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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC 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 3

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CAROLYN PAUL - DIRECT EXAMINATION

1 objections.

2 (State's Exhibit 115 admitted.)

3 (State's Exhibit 116 marked.)

4 DIRECT EXAMINATION

5 BY MS. LIVESAY:

6 Q Where are you currently employed?

7 A Nationwide Insurance.

8 Q Where is your office at?

9 A 2407 Second Loop Road, Florence, South Carolina.

10 Q And were you working there in August of 2013?

11 A I was.

12 Q And was your office in Florence then?

13 A Yes.

14 Q And were you working there May, June, July of
15 2013?

16 A I was.

17 Q Now, what are your responsibilities at Nationwide
18 Insurance?

19 A I'm what you call a financial associate. I do
20 life insurance, securities and other financial items.

21 Q And I'll show you what is marked as State's
22 Exhibit 116; does that look familiar to you?

23 A Yes, it does.

24 Q If you don't mind, tell the Court what that is?

25 A It is an individual term life insurance policy.

CAROLYN PAUL - DIRECT EXAMINATION

1 It is in the name of David Sims.

2 Q Is that a policy that you got for a customer from
3 Nationwide?

4 A It is.

5 MS. LIVESAY: Your Honor --

6 Q (MS. LIVESAY) Does it have your signatures?

7 A It has my signature.

8 Q Has it been altered in any form or fashion?

9 A Not that I can tell, huh-hu.

10 MS. LIVESAY: At this time the State wishes to
11 move State's Exhibit 116 into evidence.

12 THE COURT: Over the objection, and subject to
13 that objection, I'll allow you to introduce it State's
14 116.

15 (State's Exhibit 116 was admitted.)

16 Q (MS. LIVESAY) I want to go through a little bit
17 of the basics for myself, the Court and the jury about
18 how a life insurance policy works and kind of who the
19 players are in a life insurance policy. First of all,
20 I would like to ask you exactly to define what the
21 owner of a life insurance policy -- what is that
22 person's role?

23 A The owner of the policy is really the person in
24 charge of the contract. When you have a policy, you
25 have a contract between the company and the individual,

CAROLYN PAUL - DIRECT EXAMINATION

1 and the other is a person who is in charge of the
2 contract, meaning that they are the only person that
3 they actually own the policy, they see the policy is
4 paid for, and any changes to the policy as the years go
5 on are determined by that individual, the only ones
6 that can make a change.

7 Q So the owner owns the policy, and that is the
8 only person that can make any changes on the policy?

9 A Correct.

10 Q If you don't mind, tell these people who the
11 insured is as to a life insurance policy?

12 A The insured is the individual whose life the
13 policy covers and who, in the instance of their death,
14 the proceeds will be paid out on behalf of.

15 Q And who is the beneficiary of a life insurance
16 policy?

17 A Beneficiary of the life insurance policy is the
18 person who actually gets the death benefit at the death
19 of the insured.

20 Q If you don't mind, tell these people exactly what
21 it means that -- the death benefit, what is that?

22 A When you purchase a life insurance policy, you
23 purchase it for certain amount, and that -- as long as
24 the policy is paid for and everything keeps and stays
25 in order, then at the death of insured, the policy is

CAROLYN PAUL - DIRECT EXAMINATION

1 paid to the beneficiary.

2 Q So the beneficiary is the one who collects the
3 money upon the insured passing away?

4 A Correct.

5 Q And the policy that you are looking at now, who
6 is the owner of that policy?

7 A It was David Sims.

8 Q And when did David Sims seek out that insurance
9 policy?

10 A The insurance policy was issued as of July 23,
11 2013.

12 Q So the policy was issued July 23 of 2013, and he
13 was the owner?

14 A He was the owner.

15 Q Who was the insured, the person's life insured on
16 the policy?

17 A He was also the insured.

18 Q And who was the beneficiary of that life
19 insurance policy?

20 A Heather Sims was the beneficiary.

21 Q Was there anybody else that was a contingent
22 beneficiary or joint on the policy?

23 A No.

24 Q Only her?

25 A Only her.

CAROLYN PAUL - DIRECT EXAMINATION

1 Q Now, if you don't mind, tell this jury what the
2 amounts of the beneficiary would collect on this policy
3 upon David's death?

4 A Upon David's death on this policy, it was
5 \$750,000.

6 Q Okay. And it was issued July 23, 2013?

7 A Correct.

8 MS. LIVESAY: Nothing further for this witness.

9 CROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q Ms. Paul, you were a life insurance salesman,
12 right?

13 A Correct.

14 Q And financial planner of sorts?

15 A Of sorts, yes.

16 Q And, of course, you believe in life insurance is
17 a product, don't you?

18 A I do.

19 Q And you would recommend to a lot of people,
20 particularly young people like David Sims or Heather
21 Sims with a child --

22 MS. LIVESAY: Can he speak up a little bit. I'm
23 sorry, with his back turned, it is difficult.

24 THE COURT: Speak up, please.

25 Q (MR. MARTIN) You believe that for a person like

CAROLYN PAUL - DIRECT EXAMINATION

1 David Sims or Heather Sims, young family with a child,
2 that a life insurance policy is a good thing to have?

3 A Absolutely.

4 Q And if you are -- if you have a financial -- do
5 you do any financial seminars or presentations, things
6 of that sort?

7 A I have, yes.

8 Q And you encourage all young new families to have
9 life insurance, don't you?

10 A Correct.

11 Q And do you help them figure out how much life
12 insurance or what type, term, whole, that kind of
13 thing?

14 A I do.

15 Q This was a term policy?

16 A Yes, it was.

17 Q And those are relatively inexpensive for a
18 younger person?

19 A Yes, it is.

20 Q And, of course, the -- this policy -- you say it
21 was issued on July 23rd of 2013, and of course when
22 you get a life insurance policy, there is more to it
23 than it being issued; first of all, you have to apply
24 for it, right?

25 A Correct.

CAROLYN PAUL - DIRECT EXAMINATION

1 Q And the application for this policy was -- you
2 have it there -- I think it was June 23rd or
3 something?

4 A Somewhere in the latter part of June, yes.

5 Q And did you contact Mr. Sims about selling him a
6 policy at any point in time?

7 A He was in our office obtaining some other types
8 of insurance, I think for a business he ran, and I met
9 him while he was in the office and discussed it with
10 him.

11 Q And did you talk to him about the fact you should
12 have life insurance?

13 A I did.

14 Q And he agreed with you about that?

15 A He did.

16 Q And I'm assuming that was shortly before or
17 around the June date you just gave us, or was it some
18 period of time, or do you know?

19 A No. No. It was around the same time, around
20 June time.

21 Q And, of course, you met with him and he filled
22 out the application, and in terms of who owns the
23 policy, who the insured is and the beneficiary is, that
24 is all information that in this case David Sims would
25 have given to you?

CAROLYN PAUL - DIRECT EXAMINATION

1 A Correct.

2 Q And, of course, you filled out the application,
3 and he signs it and that is part of everything?

4 A Right.

5 Q Are you a part of the process where they go out
6 and check his blood pressure and --

7 A No. Once I complete an application, it goes to
8 our underwriting department. They do all of that.

9 Q And you are kind of out of it after that?

10 A Correct.

11 Q As to the amounts of the policy, that is
12 something you and the insured come up with together
13 after discussing his particular situation?

14 A Yes.

15 Q And you felt like in this situation for David
16 Sims a life insurance policy of \$750,000 was reasonable
17 and appropriate?

18 A Yes.

19 Q Now, this policy wasn't issued until July 23.
20 Did you deliver it to David?

21 A He came back in our office one day, I don't know
22 what day it was, picked it up. Like I say, he was
23 doing other business.

24 Q Right. He did other insurance business with you?

25 A With the agent there, yes.

CAROLYN PAUL - DIRECT EXAMINATION

1 Q The name of the agency is Nationwide?

2 A It is Hodge Etheridge Agency.

3 Q So the policy -- he came by the office and he
4 picked up the policy?

5 A Yes.

6 Q Do know when that was?

7 A I can't tell you the date.

8 Q But it wasn't mailed to his home, it was picked
9 up by him?

10 A Correct.

11 MR. MARTIN: Just one second, Judge.

12 Q (MR. MARTIN) Let me ask you this. Do you
13 remember this case -- and maybe it is consistent with
14 all cases -- what the folder looked like that this
15 policy came in when it was delivered to Mr. Sims?

16 A It should have been in a -- kind of like a gray
17 vinyl, little slots on both sides.

18 Q White and green?

19 A White and green vinyl folder that folds and slots
20 that you stick all of this information on both sides.

21 MR. MARTIN: Just one second, Judge.

22 Q (MR. MARTIN) You never had any conversation with
23 Heather Sims about this policy?

24 A I've never met Heather.

25 Q You never met her, and you never had any

CAROLYN PAUL - DIRECT EXAMINATION

1 conversation? She never called wanting to get life
2 insurance for her husband or anything like that?

3 A No, sir.

4 Q And as far as you know, this was totally David
5 Sims' idea and a good idea?

6 A Good idea.

7 Q To get insurance?

8 A Yes.

9 Q And, again, the folder we're talking about is a
10 folding folder -- you don't have one with you?

11 A I sure don't.

12 Q Okay.

13 MR. MARTIN: Judge, that is all the questions I
14 have for this witness, but I would like for her to
15 remain around, because I may have one more question
16 before the day is over.

17 THE COURT: Okay. Anything on redirect?

18 MR. MARTIN: Oh, hang on, I can finish up.

19 Q (MR. MARTIN) Let me ask you --

20 (Defendant's Exhibit 50 marked.)

21 Q (MR. MARTIN) Does that look like the folder?

22 A Yes, it does. The promotion stuff is stuck on
23 these sides.

24 (Defendant's Exhibit 51 marked.)

25 Q (MR. MARTIN) I'll show you Defendant's 51.

CAROLYN PAUL - DIRECT EXAMINATION

1 You've never seen that picture before?

2 A No.

3 MS. LIVESAY: I do have an objection as to the
4 accuracy of that picture. It obviously -- I've seen
5 that picture before, and it did not look like that.

6 THE COURT: Ma'am, let me see that. That is
7 taken from the security camera?

8 MR. MARTIN: What it is, Judge, and I don't know
9 what she means it is different. That was the photo
10 taken from the video, which is already played to the
11 jury.

12 THE COURT: Security video?

13 MR. MARTIN: Security camera, yes. It is a
14 picture taken from that on August 11th, obviously it
15 is entered into.

16 MS. LIVESAY: Your Honor, for one, I don't know
17 when -- can I see that picture again? My first thing
18 is there is no date on this picture, and my second
19 concern is I've seen this shot from the surveillance
20 camera of the cars, and I don't know if it has been
21 zoomed into, but it is not the picture you see when
22 you are looking -- viewing surveillance footage.

23 THE COURT: I think your question is going to be
24 do you recognize that?

25 MR. MARTIN: Yeah. Yeah.

CAROLYN PAUL - DIRECT EXAMINATION

1 THE COURT: I'll allow you to ask that. If she
2 recognizes the document, then the picture of the
3 document comes in for the sake that's what it is.

4 Q (MR. MARTIN) All I'm asking you, Ms. Paul, is if
5 you look at the photograph, you see a document or
6 something laying on the hood of the truck, which is
7 somewhat blurred, no doubt?

8 A Okay.

9 Q Would you agree with me that that has the same
10 color markings and color delineations as the Nationwide
11 folder that you folks delivered the policy to Mr. Sims
12 in?

13 A Well, there is no color, so I can't tell you the
14 colors, but it is blurred. I couldn't tell you a
15 hundred percent.

16 Q I know that, but would you agree that the
17 delineations of it is are remarkably similar to that?

18 A They are similar.

19 Q Okay. And, again, as you said, Mr. Sims went by
20 and it was hand delivered to him. Do you know when?

21 A No, sir. If it was issued on the 23rd, you
22 know, David stopped by the office, I don't....

23 Q Sometime before the 23rd, but you don't know
24 exactly when?

25 A No, I don't have a date.

CAROLYN PAUL - DIRECT EXAMINATION

1 Q Sometime between the 23rd and August 11?

2 A Yes.

3 MR. MARTIN: I move to enter into evidence
4 Defendant's 51.

5 MS. LIVESAY: I have an objection. This lady
6 can't identify that picture, can't put a date on it.
7 She just said it was blurred, not in color and she
8 can't even tell what's in the picture.

9 THE COURT: For purposes of the record, I'll
10 allow you to introduce it. What she says about it,
11 I'm not sure it matters much, but you can introduce it
12 over your objection.

13 MS. LIVESAY: That picture is in evidence?

14 THE COURT: Yeah. What about the policy?

15 MR. MARTIN: No, I'm not offering that.

16 (Defendant's Exhibit 51 admitted.)

17 THE COURT: Anything on redirect?

18 MS. LIVESAY: No further questions for this
19 witness.

20 THE COURT: You can step down.

21 MR. MARTIN: I'm through with her.

22 MS. LIVESAY: The State rests at this time.

23 THE COURT: Okay. Ladies and gentlemen, I'll
24 send you back about for about 10 minutes. Please
25 don't discuss this case. We have two options on how

CAROLYN PAUL - DIRECT EXAMINATION

1 we can proceed. Let me be blunt with you. If I
2 thought we could finish tonight, I would keep going,
3 but I don't think we can. I suspect we will be able
4 to get this case to you quickly, but let me be sure.
5 They can go downstairs, because it's going to take 10,
6 15 minutes.

7 At this point in the trial, there are certain
8 motions I have to take, and I won't do that while you
9 take a break, I'm just going to talk to the lawyers
10 during this time. What I'll probably do is bring you
11 back up and let you go, and we'll stay and do motions
12 and bring you back in morning to hear the defense.
13 But you heard what you are going to hear from the
14 State, so don't discuss it. Take them down, and we'll
15 bring you back in about 15 minutes.

16 (The jury exits at 5:03 p.m., and the
17 following is heard out of the presence of the jury.)

18 THE COURT: Here is what we have to decide. Mr.
19 Martin, do you know how many witnesses you have, if
20 any?

21 MR. MARTIN: I have probably seven to ten.

22 THE COURT: How long will they be?

23 MR. MARTIN: Well, the majority will not be long.

24 THE COURT: Can we --

25 MR. MARTIN: I don't know whether we'll finish

CAROLYN PAUL - DIRECT EXAMINATION

1 tomorrow or not, but I would think that by noon
2 Thursday we would be. I do have -- I've got one
3 witness here that I can't get back tomorrow, which is
4 a fact and character witness that I would like to get
5 in.

6 THE COURT: Okay. Well, that answers my
7 question. You have a motion you need to make,
8 obviously. How long will the witness tonight take?

9 MR. MARTIN: Not long.

10 THE COURT: Okay. You want to make your motion
11 then while they are out? Do you have any motions?

12 MR. MARTIN: Oh, yes, sir.

13 THE COURT: Let them fly.

14 MR. MARTIN: Your Honor, if it pleases the Court,
15 the defense will move at this time for a directed
16 verdict of not guilty based on the fact that the
17 evidence presented by the State in its totality, and
18 when viewed in the light most favorable to the State,
19 is insufficient to allow this jury to legally reach a
20 verdict of guilty. Of course I know you are eminently
21 familiar with the case law. The burden that the State
22 has in order to prove its case, in this case I would
23 say to you that the -- that the entire substance of
24 the case is built around the opinion testimony of
25 Werner Spitz, that her wounds were self-inflicted,

CAROLYN PAUL - DIRECT EXAMINATION

1 thus leading to the thought that there was no attack
2 by the defendant by the deceased with a weapon. I
3 believe that the testimony of Dr. Spitz, even when
4 viewed in the light most favorable to the State,
5 starkly fails to rise to the level of sufficient
6 evidence. He mouthed the words, but he was not
7 credible. He was disoriented. He didn't know where
8 Ms. Sims was standing. He was looking for the stab in
9 the autopsy report. He offered an opinion that the
10 stab wound in her abdomen was 3 millimeters deep, and
11 there is evidence in the record that that was only
12 1,000 percent wrong, it was 35 millimeters deep, and
13 even when you view this evidence in the light most
14 favorable to the state, the witness -- the witness for
15 the prosecution about the knife in the hand, there has
16 been absolutely no testimony at all that the defendant
17 could have maintained the possession of the knife
18 throughout the event until he was on the floor in the
19 position he was found.

20 The expert witness for the State testified that
21 certainly the knife could have been in the hand at the
22 time any blood on it was transferred. Again, negating
23 proof beyond a reasonable doubt, and certainly we are
24 not there now, but when you view the evidence that is
25 in the light most favorable to the State, that this

CAROLYN PAUL - DIRECT EXAMINATION

1 opinion evidence of Dr. Spitz, coupled with the
2 failure of any other witnesses to opine or give any
3 factual testimony contradicting the statement of the
4 defendant, which is in the record, would lead us to
5 the conclusion that there is insufficient evidence to
6 send this matter to the jury, so we would move the
7 Court at this time to direct a verdict of not guilty.

8 THE COURT: All right. Thank you, sir. Yes,
9 ma'am, anything in reply?

10 MS. LIVESAY: Your Honor, I believe the State has
11 put forth a case for murder. First of all, starting
12 with the 911 tape, immediately you see there is
13 credibility issues with the defendant's statement.
14 She starts off saying "wrench," and then after it is
15 suggested to her, she then says "knife." You also
16 hear comments made on the tape that are clearly
17 indicating they are wiping down the scene and altering
18 the scene. The first question is why? Why is this
19 scene being altered? Why are things hidden from the
20 police? Why is she taking his phone out of his pocket
21 as he's bleeding out on the bathroom floor and later
22 wiping it? It is when you look at the crime scene
23 when you talk to the evidence and talk to the experts
24 that you see that, in fact, this crime scene has been
25 manipulated, and when you look a little closer, you

CAROLYN PAUL - DIRECT EXAMINATION

1 see and you listen to her statement, the knife was
2 never in his hand. Even in her own statement she says
3 I moved the knife in his hand. I possibly moved the
4 knife. The knife is upside down and it is in the hand
5 that the blood is in, which the expert has already
6 said that is transfer blood, and that knife -- it was
7 her opinion -- was not in that victim's hand when he
8 grabbed his chest. What that means is that he never
9 had that knife in his hand when he was shot, and what
10 that means is this woman walked in there with a
11 9 millimeter -- because there is no evidence, not one
12 shred of evidence that that gun was anywhere but in
13 the nightstand. There is no evidence it was ever in
14 the bathroom other than her telling us that, along
15 with her telling us that she moved the knife, and he
16 may have a knife, and he may have a wrench. What the
17 evidence shows is that that gun was kept in the
18 nightstand.

19 What the blood spatter shows is that he never had
20 that knife in his hand when he was shot and grabbed
21 his chest. So, ultimately, what does that mean? That
22 means that victim was in the bathroom trapped and
23 unarmed. This defendant walked over to the
24 nightstand, got the gun out of the nightstand, walked
25 back to the bathroom and shot him. After she shot

CAROLYN PAUL - DIRECT EXAMINATION

1 him, she called 911 and immediately started to cover
2 up the fact that this was a murder. This was never
3 self-defense. If it was self-defense, these people
4 would have never had to alter that scene and wipe
5 anything down. This was always a murder, and every
6 step after he was shot was nothing but to cover up the
7 fact that she murdered that man who was unarmed in the
8 bathroom. Every step after that was wiping his phone,
9 trying to get in his iCloud, trying to get into his
10 E-mail to cover up any evidence we may have of what
11 that victim said was going on in that relationship at
12 that time.

13 I believe the State has put forth a case showing
14 that this was a premeditated murder, and this man was
15 shot unarmed, and he was shot just three weeks after
16 the text showed her constantly on him about a life
17 insurance policy. That started in May. As soon as he
18 got that life insurance policy, July 23rd, he only
19 lived three weeks after that. I believe there is
20 enough evidence to take this case to the jury as a
21 murder case.

22 THE COURT: Let me ask you this. What do you
23 make of the surveillance video that shows him coming
24 out on the porch? Very close to the time that he was
25 killed. It would be hard to interpret his manner as

CAROLYN PAUL - DIRECT EXAMINATION

1 anything but relaxed. How long before -- and I have
2 it in my notes, but how long before his killing was
3 that appearance on the video.

4 MS. LIVESAY: Your Honor, the testimony regarding
5 the surveillance is that he walks out, nothing in his
6 hands strolling on the porch approximately at
7 6 o'clock. The dispatcher is picking up her call less
8 than 15 minutes later. At 6:13, he has been shot dead
9 in the bathroom.

10 THE COURT: And it's the State's position that
11 the gun was not in the bathroom in the drawer?

12 MS. LIVESAY: Yes, sir. The State's position is
13 that the evidence shows that that gun was in the
14 nightstand. There is not one shred of evidence
15 showing that that gun ever had been moved from the
16 nightstand.

17 THE COURT: Anything in reply?

18 MR. MARTIN: Couple of things. Couple things.
19 Number one, certainly it is my position that the
20 arguments of Ms. Livesay concerning the fact of the
21 case are inaccurate. I mean, that is what points to
22 me the idea there is insufficient evidence. She says
23 the expert testified that the victim couldn't have had
24 that knife in his hand when he put his hand to his
25 chest. She did not say that. She did not say that.

CAROLYN PAUL - DIRECT EXAMINATION

1 She said exactly the opposite. He could have had the
2 knife in his hand. First of all, she don't know
3 whether it was transferred to his chest or some other
4 place. So what the State has done, Judge, is they've
5 got a lot of questions that they've raised, but they
6 don't have to answer to any of those questions. Just
7 like, for example, there is no evidence that the gun
8 was in the bathroom. There is a statement in there --
9 a 911 call and a statement in which this defendant
10 says that is where it was. They don't have any
11 evidence to the contrary, none. None. None. There
12 is a box that is in the -- as you know -- in the
13 nightstand drawer, that doesn't mean that is where the
14 gun was.

15 So I think the question you have here is there's
16 got -- and I said -- they got suspicious, okay, but
17 they don't have any evidence of murder, intentional
18 killing of another human being with malice
19 aforethought. What is it? And she says she shot him.
20 She says she shot him in self-defense. She says where
21 the gun was. The experts -- and the expert that they
22 have called about the gun, the this, the that --
23 excuse me, the knife, this and that, said specifically
24 that he could have had that knife in his hand at the
25 time the blood transfer was made, wherever it was made.

CAROLYN PAUL - DIRECT EXAMINATION

1 from.

2 If you listen to her statement, the totality and
3 the theme of her statement is consistent. It is
4 consistent with what Allyson Brown said she said. It
5 is consistent with the facts. It is consistent with
6 the scene. It is consistent with the location of the
7 shell casing. It is consistent with the entrance of
8 the bullet into the tub. It is consistent.

9 Now, you can raise questions about, okay, well,
10 you said "wrench" instead of "knife" that he was
11 trying to stab me with when you called, and then can
12 say why does she say that. But it never rises to the
13 level of evidence that there was a murder instead of
14 exactly what she says it was.

15 Again, I just keep going back, because I can't
16 figure what is going on, but to say that the -- the
17 expert says there is no way the knife could have been
18 in his hand is just dead wrong. That is not what she
19 said. That is not what she said.

20 THE COURT: Let me ask you something, and it is
21 mentioned several times, but her statement was that
22 she put that gun in the bathroom drawer for safety
23 because of the child, right?

24 MR. MARTIN: The statement was that she had moved
25 it a week or two earlier, I believe. Why did you move

CAROLYN PAUL - DIRECT EXAMINATION

1 it? Well, the child -- safer that way. We talked
2 about the fact that the child wasn't crawling yet, but
3 would be soon, and all of that.

4 THE COURT: Wasn't there a gun in his nightstand?

5 MR. MARTIN: There was. There was.

6 THE COURT: And there's been testimony that there
7 was a gun safe. Now, what we did with that is sort
8 of --

9 MR. MARTIN: Let me correct that. There is no
10 testimony there was a gun safe in that house. Ms.
11 Livesay told you when this case started that she was
12 going to prove that the Browning safe was in the
13 house. She did not. It wasn't. There was no -- she
14 made the comment she didn't have a safe to put it in.
15 What they did take a picture of is the upstairs bonus
16 room was a fireproof lockbox for papers, but anybody
17 with any sense knows if you have any sort of weapon
18 for self-defense, in any shape, form or fashion, you
19 are not going to lock it up upstairs in the bonus
20 room, you are going to keep it somewhere in proximity
21 to you.

22 THE COURT: What about that?

23 MS. LIVESAY: Let me be honest, Judge. I think
24 the elephant in the room is why would you take a
25 9-millimeter with no real safety and only two bullets

CAROLYN PAUL - DIRECT EXAMINATION

1 out of a drawer that is in a case with two, basically,
2 clamps to keep the gun shut? Why would you take it
3 out of there and put it in a bathroom drawer that is
4 filled to the brim with Q-tips and everything else for
5 child safety when the child cannot crawl, walk or is
6 not mobile in any form or fashion? That is really
7 what the elephant in the room is. Why would you do
8 that? And there is a loaded gun in the other
9 nightstand.

10 THE COURT: Which was a revolver.

11 MS. LIVESAY: So only move the one gun not
12 registered to you with only two bullets in the
13 bathroom, why would you do that? That is the
14 question.

15 MR. MARTIN: Two things, Judge. Let me say.
16 This isn't about the State being able to ask why. It
17 is about -- that is it. "Why" is not evidence which
18 you can base a finding that they can prove this --
19 when you view the evidence in the light most favorable
20 to the State, and what they stand up and say is,
21 listen, the crux of the case -- the elephant in the
22 room -- is why this. There is your answer. You can't
23 let people be convicted of charges like this based on
24 "why." That is the problem, and you can say all you
25 want to. Well, why? Well, people do all kinds of

CAROLYN PAUL - DIRECT EXAMINATION

1 things. I don't know why we park on the driveway and
2 drive on the parkway, but you can't prove a case like
3 this on "why." That is the point of her case. As to
4 the other gun, of course, there is -- there is no
5 testimony in this record that she knew that that other
6 gun was there at the time. There is none. They took
7 a picture of it, but there is no testimony she knew it
8 was there. You know she testified -- again, the thing
9 that is strikingly strange to me is that this all
10 centers around them saying why this, why that. Why?
11 Why? Why? And it takes, again, the thought that you
12 know every move she made was to manipulate or hide
13 evidence. There is no evidence of that, none
14 whatsoever.

15 I mean, there is one place on the tape where her
16 daddy says, Don't wipe the blood off the door, and so
17 here is another thing.

18 MS. LIVESAY: I think there was a misstatement.
19 The statement was, Wipe the blood off the door.

20 THE COURT: There are both of them. There is
21 one, Honey, this is a crime scene, don't be wiping
22 anything. And then for the first time, quite frankly,
23 we had someone with the muffled, Wipe that from the
24 door, so.

25 MS. LIVESAY: Right. And let me just say this,

CAROLYN PAUL - DIRECT EXAMINATION

1 the reason we're here, and maybe this is something I
2 should have clarified with Mr. Martin before we got in
3 here. The reason we're here is because the answer to
4 that why question is because this woman has murdered
5 that man; that is why. Every answer to that question
6 leads to the fact that he was unarmed. She murdered
7 him, and then she -- and when her daddy got there --
8 did everything they could to cover it up, and that is
9 why we are here today.

10 MR. MARTIN: Judge, I'll tell you that, you know,
11 it is a scary process in the United States of America
12 when a prosecutor can take speculation like that and
13 lead to where we are. I mean, what you have to do is
14 you have to take why this, why this, why this and why
15 this out altogether and say, okay, that is evidence of
16 a crime. That is not here. It really is not here.
17 You know, what was said and -- as you said, obviously
18 -- this is what gets me. A clear reading of what the
19 girl's 911 tape and what her statement is -- it's
20 clear -- that is, He came after me, I shot him, I was
21 afraid and shot him. And then you start picking at
22 it, pick, pick, pick, but produce no evidence, simply
23 questions.

24 When you go further, because they have not put
25 any evidence in the record, but we know in this case

CAROLYN PAUL - DIRECT EXAMINATION

1 when they check that knife for DNA, it was the
2 Defendant's DNA on that knife. So, again, the
3 proposition is that --

4 THE COURT: You mean the victim's or -- you said
5 "defendant".

6 MR. MARTIN: Did I say it backwards? Well, they
7 may be prosecuting me for murder before this is over
8 because I said the wrong thing. What I meant was
9 obviously that is when -- they did that for a purpose,
10 and that would be the cornerstone of the case, so to
11 speak, if they checked it and found her DNA on that
12 knife. But we're left -- you're left to take things
13 like, well, the knife was upside down in his hand. So
14 what does that prove? She said in the heat of the
15 moment, in the excitement, frantic nature which you
16 can take judicial notice of by the call, he had a
17 wrench when he tried to stab me. It weren't (sic) a
18 wrench. The only thing in there was a pair of pliers.
19 Why that? Why was the gun in the bathroom? Well, why
20 not? Why not? I mean, you know, you just can't add
21 nothing, plus nothing, plus nothing and get to
22 something.

23 The indication is it is a pre -- murder,
24 intentional killing of another human being with malice
25 aforethought. So the thought then from that is that

CAROLYN PAUL - DIRECT EXAMINATION

1 Heather Sims -- I guess their theory of the case is --
2 she killed to get life insurance money, this was just
3 the time to do it. I mean, that's it.

4 THE COURT: I can probably make a better argument
5 on the other side of the facts, but I understand what
6 you are saying. Here is the problem, and I have zero
7 problems directing a verdict if it's required by what
8 is in front of me, but the truth of the matter is,
9 from a judicial perspective, I do have to take the
10 facts in the light most favorable to the State's -- in
11 light most favorable to the State. Dr. Spitz, while
12 you or someone can dismiss it, and I understand that,
13 he does carry a factual issue. As you know, I'll
14 charge that jury they can disregard him completely, or
15 take anything he says. But at this point, at the
16 directed verdict stage, I think there is enough facts
17 in dispute to go forward.

18 At the end there will be another time. I'm not
19 making a decision based upon the strength of the
20 facts, because I obviously have problems. I've
21 listened to this case now for 10, 14, 15 days, and
22 I've listened to every word. I have some concerns
23 about the strength of it, but that is not what, at
24 this point, I'm deciding on. I'll deny your motion
25 for directed verdict, because I think that is the

CAROLYN PAUL - DIRECT EXAMINATION

1 proper thing to do in the light of the fact that there
2 are facts here in this case, and we'll see where we go
3 from there. You are both good lawyers and your points
4 are well taken, trust me. I need to take a break and
5 make a call.

6 MR. MARTIN: I have to take a break.

7 THE COURT: Do you have any problems at all if I
8 let Bobby tell this jury that we've just finished the
9 required -- I don't want to bring them back in here,
10 but tell them it will take 10 minutes and we'll come
11 back in for about a half hour?

12 MR. MARTIN: At most.

13 THE COURT: Any problem -- I trust him to tell
14 them that. I want them to know that we literally just
15 finished and we have to take 10 minutes, because I
16 know you need to get ready, and I need to call my
17 child, and we have a couple of things.

18 MS. LIVESAY: Briefly, who is the next witness,
19 do we know?

20 THE COURT: We know nothing up here.

21 MR. MARTIN: It is going to be my intention to
22 call Lisa Riddle.

23 MS. LIVESAY: Who?

24 MR. MARTIN: Lisa Riddle.

25 MS. LIVESAY: She's going to testify to? About?

CAROLYN PAUL - DIRECT EXAMINATION

1 THE COURT: I'll tell you what. You all talk
2 about that if there is an objection.

3 (A recess was taken and the proceedings
4 continued in Volume IV.)
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STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO: 2013-GS-26-05243

VOLUME IV of V

November 9th - 20th, 2015

B E F O R E: The Honorable J. Cordell Maddox

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

HEATHER ELIZABETH SIMS,

Defendant.

APPEARANCES:

Nancy Livesay, Esq.
For the Plaintiff/State.

L. Morgan Martin, Esq.
For the Defendant.

Official Court Reporter:
Natalie Dahl, RPR

1 THE COURT: You have one witness in and out?

2 MR. MARTIN: Yes.

3 MS. LIVESAY: Myself and my investigator are
4 trying to talk to the witnesses coming up, and Mr.
5 Martin advised them not to talk with us, so I want to
6 know if that will be from now on out?

7 MR. MARTIN: That's not true. I didn't advise
8 that witness not to talk to her, and she knows that.
9 She wanted to talk to them and I said not now, I'm
10 talking to them. If they want to talk with you when I
11 I'm through, that is fine with them. I turned to Lisa
12 Riddle and said, Do you want to talk with her? That
13 is the way that went. I don't play games like that,
14 but I'm trying to talk to my witnesses to get it done
15 and, no, every time I get ready to call a witness, I
16 won't present them to her, unless you want it.

17 THE COURT: Do you have any -- I think what she's
18 asking is do you have any ongoing objection to her
19 speaking to --

20 MR. MARTIN: No, not necessarily. Let me make
21 this clear for the Court. I don't tell witnesses that
22 they can't talk to the other side. I advise them the
23 same thing that I think the prosecutors do most of the
24 time, if you want to talk to them, you can, that is
25 your business. You don't have to, but if you want to,

LISA RIDDLE - DIRECT EXAMINATION

1 you can. If you want me to be present with you, you
2 can, but any implication that I told Lisa Riddle or
3 Robert Shelley that they could not talk to her is
4 wrong, inaccurate and wrong.

5 THE COURT: Okay. I've heard a lot of
6 inferences, I'm not too worried. Bring them in.

7 (The jury enters at 5:47 p.m., and the
8 following is heard in the presence of the jury.)

9 THE COURT: Ladies and gentlemen, just to make
10 sure -- and I know you have been told -- but we had
11 literally to take that break because we're at a point
12 where certain motions have to be dealt with. You
13 heard the State's testimony. We'll begin the
14 defense's case, and I'm told that this witness is 20,
15 30 minutes and then we'll let you go tonight and start
16 back in the morning. Thank you for your patience.

17 THE COURT: Call your witness.

18 MR. MARTIN: We call Lisa Riddle.

19 (LISA RIDDLE, having been duly sworn,
20 testified as follows:)

21 THE WITNESS: Lisa Riddle, R-I-D-D-L-E.

22 DIRECT-EXAMINATION

23 BY MR. MARTIN:

24 Q Lisa, where do you live?

25 A I live in Spartanburg, South Carolina.

LISA RIDDLE - DIRECT EXAMINATION

1 Q What kind of work do you do?

2 A CRNA, certified registered nurse anesthetist.

3 Q Are you married?

4 A Yes.

5 Q Have children?

6 A Yes, sir.

7 Q And you are currently employed where?

8 A Gastroenterology Associates.

9 Q In Spartanburg?

10 A Greenville.

11 Q And do you have to be back at work bright and
12 early tomorrow morning without failure?

13 A Yes, sir.

14 Q And you asked me to take you this afternoon if in
15 any way we could, whether in or out of order?

16 A Yes, sir.

17 Q Do you know Heather?

18 A Yes, sir.

19 Q How long have you known her?

20 A Nine years.

21 Q In what capacity did you come to know her?

22 A I met her in August of 2006. We went to the
23 Medical University of South Carolina together, and we
24 obtained our Master's in Nursing Anesthesia Science
25 there.

LISA RIDDLE - DIRECT EXAMINATION

1 Q How long were you and Heather there in school
2 together?

3 A We were there in school together for 28 months.

4 Q 28 months. And both of you finished and became
5 nurse anesthetists, and you kept in touch with her
6 since then?

7 A Yes, sir.

8 Q You consider her a good friend?

9 A Yes, sir.

10 Q And have you spent considerable time with Heather
11 in the nursing world when you were in school and
12 conversations with her after?

13 A Yes, sir.

14 Q Are you familiar with her reputation in the
15 community that you were in with her for truthfulness
16 and honesty?

17 MS. LIVESAY: Is her representation in
18 truthfulness in Spartanburg or Conway?

19 THE COURT: Generally, I would assume.

20 MR. MARTIN: Generally. She's known her in
21 numerous places, most of all Charleston in the
22 medical community.

23 THE COURT: Well, I'm assuming truth and honesty
24 doesn't change from Spartanburg to Conway.

25 Q (MR. MARTIN) Do you know her reputation in the

LISA RIDDLE - DIRECT EXAMINATION

1 communities you have been with her in addition to
2 that, specifically the medical community, for
3 truthfulness and honesty?

4 A Yes, she's truthful and honest.

5 Q How is Heather viewed in the medical community
6 where you have been with her?

7 A She is viewed in the medical community as being
8 truthful, honest, loyal and trustworthy.

9 Q Do you know her reputation in that same community
10 for being lazy, or a hard-working, industrious
11 individual?

12 A She's above and beyond extremely hard work.

13 Q Do you know her reputation in the community for
14 being a greedy, money-grubbing individual, or a
15 generous person?

16 A She's very generous.

17 Q Do you know her reputation in that community for
18 being a violent, or a peaceful, loving person?

19 A Very peaceful.

20 Q Have you ever known of anybody to be of the
21 opinion that Heather was an emotionally unstable
22 individual?

23 A No.

24 Q Do you have an opinion as to whether or not
25 Heather would have shot David on August 11 unless she

LISA RIDDLE - DIRECT EXAMINATION

1 believed she was in fear for her life or her safety?

2 MS. LIVESAY: Your Honor, that is beyond
3 objectionable, an opinion as to who whether or not
4 this woman shot her husband.

5 MR. MARTIN: That is not the question.

6 MS. LIVESAY: She wasn't there, not a witness,
7 she hasn't been here for all the evidence.

8 THE COURT: I'm assuming the question is for the
9 shot without provocation?

10 MR. MARTIN: Right. Judge, under Rule 701 of the
11 South Carolina Rules of Evidence, the opinion of a lay
12 person on a matter within their rational perception is
13 admissible. And the question was, Do you have an
14 opinion as to whether or not Heather would have shot
15 David unless she was in fear for her life or safety as
16 self-defense?

17 MS. LIVESAY: Your Honor, the essence of that
18 rule is to present evidence as to who the aggressor
19 was. This woman doesn't know anything about what went
20 on that night. She doesn't even live in Conway, and
21 now we're asking her opinion on this case, which she
22 hadn't been here for, hasn't heard any evidence and
23 doesn't even live in Conway.

24 THE COURT: Overruled. Under the Rule, I think
25 you can ask -- subject to cross-examination -- as to

LISA RIDDLE - DIRECT EXAMINATION

1 what she knows.

2 Q (MR. MARTIN) Do you remember the question, or
3 you want me to ask it again?

4 A It is my opinion that she would not have done
5 this unless she was fearful for her life.

6 Q And you, obviously, kept in touch with her during
7 her married time with David?

8 A Yes, sir.

9 Q You and her talked on the phone fairly regularly?

10 A Frequently.

11 Q Text with each other fairly regularly?

12 A Yes.

13 Q You know your texts are now part of evidence?

14 A I realize that.

15 Q Let me ask you, there's been an exhibit entered
16 into evidence about "divorce is not an option." Let me
17 find it here.

18 Q Let me ask you this -- it is joined together. At
19 any rate, is there -- they are entered into evidence, a
20 text message of July 22, 2013 that begins, "I am."
21 Would you publish that to the jury?

22 A I am. Divorce is not an option. It may be for
23 him, but we are going to sort this out. Just makes me
24 feel so bad because, you're right, this should be the
25 happiest time for us.

LISA RIDDLE - DIRECT EXAMINATION

1 Q When she said "you're right," who is she talking
2 about?

3 A She's talking to me. I had made a statement
4 about they had a new baby, this should be the happiest
5 time of their lives.

6 Q So is that text there part of the string of texts
7 between you and her on that date?

8 A Yes, sir.

9 Q Now, the tenor of that conversation that day was
10 what, Ms. Riddle?

11 A We had talked about, you know, them getting
12 counseling to help get through their marriage, and she
13 did not want to divorce him, but she was willing to if
14 they could not work it out. She was constantly giving,
15 he was constantly taking, and there was no happy
16 medium.

17 Q And so the phrase that "divorce is not an
18 option," did you take that as a literal statement or a
19 figurative statement that we need to try to work this
20 out if there is any way to do it?

21 A Figurative.

22 Q Do you think that meant that she would rather
23 kill him than go through a divorce?

24 A No.

25 MR. MARTIN: Answer any questions they have.

LISA RIDDLE - CROSS-EXAMINATION

CROSS-EXAMINATION

1
2 BY MS. LIVESAY:

3 Q You were talking to her about counseling, and
4 those kinds of things that day?

5 A Roughly.

6 Q What you read was one text message out of a
7 string of texts; would you agree?

8 A Sure.

9 Q This is the entire Cellebrite report showing that
10 day July 22, 2013. Are you the one writing to her that
11 you can see his side also? Is that you, I can see his
12 side? Here is the text in context. Here is your text;
13 do you see it?

14 A Yes.

15 Q Do you see this is a part of a string of texts.
16 See if any of those look familiar. I'll let you look
17 at it. There you go.

18 A Potentially those could be from me, yes.

19 Q Are they, or aren't they?

20 A There is no number assigned. I mean, the times
21 are about the same.

22 Q Let me ask you this. That text you just read: I
23 am. Divorce is not an option, do you see your phone
24 number by that text?

25 A No.

LISA RIDDLE - CROSS-EXAMINATION

1 Q Okay. So are these other texts around that one
2 also between you and her, because that one doesn't have
3 your phone number either? So are the ones around that
4 between you and her?

5 A I would assume they are about the same time
6 frame, but I do recall the text message about divorce
7 around the same time of the other ones, the other text
8 messages, but there is no number assigned there.

9 Q Right. And there is no number assigned to that
10 particular one either?

11 A Right.

12 Q But out of that whole strand, that particular one
13 is the only one you can definitively remember is
14 between you and her?

15 A Right.

16 Q You said you were talking about counseling, and
17 he always takes and she always gives? These are the
18 messages from that day. Look in here and show me where
19 the messages are.

20 A Probably a phone call. It probably wouldn't been
21 in here, because we talked on the phone.

22 Q These are phone calls and texts. This shows
23 both, so look through there.

24 A You have a script from the phone call?

25 MR. MARTIN: I don't think that shows --

LISA RIDDLE - CROSS-EXAMINATION

1 THE COURT: You can't talk at once. We have
2 pretty good after two weeks. Ask your question.

3 Q (MS. LIVESAY) Let me ask you this. Are these
4 texts -- let me ask you specifically. This one that
5 says: I can see his side, but I can also see his
6 side. He knew this would be the case when you built
7 the house. Is that you?

8 A Potentially.

9 Q Because that is the one right after that divorce?

10 A It could be. I don't know for sure. I don't
11 have a number assigned to it.

12 Q And the other one doesn't have a number either?

13 A Right, but I do recall that one.

14 Q Do you recall a message: That's ridiculous. I'm
15 sorry, but he should have known when he signed up for
16 you that that would be the case? Does that sound
17 familiar to you?

18 A I don't recall if that came from me or not.

19 Q Okay. So the only one you do recall is the one
20 where she's saying divorce is not an option?

21 A I do recall that.

22 Q And you don't see any texts about counseling in
23 that same string of texts?

24 A Right. But we had phone calls as well that we
25 talked about that, counseling and them both going to

LISA RIDDLE - CROSS-EXAMINATION

1 counseling, and her wanting it to work and he wasn't so
2 sure.

3 Q Her not wanting to work?

4 A She wanted it to work.

5 Q Oh, wanting the relationship?

6 A The relationship to work, yes.

7 Q How often did you talk to her?

8 A Multiple times a week on the phone, both.

9 Q Text and phone call?

10 A Yeah.

11 Q In the course of a week, how much would you say
12 you talked by text?

13 A Just depended how much we were working. It
14 varied. She was on-call a lot; I was on-call a lot.
15 Sometimes it was hit or miss.

16 Q Because the only text I see between you and her
17 between that one and after David was shot -- and let me
18 ask if you recall this one. You are asking her on the
19 13th -- let me make sure the date is right.

20 Actually, it is the 12th about going to a Florida
21 football game the day after he was shot; do you
22 remember that?

23 A Maybe.

24 Q We are probably going to the Florida game. If we
25 do, do you want me to get you a ticket? And that was

LISA RIDDLE - CROSS-EXAMINATION

1 August 12, after he was shot; do you remember sending
2 that text?

3 A Does it have my number with it?

4 Q You can look at it. It actually has your name on
5 that one, too.

6 A Yeah, I do recall that, and that is when I
7 couldn't get ahold of her and I thought she was dead.

8 Q And you were asking her to go to a football game?

9 A I didn't know --

10 THE COURT: You all, one at a time.

11 A I didn't not know that happened --

12 THE COURT: Ma'am, let me finish for sure. Let
13 her finish the question, and then answer.

14 Q (MS. LIVESAY) This is your text the day after he
15 is shot asking her to go to a football game?

16 A I did not find that he had been shot until
17 Tuesday the 14th -- or the 13th, Tuesday.

18 Q Okay. So you all are very close friends, very
19 familiar with her reputation in the community, even
20 though you live in Spartanburg, and you didn't know she
21 shot her husband until two days later?

22 A Yes, ma'am.

23 Q How long have you been living in Spartanburg?

24 A 34 years.

25 Q How long?

LISA RIDDLE - CROSS-EXAMINATION

1 A 34.

2 Q So you've never lived in Conway?

3 A Well, I moved away for anesthesia school, but I
4 still had a home in Spartanberg.

5 Q How many years have you lived in Conway, South
6 Carolina?

7 A Six weeks.

8 Q So out of your -- you are how old?

9 A 34.

10 Q And out of all that time, six weeks you have
11 lived in Conway?

12 A I lived with Heather in Conway.

13 Q For six weeks?

14 A Yes, ma'am.

15 Q Where did you all live?

16 A In her home.

17 Q On Old Reaves Ferry Road?

18 A Yes, sir.

19 Q Her parents' home?

20 A Yes, ma'am.

21 Q So you and her lived with her mom and daddy on
22 Old Reaves Ferry Road for six weeks?

23 A Uh-huh.

24 Q Is that the most you ever had lived in Conway?

25 A Yes, ma'am.

LISA RIDDLE - CROSS-EXAMINATION

1 Q So you have no idea what her reputation or
2 anything about what goes on in Conway, which is where
3 she lives?

4 A Right.

5 Q Okay. Now, do you know the victim, David Sims?

6 A Yes, ma'am.

7 Q And how do you know him?

8 A Through Heather.

9 Q And how many times had you met him?

10 A A handful. We used to go to football games
11 together, that is why I asked the question about the
12 football game.

13 Q So the only time you saw him was a handful of
14 times at football games?

15 A Yes, ma'am.

16 Q Do you know anything about him?

17 A I mean, he would text me occasionally. I know
18 bits and pieces of things that he would say to me. I
19 know bills and things that Heather would tell me.

20 Q How much do you know about him from being around
21 him?

22 A Not much.

23 Q So you've been around him five times in the
24 entire time they've been married, and that was at a
25 football game where you watch football?

LISA RIDDLE - CROSS-EXAMINATION

1 A Sometimes it was.

2 Q So you have no idea what he's like; is that
3 correct?

4 A Not personally from him.

5 Q Personally, do you, as a witness, talking to this
6 jury, do you know anything about that victim?

7 A I know him through the encounters we had.

8 Q Which was only a handful?

9 A Handful of times.

10 Q And you do not live in Conway, so you had no idea
11 what went on between the two of them in Conway?

12 A Not in Conway, but through phone calls and text
13 messages I did.

14 Q From what she tells you?

15 A From him as well.

16 Q Did you ever stay with them in Conway?

17 A I stayed with her and her parents before she got
18 married.

19 Q How about her and David?

20 A No. No, ma'am.

21 Q Did you ever spend any time with her and David in
22 their home in Conway?

23 A No, ma'am.

24 Q So you have no personal knowledge for yourself of
25 anything that went on in that household between her and

LISA RIDDLE - CROSS-EXAMINATION

1 David?

2 A Not personally.

3 Q And you don't know anything, really, about him,
4 do you, other than the handful of times you met him?

5 A Correct.

6 Q And so you have no idea enough about him to know
7 anything about what happened on August the 11th of
8 2013, do you?

9 A I know what she's told me.

10 Q But do you have any personal knowledge as a
11 witness?

12 A No. I wasn't there.

13 Q Have you ever been to their house in Conway?

14 A Yes.

15 Q On Old Reaves Ferry Road?

16 A Yes.

17 Q How many times?

18 A Maybe three.

19 Q Three times you have been to their house as a
20 couple?

21 A As them there? He was never there when I was
22 there.

23 Q So how many times have you been at that house
24 with him and her there?

25 A Just her.

LISA RIDDLE - CROSS-EXAMINATION

1 Q So you actually never seen the two of them
2 interact in that house together?

3 A No, ma'am.

4 Q So you have no personal knowledge of what went on
5 between the two of them in that house in Conway?

6 A Correct.

7 Q And you didn't even live in Conway on August 11
8 of 2013?

9 A Correct.

10 Q And you never lived in Conway when the two of
11 them lived in Conway?

12 A Right.

13 Q So all you are up here doing is talking about
14 what this woman told you, basically?

15 A And what he's told me. He spoke to me as well.

16 Q How many times did he talk to you?

17 A A handful through text messages, never on the
18 phone.

19 Q Okay. Did you notice your number was not on
20 those text messages?

21 A Yes.

22 Q Did you know they had been deleted?

23 A The messages?

24 Q Between you and her.

25 A I didn't see they were deleted.

LISA RIDDLE - CROSS-EXAMINATION

1 Q You didn't see they were deleted?

2 A Huh-huh.

3 Q This is your message here; you see that?

4 A Yes.

5 Q And you see over here where it says "yes" for
6 being deleted?

7 A Yes, ma'am.

8 Q Do you acknowledge that your messages had been
9 deleted?

10 A Yes, ma'am.

11 Q Let me ask you something else. You say you know
12 this woman, you know her reputation for truthfulness,
13 know this woman would only act out of self-defense; is
14 that what you told Mr. Martin?

15 A Yes.

16 Q So would it surprise you that she was wiping down
17 the crime scene after she shot him?

18 MR. MARTIN: Objection. I object to that. That
19 question presupposes that that's what she was doing,
20 and it is an unfair question of a character witness.

21 MS. LIVESAY: It is in the 911 tape that she is
22 wiping the scene. Does this woman even know that?

23 THE COURT: That is what you ask her.

24 Q (MS. LIVESAY) Do you know that she was wiping
25 down the scene as he was laying out on the floor

LISA RIDDLE - CROSS-EXAMINATION

1 bleeding out; did you know that?

2 A I wasn't there.

3 Q So do you know it, yes or no?

4 A No.

5 Q Do you know when he was laid out on the floor she
6 was taking his cell phone out of his pocket? Did you
7 know that?

8 MR. MARTIN: Objection.

9 THE COURT: Ask her if she knows it.

10 MS. LIVESAY: I did ask her.

11 Q (MS. LIVESAY) Did you know?

12 THE COURT: Hold on. You all, don't make me
13 start this late. Ask the question, let her answer.
14 She said no. Move on.

15 Q (MS. LIVESAY) Did you know that after she took
16 the phone out of his pocket --

17 MR. MARTIN: Objection. Judge, here is my
18 objection again. That evidence is not in this record.
19 She is asking questions saying that the evidence in
20 the record, and that is not in the record at this
21 time, so those kinds of questions are improper.

22 THE COURT: Sustained on that question about the
23 phone.

24 Q (MS. LIVESAY) Did you know that she wiped all
25 the information off his phone?

LISA RIDDLE - REDIRECT EXAMINATION

1 A No.

2 MR. MARTIN: I object. I object to the
3 terminology. She knows she didn't wipe anything off
4 that phone. She reset the phone. Whatever happened
5 to it was a result of Apple's policy, and I
6 specifically object to her terminology.

7 THE COURT: Overruled. We are -- you ask the
8 question -- you can ask the question the way he gets
9 redirect.

10 MS. LIVESAY: That's fine.

11 Q (MS. LIVESAY) Did you know that she wiped all
12 the information off the victim's phone?

13 A No, ma'am.

14 Q Did you know that the day after he was killed,
15 even before his funeral, she's on his computer trying
16 to get into his Apple account and his E-mail?

17 A No, ma'am.

18 MS. LIVESAY: No further questions.

19 REDIRECT-EXAMINATION

20 BY MR. MARTIN:

21 Q Let me ask you quickly. She asked you about what
22 you know about David, conversations with David. Do you
23 recall having a conversation with Heather on the
24 telephone when it was abruptly ended?

25 A Yes.

COURT AND ATTORNEYS

1 Q Tell the jury about that.

2 A I was on the phone with Heather one night and --

3 MS. LIVESAY: Is she testifying to something that
4 the victim said?

5 THE COURT: I have no idea.

6 MS. LIVESAY: I'm pretty sure that is
7 inadmissible, or at least it was when I tried to get
8 it in.

9 MR. MARTIN: No.

10 THE COURT: Okay. Here is the deal. The rules
11 that apply to you all are equal, period. The next
12 time I hear snide remarks about not applying equally,
13 I'm going to embarrass you, whoever it is. Ask your
14 question.

15 Q (MR. MARTIN) Do you recall the time that I'm
16 talking about, Lisa?

17 A Yes, sir. I was on the phone with Heather one
18 night and we were just chit-chatting about several
19 different things, nothing really specific, and just
20 radio silence. It was completely dead. And I said,
21 Heather, are you there? I got nervous because it was a
22 long silence, like awkward. And she got back on the
23 phone and said that David had jerked the phone out of
24 her hand and wanted to see who she was talking to. She
25 said that he had been eavesdropping around the corner

COURT AND ATTORNEYS

1 listening to our conversation, which we were probably
2 talking about our babies. I don't recall what we were
3 talking about, but nothing was said about him. And she
4 kept trying to recall the conversation to make sure
5 that he was not mad or angry about anything we said,
6 and that was probably the first time I ever realized in
7 their relationship that she was afraid of him.

8 MR. MARTIN: That is all the questions I have.

9 THE COURT: Okay. You can step down. Thank you.
10 Anybody else tonight?

11 MR. MARTIN: No, sir.

12 THE COURT: Ladies and gentlemen, you have been
13 very patient, more patient than I have. 9:30 tomorrow
14 morning. I'm going to tell you that time wise --
15 tomorrow is Wednesday, and I've almost lost track, but
16 I expect you will get this case Thursday. So give me
17 one more good day-and-a-half, and I'll see you in the
18 morning. Don't talk about the case, watch, see or
19 read any publicity, or do any research. See you at
20 9:30.

21 (The jury exits at 6:13 p.m., and the
22 following is heard out of the presence of the jury.)

23 THE COURT: Who do you have in the morning?

24 MR. MARTIN: Judge, I have Kim Collins is coming,
25 for example. I have a couple more character witnesses

COURT AND ATTORNEYS

1 in connection with things. The defendant is probably
2 going to testify, EMS person or two, SLED, lady from
3 SLED I have to get her up tomorrow to talk about DNA,
4 that kind of thing. I mean, I have at least tomorrow,
5 I would think. I don't think we'll go quite as slow
6 as it did from Ms. Livesay, because she was putting a
7 lot of pictures and things, which takes time, but my
8 guess is that I'll probably need Thursday morning to
9 finish up.

10 MS. LIVESAY: Just for scheduling, Judge, so we
11 can move, I intend to call witnesses in reply.

12 THE COURT: For scheduling purposes, I'm going to
13 get this to this jury Thursday night, even if it is
14 2:00 in the morning.

15 MR. MARTIN: I'm in favor of that.

16 THE COURT: I think they are -- they have
17 expressed frustration. And, look, you have to stop
18 making snide comments. I know I haven't been as nice
19 out there as in here, but that pushed my last button.
20 Just stop. They hear it, and you put me in a position
21 of having to correct it, which is not a good thing for
22 you.

23 MR. MARTIN: Understood. Have a good night.

24 (Whereupon, the proceedings for November 17, 2015
25 concluded. The following is had on November 18, 2015

COURT AND ATTORNEYS

1 out of the presence of the jury.)

2 THE COURT: Let's put on the record what we have
3 discussed, because I don't -- we have a juror that is
4 uncomfortable with the fact that there is some
5 indication that he's being followed; is that a good
6 way to put it? I'll find out and start to get to the
7 bottom of that, but obviously I'm going to let him go,
8 and we told him so. I'm also going to keep him here
9 to talk to SLED when they get here.

10 MR. MARTIN: Judge, can we approach?

11 THE COURT: Yeah.

12 (Whereupon, a bench conference was had.)

13 THE COURT: Again, for the record, we are dealing
14 with this juror. He's waiting around, and I'll talk
15 to him later. We met with him off the record, a nice
16 guy, but I'm not going to keep him on with any
17 allegation here, and we'll replace him with the first
18 alternate. When the jurors come in, I'm going to ask
19 them if they have been contacted in any fashion,
20 specifically via Facebook or other Internet manner, by
21 any witness in this case, and that is more out of
22 curiosity than anything else. Okay.

23 I know you all have an objection to a question,
24 and we'll do that on the side, you know. I understand
25 your objection and your reasoning. Bring them in.

COURT AND ATTORNEYS

1 (The jury enters at 10:37 a.m., and the
2 following is heard in the presence of the jury.)

3 THE COURT: Mr. Spain, I'm going to move you
4 down. You are our new juror. We're replacing one of
5 the jurors with you. You are the first alternate. I
6 need to ask you all something along the lines of what
7 I did on Monday about publicity, and I'm going to do
8 it the same way, stand up and give us your juror
9 number and yes or no. The question is, have any of
10 you been contacted -- and I'm most interested in via
11 Internet or Facebook or anything like that -- by any
12 witnesses in this case? If you have, you are not in
13 trouble, but I'll find out. If you have, tell me; if
14 not, stand up and say no. Start back and give us your
15 number. I'm sorry we have to do it that way, but
16 everything has to be done on the record.

17 JUROR: 31, no, sir.

18 JUROR: 51, no, sir, Your Honor.

19 JUROR: 115, no, sir.

20 JUROR: 210, no, sir.

21 JUROR: 311, no, sir.

22 JUROR: 74, no, sir.

23 JUROR: 89, no, sir.

24 JUROR: 371, no, sir.

25 JUROR: 327, no, sir.

RENEE HARDWICK - DIRECT EXAMINATION

1 JUROR: 64, no, sir.

2 JUROR: 123, no, sir.

3 JUROR: 79, no, sir.

4 JUROR: 132, no.

5 JUROR: 217, no, sir.

6 THE COURT: All right. If you do, I mean, look,
7 it doesn't mean anything, just means that there are
8 people out there -- well, you know what I mean, I
9 won't say it. Not going to put you in any position --
10 you are not in any position to be concerned, and I'm
11 not going to put you there. If anything funny
12 happens, let me know of, okay. Call your first
13 witness.

14 MR. MARTIN: Renee Hardwick.

15 (RENEE HARDWICK, having been duly sworn,
16 testified as follows:)

17 CLERK: State your name and spell your last for
18 the Court.

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

20 DIRECT-EXAMINATION

21 BY MR. MARTIN:

22 Q You work where again?

23 A Horry County 911.

24 Q In what capacity?

25 A Deputy director.

RENEE HARDWICK - DIRECT EXAMINATION

1 Q I'll show what is marked as Defendant's No. 17
2 and ask if you can identify that for me?

3 A Yes, sir, it is a CAD printout or detailed event
4 of a CAD report.

5 Q And a CAD report is what in layman's terms?

6 A Computer aided dispatch, computer system we use
7 to track our information, calls and units that respond.

8 Q And the date on that 911 call is what?

9 A July 31st, 2012.

10 Q July 31, 2012?

11 A Yes, sir.

12 Q And does that document accurately reflect the CAD
13 report that you keep in your records at emergency
14 medical -- well, what do you call it -- 911?

15 A Yes, sir.

16 MR. MARTIN: We move to enter that into evidence,
17 Exhibit No. 17.

18 THE COURT: Any objection?

19 MS. LIVESAY: Obviously I objected earlier, but.

20 THE COURT: Subject to your other objection, I'll
21 allow it.

22 (Defendant's Exhibit 17 admitted.)

23 Q (MR. MARTIN) All right. And let me ask you, if
24 you would tell the jury -- the date is July 31, 2012,
25 and what type of call is it?

RENEE HARDWICK - DIRECT EXAMINATION

1 A Domestic.

2 Q And does it indicate who called in?

3 A The caller name shows Heather Sims.

4 Q Does it say what telephone number it came from?

5 A Yes, sir. (843) [REDACTED].

6 Q If you would -- and, again, now, what do you have
7 here, how would you describe what is on this document
8 as opposed to the actual recording that would have been
9 made of the call when it came in?

10 A These are the notes that were taken during a call
11 that the call taker, dispatcher, puts in the call. It
12 is not a complete transcript of the call, not word for
13 word.

14 Q It is her brief summary?

15 A Correct.

16 Q Of what the call was about?

17 A Yes.

18 Q If you would, publish that to the jury. The
19 notes are what? If you would read the notes to the
20 jury beginning where it starts here.

21 A You want the date and time?

22 Q Yeah.

23 A July 31, 2012, 9:09:08 p.m., incident was
24 initiated by PD, Tracey Novak. July 31, 2012,
25 9:09:08 p.m., said she and her husband, David Sims, are

RENEE HARDWICK - DIRECT EXAMINATION

1 arguing and she is calling tonight. July 31, 2012,
2 9:09:08, won't give the phone to her. 7-31-2012,
3 9:09:16 p.m., No EMS. 7-31-2012, 9:09:24 p.m., Advised
4 he had been physical with her. 7-31-2012, 9:09:40
5 p.m., Directions down 905, right Old Reaves Ferry Road,
6 less than a mile -- I'm sorry.

7 Q Do you have to read that every time, I mean the
8 date and time every time?

9 A It is whatever I'm asked to do.

10 Q I'll tell you what, it is in evidence --

11 A I made a mistake, is what I want to say.

12 THE COURT: You can correct it.

13 A Okay. I'm sorry.

14 THE COURT: Just let me know.

15 A It is habit. Dispatcher notes are abbreviated,
16 and I actually said the whole word. I don't want to do
17 anything I'm not supposed to do.

18 THE COURT: Well, go ahead and reread it.

19 A I apologize. D-I-R down 905 RT Old Reaves Ferry
20 Road RD less than a MI. Do you want me to continue?

21 Q (MR. MARTIN) Let me ask you, instead of reading
22 it word for word, it's in evidence. But this is, in
23 fact, a 911 call that Heather Sims made back
24 July 31st of 2012 in which she was reporting what
25 she said was a physical altercation with her husband?

RENEE HARDWICK - CROSS-EXAMINATION

1 A Yes, sir.

2 MR. MARTIN: That is all the questions I have.

3 MS. LIVESAY: Just a few questions, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. LIVESAY:

6 Q Does it say on these records she said her and her
7 husband, David Sims, are arguing, she's on-call
8 tonight, and then what does it say? Does it say what
9 they are arguing about?

10 A The document says, Won't give her phone to her,
11 that is what it says.

12 Q Okay. So she's on-call and they are arguing, and
13 she calls 911 because he won't give her phone back to
14 her; is that right?

15 A That is what the notes say.

16 Q That is what the documents say, but she has
17 access to a phone because she's calling 911 from the
18 home phone?

19 A That's the number -- it came from a landline.
20 The call came from a landline.

21 Q Okay. Now, does she say how many guns are in the
22 house?

23 A The dispatcher puts, Are guns in the house, and
24 the next comment is, Not locked up are two of them.

25 Q So at that time she's indicating there is two

RENEE HARDWICK - CROSS-EXAMINATION

1 guns in the house and they are not locked up?

2 A That is what I would take it to mean.

3 Q Now, it does say something about him, David Sims,
4 in here, doesn't it? Around 7-31 at 9:11 p.m., and
5 again at 9:10 p.m. Tell the jury what is going on,
6 what is she telling the dispatcher at 9:10 and 9:11?

7 A He has a bloody lip, REF, to struggle over phone.
8 He is telling her to hang-up because her daddy is on
9 the way.

10 Q So she told the dispatcher that he has a bloody
11 lip; is that correct?

12 A That is what the notes indicate, yes.

13 Q And that he has called her dad?

14 A That he is on the way, is what it indicates.

15 Q Now, there was something else on this call that I
16 felt very interesting. At seven -- July 31st, tell
17 this jury what she's telling the 911 caller (sic) at
18 9:11 and nine seconds?

19 A She wants this on record.

20 Q So she's calling telling the 911 caller where are
21 you, he's taken my phone and I want this on the record?

22 A Yes.

23 Q Now, a little further down does it ever say
24 whether or not her dad showed up to the house?

25 A 7/31/2012, 9:15:34 p.m. her dad has arrived.

RENEE HARDWICK - CROSS-EXAMINATION

1 Q So her dad does show up to the house?

2 A According to these notes, yes.

3 Q Okay. Can I take another look at it? Thank you.

4 Now, at 7/31/2012 it talks again about her dad. If you
5 don't mind, tell this jury what is being said on those
6 two lines at 9:17.

7 A I let her off the phone to talk to her dad,
8 slash, who the husband calls every time, TH. And the
9 next line is EY, so it is they, fight, slash. He is a
10 constable and not too happy we were called.

11 Q So it indicates that her dad shows up, he is a
12 state constable, and he's not happy that she called the
13 police?

14 A That is what it says.

15 Q That is what the notes indicate to you?

16 A Yes.

17 Q Do you know Ronnie Causey?

18 A Yes.

19 Q And is he a state constable?

20 A I don't know the current status, but he was.

21 Q Now, there is something very interesting here
22 that is going on at 9:18. Tell this jury what that
23 note says, and if you don't mind, what does CX stand
24 for; do you know?

25 A It is an abbreviation for "counsel."

RENEE HARDWICK - CROSS-EXAMINATION

1 Q So tell the jury what she's saying at 9:18?

2 A She has called back, slash, slash, ADV, that she
3 has her phone, slash, slash, at ADV. We can't cancel,
4 verbal only.

5 Q So she calls back and says I've got the phone
6 back, and this is after her daddy has arrived and
7 gotten there, and she wants to cancel the call?

8 A That is what the notes indicate.

9 Q So the notes indicate she calls back and says my
10 daddy is here, I got my phone back, don't worry about
11 coming?

12 A Well, they indicate that he arrived, and it says
13 that, yes.

14 Q Now, does it indicate anything at 9:47?

15 A Verbal only.

16 Q And this is what she's telling the dispatcher?

17 A She was the caller, so, yes.

18 Q And she told the dispatcher that he has a bloody
19 lip; is that right?

20 A That's indicated in those notes, yes.

21 Q Now, if you don't mind, look over this and tell
22 me where she's saying she's injured?

23 A I don't see anything in the notes that indicate
24 that says that she was injured.

25 Q So she calls 911 over her phone, and the only

RENEE HARDWICK - CROSS-EXAMINATION

1 person that those dispatch records indicate was injured
2 was David Sims, the victim?

3 A That's what these notes indicate.

4 Q And she was the caller?

5 A Right.

6 Q So she was the one that would have said that
7 David Sims had a bloody lip; is that right?

8 A According to these notes, yes.

9 Q And she calls back later on and says, hey, I've
10 got the phone back, don't worry about coming; is that
11 correct?

12 A She asked to cancel the call, and we told her no.

13 Q And at some point, again, her dad arrives on
14 scene; is that indicated in the notes?

15 A At 9:15:34 p.m.

16 Q And the notes indicate that he's not happy the
17 police were called --

18 MR. MARTIN: Objection. Repetitive, asked and
19 answered for the fourth time.

20 THE COURT: Yeah. Ask her one more time.
21 Overruled.

22 Q (MS. LIVESAY) Does it indicate that her dad was
23 not happy that she called the police?

24 A Yes.

25 MS. LIVESAY: No further questions.

RENEE HARDWICK - REDIRECT EXAMINATION

REDIRECT-EXAMINATION

BY MR. MARTIN:

Q And the telephone recording of that call was not reserved past two months or six months, was it?

A By law it is 60 days.

Q 60 days, okay. That is not available to any of us?

A No, sir.

MR. MARTIN: Thank you. That is all I have.

WITNESS: Can I be released?

THE COURT: Can she be released?

MR. MARTIN: Yes.

MS. LIVESAY: She can be excused. Get this woman back to work.

THE COURT: Call your next witness.

MR. MARTIN: Becky Pavilack.

(BECKY PAVILACK, having been duly sworn, testified as follows:)

MS. LIVESAY: Your Honor, before I get started, I think she may have some notes, do you mind if I take a quick look? It might save us some time.

THE COURT: Okay.

MS. LIVESAY: There is a statement that Mr. Martin took from her that has been transcribed, can I send someone to make a quick copy?

1 THE COURT: Talk about it and see if you reach an
2 agreement.

3 MR. MARTIN: I have no objection.

4 MS. LIVESAY: Do you mind if Lacey makes a copy?
5 Do you need this?

6 WITNESS: Go ahead.

7 MS. LIVESAY: Okay. Thank you. I'll give it
8 right back to you.

9 DIRECT-EXAMINATION

10 BY MR. MARTIN:

11 Q Where are you employed today?

12 A Today I work at Grand Strand Regional Center in
13 the emergency center as a nurse.

14 Q Where were you employed on August 11, 2013?

15 A Horry County Fire Rescue.

16 Q Did you go to the Sims' residence on that night?

17 A Yes.

18 Q Do you know what time you got there?

19 A She just took my report, so.

20 Q Let me ask you this question --

21 A 18:36 is when the first med unit arrived, but I
22 don't know if that is the same time Chief Thompson and
23 I arrived.

24 Q Say that again.

25 A 18:36.

BECKY PAVILACK - DIRECT EXAMINATION

1 Q Or 6:36 is when the first EMS personnel arrived?

2 A The first arrived -- fire department arrived at
3 18:35 and 57 seconds, so I'm assuming that 34 got there
4 a minute or less than a minute after me.

5 Q When you got there, what did you observe inside
6 the home?

7 A When I followed Chief Thompson into the
8 residence, I went into the back room with him. I saw a
9 lady sitting on the edge of the bed. She was upset. I
10 noticed a little bit of blood on the side of her shirt,
11 went straight in with Chief Thompson because there was
12 a gunshot in there -- this came in as a
13 stabbing/gunshot, so we assumed there was two victims.
14 I went to follow him, he told me I have no pulse, check
15 on the lady sitting in the bedroom. I went in there to
16 check on her as Medic 34 was walking into the
17 residence. I saw blood on the side of her shirt, left
18 side. I went to lift it up, she said, Please don't
19 worry about me, he needs help. He needs help, don't
20 worry about me.

21 Q How would you describe her demeanor?

22 A It's been two years. As far as I can remember,
23 she was upset.

24 Q Did you -- who is Unit 34?

25 A Medic 34 off of Red Bluff Road -- off 905, I'm

BECKY PAVILACK - DIRECT EXAMINATION

1 sorry, 905.

2 Q Once she told you to check on her husband, did
3 you do that?

4 A Chief Thompson was already in the room. I went
5 in the room initially, and then he sent me back out.
6 She told me to go back in, that my husband needs your
7 help, he needs your help, I don't need it. I was
8 trying to explain, let me check you out, as Medic 34
9 was walking. I lifted her shirt up. I really didn't
10 see her injuries at all, 34 came in and they took over
11 her patient care, and I went with Chief Thompson.

12 Q What did you do?

13 A To?

14 Q You left her and went -- did you do anything else
15 there that night, or go back home?

16 A No. Chief Thompson told me there was no pulse
17 present. I put the life pack monitor on him to make
18 sure there was no cardiac activity. There was a flat
19 line on the cardiac monitor. I also asked to see the
20 hole, because there was a police officer standing in
21 there. He had his foot on a knife. I lifted up his
22 shirt to see where the wound was so I could document
23 the wound, and I asked the police officer to remove his
24 foot so I could see how much blood was on the knife in
25 his hand.

BECKY PAVILACK - CROSS-EXAMINATION

1 Q There was blood on the knife?

2 A There was.

3 Q Did you -- as you were there, did you note
4 whether the knife was in the right or left hand?

5 A Well, I could have swore it was in his left hand,
6 but I did not document which hand it was in.

7 Q That was just your impression?

8 A It was on the left side of his head, and I just
9 assumed it was in his left hand, but I did not document
10 which hand it was in.

11 MR. MARTIN: Answer any questions Ms. Livesay
12 has.

13 CROSS-EXAMINATION

14 BY MS. LIVESAY:

15 Q You looked in the bathroom and saw the victim?

16 A I was in the bathroom, yes, ma'am.

17 Q If you don't mind, tell the jury how he looked?

18 A He was pale in color.

19 Q What?

20 A Pale in color. He had no pulse rate, was not
21 breathing. There was blood noted to the front of his
22 shirt, and that is about what I got.

23 Q My question is, you and Scott Thompson come in,
24 correct?

25 A Yes.

BECKY PAVILACK - CROSS-EXAMINATION

1 Q She's obviously up talking, moving around?

2 A She was sitting on the end of the bed. I don't
3 know if there was like an ottoman or a chest at the end
4 of the bed, or she was actually on the edge of the bed.
5 She was at the edge of the bed. She was talking, so I
6 knew she had good circulation, so I knew she wasn't the
7 priority at the moment.

8 Q She was upright and able to speak?

9 A She was speaking, yes.

10 Q And she wouldn't be talking gibberish, she was
11 talking something that you could understand?

12 A She told me, Go help him, go help him.

13 Q Here is my question. When you all went in there,
14 nobody did, from EMS, CPR on him; is that correct?

15 A On Mr. Sims? No, ma'am.

16 Q If you don't mind, tell this jury why not?

17 A He had no pulse. The call had originated at
18 8:13. The first arriving unit was 8:35, so there was
19 15 minute -- if my math is a little wrong -- 15, 20
20 minute arrival for the first medic unit. There was no
21 signs of life left.

22 Q So, basically, when you get there and you all
23 take a look at him, you know he's dead?

24 A Well, I mean -- hooked him up on the monitor,
25 which was a flat line. He had no pulse. He was very

BECKY PAVILACK - CROSS-EXAMINATION

1 cool in temperature.

2 Q He was cool?

3 A Cool.

4 Q Which is an obvious sign of being deceased?

5 A Right.

6 Q So you get there, nobody even tries to do CPR
7 because basically looking at him you can tell there is
8 absolutely no sign of life?

9 A There was no sign of life, no.

10 Q And you are a nurse at Grand Strand?

11 A Present time I'm a nurse at Grand Strand. At the
12 time of this I was still a nurse at Grand Strand, but
13 my full-time job was a paramedic at Horry County EMS,
14 and I was EMS 1, which I was a captain.

15 Q So as a nurse, paramedic, you had the knowledge
16 to look and see that he had no signs of life, and there
17 was really no chance that you were going to revive him?

18 A In my report I also asked Chief Thompson the same
19 thing, do you agree that we are pronouncing, and he had
20 total agreeance with me.

21 Q So you all knew he was dead, you just hooked him
22 up to confirm?

23 A Yes.

24 Q Now, this woman, her attorney told us that she's
25 a nurse anesthesiologist?

BECKY PAVILACK - CROSS-EXAMINATION

1 A Nurse anesthetist.

2 Q Does she have as much education as you?

3 A More education.

4 Q So she has more education than you have?

5 A Yes, ma'am.

6 Q And you could look down there and tell that this
7 man was deceased, he was not going to be revived?

8 A Understand that the initial call received was at
9 18:33; we arrived at 18:35. We had to stage to let the
10 police clear the scene. So there was time that went by
11 before we got to him.

12 Q Let me ask you this. When she was telling you,
13 Go in there, check on him, there is no doubt he was not
14 moving, he was not breathing and he was already cool to
15 the touch?

16 A Yes.

17 Q So you knew at that time he was deceased from
18 your medical knowledge?

19 A Yes, ma'am.

20 Q And this woman has more medical knowledge than
21 you do?

22 A Yes, ma'am.

23 Q Now, you said earlier that you were focused on
24 her; is that right?

25 A I initially went into the bathroom to make sure

BECKY PAVILACK - CROSS-EXAMINATION

1 Chief Thompson was okay, because he had no equipment,
2 all he did was feel for a pulse. I had taken all of my
3 equipment into the back room, he said, Becky, I don't
4 have a pulse, go check on her, which the medic unit and
5 fire truck was right behind us, but they had to bring
6 in their stretcher and the rest of the equipment. So
7 as I went into the bedroom, I -- ma'am, let me look at
8 you, you have blood on your shirt. She said, Don't
9 worry with me, I'm okay, go help my husband, he needs
10 your help, don't worry with me.

11 Q Could you even see her injuries?

12 A I lifted her shirt up, but honest to God I don't
13 know what I saw. The medic unit walked in as I was
14 lifting the shirt up, and I handed it over to Steve
15 Barger, who is a paramedic. So I don't know what was
16 there. I don't know if there was a puncture wound.
17 There was obviously some blood there, but I don't
18 remember what the injury was at all.

19 Q And how about on her arms?

20 A I did not see anything on the arms, but I was not
21 looking either.

22 Q But there was nothing glaring enough for you to
23 notice?

24 A There was not a massive amount of spirting blood.
25 She was talking to me, so I knew the airway was good, I

BECKY PAVILACK - CROSS-EXAMINATION

1 knew her airway was patent, so I knew she was stable
2 enough as the medic walked in.

3 Q And there were no injuries on her that were
4 glaring to you?

5 A Except for the blood on the left side of the
6 shirt is what I saw.

7 Q And did you actually see that wound?

8 A As I was lifting the shirt up, the medic unit
9 walked in, they caught my eye and I gave reports that
10 this patient needs to go to the hospital. It was
11 obviously a Level 1 trauma, because it was an injury to
12 the abdomen, and we don't know -- in the field with us,
13 there is not x-rays, there is not radiology.

14 Q You don't know how deep it is.

15 A Exactly. So they called it a Level 1 trauma, and
16 they were going out the door. So they immediately took
17 patient care before I even touched her. I did lift the
18 shirt up, but I did not look at it.

19 Q You didn't see anything on the arms?

20 A I did not really pay attention to her arms.

21 Q Okay. So when you go up there to treat her, the
22 medics are coming in, so you really don't pay attention
23 to any of her injuries?

24 A Except for -- I mean, I went to go see her, and
25 she said, Please help my husband, the medic unit is

BECKY PAVILACK - CROSS-EXAMINATION

1 walking in the door, and I said let me at least look at
2 it, they were walking and they took over, We got this,
3 you go help Chief Thompson.

4 Q Let me ask you this. You made a good point that
5 I wanted to touch on. You said she is a trauma because
6 you can't tell by looking at the stab wound how deep it
7 is?

8 A Yes, ma'am.

9 Q So when you looked at the stab wound, or any stab
10 wound, you wouldn't be able to decipher how bad it was,
11 would you?

12 A No, ma'am -- I mean, if it is obviously spirting
13 out bright red blood or intestines hanging out, it
14 doesn't matter, the County's protocol was -- well, a
15 State trauma protocol -- any penetrating injury above
16 elbows or knees and above the neck is Level 1 trauma.
17 You can hit organs, you can hit vascular.

18 Q So you, as a nurse, when you see a puncture
19 wound, you have no idea how bad it is or deep it is
20 until an x-ray is taken?

21 A I'm not sticking my finger in it to see how deep
22 it is, so, no, ma'am.

23 Q So you automatically send it off?

24 A Yes.

25 Q And there is no way visually for any doctor or

BECKY PAVILACK - CROSS-EXAMINATION

1 nurse to look at a puncture wound and decipher this is
2 bad, or it is superficial.

3 MR. MARTIN: Objection.

4 THE COURT: What's the objection.

5 MR. MARTIN: Well, she's asking her what other
6 people can determine.

7 THE COURT: Yeah, sustained. Ask what she
8 thinks. Ma'am, make sure she finishes her question
9 before you answer.

10 Q (MS. LIVESAY) Last question. Can you look at a
11 puncture wound and tell the severity of it by just
12 looking at it?

13 A By a visual, just looking? No. Like I said, if
14 there is something sticking or spirting blood, it is
15 more serious than something that is closed off. If I
16 have something like an ice pick that is 8 inches and I
17 see blood up eight inches, I know it more severe
18 than....

19 Q Right. I understand that. And when you were in
20 there with her, did she go ahead and tell you this is
21 not that bad, it's not that bad?

22 A No, ma'am, she did not. And, honestly, at the
23 time, I had not looked at the knife itself to see how
24 much blood was on the knife when I walked out to see
25 her.

BECKY PAVILACK - REDIRECT EXAMINATION

1 Q So she didn't tell you anything about her
2 injuries?

3 A I do not remember that she said anything about
4 her injuries. I just saw the blood, and I went to make
5 sure she was okay.

6 Q And you couldn't tell just by the eye how bad it
7 was or how deep it was?

8 A No, ma'am. I don't even remember what it looked
9 like.

10 Q Ms. Pavilack, did you know that she already told
11 the dispatcher that her puncture wound was not that
12 bad?

13 A No, ma'am. The dispatcher told us it was a
14 stabbing and a shooting.

15 MS. LIVESAY: No further questions.

16 REDIRECT-EXAMINATION

17 BY MR. MARTIN:

18 Q You said you had to stage. What do you mean by
19 staging?

20 A When a domestic comes out, or a shooting or a
21 stabbing, depending on what the dispatcher takes the
22 call in, the dispatcher will tell you per your
23 protocols, or there could be something that could be
24 life threatening that would harm you, they wait until
25 PD get on scene to clear the scene so medical personnel

BECKY PAVILACK - REDIRECT EXAMINATION

1 can come in.

2 Q Where did you stage?

3 MS. LIVESAY: Your Honor, if I may. I believe
4 that is outside my cross, but if he wants to -- few
5 more questions on what I cross-examined her about.

6 THE COURT: I'll allow a few, but you are getting
7 close.

8 Q (MR. MARTIN) Where did you stage?

9 A The fire unit station, Station 40, which is just
10 around the corner. I was coming from Station 43 on
11 Highway 90, so I was rolling the whole way. Chief
12 Thompson went right in when they were cleared.

13 Q And you were staged a couple hundred, 300 yards
14 from this house? There's a station there?

15 A Yeah, however far that is.

16 Q How long did you stay staged?

17 A It dispatched at 18:13 -- sorry, dispatched
18 18:16, and they arrived at 18:35, and in 34's comments
19 it said, On scene delayed due to stage and waiting for
20 PD to clear. It does not have a time of what time they
21 started staging.

22 MR. MARTIN: Thank you.

23 THE COURT: You can step down. Can she be
24 released?

25 MR. MARTIN: Yes.

STEVEN BARGER - DIRECT EXAMINATION

1 THE COURT: You are released.

2 MS. LIVESAY: Your Honor, can I get a look at his
3 notes as well?

4 (Defendant's 52 marked.)

5 (STEVEN BARGER, having been duly sworn, testified
6 as follows:)

7 WITNESS: Steven Barger, B-A-R-G-E-R.

8 DIRECT-EXAMINATION

9 BY MR. MARTIN:

10 Q Steven, where do you work today?

11 A Pen County Fire and EMS.

12 Q Where were you employed on August 11, 2013?

13 A Horry County Fire, Station 34.

14 Q We heard Ms. Pavilack testify. Were you with
15 Unit 34?

16 A Yes, sir.

17 Q Did you go to the Sims' house?

18 A Yes, sir.

19 Q Tell me about the staging. You were one of the
20 guys staged there, that means -- were you waiting at
21 the other fire station near the Sims' residence?

22 A Yes, sir. So any time that we go to a call that
23 potentially could be dangerous to fire or the EMS
24 units, we do what is called "staging" where we wait
25 away from the scene until the police department can

STEVEN BARGER - DIRECT EXAMINATION

1 ensure there is no hazards for us.

2 Q I'll show you what is marked for identification
3 as Defendant's Exhibit No. 52, which Ms. Livesay has a
4 copy of, Mr. Barger's EMS incident report, and ask if
5 you can identify that for the jury?

6 A This is Medic 34 incident report that I would
7 have written.

8 Q And if you would look on that for me, does it
9 tell you what time the call was received by your
10 station or the 911 people?

11 A Call receive time on 8/11/2013, which is when it
12 was received at the dispatch center.

13 Q And you were in route at what time?

14 A 18:16:21.

15 Q And arrived at what time?

16 A First medic arrived at 18:36:53, which would be
17 Medic 34, which I was on.

18 Q And you left the scene at what time?

19 A 18:48:01.

20 Q And does that mean that in this particular
21 instance you left with Ms. Sims in route to the
22 hospital?

23 A Yes, sir. The scene time would have been with
24 the patient.

25 Q Did you travel with her to the hospital?

STEVEN BARGER - DIRECT EXAMINATION

1 A Yes. I rode in the back. I was the primary
2 caregiver.

3 Q What time did you arrive at the hospital?

4 A 19:06:39.

5 Q And that is about 7:26:44?

6 A Say that again?

7 Q Is that 7:26?

8 A We arrived at the hospital at 7:06.

9 Q 7:06?

10 A Yeah.

11 Q All right. And, again, simply the reason you had
12 to sit out and wait instead of helping was you had to
13 wait for the police to arrive?

14 A Yes, sir. We were dispatched initially for an
15 assault, and in the report, Medic 34 was advised that
16 it was a domestic situation and there was a gunshot
17 wound on scene, as well as a stab wound, so the
18 information progressed, obviously, as we were
19 responding.

20 Q And what did you do when you got there?

21 A So when we got on scene, or in staging?

22 Q Well, when you got to the station location, you
23 just sat and waited to get clearance to go to the home?

24 A Yeah, we sat on the concrete apron in front of
25 the Fire Station No. 40.

STEVEN BARGER - DIRECT EXAMINATION

1 Q Which is -- give us an estimate of how far that
2 was actually from the Sims' residence?

3 A I did not document the actual distance, but from
4 what I remember, it wasn't a very long ride from the
5 fire station to the scene.

6 Q Do you have any idea how long you stayed staged
7 there?

8 A It was a few minutes.

9 Q 10, 15 minutes, roughly?

10 A Potentially.

11 Q All right.

12 A I don't have an exact time on that.

13 Q But you did eventually go to the home, and when
14 you got there, what did you do?

15 A We pulled down a gravel driveway, some sort of
16 driveway. There was some sort of fence. We gathered
17 all of our equipment, found our way to the gate, I
18 remember, to walk through to enter the property, or
19 whatever. We walked around. Dr. Powell and Chief
20 Thompson had gone in because they were ahead of us
21 since we had to gather a little bit of additional
22 equipment. Once we got into the home, I was the first
23 one in there, and I met Captain Pavilack in the
24 bedroom.

25 Q What, if anything, did you do then?

STEVEN BARGER - DIRECT EXAMINATION

1 A Captain Pavilack directed me to a female patient
2 seated at the end of the bed, and she continued
3 assisting Chief Thompson in treatment of another
4 patient, and I went to treating the female patient at
5 the end of the bed.

6 Q And how would you describe her demeanor at the
7 time?

8 A Emotional.

9 Q Frantic?

10 A Yeah.

11 Q Hysterical?

12 A Yes, I believe I did use the word "hysterical."

13 Q And did you examine her?

14 A Yes, I did.

15 Q And what were your physical findings of her
16 injuries?

17 A If you don't mind, I need to review this.

18 Q Yeah.

19 (A brief pause in the proceedings.)

20 A We found -- we were advised that there was a male
21 patient, which two other patient caregivers were taking
22 care of. Captain Pavilack advised us of the female
23 patient who had a stab wound. Female patient was a
24 31-year-old female sitting on the edge of the bed. Is
25 it okay if I read this to you?

STEVEN BARGER - DIRECT EXAMINATION

1 Q (MR. MARTIN) Sir?

2 A Can I just read it to you as it is written.

3 MR. MARTIN: I move to enter it into evidence.

4 THE COURT: Any objection?

5 MS. LIVESAY: Yes, sir. Are we refreshing his
6 memory, or are we putting a prior statement in
7 evidence?

8 THE COURT: I have no idea.

9 MR. MARTIN: It is not a prior statement. It is
10 the actual EMS incident report, which is maintained in
11 the record.

12 MS. LIVESAY: And you are putting that into
13 evidence?

14 MR. MARTIN: Yes.

15 MS. LIVESAY: I have no objection to it going
16 into evidence, but I have an objection from him
17 straight of reading off of it. Either he remembers or
18 doesn't.

19 THE COURT: It is in evidence. Overruled on
20 that. He can refresh his memory. Make sure when you
21 do that, let us know.

22 (Defendant's Exhibit 52 admitted.)

23 Q (MR. MARTIN) I'll hand this to you, and I want
24 to know what you reported that you found related to
25 her injuries. Whether you want to read it or refresh

STEVEN BARGER - DIRECT EXAMINATION

1 your memory, it doesn't matter to me?

2 A I found a patient with a single stab wound for
3 L-L-Q, which means left lower quadrant abdominal area,
4 multiple superficial lacerations to the right forearm.

5 Q And what else does your report indicate that you
6 did there that night? First of all, how many stab
7 wounds did you observe?

8 A One.

9 Q And what else did you do in terms of her that
10 night?

11 A I did a primary assessment, which would include
12 lung sounds, basic vital sounds, blood pressure, heart
13 rate, respiratory rate.

14 Q Do you recall anybody there that would have a
15 police officer who would have bagged her hands?

16 A Can I read from this?

17 Q Yes.

18 A Patient was secured with three straps and was
19 loaded into the medic unit without incident. Once in
20 the medic unit, Horry County PD Officer Lee placed two
21 paper bags on her hands to preserve what he called
22 "evidence," in quotations.

23 MR. MARTIN: That is all I have.
24
25

STEVEN BARGER - CROSS-EXAMINATION

CROSS-EXAMINATION

1
2 BY MS. LIVESAY:

3 Q Mr. Barger, you got to look -- when did you
4 examine her?

5 A When I arrived on scene at 18:36:53.

6 Q Okay. But where were you? In the house?

7 A In the bedroom.

8 Q So you were not in a hospital?

9 A No.

10 Q And you didn't have any, really, hospital
11 equipment there to fully examine her?

12 A Huh-huh.

13 Q Is that correct? Okay. The medical records have
14 already been put into evidence. I have a question for
15 you off of those records. Give me one second. If you
16 don't mind, take a look at these records, assessment
17 and plan, and tell me how many puncture wounds the
18 surgeon saw, Dr. Sciarretta?

19 A He said --

20 MR. MARTIN: Judge, I object to him testifying
21 what the surgeon saw. They could call the surgeon to
22 say that. He can -- obviously the records are in
23 evidence and he can read it, but he can't say what the
24 surgeon saw.

25 THE COURT: You can ask him if he knows; if he

STEVEN BARGER - CROSS-EXAMINATION

1 does, he can answer. Overruled. Go ahead.

2 Q (MS. LIVESAY) Do you know that she saw Dr.
3 Sciarretta that night, trauma surgeon?

4 A No, ma'am.

5 Q Do you know then why you took her to the
6 hospital?

7 A We took her to the hospital because she had
8 injuries.

9 Q And you would know that a doctor saw her at the
10 hospital?

11 A One would assume at the hospital, yes. I can't
12 tell you which doctors she saw.

13 Q Okay. Are those medical records you are looking
14 at now?

15 A I believe them to be. They appeared to be.

16 Q Do you know what the date and time are on the
17 medical records?

18 A 8:13:13, maybe. That is when it was printed.

19 Q Can you look at the records on the front part and
20 tell when the doctor said he saw this young lady?

21 A Admission date, 8/11/13.

22 Q Who is that that he saw?

23 A He saw Sims, Heather.

24 Q So that would, indeed, be the same patient that
25 you brought to the hospital on the same night?

STEVEN BARGER - CROSS-EXAMINATION

1 A Uh-huh.

2 Q Do you see whether or not she was assessed by the
3 hospital?

4 A I'm not familiar -- I mean, it's a medical record
5 of hers, so someone saw her.

6 Q But you are not real familiar with medical
7 records?

8 A Not in the hospital. I don't work in a hospital.

9 Q That's fine. If you don't mind, you testified
10 earlier that she was hysterical when you got there; is
11 that correct?

12 A Yeah. That was in another document I was
13 provided with. It wasn't given back to me.

14 Q But your assessment was that she was hysterical?

15 A That is not in my report, no.

16 Q Okay. Now, she is a nurse?

17 A Anesthetist.

18 Q Thank you. Does she have more or less education
19 than you do?

20 A More.

21 Q Okay. But when you got there, did she tell you,
22 My wound is not that bad?

23 A I don't believe that is in the record, ma'am.

24 Q When you were called out, did the dispatcher let
25 you know she has told us that, yes, she's stabbed, but

STEVEN BARGER - CROSS-EXAMINATION

1 it is not that bad?

2 A Again, that is not in the report.

3 Q Okay. Now, when you look at a puncture wound,
4 can you decipher anything about whether this is
5 superficial or life threatening?

6 A All we can tell is the size of it on the surface,
7 which is the length, and again if anything is coming
8 out of the wound below, blood, organs, any kind of
9 tissue.

10 Q So can you decipher, yes or no, when you look at
11 her puncture wound whether or not it was superficial or
12 whether or not it was life-threatening?

13 A There is no way to tell that.

14 Q And that is why you then take her to the
15 hospital?

16 A Any abdominal penetrating injury is a Level 1
17 trauma, which is the highest severity.

18 Q So you looked and thought this was a Trauma 1, as
19 bad as it gets?

20 A Per protocols, any penetrating injury is Level 1.

21 Q And that is because there is no way to visually
22 look and decide whether or not it is superficial, or
23 whether or not it is life threatening?

24 A Correct.

25 Q Well, let me ask you something. Do you have any

STEVEN BARGER - CROSS-EXAMINATION

1 -- you have some medical training?

2 A I'm a paramedic.

3 Q Good. Let me ask you something. How -- without
4 an x-ray at her house or any sort of medical equipment
5 like a CT scan, how would she know that the injury is
6 not that bad; do you know?

7 MR. MARTIN: Objection as to what she would know.

8 THE COURT: Only ask what he knows. Sustained.

9 Q (MS. LIVESAY) Would there be any way for her to
10 know how bad it was?

11 MR. MARTIN: Objection. Same question.

12 THE COURT: Yeah, same question.

13 MS. LIVESAY: The man is a paramedic.

14 THE COURT: I understand, but he can only testify
15 about what he knows. If he knows -- ask him that.

16 MS. LIVESAY: I feel like I can't ask leading
17 questions or cross or direct, but I'll ask him.

18 THE COURT: Ask if he knows first. If he says
19 yes, then you can ask a question.

20 Q (MS. LIVESAY) Do you know if she knew the
21 severity of her wound?

22 A No, ma'am.

23 Q Okay. So she never told you, My wound is not
24 that bad?

25 A That is not in the document here, so.

STEVEN BARGER - CROSS-EXAMINATION

1 Q Did she tell you anything about what had gone on
2 before you got there?

3 A No, ma'am.

4 Q So when she is in this hysterical state, would it
5 surprise you that she was in the bathroom wiping up
6 blood?

7 A I found her on the foot of the bed.

8 MR. MARTIN: Objection. He has no knowledge
9 which to testify to that question, and I would object
10 to its relevance.

11 THE COURT: Overruled. Ask if he knows that
12 and -- again, the question is does he know, and if he
13 does, he can testify.

14 Q (MS. LIVESAY) Do you know that she was wiping up
15 blood before the EMS and the police got there?

16 A No, ma'am. Again, I found her on the foot of the
17 bed.

18 Q Do you know that she was able to take the phone
19 out of the victim's pocket before you got there?

20 A Again, I found her on the foot of the bed.

21 Q Do you know that she was making a couple of phone
22 calls while she was there --

23 MR. MARTIN: Again, Judge, I hate to object,
24 okay, and -- but she's asking questions that there's
25 two problems with. She's assuming facts which is not

STEVEN BARGER - CROSS-EXAMINATION

1 in evidence at this time, and she's asking a witness
2 to speculate as opposed to testify to personal
3 knowledge. Both are objectionable, and I object.

4 MS. LIVESAY: Everything I asked him is in
5 evidence, and all I want to know is do you know.

6 THE COURT: And he said, no. The problem is --
7 I'll allow you to ask those questions, but on redirect
8 you can ask him questions, too. If he doesn't know
9 these things, I mean.

10 Q (MS. LIVESAY) Do you know before you got there
11 she had made two or three phone calls?

12 A Negative.

13 Q Do you know before you got there she had called
14 her dad and got him over there?

15 A No.

16 Q Do you know that she had wiped blood from the
17 scene?

18 A No.

19 Q Do you know she was taking the phone out of the
20 victim's pocket?

21 A No.

22 Q So after all this went on and you see her, she's
23 hysterical?

24 A Uh-huh.

25 Q Is that correct?

STEVEN BARGER - CROSS-EXAMINATION

1 A Uh-huh. Yes.

2 MS. LIVESAY: Nothing further.

3 THE COURT: Anything?

4 MR. MARTIN: No, sir.

5 THE COURT: You can step down, and you are
6 released from any subpoena. How long is your next
7 witness going to take?

8 MR. MARTIN: I don't know exactly. It is
9 probably as good as any to take a break.

10 THE COURT: I need to do something related to
11 that problem. I'm going to give you an early break,
12 10 minutes. I need to deal with something -- 15,
13 let's be honest, 15.

14 (The jury exits at 11:28 a.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: I'm going to go back and talk with
17 the officer, and I'll be back in a minute. Come on
18 back.

19 (A discussion was had off the record.)

20 THE COURT: I've dealt with that matter dealing
21 with it now, so we'll keep rolling on. Bring them
22 back in.

23 (Defendant's Exhibit 53 through 56 marked.)

24 (The jury enters at 11:52 a.m., and the
25 following is heard in the presence of the jury.)

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 THE COURT: Again, I'm sorry you had to sit back.
2 I had to deal with an issue that I'll explain when it
3 is all over with, but thanks for your patience. Call
4 your next witness.

5 MR. MARTIN: Adrienne Hefney.

6 (ADRIENNE HEFNEY, having been duly sworn
7 testified as follows:)

8 WITNESS: Adrienne Hefney, H-E-F-N-E-Y.

9 DIRECT-EXAMINATION

10 BY MR. MARTIN:

11 Q Where are you employed?

12 A South Carolina Law Enforcement Division, more
13 commonly known as SLED.

14 Q For how long?

15 A Yesterday made 18 years.

16 Q And in what capacity?

17 A As forensic DNA analyst.

18 Q How long have you worked in that field?

19 A For 18 years.

20 Q How many times have you been qualified as an
21 expert in DNA forensic analysis in the State of South
22 Carolina?

23 A This makes about, approximately, the 70th time.

24 Q 78th?

25 A 70th.

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 MR. MARTIN: We offer Ms. Hefney as an expert in
2 the field of DNA analysis.

3 MS. LIVESAY: No objection, I know Ms. Hefney.

4 THE COURT: Me, too. She's introduced as in DNA
5 analysis.

6 Q (MR. MARTIN) Were you sent some swabs from the
7 Horry County Police Department for you to analyze to
8 find out whose DNA was on them?

9 A Yes, sir, I was.

10 Q And did you perform that analysis?

11 A Yes, I did.

12 Q And let me ask you, first of all, about a knife.
13 Did you perform DNA analysis on the swabs of a knife
14 handle?

15 A Yes, sir, I did.

16 Q If you would, tell the jury what you found with
17 regards to and how this works. I'm asking an
18 abbreviated question, but if you would, explain briefly
19 how you do what you do.

20 A Okay. DNA stands for deoxyribonucleic acid.
21 That is the scientific name for the chemical substance
22 found in the cells of our body. We inherit DNA, half
23 from our mother, and half from our father. No two
24 people have the same DNA with the exception of
25 identical twins. A lot of us have the same DNA that

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 makes us human, two arms, two legs and two eyes, but,
2 again, no one looks the same with the exception of
3 identical twins, so no two people have the same DNA.

4 How we apply this in forensic science is the fact
5 that no two people have the DNA except identical
6 twins, so we make comparisons to known standards,
7 those are standards that we know where DNA came from,
8 either the swabs from the inside of your cheek, known
9 as buccal swab, or blood from your vein, and we make
10 comparisons to evidence that was left behind at the
11 crime scene where we don't know the origin of it.

12 In this case, I make comparisons to several
13 items, and the item that Mr. Martin was referring to
14 was a knife handle. I have that as my Item 10, and
15 I'll read directly from my report. I'll abbreviate a
16 little because in my report Item 10 is lumped together
17 with a lot of items, but we'll deal with that first.

18 DNA profile developed from Item 10 matches DNA
19 profile of David Sims. The probability of randomly
20 selecting an unrelated individual having a DNA profile
21 matching this item is approximately 1 and
22 3.1 quintillion.

23 How that works is once we see that we have a
24 visual match, we want to apply statistical weight to
25 it to say that if you were to line up 3.1 quintillion

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 people, which is a one followed by five sets of zeros,
2 or 15 zeros, that you shouldn't see that DNA profile
3 but one time.

4 Q Did that swab contain blood DNA as well as touch?

5 A Yes, sir. Item 10 was positive for blood.

6 Q And, again, positive for the blood of David Sims?

7 A That is correct.

8 Q Did you check the swab from the other side of the
9 knife that Ms. Domogauer retrieved from it?

10 A Okay. That would be the Item 14, another swab
11 from the handle of the knife, and there was no visible
12 blood there, and so we tested for any DNA that could
13 have possibly been there and, again, I'll read directly
14 from my report: The partial DNA profile developed from
15 Item 14 also matches David Sims.

16 Q And when you say "partial," explain to the jury
17 what that means?

18 A With this item we only had -- we didn't have any
19 blood, so what we would be looking for is touch DNA.
20 Touch DNA, in theory, is when you handle something, you
21 leave behind skin cells or sweat cells, or whatever
22 that makes us get the touch DNA. It usually is left
23 behind by handling something, not simply just I touched
24 this and you expect to come behind me and get my DNA.
25 If I was to do this (indicates) for any given length of

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 time, and you come back and swab it, you should expect
2 to find my DNA there. In this case, the partial DNA
3 developed from Item 14, which was the other side, the
4 handle from the knife, gave partial profile of David
5 Sims.

6 Q Again, the word "partial" is what I want to focus
7 in on. Does that mean that any manner -- that it means
8 that it was not David Sims, or there is a question
9 whether it was David Sims -- explain to the jury why
10 you say "partial" so we're clear on it.

11 A We look at 15 different genetic locations on your
12 body, that is going to differ from everybody. Remember
13 I told you a lot of the DNA is the same that makes us
14 human, but we look at the areas that make us different.
15 Of those areas that make us different, we look at 15
16 plus our sex chromosome, and that is just a name of a
17 chromosome. In this case, when I say "partial," we may
18 not get a full profile from all 15, but may get 10 of
19 the 15, or 12 of the 15. When I don't say "partial,"
20 that means I got it from all 15 genetic locations. It
21 doesn't mean it changes anything, just that we didn't
22 get the whole gamut.

23 Q And from this instance you got it from 14
24 locations instead of 15? Would you check for me?

25 A That is correct.

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 Q Now, again, what is the statistical probability
2 that that touch DNA on the handle was anyone other than
3 David Sims of this partial match?

4 A With it being a partial match, we didn't do it,
5 we just say "also matches."

6 Q Also matches?

7 A Yes, sir.

8 Q Any question that that was a match with the DNA
9 of David Sims?

10 A No, because what I was referring to when he asked
11 me about it was 14 out of 15, I was referring to this
12 chart where we put the entire DNA profile that we
13 developed, and each of the genetic markers as it refers
14 to. So that is why I make my comparisons to the
15 evidence and the known standards.

16 Q Now, let's talk about, again, you touched on it,
17 but in this particular case there is some interest in
18 the handling and how you would leave touch DNA on that
19 knife. I think your testimony was that you do not
20 always leave touch DNA when you touch a knife?

21 A That's correct.

22 Q And let me ask you this. If my hand were laying
23 here and I was to lay the pen on it in that fashion,
24 would you expect that to leave DNA of mine on the
25 handle?

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 A More than likely, it would not.

2 Q If I took the knife in my hand and I scratched
3 myself and I stabbed myself, would you expect me to
4 leave touch DNA on the handle of a knife?

5 A I would expect so, because you are grasping at
6 the knife handle, you are handling it, doing something
7 with it, scratching, thrusting, so you should, you
8 know, leave some DNA behind, more than likely, than if
9 you were just laying it there or resting it in your
10 hand.

11 Q Now, let me show you what is was marked for
12 identification as Defendant's Exhibit No. 53 and ask
13 you if I've shown that to you before?

14 A You have.

15 Q And can you describe what it is for us?

16 A It is a picture of a black handled knife. Of
17 course, beforehand, it was never shown to me, the knife
18 itself. We just received the swabs from the knife.

19 Q Did it have an inscription which accurately
20 described your findings relating to DNA on the knife
21 handle?

22 A It does. It refers to SLED Item No. 10, knife
23 handle, label side. And then SLED Item 14, knife
24 handle, non-label side.

25 MR. MARTIN: I move to enter into evidence

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 Exhibit 53.

2 THE COURT: Any objection?

3 MS. LIVESAY: No, sir.

4 THE COURT: Without objection, 53.

5 (Defendant's Exhibit 53 admitted.)

6 Q (MR. MARTIN) Did you test DNA -- any DNA swabs
7 from the blade of the knife?

8 A Yes, I did.

9 Q What did you find there?

10 A The blade of the knife was our Item No. 11, and
11 that is labeled -- I'll read it from my report. Swabs
12 from blade Cuisinart side of knife. There was blood
13 indicated, and that blood that was indicated on the
14 knife, there was a mixture, which means it was a
15 mixture of DNA profiles. The major contributor, which
16 is the person whose DNA it was more concentrated or
17 more out front, was Heather Sims. There was a minor
18 contributor also present there, and David Sims could
19 not be excluded.

20 Q What does that mean to the jury when you say that
21 David Sims could not be excluded?

22 A Usually -- I mean, when there is a mixture on a
23 knife, we get -- or mixture in a profile, and we have
24 blood present there, usually your major contributor is
25 the one that is going to contribute the blood, because

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 that is way more concentrated than any touch DNA that
2 may have been on the knife. In this case -- and I'll
3 read directly from the report. The DNA profile
4 developed from Item 11 is a mixture of at least two
5 individuals. The DNA profile of the major contributor
6 to this mixture also matches the DNA profile of Heather
7 Sims. David Sims cannot be excluded as a possible
8 minor contributor to this mixture. The probability of
9 randomly selecting an unrelated individual who could
10 have contributed to this mixture is approximately 1 in
11 66.

12 Q 1 in 66?

13 A Yes, sir.

14 Q And it is likely that that DNA that you were
15 finding there was touch DNA?

16 A What matched David, yes.

17 Q Now, let me ask you about Item 17 that you tested
18 which -- because I have it would be a swab from the
19 handle of a 9-millimeter pistol?

20 A That's correct, from a grip portion.

21 Q What were your findings there?

22 A It was positive for blood as well, and I'll read
23 directly from my report the DNA profile developed from
24 Item 17 is a mixture of at least two individuals. The
25 DNA profile of the major contributor to this mixture

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 matches the DNA profile of Heather Sims. The
2 probability of randomly selecting an unrelated
3 individual having a DNA profile matching the major
4 contributor to this item is approximately 1 in
5 390 quadrillion. The DNA profile developed from the
6 minor contributor to this mixture is insufficient for
7 an reliable interpretation.

8 Q Which means that certainly Heather Sims' blood
9 was on the swab from the grip of the gun. There may
10 have been other DNA, but not enough to determine whose
11 it was?

12 A That is correct.

13 Q I'll show you what is marked as Defense
14 Exhibit 54 and ask if you can identify that for me?

15 A A picture of a gun, pistol.

16 Q And does it have an inscription as to your
17 findings?

18 MS. LIVESAY: Can I get a quick look at whatever
19 he's showing?

20 MR. MARTIN: I think I gave you a copy of it.

21 MS. LIVESAY: Which picture?

22 MR. MARTIN: The one with the gun.

23 MS. LIVESAY: That one?

24 THE COURT: Okay. You can go ahead.

25 A Underneath Item 17, which is SLED's item number,

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 grip of 9-millimeter, that blood was found on it, and
2 the finding was Heather Sims.

3 MR. MARTIN: I move to introduce this into
4 evidence.

5 (Defendant's Exhibit 54 admitted.)

6 MS. LIVESAY: No objection.

7 Q (MR. MARTIN) You did further testing in
8 connection to this case; did you not?

9 A Yes, sir.

10 Q How about Item 8?

11 A Item 8 is described as tip of pliers, swab from
12 tip of pliers.

13 Q And what were your findings there? Again, you
14 are testing a swab that was taken by the Horry County
15 Police Department, and you analyzed it?

16 A Correct.

17 Q And your findings as to Item 8 are what?

18 A DNA profile developed from Item 8 is a mixture of
19 at least two individuals. The DNA profile of a major
20 contributor to this mixture matches the DNA profile of
21 Heather Sims. The probability of randomly selecting an
22 unrelated individual having a DNA profile matching the
23 major contributor to this item is approximately 1 in
24 390 quadrillion. Partial DNA profile of the minor
25 contributor of this mixture matches the DNA profile of

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 David Sims. The probability of randomly selecting an
2 unrelated individual having a DNA profile matching the
3 minor contributor to this item is approximately 1 in
4 42 million.

5 Then I went on to exclude one of Ronnie Causey
6 and Thomas DelPercio are excluded as possible
7 contributors.

8 Q DelPercio and Ronnie Causey are excluded as
9 possible contributors?

10 A Correct.

11 Q And the tip obviously had some of Heather Sims'
12 DNA on it -- and David, excuse me, Heather and David
13 Sims?

14 A That's correct.

15 Q Did you examine Items 21.3 and 21.4?

16 A Yes, sir, I did.

17 Q And those were swabs or cuttings from the pant
18 leg of Heather Sims?

19 A Yes, cuttings from capri pants belonging to
20 Heather Sims.

21 Q What were your findings with regards to those?

22 A Okay. 21.3, the DNA profile developed from 21.3
23 matches the DNA profile of David Sims, probability of
24 randomly selecting an unrelated individual having a DNA
25 profile matching this item is approximately 1 in 3.1

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 quintillion. Item 21.4, DNA profile developed from
2 21.4 is a mixture of at least two individuals. The DNA
3 profile of the major contributors to this mixture
4 matches the DNA profile of David Sims. The probability
5 of randomly selecting an unrelated individual having a
6 DNA profile matching the major contributor to this item
7 is approximately 1 in 3.1 quintillion. The partial DNA
8 profile of the minor contributors of this profile
9 matches Heather Sims. The probability of randomly
10 selecting an unrelated individual having a DNA profile
11 matching the minor contributor to this mixture is
12 approximately 1 in 7,000. Ronnie Causey and DelPercio
13 are excluded as possible contributors to this mixture.

14 Q With regards to the majority of these findings,
15 you are using some rather large numbers. When you say
16 390 quadrillion --

17 A In this case it was 3.1 quintillion.

18 Q What is more, a quadrillion or a quintillion?

19 A A quintillion is more.

20 Q My point is the statistics are such that in the
21 real world we live in, you say that that DNA is that
22 person?

23 A That is correct.

24 Q Let me show you what has been introduced into
25 evidence as Defendant's Exhibit No. 77, and tell me,

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 first of all, that these have been entered in the
2 defense of Heather Sims. You just read about cuttings
3 that were marked 21.3 and 21.4?

4 A Yes, sir.

5 Q Do you see 21.3 and 21.4 on 77?

6 A Yes, sir. I see where the cutting was taken and
7 it was marked 21.3, and the cuttings over here was
8 taken and it was marked 21.4.

9 Q Those cuttings were taken from the knee area of
10 Heather's pants?

11 A About the calf area, a little lower than the knee
12 above the hem.

13 Q Of course these are cut-offs?

14 A Oh, okay.

15 Q Don't know what you call them --

16 A Capri pants?

17 Q The ones that don't reach all the way to the
18 floor. So these are Capris?

19 A Capri pants.

20 Q So with that in mind, they are probably closer to
21 the knee than the ankle; would you not agree?

22 A Yes, sir.

23 Q I'll show you what is was marked for
24 identification as Defendant's exhibit No. 56 and ask if
25 you can identify that?

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 A These are -- look like pants I just saw and the
2 inscription at the bottom is Item 21.3 and 21.4. 21.3,
3 Heather's pants from the front, left leg. And 21.4,
4 Heather's pants from the left front leg, and what my
5 findings were.

6 Q Does it accurately represent your findings?

7 A Yes. 21.3 matched David Sims. 21.4 was a
8 mixture with David in the major and Heather in the
9 minor.

10 MR. MARTIN: I move to introduce Exhibit 56.

11 MS. LIVESAY: Without objection.

12 THE COURT: Without objection, Defendant's 56.

13 (Defendant's Exhibit 56 admitted.)

14 Q (MR. MARTIN) I'll show you what is marked for
15 identification as Exhibit 55 and ask you the same
16 questions about that as the others.

17 A A picture of some needle nose pliers, and it is
18 marked as SLED Item No. 8, tip of pliers with my
19 finding Heather Sims being the major, David Sims being
20 the minor.

21 Q And that was determined to be touch as opposed to
22 blood DNA?

23 A That is correct.

24 MR. MARTIN: I move to enter that into evidence
25 as well.

ADRIENNE HEFNEY - DIRECT EXAMINATION

1 MS. LIVESAY: Without objection.

2 (Defendant's Exhibit 55 admitted.)

3 Q (MR. MARTIN) You did do other analysis in this
4 case other than the ones you and I talked about?

5 A That is correct.

6 Q And one of them I want to ask you about, you took
7 -- you took -- there was a swab from the trigger of the
8 pistol?

9 A Yes, sir.

10 Q That was introduced into evidence in this case.
11 In that case, you did not find any DNA?

12 A Yes. That is our Item 12, trigger of
13 9-millimeter Ruger. There was no visible blood, so we
14 looked for any DNA, and it was an insufficient amount
15 of DNA.

16 Q Now, there is evidence in the record that
17 Heathers Sims pulled the trigger of that gun so her
18 finger would have touched the trigger. Why would you
19 think you didn't find any touch DNA there?

20 A It could be due to the fact when you pull the
21 trigger, usually only the tip of your index is in there
22 and it might not have been enough to leave touch DNA
23 behind.

24 Q Does that surprise you in any way that you
25 wouldn't find it there if somebody gripped the handles

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 of something, you would find it?

2 A No. Usually if we're going to find it, we're
3 going to find it on the handle where you are gripping
4 it versus just the tip of your finger pulling it.

5 MR. MARTIN: One second, Judge.

6 (A brief pause in the proceedings.)

7 Q (MR. MARTIN) In this case, the only DNA you
8 found on the handle of the knife was that of David
9 Sims; am I right?

10 A On the handle of the knife? Item 10, positive
11 for blood, David Sims, and then Item 14 no visible
12 blood, touch DNA, partial was David Sims.

13 Q No DNA of Heather Sims?

14 A That is correct.

15 MR. MARTIN: That is all I have.

16 CROSS-EXAMINATION

17 BY MS. LIVESAY:

18 Q This is something we didn't see, and Mr. Martin
19 didn't touch on. There is actually a chain of custody
20 that goes along with this, correct?

21 A That's correct.

22 Q And there is actually a special way these items
23 are packaged; is that correct?

24 A I'm not sure what you mean by "special way."

25 Q If you got it, and it was not in one of those

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 evidence sealed-up bags, would you touch it?

2 A No, ma'am. No, ma'am. They come in heat sealed
3 pouches that are usually typically signed with the
4 submitting officer's initials and the date they
5 submitted it to SLED.

6 Q And SLED actually -- can I see this -- keeps an
7 electronic copy of everybody that touches it; is that
8 correct?

9 A That's correct, that moved that package. They
10 may not have opened and touched the evidence, but if it
11 is moved hand-to-hand, we keep an electronic copy.

12 Q And that is because if it is contaminated, the
13 results are not good?

14 A That is correct.

15 Q And if that bag is tampered with in any form or
16 fashion, you won't even test it, will you?

17 A No. We'll make a note and we'll call the
18 submitting agency to find out what happened, depends on
19 what they said and what happened whether we test it or
20 not.

21 Q So a lot of labor is put in documenting everybody
22 that touches it to make sure it is not tampered with;
23 is that correct?

24 A That is correct.

25 Q And if it is tampered with, the results are no

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 good?

2 A That is correct.

3 Q In fact, you won't even test it if the bag was
4 tampered with at all?

5 A Once we -- if it is someone that just brought it
6 here and forgot to sign it, but sealed when I get it,
7 that is one thing. If it is opened and the evidence
8 has been messed with, that is a different thing.

9 Q I'm glad you said that. So, basically, what you
10 are telling this jury is if the evidence has been
11 messed with, you won't even test it because those
12 results are not good?

13 A As long as I know about it, yes, ma'am.

14 Q So the vital thing about DNA, most of the
15 majority of the work that is put into preserving the
16 integrity of the evidence?

17 A That's correct, from collection to submission,
18 from analysis to return.

19 Q So if something has been wiped down at the scene
20 or tampered with at the scene, would you say the same
21 rule applies?

22 MR. MARTIN: Objection. That is obviously two
23 different things. All she can testify to is it was
24 picked up by the Horry County Law Enforcement
25 Division, goes to her for testing. The fact of

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 whether or not Heather wiped it or touched anything is
2 a question for another witness.

3 THE COURT: You can ask her if she knows the
4 answer.

5 Q (MS. LIVESAY) If the evidence has been tampered
6 with, it has lost its integrity; would you agree?

7 A If it has been tampered with at the scene?

8 Q Yes.

9 A I would have no way of knowing that. I guess it
10 would have lost its integrity, or I would pick up
11 someone's DNA if they wiped it or whatever. I don't
12 know. Maybe. All I know is when it arrives at SLED
13 how we make sure it stays intact and not compromised.

14 Q Because that is the key, correct, that evidence
15 is not compromised?

16 A That's it. When it gets to us, we have an
17 electronic chain to make sure it is right on our end.
18 What happened before it gets to me, I have no idea.

19 Q You would agree that the important thing is that
20 the integrity of the evidence for the results to be
21 accurate to be in place?

22 A That is correct.

23 Q Now, let me ask you something. You have no idea
24 what goes on with the evidence before it gets to you;
25 is that correct?

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 A That is correct.

2 Q So if something has been wiped or manipulated,
3 you would have no idea?

4 A That is correct.

5 Q So all you're analyzing is what the police are
6 able to collect when they arrive and what they see?

7 A That's correct.

8 Q So if the scene has been manipulated or wiped or
9 messed with in any form or fashion before the police
10 get there, we are stuck with whatever has been done?

11 A Whatever the police collects and sends to us,
12 that is what I have.

13 Q This is the knife, that black Cuisinart knife.
14 Let me ask you this. Was this sent to SLED, or were
15 Q-tips swabbed off of this sent to SLED?

16 A The swabs.

17 Q So you never even see this, just the swabs?

18 A That's correct.

19 Q I'll open it up. Do you mind going through the
20 results while we're looking at the knife?

21 A Okay.

22 Q Do you want some gloves?

23 A Yes, thank you.

24 Q Do you mind stepping through and coming down for
25 the jury. Let me get a picture so we can be accurate

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 as to how it looked that night on the scene.

2 THE COURT: Give me 30 seconds, I'll be right
3 back. Don't ask any questions, please.

4 (A brief pause in the proceedings.)

5 THE COURT: For the record, I had to leave the
6 courtroom for four minutes, and I'm assuming no one
7 asked a question while I was gone without me. You may
8 step down. Thanks.

9 Q (MS. LIVESAY) I'll show you a picture so we can
10 put perspective on what we're looking at. This is
11 Defendant's Evidence No. 3. This is a picture of the
12 knife in his right hand. This is the non-label side.
13 Would you agree this side has a label?

14 A Yes, Cuisinart.

15 Q And would you agree this side does not have a
16 label?

17 A That's correct.

18 Q Would you agree that the non-label side is up?

19 A That's correct.

20 Q Let me show this jury. So this is the side that
21 is up. You can visibly see it in the picture. Let me
22 scoot down here so these people can see. Thank you,
23 Ms. Hefney. The question I have is do you see the way
24 he's holding the knife?

25 A Resting between the thumb and index finger, it

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 looks like.

2 Q Kind of like -- let me get the blade straight,
3 non-label side is up and resting between the thumb and
4 pointer, kind of like that?

5 A Uh-huh.

6 Q So if I bring it down like that (indicates)?

7 A Uh-huh.

8 Q This is the non-label side again?

9 A Uh-huh.

10 Q And if I grip my hand around it, it would be like
11 that?

12 A Yes, ma'am, if you grip.

13 Q So now what we're looking at is the non-label
14 side, and this would be the label side. Now, which
15 part of the handle, which side of the handle has blood?

16 A Let's see. I'm missing my notes here. The
17 handle. They told me about the blade. I don't see --
18 blade of Cuisinart side and the swab from black handle
19 knife, non-label side, handle, Item 14, for any DNA,
20 there was no blood.

21 Q Which side, Cuisinart or no Cuisinart?

22 A No Cuisinart, non-label.

23 Q So I'll show this crowd. Can I get where you are
24 at? So the non-label side of the handle does not have
25 any blood?

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 A Right.

2 Q So that would be this side of the knife,
3 non-label side handle has no blood (indicates)?

4 A On the handle, yes, ma'am.

5 Q So what we're saying is I did like this with the
6 knife and then I came back out from that side, there is
7 no blood on that side of the knife that you saw?

8 A On the handle? From what I'm looking at, there
9 is no blood on either side of the non-label side -- I'm
10 sorry that is the blade. So Item 14, the handle, no
11 blood.

12 Q So I can show this jury, if the knife is being
13 held like this (indicates) --

14 MR. MARTIN: I object to that, because it is
15 improper. If the knife is being held like this, it
16 calls for speculation.

17 MS. LIVESAY: That's right.

18 THE COURT: I understand. Let him -- go ahead.

19 MR. MARTIN: The objection is if it is held like
20 this, in and of itself it requires speculation.

21 MS. LIVESAY: It doesn't. Here is the picture of
22 how he is holding the knife.

23 THE COURT: I'm going to allow her to answer.
24 The question is if it was held like that. I
25 understand your objection, but go ahead.

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 Q (MS. LIVESAY) When the knife is held like
2 this --

3 A With your hand gripped around it?

4 Q Yes. Let me show the jury. And this is the
5 non-label side (indicates)?

6 A Uh-huh.

7 Q If I go like this (indicates) with this knife, so
8 the jury can see, there is no blood on this side of the
9 handle for the results?

10 A Are you saying you have blood on the shirt maybe?

11 Q Yes -- I'm just asking is there any blood
12 indicated on this part of the handle?

13 MR. MARTIN: I want to make an objection.

14 THE COURT: Go ahead. Ladies and gentlemen, I'm
15 going to send you out for two, three minutes. Don't
16 talk about this case.

17 (The jury exits at 12:32 p.m., and the
18 following is heard out of the presence of the jury.)

19 THE COURT: Tell me your question again.

20 Q (MS. LIVESAY) I'm just asking her, is there
21 blood on this part of the handle, and she's going to
22 say, no, there's not.

23 THE COURT: If you ask that question, that is
24 fine, but that really wasn't what you were asking.

25 You were making -- if this, if that. What you can ask

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 is if there is blood on that handle. You are going to
2 say, no; right?

3 WITNESS: No.

4 THE COURT: And that's the answer.

5 MR. MARTIN: To save time, because I'm very
6 dubious whether that is all that is going to be asked
7 and answered, so to save time, the question that Ms.
8 Livesay just asked -- and, frankly, the one or two
9 before that -- I would object to that, because there
10 is a couple of problems. One, she's asking this
11 witness a question in which she has no basis and fact
12 to testify to. Number two, she is saying if I had the
13 knife like this and I touched here, there's nothing in
14 the record about how she's holding the knife or what
15 she's touching. Thirdly, the question -- again, the
16 question obviously calls for speculation in order for
17 this witness to try to answer it. What she's doing is
18 jury argument, and she can argue that if it was held
19 like this or that all day long, but there is no need
20 to ask this witness over and over something she knows
21 nothing about.

22 MS. LIVESAY: She knows that there is no blood on
23 this side of the knife.

24 MR. MARTIN: She testified to --

25 THE COURT: That is the question you ask. But

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 all of the hypotheticals, I'm going to rule she can't
2 testify, because she can't. She knows -- that is why
3 she's smiling -- that anything you ask her -- if a
4 unicorn walked in here, we would all be stunned, but
5 that is the way it is.

6 Bring them back in, and just ask that question.

7 (The jury enters at 12:34 p.m., and the
8 following is heard in the presence of the jury.)

9 THE COURT: Thank you. Ask that question.

10 Q Is there any blood on this side of the handle of
11 the knife?

12 A On the non-label, no.

13 Q This is the side that we see up here; is that
14 correct?

15 A The non-label side is up right here, yes, ma'am.

16 Q No blood on that side of the knife?

17 A On the handle.

18 Q On the handle of the knife. No blood on that
19 side of the handle of the knife; is that correct?

20 A Right.

21 Q Now, the label side is the part laying in his
22 hand; would you agree?

23 A Yes, ma'am. The label side is turned down in
24 that picture.

25 Q Is there blood on that side?

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 A Okay. (Witness examines document.) The non-label
2 side of the blade....

3 Q So you are telling me --

4 THE COURT: Let her finish.

5 A So you asked me if there was blood on the
6 non-label side of the handle? No. And then swab from
7 black handle knife, non-label side of the blade? No.
8 And then Item 10, swab from handle of the knife, there
9 was blood and swabs from blade Cuisinart side of the
10 knife, there was blood.

11 Q So let me ask you this. On this side, which is
12 the Cuisinart side; would you agree?

13 A That's the Cuisinart side, yes, ma'am.

14 Q Tell me if there was any blood indicated on this
15 part of the handle.

16 MR. MARTIN: Wait a minute now. I object to
17 that, because the question says "this part of the
18 handle." This witness doesn't know what part of the
19 handle was swabbed. That was Ms. Domogauer that did
20 that, so she doesn't have a basis to answer that.

21 THE COURT: The question is does she know. If
22 she doesn't know, the answer is, no. If she knows,
23 I'll let her respond to the extent of her knowledge.
24 Go ahead.

25 A I don't know. This is how it came to us, so all

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 I got was Item 10 was swabbed from handle of the knife.
2 Item 11 was swabbed from blade, Cuisinart side, of the
3 knife. Whether the handle of the knife was the
4 Cuisinart side, she didn't say that. I don't know. So
5 there was blood indicated on the handle of the knife.
6 Now, whether that was Cuisinart side or not, I don't
7 know.

8 Q Was there another swab sent to you?

9 A It was four swabs total, I'm guessing from this
10 one knife, and Item 10 says, Swab from handle of knife
11 and there was blood indicated. Item 11 says swabs from
12 the blade Cuisinart side of the knife, so I'll assume
13 that is right here, there was blood indicated there.
14 We skip down to 14, swab from black handle knife,
15 non-label side handle, there was no blood, touch DNA.
16 And Item 15, swab from black handle knife, non-label
17 side of the blade, no blood. So she never labeled
18 whether the handle was the label side.

19 Q So one is labeled swab from black handled knife,
20 non-label side of handle?

21 A That's correct.

22 Q So would you agree that this was the non-label
23 side?

24 A Of the handle, yes, ma'am.

25 Q And is there any blood on this part of the

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 handle?

2 A No, ma'am. On the non-label side of handle, no,
3 ma'am.

4 Q Would you agree with me that that is the part of
5 the knife showed in this picture?

6 A That is correct.

7 Q So the part of the handle in this picture, there
8 is no blood indicated on that part of the handle?

9 A On the handle, no, ma'am.

10 Q Now, was there blood indicated on the other side
11 of the handle?

12 A If that is what she meant when she described it
13 that way. It just says, Swab from handle of knife Item
14 10. She didn't say whether it was labeled or not.

15 Q What does that tell you?

16 A That there was blood indicated, swabs from handle
17 of knife, blood indicated, and that is the DNA
18 analysis.

19 Q So we know there is only blood on one part of the
20 handle?

21 MR. MARTIN: Objection. Again, now --again, Jill
22 Domogauer testified. I object because she's asking
23 this witness a question she can't answer, because she
24 doesn't know how the knife was swabbed.

25 THE COURT: You asked her --

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 MS. LIVESAY: Your Honor, in her testimony -- if
2 I can -- she got up and Mr. Martin questioned her, and
3 she said, yes, on this side of the handle there was
4 blood, on the other side there was no blood. On the
5 Cuisinart side, there was blood; on the other side,
6 there was no blood.

7 THE COURT: I'm overruling, but ask her first,
8 does she know. Her answer has been, no; and if it is
9 no, it ends. Ask the question.

10 Q So the only thing that you know is that the swab
11 from black handle knife non-label side did not have
12 blood on it?

13 A Black handle knife, non-label side of handle did
14 not have blood.

15 Q So all we know is that --

16 A There was a second swab from the handle, there
17 was blood, but she didn't say whether it was labeled or
18 not.

19 Q So all we know is that this portion of the knife
20 exposed in this picture has no blood on it?

21 A That's correct, because that is non-label side.

22 Q So we know the knife sitting in his hand, which
23 has blood all over it, doesn't each have blood on one
24 side of the handle?

25 A That's correct.

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 MR. MARTIN: Objection. I object, and here is
2 the difference -- and she can call her other
3 witness -- the portion that was swabbed apparently had
4 no blood. We don't know what was swabbed or what
5 wasn't.

6 THE COURT: I'll let him redirect now that it is
7 opened up.

8 MR. MARTIN: Redirect.

9 MS. LIVESAY: Like I said, Your Honor, I don't
10 want to squabble, but we have already entered
11 something into evidence, Mr. Martin did, and it is
12 labeled, "Knife handle, labeled side, blood; knife
13 handle, non-label side, touch. So is that now we are
14 saying that is no good?

15 THE COURT: I'm saying he gets on redirect, he
16 can ask her questions about what you are asking her
17 now, but you have to ask if she knows this stuff.

18 MS. LIVESAY: We can get it straight now.

19 Q Did Mr. Martin show you this?

20 A Yes. Knife handle, label side, blood. If you
21 are assuming that this is the label side, then, yes. I
22 was going by Item 10. Our Item 10, and that is correct
23 for our Item 10. Whether he said label side, I said
24 Item 10. There was blood on Item 10.

25 Q Are you now saying that the knife handle, label

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 side, had blood on it?

2 A On that side of 10, if she swabbed it, it would
3 have been easier if she had swabbed the Cuisinart side
4 of the handle, but she didn't say. But blood indicated
5 on that side.

6 Q This has to be clear. DNA results -- I know you
7 know how important it is --

8 A I do. And, unfortunately, I wasn't there taking
9 the swabs. I mean, SLED doesn't take them. They were
10 sent to us. This is how we received it, as far as
11 description.

12 Q What you are saying is you cannot testify that
13 the knife handle, label side, had blood?

14 A One would assume it did since the other side --
15 I'm assuming she flipped the knife and took blood, but
16 that is an assumption. All I can go by is Item 10,
17 swab handle of the knife had blood.

18 Q Let me ask you this.

19 A And Item 14, swab from the non-label side of the
20 handle did not have blood.

21 Q Would you say -- are you saying that this is
22 accurate?

23 A Item 10, knife handle, blood, yes.

24 Q So now you are willing to say that the knife
25 handle, label side, did have blood?

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 A Well, that is what they want to call it, yes. If
2 that is what you want to say label and non-label side,
3 that is not how it is described.

4 Q I know. I know. We have to figure out what you
5 can testify to. Can you say that the knife handle,
6 label side, had blood on it? Can you say that?

7 A I can say Item 10.

8 MR. MARTIN: Again, just to clear it up --

9 THE COURT: Wait a minute.

10 MR. MARTIN: To clarify the question, the swab
11 that she tested, that is what she can testify to, and
12 that is the point I'm trying to make. This is
13 misleading -- or confusing, let me say that. The swab
14 is what she tested, not the knife handle. Maybe they
15 swabbed the whole thing, maybe they didn't. Maybe
16 they rubbed something off, maybe they didn't. But it
17 is confusing, and I object under 403, if that is the
18 confusion with the rule. They keep talking about the
19 handle.

20 MS. LIVESAY: Here is the problem, real quick.
21 Mr. Martin has put this into evidence, and now this
22 lady is saying I cannot say. That is the issue, she's
23 now saying I can't say knife handle, label side, had
24 blood. She's saying -- is that what you are saying?

25 MR. MARTIN: No. I'm --

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 WITNESS: I'm going by the item number.

2 THE COURT: Wait. Here is the deal. Obviously,
3 I don't want to confuse them, but, Mr. Martin, you get
4 the right to redirect and you can ask these questions.
5 I understand what you are saying. You can ask her if
6 she knows the answer to these things. I haven't made
7 any ruling -- that is in evidence.

8 A I'm going to assume, for just clarity's sake,
9 that Item 10, knife handle, label side, is what it was.
10 Item 10, I don't know -- it doesn't say on my report if
11 it was label or non-label. I said Item 10 did have
12 blood; that was the swab I received. How it is
13 described in my report versus here, that is slightly
14 different, because on my report it doesn't have label
15 side, but it does have Item 10 having blood, and that
16 blood did match David Sims.

17 Q (MS. LIVESAY) So you are now saying that the
18 knife handle, label side, which is this side, which is
19 the side laying in his hand, had blood on it?

20 A Okay.

21 Q Yes, ma'am?

22 A Item 10 had blood, yes, ma'am.

23 Q So this is accurate?

24 A If Item 10 is from the label side, yes, ma'am.

25 Q So, basically, you don't know?

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 A That is what I know. If Item 10 is on the label
2 side, that is accurate.

3 Q That's fair enough. Let me ask you this. Talk
4 about the blade a little bit. Whose blood is on the
5 Cuisinart side of the blade?

6 A That is Item 11, blade of knife, positive for
7 blood, it was a mixture. Major contributor to that
8 mixture was Heather Sims; minor contributor, David Sims
9 couldn't be excluded.

10 Q So for some reason, on this side of the blade it
11 is a mixture both of David and Heather?

12 A Uh-huh. Heather was the major, and David was
13 minor, or he cannot be excluded.

14 Q Okay. And when you look at this picture, this is
15 the side down on the ground?

16 A I don't see Cuisinart on that picture.

17 Q Okay. So the part that is lying down has DNA
18 from major contributor, Heather Sims, and minor
19 contributor, possibly David Sims?

20 A That's right.

21 Q So it's not just Heather on this blade, not just
22 the defendant's DNA on this blade; is that correct?

23 A Correct, it is a mixture.

24 Q Now, the non-label side, what did you get there?

25 A So non-label side of the blade, that is Item 15.

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 I didn't get any blood. It was insufficient amount of
2 DNA.

3 Q Now, let me ask you about the pliers. Hold on,
4 I'll grab those real quick. These are in evidence,
5 State's 70. I'm showing you the pliers. Whose DNA is
6 on the handle of these pliers?

7 A The handle of the pliers is Item 9, no visible
8 blood, so I looked for any DNA. It was a mixture,
9 pretty much equal of Heather Sims and David Sims on the
10 handle.

11 Q So both of these people had -- both defendant and
12 victim has DNA on the handle of the pliers?

13 A Yes.

14 Q Earlier you were talking about touch DNA, so that
15 indicates that both of these people have touched the
16 handle of these pliers?

17 A At some point, yes, ma'am. I mean, it is
18 household pliers?

19 Q Yes.

20 A Right, that makes sense.

21 Q And the needle nose part?

22 A That would be what is described as the tip of the
23 pliers, that is SLED Item No. 8, and there was no
24 visible blood stains, so I tested for any DNA, which
25 would be touch DNA. There was a mixture on there. The

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 major was Heather Sims, and the minor was David Sims.

2 Q So that means that there is more touch DNA on
3 these needles from Heather Sims, not David?

4 A Yeah, higher concentration on Heather's DNA
5 versus David.

6 Q And it was not blood DNA, it was touch DNA?

7 A It was touch.

8 Q Which shows that she had her hand on both parts
9 of these pliers?

10 MR. MARTIN: Objection.

11 THE COURT: If she shows. Ask first if she
12 knows.

13 A Her touch DNA was -- or her DNA was on the tip
14 and the handle, as well as David's DNA was on the tip
15 and handle.

16 Q And only touch DNA, not blood?

17 A Right.

18 Q Now, let me show you something else that was
19 tested. I'm showing you a picture of the gun, which is
20 already in evidence for defense, it is No. 54. Is that
21 blood there circled?

22 A That is Item 17. I have a swab from the grip of
23 a 9-millimeter Ruger, so it looks like that is the grip
24 portion, and looks like what is circled could be blood.
25 So it was positive for blood on the grip, which is SLED

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 Item No. 17.

2 Q Just so this jury can see, this blood is close up
3 near to the slide of the gun and the hammer; is that
4 correct?

5 A It is right there at the curve of the grip.

6 Q Now, tell this jury whose DNA was on the trigger
7 of the gun?

8 A Trigger, or the grip? Trigger now?

9 Q Yes, ma'am, the trigger of the gun.

10 A That is Item 12. There was no visible blood seen
11 and an insufficient amount of DNA.

12 Q So there was so little on the trigger you could
13 not get any sort of match if it was Heather, David or
14 anybody else in the household?

15 A That's correct.

16 Q Okay. Just so we're clear on the knife, because
17 this is pretty important. The blood that was indicated
18 on the knife -- I'll show you this picture -- was the
19 part of the handle --

20 MR. MARTIN: Objection again.

21 THE COURT: What is your objection?

22 MR. MARTIN: She's talking about the part of the
23 handle. First of all, I object --

24 THE COURT: Wait a minute, I'm going to take care
25 of this. I'll send you out. Don't talk about the

ADRIENNE HEFNEY - CROSS-EXAMINATION

1 case. I'll bring you back in five minutes. You all
2 come over here.

3 (Whereupon, a bench conference was had.)

4 THE COURT: Bring them back in.

5 (The jury enters at 12:58 p.m., and the
6 following is heard in the presence of the jury.)

7 THE COURT: You can ask your question.

8 Q Ms. Hefney, you commented -- and I only have a
9 couple more questions. When we were up there talking
10 about the pliers, you were talking about how the DNA
11 was both on the needle nose part and the handle; do you
12 remember that?

13 A Yes, ma'am.

14 Q And you commented on the -- that that was a
15 household item?

16 A Uh-huh.

17 Q So you would expect DNA from both people?

18 A If they both handled it, yes, at some point.

19 Q Would you agree this knife looks like a household
20 knife you would use in your kitchen?

21 A Yes, ma'am.

22 Q Wouldn't you expect the DNA from both parties on
23 the handle of that knife?

24 A Yes, ma'am, they both handled it at some point.

25 MS. LIVESAY: Nothing further.

ADRIENNE HEFNEY - REDIRECT EXAMINATION
REDIRECT-EXAMINATION

1
2 BY MR. MARTIN:

3 Q Ms. Hefney, the initial line of questions was
4 contamination. Let me back up. In this instance, it
5 was the Horry County Police Department who did the
6 crime scene investigation; they did not call SLED in,
7 did they?

8 A Not to my knowledge.

9 Q And SLED will do that if they are asked to come
10 in?

11 A Absolutely.

12 Q And what you tested is what you got, didn't you?

13 A That's correct.

14 Q Did you see any evidence of there being any
15 problem with what you tested that was sent with you, as
16 far as contamination, or not?

17 A No, sir.

18 Q Did at any point in time anyone from Horry County
19 Police Department call you and say don't test that
20 evidence, the scene was contaminated or manipulated?

21 A No, sir.

22 Q Did anyone from Horry County Solicitor's Office
23 call you at any time and say don't test any of those
24 items we sent you because there is evidence that the
25 crime scene was contaminated or manipulated?

ADRIENNE HEFNEY - REDIRECT EXAMINATION

1 A No, sir.

2 Q You haven't heard a word until you got to court
3 here today, right?

4 A That's correct.

5 Q And, obviously, you are an employee of the state,
6 and had the Solicitor's Office wanted to call you to
7 give the DNA office, you would have been happy to come
8 for them, wouldn't you?

9 A Oh, absolutely.

10 Q Obviously -- let me say this. You don't know how
11 Mr. Sims, if he was the one holding the knife, was
12 holding the knife, do you?

13 A No, I don't.

14 Q You don't have any idea where the blood on the
15 knife or his hand in the picture she showed you came
16 from, do you?

17 A That's correct.

18 Q So if she's got something here that is like this,
19 and is like this, and all of that, you don't have a
20 clue whether that is what happened or not, do you?

21 A I don't.

22 Q So at the end of the day, that really isn't
23 relevant to anything, is it?

24 A No, sir.

25 Q Now, the other thing is what you have done --

ADRIENNE HEFNEY - REDIRECT EXAMINATION

1 since they didn't call you in -- you're testing the
2 swab they sent you?

3 A That is correct.

4 Q And it does have some description as to where it
5 came from?

6 A That's correct.

7 Q Now, when it says from the non-label -- let's say
8 from the Cuisinart side of the knife handle, you,
9 yourself, don't know what part of the handle that swab
10 came from, whether it came from the length of the
11 handle, one end of the handle, from the other end of
12 the handle or where, do you?

13 A I do not.

14 Q I think you got asked a ton of questions, and I
15 hate to start with you, but I do want to leave the
16 right impression, you know what you are talking about.
17 You do know what you are talking about, don't you?

18 A Yes, sir.

19 Q I mean, you generally testify for the State in
20 these cases, don't you?

21 A I do, yes, sir.

22 Q They don't have any problem with your knowledge
23 in doing what you do --

24 A That's correct.

25 Q -- generally. Now, I think what we're doing

ADRIENNE HEFNEY - REDIRECT EXAMINATION

1 here -- I'm looking at Exhibit 53, and the inscription
2 that I put on there says, 10, knife handle, label side,
3 blood; 14, knife handle, non-label side, touch?

4 A That's correct.

5 Q The SLED report that you got, what you had to put
6 in it was the label side, or the Cuisinart side, which
7 would be the -- if that is what we're talking about, if
8 you say -- you would assume that is what she's talking
9 about?

10 A That is what I would assume. I'm sorry, I didn't
11 pay attention to your description of label side. I was
12 going by your Item 10, knife handle, had blood on it
13 and it matched David Sims. The label side, non-label
14 side, I just -- I didn't go by that part, I just went
15 by our item number.

16 Q Item number. And what you have actually is you
17 have two swabs that were purported to be from the knife
18 handle?

19 A That's correct.

20 Q And one was designated from the Cuisinart side?

21 A One was designated from the non-label side, and
22 the other one was not designated, just says, "Swab from
23 handle."

24 Q Non-label side, and swab from handle. As an
25 expert in this area, you would assume that if they are

ADRIENNE HEFNEY - REDIRECT EXAMINATION

1 sending you two to test from a knife handle, and one of
2 them is designated "non-label side," than the other one
3 is likely to be label side?

4 A That is what it should be, yes, sir.

5 Q And if that is wrong, Ms. Jill Domogauer, who
6 works with Horry County Police Department, can come up
7 here and explain to the jury that that is not right,
8 can't she?

9 A Yes, because she collected it.

10 Q If that needs to be straightened out, Horry
11 County Police Department can straighten it out, can't
12 they?

13 A That's correct.

14 Q But at the end of the day, when all of these
15 questions are asked, the bottom line is that there was
16 David Sims' touch DNA on that knife handle, wasn't
17 there?

18 A Are we talking about Item 14?

19 Q It's a rhetorical question. I'll tell you what,
20 I won't do that to you.

21 MR. MARTIN: That is all I have.

22 THE COURT: You can step down. Can she be
23 released.

24 MR. MARTIN: Yes.

25 MS. LIVESAY: She can be excused, Your Honor.

ADRIENNE HEFNEY - REDIRECT EXAMINATION

1 THE COURT: You can go back. You all come over
2 here for a second, please.

3 (Whereupon, a bench conference was had.)

4 THE COURT: I'm going to let you go for lunch.
5 We have witnesses all afternoon, so be back in about
6 2:00 so we can get started at 2:30, that is an hour
7 and 10. Don't discuss the case. If anyone
8 approaches -- they shouldn't -- let me know. See you
9 in an hour and ten minutes.

10 (The jury exits at 1:06 p.m., and the
11 following is heard out of the presence of the jury.)

12 THE COURT: Before we go. You have witnesses
13 that will take us all afternoon?

14 MR. MARTIN: Yes.

15 THE COURT: And then --

16 MR. MARTIN: I don't think I'll finish today the
17 way it is proceeding, but I think I would finish in
18 the morning.

19 THE COURT: Okay. My intention is to get this to
20 them tomorrow afternoon, so be ready for closing
21 tomorrow. I'll see you in an hour.

22 MS. LIVESAY: And, Your Honor, can I get the date
23 of birth of any witnesses he will call so we can run a
24 criminal record?

25 THE COURT: Sure, if he knows it.

ADRIENNE HEFNEY - REDIRECT EXAMINATION

1 MR. MARTIN: I don't know the date of birth. I
2 didn't get that. There is some of them here if they
3 want to give it to them. I don't have any problem.
4 All of them aren't here, but, anyway.

5 THE COURT: See you in an hour.

6 (A lunch recess was taken.)

7 THE COURT: Based on what we talked about back
8 there, we'll do whatever witnesses we can do, up to
9 and including anybody that is going to be very
10 controversial. And, of course, I have questions, if
11 that happens, and we'll deal with that later, but I'm
12 intending to keep going. I think I'm doing you a
13 favor that you don't realize, but that is okay.

14 (Defendant's Exhibit 57 marked.)

15 (The jury enters at 2:59 p.m., the following
16 is heard in the presence of the jury.)

17 THE COURT: All right, ladies and gentlemen,
18 we're going to continue on. I'm going to give you an
19 idea -- we may blow through supper, and I understand
20 that is probably okay with you. Mr. Foreman, our next
21 break there is going to be a point this afternoon
22 where we have to take a break that may seem odd,
23 there's a reason for it. If there is a problem,
24 Mr. Foreman, with doing that tonight, let me know.

25 FOREPERSON: Yes, sir.

STARLETT GODWIN - DIRECT EXAMINATION

1 WITNESS: Starlett Godwin, G-O-D-W-I-N.

2 DIRECT-EXAMINATION

3 BY MR. MARTIN:

4 Q Where do you live?

5 A Clarendon is my address; we call the community
6 Beaver Dam.

7 Q Is that South or North Carolina?

8 A North Carolina.

9 Q And do you know Heather Sims?

10 A Yes, sir.

11 Q How do you know Heather?

12 A She worked at the hospital with me.

13 Q And where are you employed?

14 A It is now McCleod Sea Coast. It used to be Loris
15 Healthcare System.

16 Q Loris Healthcare System?

17 A Yes, sir.

18 Q How long have you worked there?

19 A 2006.

20 Q What is your occupation?

21 A I'm a CRNA.

22 Q Nurse anesthetist?

23 A Yes.

24 Q Same thing that Heather is?

25 A Yes, sir.

STARLETT GODWIN - DIRECT EXAMINATION

1 Q But you are her supervisor?

2 A Yes, sir.

3 Q How long has she worked with you -- let's go back
4 to August 11th of 2013, how long had you and Heather
5 worked together?

6 A I can't recall exactly when she graduated, so I'm
7 not exactly sure her date of hire, but whenever she
8 graduated from school, she came to work with us.

9 Q So that was 2009, it would have been roughly four
10 years, or something like that?

11 A Yes, sir.

12 Q And you are her direct supervisor?

13 A Yes, sir, I was.

14 Q What kind of employee is she?

15 A She was a good employee. She had good technical
16 skills, patients loved her. If patients came back or
17 we had employees that would come, sometimes they would
18 request her to do their anesthesia when they returned.

19 Q Do you know Heather's reputation in the community
20 and in the hospital community for truthfulness and
21 honesty?

22 A I can't really speak about the community because
23 I'm not from this area, but in the hospital, she was
24 well liked, yes, sir.

25 Q Did you know her reputation in the hospital

STARLETT GODWIN - DIRECT EXAMINATION

1 community for being hard working, as opposed to a lazy
2 person?

3 A Yes, sir.

4 Q What was it?

5 A Hard working.

6 Q Any question about that?

7 A No, sir. She was very self-confident in her job
8 and her skills.

9 Q What does a nurse anesthetist do on a day-to-day
10 basis?

11 A Well, we have many duties. When you come in for
12 surgery, you go through pre-admission testing process,
13 and we have to go in and assess you to make sure -- to
14 see if you have any past medical problems or past
15 surgical problem that we need to be aware of that would
16 compromise something we might be doing, so we might
17 have to alter medications or something to do anesthesia
18 to put you to sleep. We then go in the rooms and we
19 are the ones who stay with the patients and provide the
20 medications that keep them asleep during their surgical
21 procedure. We wake them up at the end of the
22 procedure, take them to recovery. Sometimes we do
23 post-op rounds on the patients after surgery to make
24 sure everything is okay and they didn't have any
25 complications or anything like that. We do labor

STARLETT GODWIN - DIRECT EXAMINATION

1 epidurals for patients who are in labor. We do
2 anesthesia for C-sections, so we do spinals for those
3 kinds of procedures.

4 Q In the position that Heather had, was she
5 on-call?

6 A Yes, sir.

7 Q And how does that work?

8 A There is a schedule that goes out every month and
9 we are assigned to certain days to take calls, and so
10 when the schedule is finished, at the end of the day,
11 then that person -- at that time we toted a beeper.
12 They don't do beepers anymore, we have our cell phones.
13 But if an emergency case comes in, then the person who
14 is on-call is notified, and that person has to respond
15 and come in to do the anesthesia for the case.

16 Q And like in Heather's case, or any case, is there
17 any particular time you have with which to make a
18 response?

19 A Yes, sir. Whenever we're responding to a
20 C-section, we have to be within 20, 30 minutes of the
21 facility, because if it is stat, that means you have a
22 mama and baby in distress, so you have to get back real
23 quickly.

24 Q So you have to live to where you can be there
25 within 20, 30 minute?

STARLETT GODWIN - DIRECT EXAMINATION

1 A Yes, sir.

2 Q And in Heather's case, could you have asked for a
3 more efficient or cooperative CRNA?

4 A No, sir. She did her job very well.

5 Q And a person has to be in control of their mental
6 and physical faculties to handle a job of that nature,
7 I would think?

8 A Yes, sir.

9 Q Let me show you what is was marked for
10 identification as Defense Exhibit No. 58.

11 MS. LIVESAY: I have an objection to that
12 exhibit.

13 THE COURT: It is just an exhibit.

14 (A bench conference was had out of the
15 presence of the jury.)

16 THE COURT: We had an off-the-record discussion.
17 I'm going to allow it as an exhibit only.

18 Q (MR. MARTIN) Ms. Godwin, did you on the night of
19 August 11th, 2013 talk to Ronnie Causey?

20 A Was that the night of the accident?

21 Q Yeah.

22 A Yes, sir.

23 Q Do you remember where you were when you talked to
24 him?

25 A Yes, sir.

STARLETT GODWIN - DIRECT EXAMINATION

1 Q Where?

2 A My husband and I -- it was after church and we
3 were going to get some dinner. I was coming back into
4 Tabor City when I got the phone call. I'm not sure at
5 what point I was at in Tabor City.

6 Q Sunday night?

7 A Yes, sir.

8 Q What is your phone number?

9 A (910)840-2651.

10 Q Let me show you this exhibit and see if you see
11 your phone number on it?

12 A Yes, sir.

13 Q You see that?

14 A Yes, sir.

15 Q How many times does it appear?

16 A Two.

17 Q And at what time does it appear?

18 A I'm sorry, I don't have my glasses. 8:23 p.m.
19 and 8:24 p.m.

20 Q 8:23 and 8:24?

21 A Yes, sir.

22 Q Do you know why there is two calls?

23 A Yes, sir. I remember -- I have poor cell service
24 in that area, and I remember this number called and I
25 didn't recognize the number, because I didn't have it

STARLETT GODWIN - DIRECT EXAMINATION

1 in my phone. So I do the schedule, so I called it back
2 realizing it was an 843 number, and when I called it
3 back, it was Mr. Ronnie. He told me there had been an
4 accident and Heather would not be at work the next day.

5 Q So at 8:24 you called that -- a number back that
6 had called you, and Ronnie Causey answered the phone?

7 A Yes, sir.

8 Q Are you sure it weren't Heather that answered the
9 phone?

10 A To the best of my recollection, it was
11 Mr. Ronnie.

12 Q Ronnie?

13 A Yes, sir.

14 Q And Ronnie told you Heather wouldn't be in the
15 next day?

16 A Yes, sir, he did. Said there had been an
17 accident.

18 Q And she wouldn't be in the next day?

19 A Yes, sir.

20 MR. MARTIN: That is all the questions I have.

21 CROSS-EXAMINATION

22 BY MS. LIVESAY:

23 Q How long have you known this defendant, Heather
24 Sims?

25 A Just when she started at work.

STARLETT GODWIN - CROSS-EXAMINATION

1 Q Just through work?

2 A I mean, I didn't know her before she came to work
3 there.

4 Q Is she somebody that you hang around with
5 socially?

6 A I'm not sure what you describe as "socially."

7 Q Going out to eat, going to the mall.

8 A No. We went to a conference together and we
9 worked together, and like, you know, most people at
10 work. There is a small number of us, if we have a
11 baby, we give them all baby showers. When they get
12 married, we give them wedding showers and stuff, but
13 hang out in the mall and stuff like that, no.

14 Q Had you ever met David Sims?

15 A I saw him at the wedding momentarily just to walk
16 up and speak to them and say congratulations, and then
17 I met him one time before when he came by work to see
18 Heather, but to recall a conversation, no, ma'am.

19 Q Had you ever been to their house on Old Reaves
20 Ferry Road?

21 A Yes, ma'am.

22 Q How many times?

23 A Probably -- maybe twice. I can remember when
24 they built the new home, and I can remember when the
25 baby was born, and then several of us went to the

STARLETT GODWIN - CROSS-EXAMINATION

1 wedding at her mom and dad's home. After the accident,
2 I went because I had to have papers for work and stuff
3 signed.

4 Q How close is Heather's house to her parents'
5 house?

6 A Distance? I'm not good at distance.

7 Q Across the street or?

8 A Oh, no, you can just walk.

9 Q Just walk from Heather's house to her parents'
10 house?

11 A Yes, ma'am.

12 Q That close. Do you know where David was from?

13 A Just Heather told me he was from Florence.

14 Q So he was not from Conway?

15 A I just know what she told me, he was from
16 Florence..

17 Q Do you know what he did for a living?

18 A She told me landscaping.

19 Q So she is a nurse....

20 A Anesthetist.

21 Q Thank you?

22 A You're welcome. You can say CRNA.

23 Q And he is a landscaper?

24 A Yes, ma'am.

25 Q And they lived walking distance from her parents;

STARLETT GODWIN - CROSS-EXAMINATION

1 is that correct?

2 A Yes, ma'am. When they first got married, they
3 lived in Florence for awhile.

4 Q And these -- this exhibit that Mr. Martin showed
5 you, do you know what this is?

6 A I'm assuming it is a phone record.

7 Q Do you know whose phone record it is?

8 A No.

9 Q Okay. Okay. You answered earlier -- he asked
10 you did Ronnie Causey call you, and you said to the
11 best of my recollection?

12 A Yes, ma'am. Because I remember talking to
13 Heather the next day, but Mr. Ronnie told me she had
14 been in an accident that night, and she would not be at
15 work the next day.

16 Q Now, can you say for 100 -- if you can or can't,
17 that is fine -- are you one hundred percent sure you
18 talked to Ronnie, or could you have talked to Heather
19 that night?

20 A I do not think I talked to Heather that night. I
21 mean, it's been a long time ago, but to the best of my
22 recollection, it was Mr. Ronnie. I know he was the one
23 I spoke to first, because I didn't recognize the
24 number, and when I said hello -- I said this number
25 called me, and I remember him saying, Star, this is

STARLETT GODWIN - CROSS-EXAMINATION

1 Ronnie, Heather's dad.

2 Q And did you talk to her the next day?

3 A Yes, ma'am. Actually, I called Mr. Ronnie's
4 phone because I had -- I'm not sure if I text or tried
5 to call her phone, and I didn't get no answer, and that
6 was after we had heard what had happened, so I called
7 Mr. Ronnie's phone, because I knew he called me the
8 night before, so I called his phone and he let me speak
9 to her.

10 Q He had told you that she had been in an accident?

11 A Yes, ma'am.

12 Q Now, Mr. Martin asked you about her reputation in
13 the community; do you remember that?

14 A Yes, ma'am.

15 Q And you said you just know her reputation right
16 there in the hospital?

17 A Yes, ma'am.

18 Q So you don't live in Conway?

19 A No, ma'am.

20 Q And you -- you really don't have any idea what
21 goes on in Conway or what she does in Conway?

22 A No, ma'am.

23 Q You just know her reputation at the hospital?

24 A From work, yes, ma'am.

25 Q I saw some pictures one time of a bulletin board

STARLETT GODWIN - CROSS-EXAMINATION

1 with a schedule on it from the hospital, and I noticed
2 one name up there was "Princess." Was anyone -- any of
3 your crowd have that nickname or known as a princess?

4 A If they do -- they call several people like that.
5 This week at work somebody laughed and called somebody
6 that. But, you know, it is more like a joke when they
7 are calling them a princess or something like that. To
8 my knowledge, nobody had that, per se, nickname. If
9 they did, I didn't really hear it, because I'm in
10 rooms, and out. I'm in meetings and things like that.

11 Q So you are a supervisor, not really hanging out
12 with a lot of people under you?

13 A Correct. Correct.

14 Q And you were her supervisor?

15 A Correct.

16 Q So she wasn't even really somebody you socialized
17 with at work due to a supervisor's relationship?

18 A We are a small number. There is only 10 of us,
19 so they all come and talk to me. We have monthly
20 meetings, and so they all do come in my office and talk
21 with me from time to time.

22 Q From time to time?

23 A Uh-huh.

24 Q But you don't hang out with them at the hospital?
25 There's a difference between a supervisor and an

STARLETT GODWIN - CROSS-EXAMINATION

1 employee?

2 A Well, I'm not sure what the term "hang out"
3 means.

4 Q Do you spend a lot of time with her at the
5 hospital?

6 A Well, I'm right there with them. I mean, my
7 office is within the operating room, so, yes, ma'am,
8 I'm with them all the time, but I might not be
9 side-by-side with you. Does that make sense?

10 Q Right. So when you are around this defendant, it
11 is only when you all are working together in the
12 hospital?

13 A Or unless she comes into my office, she was
14 there. She would come into my office to ask how my day
15 was going or tell me something had gone or something
16 happened, yes, ma'am.

17 Q So only in a work capacity?

18 A No. She talked to me some about personal stuff,
19 too.

20 Q Did she ever talk to you outside of work?

21 A She would call me sometimes. Some of my CRNAs
22 call me or send me a text or something, yes, ma'am.

23 Q How often would you say you talked to her outside
24 of work?

25 A I don't really know. I can't really say, to be

STARLETT GODWIN - CROSS-EXAMINATION

1 honest. I don't know. I hate to say once a day, once
2 a week, because I really don't know.

3 Q Would you consider you and the defendant close
4 friends?

5 A I consider us friends, yes.

6 Q And you had been to her house twice, three times?

7 A Probably three times. That is all I can recall
8 right now. And then like I said, after the accident
9 happened, then I went two, three times after that.

10 Q How many times has she been to your house?

11 A Once for her bridal shower.

12 Q Just one time?

13 A To my knowledge, yes, ma'am. That is all I can
14 remember.

15 Q So a total, you've been to her house maybe a
16 handful of times, and she's been to your house once?

17 A Yes, ma'am, to my recollection.

18 Q And you don't live in Conway?

19 A No, ma'am.

20 Q Have you ever lived in Conway?

21 A No, ma'am.

22 Q So you can't say anything about her reputation
23 here in this community?

24 A No, ma'am.

25 Q You said earlier to Mr. Martin you had beepers?

STARLETT GODWIN - CROSS-EXAMINATION

1 A Yes, ma'am. We don't anymore, but we did.

2 Q So it beeped, and any phone available you could
3 use to call into the hospital?

4 A Yes, ma'am.

5 Q So nobody was making any direct calls to her cell
6 phone?

7 A They could have.

8 Q Ma'am?

9 A They could have.

10 Q What was the system?

11 A The system was -- you know the old pagers, the
12 number came across and told you what to call back, we
13 had those. We had special codes, so if it was a stat
14 C-section, we would know so they could get on the road
15 and get started, and then they would call in and say,
16 you know, I'm on my way. But they would call the
17 number on there, and nine times out of ten it was the
18 supervisor, and she would tell them what the case was
19 and when it would be there. But if the
20 anesthesiologist got a call, he could have picked up
21 his cell phone or the hospital landline and called her
22 cell phone and said I need you to come to the hospital,
23 I've been notified we have a such-and-such case.

24 Q So the system was they beep you, and then you
25 just get to the closest phone and call the number?

STARLETT GODWIN - REDIRECT EXAMINATION

1 A Yes, ma'am.

2 Q Did you see Heather the day after this happened?

3 A Not the day after, no, ma'am.

4 Q Some people already came in here and testified
5 about people bringing her food that Tuesday night, were
6 you one of the people that went to the house and
7 brought food?

8 A No, ma'am.

9 MS. LIVESAY: No further questions.

10 THE COURT: Redirect?

11 REDIRECT-EXAMINATION

12 BY MR. MARTIN:

13 Q You keep your cell phone with you on-call?

14 A Yes, sir.

15 Q Would you want your cell phone with you if you
16 were on-call?

17 A Yes, sir.

18 MR. MARTIN: That's all I have.

19 THE COURT: You can step down. Can she be
20 released from any holds she has?

21 MR. MARTIN: Yes.

22 MS. LIVESAY: Yes, sir.

23 THE COURT: You are released. Thank you.

24 (Defendant's Exhibits 59 and 60 marked.)

25 (CHRISTINA WALLACE, having been duly sworn,

CHRISTINA WALLACE - DIRECT EXAMINATION

1 testified as follows:)

2 WITNESS: Christina Wallace, W-A-L-L-A-C-E.

3 DIRECT-EXAMINATION

4 BY MR. MARTIN:

5 Q Chrissy Wallace?

6 A Chrissy, Christina.

7 Q Ma'am?

8 A Chrissy, Christina.

9 Q How about if I call you Ms. Wallace?

10 A That's fine.

11 Q Ever been in court before?

12 A No.

13 Q Are you nervous?

14 A Yes.

15 Q Let me ask you, Ms. Wallace, were you working at
16 Grand Strand Hospital on the night of August 11th?

17 A Yes.

18 Q And did you have an opportunity to be a nurse for
19 Heather Sims?

20 A Yes.

21 MS. LIVESAY: Your Honor, my only objection is
22 this is Page 4 of 6 of nursing notes. If we're going
23 to introduce -- I ask that we introduce all of them
24 and not just one page.

25 MR. MARTIN: I have no objection if she wants to

CHRISTINA WALLACE - DIRECT EXAMINATION

1 introduce all of them. For simplicity's sake, I
2 wanted to pull out the relevant page for this
3 testimony so I wouldn't be flipping through it.

4 THE COURT: Lay foundation for why you want that
5 page, and then we'll go from there.

6 Q (MR. MARTIN) Ms. Wallace, go back. You were
7 working that night when Heather Sims was at the
8 hospital, brought in, questioned by the police and
9 that sort of thing?

10 A I was not there when she was brought in, but I
11 came in at 7 o'clock.

12 Q At 7 o'clock?

13 A Uh-huh.

14 Q And you were there until when?

15 A 7 o'clock the next morning.

16 Q 7 o'clock the next morning. Let me show you what
17 was marked for identification as Defendant's 59 and ask
18 if you can identify that?

19 A Yes.

20 Q What is it?

21 A A picture of Heather on the stretcher.

22 Q At the hospital?

23 A Yes, in a room at the hospital.

24 Q And does that accurately reflect her as you saw
25 her at the hospital that night?

CHRISTINA WALLACE - DIRECT EXAMINATION

1 A Yes.

2 MR. MARTIN: I'll enter that into evidence,
3 Exhibit 59.

4 THE COURT: Ask her if she's reviewed the other
5 four pages.

6 MR. MARTIN: Well, this is not part of the
7 medical records, first of all. This is something
8 different.

9 THE COURT: Okay.

10 MS. LIVESAY: She said that is the way she saw
11 the defendant that night?

12 THE COURT: Is that what you said?

13 WITNESS: Yes.

14 THE COURT: Yeah.

15 MS. LIVESAY: No objection.

16 (Defendant's Exhibit 59 admitted.)

17 Q (MR. MARTIN) Let me show you what is marked as
18 Defendant's Exhibit 60, Page 4 of 6 of the nursing
19 notes, and ask if you can -- are you familiar with
20 that?

21 A Yes.

22 Q And tell the Court and jury what it is?

23 A It is a page from the trauma documentation we
24 have to chart -- we do paper charting in traumas, and
25 it is a page out of the paper chart.

CHRISTINA WALLACE - DIRECT EXAMINATION

1 Q Okay. And does it have certain entries on it
2 that you placed there?

3 A Yes, sir.

4 Q Are those notes, do you think -- or do they
5 accurately reflect the records as you know them to be?

6 A Yes, sir.

7 MR. MARTIN: I move to enter into evidence
8 Exhibit 60 then.

9 THE COURT: No objection you said?

10 MS. LIVESAY: So these are her notes that she put
11 up there?

12 MR. MARTIN: It is, as I understand it, yeah.

13 WITNESS: It's not just mine.

14 THE COURT: Talk to yourselves, but a little
15 quieter.

16 (Mr. Martin and Ms. Livesay confer.)

17 MS. LIVESAY: I have no objection if these are
18 her notes and she wrote these notes and that is her
19 signature. I have no objection, but I think we
20 probably need to lay the foundation first.

21 Q (MR. MARTIN) Is that what this is, Chrissy? Are
22 these the nursing notes --

23 MR. MARTIN: I can put all of it in if it makes
24 it easier. You want them all in?

25 MS. LIVESAY: Not yet. I am waiting for a copy

CHRISTINA WALLACE - DIRECT EXAMINATION

1 of all of them.

2 THE COURT: Lay a foundation for that page. What
3 is that, ma'am?

4 Q (MR. MARTIN) You are a nurse at Grand Strand
5 Hospital, right?

6 A I was.

7 Q You are not now?

8 A Yes.

9 Q On August 11th, you were?

10 A Yes.

11 Q You were there the night Heather Causey was
12 there?

13 A Yes, sir.

14 Q And there were medical records and nursing notes
15 filled out on Heather Causey and what happened with her
16 while she was there?

17 A Yes, sir.

18 Q Is this page that I'm handing you, 4 of 6, is
19 that one of the pages -- there is obviously other pages
20 there. I've handed you one because it has the
21 information that I'm most interested in, but is that
22 the medical records of Heather Causey?

23 A Yes.

24 Q Are you familiar with it?

25 A Yes.

CHRISTINA WALLACE - DIRECT EXAMINATION

1 MR. MARTIN: I move to enter into evidence.

2 THE COURT: Any objection?

3 MS. LIVESAY: All my question is -- I understand
4 these are the records. Are these -- this page this
5 lady's notes, and is that her signature at the bottom?

6 THE COURT: Ask her that.

7 Q (MR. MARTIN) Are these your notes that are
8 entered on the page?

9 A They are my notes on the page. My signature is
10 on the next page.

11 Q It is on the next page.

12 MR. MARTIN: You want the next page?

13 THE COURT: You know, overruled. Go ahead.

14 (Defendant's Exhibit 60 admitted.)

15 Q (MR. MARTIN) So here's what I want to ask you.
16 Couple of questions. You were there a long time ago,
17 I know, but the one thing is -- did you have
18 instructions from the doctor, as the nurse, as to what
19 had to occur before Heather could be discharged to go
20 home that night if she wanted to go home?

21 A Yes, according to my notes.

22 Q According to your notes, what was Heather
23 required to do before she could be discharged?

24 A Doctor Sciarretta (phonetic) reports that patient
25 will be observed for six hours, and if patient can

CHRISTINA WALLACE - DIRECT EXAMINATION

1 ambulate, eat, drink, urinate and her pulse is normal,
2 patient may be discharged.

3 Q So she was required to eat and drink and ambulate
4 and urinate before she was allowed to go home?

5 A Yes, sir.

6 Q Is that pretty standard in a case like hers?

7 A Yes, sir.

8 Q Nothing out of the ordinary?

9 A No, sir.

10 Q Now, she was brought a meal tray at some point in
11 time that night; was she not?

12 A She was required to eat, so, yes, according to my
13 notes.

14 Q She wasn't there begging you for food, was she?

15 A I don't recall, but I don't think so.

16 Q Now, she was brought a meal tray, and there is an
17 entry on there that says 11 o'clock; is that correct?

18 A Yes, sir.

19 Q All right. And that -- tell the jury what that
20 means. You made that entry at 11 o'clock, what does it
21 say?

22 A Patient got a meal tray and ambulated to
23 bathroom.

24 Q Does that mean that you brought it specifically
25 at 11 o'clock?

CHRISTINA WALLACE - DIRECT EXAMINATION

1 A No. That is just when I documented it, but I
2 would assume it would be around that time.

3 Q So your thought is that that is when you
4 documented it, but you would assume that you entered it
5 shortly after the meal tray was brought to her?

6 A Yes.

7 Q Is that fair?

8 A Yes.

9 Q And that is at 11 o'clock p.m., right?

10 A Yes.

11 Q The meal box is a snack box, and it has a
12 sandwich in it?

13 A Turkey sandwich usually and carrots, and maybe a
14 pudding.

15 Q We have a picture, and I don't know if I can find
16 it. I don't want to take a lot of time looking for it,
17 but there is -- but there is a sandwich included? Was
18 she brought any other food that night other than that
19 one box with a sandwich and carrots in it?

20 A I don't recall.

21 Q It is not indicated on the records, is it?

22 A No.

23 Q All right. Now, when Heather was there at the
24 hospital and the police were questioning her, you were
25 aware that the police questioned her?

CHRISTINA WALLACE - DIRECT EXAMINATION

1 A Yes.

2 Q And she was questioned in a room there in the
3 emergency room, or where?

4 A Yes, a room in the ER.

5 Q And she was hooked up on some monitors with IVs,
6 right?

7 A Yes.

8 Q And the police were questioning her, turned the
9 tape recorder at 8:06 and cut it off at 9:41, and you
10 were not allowed in the room while that was going on,
11 were you?

12 A I don't know. I didn't want to go in there.

13 Q You didn't want to go?

14 A Huh-huh.

15 Q And to your recollection, you didn't go?

16 A Huh-huh.

17 Q And nobody else went in but the police, to your
18 recollection?

19 A To my knowledge. I wasn't standing there the
20 whole time.

21 Q But you weren't in and out or standing by there
22 when they were questioning her, were you?

23 A No.

24 Q And you remembered at some point in time the
25 police telling the father he couldn't go in, he had to

THE COURT AND ATTORNEYS

1 stay out?

2 A I don't remember exactly. I remember there being
3 some going back and forth whether or not he was going
4 to stay in there, but I can't say for certain that they
5 said he couldn't be in there.

6 MR. MARTIN: That is all the questions I have.

7 MS. LIVESAY: Can we approach real quick?

8 THE COURT: Yes.

9 (Whereupon, a bench conference was had.)

10 THE COURT: Ladies and gentlemen, I'll send you
11 back take 10, 15 minutes so we can clean this up.
12 Don't discuss the case.

13 (The jury exits at 3:50 p.m., and the
14 following is heard out of the presence of the jury.)

15 THE COURT: For the record, state your objection.

16 MS. LIVESAY: Your Honor, on the Page 4 of 6 that
17 Mr. Martin is trying to put in, there are some items
18 checked on the abuse screening tool. These are not
19 for any sort of medical purposes. We don't know if
20 this young lady checked these boxes or not, so I think
21 it is objectionable. All this is is something that
22 this defendant told somebody at the doctor -- doctor's
23 office. It isn't for medical purposes. This isn't
24 anything the doctor uses to treat this defendant.

25 THE COURT: Why don't you ask her, proffer the

CHRISTINA WALLACE - PROFFER TESTIMONY

1 testimony, because I'm confused.

2 PROFFER EXAMINATION

3 BY MS. LIVESAY:

4 Q Did you fill out everything on this sheet?

5 A No.

6 Q You did not?

7 A No.

8 Q So we're clear for the Court, tell this Court
9 exactly what you did fill out, what you wrote or filled
10 out?

11 A My notes up here that have my initials beside
12 them.

13 Q Just the ones that say CAW?

14 A CCW, those are mine. These are mine (indicates).
15 I would assume these are mine, but I'm not positive.

16 Q You are not positive you filled that out?

17 A They look like mine, but I can't be certain; it
18 is just a checkmark.

19 MS. LIVESAY: She's saying she's not positive
20 this is what she filled out.

21 THE COURT: Let me ask you something. When
22 someone comes in, would it be your normal procedure to
23 ask those questions, or would you hand them the paper
24 to fill it out?

25 THE WITNESS: We fill it out; we ask them.

CHRISTINA WALLACE - PROFFER TESTIMONY

1 THE COURT: You ask them, and then based upon
2 their answer, you check or don't check a box?

3 THE WITNESS: Yes.

4 MS. LIVESAY: What she's saying she -- doesn't
5 even know that she filled this out, and it is not for
6 medical purposes. The only thing that gets this in is
7 that it is for medical purposes.

8 THE COURT: Look, you know, it is one of those
9 things.

10 MR. MARTIN: I'm not going to agree to have it
11 redacted because --

12 THE COURT: I'm shocked beyond belief that you
13 don't agree on something.

14 MR. MARTIN: These are medical records, nursing
15 notes. She introduced through Werner Spitz, who
16 didn't fill out a darn thing, the whole emergency
17 report and all of that over my objection. This young
18 lady came in and said she was the nurse on-call, these
19 are the records, I think I filled them out, it's been
20 two-and-a-half years ago, can I say specifically that
21 that's my checkmark, but I think ultimately her answer
22 is -- if she wasn't such a cautious young lady -- yes,
23 that is my nursing notes, I filled them out. They are
24 part of the medical records. If they weren't, they
25 wouldn't be on that chart.

CHRISTINA WALLACE - PROFFER TESTIMONY

1 THE COURT: Were they not in the medical records
2 introduced, and are they?

3 MS. LIVESAY: The medical records -- I can tell
4 you why. The medical records given to me originally
5 were given by the facility. They never gave us the
6 nursing notes. It wasn't until I met with
7 Dr. Sciarretta and he said do you have the nursing
8 notes, and I said I never saw nursing notes, and he
9 said I believe they are part of the medical records,
10 so I'm going to give them to you. When he gave them
11 to me, I gave them to Mr. Martin, but we didn't have
12 those until I started meeting with him to talk about
13 trial.

14 THE COURT: Your own witness said they are part
15 of the medical records?

16 MS. LIVESAY: At the end of the day, she cannot
17 say I'm 100 percent sure I filled it out. What Mr.
18 Martin is saying is simply not true, she can't say I
19 filled that portion out.

20 THE COURT: I think that goes to the facts,
21 whether she's weak or not and of course her
22 credibility. But here is the deal, get all four
23 pages, if they come in under "nursing notes," they all
24 need to be in, and it goes to her creditability, but
25 they are the nursing notes, I mean.

CHRISTINA WALLACE - PROFFER TESTIMONY

1 MR. MARTIN: This is the rest. Do you want to
2 mark them separately?

3 THE COURT: Yeah, actually -- there is one page
4 there, and for record purposes, those are the
5 additional three that I'm asking you to introduce.

6 MR. MARTIN: Additional five pages, for what it
7 is worth.

8 THE COURT: Five, okay. I understand your
9 objection, but I think they come in under medical
10 records. Please understand, that is a legal term,
11 it's not that we don't believe you. I think we all
12 do. You have been very honest, and you need to
13 continue to be. So you all take a minute to do -- the
14 restroom or whatever.

15 (A recess was taken.)

16 MS. LIVESAY: If I may, before the jury gets back
17 in, I want to be sure that my objection is clear
18 regarding the nursing notes. My objection is to the
19 fact that, A, this young lady cannot say for sure that
20 she filled that portion out. B, that entire section
21 is not filled out, and this is only something the
22 defendant told her. This is not for medical purposes.
23 This is not scientific. This is not her taking blood
24 pressure or pulse, it is something this defendant told
25 her, so it still is hearsay whether in medical records

CHRISTINA WALLACE - PROFFER TESTIMONY

1 or if it is this young lady saying Heather Sims told
2 me this, it is still hearsay.

3 THE COURT: Let me make it clear, and, again, I
4 want to be sure I understand this, but you all found
5 out about this when your expert said these are part of
6 the medical records, right? Isn't that what you said?

7 MS. LIVESAY: My medical expert never saw this.
8 All he saw was what came from Dr. Sciarretta. I never
9 had this until after I met with Dr. Sciarretta myself.

10 THE COURT: What did he say to you; that is what
11 I want clear?

12 MS. LIVESAY: What happened is I sent what I had
13 to my experts, which was only Dr. Sciarretta's medical
14 report and CT scans. I then, probably a month before
15 this trial was scheduled, I met with the doctor to
16 meet with him to go over the records. At that time,
17 he says do you have the nurse's notes. I said, no, we
18 do not, I've never seen that. When we did a search
19 warrant, this is what we got. He, at that time, said,
20 well, I think the nursing notes are considered the
21 medical records, so he then went and said I will run
22 you off a copy and give you a copy of the nursing
23 notes, and at that time I told him, okay, and I would
24 turn over a copy to Mr. Martin. So I didn't even have
25 these nurse's notes until probably a month ago.

CHRISTINA WALLACE - PROFFER TESTIMONY

1 THE COURT: Tell me why that is not hearsay
2 contained in that document, because it is something
3 she said to her. I mean, I got an answer, I want to
4 hear it for the record.

5 MR. MARTIN: First of all, they are medical
6 records. I mean, medical records in and of themselves
7 contain hearsay, if you want to define it as a
8 statement made by out of court. They come in -- I
9 mean, that's the exception. These are medical
10 records, there is no question about that. In
11 totality, that is what they are. They were turned
12 over in that fashion. They had pertinent information
13 to them, and for that reason they are admissible.

14 MS. LIVESAY: Your Honor, just for the record,
15 and I know you are not bound by any other circuit
16 court judge, but what has always been is the records
17 have been looked at. If the statements were made to
18 further medical treatment for the patient, it has been
19 allowed in. If it is just for hearsay purposes, for
20 her to relay her story, it always has been redacted.
21 My understanding is the rule is if it is said for
22 medical purposes, if it is said in the furtherance of
23 that doctor treating the patient, then it is allowed
24 in. This is not that. This is just her statement
25 about how she feels.

CHRISTINA WALLACE - PROFFER TESTIMONY

1 THE COURT: Hold on. Ma'am, tell me why is that
2 information in that medical record, I mean, to the
3 best of your ability?

4 THE WITNESS: It is a standard of care. We ask
5 everybody patient.

6 THE COURT: You ask every patient?

7 THE WITNESS: (Witness nods head.)

8 THE COURT: It creates a standard -- that is a
9 standard of care for you?

10 THE WITNESS: Every patient that comes into the
11 ER gets asked these questions.

12 MR. MARTIN: That was part --

13 MS. LIVESAY: The whole form is not even filled
14 out. If you look at it, there are eight questions,
15 and she only filled out four.

16 MR. MARTIN: Well, Judge, again --

17 MS. LIVESAY: I mean....

18 MR. MARTIN: It is part of her assessment, part
19 of the medical records, part of the medical record
20 form, clearly part of the medical records, and for
21 that reason it is admissible.

22 THE COURT: Well, I think -- look, I could be
23 wrong, I've been wrong before, but I'll allow it in.
24 I'll let you cross-examine her. I think it goes to
25 her creditability, but when your own expert says it is

CHRISTINA WALLACE - PROFFER TESTIMONY

1 part of the medical records, I don't know how you keep
2 it out.

3 MS. LIVESAY: Just for the record, Dr. Spitz
4 never saw these nursing notes, never saw them. The
5 only thing he saw is what I gave him from
6 Dr. Sciarretta, just for the record.

7 THE COURT: Would you agree that Dr. Sciarretta
8 would depend on this?

9 MS. LIVESAY: Sorry?

10 THE COURT: Would you agree that Dr. Sciarretta,
11 before he treated her, would depend on this
12 information?

13 MS. LIVESAY: The reason I know this information
14 is because he pointed it out and said, look, this is
15 just something the patient tells us, that is what he
16 told me. He said this is something we ask before we
17 discharge a patient. It has nothing to do with
18 treatment of the patient. It is on Page 4 of 6.
19 Before they discharge the patient, they want to make
20 sure this patient has somewhere safe to go. It has
21 nothing to do with medical records or the treatment of
22 the patient.

23 THE COURT: I agree with you completely. I think
24 that goes to the factual issue of his credibility, so
25 I'll allow it in, but you can question her about that

CHRISTINA WALLACE - CROSS-EXAMINATION

1 information. That is the danger of putting it in.
2 Everything has two sides.

3 MS. LIVESAY: For the record, she can't answer my
4 questions anyway because she's not sure she filled
5 this portion out.

6 THE COURT: That is why I asked her that
7 question. It is part of the medical record because it
8 is always filled out. Bring them back in.

9 (The jury enters at 4:22 p.m., and the
10 following is heard in the presence of the jury.)

11 THE COURT: Okay. You can continue.

12 MR. MARTIN: Judge, I'm through questioning.

13 THE COURT: Okay.

14 MS. LIVESAY: Are you moving the records?

15 THE COURT: She's moved, and I've admitted over
16 whatever objections.

17 MR. MARTIN: They've been admitted.

18 THE COURT: They are now.

19 (Defendant's Exhibit 61 marked.)

20 THE COURT: Any questions?

21 CROSS-EXAMINATION

22 BY MS. LIVESAY:

23 Q Ms. Wallace, were you previously employed at
24 Grand Strand?

25 A No.

CHRISTINA WALLACE - CROSS-EXAMINATION

- 1 Q Ma'am?
- 2 A No, ma'am.
- 3 Q Where are you employed now?
- 4 A I work at a primary care doctor's office.
- 5 Q Where?
- 6 A Primary care doctor's office.
- 7 Q So you went from Grand Strand to primary care?
- 8 A Yes, ma'am.
- 9 Q Do you know the defendant?
- 10 A No.
- 11 Q Have you ever seen her before?
- 12 A No.
- 13 Q Have you seen Mr. Martin? Have you ever talked
- 14 to Mr. Martin before?
- 15 A Yes.
- 16 Q And was it about this case?
- 17 A Yes.
- 18 Q Now, he has put into evidence the complete
- 19 nurse's notes. Can you look at these and tell me
- 20 whether or not these are nursing notes from Grand
- 21 Strand Hospital and if they are from August 11, 2013,
- 22 and if they have any kind of stamp on them, like this
- 23 one, that shows to you that these are the medical
- 24 records or nurse's notes from Grand Strand?
- 25 A Yes.

CHRISTINA WALLACE - CROSS-EXAMINATION

1 Q You want to look through them?

2 A (Witness examines documents.)

3 Q Are these records kept in the normal course of
4 business at Grand Strand?

5 A Yes.

6 Q Are you familiar with nurse's notes?

7 A Yes.

8 Q And do you sometimes have to look at one nurse's
9 notes to kind of get back and see what you need to do;
10 is that correct?

11 A Yes.

12 Q So you are familiar with reading all of the
13 nurse's notes, not just your own?

14 A Yes.

15 Q So there is nothing on this page, these notes,
16 that you don't understand or you could not explain to
17 this jury?

18 A Correct.

19 Q Is that correct?

20 A Uh-huh.

21 Q I've got some questions about these notes. I
22 don't know if you remember, but Mr. Martin was talking
23 earlier about the police was talking to the defendant
24 at Grand Strand Hospital; do you remember that?

25 A Yes.

CHRISTINA WALLACE - CROSS-EXAMINATION

1 Q He said it was sometime between 8:00 and 9:30; do
2 you remember that?

3 A Vaguely. Not exact times, but I remember them
4 being there.

5 Q Now, you documented on your page -- these are
6 yours there. You documented on your page that she
7 actually had a visitor; do you see that?

8 A Yes.

9 Q If you don't mind, tell this jury who the visitor
10 was?

11 A Her father.

12 Q And if you don't mind, tell this jury what time
13 they let her father back there to see her?

14 A I don't know exact time.

15 Q Did you document a time on your notes?

16 A That is when it was entered. I entered it at
17 8:30, but I'm not positive that is the exact time that
18 he was back there.

19 Q Let me ask you this. Why would you document it
20 at 8:30 if you didn't know that was the time he was
21 back there?

22 A That is the time I had to chart, I charted a few
23 things at 8:30.

24 Q So do you have any idea if around 8:30 is when he
25 went back there?

CHRISTINA WALLACE - CROSS-EXAMINATION

1 A I would assume it would be around 8:30. It says
2 visited with father with Horry County Police.

3 Q So around 8:30, while she's in the hospital with
4 the police, her dad is allowed to go in there and visit
5 with her?

6 MR. MARTIN: I object. The objection is that is
7 not what the record states.

8 THE COURT: Ask her if she knows that.

9 Q (MS. LIVESAY) Is it documented in your notes
10 that her father came to see her in the hospital in her
11 room around 8:30?

12 A It says family with Horry County Police at 8:30.

13 Q Does it say "father"?

14 A Father with Horry County Police.

15 Q So your notes read that -- it is documented that
16 around 8:30 her father came in, and it is checked
17 "visited;" is that right?

18 A Visited.

19 Q So your notes read that her father -- and it is
20 checked "visited" on the notes -- with her around 8:30;
21 is that correct?

22 A I don't recall. I mean, it is documented that at
23 8:30 her father was visited and it says with Horry
24 County Police. I don't know if he was in the room with
25 her. I don't know if he was outside of the room at

CHRISTINA WALLACE - CROSS-EXAMINATION

1 8:30. That is simply the time I put -- I wrote it in
2 the chart.

3 Q So --

4 A I can't say for certain whether or not her father
5 was in the room with her at 8:30, or not.

6 Q Would you agree with me that you have documented
7 on this form that a family member at 8:30 visited, and
8 it is noted in your handwriting, "Father with Horry
9 County;" would you agree that that is documented in
10 your notes?

11 A It is in my notes.

12 Q So it is documented in your notes -- and I'm not
13 saying it happened, I'm just asking, it is documented
14 that he went back there around 8:30, visited with Horry
15 County?

16 A Through my notes.

17 Q That is in your notes. It is okay. Is it in
18 your notes?

19 A Yes.

20 Q That's in your notes. These are the complete
21 nursing notes here, and they already are in evidence.
22 These, I'm assuming, are to document the patient
23 throughout her time at Grand Strand?

24 A Uh-huh.

25 Q If you don't mind, tell this jury what is

CHRISTINA WALLACE - CROSS-EXAMINATION

1 documented as her pre-hospital records, as far as her
2 blood pressure and her heart rate; what is documented
3 there?

4 A Her pre-hospital blood pressure is 100 over 70,
5 and heart rate is 70.

6 Q So her heart rate is 70 when she comes into the
7 hospital; is that correct?

8 A No. That is what EMS calls over the radio.

9 Q So that is what EMS documented her heart rate to
10 be, 70?

11 A Uh-huh.

12 Q And her blood pressure is 100 over 70; is that
13 correct?

14 A Yes.

15 Q So EMS documented when she was brought in, her
16 heart rate was 70 beats per minute; is that correct?

17 A Uh-huh, that is what is documented.

18 Q That is what's documented, okay. There is a few
19 other things documented about her injuries in these
20 notes. As far as this is concerned, is this also EMS's
21 documentation?

22 A It is not EMS's documentation. It is the nurse's
23 documentation, but it is what they call into us.

24 Q Okay. That is wonderful.

25 A That is filled out generally before the patient

CHRISTINA WALLACE - CROSS-EXAMINATION

1 gets there.

2 Q Okay. If you don't mind, tell this jury what is
3 documented as to how many penetrating stab open wounds
4 she has; is that documented?

5 A It is documented.

6 Q What is that number?

7 A Didn't write it. I can't tell if it is a one or
8 a two.

9 Q Either one or two?

10 A Uh-huh.

11 Q What does it look more like?

12 A I don't feel comfortable answering that.

13 Q This documentation here about the puncture
14 wound --

15 A Yes.

16 Q -- did somebody write out approximate
17 measurements of it?

18 A Yes.

19 Q And tell this jury what is documented as that
20 measurement?

21 A Half a centimeter.

22 Q I brought this ruler, because I'm terrible with
23 measurements. I couldn't tell you how many inches in a
24 foot probably. Would you agree this is the centimeter
25 part of the ruler (indicates). It's not a trick

CHRISTINA WALLACE - CROSS-EXAMINATION

1 question. I know you are nervous. Does this say "CM"?

2 A No.

3 Q So you would agree this is centimeters going
4 across here?

5 A No.

6 Q You don't know?

7 A I said no.

8 Q Ma'am?

9 A I said no.

10 MR. MARTIN: Judge.

11 THE COURT: I can't hear you.

12 A I don't understand why you are asking me these
13 questions.

14 THE COURT: Just answer, is that the centimeter
15 portion of the ruler?

16 WITNESS: No. It says millimeter.

17 Q (MS. LIVESAY) Do you see "CM" on this ruler?

18 A Yes. Now I do.

19 Q Would you agree with me that that is documenting
20 centimeters across this ruler?

21 A Yes.

22 Q Do you see where one centimeter is on the ruler?

23 A Yes.

24 Q And you see where half a centimeter is on the
25 ruler?

CHRISTINA WALLACE - CROSS-EXAMINATION

1 A Yes.

2 MR. MARTIN: To save time, I'll stipulate what a
3 centimeter is or isn't, to save time.

4 THE COURT: Well, thank you. Ask her if that is
5 half a centimeter.

6 Q (MS. LIVESAY) Is this what I'm showing you
7 here, that is one centimeter, so would you agree that
8 this half mark is half a centimeter?

9 A Yes.

10 Q That is what the documentation shows as to her
11 has laceration and her puncture wound; is that correct?

12 A Uh-huh.

13 Q I'm show the Judge -- I mean the jury. This is
14 one centimeter, and this is a half a centimeter, okay.
15 And that is where this starts, that is 1 right there.

16 So half a centimeter is right there. This half a
17 centimeter is measuring the width of that puncture?

18 A I'm not sure. It is not my documentation.

19 Q It just says half a centimeter?

20 A It says, Half a centimeter laceration.

21 Q Okay. Is this one half centimeter?

22 A Yes.

23 Q And if you put this over this knife, would you
24 agree with me that that is measuring half a centimeter
25 on this knife?

CHRISTINA WALLACE - CROSS-EXAMINATION

1 A Yes, I guess.

2 Q Is that measuring half a centimeter? Did you see
3 it?

4 A Yes, I think so.

5 Q I'll put it up here. Do you see that is half a
6 centimeter. Here is that measuring the width of that,
7 half a centimeter?

8 A I just don't feel comfortable making that
9 observation.

10 Q You don't feel comfortable measuring the width of
11 the knife?

12 A No.

13 Q Would you agree this here, way up here on the
14 knife, is more than half a centimeter?

15 A I don't feel comfortable doing that.

16 Q That's fine. I understand. You agree that half
17 a centimeter is what is documented as to that puncture?

18 A Yes, I agree it is documented. I did not
19 document that.

20 Q But it is in the nurse's notes; is that correct?

21 A It's in there. I did not document it, though.

22 Q Did you see that picture that Mr. Martin showed
23 you of Heather Sims?

24 A Yes.

25 Q And you actually remember from -- how many

CHRISTINA WALLACE - CROSS-EXAMINATION

1 patients do you normally see within a day at Grand
2 Strand?

3 A I don't know. It is random. I really can't put
4 a number on it.

5 Q Now, did you remember that that was Heather Sims
6 on 8/11/2013 sitting at Grand Strand Hospital when he
7 showed you that picture? Did you remember that,
8 indeed, is the patient that belonged to these nurse's
9 notes?

10 A Yes.

11 Q So you did remember what she looked like two
12 years ago?

13 A Yes.

14 Q This is it here?

15 A Yes.

16 Q Do you see any bruising or anything on her left
17 arm. Would you like to refer to the notes to see if it
18 is documented in the notes?

19 A Are you asking me if I see it in the picture, or?

20 Q Do you see it in the picture?

21 A I don't see any bruises in the picture.

22 Q And this picture, you don't see any bruises, you
23 just see cuts on her arm; is that correct?

24 A Yeah, I don't see a bruise in that picture.

25 Q You don't see it in the picture? Will you look

CHRISTINA WALLACE - CROSS-EXAMINATION

1 through the nurse's notes and see if any nurse
2 documented anything about any bruising and let me know
3 and let this jury know?

4 A (Witness examines document.)

5 (A brief pause in the proceedings.)

6 MR. MARTIN: If it will save us any time, I don't
7 know what the records say about that, I'll stipulate
8 the records may not say anything about bruises.
9 Bruises don't show up until the next day or two.
10 There is no reason to let her read these records here
11 to prove or disprove.

12 MS. LIVESAY: If he's stipulating there is no
13 bruising documented in the nursing notes, I'll move
14 on.

15 THE COURT: So stipulated.

16 Q (MS. LIVESAY) Earlier we talked about the times
17 of this documentation, and just so I'm clear and the
18 jury is clear, and there is no misunderstanding, these
19 times are documented up there, but you are uncertain
20 whether or not the times are correct?

21 A I am uncertain as to if these things happened at
22 that time, yes.

23 Q But these are your notes, times are written down,
24 but you are uncertain that that is an exact time or
25 just kind of an estimated time looking at the watch and

CHRISTINA WALLACE - REDIRECT EXAMINATION

1 then --

2 A For example, her valuables were given to security
3 -- excuse me, Horry County at 8:30. I'm not sure if
4 they were given to them at 8:30, but that is when I
5 documented it, so that is why it is in there.

6 Q That is fine. If that is the truth, that is
7 fine. I understand you are documenting the best you
8 can, and what are saying is you are not sure that that
9 is the an exact time, you were just documenting to the
10 best of your ability?

11 A Correct. Correct.

12 MS. LIVESAY: Thank you. No further questions.

13 THE COURT: Redirect?

14 MS. LIVESAY: Sorry, one more question.

15 Q (MS. LIVESAY) Which Doctor's Care are you
16 currently employed at?

17 A I'm not at Doctor's Care.

18 Q Sorry. Where are you currently employed?

19 A Myrtle Beach Family Medicine.

20 REDIRECT-EXAMINATION

21 BY MR. MARTIN:

22 Q Look at Page 4 again -- you don't have it. Are
23 you tired of looking at it?

24 A Kind of.

25 Q Let me show you this. You and I talked about

CHRISTINA WALLACE - REDIRECT EXAMINATION

1 this, the dates and times of the document, before you
2 testified?

3 A Yes.

4 Q I asked you about the 8:30 time about the father
5 and the police?

6 A Yes.

7 Q To be sure here, first of all, she was discharged
8 at 1:56?

9 A Yes.

10 Q Secondly, if you go down the list, you have
11 family, clothing, valuables, police and there is an
12 entry of 8:30 for every one of them, isn't there?

13 A Yes.

14 MS. LIVESAY: I think that is -- are we going
15 outside of my cross?

16 THE COURT: No. I don't know where we are going
17 yet, let's just get there.

18 MR. MARTIN: This is directly relating to it.

19 Q (MR. MARTIN) What you explained is that the
20 8:30, that is entered four times at the very same time
21 for different activities, isn't there?

22 A Yes.

23 Q And what that means is that you actually made
24 that entry --

25 MS. LIVESAY: Your Honor, if I may, can he ask a

CHRISTINA WALLACE - REDIRECT EXAMINATION

1 non-leading question? He is basically, at this point,
2 testifying from the nurse's notes. Does he have a
3 question for this nurse?

4 THE COURT: Sustained. Don't lead.

5 Q (MR. MARTIN) How many entries are there that say
6 "8:30" on there, Chrissy?

7 A Four.

8 Q And that is four separate activities, right?

9 A Yes.

10 Q And all four of those wouldn't occur
11 simultaneously, would they? I'm not trying to make it
12 harder than what it is. Maybe this question --

13 A It is when I charted it.

14 Q The 8:30 time is when you entered it into the
15 chart, right?

16 A Yes.

17 Q That doesn't mean that is when the activity was
18 occurring, does it?

19 A No.

20 Q Because the activity has already occurred --

21 MS. LIVESAY: Another leading question.

22 THE COURT: Hold up. We're going to keep going,
23 so you might as well gird your patience. Don't lead.
24 Go ahead.

25 Q (MR. MARTIN) The activities have occurred, and

CHRISTINA WALLACE - REDIRECT EXAMINATION

1 at some point in time, you get time and you pick up
2 the paper and enter the activity at 8:30 on that
3 chart, right?

4 A Yes.

5 Q You entered four of them at the same time?

6 A Yes...

7 Q And they already had occurred, right?

8 A Yes.

9 Q Same thing on the --

10 MS. LIVESAY: Your Honor, she never said anything
11 about the activities had occurred and then you enter
12 it on the chart. She's already said I'm uncertain if
13 these times are accurate, I'm trying to get a
14 roundabout time. She never said that.

15 THE COURT: I mean, she said what she said. Ask
16 her what you want.

17 Q (MR. MARTIN) Let me turn with you to Page 3.
18 Let me show you Page 3. The question was brought up
19 about heart rate. Are there entries on the nursing
20 notes as to heart rate?

21 A Yes.

22 Q Read the heart rates out to the jury of Ms. Sims,
23 not whether EMS called it in, but what some nurse wrote
24 during the course of the evenings.

25 A 145, 138, 140, 130, 1238, 130, 132.

CHRISTINA WALLACE - REDIRECT EXAMINATION

1 Q Those are all very high, aren't they?

2 A Yes.

3 Q And last question. One of Dr. Sciarretta's
4 charges was that heart rate had to come down before she
5 could be discharged?

6 A Yes.

7 MR. MARTIN: That is all I have.

8 THE COURT: Thank you. You can step down. If
9 you are under a subpoena, you can be released. Call
10 your next witness.

11 MR. MARTIN: John Gaddy.

12 MS. LIVESAY: I do have a matter that needs to be
13 heard outside of the presence of the jury at this
14 time. It is real quick.

15 THE COURT: I'll send you out for five minutes.
16 Don't go downstairs or discuss the case.

17 (The jury exits at 4:46 p.m., and the
18 following is heard out of the presence of the jury.)

19 MS. LIVESAY: Your Honor, I'm thinking that they
20 are going to call John Gaddy to say that he looked at
21 the toilet, and I would like to know when he looked at
22 the toilet, because if it wasn't the day before or day
23 of, I don't think anything that he looked at days
24 after the incident when the scene was released back to
25 the family, we have no custody control or idea what

JOHN GADDY - PROFFER EXAMINATION ONLY

1 happened with that toilet between August 11th and
2 when John Gaddy got there.

3 THE COURT: You are calling someone to talk about
4 the toilet?

5 MR. MARTIN: Yes.

6 THE COURT: If it wasn't before, I don't think
7 they can testify.

8 MR. MARTIN: Let me understand, I'm going to
9 proffer it, if you exclude it.

10 THE COURT: Yeah, I'm going to exclude it, but
11 bring him on up.

12 MS. LIVESAY: What is his date of birth?

13 WITNESS: 6/5/73.

14 MR. MARTIN: You going to check it anyway?

15 MS. LIVESAY: I know Johnny ain't got no record.

16 (JOHN GADDY, having been duly sworn, testified
17 as follows:)

18 PROFFER EXAMINATION

19 BY MR. MARTIN:

20 Q The question, John, and I know the answer of
21 course, but did you check this toilet prior to
22 August 11th, before or after?

23 A After.

24 Q Of course you wouldn't have had a reason to check
25 it before?

JOHN GADDY - PROFFER EXAMINATION ONLY

1 A No, sir.

2 Q I asked you to check it shortly after

3 August 11th, did I not?

4 A Yes.

5 MR. MARTIN: It was a few days after, Judge.

6 What I would say to you is we have no -- I mean, first
7 of all, Horry County Police Department -- and I'm
8 assuming before -- and this is relevant -- there is no
9 testimony from them that they confirmed that the
10 toilet was in proper working order, and they released
11 the scene at 1:00 a.m. They can control it as long as
12 they want to, check whatever they want to. I can only
13 assume they did not check the toilet, or if they
14 checked it, it weren't working right because they
15 didn't say that. There is no documentation of it,
16 nothing like that. The only thing I can do is check
17 it myself. We checked it, there was a problem with
18 the toilet, that kind of thing. Now, did we check it
19 before? The answer is, no.

20 THE COURT: What I was going to say, it has to be
21 within the relative time period. What date did you
22 check it?

23 THE WITNESS: I do not remember.

24 MR. MARTIN: He and I talked about it. He
25 checked it in the month of August, I can't tell you.

JOHN GADDY - PROFFER EXAMINATION ONLY

1 what date.

2 MS. LIVESAY: He's already answered, he doesn't
3 know.

4 THE COURT: There is no jury here, just tell me.
5 You all, just tell me. That is all I want to know,
6 and, quite frankly, that's all they want to know.

7 MR. MARTIN: That is what I'm telling you.

8 THE COURT: I'm telling you, if it was sometime
9 unknown afterwards, I think that obviously it could
10 have been tampered with.

11 MR. MARTIN: Sure. But that is a matter for
12 cross-examination. The only thing we can do -- we
13 cannot check it before. I had no reason to send
14 anybody to check it before. Now, it goes -- maybe it
15 goes -- she could say they could have tampered with
16 it, manipulated it, yes, they could, okay. But the
17 only thing I can do is -- because from what I've seen
18 so far, and there weren't anything wrong with the
19 toilet, well, I have a feeling that -- stand up and
20 tell me if I'm wrong, Cestare was there, Chatfield was
21 there, let me know if you right now before you make
22 your determination, but I did the best I could do,
23 which was send someone after I was involved.

24 THE COURT: Did anyone check the toilet? I
25 hadn't thought about the toilet, quite frankly.

JOHN GADDY - PROFFER EXAMINATION ONLY

1 MS. LIVESAY: Give me five seconds.

2 THE COURT: That may answer the question.

3 (A brief pause in the proceedings.)

4 THE COURT: What do we know?

5 MS. LIVESAY: Your Honor, Lieutenant Cestare says
6 when they went back on the search, second search
7 warrant, he did listen for the toilet. He said every
8 few minutes it would run for a few seconds and then
9 shut off, and then five or six minutes later it would
10 run a little bit again, and then shut off, but that
11 was on the second search warrant.

12 THE COURT: I appreciate the honesty, believe me.
13 What did you hear was wrong with the toilet?

14 WITNESS: The chain was too long. It is a flush
15 valve, cylinder raises up and down, and the chain was
16 too long and doing a half flush.

17 THE COURT: Which would cause it to do what?

18 WITNESS: Run.

19 THE COURT: Run every four, five minutes?

20 WITNESS: If the chain gets hung, it will.

21 THE COURT: So the level of the water would drop,
22 and it would fill up?

23 THE WITNESS: Correct.

24 THE COURT: I appreciate the honesty more than
25 you both know, I mean.

JOHN GADDY - PROFFER EXAMINATION ONLY

1 MR. MARTIN: I'm willing to stipulate to this.
2 If that is what he says, that is what he says. This
3 might be the one thing we have an agreement.

4 THE COURT: That the toilet ran?

5 MS. LIVESAY: On the 15th when they got there,
6 not the night of.

7 THE COURT: I think that the only day we can do
8 it, because he doesn't know what day he went.

9 MR. MARTIN: There is one other thing that John
10 would testify to.

11 THE COURT: Ask away.

12 Q (MR. MARTIN) The problem that you found that you
13 just described, is the -- well, would it be out of
14 ordinary for a person to take a pair of needle nose
15 pliers and a knife to correct that problem?

16 THE COURT: Let him answer. If you don't know
17 the answer, it's I don't know.

18 WITNESS: I mean, I use a knife for a lot of
19 things.

20 THE COURT: Do you know the answer to his
21 question?

22 WITNESS: Would it be unreasonable to take --

23 THE COURT: Out of the ordinary?

24 WITNESS: No. No.

25 Q (MR. MARTIN) Another way, are those the tools

JOHN GADDY - PROFFER EXAMINATION ONLY

1 that a person may need to correct that problem, or at
2 least think they would need to correct that problem?

3 A To pry the link on the chain.

4 Q Yes?

5 A Yes.

6 MR. MARTIN: And I will enter that.

7 THE COURT: Again, I'm not going to let it in. I
8 understand why he wants it in, but I'll assume that
9 you all will stipulate that on the 15th, when it was
10 checked by the police department, that the toilet was
11 running?

12 MS. LIVESAY: Yes.

13 THE COURT: Mr. Martin, you agree there is a
14 stipulation that on the 15th of August, when it was
15 checked by the police department --

16 MS. LIVESAY: I'm stipulating under the pretense
17 that this man is not testifying.

18 THE COURT: Stipulation is to the truth, no
19 matter what.

20 MS. LIVESAY: Right.

21 THE COURT: I won't let him testify, but I'm
22 assuming what you have been told is the truth.

23 MS. LIVESAY: I'm assuming it is true, too. If
24 Mr. Martin wants to put Lieutenant Cestare up, he can.

25 THE COURT: He doesn't know -- I wouldn't

JOHN GADDY - PROFFER EXAMINATION ONLY

1 remember either -- it could be a week, two weeks. The
2 evidence has not been in the control of anyone, and he
3 can't know whether it is out of the ordinary to take
4 needle nose pliers or not, that is a stretch. I won't
5 let that in, but I do want you to stipulate to what
6 they are telling me.

7 MS. LIVESAY: I'll stipulate to that, but I'm not
8 stipulating to him getting up here and testifying what
9 tools --

10 THE COURT: I don't know what else to -- he's not
11 testifying.

12 MR. MARTIN: Well, let me be sure, Judge, to what
13 our stipulation is. All I want to do is to close the
14 door on an argument and insinuation that there was no
15 problem with the toilet, that that is a bunch of BS.
16 Now, having said that, if the stipulation could be
17 between the State and the defense that the -- and
18 we'll think about the wording of it, but that on --
19 that when checked -- and just leave it done -- by
20 authorities and private plumber, that the toilet was
21 not functioning properly in, need of some sort of
22 repair.

23 MS. LIVESAY: Okay.

24 THE COURT: She agrees to that. Thank you, sir.
25 I appreciate you coming. You are protected for the

THE COURT AND ATTORNEYS

1 record.

2 MR. MARTIN: They just told me he went on the
3 morning of the 16th.

4 THE COURT: You have it on the 15th, and you
5 have it a day early. So work on the language of that.
6 Good luck on that.

7 MR. MARTIN: You think we need to work on it
8 before he leaves?

9 THE COURT: No. Thank you, though. Who is your
10 next witness?

11 MR. MARTIN: I think it is good to give them 15
12 minutes. I have witnesses here, and I'll call him
13 now, if you want. Whatever you want.

14 THE COURT: Are you calling the pathologist?

15 MR. MARTIN: Collins, at some point in time.

16 THE COURT: Well, I think tonight is a good
17 night.

18 MR. MARTIN: You think tonight is the night?

19 THE COURT: Yes. Trust me, with this jury, they
20 do, too. I want to give you a little time before you
21 do that, is what I'm saying.

22 MR. MARTIN: Yeah, I need a little time before we
23 get to her.

24 MS. LIVESAY: We're calling another witness
25 tonight?

THE COURT AND ATTORNEYS

1 THE COURT: That's what we're talking about.

2 MS. LIVESAY: Yes. Okay.

3 MR. MARTIN: I have one short one here.

4 THE COURT: Call the short one and then we'll
5 give them 15 minutes or so.

6 MR. MARTIN: I don't see why we -- come around,
7 Mr. Briggs. I don't know why we can't stipulate to
8 this one. I asked Ms. Livesay, and I don't see a
9 problem, but I have Dean Briggs, custodian of records
10 for one of these phone companies, AT&T. The State
11 used him to introduce cell phone records of Heather
12 Sims and David Sims for the month of August. I want
13 to use him to introduce Heather's records for the
14 month of July, specifically the day of July 24th.

15 MS. LIVESAY: Your Honor, I'm going to object.
16 That date is not relevant, not close in time.

17 THE COURT: What is the relevance of it? I mean,
18 you might as well say it, you're going to say it in a
19 few minutes.

20 MR. MARTIN: I don't have a problem with that, I
21 was just thinking. On July 24th, Heather -- the
22 telephone records and text records, a combination,
23 will show that Heather made numerous calls from --
24 starting about 7 o'clock in the morning to Prayer
25 Ministry about -- to pray for her marriage, and

THE COURT AND ATTORNEYS

1 numerous marriage counselors, about four or five
2 different marriage counselors called trying to get an
3 appointment with one, because there was an argument
4 between her and David about, and so there is a litany
5 of phone calls there that Heather could identify or --
6 I want the records in, that is the purpose.

7 THE COURT: If he's going to put him up to put
8 the records in --

9 MS. LIVESAY: Here is my thing, judge. If he's
10 going to put those records in, those numbers have to
11 be identified, that's the counselors' numbers. Now,
12 if he wants to put his defendant in, she can look at
13 the records and say these are my records, here is the
14 phone calls I made.

15 THE COURT: I get it. This is just -- you know.
16 Bring them back in. Call him. I'm not going to argue
17 whether you stipulate. She's not going to. Bring
18 them back in.

19 MR. MARTIN: Judge, they have the records. I
20 would assume they've introduced the days all around
21 it, but this is not a trick of any sort.

22 (The jury enters at 5:00 p.m., and the
23 following is heard in the presence of the jury.)

24 (DEAN BRIGGS, having been duly sworn,
25 testified as follows:)

DEAN BRIGGS - DIRECT EXAMINATION

1 WITNESS: Dean Briggs, late name B-R-I-G-G-S.

2 DIRECT-EXAMINATION

3 BY MR. MARTIN:

4 Q Mr. Briggs, you're getting the same pleasure of
5 getting to testify twice?

6 A Absolutely.

7 Q You are a custodian of records with AT&T?

8 A Correct.

9 Q Let me show you what is marked for identification
10 as Defendant's Exhibit 62.

11 (Defendant's Exhibit 62 marked.)

12 Q (MR. MARTIN) Can you identify those? Have you
13 looked at them before you took the stand here this
14 afternoon?

15 A I've looked at records pertaining to this case,
16 yes.

17 Q Take a look at these and tell me if those are the
18 official records of AT&T?

19 A (Witness examines document.) Yes.

20 Q For what telephone number?

21 A (843) [REDACTED].

22 Q And you testified earlier that that is the cell
23 phone records of Heather Sims?

24 A Correct.

25 Q Do those accurately -- have they been tampered or

DEAN BRIGGS - DIRECT EXAMINATION

1 changed or manipulated in any way, to your knowledge?

2 A No.

3 MR. MARTIN: I move to enter those into evidence,
4 these records, Defendant's 62.

5 THE COURT: Subject to your objection on
6 relevancy.

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

8 (Defendant's Exhibit 62 admitted.)

9 THE COURT: Subject to the objection.

10 Q (MR. MARTIN) The date -- these cell phone calls
11 were made on what date, Mr. Briggs?

12 A Starts on 7/23/2013 and going forward from there.
13 Do you want the ending?

14 Q What day? Did you say the date?

15 A 7/23/13.

16 Q And end date is what?

17 A End date is 7/25/13.

18 MR. MARTIN: That is all I have, Mr. Briggs.

19 THE COURT: Any questions?

20 MS. LIVESAY: No questions for him.

21 THE COURT: You can step down. Can we let him
22 go?

23 MR. MARTIN: Well....

24 THE COURT: You are still under subpoena. I get
25 it. I understand. Is this the point you need a

DEAN BRIGGS - DIRECT EXAMINATION

1 little time, Mr. Martin?

2 MR. MARTIN: It is, Judge.

3 THE COURT: Like I told you several weeks ago,
4 there would be times that we have to take a little bit
5 of a longer break. I told you, again, not to get mad
6 with the lawyers, it is just the way it works, but at
7 this point it will take --

8 MR. MARTIN: Judge. Judge.

9 THE COURT: Yes.

10 MR. MARTIN: If it works, I do have a witness
11 that needs to be called because of issues that he has.

12 THE COURT: Okay. Wait a minute, a short one?

13 MR. MARTIN: Well, he should be relatively short.

14 THE COURT: Okay. What we're going to do is
15 we'll call this next witness, and then we have to take
16 a 15, 20 break. We'll go later this night to a point
17 you can stand it and we call can take it, but we'll
18 call this next witness, and then we have to take a
19 break. Bear with us.

20 (Defendant's Exhibit 63 marked.)

21 (ROBERT SHELLEY, having been duly sworn,
22 testified as follows:)

23 THE CLERK: State your name and spell the
24 last.

25 WITNESS: My name is Robert Shelley,

AMY RICHARDSON - DIRECT EXAMINATION

1 turned over on July 31, 2014, but we gave them another
2 copy out of an abundance of caution.

3 THE COURT: Okay. Thanks.

4 MR. MARTIN: Judge, the jury is on the way, I'm
5 assuming?

6 THE COURT: Yeah.

7 MR. MARTIN: Let us talk to you about something
8 that won't stop what we're doing at all, but I don't
9 want to forget.

10 (A bench conference was had.)

11 (The jury enters at 5:58 p.m., and the
12 following is heard in the presence of the jury.)

13 THE COURT: I'm not going to let you suffer on
14 purpose. Mr. Foreman, when we take this witness, if
15 you want supper, I'll order it for you.

16 (AMY RICHARDSON, having been duly sworn,
17 testified as follows:)

18 WITNESS: Amy Richardson, R-I-C-H-A-R-D-S-O-N.

19 DIRECT-EXAMINATION

20 BY MR. MARTIN:

21 Q Amy, you live here in Conway, I know that. Are
22 you employed?

23 A I am.

24 Q Where?

25 A Smith, Sapp, Bookhout, Crumpler & Calliham.

AMY RICHARDSON - DIRECT EXAMINATION

1 Q Do you know Heather --

2 A I do.

3 Q -- Causey Sims?

4 A I do.

5 Q And you have known her for a long time?

6 A Since about kindergarten.

7 Q Did you hear about the shooting out at the
8 residence on August 11 that night?

9 A I did. My husband called me.

10 Q And you were where?

11 A I was in Charleston, South Carolina, at a retreat
12 for my work.

13 Q Facebook. Facebook. I want to talk to you about
14 Facebook. There have been questions and testimony
15 about Heather being on Facebook or having something to
16 do with Facebook. Can you tell us what you know about
17 how Facebook came up that night?

18 A Yes. I was on Facebook. We had left dinner in
19 Charleston and were heading back to the hotel. I got
20 on Facebook, like I normally do. I saw something from
21 someone in David's family, a post to Heather's Facebook
22 page, and it was -- had profanity. It was negative,
23 and something I just didn't feel like was appropriate
24 for Facebook, so I called her mom at that point to let
25 her know it was on there.

AMY RICHARDSON - DIRECT EXAMINATION

1 Q What time was it that you called her mom?

2 A It was probably between 8:30 and 9:00. We had
3 been to dinner around 7:30 and finishing up dinner and
4 heading back to the hotel.

5 Q And did you have further conversation -- when you
6 made that call, what did you tell Sandra?

7 A I first asked if Heather was okay, make sure
8 everything was okay, she said she was fine. She -- I
9 told her that I felt like someone should take Heather's
10 Facebook down or delete the comment, and I told her if
11 she didn't know how to do it, if she knew the password,
12 I would be willing to do it for you.

13 Q You knew how to do it?

14 A Yes.

15 Q If you have the password?

16 A Yes.

17 Q You didn't have the password to Heather's
18 Facebook?

19 A No, sir.

20 Q Who would be the person that would know the
21 password to Heather's Facebook?

22 A I would assume just Heather, but I don't know.

23 Q All right. And you talked with Sandra by
24 telephone or by text from about 9 o'clock until about
25 what time that night about this issue?

AMY RICHARDSON - DIRECT EXAMINATION

1 A It was around an hour or so back and forth, maybe
2 a little longer.

3 Q And do you know whether Sandra was trying to
4 contact Heather or Ronnie about that?

5 A It was my understanding that she was not --
6 Ronnie hadn't been able to get back to Heather, so she
7 did not give me a password.

8 Q Couldn't get the Facebook because Ronnie couldn't
9 get to Heather at that time?

10 A Yes.

11 Q Later on in the night, in the 11 o'clock hour,
12 give or take, did you have any more conversation with
13 her, or do you know whether the password for Heather's
14 Facebook was ever obtained?

15 A I remember asking her if she got it, and she told
16 me, no, and after that, we didn't talk about it.

17 Q But there is no question that you are the one
18 that instigated the idea that Heather needed to be
19 worried about her Facebook?

20 A Yes, sir.

21 MR. MARTIN: That's all I have for
22 Ms. Richardson.

23 THE COURT: All right. Yes, ma'am.
24
25

AMY RICHARDSON - CROSS-EXAMINATION

CROSS-EXAMINATION

1
2 BY MS. LIVESAY:

3 Q Amy, what time did you call Sandra Causey about
4 the Facebook?

5 A We went to dinner at 7:30. We were there about
6 an hour. On our way back to the hotel, you know, in
7 Charleston. Probably between 8:30 and 9:00. I can't
8 give you an exact time, but between 8:30 and 9:00.

9 Q Do you have any idea when Sandra talked to Ronnie
10 or Heather to relay that message to them?

11 A No.

12 Q So just because you told her at 8:30 doesn't mean
13 anything about when Heather or Ronnie was trying to
14 close out the Facebook?

15 A I wasn't with them.

16 Q Let me ask you this. You called her on 8/11/2013
17 after David had been shot?

18 A Called who?

19 Q Called Sandra Causey.

20 A Yes.

21 Q So this man has been shot and killed and your
22 first concern is to notify Heather's Mom about
23 Facebook?

24 A I called her first and asked her how Heather was
25 doing and if everything was okay, and I called her

AMY RICHARDSON - CROSS-EXAMINATION

1 back. There were two separate phone calls. I told her
2 about Facebook when I saw it, and I did think -- I just
3 didn't think it should have been up there.

4 Q Ma'am?

5 A I just didn't think it was appropriate to be on
6 Facebook. I felt they should know about it.

7 Q But this man has died, lost his life at 35 years
8 old, and your concern is to call them about Facebook?

9 A I was concerned about everyone. I asked about
10 Heather, asked how they were doing, but, yes, I did let
11 them know it was on Facebook.

12 Q Okay. Did you know he was dead?

13 A Yes.

14 Q Do you know what Sandra's phone number is?

15 A No, it is saved in my phone.

16 Q Would you recognize it if you saw it?

17 A I doubt it. Maybe. You can try me.

18 Q Can you look and see if you recognize her phone
19 number?

20 A Yeah.

21 Q Look at this number here and tell me if you
22 recognize it.

23 A Yes, that's it.

24 Q Is that Sandra Causey's phone number?

25 A Yes.

AMY RICHARDSON - CROSS-EXAMINATION

1 Q It is?

2 A Uh-huh.

3 Q Is that message concerning something about
4 Facebook?

5 A Yes.

6 Q Now, what is the time that -- UTC time on that
7 message?

8 A 1:18 a.m.

9 MR. MARTIN: I couldn't understand.

10 THE COURT: 1:18 a.m.

11 A I'm just reading this.

12 Q (MS. LIVESAY) Go ahead. What does it say?

13 A 1:18.

14 Q And UTC time, do you know that is four hours in
15 front of eastern time?

16 A I don't know what that means.

17 Q And that message -- do you see the message?

18 A Uh-huh.

19 Q What does the message say?

20 A Ronnie call Morgan Martin now. You need
21 Heather's Facebook password. I need to shut it down
22 ASAP. Amy said to tell Morgan she said for us to call.

23 Q You are the Amy that said --

24 A Yes.

25 Q This was four hours in front, so about 9:18?

AMY RICHARDSON - REDIRECT EXAMINATION

1 A Yes.

2 Q So 911 was called about 6:13, David was shot and
3 killed, and at 9:18 Sandra and Ronnie and Heather are
4 worried about Facebook?

5 A I can't say what they were worried about.

6 Q Can you tell me what that message is about?

7 A I can read it back again.

8 Q Read it back.

9 A Ronnie call Morgan Martin now. You need
10 Heather's Facebook password. I need to shut it down
11 ASAP. Amy said tell Morgan she said for us to call.

12 Q Is there anything in that message about David?

13 A No.

14 MS. LIVESAY: No further questions for this
15 witness.

16 REDIRECT-EXAMINATION

17 BY MR. MARTIN:

18 Q I want to be clear on this, Amy. The contact
19 between you and Sandra about Facebook was started by
20 you?

21 A Yes.

22 Q No one text you and asked you to worry about
23 Facebook; you are the one that brought up the Facebook
24 issue?

25 A Yes.

AMY RICHARDSON - REDIRECT EXAMINATION

1 Q So to say that Heather or Ronnie or any of the
2 rest of them were worried about Facebook would be
3 somewhat misleading from your knowledge of the
4 situation; would it not?

5 A I can't speak for them.

6 Q You can't speak for them, can you?

7 A Huh-huh.

8 Q But they didn't call you. The first text you
9 seen about any of this was that you saw the posting
10 that you didn't think was appropriate, you contacted
11 the family?

12 A Uh-huh.

13 Q And said you all ought to get that Facebook shut
14 down?

15 A Yes. Yes.

16 Q Did you text her at some point in time, If you
17 folks don't have time to do it, I'll do it for you?

18 A Yes, sir, I did.

19 MR. MARTIN: That is all I have.

20 / THE COURT: Thank you. You can step down.

21 MR. MARTIN: Dr. Kim Collins.

22 (KIMBERLY COLLINS, having been duly sworn,
23 testified as follows:)

24 WITNESS: Kimberly Ann Collins, C-O-L-L-I-N-S.

25 MR. MARTIN: I'm looking for some of the

KIMBERLY COLLINS - DIRECT EXAMINATION

1 photographs that I might use in my examination of her,
2 and that will take me just a second.

3 (A brief pause in the proceedings.)

4 DIRECT-EXAMINATION

5 BY MR. MARTIN:

6 Q Where do you live, Dr. Collins?

7 A Wadmalaw Island in Charleston, South Carolina.

8 Q What is your occupation?

9 A I'm a forensic pathologist.

10 Q Are you a practicing forensic pathologist?

11 A Yes, I am.

12 Q Where do you practice your profession?

13 A I work at Newberry Pathology Associates and also
14 the medical director at Life Point Organ and Tissue
15 Procurement Services and Transplant for South Carolina.

16 Q And could you give the jury the benefit of your
17 education and training?

18 A Yes. I went to college at the University of
19 Georgia and received my bachelor's in microbiology.
20 After college, I went to medical school at the Medical
21 College of Georgia in Augusta and received my MD.
22 Following that, I chose to specialize in pathology, and
23 so I completed a five-year combined anatomic and
24 clinical pathology residency at Wake Forest University,
25 also Bowman Gray School of Medicine which is in

KIMBERLY COLLINS - DIRECT EXAMINATION

1 Winston-Salem, North Carolina. After my five-year
2 residency, I wanted to study forensic pathology. There
3 are very few programs of training in that area, and one
4 was here in Charleston at the Medical University of
5 South Carolina, so I completed that forensic fellowship
6 in that location. I then stayed on staff as a full
7 professor of pathology and laboratory medicine, and
8 when we had a medical examiner system, I was chief
9 medical examiner for Charleston County.

10 Q All right. And have you been qualified as an
11 expert in the courts of this state and other states?

12 A Yes, I have.

13 Q In what field?

14 A Pathology and forensic pathology.

15 MR. MARTIN: I offer Dr. Collins as an expert in
16 that field.

17 THE COURT: Any objection?

18 MS. LIVESAY: No objection.

19 THE COURT: Without objection.

20 Q (MR. MARTIN) Dr. Collins, did you take a look at
21 some evidence in this case at my request?

22 A Yes, I did.

23 Q If you would, tell the jury what you looked at,
24 and then I want to ask you about some of your findings
25 and opinions.

KIMBERLY COLLINS - DIRECT EXAMINATION

1 A I looked at the autopsy report on David Sims. I
2 looked at photographs that were taken at the scene,
3 some that were taken of Ms. Heather Sims' arm and hand.
4 There were some photographs taken by the patrol
5 officers, autopsy photographs. I was provided with a
6 diagram from an engineer locating angles in the
7 bathroom as well as a handwritten diagram. I had
8 evidence -- a report from Dr. Spitz. I had an Horry
9 County 911 transcript of what went on in the 911 call.
10 I had the transcript of Heather Sims. I have SLED,
11 South Carolina Law Enforcement Division, serology and
12 DNA results. Grand Strand Regional Medical Center
13 medical records on Heather Sims, and also there was
14 reenactment photos that were sent to me of someone
15 reenacting the event, supposed event.

16 Q I think they've abandoned the reenactment theory,
17 but they may ask you about some of the other items.
18 Who performed the autopsy in this case?

19 A Dr. Lee Proctor.

20 Q They haven't called Dr. Proctor. Did you talk
21 with him?

22 A I sure did.

23 Q Do you know how big a person Mr. David Sims was
24 according to the autopsy report at the time of his
25 death?

KIMBERLY COLLINS - DIRECT EXAMINATION

1 A Yes. He weighed 250 pounds, and he was
2 74 inches, or 6 feet 2 inches for height.

3 Q Now, the first thing I wanted to ask you about is
4 self-inflicted as opposed to defense wounds. After
5 having looked at the photographs, the evidence and all
6 the things that will go into forming an opinion of that
7 matter, do you have an opinion as to whether or not the
8 wounds on the arms of Heather Sims were self-inflicted
9 or defensive?

10 A They are defensive wounds.

11 Q If you would, explain to the jury how you come to
12 that conclusion?

13 A Defensive wounds in a knife altercation are
14 classically seen on the forearms, either fending off
15 yourself, so you have the inner forearm or non-hair
16 bearing part of the forearm, or maybe you are covering
17 your face, so you have the hair bearing part of your
18 forearm. Also, they are on the hands as you try to
19 deflect the blade or grab the knife. Sometimes if the
20 individual or victim is on the ground, we look for them
21 on the bottoms of the feet. Those are the classic
22 locations for defensive wounds.

23 Q Did you see the pictures of the wounds of Mrs.
24 Sims?

25 A Yes, I did.

KIMBERLY COLLINS - DIRECT EXAMINATION

1 Q All right. And I'll show you what is in evidence
2 as State's 81 and 96 and ask if those are the wounds
3 that you observed?

4 A Yes, these are the ones on the arm.

5 Q And while I'm handing them to you, No. 82, the
6 third one.

7 A This is a wound on the thumb.

8 Q Now, Dr. Werner Spitz came and testified and he
9 testified that those -- his opinion was those wounds
10 were self-inflicted, and there is a couple of things
11 that he talked about how you make that determination.
12 First of all, what factors do you weigh in trying to
13 determine whether wounds are one or the other?

14 A Well, defensive wounds -- and we know there was a
15 knife altercation, and so defensive wounds are on the
16 locations that I just mentioned. Self-inflicted wounds
17 are more commonly seen in cases of suicide; we see
18 hesitation marks. Self-inflicted wounds are usually in
19 the same area of the body. Often, if you are
20 right-handed they are on the left arm or left part of
21 the body. They are often run in the same direction,
22 parallel to each other.

23 Q And in this case, as to the wounds all running in
24 the same direction on that arm, are those all running
25 in the same direction?

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1 A No, all running in the different directions.

2 Some are almost horizontal, some are almost vertical,
3 some are oblique or going sideways down the arm.

4 Q Do you find anything in those that are
5 inconsistent -- here is another question. If Heather
6 is right-handed, those wounds are on her right arm, so
7 they would be on her dominant arm, is that an
8 indication you factor in?

9 A It does factor in, yes. If she's right-handed,
10 you would see a self-inflicted wound on the left arm,
11 and these are different lengths, very haphazardly on
12 her left arm.

13 Q Let me right --

14 A On her right arm, excuse me.

15 MS. LIVESAY: Can I see?

16 MR. MARTIN: Sorry, what?

17 (Ms. Livesay and Mr. Martin confer.)

18 Q (MR. MARTIN) Let me show you for identification
19 and refresh your memory the paragraph out of
20 Mr. Spitz' book about self-inflicted wounds. If you
21 use his criteria, there is one statement he makes in
22 there that trying to determine what they are without a
23 history is very dangerous; would you agree with that?

24 A Yes.

25 Q So one would always take into account history in

KIMBERLY COLLINS - DIRECT EXAMINATION

1 a situation like this?

2 A The paragraph says, The background information
3 is, quote, essential in all of these situations, end
4 quote.

5 Q And in addition to that, he's got a book here --
6 I mean a page out of the book, which is in evidence,
7 but to refresh your memory, it is No. 43 that shows a
8 wound on a forearm?

9 MS. LIVESAY: Is that from Dr. Spitz' book?

10 MR. MARTIN: It is.

11 Q (MR. MARTIN) Do you see that?

12 A Yes.

13 Q Is that in a similar, if not identical, location
14 of Heather Sims?

15 A Yes, it is. It's in the same location and it
16 says, Superficial defense cut on the left forearm, and
17 this was a stabbing case.

18 Q That word "superficial," that is out of Dr.
19 Spitz's book. He describes it as a superficial what?

20 A Defense type cut of the left forearm.

21 Q So superficial, does that mean in and of itself
22 that a wound was self-inflicted?

23 A No, not at all.

24 Q And an assailant can certainly inflict a
25 superficial wound?

KIMBERLY COLLINS - DIRECT EXAMINATION

1 A Yes, and in this case, what he wrote here, it
2 occurred in an altercation.

3 Q Exactly the situation that at least Ms. Sims says
4 occurred here?

5 A Yes.

6 Q Now, Dr. Spitz testified in reaching his
7 conclusions about the cuts or scratches on the arm of
8 Ms. Sims were -- at least as I took it -- inflicted in
9 a slow and meticulous fashion; what would you think he
10 meant by that?

11 A There is no way to look at a stab or a laceration
12 and determine how quickly the cut took place or how
13 meticulous the cut was. These are just haphazard
14 lacerations or -- not lacerations, but incisions on her
15 arm.

16 Q Is there anywhere in the field of forensic
17 pathology that allows pathologists to make that
18 determination?

19 A No, not even looking at it under a magnifying
20 glass.

21 Q No matter how heavy the book is you published?

22 A No matter how heavy.

23 Q Fat versus fat stranding. Dr. Spitz testified he
24 wasn't sure what I was talking about when I said fat
25 stranding, but it had nothing to do with his

KIMBERLY COLLINS - DIRECT EXAMINATION

1 determination of the depth or of the reading of the
2 radiology report of the stab wound to the abdomen.
3 It's been talked about before, but would you describe
4 for the jury briefly the difference between fat and fat
5 stranding?

6 A Minimal fat stranding, and what stranding is, it
7 is a term used with CT scans. It has to do with --
8 when you look at a CT scan, for instance, your bone
9 will be white and different organs of different density
10 has a different shade of black or gray. When we have
11 fat stranding, that means there is some edema or
12 swelling to the fat, and that is kind of a red flag to
13 the radiologist that there is something going on in
14 this location, either like a appendicitis or an
15 infection or some type of trauma. So when you see this
16 change in the look or density of the fat because it is
17 swollen, that is called "stranding," and that is just a
18 sign of pathology, sign of something is not quite right
19 in this place.

20 Q Dr. Spitz testified that the stab wound to the
21 stomach was, in his professional opinion, 3 millimeters
22 deep. Do you know what he could have used without a
23 radiology report or a CAT scan reading to make such a
24 determination?

25 A The only way you can determine how deep the stab

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1 wound is is to have a physician measure it with a
2 sterile probe or have it measured under CT scan.

3 Q Okay. If we're talking about measurements, first
4 of all, do you have a photograph there of the stab
5 wound?

6 A No.

7 Q But you looked at multiple photographs of the
8 stab wound?

9 A Yes, the stab wound to the abdomen.

10 Q First of all, the medical records that are in the
11 record refer to two --

12 MS. LIVESAY: Can I get a look at what she's
13 looking at so I'm on the same page?

14 THE COURT: Sure.

15 MR. MARTIN: I'm looking for the pictures now of
16 the -- here it is.

17 Q (MR. MARTIN) Let me show you State's Exhibit 83.
18 How many stab wounds are on Heather's abdomen,
19 stomach?

20 A This is her abdomen. I only see one stab wound
21 that appears to be going up and down, or vertical.

22 Q Is that consistent with a knife wound?

23 A Yes. It is not a puncture wound, it is a knife
24 wound.

25 Q Is it consistent with the knife that was found at

KIMBERLY COLLINS - DIRECT EXAMINATION

1 the scene in this case?

2 A Yes.

3 MS. LIVESAY: I have an objection to 77 and 78.

4 THE COURT: What is the objection?

5 Q (MR. MARTIN) Well, let me show you -- well,
6 these aren't marked. Let me mark these.

7 (Defendant's Exhibits 64 and 65 marked.)

8 Q (MR. MARTIN) Let me show you what is marked as
9 Defendant's Exhibits 64 and 65. Are those photographs
10 of the crime scene that you reviewed in connection
11 with your findings?

12 A Yes, they are.

13 Q And they are photographs of what?

14 A They are photographs -- you see in the background
15 is a tiled bathroom floor, and 77 -- or Defense
16 Exhibit 65 is the hand that is holding a knife. And
17 Defendant's 64 is pretty much the same picture just
18 taken from a little further back.

19 MR. MARTIN: I move to enter those into evidence.

20 MS. LIVESAY: I guess my first question is, is
21 this woman saying that that is an accurate picture and
22 it has not been altered in any form or fashion?
23 Because you can clearly look at the ones taken from
24 the crime scene and tell that that picture has been
25 altered, and the blood on his hand and color has been

KIMBERLY COLLINS - DIRECT EXAMINATION

1 lightened to where you can't even see it.

2 THE COURT: Come over here.

3 (Whereupon, a bench conference was had.)

4 THE COURT: I'm going to send you out for five
5 minutes. Don't discuss the case.

6 (The jury exits at 6:31 p.m., and a bench
7 conference was had.)

8 MR. MARTIN: Nancy, here is one here.

9 (The jury enters at 6:33 p.m., and the
10 following is heard in the presence of the jury.)

11 THE COURT: Ask your next question.

12 Q (MR. MARTIN) Dr. Collins.

13 A Yes.

14 Q Let me show you a photograph here which is
15 Defendant's Exhibit No. 46, which has been admitted
16 into evidence.

17 MR. MARTIN: Is that in?

18 COURT REPORTER: 46? I have it as admitted.

19 Q Which has been admitted into evidence. Is that
20 one of the photographs -- one of the crime scene
21 photographs that you reviewed?

22 A Yes.

23 Q Now, let me ask you this -- let me show you what
24 is marked as Defendant's Exhibit No. 46 and ask if you
25 have seen that?

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1 MS. LIVESAY: I think he's showing her a picture
2 from the radiologist. I don't know if she anticipates
3 testifying this time. I can tell you last time she
4 said -- when I asked her about it -- I would have to
5 ask a radiologist, so I'm wondering if her
6 qualifications have changed?

7 THE COURT: No. You can ask her that. Go ahead.
8 That is into evidence, right?

9 MR. MARTIN: It's into evidence.

10 Q (MR. MARTIN) The answer was, You would have to
11 ask a radiologist?

12 A Exactly.

13 Q So per your advice, I asked a radiologist, didn't
14 I?

15 A Yes.

16 Q And that was Dr. Joshua Tew that came in to
17 testify last week, and that is an exhibit that was
18 entered into evidence where he determined the depth of
19 the stab wound to the abdomen, the one stab wound that
20 you could see on the pictures, and he testified that it
21 was -- what is the number on that exhibit?

22 A 33.26 millimeters.

23 Q And he said it was that, or three-and-a-half
24 centimeters?

25 A Yes.

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1 Q Now, what does that tell you about that wound in
2 terms of self-inflicted or inflicted by an assailant or
3 superficial? Tell the jury what that means to you now
4 that we know the actual depth.

5 A It is not superficial. It is deep to the skin,
6 to the fat, right to the peritoneum, the area where
7 your organs are. So it is not superficial. It is not
8 one that I would say as a self-inflicted wound.

9 Q Now, the medical records used the term
10 self-inflicted -- strike that -- "superficial," even as
11 to the wound to the abdomen, and you are saying, to
12 you, it is not superficial. Talk about that for a
13 second.

14 A Superficial, when you are talking about the skin
15 and wounds and depth, refers to going through the top
16 layer, epidermis and the dermis, which is below it.
17 Once you get into fat and deeper, you are no longer
18 superficial.

19 Q And in this instance where we're talking about --
20 let me ask you this first. That wound, the testimony
21 in the record was that it penetrated through
22 three-and-a-half centimeters of fat to the muscle, but
23 not into the peritoneum cavity, and that area of the
24 body that there was the bowels or intestines under
25 there. With all of that information and the pathology

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1 of the body, do you know how close to penetrating the
2 peritoneal cavity was the stab wound?

3 A It was through the muscle. The peritoneal, you
4 can see through the peritoneal; it is like wax paper.

5 Q This went to the muscle and the peritoneum?

6 A So we're -- we're within a millimeter, which is
7 the thickness of a lead in a pencil.

8 Q And what does that tell you about the issue of
9 whether it is self-inflicted or inflicted by another
10 person in an altercation?

11 A To me, this would be consistent with inflicted by
12 another person into her left abdomen.

13 Q And does that somehow raise the level of opinion
14 inasmuch as it is that deep and that close to
15 penetrating the peritoneum cavity?

16 A Yes, because self-inflicted wounds are usually
17 superficial, and this definitely is not superficial.

18 Q And had there been a penetration of the
19 peritoneum cavity, what would or could have occurred?

20 A She could have had -- once you expose that
21 sterile area, you can have infection, rupture of the
22 colon, you can die from fecal material spilling out
23 into your abdomen. It could have ruptured a great
24 vessel, such as the aorta, any of the large vessels in
25 that area. On the left side, we have the spleen, which

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1 is a very vascular organ.

2 Q All right. And as to, again, the wounds -- the
3 wounds on the arm, which you have described in your
4 opinion as defense wounds, are any of those wounds
5 located to major arteries or veins?

6 A They are over the areas of major arteries and
7 veins. You can see your own arteries and veins on the
8 inner aspect of your arm, your wrist. That is where a
9 lot of cuts that can be fatal take place, on your wrist
10 or elbow region.

11 Q The wound closest to the wrist is a little
12 different from the others; would you describe that to
13 the jury?

14 A It is close to the wrist, goes over some major
15 vessels. You can see those in the photograph. It is
16 bleeding more than the two that are above it. The end
17 of it looks like it might be a little deeper, but there
18 is dried blood, so it is difficult to tell.

19 Q Now, did you have an occasion -- let me change
20 the topic from defense wounds. Let me go back. In
21 your opinion, the wounds on Heather, the ones on the
22 arms and the ones in the abdomen, in your opinion, to a
23 reasonable degree of scientific certainty, were they
24 defensive wounds?

25 A The ones on her arms are defensive wounds, and

KIMBERLY COLLINS - DIRECT EXAMINATION

1 the one to her abdomen is inflicted by another
2 individual.

3 Q Now, bruises. There has been testimony or
4 questions asked in this case of medical personnel
5 and/or police officers if they saw any bruises on
6 Heather's arms or, I guess, other parts of her body.

7 A Yes.

8 Q If you would, explain to the jury why you may or
9 may not see bruises on a person in the two to four
10 hours after they were inflicted?

11 A Often it takes bruises some time to appear on the
12 body. We've all had a bruise and think, When did that
13 happen. The reason is it depends on the body location.
14 Some body parts have a lot of fat, some don't. It
15 depends on the age of the individual how quickly they
16 appear, and it depends on the force that was applied.
17 So it is not unusual to have bruises appear the next
18 day or two.

19 Q And would bruises generally age and change in
20 color and intensity as time passes?

21 A They do. They change from a red/purple to
22 yellow. As the red blood cells break down, they can
23 have a brown color, but can't age a bruise by looking
24 at a color. Some look older than others. You can say
25 maybe they occurred at different times, but you can't

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1 age it and say this is X number of days old.

2 Q And going back for a moment to the stab wound to
3 the abdomen. The wound that you observed, could it
4 have been inflicted by the knife that you had
5 previously examined that is etched in this case whether
6 it was turned with the blade either way?

7 A Yes.

8 Q No way to say that it was held a certain way when
9 that particular wound was inflicted?

10 A That's correct.

11 Q Now, did you -- let me talk to you a minute about
12 distance, gunshot residue, powder burns and that kind
13 of thing. Dr. Spitz testified the autopsy report
14 indicated that there was no discrete powder residue?

15 A That was visible, that's correct.

16 Q Visible to the pathologist's eye?

17 A Correct.

18 Q And if you want to know for certain whether there
19 was any gunshot residue on the clothing of Mr. Sims,
20 you would have to have that analyzed, and could have it
21 analyzed at a lab?

22 A That's correct.

23 Q Any question about that?

24 A No. That is the only way. If you can't see it,
25 you have to have it analyzed by -- trace evidence lab,

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1 that is what they specialize in, detecting the unburnt
2 power or carbon fragments or some lead antimonium and
3 barium.

4 Q What does that tell you as a forensic
5 pathologist -- the autopsy report that you have in this
6 case, what does that tell you about your ability to
7 tell how far the end of the gun barrel was from the
8 chest of Mr. Sims as it would be in this case?

9 A You would never be able to tell and give a
10 number. You can give a guesstimate and say, well,
11 looking at a handgun, if you are about 18 inches or
12 further away, you usually don't see any soot or gun
13 powder, but the only way to know really how far the end
14 of the gun is from its target is you take that same
15 gun, same type of ammunition, and you have it tested
16 and fired onto fabric, and that is performed by
17 ballistics, such as at a crime lab.

18 Q All right. So, in essence, what you are saying
19 is no forensic pathologist, you or Dr. Spitz or anyone
20 else for that matter, can say whether this gun barrel
21 was 6, 8, 12, 18, 24, 36 inches from Mr. Sims at the
22 time it was fired?

23 A No. All we can say is yes or no there is carbon.
24 Yes or no there is visible gunpowder, or we don't see
25 anything visible. That is all you can say, and the

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1 rest is testing of the clothing.

2 Q Are you familiar with the old rule of thumb in
3 Dr. Spitz' book that generally if you get more than two
4 times the length of the barrel of the gun away, it
5 tells you nothing?

6 A That would be like 18 inches, and that is
7 correct, it doesn't tell you anything. You could be
8 50 feet away.

9 Q And, of course, in this case the barrel of the
10 gun is probably five to six inches, but at any rate,
11 there is no way to make that determination with any
12 particularity, is there?

13 A No, there's not.

14 Q Were you able to -- let me ask you this. In
15 terms of what you looked at in connection with the
16 case, did you look at the crime scene photographs,
17 which showed the position of the deceased body in the
18 bathroom?

19 A Yes.

20 Q Did you look at photographs which showed the hole
21 in the tub?

22 A Yes.

23 Q And did you look at the photographs which showed
24 the shell casing in the chair in the bedroom outside
25 the bathroom?

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1 A Yes.

2 Q Did you take a look at the chart that I sent you
3 that Brandon Elvis prepared?

4 A Yes.

5 Q And as you look at all of that, do you have an
6 opinion as to whether or not -- and let me back up.
7 You did review the 911 call recording of Mrs. Sims?

8 A Yes.

9 Q As well as the statement that she made to the
10 Horry County Police Department?

11 A Yes, I did.

12 Q And in that she described what occurred?

13 A Yes.

14 Q As best she could tell?

15 A Yes.

16 Q Do you have an opinion as to whether or not her
17 statement as to what occurred is consistent with the
18 physical crime scene that you saw there?

19 MS. LIVESAY: Your Honor, I'm sorry, maybe I
20 missed it. Did she now get qualified in crime
21 reconstruction to be able to say whether or not the
22 911 call is consistent with the crime scene, so now
23 she is a crime scene expert as well?

24 THE COURT: Sustained. That is probably
25 stretching it.

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1 MR. MARTIN: All right.

2 Q (MR. MARTIN) Did you take a look at all of those
3 things?

4 A Yes.

5 Q Now, you also reviewed, I believe, in this case
6 the autopsy report?

7 A Yes, I did.

8 Q And what did the autopsy report say about the
9 angle of the bullet as it transferred through the body?

10 A It said that it went from anterior to posterior,
11 front to back, to the left and down.

12 Q Does it give an angle down?

13 A No.

14 Q So Dr. Proctor, who did the autopsy report, and
15 of course you talked to him as well, he didn't attempt
16 to provide an angle down, did he?

17 A No, he did not.

18 Q He does report in there that the bullet entered
19 50 centimeters from the top of the head on the chest,
20 and exited 50 centimeters from the top of the head on
21 the back?

22 A Yes, that is what it says.

23 Q Does that make sense if there is a downward
24 angle?

25 A It doesn't make sense anatomically, looking at

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1 the structures that the bullet went through. You can
2 look at the body where it entered at the rib level, and
3 where it exited at the lower rib level, as well as the
4 heart and lung it went through. So we know the exit
5 wound is lower than the entrance wound on the body.

6 Q You talked to Dr. Proctor, if you have a downward
7 angle, you would expect the entrance wound was 50
8 centimeters from the top of the head, that the exit
9 wound would be a greater number, 55 or 56 centimeters
10 from the top of the head, 53 or something?

11 A That's correct.

12 Q Here, he said 50 and 50?

13 A Yes.

14 Q Did he have an explanation for that?

15 A He said that was an error. He said that either
16 he wrote it down wrong when he dictated it, or the
17 typist typed it out wrong. He said the error was also
18 that he did not catch -- that it should be greater than
19 50 centimeters from the top of the head. I asked
20 him --

21 MS. LIVESAY: Your Honor, if I may, the first
22 problem I have is that whatever Dr. Proctor told her
23 is hearsay. Second problem I have is I've also spoken
24 to Dr. Proctor, and that is not what he told me. In
25 essence, that is the issue with it being hearsay.

KIMBERLY COLLINS - DIRECT EXAMINATION

1 THE COURT: Overruled. She's an expert. She can
2 testify as to opinions and give her background. It
3 goes to creditability. Go ahead.

4 Q (MR. MARTIN) Go ahead. If you would, answer the
5 question.

6 A Well, if you look at the autopsy report, it
7 doesn't make sense where it goes through the rib on the
8 front and then exits -- it goes through the fifth rib
9 on the front, it exits below the ninth rib on the back,
10 so we know it is going down. So the numbers don't make
11 sense at all. Looking at anatomy, it goes through the
12 heart and then the lower part of the left lung, so we
13 know it is going downward also. So the numbers don't
14 make sense. You don't even need the numbers. I said,
15 well -- and we have worksheets that we work things on,
16 so you go back to your worksheet and see if you wrote
17 it down or the right answer is written down. He said
18 the worksheets are all in storage in Virginia.

19 Q All right. And Dr. Spitz had an explanation, and
20 the reason I ask that question is Dr. Spitz had an
21 explanation saying that he explained the 50/50 as being
22 correct, but when a person is lying down, as opposed to
23 standing up, it changes the angle of those wounds, and
24 that was the explanation why there was an angle
25 somewhat downward, that it was based on the fact that

KIMBERLY COLLINS - DIRECT EXAMINATION

1 he was lying down at the time the measurement was made.

2 A That's so not true. You can't -- if we went home
3 and tried to flatten our spine on the floor, we
4 couldn't do it from the bottom of our skull to the
5 tailbone. Every body I've seen, when you look in the
6 body, the spinal cord column maintains its curvature.
7 We have ligaments, tendons, muscles and we've got
8 stiffening of the body. It is not going to suddenly
9 like a string of beads flatten on the table. Never
10 happens. Never.

11 Q Let me ask you this --

12 MR. MARTIN: Mark this for me.

13 (Defendant's Exhibit 66 marked.)

14 MS. LIVESAY: What are you showing her?

15 MR. MARTIN: Some measurements that I prepared.

16 MS. LIVESAY: Can I get a look at it so we can be
17 on the same page?

18 Q (MR. MARTIN) Did you do any calculations in
19 connection with the measurements that we're talking
20 about?

21 A No.

22 MR. MARTIN: She can't use it anyway.

23 MS. LIVESAY: Where did these come from, and who
24 did the measurements? Your Honor, I have some serious
25 objections.

KIMBERLY COLLINS - DIRECT EXAMINATION

1 MR. MARTIN: Let me save time. I'm not trying to
2 introduce it through her at this time.

3 MS. LIVESAY: I have problems with this woman
4 even looking at this. I don't know where any of the
5 measurements came from.

6 MR. MARTIN: I'm not going to show it to her.

7 THE COURT: Okay. Don't.

8 Q (MR. MARTIN) I'll come back to this in a moment.
9 Going back to this case. You know from the autopsy
10 report that the path of the bullet was somewhat
11 downward. Could anybody say at this point in time
12 what that angle would have been?

13 A You could guesstimate just by looking at the
14 fifth rib and the ninth rib -- fifth in the front and
15 ninth in the back. Everyone is different, but you
16 could say approximately 20 degrees down, 15 degrees
17 down.

18 Q Anywhere from 10 to 20 degrees, but it is
19 somewhat downward?

20 A Definitely down, yes.

21 Q And not only is it downward, it was to the left?

22 A Yes.

23 Q What does that tell you in terms of the positions
24 of the body at the time the shot was fired?

25 A We know that the bullet entered at a slightly

KIMBERLY COLLINS - DIRECT EXAMINATION

1 downward angle, which is consistent with him leaning
2 forward. We know that because when you look at the
3 entrance wound, there is a collar from 9:00 to
4 3 o'clock over where the bullet kind of rubbed the skin
5 as it was going in.

6 Q Let me ask you, Dr. Collins, how about -- you
7 said it traveled through the body to the left?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q Tell us -- step down if you would.

12 MR. MARTIN: Do I need to mark this? I'm not
13 introducing it into evidence.

14 THE COURT: No. As long as it is just an
15 exhibit.

16 Q (MR. MARTIN) Now, let me ask you, in terms of --
17 how is the best way to do this for the jury to see?
18 Simplest way, can you take one of these rods and
19 approximate the path of the bullet through the body?

20 A Yes. It went in like your breast bone, it went
21 into the left of the breast bone, right under the
22 fifth rib. So, I mean, it is hard without the nipple
23 and everything to look at, but it -- let's make a mark.
24 It exited near the back kind of where that little
25 (indicates) --

KIMBERLY COLLINS - DIRECT EXAMINATION

1 Q Show them on me.

2 A On the skin, kind of where your arm comes -- this
3 is your armpit, and where it comes together, there is a
4 line, imaginary line, and so it exits right in this
5 area, and then they measured how far to the left of
6 midline.

7 Q And I know it is not exact, but just -- Dr. Spitz
8 had a skeleton and a ruler, but I'll have you show this
9 approximate path going to the body.

10 A It is not easy to have it go in there. It might
11 be easier to get another one to go this way. Probably
12 about right (indicates).

13 Q Something like that. And that is an
14 approximation?

15 A Yeah.

16 Q You can take the witness stand, if you would.

17 A Okay.

18 Q What is your opinion, if you have one, to a
19 reasonable degree of scientific certainty about the
20 fact that that path of the bullet through the body is
21 consistent with the -- if the persons (sic) are
22 standing straight in front of each other, with the
23 deceased having been with his right side forward
24 leaning at the time the shot was fired?

25 A Yes, that would make the exit wound lower. If he

KIMBERLY COLLINS - DIRECT EXAMINATION

1 was standing straight up, it would go right through and
2 come out at a similar level where the exit wound is.
3 When he is leaning, it will come out lower on the back.

4 Q And the fact that it transfers through the body
5 to the left, but yet goes back into the tub --

6 A That would pull his left shoulder backwards, and
7 his right shoulder towards the gun.

8 Q If I were -- if I did have a knife and I lunged
9 at you with my right hand, would it put me in that
10 position?

11 MS. LIVESAY: Your Honor, I'm assuming now --

12 A Yes.

13 MS. LIVESAY -- this lady is testifying to the
14 fact that with all of these variables, she knows the
15 position of the victim when he was shot; is that what
16 she's trying to testify?

17 MR. MARTIN: I'll ask her whether she has an
18 opinion as to whether or not that is consistent with
19 the autopsy results.

20 THE COURT: Okay. Do that.

21 MR. MARTIN: All right.

22 Q (MR. MARTIN) Is it consistent with the autopsy
23 results that an individual was leaning forward and
24 with his left side back and his rights side forward at
25 the time the shot was fired?

KIMBERLY COLLINS - DIRECT EXAMINATION

1 A Yes. The direction and the appearance of the
2 entrance wound, yes.

3 Q Appearance meaning -- looking -- you looked at
4 the entrance wound from the photographs at the crime
5 scene and at the autopsy?

6 A At the autopsy, yes.

7 Q As far as an angle downward, if a body is leaning
8 forward, it could almost be a straight
9 through-and-through shot?

10 A Yes. Leaning that forward, then the rods are
11 going parallel to the earth, floor.

12 Q So we also know -- let me ask you, when the
13 bullet transfers through the body, what we have here
14 is -- if you look at these things, the bullet, when it
15 hit the tub it was lower than it may have been when it
16 went through the body of Mr. Sims? Of course, we don't
17 know -- again, let me ask you this. Can you tell from
18 the autopsy report whether or not the deceased at the
19 time he was shot was standing in any position or
20 whether he was kneeling or crouched or anything like
21 that?

22 A No.

23 Q Now, the path in looking at the diagram that we
24 have here, which you reviewed, which is 57, which shows
25 the angle of the tub, is there anything in your

KIMBERLY COLLINS - DIRECT EXAMINATION

1 opinion -- and this is within pathology within
2 reasonable degree of certainty --

3 MS. LIVESAY: I'm assuming she's going to testify
4 to that line being accurate as to the ballistics of
5 the bullet?

6 THE COURT: That goes to her credibility on
7 cross. Go ahead.

8 Q (MR. MARTIN) No. And the question I've got to
9 you is, is there anything inconsistent with the fact
10 that the bullet goes through a body at some 10,
11 12 feet from the tub higher than it winds up at the
12 time it strikes the tub?

13 A Once it hits the body, it loses energy. It loses
14 energy as it passes through the organs we don't hit
15 ribs or bones, so we don't lose too much energy. It
16 still has energy to go through the air, but the number
17 one factor with what happens now is gravity, so gravity
18 pulls it down.

19 MS. LIVESAY: Your Honor, just very briefly --
20 and, again, I could have missed this -- is she now an
21 expert in ballistics as well as forensic pathology?
22 If she is, I just want to hear about it.

23 THE COURT: No. No. And that goes to
24 credibility. Go ahead.

25 MR. MARTIN: I'm not offering in ballistics, just

KIMBERLY COLLINS - DIRECT EXAMINATION

1 forensic pathology.

2 THE COURT: I understand.

3 Q In addition to that, when the bullet goes out of
4 the rifle barrel -- and I know you are not in
5 ballistics, but, again, in the field of pathology, one
6 thing that would cause the path of the bullet to change
7 would be that it begins to tumble as opposed to flying
8 in a circular pattern?

9 A Right. When it comes out, it almost goes like a
10 football in a way spin, but once it hits an object,
11 skin, clothing, anything, it will lose that nice
12 direction and spin and start to tumble; that is why the
13 entrance wounds are often really round like a cookie
14 cutter, and the exit wounds -- if you see the
15 picture -- it is jagged and almost star shaped.

16 Q Now, in conclusion on that, is there anything
17 that you could find in looking at everything you did in
18 connection with the case that is inconsistent with what
19 Mrs. Sims told the police about what occurred that
20 night?

21 A No, I could not find any inconsistencies.

22 Q Now, you also have some pictures, and there are
23 many in evidence of the deceased with the knife lying
24 on the floor and on his hand. You've looked at those
25 photographs?

KIMBERLY COLLINS - DIRECT EXAMINATION

1 A Yes.

2 Q Do you have some of those with you?

3 A Yes.

4 Q Do you have an opinion whether or not there is
5 any question that the deceased could have maintained
6 control of the knife in his hand from the time he was
7 shot until he eventually was laying on the floor in a
8 position that he died in?

9 MS. LIVESAY: Again, are we getting into blood
10 spatter?

11 THE COURT: I don't think so. Overruled.

12 Q (MR. MARTIN) I'm not asking you a blood spatter
13 question at this time. I'm asking you a forensic
14 question, and that is -- first of all, when an
15 individual is shot, as Mr. Sims was, do they lose
16 immediate control of their musculature? Are they able
17 to do anything? What can you tell the jury about
18 that?

19 A Where he was shot, you don't lose immediate
20 control. There have been cases where they are noted to
21 run upstairs, run down the street when they are shot in
22 the heart or lungs. It all depends. Now, if you're
23 shot in the brain stem or shot in the spinal cord, you
24 could lose control from there at that point down. But
25 this is not what we would call an instantaneous death.

KIMBERLY COLLINS - DIRECT EXAMINATION

1 Q In this case, is there any question that he could
2 have maintained control of the knife, that is not
3 dropped the knife immediately, but maintain control of
4 it until he came to his final rest?

5 A Yes. It is not uncommon to see objects in the
6 hands. If it is really clenched, they call it a
7 cadaveric spasm --

8 MS. LIVESAY: Again, I just want make sure I'm
9 clear. This woman now knows something about crime
10 scene --

11 THE COURT: All right. Ladies and gentlemen,
12 don't go all the way back to the room, and don't
13 discuss the case.

14 (The jury exits at 7:05 p.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: Your objection?

17 MS. LIVESAY: My concern is this woman is a
18 forensic pathologist, and I feel we have lost touch of
19 what she does. This woman goes and does autopsies on
20 deceased people, and somehow we have gone from that to
21 she is a ballistic expert, and now a crime scene
22 expert. Now she knows something about the way the
23 victims are found at the crime scene.

24 THE COURT: Let me ask you this. What was Dr.
25 Spitz' qualified as?

KIMBERLY COLLINS - DIRECT EXAMINATION

1 MR. MARTIN: Same thing.

2 MS. LIVESAY: He didn't say anything about
3 victims are --

4 THE COURT: I love Dr. Spitz, but he got down on
5 the floor. I mean, look, she can testify about this
6 stuff to the extent that it is within her opinion. On
7 cross, you can do whatever you want. In fact, we'll
8 give them a break before cross. This is nothing that
9 Dr. Spitz didn't testify to, and I would let her
10 testify. Again, it goes to creditability. I'll tell
11 this jury they can disregard an opinion if they
12 believe it is outside the scope of her expertise.
13 Bring them back in.

14 (The jury enters at 7:06 p.m., and the
15 following is heard in the presence of the jury.)

16 Q (MR. MARTIN) Let me show you Defendant's 46,
17 which is in evidence.

18 MR. MARTIN: Is Defendant's Exhibit No. 1 in
19 evidence?

20 COURT REPORTER: It is not.

21 Q (MR. MARTIN) The pictures before you is a
22 picture of --

23 MR. MARTIN: How about State's No. 43?

24 COURT REPORTER: Yes, sir.

25 Q (MR. MARTIN) All right. There is multiple

KIMBERLY COLLINS - DIRECT EXAMINATION

1 pictures of the gun in the hand lying on the floor --

2 A Knife, right.

3 Q State's 43 and Defendant's 46, the two of them.

4 And those pictures -- tell us what those pictures show.

5 A This is a picture of the crime scene, and as a
6 forensic pathologist, I've been to hundreds of crime
7 scenes, all hours of the day and night. So this is a
8 crime scene where they have marked with the number the
9 area of the body at the scene, and you see those, a
10 hand with a knife in it.

11 Q All right. And what I was asking you was an
12 opinion as to whether or not he could have maintained
13 control of that knife until he was found in that
14 position?

15 A Yes.

16 Q And in your opinion, could he have maintained
17 control of the knife by holding it in his hand in any
18 one of many variations?

19 A Yes.

20 Q And in your opinion, could he have had that knife
21 in his right hand and maintained control of it
22 throughout his going to the floor in the position that
23 he was found?

24 A Yes.

25 Q You see there is blood on his hand?

KIMBERLY COLLINS - DIRECT EXAMINATION

1 A Yes, I do.

2 Q And of course -- does the blood on the hand in
3 any way change your opinion of that?

4 A There is blood on the lateral palm of the hand,
5 and then there is sparing on part of the palm, which
6 would be consistent with him holding the knife or
7 gripping the knife.

8 Q And the heaviest concentration of blood in those
9 pictures is on what part of the hand?

10 A The lower, outer palm under the side of the
11 pinky, side of your small finger.

12 Q All right. As you look at the photograph, the
13 blood dissipates or becomes less or nonexistent as you
14 move from the crease of the palm to the palm of the
15 hand towards the fingers, right?

16 A Yes.

17 Q And what is your opinion of what that tell us?

18 A That he's got blood on his hand and he was
19 holding the knife, which protected the hand from
20 getting blood in those locations where the fingers are
21 curled around the knife handle.

22 Q In your opinion, is that consistent with the fact
23 that instead of not having a knife in his hand, he had
24 a knife in his hand at the time the blood was
25 transferred to the hand?

KIMBERLY COLLINS - DIRECT EXAMINATION

1 A Yes. He has transfer blood on the hand, and the
2 knife was in the hand or else there would be more blood
3 on the hand as opposed to blood being on the knife
4 itself.

5 MS. LIVESAY: For the record, I'm going to assume
6 we have now qualified her in forensic pathology and
7 blood spatter; is that accurate?

8 THE COURT: No. Go ahead.

9 Q (MR. MARTIN) Dr. Collins, did you reach any
10 other conclusions or opinions that I have not
11 discussed with you?

12 A No, I don't think so.

13 MR. MARTIN: That's all I have.

14 THE COURT: Okay. Give us a minute. Let's take
15 ten minutes to, come back in, we'll finish this
16 witness and go home. Take 10 minutes. Don't discuss
17 the case yet.

18 (The jury exits at 7:11 p.m., and a recess was
19 taken.)

20 THE COURT: Bridge them in.

21 (The jury enters at 7:28 p.m., and the
22 following is heard in the presence of the jury.)

23 THE COURT: Ladies and gentlemen, I'm assuming
24 you are okay to continue on?

25 FOREPERSON: Yes, sir.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 THE COURT: That is the impression I get
2 radiating off of you. All right.

3 CROSS-EXAMINATION

4 BY MS. LIVESAY:

5 Q Ms. Collins, Mr. Martin showed you some articles
6 or pages out of this book?

7 A Yes.

8 Q And they were about self-defense wounds and
9 self-inflicted wounds?

10 A Yes.

11 Q Well, did you bring your book to show us what you
12 have written about as far as self-defense wounds or
13 self-inflicted wounds?

14 A Oh, I could have, but I wasn't asked to.

15 Q Did Mr. Martin show you anything or any pages
16 from a book you had written?

17 A No.

18 Q Just from this book?

19 A Today? Yes, just today.

20 Q So he didn't bring anything from any articles you
21 ever have written?

22 A No, he didn't.

23 Q And you didn't bring anything?

24 A No. I was not asked to.

25 Q Okay. But you knew you were coming to testify

KIMBERLY COLLINS - CROSS-EXAMINATION

1 today on this particular issue, didn't you?

2 A Exactly.

3 Q And you were here Friday when Dr. Spitz

4 testified?

5 A Yes.

6 Q And so you knew what we were going to be talking

7 about, correct?

8 A Yes.

9 Q And you saw we were taking excerpts out of this
10 book?

11 A Yes.

12 Q But you didn't think it would be appropriate for

13 you to bring something you had written regarding the

14 same topics?

15 A No.

16 Q Now, the next question is, Dr. Spitz did a

17 report, and you reviewed it, didn't you?

18 A Yes.

19 Q Can I get a look at the report you did?

20 A I wasn't asked to generate one.

21 Q So you didn't do a report?

22 A That's correct.

23 Q Okay. Now, we talked about some wounds -- first

24 of all, I want to clear something up, because I think I

25 misunderstood. You testified to Mr. Martin that in the

KIMBERLY COLLINS - CROSS-EXAMINATION

1 autopsy report Dr. Proctor put that this was a -- I
2 think he put it went through the left -- what did you
3 testify to earlier?

4 A It went to the left, unless I misspoke.

5 Q Let me ask you this. Did you testify that Dr.
6 Proctor said it was a downward angle? Isn't that what
7 you told this Court, that Dr. Proctor said it was a
8 downward angle and it didn't make any sense because the
9 measurements were 50, 50?

10 A I said he did not give an angle, but the location
11 anatomically did not make sense to be 50, 50.

12 Q So you are telling this Court now that you never
13 said anything about the autopsy saying it was a
14 downward angle, and that didn't make any sense because
15 Dr. Proctor measured it 50 centimeters from the top,
16 and 50 centimeters in the back; is that what you are
17 telling us now?

18 A No. I said I don't recall using the word
19 "angle." I said the bullet went downward.

20 Q Is that what the autopsy report says?

21 A One part says anterior to posterior and left
22 direction.

23 Q You show me where that report says anything about
24 downward.

25 A Using that word?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q Yes.

2 A No, he just describes the areas of the body that
3 it went through.

4 Q So when you told this Court that his autopsy
5 report said downward, but it didn't make any sense
6 because of the measurements, that is not true, is it?
7 His report didn't say anything about a downward angle;
8 isn't that correct?

9 A He didn't mention an angle at all.

10 Q So he didn't say anything about a downward angle?

11 A Correct. I said he didn't give an angle.

12 Q You said also that you talked to Dr. Proctor, and
13 he said he was incorrect in his report?

14 A Yes.

15 Q Now, what are you holding now? Documentation
16 from Dr. Proctor?

17 A Yes.

18 Q And that is his report?

19 A Yes.

20 Q So do you have documentation of a supplemental
21 report?

22 A No.

23 Q But you do realize he supplements his reports,
24 correct?

25 A We all do.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q Right. Did he supplement this report?

2 A Not that I'm aware of.

3 Q So there is nothing in writing saying anything
4 about Dr. Proctor said there was a mistake in the
5 report; is that correct?

6 A That is correct.

7 Q And you would agree with me that you and any
8 other doctor have supplemented their reports and said,
9 here, this is a supplement to this report?

10 A If the mistake was brought to their attention.
11 Maybe the mistake was not brought to his attention.

12 Q So you did not have a conversation with him about
13 a mistake?

14 A Yes, I brought it to his attention. Maybe he'll
15 make a supplemental report now.

16 Q Has he made one yet?

17 A I haven't spoken to him yet.

18 Q Have you seen one?

19 A No.

20 Q So he hasn't sent you anything in writing about
21 any sort of mistake being in his report; is that
22 correct?

23 A That's correct.

24 Q Now, these wounds -- Mr. Martin only talked about
25 two wounds, he talked about the abdomen and he talked

KIMBERLY COLLINS - CROSS-EXAMINATION

1 about the scratches on her arm; do you remember that?

2 A Yeah. There are more than two, though.

3 Q I agree. I agree. That is what I want to talk
4 to you a little bit about right now. First of all,
5 let's start with this wound I'm showing you now,
6 State's Evidence 95.

7 A Yes.

8 Q Does that look familiar to you?

9 A Yes.

10 Q Let me show the jury so they know which wound
11 we're discussing. This is the wound on the thumb?

12 A Yes.

13 Q And you can see her thumb in the picture.

14 (Published to the jury.)

15 Q (MS. LIVESAY) You've told this Court before that
16 this wound was a self-defense wound, correct?

17 A I said it was consistent with that in the
18 location.

19 Q And you said it did not come from the gun, from
20 the slide; is that correct?

21 A You are referring to my previous testimony?

22 Q Yes.

23 A If you want to pull up on Page 32 and 54, you can
24 see exactly what I reference with regards to that being
25 from the slide, or from a cut or incised wound. I said

KIMBERLY COLLINS - CROSS-EXAMINATION

1 it is a --

2 Q What is your opinion today?

3 A The same as the other time. It is a classic
4 location for a defensive wound, for a stabbing, as I
5 mentioned the hands. If a gun is held improperly, you
6 can also have an injury from a gun.

7 Q Okay. Let me refresh your memory: So you never
8 took into consideration that possibly the wound on her
9 thumb came from the slide of the gun?

10 And your answer was: Not in my opinion. I
11 haven't seen a wound like that. If it did, it did.
12 I'm saying it is not in a classic location for
13 self-defense.

14 Is that correct?

15 A It is not in the classic location for
16 self-defense?

17 Q You said I'm saying it's in the classic location?

18 A Yes, in the classic location for self-defense,
19 that's correct.

20 Q So you testified earlier that this was in the
21 classic place for self-defense, and that this was a
22 knife wound?

23 A Yes.

24 Q And it was your opinion that this gun -- this did
25 not come from the slide of the gun?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 A If you turned to Page 32, and I believe on 54 --
2 I can finish my question?

3 THE COURT: Let her answer.

4 MR. MARTIN: Let her answer.

5 A It was brought up -- she brought up and asked me
6 could this have come from a gun. I said, well, it
7 could have, but in my opinion it is a classic location
8 for a defensive stab wound.

9 Q (MS. LIVESAY) So it is still -- you are telling
10 these people today that this wound right here is a
11 classic wound from a stab wound from a knife?

12 A It is in the classic location for defensive
13 wounds.

14 Q So it is still your opinion in looking at this
15 wound that it did not come from the slide of that gun?

16 A No, that is not what I testified before either.
17 I said it could have happened the day before from
18 another type of injury. It is very non-specific. I
19 testified before, and today, it is in the classic
20 location for defensive wounds.

21 Q And it is your opinion that this did not come
22 from the slide of the gun?

23 A No, that is not what I testified to at either
24 time. I said it could have been an injury from the
25 gun, could have been an injury from the day before. It

KIMBERLY COLLINS - CROSS-EXAMINATION

1 is a very non-specific injury to the thumb.

2 Q Let me just read this to you. This is off of
3 Page 54. I'm asking you: So you never took into
4 consideration that possibly the wound on her thumb came
5 from the slide of the gun?

6 And you replied to me: Not in my opinion.

7 A Correct, I did not take into consideration.

8 Q Okay. So in your opinion, this, along with the
9 other two, are from the knife?

10 A It is an injury in the classic location. It is
11 not a great photograph. I thought it was a defensive
12 wound from the knife, yes.

13 Q So this one came from the knife?

14 A I said it is in the classic location. It is a
15 very poor photograph.

16 Q Let me ask you this. Is it also in the classic
17 location of when you hold this gun the slide is already
18 back on the thumb, is it not in a classic location from
19 when the slide comes back to nick you right there?

20 A Depends how you hold the gun. Most of them that
21 I see occur more in the palm area.

22 Q You've seen a wound from the slide of a gun in
23 the palm area?

24 A Yes. Again, these wounds occur in people that
25 are not experienced with firing guns, that is why they

KIMBERLY COLLINS - CROSS-EXAMINATION

1 have them.

2 Q Let's look at her wounds, because we didn't get
3 to look at those with the injury, and I have some
4 questions regarding her wounds. See if I have some --
5 give me one second, Ms. Collins.

6 (A brief pause in the proceedings.)

7 MS. LIVESAY: My pictures got a little jumbled up
8 over here.

9 Q (MS. LIVESAY) I'm showing you State's Evidence
10 No. 84. You are in here now telling this jury that
11 that is not a superficial wound; is that correct?

12 A That's correct.

13 Q Do you know how it was treated?

14 A I know that at one time she had antibiotics and
15 they wanted it to heal from the inside out because it
16 was a dirty implement, so the wound was considered,
17 quote, dirty. You don't suture those.

18 Q Let me ask you this. Did you know that that
19 wound did not require a stitch, a staple, not even a
20 bandaid; did you know that?

21 A Yes. They were healing from the inside out.

22 Q And did you know that the doctor at ER who saw
23 her in person said it was superficial?

24 A If that is what he said, I disagree.

25 Q Okay. So you are disagreeing with the doctor

KIMBERLY COLLINS - CROSS-EXAMINATION

1 that actually treated her that night who is a trauma
2 surgeon?

3 A I'm basing it on the medical records, radiology
4 and photographs.

5 Q Do you have the medical records with you?

6 A I have everything with me, I believe.

7 Q Did you look at the medical records and
8 radiology?

9 A Yes.

10 Q Both said superficial?

11 A Yes.

12 Q So you are in here telling this jury that a
13 trauma surgeon, who saw her that night, is wrong, and
14 you are in here telling this jury that the radiologist
15 who also said it was superficial, he was treating her,
16 they are both wrong?

17 A You have to ask them how they define superficial.
18 To them it may mean no penetration into one of the body
19 cavities.

20 Q Let me ask you this. What did the report say?

21 A It was superficial with no penetration into
22 peritoneal cavity.

23 Q You are saying you degree with that?

24 A I define that wound as not superficial when it is
25 3.5 centimeters deep.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q Let me make sure I'm correct. The trauma surgeon
2 at the ER said it was superficial. The radiologist
3 said it was superficial. It was treated with not even
4 a staple or a stitch, not even a bandaid, and now you
5 want to tell the people in here it was not a
6 superficial wound?

7 A Depends how they define "superficial." If they
8 mean it doesn't penetrate into the abdominal, you don't
9 need to suture because you want to heal from the inside
10 out; otherwise, you are suturing in germs and you're
11 going to create an abscess. If that is how they define
12 superficial, that is not how I define superficial when
13 I look at wounds on the body, and that is what forensic
14 pathology is.

15 Q Are they doctors?

16 A Yes.

17 Q Are you a doctor?

18 A Yes, I am.

19 Q But for some reason, superficial is different to
20 them, those three, than what it is to you?

21 A And every other profession. Superficial to a
22 neurosurgeon is going to mean a lot different than to a
23 dermatologist.

24 Q But you would agree every other doctor said it
25 was superficial?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 A Every other doctor -- the two that looked at her,
2 yes.

3 Q Okay. If you don't mind, these are wounds on her
4 arm. Can you step down so we can go through them with
5 the jury?

6 A No.

7 Q What I'm extremely interested in -- and I'm
8 showing the jury what is State's Evidence 18. Do you
9 see here that there is a light scratch and then a
10 deeper scratch over the same scratch; do you see that?

11 A Yes, I see the darker one and then there's a
12 light pink.

13 Q So would you -- she has two wounds, one real
14 light one, and then one that is just a little deeper
15 over the same wound?

16 A Can't tell if it is a scar or scratch. The three
17 main ones are the ones mentioned in the medical record.

18 Q This red -- would you say that is red?

19 A Red or pink.

20 Q That looks like a scar to you?

21 A It could be anything. I don't see what the
22 relevance is.

23 Q I don't -- do you know what a hesitation mark is?

24 A I do.

25 Q Do you mind telling the jury what it is?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 A A hesitation mark is usually seen in cases of
2 suicide where they are trying to get up the nerve, so
3 to speak, to cut. So they'll cut kind of like you are
4 marking it out, where I'm going to do it, and you cut
5 and cut a little deeper until you kind of finally
6 decide to do it all the way in. So that is what a
7 hesitation mark is. They go very parallel, very much
8 in line to where the final incision mark is on the
9 body.

10 Q Basically, a practice run? Do you describe it
11 they try one time to see, and then go a little deeper?

12 A It could be called that, I guess.

13 Q What you are saying is this is not a light
14 scratch, like you just talked about, with one just a
15 little deeper over the same one?

16 A Right. They are not over the same -- running the
17 same place, no.

18 Q Have you talked to Mrs. Sims?

19 A Just seen her over here.

20 Q And have you looked at her arms?

21 A No.

22 Q Now, we talked to you earlier at the prior
23 hearing, didn't we?

24 A Yes.

25 Q About whether or not this was a scar or a

KIMBERLY COLLINS - CROSS-EXAMINATION

1 hesitation mark?

2 A I remember something of that, yes.

3 Q And between then and now, you never looked at her
4 to see whether or not there, indeed, is a scar in that
5 location?

6 A No.

7 Q And what you want to tell these people here today
8 is this red scratch, you don't know if that is a scar
9 or a wound?

10 A It could be another scratch with a blade. I
11 would be happy to look at her arm now.

12 Q Okay. You can have a seat if you want to,
13 Ms. Collins. I know it's late, and I'm tired.

14 You are an expert in forensic pathology, which is
15 basically wounds; is that correct.

16 A You know, I think that would really help clarify
17 things for the jury, because we never got into what
18 forensic pathology really is. And so pathology is the
19 study of diseases. You've all been treated by
20 pathologists if you've ever given urine, blood, had a
21 PAP smear, biopsy. Forensic pathology is the
22 investigation and study of unnatural death or trauma in
23 both living and deceased individuals. So we take
24 everything we know from the laboratories and anatomy,
25 and we look at trauma, look at any injuries from

KIMBERLY COLLINS - CROSS-EXAMINATION

1 poisonings to gunshot wounds and try to understand the
2 injury process so we can understand how it occurred so
3 we can backtrack and extrapolate the injuries.

4 Q So you do all of that, and you cannot tell these
5 people if that is a scratch or a scar on her arm?

6 A Not in that two-dimensional photograph, no.

7 Q Okay. Can you -- let me ask you this. Can you
8 tell on this two-dimensional photograph if that is a
9 scratch or a scar?

10 A That is a scratch or laceration that is
11 bleeding -- or incision, sorry. It is an incision that
12 is bleeding.

13 Q So you can look and tell something about a
14 two-dimensional photograph?

15 A In those I can.

16 Q The only one that you are unsure about is that
17 one that looks like a hesitation mark?

18 A The one that is very pale, yes.

19 Q Yes. Yes. Very pale, light scratch. Now, you
20 talked a little bit earlier with Mr. Martin, and when
21 he first started questioning you, you immediately said,
22 yes, because we know that this is a knife altercation;
23 do you remember that?

24 A I would have to look back what the sentence was,
25 I don't remember.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q So you don't remember what you just said maybe 30
2 minutes ago?

3 A I remember saying this is a knife altercation, I
4 don't remember what it was in response to.

5 Q Okay. So you are saying that this is a knife
6 altercation?

7 A There is a knife involved in an altercation, yes.
8 There also is a gun involved.

9 Q How do you know that this was an altercation
10 other than the defendant's statement?

11 A Because the gun -- there was a gun shooting and
12 she was stabbed in the abdomen.

13 Q Let me ask you this. How do you know, other than
14 her statement, that she -- these wounds were through
15 any kind of altercation?

16 A They are classic for defense wounds.

17 Q Now, you were here Friday for Dr. Spitz'
18 testimony?

19 A Yes.

20 Q And tell these people where you were sitting when
21 he was here?

22 A I was sitting in one of the benches or pews where
23 I could see him.

24 Q Right beside Heather Sims' mom?

25 A I don't recall. I know her father.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q So you don't recall where you were sitting Friday
2 last week?

3 A I remember one time I was sitting on the other
4 side of the isle, and one time I moved over. Someone
5 had a cushion.

6 Q So you do remember sitting over there behind the
7 defendant and beside her parents?

8 A Yes, behind Mr. Martin.

9 Q So you were over there sitting beside the
10 defendant's mom and behind the defense attorney?

11 A If that was her mother.

12 Q Let me ask you this. When you were here for Dr.
13 Spitz' testimony, something that Mr. Martin didn't
14 point out that I wanted to ask you about was, did you
15 see him show this jury his arm; did you see that?

16 A Where he had written on it?

17 Q Yes. Where he had marked out the wounds on his
18 arm.

19 A Yes.

20 Q And did you notice when you do this way, you
21 cannot see those wounds in this self-defense location;
22 did you notice that?

23 A I could see the wound he drew on his arm from
24 back there.

25 Q Let me ask you this, yes or no. Tell these

KIMBERLY COLLINS - CROSS-EXAMINATION

1 people right here if you saw Dr. Spitz -- yes or no --
2 show them his arm like this with the wounds drawn on
3 them, and you could not see any of those wounds in that
4 self-defense location that you keep referring to?

5 A I did see those wounds. I saw the magic marker,
6 and I was sitting back there.

7 Q Oh, so you did see him from this side?

8 A No, when he lifted up his arm.

9 Q So you are saying when he lifted up his arm like
10 this, you were sitting over there; is that correct?

11 A Yes.

12 Q And you are telling this jury when you were
13 sitting over there, you could see what was on his arm
14 right here (indicates)?

15 A It was when he was questioned by Mr. Martin and
16 he raised his arm, and that is when people started
17 laughing.

18 Q So could you -- when he put his arm up like this,
19 then tell me, could you see the wounds on his arm?

20 A Yes.

21 Q And you saw him put his arm up like this and show
22 the jury?

23 A Well, they would have seen it when he was facing
24 the jury. When he was here, and Mr. Martin asked him a
25 question and he raised his arm again, there were the

KIMBERLY COLLINS - CROSS-EXAMINATION

1 marks.

2 Q When he raised his arm like this (indicates)?

3 A He raised his arm.

4 Q Okay. Okay. You are doing like this, is this
5 how you saw the wounds (indicates)?

6 A Well, the left arm.

7 Q So you saw when he raised his arm like this
8 (indicates), you saw the wounds?

9 A He raised it up like this, more in front of him.

10 Q Would you just admit that a minute ago you were
11 telling when he raised his arm up like this I saw the
12 wounds (indicates)?

13 MR. MARTIN: Object. This has gone on. The jury
14 saw what he raised, and I'm trying not to object, but
15 this is so repetitive.

16 THE COURT: I think they understand. Go ahead.

17 A I wasn't trying to pose like Dr. Spitz. I was
18 saying when he raised his arm up, in answer -- I guess
19 Mr. Martin was asking a question about the defensive
20 posture, when you have a defensive wound, there were
21 the wounds. He had drawn the wounds right in the same
22 place as Heather Sims' wounds, and he is demonstrating
23 defensive wounds, and I saw it from back there.

24 Q (MS. LIVESAY) When he was doing like this in
25 this classic self-defense position (indicates)?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 A I told you I did not pose like Dr. Spitz.

2 Q Mr. Martin also talked to you a lot about, of
3 course, her wounds, which you have said are classic --
4 in the position of classic self-defense wounds,
5 correct?

6 A Yes.

7 Q The one on the thumb, the puncture and the
8 scratches on the arms, all of those are self-defense?

9 A I did not say that. The puncture to the abdomen
10 is not a puncture, it is a stab. It is not a
11 self-defense wound.

12 Q Okay. So the one on the thumb and her arm is
13 self-defense?

14 A I said they were classic locations for
15 self-defense, and that is my opinion, yes.

16 Q And you are telling these people that those
17 scratches on her arm and the one on her thumb are, in
18 your medical opinion, from self-defense?

19 A I think we've been over the one on the thumb, it
20 is in a classic location. It is difficult to see from
21 the photograph exactly the detail as the ones on the
22 arm are very clear in the photographs.

23 Q He talked a little bit about gunshot residue; do
24 you remember that?

25 A Yes.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q And if you don't mind, the rule is -- and correct
2 me if I'm wrong, because you mentioned 18 to 24 inches;
3 do you remember that?

4 A Yes.

5 Q If gunshot residue is not visible, that means the
6 muzzle of the gun was at least 18 to 24 inches from the
7 victim; is that correct?

8 A It depends on the gun. You would have to test
9 fire it.

10 Q So now you are saying that this is not the
11 general rule, if you don't see gunshot residue, then
12 the gun is more than 18 to 24 inches? Is that what you
13 are saying?

14 A I said that is a rule of thumb when you are
15 teaching residents to think about that. As I told the
16 jury, you never would give a number. You would have
17 that tested by trace or ballistics.

18 Q But you would admit that the general rule of
19 thumb, which is why Dr. Proctor put it in his report,
20 is that if you don't see residue on the shirt or on the
21 wound, then the muzzle is at least 18 to 24 inches from
22 the victim?

23 A That would be a guestimate.

24 Q And it also would be the general rule of thumb,
25 wouldn't it?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 A I don't know if it's a general rule of thumb. It
2 is something I use to teach my trainees.

3 Q That is what you use to teach people, that rule,
4 18 to --

5 A It is not a rule. You said a rule of thumb,
6 which is slang. I say if it's greater than 18 or 24
7 inches, the gun is probably far away, that it doesn't
8 matter because you have to have it test fired.

9 Q You also talked a little bit how he was holding
10 the knife; do you remember that?

11 A Yes.

12 Q And Mr. Martin was talking about blood in the
13 hand and could he still be holding the knife with blood
14 in his hand; do you remember that?

15 A Yes.

16 Q Now, were you in here when Paulette Sutton
17 testified, a blood spatter expert?

18 A No.

19 Q Tell this jury how many times you have been
20 qualified as an expert in blood spatter?

21 A I told you, I've only been qualified as a
22 pathology expert and forensic pathology expert.

23 Q So the answer is none?

24 A Correct.

25 Q So you never have been qualified in blood

KIMBERLY COLLINS - CROSS-EXAMINATION

1 spatter, and let me ask you about ballistics. You were
2 talking about the bullets tumbling, gravity gets a hold
3 of it, it drops, all of this stuff. Tell these people
4 how many times you have been qualified as an expert in
5 ballistics?

6 A Ballistics, with forensic pathology, every
7 gunshot wound case, because we study the way -- or the
8 ballistics of the bullet or any projectile through the
9 body, so that is part of the study of forensic
10 pathology.

11 Q So the answer is none, you have never been
12 qualified as an expert in ballistics?

13 A Ballistics is not what I mentioned earlier.
14 Ballistics is the study of the bullet itself, the
15 rifling, the cartridge, the ammunition, the guns. I
16 didn't bring up any of that.

17 Q Have you been qualified as an expert in anything
18 with ballistics?

19 A When it deals with forensic pathology.

20 Q When it deals with forensic pathology, but
21 nothing else?

22 A No.

23 Q So you have never been qualified with any kind of
24 specialty in ballistics?

25 A I'm not a ballistic scientist.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q Okay. Good. So you are not an expert in blood
2 spatter, and you are not an expert in ballistics; is
3 that correct?

4 A As long as we know what the definition of
5 ballistics is, yes.

6 Q Mr. Martin was talking about what is consistent
7 with David Sims' wound, the trajectory of the bullet;
8 do you remember that?

9 A Yes.

10 Q The motion he was making, is that the only
11 position that is consistent with that type of wound?

12 A No.

13 Q In fact, there is many positions that would be
14 consistent with that type of wound, correct?

15 A You can put the victim or the person with the gun
16 in different positions as long as the angle is the same
17 through the body.

18 Q So the answer is, yes?

19 A Yes.

20 Q Now, he also mentioned with you the 911 tape; do
21 you remember that?

22 A Yes.

23 Q And you said that her wounds and this crime scene
24 was consistent with what she told the 911 operator; is
25 that correct?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 A We listed all of the materials that I went
2 through, and he asked if my opinion and materials were
3 consistent with the history that was provided by with
4 Ms. Sims, and I said, yes.

5 Q So you are saying her 911 call, which is what he
6 specifically mentioned, is consistent with the crime
7 scene and her wounds, and everything else?

8 A From what I recall, yes.

9 Q So when she said -- and it is on the 911 tape,
10 you've heard it -- he's coming at me with a wrench; do
11 you remember that?

12 A I remember "wrench" or "pliers," yes.

13 Q So do you know that the pliers were found sitting
14 on top of the toilet?

15 A Yes.

16 Q So you are now telling these people that those
17 pliers sitting on top of the toilet is consistent with
18 the victim attacking Heather Sims with pliers; is that
19 what you are telling me?

20 A No. Just an attack with a knife.

21 Q Sorry?

22 A What is consistent is that she was attacked with
23 a knife.

24 Q Okay. Tell me this. Is it consistent that she
25 was attacked with a set of pliers, and when the police

KIMBERLY COLLINS - CROSS-EXAMINATION

1 got there, they were lying on top of the toilet with
2 the top of the toilet closed, they were sitting on top,
3 is that consistent with her being attacked with a pair
4 of pliers?

5 A I don't know how the pliers got there, so I
6 couldn't say.

7 Q You don't know the answer?

8 A I don't know how the pliers got there, or wrench,
9 or anything, how they went from Point A to Point B.

10 Q Then how do you know that the crime scene is
11 consistent with the 911 tape?

12 A Her history of being stabbed and the crime scene,
13 standing in the threshold, the ejection of the
14 cartridge, all of that is consistent.

15 Q So you completely forgot about the fact that she
16 said "pliers" or "wrench," just discarded that; is that
17 correct?

18 A I know she mentioned the pliers and a wrench, and
19 there was nothing else said about it.

20 Q But you discarded that?

21 A She didn't appear to be injured with pliers or a
22 wrench.

23 Q So that is not consistent with the fact she was
24 attacked with pliers or a wrench; is that correct?

25 A I did not see any injury from pliers or a wrench.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q Did you hear when someone is telling her to stop
2 wiping down the blood? Did you hear that, Stop wiping
3 that? Did you hear that?

4 A Something to that effect. I don't remember the
5 exact wording.

6 Q And, to you, that means that the crime scene,
7 again, was consistent with what she told 911, the fact
8 that she is in there altering the crime scene, to you
9 means that it is consistent with the fact that an
10 altercation took place?

11 A Not altering the crime scene, but an altercation
12 did take place.

13 Q Are you denying that the crime scene was altered,
14 manipulated?

15 A If she wiped off blood, yes, it was.

16 Q So when somebody said, Stop wiping that, what
17 does that indicate to you? Does that indicate to you
18 that she is wiping something?

19 A If they said, Stop wiping that, she's wiping at
20 something, an object.

21 Q And you are going to tell these people the fact
22 that they altered the crime scene, was manipulating the
23 crime scene, is consistent with what she told 911 that
24 she was being attacked?

25 A I don't know what she was wiping or how she was

KIMBERLY COLLINS - CROSS-EXAMINATION

1 wiping. I'm saying that the physical wounds on both
2 individuals are consistent with the history provided.

3 Q Let me ask you this. The fact she was in there
4 taking the phone out of his pocket --

5 MR. MARTIN: I object to that line of
6 questioning. It is the same old thing.

7 THE COURT: Yeah, sustained. Sustained. Move
8 on.

9 Q (MS. LIVESAY) Let me ask you this. The fact
10 that her dad is telling her to wipe blood off the
11 door; did you hear that?

12 MR. MARTIN: Object. I object to that. That is
13 a nonsensical question for this witness, and I object
14 to it.

15 THE COURT: Tell you what, you've asked it a
16 couple of times. One more time, and that is it.

17 Q (MS. LIVESAY) The fact that he was in there
18 telling her to wipe blood off the door, to you, that
19 means that that crime scene is -- the integrity is in
20 tact and it is consistent with what she said?

21 A He was telling her to wipe something off the
22 door?

23 Q Yes. He said, Wipe that off the door.

24 A I don't think that is what he said, but.

25 MR. MARTIN: That is her interpretation of what

KIMBERLY COLLINS - CROSS-EXAMINATION

1 was said, and she didn't ask the question that way.

2 THE COURT: Overruled. She said that is not what
3 she thought she said. I mean, it is what it is.

4 Q (MS. LIVESAY) Did you listen to her statement
5 from the hospital?

6 A I read one statement. I don't know if it was
7 from the hospital. I'll have to see where she was when
8 she gave it. Interview with Heather Sims, yes, Grand
9 Strand.

10 Q Did you read in there where she was telling
11 Chatfield that she moved the knife and placed it back
12 in his hand; did you see that?

13 A What I recall is the knife might have moved while
14 she did CPR.

15 Q So you are denying that she told Chatfield --

16 MR. MARTIN: I object. Again, Judge. I object
17 to what is totally improper.

18 THE COURT: Do you have that statement?

19 MR. MARTIN: Do I have the statement? She's got
20 the statement.

21 MS. LIVESAY: I have it on recording. We don't
22 have to squabble about it.

23 THE COURT: Okay. Well, let's not squabble. Go
24 ahead. Sustained.

25 MS. LIVESAY: I'll play it for you, Dr. Collins,

KIMBERLY COLLINS - CROSS-EXAMINATION

1 and you tell me whether or not you hear her say that
2 she moved the knife.

3 MR. MARTIN: Judge, wait a minute now. First of
4 all, that is why I told you my objection, these
5 nonsensical questions -- the tape says what it says.
6 The fact that Ms. -- she asked Ms. Collins did you
7 know that she said -- or I think she said this, that
8 doesn't mean she changed the crime scene. All she's
9 saying is if she did wipe blood off the door, that
10 ain't necessarily changed her opinion about what
11 happened, or if she did make a misstatement --

12 MS. LIVESAY: Here is my question. It's
13 important to ask her. All of these things are going
14 on, and this woman is trying to tell these people that
15 that crime scene, which was manipulated by the very
16 words of the defendant --

17 MR. MARTIN: Again --

18 THE COURT: Yeah. Yeah. Wait a minute. Just
19 ask her a question and within her realm of expertise,
20 which is very broad.

21 Q (MS. LIVESAY) Did you hear Heather Sims, the
22 defendant, talk about moving the knife?

23 A I know -- and I can look for the wording
24 verbatim, but the knife might have moved while
25 performing CPR.

KIMBERLY COLLINS - CROSS-EXAMINATION

1 Q Did you hear her say, And possibly I picked it up
2 and put it back in his hand?

3 A I don't recall that, but I didn't memorize this.

4 Q Would you like me to refresh your memory?

5 A If you want to tell me what page.

6 Q Actually, it is a very lengthy 10 minutes. Do
7 you mind if I play it for you, and that way there is no
8 question about it?

9 THE COURT: If you have a page, do that.

10 MR. MARTIN: I have a page. That is an hour and
11 46 minute tape.

12 THE COURT: Pull the page.

13 MS. LIVESAY: All I'm asking is that I can
14 present my case, and I would like for this woman to
15 refresh her memory by hearing what this woman said at
16 the hospital. I have documented where that
17 conversation takes place, so I will get to that place.

18 THE COURT: Come over here. This is not on the
19 record. Come over here.

20 (Whereupon, a bench conference was had.)

21 Q (MS. LIVESAY) Would it change your opinion to
22 know that in her statement she's talking about moving
23 the knife, putting it back in the victim's hand?

24 A No.

25 Q So you would still tell these people in here that

KIMBERLY COLLINS - CROSS-EXAMINATION

1 these wounds were self-defense, even though this woman,
2 by her own words, said that she wiped something down,
3 her dad is telling her to wipe something down, she gets
4 to the hospital and tells the police, yes, I possibly
5 moved the knife, yes, I put it back in his hand?

6 A Yes, she said she was trying to feel his pulse on
7 one part, and the knife might have moved while she was
8 doing CPR.

9 Q But she also said other things, didn't she, about
10 moving the knife?

11 A I have to look through here.

12 MR. MARTIN: Can we just say would it change her
13 opinion?

14 THE COURT: Move on. It doesn't change her
15 opinion.

16 Q (MS. LIVESAY) So none of that would change your
17 opinion about these wounds?

18 A No. That is correct.

19 Q So you are telling these people, it is your
20 opinion, that some sort of altercation took place, and
21 this woman only suffered what the medical records
22 called superficial wounds, she's in there wiping the
23 scene off, and she's telling the police that she moved
24 the knife back in his hand, and you are telling these
25 people that you still believe these wounds are from

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1 self-defense?

2 A Yes, taken with the totality of the records that
3 I have, yes.

4 Q So you are including these facts I just went
5 over?

6 A Yes.

7 Q Let me ask you this. Since those things didn't
8 seem to change your opinion, tell these people then,
9 other than the position of the wounds, how you are
10 coming up with there was a huge altercation and this
11 woman was stabbed. Tell these people how you came up
12 with that opinion.

13 A Based on the physical findings, and we know there
14 was an altercation, gunshot wound, and there is a
15 stabbing. She had a deep stab into her abdomen. There
16 is nothing that would refute that history.

17 Q Not even the hesitation marks on her arm?

18 A That is not a hesitation mark.

19 Q What is it?

20 A Incisions on her arms.

21 Q So now you are sure that that one mark is not a
22 scar, now it is an incision?

23 A No. I still say that that one mark, whatever it
24 may be, is not clear to me what it is.

25 Q Just so we're clear, you are an expert, we're

KIMBERLY COLLINS - CROSS-EXAMINATION

1 looking at simple wounds, superficial, but you can't
2 tell these people what that particular wound is; you
3 don't know?

4 A Not with that photograph.

5 Q But you can tell, ironically, what the other
6 wounds are from a photograph?

7 A Yes, they are in focus. They are better.

8 Q When you look at medical records, how many wounds
9 did the doctor that actually examined her say she had?

10 A Two.

11 Q So he said that she had two puncture wounds?

12 A I don't know if he used the words "puncture," but
13 two wounds.

14 Q Do you have the medical records?

15 A Yes, I still have them.

16 Q Take a look at them and tell me.

17 A She sustained stab wounds to the abdomen.

18 Q You don't see in there where he described two
19 wounds?

20 A Yes, I said that he counted two.

21 Q Do you see where he says, Stab wounds less than
22 .5 centimeters times two; do you see that?

23 A I see two stab wounds less than 0.5 centimeters
24 in the left, upper quadrant.

25 Q So he saw two very small wounds; is that correct?

KIMBERLY COLLINS - CROSS-EXAMINATION

1 A Well, less than 0.5 centimeters.

2 Q Can you show these people .5 centimeters on this?

3 A Sure. Do you want me to walk around with it?

4 Q Yes, please.

5 A A centimeter has 10 millimeters in it, and a
6 millimeter is about the thickness of lead from a
7 pencil, so you multiply that by five. But here is
8 5 millimeters, five pencil leads wide.

9 Q Thank you, Dr. Collins. Two more questions. My
10 first question is, did you base your opinion as to the
11 wounds on the pictures, medical records, or did you
12 actually see her in person with the wounds?

13 A No, I didn't see her in person.

14 Q So everything that you based your opinion on is
15 the documentation already in evidence?

16 A That is correct.

17 Q Was this opinion peer reviewed by any other,
18 doctor or forensic pathologist?

19 A What do you mean peer reviewed? I know what
20 "peer review" means, but there was not a report for
21 anyone to read or peer review.

22 Q So the answer is, no?

23 A No one asked me, that's correct.

24 Q But so this jury is clear, you didn't do a report
25 and nobody peer reviewed or looked over anything you

KIMBERLY COLLINS - CROSS-EXAMINATION

1 are in here telling these people today?

2 A No forensic pathologist is involved in this case
3 to have peer reviewed my opinion. I generate reports
4 when asked, but I wasn't asked to.

5 Q So you didn't generate a report?

6 A No.

7 MS. LIVESAY: Nothing further.

8 MR. MARTIN: No questions.

9 THE COURT: What did you say?

10 MR. MARTIN: No questions -- just one (laughing).

11 THE COURT: Thank you. You can step down. Can
12 she be released?

13 MS. LIVESAY: Yes, sir.

14 THE COURT: Come over here for a second.

15 (A bench conference was had.)

16 THE COURT: Ladies and gentlemen, when this is
17 all over with, I'll probably stand in the hallway and
18 let you all take a punch at me because that will be
19 the only thing that will make you feel better. We are
20 through for the night. We have other matters to deal
21 with, and I'm telling you that I'm hopeful that we can
22 get this case to you tomorrow. I'm staying here until
23 Friday, because I think there is a chance -- it is
24 tomorrow or Friday you'll be in the middle of it.

25 Thank you for your patience. We have something

COURT AND ATTORNEYS

1 in the morning at 9:30, so don't be here until 9:45.
2 That 15 minutes will make a difference in the day, but
3 don't talk to anyone or watch or listen or read any
4 publicity. Have a great 13-and-a-half hours.

5 (Whereupon, the jury exits at 8:21 p.m., and the
6 following is had out of the presence of the jury.)

7 THE COURT: We have to take one matter, the
8 iTunes stuff?

9 MR. MARTIN: I think they are trying to get it to
10 us. They gave us something earlier that said this is
11 what you mean. When Mary Ashley -- we can't find
12 anything on what they are giving us that they had
13 described. Either our software won't pull it up, we
14 don't know how to pull it up, but it is -- we can't
15 find that. I had asked them if they would, you know,
16 help us with our ignorance, I guess, but it doesn't do
17 me any good to say here it is, but yet we can't see or
18 hear what it is.

19 THE COURT: Can you work together? I mean, all
20 you are going to do is play that under certain
21 circumstances?

22 MR. MARTIN: I don't know that it is admissible,
23 period, or if she wants to put it in, period. But I
24 don't want to wait until tomorrow to deal with it.

25 THE COURT: Well, here's the question. For you

COURT AND ATTORNEYS

1 to make a decision, he has to know what is on there.
2 So I -- I'll stay here, you work here and see if you
3 can pull it up. I don't know what else to tell you.
4 I think you are entitled to it, because you have a
5 hard decision to make tomorrow. If you can't pull it
6 up, as an officer of the court, I believe you both. I
7 know I frustrate you and you frustrate me, but I
8 believe you. You just have to get it somehow. You
9 are saying you can't pull it up under any format you
10 have?

11 MS. MARTIN: They put it on this disk of mine,
12 and if they want to put this disk in their computer
13 and pull it for us on there, it just doesn't pull up
14 on mine.

15 THE COURT: You all work that out. We're
16 adjourned until tomorrow. I'm going to give you the
17 jury charge, too, tonight. It is very rough, but you
18 all can have it.

19 MS. LIVESAY: We are making a copy, and it is 30
20 more minutes, but we are able to find where we handed
21 it over on November the 26th of 2014. We did a screen
22 shot, and it looks like we put it on their Passport.

23 THE COURT: Okay. Well, here is what I want to
24 do, because you all can stick around, but I want the
25 -- all I'm worried about is the record, and I want it

COURT AND ATTORNEYS

1 to reflect it is 9:15, eight days of trial, and we're
2 making recordings of potentially -- potential material
3 for cross-examination, and I'm going home. You all
4 can stay and do all you want, but I want the record to
5 be clear that we're still doing this at 9:15, so when
6 the supreme court looks at it later, they are real
7 clear that everyone is here. You have to stay,
8 because this should have been done. We have to go.

9 MS. LIVESAY: Judge, I handed it over on
10 November 26 and put it on a passport for them, the
11 record shows.

12 THE COURT: I think tomorrow morning when they
13 argue you can't use it, that is something -- have that
14 ready.

15 MR. MARTIN: I can tell you now, just a couple of
16 things, and we'll get it -- first of all, they said
17 they handed this July 31, 2014. That isn't right.
18 Here is the problem, just because they have a piece of
19 paper saying they handed it over in this instance,
20 doesn't mean I got it, and it doesn't mean they were
21 trying to trick me out of it, it simply means with
22 these electronics and digital recordings and downloads
23 on the Passports, and that kind of thing, it is just
24 like E-mails, sometimes they don't come through. That
25 Passport she is talking about, we did thoroughly go

COURT AND ATTORNEYS

1 over, and we haven't seen or heard any -- not one -- I
2 haven't, because I looked at it, Heather herself, Mary
3 Ashley, and we just didn't find those.

4 So I'm just saying that for the record now so
5 that you can be thinking about it. I'm going to say,
6 again, adding to -- there is things in evidence that
7 is going to have to be redacted somehow before it goes
8 to that jury, and that will take some work, too.

9 THE COURT: You all -- you better get to it. I
10 don't know what else to tell you. My being here isn't
11 going to help, because you all said earlier today you
12 would work towards redacting it. We all know what
13 needs to be redacted, stuff that is inflammatory and
14 some of the stuff referred back in my office 10 days
15 ago that needs to come out. I'm just worried that,
16 you know, tomorrow -- I mean, look, you both have made
17 comments that led me to believe that you think you --
18 I'm not being fair. I'm trying to be as fair as I
19 can, believe it or not, and I just want the record to
20 reflect it is 9:15 on Wednesday night, 18th of
21 November and we still have to redact and tomorrow
22 argue about whether or not Rule 5 material was turned
23 over. I just want that on the record.

24 MR. MARTIN: I think it is clear, too, the only
25 reason I'm hanging personally is I want to see what

COURT AND ATTORNEYS

1 they have to say if they have anything inculpatory in
2 it that I want, because I don't think -- I mean,
3 certainly it would be my position at this hour -- it
4 would be extremely unfair for me to have to try to
5 listen to all of this, get ready for court tomorrow,
6 closing arguments and all of that. I mean, you know,
7 whatever they hand over, they hand over and they go
8 home, and then that is left to me and my small staff
9 here to try to deal with this, and there is no way in
10 the world that that can be reasonable. Having said
11 that --

12 THE COURT: Let me -- let the record reflect also
13 that the State -- I know you have given it to them,
14 but you also have the ability to pop something in,
15 apparently, and record the one document that you all
16 -- we all know what is going on here -- the one
17 recording that you just are dying to put in. I think
18 the record needs to reflect that. I know you said you
19 gave it to them, they said they didn't get it. Now it
20 is 9:17 tonight, after 12 hours of trial, no supper,
21 we're still waiting for one recording, best I can
22 tell. If I'm wrong, tell me.

23 MS. LIVESAY: Okay. Judge, I'm not saying you
24 are wrong. Here is the dilemma I run into, just for
25 the record. On November 26th, Mr. Martin signed for

COURT AND ATTORNEYS

1 a Passport, which included screen shots of three pages
2 that was on the Passport. PhePhe was written an
3 E-mail by my administrative assistant saying she has
4 Mr. Martin's Passport loaded with the discovery. On
5 that Passport, it included Heather Sims' stuff from
6 the tower, the Apple laptop. It also included a 911
7 call, David Sims' phone dump to, AOL search warrant
8 results and Apple Device Advance Logical Report for
9 Heather Sims, AT&T records, Brad Daniel's interview,
10 CSI file and several other interviews, and all of this
11 was turned over altogether on one Passport on November
12 the 26th of 2014.

13 So the dilemma I'm in -- and I understand that
14 Mr. Martin is saying he has to look at it tonight, but
15 it was handed to him on November 26th. I have to
16 give it all to him because I didn't want an issue to
17 come up at a later date where he listens to it and
18 says, oh, this one was exculpatory, and I didn't get
19 it. So I have no choice but to give it all to him.
20 Yes, one recording, but I have a duty to give it all
21 to him.

22 MR. MARTIN: She's right. And I just found
23 something else out here. I don't understand all of
24 this stuff, but they now apparently have our Passport,
25 same Passport that they are talking about, that they

COURT AND ATTORNEYS

1 are downloading it onto now. I don't think -- people
2 tell me the program won't let you download it if it is
3 already on there. But whatever, under any
4 circumstance, my position will not change about the
5 inadmissibility on anything unless I want it because
6 of the exculpatory nature of it.

7 THE COURT: Okay. Like I said, I can wait around
8 and give it to you, but.

9 MR. MARTIN: No need for you to wait, Judge,
10 because once it is given to me, then I have to figure
11 out what the hell I'm going to do with it.

12 THE COURT: You know, I understand.

13 MS. LIVESAY: For the record, tomorrow, this is
14 only going to take 10 minutes. I'll place it into an
15 exhibit, a copy of the signed discovery showing that
16 we put it on the Passport for them and the items on
17 the Passport, just to protect the record.

18 MR. MARTIN: And I'm going to protect the record
19 from my side, too.

20 THE COURT: I understand. We'll do that tomorrow
21 as calmly as we can because -- I'm sort of expecting
22 that, at most, we have five -- more likely maybe we
23 have four witnesses tomorrow, right?

24 MR. MARTIN: Well, you know, I don't think I'll
25 have over three, four at the most, and only one will

COURT AND ATTORNEYS

1 be more than 10 minutes unless we are both insane, and
2 that is possible, I may be.

3 THE COURT: Let's stop the record there for
4 judicial notice. I understand. And yours aren't
5 going to be that long either?

6 MS. LIVESAY: No, sir.

7 THE COURT: We know what can take long, and we'll
8 have to deal with that in the morning. I'm really
9 worried about this jury. I've pushed them pretty hard
10 despite some people's thoughts that I've taken way too
11 many breaks; that hurts. You can tell it doesn't
12 bother me, and I let it roll off my back. I'll let
13 the court reporter go home. I'm out of here.

14 (Whereupon, the proceedings for November 18, 2015
15 concluded. The following was had on November 19, 2015
16 out of the presence of the jury continuing in Volume
17 V.)

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1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

2 COUNTY OF HORRY) CASE NO: 2013-GS-26-05243

3
4 **VOLUME V of V** /

5 November 9th - 20th, 2015

6 **B E F O R E:** The Honorable J. Cordell Maddox

7 STATE OF SOUTH CAROLINA

8 Plaintiff,

9 vs.

10 HEATHER ELIZABETH SIMS,

11 Defendant.

12
13 **APPEARANCES:**

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

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

19 Official Court Reporter:
20 Natalie Dahl, RPR

1 (State's Exhibit 117 and 118 marked.)

2 (Defendant's 67 through 76 marked.)

3 THE COURT: Let me clear some things up for the
4 record. Mr. Martin, you kept referring to Exhibit 46?

5 MR. MARTIN: Yes, Judge.

6 THE COURT: It had not been introduced. I think
7 we have so many that I would assume it slipped by.

8 MR. MARTIN: I move to introduce it since it has
9 been talked about.

10 THE COURT: I mean, any objection?

11 MS. LIVESAY: Is that the one where you can -- it
12 looks lightened up?

13 THE COURT: No. Come look at it.

14 MS. LIVESAY: Same objection I had before.

15 THE COURT: I'll let this one in. Not the other
16 one. I assume you have given up on that. This is now
17 Exhibit 67, because it wasn't 46.

18 (Defendant's Exhibit 67 is entered, but has been
19 referred to as Exhibit 46 throughout the trial.)

20 THE COURT: Who are we calling next?

21 MR. MARTIN: Dr. Dorn Smith.

22 THE COURT: Let's get what we can, and at some
23 point we'll have to take a break and talk about the
24 proceedings, but you all know what I have do on the
25 record.

1 MR. MARTIN: And, also, I don't know when you
2 want to take up this issue about late last night, why
3 we stayed here.

4 THE COURT: Let's wait, because I don't know if
5 it is going to matter. I know you do, but you are
6 only in the courtroom --

7 MR. MARTIN: It will matter, Judge.

8 THE COURT: We'll take a break, and when we do,
9 we'll do all of that.

10 MS. LIVESAY: Before he gets on the stand, can I
11 get some idea what he's planning on testifying to so I
12 don't have to object.

13 MR. MARTIN: The same thing we discussed with the
14 judge on the bench last week. He is a thoracic
15 cardiac surgeon. He'll address the fact that the
16 presence or lack of blood on the shirt on the chest of
17 the diseased is no indication that CPR was not
18 performed.

19 THE COURT: I mean, it is a fact issue. Okay.
20 Bring them in, but can you tell Robert to bring me
21 some of those glasses -- here he is right here.

22 (The jury enters at 10:06 a.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: Thanks for your patience. I know
25 some of you are cold. I'm so hot. One of us is sick,

CHARLIE DORN SMITH - DIRECT EXAMINATION

1 either you or me, but probably me. But thanks for
2 your patience last night. I understand you are
3 frustrated, and I completely understand. We're going
4 to get as far as we can today, hopefully to the end.
5 Call your next witness.

6 MR. MARTIN: Dorn Smith.

7 (CHARLIE DORN SMITH, having been duly sworn,
8 testified as follows:)

9 THE CLERK: State your full and spell your last.

10 WITNESS: Charlie Dorn Smith the Third,
11 S-M-I-T-H.

DIRECT-EXAMINATION

12
13 BY MR. MARTIN:

14 Q And, Dr. Smith, where do you live?

15 A I live at [REDACTED] [REDACTED] [REDACTED] [REDACTED], Lake City,
16 South Carolina.

17 Q And what kind of work do you do?

18 A I'm a cardiovascular thoracic surgeon.

19 Q How long have you been doing that?

20 A Since '92 -- what would that be -- so close to 25
21 years -- 23 years.

22 Q How many times have you been qualified in courts
23 in South Carolina as an expert in that field?

24 A Probably 10 or 12.

25 MR. MARTIN: I offer Dr. Smith as an expert in

CHARLIE DORN SMITH - PROFFER BY MS. LIVESAY
1 the field of cardiac or thoracic surgery.

2 THE COURT: Any objection?

3 MS. LIVESAY: No objection.

4 THE COURT: Without objection.

5 MS. LIVESAY: I have one question.

6 THE COURT: What?

7 PROFFER EXAMINATION

8 BY MS. LIVESAY:

9 Q How many times have you been qualified in general
10 sessions before as an expert?

11 A I would say 10 or 12 times. I mean, I'm not an
12 attorney, so I assume by "general sessions" you mean
13 any court? I would say that number, yes, ma'am.

14 Q So in a courtroom like this with 12 jurors you've
15 been qualified as an expert before?

16 A Yes, ma'am, I have.

17 Q Here in Horry County?

18 A I have.

19 Q Okay. And what were you qualified as an expert
20 in?

21 A I was qualified as an expert witness in a medical
22 malpractice lawsuit.

23 Q Have you ever been qualified as an expert in any
24 criminal case?

25 A I have not.

CHARLIE DORN SMITH - DIRECT EXAMINATION (CONT.)

1 THE COURT: Go ahead.

2 DIRECT-EXAMINATION (CONT.)

3 BY MR. MARTIN:

4 Q Did I ask you to take a look at some information
5 in this case?

6 A You did.

7 Q And among other things, did that include
8 photographs of the house, of the body of the deceased?

9 A Yes, sir.

10 Q The statements and things of that sort?

11 A Yes, sir.

12 Q Now, an issue has arisen by some as to whether or
13 not the defendant, Mrs. Sims, conducted CPR or vigorous
14 CPR in order to attempt to save Mr. Sims' life. Do you
15 have an opinion as to whether or not the amount of
16 blood that is seen in the picture that we have, or on
17 the chest, either the presence of what is there, or the
18 lack of some that is not there is any indication as to
19 whether or not vigorous CPR was performed?

20 A Yes, sir, I do have an opinion.

21 Q What is that opinion?

22 A The opinion is that the amount of blood that is
23 there on the front of the chest or on the floor has no
24 bearing on whether or not CPR was performed adequately
25 or not.

CHARLIE DORN SMITH - DIRECT EXAMINATION (CONT.)

1 Q If you would, briefly explain to the jury how you
2 come to that opinion?

3 A Well, two reasons. First of all, just the laws
4 of gravity. In other words, if I'm trying to drink
5 water out of this cup, if you cut the bottom out of the
6 cup, it doesn't matter how much I want to drink out of
7 the top, gravity will pull the fluid to the bottom and,
8 unfortunately, in Mr. Sims' case where the bullet
9 entered his chest, entered through the right side of
10 his heart, went through the area between that and the
11 left side and then went out the back, because of that
12 the blood drained to the floor, if you will. In this
13 case it didn't go all the way through the chest wall,
14 because blood is thick, it is not like water. The
15 tissue there is thick. The body's own mechanism is
16 trying to get things clotted off, if you will. If you
17 look at the autopsy report there was only about 50 cc's
18 of blood in the pericardium, which is the sac around
19 the heart, but there was over two liters of blood in
20 the left chest, which is where all the blood drained
21 to. So it is not going the blood is going to be
22 squirting up like a garden hose or something, it was
23 draining out posteriorly, if you will.

24 Q And would it follow then that the presence of
25 some blood, no blood or a lot of blood on the hands of

CHARLIE DORN SMITH - CROSS-EXAMINATION

1 the deceased would be no indication as to whether or
2 not vigorous CPR was performed?

3 A That is correct, yes, sir.

4 MR. MARTIN: Answer any questions Ms. Livesay
5 has.

6 CROSS-EXAMINATION

7 BY MS. LIVESAY:

8 Q How are you?

9 A I'm well. How are you?

10 Q Good. If you don't mind, tell this jury how you
11 know Morgan Martin.

12 A I met Morgan probably four or five years ago
13 through a mutual friend.

14 Q Are you social buddies?

15 A We do have a social relationship, we do.

16 Q So you all are friends?

17 A We are, but I'm also friends with Jimmy
18 Richardson, the Solicitor, and with Cane Hearn; does
19 that imply that my testimony is anything other than a
20 medical opinion?

21 Q I'm just asking.

22 A Yes, ma'am.

23 Q Did you do a report about anything you were going
24 to say in this case?

25 A No, ma'am, I did not. I wasn't asked to.

CHARLIE DORN SMITH - CROSS-EXAMINATION

1 Q Now, you are telling this jury -- so I'm clear,
2 what you are saying is you don't know by looking at the
3 pictures whether or not CPR was performed?

4 A Well, what I was asked to say is whether or not
5 the presence of blood on the defendant's hand were any
6 evidence, if you will, or blood on the floor and on the
7 chest, and you can't say from looking at the picture
8 whether or not CPR was performed or not, but you also
9 cannot say that if it was performed, it was not
10 adequate because of the fact that there was adequate --

11 Q So what you are saying is you do not know? You
12 don't have any sort of medical opinion about whether or
13 not CPR was performed on the victim?

14 A There is no way to know that. I wasn't there.

15 Q So, basically, you are just up here saying you
16 don't know if CPR was performed or not by looking at
17 the pictures; it could have been performed, but may not
18 have been performed?

19 A That is true, but if it was performed, there is
20 no indication that it wasn't done properly.

21 Q Just so I'm clear, and I'm not arguing with you,
22 I just want to be sure I'm clear, you know a lot more
23 about this than I do.

24 A I hope so.

25 Q Yes. I do, too. You really don't know if CPR

CHARLIE DORN SMITH - CROSS-EXAMINATION

1 was performed? It could have been, but may not have
2 been?

3 A That's true, but if CPR was performed, then there
4 is no way to tell that it wasn't done properly.

5 Q What did you look at before you came up here to
6 give your expert opinion?

7 A I looked at the pathology report, and I looked at
8 the pictures that were provided from the investigation.

9 Q Did you listen to the 911 tape?

10 A I did not. I read the 911 tape, but I did not
11 listen to the 911 tape.

12 Q Okay.

13 MS. LIVESAY: No further questions.

14 MR. MARTIN: Nothing further.

15 THE COURT: You can be excused and I assume
16 released from any subpoena?

17 MR. MARTIN: Yes.

18 THE COURT: Call your next witness.

19 MR. MARTIN: Katie Brim.

20 (KATIE KHANDUJA, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your name and spell your last.

23 WITNESS: My name is Katie Khanduja,
24 K-H-A-N-D-U-J-A.
25

KATIE KHANDUJA - DIRECT EXAMINATION

1 DIRECT-EXAMINATION

2 BY MR. MARTIN:

3 Q Katie, where do you live?

4 A Currently in New Jersey. I live at [REDACTED]
5 [REDACTED], Montclair, New Jersey.

6 Q And where were you born and raised?

7 A I was born in Conway and raised in Conway.

8 Q How long did you live in Conway before you moved
9 to New Jersey?10 A I lived in Conway until 2006. I moved to New
11 Jersey in 2006 when I was hired with Continental.

12 Q Do you know Heather Causey Sims?

13 A I've known her my whole life. We were born six
14 months apart and put in the nursery together at church,
15 and known her ever since.16 Q Since you have moved to New Jersey, have you kept
17 in touch with Heather?18 A Yes, sir. I've kept in touch with Heather just
19 like I have with my family down here. Heather and I
20 always have done everything together. We've always
21 kept in contact with each other making sure everything
22 is going okay.

23 Q Your parents still live in this area?

24 A They do. My dad is still here. He's an attorney
25 across the street. My mom worked for the State, and

KATIE KHANDUJA - DIRECT EXAMINATION

1 they are still in Conway and Murrell's Inlet.

2 Q Let me ask you this. Based on the 26 years you
3 lived here in Horry County and keeping in touch with
4 Heather over the past eight years, do you have an
5 opinion as to her reputation as it regards to truth
6 veracity in the community?

7 A Heather has always been truthful and loyal. She
8 was a friend of everyone. Everyone knew what she stood
9 for. Heather stood for her faith. She stood for her
10 family. She stood for her friends. If you needed her,
11 she was there for you (witness crying). She's always
12 been a friend that you always want, and she's the one I
13 want my daughter to meet. I was raised by this family
14 growing up. She is a part of my core memory. I love
15 her as much as I could love anybody. (witness crying.)

16 Q Are you worried about her?

17 A I'm so worried about her. I was worried about
18 her when it happened. I couldn't imagine -- I couldn't
19 imagine what she's gone through. I can't imagine my
20 life without her.

21 Q Let me ask you this, Ms. Brim. Do you know her
22 reputation for hard work, industriousness as opposed to
23 laziness or greediness?

24 A Heather has worked so hard. It always seemed to
25 be so effortless, and she was so smart. She would be

KATIE KHANDUJA - DIRECT EXAMINATION

1 with me -- in fifth grade she would name all the bones
2 in my body. She taught me how to swim. She taught me
3 how to love. She always worked so hard in school. She
4 worked so hard in college. She just did more than I've
5 ever done, and I wish I could do.

6 Q Do you know her reputation in the community for
7 violence as opposed to peacefulness?

8 A Heather wouldn't know how to hurt someone if she
9 tried. We were little one time and having a sleepover.
10 I guess I was nine, and we had a mosquito -- a gnat in
11 the room, and I wanted to kill the darn gone thing
12 because it kept buzzing in my ear, and she said, no,
13 put the blanket over your head and we'll put it out in
14 the morning. I was like, Heather, can't I just get rid
15 of this gnat now, and she was like, no, Katie, just
16 leave the gnat alone, just sleep under the covers and
17 the gnat won't bother you anymore. Heather couldn't
18 hurt anybody, she wouldn't know how.

19 Q Do you have an opinion as to whether or not
20 Heather would have shot that gun that day unless she
21 was in fear of her safety or her life?

22 A The only reason why Heather would pull a trigger
23 is if he were going to kill her or hurt her child.

24 MR. MARTIN: Answer any questions Ms. Livesay has
25 for you.

KATIE KHANDUJA - CROSS-EXAMINATION

CROSS-EXAMINATION

1
2 BY MS. LIVESAY:

3 Q Ms. Brim, where do you live now?

4 A Montclair, New Jersey, 180 Walnut Street.

5 Q How long have you lived there?

6 A I've been in New Jersey for almost ten years.

7 Q Ten years?

8 A Uh-huh. Yes, ma'am.

9 Q Let me get this straight. You have not even
10 lived in Conway for the past decade?

11 A No, but I visit about three times a year. My
12 family is here. My roots are here. I mean, this is
13 home. You know, this is what my daughter knows as
14 being home.

15 Q So you come here back just for the holidays?

16 A No. I come here just to visit my parents and
17 visit my friends, and if I have a group of days off, I
18 can fly, so I just fly home. I fly home to visit them.

19 Q But the majority of the time for the last decade
20 you have lived several states away from Conway?

21 A Yes. Yes. I work in Jersey, so I live in
22 Jersey. Yes, ma'am.

23 Q So you really have no idea what her reputation is
24 in the community for the past ten years, do you?

25 A I know Heather's reputation. It doesn't mean it

KATIE KHANDUJA - CROSS-EXAMINATION

1 is going to change because it is ten years. I have
2 friends all over the U.S., and just because I don't
3 live with them or see them, I know they are good
4 people.

5 Q That is an excellent point. Just because you
6 don't live here and don't see her, doesn't mean that
7 you don't know all about her; is that you are saying?

8 A I wish I knew she was in a domestic violence
9 relationship because I would have done something to
10 help her.

11 Q Let me ask you this. Did you know David Sims?

12 A I met him three times.

13 Q And when did you meet him?

14 A I met him at the high school reunion in '99 -- I
15 mean 2009. I met him at the rehearsal dinner at the
16 wedding, and on the wedding.

17 Q How long had he and Heather been together?

18 A They had just -- I think they just started seeing
19 each other in 2009.

20 Q So they had been together for almost five years?

21 A Until August 11th, yeah.

22 Q And you all are close friends?

23 A Uh-huh.

24 Q And she eventually married him?

25 A Yes, ma'am.

KATIE KHANDUJA - CROSS-EXAMINATION

1 Q And had a child with him?

2 A Yes.

3 Q And you all were so close you only met him and
4 been around him three times, and one was when they got
5 married?

6 A He wasn't available. I mean, I saw her when they
7 were together, but he just wasn't around, so I didn't
8 spend time with him. It doesn't mean I wasn't with
9 Heather, I just didn't have time with him.

10 Q And did you ever see them and hang out with them
11 at their house on Old Reaves Ferry Road?

12 A No, I wish I did.

13 Q So they lived at Old Reaves Ferry Road about a
14 year, and during the course of that year, you never
15 went to that house and spent any time with both of
16 them?

17 A No.

18 Q And what do you know about David Sims? Anything?

19 A You want fact, or rumors?

20 THE COURT: Just facts.

21 A No. I mean, Heather met David. I know Heather
22 was going to marry David, and Heather is not an idiot,
23 she's very smart, so I figured, you know, if Heather
24 loves him, he must be a good guy. Why would I think
25 less? You don't want to think bad of people, you only

KATIE KHANDUJA - CROSS-EXAMINATION

1 want to think the good of people.

2 Q And you are from New Jersey?

3 A No, I'm from Conway.

4 Q That's right, I'm sorry. And you lived in Jersey
5 for ten years?

6 A Yes. February is ten years.

7 Q Really, the last time you were around her was
8 high school?

9 A No, because I was around when we were in college.
10 Like I didn't leave until 2006.

11 Q Where did you go to college?

12 A I attended Horry Technical College.

13 Q Where?

14 A Horry Technical College. I didn't graduate. I
15 just went there for a few years, and I worked at Grand
16 Strand.

17 Q Is that the same college Heather went to?

18 A No.

19 Q So you didn't go to the same college?

20 A No, ma'am, I wasn't smart enough to go to her
21 college.

22 Q And shortly after that, you moved to New Jersey?

23 A Yeah. I moved to New Jersey in February of '06,
24 February 24th of '06.

25 Q So, really, you haven't been around her since

KATIE KHANDUJA - CROSS-EXAMINATION

1 high school?

2 A No, we were around each other. Just because we
3 didn't go to the same college doesn't mean we didn't
4 see each other on the weekends. I mean, our families
5 are friends. Just because you don't hang out with
6 someone all the time doesn't mean you are not friends
7 with them. I mean, I saw her, saw her on the weekends.
8 My family saw her. I mean, when my sister died, I
9 stayed at their house for two weeks when I was nine
10 years old. My family has been friends with them. Just
11 me being away doesn't change her reputation or who she
12 is. (witness crying.)

13 Q Right. But would you agree it changes how much
14 you know about her reputation and what is going on in
15 her day-to-day life?

16 A All that changed was I didn't know what she was
17 going through, and I would have come home more often
18 and saw her, and I could have probably figured out that
19 she was abused, and I could have helped her. She is
20 such.....(witness crying).

21 THE COURT: Do you need a break? We'll give you
22 a break.

23 WITNESS: I'm okay.

24 THE COURT: Ask your question.

25 Q You okay?

KATIE KHANDUJA - CROSS-EXAMINATION

1 A Yes, ma'am.

2 Q Did she tell you before August 11, 2013 that she
3 had been hit or abused in any form or fashion?

4 A No, ma'am. Women who are abused don't talk about
5 it.

6 Q And you told my investigator that she's not the
7 type of person that would sit around and be abused; is
8 that correct?

9 A Yeah, I did. Yeah, I sure did. I talked to
10 Ginger in June.

11 Q So let's talk about that little bit. You know
12 her?

13 A Uh-huh.

14 Q And when my investigator asked you about her, you
15 told my investigator she's not the type of person that
16 would sit around and be abused, didn't you?

17 A I did.

18 Q And she lived right across the same yard from her
19 parents' house; isn't that correct?

20 A When you are mentally broken down, you are not
21 going to tell anyone. You are not going to tell
22 anyone.

23 Q Do you know anything about domestic abuse?

24 A I was in a domestic violence relationship, and I
25 did go somewhere for help for it, so I do know about

KATIE KHANDUJA - CROSS-EXAMINATION

1 it.

2 Q But you told my investigator that this woman is
3 not the type of woman that could sit around and get
4 abused?

5 A I did. I did.

6 Q And you also told my investigator that this is
7 also not the kind of woman that would want a divorce,
8 didn't you?

9 A She would fight so hard to stay married. She
10 really wanted to be married. She wanted her family,
11 and I know she wanted -- she wouldn't just let it go,
12 just walk away.

13 Q So she's not the type of person that would sit
14 around and be abused, and she's not the type of person
15 that would want a divorce; isn't that what you told my
16 investigator?

17 A That is why I was so worried about her. God
18 knows what she went through.

19 Q Let me ask you this, Katie.

20 A Yes, Counselor.

21 Q Did you tell my investigator that this woman is
22 not the type of woman that would sit around and get
23 abused, and this is not the type of woman that would
24 want a divorce; is that not what you told my
25 investigator?

KATIE KHANDUJA - CROSS-EXAMINATION

1 A I have said yes to that, Counselor.

2 Q You did? That is what you told her, yes?

3 A I just answered that question three times with
4 you, Ms. Nancy.

5 Q And now you are up here telling these people a
6 completely different story than what you told my
7 investigator?

8 A I haven't changed my story, Nancy. That is not a
9 story changer.

10 Q But you would agree with me that you have not
11 lived in Conway for ten years?

12 A I have not lived in Conway in ten years. I live
13 in New Jersey.

14 Q I noticed you got up here and cried and talked
15 about you didn't know what she was going through; do
16 you remember that?

17 A Yes, ma'am.

18 Q Have you been here all week?

19 A Yes, ma'am.

20 Q And do you realize you are the only person that
21 got up here and said that she was in some sort of
22 domestic violence situation?

23 A I do.

24 Q Do you also realize there hadn't been one person
25 from Conway that still lives in Conway that has said

KATIE KHANDUJA - CROSS-EXAMINATION

1 anything about her being in an abusive relationship or
2 ever being abused?

3 A No one has been on the stand.

4 Q Ma'am?

5 A No one has been on stand to say that.

6 Q But have you been here all week?

7 A Yes, ma'am.

8 Q Have you seen anybody that is from Conway and
9 lived in Conway all their life, and still lives in
10 Conway, say anything about this woman being in that
11 kind of relationship?

12 A No one has been on the stand and asked the
13 question or given the opportunity.

14 Q And did you also notice nobody came up here from
15 Conway that still lives in Conway and say anything
16 about her truthfulness or how peaceful her reputation
17 is; have you seen anyone from Conway come in and say
18 that?

19 A No one has been called up here, Nancy.

20 MR. MARTIN: Objection. That statement is
21 inaccurate, and she is beginning to badger this young
22 lady.

23 THE COURT: Yeah. It's -- move on. Sustain on
24 that.

25 Q She never said anything to you about any of this

KATIE KHANDUJA - CROSS-EXAMINATION

1 going on before she shot and killed him and was charged
2 with murder, did she?

3 A She has not said, no.

4 Q She didn't say anything until after she was
5 locked up for murder.

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

7 THE COURT: You can answer that question.

8 WITNESS: She didn't murder him.

9 THE COURT: Ma'am, the question was, did she say
10 anything?

11 WITNESS: No. No.

12 THE COURT: Anything on redirect?

13 MR. MARTIN: Nothing.

14 THE COURT: You can step down and be released.
15 I'll need to send you out. It will take 10 minutes.
16 Don't talk about the case.

17 (The jury exits at 10:31 a.m., and the
18 following is heard out of the presence of the jury.)

19 THE COURT: Where are we?

20 MR. MARTIN: We are at a stage where I may have
21 one more short witness, but the next witness would be
22 Heather Sims.

23 THE COURT: Mrs. Sims, if you would, come up here
24 with your lawyer. I'm going to put you under oath. I
25 have some questions to ask you. Stand there, we're

HEATHER SIMS - EXAMINATION BY THE COURT

1 going to swear you in. This is, quite frankly,
2 between you and I.

3 (HEATHER SIMS, having been duly sworn,
4 testified as follows:)

5 EXAMINATION

6 BY THE COURT

7 Q I need to ask you questions, which are checklist
8 questions, to make sure you understand your Fifth
9 Amendment rights. If you have questions about the
10 questions I ask you, you are welcome to ask Mr. Morgan
11 -- Mr. Martin, but you need to understand that at this
12 time in the trial, you have a right to claim your
13 protections to the Fifth Amendment; do you understand
14 that?

15 A Yes, sir.

16 Q Which means -- the Fifth Amendment states, in
17 part, that no person shall be compelled to testify
18 against themselves; you understand that?

19 A I do. Have.

20 Q You talked to your lawyer about that?

21 A I have.

22 Q If you decide to testify, the decision must be
23 freely, voluntarily made, and it must be your decision,
24 and it must be made intelligently. The Fifth Amendment
25 right is given to you, not to your lawyer or to anyone

HEATHER SIMS - EXAMINATION BY THE COURT

1 else in the courtroom, and even though you can speak
2 with your lawyer about it and seek his advice, and also
3 depend on his advice, you are the only person in this
4 courtroom that can decide they want to waive their
5 Fifth Amendment rights; do you understand that?

6 A I do understand.

7 Q Do you understand that if you don't testify, I'll
8 instruct the jury that they cannot hold that lack of
9 testimony against you?

10 A Yes, sir, I understand.

11 Q Do you understand that I will tell them that they
12 cannot be prejudiced in any way by the fact that you
13 did not testify?

14 A I understand.

15 Q Have you talked to your lawyer about this
16 decision?

17 A Yes, sir.

18 Q Do you have any questions about the Fifth
19 Amendment right as I've explained to you?

20 A I don't.

21 Q Has your lawyer explained his Fifth Amendment
22 right to you?

23 A Yes, sir, he has.

24 Q And have you discussed this issue with him.

25 A Yes.

HEATHER SIMS - EXAMINATION BY THE COURT

1 Q Have you made a decision whether or not you will
2 testify?

3 A I have.

4 Q What is that decision?

5 A I'm going to testify.

6 Q And you talked to your lawyer about this?

7 A Yes, sir.

8 Q And you understand all of these rights as I told
9 them to you?

10 A Yes.

11 Q Do you have any questions about those Fifth
12 Amendment rights?

13 A No, sir.

14 THE COURT: Any questions?

15 MR. MARTIN: There is none. She understands.
16 The only thing that I will tell the Court is we have
17 that issue we were dealing with last night that we
18 need to deal with before. No, there is no question
19 that she understands her rights.

20 THE COURT: Thank you, ma'am. What we'll do is
21 -- let's get this next witness.

22 MR. MARTIN: it may not --

23 THE COURT: Where are you with this stuff?

24 MR. MARTIN: I need to check when I'm done
25 talking to you about if there is another witness.

COURT AND THE ATTORNEYS

1 THE COURT: Let me ask you this. We stayed up
2 here last night at 9:20. I went on the record that it
3 was 9:20 and we were still here. Where are you in
4 regards to the audio files, because when I left at
5 9:40, you were copying 250 audio files and there was
6 questions about whether they received it. State said
7 they sent it, so we have one of those questions.
8 Where are you on that?

9 MS. LIVESAY: I've marked it as an exhibit,
10 State's 117, showing Mr. Martin's signature, and we
11 sent it on November 26, 2014. This is a screen shot
12 attached to the items that was sent to him. I've also
13 put State's 118 in, that is a screen shot of what we
14 gave him last night to show, indeed, what he was given
15 on November 26 of 2014, is the exact same thing we
16 gave him last night.

17 THE COURT: What did you discover? I know you
18 went back to look.

19 MR. MARTIN: Well -- well, the point is, Judge,
20 the piece of paper she's got is legitimate, either me
21 or my secretary signed for it, but that doesn't
22 establish what we got. And we did go over last night
23 and listen as much as I could until I gave out at
24 about 1 o'clock in the morning. I don't think that it
25 was intentionally on anyone's part that we didn't get

COURT AND THE ATTORNEYS

1 anything, but I do know that we didn't have all of the
2 -- all the audio recordings that they got from David
3 Sims' phone, iCloud, whatever that apparatus is that
4 maintains things. We didn't have them. Obviously, if
5 I had them, I would have listened to them. Or they
6 were delivered in a format that was unopenable, and
7 that happens from time to time with this kind of
8 stuff. So I would -- but having said that, if -- I'm
9 going to object under Rule -- discovery of Rule 5
10 Brady versus Maryland, and anything else I can think
11 of, those things specifically, to the use of any of
12 those audio recordings from this point on, so I do
13 that.

14 I have a second objection. I think that we may
15 have isolated Ms. Livesay -- and the State never did
16 say exactly which one they wanted to use, other than a
17 general description about a conversation he recorded
18 back when they were building a house, in which there
19 was an exchange of some sort. I did hear a
20 conversation which may well be that in November of --
21 well, it was 18, 20 months before August 11 of '13.
22 It must have been '12. I would object to that on the
23 additional grounds of relevance under 401, 402 and
24 403. It is at least 20 months removed from this
25 event. It really is an argument about -- and of

COURT AND THE ATTORNEYS

1 course if I'm talking about the wrong one, they need
2 to tell me, and I want the Court to listen to it
3 before anything occurs.

4 THE COURT: I will.

5 MR. MARTIN: Under Rule 401, 402 and 403, I don't
6 think it is relevant, anyway. If it is the one I
7 heard, it is not earth shattering by any stretch of
8 the imagination, but it is, again, not relevant. The
9 chance of prejudice from some old conversation
10 relating to the issue of whether in this instance she
11 is guilty of murder or self-defense, the confusion or
12 prejudice from that is too great, and I move that it
13 be excluded.

14 THE COURT: Okay. Let me ask you this, because
15 this is where I left it, and it was, quite frankly,
16 the point of frustration I had last night. If you are
17 going to play something, you have to show him what it
18 is. I'm assuming -- this is what is driving me crazy.
19 I'm assuming you are talking about the same recording,
20 right?

21 MS. LIVESAY: I can play the recording for him
22 now, but I wasn't --

23 THE COURT: No. Hold on. Are you all talking
24 about the same recording, the one he says that he
25 listened to, and the one you say you are going to use?

COURT AND THE ATTORNEYS

1 MS. LIVESAY: We are looking at the same report.

2 THE COURT: No. No. I'm not a witness. Are you
3 all talking about the same audio recording?

4 MS. LIVESAY: I would think so. I can play it to
5 make sure.

6 THE COURT: That is what I want to do, but that
7 is taking us two days to get to that point. Go ahead
8 and -- I mean, I'll listen to it, and then, quite
9 frankly, the question -- I don't have any doubts that
10 you sent it to him, you know. The timing of it
11 probably goes to its credibility. I mean, it is a
12 factual issue. There is a forest and tree argument
13 here, and I think the forest has been lost, but let
14 her respond.

15 MS. LIVESAY: I do think it is relevant because
16 he marched these people up to talk about their
17 relationship and how peaceful she was, and this woman
18 just got up and insinuated that this woman was a
19 victim of domestic violence. That conversation is
20 between her and the victim, so we don't have to wonder
21 what is going on between her and the victim. We don't
22 have to hear from Katie Brim or some lady from
23 Spartanburg. We can listen to the tape and get
24 insight about that relationship, and I believe that
25 would be the best evidence to show what was going on

COURT AND THE ATTORNEYS

1 in this relationship, then the jury doesn't have to
2 wonder is this man this controlling, overwhelming,
3 not-letting-her-speak type of relationship. The audio
4 speaks for itself. That is an insight into what is
5 going on into that relationship, so I think it is
6 completely relevant.

7 We are here charging this woman with murder.
8 Mr. Martin has said, no, she didn't have the
9 personality for that, so let's get a look at the
10 recording and see really what this woman's personality
11 is like and what was going on between her and the
12 victim. There couldn't be any better evidence.

13 MR. MARTIN: Let me say this to you. That is not
14 true. When I tried to put in phone records from
15 July 24, Ms. Livesay objected because it wasn't
16 relevant, it was too far removed. We are talking
17 about November of 2011. Let me say this, now, the
18 Court needs to know this too. Mr. Sims apparently
19 loved to record himself. You know --

20 THE COURT: I understand there is over 200
21 recordings, that is where we were at late last night.

22 MR. MARTIN: And the majority has nothing to do
23 with her. But it doesn't change, in my mind -- the
24 objection I made, I won't restate them, but that is
25 where I'm at.

COURT AND THE ATTORNEYS

1 THE COURT: Let me say this. We've all known we
2 would reach this point for 10 days, and so that was
3 the crux of my frustration last night, that literally
4 since last Monday we knew we were going to get to this
5 point, and then suddenly at 9:30 the night before the
6 trial ends, we're arguing about it. I think -- I
7 assume there is no disagreement that this is these two
8 voices, these two people?

9 MR. MARTIN: Judge, I suggest when you take the
10 break, you listen to it before you make a decision,
11 and then whatever you do, you do.

12 THE COURT: I know. Again, I'm not a witness.
13 You all agree, it is these two people?

14 MR. MARTIN: Oh, I think it is, yes.

15 THE COURT: That is the first question, and then
16 relevance is second. So you have something I can
17 listen to it on?

18 MS. LIVESAY: Your Honor, this recording, just
19 for the record, was off of David's phone, and you
20 clearly hear him calling Heather's name in the
21 recording.

22 THE COURT: We've agreed it is them. I'm
23 wondering is there some way I can listen to it back
24 there and not have to listen to them out here?

25 MR. MARTIN: There is. I'm sure they have it on

KERRY HODGE - PROFFER EXAMINATION BY MR. MARTIN
1 a laptop.

2 THE COURT: Bring it back there and let me listen
3 to it. I'll let the jury know through Bobby it will
4 be 10, 15 more minutes. They probably already hate
5 me, but I tried to avoid that. We're on break until I
6 come back after I listen to it.

7 (Defendant's Exhibits 77A through N marked.)

8 (A recess was taken.)

9 MS. LIVESAY: Can I look at the particular
10 portion that Mr. Martin is going to show the jury
11 before the jury gets in here?

12 (Defendant's Exhibit 78 marked.)

13 MR. MARTIN: While we're waiting, in an effort to
14 save time again -- are they coming?

15 THE COURT: No. No. We have to proffer that
16 stuff.

17 MR. MARTIN: Nancy, if you would, please, let's
18 show the Judge something here.

19 (A conversation was had off the record.)

20 (KERRY HODGE, having been duly sworn,
21 testified as follows:)

22 WITNESS: Kerry Hodge, H-O-D-G-E.

23 PROFFER EXAMINATION

24 BY MR. MARTIN:

25 Q What is your full name, and where you do live?

KERRY HODGE - PROFFER EXAMINATION BY MR. MARTIN

1 A My name is Kerry Hodge and I live in Green Sea.

2 Q Do you know Heather Causey Sims?

3 A I do.

4 Q Did you know David Sims?

5 A I do.

6 Q Did you have an occasion to have Mr. David Sims

7 do some work at your home?

8 A I did.

9 Q Tell the Judge what happened.

10 A It was May of 2013. We put a pool in, and he
11 poured a deck around the pool. Getting over to the
12 end, later in the afternoon, he -- the pumping guy he
13 had there was not the one he usually used. He had
14 already cleaned out the pipe, and they needed a little
15 bit more. At this point, he went from okay to upset, I
16 mean upset enough that I was uncomfortable, and I
17 removed myself from the situation.

18 Q And what -- what did he appear to be upset over?

19 A This guy that cleaned the pipe out before he
20 pretty much said he was done.

21 Q And how did he -- what did he say -- not specific
22 words, but convey to the Judge his demeanor as to what
23 was said, how he looked and how quickly he got to that
24 condition?

25 A It went from calm to angry. I mean a split

COURT AND THE ATTORNEYS

1 second. He was red from the neck to the top of his
2 head. There was many, many explicit, GDs and MFs a
3 lot and, I mean, I was uncomfortable, so I left.

4 Q It made you uncomfortable?

5 A Yes, sir.

6 Q Were you glad he wasn't directly mad with you?

7 A Absolutely.

8 MR. MARTIN: That is the basis of the testimony,
9 Your Honor. We believe it is admissible, and in this
10 particular case under the Rules that allow evidence of
11 character and specific instances in character, because
12 the testimony in this case from the way the both sides
13 look at it is that Mr. Sims in this case got very
14 angry, very quickly, over what some might call not a
15 big deal, and so we think it is specifically relevant
16 to our case.

17 THE COURT: And thank you for proffering that.
18 Based upon what we talked about in the back, this was
19 his testimony about Mr. Sims and another man, doesn't
20 have to do with Heather Sims. So, again, I'm glad you
21 proffered it, but I won't allow it. I think it is too
22 remote, and I'm not sure it is relevant. I understand
23 because the State is planning on playing a snippet of
24 a tape that seems to show their relationship, I don't
25 think the fact he got mad at a concrete guy has

COURT AND THE ATTORNEYS

1 anything to do with that. Thank you. I'm not saying
2 you are not telling the truth, it is just that.

3 THE WITNESS: Right. Right.

4 THE COURT: Thank you, sir. Before we start, I
5 understand that everyone in this courtroom is tired.
6 We've all been here most of the time. I have noticed
7 some whispering, and you've done better than what I
8 thought you would do, but when Mrs. Sims testifies, if
9 she testifies, that is not going to make everyone
10 happy. If you make any noise, make any faces, I mean,
11 I can see, and I've seen what you did. I saw when
12 Dr. Collins testified there was a little bit of an
13 outburst, do not make any noise or faces. If you do,
14 the deputies are under orders. They will point to
15 you, and you're gone. There won't be any questions,
16 okay.

17 Have you seen these pictures?

18 MS. LIVESAY: Let me see which ones.

19 (The jury enters at 11:30 a.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: Thank you for your patience. We had
22 to take some equipment out of here and take it to the
23 back office and get it back in here. My law clerk did
24 notice last night when I said you all can punch me
25 that no one smiled; I did, too. So sorry about that,

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 but we're quickly bringing this thing to the point
2 where you will get a chance to make your decision, so
3 bear with me, please.

4 Call your next witness.

5 MR. MARTIN: Heather Causey Sims.

6 (HEATHER CAUSEY SIMS, having been duly sworn,
7 testified as follows:)

8 THE CLERK: State your name and spell your last.

9 WITNESS: Heather Sims, S-I-M-S.

10 DIRECT-EXAMINATION

11 BY MR. MARTIN:

12 Q I won't ask you where you live and what is your
13 name, because I think we've been there with that. Are
14 you okay?

15 A Yes, sir.

16 Q Heather, you know we talked about you testifying.
17 You've given statements, calling 911, you've talked for
18 the police at the hospital, talked about this case and
19 you answered a lot of questions, and you probably have
20 been getting asked a lot more questions.

21 A I understand.

22 Q But you want to testify?

23 A Yes, sir, I do.

24 Q Heather, let me go back and start with you. Now,
25 I'm going to do this as organized as I can, but let me

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 first say right at the start, it's been two years and
2 two, three months since August 11, 2013. Do you
3 remember every movement you made or everything you did
4 that day?

5 A No, sir, I don't.

6 Q Do you remember everything or every body movement
7 that David did that day?

8 A No, I don't.

9 Q Do you remember every syllable, every word, every
10 utterance that you or David said that day?

11 A No, I couldn't. I couldn't tell you everything
12 that was said or done.

13 Q When you talked with the police that night at the
14 hospital, did you tell them the best you could what you
15 could recall?

16 A It was a very emotional and difficult situation
17 for me to be in, but I did the very best I could to
18 tell them what happened.

19 Q And let me back up with you for a few minutes and
20 talk. Tell the jury -- they know who you are and
21 essentially where you are from a little bit. But I'll
22 go over your background. You live here in Conway, and
23 your parents are Ronnie and Sandra Causey?

24 A Yes, sir.

25 Q Your grandparents live in this community?

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 A Yes, sir, they do, from Conway as well.

2 Q And you have a child?

3 A Yes, sir.

4 Q What is the child's name?

5 A His name is J.D.

6 Q And he is the child of you and David?

7 A Yes, he is.

8 Q Heather, do you regret what happened?

9 A With all my heart. I look at my child every day
10 and I am reminded that he doesn't have his father, and
11 it's the most difficult thing. I never wanted this for
12 my child. (witness crying.)

13 Q Do you know how hard this is on the Sims' family?

14 A I think about his family every day, and I'm so
15 sorry for all of their pain, and I sympathize with
16 their pain, because I've experienced the same pain.

17 Q In your opinion, Heather, did you act in
18 self-defense?

19 A Yes, sir. This wouldn't have happened. I loved
20 David with my whole heart.

21 Q All right. Heather, where did you finish high
22 school?

23 A I went -- graduated in 1999 from Conway High
24 School.

25 Q And after finishing high school in Conway, what

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 did you do?

2 A I always knew that I wanted to do something in
3 the medical field. My desire was to help people, and I
4 thought it would be, you know -- everybody loves
5 anesthesia, it is your favorite person and helps your
6 nerves, you know. I wanted to be that person, so in
7 order to do that, I had to be a nurse first.

8 Q All right. So let me say to you. I want us to
9 try to tell your story to the jury. I don't want to
10 bore them. I don't want to drag this out any more than
11 we have to.

12 A Yes.

13 Q So let's remember that as we go through it, and
14 maybe I'll lead you a little bit through some of this.
15 You went to high school here in Conway, and you
16 graduated?

17 A Yes.

18 Q And then you went to Coastal for a couple of
19 years to get the basics of college?

20 A Right.

21 Q And then Francis Marion to get your degree in
22 nursing?

23 MS. LIVESAY: Your Honor, is he going to allow
24 her to testify?

25 THE COURT: Don't lead.

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 Q (MR. MARTIN) I'll do better. You went to
2 nursing school?

3 A Yes.

4 Q Where?

5 A I went to Francis Marion. It was a satellite
6 program. I got my diploma through the Medical
7 University of South Carolina, and I did that in 2003.

8 Q And then after that, did what?

9 A In order to be a nursing anesthetist, you have to
10 have ICU experience. So I went to Grand Strand
11 Regional Medical Center and worked in the surgical ICU,
12 floated to the cardiovascular ICR and all the other
13 ICUs and got three years of experience there before I
14 applied to USC and MUSC. I got into both programs.
15 MUSC is the one that started before, so that is the
16 only reason I picked MUSC over USC, so I could get
17 started.

18 Q You graduated from MUSC when?

19 A I graduated from MUSC with my Master's in Science
20 in Nurse Anesthesia in December of 2008.

21 Q And came back to Horry County?

22 A Yes, sir.

23 Q And you got your degree in -- you are a nurse
24 anesthetist?

25 A Yes, sir.

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 Q And then you came back to Horry County and went
2 to work?

3 A Yes.

4 Q Where?

5 A I went to work -- it was Loris Healthcare Systems
6 at the time, but it is now McCleod, Loris and McCleod
7 Sea Coast.

8 Q You worked there until August 11?

9 A Yes.

10 Q And of course with these charges pending against
11 you, what is your work status?

12 A I haven't been able to work.

13 Q Let me hand you what was marked for
14 identification as Exhibit 77M, 77L, 77I, 77H, 77N, 77K
15 and 77J, and ask you if you can identify those for us?

16 A Yes, sir.

17 Q Take each one and tell me.

18 A That was me in the homecoming parade in high
19 school.

20 Q Let me hand them to you.

21 MR. MARTIN: Judge, we have a larger exhibit of
22 it when we need it, but for time's sake, I'll do it
23 this way.

24 THE COURT: Thank you.

25 Q (MR. MARTIN) 77M is what, Heather?

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 A That was the homecoming parade in high school. I
2 was Ms. Homecoming, and we had a parade.

3 Q And 77L is what?

4 A That is also when I was in high school, when I
5 got inducted in the National Honors Society.

6 Q 77I?

7 A I graduated anesthesia school with my mom and my
8 dad.

9 Q 77N?

10 A That is a picture of me and the runners-up on the
11 football field after I found out I won Ms. Homecoming.

12 Q And 77K?

13 A That is -- I took piano for 12 years, and my
14 grandmother, she had a stroke. She was in a nursing
15 home, and we -- she would like to hear me play the
16 piano. She's not with us anymore, but I was playing
17 the piano for her.

18 Q 77J?

19 A Is me -- I graduated nursing school. That was me
20 at the sign.

21 Q And 77H?

22 A That is a picture ever me as I was pushing a
23 patient to the recovery room after they woke up.

24 MR. MARTIN: I'll move these into evidence.

25 THE COURT: Any objection?

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 MS. LIVESAY: No objection.

2 (Defendant's 77A through 77N admitted.)

3 Q (MR. MARTIN) You worked at Loris Hospital up
4 until August 11th when this happened; is that right?

5 A That's correct.

6 Q Tell the jury -- and of course a nurse
7 anesthetist does what, very briefly?

8 A Well, simply put, this is what I would tell you
9 if you were having surgery. I'm going to wake you up
10 -- I'll put you to sleep and wake you up, and wake you
11 up as comfortable as I can. I'm with the patient from
12 the beginning to the end during the entire procedure,
13 whether it is 30 seconds or 8 hours.

14 Q And what kind of schedule do you work as a nurse
15 anesthetist?

16 A We were a small hospital, so we had to take calls
17 at least once a week, and every fourth weekend I was
18 on-call from Friday 7:00 a.m. until Monday at
19 7:00 a.m., I was on-call for 72 hours at a time.

20 Q Is it a somewhat stressful job?

21 A Yes, it is. I would say it is very stressful.

22 Q Did you like what you do?

23 A I love what I do.

24 Q Heather, now that we are talking about your job,
25 I'm going to ask you about your salary and that kind of

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 thing, because they've introduced evidence of a life
2 insurance policy that you were the beneficiary of, and
3 maybe that might raise the question of whether you
4 needed money or you shot David to collect the life
5 insurance policy. It's the kind of thing that people
6 don't want to talk about, but I need to ask you about
7 your financial situation.

8 A I understand.

9 Q What was your salary at the hospital over there?

10 A I think my last W2 read 170,000 to 180,000.

11 Q Somewhere between 170- and \$180,000?

12 A Yes, sir.

13 Q While we're on that point, you had gone to work
14 part-time after the baby was born and before this
15 happened?

16 A No, I never went part-time.

17 Q You hadn't?

18 A No, I hadn't. I had --

19 Q There was a conversation about that, so tell the
20 jury about the full-time/part time.

21 A After I had J.D. , you know, it's a
22 full-time job being a parent, let alone working. You
23 know, I did take a lot of calls, and I talked to my
24 boss about a part-time position, if there was one
25 available, and she actually went to the board of

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 whoever she had to go to, and they actually made a
2 position for me there so I could stay there and not go
3 to a different hospital. I did that so I wouldn't have
4 to take calls so that I could -- when I got off of
5 work, I could be available. David worked -- he was
6 away from home a lot of times until after 9 o'clock at
7 night, and I relied on my mom. If I got called in, she
8 would have to run quickly over to the house, and I had
9 a time frame I had to be in work if I got called in.
10 So it seemed -- even part-time, I still had benefits
11 and I could definitely make ends meet on a part-time
12 salary.

13 Q Have you testified about what part-time salary
14 was?

15 A No. If I remember correctly, it would have went
16 from 180- to \$120,000. So I felt that was enough, and
17 then I would be available not have to leave once I got
18 home. I would get called in at 3 o'clock in the
19 morning and 10 o'clock at night, and many times my mom
20 would have to stay until I was off at work, and
21 sometimes that was 9:00 p.m. I didn't want her to feel
22 that she was being taken advantage of as far as being
23 there all the time when I couldn't be.

24 Q Now, Heather, I feel we need to cover as many
25 bases with you as we can in terms of interpretations

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 and thoughts about what might have occurred here. But
2 did you want to quit work and not have an income?

3 A No, I would never. Anesthesia school is nothing
4 short of difficult. It is difficult, and I knew when I
5 went to school that I would be working to some capacity
6 until I was ready to retire. I put too many hours and
7 too much sweat into that license to lose it, and it is
8 one of those things that if you don't work and
9 completely quit, I mean, you're going to lose your
10 credentials, which unfortunately I have at this point,
11 but I hope to get that taken care of.

12 Q You had a conversation with your mommy, daddy,
13 David about working, not working, part-time, full-time,
14 that type of thing?

15 A When my boss, Star, you heard her yesterday, when
16 she told me a part-time position had opened up, I was
17 ecstatic. I felt that was an answer to my prayer. It
18 was something I had prayed about.

19 Q And when were you to start the part-time work?

20 A I'm not sure. When I found out, it was July or
21 August of 2013, and she said the position would become
22 available later that fall, so I would assume November.

23 Q Financially, Heather, were you in a position to
24 quit work if you wanted to?

25 A I could. I've continued to pay my bills and make

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 my house payments on funds that I have saved without
2 any work for the past two years and three months, so I
3 could have if I wanted to, but that isn't what I wanted
4 to do.

5 (Defendant's Exhibit 79 marked.)

6 Q Let me show what you was marked for
7 identification as Defendant's Exhibit 79 and ask you --
8 don't read it now -- ask you if that is a series of
9 text communication between you and your dad about that
10 very issue of needing to work, wanting to work, having
11 to work?

12 A Yes.

13 Q And, again, without -- just using that to refresh
14 your memory, and not reading it verbatim in the
15 interest of time, what is the basic theme of that text
16 conversation between you and your dad?

17 MR. MARTIN: Judge, this is something that is
18 already in evidence.

19 THE COURT: Right. Okay.

20 MR. MARTIN: I'm pretty sure it is anyway.

21 A This was a text message conversation between my
22 dad and I. It was early on in May, so J.D. was
23 maybe a little over a month old. I think every mother
24 at some point in time worries about the first day going
25 back to work, being away from their child. I probably

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 made a comment to him, gosh, I wish I could not go
2 back, but my dad texted me and he said, well, if you
3 want to do that, I'll pay your house off, and I told
4 him I would never let him do that, that I worked too
5 hard for my license, first of all, and -- you know, I
6 just worked too hard for that, for what I do, and I
7 love what I do. I absolutely love being a nurse
8 anesthetist.

9 Q And is that back-and-forth in paper on that text
10 message or communication?

11 A Yes.

12 MR. MARTIN: We move to enter into evidence
13 Defense Exhibit No. 79.

14 THE COURT: Any objection?

15 MS. LIVESAY: No objection.

16 (Defendant's Exhibit 79 admitted.)

17 Q (MR. MARTIN) Let's talk about David, your
18 meeting David. Tell the jury -- and, again, I guess
19 using as few words as possible, how you met David and
20 came to be married to him?

21 A Okay. I'm long winded, so I'll try to keep it
22 short. I met David at a mutual friend's wedding. I
23 think that is when he was going through his first
24 divorce, sometime in that period. I met him there
25 briefly, never talked to him again. Years later, I got

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 a friend request from a David Sims, and I'm terrible
2 with names, so I messaged him and asked if I knew him,
3 and he said I think we were in the same wedding
4 together, and I said, oh, okay. That is when he was
5 going through his second divorce, and that is when we
6 started dating at that point.

7 Q And when was this, 2009?

8 A Yes.

9 Q And when did you -- how did you first meet David
10 personally after that?

11 A On August 4 of 2009, my dad had to have surgery,
12 and he had surgery at McCleod in Florence, and since I
13 was there, I think I text him or E-mailed him, or had
14 some sort of communication about, hey, do you want to
15 get lunch. He was having a long surgery, neck surgery,
16 and so we went and ate lunch, and that was our first, I
17 guess, formal date.

18 Q And you and David were married when?

19 A We were married a year and few months later on
20 December 18, 2010.

21 Q How would you describe your relationship with
22 David at that time?

23 A Oh, gosh, I was -- it was great. It was really
24 everything that I ever wanted at that point.

25 Q You never had been married, Heather?

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1 A No.

2 Q You loved David?

3 A Yes.

4 Q And you believe David loved you?

5 A I believe he did.

6 Q So you got married at your parents' home in

7 Conway in December of 2010, right?

8 A Yes.

9 Q And where did you and David live?

10 A After we got married, it was a week before
11 Christmas. We had a Christmas wedding. We went on our
12 honeymoon, and we came back and he had a house in
13 Florence that he had during his second marriage. We
14 lived there; it made sense. We lived there, but he was
15 actively trying to sell it and, you know, the market
16 wasn't good at the time. Nobody was interested in
17 buying it, but he did have an inquiry about a family
18 wanting to rent it, so on February 14th of 2011, I
19 remember because it was Valentine's Day, we had to kind
20 of quickly move out, and they were ready to move in.
21 So he rented it so he could pay -- the rent that he was
22 charging the renters was the same amount as his
23 mortgage, so he wouldn't have to pay a mortgage.
24 Q Do you know how much the mortgage was on David's
25 home?

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1 A Total, or monthly?

2 Q Total.

3 A I really don't. I think it was between \$200- and
4 \$300,000.

5 Q So you and David moved from -- you were working
6 at McCleod at the time?

7 A Yes.

8 Q And you moved back to Conway?

9 A Yes.

10 Q And did you have a home to move into then, or
11 what did you do?

12 A We kind of packed up quickly and got out, and we
13 didn't have anywhere to go. So my parents offered for
14 us to move in with them, and that is what we did. We
15 had plans of building or buying, but we lived in their
16 upstairs, which is, I mean, like an apartment, until we
17 figured out what we were going to do.

18 Q Then you set out about building a house?

19 A Yes.

20 Q Now, at this point in time in your marriage had
21 there -- had you seen a marriage counselor of any sort
22 by the time you started building the house?

23 A Yes.

24 Q And tell the jury briefly why?

25 A You know, obviously after you get married the

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1 honeymoon is over and you start to have normal marital
2 issues. For one, we were trying to figure out building
3 a house, and that was an issue, but David and I had
4 trouble communicating, and if there was an issue, we
5 would talk about it, but it would get talked about in
6 circles. There was never a resolution. In the
7 two-and-a-half years of my marriage, I don't think we
8 ever resolved issues, and every time we had one that
9 would rise up, the others would get brought up. It
10 would snowball. We couldn't -- we couldn't settle one
11 thing without everything else getting brought up.

12 So, you know, my reason for wanting to see a
13 counselor at that point is I think we had problems
14 communicating, and I wanted somebody to help us learn
15 how to talk instead of -- I just wanted to talk and
16 solve issues we had with a resolution instead of just
17 being mad with each other.

18 Q All right. Now, you are living with your mom and
19 dad, you all begin to decide to build a house?

20 A Yes.

21 Q And you got pregnant?

22 A Yes.

23 Q Tell the jury when and where.

24 A I got pregnant in April of 2011, just
25 four-and-a-half months after we got married, and we

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 were living with my parents. You can imagine the
2 predicament we were in. The building of the house kind
3 of got on the back burner. We considered buying. We
4 kind of needed to get something more urgent at the
5 time, but when we went to see the doctor, it wasn't a
6 normal pregnancy, so I ended up having a couple months
7 later a miscarriage that ended up with me in the
8 emergency room on July 4th. It was, to say the
9 least, a traumatic experience. It wasn't your normal
10 miscarriage, but that was on July 4th.

11 Q And without getting into graphic detail, why was
12 it more traumatic than maybe some miscarriages?

13 A I know being a nurse anesthetist a lot of times
14 they know it is not a normal pregnancy and they do a
15 DNC, but we needed closure. Every time we went back to
16 the doctor, the baby had a heartbeat and, you know, I
17 just couldn't -- I needed to know that -- I just
18 couldn't do that. It was just a long drawn-out
19 process, and I thought that the miscarriage was
20 actually over with. I was on-call one day, and I was
21 in the operating room, and I just got these terrible
22 pains and it progressed that night. I ended up going
23 to the emergency room and being discharged from the
24 emergency room and having to go back to my doctor's
25 office the next morning and having a DNC the next day,

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 so it was drug out.

2 Q That was in July of 2012?

3 A 2011.

4 Q Let me show you what was marked for
5 identification, State's Exhibits 77G -- F and G. Can
6 you identify those for me?

7 A Yeah.

8 Q What are those?

9 A They are pictures of me and David, one when we
10 were in the mountains, and one when we were on a
11 cruise.

12 Q Were those before or after you were married, or
13 do you recall?

14 A I don't remember. I think one looks like before,
15 and the other one I can't remember.

16 MR. MARTIN: I move to enter these pictures.

17 MS. LIVESAY: No objection.

18 (Defendant's Exhibits 77F and 77G admitted.)

19 Q (MR. MARTIN) Let's go back to after the
20 miscarriage and building the house. How did you
21 decide where to build a house -- buy a house or build
22 one? How did that, briefly, come to be?

23 A My grandfather has land enough for -- it is
24 family land. He deeded a piece of the land to me for
25 David and I to build on, and we both agreed that that

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 is where we wanted to be, and we started to look at
2 house plans.

3 Q Let me ask you this. One question, how were you
4 working at McCleod when you lived in Florence for those
5 months after your marriage? You have to be fairly
6 close to the hospital.

7 A When I was on-call, I would sleep at the
8 hospital. We had a call house at that time, which, you
9 know, it is not there anymore. When McCleod took over,
10 we didn't have it anymore, but at the time when I
11 worked for Loris, they had a call house for us to stay
12 in.

13 Q You moved into your house when?

14 A June of 2012.

15 Q June of 2012. So it takes you probably nine
16 months to get that, a year to get that house built?

17 A Yeah.

18 Q Who built it?

19 A My dad; he's a contractor.

20 Q And how was the house paid for?

21 A It took us -- we had trouble getting a loan.

22 Q I'm asking you these questions because of the
23 insurance and all of that.

24 A Right. Right. I got you. The loan wasn't going
25 to suffice what it cost to build a house, so we had

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 trouble getting a loan for the amount we needed. My
2 dad just started building, and he said, you know, if I
3 have to fund it myself, I'll just do it. So we got a
4 loan almost -- the loan didn't go through until almost
5 when the house was close to being complete, so my dad
6 was paying for that and I was helping him, you know, my
7 dad, and I funded -- we were the loan until we got one.

8 Q And when you -- you did finally take a loan on
9 the house, right?

10 A Right.

11 Q And you paid your dad back with that?

12 A Yes.

13 Q And of course the house was in your name?

14 A Yes.

15 Q Not yours and David's?

16 A No.

17 Q House was on the land your grandfather gave you?

18 A That's right.

19 Q And your name was on the note and mortgage for
20 the house?

21 A Yes. Yes.

22 Q Of course, what kind of work did David do?

23 A When I met David, and when we first got married,
24 he was a landscaper. He did irrigation, and then
25 throughout our marriage he kind of got more into the

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 concrete side where he would do -- spray create or
2 stamp create or anything with concrete.

3 Q And David worked fairly hard?

4 A Yeah, he did.

5 Q And he wasn't in a position to make as much money
6 as you did?

7 A No. No, he wasn't.

8 Q But that didn't matter to you or him at the time?

9 A No, had nothing to do with it.

10 Q Was building the house stressful on the marriage?

11 A Yes. I can remember people telling me if you can
12 get through building a house, you can get through
13 anything, and I believed that. It was stressful.

14 Q And did you and David argue some about the house
15 and get upset with each other?

16 A Yes. Yeah, we both did. We were both tired,
17 frustrated. We had a lot of arguments about the house.

18 Q When did you move into the house?

19 A June of 2012.

20 Q What happened shortly after that?

21 A I got pregnant the next month.

22 Q Let me show you what is marked as Defendant's
23 Exhibit 77A and ask if you can identify that?

24 A Yes.

25 Q What is that?

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1 A That's me and J.D. and our dog, Marley.

2 Our dog passed away, and I got him a new one just like
3 the one we had, and that is us when we picked her up.

4 MR. MARTIN: I move to enter into evidence
5 Exhibit 77A.

6 MS. LIVESAY: No objection.

7 THE COURT: Without objection.

8 (Defendant's Exhibit 77A admitted.)

9 A Yes.

10 Q J.D. was born when?

11 A On March 26, 2013.

12 Q And tell the jury about that time in the
13 relationship with you and David and how it changed, if
14 at all?

15 A When we had J.D. -- (witness crying).
16 Sorry. My whole life was just at its peak. I would
17 see David with J.D. and, you know, it would -- I
18 know it does something to you, you see your husband
19 with your child, and it really does just intensify the
20 love you have for both of them. We had -- you know, we
21 had a little family, and I wanted desperately to keep
22 that family together. He stayed home for two weeks,
23 and then he went back to work. After he went back to
24 work, it started changing, you know. We had a new
25 house, new child. Everyone was tired. There were a

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 lot of frustrations, and then, you know, other family
2 issues were coming into play, issues we never had to
3 deal with.

4 Q And did there come a time when the relationship
5 just began to deteriorate to a significant degree?

6 A Yes.

7 Q And when was that, Heather?

8 A You know, it's hard to tell, because it was just
9 kind of a gradual thing, but it seems like it was --
10 looking back, it was around June, like the first of
11 June, you know. I was getting ready to go back to work
12 and I was talking about going part-time, and he didn't
13 seem to like that idea too much. You know, other
14 people were giving their opinions about that, and it
15 was -- obviously he had been talking to people. He had
16 an opinion about that. You know, we were up at night
17 with J.D. , and then he was having to drive to
18 Florence an hour-and-a-half both ways, and it became
19 I'm here because of you and I'm having to drive because
20 of you, you're the reason my parents don't come see
21 J.D. , and, you know, everything is your fault.

22 Q There is a text of some of this stuff, in the
23 information here in which the conversation between you
24 and David, and you talk about you don't -- that he
25 seems to have a lot of resentment and hate; do you

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 recall that?

2 A Yeah, I do.

3 Q And you recall a conversation you tried to have
4 with him about where it was coming from?

5 A I think so.

6 Q And what do you think was going on with you and
7 David back in July and August in terms of where his
8 anger seemed to be coming from?

9 A A lot of David's friends were having marital
10 problems, and it seemed to me like there was few people
11 in his life that actually encouraged our marriage to
12 work, and I wanted our marriage to work. You know, he
13 would come home, and I haven't cooked supper, you see
14 J.D. more than I do, and your parents see J.D.

15 more than I do, the whole driving thing, it was a
16 big issue that he just didn't want to be here anymore.

17 Q Your house?

18 A Your house, your land, your pond. It was just so
19 much resentment, and the resentment started when we
20 started building the house, but it just grew
21 significantly after J.D. was born.

22 Q And how did David's treatment of you verbally
23 during this time period change?

24 A Well, it seemed like every time we had an
25 argument -- you know, I made J.D. 's baby food, I

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1 planted a garden and tried to make home-made baby food,
2 and tried to do all of that, and that didn't last very
3 long, but I did try, you know. I was a hippie. I was
4 selfish. He would often call me a bitch. He would
5 tell me he wished he pushed me through a window while I
6 was pregnant, is the time he was referring to.

7 Q All of these comments are in text placed into
8 evidence?

9 A Yes. Yes. I would get upset and I would get
10 emotional, and it should have been the happiest time in
11 our life, and it was the most -- it was terrible.

12 Q Let me ask you this. Let me go back July 31,
13 2012. You called 911?

14 A Yes.

15 Q You heard the testimony about that, and the CAD
16 report is in the record?

17 A Yes.

18 Q And tell the jury why you called 911 on that day.

19 A I was on-call and we did have beepers, but mine
20 was never on. They never really used the beeper unless
21 it was really, really bad. They always called my cell
22 phone. I had my cell phone with me, and I said
23 something about our remote, about the sound or
24 something wasn't working, and his friend is the one who
25 installed it, so he took a lot of offense to it. He

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1 stood up, and I was sitting in the recliner, he grabbed
2 my cell phone and he walked back towards the other end
3 of the house, assuming he's going through it, and I
4 said, David, I have to have my phone, I'm on-call.
5 When I said stuff like that, that whole resentment
6 about your job is so important, so much more important
7 than me, so much more important than what I do, that
8 kind of stuff was coming out at that point. My job was
9 important. I was expecting somebody, a pregnant lady,
10 to need an epidural, possibly a C-section, and I needed
11 to be able to get in touch. I explained to him that I
12 needed my phone, and he kept walking. So I just simply
13 went and got the house phone, called the nursing
14 supervisor, told her if she needed me to call my house
15 phone, make sure she had that number. I have a window
16 of 20 minutes to get into work, and I live 17 minutes
17 away, so if they can't get in touch with me, they are
18 wasting time. So she needed to get in touch with me.

19 I went in the bathroom to have this conversation
20 with her, and as I was getting off the phone with her,
21 he came in. The lights are off in the bathroom, all
22 we have is the daylight, light of the sun, you know.
23 And he came in and he put his arms like he was going
24 to hug me, and I thought, okay, this is good, you
25 know, it is just going to end. But he put his arms

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1 around me and started taking out all of his
2 frustrations, like closed fist on my back like -- he
3 was mad, he was -- he wanted to hit me, but instead of
4 just doing it, he just started beating my back, and it
5 hurt. I pushed him away, and when I did, he grabbed
6 my arms, and when he grabbed my arms, he grabbed them
7 tight, and it hurt. I had the house phone in my hand.
8 You know, someone grabs you by your arms, the first
9 thing you do is this (indicates), and it hurts. So
10 whenever this happened (indicates), his lip got hit in
11 that whole process. I'm not sure how it happened, but
12 it was in this process of after he grabbed my arm so
13 tight.

14 Q What happened to him?

15 A When his lip got hit, which was completely
16 unintentional, however that happened, when that
17 happened, he was livid. He took me by my arms and he
18 pushed me up against the wall where the window meets
19 the wall, where the molding is, and that is where my
20 back was. He pushed me up there, put his hands around
21 my throat and pushed my head against the wall, and I'm
22 six weeks pregnant -- or I don't know how many weeks,
23 but in my first trimester. I reminded him, David, you
24 know, what are you doing. He stopped, and I had that
25 phone in my hand, and I called 911 because he was still

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1 mad.

2 Q You called 911?

3 A Uh-huh.

4 Q And of course you had a conversation with them?

5 A Right.

6 Q There is a piece of evidence in the record, which
7 is the CAD report of the summary of that report?

8 A Yes.

9 Q Did you tell that operator then roughly or
10 basically what you are telling us today, maybe not
11 every detail?

12 A Maybe not every detail, but I told her that he
13 had been physical. He was over my shoulder listening
14 when I called 911, and he didn't want me to call 911.
15 He kept telling me to get off the phone, he was calling
16 my daddy. He knew that I have never wanted my parents
17 to worry about me. They have other things to worry
18 about, don't involve them. I'm calling your daddy, you
19 need to hang up the phone right now. I don't want to
20 cause a scene or anything like that, but she overheard
21 him, and she said is that him, and I said, yes, ma'am,
22 it is, and she said, well then somebody needs to go out
23 there and you need to get out of the house.

24 Q All right. No one was arrested as a result of
25 that call?

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1 A No.

2 Q But that was about a year before this occurred?

3 A Yes.

4 Q And things would get better and worse, and get
5 better and that kind of thing?

6 A Yes.

7 Q Let me show you what's marked Defendant's 78 and
8 ask you if this is a series of text exchanges between
9 you and David in March of 2013?

10 A Yes.

11 Q If you would, I believe that has to do with an
12 issue you and he were having about the way you got
13 along and Max, the dog?

14 A Yes.

15 Q Tell the jury as succinctly as you can what that
16 was about, and then I want to let you refer back to the
17 text messages.

18 MR. MARTIN: First, I move to enter into evidence
19 Exhibit 78.

20 MS. LIVESAY: No objection.

21 THE COURT: Without objection.

22 (Defendant's Exhibit 78 admitted.)

23 A We had a dog named Max that was about four months
24 older than JD. This took place -- I was -- I
25 think it was March, sometime the beginning of March.

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1 He was born March 26, so I was really pregnant with
2 J.D. . Max, our dog, was little. He is a big
3 dog, but he was a puppy at the time. They were
4 roughhousing on the floor and, you know, playing and
5 tussling and everything. Max, he's a bull mastiff --
6 part bull mastiff and lab. He took his paw, which he
7 had a big paw, playing with David, and he scratched him
8 when he did. And when he did, I mean, he went from
9 playing with Max to I'm about to hurt this dog. Like,
10 I was scared that he was going to hurt Max when that
11 happened because his whole demeanor changed in seconds.
12 Max could tell. He jumped behind me and he was
13 shaking, and it was, Give him to me. Give him to me.
14 Give him to me.

15 Q Were you afraid for the dog?

16 A Yes, I was.

17 Q Of course, that was a dog?

18 A Right. No, it wasn't me, but I loved our dog.

19 Q But as a example how David could get upset so
20 quickly?

21 A Right.

22 Q Let me ask you, there's a couple of comments in
23 here in this text exchange between you and him, and for
24 brevity's sake, I don't want to read the whole thing,
25 but I want to talk about the give and take. You all

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1 had a conversation about what happened the next day
2 about what had happened with the dog, and the way you
3 felt and what he felt about it?

4 A That's right.

5 Q And, of course, the whole thing is in evidence,
6 so the jury can look at it, but there's a couple of
7 comments I want you to publish to the jury. Look here
8 at 7:14 UTC time, for what that is worth. What does
9 David say to you?

10 A He tells me via text message, So you are saying
11 that the next time he needs discipline that I should
12 instead just punch you in the face.

13 Q And of course that is in response to you saying
14 something like, David, you can't be that way with the
15 dog, I rather you mistreat me than the dog?

16 A Yeah.

17 Q And then, if you would, look at the 7:27 entry,
18 and not the whole thing, look at the last couple of
19 sentences that stop with "sometimes."

20 A Okay. Sometimes I feel like I can't even bring
21 things up or talk to you because you are so quick to
22 get mad. It shouldn't be like that. And as far as
23 children go, you should never discipline out of anger.
24 If you are that upset, as you were last night, you need
25 to stop and cool down before you hurt someone. You

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1 were downright rageful last night, and I don't like to
2 see that and it is not healthy.

3 Q And did slowly but surely that rage and
4 resentment become some sort of a pattern?

5 A Yeah, it did. It got a little bit more every
6 time.

7 Q But in between these periods, there was good
8 times, and I-love-yous and I love you and you're great
9 and I'm awesome, and all of that?

10 A Yeah. We tended to kind of ignore, you know --
11 you send a text I love you and kind of ignore what
12 happened yesterday, and hope for the best.

13 Q A lot of texting going on between you and David.
14 Did it get in the final months that that is how a lot
15 of communication took place?

16 A Yeah. Especially about two or three weeks before
17 this happened. We had very little conversations with
18 each other; it was on text. He would come home and
19 wouldn't speak. So when we talked, it was via text
20 message.

21 Q Did he get to the point that the two of you
22 decided to see a marriage counselor?

23 A Yes.

24 Q And would you say that was you, him, or the both
25 of you?

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1 A I think it was both of us.

2 Q And did you see a marriage counselor?

3 A Yes.

4 Q Let me show you what is marked as Defense Exhibit
5 74 and ask you if you can tell us what that is?

6 A Yes. These are the dates that David and I saw
7 the marriage counselor. We saw her alone and by
8 ourselves.

9 MR. MARTIN: And I move to enter into evidence
10 74.

11 MS. LIVESAY: No objection.

12 THE COURT: Without objection.

13 (Defendant's Exhibit 74 admitted.)

14 Q (MR. MARTIN) For brevity's sake, you and David
15 saw a marriage counselor?

16 A Yes.

17 Q And the first time was July 22, 2013, and you
18 both went?

19 A Yes.

20 Q And July 30, 2013 David went?

21 A Yes.

22 Q August 1, 2013 you went?

23 A Yes.

24 Q August 5, 2012 both of you went?

25 A Yes.

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1 Q August 6, 2013 David went?

2 A Yes.

3 Q August 12, 2013 you were both scheduled?

4 A Yes.

5 Q What, if anything -- what it just a general
6 problem overall with you and David, and you just felt
7 it was getting bad?

8 A Yeah. The arguments were really -- over really
9 insignificant things. We had nothing to argue about.
10 I mean, neither one of us had any infidelity or -- they
11 were a lot of little trivial things, and we needed to
12 see a counselor for several reasons. But still, again,
13 we had trouble communicating and resolving those little
14 issues.

15 Q Wednesday, July 24th, was that a day that
16 became emotional and tough day in terms of you and
17 David arguing and marriage counseling information?

18 A Yes.

19 Q I'll show what was marked for identification as
20 Defendant's 75 and 76 and ask if you can tell the jury
21 what that is?

22 A This is a call log from my phone referring to
23 July the 24th of 2013, all the calls that I made that
24 day.

25 Q This is your cell phone, AT&T, in the records,

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1 and that exhibit shows where you have gone back and
2 written in the people that you were calling with those
3 specific numbers during that period of time, right?

4 A That's right.

5 MR. MARTIN: I move to introduce into evidence 75
6 and 76.

7 MS. LIVESAY: No objection.

8 THE COURT: Without objection.

9 (Defendant's Exhibits 75 and 76 admitted.)

10 Q (MR. MARTIN) Now, Heather, if I recall
11 correctly, you were on-call that night. Did you get
12 called in, and if you can, as succinctly as you can,
13 tell the jury about that day.

14 A I was on-call the night before, and I got called
15 in sometime -- 2 o'clock in the morning to put an
16 epidural in. I had stayed there until 7 o'clock or
17 6:30 when the rest of my co-workers we're coming in. I
18 hadn't been back to sleep, so I came home and, you
19 know, J.D. is up. So I'm taking care of him, and
20 we're in the rocking chair. And I happened to come
21 across the TBN Christian channel, and there happened
22 to be -- it was Kerry Schook talking about
23 relationships and marriage. I thought this is meant
24 for me to see. They had a 1-800 number you can call
25 and ask for prayer, so I said, well, I'm going to call,

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1 and I had the lady pray with me.

2 (Defendant's Exhibit 80 marked.)

3 A I was getting a little bit more encouraged about
4 my marriage. Then I called the pediatrician. We had a
5 conflict with the counselor dates and J.D. 's
6 pediatrician's appointment, and whatnot. Then I get a
7 text from David about I want you to change the baby's
8 dedication date.

9 Q Stop right there. Let me show what is
10 Defendant's Exhibit No. 81 and ask if you can tell me
11 what that is?

12 A Yes, this is -- after I called Kerry Schook, the
13 pastor on TV --

14 Q He is a preacher?

15 A He's a preacher. I called them and, you know, I
16 put David and I on their prayer list, and this is a CD
17 they sent me about relationships after that phone call.

18 Q July 24, 2013?

19 A Yes.

20 MR. MARTIN: I move to enter this into evidence.

21 MS. LIVESAY: No objection.

22 (Defendant's Exhibit 80 admitted.)

23 Q (MR. MARTIN) The baby dedication became an
24 issue?

25 A Yes.

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1 Q Tell the jury about the baby dedication
2 scheduling.

3 A Okay. I had -- he got -- his baby dedication was
4 July 28. July 21 is when I first had it scheduled. At
5 first, David said don't worry about my parents to be
6 there, they are in the mountains, but it doesn't
7 matter. My first thought was let's do it a day that
8 they can come if they wanted to. So I changed it to
9 July 28th, and he thought that would be a good day
10 for everybody. His sister was actually in town, and I
11 thought that was the perfect date to do it, that way
12 everyone could come, and he was okay with it. Everyone
13 was okay with it. This was on a Wednesday before the
14 Sunday he was getting dedicated on. His outfit was
15 picked out. I was on-call the next weekend, so that
16 was out of the question. I got a text from him about
17 wanting to change it.

18 Q On the 24?

19 A On the 24th, four days before the dedication.
20 So I called him back, and he just said I want you to
21 change it, change the day. You know, there was really
22 no reason about why and, you know, he was upset, for
23 whatever reason. I don't know if there was
24 communication with him and somebody else that had kind
25 of started that process, but when he called me, he was

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1 obviously frustrated and upset with me. It was just
2 out of the blue. So I said, you know, I'm having
3 trouble talking to David and sorting this out, so I'll
4 call his mom. I called his mom and I said, you know,
5 what do you want to do about the dedication date, I'll
6 change it, you know. And I did tell her, you know,
7 we've got his outfit, but I will change it to whatever
8 day if you all want to come so that you can come if you
9 want to come, and she was really nice. She said, No,
10 no. No. Don't you do that, just take pictures, and it
11 is fine.

12 Q That morning, what time did you call the
13 television station with the minister on it?

14 A 7:54 a.m. -- yes. Yes, 7:54.

15 Q And you had seen the marriage counselor on the
16 22nd?

17 A Yes.

18 Q And you were to go back another day?

19 A Yes.

20 Q And there was a conflict with that and the baby's
21 doctor's appointment that you didn't realize at the
22 time you made the appointment?

23 A Right.

24 Q And that became an issue itself?

25 A Yes.

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1 Q So as a result of what was going on with you and
2 David that morning, and the arguments and the intensity
3 thereof, what did you do throughout that morning?

4 MS. LIVESAY: Your Honor, can he let her testify?

5 THE COURT: If you can stop leading, please.

6 MR. MARTIN: Okay.

7 A In attempts to correct the conflict between the
8 counselor date and J.D. 's pediatrician
9 appointment, I called the pediatrician. I was
10 considering switching the pediatrician, so I actually
11 switched his appointment a couple of times. I was
12 going to take him to see one in Florence, but that --
13 we didn't think that was a good idea because if he was
14 sick, that is a long way to drive if he didn't feel
15 well. I was trying to change around the appointment to
16 keep the counselor's appointment, and they couldn't, so
17 I kept that appointment --

18 Q (MR. MARTIN) I don't want to get bogged down.
19 There was some juggling schedules, that kind of thing?

20 A Yes.

21 Q Besides calling the pediatrician and arranging
22 that, who did you call?

23 A John Fowler, a counselor, I called Myrtle Beach
24 Biblical Counseling, I called Cathy Battle, she is a
25 counselor, I called Coastal Samaritan Counseling, and

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1 then after I called them, they gave me a counselor's
2 cell phone, I called her specifically, and then I
3 called back Coastal Samaritan Counseling and Cathy
4 Battle again. I made several different phone calls
5 because I was trying to find one that could see us
6 soon.

7 Q Could you find anyone to see you any sooner than
8 the one you were currently seeing?

9 A No. No. I even called our counselor that we
10 were seeing and begged her, and I told her things were
11 getting worse. We had been to see her one time, and I
12 said we really needed to see you before two weeks, and
13 she assured me that things may get worse before better.

14 Q So that is an accurate reflection of the efforts
15 you were taking that morning to arrange a second
16 counselor?

17 A Yes.

18 (Defendant's Exhibits 81 through 86 marked.)

19 Q (MR. MARTIN) And in between that time, you are
20 calling and texting back and forth with David and your
21 friend, Lisa, who was here in that time?

22 A Yes.

23 Q It was an emotional day?

24 A It was. It was a rough day. I remember crying a
25 good bit that day. I was frustrated.

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1 Q Couple of things. Between the 24th and
2 August 11, were you wanting to save your marriage?

3 A Absolutely.

4 Q Let me show you what is was marked for
5 identification as Defense Exhibit 82 and ask if you can
6 identify that?

7 A This is a receipt from Books A Million. Let's
8 see if I can find the date. It was on July 28th of
9 2013 at 6 o'clock, 6:05 p.m. I went to Books a Million
10 and I bought, I think his name is, Gary Chapman, Five
11 Love Languages, and it was charged to my MasterCard.

12 MR. MARTIN: I move to enter into evidence 82.

13 THE COURT: Any objection?

14 MS. LIVESAY: No, sir.

15 THE COURT: Without objection.

16 (Defendant's Exhibit 82 admitted.)

17 Q (MR. MARTIN) 81 is, in fact, the book?

18 A Yes, sir.

19 Q Where was that book on Sunday August 11th when
20 this tragedy occurred?

21 A On my nightstand beside my bed.

22 Q Now, they entered evidence into the record that
23 the insurance policy that they've put in was issued on
24 July 23. We're going to go back and talk about that in
25 a minute, but that was on July 23rd and you bought

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1 this book when?

2 A July 28th.

3 Q And you called Kerry Schook when?

4 A July 24th.

5 Q Were you worried about the life insurance policy,
6 or your marriage?

7 A I was worried about my marriage. I never knew
8 the life insurance was even issued.

9 Q And we'll go back to that, but what you are
10 saying is you knew he was trying to get one, but you
11 didn't know it was issued?

12 A Yes, I didn't know it was in effect.

13 Q And let me show you what is marked as Defendant's
14 Exhibit 83 and ask if you can identify that?

15 A Yes. It is a receipt from iTunes. On iTunes you
16 can buy books, and I bought a book called "I Vow." It
17 was a marriage help book, and it was purchased on
18 August 5th of 2013 and billed to my MasterCard.

19 MR. MARTIN: I move to enter that receipt into
20 evidence.

21 THE COURT: Any objection?

22 MS. LIVESAY: No, sir.

23 THE COURT: No objection.

24 (Defendant's Exhibit 83 admitted.)

25 Q (MR. MARTIN) Heather, with that background,

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1 August 11th, 2013, the jury heard the 911 call,
2 they've heard your hour and 36 minute statement to the
3 police, but we need to recount that again I think here
4 in the courtroom. So I want you to break it up into
5 different segments. Tell the jury about August 11 and
6 how it started and what you did.

7 A We got up that morning, I can't remember what
8 time, normally between 6:00 and 7:00 J.D. would
9 wake up. David went to get him and gave him his
10 bottle, and after he gave his bottle, we had the play
11 mats with the things they lay on and look up at the
12 lights and the music. He laid him on that in the
13 living room, and then he came back to bed. So at that
14 point, I got up. I didn't want to leave him in there
15 by himself. So I went back into the living room and
16 sat up with him and got him settled, and when David got
17 up, he wanted to go to Ruby Tuesday's to eat lunch. It
18 was like 10:00 or 10:30 that morning. I remember it
19 was kind of early for lunch, but it was when he got up.

20 So I started getting ready and got J.D.
21 ready. I started getting ready and, you know, David
22 wasn't really used to have to get everything packed up
23 and ready, so I was doing all of that, making sure the
24 bottles were in the diaper bag and he had diapers and
25 extra change of clothes, and all of that stuff. We

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1 had trash that needed to be taken out. I had to make
2 sure the dog had food and water, several things before
3 you can get out of the door. It was hard to get out
4 the door with an infant and a dog. So he had J.D.
5 at the back door, and I don't know what he was
6 doing, just holding him. I'm sure I'm running back
7 and forth trying to get it altogether and bagging the
8 trash up. I asked him, because he just came from the
9 bathroom, somewhere over that way, he was on that
10 side, I said did you shut the bathroom door before we
11 leave, because that is something we did. He said,
12 Would you just sit your ass down a minute. And, you
13 know, this was really the first day that I had the
14 opportunity to spend with my husband and my child
15 together, the three of us. If that was any indication
16 of how the day was going to be, it was -- I just
17 remember thinking, God, please don't let today be like
18 that. So I just went and sat down, and then he came
19 up to me and he said, Don't you start this shit today,
20 and I said, Start what, and he said, Don't you start
21 this shit, you know what I'm talking about. I said, I
22 don't know what you want me to do. You don't want me
23 to stand up, you don't want me to sit down. It seems
24 like I just get on your nerves no matter what I do.
25 So we -- I got the trash together, made sure the door

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1 was shut, and we were going out to the car. He was
2 loading up the trash in my Tahoe, and he has a truck.
3 We have to actually take the trash to the dump, they
4 don't come by and pick it up. So it wasn't opened up
5 yet; it was a Sunday. I said, Can we drive your truck
6 that way my Tahoe won't smell like trash, and he
7 said -- I guess I use the language he said?

8 Q Use initials, if you can?

9 A He said I'm not driving my F'ing truck any more
10 than I already do. I already drive it an
11 hour-and-a-half to Florence and back, and I'm not
12 driving my F'ing truck any more than I have to. And I
13 don't mind driving my car, so I just said okay. And I
14 said, At least take the trash out and we'll just take
15 it later. So I remember him taking the trash out of my
16 car, and then I took it and put it in the back of his
17 truck, from what I can recall. We loaded up, and we
18 were on our way to Ruby Tuesday's. Out of the blue he
19 said, So are you taking diet pills, and I said, Well, I
20 thought that was an odd question. And I said, Well,
21 no, but after my C-section and after I stopped
22 breast-feeding, my OB/GYN, she offered them and I had
23 gotten them filled, but I hadn't taken but a few
24 from -- I don't know how many I took. Anyway, I
25 explained that to him, and he said, Um, just kind of

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1 snide. I didn't know what that was for, but it was
2 obviously going to come up later. You know, I didn't
3 go into it. We got to Ruby Tuesday's and, you know, it
4 was obvious that the day he woke up on the wrong side
5 of the bed. He was just aggravated to all get out with
6 me, for whatever reason. I had lost my appetite at
7 that point when we got to Ruby Tuesday's. I just
8 ordered water. I remember him saying, well, I know why
9 you're not eating, and I remember explaining to him,
10 you know, David, I don't need to take diet pills. I
11 mean, this is enough to make somebody not want to eat.
12 So I remember, you know -- even the waitress, she did
13 her job and was nice to us, I thought, but she didn't
14 fill his tea fast enough, didn't clean the table fast
15 enough. Even her, she was not doing efficiently what
16 he thought she should be doing. When the bill came, he
17 had wrote something on the tip line where it said -- it
18 was initials, and it stood for "are you kidding me."
19 That is when I explained to him -- I said, David, you
20 know, she did her job, and if you don't leave a tip,
21 I'm going to because, I mean, I don't know why you're
22 so on edge today, but, you know, don't take it out on
23 her. So he ended up leaving the tip and --

24 Q Where did you go then?

25 A Bass Pro.

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1 Q And stayed at Bass Pro for long?

2 A No. He went in, and I had the stroller, which is
3 bulky. It was not a regular stroller, it was a bigger
4 one. It was kind of cumbersome to get through the
5 wheel thing.

6 Q I don't want to get bogged down.

7 A Okay. Okay. We sat outside on the bench. J.D.
8 and I sat outside of the store on the bench, and
9 David went in and bought whatever he bought and --

10 Q Tell us about the trip home.

11 A We got in the car -- something was eating at him.
12 He needed to say something. It was just really eating
13 away at him that day. On the way home, he started
14 taking his truck and running it on them little things
15 on the side of the road that is supposed to wake you up
16 if you start to fall asleep, and he would do that and
17 run off the road and pull it back. We do that several
18 times, and J.D. at this point is sleeping in the
19 car seat, and I turned around to see if he was awake or
20 if it was waking him up, because I didn't want him to
21 wake up. He was going to be cranky, and I turned
22 around and checked, and he would say, Turn your ass
23 back around. He said, Is this getting on your nerves
24 yet? And I said, Well, yeah, a little. And he said,
25 Well, good. Just real -- I don't know. Then, you

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1 know, on the way home I asked him at some point, I
2 said, David, what do you want to do? You are obviously
3 miserable. Do you want to separate? What do you want
4 to do? And he said, Well, I think we need to talk, and
5 I said, I agree, I do, I think we need to talk. But
6 look our talks didn't last for 30 minutes, they went on
7 and on and on. I told him, you know, maybe the best
8 time to have our talk is after J.D. goes to
9 sleep. He was sleeping through the night at this
10 point. David and I were up more than one night all
11 night long arguing, and I told him, if I have to stay
12 up at night with you, we will talk. We will talk about
13 every problem that you and I have, and we will figure
14 out what we need to do, but we need to do it when we're
15 not interrupted, because it is impossible to have that
16 conversation when you have a child.

17 Q So you -- anything else of significance? And, of
18 course, you can't recall everything that was said?

19 A No. No.

20 Q Let me ask you this --

21 A Never could.

22 Q You told some details here that you didn't tell
23 the police on that night at the hospital. Does that
24 mean you are making them up, or just remembering
25 different parts at different times?

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1 A I remember different parts at different times
2 and, you know, when I was talking to the police, you
3 know, I never told anybody really how David could act.
4 I never talked bad about David. I didn't want people
5 to think bad about him, and that night he had just
6 passed away, and I didn't want to repeat everything he
7 said.

8 Q You and David got home that day sometime in the
9 1:00 to 2 o'clock range?

10 A Yes.

11 Q What happened then?

12 A J.D. was still asleep on his way home, and
13 I got in the recliner and I rocked him. I rocked him
14 all the time. I rocked him and David came up to me and
15 said, We're going to talk, and we're going to talk now.
16 And I said, David, why don't we just do it later? You
17 are going to wake J.D. up. He said, You might as
18 well put his ass down right now because I'm going to
19 talk to you. I don't know if David really understood
20 at that point, but if J.D. woke up, we weren't
21 going to be able to talk, and you never wake a sleeping
22 baby is true. I said, David, if I lay him down, he's
23 going to wake up. He kept going, Heather. Heather.
24 Heather. Heather. And it got louder and louder and
25 louder, and more frustrated and more frustrated, and

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1 instead of engaging in that, I said, You know what, I'm
2 just not going to -- I'm not going to involve -- I'm
3 not going to engage in it. He just kept getting louder
4 and louder. I took my phone, and I had an app on
5 there, it was a white noise app and it was an app when
6 he was in the car I would play it and it helped him
7 sleep. So I turned that on, and I turned it on wide
8 open and I was trying to drown David out, so the baby
9 wouldn't wake up.

10 Q So what did you do the rest of the afternoon? We
11 have -- obviously know that 911 was called at 6:13, and
12 you all are home for three, four hours and that is what
13 was transpiring as to the conversation between you and
14 David. What did you do? What physically did you do
15 that afternoon?

16 A After J.D. got up, I put him in his
17 Pack 'N' Play. I got up and, you know, I prepared to get
18 everything ready so that David and I could talk. I
19 washed the baby bottles. I had to clear the sink out,
20 because that is where J.D. got his bath, in the
21 kitchen sink. So I went and I got everything cleaned
22 out, the sink, everything ready. I was doing
23 everything I could do to avoid having to do it later
24 on, so we could talk as soon as possible. I did that,
25 got his bottles ready for the next day, had his diaper

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1 bag ready to go for tomorrow morning. And I said,
2 Well, what else can I do? I went outside and played
3 with the dog for a little while, and his mobile needed
4 batteries, so I went to the Dollar General and bought
5 batteries for that and replaced those. At that point,
6 I said, you know, I can take a bath, that way that is
7 one less thing I got to do. Then I can give him a
8 bath, get him to sleep and we could talk.

9 Q Did you go anywhere else?

10 A Not that I recall.

11 Q On that point, some video clips were introduced
12 showing your mom and dad out at the house, you leaving
13 the hospital that night. If that whole video was
14 played, it would show you going out with the dog, you
15 leaving with the car and coming back, and all of that?

16 A Right.

17 Q Because each of the entrances of the house --

18 A Right.

19 Q -- is videoed as to who comes and goes 24/7?

20 A That's correct.

21 Q Now, going back to shortly before this
22 altercation occurred, tell the jury where you were and
23 what you were doing?

24 A I was sitting in the bathroom. We have a big
25 garden tub with granite surround around it, and you

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1 have to understand, our bathroom is like 16-by-17 feet.
2 It is large enough to be a room. The tub is way back
3 here when you walk in the door. I was sitting on the
4 surround of the granite bathtub and running bath water.
5 It takes awhile to fill that bathtub up, so I was
6 sitting there waiting on it. I was texting my mom back
7 and forth. We had missed a baby shower. This was
8 right before 6 o'clock that evening. I was texting her
9 back and forth and realized that my battery was about
10 dead, which that happens to me every day. I went and I
11 got a spare charger that I had used for work. Where
12 that charger was at, I don't recall, but it was
13 somewhere that I put down after I had taken a call one
14 night. I went and got the charger, plugged it into the
15 outlet above the vanity, and I plugged my phone in. I
16 remember -- I heard J.D. cry. I left David and
17 J.D. in the living room, you know. I told him I
18 was going to take a bath. I heard J.D. crying,
19 and normally you just have to put a pacifier in his
20 mouth or something and he would settle down, but he
21 continued. So I went in to check on him, and David
22 wasn't in there. He was out on the porch. I didn't
23 know what he was doing, but I saw him getting ready to
24 come back in. So when I saw him get ready to come back
25 in, I went back to the bathroom. I was trying to avoid

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1 -- it was tense. The whole day was just tense, and
2 there was a lot of bitterness and a lot of resentment,
3 and I was trying to avoid any confrontation, you know,
4 until after --

5 Q So you go back into the bathroom, and you are
6 having some text messages with your mama?

7 A Yes.

8 Q And tell the jury about David coming into the
9 bathroom.

10 A I was sitting on the surround, and he comes in
11 and he has tools in his hand. When he came in, I mean,
12 he came in and he was walking hard. He was very
13 frustrated. And when he came in, he said -- he walked
14 over to the toilet. I made an assumption he was going
15 to work on the toilet. Our toilet had been having some
16 problems, and he said I'm going to talk to you and I'm
17 going to talk to you right now, right now. At that
18 point I thought I've probably avoided this as long as I
19 can, so I turned the water off and prepared to talk
20 about whatever he wanted to talk about.

21 But he walked in, and he walked in looking to
22 argue and he turned around and he said, So what do you
23 want to do? Do you want to separate? And I said, No,
24 David, that is not what I want. I love you and I want
25 our marriage to work, but I don't want to be married

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1 to somebody who doesn't love me, and I don't think you
2 do. And he said, Well, I don't want to be married to
3 a damn liar. And I said, You know, that has been
4 brought up a couple of times today, and I don't know
5 what you are talking about. If you can talk to me
6 about it, we might can fix it. What are you talking
7 about, and he brought up the diet pills again. He
8 said, How many did you say you had taken? And I said,
9 David, I only had taken a few. Well, I went and
10 counted them, there is X amount in the bottle and X
11 amount gone. I said, I didn't count them. I didn't
12 intentionally lie about how many I had taken. But it
13 was that little stuff that was just -- and then he
14 said, Well, how many times have you been to see a
15 counselor by yourself, because I didn't tell him that
16 I did that. I did that in confidence with her because
17 I knew he didn't want me talking to the counselor by
18 myself.

19 When he asked me about it I told him, I've been
20 to see her once. And he said, Well, you said you
21 couldn't get an appointment for us with her in two
22 weeks, and that is a damn lie because I've been to see
23 her twice by myself. And I said, Well -- he wanted to
24 see her in the afternoons when he got off of work, and
25 I told him, I said if she got you in there with a

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1 cancellation or there was -- you know, she could only
2 see us that morning and you couldn't be there, it
3 didn't work out. I'm not lying, she couldn't see us
4 for two weeks.

5 You know, that progressed there about the
6 counselor. I told him, I said, You know what, if that
7 is what all this is about, something that
8 insignificant, I'll show you on my phone what I'm
9 talking about, because we had that conflict with the
10 baby's appointment.

11 I went over to my phone, and I took it off the
12 charger. I was trying to show him -- or get to my
13 calendar where I could show him. So I have my phone
14 in my hand and I'm looking at it, and he comes up and
15 he tries to get my phone away. There is a struggle
16 for the phone. I mean, there was -- I turned my back
17 and he was behind me, and then he got it and then he
18 had his back towards me, and there was a struggle for
19 it. You know, I simply wanted to show him that what
20 he was upset about wasn't -- there wasn't a reason for
21 him to be upset.

22 At that point, he turned around and he had a
23 knife in his hand. He got in my face and held the
24 knife in my face and he said, You are a stupid bitch,
25 and then he started calling me these names, and when

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1 he did that, I was like, David, why are you so mad?
2 Why are you so mad with me today? I backed up, and he
3 starts taking that knife and just taunting me with it,
4 just trying to scare me with it. He was calling me
5 names the whole time, You stupid bitch. I would like
6 to knock the F'ing teeth out of your head. I backed
7 up, and I had put that gun in that drawer earlier,
8 like maybe a month before this happened. You know,
9 I've never even had that thought in my head about even
10 having to get a gun, but I got it because I was
11 scared. I was scared, and he was mad. He was
12 gritting his teeth, his face was red. I -- I've seen
13 him mad before, but I've never seen him this mad, this
14 was something different. This was something that I
15 had never experienced before, and I was scared.
16 (Witness crying.)

17 So I reached for the gun and I held it by my
18 side, and he goes, What the F are you going to do with
19 that? I'm not going to do anything with it, you're
20 just scaring me, and I want you to stop. He says,
21 Well, you're not going to do shit. And it's like it
22 made him madder. And while he was calling me names,
23 he was -- he still had that knife and he was just
24 taunting. I kept backing up, and as I was backing up
25 around the vanity to get back into the bedroom, he

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1 said again, I would like to knock your F'ing teeth out
2 of your head, and he lunged at me, and when he did, my
3 hand went up and I shot, and I shot out of a reaction.
4 I didn't think, nor did I ever want to do that, but it
5 was a reaction because I was scared. (Witness
6 crying.)

7 And when I shot, I thought, This did not just
8 happen. This is not real. All I can think about at
9 that point was I've got to get help. I don't know --
10 I don't know where that bullet went, but we got to get
11 somebody here. (Witness crying.)

12 So I went and I called 911, and I've never been
13 more scared in my entire life. And I went and got the
14 phone and I called 911 and, you know, I could not get
15 my words straight. I couldn't think. All I could
16 think about was, You all got to get here. So when I
17 went back into the bathroom, I saw David laying on the
18 floor and I didn't know until that point how bad it
19 was. I put the phone on speakerphone and I put it
20 down, and I thought, I have to do CPR. And I started
21 doing CPR, and I did CPR the best that I could, but I
22 knew it wasn't helping. It wasn't making things any
23 better, and I watched my husband just deteriorate
24 right in front of my face, and it was the most
25 helpless feeling I've ever felt in my entire life.

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1 (Witness crying.)

2 I kept waiting and waiting and waiting on
3 somebody to get there, and nobody ever came. They
4 took 24 minutes, and it felt like 24 hours. It was
5 the longest 24 minutes that I've ever lived in my
6 entire life, but I still did what I knew what to do
7 still kept doing CPR. I didn't do it the whole time,
8 I know I was moving around. I had a baby on the other
9 end of the house, I had a dog up under me. I mean Max
10 didn't know what was going on, he didn't understand.
11 And my -- my focus was, I've got to get somebody here.
12 That is the first part of CPR, is to get help.

13 I am a nurse anesthetist, and I can and I know
14 how to do CPR. I know how to do basic life support
15 and advanced cardiac life support, but I can't do -- I
16 couldn't do what I needed to do with just my hands and
17 my mouth. David needed more than just basic life
18 support, and I couldn't -- I was limited in what I
19 could do for him, so I needed somebody to get there
20 with IVs and drugs and with a defibrillator. I'm
21 limited, and I'm in my home and my baby is -- our
22 child is on the other end of the house by himself and,
23 you know, one person -- I don't care how educated you
24 are, one person cannot handle all of that.

25 Q Heather, let me ask you. Were you afraid for

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1 your life, for your safety?

2 A Yes.

3 Q That day with David?

4 A Yes, sir, I was.

5 Q Did he come at you with a knife?

6 A Yes, sir, he did.

7 Q Were you trying to box him into the bathroom?

8 A No.

9 Q And kill him for insurance money?

10 A Absolutely not. He never tried to get past me,
11 never (witness crying).

12 Q You called 911?

13 A Yes.

14 Q Where is the 911 station with regards to your
15 house?

16 A There is a fire station -- I can walk to it from
17 my house. I'm terrible with distances, but it is
18 probably 200, 300 yards from my house.

19 Q And you thought that is where they would be
20 coming from --

21 A Right.

22 Q -- because they do have fire rescue?

23 A When I called, I was expecting them to be there
24 like then, like immediately.

25 Q And it took forever?

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1 A It took so long.

2 Q Let's talk about some of the things that the
3 State introduced into evidence. Heather, did you do
4 all you can do with CPR to save David?

5 A I did CPR until I had no skin on my toes, and I
6 didn't realize that until the next day, because your
7 adrenaline -- you don't know is going on. But I did
8 CPR until I had no -- I have scars on my toes where I
9 didn't have skin on the bottom -- top of my foot where
10 my toe met the foot. There is still scars down there
11 from me being on the tile floor doing CPR.

12 Q In order to do that, obviously you had to get
13 down by David's side?

14 A Yes.

15 Q And the questions come up -- let's talk about a
16 cell phone. Let me ask you this before I talk about
17 that. They've introduced phone records here today, not
18 today, but some day previous which shows every call,
19 every text or something from your phone or other phones
20 that day. You called 911 from the house phone?

21 A Yes.

22 Q When you came back into the bathroom and you
23 found where David was, your phone was in the bathroom?

24 A Yes.

25 Q Did you try to call anybody from your phone?

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1 A Looking at the records, I apparently -- I didn't
2 have any recollection of it at the time, it was just a
3 minute or two after this happened, but I tried to call
4 my parents' house, but my fingers were not -- it was
5 hitting an extra button or something. I mean, I was
6 trying to do it so fast, they just weren't working.

7 Q And you voided that idea and kept doing CPR?

8 A I apparently tried a couple of times and
9 couldn't -- you know, you're shaking. I'm shaking, and
10 my fingers can't dial numbers. You can't -- couldn't
11 dial the number correctly. I just put it down and
12 started CPR again.

13 MR. MARTIN: Hold on a second, Ms. Livesay wants
14 to approach.

15 MS. LIVESAY: Can we approach?

16 THE COURT: Yep.

17 (Whereupon, a bench conference was had.)

18 THE COURT: I'm going to give you an hour for
19 lunch, we'll get started. Of course you can't talk to
20 your lawyer while -- during a break. You be back by
21 2:00, and we'll get started. Don't discuss the case.

22 (The jury exits at 1:03 p.m., and the
23 following is heard out of the presence of the jury.)

24 THE COURT: Ma'am, you can't talk to your lawyer.

25 (A lunch recess was taken.)

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1
2 THE COURT: You can bring them in. Come on back
3 up, if you would, please.)

4 (Whereupon, a bench conference was had.)

5 (The jury enters at 2:21 p.m., and the
6 following is heard in the presence of the jury.)

7 THE COURT: We're going to keep going until,
8 Mr. Foreman, I think we need a break, and as I said,
9 I'm going to ask you at that time to poll everyone and
10 make sure they're good with us keeping going. If you
11 need a break, raise your hand, we'll stop.

12 MR. MARTIN: May it please the Court.

13 THE COURT: Yes, sir.

DIRECT EXAMINATION (CONT.)

14
15 BY MR. MARTIN:

16 Q Let's gather ourselves and go back to where we
17 are, and I'm trying to recall exactly what I asked you
18 last. You had just finished with talking about what
19 happened there in the altercation between you and David
20 and moving onto the cell phone. If you would
21 describe -- though you may not know what it was at the
22 time -- describe to the jury the injuries that you did
23 get. They've seen multiple pictures, but tell them
24 what the injuries were and when you think you got them
25 and how you got them.

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1 A I ended up with three lacerations on my right
2 arm. You can see one here and across, and a couple
3 more here. I had a stab wound to my left abdomen.

4 Q When did you get the stab wound specifically?

5 A It was after he lunged.

6 Q It what was what?

7 A After he lunged at me.

8 Q At the time he lunged?

9 A Uh-huh.

10 Q Is that the time you testified to that the shot
11 was fired, right after that?

12 A It was right after that. It was a reaction to
13 what he did.

14 Q Heather, did you self-inflict these wounds on
15 yourself?

16 A Absolutely not, no, sir.

17 Q In addition to those wounds, let me -- let me
18 show you what was marked for identification as
19 Defendant's Exhibits 71, 72, 73 and ask if you can
20 identify those?

21 A Yes. These are pictures that was taken at Karen
22 Staples' office.

23 Q Do they accurately depict your arms and legs and
24 knees on August the 13th when the photographs were
25 taken?

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1 A Yes, sir, they do.

2 MR. MARTIN: I move to enter these into evidence.

3 MS. LIVESAY: No objection assuming she's going
4 to date and authenticate them.

5 MR. MARTIN: I think we did date them and
6 verified them.

7 (Defendant's Exhibits 71, 72 and 73 admitted.)

8 MS. LIVESAY: If he can date -- can he date
9 it?

10 MR. MARTIN: August 13th.

11 THE COURT: Day after?

12 MR. MARTIN: Two days after the pictures were
13 taken.

14 THE COURT: It was after the incident.

15 MR. MARTIN: I hid a picture from myself. Let me
16 show you what was marked for identification as Defense
17 28; do you recognize that?

18 A Yes.

19 Q What is that a picture of?

20 A These are pictures of my feet after the
21 altercation occurred. This is -- you can see where the
22 skin off of the knuckles of my toes when I was on the
23 floor.

24 Q Were you barefooted the day this occurred?

25 A Yes, sir.

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1 Q Does that the picture adequately -- accurately
2 represent your toes in the days shortly after this
3 altercation occurred?

4 MR. MARTIN: I move to enter into evidence 84.

5 THE COURT: Any objection?

6 MS. LIVESAY: No, sir.

7 THE COURT: Without objection.

8 (Defendant's Exhibit 84 admitted.)

9 Q Heather, the photographs that we just introduced
10 are some bruises?

11 A Yes, sir.

12 Q On your arms, knees, in addition to the toes
13 that we have here. Is that the way bruises developed
14 on your body in the days following this altercation?

15 A Yes, sir.

16 Q And do you know specifically how they were
17 inflicted on you?

18 A I don't know specifically. I do know that they
19 were not there prior to this altercation, and I
20 noticed -- you know, that night was a very long night,
21 and I came home and tried to sleep, and the next
22 morning is when I saw these bruises.

23 Q All right. Now, if we go back and talk about
24 what had occurred with you there. The cell phone,
25 let's talk about what turned out to be David's cell

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1 phone. If you would after you -- this had happened,
2 you had got the phone, called 911, you had come back
3 in, you were attempting to do CPR. Tell the jury what,
4 if anything, you know about David's cell phone.

5 A When I was on the floor kneeling down, I was on
6 David's left side, specifically in between his upper
7 body and his left arm. While I was doing CPR, I was
8 knelt down right beside his leg, and like I said
9 earlier, my focus was on getting help in because I'm
10 limited as to what I can do on my own, in addition with
11 a baby and a dog just more -- anyway, his phone was
12 hanging out of his pocket, or it was visible. Visibly
13 -- you can see the phone sticking out of his pocket,
14 that's when I got his phone in attempting to use his
15 phone to try to call somebody else to come help me
16 before the police got there.

17 Q Did you attempt to use that phone?

18 A Yes, I did.

19 Q Could you use it?

20 A No. I used to know David's pass code, and
21 apparently he changed it or -- he changed it randomly,
22 and my fingers were shaking and I couldn't get into it,
23 although I tried.

24 Q And that was in and about the same time you were
25 trying to use your phone to call your mom or dad?

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1 A Yes. Yes, it was.

2 Q Do you know what happened to that cell phone?

3 A No, I was -- I don't remember every move I made,
4 but I do remember just -- I felt like I was just
5 running in circles wondering where they were, if I
6 had -- I was trying to get into it and I couldn't. I
7 don't know what I did with that phone, but when I
8 couldn't get into it, it was of no use, and I just
9 couldn't get into it, and I don't remember what I did
10 with it.

11 Q All right. Now, and I'll come back to the cell
12 phone in a few minutes. You were there at the house,
13 and you did finally call your dad?

14 A Yes.

15 Q And he came?

16 A Yes.

17 Q And we've heard the 911 tape, and it is in
18 evidence for the jury to listen to again?

19 A Right.

20 Q Now, in terms of you manipulating the crime
21 scene, let's talk about that a minute. There is a
22 statement about you wiping blood?

23 A Yes.

24 Q Tell the jury what you know about that.

25 A This was later into the 911 phone call. You have

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1 to understand that 24 minutes, like I said earlier,
2 felt like 24 hours, and what do you do when your
3 husband or spouse is deteriorating in front of you and
4 your efforts are just not working? I remember my dad
5 being on the house phone with 911, and while I'm doing
6 CPR, I did it forcefully enough peanut butter was
7 coming out of his mouth and nose, and it was difficult
8 to do CPR like that, but, you know, I did it anyway.
9 (witness crying.) You have to clear someone's airway
10 in order to get air in, and just peanut butter was in
11 his mouth, and I took a rag and wiped his mouth and
12 attempted to do mouth-to-mouth again, and I remember
13 getting up and I remember going -- I heard my dad and I
14 just could not figure out where they were. I just
15 cannot figure out -- there is a fire station in walking
16 distance of my house, and I don't know how that works.
17 I don't know that anyone has to clear, so I'm not
18 understanding what is taking them so long. I remember
19 getting up, and I had the rag in my hand and there was
20 something on the door that I think that I put there
21 with my hand, and about that time I just unconsciously,
22 not thinking about it, took the rag and wiped the door.
23 It had nothing to do with anything that happened. I
24 never wiped anything that had to do with me or David or
25 this altercation. This was something that I thought

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1 that I had just -- my hand or something touched the
2 door and I put there, and I wiped it and it was just
3 something that I wasn't even thinking about at that
4 time.

5 Q Heather, in the moments after -- while you were
6 waiting on the police to come there, and at least until
7 your dad comes in, does this strike you that this is a
8 crime scene that you shouldn't touch, move anything?

9 A No. No. No. No. No.

10 Q As a matter of fact, you were all in it?

11 A I was all in it. And you know what, at that
12 point I wasn't thinking about it being a crime scene.
13 I didn't care what was moved or wiped or anything. All
14 I was worried about is doing CPR on my husband and
15 being there, and that crime scene wasn't a crime scene
16 to me at that point.

17 Q And, of course, your daddy came, and the state
18 constable; we started talking about that?

19 A Yes.

20 Q And you can hear on the 911 calls a couple of
21 times first don't touch anything, don't wipe anything,
22 don't touch the knife, don't do this; you remember
23 that?

24 A I do.

25 Q Do you remember Mr. Cestare testified that

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 somewhere in there they hear your daddy say, Wipe the
2 blood off the door?

3 A I don't recall that at all. Frankly, that is not
4 what I heard. I did not hear him tell me -- the 911
5 operator was telling him, Ronnie, don't let her touch
6 anything, don't let her move anything, don't wipe
7 nothing. My dad was reinforcing that every time I
8 would check his pulse, Heather, don't touch nothing,
9 don't touch nothing. He was scared that I was going to
10 touch something.

11 Q And that wasn't -- that weren't what you were
12 trying to do?

13 A No. No. No. No.

14 Q In talking about touching things, let me ask you
15 this. David came into the room and he had tools with
16 him; we talked about that. We know there is pictures
17 of a knife and pair of pliers. What do you know about
18 the pair of pliers?

19 A At the time I didn't know what happened to the
20 pliers. During the altercation, I didn't know what
21 happened to the pliers, but I remember while I was
22 doing CPR, the 65-pound dog we had, he is everywhere I
23 am. He is in whatever room that I'm in, and he was
24 obviously around me and David. I'm doing CPR, and I
25 happen to look over, and he's around the pliers that

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 were on the floor. The pliers were on the floor, and
2 he's around them sniffing them like he's getting ready
3 to put them in his mouth or do something to them.
4 Again, not thinking about a crime scene, not thinking
5 that, you know, this is my bathroom, this is my home,
6 you know, this just happened, I picked them up and put
7 them on the back of the toilet, for whatever reason.

8 Q And you didn't tell the police that that night?
9 We'll go into the statement, but you didn't tell them
10 that before, had you?

11 A No. There were a few times I kept saying, My
12 dog, and then I would get cut off, and we would go back
13 to that knife. Every time I would try to say
14 something, which frankly that wasn't really on my mind
15 either, but any time I would start getting into what my
16 dog was doing, we got redirected back to something
17 else.

18 Q Are you making it up, just to make it up?

19 A No.

20 Q And every time you talk about this, Heather, do
21 you tell it a little different way?

22 A Of course.

23 Q You remember a fact here or there that you don't
24 remember the last time?

25 A Yes.

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 Q Are you lying about any of it in trying to tell
2 as best you can remember?

3 A I did my best that night, and I've done my best
4 ever since it happened to help talk to whoever to tell
5 them what happened.

6 Q And you understand you don't have to take the
7 stand to testify, don't you?

8 A Yes, sir.

9 Q You know you are going to get asked a gazillion
10 questions what you did, what you didn't do, why this,
11 why that?

12 A Yes, sir.

13 Q You want to tell it, don't you?

14 A Yes, sir.

15 Q And I know that in this particular case,
16 Detective Jim Chatfield took a statement from your
17 daddy after this happened, didn't he?

18 A Yes.

19 Q And you had told your daddy about the pliers --
20 moving the pliers onto the toilet, and he told
21 Chatfield?

22 A Yes.

23 Q That is this guy here?

24 A Yes. He told Detective Chatfield.

25 Q So let me ask you this, then. I'm trying to move

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 this as quick as I can, but we don't need to cut
2 corners at this point. Going back to the 911 call, you
3 said, He came at me with a wrench and was trying to
4 stab me?

5 A Yes.

6 Q And they are making a big deal about that?

7 A Yes, sir.

8 Q You are lying?

9 A No.

10 Q There was no knife, that is why you said that and
11 thought of all of this later, talk to the jury about
12 that?

13 A Immediately after that happened, I called 911
14 within seconds. That 911 call was made within seconds
15 of this happening, that is the first thing I did. When
16 I was on the phone with the 911 dispatcher, for
17 whatever reason, the needle nose pliers -- I don't know
18 why "wrench" came out, he wasn't trying to stab me with
19 a wrench obviously, but I did use the word "stab"
20 connotating that there was something he was trying to
21 stab me with. For whatever reason, I think I used the
22 word "wrench" until half way into my interview.
23 "Wrench" just kept coming out, for whatever reason.

24 Q What you are referring to was "pliers"?

25 A Pliers, that's right.

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1 Q No question about it?

2 A No question.

3 Q So, eventually, the police get there. Sergeant
4 DelPercio is there. You are still in the bathroom?

5 A Yes.

6 Q And they move you out to the EMS?

7 A Yes.

8 Q And they testified as to what they did, and they
9 took you to the hospital?

10 A Right.

11 Q And you got treated?

12 A Right.

13 Q And the policeman came to talk to you?

14 A Yes, that's correct.

15 Q You are in the hospital. Are you clothed at that
16 time, or how are you dressed?

17 A My clothes were taken off when I went to the
18 hospital. I had a hospital gown. I came in barefoot.
19 I had no socks or shoes, all I had on was a hospital
20 gown.

21 Q And then the police officers come in to question
22 you, right?

23 A Yes.

24 Q First of all, they wanted a consent to search
25 your house, didn't they?

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1 A Yes. I do remember being put into the CT scan
2 and they were getting ready to inject the dye, and they
3 stopped and they took me out, and they took me back out
4 and they wanted a consent to search, so I signed it,
5 and they did the CT scan.

6 Q You had no problem with them searching your
7 house?

8 A No. No, sir.

9 Q And they wanted to take a statement from you, and
10 you had no problem talking to them?

11 A No.

12 Q And they told you you could get a lawyer if you
13 wanted one?

14 A Yes, they did.

15 Q Did you get a lawyer?

16 A My exact words, I'm going to talk to you. I'm
17 going to talk to you.

18 Q Of course you are smart enough to know you didn't
19 have to if you didn't want to?

20 A Yes.

21 Q And then they questioned you, we know from
22 8:06 to 9:41. How many police officers took their
23 rightful turns questioning you, Heather?

24 A Detective Chatfield started, and Brantley was in
25 there, and then at the end, Cestare came in.

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1 Q And during that statement that you made to them,
2 were you doing your best to cooperate and answer the
3 questions?

4 A Yes. And at that point when they asked
5 questions, I did my best to answer them. I did my best
6 to give them an answer.

7 Q How would you describe your state of mind at the
8 time?

9 A My mind was, frankly, all over the place. You
10 know, I was wondering about David's family, if they
11 knew, you know, my mom, our child.

12 Q You said somewhere in that statement that you
13 just felt --

14 A I felt numb, absolutely numb. I remember saying
15 that on the ride to the EMS, to the hospital, I do
16 remember they kept saying, How are you feeling, or, Are
17 you hurting, and I kept saying, I just feel numb. I
18 just feel numb. It was so surreal that I -- I felt
19 numb is the only way I can describe it.

20 Q And over the next hour-and-a-half or so, you
21 answered their questions?

22 A Yes.

23 Q You drew them a diagram?

24 A Yeah. It was a little confusing I think at first
25 because Detective Chatfield, he didn't know the layout

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 of my house. It was confusing for both of us I think
2 as to where we were standing, and so I offered to draw
3 him a diagram of the bathroom and bedroom to help,
4 because understandably one wouldn't know -- it would be
5 helpful.

6 Q And you told them immediately after, in this
7 statement, what happened in terms of where the
8 altercation started, how it advanced to the vanity,
9 where the gun was, backing up and all of that?

10 A Yes, sir.

11 Q And do you know specifically within the 6 inches
12 of the foot where you were standing or where David was
13 standing at the time the shot was fired?

14 A No. I mean, we were in constant motion. I don't
15 recall it that night. I don't recall it today. It
16 happened so fast. I know the area that we were in,
17 down to the foot or the exact location -- he was
18 somewhere in the doorway, and I was somewhere around
19 that white chair, that is the only thing I know how to
20 describe it.

21 Q And the time they were questioning you, you told
22 them -- and of course the statement is in evidence and
23 obviously you and I have looked at it -- you told them
24 then, at that time, when they asked you, that he didn't
25 drop the knife upon being shot?

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1 A I did.

2 Q And you told them you went to get the phone, and
3 he began to back up?

4 A Yes.

5 Q And when you came back in, he was lying on the
6 bathroom floor, and then at some point they are getting
7 calls and they start questioning you about did you
8 possibly touch the knife?

9 A Yes. There was a lot of "possibllys." There was
10 a lot of "could this have happened, could this, is it
11 possible. I know you were doing CPR is it possible --
12 is it possible you touched the knife"? Well, of course
13 it is possible. I wasn't concerned about the knife, or
14 anything else for that matter. The only concern I had
15 was -- I remember David, and I remember his face, and I
16 remember just that helpless feeling of doing CPR. Did
17 I possibly? Yes. Yes, it's possible. If I'm doing
18 CPR in the hospital and someone said, Is it possible
19 you touched this? Well of course it is possible,
20 because that is not my concern.

21 Q What was your focus, Heather? What did you tell
22 them in the statement your focus was while all of this
23 was going?

24 A My focus was David, David the entire time, and if
25 it wasn't David, it was trying to get someone here to

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1 help David.

2 Q Did you get that knife after the fact, stab
3 yourself with it and lay it in David's hand?

4 A No, sir, I did not.

5 Q Did you inflict these wounds on yourself?

6 A No, sir.

7 Q What time did you get out of the hospital that
8 night, or do you remember?

9 A Somewhere around 2:00, I think, 2:00 a.m.

10 Q Now, let's talk about -- they have a photograph
11 in here of you and a cell phone and a sandwich?

12 A Yes.

13 Q Did you have that cell phone and sandwich while
14 the police officers were questioning you?

15 A No, sir. That cell phone was brought into me
16 after they were finished with the interview and my dad
17 was let back in the room.

18 Q But they have a picture -- there is a picture of
19 you, a piece of sandwich or part of a sandwich, and a
20 phone; how did that have to happen?

21 A It had to happen after the interview.

22 Q Some pictures were taken during the interview?

23 A That's correct.

24 Q You can tell from listening?

25 A Right. But that cell phone and sandwich was not

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 introduced to me until after I was interviewed.

2 Q The food was brought to you -- the records
3 show -- some point in time before 11 o'clock, according
4 to Christy Wallace, and probably in somewhat close
5 proximity to that, but was it brought to you after your
6 daddy came back in?

7 A Yes. I remember my dad was in the room when they
8 brought me that tray, because I remember distinctly
9 saying I don't want anything to eat. I can't eat. She
10 replied, Well, that is one of your criteria, you have
11 to eat to go home.

12 Q Were you -- you did use the cell phone after it
13 was brought back in?

14 A Yes.

15 Q Facebook. Facebook. Tell the jury what you used
16 the phone for and how that came to be that you were
17 messing with your Facebook account after this had
18 occurred?

19 A After the interview, my dad came back in the
20 room. He came to my side and he said, I don't know how
21 to tell you this or even if I should, but I think we
22 need to shut your Facebook page down. Amy called your
23 mama, your mama called me and they want your Facebook
24 page down. So I said let me hold your phone, I'll get
25 on Facebook app and log in, and when I got on it, I

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1 couldn't remember my passwords. You can hit the forget
2 password thing on the bottom, and it will say password
3 change, or whatever it is, is sent to your E-mail
4 address. Well, tried to get into my E-mail. Can't
5 remember my password to that either. I could not
6 remember any of my passwords to anything. So I tried
7 to enter in my dad's phone number in my Facebook to get
8 that code generator for password reset. I tried to
9 enter -- Mike was at my mom's house. Daddy had called
10 him to help my mom. He was at the house. It was just,
11 well, we'll try Mike's phone number, maybe I can get
12 the code -- all of this was in an attempt to get my
13 password for Facebook, not for search on Facebook or
14 browse any pages, just to deactivate Facebook to
15 prevent any more comments from being put on my Facebook
16 page.

17 Q And that was not your idea, but brought to your
18 attention?

19 A No -- yes.

20 Q So the characterization, if anyone tried to make
21 it that in the two, three, four hours after this
22 horrible thing happened that you are nonchalantly,
23 uncaringly gnawing on a sandwich and checking your
24 Facebook is right or wrong?

25 A Absolutely wrong. I had to eat to go home.

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1 Q And you didn't want to stay at the hospital?

2 A I was ready to go home or to my parents' home.

3 Q Now, you go home and go back your parents' home?

4 A Yes.

5 Q Let's go back to the cell phone. The cell phone,

6 at some point in time -- the police had your cell

7 phone, right?

8 A Yes.

9 Q At some point in time, did you become in
10 possession of David's phone?

11 A Yes.

12 Q Tell the jury about that.

13 A The next day, my dad and I had some visitors.

14 You all met Robert Shelley yesterday, him and a couple

15 other friends came and checked on us. They came to my

16 house instead of my parents', so we were up there with

17 him. My dad, he came across David's cell phone in the

18 drawer, in the drawer that Jill Domogauer and Mr.

19 Cestare saw the phone in, it was in that same drawer.

20 Q In that same drawer?

21 A Yes.

22 Q So this is important. The police say that they

23 looked in the house, they saw some old phone in that

24 same drawer that this phone came from; did you or David

25 have an old phone that was still there at the house?

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1 A No. We had just an iPhone 5. We had an iPhone 4
2 before. We both sold our iPhones shortly after we got
3 an iPhone 5. We had no cell phones -- no old cell
4 phones in the house.

5 Q If the police saw, as they said they saw, a cell
6 phone in a drawer at your house that night while they
7 were searching and you were at the hospital, it had to
8 be what phone?

9 A It was David's phone, no doubt in my mind that
10 that was David's phone. There was no other phone
11 there.

12 Q Have you seen the picture that was introduced
13 into evidence of the kitchen drawer?

14 A Yes. Yes. That was David's phone.

15 Q Same drawer that Jill Domogauer and Pete Cestare
16 said they saw a phone, but they did not take a picture
17 of it at that time, and they did not collect it?

18 A That's correct.

19 Q And they didn't make any notes of it, but that is
20 the phone you believe?

21 A Yes. There would be no other old phone in that
22 house for them to see.

23 Q Now, did they ever that night ask you about
24 David's cell phone?

25 A No, they didn't. I was never asked about the

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 phone.

2 Q Were you ever told by anyone after you got home
3 not to touch anything, not to go into the house, not to
4 use what was there, or anything of that sort?

5 A No. When I got home, either then or the next
6 day, they told my mom the scene was clear. It was even
7 asked, Do we need to wait 'til tomorrow to do anything?
8 No. No. No, you all go ahead. It was even brought
9 up --

10 Q Jonathan Martin advised that it would be smart to
11 go ahead and clean up that night?

12 A Yes.

13 Q And you didn't have anything to do with it?

14 A No, I was at the hospital, but it was advised
15 that we go ahead and do that.

16 MS. LIVESAY: Your Honor, for one, there is no
17 evidence that John Martin suggested anything even
18 close to that.

19 THE COURT: Sustained.

20 MR. MARTIN: If they want to call John Martin in
21 reply, that would be good.

22 THE COURT: I understand.

23 Q Heather, you did try to use David's phone, right?

24 A Yes.

25 Q They have records in here as to when a call was

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 made. First of all, could you use it?

2 A No.

3 Q Why?

4 A Again, the pass code, I couldn't -- I didn't have
5 his pass code. It locked me out.

6 Q So no way to get in that phone?

7 A No.

8 Q And you know a little bit about phones, but you
9 are not an expert?

10 A No.

11 Q But you did begin to -- let me -- you tell it.

12 Tell the jury what you did. First of all, let me ask
13 you this. When was it that you made an attempt to use
14 the phone and call AT&T or Apple in regards to trying
15 to reset the password on the phone so you could use it?

16 A It was August 13th, two days after this
17 happened.

18 Q So you made no attempt to do anything with that
19 phone when you got home Sunday night?

20 A No.

21 Q Or Monday?

22 A No, sir.

23 Q It was the next day?

24 A That's correct.

25 Q And these records, of course, which are in

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 evidence, have the times when calls are made and what
2 is asked and what is said; is that right?

3 A That's correct.

4 Q Are you smart enough that if there is something
5 on that phone you wanted to hide or get rid of, that
6 you would have waited two days to get the phone and
7 attempt to use it?

8 A Yes, I'm smart enough to know if there was
9 something to hide -- you would have seen records on
10 Apple and AT&T of trying to get into it as soon as I
11 can. There was nothing on there to hide.

12 Q So the question might be, Why not just buy
13 another phone? Why did you use that one?

14 A Well, the phone account was in my name. I was
15 under the assumption that the police did not want the
16 phone. They didn't ask about the phone. My family was
17 even told that they didn't need the phone. My family
18 was told that it wasn't part of the altercation, they
19 didn't need the phone.

20 Q And so at some point, you did get the phone, and
21 of course they have the records of a few phone calls
22 back and forth on the phone and text messages, and
23 there were some about bringing food, birthday cake;
24 what is that about, in case questions are curious about
25 that?

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1 A After this happened, after I gained access to
2 David's phone, I gave a couple of people, close
3 friends, David's phone number and said if you need me,
4 this is my phone number -- using this phone, and people
5 were offering to bring over food, which is common after
6 something like this happens. August 13th was my
7 mom's 60th birthday, so one of her friends was trying
8 to bring over a birthday cake to her birthday.

9 Q When you found out the police were looking for
10 the phone, the police got the phone?

11 A Yes, they did.

12 Q Anything you wanted to hide from anybody whether
13 it was deleted or not deleted?

14 A No. No. No.

15 Q Did you delete anything off the phone?

16 A I don't delete anything. I called Apple in order
17 to figure out how to go around the password to simply
18 get in the phone and use it. There were pictures,
19 videos, all sorts of things -- pictures of J.D.

20 I didn't want to erase the phone, that was never my
21 attention to erase anything, and there was nothing that
22 was -- I was trying to hide. I, to this day, would
23 love to know what was on this phone, see what was going
24 on, why he was acting the way he was that day.

25 Q There is also testimony around the 13th that

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1 you are going into computers trying to get -- and I
2 don't know that I understand it -- going into computers
3 looking been for passwords, trying to hook up, trying
4 to hook up, find this, find that; were you attempting
5 to delete anything so the police couldn't find it?

6 A No. No.

7 Q As a matter of fact, they got all of the
8 computers in your house one by one?

9 A Yes, they did.

10 Q Nothing was erased?

11 A No.

12 Q Everything that was there, was there?

13 MS. LIVESAY: Your Honor, if I can, can we just
14 let her testify?

15 THE COURT: That is what -- just ask her
16 questions.

17 MR. MARTIN: She's right. She's right. I'm
18 wrong.

19 THE COURT: Don't start, either one of you.

20 MR. MARTIN: I apologize. I am leading, but --

21 Q Tell the jury what you were doing.

22 A On the 13th, I'm trying to get into David's
23 phone. I would like a phone to use, and I didn't,
24 frankly, feel like going to get another phone. There
25 was a phone, the police didn't want it, they didn't get

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1 it, they saw it, it was left there.

2 Q Now, the computers, move on to the computer.

3 What are you doing with the computers?

4 A So after I get into the phone, Apple say after
5 you restore the phone, you have to hook that phone back
6 into the computer that it is registered to, or the
7 iTunes account that it is on, and you have to sync it
8 back up to iTunes, and everything that was restored off
9 of that phone, it would go back to that phone after you
10 synced it with iTunes. So I went up to our house and I
11 plugged David's phone into his computer in order to get
12 everything back on his phone, and it popped up there
13 that I needed his Apple password. I didn't know his
14 Apple password, so, again, you have to try to get into
15 E-mails to get a password to reset to even sync the
16 phone back to the iTunes account to put everything back
17 on it, which I was never successful.

18 Q All of that being said, were you trying to
19 destroy or hide anything?

20 A No.

21 Q The gun in the bathroom drawer, we've seen
22 pictures. The gun was in the nightstand. There was a
23 gun in David's nightstand. You testified that you had
24 moved the gun?

25 A Yes.

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1 Q Tell the jury what you know about that.

2 A J.D. started rolling over around
3 July 21st, and he was scooting around, wasn't
4 crawling or walking yet, but my first child I knew that
5 would be approaching, the next step would be crawling.
6 Just out of an abundance of precaution, our
7 pediatrician said think about childproofing the house.
8 That was just something that I could do quickly, just,
9 okay, let's move the guns. We didn't have a safe to
10 put them in. That gun safe was not in our house.
11 David did not want to put the guns in the safe, which
12 was at my parents' house, which that makes sense. The
13 guns in the bottom of a nightstand I thought would be
14 safer in a room that was --

15 Q Why the bathroom?

16 A It was in the bathroom -- Max, our dog, was never
17 allowed in the bathroom unless someone else was in
18 there with him. If he was, he would get the wash
19 clothes off the vanity and chew them up and they would
20 be in a million pieces in front of the back door. So
21 that is why -- even the day this happened, when we
22 left, that is one of my questions, did you shut the
23 bathroom door. Obviously, my dog was very close to me,
24 and if I went in there to take a bath, if I didn't let
25 him in the bathroom while I was taking a bath, he would

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1 scratch the paint off the door. I mean, I can't keep
2 the dog -- he was going to be there with me and, you
3 know, I had a dog bed in there for him to lay on while
4 I took a bath. I took a shower, he was in front of the
5 shower.

6 Q I'll show you Exhibits 85 and 86, which are text
7 messages already in evidence.

8 MS. LIVESAY: Can I look at them?

9 MR. MARTIN: After she identifies them, I'll show
10 them for you.

11 Q Any comments in there about the dog, Max, being
12 on the bathroom floor?

13 A Yes. Yes.

14 MR. MARTIN: All right. Let me show them to Ms.
15 Livesay.

16 MS. LIVESAY: Can we put one that is not altered
17 on?

18 MR. MARTIN: She's right. I have scribbled
19 because it is hard for me to find what it is looking
20 for instantaneously. I'll not stop now, but put in a
21 clean copy at the end.

22 THE COURT: Before the jury sees it.

23 MR. MARTIN: Right.

24 THE COURT: All right. I'll allow you to
25 substitute it.

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1 MS. LIVESAY: For the record, I'm assuming that
2 her testimony is going to come from the copy with
3 these notes on them, just so everyone knows?

4 Q There is underlining in here at the point where
5 we are --

6 A Right.

7 Q -- but to save time, the text messages that
8 Cellebrite that cannot be altered, what is on there
9 that may substantiate what you told the jury about the
10 dog in the bathroom?

11 A On July 31, 2013, I sent a text to David, Max
12 made a mess. We got to shut the bathroom door.

13 July 31 I sent my mom a text message that says, K. I
14 normally close the bathroom door, David probably
15 didn't.

16 Q There are other questions that was raised about
17 towels, towels in the bathroom. Did you hide towels
18 from anybody as part of wiping blood or doing anything
19 like that?

20 A No, sir.

21 Q Did you have a towel at some point in time in
22 your hand during this -- waiting for the police and EMS
23 workers?

24 A Yes, I did.

25 Q And might it have had blood on it?

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1 A If it did, it was a small amount, whatever I
2 wiped off the door.

3 Q What were you doing with the towel to start with?
4 Why did you have a towel?

5 A I was trying to wipe David's face with the peanut
6 butter.

7 Q Let me show you Defendant's Exhibit No. 68 and if
8 -- that is in evidence. What is that a pictures of?

9 A This is a picture of the bathroom that was taken
10 after this happened.

11 Q And do you see a hand towels in that photograph?

12 A Yes, I do.

13 Q And where are they? Explain to the jury where
14 there are.

15 A It is on top of the short wall of the shower
16 right there on the shower ledge, but it is just the
17 half wall going into the shower. I have no glass, you
18 just walk into the shower.

19 Q Do you recall how those towels would have gotten
20 there from you in that -- who put them into the final
21 position before the picture was taken?

22 A I don't remember exactly how they got there, but
23 I do remember, you know, again, trying to look and see
24 if anybody had made it outside yet or where everyone
25 was at.

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 Q Is there a window near that shower encasement
2 where the towels are?

3 A Yes, there is.

4 Q Can you see the road from that window?

5 A You can't see the road. You can see the
6 driveway.

7 Q So if you wanted to check the road or if you
8 wanted to look out of your house to see if anybody were
9 coming, or on the way, how would you have to do it?

10 A Go out of the bathroom, all the way through the
11 kitchen, go into the living room, and there is windows
12 in the front door out on the front of the house.

13 Q Or you could go through the tub?

14 A Well, yeah, in order to see the road from the
15 bathroom, you would literally have to crawl over the
16 garden tub, get in the tub, open the blinds, and it is
17 more difficult. The tub is really wide. It is not a
18 standard tub.

19 Q Two knives -- two knives missing?

20 A Yes.

21 Q Tell the jury what you know about two knives
22 missing?

23 A There was one knife that has been missing for a
24 long time before this happened. I don't know where it
25 is at.

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 Q Allyson Brown doesn't remember that?

2 A No, she doesn't. I don't think it was ever
3 brought up. I don't see how it would be relevant for
4 her to know.

5 Q Did you have any knife that night? Did you, that
6 night -- did David have the knife, or did you have the
7 knife?

8 A Oh, no, David had the knife.

9 Q Allyson Brown's testimony. Allyson was your
10 friend and photographer and did housework for you?

11 A Allyson and I were very close when it happened.
12 She was at my house every day for weeks after this
13 happened.

14 Q And you did talk to her -- or did you talk to her
15 about what happened?

16 A I talked to her in bits and pieces. She did ask
17 me questions. It was bits and pieces here and there.
18 I remember right after this happened I was more quiet
19 about everything. You know, I didn't talk to -- I
20 don't even know that I told my dad immediately
21 everything, but it was in bits and pieces here and
22 there, and it was in response to questions she asked.

23 Q She testified about something going -- sliding
24 cross or flying cross the bathroom floor, which
25 somebody might try to use that to say something

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 happened different than what you say happened; what do
2 you know about that?

3 A All I know is there was a struggle over the phone
4 and David ended up with the phone. She said my phone
5 slid cross the floor. I found that highly unlikely.
6 First of all, it's not what happened, so I don't
7 remember ever telling her that. I'm not sure how she
8 can remember that long ago, and I think that is normal,
9 not to be able to get everything exactly right. But
10 with that being said, I had an Otter Box on my phone.
11 The case is made out of silicone, and I've even had a
12 phone in an Otter Box that rode on the back of a tool
13 box for 10 minutes without sliding off. It would be
14 unlikely for that phone to slide across the floor.

15 Q I'll show you State's Exhibit 73.

16 A That is my phone.

17 Q Is that similar?

18 A That's the phone case.

19 Q That is the case for your phone?

20 A Yes.

21 MR. MARTIN: I move to enter it.

22 MS. LIVESAY: It already is.

23 COURT REPORTER: Yes, sir, it is.

24 Q Heather, did you attend David's funeral?

25 A No. I thought about it, and I remember talking

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 that over with you. It was apparent after this
2 happened that there was some -- I don't know how to say
3 it, but there was some....

4 Q Great animosity?

5 A Great animosity with David's family and myself.

6 MS. LIVESAY: Your Honor, I have to put it on the
7 record, when he asked her a question, can he just let
8 her answer instead --

9 THE COURT: Sustained. Ask a question, don't put
10 words --

11 A There was obvious animosity after this happened.
12 We thought it over, talked to you about it. We
13 probably talked to several people about it, and we
14 didn't know what to do. I wanted to be there, but I
15 didn't want to cause a scene.

16 Q Fair to say -- or how would you describe any
17 direct communication you had with David's family since
18 this tragedy?

19 A There has been none. It's all been through
20 lawyers and their family lawyer.

21 Q Let me talk to you a minute about life insurance.
22 They've introduced a life insurance policy into
23 evidence. They've introduced text messages into
24 evidence. Let me -- let's talk about that. Tell the
25 jury what you know about, first of all, David's life

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 insurance?

2 A Before we got married, and even after we got
3 married, David had life insurance. It came out after
4 J.D. was born because that is when it was
5 pertinent. We talked about wills, life insurance. We
6 talked about the obvious things you do after a child is
7 born, that is when it came out he didn't have life
8 insurance. His mom had life insurance on him, that it
9 was a policy she owned.

10 Q Who is Dave Ramsey?

11 A Dave Ramsey is -- a lot of people know who he is.
12 He goes to a lot of churches and talks about financial
13 planning. He helps couples with retirement and just
14 planning for the future.

15 Q Anything to do with life insurance?

16 A Yes. His suggestion that, you know, every
17 family, everybody needed life insurance, specifically
18 term life insurance.

19 Q It is clear from the text messages there were
20 explanations between you and David about life
21 insurance?

22 A Yes, there was.

23 Q And what was the extent of your knowledge on
24 August 11 about David's life insurance policy?

25 A The extent of my knowledge on that date was that

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 he had looked into a life insurance policy. He had
2 gotten a quote on a life insurance policy, that that
3 quote wasn't the -- his blood pressure was high, and he
4 didn't think he needed to pay that much. They came
5 back and checked his blood pressure and gave him a
6 preferred rate, but at the time this lapped, I did not
7 know that that life insurance policy was actually
8 issued or in effect. I thought it was still in the
9 process of figuring out what rate he was going to pay
10 every month, and if he was even going to get it or
11 purchase it, or whatever. I knew we talked about it,
12 but I did not know it was in effect or issued.

13 Q Did you kill David to collect life insurance?

14 A No. I loved David, and it was never about money.

15 Q Did you need insurance money to live a decent
16 life?

17 A No. Money was not anything -- I never thought
18 about money.

19 Q The policy was issued, the evidence says,
20 July 23rd. You tried to save your marriage after
21 that?

22 A Yes. I bought books. I was in the Five
23 Different Love Languages, I offered to read it in its
24 entirety and when David -- he was willing to.

25 Q The reason to have life insurance is probably

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 self-explanatory, but we are in a very serious trial
2 here, so I don't want to shortcut it. Did David have
3 debt associated with his house, business, auto?

4 A Yes. He had to refinance mortgages and he owed
5 almost as much on his home in Florence as he did the
6 loans were taken out. Credit cards were maxed out.
7 The only reason I know that -- I didn't have much to do
8 with David's business or financial stuff. I mean, I
9 was the primary one that handled all of that, but and
10 it was not uncommon, quite frankly, that he paid for
11 stuff, so it wasn't really -- I didn't really know much
12 about his financial stuff. I do know when we were --
13 we would go out to eat, he would have to pay a credit
14 card before he charged something. He bought a \$50,000
15 truck while building the house that he still owed on.

16 Q I'll show you what is marked as Defendant's
17 Exhibit 51 and ask if you can tell me what that is?

18 A This is a picture of our carport, mine and
19 David's truck, and it is a picture that you can see the
20 life insurance policy on the dash of his truck.

21 Q And that can clearly be seen in the surveillance
22 video, which has been offered into evidence?

23 A Yes.

24 Q And when did you realize that was there?

25 A This was after August the 11th. There was

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 communication through their family attorney and you or
2 one of ours that, you know, they wanted the truck back
3 and clothes, and I had been up there putting clothes in
4 bags. My dad asked Mike--

5 THE COURT: Mike, stand up. Is that Mike White?

6 A Yes, that's Mike.

7 Q He's here.

8 A Mike was helping me load the truck up because
9 there was deer heads, a lot of heavy stuff. The bags
10 were heavy. My dad asked him to help put things in the
11 truck to give back to his family, and while we were in
12 there, and this was after the police searched the truck
13 on August 11, I happened to look up there and find this
14 life insurance policy, didn't know it was there.

15 Q And Mike was with you?

16 A Mike was with me.

17 Q And, of course, the police had been in the truck
18 themselves also as well?

19 A Yes.

20 Q And you hadn't taken it out, because it is in the
21 surveillance video?

22 A That's correct. It was never brought to the
23 house, to my knowledge.

24 Q Did you have life insurance, Heather?

25 A Yes, I did.

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 Q Allyson Brown testified something about life
2 insurance, so tell the jury about your life insurance.

3 A I had life insurance through my work. It was
4 four times my pay. Whatever my pay was, they
5 multiplied it by four, so it was like 600 something
6 thousand dollars. It was term life insurance.

7 David --

8 Q Beneficiary was who?

9 A My dad before we got married was my beneficiary.
10 When we got married, David became my beneficiary. When
11 we were in the process of building our house and didn't
12 have a loan, and my dad was having to pay everything, I
13 switched everything back over to him. In the event
14 something happened to me, his debts would be paid off
15 because he was the -- he was our loan, you know, and I
16 wanted to be sure that he would pay his debts off and
17 take care of David. But I owed my dad, so I switched
18 all of that to him.

19 Q Had you ever switched it back?

20 A I was in the process of doing that. I had been
21 back to work only for a month, and in order to get it
22 changed back through work, it is a little bit different
23 than calling up Nationwide or whoever and saying I need
24 to change my beneficiary. It is not that simple. They
25 told me I physically had to get on a computer and log

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 in, and their program is compatible with an HP, I had
2 an Apple.

3 Q Was that a priority on your mind on who the
4 beneficiary of any particular life insurance policy
5 was?

6 A No. No, it wasn't.

7 Q How about your 401K, did you have a 401K?

8 A Yes.

9 Q Only because we're having to deal with the
10 question of whether or not this life insurance policy
11 had anything to do with David's death, I want to ask
12 you about your financial situation. Other than the
13 debt on the house, did you have any other significant
14 debt?

15 A Just the house.

16 Q And at the time, you had a 401K?

17 A Yes.

18 Q Who was the beneficiary of that?

19 A David.

20 Q How much money did you have in the 401K?

21 A I'm not sure. I had a 401K and a 403B, and it
22 totaled up to over a hundred thousand dollars.

23 Q And between your savings and checking account at
24 about that time, how much money did you have in them?

25 A Around \$90,000.

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 Q And have you been trying to live off of that with
2 the help of your parents since this happened, since you
3 haven't been able to work?

4 A I have been.

5 Q But were you in any sort of financial distress
6 that would cause you to want to collect an insurance
7 policy on your husband?

8 A No.

9 MR. MARTIN: One minute, Your Honor.

10 (A brief pause in the proceedings.)

11 Q Is there a picture of a handgun on the bottom
12 drawer on David's nightstand side of the bed?

13 A Yes.

14 Q Why would that have been there, and you moved the
15 other gun?

16 A When David and I got engaged, I bought a .38
17 revolver -- it was small -- to put in the car, and
18 before we got married, he liked it, so I bought a
19 second one; that one I gave to David. My .38 revolver
20 was in my car, that is where it's always been, and that
21 was the one that I had given to David. He had it in
22 the nightstand, and I always thought that that gun was
23 in his truck. I never knew that that gun was in his
24 nightstand.

25 Q You might have said this, but the gun that

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 happened to be used here was registered to or bought by
2 Mike White?

3 A Yes.

4 Q Tell the jury who Mike is to you and your family?

5 A Mike has been an employee with my dad, who owns a
6 construction company, for as long as I can remember.
7 But over 10 years ago, my dad bought that gun from
8 Mike. There was a lady that was kidnapped from Walmart
9 when I was younger, and my dad gave it to me and said,
10 here, go get your weapon permit and keep it.

11 Q You bought the two small guns, one for you and
12 one for David so it could be kept in the car?

13 A Yes.

14 Q And you did -- do you have a concealed weapons
15 permit?

16 A Yes, I did.

17 Q You went to training. Did you get the permit?

18 A Yes.

19 Q Okay. Allyson Brown said you were packing up
20 some of David's clothes the week following, or sometime
21 after this happened. Why were you getting any of
22 David's clothes at that particular time, Heather?

23 A I was packing them up to put them in his truck
24 and take them back to his family. They wanted his
25 truck back, and I put deer heads and rifles and

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 whatever I could pack in there, clothes.

2 Q They made a request to get things back of his
3 through attorneys, right?

4 A Yes. Yes.

5 Q When you were at the hospital, did you have any
6 phone call conversations with Star Godwin?

7 A No.

8 Q Did you have any texting conversations with
9 Robert Shelley?

10 A No. I actually told my dad to call Star for me.

11 Q Now, the drawers in your house -- it is a new
12 home, what kind of cabinet drawers do you have in it,
13 in the bathroom and kitchen?

14 A They are the kind that all you have to do is
15 touch them and they roll on back. They roll on back
16 and close all the way.

17 Q So they are easy to close if they get --

18 A They just roll back and close.

19 Q What else were you doing to childproof your
20 house? You said the movement of the gun, not having to
21 be immediate, but it was an effort to start; what else
22 were you doing?

23 A I bought the electrical plugs. I had bought
24 those -- I bought the stove knob things; they wouldn't
25 fit. I have the ones with huge knobs and never found

HEATHER CAUSEY SIMS - DIRECT EXAMINATION

1 ones that fit, but I did purchase them. I started
2 buying that stuff. I had corner bumper guards around
3 some of the corners, and the gun was something -- you
4 know, it was on the bottom of the nightstand, just
5 seemed to be better to be in a room that was -- in
6 general the door was shut, in general nobody could go
7 in there unless I was in there or David was in there,
8 and it was a drawer that was higher off the ground. It
9 was something like, Let me do it while I'm thinking
10 about it, I'm that kind of person.

11 Q Heather, you told this jury today, and when you
12 talked to the police department, police officers that
13 night at hospital, why did you tell them that you shot
14 David?

15 A I told them several times that I was scared.

16 Q Were you?

17 A I was.

18 Q Have you visited David's grave?

19 A I have.

20 Q How did you have to find it?

21 A I had to go on-line on grave.com and put his name
22 and cemetery, and it gave a picture, and I searched
23 about a half day, and I finally found it.

24 MR. MARTIN: That it is all I have.

25 THE COURT: Come over here for a second.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

(Whereupon, a bench conference was had.)

CROSS-EXAMINATION

BY MS. LIVESAY:

Q Ms. Causey, I noticed earlier when you were talking to Mr. Martin, Mike White is the guy that the gun belonged to, correct, with the two bullets?

A It was registered to Mike.

Q Yes or no?

A No, it didn't belong to Mike.

Q Whose name did it come back to?

A It was registered to Mike White, but it belonged to me.

Q So the gun that was registered to Mike White that had two bullets, is the gun you used to shoot David Sims with?

A That is the gun that was used, yes, ma'am.

Q And Mike White is the same man that you were sending your passwords to that night from the hospital; is that correct?

A He was one of the people, yes.

Q And he was also, ironically, the same person, you and him, after David had been killed, was rummaging through his truck to find the insurance policy?

A My dad asked Mike.

Q And he is the same guy standing in the back to be

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 here to support you today?

2 A He is under subpoena, yes, ma'am.

3 Q So he's here to support you?

4 A He's here under your subpoena and Mr. Martin's
5 subpoena.

6 Q Is he here?

7 A He is here, yes, ma'am.

8 Q And he was actually there at your mama's house
9 when you were at the hospital?

10 A Again, yes, he was. My dad called him. I never
11 saw him, but my dad called him to ask him to help.

12 Q So he was there that night you were at the
13 hospital already at your mom's house; is that correct?

14 A I don't know when he got there. I didn't see
15 him. All I know is my dad asked him to come and help.

16 Q And how long have you known him?

17 A Ever since he started working for my dad; I'm not
18 sure what year that was. I think in high school.

19 Q Now, something else that Mr. Martin brought out
20 that I didn't really didn't catch until today. He
21 brought out some receipts, Barnes and Nobles or Books a
22 Million on -- do you see a date?

23 A Yes, ma'am, I think it is at the bottom. 7/28.

24 Q So July 28, and then you ordered the CD and got a
25 receipt back on what day?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 A Well, this wasn't the CD, this was a book that
2 was purchased through iTunes that was like an immediate
3 download.

4 Q What was the date on this?

5 A August 5th.

6 Q Okay. And you called some counselors on -- what
7 day did you start calling the counselors?

8 A I think it was -- let me make sure. July 24th.

9 Q And when did you start making appointments?

10 A I don't know when the -- when I actually called
11 to get an appointment, I had to call a first counselor
12 before Ms. Payne, so it was sometime prior to
13 July 22nd.

14 Q So all of a sudden you start keeping up with
15 receipts from Books a Million from July 28th, 2013,
16 you were able to find that, keep up with that, and a
17 receipt from August the 6th, all of these phone calls
18 started going out to a counselor at the end of July?
19 Do you have one shred of paper to show us where any of
20 this was going on before that insurance policy went
21 into effect, or did you just start papering everything
22 after?

23 A This receipt for Books a Million was actually --
24 I didn't keep up with the receipt, but I had put it in
25 the front cover, and I just happened to find it there.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 It was when they purchased the book, they put it in the
2 front of the book, and that is where it was. I called
3 to try to get a receipt, and they never did call me
4 back, and I happen to find it there.

5 Q You called them to?

6 A After this happened.

7 Q After this happened?

8 A After this happened, I was searching for the
9 receipt, and it happened to be in the book. I wasn't
10 keeping up with it.

11 Q Is there one shred of a receipt or a paper or a
12 book or a counselor was called before the insurance
13 policy went into place?

14 A I'm not sure when the first appointment -- yeah,
15 I called the counselor before July 22 and I'm not sure
16 when the life insurance policy was issued, but it was
17 July 23rd, so the counselors were scheduled before
18 life insurance was issued.

19 Q Do you -- there is a lot of documentation here.
20 Do you have one piece of documentation where you have
21 kept up with showing where any of this was going on
22 before the end of July when he got the life insurance?

23 A My phone records are in evidence. I'm sure I
24 called -- and you'll see where I called Ms. Payne prior
25 to that.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q But nothing up here?

2 A I haven't been given anything.

3 Q So nothing your attorney has introduced into
4 evidence?

5 A I think you may have introduced it into evidence.

6 Q Sorry?

7 A I think you introduced it into evidence, but I
8 haven't been handed it.

9 Q Anything up here show anything about this going
10 on before the life insurance policy went in effect?

11 A Not up here, no.

12 Q Ma'am?

13 A Not up here, no, ma'am.

14 Q These are things that were introduced by your
15 attorney?

16 A I'm assuming. I can't remember who introduced
17 them.

18 Q So all of this documentation starts where you can
19 show it on the phone records where you are calling, all
20 of a sudden now -- all the sudden you've kept receipts,
21 all of this is going on after July?

22 A I didn't keep up with anything. I was able to
23 find this after this happened. Never did I keep up
24 with anything.

25 Q Let's lead up to the night that all of this

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 happened, okay. Because, ironically, after all of this
2 documentation is taking place in July, along with the
3 insurance policy, he's killed three weeks later, so
4 we'll get to that night. That night you told this jury
5 about his phone; do you remember that?

6 A Yes.

7 Q If you don't mind -- and you dug his phone out
8 after he was laying there shot on the floor, correct?

9 A I didn't dig his phone out. It was visibly out
10 of his pockets. I didn't go through his pockets or dig
11 anything out; you could see it.

12 Q Which pocket did you dig it out of, the one
13 closest to the vanity or the other one?

14 A I hate to assume.

15 Q Ma'am?

16 A I hate to assume, but it would have been the one
17 closest to me, because that is where I was at.

18 Q So I'm showing you now State's Evidence 41. This
19 is a picture of his bloody pocket that you dug the
20 phone out of?

21 A There is some blood on the pocket, but not in his
22 pocket.

23 Q Ma'am?

24 A I see blood around the top part of the pocket,
25 but not in his pocket.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q Is that the pocket you dug the phone out of?

2 A Yes.

3 Q So he's laid out bleeding and blood is on his
4 pocket, and you reach in and get his phone out; is that
5 correct?

6 A I don't remember reaching in his pocket. I put
7 my hand on his phone and pulled it out.

8 Q You pulled it out of his pocket after he was laid
9 out on the floor?

10 A There would be no reason for me to get it out
11 before then.

12 Q Okay. Okay. Let me ask you this. Your
13 attorney, you all talked a little bit about where that
14 phone went, so there is no doubt at this point you have
15 his phone?

16 A Yes.

17 Q And there is no doubt we never found it in the
18 bathroom?

19 A I think you did -- not the bathroom, but in the
20 house.

21 Q Ma'am?

22 A I'm assuming it was found.

23 MR. MARTIN: I object. She doesn't know where
24 they found or didn't find the phone, she doesn't know
25 that.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 THE COURT: Ask if she knows. If she knows, she
2 can answer; if she doesn't, the answer is, no.

3 MS. LIVESAY: Can I ask leading questions on
4 cross, is that a problem for Mr. Martin?

5 THE COURT: It is not a problem for me either, so
6 let's go.

7 Q (MS. LIVESAY) Where did you put his phone after
8 you dug it out of his pockets?

9 A I didn't dig it out of his pockets, but I don't
10 know where I put it.

11 Q Don't know where you put it?

12 A No. That was not -- I don't remember
13 everything -- everywhere I put everything, it wasn't my
14 priority.

15 Q But you would admit you've seen all of the
16 pictures from the bathroom, you've been here the entire
17 trial?

18 A Yes.

19 Q Did you see a picture of his phone in the
20 bathroom?

21 A Not in any of the other pictures that I saw.

22 Q Ma'am?

23 A Not in any pictures I saw.

24 Q So you agree there is no evidence that you put
25 the phone anywhere in that bathroom; is that correct?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 A No. I don't know where I put the phone.

2 Q But your phone was still in the bathroom,
3 correct?

4 A Yes, my phone was. I could get into my phone. I
5 called my mom. And just to clear everything up, I
6 didn't have to dial my mom's phone number, I have my
7 mom -- I have to hit her name and it called her. She
8 was in the call log, that is how I called her.

9 Q While we are talking about what all is going on
10 in the bathroom, it is obvious there is a lot going on
11 in the bathroom, and obviously at some point you left
12 the bathroom with the phone, but also the other items
13 in the bathroom are moving around as well, like the
14 pliers. Did you see every picture we had of that blood
15 spatter; do you remember seeing those around the
16 victim?

17 A Yes.

18 Q Do you remember we actually had a blood spatter
19 expert come in and talk about it?

20 A Yes.

21 Q Did you see one -- and you can actually tell in
22 the pictures -- do you remember where there is wiping;
23 do you remember that?

24 A Yes.

25 Q That woman is very good at what she does. Did

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 you see one dog print in any of that blood all around
2 the victim, one dog print?

3 A I saw smears.

4 Q Ma'am?

5 A I saw smears. I didn't necessarily look for a
6 dog print.

7 Q So you didn't see a dog print?

8 A I didn't look for one.

9 Q Ma'am?

10 A I didn't look for one. I had seen where things
11 were in the blood, but -- no, I don't -- no.

12 Q Nobody saw a dog print?

13 A Okay.

14 Q And you didn't see one either, did you?

15 A I didn't look for one.

16 Q Let me ask you this, because I thought this was
17 very puzzling to me, and I think I can straighten it
18 out for me and the jury. In the beginning of the 911
19 tape, you are saying "wrench, wrench, wrench"?

20 A Yes.

21 Q And then after the operator says "knife," then
22 you say, yes, he stabbed me with a knife?

23 A I said he stabbed me. He had a wrench, he tried
24 to stab me, and immediately she said "knife."

25 Q And, ironically, after that happened, the dog --

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 now what you are telling us -- was sniffing around the
2 pliers, but never the knife? The dog never --

3 A He may have, I didn't see him. Like I said, I
4 wasn't watching my dog, I just happened to look over
5 there and he was around them.

6 Q But whatever went on in the bathroom only
7 entailed, ironically, moving the pliers, which is of
8 course is when you switched your story from pliers to
9 knife; is that not correct?

10 A Can you ask it again?

11 Q I certainly can. Those pliers were on the
12 toilet?

13 A Yes.

14 Q And you are telling this jury now it was because
15 the dog was sniffing around them?

16 A Yeah. I was getting ready to pick them up. They
17 were rubber handled, and every dog toy he had was made
18 out of rubber, so I thought he was going to pick them
19 up.

20 Q So, ironically, this dog is in the bathroom
21 running around, sniffing around, sniffing around the
22 pliers, but ironically he never sniffs the knife, he
23 never kicks the knife, and ironically that knife stays
24 laying right in his hand; is that correct?

25 A I don't know if he was sniffing around it or not.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Like I said, I wasn't watching everything he did, I
2 just remember trying to push him away.

3 Q At some point you got the pliers off the floor
4 and put them on the toilet?

5 A I happened to look back and he him sniffing the
6 rubber part of the handle, and I moved them.

7 Q So now -- just so we're all on the same page --
8 at some point you are getting his phone out and taking
9 it to another room, then you are moving the pliers from
10 the floor on the toilet; is that correct?

11 A Like I said, I saw my dog sniffing around the
12 pliers, and I picked them up and moved them out of his
13 reach.

14 Q At some point you are wiping blood off the door
15 and putting that washcloth on the top of the shower?

16 A I don't know where I put the washcloth, but I
17 would assume it would be a possibility. I remember a
18 brown washcloth, but I was using it to wash peanut
19 butter off David's face.

20 Q So the picture Mr. Martin showed you, you are now
21 saying that is not the washcloth you used to wipe the
22 blood off?

23 A I remember having a washcloth. There is several
24 of them in that picture, I don't know which one was
25 used.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q So you don't know that that is the washcloth?

2 A I would assume it was one of them. There is
3 several in that picture, I don't know which one you are
4 referring to.

5 Q Are any of them on the vanity?

6 A There was one on the vanity, but like I said, the
7 one on the vanity was a light color, and I don't
8 remember. If you notice, it was pushed away from the
9 ledge of the vanity; again, that was typical.

10 Q So now you are saying that was the washcloth?

11 A No. No. I'm just saying that was typical for a
12 washcloth to be pushed up away from the ledge of the
13 vanity, so the dog wouldn't get it.

14 Q So when you pointed out the washcloth on top of
15 the shower to Mr. Martin, the truth is you are not sure
16 that that is the washcloth you used to wipe the blood?

17 A There was two washcloths on that shower ledge. I
18 remember it being a brown washcloth, but there is two,
19 so I'm not really sure which one you are referring to,
20 but it would be one of the ones on the shower.

21 Q It would be one of the ones on the shower?

22 A That is all I seen in the pictures that were
23 taken.

24 Q So now you have moved his phone, moved the pliers
25 and wiped some blood, and then put that washcloth on

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 the shower?

2 A I looked out the window to see if anyone was
3 there yet.

4 Q But you moved the washcloth, correct?

5 A At some point I had a washcloth, and I laid it
6 down somewhere.

7 Q And you are talking to your dad -- talking to
8 Mr. Martin about your dad telling you to wipe the blood
9 off the door; do you remember that?

10 A Yes.

11 Q And did you hear the 911 tape?

12 A Yes, I did. It was very difficult to hear and
13 make out what he was saying. I heard a word in front
14 of that, and I can't make out what it was. All I know
15 is I never heard him telling me to wipe anything.

16 Q Because I thought your response on the 911 tape
17 was, I already did that? You didn't hear that either?

18 A I don't recall "I already did that." It wasn't
19 "I already did that," it is something else. And I
20 don't even know what I was talking about. I can't
21 remember everything I said. This was a completely --
22 this was an event that most people don't have to
23 recollect everything that was said or done, and I
24 can't.

25 Q Let me talk to you one more time about this phone

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 because, to me, there is something going on?

2 MR. MARTIN: Objection, commentary. She can ask
3 questions, but there is a running commentary with it
4 for argument.

5 THE COURT: Get to the question. You can lead a
6 little bit, but make sure you ask a question.

7 Q (MS. LIVESAY) This phone, the issue with the
8 phone, to me, I want to ask you because I find it
9 puzzling that you would pull his phone out, hide it
10 and then at a later date wipe all the information off,
11 I found it puzzling, but then since you have been in
12 this case, have you looked at all of the discovery
13 with your attorney, looked at everything with him?

14 A I don't know if I looked at all of it or not,
15 I've looked at a lot.

16 Q Did you look at the fact that both David's phone
17 and your phone had been dumped, Cellebried the
18 information?

19 A Yes.

20 Q Do you want me to move so you can look at Mr.
21 Martin better?

22 A No, I'm looking at you, Ms. Livesay.

23 Q Did you find out on the Cellebrites that he was
24 recording your conversations with him?

25 A Yes, I found out last night about midnight.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q And you recorded some of his, too, correct?

2 A I recorded one or two, yes, ma'am.

3 Q It doesn't matter, but both you all you were
4 recording each other?

5 A Yes, I found out last night.

6 Q I'm so glad you said you found that out last
7 night, because the fact that you mentioned that makes
8 me think that he was recording the conversation on
9 August the 11th, and that is why you took that phone
10 out, that is why you hid it from the police, and that
11 is why you had to wipe the information off it.

12 A The police could have gotten the phone that
13 night, they didn't get it. There was nothing to hide.

14 Q The truth is you didn't have the code for that
15 phone, did you?

16 A No.

17 Q So there was no way when this was recording for
18 you to turn it off?

19 A It wasn't recording.

20 Q Now, I want to ask you a few more questions about
21 that night. Obviously there was a lot going on before
22 the police got there?

23 A Yes.

24 Q There is no doubt about it. You are moving
25 around wiping things down, moving his phone, moving the

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 pliers, but then the question becomes, was the knife
2 moved -- because all of this has gone on, the question
3 then is basically everything in the bathroom has been
4 moved, and the only piece left to address is the knife.
5 Do you remember talking to Detective Chatfield at the
6 hospital?

7 A Yes, ma'am, I do.

8 Q And, in fact, you told him that you moved that
9 piece of evidence, too, didn't you?

10 A Those were his words, not my own. I just
11 answered "right" at the end with the assumption he was
12 still talking about the possibility.

13 Q Did you tell him -- and we've already heard the
14 tape. You heard the tape?

15 A Yes.

16 Q Did you not tell him that the knife landed inches
17 away from the victim?

18 A When he was asking me that -- this was the
19 context of what he was saying, It had to have flown way
20 over here and flipped up against the wall or something.
21 Let me ask you this. How many feet was the knife away
22 from his hand? I was like, It wasn't feet away from
23 his hand. And he was like, Well, how many would you
24 say? I remember that knife being in or around his hand
25 so I simply said inches. It wasn't a foot, 2 feet,

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 3 feet. He wanted an answer, and I answered him.

2 Q And you said -- just so we're on the same page --
3 you did tell him it was inches away from the victim?

4 A Yes. He was adamant that it wasn't in his hand,
5 it had to have been away from his hand.

6 Q On the 911 tape you said he dropped it?

7 A Yes, ma'am. When I was doing CPR -- when I was
8 doing CPR and the 911 operator -- while I'm watching my
9 husband deteriorate in front of me -- the 911
10 operator says, Where's the knife. She asked where the
11 gun was first, obviously I know where the gun is, I put
12 it there. She asked where the knife was, and I said,
13 On the floor where he dropped it. I looked out of my
14 peripheral vision, saw the knife on the floor, assumed
15 that's where it was. It wasn't all the way in his
16 hand. I assumed he dropped it. I don't know.
17 Frankly, my focus was not where that knife was at the
18 time; I don't think anybody's would be. Everybody is
19 asking me where the knife is. Where is the knife? I
20 don't know, but I'm doing CPR.

21 Q That is a good question, because it has been
22 boggling my mind. When did you have time to do CPR?
23 You are taking the phone out of his pocket, moving it
24 to another room, moving the pliers, wiping off blood
25 off the door; when is there time to do CPR?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 A 24 minutes is a long time to do CPR.

2 Q It's a long time to do a lot of things.

3 A Yes, it is. And I don't understand why it took
4 that long, but, / frankly, it was out of my hands.

5 Q Let me ask you this. You go to the hospital.

6 You tell him that you are, the knife was inches away,
7 and that conversation is going on. Now, your attorney
8 has talked to you some bit about how you felt at the
9 hospital; do you remember that?

10 A Yes.

11 Q You told him in the beginning when we first
12 started this conversation, you told him that you were
13 upset and hysterical and emotional in the hospital; do
14 you remember that?

15 A I remember feeling numb.

16 Q Do you remember hearing your statement from the
17 hospital?

18 A Yes.

19 Q You may remembering something I don't. Do you
20 remember even one time while you are in there talking
21 to him ever breaking down and crying and sounding the
22 least bit hysterical?

23 A Yes. When they left the room, you can hear me
24 crying.

25 Q Ma'am?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 A When they left the room, you can hear me crying.

2 Q So when the recorder ironically wasn't running is
3 when you became hysterical?

4 A The recorder was running and you can hear me
5 crying when they left. I knew I had to talk to police
6 officers. My dad said, Heather, you have to get it
7 together. It is clear on the 911 call I'm frantic.
8 But he's telling him, Heather, you have to get yourself
9 together, you've got to compose yourself, you have to
10 talk to a police officer, and, you know....

11 Q So you talked to the--

12 A I gained my composure and talked to the police
13 the best I could. I knew I needed to talk to them,
14 yes, ma'am.

15 Q Would you admit that that recorder is about an
16 hour-and-a-half?

17 A Yes.

18 Q So -- at no time during that hour-and-a-half do
19 you break down and cry sounding hysterical, really even
20 emotional, and now you want this crowd to believe as
21 soon as the recorder stops you fall to pieces?

22 A No. When they left out of the room you can hear
23 me crying on the recorder. You can hear it on the
24 recorder. When they walk out, I'm crying. I'm not
25 screaming.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q You are screaming?

2 A I said I'm not screaming, but I'm crying.

3 Q Oh. This picture, Mr. Martin talked about a lot,
4 State's 95. Were you upset after the police left?

5 A Ms. Livesay, I was upset for -- yes, I was.

6 Q But you were not too upset to get on Facebook; is
7 that correct?

8 A I was helping my dad figure out how to take down
9 Facebook. I was upset. Obviously I was in the mental
10 capacity to talk to the police, I can certainly take
11 down my Facebook page after someone made a derogatory
12 comment on there.

13 Q Oh, no, I don't blame you, that would be my first
14 priority.

15 THE COURT: If you have a question, ask it, but
16 don't make comments. I've told both of you -- no.
17 No. Don't do it again.

18 Q (MS. LIVESAY) After you leave the hospital, a
19 lot goes -- now, after you leave the hospital, you get
20 home. All of a sudden, the victim's phone shows up,
21 and you reset the phone back to factory settings; is
22 that not true?

23 A I called Apple, that was their suggestion, and
24 they walked me through it, and they reset it.

25 Q You saw his Cellebrite, correct?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

- 1 A Yes.
- 2 Q And you saw it was only about that big?
- 3 A Yeah, I did. I saw it wasn't much.
- 4 Q And you heard the messages read off of it, and
- 5 like you told your attorney, those were your messages?
- 6 A You are talking about the lasagna and stuff?
- 7 Q Yes.
- 8 A Yes.
- 9 Q And that was on the 13th?
- 10 A I don't remember the date.
- 11 Q You want me to refresh your memory?
- 12 A What are you asking? What day the text was?
- 13 Q Yes.
- 14 A Yes, I believe it was on the first.
- 15 Q So on the 13th, you are texting your friend
- 16 from your deceased husband's phone about lasagna and
- 17 bringing birthday cake?
- 18 A They were asking me about if they needed to bring
- 19 paper products, because someone else was bringing
- 20 lasagna. They text me that.
- 21 Q After you got done wiping his phone, is then when
- 22 you got on his computer and tried to get into his Apple
- 23 account and into his E-mail?
- 24 A I was trying to put everything on the phone back
- 25 on it. I had pictures of my child and pictures of us

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 that I didn't want to delete.

2 Q Did you hear the guy from SLED testify?

3 A Yes.

4 Q So then you heard him tell these people and you
5 that you are up there trying to reset the password? He
6 did not say one word about you trying to put
7 information back on the phone?

8 A Yes.

9 Q He testified that you were up there trying to
10 reset passwords to get into that account?

11 A That is what I had to do in order to put the
12 information back on there. I had to get into the Apple
13 account in order to put whatever he had backed up in
14 his iTunes. I'm not an expert. I don't know how it
15 works, but you have to get a password to get into that
16 account to put everything back on it, otherwise, it is
17 not going to put everything back on his phone the way
18 it was. They told me after I did that that all we had
19 to do is connect to iTunes or Apple, it would put
20 everything back on the phone the way it was before you
21 set it; that is what I was doing. In order to do that,
22 I had to get into e-mail accounts -- I never got into
23 any of them, and you all have everything that was on
24 those e-mails accounts, and so whatever was on there,
25 you all have.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q Did you need to get into his e-mail as well?

2 A In order to change the password to his iTunes
3 account, yes, ma'am.

4 Q Now, this stuff about connecting the phone and
5 the computer, are you sure you learned that from Apple
6 and not from Ms. Pop when she told your attorney?

7 A No, I don't know who Ms. Pop is, but I don't know
8 the conversations she had with my attorney. I have no
9 idea.

10 Q Because you testified earlier, few months ago,
11 remember that?

12 A Yes.

13 Q And you never mentioned anything about that then.

14 A I remember trying to tell you that I tried to go
15 there, and they taught me how to reset the phone and
16 load everything back on there. Maybe I didn't go into
17 detail, but that is what I meant. That is what I did.

18 Q And you now have some pictures of some bruises?

19 A Yes.

20 Q And you've told this jury, Mr. Martin, how your
21 daddy went and talked to the police and told them why
22 you wiped that blood up; do you remember that?

23 A Yeah, I do.

24 Q He didn't tell the police anything about those
25 bruises, did he?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 A He wasn't asked about them.

2 Q Ma'am?

3 A I was stabbed in my stomach. I think the bruises
4 were irrelevant. I don't see where that would have to
5 be brought up.

6 Q Your daddy talked to Detective Chatfield at the
7 end of the month?

8 A About what happened and the questions he asked
9 me, and there was never any question about any bruises
10 or anything. I could see where that wouldn't come up.

11 Q So you've heard that interview?

12 A No, ma'am, I have not. I haven't listened to the
13 interview.

14 Q You did?

15 A I did not.

16 Q How do you know what was brought up in the
17 interview whether or not Chatfield asked him?

18 A My dad. My dad told me.

19 Q Now, what I find -- and I want to ask you about
20 these bruises. I'm showing you defendant's 71, 72 and
21 73. Tell us how those bruises came about two days
22 later?

23 A Actually, the morning after.

24 Q When were the pictures taken?

25 A These pictures were taken on the 13th when I

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 went back to Ms. Karen Staples' office, and she took
2 these pictures.

3 Q So this jury is clear, the 11th is when it
4 happened, 12 is the next day and this would be the
5 13th?

6 A Yes, ma'am.

7 Q So these pictures are two days later?

8 A Yes, ma'am.

9 Q Now, tell the -- tell this jury how you got those
10 bruises?

11 A I'm not -- I've learned not to assume. I know
12 they were not there before this altercation, and I will
13 go out on a limb and say it was during the struggle
14 over the phone. I'm not sure. All I know is they
15 weren't there before this happened.

16 Q So you don't know that this came from the
17 altercation?

18 A Nothing happened before the altercation and
19 Tuesday morning that would cause these to be here.

20 Q So they -- these bruises popped up between the
21 altercation and when she took the picture on the
22 13th?

23 A They popped up between the altercation and the
24 next morning. When Robert Shelley came to my house, he
25 took pictures that day.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q But for whatever reason, these pictures came from
2 the 13th, not the 12th?

3 A Yes. Yes.

4 Q You have no idea how you got those bruises?

5 A They were from the altercation.

6 Q So now they were --

7 A Assuming that they were during the struggle.

8 They weren't there before, nothing happened the
9 altercation that would cause this.

10 Q You heard your interview with Detective Chatfield
11 on the 11th?

12 A Yes, ma'am.

13 Q And did you notice he was minimizing -- he said
14 those are some scratches on your arm, and I'll call
15 that what you might call a puncture wound; do you
16 remember that?

17 A Yes, ma'am.

18 Q So he didn't seem too convinced that your
19 injuries were that severe; would you say?

20 A I can't speak for Detective Chatfield.

21 Q You just said earlier you were both confused.

22 A We were confused -- he didn't know the layout of
23 my house, and I was trying to tell him where we were at
24 when this altercation took place, and the whole time he
25 thought I was talking about the bedroom, and I'm

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 talking about the bathroom, so that is why I finally
2 drew it out, to limit the confusion.

3 Q You would agree, when you were talking to him
4 about your wounds, he used the words "scratches," and
5 he said, I guess we'll call that a puncture wound?

6 A I remember that, yes, ma'am.

7 Q You do remember that?

8 A I think so.

9 Q Do you remember when he is insinuating to you
10 that he thought you placed the knife in the victim's
11 hand?

12 A Yes. That question was asked quite a bit.

13 Q And he said, Do you think maybe you shot this guy
14 and said I'm going to get in trouble, and you go and
15 get the knife and put it in his hand; do you remember
16 that?

17 A Yes, ma'am, and I adamantly said, no.

18 Q So one would assume from that conversation that
19 he is not bought in on this idea of self-defense; would
20 you agree?

21 A I don't know what he has bought into. I can tell
22 you the questions what he asked me and what he told me
23 and it was always, No, no, no, no.

24 Q Throughout the conversation, he is consistently
25 insinuating that your wounds are not severe?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 MR. MARTIN: Objection.

2 THE COURT: Hold on a minute. Hold on. Yes,
3 sir.

4 MR. MARTIN: What he's insinuating is not
5 relevant, even on cross-examination.

6 THE COURT: Sustained. Ask what she knows, what
7 he is saying or -- sustained.

8 MS. LIVESAY: It is relevant because that night
9 when you talked to Detective Chatfield --

10 THE COURT: Wait. Wait. Wait. It is sustained.

11 MS. LIVESAY: I understand.

12 Q (MS. LIVESAY) You didn't have these bruises when
13 you talked to Detective Chatfield, did you?

14 A I don't recall seeing them. I wasn't looking for
15 bruises. I don't think anybody was. No one saw the
16 wounds on my feet. No one saw all of that. No one was
17 looking for anything. Wasn't looking for anything to
18 document.

19 Q Would you agree that we saw a picture?

20 A Yes, ma'am. They asked me to put my hands out to
21 take a picture. I was asked to pose like that so they
22 could take a picture.

23 Q That was when you were at the hospital?

24 A Yes, ma'am, on the stretcher at my house. They
25 said I need to take a picture of you, they said do

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 this, and that is what I did.

2 Q Tell these people if there were any bruises in
3 that picture -- in either of those pictures?

4 A In the hospital I had a blood pressure cuff
5 around the same arm, it would have been covered up. I
6 had another hospital gown on my other arm that was
7 draped this far down, so I don't know that you could
8 have seen them or not.

9 Q Did you see any bruises?

10 A I couldn't see through the hospital gown or blood
11 pressure cuff.

12 Q Have you seen the medical records?

13 A Yes, ma'am.

14 Q From Grand Strand?

15 A Yes, ma'am.

16 Q Would you tell these people if that documented
17 any bruises on you?

18 A They didn't document that. They didn't document
19 anything on my toes. No one was looking for anything
20 like that. We weren't out to document anything, Ms.
21 Livesay. At this point I'm letting them take pictures
22 of what they want, and I'm not looking to document
23 anything.

24 Q And at this point you didn't have any bruising,
25 and after you talked to Dr. Chatfield, you had to amp

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 the story up, and the next day you got bruises and you
2 went back to a family doctor and had these pictures
3 taken?

4 A No. These bruises were noticed on my arms the
5 next day when we had a visitor. He told me, Heather,
6 your arm is black and blue, we might need to take a
7 picture of that, so that is when we took a picture of
8 it.

9 Q Which picture -- who took those pictures, these
10 right here?

11 A They were taken by Karen Staples.

12 Q Tell these people who Karen Staples is.

13 A She's a nurse practitioner in Loris that I see.
14 I see a nurse practitioner instead of a doctor.

15 Q And tell these people whose camera she used to
16 take the pictures with?

17 A She didn't have a camera in her office. McCleod
18 -- she didn't have access to a camera, so she asked my
19 mom to bring hers, and she took the pictures. But
20 Karen took these pictures, but it was on my mom's
21 camera because they didn't have a camera.

22 Q Tell this jury who went and got the pictures
23 developed?

24 A I don't remember if it was me or my mom, but I
25 can't make up pictures. I mean, she took them.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q And then you and your mom go and get them
2 developed, and tell the jury how they get back to
3 Dr. Staples and her medical records?

4 A I really don't know if -- I guess I took the
5 pictures to her office.

6 Q So you go to Karen Staples, bring your mom's
7 camera, you snap pictures, go get them developed, bring
8 them back to Ms. Staples and ask her to put them in her
9 medical records?

10 A She asked me. That is what she wanted me to do.
11 As part of her care, she said -- she's very thorough
12 and documents everything, and she asked that we bring
13 the camera and take pictures and bring it back and put
14 them in my record.

15 Q You want these people to believe that she
16 documents everything in a woman that didn't even have a
17 camera?

18 A The McCleod Hospital didn't have a camera. She
19 wouldn't have brought a personal camera to take
20 pictures of me, no, sir.

21 Q Do you know Karen Staples' phone number?

22 A It would be in my contact list.

23 Q Do you know your dad's phone number?

24 A Yes.

25 Q And would you recognize that on this sheet? This

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 is a Cellebrite from your dad's phone.

2 A Yes.

3 Q Do you see where there is a conversation between
4 your dad and Karen Staples about Karen needing to talk
5 to your attorney, Morgan Martin?

6 A Yes.

7 Q And tell this jury what date that conversation is
8 going on?

9 A That was on the 14th of August.

10 Q So your dad -- your dad is having a conversation
11 with Karen Staples, who took these pictures, about that
12 lady needing to talk to your attorney, Morgan Martin?

13 A I'm not sure how that conspired (sic). What
14 their conversation was about anything is beyond my
15 knowledge, I don't know.

16 Q From Karen Staples, I need to talk to Morgan,
17 call me?

18 MR. MARTIN: Judge, she's asked and answered it.

19 THE COURT: I don't know the question. Go ahead
20 and ask your question and we'll see. I mean, it is a
21 different question, but I understand.

22 Q (MS. LIVESAY) You don't know how you got the
23 bruises, correct?

24 MR. MARTIN: Object. That question was asked and
25 answered four times.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 THE COURT: One more time.

2 MS. LIVESAY: It's fine. She said she didn't
3 know.

4 Q Something else I noticed, and you have been here
5 the whole trial?

6 A Yes, ma'am.

7 Q Your attorney called some character witnesses; do
8 you remember that?

9 A Yes, ma'am.

10 Q And one lady was from Spartanburg, who was Lisa
11 Riddle?

12 A Yes, ma'am.

13 Q And one lady lives in Tabor City?

14 A Star Godwin.

15 Q And one is your Daddy's friend, Ronnie Shelley?

16 A Robert, yes, ma'am.

17 Q And these are the three people that he called for
18 you as character witnesses?

19 A And Katie Brim.

20 Q And the girl that lives in New Jersey?

21 A Yes, ma'am.

22 Q And tell this jury if he called one person that
23 currently lives in Conway to testify about your
24 reputation for peacefulness or truthfulness?

25 A No, he called people I'm closest with. I'm

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 closest with my childhood friends and people I work
2 were and keep up with. I'm closer with these people
3 than people in Conway. ?

4 Q So you are closer to people that don't live where
5 you live?

6 A Well, I have a lot friends, but these childhood
7 friends know me better than anybody, people that I
8 would always keep in touch with. I talk with -- and my
9 boss. You know that saying you are closer with your
10 work family than your own family? Like Star Godwin,
11 regardless of where she lived, I was with her every
12 day.

13 Q But you would agree you lived in Conway all of
14 your life?

15 A Yes -- well, with the exception of school.

16 Q And your parents are from Conway and lived here
17 all their life?

18 A Yes, ma'am.

19 Q And there wasn't one person that came up here as
20 your friend from Conway to testify to your truthfulness
21 and your peaceful character?

22 A I mean, we could have, but, you know, we've had
23 four.

24 Q You have said -- and your attorney has said --
25 constantly about the fact that David has two exit

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 wounds?

2 A Yes.

3 Q And I want to show you something. These two
4 women are here, and I'll ask them to stand up; do you
5 see where they are sitting?

6 A Yes, ma'am.

7 Q Where are they sitting --

8 MR. MARTIN: Objection, relevance.

9 THE COURT: Sustained. That's not relevant. Sit
10 down. That is not relevant.

11 Q (MS. LIVESAY) You also showed some text
12 messages, your attorney did. Do you remember seeing
13 this?

14 A -- Yes.

15 Q You have gotten up here and told these people how
16 David is so ugly to you and cusses you, and this has
17 been so terrible and you felt so threatened, and you
18 all couldn't come up with one text where he was saying
19 ugly stuff to you and calling you ugly names and
20 threatening you; this is what you introduced, something
21 about him and the dog; is that correct?

22 A This text message is about him losing his temper
23 with our dog, yes, ma'am, and he admitted that.

24 Q This notebook is part of your Cellebrite report,
25 isn't it?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 A I'm assuming. I trust you.

2 Q You don't know? You want to look at it? It is
3 yours?

4 A I can look at it before I answer to make sure.

5 Q See where it says "from," is that your phone
6 number?

7 A Yes, ma'am.

8 Q So this notebook is part of your Cellebrite?

9 A Yes, ma'am.

10 Q And the only things you could come up with to
11 introduce is that text message about the dog?

12 MR. MARTIN: Objection. Objection. First of
13 all, she doesn't know what we could come up with.
14 They are in there, she put them there and we'll talk
15 about them.

16 THE COURT: I mean, they are what they are. Go
17 ahead. Sustain on that.

18 Q (MS. LIVESAY) Last thing I want to talk to you
19 about is where the gun was.

20 A Yes, ma'am.

21 Q There is a picture in here of this drawer,
22 State's Evidence No. 89?

23 A Yes, ma'am, I remember that picture.

24 Q Now, we saw pictures of your house. Would you
25 agree that is very clean, immaculate really?

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 A Yes, ma'am, I'm a very clean person.

2 Q Yes. And everything has a place, everything is
3 put up, everything is tight and needy?

4 A We had those drawers that were -- I don't know
5 where to put stuff, you put them in here. We had those
6 drawers. For the most part I tried to keep everything
7 in its place, but it is impossible to have a place for
8 everything. You have those odds and ends you don't
9 know what to do with.

10 Q You want these people to believe that you moved a
11 gun from a safety box to a drawer in the bathroom full
12 of Q-tips and dental floss and some old remotes?

13 A It is a drawer that I put stuff in. Yeah, I'm
14 not a hundred percent sure that everything in that
15 drawer was in that drawer that night. That picture was
16 taken four days later.

17 Q So you thought it was safer to move it from a box
18 that is made to keep a gun in a safety box, to a drawer
19 full of tooth floss and Q-tips?

20 A I have several reasons. One was for child
21 protection. I didn't like the idea of it being in a
22 bottom drawer of the nightstand, and I wanted to move
23 it. I didn't have a place to move it to, so the
24 bathroom is -- normally the door is shut unless I'm in
25 there, that seemed like -- and my dad keeps guns in his

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 bathroom, so that just seemed like, you know, keep it
2 in there. My husband was never home until late in the
3 evening after dark, and after J.D. went to sleep,
4 I would take a bath, and I was in that house by myself,
5 so that is the other reason I put it in there.

6 Q Let's talk a little bit about your wounds.

7 A Yes, ma'am.

8 Q Let me see if I can -- I put my pictures here but
9 they got jumbled around. Do you see this wound on your
10 thumb, State's Evidence No. 95?

11 A Yes, ma'am.

12 Q In the beginning of your interview with
13 Chatfield, you said this is from where you put your
14 hand up, and then you said, yeah, it could have come
15 from the slide of the gun.

16 A They were introducing possibilities where it came
17 from, and I guess it is possible. There is a lot of
18 possibilities. I don't have a videotape memory of
19 everything that happened, but my answer was it came
20 from the altercation, and then, well, that looks like
21 it could have been this or that, and for the sake of
22 argument, yeah, I guess it could have been.

23 Q What was it from?

24 A From the altercation. It possibly was from the
25 gun slide. All I can tell you is after this

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 altercation, before I reached for the gun, I had blood
2 on that hand, and that is how the blood ended up on the
3 gun.

4 Q So you are telling these people that this did not
5 come from the slide of the gun?

6 A I'm telling them I'm not a hundred percent sure
7 where it came from, but my hand was bleeding before I
8 went for the gun. I never shot a gun and had that
9 happen.

10 Q So you are not sure?

11 A I'm not sure.

12 Q And you are not sure where the bruises came from?

13 A They weren't there before, and nothing happened
14 afterwards that would cause them. That would have been
15 the only reasonable answer for where they came from.

16 Q And Mr. Martin talked a lot about what you do for
17 a living?

18 A Yes, ma'am.

19 Q And you make a lot of money doing what you do for
20 a living; is that correct?

21 A Yes, ma'am.

22 Q And the house was in your name?

23 A Yes, ma'am.

24 Q Both phones were in your name?

25 A Cell phones? The account was in my name.

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 Q So that means you had control over both phones,
2 you could cancel a line if you wanted to?

3 A Yes, ma'am.

4 Q And you were, by far, the bread winner in the
5 household?

6 A Yes, ma'am.

7 Q And your family was the one from Conway?

8 A Yes, ma'am.

9 Q And you all lived right across the yard from your
10 mama and daddy.

11 A Yes, ma'am.

12 Q And that was daddy and mama's land?

13 A That was my grandfather's land.

14 Q Okay. It was family land?

15 A It was family land.

16 Q Now, these pictures, let me ask you, you put
17 people to sleep for a living?

18 A Yes, ma'am.

19 Q And you do that so people can perform surgery on
20 them; is that correct?

21 A I do that for several things. There is
22 endoscopies, surgeries, spinals, epidurals, labor
23 patients, several reasons that people need anesthesia,
24 patients in the ER.

25 THE COURT: Okay. Ladies and gentlemen, take a

HEATHER CAUSEY SIMS - CROSS-EXAMINATION

1 break. I'll give you 10 minutes. We went longer than
2 we thought we would. Don't discuss the case.

3 (The jury exits at 4:18 p.m., and a recess was
4 taken.)

5 THE COURT: How much longer do you have so I can
6 guesstimate?

7 MS. LIVESAY: Sir, just two questions and I'm
8 sitting down.

9 MR. MARTIN: Here's some charges.

10 THE COURT: Bring them in.

11 (The jury enters at 4:38 p.m., and the
12 following is heard in the presence of the jury.)

13 THE COURT: That is exactly how we do it, get my
14 attention and we break. Go ahead.

15 CROSS-EXAMINATION (CONT.)

16 BY MS. LIVESAY:

17 Q Did you look at the medical records?

18 A I believe I did.

19 Q How many stab wounds or puncture wounds does the
20 medical records say you have?

21 A Sorry, I'm finding it. Okay. Two stab wounds in
22 the left, upper quadrant.

23 Q And you have seen that shirt from the 11th?

24 A Yes, ma'am, I've seen pictures.

25 Q And it only has one hole?

HEATHER CAUSEY SIMS - REDIRECT EXAMINATION

1 A Yep.

2 Q And on the day of his funeral, you heard Allyson
3 testify that you all were at Red Lobster and looking
4 for you a phone; is that correct?

5 A Yeah. At that point the police were coming to
6 get David's phone that I was using, so I just went and
7 got my own.

8 Q So she was telling the truth, the day he was
9 getting buried, you were going out to lunch and
10 shopping?

11 A It was her birthday and mother's, so she wanted
12 to go to Red Lobster to eat, and while at Red Lobster
13 we went and got a phone because I wasn't going to have
14 mine.

15 MS. LIVESAY: No further questions.

16 THE COURT: Anything on redirect?

17 MR. MARTIN: Just a couple.

18 REDIRECT-EXAMINATION

19 BY MR. MARTIN:

20 Q Was it your idea to go have lunch that day, or
21 was it your family?

22 A They were trying to get my mind off of
23 everything, get out of the house.

24 Q What was your mind on, Heather?

25 MS. LIVESAY: Your Honor, does he want her let

HEATHER CAUSEY SIMS - REDIRECT EXAMINATION

1 her testify or --

2 THE COURT: Go ahead.

3 A I can remember that day well, and it was their
4 idea to go. My mind was not my friend's birthday or my
5 mother's birthday. I had completely forgotten my
6 mother's birthday until that day or the day before, and
7 it was their idea to go.

8 Q Karen Staples, you saw Karen Staples on the day
9 after this happened?

10 A Yes.

11 Q And the pictures that we've introduced in
12 evidence of the bruises on your arms and knees and
13 thighs were taken on August 13 by Karen Staples?

14 A Yes, they were.

15 Q And did you go beat yourself up or bruise
16 yourself up to do that so you can --

17 MS. LIVESAY: I have an objection. It's been
18 asked and talked about in direct.

19 THE COURT: I'm going to allow you to answer
20 that, it's just on redirect.

21 MR. MARTIN: Briefly.

22 Q (MR. MARTIN) Did Ms. Staples also treat you for
23 an infection?

24 A My stab wound got infected, like I said earlier,
25 at the hospital it was --

HEATHER CAUSEY SIMS - REDIRECT EXAMINATION

1 MS. LIVESAY: Your Honor, just for the record, I
2 have an objection because it is outside of my cross.

3 THE COURT: Okay. Overruled.

4 A Typically, and I know this from nursing
5 experience, if you have a dirty object into your
6 abdomen, or anywhere else for that matter, you don't
7 stitch it up. You want it to drain. I, in fact, got
8 an infection and I had to go see Karen Staples to get
9 an oral antibiotic.

10 Q (MR. MARTIN) And the hole in the shirt -- and
11 it's here, and somewhat torn -- tell the jury what you
12 know about the hole in the shirt.

13 A When I realized I had blood on my shirt, I looked
14 down and I felt around and felt a hole, and instead of
15 lifting my shirt, I remember doing this, I pulled and
16 tore it to see what was going on, how bad that wound
17 was. For whatever reason, I didn't lift my shirt up.

18 Q The medical records -- the entry by
19 Dr. Sciarretta, who has not been called by the State as
20 a witness, talks about two wounds of similar size; does
21 it not?

22 A Yes.

23 Q Was that accurate?

24 A No, sir. No, sir.

25 Q How many stab wounds did you have?

HEATHER CAUSEY SIMS - REDIRECT EXAMINATION

1 A I had one. I had one, that was all I ever had.
2 I had one.

3 Q That is what the EMS guy says?

4 A That is what the EMS guy said.

5 MR. MARTIN: That is all I have.

6 MS. LIVESAY: I just have one question on that,
7 Your Honor.

8 THE COURT: No. No. No. You can step down.
9 Any other witnesses?

10 MR. MARTIN: That's it. Defense rests.

11 THE COURT: You heard the defense's case, and so
12 I'll send you back. I have to hear certain motions.
13 Mr. Foreman, my intention is -- you all have a couple
14 of witnesses?

15 MS. LIVESAY: I do.

16 THE COURT: We have a couple more witnesses in
17 rebuttal. My intention is to give you a break, hear
18 the motions and keep going. If that bothers anyone,
19 if you would, poll the jury and let me know. I can't
20 say I'll do what you want me to, but it helps me know.

21 FOREPERSON: Yes, sir.

22 THE COURT: Thank you. You can take them down.
23 This will take 15 minutes.

24 (The jury exits at 4:44 p.m., and the
25 following is heard out of the presence of the jury.)