for this child's sake, who is two years old. Thank you. You can get them out however you want to do it.

(Whereupon, the proceedings for the trial of State of South Carolina vs. Heather Causey Sims concluded.)

State of South Carolina

County of Horry

In the Court of General Sessions

State of South Carolina,	)	
	)	2013-GS-26-5243
Plaintiff,	)	
	)	
-vs-	)	December 16, 2015
	)	
Heather Elizabeth Sims,	)	
	)	Transcript of Record
Defendant.	)	
	)	

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Nancy Livesay, Esquire
Assistant Solicitor for Fifteenth Judicial Circuit
Attorney for the State

L. Morgan Martin, Esquire
Mary Ashley, Esquire
Alex Hyman, Esquire
Attorneys for the Defendant

Renee H. Tollison, CVR
Circuit Court Reporter

INDEX

	PAGE
Motion to Reconsider Sentence	3
Certificate of Reporter	54

EXHIBITS

No	DESCRIPTION	ID	EV
C-1	State's Reply to Defendant's Motions and Proposed Order	25	
C-2	Trial Transcript Excerpt	25	

December 16, 2015

(WHEREUPON, court convened with all parties present and the following proceedings were had commencing at approximately 3:16 p.m.)

THE COURT: Yes, sir?

MR. MARTIN: If it please the Court. First of all, it's good to be with you in Anderson today.

THE COURT: That's a long drive, isn't it?

MR. MARTIN: Yeah, it is that.

Judge, let me just say for the record that we are here today under motions filed under Rule 29. And we would at this time renew and preserve all motions heretofore made in the matter, including those for a motion to dismiss at the stand-your-ground hearing, the directed verdict at the end of the State's case, the directed verdict judgment NOV motion for a new trial on the thirteenth juror at the end of the evidence.

And we're here today to move the Court at this point in time for a new trial, a motion to -- technically for a new trial based on the insufficiency of the evidence to support a verdict of voluntary manslaughter and/or that the Court was in error when it charged the offense of voluntary manslaughter.

At this juncture, a motion for a new trial is a part of the judgment notwithstanding the verdict, but the

technical motion is for a new trial. And I'd like to present to the Court an argument in connection with that.

THE COURT: Sure. Y'all have driven a long way. I'll listen.

MR. MARTIN: Do what, now?

THE COURT: Y'all have drive a long way. I'll be happy to listen.

MR. MARTIN: Yeah. Well, let me say, Judge, I'm going to make this as concise as I can. And I know that the Court will not take my efforts to make it concise as an indication that I am any less convinced of the correctness of my position than I am. But the principal issue is whether the Court erred in charging the jury on the lesser-included offense of voluntary manslaughter.

And then as a corollary to that, was there sufficient evidence in the record to support a conviction for voluntary manslaughter? And our position is there was not.

There's some things I think that the State and the Defense can agree on. First of all, voluntary manslaughter requires some evidence, some evidence that the defendant acted in a sudden heat and passion, which the Supreme Court has defined as an uncontrollable impulse to do violence. And there's numerous cases which

state that, but most recently Cook versus State.

THE COURT: Which came out the week after this trial.

MR. MARTIN: Yep. And I will say, Judge, just to start with, that's a case that you did not have the benefit of at the time this case was tried. But on December the 8th, December the 9th of 2015, the Supreme Court filed the case of Cook versus State which is strikingly similar in legal principle. Not in fact, but in legal principle. And the facts surrounding the critical elements of heat and passion, uncontrollable impulse and evidence thereof to support a conviction for voluntary manslaughter.

I think we can all agree that the jury charges are governed by the evidence presented at trial. I would agree that the State's theory of the case doesn't govern, but I would think that in this case, as was discussed in Cook, it may be relevant to a court's determination of whether or not that evidence was presented or not.

In State versus Starnes, which is a case that I have forwarded to both you and Ms. Livesay earlier today -- and I apologize for not getting things to you earlier ---

THE COURT: That's okay.

MR. MARTIN: --- but I've been working hard the last week or so. But those four cases, I think, are

central to our argument before you for a new trial, and that is State versus Cook. Also, the 2015 case of State versus Niles, the 2010 case of State versus Starnes, and the 2011 case of State versus Dickey.

Now, if you go back and you look at those cases carefully -- and I would hope that the Court would do that.

THE COURT: Yeah. I actually -- just for your benefit, I've read them all several times.

MR. MARTIN: Well, then if you did, you will recall the language in State versus Starnes which says, given the appellate's argument we take our case law -- given appellate's argument, which states our case law and turns primarily fact-driven holdings into broad statements of law, we take this opportunity to clarify the law regarding how a defendant's fear following an attack or a threatening act relates to voluntary manslaughter. So right there is the guts of what we're dealing with. And it was at that point in time that I believe as you read these court cases -- and I read a lot of them prior to and after 2010 in the last two weeks -- it is at this point in time that they begin to walk away from that broad-brush approach of if there was an attack, a fight, an encounter, physical or verbal encounter, and somebody said I'm fearful, okay, we charge voluntary

manslaughter. And it does seem to me like that that might have been the approach for a while. Even though if you break the cases down, maybe it wasn't, but it appeared to be that way. But the court made it clear in Starnes as they went back and began to talk about these cases that you had to do more inquiry into it. But I would agree with the State that the evidence in the record is what the decision to charge is made off of.

Secondly, we would agree that voluntary manslaughter and self-defense are not mutually exclusive and that it is possible for evidence to justify both charges, but not necessarily justify both charges.

In this case, we certainly take the position the evidence doesn't justify voluntary manslaughter. It does self-defense but not manslaughter. Where we disagree with the State is the question that where there is any evidence presented in this trial tending to reduce the killing the State has vigorously claimed was a murder to voluntary manslaughter. And I have recalled -- and I also have for the Court, which I just got yesterday, a portion of Ms. Sims' testimony, which I can hand up to you and the State. But going back and looking through -- I don't have all of the transcript of the trial, obviously.

THE COURT: Sure.

MR. MARTIN: But I have thorough notes that we had taken. And, of course, if there's evidence that the State has, I'm sure they'll tell you about it. But the instance in this case is that there is not evidence of sudden heat and passion. They might say, as in some of the cases, we could talk about fear. She says, and her testimony was, I was afraid or I was fearful. Yet we know from the Starnes case that, quote, fear does not end the inquiry because the fact that someone was afraid does not necessarily constitute evidence that they lost control and succumbed to an uncontrollable impulse to do violence. Starnes rejected the argument that the presence of fear warranted a voluntary manslaughter charge. The court explained that Mr. Starnes either shot with malice aforethought or in self-defense.

In State versus Dickey, Justice Pleicones offered a concurring opinion in that case and says, only evidence is that the defendant admittedly acted out of fear and acted deliberately and in a controlled manner. We can talk about the fact that there was a struggle. Okay. Well, if there was a struggle, then we've got to charge manslaughter. And the answer to that is a resounding no. If it did, the court would need to charge voluntary manslaughter every time you had a case of self-defense which involved a struggle. An odd conclusion when the

fact that a defendant was attacked tends to make a self-defense case better, not worse. In other words, as you know, you can have self-defense whether there's a physical encounter or not.

In this case, as in other cases, where you have an attack, an assault, if you would, which is all the more reason and should make one's self-defense case better, it certainly doesn't follow that, okay, well, then we've got to charge voluntary manslaughter, which is a totally different set of facts in every case. Manslaughter is not a lesser-included charge to self-defense.

So it's clear that the things in this case, the only things in this case, that anyone could say may constitute a charge of manslaughter is that there was the defendant's testimony that she was in fear and that there was some sort of encounter between the two of them, an argument, before the fatal shot was fired.

It should not be surprising that there's no evidence of an uncontrollable impulse to do violence in this case. Nobody tried that case. The State tried its case. They made the decision to indict the defendant for murder and build its evidence around proving deliberate actions -- deliberate actions with cool reflection. The State offered life insurance as a financial motive, even though the defendant showed the defendant's earnings far

exceeded her husband's.

The State also alleged the defendant planned the encounter in advance, manipulated the crime scene to cover up a preplanned killing. The State did this even though the evidence shows that the defendant -- think back to Niles and Cook -- shot only one time. Voluntary manslaughter did not apply in Niles and Cook even though there were multiple shots fired. The impulse to do violence. I'll shoot you five times, two times, four times.

She called for help immediately afterwards. No evidence in the record that's not the case. Administered CPR in efforts to save her husband's life. The State had no incentive to offer into evidence that the defendant struck the fatal blows because she lost control of her actions because their theory of the case was totally different. And that's fine. But there is no evidence that they introduced to that direction. It was that, as Ms. Livesay said in her closing argument, it's murder every day of the week. Not one word about manslaughter.

But again, you've got to go back to the evidence. In this case, the defendant had the same incentive. Her theory, which has the advantage of being we believe true self-defense. She never raised the issue of voluntary manslaughter. Of course, we objected to the charge at

the time. But the defendant would obviously rather be -- you know, some defendants 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 saying I shot my husband as a reaction when he lunged at me with the knife, which is exactly what she said.

This is a transcript of several pages. It's certainly not all of it. It's a transcript of several pages of Heather's testimony concerning what happened. It's evidence in which the testimony -- if you look over -- and I don't want to burden you with reading all of it right this minute.

THE COURT: That's okay.

MR. MARTIN: But if you look over to page 4 -- page 5 -- excuse me -- back at the bottom of -- if you're going over to page 5, line 24, 25, 1, 2, and 3. Again, and he lunged at me. And when he did, my hand went up and I shot. I shot out of reaction.

THE COURT: And that was, I told you at the time, language that clicked -- I mean ---

MR. MARTIN: Sir?

THE COURT: -- that that was language that clicked with me. I mean, I was listening very ---

MR. MARTIN: I remember you saying that. Okay? But I'm glad that's what clicked with you because I'm going to talk about Niles and Cook in just a minute to explain how that isn't sufficient evidence to charge manslaughter.

THE COURT: She says it went up and I shot. I shot out of reaction.

MR. MARTIN: I did.

THE COURT: And that was what I wrote in my notes.

MR. MARTIN: I did. And it's the exact -- said, I shot out of a reaction. I didn't think nor did I ever want this to happen, but it was a reaction because I was scared. Now, at no time does she say that I lost control, that there was any sort of intent to do violence. She says -- a reading of that is clearly that he lunged at me, and when he did, my hand went up and I shot. And I shot out of a reaction.

If you go and look at -- if you go and look at the case of Niles -- I'm trying to get my notes so I could be a little concise as opposed to scattered. But if you go and look at the language in Niles and in Cook, you will see that in those cases, that same point was the issue.

What did they say? Did it mean that he lost control or was acting with some uncontrolled impulse to do violence? And then ...

Find that in Niles. No. Cook.

(Off record discussion with co-counsel.)

MR. MARTIN: Give me one second, Judge. I had this stuff written up so that I could do it quicker than this.

THE COURT: That's okay.

MR. MARTIN: In Niles, the language according to the record was I shot twice. I went pow pow. I shot two times. My eyes was closed. I wasn't even looking. I wasn't trying to hit anybody. Two times. Closed my eyes, shot.

Cook, before I knew it, I fired a shot. Before I knew it, I fired a shot. The trial court judge says that plus two shots, I'm going to charge manslaughter. Cook says wrong. Wrong.

THE COURT: But now, factually in Cook, what they say is, number one, that it is discretionary based upon all of the testimony. And number two, that Mr. Cook had followed the victim to the trash dump. They'd had a verbal altercation, but he had cooled off. Somebody cooled off. Then Mr. Cook followed the victim to the dumpster. And it seems to me the Supreme Court --

because, look, when I read Cook, I was concerned. It did come out a week after this trial. I would have loved to have had the benefit of it. But they seemed to take great -- put great importance on the fact that Mr. Cook could have walked away, and that was the evidence -- lack -- and that's their phrase -- lack of uncontrollable impulse, which was not here.

MR. MARTIN: Well ---

THE COURT: We had two people in a bathroom. And based upon her testimony, she's got a gun in the bathroom. And, again, just bear with me because I want to -- she's got a gun in the bathroom with two bullets in it, and he is fixing a toilet with a knife and some type of pliers. They have an argument. He says, I'm going to knock your effing teeth out. She says back to him, I just want a marriage. They have some verbal altercation. And then there's a gap, a very, very small gap, and he's dead with one bullet in his chest.

And the State's position is, I'm sure, that she put the gun in there and waited for him and manipulated the situation and created the -- a set of facts that would give rise to self-defense. But the truth of the matter is, it's factually different from Cook and Niles.

MR. MARTIN: Well ---

THE COURT: You may disagree with that, but to

me ---

MR. MARTIN: Well, I respectfully disagree ---

THE COURT: Yeah. I don't expect you to agree with me.

MR. MARTIN: --- on the critical facts. Well, it doesn't matter if I agree. It's a question of what it is and how you interpret it, you know.

THE COURT: Right.

MR. MARTIN: But first of all, in the Cook case, what happens is there is a bitter exchange, which would, if you want to say calling each other very bad names ---

THE COURT: Yeah.

MR. MARTIN: --- where somebody might say that's going to make you mad and trigger the chance for a heat of passion event. And then the guy comes home, they text each other. They walk upstairs. The deceased calls his girlfriend a B-I-T-C-H, which he said that -- I thought about that for a minute, but I went on. I go upstairs. I eat my watermelon. I get my pistol, and I'm coming back down to put the trash in the dumpster. And when I come back down, he starts with me again. Okay? And I'm walking past him, and I'm trying to walk away from him. That's what they say in Cook. And that's what the Court hinged on.

In this case, same thing. If you take Heather's testimony at trial, which you have there before you.

THE COURT: I do.

MR. MARTIN: If you take her statement to the police on that night that this occurred, then you will hear her say, I got the gun. I remembered I had put the gun in the bathroom vanity. I was scared, so I got the gun. These are quotes. I don't want to use this. The same thing she said at the 9-1-1 statement. Same thing she said in court. You are scaring me. I was backing away. She was in the bathroom, Judge, but she was backing away. She was moving away just like in Cook. And they said in Cook that the deceased kept cutting him off.

In this case, he keeps pursuing her. Okay? She shoots only at the time she's stabbed. She shoots one time. 9-1-1. CPR. There's no evidence in the record there at all that there was an uncontrollable impulse to do violence. I mean, with all due respect, how much clearer can it get in terms of self-defense? Now, maybe they don't believe her. Okay?

THE COURT: Because they could have decided. They had self-defense before them. They could have wiped this entire thing out if that jury believed it.

MR. MARTIN: That's right. And maybe some of

them probably thought it was self-defense, some might have said murder. And that's okay. The problem is, the problem is in this case there's no evidence of voluntary manslaughter. There's no evidence there. And if you're hinging your decision on the thought that she said, I threw up and shot out of a reaction, then Niles shoots that down flatly.

They go on to say in Niles -- excuse me. Cook. It's Cook. Let me find it in Cook.

THE COURT: And just for the record, let me say this. When I say I perked up, obviously I'm taking the evidence in its entirety.

MR. MARTIN: I understand.

THE COURT: And I'm watching the way they testify. That did strike me -- quite frankly, at the time she testified that way, that was the first time I had heard that. That suddenly, oh, I was there and I fired a pistol and shot. There had been some testimony that I've got a gun on you. You'd better back off because I'm scared.

MR. MARTIN: Judge, no, uh-uh. She said she had the gun by her side. And I'm just telling you, now. And the transcript says ---

THE COURT: Okay. Well, again, by her side.

MR. MARTIN: I'm not arguing with you, but the

point is she said throughout her statement to 9-1-1 and here -- and obviously, there's always some words different.

THE COURT: I agree.

MR. MARTIN: But it doesn't change from the concept that when he turned around with the knife, I was scared. I reached and got the gun. Transcript there. Testimony of 9-1-1. I had it down by my side. I don't want to use this. Statement. Testimony in court. I'm backing up. I'm trying to move away, not chest bumping like in Lowry and other cases that I'm looking to kick your A double S. I'm backing away. He lunges. I raised -- my hand goes up, the gun goes up and I shoot. She doesn't say, again, it just went off as it did in Niles. She said I shot. She said -- you can go back and listen to her 9-1-1 statement. She says four or five times in there -- they're asking her what happened. I held the gun up and I shot. Now, she said, I shot out of a reaction because I was scared. Okay. So can you parse the words "out of a reaction because I was scared" to mean that that's an uncontrollable impulse to do violence? And I think Niles tells you -- I mean, Cook tells you no. I mean, in other words -- they say -- listen to this, Judge. This is quoted out of Cook. Due to the short -- it says here in this case, finally, we do

not believe Cook's statement that before I knew it, I fired a shot. Now, that sounds more like uncontrollable impulse. Before I knew it, I fired a shot. It says, we do not believe that that warrants a charge of voluntary manslaughter. The State argues this statement could be interpreted to mean that Cook lacked self-control when he shot the victim and thus acted under an uncontrollable impulse to do violence. We disagree. Due to the short, swift motion of firing a gun, we believe this statement can be heard in any case in which a defendant is charged with firing a weapon, even out of self-defense.

THE COURT: And if you read on, they say that there was testimony that these two men -- and, again, we can talk about the facts of it, but this is what I'm looking at. These two men were arguing so softly that a witness who watched them didn't even know they were arguing, which led the Supreme Court to believe that there might not have been the altercation that Cook said. And, again, I wish Cook had come out first.

MR. MARTIN: I agree with you that language is in there. But once again, the fact that they're -- but think about this, Judge. The fact that there is a, quote, unquote, altercation, physical encounter, struggle, which in this case there's no testimony in the trial record or in the statements that Heather here was

trying to hit, fight, strike back at him. All of her testimony is -- and it is her testimony because that's what we've got. But that doesn't change the law in this state as to what is and isn't manslaughter. But what you've got in this situation here is that there -- unlike in Cook, they cite Lowery, in which they say, you know, these guys -- there had been a -- we see manslaughter as a viable charge here because we believe there's evidence of a sudden heat and passion because there had been chest pumping and threats between the two.

THE COURT: Right.

MR. MARTIN: That he had fired a gun at him that didn't go off, and the guy walked away. And he went and loaded his gun, came back, shot it up in the air, and then went looking for him, all of which the court in Cook says is evidence of, they believe, a sudden heat and passion.

That's not in this record here. And so, again, it seems to me that it's clear that in this case you've got the court addressing, probably with some finality, that array of statements which a person may make in that before I knew it, I had shot. Or I shot out of reaction. Well, that's exactly what you're doing. If somebody is coming at you with a knife, and you raise the gun and shoot, you're going to shoot out of a reaction to defend

yourself from the person who you believe is trying to harm you.

Now, you can spin that any way you want to, but under Cook, you really can't. You can't use that in and of itself because, again, think again, because then you say well, the worse a guy -- an attacker is assaulting or attacking you and the scareder you are, the greater the chance we're going to have to charge manslaughter because you may not say the right thing about how you shot the gun. My, that would be a sad set of circumstances, I think.

But, again, Cook seems to me to be not only controlling but dispositive as to what happened in this case. They go back and talk about Niles, and they say -- somebody said, well, they shot twice. Maybe that's evidence of an uncontrollable impulse. No, it's not enough. But in this case -- of course, we don't have that. We've just got once.

You know, if you go back into the Starnes case, it says there that the court has cautioned lawyers against taking isolated facts and turning them into broad statements of law. I think that's what you've got to do here to get to voluntary manslaughter. And, of course, all of this is a lot tougher to do in the heat of a trial and in the heat of arguments and motions and objections

and all. But when you do come back down to the testimony that we've got in the record here, those are the only things that could conceivably be used to get you, we believe, to voluntary manslaughter. And we believe that both of them, that a reading of Starnes, Niles, Dickey and Cook lead you decidedly to the conclusion that there's insufficient evidence in the record to charge or support a conviction for voluntary manslaughter.

That case wasn't tried, Judge. And that might be one of the reasons that the evidence is not there because we weren't trying to introduce evidence of heat of passion for voluntary manslaughter. The State wasn't trying to introduce evidence of heat of passion for voluntary manslaughter. So it shouldn't surprise anybody that it's there -- I mean, that it's not there.

You know, we never know what happens with a jury, but it sure seems in this case that this was a compromise verdict.

THE COURT: And I understand that was your fear.

MR. MARTIN: Yeah.

THE COURT: I mean, there were discussions -- and I've been in your spot -- where you have to make a decision whether you want to go for murder or nothing. Thirty years to life or nothing. And just for the

record, it was always real clear to me because, unlike a lot of lawyers, you directly said to me, I believe she's innocent and I want murder or nothing.

MR. MARTIN: I did. And whether that was a wise decision or not, I don't know. But that's exactly what I said.

THE COURT: Wise or not, what it told me was you believed your client and you believed your facts.

MR. MARTIN: And I believe ---

THE COURT: Which I respect.

MR. MARTIN: And that was the best way, I thought, to defend her, and that decision was made after discussions with her about it. But all of that having been said, Judge, you know, there's a lot of transcript, but most of it's not going to go to this. It really isn't because the State tried an excellent case, but they did adopt the approach that it was murder, and they went to great length to prove murder. We went to great length to prove self-defense. Nobody talked about manslaughter. Doesn't mean the jury can't do it, but they can only do it if there is evidence in the record to support it. And frankly, I believe that the Cook case, which was decided after the trial, makes it clear, taken in conjunction with Starnes, Niles and Dickey, that the evidence is not there to support a conviction for manslaughter,

particularly if you're trying to base it off of I shot him out of a reaction because I was scared. What is a defendant supposed to say if they're acting in self-defense?

Now, again, Judge, with that I would say that we would move the Court for a new trial judgment NOV, but in a criminal trial it's move the Court for a new trial at this stage, renew all of our motions that were made previously regarding stand your ground, a directed verdict. Any motions that's not made at this time or arguments that are not made, we would ask not be deemed as a waiver of any of those.

And so with that, I will rest.

THE COURT: Okay. And I -- with that, before I say this, I've got to go change this, so I need five minutes. I'm sorry.

I want to make the record real clear that during the course of this long trial, there were several occasions where the Defense, Mr. Martin, made motions that were correctly made at the time. And several times I said, you're protected and I'm incorporating all of your previous arguments into this argument. I want it real clear. And I'm doing that -- again, you told me -- one of y'all said if you say for the record again, I'll kill you. I'm doing that to make sure that whoever reads this

record understands that you made all the proper motions and that if you were cut short at any time, it was because I said I'm incorporating your previous motions. I just want that clear.

MR. MARTIN: And I appreciate that. And, again, with that -- because there was times that that somewhat occurred. We agree for the record that I made all the proper motions with regards to directed verdict ---

THE COURT: And I think you did.

MR. MARTIN: --- judgment notwithstanding and new trial.

THE COURT: Yeah. And to the extent that if somebody looks at this later, it was clear to me that any decision I made was based upon previously made motions and that those were all without objection -- because from both sides -- properly made at the time.

Y'all give me about five or six minutes.

(WHEREUPON, court stood in recess for a short break during which Court's Exhibit Numbers 1 and 2 were marked for identification only.)

MR. MARTIN: Your Honor, I have obviously ---

THE COURT: Oh, shoot. I gave them a chance to think.

MR. MARTIN: I don't know whether the motion to

modify the sentence, I don't know whether you want me to argue on that or take it up subsequent to her response to this or how you want to do that.

MS. LIVESAY: Can I have a few minutes maybe to address this issue, and then ---

MR. MARTIN: That's fine.

THE COURT: Why don't you address this issue, and then that'll give all of y'all time to think. I want you to have plenty time.

MS. LIVESAY: I'm not going to take too long. And I marked the memorandum I did for a Court's Exhibit.

THE COURT: Thank you.

MS. LIVESAY: I figured that'd be easier for everybody.

THE COURT: Thanks.

MS. LIVESAY: I want to start out just a little bit about talking about the facts of the case. Mr. Martin was talking about one statement that was made in her testimony in the trial, but the truth is several statements -- and the law says you have to look at all evidence that was presented at trial. The truth is there were several statements made by this defendant presented at trial. And just briefly, the 9-1-1 tape, which was also a statement by this defendant, immediately started off talking about her and the victim arguing. It's

talking about him approaching her, getting in her face, calling her ugly names, having a knife in his hand. These are things to present evidence that there was a heated argument between this defendant and the victim.

She talked about the fact that they had been having problems all day. They had been going to a counselor. All of these issues are talked about even in the 9-1-1 tape. Multiple times she is talking about in that tape the argument, the heated argument, that had pursued between him and her. And then she says in the course of that argument, he has a weapon, a knife. He then lunges at me with that knife, and I take out the gun and I shoot him.

Then when she's interviewed by the police in the hospital, Mr. Martin told you that there was no threatening words by her, but indeed she told the police he is cussing me. He is approaching me. I then get the gun. I'm not pointing it at him. I'm holding it at my side and I look to him and I say, I don't want to use this. That is on page 14 of the transcript in the hospital.

So at this point, this is not a woman that has gotten out a gun in fear for her life and immediately started firing. This is a woman that a heated argument is going on in the bathroom, which all takes place,

according to the phone records, within minutes. He's calling her phone at 6:07, and she's calling 9-1-1 at 6:13. So we are talking about a heated argument that has unfolded in five or six minutes. She tells the police, he's cussing me. He has a knife. He's lunging at me. I then pull out the gun. I'm not pointing it at him. I'm holding it by my side, and I looked at him and I say, I don't want to use this. Those words alone indicate that there is a heated argument. Those words alone could indicate that when she got that gun out, she got it out because she was mad. She was upset.

Now, there was also evidence presented by Allison Brown who testified, again, she told me -- this defendant told me there was a struggle over the phone. He had his arms around me. We were in a physical altercation. And in the course of that altercation, I get cut. And then I pull out the gun, and I shoot him.

Multiple statements were made by him. And the one -- by this defendant. And the consistency is every time it's we're arguing, he's cussing me, and he has a weapon and has already struck me two or three times and is lunging at me.

In every case including Wiggins and Locklear, the court of South Carolina says these facts warrant a reading of voluntary manslaughter. And, in fact, Wiggins

is right on point. It says evidence tended to show that the defendant acted in sudden heat of passion upon sufficient legal provocation, then the submission of voluntary manslaughter should be read. In those facts, a heated argument had taken place with the victim and the victim's sister. He testified he was afraid for his life because the victim physically threatened him, and this fear could constitute basis for voluntary manslaughter. Those facts are consistent with the facts that we have here.

In Locklear, that case says where the death is caused by use of a deadly weapon, words alone are not sufficient for legal provocation. That's not enough. But along with an overt act such as an assault, then along with threatening words can produce the heat of passion, which allows the court to read voluntary manslaughter.

I agree with Mr. Martin, the argument was never made by the State of voluntary manslaughter. It was always murder. But what the law says is you have to look at the evidence. And the evidence produced in this case could infer that a heated argument took place in that bathroom. She says a heated argument took place. She says there was an overt act. She says within six minutes there was no time to cool off. She never left the room. This

argument pursued from the bathroom for six minutes. She never left him. The two of them were together arguing in every statement she gave. There was no time to cool off.

You could infer from the facts that she's being cussed, they're in there arguing, he physically goes to assault her. You could infer in the heat of passion this woman pulls out the gun and shoots him.

Now, also in this case, there are other evidence, not just one sentence from her testimony, that you could infer that this was a decision she made in the heat of passion. And that is this woman never left the house. This woman, within five minutes, this heated argument took place, she's cut and she shoots him. She immediately calls 9-1-1. She immediately calls 9-1-1, and there is inference that there are things going on in the bathroom. There's wiping off. There are things going on to hide the scene. This is evidence that the jury could infer this is a woman who made a split second decision and shot this man and immediately regretted it. Immediately. She didn't run off in fear. She immediately thought, oh, my God. And in the 9-1-1 tape, she says, I didn't mean to do this. She immediately realizes she's made a mistake in the heat of passion, and she is immediately trying to fix it.

These facts are very different from Niles and Cook,

and I'm just going to briefly address that. The case in Niles is absolutely nothing like the case we have here. In Niles that defendant was making a drug transaction. Him and the co-defendants had gotten together and decided they were going to rob the victim. This man brought a gun to that transaction in preparation for a robbery. It had nothing to do with heat of passion. He brought the gun in preparation to execute a robbery. It was premeditated. There was never any evidence that he grabbed a gun in the heat of the moment and shot this victim. The evidence was he brought the gun with the intention to use it to execute a robbery. Those facts are completely different than these facts.

The case in Cook, you are talking there about facts where there is an argument by text message. By text message. Nobody says anybody has slapped anybody or put their hands on anybody. They had texted back and forth. He walks upstairs. There is a cooling off time when he is in there eating. When he comes back downstairs, he said yes, again, I come in contact with the victim, and there's words exchanged.

Again, in that case there is no indication that there was ever any hand-to-hand combat. There's no indication there was an overt act with a knife being used or a gun being used. And in that case, the witness says

that they were talking in such a way that would indicate, in fact, there was not a heated argument. The witness in this case tells us she talked to this defendant and that defendant told her there was a heated argument.

The facts are completely different in Cook. There's no indication of any kind of overt act. There's no indication that anybody put their hands on anybody. There's no indication that a knife was used or a gun was used. I think the case is completely different. I think the facts are completely different in that case.

In every case you look at, the Court has said the requirements for voluntary manslaughter are words that can cause the heat of passion along with some sort of overt act. And that is what his case was. It was an argument, a heated argument. There were words being said that could certainly cause a heat of passion, along with an overt act.

In one case, it plainly states that a knife being presented, an unprovoked indication of an overt act, clearly constitutes legal provocation. That case is State v. Naughten. In that case, it says clearly after the person was cut twice with a knife, then the defendant then struck. And they constituted that was enough for voluntary manslaughter. In that case, the defendant and the woman argued. She cuts him twice with a knife. He

strikes her then with a pipe and ultimately kills her. And in that case, they decided that was enough for voluntary manslaughter.

In this case, there was no argument whether or not this was manslaughter. The State's theory was no doubt this was a murder case. However, it cannot be denied that the evidence could infer that, in fact, this was not premeditated but in the heat of the moment and six minutes while they're arguing and she's telling us he's cussing her, he's got this overt act to stab her. She gets upset. She grabs the gun. She holds it by her side. She then begins to threaten him and ultimately shoots him.

The question is whether or not the jury could infer from these facts it was manslaughter. And certainly when you are talking about a husband and wife in a heated argument and one of them reaches out to physically harm the other one, certainly those are facts one could infer in the heat of the moment she became enraged and shot him. And she immediately knew that was a bad decision, and she immediately regretted it and called 9-1-1.

I think the facts in this case are distinguishable from Niles and Cook, and I think every case that South Carolina has come down with that is on point with an overt act and words make it mandatory to read voluntary

manslaughter.

THE COURT: All right. Thank you.

Okay. You want to argue your second point and then we'll go from there? I mean, I understand the point here. And, look, as much as I would like to rule today, I want to read this. I've got those thirty-eight letters. I've glanced through them. So I'm obviously going to take it under advisement for a couple of days.

MR. MARTIN: I do. And let me just say in a two-sentence response to Ms. Livesay. First of all, that the cases she cited, Wiggins, Naughton, and Locklear, which I have read, all of those are cases that are out of 1998, 2000. And the clarification is those statements say, and the court in Starnes says when citing those cases are not that a physical encounter may constitute evidence, but there has to be further inquiry. And that, I think, is significant. And when the facts are taken as a whole here, inquiry doesn't get you there.

And the last sentence I would say in connection to that is it's just an interesting concept that a physical encounter all of a sudden means you're not acting in self-defense but that you could be acting in the sudden heat and passion, which is exactly contrary to one who is truly fearful.

All right. That having been said, Judge, we would

ask at this time, again, pursuant to our motion that the Court modify the sentence that it handed down to Heather Sims. And I thought about a lot of different ways to say this and how long I could take to do it. And though I know that you are really interested in my eloquence on the point, I want to say things ---

THE COURT: You'd be shocked at how interested I am.

MR. MARTIN: --- succinctly as to -- on this.

You know, first of all, I will say that the night of the verdict, everything happened, including the verdict, the motions, the sentencing, all of that relatively rapidly. But that's the way we generally do it here in South Carolina. No question about that. But I would say to the Court, first of all, we understand that the sentence of twenty-five years suspended to ten years and five years probation is a sentence that could have been more dramatic than it was in terms of consequences of punishment, of time to be served in jail. We recognize that. But at the same time, I think that this is a unique case in terms of just what is a just penalty for Ms. Sims.

And I start from the premise again that manslaughter carries two to thirty. You know that, and you said that night talking to the jury, that's what you said, two to

thirty. And that's true. And it's been that way a long, long time. Even in the face of the Truth in Sentencing Act, the Violent Crimes Act, the movement through the Three Strikes and You're Out of the '90's and the early 2000's, they have never increased the mandatory minimum sentence for manslaughter. It's two years, two years, which means that a person convicted of the offense that Heather was convicted of by the jury -- which, again, we believe was a compromise verdict -- could be two years. Frankly, that could be suspended if I'm not mistaken, but it doesn't matter.

The question becomes, you know, what is the right sentence. And I don't know that anybody knows exactly what the right sentence is. But I can say in this case, you know, generally you look at deterrence. And I think that really giving Heather as much as a ten-year jail sentence related to deterrence probably isn't necessary or warranted. If you take what is now the State's version of apparently what the jury believed, then it was that there was an argument, he assaulted her and she shot him. The same applies to him that I would say for her.

But this is a situation, Judge, in which these two people, I'd like to say, are at home minding their own business. She is. The events that unfolded that day, I'm sure that she wishes she could call back, as a lot of

people wish they could call back. But again, to send a message to deter others through a sentence of ten years or twenty-five suspended to ten, we believe, is not necessary. In terms of thirty years, ten years is not a long sentence, but ten years, Judge, is a long time ---

THE COURT: I understand.

MR. MARTIN: --- to any individual. It's a long time to Heather Sims. It's a long time to the child. It's a long time to the community. And I -- when I say that, I can hear the thoughts running that, but the victim in this case is dead, and ten years is a short time. But having said that, if you believe the jury's verdict in this case, then -- and Ms. Livesay's argument that she just made, argument, assault, she gets the gun, and maybe it's manslaughter. It could be inferred, or certainly it could be inferred it was not. And so it seems to me that it would be appropriate for the Court to consider a lesser sentence.

Rehabilitation, I don't know, again, that any period of time in jail -- well, let me say I know that don't rehabilitate Heather Sims. If anything, it moves in the other direction. And whatever you want to say about Heather Sims, whatever anybody wants to say about Heather Sims, she -- and I don't know how you say this. The world is full of good people. There's an old poem that

it's not bad or good and bad because the good are half bad, and the bad are half good. But Heather was a lifter, and she was a hard worker. She did what she would hope she would do. She spent nine years going to school, and now a punishment that she has as a result of this is that nine years itself is gone and wasted. And she won't be able to practice as a nurse anesthetists for whatever value that has. And to some people it would have some. But rehabilitation is not the goal.

It simply then goes to what's the punishment. What do we do to punish her for what she did? And that goes back to, Judge, punishment comes in a lot of forms to a lot of different people. A lot of people come in court before you, and they stand where I'm standing probably and they're sentenced. And some of them would just as soon be in jail as out. Some of them -- you know, I don't like to say anybody belongs or don't belong in jail, but there are some people it makes no difference -- it doesn't make as much difference to, though hardly anybody wants to go to jail.

THE COURT: No, I understand. Trust me.

MR. MARTIN: But to some people, it don't have the same gravity on them. The punishment -- Heather has been punished every day since this happened, and that's true. You know, Ms. Livesay says her version of what

happened. It happened quickly, and she's regretted it ever since. Of course, that's changed from the, you know, the theory at the trial. But whichever, I'm sure there has been that regret.

But, again, I would say to the Court that the sentence that you gave -- first of all, related to the probation, we would ask that you reconsider that from this standpoint. Whatever her sentence is, ten years or less, there's a mandatory supervised release provision that goes with that for two years. She would be under electronic monitoring and supervised. So we believe that probation serves no purpose. We believe that it would be frankly a waste of the State's resources to have Heather Sims on probation in connection with this. We believe that a sentence -- and I don't know whether to -- how to put a number on it. But you could cut your sentence in half, for example, and five years is a long time. It's particularly a long time in this case.

And I understand the gravity of the loss of the Sims family and to everyone involved. But at the same time, this is somewhat of an unusual case, and there's a lot of good that Heather could do if she were not in jail as opposed to being in jail. But I understand the Court's position is, the jury verdict being what it is at the moment, that there has to be a punishment attached to it.

But we believe that in this case the verdict is borne out of manslaughter, which is the idea -- the idea of manslaughter in a case like this is that the wrongful act was borne out of fear which turned to an uncontrollable impulse. But in this case, it has to start with fear because you see there's no other sufficient legal provocation.

You know, the old business of a man finds his wife and he loses it and he kills one or both. Okay. But in this case, under anybody's imagination of what the facts would be, if it is manslaughter, then the sudden heat and passion, sufficient legal provocation has to be based -- I mean, the fear had to be based on a sufficient legal provocation. The only one that could be is fear because there's no evidence of any other sufficient legal provocation. Words alone, you know, you go back through all that litany.

So for manslaughter, there has to be the sudden heat and passion, and there has to be upon a sufficient legal provocation. Here the only sufficient legal provocation that anybody could image would be fear. So the act was borne out of fear, not out of hatred, not out of anger. And the whole conduct of the lives of these people would indicate that. And I would submit to the Court that inasmuch as it was borne out of fear that she is entitled

for the Court to consider a lesser sentence, a sentence of less than ten years, a sentence without the probationary component attached to it could more than adequately -- one thing I've learned over time trying cases -- and I have a tried a lot of cases -- is that jurors don't appreciate the penalty that comes with manslaughter. I know that from talking to the jurors in past trials as, you know, we talked about here. They don't appreciate what comes with that. Most times, a lot of times, jurors think -- okay, we're not convicting of murder. We're convicting of manslaughter. That means three or four years or two years of probation. They don't get it. I believe in this case that's a relevant component of the sentence that ought to be imposed. And I believe that the Court, upon proper reflection -- and obviously, you, like all of us, have had time to reflect to some degree since November the 20th or whatever day it was we were there in Horry County -- is that she is entitled to a sentence reduction and/or modification of some degree. We obviously hope that the Court will read, study -- I'm going to introduce into evidence this transcript before I leave so that you'll have that of her and make it a part of the record ---

THE COURT: Yeah.

MR. MARTIN: -- in this case and grant our

motion for a new trial. But that having been the case -- one second, Judge. That having been the case, that's -- obviously you want to take it under consideration. I believe that's proper because this is once -- this is once I want the Court to read the cases in a way like I've read them -- that I haven't read them in a long time -- and put it together because we believe with Cook that we have a compelling argument.

And respectfully, it's a matter that if the Court rules against us -- or maybe if you rule for us -- but particularly if you rule against us, it will be appealed. And that takes time. And we believe that every day that Heather -- you said something at the close of the trial. And I'll rest with this.

The most important thing left is the child. That the families need to find a way, there's no question about that. Heather needs to be punished. You can cut it any way you want to -- and it may be playing on the sympathy of the child. But it's a fact every day that the mother is away from that child, the child is punished too. You said, well, we've got to punish her. I understand that. But there's no evidence in the world but that she is a good, loving, wonderful mother, and the punishment goes further than her.

So with that, we would ask that the Court consider

these matters, grant a new trial as that is the motion made before the Court today with regards to the criminal matter. That you reduce the sentence.

They keep giving me notes here, Judge, telling me things I need to say.

THE COURT: That's okay.

MR. MARTIN: The transcript is now with the court reporter.

THE COURT: When will you have that transcript?

MR. MARTIN: Before we leave here, we'll get the stuff in there. But, again, that you consider our motion for a new trial, grant it. If not, again, that you modify the sentence as to the probation component -- which we believe doesn't really make a lot of sense in this particular case -- and reduce the sentence to some amount that would punish her, keep into account what she was convicted of and the basis for it, and at the same time allow there to be a healing of everyone involved, including the child.

THE COURT: When do you expect the transcript to be ready? Listen ---

MR. MARTIN: Well, Judge, it's going to be a while because actually I don't know that anybody has ordered -- well, we've asked for it, but the things we got, I just got yesterday.

THE COURT: Ordinarily.

MR. MARTIN: And so I don't know. I mean, I've got a feeling it may take -- you'd have to ask Natalie, the court reporter. It's a long trial.

THE COURT: I don't think she's speaking to me anymore.

MR. MARTIN: She's not speaking to you? What I could say to the Court is, just as she did for Ms. Livesay, she got some document from her in connection with it. If there's aspects of the proceedings that the Court would have particular interest in, you know, those may be able to be retrieved in a few weeks. And so I give that as a suggestion. That's how she got this portion of the transcript that I have regarding Heather's testimony.

THE COURT: Okay. Thank you. Anything was -- look, in this case I realize that one side wanted thirty years; one side wanted two. When I practiced law, for what it's worth, there was a judge who will remain nameless who just maxed out everybody. And I remember sitting in this courtroom thinking that a monkey could do that. You just look at the statute, figure out what the maximum is, let the jury bear the burden of the hard work and then max them out. And one of the things -- at that time, I never thought I'd be a judge. I remember

thinking that that was the coward's way out.

I also will tell you that the first person I sentenced in Gaffney fifteen years ago -- my father's a Baptist minister. I had to sentence a man who had turned down eighteen months on a plea. He had a minimum of thirty in a drug case. I had to sentence him to thirty, and it almost killed me. And I called my father on the way back from Gaffney. And my father, who I called Buddah, told me that I should never ever forget that I had peoples' lives in my hands, and the first day that I forgot that, I should resign and go back to practicing law.

I do not take these things lightly at all. I don't like the fact that in our state system that we don't have pre-sentencing reports. That would help me. That would help any judge. We're never going to get that for money's sake.

But having said that, anything you can add other than you think my sentence was either correct or low? And I'm not trying to be glib. I know that that's ---

MS. LIVESAY: I understand. I just want to put briefly a few things on the record. First of all, I want to reply to what Mr. Martin said regarding the voluntary manslaughter that I was up here arguing today that it was the heat of passion. I want it clear on the record that

my job as a prosecutor is to uphold the law. The facts in this case were as such when you look at the case law, voluntary manslaughter should have been read. That is what the law says. It is my job to uphold that law and look at that in the most favorable light to the defendant. I argued for murder. That was my theory of the case. But as a prosecutor and an officer of this Court, I have to bring to light the fact that voluntary manslaughter was an appropriate charge.

The facts could infer that this was a heat of passion and she shot him in the heat of passion. So I don't want any questions on why we asked for voluntary manslaughter. We asked for it because it is what the law dictates under those facts.

THE COURT: Well, alleged murder, I had done the charge before, and I thought the facts required it. That's -- I mean, I'm sure, you know, there are differences in opinion.

Okay. Go ahead. I'm sorry.

MS. LIVESAY: And as to the sentence -- because I don't want to reargue that issue. But as to the sentence, there is nothing that has been said today that was not said after the verdict came. And I can appreciate the situation with the child, but I can also appreciate that this defendant shot a thirty-five-year-

old man who is never going to see that child again. That child is not going to look down at him at his college graduation or his high school graduation. That man -- there was absolutely nothing wrong with him. There was nothing to show anything other than he was going to live a full life. He was thirty-five years old. In essence, this woman stole thirty-five years from him. Thirty-five years. He was thirty-five years old. He could have lived to be sixty, seventy years old, and she took that from him, and she took it from his family, and she took it from that little boy. It was not the State. It was not the Court. It was a decision that she made.

And it is important, and I did argue that she regretted it, which is why I believe led to the decision she made afterwards to save herself. She was regretting where that decision was going to put her at. She made a decision that took that child's father away from him.

It is an unfortunate decision and an unfortunate situation. But at the end of the day, this woman was sentenced to ten years. The max is thirty, so we are talking a fraction of what could have been sentenced to her. And we are talking about a fraction when you compare it to the time she took from the victim and his family.

I feel like everything was presented at trial.

Everything was heard at the end of the day. I see nothing to reconsider. Nothing has come to light to this Court that was not presented at the time of trial. I do not believe there is any reason to change her sentence at this point in time.

THE COURT: All right. How many days did she serve prior to the trial? I mean, she had been out on bond, and I got back and looked at my notes and didn't have a ---

MR. MARTIN: Five -- I think it was five days.

THE COURT: So there was very little pre-trial service.

MS. LIVESAY: Your Honor, whoa, whoa, whoa. Let me make a correction. My understanding was she was arrested on Friday afternoon.

MR. MARTIN: She was arrested on a Friday afternoon.

MS. LIVESAY: And she was bonded out on Tuesday.

MR. MARTIN: Well, how many days is that?

THE COURT: I think that's five. Okay. Well, it doesn't matter. I was trying to figure out if it was a substantial amount. Obviously, I have a lot of people who serve two years or a year before they get to trial.

All right. Here's what I'm going to do. I'm going

to take this under advisement because I think it deserves it. I do have a couple of things to say, and you can shut your ears down if you don't want to hear it because some of them are neither here nor there.

What I said that night is that I worried about that child because what I saw was naked, as we say in the Upstate, or maybe naked animosity and hate from the families. I sit ten feet above. I see everything in the courtroom, and I watched it. And it not only concerned me; it made me mad. And it hit me that during some of the testimony at the sentencing phase that this child, who is now two years old and what? Six months? Eight months? I can't remember.

MR. MARTIN: Two years and nine months.

THE COURT: Nine months now. Is undoubtedly completely innocent. And I urged the families to do something about that, i.e., to put aside what is seriously -- and I have tried a lot of murder cases. And yesterday I had one of the most emotional guilty pleas where one man drove a car and killed another man's son. And we had this cathartic moment in here where the father of the dead son said, man, I don't want to do it, but I forgive you for it. I don't see that in any of y'all's faces. Not one face do I see a softening from what I saw. And what I said down there is that I had two groups

of people who professed faith and yet stood up and didn't show me any. That's not my place. That's the Lord's place.

I read through this book, this book of letters. What strikes me about this -- and it's a good -- some of them are great.

Ms. Sims, your letter I read last night and again this morning. What strikes me is that there are people who are on your side who literally are saying, as if they were there every minute, that the Court system is completely flawed and failed and why didn't they take it.

I have never seen a jury ever in ever take the time and expend the emotion that this jury expended. You saw them in there. They all wept. The foreman, who is a -- there are no retired former Marines -- wept. They wept when I told them what the sentence range was. They asked me to please be merciful. And yet I see letters and I've been told that there are people who are publically saying that this jury, for lack of a better word, was incompetent. That is offensive to me. It offends me for their benefit.

I'm used to being criticized. The one thing about me is every time I go into a courtroom, half of the people think I'm an idiot. That's fine with me. But I'm offended for this jury's sake, and I would urge you to

stop doing that. And I would urge you all to please put aside -- whatever I do, I'm going to do the best I can, period, to try to find justice in this unjust world and in this sad case, just like we all did.

I will say Mr. Martin, during the course of that trial, said to me several times -- and it became very apparent -- that he legitimately with his whole heart believed that Ms. Sims was innocent. And I don't -- he had no reason to say that to me. I have had lawyers say to me, hey, he may be guilty. You see it on TV, lawyers who will say, well, I don't ask that question, whether they're innocent or guilty. That doesn't matter to me. That's just TV. Mr. Martin believes his client. He believed it, and he tried a heck of a case.

Ms. Livesay, I believe that you, on behalf of the State, put up everything you could. There were factual disputes. I have no problems -- despite the fact that I got so mad at you two that it just drove me crazy -- that in hindsight, I look back and think if I was the Causeys or if I was the Sims, I would want the lawyers to do the same thing.

So I've thought about this case every day, and I'll continue to think about it. So any indication that I think that the court system is flawed based upon this case is wrong. Believe it or not. It doesn't matter to

me. But I will say that I read in here a couple of people who I know for a fact weren't there, and that bothers me.

But having said that, Ms. Sims -- and I want you to understand this -- and to the Sims family -- that doesn't affect my decision. I'm just saying because it wasn't y'all. It was other people. And your letter quite frankly, Ms. Sims, was as heartfelt as it can be.

I am so worried about this child. I mean, I have three boys. I have taken in children. My boys have brought home stray children over the course of the years, even into their adulthood. At Thanksgiving this year we had six strays at our house. And by strays, I mean sweetly people that didn't have anybody. I'm worried about this child, but I'm worried about you two families. You better put this hate aside, or quite frankly, this child's -- I mean, it'll eat you up or kill you. It'll just kill you.

So having said that, I'll take it under advisement just for safety sake. I'm really doing -- bending over backwards. If you think of something driving back to Myrtle Beach -- I have made that drive, as you know, a couple of times. It is a long and tedious drive. If you're like me, when I went out of town to argue these things back fifteen years ago, I always thought of

something on the way home. The record is open. If you want to supplement what you've said here today by letter, don't -- please, Lord, don't brief it, but just send me a letter, and I will take it into account.

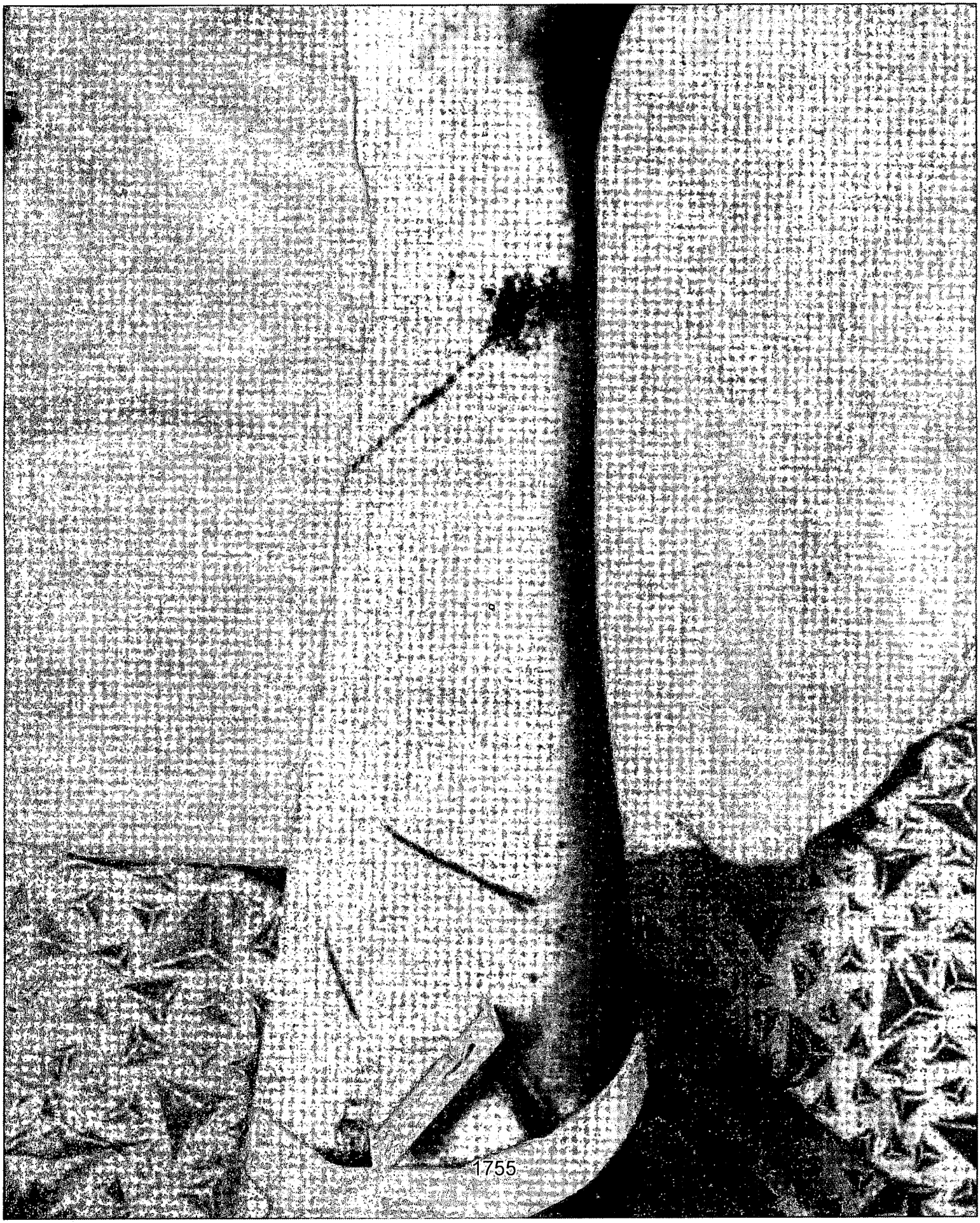
Now, Mr. Martin, your argument about probation is a good argument. There's no point in that, so I'm going to tell you that I'm going to shift this sentence around somehow. No point in her being on probation. And I'll figure that out. And then, you know, y'all can run up the road and figure out what you want to do.

Okay. We're adjourned.

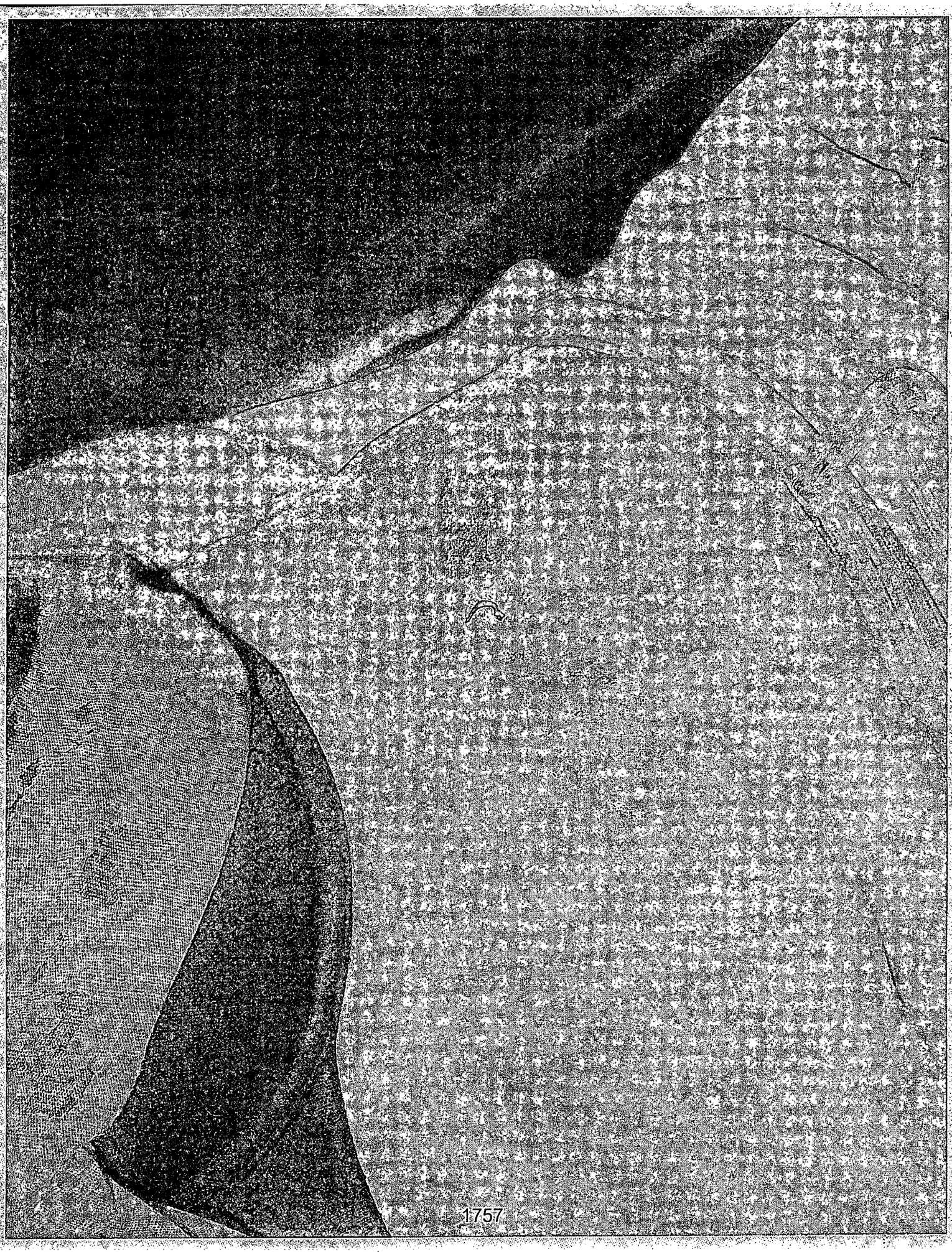
(WHEREUPON, the hearing concluded at approximately 4:55 p.m.)

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

State's Exhibit 96
Photograph of Arm



Defendant's Exhibit 4
Photograph of
Abdominal Stab



Defendant's Exhibit 37
Transcript of Sims Interview

INTERVIEW WITH HEATHER CAUSEY SIMS
AUGUST 11, 2013
(REVISED)

Chatfield: Today's date is August 11, 2013; the time now is 20:06 hours which is eight zero six p.m. We are in Room Fourteen at Grand Strand Regional Medical Center. This is in reference to a fatality shooting.

Sims: Uh-huh (yes).

Chatfield: Present is Mrs. Heather Causey, Detective Jim Chatfield and Corporal Brandon Lee. Heather, right now I'm going to go ahead and advise you your Miranda rights, okay? You have the right to remain silent; anything you say can and will be used against you in a court of law. You have the right to talk with a lawyer and have him present with you while you're being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you so desire. If you make a statement or answer any questions you have the right to stop at any time. Do you understand the rights I've read to you?

Sims: Yes.

Chatfield: Okay. I'll try to bring this to you here. Okay, if you would, go ahead and initial in yes right here. And understanding, understanding your rights, do you wish to waive them and make a statement or answer questions at this time? You know, understanding your rights are you going to talk me?

Sims: I'm going to talk to you.

Chatfield: Okay. Put your initials there. Who is it, Brandon? Do you know? Huh?

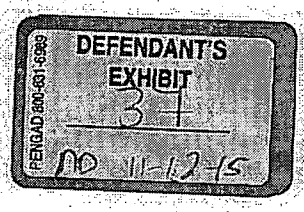
Lee: Neal Frebowitz.

Chatfield: Go ahead and answer and go outside. Go ahead and sign this. Sign – sign your name right there. Sorry about that. Today is the -- okay. Today is the eleventh, correct? Today is the eleventh, right?

Lee: Today is the eleventh.

Chatfield: If he's got anything for me just put it on notes. I can't really -- Okay. Okay, Mrs. Heather, if you would tell me – tell me what, what took place tonight. Tell me what you – you know, tell me, tell me what you've been doing today.

Sims: We got up.



Chatfield: Uh-huh (yes).

Sims: He wanted to go to Ruby Tuesday's.

Chatfield: What time did y'all get up today?

Sims: Well, we got up at seven with the baby and then when the baby took a nap we went back to sleep. We got back up at around ten thirty; we went to Ruby Tuesday's around eleven thirty – twelve. Then he wanted to go to Bass Pro.

Chatfield: Tuesday from what time? What time Ruby Tuesday's?

Sims: Around noon. Maybe eleven thirty.

Chatfield: Eleven thirty to noon?

Sims: Something like that.

Chatfield: And y'all - where was that at? Was that –

Sims: Colonial Mall.

Chatfield: Colonial Mall?

Sims: Uh-huh (yes).

Chatfield: Okay. Were y'all – y'all talking about anything today? Arguing or anything?

Sims: No. But, but we've been having problems. We actually were going to a counselor.

Chatfield: Okay. You were going to a counselor today?

Sims: No. Huh-uh (no).

Chatfield: No. But were y'all talking about it today at lunch or anything?

Sims: No. He – I was quiet and on the way there he – he was asking why I was in a bad mood and -- or why I was mad or whatever. I told him that I wasn't mad. I've just been – I've just been really sad, kind of down just because, you know, we have a four month old and we've been -- we just haven't been getting along. And he kind of wanted to pick an argument and our counselor told us it takes two people to argue so....

Chatfield: Okay.

Sims: Just – so I just chose to not say anything.

Chatfield: What is your husband's name?

Sims: David.

Chatfield: David what?

Sims: Sims. S-I-M-S.

Chatfield: His middle name?

Sims: Lee. L-E-E.

Chatfield: And what's his date of birth? Do you know?

Sims: Six, one, seventy-eight.

Chatfield: And how old is he?

Sims: Thirty-five.

Chatfield: Okay.

Sims: He just turned thirty-five.

Chatfield: Someway David wanted to pick an argument today. Was this at Ruby Tuesday's?

Sims: Well, on the way to Ruby Tuesday's.

Chatfield: On the way? Okay. All right, so y'all got there and --

Sims: And it was fine. It was – it was avoided. I just chose not to, you know, say anything. I just told him I was kind of sad and then we went to Bass Pro. He wanted to go to Bass Pro.

Chatfield: Okay.

Sims: And on the way home, it kind of started again. Why are you mad?

Chatfield: Okay. What time was this when y'all were heading back home?

Sims: I couldn't –

Chatfield: I mean just an estimate. I'm trying to –

Sims: It was maybe a couple of hours later we were heading home.

Chatfield: Okay. So what do you –

Sims: Maybe two.

Chatfield: Maybe two. Okay. Two p.m. heading home. And David started arguing again?

Sims: Well, he was like, you know, why are you mad? Why are you in a bad mood? And – and I told him again. I said, "David, I'm not mad at you. I love you." I said, "I have just been sad." And he says, "Well, I've caught you in lies." And I said, "What lies are you talking about?" And he wouldn't tell me what he was talking about. And I was like, "Well, David, I don't – you've got to tell me what you're talking about. You can't just call me a liar and not tell me what you're talking about. That's not fair."

Chatfield: Right.

Sims: "I mean you should tell me what you're upset about if you're upset." He was like, "Oh, you'll find out. You'll find out." And I just, you know, left it at that. And we got home and he wanted to continue when we got home but I told him. I said, "Look." I said.

Chatfield: What time did y'all get home?

Sims: Well, about two or two-thirty.

Chatfield: Okay. About two-thirty you got home. Okay. And –

Sims: Now these are estimates. I couldn't – I don't know.

Chatfield: Right. I understand. Okay. So y'all are at home. Are y'all arguing now at the house?

Sims: No. Well, he – he's trying to engage in a – in a conversation and says let's talk. And – and I said, "Well, David, our talks are never thirty minutes long. They are always at least a couple of hours." I said and that baby is going to wake up and be hungry and let's – the baby will go to bed at seven-thirty or eight. Let's do it then when we have as much time as we want and we're not uninterrupted. Or we're not interrupted.

Chatfield: Right.

Sims: And he says – He says, "Well, I'm going to talk to you now." And we actually just got home and the baby was asleep and I had the baby in my arms asleep. I said, "David, I'm not going to do this right now. I'm going to wake the baby up."

He said, "Put the baby in the crib." And I said "If I put the baby in the crib, the baby is going to wake up." I said, "Don't do this right now." And so he kept – he kept saying, "Heather. Heather. Heather." And he'd ask me a question and I was just completely silent.

Chatfield: Okay.

Sims: Because at that time that baby was more important than whatever and I did not want to wake him up because I knew what would happen.

Chatfield: Right.

Sims: He'd wake up and then we wouldn't talk because he'd be mad because he got woke up.

Chatfield: Right.

Sims: So he stopped and he was watching T.V. and the baby woke up and the baby ate and then I was letting the baby play and while the baby was playing I was gonna – I washed his bottles. I made bottles for tomorrow and I got everything ready so that I could give him a bath later on and feed him and put him to bed so we could talk.

Chatfield: Uh-huh (yes).

Sims: And while – after I got done washing bottles and making bottles, I went to run some bath water. That way I could have that out the way. That's what I normally do before I give him a bath. That way – so I was running bath water and David came in and he goes I'm gonna talk to you now. You've been avoiding this but I'm gonna just talk to you while you're taking a bath. I wasn't in the bathtub. I was just running water. And – and I was like, "Well, David, I told you we could do that or I told you we could wait until he went to bed." And he said, "Well, I'm gonna talk to you now." And he was over there at the toilet. Our toilet – when you flush the toilet there is like not enough water in the tank or something. I don't really understand the details of it –

Chatfield: Right.

Sims: But he was over there. He had gotten something out of – I don't know if it was a wrench or something. He had – he had it, something over there he was trying to fix it with. And I'm not really sure what it was but he was over there. And he says – He says, "Do you want to separate?" And I said, "David." I said, "I love you." And I said, "I want this to work out." And I said, "But I don't want to be with somebody that doesn't love me."

Chatfield: Uh-huh (yes).

Sims: You know. If, if you do then we can work this out. But if you don't – if you don't care about me then I mean I don't know what to do. And he says, "Well, I'm not gonna be married to a damn liar." And I said, "David, you've been telling me I've been lying all day. Tell me what you're talking about." And he said, "Well, you told me the counselor couldn't see us for two weeks. How many times have you been to see the counselor by yourself?" I said, "Once." He said, "Well, you told me she couldn't see us for two weeks and I've been to see her twice and she got me in before two weeks." And I said, "David." He said, "You didn't want to go back to see her because she told you something you didn't want to hear." And I said, "David." I said, "When I made that appointment.." I said, "If she made an appointment with you then there must have been a cancellation because she couldn't see me for two weeks." Because I suggested maybe getting somebody else because I felt like we needed to see somebody.

Chatfield: Right.

Sims: And -- but it was stuff like that that he was saying that I was lying about and it was – it was really stupid stuff. And – and that's what – You know, he had stopped doing what he was doing and he walked over towards me with whatever was in his hand and he -- he had that in his hand and then he was trying to get my phone.

Chatfield: Okay.

Sims: And he got my phone and he was like, you're nothing but a stupid bitch. And I said, "David, stop." I said, "Give me back my phone. What are you doing?"

Chatfield: Okay.

Sims: And then he got in my face –

Chatfield: But he had your cell phone, correct? Or is this your cordless phone?

Sims: My cell phone.

Chatfield: Okay. So he's got your own per—

Sims: He's got my phone.

Chatfield: Okay. Is he looking through it?

Sims: I –

Chatfield: Okay.

Sims: He's got his back turned towards me at this point and then he turns around and that's – whatever he had in his hand at the time was – that's when he, you know, had it like, you know, in my face.

Chatfield: Okay.

Sims: He had it in my face and that's when he was saying stupid bitch. You're nothing but a lying whore.

Chatfield: Why is he calling you a whore? Does he think you're sleeping with somebody?

Sims: No. I, I– I hope not. I don't have time to.

Chatfield: Okay.

Sims: Because I think he was just – he was irate.

Chatfield: Yeah.

Sims: He was just saying whatever he could to try to be hurtful.

Chatfield: Okay.

Sims: That's what I believe because all I do is I go to work and I come home and I take care of that baby and I go to bed and I go to work. I don't do anything else. You can ask anybody.

Chatfield: Right.

Sims: So I don't – I don't know what he's thinking but he's in my face and so I'm trying to get him away and he's just saying I'm about to slap the teeth out of your head.

Chatfield: Okay.

Sims: And I - I had a gun in the nightstand and I had moved it because it was in the bottom drawer of the nightstand. I moved it to the top of the bathroom drawer because we always keep that bathroom door shut and our baby is not crawling yet and we don't have a safe to put it in.

Chatfield: Okay. So you moved the gun to the top of the bathroom what?

Sims: The bathroom drawer.

Chatfield: Okay. So the child couldn't get it?

Sims: Right. Because that's one room we always keep shut. Our bedroom is not always shut but --but our bathroom doors are always shut to our bathroom because when we leave we always shut that door because the dog can't get in there either. The dog will make a mess.

Chatfield: Okay.

Sims: So I kept it in there until we could get a better way to secure it.

Chatfield: Okay.

Sims: Because I don't have anything for a lock on it.

Chatfield: Yeah. What gun was that? Which gun was that?

Sims: The nine millimeter.

Chatfield: The nine millimeter. Okay. The Ruger nine?

Sims: Uh-huh (yes).

Chatfield: Okay. I've got that so far.

Sims: Okay. So I – he, he was in my face and I was starting to feel threatened and so I reached for it and I was trying, you know, to get him to stop. And I thought maybe that would just make him back off.

Chatfield: So you reached – you got the gun. Were you pointing it at him and telling him to back – tell me what. I don't want to put any words – tell me what you did?

Sims: Well, I took it out and I had it my hand and I said, "David, stop it." And I had it like out, you know, so he could see it.

Chatfield: Right.

Sims: And I said, "David, stop it." I said, "You're scaring me."

Chatfield: Okay.

Sims: And I said, "Please just get away from me." I said, "You're mad and you're upset and you need to calm down." And I said, "You're scaring me."

Chatfield: Okay.

Sims: And that's when he – he, he just like completely lost it. I don't know if that sent him over the edge or whatever but he – he was walking towards me and I was

actually backing up. I was back where the doorway was to the bedroom and the bathroom.

Chatfield: Uh-huh (yes).

Sims: So I wasn't – I was kind of at the threshold of that room I guess you could say. And that's when he, he went like this. He went like, you know, that and I didn't even know if he got me or not but I saw him coming towards me and that's when I – I just shot.

Chatfield: Okay. Did you know he had a knife in his hands?

Sims: Well, I knew it was a knife or a something of that nature. A tool he was coming at me with. I thought it was a knife. I know he had a knife and a wrench. Or I guess – I guess a wrench. The -- I'm not good with the names. I'm not good with names of tools but the, the pointy – the pointy thing that -- It's a pointed thing that you grab stuff with.

Chatfield: Okay. So –

Lee: Pliers?

Sims: Maybe. Something like that.

Chatfield: So you saw him. He was coming at you and where were you at? You said the threshold?

Sims: At that point in time I was right there at the threshold. Yes, sir.

Chatfield: Okay. And that's the bathroom and the…

Sims: Bedroom.

Chatfield: …bedroom.

Sims: Uh-huh (yes).

Chatfield: And when he came with an object did he hit you with the object in his – was it the left hand or right hand? What hand did he use?

Sims: Right hand.

Chatfield: When he used his right hand did you feel anything?

Sims: I - I felt this.

Chatfield: Okay. How did that -- Okay. I – I understand that you've got a puncture. We'll just say a puncture to your left side. When you saw an object did you shoot him before he hit you or what?

Sims: No. Afterwards.

Chatfield: So he hit you once on that side and then you shot him?

Sims: Yes.

Chatfield: Okay. How did you get those other –

Sims: These – these were – these were before. This was –

Chatfield: Okay. Tell me what happened? Tell me how you got those cuts on your left arm?

Sims: He was slinging at me first and that's when I got the gun and I said stop.

Chatfield: When he was slinging what did he have in his hand?

Sims: I think it was the knife.

Chatfield: You didn't see it?

Sims: I did but I know it was a knife or those pair of pliers.

Chatfield: Okay. So you think it was a knife or a pair of pliers?

Sims: I'm almost positive it was the knife.

Chatfield: Okay. Yeah. I don't want to put any –

Sims: No. No. No. No.

Chatfield: Heather, I'm just asking you so –

Sims: I know at one point he had the pliers in his hand, but I did see the knife.

Chatfield: Okay. Okay.

Sims: And he was start – he was swinging and then that's when I was trying to get the – get the gun and that's when I said-- I said, "Stop it." I said, "Just calm down." I said, "Don't do this." And that's when I tried to get him to stop and then that's when he went in like he was getting ready to stab me in the stomach and that's when I backed up and, and I shot him.

Chatfield: Okay. Okay. I'm just gonna – I'm gonna kind of recap that a little bit. Okay? So basically, y'all are at this threshold and he's now – he's coming at you. Okay?

Sims: Uh-huh (yes).

Chatfield: Now when he was coming at you at the threshold, what did he have in his right hand?

Sims: A knife.

Chatfield: Okay. And then what did – is that when you reached – then you entered into the bathroom? Is that when you entered into the – when did you enter into the bathroom to draw the revolver? Or to draw the pistol?

Sims: No. It was before that.

Chatfield: Okay. Let's go – let's go back over that if you would. I'm sorry I'm a little--

Sims: It's okay. When, when he started coming towards me we were kind of in front of the bathroom sink.

Chatfield: Okay.

Sims: And that's when he had the knife in his hand and he was starting to get in my face. And he held the knife in my face. He was – he was right here in my face and that's when he was calling me all those names.

Chatfield: Okay. So how was he holding the knife? Brandon, use your ink pen or something. You're going to be the suspect. Go over there toward her. Brandon is your husband, okay? So he's got the knife. Tell me. Show me how he's holding it.

Lee: This or --

Sims: He might have been holding it with that one because I think he had my phone maybe with that one.

Chatfield: Okay. So he's got it in his left hand?

Sims: I think –

Chatfield: The knife?

Sims: I think. It all happened so fast.

Chatfield: Right.

Sims: Yes.

Chatfield: Okay. So go ahead. Okay, so he's got the knife in his left hand.

Sims: So he has it and he was doing this. Like –

Chatfield: Okay. All right. And he's got the phone in his right?

Sims: Right.

Chatfield: And then tell me what happened?

Sims: And that's when I said, "David." I said –

Chatfield: Just stand there a minute, Brandon, with that.

Sims: I said – I said, "Calm down, David." I said, "I don't -- what are you doing?"

Chatfield: And hold this here too. Okay.

Sims: I said, "Calm down, David." I said, "What are you doing?" I said -- I said, "Please stop." And I started backing up.

Chatfield: Okay.

Sims: And that's when I went for – I knew that the gun was there and I went for it because I felt threatened at that point.

Chatfield: Uh-huh (yes).

Sims: So I reached for the gun and I had it and he saw me. He saw me with it.

Chatfield: Okay. Where is he at now? Did you get the gun with your left hand?

Sims: Yes.

Chatfield: Okay. So you get the gun with your left hand and does it got a safety on it or anything?

Sims: You know what I have not – I think it does.

Chatfield: Okay. Okay.

Sims: It wasn't on.

Chatfield: The safety wasn't on?

Sims: If there is one; it wasn't on.

Chatfield: Okay. So go ahead.

Sims: So then he's still in my face and I've got it and I said, "David, stop." And I start backing up and he's still like coming at me and then at that point that's when he starts swinging.

Chatfield: Okay. Show me how he's swinging. Brandon, you've got the phone in your right hand. Show me how he's swinging.

Sims: He's – he's doing like this.

Chatfield: Okay. With his left hand?

Sims: Well --

Lee: Like this?

Sims: It may have been in his right hand. It all happened so fast. I think it was with that hand.

Chatfield: Okay. Where was the phone at, your phone?

Sims: At this point I think he had laid it on the counter.

Chatfield: Okay.

Sims: He had laid it on the bathroom counter.

Chatfield: Okay. Okay. So he put the phone on the counter and he's swinging now. Was it with his right hand or his left hand?

Sims: Right.

Chatfield: Okay. Show me how you're putting your arms up? I mean do you have the gun in your hand now when he's swinging?

Sims: I have it in my left hand.

Chatfield: You have it in your left hand?

Sims: Uh-huh (yes). I have it in my left hand.

Chatfield: Okay.

Sims: And, and I'm saying, "David, stop." And he's, he's still coming towards me and at that point I didn't have it pointed at him. I just had it. I just had it. I was trying to scare him so he would stop. And he was still coming towards me and then – then that's when he started doing, doing this.

Chatfield: Okay. So you had a gun on him and you told him – Did you ever tell him you were going to shoot him if he didn't back up?

Sims: I told him. I said, "David." I said I don't – I don't. I've never had a gun in my hands except for target practice or whatever but I – I told him. I said, "David. I said, "Stop." I said, "I don't want to use this."

Chatfield: Uh-huh (yes). And then what did he say?

Sims: And he says you're not going to use that. I'm about to knock the teeth out of your fucking head.

Chatfield: Okay. And then what happened?

Sims: And then I – I didn't have it pointed at him but he started doing this at me and I – I backed up and I'm right-handed so I went like this. I shot.

Chatfield: Okay. Okay. Now what happened after you shot him?

Sims: He, he kind of backed up and I grabbed the phone. My phone was dead. I had it charging. So I grabbed the house phone and I called 9-1-1, and I put her on speaker and I told her. I told her I knew CPR and I was trying to do chest compressions and I was –

Chatfield: Heather, in these types of cases in all every, everything – and I always ask. It's standard. You wouldn't have a problem taking a polygraph test?

Sims: Huh-uh (no).

Chatfield: Okay. Where – after you shot where did you put the gun?

Sims: On the counter.

Chatfield: The bathroom counter?

Sims: Uh-huh (yes). Because that's where I put it down so I could check on him.

Chatfield: Okay. Let me make a phone call here. You need water or anything to drink at all?

Sims: I just drank water.

Chatfield. All right. Let me make one phone call here. I'll be back in a minute. Okay?

Sims: I had to take the _____

Chatfield: Oh, gosh. Yes, ma'am. Be with you in a second. Okay. Lee, would you go out to my car and get something for me, please, sir? We'll be back in a minute, Heather.

Sims: Okay.

Chatfield: Hey, Heather. Sorry. Where – when you shot him where was – where was he at when you actually shot him?

Sims: Right there at the threshold.

Chatfield: Of the bathroom?

Sims: Of the bathroom. Near the door.

Chatfield: Okay. He wasn't in the bedroom? He wasn't standing in the bedroom at all?

Sims: No.

Chatfield: Okay. What hand did you use to shoot him with?

Sims: The right hand.

Chatfield: Okay. Where did you – on your left hand right here, where did you sustain that injury right there?

Sims: That was during the – whenever he was doing this. Putting my hand up and I guess—it all happened so fast.

Chatfield: Yeah. See that kind of looks like a slide when the gun rejects. It kind of looks like you had a finger in the slide. You know when the slide comes back on an auto. This looks like it's pulled your skin.

Sims: Maybe. Maybe that's --

Chatfield: That's why I'm asking if you shot it with the left hand?

Sims: No. Uh-huh (No.).

Lee: Show how – show how you were holding the gun. Pretend like you're holding a gun.

Chatfield: Yeah.

Sims: It's so hard to remember. This is how like – like that.

Chatfield: Okay. You were holding it with two hands. Okay. Okay. Yes, sir. Heather, I'm so sorry. I'm not trying to drag this out…

Sims: It's okay.

Chatfield: …but I've got to make sure I've got everything in. I've got a bunch of bosses. Okay. I just – I'm, I'm having a – I guess and I'm not trying to trip you up. Okay. I just want to tell you that right now. I know it's a little bit confusing.

Sims: It's all a blur.

Chatfield: First of all, I thought the phone. I thought we had the phone out in the car. Brandon, when we were talking about the phone. Her phone?

Lee: Uh-huh (yes).

Chatfield: He didn't have it in the car?

Sims: Who?

Lee: I think he got it.

Chatfield: Okay. But anyway, let's go to the swinging stuff. Let's just --when you fired that -- Okay. You went into the bathroom. Okay. And can you like point, tell Brandon where the cabinet is to kind of give me – I've got a guy, a crime scene guy, bringing me some pictures. I just want you – because I can't figure this. I want to document this right.

Sims: I'm doing – I'm doing my best. It's just – it is such a blur. Okay. There's, there's the bedroom over there and the doorway is where is that –

Chatfield: Well, I'm gonna tell you what. Let's draw this out.

Sims: You want me to draw it?

Chatfield: Yeah.

Sims: I'll draw it.

Chatfield: Let's draw it out.

Lee: It's about the size of this room here, isn't it?

Chatfield: Okay. Here you go, Heather.

Sims: Okay. So here's the bedroom. And here's the bathroom. And here's the wall. And here's the doorway.

Chatfield: Okay. Is this the – is this -- what doorway is this?

Sims: This is the threshold to the bathroom.

Lee: You come in here and you go into the bedroom and then you come through here to go to the bathroom?

Sims: Right.

Chatfield: Okay. So this -- can you box this out for me a little if you want.

Sims: Oh. Yeah.

Chatfield: Just kind of –

Lee: Draw the sinks and everything.

Chatfield: Yeah.

Sims: Okay.

Lee: And the cabinet.

Sims: Right here is the vanity.

Chatfield: Okay.

Sims: And then here's the – the drawers here.

Chatfield: Okay.

Sims: Okay? And then the toilet is here. And the bathtub is here. Sorry. David was right here.

Chatfield: Okay. Is there a chair somewhere in there?

Sims: There's a chair right here.

Lee: Where were you at?

Chatfield: Yeah.

Sims: I was right here.

Chatfield: Okay. Put a – put, put a – just put a bigger circle, a bigger circle where you were. Okay. So you're right here. Okay. And are you firing into the bathroom?

Sims: Yes.

Chatfield: Okay. That's -- Brandon. Okay. That's, that's one of the things. Go and have her draw the rest out. Okay.

Sims: What else do I need? Bedroom.

Lee: Where was the gun at when you picked it up?

Sims: The gun was right here. He's --

Lee: In the bathroom vanity?

Sims: He's – yes. He started -- and he started getting aggressive when he was right here and then he kept walking towards me.

Lee: Now when he was walking towards you, were you – what were you doing?

Sims: I was backing up.

Lee: Okay.

Sims: I was backing up. And I knew he had – at one time he had a wrench in his hand. He did have a knife in his hand too. But this is when he told me he was going to knock my teeth out of my head.

Lee: Do you know what the knife looked like?

Sims: It was one of the kitchen knives.

Lee: Okay.

Sims: One that I had just washed not – I think earlier today whenever I washed his bottles and everything else I had just put it up and then he got it along with the

whatever – whatever that tool was and he was in the bathroom trying to fix something with the toilet.

Lee: Okay. So he was using those to work on the toilet?

Sims: Right. And that's when he started arguing. And then I was in there running bath water and then I turned the bath water off and I went to charge my phone and then he was talking about stuff I had lied about. And I was like, well tell me what I had lied about. I really don't know what he's talking about. So --

Lee: Did you go put your phone on the charger?

Sims: I put my phone on the charger.

Lee: Where was your phone on the charger at?

Sims: Right here.

Lee: On the vanity?

Sims: Uh-huh (yes).

Lee: Okay. Did he take it off the charger?

Sims: No. I took it off the charger because he was fussing. He was arguing about the dates of the counselor. Of all the dates.

Lee: Oh, okay.

Sims: So I was trying to pull my phone out on the calendar to show him whenever I made the appointment; that it was two weeks. Because he was saying – He will find anything to argue over. But I don't know what else he was saying that I supposedly had lied about.

Lee: Write on here where – like kind of draw a little picture where the gun was at when you got it?

Sims: It was in this drawer.

Lee: Okay.

Chatfield: All right. Sorry. Okay.

Lee: She's, she's aying that he was over here working on the toilet with the wrench and the knife that he got out the kitchen.

Sims: He was trying to – the thing won't lift up, pick up, and he was trying to get something on it.

Lee: She was here and she put her phone on charge right here on the vanity.

Chatfield: Okay.

Lee: And she took it off charge because she was wanting to – he was arguing about the dates to her calendar.

Chatfield: Right.

Lee: And she was over here and he comes and they start arguing and all that stuff and she was kind of back tracking and she grabbed the gun that was in the drawer right here.

Sims: And then I kept back tracking.

Chatfield: Okay.

Sims: I grabbed it there.

Lee: Okay. At what point in that did he start – how did all this on your arm happen? At what point?

Sims: Well, he come up here while I was right here at my phone and I was trying to show him and he gets in my face and that's when he starts calling me derogatory names and he was starting to push me at that point. And, you know, nothing bad. It was just, you know, whatever. Shoving.

Lee: What are some of the things he was saying to you?

Sims: He told me I was a lying bitch.

Lee: Just say it. Don't, don't try with me. Just tell it.

Chatfield: Did he – and what did he have? Did he have a wrench, pliers, knife? I mean I'm just trying to --

Sims: I don't know the name of the tool, but I guess it's a plier. A needle-nose plier.

Chatfield: Okay. Is it possible that instead of a knife he had a needle-nose –

Sims: No. I think he had both.

Chatfield: You think. Okay, but you're not a hundred percent?

Sims: I know he had a knife, but I'm –

Chatfield: Okay. A knife. Where did he get the knife from?

Sims: The kitchen. He already – I was telling him I had just washed it along with all the baby bottles and I had – I had just put it – put it up. Or I had just washed a knife. We have several that look the same.

Chatfield: Okay.

Sims: And I'm assuming it's the same one because it's probably the closest.

Chatfield: What do you think he needed a knife for with the needle-nose? That's what I guess I'm trying to –

Sims: He was fixing something in the toilet. Our toilet, the tank won't fill when you go to flush it. I don't know the mechanics of it.

Chatfield: Uh-huh (yes).

Sims: But he was needing something pointed to get up under the thing that lifts it up.

Chatfield: Okay.

Sims: I'm assuming because I went in there and looked, looked at it myself.

Chatfield: When you went in there and looked at it did you see him with a knife in his hand?

Sims: When I went in there and looked at what?

Chatfield: The toilet thing? Did he have that knife and pliers in his hand?

Sims: Yeah.

Chatfield: Okay. So he –

Sims: That's whenever he started the argument.

Chatfield: Okay. Okay. And you were outside the threshold and you shot how many times?

Sims: Once.

Chatfield: Okay. When you shot him did he drop the – I haven't seen – I haven't seen the pictures. That's what I'm waiting for.

Sims: No. He didn't.

Chatfield: It always puts me at a disadvantage.

Sims: He didn't drop it. He still had it and I – I thought – he just backed up. And he backed up and I – I just stood standing there because at that point I was – I mean I was scared to begin and then at this point I'm just -- don't even know what to do.

Chatfield: So if you washed the knife, his latent – his finger, your fingerprints or anybody else's wouldn't be on it? Just his, right? Because you had just washed it.

Sims: My – I had my hand on the handle..

Chatfield: Okay.

Sims: ... after I put it up.

Chatfield: Okay. No. But after you – did you ever touch the knife after you shot him? We have all this forensics stuff. That's why.

Sims: I think I did.

Chatfield: Okay. Tell me.

Sims: Because I moved –

Chatfield: You moved –

Sims: I was trying to feel his pulse.

Chatfield: Could you have moved the knife from the floor back up just for trying to get – you know to get it out of your way when you sat down? Could you have moved the knife and just sat there when you were trying CPR so you wouldn't get cut in the leg? Is that possible? That you moved the knife?

Sims: Yes. It's very possible because I was trying to feel his pulse. I was trying to do CPR. I was trying to –

Chatfield: Heather, let me, let me ask you this? Okay. And is it just – and I know things go by and I'm a really easy going guy. Is it possible that he just had the pliers and in all of the excitement and stuff and he was being mean, is it possible he just had the pliers and you shot him because you didn't know what he had in his hand and then a knife could have been around and you could have put it there? I mean is that --

Sims: No. No.

Chatfield: Okay. I'm okay. That's – I'm okay.

Sims: No. No. No. Huh-uh (no).

Chatfield: Okay. I just want to make sure.

Sims: I know. No. I know.

Chatfield: I know you're under a lot of stress and I'm not trying –

Sims: I know.

Chatfield: I'm just – it's just some of this stuff doesn't seem to be -- like there's just something that doesn't seem to be adding up. And I'm just trying to – that's why I asked you about the knife because I was going well --

Sims: He had them both.

Chatfield: Okay. And what hand was the knife in.

Sims: It was in his right hand.

Chatfield: Okay.

Sims: He's right-handed.

Chatfield: Okay. Knife in right hand. Okay.

Sims: And I said earlier it may have been the left hand because he did grab my phone.

Chatfield: Right.

Sims: And at the point – I'm being honest, I don't know if he moved it to get my phone or if he – I don't know.

Chatfield: Now see what I'm trying to figure out. I remember he had the phone and he had the pliers at one time. Okay?

Sims: He did.

Chatfield: And then while he was waving the phone somehow he got rid of one of them and grabbed a knife. That's what I can't figure. I'm just trying to figure that out.

Sims: He either had the knife or the pliers one in his hand. He didn't have them both in his hand.

Chatfield: Okay. So you're not sure. You're not sure he had the knife. It could have been the pliers, correct? Because when I asked you what he -- When he jabbed you, you weren't sure what he jabbed you with?

Sims: No. It's all a blur.

Chatfield: Okay. So you have no idea if it was a knife or pliers?

Sims: I think it was a knife.

Chatfield: But you're not sure?

Sims: But all I know is that – is that he was coming at me with an object, a sharp object.

Chatfield: Okay. And the pliers –

Sims: He had the knife. He had the knife because he had the knife in my face. Now where the pliers went I don't know.

Chatfield: Okay. Those needle-nose pliers – what else could look like a knife, right?

Sims: Yeah.

Chatfield: And I mean your injury – I'm not a doctor but – I'm not and I have no idea and there's Brandon here, but could he – could that have been a pliers hit? I mean could he have been coming at you with the pliers and you thought it was a knife since he had a knife near him?

Sims: I guess so. I guess it could have been. It's all a blur.

Chatfield: So basically, what I'm getting at you could have just shot him because you thought it was a knife or it appeared to be a knife because it went so –

Sims: He had a knife in my face, but now what he –

Chatfield: Okay. So then he had -- could he – could he have had the knife in your face with his left hand and started coming with your pliers and could you have shot him because – hell, just because you saw a knife could that, could that have been it and could those pliers be the extent of that injury to your ribcage? I mean is that possible?

Sims: I - I think he just had one weapon if you will. I don't think he had both.

Chatfield: Okay. I'm sorry. I thought you said he just had pliers in the right hand. Brandon, correct me if I'm wrong, and the knife in his left hand?

Sims: No. The phone.

Lee: (unintelligible)

Chatfield: Well, help me here.

Sims: He had – he got my phone.

Chatfield: Okay. What hand is he holding the phone in?

Sims: At this point, his right hand.

Chatfield: Okay. This is the hall.

Sims: And then he put it down. But then he put my phone down.

Chatfield: Where did he set the phone at?

Sims: Back on the counter.

Chatfield: In the bathroom?

Sims: Yes.

Chatfield: And where are you standing while this is going on? Are you in the threshold?

Sims: Huh-uh (no). No. I'm like right there at the vanity.

Chatfield: Okay. And he, where is he at?

Sims: He's like right here.

Chatfield: So he's here; and you're here. And he's got your phone.

Sims: Uh-huh (yes).

Chatfield: In his right hand. And what's he got in his left hand?

Sims: The – the weapon. The knife.

Chatfield: Okay. Where are the pliers at?

Sims: I don't know if he put them in his pocket or where they went at that point but he had them working on the toilet. But the reason I said I don't know what, what this was the reason though is because I don't - I know he had them both. And I

know he -- I know he had the knife. After he put the phone down, it – he could have had the pliers. I don't know what he did with it.

Chatfield: I know –

Sims: I know he had them.

Chatfield: It's just – well, it's just sketchy. I'm just trying and I know you're upset. I'm just trying to clear some of this up. Okay.

Sims: I know.

Chatfield: And so did you ever see him go get the knife?

Sims: I saw him go get it before he started working on the toilet.

Chatfield: You saw him get it. Okay. So the – Okay. When you shot him did you ever touch the knife? Is it possible that you removed the knife due to some blood? Is it possible you picked it up and put it on his hand or his stomach just to get it out the way and do CPR? Is that possible?

Sims: It's very possible.

Chatfield: That's –

Sims: Because he – he didn't drop it immediately.

Chatfield: So it's very possible that you picked the knife up and put it there in his hands because you were doing CPR; it's possible?

Sims: I'm doing CPR. Yes. I--

Chatfield: Okay. So very possible.

Sims: I remember I was checking his pulse. I was doing mouth-to-mouth. I was doing chest compressions and –

Chatfield: Okay. So basically, and I'm having the guy come here with the pictures. So basically, those pictures, that's not going to be a correct re-enactment of the crime scene because the knife shouldn't have been in his hands. It should have been away when he jarred and hit the ground. Correct? It should have been somewhere. Do you remember how far – let me ask you this. Once he fell after he got shot, how – where do you think the knife fell? Where did – it obviously didn't stay with him. Where did it fall? Try to think real hard. Try to think real hard where that knife went because it will leave – it will leave blood on the carpet and that's what I'm – I'm , you know –

Sims: It –

Chatfield: Try to think.

Sims: It – it didn't go far.

Chatfield: How far do you think? A foot?

Sims: No. Not even that.

Chatfield: Okay. How far do you think?

Sims: Like inches.

Chatfield: Inches. Like – now - ____ away from his body, probably?

Sims: Yeah.

Chatfield: Okay. And then you picked it up and just sat it there and did your stuff, right?

Sims: Right.

Chatfield: Okay.

Sims: All I know is I was -- I had his arm and I was checking his pulse.

Chatfield: Uh-huh (yes).

Sims: I was checking his airway and I'm trying to give him mouth-to-mouth and I'm trying to do CPR and, I mean, it was – it didn't go far. It was right there beside him.

Chatfield: Okay.

Sims: The whole thing is a blur, the whole thing.

Chatfield: Okay. Let me – can I run something by you?

Sims: Uh-huh (yes).

Chatfield: If you don't mind, let me just run this by you. Y'all were having a bad day today and just kind of listen to me and I'll just – I just - is it possible that he was working on the toilet with the pliers that look like a knife? Is it possible, okay? And is it possible he got pissed at you, started yelling at you, and he jabbed you

with those pliers and is it possible that you didn't know – you know, and I'm just trying –

Sims: I guess it's possible but I saw a knife in his hand.

Chatfield: Okay. I'm, I'm just wondering. I'm just gonna throw this at you. This is just one. You shot him with the pliers and then you thought oh, man, I might get in trouble for a guy attacking me with a set of pliers so you went and got a knife and kind of – I don't want to say. I just want to say maybe in all your -- your frustrations and stuff you put the knife there because the knife wasn't originally there and that's basically it and you're kind of scared what would happen, what would happen.

Sims: No.

Chatfield: Okay. And I'm just – I'm just trying to just - okay.

Sims: He had them both working on the toilet and I –

Lee: Well, it seems -- so there will be no confusion is -- after you shot him and he fell why was your focus on picking up the knife and setting it?

Chatfield: Yeah, that's -- and it looks –

Sims: My focus was him. I went and got the phone and called 9-1-1, and I started CPR.

Chatfield: Okay.

Sims: I – I moved it to – Like I said, it did not go far. I had his arm out and I was checking his pulse. I tried to move him. If, if I –

Chatfield: Did you get to move him at all?

Sims: I tried. I was trying to move him away from the cabinet so I could – and where that knife was or pliers were, where any of that was, I don't – I don't know where it was because I was trying to move him. Now my dog was around. My dog was sniffing everything. I kept trying to tell him to move. I called my dad to try to get him over there to get the dog because –

Chatfield: Did your dad get there before the police came?

Sims: Yeah. Yes.

Chatfield: Okay.

Sims: He just got – my mom, my mom got the baby and my dad got the dog. But my dad never came into the bathroom. He stayed right there at the threshold on the phone.

Chatfield: Okay.

Sims: Because I gave him the phone. I said talk to her. I was trying to do CPR.

Chatfield: Yeah, you --

Lee: He showed us into the house.

Chatfield: And I guess one thing is that, you know, you never really said anything about a knife on the 9-1-1. You just said he had pliers. That's why. And I know everything was going fast. That's why I'm trying to ask you.

Sims: Well, he did. He did have the pliers but –

Chatfield: Okay. But you didn't mention anything about a knife. You just said pliers on the 9-1-1 tape. That's what I'm – what I'm referring to.

Sims: I was – I was concerned about him and I was trying to get the EMS there. And I – I know he had pliers and I know he had a knife but I don't know what this was a –

Chatfield: You don't know?

Sims: Maybe it was. This was – this was before I grabbed the gun.

Chatfield: Okay. He stabbed you or he cut you three times before you grabbed the gun?

Sims: Well, yeah. I was standing there like at the sink and that's when I was backing up. And that's when I grabbed it and I was trying to get him to stop.

Chatfield: Okay. I thought you were -- I'm sorry. I thought you were outside the bathroom in the threshold?

Sims: No.

Chatfield: Okay. So you were turned around the other way?

Sims: I was backing up in -- I was – I'll try to show you.

Chatfield: Okay.

Sims: I was backing up.

Chatfield: Okay. You were –

Sims: And that's when I grabbed that.

Chatfield: Okay. And he had already cut you three times here?

Sims: Huh-uh (yes).

Lee: Let me ask you this. When he was in your face here, okay, and he had this knife or pliers or whatever in your face. And he was – he was threatening you and calling you all these bad names and stuff and you were backing away as you said --

Chatfield: Why didn't you just run?

Lee: And he was in your face the whole time. How did he not try to stop you from grabbing the gun? I mean, did he try to stop you or did he just say – or did he just ignore the fact that you were grabbing the gun or did he not know it was there?

Sims: He didn't try to stop me.

Chatfield: Okay. But you had an escape route. I mean you could have took off. He was there and you were here. You had an escape route right out the house? You see this, right?

Sims: Yeah.

Chatfield: Now let me ask you. Why didn't you just run out of the house? You already know he's pissed off. You know he's confrontational. That's what – that's what I'm getting at. You had a – you have an exit to vacate the house.

Sims: I should have. I should have.

Chatfield: Okay.

Sims: I was scared and I, I hated to leave because he was mad and I had a four month old on the other side of the house.

Chatfield: And I understand that, but I just know he wouldn't hurt a four month. I don't think any parent would. I'm just wondering why instead of all this when he's being an ass that you didn't just go out and call 9-1-1. You know, this obviously started a domestic dispute. That's, that's -- that's what I'm getting at.

Sims: I – I should have. I should have left. I should have just left but I was just trying to get him to calm down and I was trying to talk to him and I thought maybe if I

grabbed that that he would calm down and he would stop. But then, then he started –

Chatfield: I mean you both have CWP's, right?

Sims: Yes. And then he started coming at me again.

Chatfield: And you still could have ran. Correct? I mean you still have the way out even though he was coming at you. You could have just – I've got a feeling you're a pretty fast girl if you're a nurse. So you probably could have scooted on out, right?

Sims: Well, I was scared that -- he's very fast.

Chatfield: Right.

Sims: I've ran from him before.

Chatfield: Okay.

Sims: I was scared that if I turned around I might get stabbed in the back. But I should have tried, but I mean I was scared to turn my back on him.

Chatfield: Okay. Now -- and I know we're jumping a little bit back and forth. The knife thing – when you moved the knife. And this –

Sims: I don't know that -- I don't know that I moved it. It's possible that I moved it by accident because I went over to him.

Chatfield: Yeah. You said it was very possible that you moved it. You said that it was inches away. And then you said because -- okay, tell me why you moved the knife? What --

Sims: If, if -- if I did, it's because I was trying to get to him and my foot may have moved it or I may -- it may have moved it when I was grabbing his arm.

Chatfield: Well, how did it get back into this hand? That's what I'm getting at. Did you set it up there just trying to –

Sims: No. I don't -- I'm not saying I did move it. It's possible that I moved it. I don't know where it was at. Was it in his hand?

Chatfield: I don't' know. That's why I'm asking.

Sims: It's possible that I moved it trying to get to him, checking his pulse and doing CPR. But I don't know that I moved it or not. Because whenever that happened, my focus was him. I called 9-1-1 and I started doing CPR.

Chatfield: Okay. See but at one time he had the phone in his hand and the pliers in his hand in the bathroom, right? And he was waving it in front of you, is that correct? At one time?

Sims: Uh-huh (yes).

Chatfield: And he had your phone and he had the pliers?

Sims: Well, he, he --

Chatfield: And he said he wanted -- what did he say he wanted to do to you?

Sims: He was calling me a fucking bitch.

Chatfield: Okay. Is there any reason why – and you knew, knowing him, you knew something was coming up bad, right? Did you think he was going – you tell me he's fast. Did you feel threatened for your life at that time?

Sims: I, I was – I was beginning to because he's gotten mad before but –

Chatfield: Well, why didn't you just run? And I know that. And I know that by your history. Why didn't you just run the hell out of the bathroom and call your dad or do whatever to straighten this up? That's what I'm getting at.

Sims: Like I told you. I was scared to turn my back on him.

Chatfield: Okay.

Sims: I wanted to keep my eye on him because he is faster than me.

Chatfield: Right. And when he – then when you withdrew did he stab or did he puncture you before you could get the gun? Where did –

Sims: Here –

Chatfield: Okay. So he took the instrument – we're just -- or is it okay to say "pliers" or is it okay to "knife?" What did he cut you – what did you see that he cut you with? Or did you?

Sims: He had the knife.

Chatfield: Okay. So he cut you –

Sims: He had the pliers but I don't know if it was -- if he still had them with him or if he left them or where they went but he had them in his possession.

Chatfield: And where was your phone? Did he have that phone or what did he do with the phone? Your phone?

Sims: He had set – he had put that down.

Chatfield: Okay. So then he had the knife and you're not sure where the pliers were, right?

Sims: No. I'm not sure where the pliers were.

Chatfield: And he's waving the knife at you?

Sims: Yes.

Chatfield: Okay. Tell me – and did he have the knife in his left hand?

Sims: Right hand. It was his right hand.

Chatfield: What's he –

Sims: I think it was his right hand.

Chatfield: Okay. Do you have – do you have any idea which hand it was in?

Sims: It's – it's a blur…

Chatfield: Okay.

Sims: …which hand it was in.

Chatfield: Okay. So –

Sims: I think it was his right hand.

Chatfield: You think it was. Okay. So he's cut you. Sorry. How many times? How many times do you think he cut you?

Sims: Three.

Chatfield: Okay. So he cuts you three times and what hand did you grab the gun with? I guess --

Sims: My left hand.

Chatfield: Your left hand?

Sims: Yeah.

Chatfield: And you don't know if the gun's got a safety or anything?

Sims: I'm pretty sure it has a safety but –

Chatfield: Do you always leave a – did you -- was the safety on?

Sims: Huh- uh (no) No.

Chatfield: Do you always leave the gun in the bathroom with a kid with the safety off?

Sims: Well, I had just moved it because I always keep that door shut and he's not crawling yet but I moved it.

Chatfield: Where did you always use to keep that gun?

Sims: The nightstand.

Chatfield: And when, what day did you move -- The nightstand. And what day did you move the gun?

Sims: When he started rolling over, when he started scooting around. I don't know when they normally start crawling.

Chatfield: Okay. A month ago? Two months ago? A week? A day? What?

Sims: Maybe a month.

Chatfield: Okay. So a month ago. Was your husband aware that gun was in there?

Sims: I told him it was in there.

Chatfield: You told him?

Sims: Uh-huh (yes).

Chatfield: Okay. So you started backing up and he stabbed you. He cut you three times with a knife and you're not really sure what hand it's in. Correct? Is that what you said?

Sims: Uh-huh (yes).

Chatfield: And please don't let me put anything in your mouth.

Sims: No.

Chatfield: And then you back up and you shoot him once and where did the knife fall after you shot? I mean, I know -- you know, where did the knife fall?

Sims: He – he still had it in his hand.

Chatfield: He's gripping the knife?

Sims: Yeah.

Chatfield: And then you could have moved –

Sims: That's why I thought well maybe he's okay.

Chatfield: Okay. Go from there when you thought he was okay. Tell me what you did and tell me how the knife could have moved. Go from that part.

Sims: Okay. So I shot the gun and he – he started. He turned – he started going this way, back this way because it was here. So he started kind of rounding this corner and I went – I went to get the – I went to get the phone to call 9-1-1 before he was even on the floor. I went to call 9-1-1 and when I came back in he was laying here. And I ran over here to his side and I started doing CPR. Now where it went, I don't know where it went but if I – if it got moved it, it was because I was either trying to move him or I was trying to move his arm. I had his arm out trying to check the pulse.

KNIFE

Chatfield: His right arm?

Sims: It's his left.

Chatfield: Heather, this is our crime scene lieutenant.

Sims: It was his left arm I was checking the pulse in.

Chatfield: So I just want to get back to this. I'm going to make this short. So let's go with – go ahead and go with the bathroom again. Pete's just got here and instead of reviewing this, go ahead and tell me exactly what you said about possibly the knife moving and everything else, but go ahead and…

Sims: Okay.

Chatfield: …give him a little sketch here.

Sims: Okay. So this is me and this is him. And I know he's got a knife. He had a pair – a pair of pliers. I don't know where those went, but I do know there was a knife in his hand. So I'm here and he's swinging at me with the knife so I shot him.

Cestare: Uh-huh (yes).

Sims: And when I shot him he started backing up. It was actually more like right here. He started backing up this way and that's when I went to call. I got the phone. My cell phone was here and I went and grabbed the house phone.

Cestare: Okay.

Sims: And I called 9-1-1 and when I came back in he's laying here.

Cestare: Okay.

Sims: And I come up to him and I start doing CPR.

Chatfield: Tell him about the knife that possibly could have moved?

Sims: And I don't know where the knife went. I don't know if – if he dropped it or if it was still in his hand or what, but if I – but if I moved it I was trying to – I did have his arm. I tried to move him away from the cabinets so I could get to him better. I kept checking his pulse everywhere and I was doing CPR and giving mouth-to-mouth. So my dog was in there. My dog.

Chatfield: Right. At this time they were in a verbal argument and she had the clearance to exit the house...

Cestare: Uh-huh (yes).

Chatfield: ...before grabbing the gun and she said she didn't know if the Ruger had a safety on it or not.

Sims: It does have a safety on it. It wasn't on, obviously.

Cestare: It was in the vanity cabinet here?

Sims: Uh-huh (yes).

Cestare: Okay. Look – looking at the vanity you've got drawers all the way down and then there's - I guess there's two upper pieces.

Sims: Uh-huh (yes).

Cestare: What was it in, the drawer or the other piece?

Sims: The drawer. The upper drawer. The reason I was telling him I put it there. I used to keep it in my nightstand and our four-month old, I don't know when they start crawling around or anything, but I was telling him we had to start – You know, the last pediatrician's appointment he told us we needed to start child proofing and we don't have a safe or anything to put it in. But the one thing that I thought that I could do for now is we always keep this door shut.

Cestare: Uh-huh (yes).

Sims: We always keep this – this room is off limits during the day because our dog can't – if our dog gets in here for some reason he makes a royal mess in here.

Cestare: Okay.

Sims: So I moved it here just for the time being until I could get a safe or something to put it in because I figured that was safer than a bottom drawer on the vanity.

Cestare: Okay. All right. Okay. Let me talk with you for a minute outside.

Chatfield: Sure.

Cestare: We'll be right back.

Chatfield: Heather, I'm going to take you, for the DNA off the knife and stuff, I'm going to go ahead and take –

Cestare: Did they bandage you up already?

Sims: Sir?

Cestare: Let me see where you –

Sims: It's not –

Cestare: Okay. Is that how – is that the only spot where he got – where you got stabbed?

Sims: On the -- Yeah. On my stomach.

Cestare: Okay.

Sims: I was backing, trying to back up.

Chatfield: Am I in your way, Pete?

Cestare: No. I'm just going to try and get a picture of it if that's all right with you.

Chatfield: Pete, I got several. Yeah. Go ahead.

Cestare: Okay. Okay.

Chatfield: Pete, how do you spell your last name?

Cestare: C-E-S-T-A-R-E.

Chatfield: What time is it, Pete?

Cestare: It is twenty-one, twenty.

Chatfield: Today's date - eleven, August?

Cestare: Yes. Okay. And let me just get a picture of your thumb there where --

Chatfield: Heather, I'm going to read this to you real fast while he's doing that. It's a – I'll let you. I'm going to go ahead and read it to you out loud. I, Heather Sims, have been informed by Police Officers Chatfield and Cestare of the Horry County Police Department of my legal rights to turn DNA swab collection and DNA testing ___ without a search warrant. And knowing my lawful right, I willingly give my consent to submit to a DNA. The DNA is performed at Room Fourteen of Grand Strand on this date and this time.

Sims: Uh-huh (yes).

Chatfield: Okay. Do I have your permission? Okay if you would sign it, and print your name, ma'am.

Cestare: Yeah. We would just need – we need to be able -- when we start going through evidence, to be able to isolate what _____.

Chatfield: I'll witness.

Sims: I just feel numb.

Cestare: And let me just get ones of your stomach.

Chatfield: (unintelligible)

Sims: I've run from him before and he's always –

Chatfield: Pardon me?

Sims: I ran from him before or tried to get away.

Chatfield: You ran from your husband before?

Sims: And I never can.

Chatfield: Well, let me ask you about that knife again. And let's –

Cestare: I'm going to get the inside of your cheek. Okay.

Chatfield: After you washed the knife he got it out of the kitchen, correct?

Sims: Well, I don't know which one it was but I had just got done washing a few of them.

Chatfield: Okay. But all the knives would be washed if you put them in there, right? He wouldn't pull a dirty knife out is what I'm saying?

Sims: No.

Chatfield: Okay. You don't' seem to be that type person. So if he went then only his latent prints would be on that knife? Is that correct? Your DNA shouldn't be anywhere near that knife? You said to me, and please don't let me put words in your mouth. You said to me you might have moved it. Could possibly you moved it with your hand where your DNA would be on there. Your feet or what? That's what I'm getting at?

Sims: Well, I'm the one that washed it.

Chatfield: Okay.

Sims: My hand – I'm the only one that washes the dishes.

Chatfield: Right.

Sims: Mine are going to be on there from just putting them –

Cestare: You have a dish washer or do you –

Sims: No.

Cestare: Okay.

Sims: No.

Cestare: Where do you – where do you put things to dry when you're done washing them? Do you have like a dish drain or anything?

Sims: No. I dry them off with a rag and then I put them up.

Cestare: Okay.

Chatfield: Okay. But what I'm getting at is, is it possible that you used your hands where the knife was moved out a little bit. Like if it was here, was it possible that you flipped it against the wall or is it possible that you kicked it against the wall? Like how - tell me how – when you were doing the CPR, I was not there. Tell me how his body was laying? Was he on the ground? Tell me where the knife was, where the knife was. Tell me what hand the knife was in, left or right?

Sims: Right.

Chatfield: Okay. Was it like this? Was he laying there like this with the knife?

Sims: Huh-uh (no.) No. No.

Chatfield: Okay. Tell me how the knife was?

Sims: His arms were out like this.

Chatfield: Okay. Out like this. Okay. Now did he have the knife gripped?

Sims: Yeah. He – he did.

Chatfield: Was his fingers all around it? That's what I'm asking.

Sims: Yeah.

Chatfield: Okay. So he had it like that? Like a fist?

Sims: Yeah. And I – like I said, I may have moved it inadvertently trying to …

Chatfield: Okay.

Sims: …not me literally putting my hand on it and moving it.

Chatfield: Right.

Sims: But I may have moved it trying to get him away from the cabinet.

Chatfield: Okay.

Sims: So I could do CPR.

Chatfield: So you slid him away. So if he's –

Sims: No. I didn't. I tried.

Chatfield: Oh, you tried?

Sims: I tried to. I tried to but then I'm like I'm not going to take time to do that. I just started CPR. But my dog was –

Cestare: How did you get cut? Where were you when you got cut?

Sims: Where was I physically in the room?

Chatfield: Yeah.

Cestare: Yeah. Like what was happening? Show me what –

Sims: We were right here and he was here. Now he had a pair of pliers. He was working on the toilet lid. And the knife, I know he had them both. He started –

Cestare: Why would he have the knife if he was working on the toilet?

Sims: The – if you open up the thing he was trying to –

(unintelligible conversation in background)

Cestare: Okay. Go ahead.

Sims: The thing that lifts up that the water goes out of the tank with –

Cestare: That adjusts – okay.

Sims: That was broken and he said he needed something like skinny…

Cestare: Okay.

Sims: …to get whatever lifts it up, he was trying to get that off.

Cestare: Okay.

Sims: I don't understand the mechanism of it.

Cestare: Okay.

Sims: But nor did he go into detail about how he was going to fix it, because he just said he was going to fix it.

Cestare: Okay.

Sims: But I did - he did say that he needed something skinny and flat to get up under, under that thing that goes around that tube that lifts it up. He was trying to adjust that somehow.

Cestare: Okay. So he had – he had the pliers and the knife.

Sims: Working on the toilet.

Cestare: Okay. And then what happens from there?

Sims: Okay. He was over here working on the toilet and I was running bath water. And he said we're going to talk whether – I'll just talk to you while you're taking a bath. Because he had been wanting to talk all day but I told him maybe it would be better if we did it after the baby went to sleep. Because I know it was going to take longer than thirty minutes. So I turned the bathtub water off because, you know I - I don't even think I opened up the drain. I think I just turned it off and I sat down over here and then he was doing something with the toilet trying to fix that. We have been having problems with it. It runs all the time. And then he turns around and he said, "What do you want to do? Do you want to separate?" And I said, "No, I don't." I said, "I love you." I said but I don't' want to be with somebody that don't love me and you don't act you do.' And he goes-- I'm, I'm trying -- I can't remember it verbatim but he said well you're nothing but a damn liar. And I said well what have I lied about? I said you've mentioned this earlier today but you still have yet to give me an example of what you're talking about. If you can tell me I'm lying -- and something about an appointment that was made with the counselor and a whole bunch of piddly stuff and I my phone was over here charging and I was trying to prove to him because I had the appointment in my calendar.

Cestare: This is on the cell phone?

Sims: Uh-huh (yes).

Cestare: Okay.

Sims: And so I got up and I come over here and I was like look. This is the appointment that I made. I said – because he said that I had told him it would be two weeks before she could see us.

Cestare: Okay.

Sims: And I suggested maybe getting another counselor. And he said – he said that he had called her and that she said that she could see us before two weeks. It's

stupid. It's stupid. And I said, "Well, David, if she can see us earlier it's probably because of a cancellation because she told me it would be two weeks." And I don't know why he was wanting to argue over it but he – he don't believe anything. It's like he don't believe anything I say. It's like he's finding something. And he said that there was this whole list of stuff and so I had my phone and he come over here and he grabbed my phone out of my hand and he turned his back towards me like he was looking, looking at my phone. And I was like, David, give me my phone back. I said, "The battery is almost dead. I'm charging it." And then he, he turned around and he got in my face and he said you're nothing but a fucking bitch and I could knock your teeth out of your head. And he did – he did have the knife and he put it in front of my face at that point when he said I'm going to knock your fucking teeth out of your head.

Cestare: And which hand is the knife in?

Sims: I think it's his right hand.

Cestare: Okay.

Sims: And he had put my phone down at this point.

Cestare: On the counter there?

Sims: Uh-huh (yes).

Cestare: Okay.

Sims: And -- and I said – He said about knocking your fucking teeth out of your head. And I said – I said, "No you're not, David." I said, "I will call the police." I didn't tell you that but I did him I was going to call the police. But then he – at this point he was very irate and he was calling me names and he was threatening me, telling me he was gonna – he was gonna knock my teeth out of my head. He was mad. He was really, really mad. And he was in my face. And I started backing up and as I said, "David, get out of my face." I said, "Leave me alone." I said, "Just stop." I said, "I'm going – I'm going in the other room." And he wouldn't. He was slinging the knife around like he was going to cut me and I think he was just doing it to scare me. I don't know but I had my arm out, you know, like stop. And I opened up – I didn't know if I'd need it or not but at that point I felt a little threatened and I opened up the drawer and I grabbed the gun and he saw me. And I said, "David." I said, "Stop it now." I said, "I don't – I'm not planning on using this but you're scaring me."

Cestare: Uh-huh (yes).

Sims: And then I guess that just made him madder and then he starts going like he's – he went from slinging it to doing this. And at that point we were here because I kept backing up. And I should have turned around and ran, but I was telling him I was scared to turn my back to him.

Cestare: Do you remember at what point your arms were cut? Your arm?

Sims: It was as I was going for – it was as I was going for --

Cestare: As you were going for the gun?

Sims: Uh-huh (yes).

Cestare: And, and are you right handed or left handed?

Sims: I'm right handed.

Cestare: Right handed. Okay. So when you – when you fired the gun it was with your right hand?

Sims: Yes, sir.

Cestare: Okay.

Sims: And we got to where we were here and –

Chatfield: Can you show me how you fired the gun? Show me how you fired it?

Sims: Like that.

Chatfield: So you had both hands on your gun, on the gun?

Sims: I'm – it's a blur. I'm sure I did because any time I've ever shot that gun it's with two hands.

Chatfield: Okay. How did you sustain that thing right there? That thing on your thumb, how did you get that injury?

Sims: I don't know if it was from the gun like, you know, from firing it or it was just from the whole confrontation when he was –

Chatfield: Okay.

Cestare: Okay.

Chatfield: Go ahead with what you were saying.

Sims: So we were here and at that point he was still, you know – and he was going at me with the knife and I was scared to turn around because he can catch me.

Cestare: Where is the baby?

Sims: The baby is way on the other side of the house in the pack and play.

Cestare: Okay. Over by the – by the baby's room.

Sims: It's right before the entertainment center.

Cestare: In the living room?

Sims. Yes. Yeah.

Cestare: Okay.

Sims: So I fired the gun and then he backed up this way. He actually walked, like walked backwards this way. And I thought okay. I said, you know, I didn't know what to do. The first thing I did – my phone was still here. So I went and I grabbed the house phone and called 9-1-1. And then I started doing CPR and I was checking his pulse and I was trying to get my dog away.

Cestare: Where was the house phone at, in the kitchen or living room, or where?

Sims: It was in the living room.

Cestare: Okay. So after you, after you shoot at him you go back into the living room, you grab the phone?

Sims: There's actually a phone – now that I think about it there's actually a phone in the bedroom and in the laundry room but I never use those. I never think about them. The one that I always use is in the living room.

Cestare: The living room.

Sims: So that's the first one I think about so I go in there and I run and I go back in there and I start doing CPR.

Cestare: And you're calling 9-1-1 as you're coming back in?

Sims: Uh-huh (yes).

Cestare: Okay.

Sims: Uh-huh (yes).

Cestare: And at that point what does – what does the dispatchers tell you?

Sims: She was like don't – don't do CPR if he's breathing. And he was but I couldn't feel a pulse. I know how to do CPR so I didn't feel a pulse and at that – I knew to count my pulse, or if I didn't feel one, you do CPR.

Cestare: Okay.

Sims: So I'm trying to get him away from the cabinets so I can do better CPR but I couldn't because he was right up against the cabinet.

Cestare: Okay. All right. All right. And the -- you said you had run a tub before that. Did you ever take the bath or not? You never got that far? Okay.

Sims: I just turned the water off.

Cestare: All right. Okay. All right. That, that should be pretty much all the questions I have now. I may again have some more but --

Sims: As far as the pliers, I don't know what happened to the pliers. I know he had them at some point but at first I thought maybe that – I don't know. It's such a blur. I don't know what happened to the pliers but I know he had them both trying to finagle something on the toilet, trying to get that thing up.

Cestare: Okay.

Sims: Trying to adjust it. It --

Cestare: Okay.

Sims: It's just a blur.

Chatfield: Okay.

Cestare: You want me to take this back with me?

Chatfield: Yes, sir. If you'd like. I want to make sure – I need the case number. And I need you – Heather, I need you to go back sign this - chain of custody. Just relinquish --

Cestare: Yeah. Just do a handwritten one to me and I'll –

Chatfield: Let me talk with you outside for a second.

Cestare: Yeah.

Chatfield: Heather, I'm so sorry I've taken so long of your time. Okay.

Sims: That's okay.

Chatfield: The time now is twenty-one, forty one. This will conclude this interview.

Defendant's Exhibit 40 Treatise Photograph of Defensive Wound

FIGURE VIII-12. Superficial defense-type cut of the left forearm and scratches on the face indicate that an altercation had taken place. Death was due to a single stab wound of the chest.

DEFENDANT'S EXHIBIT 40 MP 11-12-15
PENQAD 800-631-6989

Defendant's Exhibit 41
Spitz Affidavit Excerpt

Reenactments of the shot that struck David Sims indicates an adult shooting, inflicting the chest wound, entering at the level of the 5th intercostal space at the frontal midline, the slug traveling downward, rearward and to the left through the heart and left lung, exiting the back at the level of the left 9th intercostal space.

The cause of death is internal bleeding with 2000 mL of liquid and clotted blood in the left chest cavity. The slug exits through the 9th intercostal space in the back. The shot is downward at an approximate angle of 20 degrees.

To cause this angle, the shooter was upright; the victim was down on his knees. This is evident from the re-enactment and from the spatter of blood on the back of the victim's lower pant legs.

No defense wounds are noted on Heather or David Sims.

All my opinions are based on my education, training and experience and are rendered to a reasonable degree of medical certainty.

Sincerely yours,

Werner U. Spitz, M.D.

WUS:dll
dk:live111214cor6430

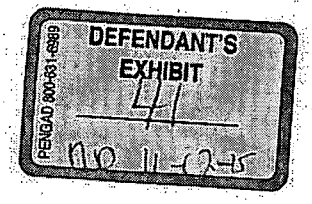
On this 12th day of November, 2014 before me personally appeared

Werner U. Spitz, M.D.

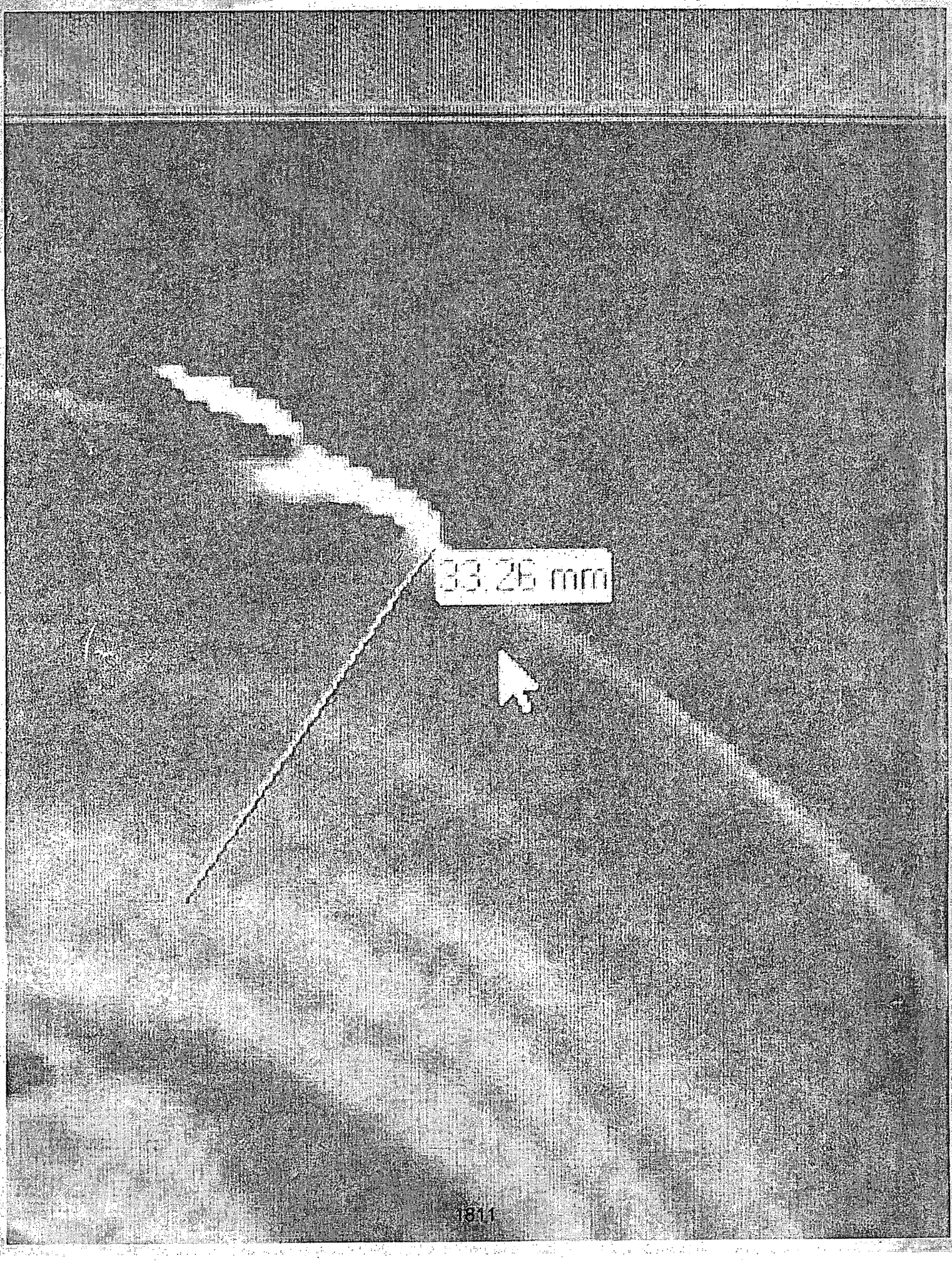
To me known to be the person who executed the forgoing instrument, and acknowledged that he executed the same as his free act and deed.

Sworn and subscribed to before me this 12th day of November, 2014.

Diane L. Lucke, Notary Public
County of Monroe, State of Michigan
Acting in Macomb County
My Commission Expires: October 20, 2017



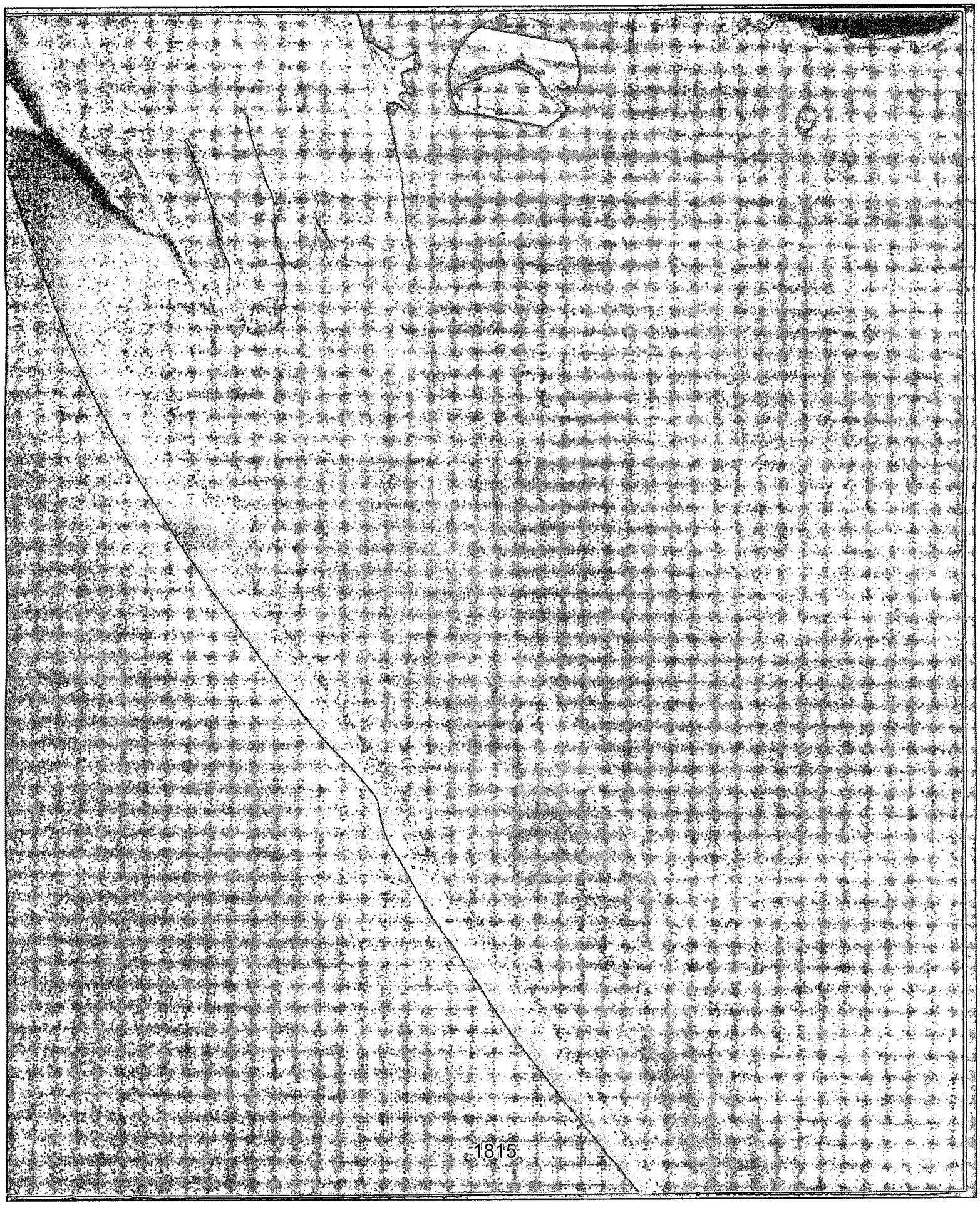
Defendant's Exhibit 46
MRI Photograph


33.26 mm

Defendant's Exhibit 65
Photograph of Knife

1813

Defendant's Exhibit 72
Photograph of Arm Bruises



Defendant's Exhibit 78
Text Messages

	3/4/2013 3:00:16 PM(UTC+0)	From: +18433192683 David	I'm sorry again for scaring u by getting angry with Max. I shouldn't have. I would never ever physically hurt him.	
	3/4/2013 3:18:02 PM(UTC+0)	From: +18436023892 Heather Causey	I know. It did scare me. I just wanted you to calm down a little before you did something you might regret. I know he has to be disciplined but I think sometimes, when you rough house w him, and get in his face, and he does it back... He thinks it's ok other times too. I really do because he never does that w me but I never get in his face and smack him with toys and okay like u do. Just a thought. But I accept your apology. I know you love him. But it did scare me. It's easy to let emotions over rid me what you would normally do when you are that angry.	
	3/4/2013 3:18:11 PM(UTC+0)	From: +18436023892 Heather Causey	Over ride. Not rid me	
	3/4/2013 3:36:27 PM(UTC+0)	From: +18436023892 Heather Causey	I know max loves you, and he does get out of hand sometimes but he's still a puppy. We have to discipline him, but I've gotten too upset w him too before. And then I felt bad. But he loves us and he for the most part is a good puppy	
	3/4/2013 6:08:45 PM(UTC+0)	From: 8439975832	From: 8439975832	
	3/4/2013 6:08:45 PM(UTC+0)	From: 8439975832	From: 8439975832	Yes
	3/4/2013 6:08:45 PM(UTC+0)	From: 8439975832	From: 8439975832	Yes
	3/4/2013 6:29:20 PM(UTC+0)	From: +18433192683 David	Yeah He is a great puppy. One of the best I've ever had!	
	3/4/2013 7:00:15 PM(UTC+0)	From: +18436023892 Heather Causey	And Collins apparently doesn't know so it makes u wonder how accurate that date is	Yes
	3/4/2013 7:00:35 PM(UTC+0)		True!	Yes
	3/4/2013 7:00:35 PM(UTC+0)	From: +18436023892 Heather Causey	And Collins apparently doesn't know so it makes u wonder how accurate that date is	Yes
	3/4/2013 7:05:36 PM(UTC+0)	From: +18433192683 David	:) he weighs 38 lbs	
	3/4/2013 7:05:36 PM(UTC+0)	From: +18433192683 David	I know. It was awesome:)	
	3/4/2013 7:05:45 PM(UTC+0)	From: +18436023892 Heather Causey	Change if plans. Getting maxs heartworm. I'll go get nursing stuff later.	
	3/4/2013 7:06:23 PM(UTC+0)	From: +18436023892 Heather Causey	Ok	
	3/4/2013 7:06:44 PM(UTC+0)	From: +18436023892 Heather Causey	He slept on me last night and never moved.	
	3/4/2013 7:07:44 PM(UTC+0)		He has 60 clause?	Yes
	3/4/2013 7:09:52 PM(UTC+0)	From: +18433192683 David	I love you.	
	3/4/2013 7:10:56 PM(UTC+0)	From: +18436023892 Heather Causey	Bless his heart. He loves you. He was really scared tho. You pulled his skin so hard the whites of his eyes were showing and he was looking back at me. It was so pitiful. You better make up w him today. I had just never seen u like that. And he's a lot smaller than you. But it shows how unconditional his love is. He loves you no matter how mad u get with him. Just remember that!:)	
	3/4/2013 7:12:30 PM(UTC+0)	From: +18436023892 Heather Causey	He tries hard to make us happy I think. And he is just so happy that he is ours! I know we gotta discipline but I swear I'd rather get punched in the face than see him mistreated. I love you too.	
	3/4/2013 7:14:08 PM(UTC+0)	From: +18433192683 David	So are you saying that the next time he needs discipline, that I should instead just punch you in the face?	
	3/4/2013 7:14:56 PM(UTC+0)	From: +18436023892 Heather Causey	And I do love you but I do want you to pray about how quick you are to anger. You really are. We all have things we can improve, including me. But the bible talks a lot about being quick to anger and quick to speak. We've got to set a good example now. And that's one thing I think we need to pray about:)	
	3/4/2013 7:16:49 PM(UTC+0)	From: +18436023892 Heather Causey	I'd rather u punch me in the face than do what u did last night. That was past discipline. You had already spanked him twice. You just kept on. That's what scared me. And as concerned u were about me getting upset when u and my dad argued, it didn't seem to bother u last night. I begged u to stop and calm down.	
	3/4/2013 7:19:18 PM(UTC+0)	From: +18433192683 David	Well there is alot that I can tell I will have to deal with in the future. It's all a learning experience. No one knows how the other person is until things happen and they find out in life experiences. Not a big deal, just an adjustment.	
	3/4/2013 7:27:43 PM(UTC+0)	From: +18436023892 Heather Causey	David I believe in discipline. But last night was scary. U weren't able to see yourself. U mentioned ur dad being the same way. That doesn't make it right. Most men r quick to anger. And most men don't think they can improve. But anyone who thinks they can't improve are wrong. Unless you are Jesus Christ Himself, you can always improve. All I'm asking is that you pray about it and try not to get so angry. Sometimes I feel like I can't even bring things up or talk to you because u r so quick to get mad. Shouldn't b like that. And as far as children go, u should never discipline out of anger. If you're that upset as you were last night, you need to stop and cool down before you hurt someone. You were down right rage- ful last night and I don't like to see that and it's not healthy.	

DEFENDANT'S EXHIBIT 78 11-18-15

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Blake A. Hewitt # 73674
John S. Nichols # 4210
BLUESTEIN NICHOLS
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

July 11, 2017

Attorneys for Appellant