STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELVIN FOURNEY, SR.,

APPELLANT

APPELLATE CASE NO 2018-000103

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF CHESTER

2016-GS-12-00012 and 2016-GS-12-00013

State of South Carolina

vs.

Melvin Fourney, Sr.

Chester, South Carolina

January 9-10, 2018

Before the Honorable Brian M. Gibbons

APPEARANCES

For the State: Candace Lively

For the Defendant: William Frick

THE COURT: I believe all jurors have returned from their break. Madam Solicitor, you may call the case.

MS. LIVELY: Thank you, Your Honor. This is State of South Carolina versus Melvin Fourney, Sr. It's indictment 2016-GS-12-012, indictment for murder. Docket number 2016-GS-12-013, indictment for possession or display of a firearm or a knife during the commission of a violent crime. Thank you.

THE COURT: All right, thank you. Ladies and gentlemen of the jury panel, as you heard the solicitor, the State has just called the case for trial called the State of South Carolina versus Melvin Fourney, Sr. who has been charged with murder and possession of a weapon during the commission of a violent crime. I'll remind you that you're still under oath from when the clerk previously swore you in. I do have a series of questions to ask you to go through the trial selection process and we'll get to those in a moment, but before we do all of that I am going to have all the lawyers sitting on each side of courtroom introduce themselves to you along with whoever else is sitting at their table who is going to be participating in this trial. So Madam Solicitor, you first.

MS. LIVELY: Thank you, Your Honor. Good morning everyone, my name is Candace lively, I'm a deputy solicitor here in Chester County. Sitting here with me is your elected Solicitor Randy Newman, and I have my chief investigator, Keith

admitted and I will again take these under advisement back in chambers and review everything and let you know my decision momentarily.

(A break was taken.)

THE COURT: All right. After reviewing these videos my ruling is the same as previously, the statements appear to be voluntarily made and without coercion. I do intend on allowing them into evidence subject to the defendant's objection during the trial.

MS. LIVELY: Thank you, Your Honor.

THE COURT: Okay. Any other pretrial issues before we bring the jury in?

MS. LIVELY: No, sir, not from the State.

MR. FRICK: Not from the defense.

(The jury returned to the courtroom.)

THE COURT: Well, again, I apologize and I think -- I had no idea, don't get mad at the lawyers, get mad at me, okay? I'm the one who runs the show here as far as timing and scheduling and I had no idea -- I'm going to tell you in a moment, you're the judges of the facts, ladies and gentlemen of the jury, you determine what happened, okay? Just like you're the judge of the facts I'm the judge of the law and, of course, there are a lot of legal issues in a case such as this that may come up, okay? So we had some legal issues we had to deal with and, of course, you do that outside the presence of the jury,

not that we're trying to keep anything from you because we're not but y'all aren't trained in the law and, of course, we had to deal with all of that. So that is the delay, sorry, I understand and I hope lunch was good, I hope everybody liked it, and again thank you for your patience and I'm sorry if you're frustrated, okay? Let me speak to you just for a moment before we start this trial. Let me tell you that this trial is probably going to be different from what you might expect. I kind of alluded to this in the questions I had for you when we were going through the process about the stuff that's on TV these days. I mean, there must be four or five different CSI shows on and everybody has seen Law and Order all of the movies and everything, but, you know, most people don't have the chance to attend actual court sessions much less participate in them like you're doing right now, and so most everybody thinks that what you see on TV or in the movies or what you read in books that trials are always full of intense action and riveting circumstances, that big ah ha moment. Now while all of these things may happen to be true some of the time, this trial, ladies and gentlemen, is not for entertainment, it's a fundamental part of our democracy. It's an effort to make sure that justice is done between the parties before the Court. Now, making sure that justice is done could often times be a slow, deliberate and repetitive process, just like you've experienced these past two hours while you've been couped up in

your jury room during lunch, the opposite of what you may have seen or heard about, okay? Now, this courtroom, this beautiful courtroom, ladies and gentlemen, is a place of honor dedicated to the preservation and protection of citizens rights through what many have called the greatest justice system ever created. The attorneys who appear before you are advocates for the parties they represent. The solicitor represents the State of South Carolina, the defense lawyers represent the defendant, but first and foremost, ladies and gentlemen, they're officers of this court sworn to uphold the integrity and fairness of our judicial system. You should expect them therefore to be professional, competent and ethical in the representations of their client's interests. Remember, you took an oath prior to lunch to do the same thing and to act that way in reaching a verdict whatever your verdict may be, so you will also act accordingly. Thank you again for accepting this important responsibility. Let me tell you basically how a trial proceeds and give you kind of a quick outline run down. The first thing that's going to happen is the lawyers will make opening statements to you. The State gets to do it and if the defense wants to do it they can but they don't have to, and I'll get into that later on. What an opening statement is, it's not evidence, it's simply a summary of what that lawyer thinks the evidence will show, it kind of gives you an outline of what that lawyer thinks happened and what the evidence that lawyer

will show you or will be introduced to support their position. Now, following opening statements that's when we will start what's called the testimony and evidence phase of the trial, that's when you will hear testimony from people who are testifying, okay? They'll testify from this witness stand right here in front of you, and, of course if at any time -- can y'all hear me okay? If at anytime y'all can't hear whatever just raise your hand and we'll make sure that we get the mics working real well that you can hear, okay? But you'll hear testimony from various witnesses as well as certain evidence will be introduced, okay? And then after we finish the testimony and evidence phase of the trial, that's when we go to closing arguments. That's when the lawyers once again get to speak directly to you and then they get to summarize the case to you from what they think the evidence is showing and try to influence you as to what your verdict should be, okay? Now, after all of that happens that's when I get to talk to you directly and instruct you on the law as it pertains to the issues which have arisen in this case, okay? Now, once I've completed my legal instructions to you you take those instructions and go back to your jury room, that's when you will apply the law as I've given it to you to the facts as you find them to be and that's how you reach a verdict, okay? So that's what's going to happen. Let me talk briefly about some things before we hear from opening statements. Now, as you

know, this is a criminal case that's been brought by the State of South Carolina who has charged the defendant with the crimes of murder and possession of a weapon during the commission of a violent crime. Now, the charges against the defendant are contained in these papers called indictments, okay? Now, ladies and gentlemen, these indictments aren't evidence of anything, they're simply the description, the written description of the charge or charges which have been made against the defendant. Now, the defendant has pled not guilty to these charges and is presumed innocent unless and until proven guilty beyond a reasonable doubt. I will define that more in detail for you at the appropriate time, but a reasonable doubt is that kind of doubt which would cause a reasonable person to hesitate to act. Now, a defendant has the right not to testify and never has to prove innocence or present any evidence, the burden of proof is always upon the State of South Carolina. It's going to be your duty, ladies and gentlemen, to decide from the evidence what the facts are, like I said, you and you alone are the judges of the facts. I will give you the law and then that's how you will reach your verdict. You will take the law as I give it to you whether you agree with the law or not because I'm the judge of the law, and then you will apply the law as I give it to you to the facts as you find them to be and that's how you reach your verdict. Now, just like rules which govern sports and other activities

we have certain rules of evidence and rules of court which control what kind of evidence that you can consider, okay? So when a lawyer asks a question of a witness and the lawyer on the other side thinks that that question may violate the rules of evidence that lawyer will stand and say "objection," y'all have seen that, okay? And that's simply letting me know and letting the record know -- see my court reporter is right below me typing up everything we say, okay -- that there was an objection, so then I will rule on the objection as a matter of law. If I sustain an objection that means the question cannot be answered or the thing cannot come into evidence, so you should disregard what the thing may be if I sustain an objection, and you should not speculate about what the answer would have been had they been allowed to answer. Because see, you have to consider only the best evidence available and that's why we have these rules of evidence. If I overrule an objection that means the question can be answered or the thing can come into evidence, okay? Again, don't speculate -- from time to time, when I say don't speculate, the lawyers will come up here and want to approach the bench and talk to me, y'all saw it during jury qualifications. We're not trying to keep anything from you, we're just trying to make it easy so y'all don't have to keep going back and forth going to to the jury room back to your jury seats to deal with matters of law, okay? Now, having said that, in deciding the facts of the case you're

going to have to decide which witnesses to believe and which witnesses not to believe, that's called the credibility or believability of the witnesses. You can believe everything a witness says if you want to, only part of what a witness says or none of it, that's the power you have as the fact finders, okay? Now, you're not going to be allowed to take notes, you know, you don't have note pads and pencils with you so you're not going to be allowed to take notes so you've got to pay very close attention. I don't anticipate this is going to be a very long trial from talking with the lawyers, but again, don't take the length or the brevity of the trial into consideration, everything is important in court, okay? And also when you go back to your jury room to discuss the case you're not going to have a transcript or a record of what happened to consult, that's why you need to listen, look -- you know, look at the witnesses, listen to the witnesses hear what they say, pay close attention to what the lawyers ask and what they say to you, okay? It's very costly and time consuming to play back lengthy testimony and that's why you need to pay attention as it goes on, okay? Really quick, let me say this then I will let the lawyers talk to you and give you their opening statements. Until I advise you to begin your deliberations and begin talking about this case, ladies and gentlemen, you cannot and must not discuss this case with anybody, that means yourselves. You can't discuss it with another juror, you can't

discuss it with a friend or a family member when you leave here today, or anybody else involved with this case. I'm instructing you and ordering each one of you not to go looking for information on this case when you're away from the courthouse. Don't look up media reports, don't go on Twitter or on Facebook or any type of social media or Safari or Google or whatever and try to do any independent research, okay? If you do that you're violating your oath you took as a trial jury which was to judge this case from the evidence presented in this courtroom and this courtroom alone, okay? You can only consider the testimony from this witness stand and the evidence which may come in and be placed on that table for you to consider, that's what you base your verdict on, not what you read in the Herald or hear on the news or the radio or look on social media. And let me say, you will notice that there is going to be some media presence in this courtroom during the trial of this case. I -- this is a public courtroom, okay, they're entitled to be here, okay? But I will tell you every safeguard has been made to make sure your identities are secure and you will not be on any video or photographs so you don't need to concern yourself with that, okay? So if anybody attempts to talk with you about this case in violation of these instructions which I've just given you, please advise the bailiffs or let me know and I assure you I will take care of that, okay? I haven't had that issue before and I don't

anticipate having that issue now. Ladies and gentlemen, lastly, it's very important that you keep an open mind and not decide anything in this case until you've heard everything, until everybody has made their closing arguments and until I've instructed you on the law. It is your solum responsibility to determine the guilt or innocence of this defendant, and your verdict, again, must be based solely on the evidence presented in this courtroom and on the law as I instruct you at the end of the trial. Thank you again for your jury service, we will now begin with opening statements. Madam Solicitor?

MS. LIVELY: Thank you, Your Honor, thank you ladies and gentlemen of the jury. I'm Candace Lively, I introduced myself earlier today and I'm the deputy solicitor here in Chester. And my job is whenever someone commits a crime, a felony in our county is to determine whether or not that case should be prosecuted, and then ultimately come to trial and be brought before 12 of you as well as the alternates to consider the guilt or innocence of someone in our community. The whole point of what we do as prosecutors or solicitors is to make sure that we bring every bit of evidence and everything to the table so that each one of you can make an informed decision, especially in a really important case involving the murder of a man, and in this case that was Leonard Buster Hayes. He was 47 years old when on September 1st of 2015 he breathed his last breath in the presence of the man who is his cousin, roommate,

friend, someone he trusted, had lived with for years when the defendant that day ended his life. What you're going to hear from that stand over the next couple of days are statements about what happened. And here is the thing, I'm going to tell you the one person that's going to give you the clearest picture about what happened on that day. It can't be Buster Hayes because he's gone, it's going to be the defendant, Melvin Fourney, Sr. who is going to tell you not in one statement that he gave to law enforcement but in two statements "I stabbed him, I was tired of him." Ladies and gentlemen, murder is the ultimate crime, and unfortunately in our communities and in our wonderful nation we hear about this stuff all the time, and the thing that I hope as a prosecutor is that I never become numb to these kind of cases, because under the circumstances that is somebody's family member who is gone, a son who is gone, and once that death happens there's no bringing them back. But what I'm here to do for that family is to bring justice for the unlawful killing without provocation by the defendant, Mr. Fourney. Murder is a crime whether you commit it at the age of 68 or 70 or if you commit it at the age of 16 or 18 you are still killing someone. Don't be blinded by the age of the defendant, don't sit here and think that there's, you know, more of a justifiable reason because he's old and maybe he's ornery that he had a right to take Buster's life, and he's going to tell you in his own words "I was just tired of him."

So ladies and gentlemen, you're going to hear from several witnesses, people who actually went to the home, saw the four and a half inch steak knife that was used by the defendant that was plunged into the chest of Leonard Buster Hayes while he was seated on a couch defenseless eating his lunch. You're going to hear from the pathologist about that wound, about how it entered every tissue all the way through the back of his heart basically killing him instantly. Ladies and gentlemen, I don't like to call any murder case a simple murder case because they're not, but in this particular case it's not a who done it, we know who did it and he's going to tell you he did it. What I'm going to ask you to do is use your common sense, that's it, your common sense, listen to what you hear from the defendant himself, listen to the people who were there. This is no law enforcement coverup or some crazy thing where you're going to hear some conspiracy, this case is what it is and that is a straight murder. He had ill will in his heart, malice in his heart, and because of that malice that the defendant held in his heart he plunged a knife into the heart of Leonard Buster Hayes and killed him, and that's why we're here today. And I thank you for being on this jury, I thank you for being here for the family of Buster Hayes and also for being fair and impartial to the defendant who is going to tell you that he killed him. Thank you.

THE COURT: Thank you, Madam Solicitor, Mr. Frick?

MR. FRICK: Thank you, Your Honor, Solicitor Lively, ladies and gentlemen of the jury. I'm going to echo my thanks and Mr. Fourney's thanks you for y'all being here. Obviously this is part of the job that folks like Ms. Lively and I love because we get to stand in front of you and you're trapped in a box and can't get out so you don't have much choice but to listen to us for the next couple of days. But it is a serious matter that we're here about. And I will agree with the solicitor, murder is the ultimate crime that we deal with in our society, and they have charged Melvin Fourney, Sr. with that crime. And I also echo what the Judge has told you and we'll all tell you again and again as we go along in this process, it is the State and the State alone that must prove beyond a reasonable doubt that Melvin Fourney committed that ultimate crime. And what is murder? The Judge is going to tell you at the end of the trial what the law is and I will give you my summation of it. Murder is the unlawful killing of a person with malice aforethought. Unlawful killing implies that there are justifiable reasons why people find it necessary to take someone else's life even if it's someone who happens to be basically a blood family member, your roommate, someone you've raised and someone you've known for a long time. Sometimes a man comes to a point where he has no other recourse but to defend himself. Now, here is the beauty of the process and one of my favorite things about this whole thing, it

doesn't matter what I think about the case, it doesn't matter what Ms. Lively thinks about the case, it only matters what y'all believe happened. Y'all get to determine what the facts are telling you. You get to determine whether you want to believe the witnesses you see from the stand, all, part or none of what they tell you. You have that sole province. You get to look at the evidence that's presented and determine what it's telling you what happened. And this is not a who done it, this is a why done it and that's exactly what it is, and you get to determine whether Melvin Fourney had malice in his heart and just picked up this knife and plunged it into somebody's heart, or maybe he thought it's him or me and he was within his rights to defend himself. You will see this evidence. It's a complicated case in a small package I would say, it's not going to take a real long time to get there, there's not a ton of witnesses, there's not a ton of CSI evidence as you would say but it's all there and it's all for you to weigh. And remember, the burden is on the State to prove to you beyond a reasonable doubt that Melvin Fourney did what they say he did and commit that ultimate crime of murder, or is it something else? Now, I'm not going to go into what reasonable doubt is but I'm going to tell you what I think it isn't. What reasonable doubt is not is going "I've looked at Mr. Fourney, he looks like he might get a little agitated every now and then and lose his temper, he probably did murder that guy." It's

not probably, it's not might have, it's not could have, it's there's no other reasonable explanation. And I assure you once you've seen all the evidence and you weigh it you will determine that there is another reasonable explanation and Mr. Melvin Fourney is not guilty of murder. Thank you.

THE COURT: Thank you, Mr. Frick. Is the State ready to proceed?

MS. LIVELY: Yes, sir, Your Honor.

THE COURT: You may call your witness.

MS. LIVELY: Thelma Hayes.

The witness, THELMA HAYES, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Ms. Hayes, please tell the jury your full name.

A Thelma White Hayes.

Q Ms. Hayes, how are you related to Leonard Buster Hayes?

A I'm his mother.

Q You're his mother? How many children do you have?

A Six.

Q What are the names of your children in order from oldest to youngest?

A Moses, Jr., Gene Hayes, Cassius Hayes, Leonard Hayes, Sandra Hayes and Tammy Hayes.

Q So Buster was right there in the middle?

A Buster was my baby.
Q He was your baby boy?
A Uh-huh.
Q Yes, ma'am. Okay. Now, how do you know the defendant, Melvin Fourney, Sr.?
A We went to school together. We come up in life together. He was a relative. We was in the same classes and all of that and that's how I know him. We used to visit him at home when we was coming up.
Q What community do you live in? Is it in Chester County?
A Yes, it is.
Q And where is that?
A Now?
Q Yes, ma'am.
A Richburg.
Q In Richburg? All right. Now, back in 2015 were you living in Richburg?
A Yes, I was.
Q Where was your son -- let me just -- his legal name is Leonard Hayes.
A Leonard Hayes.
Q But everybody calls him?
A Buster.
Q Buster. Okay. So Buster, where was he living back in

2015?

A He was living with Melvin Fourney.

Q And what was their relationship like?

A He have told me that Buster seemed like a son to him.

Q And when you say he, are you referring to the defendant?

A Yeah. That Melvin said to me personally that Leonard felt like a son to him.

Q And how close were they throughout the years?

A They was close.

Q How old was Buster whenever he died?

A Forty-seven.

Q And how old is the defendant?

A The defendant now?

Q Yes.

A He's 70, or will be 70 this year, or 71 I mean.

Q Okay. And Ms. Hayes, back in 2015 where was Buster living?

A He was living with Melvin Fourney.

Q Where were the two of them living?

A I forgot the name of the street but it was out there near the school we used to go to.

Q Within the city limits?

A Yes.

Q Had you ever visited them there?

A Yes, I have, I took -- by taking Buster back home.
Q Now, Ms. Hayes, what was the relationship like from Leonard's perspective in regards to the defendant, Mr. Fourney?
MR. FRICK: Your Honor, objection, speculation.
Q Do you have any personal knowledge as to how --
THE COURT: Sustained as to that question. Go ahead and rephrase your question, Madam Solicitor.
MS. LIVELY: Yes, Your Honor.
Q Do you have any personal knowledge as to Leonard's relationship from his perspective in regards to the defendant?
A They seemed like that they got along good.
Q Okay. All right. Now, Ms. Hayes, around September 1st of 2015 before that time, did you have any indication that there were any problems with the defendant and your son?
A No. Because he comes down to my place, he come and stays with me, and my husband is dead, passed in '06 and he would come down and stay with me all night on Mother's Days --
Q That's okay. And you're referring to your son, correct?
A (Nods head yes.)
Q That's a yes?
A Yes. He would come stay with me all night on Mother's Day and Father's Day.

Q Ms. Hayes, how long did he live as a roommate with the defendant?
A He lived with him for years, back and forth for years, for years.
Q Do you know whether or not he ever paid rent or --
A I don't know.
Q You don't know. Okay. Fair enough. Now, tell this jury, you know -- you said that whenever -- you never knew them having any kind of problems, isn't that what your statement said?
A No.
Q Did you ever have any kind of concerns about them living together from any conversations you had with the defendant?
A No, I didn't. On one particular time the defendant called me and said, "I'm going to kill your son."
MR. FRICK: Objection, hearsay, Your Honor.
THE WITNESS: No, it's not hearsay.
THE COURT: Hang on. Overruled.
Q Okay. Well, tell me about when that happened.
A That happened about a month before he was killed. He called me, I was on the phone, Buster would be calling me and he would say "Mama, somebody want to talk to you." Me and the defendant, we would have a conversation just talking about old times, you know, just talking. But about a month before he was

killed he called me, he said, "Thelma, I'm going to kill your son." I said -- I called him, "Deke, you're too old to be getting in trouble like that," and that was it. And it was a month after that he was dead.

Q Now, were you worried whenever Deke or the defendant --

A I didn't take him serious because I never have had him say that.

Q Okay. So was that the last time you thought about it until September of 2015?

A Yes, because he had told me. Yes, he had told me he was going to kill him.

Q Now, September 1st of 2015, tell me how you remember that day.

A Okay. That day didn't nobody call me. I'm in Fort Lawn at this community center and people -- my daughter called me and said "Mama, Buster dead. I said, "No Buster ain't dead," just like that. But I got upset and I come on home and people was coming to my house.

Q Well, let me ask you this, did anyone such as the defendant or anyone from his family call you that day?

A No.

Q All right. At what point in time -- and if you don't remember exactly that's okay, but around when did you learn that something had happened to your son?

A Do you want me to go into details about it?

Q Would you please give us the details about how you came to know that your son had been harmed?

A When I knowed my son was dead, the people is coming to my house and they say, "I'm sorry about your son," I say, "What about him?" And they say, "I'm sorry about your son. And I say, "Ain't nothing wrong with Buster, ain't nobody called me about Buster." And so more people tell me the same things. So I told my daughter, "Let's go to Chester to see what's going on." So we went to Chester, went to the defendant's house, his son come to the car and I asked, I said, "Where is Buster?" He said, "Oh, he in Rock Hill." And so my daughter stayed in Rock Hill and I said, "He say he in Rock Hill at the hospital." So my daughter stayed in Rock Hill and I told her to go to Rock Hill and see if Buster is at the hospital and she went. She said, "Mama, they ain't got nobody up there." I said, "Okay." I said, "What I gone to do now?" And then I went to the hospital in Chester, I said, "Do y'all have anybody here the name of Leonard Hayes or Buster?" They said, "No." I said I don't know what to do now, still didn't know.

Q So at this point in time had you heard from anybody, from police or anyone regarding your son?

A No.

Q Who did you finally talk to who was able to give you some information?

A I went to the funeral home, I went there and Moses wasn't

there so one of his helpers was there and he come to the car, I didn't get out, he come to the car, I said, "I want to speak with Moses." He said, "He out, but I will give you his number you can talk to him." So he give me his number and I called Mose and Mose was like, "No, we don't have him. If you want to know is he really dead call the coroner." So he give me the number and I called the coroner and he said, "Yes, we have a Buster," I said "Lord have mercy." And that was in the evening.

Q Yes, ma'am.

MS. LIVELY: Thank you, Ms. Hayes, answer any questions that the defense may have for you, okay?

THE COURT: Mr. Frick?

MR. FRICK: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FRICK:

Q Ms. Hayes, how long did your son and Mr. Fourney live together?

A For years.

Q To your knowledge had they ever had any trouble amongst themselves?

A Not that I know of.

Q When is the last time you had seen your son before the event?

A That Saturday, he come to my house that Saturday. He was

a plumber, he worked with everybody in Chester, he'd done been to most everybody's house in Chester and he was at my house that Saturday doing some work for me and my daughter right there.

Q Did he tell you about any kind of issues going on between him and Deke?

A No, happy. No.

Q Did you ask him about what Deke had told you?

A What Deke had told me?

Q The phone call you got just months before.

A No, I didn't tell him about it. I didn't tell him about it.

Q So that didn't raise any concerns with you.

A No, because I didn't know he would do that. I didn't know Deke would do something like that.

Q So have you ever known -- Deke, have you ever known him to be violent in any way?

A I ain't ever known anybody to be violent.

Q Y'all have grown up together, you've known him for a long time.

A Yes.

Q You trusted him with your son, correct?

A I did.

Q So when he said this, was there any further conversation?

A About?

Q About why he was saying that.

A No.

Q So he didn't tell you what was going on, you didn't ask what was going on and your son didn't tell you anymore information.

A No, he didn't.

Q And that was the end of that, you never heard anymore about that.

A No.

MR. FRICK: Thank you, ma'am, that's all of the questions I have.

THE COURT: Any redirect?

MS. LIVELY: No, Your Honor.

THE COURT: Thank you ma'am, you may step down. Take a brief recess. Ladies and gentlemen of the jury, you may step back to your jury room, please don't discuss the case, okay?

(The jury left the courtroom and a recess was taken.)

(The jury returned to the courtroom.)

THE COURT: All members of the jury are present. I apologize, that was on me, I had a phone call -- received a phone call from my father's caregiver down in Orangeburg and I had to go take it real quick, everything is okay thankfully. Anyway, that was the reason why we had to stop so quickly so thank you for your understanding and patience. Call your next

witness.

MS. LIVELY: Yes, thank you, Your Honor. Johnny Roddy.

The witness, JOHN CARLISLE RODDY, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Mr. Roddy, where do you work?

A Chester County 911.

Q And when you work at Chester County 911, do you actually maintain and keep records of 911 calls that are made in this particular county?

A I do.

Q And were you working -- well, first of all your position at 911?

A I'm the assistant director.

Q Assistant director, okay. So does that mean that you're also the person that's in control of the particular calls and how they're organized and kept in the normal course of business?

A I am.

Q All right. And at the time of September 1st of 2015 was the county 911 in operation and were you able to get a recording from a 911 call involving the defendant on that day?

A I was.

Q And whenever you have these recordings actually saved and put on a disc, do you provide these to the State as well as the defense upon our request?

A I do.

Q I'm going to show you what has been actually already identified as State's Exhibit Number 5, I'm going to show it to the defense first. And I'm going to hand this to you and ask you if this is the copy of the recording from the case number involving Melvin Fourney, Sr. from the event that occurred September 1st of 2015?

A It is.

Q And once again, has there been any alteration or anything done to the recordings or do you just take them as is and put them on a disc?

A I take them as they come in in order they pertain to this call and put them on it.

Q There's no bias or any kind of opinions regarding the call, correct?

A No.

MS. LIVELY: Your Honor, at this time the State would ask to publish unless you want to cross examine first.

MR. FRICK: Not at this time. No objection to the introduction of this.

MS. LIVELY: So we move in State's Exhibit 5 and I would ask to publish to the jury at this time.

THE COURT: All right. Admitted and you may publish.

(The 911 disc was received as State's 5.)

MS. LIVELY: Your Honor, with the indulgence of the Court I can call another witness just so I won't get us out of order today.

THE COURT: Any objection to that?

MR. FRICK: No, sir.

THE COURT: Do you have any questions of this witness at this time?

MR. FRICK: No. Are you going to put him back up?

MS. LIVELY: No. As a matter of fact I was going to go ahead and ask that he be excused unless you have anything that you need to ask him.

MR. FRICK: I don't think I have anything to ask him, no questions.

THE COURT: Thank you, sir, you may step down and you may be excused. Of course, the accompanying CD involving that testimony has not been objected to and is in evidence.

MS. LIVELY: Thank you, Your Honor.

THE COURT: Call your next witness.

MS. LIVELY: The State calls Edward King Nelson.

The witness, EDWARD KING NELSON, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Mr. Nelson, I'm going to approach you for just a minute so I can help you get the microphone a little closer, okay?

A Okay.

Q All right. I just need you to talk into that because this gentleman is typing down what you say.

A Okay.

Q Mr. Nelson, I know we talked briefly about two weeks ago, do you remember that?

A Yes, ma'am.

Q And I understand you knew Buster Hayes and you know the defendant, Melvin Fourney Sr. is that right?

A That's correct.

Q And Mr. Nelson, do you live close by to where they were living on [redacted]?

A Yes, ma'am.

Q Would you say that it was like just around the corner?

A Yes, ma'am.

Q And when Buster was still alive and living with Mr. Fourney, would you visit them sometimes?

A Yes, ma'am.

Q Were you friends with them?

A Yes, ma'am.

Q Now, Mr. Nelson, on September 1st, 2015, something happened to Buster Hayes at his home that morning. Were you

there when something happened to Buster Hayes the morning of September 1st?

A Yes, ma'am.

Q Okay. Now you've sworn to tell the truth here today, correct?

A Yes, ma'am.

Q I want you to tell this jury when you got to that home what happened and what you saw.

A Well, when I got to the home I knocked on the door and there was some talk, there was some arguing between the two individuals there.

Q Can you tell me who those people were? They don't know.

A It was Melvin Fourney, Sr.

Q Okay.

A And Buster Hayes, they was arguing.

Q Okay. They were arguing. So tell us what happened next.

A Well, the arguing got into -- I say into a aggravated state, you know. Melvin got aggravated and he picked up a knife and he started toward Mr. Hayes.

Q Where was Mr. Hayes? Was he standing or sitting down?

A Sitting down on the couch.

Q What was he doing, Mr. Hayes?

A Mr. Hayes had fixed him a meal.

Q All right. Okay. So he was sitting down. Was he eating the meal or just holding it?
A He was holding it at the time.
Q Okay. So he's sitting down holding the meal, and you said that Mr. Fourney did what?
A He approached him with the knife.
Q Did you see the knife in his hand?
A Yes, I did.
Q Okay. Did he say anything to Buster at that time?
A No, he didn't.
Q What did he do?
A Well, he approached him and stabbed him in his midsection.
Q And was Buster still sitting down when that happened?
A Yes, that's correct.
Q Was Melvin standing up, sitting down or something else? What was he doing?
A No, he went back to his seat.
Q But when he stabbed Buster, was he standing up when he stabbed him?
A Standing up.
Q And when he stabbed Buster had they been physically fighting in any kind of way?
A No, they hadn't been physically fighting. Like I said, it was a aggravated state of mind, something had aggravated Melvin to do that, you know. Melvin, he never approached him like

that when I was around but something just tee'd him off and --

Q So it made him mad.

A Made him mad and I got the hell out of there.

Q I understand. I understand. Okay. All right. And I have only got a couple of more questions. You said there was no physical fighting.

A No physical fighting.

Q Did you ever see Buster try to stab Melvin with the knife?

A No.

Q And you said that they were just kind of arguing, Melvin was aggravated and then he stabbed Buster.

A That's correct. Now, I don't know what led it up to, you know, he could have been abusing Melvin, he could have been abusing Melvin.

Q But you're just guessing because you weren't there and you don't know.

A No, I wasn't guessing. They was just talking, bugging him, you know, and I just left the premises.

Q I understand, thank you. When you left was anybody just getting there? Did you see anybody and talk to them do you remember?

A I think his son, Melvin Fourney's son, and I told him they was arguing in the house.

Q And so you told him there had been an argument in the

house?

A Uh-huh.

Q And you left. Why did you not ever tell the police or anybody that you had seen this, Mr. Nelson?

A Well, when I left I went to the local bar down the street and the officer came down to the bar and questioned me at the time, and I was so upset at the time I couldn't explain myself, you know, at the time I couldn't explain myself. I couldn't, you know -- I couldn't believe, you know, what happened at the time.

Q So it upset you.

A It upset me.

Q And had you started drinking because of what you had just seen?

A Well, no. I usually go to the local bar all of the time, and you know, but that incident I speeded down the street. I am going to tell you the truth, I speeded down the street, that is the honest to God truth, I speeded down the street. I didn't know exactly what went through Melvin's mind and what went through Buster's mind, you know, at the time, and that was it.

Q Yes, sir. Do you know if Melvin or Buster had been drinking that morning?

A I don't know, I just arrived on the premises.

Q And then you got out.

A I got out.

MS. LIVELY: Thank you. Answer any questions the defense may have for you, okay?

THE COURT: Mr. Frick?

MR. FRICK: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FRICK:

Q Mr. Nelson, have you and I ever talked?

A No, we never have talked.

Q You've never met me, have you?

A I've never met you.

Q How long had you known Mr. Fourney?

A Practically all my life.

Q Did y'all grow up together.

A No, we didn't grow up together. He lived in a different area of town than I did, but he knew me and when I worked with the school district at the time and we was associated like that.

Q So you've known him for a real, real long time though.

A Yeah.

Q Did you know him well or were y'all just acquaintances, how would you phrase it?

A Well, I knew him as an associate.

Q Did you ever know him to be a violent person?

A No.

Q Did you hear about him being violent?
A No.
Q Ever hear about any trouble whatsoever with Mr. Fourney?
A No.
Q Did you ever have any trouble with him?
A No. I never had any trouble with Melvin.
Q How about Mr. Hayes, did you know Mr. Hayes?
A Yes, I know Mr. Hayes.
Q Do you call him Buster?
A Buster.
Q How long had you known Buster?
A About 15 years.
Q All right. Would you go over to Mr. Fourney and Buster's house frequently, or how often would you go by?
A Well, when I walked through the neighborhood I would have to pass by their house so I'll stop and speak.
Q Well, this particular morning you stopped and knocked on the door, correct?
A That's correct.
Q Is that what you would normally do?
A That's what I normally do.
Q Just go by speak and say hey?
A Yeah.
Q And then head on about your day.

A Right.
Q Would you hang out there any or just --
A No, just wouldn't hang out. Sometimes we would have a drink together, you know, and sometimes we don't.
Q Okay. Did y'all have a drink this morning?
A No, we didn't.
Q When you got there did it seem different than it had before? Was there more tension or was it the same? How would you phrase it?
A It was so-so. They have sayings all the time, it's different arguments and different sayings, you know, back and forth and everything.
Q Just arguing back and forth though?
A Yeah.
Q You said Buster had fixed himself something to eat, correct?
A That's correct.
Q He was sitting down eating --
A He was sitting down.
Q Do you know whether he had a fork and a knife, a spoon or anything like that?
A No, I didn't visualize that.
Q Did you see where the knife that Mr. Fourney had come from?
A No, not exactly.

Q So he didn't walk off to the kitchen, grab one and come back in.
A No.
Q Okay. Was it right there in front of Buster?
A Probably was.
Q You didn't see any interaction with Buster and the knife?
A No.
Q Where you were in the room, was Mr. Fourney's back to you or was he facing --
A No, we was sitting around like in a circle.
Q Pretty close, as close as I am to you or closer or further away or what?
A Yeah, closer.
Q All right. Did you hear what words were exchanged? Don't tell me what anybody said, but did you hear words exchanged?
A No, I didn't hear.
Q You said to the solicitor that it could have been that Melvin was being abused by Buster, what you mean by that?
A Well, I was saying that when Melvin was renting the house, he was renting the house, and, you know, someone comes in and take over your property, that's what I call abusing.
Q So what you mean by that? Who came and take over Melvin's property?

A Mr. Hayes.
Q Mr. Hayes came in and took over the property?
A Yeah.
Q What you mean by -- can you explain that a little bit?
A Well, he was in charge of the house.
Q But it was Mr. Fourney's house to start with.
A That's right.

MR. FRICK: Thank you, sir, that's all of the questions I have.

THE COURT: Any redirect?

MS. LIVELY: None from the State, Your Honor.

THE COURT: Thank you, sir, you may step down and you're free to leave. You may call your next witness.

MS. LIVELY: Yes, sir, Your Honor. The State would call James Anthony Fourney to the stand.

The witness, JAMES ANTHONY FOURNEY, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Hi, Mr. Fourney.
A Hello.
Q I apologize for having to get you over here so quickly. If you could just talk into that microphone because the jury needs to hear you and the court reporter needs to take down everything you say, okay?

A All right.
Q Please tell the jury your full name and how you're related to the defendant.
A James Anthony Fourney, Melvin is my father and Buster is my cousin.
Q And Buster is your cousin, Buster Hayes, the one who died on September 1st of 2015, correct?
A Yes.
Q All right. Now, Mr. Fourney, do you live in Chester?
A Yes.
Q Are you married?
A Yes.
Q Who are you married to?
A Teresa Fourney.
Q Can you point her out to the jury?
A (Witness complies.)
Q That's Teresa? Did she drive you here?
A No.
Q She didn't? Okay. Well, on September 1st, 2015, did she drive you over to your dad's house?
A Yes.
Q Tell the jury what happened on September 1st, 2015 that got you to go over to your father's house on Oak Street.
A Well, he called me on his cellphone and told me to come over to the house right quick and that was all he said.

Q Did he say anything about Buster at that time?
A No.
Q So did you have any idea what he was calling you about?
A No. He normally called me every Monday because I worked Friday, Saturday and Sunday, he'll call me on Monday morning and tell me to come over there. And it was just -- you could tell something wasn't right but I don't ask no questions on no phone, I just like to go over there and see what's going on and leave it at that.
Q Do you remember about what time it was whenever your father called you?
A No, not right off.
Q Was it in the morning before lunch?
A Yeah, it might have been right around lunch or maybe before.
Q Did he say to you anything about there being a problem in the house or call 911?
A No.
Q All right. And after you got that call from your father, were you able to actually leave right at that moment or did you need a ride?
A Well, I called my wife and she came around and picked me up and we went over.
Q And where were you whenever your wife came to pick you up?

A I was on Second Street.
Q On which part?
A Second, and I stay on Third.
Q So about how far away is that from Oak Street, which is where your father was living?
A About -- it's not even a good ten or 15 minutes, it's not that far. It's walking distance.
Q Whose house were you at whenever your wife, Teresa, came and picked you up?
A At one of my cousin's house on Second, at the top of Second.
Q So when Teresa picked you up, did y'all go directly over to your father's house?
A Yes.
Q And when you got there, who was the first person that you saw?
A When I first -- Edward came, walked around the side of the house and told us, "Y'all need to go in there, I think Melvin done killed Buster."
Q You had no idea at that point what was going on.
A We didn't know what was going on when we got there.
Q Was the weather good? Was it raining? It was clear?
A It was nice that morning.
Q Okay. All right. So were you in any rush to get into the house at that point?

A Yeah. Once he said that we were trying to figure out what was what, what's going on, and once we got in I left went and got my oldest brother and I left my wife there.

Q When you walked into the house, tell this jury what happened. What did you see?

A Well Buster, he was sitting on the couch, my daddy was sitting at the door shaking. I just looked at him, I don't know what to say to him, you know, I didn't ask what was what, I just left and went and got my oldest brother and I left them there, and when I got back they had him in handcuffs and wouldn't let nobody else in the house.

Q All right. Now, do you go by James or Tony?

A Tony.

Q Now Tony, but a little bit more happened between the time you left and went to your older brother's house there, wasn't there?

A No. When I walked in I turned around and walked right back out.

Q Okay. So were you in there whenever 911 was called?

A No.

Q Were you asked to call 911 by your father?

A He asked my wife. Wasn't no sooner she was walked in -- because we headed back out when she was coming in.

Q Did you see Buster Hayes?

A Yeah, he was sitting on the couch.

Q Did he have anything around him?
A It was a bowl in his lap, that was it.
Q Did you see any other things around that would show you how he was harmed?
A No.
Q Was he breathing?
A I didn't even check.
Q You didn't check?
A No. I walked in, turned around and walked back out. Because after Mr. King said that I'm very nervous, I'm a nervous type person, I ain't --
Q Do you remember giving a statement to a SLED agent and Tammy Levister?
A Yeah.
Q And you know some of the questions that they asked you was whether or not you had ever seen Buster pushing your father around or harming --
A No.
Q You never did.
A No.
Q Had you ever seen them arguing?
A They might cuss and fuss at each other but that was about it.
Q Have you ever seen your father be violent?
A No.

Q Have you ever seen him drinking?
A Who? Which one? Yeah.
Q Your father. Yes?
A Yeah.
Q Do you know if he'd been drinking that morning?
A I don't know.
Q Was he able to talk to you whenever you got there and tell you what happened?
A No, I never asked.
Q You never asked him?
A No.
Q Was Buster -- did Buster have a job? Did he work?
A He did plumbing work here and there.
Q Plumbing work?
A Yeah.
Q And how long had him and your father lived together?
A There or --
Q Just together in general, I mean, not necessarily just that house but other places.
A Off and on it was awhile.
Q For awhile?
A Yeah.
Q More than a year?
A Yeah.
Q Okay. And did they get along most of the time?

A Yes.
Q And you said you never saw him, him being Buster, touch your father or hit him, right?
A No.
Q Have you ever seen Buster threaten him with any type of a weapon?
A No.
Q Have you ever seen your father threaten Buster with a weapon?
A No.
Q Had your father ever said he was going to kill Buster?
A No.
Q Did he say he wanted to kick Buster out of the house?
A Every once in a while they would argue, he would tell him get your stuff and leave, but other than that no.
Q Other than that, no. Okay.

MS. LIVELY: Thank you so much, Tony, answer any questions that the defense may have.

THE COURT: Mr. Frick?

MR. FRICK: Thank you.

CROSS EXAMINATION

BY MR. FRICK:

Q Mr. Fourney, whose house was it?
A My father's.
Q And how long had they been over there?

A Oh, I don't know how many, he hadn't been over there --
Q Lean over so they can hear you, sorry.
A He had been over there a minute.
Q Okay. And how long had Buster been with him?
A I forgot. He came -- it was cold one year and he came there.
Q Do you know why Buster moved in with him?
A He said he didn't have nowhere else to go.
Q Okay. All right. Would you come over and visit your father fairly frequently?
A Yeah.
Q How about when Buster was there, would you visit?
A Sometimes.
Q Would you stay there when Buster was there?
A No, not if they were drinking I wouldn't.
Q Why not?
A They're aggravating. You got one on one side want to talk to you and the other one.
Q Okay. Solicitor asked you about a statement that you gave, I'm going to -- don't read it out, just kind of look at it. Does that look familiar?
A Yeah.
Q Is that the statement you gave?
A Yeah.
Q Do you recall in there saying that Buster was really

mouthy and would grab on you?

A Yeah. He would -- like with me and him it was the same age it was different, you know. If I walked in there, yeah, he would go to mouthing and want to grab on me.

Q When you say grab on you what would he do?

A Like grab your arm and, you know, how guys do when they get around somebody.

Q Did he ever get violent with you?

A No.

Q Had you ever heard about him getting violent with your dad?

A Heard, but heard and seen is two different things.

Q Absolutely. One of the things you said was it depends on what Buster had going on in the streets, what you mean by that?

A Sometimes, you know, you have stuff going on in the streets and it will follow you home.

Q I've got you. Did your dad have anything going on in the streets?

A He never left home. You couldn't even get him to ride to the store with you.

Q When you got the phone call that morning, was this kind of the typical time that he would call you?

A No. It would normally be all day on Monday he would call any time of the day.

Q Did he sound different this time?
A Sound like he had just woke up.
Q And when you got over there you said you saw him and he was sitting in a chair shaking.
A Yeah, by the door. They ain't got no screen door, but when they open the big door they just sitting right there in the doorway.
Q And that was unusual?
A Well, he normally would sit there sometime from time to time when you would pass by he would be sitting there.
Q But him sitting there shaking.
A Yeah. That kind of throwed us off when we pulled up and I was like, "What's wrong with him?" And then when we went in the house that's when we see -- well, Edward King came around the corner of the house first and then we went in the house.
Q So you were already a little apprehensive when --
A Yeah. After Edward came and told us that and I was like, "What the hell is going on?" Then we went in the house, that's when I turned around and walked back out, got in my van and went and got my brother.
Q You just didn't like the scene?
A You know how you walk up on something and it will startle you all the sudden? So I just left, went and got him and come back, and when I got back they had the house taped off and wouldn't let nobody in, he was in the police car.

Q Did you see any blood?
A No, sir.
Q Buster wasn't moving?
A No, sir.
Q Now you didn't go over there and check him.
A No, I didn't check. But as far as like physically moving, no, he wasn't moving.
Q Okay. Did you just stick your head in the door or you come into the door?
A I walked about into the corner and everything and turned around.
Q Is that into the living room of the house?
A Right there in the doorway.
Q Okay.
A From the porch to the doorway, then turned around, walked back out.
Q From where you were could you see your dad and Buster?
A I could see my dad. But when you first walk in the door you walk in and you go about from the front porch to that -- this white thing right here and that's as far as I went and turned around.
Q Did you have any conversations with your dad about the situation?
A No.
Q You just went to go get your brother.

A Yeah.
Q Your wife stayed?
A Yeah.
Q Have you ever had any trouble with your dad?
A No.
Q Have you ever known him to have any trouble with anybody?
A No.
Q Ever known him to be violent?
A No.

MR. FRICK: Thank you, sir, that's all of the questions I have.

THE COURT: Redirect?

MS. LIVELY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. LIVELY:

Q The defense -- the defense just asked you about whether or not your father ever went anywhere and did anything and you said no, he pretty much stays in the house.
A Yeah.
Q So would there be times when Buster would actually be the one that would go out get them alcohol, cigarettes and food?
A If that's what they were doing, yeah.
Q And there were times when you brought those kind of

things to the house too.

A Yeah.

Q So do you know for a fact that Buster would go out and bring back food and those things or not?

A I don't know, I wouldn't -- don't nobody know that but them two and whoever else be there. But I know what I used to bring, but now when I ain't there I don't know what happens.

MS. LIVELY: Thank you. That's all of the questions I have.

MR. FRICK: No other questions.

THE COURT: Thank you, sir, you're free to leave. The State may call its next witness.

MS. LIVELY: Your Honor, at this time the State has fixed its problems with the audio, we are ready to play the 911 --

THE COURT: All right. You may play the 911 tape previously entered into evidence.

(The 911 tape was played.)

THE COURT: All right. The State may call its next witness.

MS. LIVELY: Thank you, Your Honor. The State calls Tammy Levister to the stand.

The witness, TAMMY LEVISTER, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Mrs. Levister, tell this jury where you were working back in September of 2015.

A Chester Police Department.

Q And what were your duties at that time?

A At that time I was the lead investigator and also the interim chief.

Q Okay. Now, on September 1st of 2015, did you receive notice through dispatch that a stabbing had occurred in the city limits of Chester?

A Yes.

Q Please tell the jury approximately what time that was that you received that call and how you responded.

A I want to say the time was probably around 12:00 but I can't remember to be exact on the time. I received the call, I then responded to [redacted].

Q And did you have any information regarding what type of case you were responding to at the time whenever you left?

A Just a stabbing.

Q Did you know who was involved in the stabbing?

A No.

Q Whenever you got to [redacted] in Chester, tell the jury who you actually saw there.

A When I arrived we already had some street officers there, EMS was on scene. I arrived. The first officer that arrived

started speaking to me informing me of who was involved, that it was Leonard Hayes as the victim and Melvin Fourney, Sr. as the suspect. At that time --

Q Okay.

A Oh --

Q I said -- no, that's fine, continue.

A At that time I couldn't put a face with the Melvin Fourney, Sr. name. Once I realized who that was I had my partner with me and I had her back out of the house, and I then informed them that I had to take lead, she wasn't allowed to be involved and we proceeded from there.

Q Okay. And just so the jury understands the procedure in doing that, who was the officer again that you had step out of the scene?

A Loleita Fourney.

Q And how is she related to the defendant, Melvin Fourney, Sr.?

A She was his daughter-in-law.

Q Did she have anything to do with this case or the investigation at all?

A No.

Q And as a matter of fact did you call in another agency just to assist because of the fact of wanting to keep an unbiased person involved?

A Yes.

Q Who was that?
A I then at the time called the lieutenant over SLED and he sent an agent down.
Q So you took care of that situation with your Investigator Fourney by having her remove herself.
A Yes.
Q Who actually entered the scene and processed the scene?
A I did.
Q And whenever you processed the scene what is it that you actually do to try to determine what had happened in that particular event?
A Well, you start photographing the entire scene, the outside of the house, you look for clues inside the house, evidence going by what Mr. Fourney was saying, and then looking at the victim deceased on the couch and just photograph everything.
Q Did you interview the defendant there in the home at that time?
A No, I did not.
Q Well, tell the jury what it is that you saw whenever you first walked into that home.
A When I arrived at the scene I believe they had Mr. Fourney sitting in the house away from the victim, the victim was sitting on the couch. When you go in the front door he's on the couch to the right.

Q And how big is this area that they were in?
A It's small.
Q It's small?
A Uh-huh.
Q So if you had to give us kind of an idea of how big the room is, would it be as big as this area where we encompassed where the clerk is sitting through here and then you?
A Maybe close to it, maybe not that big.
Q Maybe not that big. So either that big at the most.
A Uh-huh.
Q And what was inside that area whenever you walked in?
A There was I remember a chair by the front door, a little couch on the wall that the door is on, and then a longer couch where the victim was. And when we go in it's kind of like a open -- it's open from the living room into the kitchen.
Q Okay. And once again, did you actually photograph this area and document it in pictures?
A Yes.
Q I'm going to show you what's already been marked as State's Exhibit 6 through State's Exhibit 28. And before we actually talk about what's in each one of the pictures I'm just going to just ask if you would flip through those, and if you recognize those photos and if those are consistent with the photos that you took on September 1st of 2015 at

the [redacted] residence?

A Yes.

Q Have those pictures from what you're looking at now, have they been altered or changed in any kind of way?

A No.

Q Are they an indication and what you saw and what you captured on that day September 1st involving the defendant, Melvin Fourney, and the victim, Buster Hayes?

A Yes.

MS. LIVELY: Your Honor, at this time the State would move to enter State's Exhibit 6 through 28 into evidence at this time.

MR. FRICK: Your Honor, can we -- we probably need to do this outside of the presence of the jury, I do have some objections to some of the pictures.

THE COURT: Okay. Now is a time for a good midafternoon recess. Ladies and gentlemen, we'll get you back out here just as soon as possible. Before we do that let me go ahead and appoint the foreperson of the trial jury, where is Ms. Wilson, Lucy Wilson. Thank you for volunteering. It's my practice to appoint somebody, okay, so I've chosen you. I've chosen you to be the forelady of the grand (sic) jury. Let me tell you what your duties are going to be. Number one, the main purpose is you will preside over the deliberations when you get to that stage at the end of the trial. Number two, you're going to be

the jury spokesperson here in court if y'all need something, whatever, let me know, okay? It's also going to be your duty to write on the verdict sheet what the verdict of the jury is when you get to that point, you're the only one who can write on the verdict sheet, okay? But you can't write on it until y'all have reached a verdict, and of course I'll tell you in more detail later, it has to be a unanimous verdict, okay? So at this point in time we'll go ahead and recess, we'll get you back out here just as soon as possible, go ahead and refresh yourselves. Don't talk about the case.

(The jury left the courtroom.)

MR. FRICK: The majority of the pictures I have an objection to includes pictures of the victim, I obviously have an objection to all of those coming in. But just for the record 6, 7 and 8 defense does not object to. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26, no objection.

THE COURT: Okay.

MR. FRICK: So specifically my objections are to the pictures 27, 28, 9, 10, 11, 12 and 13.

THE COURT: All right. Hand me up the photos, let me look at them and let me hear argument then from the defense first.

MR. FRICK: Your Honor, obviously the State has a right to introduce evidence of the injury, I certainly understand that, however there are several pictures of this injury. I also believe of the pictures, particularly the ones that shows a

frontal view of the victim is more prejudicial than probative and I think they should be excluded.

THE COURT: All right. Madam Solicitor?

MS. LIVELY: Your Honor, the State has got to be able to show that there was malice and aforethought in regards to how this injury took place. We want to show the defenseless nature of the victim by him being seated on the couch. Each angle of the victim seated on the couch is important for us to be able to show that he was in a defenseless position, then the actual wound to the victim, we need to show this wasn't just a small nick. Whenever you hear the defendant's two statements he says, "I just nicked him a little bit," or, "I think I got him in his shirt," is what he said on the 911 call. This was an intentional violent plunging of a knife into the chest of the victim. In order for me to show that I need to show that this 70 year old man, despite how he may appear to the jury at this point in time, he grabbed that steak knife and without hesitation plunged it into the chest of this victim. And the way that the size of the wound, how he was actually positioned and the fact that there was food, which is evidence that this person was -- he was sitting there eating food on his lap, he was not in a position where he was going to attack or harm the defendant, and in order for me to show that I need those photos to come in so the jury can see the violence of this particular incident. I think it's huge for the State and I don't see how

it's prejudicial at all whatever, you know, unfortunately we know people see worse than this all of the time. And I'm not trying to be grotesque, what I'm doing is I'm showing it as one violent injury and I need to be able to show that.

MR. FRICK: And, Your Honor, my concern on -- the State using this as the position of the victim, I don't know that anybody can say that that accurately reflects the position of the victim. As you see, the shirt has already been cut off of him, he's already got the things from EMS on him so it's clear somebody has moved this body, I don't think this accurately reflects the position of the victim. Now, I think they can show a picture of a wound, but as far as all these pictures -- and if they're going to say that's the position he was in I don't think they can do that, there's nobody that can testify to that.

MS. LIVELY: We've have got two witnesses that have said he was sitting down. Mr. Fourney said -- or Tony said when he went in there he saw him sitting on the couch and he turned around and backed off, that's before EMS got there, that's before 911 was called. Then we have Mr. Nelson who said he was sitting on the couch eating his food. That's two people who have said that at this time.

MR. FRICK: And I guess there's a difference between sitting down and slumped over. And you heard on the 911 tape they're telling Ms. Fourney to try to lay him down so they can

work on him, and that's clearly possibly the position that he's in here. I guess that's my concern as far as position.

THE COURT: Okay. All right, thank you. I've reviewed -- I have listened to arguments on both sides, I've reviewed the proposed photographic evidence to come into trial, considering what I've heard and the totality of the circumstances and me being the gatekeeper trying to allow non-prejudicial information in that's more probative of anything, I'm going to allow all of the exhibits in with the exception of State's Exhibit 9, all right? And that's -- y'all want to see it? All of these come in because these show the angle of the body as the State argued, which I do think is important and legitimate for the State to try to show and the size of the wound. I'm not allowing State's Exhibit Number 9 in, which I would call the full frontal view showing his entire face and all of the blood and the wound and everything simply because I just agree with the defense that that would be too prejudicial, okay? So Number 9 is not allowed in. Your objection is clearly noted in the record. Anything else on this?

A No, sir.

(The jury returned to the courtroom.)

THE COURT: All members of the jury are present. Thank you, ladies and gentlemen, again for your patience. You may resume your testimony.

MS. LIVELY: May I approach?

THE COURT: Yeah.

BY MS. LIVELY:

Q I'm going to hand you what's been marked as State's Exhibits 6 through 28 with the exception of State's Exhibit Number 9. And I was asking you before you stepped out whether or not those were the actual pictures that you took whenever you responded to the home at [redacted] on the day that Buster Hayes was stabbed.

A Yes.

Q And those are the pictures you took.

A Yes.

MS. LIVELY: Your Honor, at this time the State would move Exhibits 6 through 28 with the exception of Number 9 into evidence.

THE COURT: And --

MR. FRICK: Objection as previously noted.

THE COURT: Objection as previously noted and ruled upon, those are admitted into evidence as stated.

(The photos were received as State's 6-8 and 10-28.)

MS. LIVELY: Okay, Your Honor, thank you.

Q And what I would like to do right now, Tammy, if you don't mind, is actually have you go through each one of them. We've got them that they'll actually pop up on the screen for the jury to be able to see so you can tell us what it is that you were actually capturing in the photo at

the time that it was taken. State's Exhibit Number 6.

A That's the front of the house where Melvin and Leonard resided.

Q Okay. And that's [redacted], correct?

A Yes.

Q That's in the City of Chester?

A Yes.

Q And then the next photo, what is that?

A That's from the cross street right -- it's right there at the corner of Oak and Crosby Street.

Q So you're looking at -- that's State's Exhibit 7, correct?

A Correct.

Q Then what is in State's Exhibit 8?

A It's showing down towards -- down toward Oak Street towards Saluda Street at the intersection of Crosby again.

Q Back up to 7 again if you don't mind. And you see some people in those photos. Who are those people that had responded at that point in time?

A The ones in the photos by the white Tahoe, that's going to be EMS, first responders. And the female, that's going to be Stephanie with the coroner's office.

Q And do you know if the victim was actually pronounced dead at the scene?

A Yes.

Q All right. We'll go back to the next one and then the very next one which would be -- what are we seeing in this particular picture?

A When I arrived inside the residence this is how I observed Mr. Hayes sitting on the couch with what appeared to be a salad bowl beside him.

Q What are the white patches that are up at the top of his arms?

A That's where EMS had tried to work on him.

Q All right. And what is he seated on?

A A couch.

Q And was that one of the couches that you actually mentioned that you saw that was inside this small room?

A Yes. That was biggest couch, well, the longest couch.

Q What was the next exhibit?

A The next is just showing how he's kind of sitting on the couch and more of EMS's whatever they do to see if they can get a pulse.

Q Were there any weapons within the reach of Mr. Hayes that you documented at that time?

A No.

Q What is that Exhibit Number that you're referring to right now, Tammy, so we can make sure the record is clear?

A Exhibit 11.

Q And then the next exhibit would be 12. What are we

seeing in this photo? What are you documenting?
A This is showing that there's some type of salad plate turned upside down beside Mr. Hayes on the couch.
Q And at the time you stated that you did not get any type of statement from the defendant; is that right?
A Correct.
Q So were you aware of why that food was positioned the way it was at that time?
A Not at that time.
Q You just documented it.
A Yes.
Q And then what's the next picture depicting?
A State Number 13 is showing how his foot was positioned on the floor and a hat in the floor.
Q So this is the victim's leg that we're seeing.
A Correct.
Q And then the next exhibit?
A That is -- State Exhibit 14 is a knife I found on a table. The view of where the victim is sitting is to the right further.
Q Okay. And what was it about that night that caused you to actually document it and take a picture of it?
A It appears to be blood on it.
Q Did you seize that knife and put it into the evidence room in Chester City PD?

A Yes.
Q And then the next picture?
A State Exhibit 15 is showing -- I placed a marker beside the knife stating the knife is collected as evidence.
Q So the marker is just for you to be able to know and document what it is that you're taking from the scene.
A Correct.
Q And then the next photo, is that a close-up of the same thing?
A Yes. It is just another angle of the same knife.
Q And the next photo. What is that supposed to be showing?
A State Exhibit Number 17 is showing a drop of blood on the -- kind of -- it's on the hardwood but right there in the torn part of the carpet.
Q And I think the next photo may be a closer -- okay.
A Yes.
Q All right. Is that the blood spot you were referring to?
A Yes.
Q And then the next photo, what is that exhibit number?
A State Exhibit 19 is showing there is more blood droppings, or what appears to be blood droppings on the hardwood floor of the residence.
Q Is this all within the vicinity of where the victim was

seated, do you recall?

A Yes. Again, if you're sitting where the victim was seated this is all to the right of him. This is like going towards the bathroom and then some towards the kitchen.

Q The next picture, what exhibit is this?

A It appears to be more blood droppings on the floor.

Q And that's State's Exhibit what?

A 20.

Q And the next photo?

A Again, State Exhibit 21 is just showing more blood drops on the floor.

Q All right. And is six the same thing?

A Yes. State Exhibit 22, yeah, same thing.

Q All right. What about marker seven?

A State Exhibit 23 is another blood -- well, what appears to be a blood dropping on a different type of floor besides the hardwood floor.

Q Let me ask you, was this like in a trail of blood drops or how would you describe that to the jury? Because it's kind of hard to tell from the pictures.

A Right. From the table where the knife was -- the floor that you're looking at in State's Exhibit 23, this one here, that's the kitchen floor right there where the table was located with the knife on it. The other blood droppings is on the hardwood floor going towards the restroom, or the bathroom.

Q Okay. Thank you. And the next picture?
A It's kind of like an overview of the kitchen flooring and the hardwood flooring. If you go to the right of number eight that's where the restroom is located, and as you can see sitting on the couch part of the victim's leg. And behind number four is the kitchen area of the residence, and to the left of four is where the table was located that had the knife on it.
Q All right. Thank you. And then the next photo?
A State Exhibit 25 is just trying to get a measurement of the knife.
Q All right. And when you measured the knife according to this particular ruler, would you tell the jury how long the actual metal part of the blade was?
A The blade is approximately five inches.
Q Okay. All right. Next picture.
A State Exhibit 26 is showing a measurement of the handle of the knife.
Q And what is this -- and you'll have to tell me what exhibit this is.
A State Exhibit 27 is the stab wound to the victim's chest.
Q Okay. Once again you've also got a ruler -- you were taking the photo, right?
A Correct.
Q Do you know who was holding that?

A I want to say either Stephanie or the coroner, Terry Tinker.

Q And so in measuring this particular wound, why would you document that for this particular case?

A One just to -- so we can show comparison to the weapon that we had found with the blood on it to make sure it was the correct weapon, and two, just trying to get the size of the wound on the victim.

Q Next picture, please. And what's --

A I'm sorry.

Q What's that exhibit number?

A State Exhibit 28.

Q And also, would that be for the same reason?

A Correct. It's just showing a measurement of the wound as we see it.

Q Now Ms. Levister, I wanted to show you the cab report, which is the report that is actually compiled by 911. Would that help refresh your memory as to when the 911 call came in and when you would have been dispatched to respond?

A Yes.

Q I'm going to show you the first page of this report and ask you if that helps to refresh your recollection as to the timing of when that 911 call came in and you responded?

A The call came in at -- well, the call was dispatched to officers, or EMS at 11:43.

Q So would you have responded pretty quickly thereafter?
A Yes. Either I heard the call come out -- and I'm not seeing the number on there, but I heard the call come out to officers or they actually called me to respond.
Q All right. And did you ever have an opportunity after you called in SLED to actually be involved with another interview with the defendant, Mr. Fourney?
A Yes.
Q And when did you and the SLED agent actually interview the defendant?
A The day after the incident.
Q Had he been interviewed or was he interviewed prior to that time?
A Yes.
Q And who would have interviewed him prior to you having that opportunity?
A Travis Moore did.
Q Travis Moore did?
A Yes.
Q I know what I needed to ask you, and I apologize, Ms. Levister. Did you actually go to the autopsy involving the victim?
A Yes.
Q You did. And where was this autopsy performed?
A Piedmont Rock Hill.

Q And while you were there, did you actually take any photographs during the autopsy?

A Yes.

Q I'm just going to show you the photos and see if you can identify those if you don't mind.

MS. LIVELY: May I approach, Your Honor?

THE COURT: Yes.

Q I'll show you what has been marked as 29 through 36. Do you recognize those photos?

A Yes.

Q Are those the photos that you took at the time you went to the autopsy of the victim, Leonard Buster Hayes?

A Yes.

Q Are these an accurate representation of what you actually saw during the time that you were attending the autopsy?

A Yes.

Q And you were the one that took those photos?

A Yes.

Q Now, Ms. Levister, whenever you said that you interviewed the defendant with the SLED agent, did y'all also interview other witnesses?

A Yes.

Q Who were those?

A We talked to his son, Tony, and Tony's wife.

Q Were those actual interviews documented and recorded as well?

A Yes.

Q After that part of the investigation, did you submit any items to SLED for analysis?

A I believe we did. I believe we submitted Mr. Fourney's clothes to see if there was any blood on them.

Q How about the knife?

A Yes.

Q And do you know whether or not a report came back from SLED on those items?

A I can't remember if one had came back before I left or not.

Q But SLED forensics would have that information.

A Yes.

MS. LIVELY: All right, thank you. Answer any questions that the defense may have for you.

THE COURT: Mr. Frick?

MR. FRICK: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FRICK:

Q Ms. Levister, you ended up becoming the investigative officer for Chester in this, right?

A Yes.

Q Do you know about when you arrived there? I know there

was a dispatch time, you're not the responding officer, correct?

A No. I'm not the responding officer, no.

Q So y'all had officers that were there first --

A Correct.

Q -- EMS had gotten there. Approximately how long was it before you got there?

A I can look at the cad sheet and tell you, but maybe five minutes.

Q Was it a matter of minutes?

A Yeah, just matter of minutes from the time the call went out.

Q But EMS had already come in and they had already worked on Mr. Hayes, correct?

A Correct.

Q And that's those patches that are on there?

A Correct.

Q You didn't see Mr. Hayes until after EMS had done what they did, correct?

A Correct.

Q So the photographs you took are taken of Mr. Hayes after EMS has done whatever they do.

A Correct.

Q Can you -- and I know the solicitor had you go through, I'm still trying to get this straight in my head -- can you

give me a little idea the layout of this house? If I'm standing at the front door where is what?

A If you're standing at the front door that's putting you inside the living room. From what I recall, if you go step just inside the front door there's like the door kind of opened to this wall here. There's like a chair and I think like a little table or something, maybe the TV was on, and I think another chair. If you're standing when you are in the front door and you're to the right that's where the love seat is, and then you can see in the pictures the love seat kind of connects with the long regular size couch where the victim was sitting.

Q Okay.

A And if you go past the couch you go straight into the kitchen, and if you go to the right of the couch that goes to the restroom and I think two bedrooms.

Q Okay. All right. So who put down the markers? You have like one, two, three, four, five, six, seven, do you know who put down the markers? Was that you?

A Yes.

Q Obviously marker one is the knife.

A Correct.

Q Can you give me some idea of where it is? And what I'm looking at as State's Exhibit Number 15, where is that in relation to stuff in the living room?

A Okay. Where the victim was sitting on the big couch, not

the love seat but the bigger couch, if you're sitting where the victim was sitting the table is going to be kind of diagonally but straight ahead of the victim.

Q Straight ahead?

A Uh-huh, but off to the right side.

Q But not into the kitchen.

A Yeah, towards the kitchen. This is the kitchen floor here, this vinyl, that's the kitchen floor. This is like the living room, the victim -- if you're looking right here, the victim is sitting here and the table is going to be off this way. It's kind of sitting on the kitchen and the hardwood floor, living room and kitchen floor, it's a big open space there.

Q Big open space.

A Yeah.

Q All right. So what I'm looking at, this is State's number 24.

A In looking at this picture this is the victim's leg right here, this way right here is a door, this will shut off the living room from like the hall and the bathroom. If you keep going straight that leads straight into the restroom, and then there's a bedroom to the right of the restroom and I think a bedroom to the left of the restroom. This right here is the kitchen, the table is sitting like right here.

Q Now, except for basically number one the markers that

you put down is suspected blood?
A Yes.
Q Did anybody swab those?
A Yes.
Q Where did those swabs go?
A They should have been sent to SLED with items, whatever items.
Q Okay. All right. Did SLED come and process this scene?
A No, they did not process the scene.
Q This was done by Chester?
A By me.
Q Y'all called in SLED to do interviews, correct?
A Correct.
Q But they didn't come out and process the stuff.
A Correct. They did not come to the scene.
Q Okay, all right. And, of course, you don't have the results of any blood tests SLED did, correct?
A No.
Q All right. How about any other fingerprints or anything like that, do you know if any of that was taken?
A I did not collect any fingerprints.
MR. FRICK: Beg the Court's indulgence one minute.
THE COURT: All right.
(Break in proceedings.)

Q So as far as the swabs that are at points -- the blood swabs, you don't have any knowledge of whose that came back to.

A No. I don't think every spot was swabbed, but no, I don't have any results.

MR. FRICK: Okay. All right. Thank you, ma'am, that's all the questions I have.

REDIRECT EXAMINATION

BY MS. LIVELY:

Q Just to make sure, in regards to the evidence that was collected and sent to SLED, was the blood from the victim actually submitted to SLED as well?

A I would say yes, from the autopsy that would have been sent, yes.

Q Okay, all right. Because I don't think I asked you about that and I wanted to make sure that was done.

A Yes.

MS. LIVELY: That's all I have, Your Honor.

THE COURT: Thank you, ma'am, you may step down. The State call its next witness.

MS. LIVELY: Travis Moore.

The witness, TRAVIS MOORE, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Mr. Moore, please tell me where you currently work?

A I work for the City of Chester Police Department.

Q And what are your duties there.

A Currently I am captain. I oversee the functioning of the department as second in command.

Q Can y'all hear him okay? Captain Moore, what were your duties back in September of 2015?

A In 2015 I was a lieutenant in narcotics.

Q Narcotics?

A Yes, ma'am.

Q Did you have an opportunity to respond to [redacted] in the city limits of Chester?

A Yes. When the incident occurred Chief Levister contacted me to come out to assist.

Q And is that standard for whenever you have a situation where somebody may have been stabbed or killed?

A Yes.

Q So you assisted on that date. What did you do whenever you got to that location?

A When I got to the location I was instructed to take Mr. Fourney to city call to conduct an interview and get his statement of what happened that day.

Q Was he already detained whenever you got to the house?

A Yes.

Q Was he in handcuffs?
A Yes.
Q When you got there, did you actually see the victim or anything that was taking place inside the house?
A No.
Q So what was your role at that point in regards to your response?
A At that point when I got there I was pretty much directed to take Mr. Fourney to city hall to give a statement.
Q While you were on the way to city hall to get a statement possibly, did he say anything to you or did you question him?
A At that time, no, I didn't say anything to him or he say anything to me.
Q What was his demeanor whenever he was in the vehicle with you?
A He was -- from what I gathered he was I would say calm and relaxed, he didn't seem to be nervous or uptight or anything.
Q Whenever you got to city hall, about how long did it take you to get there?
A From that location within two to three minutes because I don't believe there was a train on the tracks, so within two or three minutes.
Q Whenever you got to city hall, what did you do with Mr. Fourney?

A Escorted him from the basement to what would be the third floor including the basement. Considering he was handcuffed from behind I handcuffed to the front for his safety as far as going up the stairs to ensure that he was okay to walk up the stairs.

Q Did you have any concerns about him being impaired either mentally or through intoxication?

A No, ma'am. Based off my law enforcement experience and my present experience in general he did not seem to be under the influence nor did I smell any alcohol.

Q So whenever you got to the third floor what did you do next?

A I sat him down in front of the desk and I told him not to pretty much say anything -- because at that point he was pretty adamant about telling me what took place and I had to constantly tell him to stop until I Mirandized him. That's when I started to activate the video camera, then I Mirandized him and we went on with his statement.

Q And I'm going to show you what has been marked as State's Exhibit 3 and ask you if you recognize this document and what it is.

A Yes, I recognize State's Exhibit Number 3. And it's a document of our Miranda rights that we read to the suspect or question him on before we proceed with any questioning.

Q And did you go through each one of those right with the

defendant at the time on September 1st when he was there with you?

A Yes, I did.

Q What was the time of that interview?

A From here the time was around 1:30.

Q 1:30 p.m.?

A Yes, p.m.

Q And did Mr. Fourney actually indicate on each line of his rights that he wished to waive those rights?

A No. He pretty much initialed and went on to proceed with the interview.

Q Did he seem to understand your questions and everything that you were asking of him at that time?

A Yes.

Q Was there anyone else in there to witness this or was it just you and Mr. Fourney?

A It was just me and Mr. Fourney.

Q And I'm going to show you also what's been marked as State's Exhibit Number 1, and ask whether or not his recorded interview was documented in a disc, audio/visual for this case?

A Yes, it is.

Q And is that the representation of the actual interview of the defendant, Mr. Fourney, on September 1st of 2015?

A Yes.

MS. LIVELY: Your Honor, at this time State would move State's Exhibit 1 and State's Exhibit 3 into evidence.

MR. FRICK: Objection as previously ruled upon.

THE COURT: Objection noted for the record and previously ruled upon. They're in the record, you may publish to the jury.

(The disc and Miranda Form was received as State's 1 and 3.)

Q I'm going to show you State's Exhibit Number 37, which actually encompasses five small photographs on one sheet of paper. Do you recognize that?

A Yes.

Q What does that piece of paper document?

A This paper pretty much documents, before I conducted an interview I took a picture of Mr. Fourney's person to document any type of evidence or markings that he may have had on his person basically.

Q And whenever you were taking those photographs you said that you were trying to document any potential evidence or markings from what could have taken place that day?

A Yes.

Q During that time while you were taking the photos, did he tell you that he had been injured or harmed in any way?

A From what I recall the picture of his right wrist, he said that Buster did nip him with the steak knife, but then he sat

the knife down on the couch behind him.

Q All right. And that's actually one of the things that you documented in the picture.

A Yes.

Q And once again there's five small little thumb nail photos on there.

A Yes.

MS. LIVELY: Your Honor, the State would move State's Exhibit 37 into evidence at this time.

MR. FRICK: No objection.

THE COURT: Without objection introduced.

(The paper with photos was received as State's 37)

MS. LIVELY: Your Honor, the State is ready to publish Exhibit Number 1 at this time.

(At this time the statement was played.)

Q Now Captain Moore, is what we just now watch ed regarding the defendant in this case, was that his total statement given to you on that day?

A Yes.

Q Was there ever a time before the recording came on or even after where he told you he was afraid for his life or that he had to defend himself for his life?

A No.

Q And did you -- in any circumstance did he say that he was fearful of the victim?

A No.

MS. LIVELY: Thank you. Answer any questions that the defense may have for you.

CROSS EXAMINATION

BY MR. FRICK:

Q Captain Moore, you didn't process the scene, correct?

A No, I didn't.

Q Your role in this was transporting Mr. Fourney and getting this interview, correct?

A Yes.

Q And when you got there he was already in handcuffs?

A Yes.

Q And the way we see him on the scene here, is that exactly what he looked like when you got there?

A Yes.

Q And he remained that way?

A Yes.

Q You did -- I think the State talked about these thumb nail photographs you got in Number 37. You observed these injuries?

A Yes.

Q You took these pictures?

A Yes.

Q Okay. I'm going to show you -- if you recognize what I've got in that folder. Just look through them first and

see if you recognize them.

A Yes. These are the five pictures that I took.

Q It's the same thing we've got in State's 37, it's just an individual picture of each one?

A Yes, sir.

MR. FRICK: Your Honor, at this time defense would move these in as Defense Exhibits 1 through 5.

THE COURT: Any objection?

MS. LIVELY: No objection, Your Honor.

(The photos were received as Defense 1-5.)

Q All right. Captain Moore, I'll ask you to look at Defense Number 2. Is this what you're documenting here, it looks like to be some kind of --

A Yeah. That's the nick that he described was on his right wrist.

Q And that is -- you've got a close-up of that on Defense Number 5, correct?

A Yes.

Q And Defense Number 3?

A That one is just some type of bruising, he didn't state what that was.

Q But --

A It was an injury that I took a picture of.

Q Some injury and you felt it was significant to take a picture of, correct?

A Yes.

Q And, of course, 4, what are you taking a picture there?

A Four, I took a picture of his fingernails due to I saw traces of what appeared to be blood on his fingernails.

Q Did you swab it or do anything like that?

A No.

Q You just documented it there?

A Yes.

Q Then Number 1 is just a --

A Overall picture.

Q After you did the interview with Mr. Fourney, did you have any further involvement in this case?

A No.

MR. FRICK: Your Honor, at this time I would like to publish defense exhibits to the jury.

THE COURT: All right.

Q And just so we're 100 percent perfectly clear, you transported Mr. Fourney directly from the scene to city hall.

A If I remember correctly, yes.

Q No stops along the way and wasn't no train that day so it didn't take a long time.

A You're right.

MR. FRICK: Thank you, sir. No further questions.

THE COURT: Redirect?

MS. LIVELY: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. LIVELY:

Q Captain Moore, do you have any medical background?

A No.

Q So you cannot say that what you documented in those pictures were actual injuries from what had occurred that morning, can you?

A No, ma'am.

Q As a matter of fact you can't say they're injuries at all, can you?

A No, ma'am.

MS. LIVELY: And I apologize, I'm going to actually retrieve photos from the jury, I know they've been published but I need to be able to document them.

THE COURT: Let them finish looking at them first.

Q I know what I can ask you. When taking those photos you were basing it off of what the defendant told you happened to him; isn't that correct?

A Yes.

Q So it's based on the person who actually stabbed and killed our victim, Buster Hayes.

A Yes.

Q While he was sitting there did he require any type of medical attention?

A No.
Q Was he bleeding?
A No.
Q Was there any way for you to tell if it was even a fresh wound?
A No. Those pictures were taken just based off of documentation before I interviewed him, that's what I observed.
Q So in regards to Defendant's Exhibit Number 5, which is the close-up of the wrist of Defendant Fourney, you documented this based on his statement that he had been hit with a knife.
A Yes.
Q But you have no evidence of that whatsoever.
A No. That was just based off what he told me which was also in the statement that he gave.

MS. LIVELY: Thank you, that's all I have.

THE COURT: All right. Mr. Frick?

RECROSS EXAMINATION

BY MR. FRICK:

Q He was arrested because he's the one who said he stabbed Buster Hayes, right?
A That part I don't know, when I got on scene he was already taken into custody and I took him to city hall to interview him.
Q But he was arrested because of his statement, correct?

A To my understanding he was arrested prior to me taking him from the scene.

Q Well, you interviewed him, right?

A He was taken into custody and he was interviewed.

Q And you interviewed him about what?

A Being arrested, because he was the alleged suspect in the incident.

Q Because he said he did it just like he said he got cut, correct?

A Based on his statement he said he also stated that he picked up the knife and stabbed Buster.

Q Right.

A Yes.

Q Okay. Just like he said Buster cut him.

A Yes, which is why I documented it.

Q And you documented it?

A Yes.

MR. FRICK: Thank you, sir.

THE COURT: Thank you, sir, please step down. Have you got another witness for the day?

MS. LIVELY: I do, Your Honor, if Your Honor wants me to -- may we approach for a second?

(A bench conference was held.)

The witness, LEE BLACKMON, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Please state your name for the record and let the jury know what it is that you do.

A I'm Lee Blackmon. I am a special agent with the State Law Enforcement Division most commonly known as SLED.

Q And were you contacted by Chester City Police Department to assist on a case involving the defendant, Melvin Fourney, on September 1st of 2015?

A Not on September 1st. SLED was contacted, a message was sent to my lieutenant. I work out of the midlands region which is basically -- Chester is a part of that all of the way down to Akin, and my captain of that division was contacted, and the next morning my lieutenant informed me, which was the morning of September 2nd to respond to Chester to look at a murder case that they were working on.

Q And did you know the reason why they were calling you in to this particular case?

A Yes, ma'am. This particular incident Loleita Fourney, who was a lieutenant with the Chester Police Department, the defendant in the case was her father-in-law and they just simply wanted someone to look over the case and to help with a few interviews.

Q We've already heard Tammy Levister testify that you were there at the time whenever a second interview was

conducted with the defendant, Melvin Fourney; is that correct?

A That's correct.

Q And what day was that interview conducted?

A It was on September 2nd.

Q Do you recall what time that was?

A If I recall correctly it started around 1:58 in the afternoon.

Q I'm going to show you what's been marked as State's Exhibit Number 4 and also State's Exhibit Number 2 and ask you -- first of all in relation to Number 4, do you recognize that document?

A I do.

Q And what does that document portray?

A It is a Chester Police Department Miranda rights form.

Q And are you familiar with that specific form, the date and who witnessed and signed that form?

A I am.

Q And is that the form that was actually signed by the defendant in your presence at the time of his second interview?

A It is.

Q Who witnessed that statement?

A Tammy Levister.

Q Is it signed by the defendant, Mr. Fourney?

A It is.
Q And then I'm going to show you State's Exhibit Number 2 and ask you if you recognize this disc and the audio/visual information on it, if it is based on what was prepared during the interview of the defendant, Melvin Fourney?
A It is.
Q And was that in conjunction with the Miranda form waiving his rights to give a statement to you at that time?
A It was all done at the same time.
MS. LIVELY: Your Honor, at this time the State moves State's Exhibit Number 4 and Number 2 into evidence.
THE COURT: Previous objection noted for the record, have been overruled and admitted over objection.
MS. LIVELY: Thank you, Your Honor.
(The disc and Miranda form were received as State's 2 And 4.)
Q And while my technician gets this up and running I have a couple of more questions.
A Okay.
Q Now, Agent Blackmon, whenever you conducted this interview, did you have an opportunity to interview anybody else on that day?
A I interviewed Tony Fourney and Teresa Fourney.
Q And what is their relationship to the defendant?
A Tony is the son and Teresa is the wife, the defendant's

son and daughter-in-law.

Q And did you have an opportunity to interview anyone else or any other witnesses in the case?

A No, I did not.

Q After your involvement on September 2nd of 2015, did you have anymore involvement in this case other than coming to court here today?

A I did not.

Q Other than doing those particular statements, did you offer to provide any additional assistance if needed?

A We did. SLED is an assisting agency and we often get called at times to look over cases and review cases and that was in this particular instance, and when I finished my work here on the 2nd I was not asked to help in any other regard.

Q Thank you.

(At this time the video was played.)

Q Agent Blackmon, that was the last thing you did in this case is that interview as well as interviews with James Anthony Fourney and Teresa Fourney; is that correct?

A Yes.

MS. LIVELY: Thank you, I have no further questions.

THE COURT: Cross?

MR. FRICK: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FRICK:

Q Special Agent Blackmon, this was your sole role in this case was the interview of some witnesses?

A That's correct. When they give oversight to look at the case because there was a relative involved to make sure that everything was kosher and was above board with the case and that's what I found.

Q Did you go to the scene and collect any evidence?

A I never did go to the scene.

Q So you weren't called in to process or collect anything or --

A No, sir, I was not.

Q I think there were two other witnesses I believe you interviewed; is that correct?

A That's correct.

Q But your main focus was just simply this.

A Yes, that's correct.

Q And this was the only interview that you had with Mr. Fourney?

A Yes. This was an interview and the result of this interview we also had a formal statement that was written.

Q Right. But it's based on what y'all went over right here, right?

A Absolutely.

Q It doesn't include anything different or anything more than what y'all talked about, does it?

A No, sir. It's basically what he had said during the initial interview.

MR. FRICK: Thank you, sir, that's all the questions I have.

THE COURT: Thank you, sir, you may step down. Ladies and gentlemen of the jury, that's going to be it for the day. I'm going to reiterate my instructions to you that I gave you earlier this afternoon, while away from the courthouse do not discuss this case or even while you're here at the courthouse you can't discuss it with anybody until I tell you you can discuss it. But especially while you're away from the courthouse tonight don't do any independent research of the case. Don't go Googling names and looking up media reports or what the Herald has to say about it or the stuff like that. Don't go on social media and post about the case or go looking for information on the case. Remember, your verdict solely is based on the testimony and evidence presented in this courtroom, and if anybody tries to question you about what's going on or tries to talk to you about it, please let me know or let the bailiffs know and we'll take care of that, okay? I want you to have a wonderful evening. I would like you back in your jury room tomorrow morning, I want you to report straight to the jury room tomorrow at 9:30 a.m., okay? We will see you then, have a wonderful evening.

(The jury left the courtroom.)

THE COURT: Anything else for the good of the cause today?

MS. LIVELY: No, sir, Your Honor.

THE COURT: Thank you very much, we are in recess.

(Court recessed for the day and resumed at 9:45 a.m. On Wednesday, January 10, 2018.)

MS. LIVELY: I wanted to bring this to the attention of the Court. I do have my pathologist here, and if the Court would want us to go ahead and proffer what the autopsy photos would be we could go through everyone's testimony without having to take a break, or we could take a break and proffer at the time whenever I call Dr. Thomas to the stand.

THE COURT: How long do you think that's going to be?

MS. LIVELY: What, the proffer?

THE COURT: Before you call -- yeah.

MS. LIVELY: Well, I'm going to call Teresa Fourney first and then I was going to call my pathologist.

THE COURT: All right. Well, let's go ahead get the jury busy this morning so they won't be sitting there too long. Anything from you?

MR. FRICK: No, sir.

THE COURT: All right, bring the jury out.

(The jury returned to the courtroom.)

THE COURT: All members of the jury are present. Good morning, ladies and gentlemen, I trust you had a nice evening. We will get started right now. Madam Solicitor, you may call

your next witness.

The witness, TERESA FOURNEY, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Good morning, Ms. Fourney.

A Good morning.

Q We'll need you to pull that microphone as close as you can and please speak clearly so we can all hear you, okay? You are Teresa Fourney; isn't that correct?

A Yes, ma'am.

Q Thank you, that's much better. Now, Ms. Fourney, how are you related to the defendant?

A My father-in-law.

Q He is your father-in-law. Who are you married to?

A James Fourney.

Q Was Mr. James Fourney the one who came in and testified yesterday afternoon?

A Yes, ma'am.

Q All right. Now, were you in the courtroom whenever your husband testified?

A Yes, ma'am.

Q Now Teresa, please tell the jury what happened on the morning of September 1st, 2015, whenever your husband got a call from this defendant.

A We got a call and we went over to [redacted] and went in the house, seen Buster slumped over on the couch, and my father-in-law asked me to call 911 and I called 911.

Q Okay. All right. So you -- whenever you first got there, when you and James actually pulled up to the house did you see anyone before you went into the home?

A Yes, ma'am.

Q Who was that?

A Edward King.

Q And do you know Edward King?

A I just know him by name.

Q All right. And when you saw Edward King, did he say anything to you?

A Yeah. "Y'all better go in there and check on Buster, I think Melvin done stabbed him."

Q So you -- is this the first time you're hearing that Buster might be injured or harmed in any way?

A Yes, ma'am.

Q So Edward King tells you this, and then you just testified that y'all went into the house; is that right?

A Yes, ma'am.

Q All right. So when you got into the house, what was Melvin, or the defendant, doing?

A Sitting in a chair in the living room where Buster was.

Q How big is the living room?

A The time you walk in the front door it's like you go straight to the living room, it's just a little small area.
Q Little small area?
A Yes, ma'am.
Q And where was Buster sitting?
A On the love seat slunched down in the chair.
Q Slunched down in the chair? Was he wearing any clothing?
A Yes, ma'am.
Q What did he have on?
A Blue jeans and a shirt I think, or blue jeans and a shirt.
Q Let me ask you this, this was September 1st of 2015. Do you remember if it was hot that day? Cool? Do you remember what the temperature was? I know that's been a long time, if you don't that's fine.
A No, ma'am.
Q All right. Do they have air conditioning in this house?
A I don't think so.
Q Was it hot when you walked in there?
A Yes, ma'am.
Q So you walk in there, and about what time was it when you got there, do you remember?
A I would say about before 12:00.
Q So before 12:00 you get in there and you see Buster

sitting on this couch, and at that time did you see any blood?

A When I walked over to him at first I did, and then I seen the flies and stuff was flying around him and stuff.

Q All right. And so the -- so he had on a shirt or he didn't?

A He did.

Q He did have on a shirt. And could you see where he was injured at that point?

A Yes, ma'am.

Q All right. How close did you have to get to him to see where he was injured?

A About from here to here (indicating.)

Q I'm going to show you a couple of photos. I'm going to show you State's Exhibit Number 10, it's already in evidence. This is State's Exhibit Number 10, Teresa, I'm going to show you that picture. And does that look similar to what you saw whenever you first got there and saw Buster on the couch?

A Uh-huh. He had his shirt on I think when I got there.

Q Okay.

A It was on, yes, ma'am.

Q Right, I understand. Now, the little white patches on there, were you out there when EMS got there and actually --

A No, I was outside.

Q You were outside. And that's what my next question was going to be, so you were not in there when those things were done?

A No, ma'am.

Q When you did walk in there, though, was Buster -- you said he was slumped on the couch. Would that be consistent with what we're seeing on this picture?

A Yes, ma'am.

Q Now, we did hear the 911 call that you made to dispatch yesterday.

A Yes, ma'am.

Q And in the 911 call the operator asked you if you would move Buster off of the couch and maybe try CPR, do you remember that?

A Yes, ma'am.

Q Did you do that?

A No, ma'am.

Q Did you ever touch him or pull him off the couch?

A No, ma'am.

Q Did you move his body at all?

A No, ma'am.

Q Did Mr. Fourney, the defendant, tell you he ever moved the victim, Buster, from the couch?

A No, ma'am.

Q So there was a point in time during that call, Ms.

Teresa, that the operator was asking you time lines about how long it took you to get to the house and things like that, do you remember that?

A Yes, ma'am.

Q So when y'all got the call, you and James got the call to go over to the defendant's house, about how long did it take you to get there?

A About ten minutes, yes, ma'am, about ten or 15 minutes.

Q About ten or 15 minutes.

THE COURT: Ma'am, can you speak up a little bit, please?

Q Yeah, remember to always speak into that microphone.

A Okay.

Q So about ten or 15 minutes you and James get there and you see Edward King when you first get there, right?

A Yes, ma'am.

Q So when you go into that house, how quickly after you looked at Buster, you saw the wound on his chest and he's sitting there slumped, how quickly did you then call 911?

A Well, my father-in-law told me to call 911 after I had got there.

Q After you got there?

A Yes, ma'am.

Q So he told you to call 911.

A Yes, ma'am.

Q All right. Now, Teresa, while you were talking to 911

and she was asking you questions about the body, was there a time when you actually touched the victim, Buster Hayes?

A I touched his knee part to see was he moving but he wasn't moving.

Q Okay. And was he cold to the touch?

A Yes, ma'am.

Q All right. And at the time you were asked whether or not he was breathing, was he breathing at that point?

A No, ma'am.

Q Now, Ms. Teresa, after you called 911 there's some conversation that takes place -- it might have been before but I'm asking you, was there ever a time whenever you asked the defendant what happened?

A Yes, ma'am, he never did say.

Q He never did say.

A No, ma'am.

Q Okay. Well, do you remember talking to SLED Agent Lee Blackmon on the day after and giving him a statement as to what happened on the first of September?

A Yes, ma'am.

Q Okay. And you remember I actually allowed you to review your statement so you can remember the things that you told him at that time, do you recall that?

A Yes, ma'am.

Q And would you agree that the things that you told two

and a half years ago would probably be more clearer than they are to you today?

A Yes, ma'am.

Q It has been a long time, right?

A Yes, ma'am.

Q So I'm going to refresh your memory and show you on your statement, and it's actually at the top of this page. I am going to ask you to read this, the first couple of lines, don't read it out loud, just read it to yourself and I am going to ask you again, whenever you asked -- you call him Deke, the defendant, whenever you asked him what happened I just want you to read to yourself those first top lines.

A (Witness complies.)

Q Okay. Now, do you remember what he told you?

A Yes, ma'am.

Q Tell this jury what the defendant said to you when you asked him what happened.

A He had stabbed Buster, he got tired of him.

Q He was tired of him.

A Yes, ma'am.

Q Who was he talking about?

A Buster.

Q And Melvin Fourney told you that?

A Yes, ma'am.

Q At any point in time did he tell you he was afraid of Buster?
A No, ma'am.
Q Did he ever tell you that they were physically fighting?
A No, ma'am.
Q Did he even tell you that they were arguing that morning?
A No, ma'am.
Q And for all we know you were the first person that he actually talked to after the stabbing had taken place, would you agree?
A Yes, ma'am.
Q Other than maybe Edward King.
A Yes, ma'am.
Q All right. So the first person he talks to other than Edward King is you, and it's your -- two years ago you said he said, "I stabbed Buster, I just got tired of him?"
A Yes, ma'am.
Q All right. Did you find the knife?
A I think I did see the knife.
Q You did see the knife?
A Yes, ma'am.
Q Okay. And did you look close enough to see if there was blood on it?

A I ain't actually pay it no attention.
Q Okay. Fair enough. All right. Now Teresa, I understand that -- how long have you been married to James Fourney?
A Since 2004.
Q 2004. So have you known Buster for a long time?
A Yes, ma'am.
Q All right. And obviously you've known your father-in-law since then as well, right?
A Yes, ma'am.
Q Now, Ms. Fourney, were there times when you would take food over to Deke, the defendant, and Buster when they were living on Oak Street?
A Yes, ma'am.
Q And were there times whenever you would go over there and Buster would be messing with or picking on the defendant?
A Sometimes.
Q Sometimes?
A Yes, ma'am.
Q All right. Okay. And did the defendant sometimes pick or joke back?
A Sometimes.
Q All right. But they lived together for about how long?
A Off and on.

Q For years or months?
A For years.
Q For years. Okay. What would they argue about, if they did argue, do you know?
A Just little simple stuff.
Q Did they ever threaten to kill one another --
A No, ma'am.
Q -- or beat one another up?
A No, ma'am.
Q When, if ever, did the defendant say he was being abused by Buster and he wanted him out of the house? Did he ever tell you that?
A No, ma'am.
Q Right. You gave a statement to the police regarding everything that you knew regarding their relationship, didn't you?
A Yes, ma'am.
Q All right. And you knew both of them really well, is that fair?
A Yes, ma'am.
Q Now, Ms. Teresa, who else would bring food to the house for the defendant to eat?
A I don't know.
Q What about Buster, didn't he have a job?
A Yes, ma'am.

Q He was a plumber, wasn't he?
A Yes, ma'am.
Q And whenever he -- weren't there times when he would go to the store with Deke because he couldn't see and he pretty much didn't go anywhere?
A Correct.
Q If Deke had come to you, or James, and asked you to help him get Buster out of the house, would you have helped?
A Would have got him out of the house?
Q Would you have helped the defendant get Buster out of the house, would you, your husband, his other son, Melvin Fourney, Jr. would any of y'all have been willing to help him get Buster out of the house lawfully without pushing him out, would you have helped get him out?
A Oh, yes, ma'am.
Q Just like you helped him that day whenever he stabbed Buster, right?
A Yes, ma'am.

MS. LIVELY: Thank you. Answer any questions that the defense may have for you.

CROSS EXAMINATION

BY MR. FRICK:

Q Ms. Fourney, how often would you go over to the house?
A Every often.
Q So pretty frequently?

A Yes, sir.

Q And basically just to what, check on him and see how he was doing?

A Check on him to see do he need me to go anywhere for him or anything like that, or bring him something over there maybe.

Q And you've known Melvin Fourney, Sr. for a long time.

A Yes, sir.

Q And would you say he's a mean person?

A No, sir.

Q Have you ever seen him get violent?

A No, sir.

Q Was he a good person then?

A Yes, sir.

Q Good to you?

A Yes, sir.

Q Good to your husband?

A Yes, sir.

Q Good to Buster?

A Yes, sir.

Q Now, the solicitor said that Buster would pick on Melvin. Did it ever get physical?

A No, sir.

Q Solicitor was talking about your statement.

A Uh-huh.

Q Take a look at your statement here.

A Sometimes they'll push around on each other.
Q Okay. You did tell law enforcement that.
A Yes, sir.
Q Okay, in September. You said, "Buster was the kind of person that would mess with people?"
A Yeah.
Q Did he mess with you?
A No.
Q Did you ever see him mess with Melvin?
A Sometimes, push around him sometimes.
Q Did you ever see that?
A Sometimes they'll -- he'll push around on Melvin sometimes.
Q Okay. And, in fact, in the statement, didn't you tell law enforcement that Melvin did want him out of the house at some point?
A Yes, sir.
Q With all this, did it ever get really serious, though? Were you ever concerned? Did the picking and physical stuff, did you ever --
A No, sir.
Q Whose house was this, do you know?
A We stayed on [redacted], we stayed on together with Buster, [redacted].
Q So you've known him for a long time too.

A Yes, sir.

Q All right. When he and Melvin were living together, do you know who paid the rent?

A Deke, Melvin.

Q And Deke is Mr. Fourney?

A Yes, sir.

Q And who paid most of the bills?

A Deke.

Q Okay. Solicitor showed you State's Number 10, I am going to show it to you again. I know nobody wants to look at these pictures, but this is the picture the State showed you, correct?

A Yes, sir.

Q But this is not what he looked like when you got there, right?

A No, sir.

Q What was different?

A His shirt was -- he had a full shirt on.

Q So this picture does not accurately represent what you saw when you came in the door.

A No, sir.

Q This is after somebody has done some kind of work on him, correct?

A Yes, sir.

Q And you were not in the house when EMS was there,

correct?
A No, sir.
Q So you don't know what procedures they did, do you?
A No, sir.
Q How about law enforcement, when the cops got there were you still there?
A Yes, I was standing outside.
Q You were outside?
A Yes, sir.
Q So if they did anything inside would you know?
A No, sir.
Q When you called 911 they did ask you to perform CPR, correct?
A Yes, sir.
Q But you did not.
A No, sir.
Q Okay, that's fine. Do you know how to do CPR?
A No, sir.

MR. FRICK: Thank you, ma'am. That's all of the questions I have.

THE COURT: Any redirect.

REDIRECT EXAMINATION

BY MS. LIVELY:

Q Teresa, I want to be clear, though, on the question that the defense asked you. When you got there, you and

your husband, James, nobody else was in the house but Melvin and Buster, right?

A Correct.

Q When you saw Buster before EMS or the police got there, was he sitting on that couch slumped into that couch in a seated position with that food knocked over beside him?

A Yes, ma'am.

Q He just had his shirt on at that point, is that fair to say?

A Yes, ma'am.

Q Is that what was different is that the shirt is open now?

A Yes, ma'am.

Q You never moved his body.

A No, ma'am.

MS. LIVELY: Thank you, no further questions.

MR. FRICK: Nothing further, thank you.

THE COURT: Thank you, ma'am, you may step down and you're free to leave. The State may call its next witness.

MS. LIVELY: Yes, Your Honor. The State calls Anna Jagger to the stand.

The witness, ANNA MARIE JAGGER, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Ms. Jagger, where do you currently work?

A For the Chester Police Department.

THE COURT: Ma'am, you'll have to speak up.

THE WITNESS: Yes, sir.

Q For the Chester Police Department. And what do you do there?

A I'm the training officer and I'm also in charge of evidence.

Q And are you in charge of the evidence that involved the case of the defendant, Melvin Fourney, Sr.?

A Yes, ma'am, I am.

Q Was there an opportunity for myself as well as defense counsel to come and review that evidence with you recently?

A Yes, ma'am.

Q And do you have that evidence that was collected in that case with you here today?

A Yes, ma'am.

Q All right. I'm going to ask you if you would, please, tell the jury what items of evidence, and pull them out individually as you're referring to them so we can have them marked, if you would please pull out each piece I'm going to have it marked and you say what that piece evidence is, okay?

A Yes, ma'am.

Q All right. And why don't you do this, bring the box here so it will be easier, and they need to be able to hear you so this might work better.

A The first item is going to be blood, it is item number 3905. It's a clear in color biohazard bag, six vials of blood and one vile of occular fluid from the victim.

Q Okay. I'm not going to put that in evidence so you can hold on to that, we don't want the blood. I'm going to set this aside. But that was seized from the victim at the time of autopsy and provided to you.

A Yes. It was given to Lieutenant John Poole who was over evidence at that time.

Q So you've taken the place of Lieutenant Poole and I believe Troy Cannup as well.

A Yes.

Q And are all of those items maintained in the evidence room with no one else to be able to tamper with or have anything to do with this evidence unless going through the evidence custodian?

A Correct.

Q All right. So what's the next items of evidence that was provided to you?

A It's going to be clothing, 3906.

Q If you would tell the jury --

MS. LIVELY: Your Honor, the State would move to enter

this into evidence at this time as State's Exhibit 38.

MR. FRICK: No objection.

THE COURT: Without objection introduced.

(The clothing was received as State's 38.)

MS. LIVELY: Thank you, Your Honor.

Q Please tell the jury what is in this particular bag of evidence that was seized.

A This is clothing. It says brown in color evidence bag containing bloody clothes, blue jean shorts, brown and black belt, brown in color work boots, dark colored shirt belonging to the victim.

Q What is the next item that you have on your list that was submitted in this case?

A That would be item 3907 and it's going to be a knife.

Q So I'm showing you Number 39. Once again, you stated that this is the knife. And was this the knife that was provided to you from the crime scene involving the defendant?

A That is the one that was in evidence that was submitted by the officer on scene.

MS. LIVELY: Okay. Your Honor, the State would move Exhibit 39 into evidence at this time.

MR. FRICK: No objection.

THE COURT: Admitted into evidence.

(The knife was received as State's 39.)

Q Let's go ahead and move forward.
A That's a white in colored knife box containing one bloody black candlestick knife.
Q Okay. What else do we have?
A 3908. And this is going to contain a red shirt with white writing, black in color flip flips, black shorts with blue stripes and white socks.
Q Okay. And once again, this was seized from the same case number, same location, same officers.
A Correct.
MS. LIVELY: Your Honor, the State would move State's Exhibit Number 40 into evidence at this time.
MR. FRICK: No objection.
THE COURT: Without objection it's received.
(The clothes were received as State's 40.)
A The next item is going to be 4087, which is going to be this envelope. And it is a brown in color evidence envelope labeled item number six containing known fingerprint and/or palm print.
MS. LIVELY: Okay. State moves Exhibit 41 into evidence at this time.
MR. FRICK: No objection.
THE COURT: All right, admitted.
(The fingerprint envelope was received as State's 41.)
A The next item is also blood, it's going to be blood

evidence back from SLED, item number 4491.

MS. LIVELY: Your Honor, State moves Exhibit 42 into evidence at this time.

MR. FRICK: Is there some explanation of where this blood is from?

MS. LIVELY: It is on the evidence sheet -- hold on one moment, Your Honor.

MR. FRICK: No objection.

THE COURT: Without objection admitted.

(The blood sample was received as State's 42.)

A The next item is going to be DNA, that's DNA back from SLED, item 4492.

MS. LIVELY: All right. State moves State's Exhibit 43 into evidence at this time.

MR. FRICK: No objection.

THE COURT: All right, introduced.

(The DNA report was received as State's 43.)

Q Are those all of the items, Officer Jagger?

A Yes, ma'am.

Q If you will just take a seat for me, please.

A (Witness complies.)

Q Now, Officer Jagger, when you received the items from an individual and I'm going to let you just -- when you receive it from an officer whose actually done the crime scene and they submit it to you, who actually packages those

items?

A That would be the officer on the scene.

Q The officer on the scene. So when you get it it's already been packaged in this type of packaging?

A Depending on what the officer at the time has.

Q Did you have documentation as to who submitted this to you whenever -- or it wasn't you at the time, but documentation of who submitted these items to you?

A Yeah. I have a chain of custody for each item.

Q And who was it that actually submitted the knife to you?

A The knife would be Lieutenant Tammy Levister.

Q Tammy Levister. All right. And how about the items that were being worn by the victim, that would have been your item number 3906?

A Yes. All items except for the two from SLED are from Lieutenant Tammy Levister.

Q Okay. All right. So the two from SLED, who actually submitted those?

A John Poole, Lieutenant John Poole.

Q And is John Poole the person who used to be over evidence at the time at Chester City?

A That's correct.

Q All right. And is that standard policy for the evidence custodian to actually be the one who will run these

items to SLED and bring them back once testing has been completed?

A Yes, ma'am. Sometimes an investigator will but a lot of times an evidence technician will also.

Q An evidence technician will? Okay. Now, whenever items such as clothing and things of that nature are actually packaged, who packages them into this particular bag documenting what those items are as well as what all is in the bag?

A That again would be the officer on scene and/or the investigator on the scene.

Q All right. And since you were not necessarily the evidence custodian, or you weren't at that particular time, whenever you receive these items, would you just actually -- who wrote this information on the front as to what was in here?

A That would be the investigating officer, the person that sealed the bags.

Q In regards to this particular bag that I'm pulling a shirt out of right now, was this an item that was actually taken off of the victim in this particular case, Mr. Leonard Hayes?

A Some of the items were retrieved from Piedmont Hospital is all -- they have documented Piedmont Hospital.

Q Piedmont Hospital. All right. So whenever these items

are actually retrieved, is there anything on these particular items that has been manipulated, changed in any kind of way whenever they're actually retrieved and placed into evidence?

A No, ma'am. They try to secure the scene so there's no damage.

Q Why do they put things that contain blood on them into a paper type bag?

A It's so that it can breath and get air and dry. Because if you put it into plastic it's going to mold and mildew and be contaminated.

Q All right. So with blood being on a particular item such as a shirt that the victim was wearing, you would need to make sure to maintain the integrity of the evidence by actually putting it in a paper bag?

A That's correct.

Q So other than the victim's boots, the jeans and the shirt he was wearing that day when he was stabbed, were those the only items that were actually taken from the victim?

A Yes, that is what is on this evidence sheet.

Q Other than the blood that you're going to take back and put in the fridge, right?

A Yes, ma'am.

Q Okay. After you maintained the records for all of the

evidence and made sure that it's brought to court for trial or whatever purposes, do you at that point in time have anything else to do with the handling of evidence in the case?

A If it's given to me I'll secure it back in the evidence room, otherwise -- like today I log it out to myself to go to court, and then if y'all keep it then I will put that it has been released to Candace Lively on today's date and time.

MS. LIVELY: Okay. Thank you so much, Officer Jagger, I appreciate it. Answer any questions that Mr. Frick might have for you.

THE WITNESS: Yes, ma'am.

CROSS EXAMINATION

BY MR. FRICK:

Q Officer Jagger, you're -- well, I don't know what your entire job is, but for the purposes of this case your job is to keep up with everything that was collected by Chester County Police Department, correct?

A Yes, sir, the city.

Q I'm sorry, I said county, thank you for catching that. You don't go out to the scene or at least you didn't go out to the scene in this particular case, correct?

A That is correct.

Q You just keep up with what they've collected.

A Absolutely.

Q You don't analyze it.
A Not this evidence, no, sir.
Q Do you take -- in this particular case did you take any additional samples? Did you take this shirt and take a clipping off of it?
A No, sir.
Q So you just kind of log it, keep up with it, correct?
A That's correct.
Q And it's everything, correct?
A Yes, sir.
Q And, in fact, is there a list generated?
A Yes, sir, we have one. We use Law Track, and then also -- and at that time they had a handwritten chain of custody where they write it down and then when we get it we put it into evidence in the system.
Q Okay. I'm going to show you this document that I've got. Do you recognize that?
A Yes, sir. This would be pulled from our Law Track system. We have a evidence monitoring when you list all the items and it is collected with the case.
Q And that has every item that you've got in evidence on this particular case, correct?
A Yes, sir, some items.
Q Okay.
MR. FRICK: Your Honor, at this time I would move this in

as Defense Exhibit whatever I am up to.

MS. LIVELY: Without objection, Your Honor.

THE COURT: All right.

(The evidence report was received as Defense 6.)

Q Can you tell me on there where you've got blood swabs from marker six, seven, anything like that?

A I'm sorry, blood swabs?

Q Blood swabs from marker six or seven.

A I only have the blood back from SLED.

Q Okay. Do you know where that came from?

A Sometimes when they send in one item SLED will turn it back in. Like that's a SLED envelope, it's not an original item, they give you an additional item which is why some of those last two have a higher item number because I had to add them when they came back from SLED. They were not originally submitted.

Q Okay. So the blood that you have got is something that was generated -- not the blood was generated but the item was generated at SLED, correct?

A That's correct.

Q They would have done a swab there, correct?

A Yes, sir.

Q Okay. So as far as any blood swabs from marker two, three, four, five, six or seven, you don't have any.

A That's correct.

MR. FRICK: Thank you, ma'am, that's all of the questions I have.

THE COURT: Any redirect?

MS. LIVELY: None from the State, Your Honor.

THE COURT: Thank you, ma'am, you may step down, you're free to leave. The State may call its next witness.

MS. LIVELY: The State would call Dr. Robert Thomas to the stand.

The witness, ROBERT THOMAS, M.D., was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q Dr. Thomas, please tell the jury where you work.

A York Pathology Associates in Rock Hill, South Carolina.

Q How long have you worked for York Pathology?

A Seventeen and a half years.

Q What is your job title there?

A I'm a pathologist.

Q How long have you been a pathologist?

A For those 17 and a half years, plus five years of residency training at USC in Charleston.

Q So you've got -- where did you receive your education to become a pathologist?

A So I did my undergraduate training in engineering at Clemson, and then did a four year medical school education at

MUSC in Charleston, and then a five year residency program also at MUSC in Charleston.

Q Since that time how many autopsies just in general would you say that you've either observed or actually did yourself?

A Over 700 autopsies, and about 200 external examinations.

Q And during that time, have you had the opportunity to be called to court as an expert witness to testify in cases such as a murder case that we have here today?

A I have.

Q Have you ever been qualified as an expert in pathology?

A I have.

MS. LIVELY: Your Honor, at this time the State would offer Dr. Robert Thomas as an expert in the field of pathology.

THE COURT: Any voir dire on qualifications?

MR. FRICK: None.

THE COURT: All right, thank you. I'll declare him as an expert then in the field of pathology.

MS. LIVELY: Yes, sir.

THE COURT: Ladies and gentlemen, what I've just done is qualified this witness as an expert witness. An expert witness is different from what's called a lay witness. Normally a lay witness can only testify about what that person saw, heard or smelled or something like that, okay? An expert witness can go further than that, an expert witness can give opinion testimony

because of that witness' training, expertise knowledge or skill if they're qualified that way. Well, you just heard me qualify this witness that way. Now, just because a witness is qualified as an expert doesn't mean you have to accept the opinion, okay? It's just something for you to consider with the totality of the evidence that you discuss and consider when you were deliberating, okay?

MS. LIVELY: Thank you, Your Honor.

Q Dr. Thomas, were you actually one of the pathologists on call at the time whenever this particular case involving the defendant, Melvin Fourney, was referred to your office?

A I was.

Q And that was around September 1st of 2015; is that right?

A That's correct.

Q Do you have your autopsy records with you from this particular case?

A I do.

Q Tell us what information you had prior to actually receiving the body or at the time you received the body regarding the circumstances of the death.

A Received a phone call from the Chester County Coroner's Office that there had been a stabbing, a homicide presumably here in Chester and that they would need an autopsy. Two individuals in a house and a single stab wound is the

information we had at the time.

Q And when you receive this kind of information typically do you have other people show up at the autopsy just to document the process?

A We do.

Q All right. Who all was there for the autopsy done on Leonard Hayes?

A So Terry Tinker, who was the Chester Coroner, Stephanie Bishop who an assistant with the Chester Coroner's Office, and Officer Levister who was the police department officer at the time, as well as David Chambers who is an assistant with our practice.

Q Now, whenever the body is actually received, do you also like to have someone in the room who is documenting the process with either photographs or some type of visuals?

A We do.

Q And who was it that was actually documenting the autopsy at that particular time?

A So Officer Levister would have probably taken the photographs during that autopsy.

Q And are you aware or is it obvious that whenever the officers that are taking the photos, whatever it is they are seeking to actually capture during the autopsy?

A Presumably they would have taken photographs at the scene, and then when we do the autopsy that's an additional piece of

information gathered. They would come take autopsy photographs to help put together and piece together the evidence and the story as far as what happened on that day.

Q And what other items were brought to the autopsy to assist you in your -- in trying to assess the injury to the victim by the defendant?

A So there was a knife recovered at the scene that was thought to be the most likely weapon used during this homicide.

Q Okay. And I'm going to approach you and show you an item which has been marked and in evidence as State's Exhibit Number 39. It's sealed so -- okay. Okay. I am going to show you this knife and ask you, does this represent the knife that you recall being brought to the autopsy at the time whenever you performed it on Mr. Hayes?

A It does.

Q Now, when you come before a jury and you have to explain the types of injuries that were sustained by a victim such as Mr. Hayes, is it helpful for you to be able to have photographs to actually show those injuries of the victim?

A It is.

Q I'm going to ask you if you would please first just describe how you divide up an autopsy so you can let the jury know how you find evidence of injury and other things you do with the body, and then I'm going to ask you a few

questions about the photographs.

A Sure. So the first part of autopsy would be what we call an external examination, and basically we're going to weigh the body, get the height of the body, go from head to toe, look at eye color, try to get a description, any characteristics to basically determine that is the individual that it is thought to be. Looking at any clothes, remove clothes at the time. We would look at any sort of natural disease processes externally that might be evident, and then we would want to document any injury pattern, any scars, in this case a stab wound. We would measure the stab wound, we would try to characterize the stab wound or document if there were multiple stab wounds, or if it's a gunshot case where the gunshots are, what their characteristics are. And then basically this helps to describe and characterize the injury patterns to the decedent.

Q Okay. And once you collect all of this information, do you actually document it in a hard copy autopsy?

A We do.

Q And you provide that to the State as well as to any defense counsel, correct?

A Correct.

Q All right. Did you prepare an autopsy report in regards to this particular case?

A I did.

Q All right. And whenever you prepare that information

that section where you put evidence of injury, would you please tell the jury exactly what it was that you found in your examination of the victim regarding the injury he sustained?

A Sure. Basically he had a single stab wound in the left mid upper chest region approximately right here. It was a sort of irregular V-shaped incision, it measured approximately one inch in part of that V, about one and a quarter inch in the other part of that V. The part of the examination once we get beyond the external examination is to actually open the body up and do an internal examination. So during both the external and internal examination we would further characterize that wound. We would try to probe it to try to get an idea of the depth of that injury, and again, that helps to correlate with the potential knife that might be found on the scene to see if that may or may not be consistent would that injury.

Q And Dr. Thomas, would the photographs from that particular autopsy assist you in describing the level of the injury to the victim in this particular case?

A Yes.

Q I'm going to show you what's just been marked and not in evidence at this time, they're marked as State's Exhibit 29, 30, 31, 32, 33, 34, 35, and 36, so they are 29 through 36. And all I'll ask you to do at this point without actually showing them to the jury or anyone else, do you

recognize those photos and whether or not those are the photos of the victim in this particular case, Mr. Leonard Hayes?

A Yes, I do recognize them, and yes they are.

Q And would the information that's on those photos assist you in describing the injuries and the cause of death to this particular victim?

A Yes.

Q All right.

MS. LIVELY: Your Honor, at this time the State would move in Exhibits 29 I believe through 36 from the autopsy of the victim in this case.

MR. FRICK: Your Honor, I have a matter of law we need to take up.

THE COURT: All right. Ladies and gentlemen of the jury, there's an issue of law that the Court needs to resolve with the lawyers so at this time I'll ask you to go back to your jury room, don't talk about the case, okay? Thank you very much.

(The jury left the courtroom.)

THE COURT: All right. Mr. Frick?

MR. FRICK: Thank you, Your Honor. Your Honor, I believe these photographs are cumulative and objectionable under 403 as being more prejudicial than probative. Obviously we have the pathological report. The doctor can -- has done and excellent

job of articulating in the report and will do so on the stand of describing the injuries without having to show these rather I would call gory photographs. I certainly understand that the State is trying to demonstrate the depth and their allegations of the force used but I believe they can do that without having to introduce these pictures to the jury. That's my objection basically is being cumulative and more prejudicial than probative.

THE COURT: Madam Solicitor?

MS. LIVELY: Yes, sir, thank you, Your Honor. Your Honor, the balancing test in this particular situation has been reiterated in State v. Collins, and Your Honor is very familiar with that case and the horrible nature of that particular case of a child being mauled by dogs. In that particular case our supreme court clearly stated that the State has that burden of proof beyond a reasonable doubt to be able to prove their case. This case, clearly there's a situation where the defendant is claiming self-defense, there's where this is possibly going to be a charge of voluntary manslaughter, and the Court -- in order for the State to be able to show those jurors how vicious of a stab wound that this was to the victim, not only the depth but also now the knife would have went in and then with a jagged serrated edge came back out and actually tore, that's the reason why there's that unusual wound to the victim. Also what I'm showing here -- and I'm going to tell the Court what I

already did, out of 27 photos from the autopsy I went down and I just picked out these nine that are specific to what I believe the State has to prove in order to show murder in this case. And one of the things I think that's clearly important, and I'm going to ask Dr. Thomas about it, is I changed that photo, which is the original to now the more muted color so that the blood wouldn't be so obvious to show where the rib was actually separated from the sternum whenever the knife went into the victim and there's no way that a jury is going to understand that without seeing it for themselves. And in order for me to show the level of violence and intent by the defendant I've got to be able to show these photos. It is not intended at all to be unfair and unduly prejudicial, and the balancing is whether or not it serves a purpose in this particular case, and that purpose is to be able to give an understanding to the jury as to the level of violence that occurred in that stabbing. Then we have the probe also, Your Honor, this is just showing the probe. I understand that when I first looked at that I'll agree, that probe, I didn't understand what the purpose was, but then if you go to the next photo it shows that it's going into the tissue of the victim and then when they pull it out it's actually a measurement of how far that knife went.

THE COURT: Let me stop you there then. Why show Exhibit 29 and 30, which has a partial facial picture of the victim

when a partial facial picture has already been admitted into the record in this case? I understand your probe argument as to number 30 showing it going in, but doesn't 31 -- move to 31 -- that one shows the probe going in with the facia or whatever exposed without a face.

MS. LIVELY: Right.

THE COURT: Why do you have to have the facial pictures in there to show what you're trying to show?

MS. LIVELY: I'm sorry, I'm not seeing the ones you're talking about.

THE COURT: That one shows the probe one, correct?

MS. LIVELY: Yes, sir.

THE COURT: The previous one shows the probe with his face.

MS. LIVELY: I can cut the face out, I can cut the face out.

THE COURT: Okay.

MS. LIVELY: It shows why they do what they do and why they're probing the person beforehand and then it shows how far they go down into the tissue and then it shows the measurement.

THE COURT: What do you mean cut the face out?

MS. LIVELY: I can crop it out.

THE COURT: On the screen.

MS. LIVELY: Yes.

THE COURT: But not on this.

MS. LIVELY: Yes, I can crop it out of that.

THE COURT: All right, go ahead, I'm listening. Why do you have to have that one and the other one?

MS. LIVELY: Because I want to show how they prepared to go in to show the depth of the wound to this victim. So what they're doing is they show they start out with the probe, all right, they put it inside of the victim to see how far in it goes. Then it shows, well, then the next thing we do is we probe again after we've actually gone in internally to make sure we can show how far the probe goes after the tissue has been pulled back. And I didn't bring in all of the pictures of the heart and the different layers and I have that as well.

THE COURT: Well, this is just argument. Ask questions of your expert witness to establish what you're arguing to me right now.

BY MS. LIVELY:

Q Dr. Thomas, you're hearing my statements to Your Honor. Please explain to the Judge, if we cropped out the face of the victim that wouldn't hinder your ability to use these photos, is that fair to say?

A That's correct.

Q So initially whenever you get the body and you recognize and document where the injury is, what is the next thing you're doing in this particular photo, which is number two on the screen?

A Well, we're probing the wound again to get a depth on that wound.

Q Okay. So you're probing it to get a depth. And then the next photo that I have, and it may be out of order because I just pulled certain ones, in this particular photo have you already gone into the body and looked at and peeled away each part of the tissue?

A Yes.

Q So once you've done that and you go back at the end and you put everything back together, do you once again measure it and determine the accuracy of the probe from initially whenever you got the body?

A Correct.

Q Okay. So on this particular one you're basically confirming the probe and the depth of that wound.

A Yes, I am.

Q Does this picture help you to explain why you do that in order to determine the accuracy of the wound that was inflicted to this victim?

A Yes.

Q And does it help you to explain that to the jury?

A Yes.

Q Okay. Now, the next photo -- well, this one I don't think there's an objection to, this is the one where the probe it measured.

THE COURT: For the record he objects to all of the photos. This would be -- all right. For the record the previous questions were to Exhibit 30 and to Exhibit 31, your question now is as to Exhibit 32. Go ahead.

MS. LIVELY: Yes, sir, thank you.

Q As to Exhibit Number 32, what is the purpose of you measuring the probe once it's been removed from the body?

A To get a depth.

Q So you're just measuring it at that point.

A Yes.

Q And then the next photo, the knife which I showed you earlier, this was what actually was brought to the autopsy, correct?

A Correct.

Q And you have it here on the screen. And is this the same measurement tool that you were using for the probe?

A Yes.

Q And is the purpose to show that that weapon would be consistent with or could have very well been the murder weapon at that time?

A Correct.

Q So you measured that. Now, as for the wound being measured, what is the purpose of you measuring the actual wound itself?

A This is the length of the wound itself, and again, that's

going to correlate potentially with the blade length.
Q And one of the things that I was asking you to tell us is, it's a little bit of an irregular shape in regards to the wound, how does that picture help you describe how the entrance and the pulling out of the knife might have been shown by this particular wound?
A Sure. So the totality of that measurement is over two inches, about two and a quarter inches where the blade is only an inch in length. And it also has this V irregular shape which indicates or suggests that the blade would have been twisted and then brought out or further down to create that additional length and additional shape of that wound.
Q So it shows that kind of unevenness so it didn't smoothly go in and come right back out.
A Right.
Q Then the next photo. This is the one that's actually -- this is the original photo from the time of the autopsy, okay? Now I'm going to back up one and then two. All right. This is the same representation, it's muted out, okay? Does this help you to explain to the jury once again with -- how much tissue did he actually perforate when this knife went into this body?
A So it went through the skin, the subcutaneous fatty tissue, a little muscle, and at this point this is showing the fourth rib to where it's been severed from its junction with

the sternum. So it went through that and it went into the pericardial sack which contains the heart, then it went through the left ventricle of the heart, the septum of the heart, and then the right ventricle and the septum and then the left ventricle of the heart, and then it hit the back end of that sack that contains the heart.

Q There were actually photos of tissue being separated from the heart all the way through as well, correct?

A I believe there were.

Q Yeah. So in regards to the level of force and the tissue being separated by this knife, does this picture accurately reflect -- does it accurately reflect how the rib was actually severed from the sternum by this knife?

A It does.

Q Do you think that there's a way for you to portray that to the jury without being able to actually show them what this means and what it looks like?

A Well, I can portray it but a visual is very helpful.

Q Yes. Okay. And this is a portrayal of that actual injury, correct?

A Correct.

Q And it's a documented injury in the actual autopsy, correct?

A It is.

MS. LIVELY: Okay. Thank you, Doctor.

THE COURT: All right. Any further argument?

MS. LIVELY: Your Honor, the doctor just testified he can portray the injury without having to show ribs that are sticking out without skin on top of them, and he's done an excellent job in the report describing it. We're talking about a rib being cut from the sternum, that is a visual enough language without having to have the photograph up here, I don't think it's necessary. In regard to the photographs with the probes, I believe he can ably describe it with one of them but not both of them. I don't see the necessity of having both of the pictures with the body laying there and a probe being stuck in it, one is the initial view the solicitor says they can crop the face out of it, and then the next one will be the one where I believe some skin has been removed, I think either one would be appropriate. Obviously I still object to all of them as being cumulative and more prejudice than probative, but I certainly disagree that they need all of those photographs.

THE COURT: All right, thank you. As to defendant's motion -- or, excuse me, as to defendant's objection, having analyzed this pursuant to Rule 403 I am not going to allow State's Exhibit 29 or State's Exhibit 30 into evidence, however I will allow 31, 32, 33, 34, 35 and 36 into evidence over the defendant's objection after properly balancing the prejudicial versus probative value. I understand the State believes it could crop the facial picture out but I don't want to confuse

the jury any so we'll just leave those -- I've heard the doctor's testimony, I believe he can adequately discuss what he needs to discuss and you can prove what you need to prove by leaving Exhibit 29 and 30 out, okay?

MS. LIVELY: Your Honor, if you don't mind handing those two to me so I can take them off the screen and we'll be ready to move forward.

(A break was taken.)

THE COURT: There's a stipulation in the record which is what, Madam Solicitor?

MS. LIVELY: The stipulation on the record is that the toxicology report and findings are going into evidence without objection. We're both agreeing to these findings, we're both agreeing that they are accurate and we don't need a chain of custody and all of that kind of stuff so we're not requesting any kind of testimony.

MR. FRICK: That's correct.

THE COURT: All right, so stipulated. I'll tell the jury if you need me to what a stipulation means, it just means that both parties agree that it is what it is.

MS. LIVELY: Yes, sir, I think that is fine. The only thing, Your Honor, I brought to your attention, I am going to ask you to take judicial notice as to the actual climate data from the time of the actual stabbing, which was pulled off of the weather --

THE COURT: And what is the weather variance for that day?

MS. LIVELY: The weather variance for that day was on September 1st of 2015 was 88 for a high and a low of 64.9.

MR. FRICK: No objection.

THE COURT: I'll take judicial notice of that fact as well, and you can publish that fact to the jury along with the other document in your hand.

MS. LIVELY: Thank you, Your Honor. Since you're taking judicial notice do I need to have it marked in any way?

THE COURT: For the record in the case please do.

(The jury returned to the courtroom.)

THE COURT: All members of the jury are present. You may resume your questions.

MS. LIVELY: Thank you, Your Honor.

BY MS. LIVELY:

Q Dr. Thomas, whenever we broke just briefly a minute ago I was asking you questions in front of the jury in regards to whether or not photographs from the actual autopsy would assist you in explaining the injury that led to the death of the victim, Leonard Hayes, in this case, do you recall that?

A Yes.

Q What I'm going to ask you to do now -- well, first let me do this, I'm going to show -- and they're actually in your possession at this moment, State's Exhibit 31, 32, 33, 34, 35 and 36, and you've already stated that you recognize

these particular photographs. Would these photographs assist you in explaining the injuries to this victim?

A It would.

MS. LIVELY: Your Honor, the State moves Exhibits 31 through 36 into evidence at this time.

MR. FRICK: Objection as previously ruled upon.

THE COURT: All right. Objection -- all right. We've already ruled upon that, the record is clear, those are admitted over objection.

(The photos were received as State's 31-36.)

MS. LIVELY: Thank you, Your Honor.

Q Before we actually pull up the photos, Dr. Thomas, if you don't mind stepping down, I am going to ask you to assist me, and you can bring your autopsy report with you if you need to.

A (Witness complies.)

Q Now, I'm going to show you some photographs here, and before we actually pop them up on the scene just to prepare the jury for what it is they're going to see, I am going to show them this smaller visual right now, okay? And State's Exhibit Number 31, I will show it to them in a second, what is the purpose of this particular picture? Just tell me what the purpose of this picture was.

A So this is of the autopsy itself and there's a metal probe that's going into the stab wound. The purpose of that is to

get a depth of the wound as well as directionality of that wound.

Q Can you hear him? This is the mic, if you'll talk a little bit louder.

A Sure. So this is a picture of the autopsy itself. And what it shows is a stab wound and it shows a metal probe and that shows -- it's designed to help get an idea of the depth of the stab wound as well as the directionality of that wound.

Q Okay. Now, this is State's Exhibit Number 31. This photograph that you just described, the probe that is actually in the body at this point in time, is that the wound as it looked whenever you actually received the body from Chester County?

A Yes, it is.

Q And when you do an incision into the body where we see underlying tissues, what are you doing when you're going through each layer at that point?

A So we've already described what the external examination is, we described the internal examination, but basically after we finished with the external examination and the internal examination. The first part of that at least with the thorax and abdomen is to do a Y-shape incision like this, and we will reflect the tissue back and you can see part of that Y incision here. We reflected the tissue back and then we will remove the rib sections with rib cutters like this. Then we will proceed

to take out all of the organs, we will weigh the organs, we will look for any natural disease processes in the organs. In this case in particular we will document any injuries that were inflicted by this injury. So in this case we removed the ribs, and you can see in the bottom right-hand corner where there's a separation of the tissue, so we removed the ribs and we started to investigate into the organs. And then we put them back together and you can reprobe again just to sort of confirm the depth of that wound.

Q Next photo, please. Okay. I'm going to show you -- this is State's Exhibit 32, and you can refer to it as you're talking to the jury. We've already seen the probe, you just showed that to us in 31. Tell the jury what you're doing at this point.

A So again at this point we're taking that same probe and we're taking a tape measure and trying to measure the depth of the probe. It's a little bit off here, it's basically four and a quarter inches is what we measured it as.

Q And that was documented in your autopsy report?

A Correct.

Q Four and a quarter inches depth?

A Correct.

Q All right. And when you confirmed that depth, Doctor, how many layers of tissue did you have to go through where you saw evidence of either the perforation or puncturing by

the knife?

A Again, the wound is right there in the chest roughly. It went through the skin, it went through the subcutaneous tissue, a little bit of muscle and then went through the space between the third and forth rib, and then it actually severed the attachment of the fourth rib to the sternum which is the bone right here, went into the pericardial sack, which is the sack that contains the heart, went into the -- one side of the heart, the right ventricle of the heart through the septum of the heart which separates the two main pumping chambers, went in the left ventricle, main pumping chamber of the heart, through it and out the back of the left ventricle, and then made a small little wound on the back of that sack that holds the heart.

Q Once again, four and a quarter inches all the way in through the tissues of the heart all of the way to the back.

A Correct.

Q All right. Next. So when you were able to do that measurement you stated earlier that you had the opportunity to have the actual weapon that was used or was found on the scene with blood on it at the time that the decedent was found; is that correct?

A Yes, that's correct.

Q Is this the knife that we're seeing in this picture here?

A Yes.
Q All right. And once again the measurement of the blade is reflected as what?
A As five inches.
Q So all but three quarters of an inch of this knife would have gone into his body.
A Correct.
Q According to your measurements.
A Correct.
Q Now, that's Exhibit Number 34. Doctor, if you would, please explain to the jury the measurement that you got and the purpose of measuring that particular wound.
A Sure. So now this is a centimeter scale, so measurements on the autopsy -- this is metric obviously, you want to do those in U.S. measurements which is inches. So there's two components to this injury. The first one is on the left side of that measured by one inch in length, and then you can see it makes a turn kind of upwards and that measured about one and a quarter inch, so all total it was about two and a quarter inches in length.
Q And when looking at this knife in relation to the injury that's portrayed in this particular photo, if you would please recreate to the jury in your professional medical opinion what would be consistent with that type of a wound?

A So the width of the blade is the metal part from here between my two fingers, again, you could measure that as five inches. The length of the blade -- that would be the length. The width of the blade is measurement between my two fingers here and that would measure one inch. Again, if you look at the injury, that first injury it measured about one inch, that second one was measured at one and a quarter inches. So what most likely happened is that the first one to the left side of the screen would have been the first incision by the stab wound, and then the knife would have been twisted or turned and/or removed, and when it was removed from the decedent it would have cut and make that second part of that wound.

Q Would an injury like that result in significant blood loss?

A Yes. Well, in this case because it hit the heart is the reason we had so much blood loss.

Q And as matter of fact, what was your cause of death?

A Basically exsanguination, internal and secondary to the stab wound to the heart.

Q Exsanguination means --

A He bled out.

Q Now, would there have been a lot of blood externally from a wound such as this?

A Yes.

Q Yes, all right. Immediately or would it take some time

for the blood to --

A Very quickly, seconds to minutes.

Q Now, before you go to the next one I'm going to show you State's Exhibits 35 and 36. And if you will kind of warn the jury what it is they are about to see next so they'll understand it when they see it. So 35 and 36 are the same thing, but explain to the jury what they're looking at.

A So again, after we do this Y-shape incision and take off the breast plate or the ribs, we would examine that. And as I mentioned, the stab wound between three and four and it severed the attachment of the rib to the sternum. What this shows here is basically the cutting and the detachment of the rib number four from the sternum over here.

Q And I've got it up here on the screen now, and if it would assist you you can actually explain to the jury what it is that they are seeing. If you could speak loud enough, there's a microphone over there.

A Sure. This is remanent of a core here and this is where it attaches to the sternum and you can see where it has been severed right there.

Q All right. And that circle that is on the screen, is that indicative of the severing of the rib from the sternum?

A It is.

Q And that's what you're referring to.

A Correct.

Q All right. Doctor, you can actually have a seat. Thank you.

A (Witness complies.)

Q Dr. Thomas, as a part of your autopsy and collection of the facts do you receive at some point a toxicology report from the blood that was drawn from the victim in a murder case or any kind of case?

A Yes.

Q And did you receive the toxicology report in this particular case involving the deceased, Leonard Hayes?

A I did.

Q And that particular report was submitted through SLED; isn't that correct?

A That's correct.

MS. LIVELY: I'm going to actually, Your Honor, at this time, prior to the jury coming back in, counsel and I actually stipulated to this toxicology report to avoid having to have the SLED agent come here and testify and so I would like to go ahead and put it into evidence at this time.

THE COURT: You can do that. Ladies and gentlemen, what stipulation means is that both parties to an action in court agree that the document is what it says it is, there's no further level of proof required. It is just a stipulated fact, that means everybody agrees that it is what it is, okay?

MS. LIVELY: Thank you, Your Honor.

(The toxicology report was received as State's 44.)

Q I'm going to show you State's Exhibit Number 44 which is in evidence and stipulated to, and ask you if that is the report that you incorporated into your final autopsy?

A It is.

Q All right. And what did it reflect in regards to any type of drugs or alcohol in the system of the victim, Leonard Hayes?

A He had ethanol, or alcohol. He had cocaine-cocaine, and then two cocaine metabolites, cocaethylene and benzylamine.

Q And what was the level of ethanol in his system?

A It was point 2.10.

Q All right. And what was the left of any of the cocaine?

A .01.

Q And you're not a toxicologist, correct?

A Correct.

Q So you use these actual -- the information just incorporated into your report just as a part of the your findings.

A That's correct.

Q All right. Thank you. Now, Dr. Thomas, whenever a person -- you talked about the blood loss and multiple layers of injuries and the depth of the wound. In regards

to a person being found in that particular condition, if you're not qualified to tell me this that's fine, you can say you're not, but how quickly when someone has bled out like that would they die?

A Again, it would be a matter of minutes, it would be very quickly due to the injury to the heart.

Q Just from your experience you would bleed out pretty quick?

A Very quickly, yes, ma'am.

Q All right. And in regards to someone who actually finds the body whenever a body is actually -- when someone dies, how quickly does their body temperature start to drop?

A Well, ballpark figure about a degree or two per hour, but there's a lot of variables. The ambient temperature in the room, metabolic rate of the individual, muscle mass, but that's just a ballpark figure.

Q Just a ballpark about degree per hour?

A Degree or two, yes.

Q And what's our body temperature.

A Around 98.6.

MS. LIVELY: Your Honor, at this point the State would move State's Exhibit Number 45 into evidence. It's my understanding that this is also a stipulation through the defense regarding the climate on that day.

MR. FRICK: No objection, Your Honor.

THE COURT: Without objection. Again, this is a stipulated fact and I took judicial notice that the climate was as that document says it was and you may publish that.

(The weather report was received as State's 45.)

Q This occurred on September 1st of 2015, and this is actually a U.S. data report regarding the temperature, the high and low of that particular day, it's the very first one. Do you see that, Dr. Thomas?

A I do.

Q And what was the high for that day?

A 88 degrees Fahrenheit.

Q And what was the low?

A 64.9 Fahrenheit.

Q And in regards to a body, you said it would become cool -- or would it become cool to the touch it would take about -- it loses about a degree every hour on average?

A A degree or two.

Q All right. In the month of September in Chester in a home without air conditioning, do you believe that within ten minutes his body would have been cool to the touch?

A No.

Q How about 20 minutes?

A No.

Q How long do you think it would have taken just in your professional opinion as a medical opinion, how long would it

have taken for his body to become cool to the touch?
A I guess that depends on everybody's perception of what cool means. If the outside temperature that day is -- 88 was the high theoretically he's not going to get much more below 88 at all which I don't know that you would -- when we do autopsies a lot of times bodies have been in cooler in the hospital in a morgue for a period of time. In a September day, 88 degrees, I'm not sure that you're going to feel a body that's cool to the touch, that's just my opinion.
Q Thank you. That's all. So after everything that you did in your report, Dr. Thomas, and the information that was provided to you, can you tell this jury within a reasonable degree of medical certainty as to the cause of death and manner of death as concluded by you regarding Leonard Hayes?
A Exsanguination secondary to a stab wound to the heart, manner of death would be homicide.
MS. LIVELY: Thank you. Answer any questions that the defense may have.
THE COURT: Mr. Frick?
MR. FRICK: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FRICK:
Q Dr. Thomas, so it's fair to the say cool to the touch is not a very accurate term to describe something?
A Yes, it's very subjective.

Q When you were doing this examination, was it the one wound or were there multiple wounds?
A Just one.
Q And, of course, I know you described it looked like there might have been some twisting, but it wasn't somebody who just had been stabbed multiple times.
A No.
Q One stab wound that perforated the heart.
A Correct.
Q And it was in the heart itself, it's just one perforation that caused it to bleed out?
A Yes.
Q And you're an expert, give me your opinion, about how long do you think it would take for someone to bleed out with this injury?
A Again, I would say minutes. It would take -- like ballpark one to five minutes, it would be pretty quick.
Q And, of course, you were making your -- well, are you giving information about the scene to make your determinations?
A Again, it depends upon who is at the autopsy, but generally speaking the more information you can have the better you can piece together the information you're seeing at autopsy.
Q In this particular case, were you given any information

about where the victim was found or anything like that?
A Again, this was 2015 so it was awhile back.
Q Okay. And you just don't recall right now?
A I don't recall.
Q That's fine. Obviously for a wound to occur with an object like this there has got to be some force exerted on it, correct?
A Correct.
Q It's either got to be thrust from one direction or the other, correct?
A Correct.
Q So the force could come from someone going this way, or because this is a sharp object the force could come from the other direction, could it not?
A Theoretically.
Q Okay. And you can't determine by looking at the wound which direction it came from, can you?
A No.
Q So essentially your determination is that the stab wound occurred you can determine that there may have been some type of twisting as it comes back out, is that fair? Is that your assessment?
A Well, it could have been as it was coming back out or it could have been a deliberate downward motion and then out.
Q Okay. But you can't say which side the force was

coming on that caused the injury to occur.

A No, I can't.

Q Have you got your report with you?

A I do.

Q I can let you look at this copy if you don't have it right there with you. What I'm looking at the description of injury -- and make sure, is that your report?

A It is.

Q Under description of injuries you talk about something called a hilt wound or hilt impression?

A Yes.

Q What is that?

A So again, the knife, the blade is the metal part and then you've got a handle which is the -- I think in this case it was the black part.

Q Here. I'll let you -- I don't remember what number that is but however you want to --

A Sure. So this is the blade, this is the handle, the hilt just refers to this part right here, so the junction of the two. So sometimes when a knife might go all the way in an individual you might actually see a bruise around that stab wound which would suggest it went completely all of the way in, I didn't observe that in this case.

Q So no hilt wound or bruise.

A Correct.

Q So it was not thrust in to the point where the hilt hit the chest.

A Correct. Again, you're not always going to see that, but if you see it it's helpful information.

Q Right. But you did not observe it.

A I did not see it, correct.

Q All right. Let's go to the toxicology in this report. I know the solicitor had you quickly go through it, but are those findings significant to you? You obviously include them in your report, why do you do that?

A It's just standard procedure. We're going to do toxicology on most cases that we do for the coroner's office, not every case but certainly a homicide we are going to do toxicology. It provides a more complete picture of the state of the individual when the homicide occurred or the death occurred.

Q And this, to be clear, is the toxicology, what was in the blood of the victim, correct?

A Correct.

Q And what were the findings again, can you read through those?

A Yeah. He had cocaine on board, he had ethanol and he had two cocaine metabolites.

Q What's a cocaine metabolite?

A So cocaine is going to be broken down by your body, so the

metabolites are just break down products of cocaine.
Q So that means you've used it some time in the past?
A Sometime, yeah, previously. So cocaine metabolites pretty quickly so it would have been some time that day most likely.
Q All right. What is the timeframe that it would typically metabolize?
A Again, I'm not a toxicologist but it was about an hour or hour and a half, which means about half of what's in the body is going to be eliminated in about an hour.
Q So that's for a metabolite, right?
A That's for the main ingredient, I can't quote the half life for the metabolites.
Q But in this case you've got the cocaine itself and two metabolites.
A Correct.
Q Tell me about the ethanol.
A So the ethanol was 210, or .210, so it was reasonably high.
Q Is that significant?
A Well, by operating a vehicle we would consider 80 or .08 to be legally impaired.
Q And this was .21.
A Right.
MR. FRICK: Beg the Court's indulgence one moment.
(Break in proceedings.)

MR. FRICK: Thank you, sir, that's all of the questions I have.

THE COURT: Any redirect?

MS. LIVELY: Just one, Your Honor.

REDIRECT EXAMINATION

BY MS. LIVELY:

Q Dr. Thomas, when Mr. Frick was asking you about the hilt on the knife and how it entered the victim's body, I was looking at your report and in your evidence of injury one of the things that I didn't have you clarify in regards to the stab wound on the first page under external examination, when you talk about the directionality of the stab wound, would you please tell the jury what you found in regards to that?

A Sure. So it's backwards, meaning it goes into the body, it's slightly downward, so it's slightly downward relative to if someone were standing up like yourself, and then slightly from I believe the right to left, so slightly that way.

Q That way?

A Right.

Q We've seen video in this courtroom and I'm going to ask you in a hypothetical in that regard, if a movement was shown to be like this, would that be consistent with what you just now read out?

A Yes.

Q A downward motion by someone standing.
A It could be, yes.
Q It could be. Thank you.
MS. LIVELY: That's all of the questions I have.

RECROSS EXAMINATION

BY MR. FRICK:
Q Or if the knife is here and the body came from this direction, that could be consistent as well, couldn't it?
A Theoretically.
MR. FRICK: Thank you, sir.
THE COURT: Thank you, sir, you can step down, you are free to leave. The State can call its next witness.
MS. LIVELY: One moment, Your Honor.
(Break in proceedings.)
The witness, THOMAS DARNELL, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:
Q Hi, Mr. Darnell. Please tell the jury your full name and where you are currently employed.
A My name is Thomas Edward Darnell, D-a-r-n-e-l-l, and I work at SLED in Columbia.
Q And what are your duties at SLED?
A I am currently a latent print examiner assigned to the forensics laboratory.

Q And how long have you been with SLED?
A I started in 1990, actually retired in 2009 and came back to work to SLED at 2012 as a part-time employee, so I guess I've been there about 25 plus years.
Q Other than latent prints, are there other things that you test and analyze at SLED?
A In the department that I'm in we examine all sorts of evidence that's collected at crime scenes. It could be anything from guns to any kind of weapon or most anything that can be picked up at a crime scene we'll process that for latent prints. I also -- in the past I've done footwear examinations, tire examinations and blood stain interpretation as well, but at the current time my primary focus is in the area of latent prints.
Q And did you have an opportunity to do an examination involving evidence of this case in Chester from September of 2015?
A I did.
Q Please tell the jury what it was that you actually received from Chester County for analysis.
A I received a sealed box from our evidence vault where we keep evidence that comes in from submitting agencies, in this case it was Chester Police Department. So I got a sealed box and inside that box was a knife, just a single bladed knife for me to process for fingerprints and/or to collect any evidence

that might be on it.

Q So have you ever been qualified as an expert in that field of latent prints as well as serology?

A Yes, I have.

Q And what is serology? I know I just threw that out there, will you explain that to the jury?

A Well, serology is basically the area that deals with body fluids, blood, any sort of body fluid or seminal fluid that might be present.

Q And is that something that a piece of evidence has to go through before it's sent off to your DNA lab for analysis?

A Right. In this case I was able to collect what appeared to be body fluid, in this case it appeared to be blood and then it was packaged properly and then transferred to our DNA laboratory.

MS. LIVELY: Your Honor, at this time the State would offer Tom Darnell as an expert in latent prints as well as serology.

MR. FRICK: No objection.

THE COURT: Without objection so qualified. Ladies and gentlemen, remember what I told you what an expert witness can do, okay?

MS. LIVELY: Thank you, Your Honor.

Q Now, Agent Darnell, I am going to show you the box that

I believe you're referring to which is already in evidence, State's Exhibit Number 39 which contains a particular item. Will you tell the jury if you recognize that and if that's the item that you tested in this particular case?

A Yes, ma'am. This appears to be the knife that I examined back in I think it was September of '15. It has the laboratory number, item number and it has my initials on the handle, which I put there, and the reason I do that is so I can identify it at any given time. But this does appear to be the same number.

Q And what were the results of your examination?

A I did a visual examination and I could see what appeared to be blood on the blade itself. I collected some of that blood with a sterile swab, packaged it, had it transferred to DNA. I also processed the knife for any fingerprints that might be there, sometimes prints are there, sometimes they're not. In this case I could see what looked to be fingerprints and once I used certain techniques I was unable to develop any fingerprints that I could identify to anyone.

Q So in your conclusion then as an expert when you're not able to -- actually able to identify a good enough print then what do you put as your findings?

A The terminology that we used in our reports is that it's no value for comparison, and simply what that means is that there was the presence of fingerprint evidence, there was just not enough detail to be able to compare to anyone.

Q All right. Now, as for the actual serology part of it where you said bodily fluids and that type of thing, when you swabbed the knife do you swab the entire knife or do you take different sections? How do you do that?

A In this particular case the knife had a heavy concentration of what appeared to be blood on the blade. I did not swab the entire blade, I swabbed a good sample of what was there. I use a sterile -- a moistened sterile swab, allowed it to air dry, I packaged it properly and then, like I said, it goes on the DNA laboratory. But with this particular items since there was so much blood there I knew that the DNA laboratory would not need every square inch of the blade so I just got a good sample of what was there for them to analyze. Because keep in mind, I'm also trying to develop latent prints so I didn't want to swab up the entire blade and then damage any chance of getting any prints on the blade itself.

Q Mr. Darnell, once you -- were you able to confirm that it was blood that was on this blade?

A I actually did not. There is a technique that you can use, I did not do that in the laboratory myself, I had it transferred. I just collected it, let it dry, had it transferred to DNA, and then the actual testing of the swab itself would be done by the DNA laboratory.

Q So you didn't actually make a conclusion through serology that this was actually blood at the time.

A That's correct. There is a chemical that we can drop on to the swab to see if it reacts in a certain way. I was fairly certain that this was blood so I just swabbed it, left it as it was and let it go to DNA and do the examination.

MS. LIVELY: Thank you. Answer any questions that the defense may have for you.

CROSS EXAMINATION

BY MR. FRICK:

Q Mr. Darnell, do you ask the local agency what to send you or do you just get to deal with whatever they send you?

A I just get whatever they send me. Sometimes we do communicate once we get evidence if we have a question about something that we do have, but no, sir, I just process whatever they sent me.

Q So in this particular case you processed the items that were sent to you from Chester, correct?

A That's correct.

Q And were you sent anything other than that knife?

A No, sir.

MR. FRICK: Thank you, sir. That's all the questions I have.

MS. LIVELY: Nothing further from the State, Your Honor.

THE COURT: All right. Thank you, sir, you can step down, you're free to leave. The State can call its next witness.

MS. LIVELY: Yes, sir, Your Honor. The State would call

Donna Money from SLED to the stand.

The witness, DONNA MONEY, was first duly sworn and Testified as follows:

DIRECT EXAMINATION

BY MS. LIVELY:

Q All right. Ms. Money, please tell the jury where you are currently employed.

A I'm currently employed at the South Carolina Law Enforcement Division also known as SLED.

Q And in what division of that particular agency do you work?

A I'm an analyst in the DNA case working forensics lab.

Q How long have you been a DNA analyst?

A Approximately five years.

Q What type of educational background do you have to complete in order to get a job as DNA analyst?

A I have a Bachelor's Degree in Forensic Science from the Pennsylvania State University.

Q How long have you actually been doing testing of DNA?

A Approximately five years.

Q So the five years you've been with SLED?

A Yes.

Q Have you ever been qualified as an expert in DNA analysis?

A Yes.

Q How many times?
A Approximately 20.
Q In regards to testifying on DNA, are you able to give percentages in regards to the findings that are within the national standards used here in the United States?
A I'm a little unclear about your question.
Q What I'm asking, it's an accredited agency, correct?
A Yes.
Q So the standards that you use in coming up with different types of profile matching and that kind of thing, you use certain standards that are nationally required; is that right?
A Yes.
Q I'm sorry I didn't ask that better. All right.

MS. LIVELY: So Your Honor, at this time the State would offer Donna Money as an expert in DNA analysis.

MR. FRICK: No objection.

THE COURT: All right. Without objection so qualified.

MS. LIVELY: Thank you, Your Honor.

Q Now Ms. Money, did you have an opportunity to become involved in a case that was submitted from Chester City Police Department back in September of 2015?
A Yes.
Q All right. Please tell the jury what it was that you received and what the process was after you received that?

A May I consult my report?
Q Please do.
A For this case I received a set of swabs from item two which was a knife blade, and I also received a known standard from the victim on this case.
Q And the victim in this case is identified as Leonard Hayes, correct?
A Right.
Q So when you received the swab, did you receive it from another particular area of your laboratory?
A I retrieved this item of evidence from our evidence control area in our laboratory from one of the evidence technicians.
Q And with this particular swab that had already been taken by another individual through serology or some other form of retrieval.
A The set of swabs were collected by forensic scientist Tom Darnell, then I performed the serology myself on the set of swabs.
Q Okay. So at the time whenever Tom Darnell actually swabbed the knife, and he's just now testified, he told us he didn't do any type of initial testing to confirm that it was blood on the knife.
A That's correct.
Q So whenever you received the swabs, what's the first

thing that you do in doing your analysis?
A I look at what the request is for that item, in this case it was a DNA blood request. Since Mr. Darnell stated in his notes there was some staining I focused on that and proceeded to do a presumptive test for blood.
Q And what did that presumptive test show you?
A The results were positive.
Q Positive for blood?
A Positive -- like a presumptive positive.
Q So once that happens then the next step would be what?
A Then that sample is then taken forward for DNA.
Q Once that DNA sample was taken forward for further analysis, what was the result of that?
A May I consult my report?
Q Please do.
A The DNA profile developed from item 2.1, which was the set of swabs from the knife blade, matched the DNA profile of Leonard Hayes.
Q And what was the actual probability of selecting an unrelated individual, meaning someone not related to Leonard Hayes, as being the individual that could have left this blood on that knife?
A It was one in 900 quadrillion.
Q So in your expert opinion in your DNA analysis, are you confident in saying that the blood analysis clearly showed

that was Leonard Hayes?
A Yes.
Q Now, let me ask you this, Ms. Money, whenever -- in your particular job are there times whenever you receive swabs and other blood evidence where there's a mixture of other individuals within that particular swab?
A Yes, mixtures do happen.
Q Okay. And tell the jury, if you wouldn't mind explaining, what could cause a mixture of two individuals on a swab.
A So a mixture occurs when DNA from two or more individuals is present on an item. It could be because an item was handled by one person and then maybe somebody spit or bled on it, or maybe two individuals or three individuals were bleeding at the same time and the blood all mixed together. It's just a matter of multiple people's DNA being present.
Q And how sensitive is your DNA machinery that actually determines whether or not there is a mixture of DNA, meaning more than one individual's DNA is found in a particular item.
A It's difficult to say exactly how sensitive our testing is -- it is, but depending on what the source of DNA is that could mask the potential for somebody else's DNA being there.
Q The particular knife, which I know -- you didn't receive the night itself; isn't that correct?

A That's correct.
Q And I'm just going to show you what's in evidence as State's Exhibit Number 39. If two individuals have been cut with this knife and a swab had been taken off of this knife and given to you, would there be a possibility that there would be a mixture of blood from this knife?
A It's possible, it depends on where on the blade it was found.
Q And I actually was asking Mr. Darnell that very question. So if this knife contained any other blood on it though and it was swabbed in an area where that blood would have been, that could have been a mixture of two people's DNA, correct?
A It's possible.
Q And it's possible that the only blood on here was the one that you found, which was Leonard Hayes as well.
A Correct, that was possible.
Q And actually the amount -- the level of the probability of it being anyone else's DNA is quite a substantial number, one in 900 quadrillion, correct?
A Yes.
Q Okay. So that's about as good of a match as you can get, would you agree?
A Yes.
Q If there had been any other mixture, would that have

caused your number to be somewhat different?

A If there was a mixture present the interpretation would have been different and a different statistic would have been calculated.

MS. LIVELY: Just one moment, Your Honor.

(Break in proceedings.)

Q And if you could refer to your report, would you just be clear to the jury, I think I failed to ask you, where did you actually receive the known sample from the victim that you used to test? Where did the sample come from?

A The sample I received was a dried blood standard which was just created from the parent liquid blood standard.

Q Okay. Which would have been received -- that you got from Mr. Darnell; is that correct?

A No. The liquid blood standard was dried down by a separate technician in our department and then that was returned and I only received the dried blood standard.

Q Only the dry blood standard. But the liquid blood standard would have been in the possession of SLED at that time.

A Yes.

Q I'm sorry, and thank you for clarifying, I wasn't asking that question very well. So that blood standard would have been one that actually was received by SLED through the requesting agency.

A That's correct.

Q Once again according to your records that known blood sample came from who?

A Leonard Hayes.

MS. LIVELY: Thank you. That's all of the questions I have.

MR. FRICK: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FRICK:

Q So Ms. Money, you essentially had two items that you looked at in this report, is that fair to say?

A That's correct.

Q The standard that you received of Mr. Hayes and then the swabs from the knife blade.

A That's correct.

Q You received no other items to examine in this case, correct?

A That's correct.

Q Do you request items or you just examine what is sent to you?

A We just examine what we're instructed to, we don't request additional items because we're not charged with actually investigating the crime.

Q So you just deal with whatever they send you.

A That's correct.

Q And that's what you had in this situation.
A Yes.
Q All right. And the solicitor was talking about the possibility of someone else's blood on here, but you didn't find any other blood other than what's in this report, correct?
A That's correct.
Q But it is still a possibility there could have been something else, it just didn't get picked up in this swab.
A It's possible.

MR. FRICK: Thank you, ma'am, that's all of the question I have.

THE COURT: Thank you, ma'am, you can step down, you're free to leave.

MS. LIVELY: Your Honor, at this time the State rests its case.

THE COURT: All right, the State rests. Ladies and gentlemen, what we'll do is go ahead and take our lunch recess, I had the clerk go check on the status of the food for you and I think it's either being delivered right now or just has got here, so obviously y'all get to fix your food and stuff first, plus I need to take up some legal issues with the lawyers. Let's go ahead and do that and we'll get you back in here to start the next part of the trial, okay? Until then don't talk about the case. Thank you.

THE DEFENDANT: Yes, sir.

THE COURT: Now, if you do decide to testify or even if you don't decide to testify you must freely, voluntarily, knowingly and intelligently make that decision understanding your 5th Amendment rights, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand your 5th Amendment rights?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that if you decide not to testify I will specifically instruct the jury that they can't hold that against you. In fact, I'll tell them that they can't bring it up in their jury room when they're deliberating the case, because all of us as United States citizens has the right to claim the protections given to us by the United States Constitution, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand everything I've explained to you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about it?

THE DEFENDANT: No, sir.

THE COURT: Do you want to discuss this issue with your lawyer anymore?

THE DEFENDANT: No.

THE COURT: All right. Do you wish to testify?

THE DEFENDANT: No, I do not.

THE COURT: Okay. And Mr. Frick, do you concur in your client's opinion?

MR. FRICK: Yes, sir, I do.

THE COURT: Okay. At this point in time while we're at a break, do you anticipate calling any witnesses, Mr. Frick?

MR. FRICK: No, I do not.

THE COURT: You've already introduced evidence in the case so we're all straight about how the closing arguments are going to go, right?

MR. FRICK: Are we operating under what I would like to call the standard rule or the newer rule?

THE COURT: Well, the newer rule which was established in January of 2017, this very week because I remember I was trying a first degree burglary case in Horry County this time last year, in fact, it was this very day, State versus Beatty is what you're talking about.

MR. FRICK: Yes, sir.

THE COURT: And, you know, there's some consternation and people don't quite understand what that case holds, and it's my understanding there was some movement to clarify that case by the Supreme Court, it hadn't happened yet, but as I understand it the rule still is that the State goes last because they bear the burden of proof. Is that your understanding of the standard rule?

MR. FRICK: Yes, sir. Since I've introduced evidence I would have waived final closing, I believe.

THE COURT: Correct. Now, the way the State versus Beatty reads is as follows, and I've tried to shimmy this down, y'all tell me if y'all disagree with my statement, if requested by the party who has the right to second argument, which would be you, the party with the right to open and close will have to open in full on the law and the facts and then close on reply to arguments presented in the middle, you can't bring up new stuff. Did I just totally lose y'all with that? But that's the way I read the opinion, I want to hear from you how you intend on doing it. Do you intend on just letting him go and then you go?

MS. LIVELY: Yes, sir, Your Honor.

THE COURT: All right. Is that how --

MR. FRICK: Yes, sir, it's fine with me.

THE COURT: You agree with going that way?

MR. FRICK: Yes, sir.

THE COURT: See, that was consternation with the State versus Beatty case so that's how we'll do it. Now let's talk about jury charges. Let me tell you first of all what I intend on charging and then y'all can tailor your arguments accordingly. Of course, all of my general stuff: Function of a trial judge, function of jury, credibility, charge, arrest and indictment is not evidence, credibility, direct and

circumstantial evidence, and I do the long one on there with if the circumstances portray the defendant's behavior suspicion the proof has failed. To the extent the State relies on circumstantial evidence all of the circumstances must be consistent with each other and when taken together point conclusively. That's the language that the defense lawyers like. Presumption of innocence, reasonable doubt, the long charge that y'all are accustomed to me normally doing. Expert witnesses. Statement of defendant. Intent. On the murder charge, let me -- I talk about express and inferred murder -- inferred malice, excuse me. I deleted the part where it talks about you can infer malice if the alleged crimes is committed with a deadly weapon, I think that's applicable in this case. And so the only inference of malice charge that I give is that malice may be inferred from conduct showing a total disregard for human life. Any issue on that?

MS. LIVELY: I'm sorry, explain that which part -- because I'm looking at it and I know that it's probably the same thing you're looking at.

THE COURT: All right. I'll just read it. Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist, that is either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is

shown when a person speaks words which express hatred or ill will toward another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait, bla, bla. Malice may be inferred from conduct showing a total disregard for human life. Period.

MS. LIVELY: Well, he's also charged with possession of a weapon during the commission of a violent crime.

THE COURT: Correct, but that's a separate charge.

MS. LIVELY: So you're going to do it as a separate charge.

THE COURT: And I'm going to tell them about that. But I think the law is that it's an inappropriate jury instruction because it is commenting on the facts to say that you can infer malice if the deed is done with a deadly weapon.

MS. LIVELY: If you're also charging possession of a weapon?

THE COURT: Right. But it's inappropriately commenting on the facts so I'm not going to charge that, I'm going to charge inference of malice if there -- if there has been shown a total disregard for human life you can infer malice. I am going to charge possession of the knife, the possession of a weapon. This is my purported charge for that. The indictment says possession or display of a firearm or knife during the commission of a violent crime, the actual statute is entitled possession of a weapon during the commission of -- or attempt

to commit a violent crime. I am going to charge that and this is the following purported charge and y'all can weigh in with comments in a moment. The defendant is charged with possession of a weapon during the commission of or attempt to commit a violent crime. The State must prove beyond a reasonable doubt that the defendant possessed or visibly displayed a weapon during the commission of a violent crime. A knife is an instrument, a tool with a sharp cutting blade whether or not fastened to a handle which can be used to cut, slash or wound. A knife is a weapon. Murder and manslaughter are both classified as violent crimes.

MS. LIVELY: Yes, sir.

THE COURT: The State agrees with that. Do you agree with that definition.

MR. FRICK: Yes, sir.

THE COURT: Now then, I tipped my hand obviously that I do think this is a case to charge voluntary manslaughter, I intend on charging voluntary manslaughter as a lesser offense. I don't see any facts in the record from which I can charge anything lesser than that. Let me hear from y'all on that.

MS. LIVELY: The State concedes that, Your Honor, we don't believe involuntary would be appropriate.

THE COURT: Mr. Frick.

MR. FRICK: Your Honor, obviously I would disagree on that, I do believe involuntary manslaughter is appropriate.

I'm looking at a rather older Anderson charge book and I think the language is still applicable, and what I'm looking at is the unintentional killing of another without malice while engaged in an unlawful activity that is not a felony and does not naturally tend to cause death or great bodily harm. I think what we have postulated is that it is possible that my client had the knife, simply pointed it at the victim and then the unintended consequences occurred. So if even if he did that, if that's considered an unlawful activity that could be a non-felonious assault which could fit these guidelines.

THE COURT: But twice in his audio statement he said that he stuck him, that he didn't think he stuck him that hard.

MR. FRICK: And the jury gets to decide whether they want to believe the statement or not.

THE COURT: Ain't no doubt about it, I agree with you. But what I'm getting at is that's the only evidence in the record of his side.

MR. FRICK: Yes, sir, I understand.

THE COURT: Do you understand what I'm saying?

MR. FRICK: Well, what I'm looking at is their interpretation of the facts. They could interpret it based on the testimony I elicited from the doctor that it quite possibly could have been the victim lunges forward while my client is standing there holding a knife.

THE COURT: Even though he says in his statement, "I never

had any issue with him, we never fought, we never did stuff like that, he didn't come at me." I understand what your argument is, I'm just thinking out loud. Ms. Lively, what is your response to that?

MS. LIVELY: I agree with you, Your Honor. I'm looking at the supreme court case State v. Sams where there is an actual -- Justice Beatty goes back and forth between whether or not a voluntary manslaughter charge would also be in this particular case where you strangled a victim who he said he was trying to hold down to keep from getting back up and continuing fighting and then the person died and he said it was an accident, so he goes into all of this information. There is absolutely nothing in the record other than the hypothetical that Mr. Frick asked our doctor, which is not direct evidence, it would only be some miniscule possible argument that there was maybe circumstantial that that was a possibility. We have no evidence whatsoever --

THE COURT: Well, there's a difference between -- let me interrupt, I hate to, there's a difference between a lawyer's questions and evidence. All right, go ahead.

MS. LIVELY: I agree. So without that, with only the evidence that the jury is supposed to weigh and the facts of the case they do have two statements from the defendant where as Your Honor has already related he said, "I stabbed him. I didn't think I got him that hard, I didn't think I stuck him

that hard, I thought I just got him in the shirt." But clearly he's saying a verb, "I stabbed him." He never claims accident. Even in the self-defense realm, which I know we're not arguing, but it goes in line with this, if anything he can make that argument of self-defense. However, even that is somewhat of a push in the circumstance because everyone is saying he never claimed that he was fearful. He didn't say he was trying to minimize what the victim was doing, he didn't say that he was afraid for his life and he was just holding the knife and the next thing he knows that he lunged at him, there is absolutely no evidence in the record whatsoever in that regard. Everything consistently shows that the defendant did stab him. And we had our own witness who was an eye witness who was actually there who said he saw it himself, so even someone outside from the defendant's own words who said that he stabbed Buster Hayes.

THE COURT: All right. Coming back to you, Mr. Frick.

MR. FRICK: Your Honor, it's the interpretation of the evidence that's been presented. The State is saying what they want the jury to interpret the evidence to be but as we all know it is the province of the jury to determine what they believe the evidence says, and they could very well believe that Buster Hayes tried to stand up and lunge at my client while my client is holding the knife and impaled himself with the knife.

THE COURT: I agree. That's a great argument and that's a great jury argument, but from a legal perspective it doesn't rise to the level for me to charge and to allow the jury to consider involuntary manslaughter so I'm going to deny your request to charge the jury and allow the jury to even consider the charge of involuntary manslaughter.

MR. FRICK: I understand.

THE COURT: All right. So we've gotten involuntary and I have read to you my possession of a weapon, I am going to charge about failure of the defendant to testify. All right. Talk to me about self-defense and accident, talk to me about both of those.

MR. FRICK: Judge, obviously there is evidence in this case that my client was injured, it is documented. He said he got snagged by the victim before the ultimate event occurred so I think that is the necessary evidence to get us to self-defense. He believed -- he could have possibly believed that the victim would have gotten up and done more damage to him if he had not removed the knife and done what he did.

THE COURT: All right. Ms. Lively?

MS. LIVELY: Your Honor, from the defendant's own words as well as the eye witness, Edward King Nelson, this was an intentional act. And I know that there is a mention by the defendant that he was snagged with the knife, that is just his words, there is no evidence whatsoever other than that

statement that anything happened to him, also snagged meaning he barely touched him with the knife, there was nothing other than his statement that that happened. And what we also have is an eye witness who testified who said, "I was sitting there, he was getting aggravated, next thing I know he picks up the knife and he stabs Buster." And I specifically asked him, "Did you see Buster with the knife touch or harm the defendant?" And he said, "Nope, and I got the hell out of there." And under the circumstances, Your Honor, there is no other information or evidence in the record in regards to that. It's clearly not an accident. It's clearly not an accident. He picked that knife up, even from his own words he says the knife was out of the victim's hands.

THE COURT: I agree with you about accident, I'm not going to talk accident, but talk to me about self-defense specifically. You heard Mr. Frick's argument, I think he makes a good argument, I haven't decided whether I'm going to charge it or not but there is evidence in the record from his client's statement that "he snagged me and I poked him" or stuck him or whatever he said. And, of course, there's no duty to retreat --

MS. LIVELY: Right.

THE COURT: -- in his house and et cetera, et cetera.

MR. FRICK: Well, Your Honor, and additionally there are photographs of injuries that law enforcement took almost

instantly after they got him to --

THE COURT: Right, that came out also. So let me cut to the chase, I think I am going to charge self-defense, and certainly y'all can argue that, but I think there's enough, although it's miniscule, I think it's enough for a charge on self-defense.

MS. LIVELY: Your Honor, in regards to your decision, I understand, I still would object to it coming in. My thing is is that it had to be done without any fault in bringing on the difficulty. They were both just mutually just arguing, the victim actually put the knife down. He was cutting an onion whenever he was getting ready to eat, he didn't have a weapon in his hand. There was no reason that an ordinary person would at that point in time pick up a knife and just stab somebody who was sitting down and eating and did not have any way of defending himself, so that would be my reason of saying I don't think that self-defense should be considered by the jury.

THE COURT: Considering the evidence in the light most favorable then -- well, you know, let me put this way, looking at the totality of the circumstances and erring on the side of caution and erring on the side of the right of the defendant to claim self-defense I am going to allow the charge to self-defense. What you've told me just like to Mr. Frick on the issue of involuntary is an excellent jury argument. I mean, I think there's enough evidence to charge it but

certainly I think -- of course, I could be wrong, you never know what a jury is going to do, I think they're going to have a hard time with the first prong of that self-defense being without fault in bringing on the difficulty, okay? But there's enough there to let it go to the jury. You can talk about that during your closing. Let me talk about my self-defense charge while we're talking about it because this is what I have, I have tailored it down a little bit to make is easy to understand. The defendant has raised the defense of self-defense. Self-defense is a complete defense and if established you must find the defendant not guilty. The State has the burden disproving self defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense then you must find the defendant not guilty. On the other hand if you don't have it you must find him guilty. The following elements are required to establish self-defense. Number one, without fault. First the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. Imminent danger. The second element of self-defense was that the defendant was actually in imminent danger of death or

serious bodily injury, or that he actually believed that he was in imminent danger of death or serious bodily injury. In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury you should consider all the facts and circumstances surrounding the event including the physical condition and characteristics of the defendant and the victim. And third, no other way to avoid danger, no other possible way, I've described what that is. The proposed charge that I'm looking at on the duty to retreat, if the defendant was on his own premises the defendant had no duty to retreat before acting in self-defense. Let me hear from y'all, do you think I should charge that.

MS. LIVELY: I would object to that being charged, Your Honor. They are both obviously living in that home, it's not really a stand your ground situation, I think that that gets confusing for a lot of jurors especially with the way that statute and the language of that statute has been portrayed by not only by the media but just by the language itself.

MR. FRICK: But he has no duty to retreat because this is his residence. And the most the recent case that came out, and I know it was a stand your ground case, but the self defense and stand your grand law has all been muddled, they were talking about two people cohabitating and they still had the right to not have to retreat, I think that applies here as well. If he is in his own residence regardless of the

situation I don't think he's got a duty to retreat.

THE COURT: I agree with the State on that, I'm not going to charge it. If the defendant was on his own premises the defendant had no duty to retreat before acting in self-defense because the evidence in the record was that the victim lived there as well so I don't want to improperly -- well, I don't want to confuse the jury so I am not going to charge that since both of them were properly residing there. Other factors to consider, prior difficulties. There's been evidence in the record about prior difficulties of both of them from various witnesses without -- there's evidence in there from Mr. King, I believe, the first witness who testified, to his son, to his daughter-in-law, to his own admissions so this is the proposed charge on that. Evidence of prior difficulties between the person -- between the defendant and the victim may be considered in deciding whether a threat existed, whether the defendant had a reason to believe that the threat existed and how serious that threat was. Any objection?

MR. FRICK: Not from defense.

MS. LIVELY: Your Honor, my objection would only be that the defendant clearly was questioned whether or not he felt threatened both for his life or safety if he had ever felt threatened by this individual and he very clearly said, "Nope, we got along fine, he was great."

THE COURT: Correct, I agree with you and that's a great

argument. But what I'm getting at as to the element of self-defense that's something that the jury needs to know that they can consider, that they can consider whether or not there was prior difficulties between these two. They can consider the size, age and weight between the two, that's black letter law. And they can consider, tell me if I'm wrong, the intoxication of the victim in deciding whether or not the defendant's fear of death or bodily harm was reasonable.

MS. LIVELY: I don't have an objection to the intoxication.

MR. FRICK: That's fine.

THE COURT: Okay. And then, of course, I close it up with their duty to deliberate and conclusion. Anything that we've gone over -- anything else y'all wish for me to charge other than what I said?

MS. LIVELY: If you don't mind, Your Honor, just make sure that I'm clear because I was trying to make notes, under self-defense the different subsections that you're going to pull out, are you going to talk about without fault?

THE COURT: I'm going to talk about without fault, imminent danger and no other way to avoid danger, and then I'm going to talk about prior difficulties, size and age and weight and intoxication.

MS. LIVELY: Thank you.

THE COURT: Anything else from the defense?

MR. FRICK: Yes, sir, good reputation of my client. There's been testimony by even the victim's mother that my client had not been turbulent, had no reputation for violence and had not been of any bad character.

MS. LIVELY: We have not had a clear reputation evidence in regards to this particular defendant. I think there was just talk about had they ever known of any problems in the past between the two, we didn't get in to what his reputation was in the community, at least I didn't see anyone talk about that or testify about it.

MR. FRICK: That's not correct. I asked every witness that was up there did they know my client, had they known him to be violent, had they known him to be mean, had they known him to cause any trouble to them or in the community.

THE COURT: Have you got a proposed charged?

MR. FRICK: I've got the Anderson charge.

THE COURT: The defendant has presented evidence of his good reputation and character -- did you present evidence?

MR. FRICK: Through cross examination and testimony.

THE COURT: The defendant has presented evidence of his good reputation and character to show that it would be inconsistent with his committing the crime. The weight you give that testimony like all other testimony in this case is for you to decide in your good judgment. You may consider the testimony of the defendant's good character along with all of

the other evidence in deciding whether or not the defendant committed the alleged crime.

MS. LIVELY: Your Honor, my objection would go under the purpose of that particular charge which would be under evidence of character under Rule 608. Basically specific instances of conduct as we know doesn't come in, it's just an overview of whether or not the person is being truthful or untruthful in regards to the kind of person that they are in the community. In regards to what he's arguing for in a charge goes along with the argument of the self defense charge as to whether or not he would have felt some type of imminent danger, if he would have acted in such a way as a normal person of that character in responding to that threat of harm. By going into character information under 608, that's not something that is specific to this particular case. No one has talked about it, no one has talked about -- all they've done is like in cross examination is if they have ever seen them be violent to one another before, I asked those same questions, but as for any other reputation information in the community that information is void in the actual record.

MR. FRICK: I disagree with that. I asked everybody how long they had known my client, whether they know him individually, not just whether or not he'd known the two of them to have any trouble. I don't think 608 is applicable here because I'm not talking about specific instances of conduct,

I'm talking about my client's general reputation which is allowed under that charge.

THE COURT: I'm going to charge it. I understand where you're coming from there. Reading Anderson's requested charge -- hang on a second.

MS. LIVELY: And also, Your Honor, when you talk about specific instances of conduct it talks about what the Court does not allow in and that would be prior abuse of a witness, other types of information that would come in in court, those particular types of things are things that the Court can't comment upon. So by actually putting in the information regarding good character then it is an indication that that is something -- that is a comment on this particular defendant's reputation in the community and I just think that that's outside the scope of what this case is about.

THE COURT: I agree with you, I'm not going to charge it.

MS. LIVELY: Thank you.

THE COURT: You can argue it.

MR. FRICK: I would just state for the record I believe I have elicited testimony that talks to my client's reputation. There is evidence on the record about my client's reputation for not being turbulent, not being violent, I believe that is enough evidence to -- the scintilla of evidence that is required for a charge.

THE COURT: I understand your argument, I respectfully

disagree, you're protected in the record. All right. Here is your book back. Anything else before we take a lunch break?

MS. LIVELY: Not from the State, Your Honor.

MR. FRICK: That's it.

(A lunch break was taken.)

(The jury returned to the courtroom.)

THE COURT: All members of the jury are present. I hope y'all enjoyed your lunch, I know I did. And the State has just rested. Mr. Frick?

MR. FRICK: Defense rests, Your Honor.

THE COURT: The defense rests. Ladies and gentlemen, that has now concluded the testimony and evidence phase of the trial, we will now move into the closing arguments phase of the trial. I urge you to listen very closely to the lawyers as they speak to you. After they are through speaking to you that's when I will charge you on the law as it pertains to the issues which have arisen in this case, and after that you will finally be able to start talking about it with your fellow jurors in the jury room, okay? So listen carefully as we proceed with closing arguments. Mr. Frick?

MR. FRICK: Thank you, Your Honor, Solicitor Lively, ladies and gentlemen of the jury. Thank you for your attention. These are all very serious matters and everybody that's involved in the process is very appreciative of the attention that y'all have paid through this whole process, and

now it comes down to the time when y'all get to go to work. You've got to see us stand up here and talk about a whole lot of stuff going on in a short period of time and soon you'll have all of this evidence back there and you will consider it and you will weigh it, and I echo again, as I know the Judge will when he gives you his charge, only you can determine what this evidence tells you. Now, we're going to stand up here and we're going to tell you what we believe it shows you, but only you get to decide what it is actually telling you. The State, as you're well aware, has charged Melvin Fourney, Sr. with the crime of murder, saying that he with malice aforethought killed with no legal provocation to do so Buster Hayes, a person who he told you he thought of like his child. He raised him up, lived with him, took him in when no one else would take him in. You heard the testimony from the stand and from Mr. Fourney on his video that Buster didn't have any other place to stay so he stayed with him. They fussed like family. They would fuss and cuss each other, everybody who took the stand that knew them told you that they would do that, but on September 1st of 2015 something was different, something was different that day. And Mr. Fourney tells you in his words, and I submit to you he is the most credible witness that you have in this case, and while he did not take the stand to testify, you have his side of the story. He tells you that Buster Hayes picked up -- was eating, picks up this knife, this very knife and cut him when he asked

him -- because Buster did the cooking, because Mr. Fourney said, "I can't see too good." Well, you see him sitting over there with his glasses, on almost 70 years of age at the time, naturally his eyes aren't as good as they used to be so he says, "Because of that Buster would usually do the cooking." Buster is sitting down, he said he comes out, smells pretty good. "What are we eating? (Motions with the knife) "That's what we're eating." And then Mr. Fourney shocked by this incident picks up the knife, and I suggest to you he doesn't necessarily have a clear recollection of what happened, but he probably has the best recollection of what happened and he says he did this thing. But did he have malice in his heart when it happened? You've heard the people testify, folks that have known him forever said he was a good guy, not violent, does this sound like the guy who has malice in his heart at that point? Took Buster in, fed him, gave him a home when no one else would, and he's just going to pick up this knife and jab it in his chest? That doesn't make any sense, ladies and gentlemen. Yeah, they argued and fight and you heard that they argued and fight and fought a little bit that morning, but again, something was different this time. He tells you in his video, "He'd never done that to me before," and he has the injuries. The State is going to try to tell you you've got this statement saying he's got these injuries. Well, first of all the only evidence that you've really got that he committed

a crime is his statement and they want you to believe that, but they don't want you to believe the part where he says he cut me first. Well, you've got the pictures on his artery right here where if you are going to do harm to yourself that's the one you would cut, that's what gets cut. He's got an injury here. He is injured, you have the photographs that prove it. If you've already been cut once you ain't got to wait for the guy to pick up the knife and try to stab you, you have a right to defend yourself. That is very likely all Mr. Fourney was doing was protecting himself from this younger, fitter man who, by the way, was drunk and high. Blood alcohol .21, that's almost three times the legal limit for you to get behind the wheel of a car in the State of South Carolina, that's drunk. I don't care how much you drink on a daily basis, 21 is drunk. And not just that, cocaine. And not just the metabolite, remember what the doctor told you up here? The metabolite means you took it some time ago and it started kind of digesting basically. It's not just that, it's actual cocaine meaning he has just ingested this. So he's high, he's drunk, he's aggravated and he has cut Mr. Fourney, Mr. Fourney is shocked, picks up the knife. Now, it's one wound, if he intended to kill this man that day don't you think he would have stabbed him a couple of times? Why would he just hit him one time and put the knife back down? And by the way, he just throws it on the table that's right there, maybe he's just trying to get it away from Buster so

Buster doesn't hurt him anymore. He makes no effort to hide the knife. Mr. Fourney, he didn't call 911, he told you, "I couldn't see the numbers on my phone." The first name that popped up was his family, he called them said, "Get over here and help me out." He told you, "I just wasn't thinking." He's in shock. This person he has raised who he's helped has just cut him on the wrist, he's bleeding, has just cut him on the wrist and something has happened, he knows it's not good but he's in shock, he's perceiving the moment and really doesn't know what to do. Now, the State is going to tell you in a minute I'm sure about all this blood that's going to be everywhere, and Mr. Fourney tells you, "I didn't see the blood." Well folks, this is the actual shirt. It's entirely possible that maybe the man bleeds on this shirt and Mr. Fourney can't see it. That's a dark colored shirt. I would submit to you I bet the lighting in this house isn't too good, maybe he doesn't see the blood. He tells you, "I thought I just nicked his shirt," puts the knife down and walks off. You know he's not wearing his glasses at the time because when he gets to his interview at the city he doesn't have them on. I asked Captain Moore, "Where did you get him from? Got him right from his house right at the scene, took him directly from there to city hall and interviewed him in the exact condition he was found in." He didn't have his glasses on, maybe he couldn't see. You certainly even with the glasses may have a

difficult time seeing the blood coming through that dark colored shirt in what is likely an ill-lit house. But then he says, "Something wasn't right. Buster is always talking trash and running off at the mouth, he ain't saying nothing." So he goes up and checks on him and says, "Uh-oh, something bad has happened here," and that's when he tries to get help. Now, would he have done it the way you would have liked him to have done it? Probably not. But he did the best he could at this period of time when he is perceiving this incident and he believes he has done harm to this person that he raised and loved and took in. Now, I don't know what the layout of the house is, we have no diagram, I still have no clear explanation based on what I was told by law enforcement of how this house is laid out, and you sure as heck can't tell by the pictures they took, but what they did do is they marked these blood spots, and this is supposed to prove something. Well, it does prove somebody bled maybe, but we've got marker number two, marker number three, four, five, six, seven, and then there's an eight of suspected blood spots. They didn't swab them. Ms. Levister told you they did but you heard from law enforcement today, Ms. Jagger, there were no swabs. The only swabs they got were taken off of this knife when it's in Columbia at SLED. Nobody swabbed these six spots of blood. So first of all we don't know they are blood but let's assume they are, whose are they? We have no idea. They could be Melvin Fourney's because

he's cut here and here. He said he went to go wash blood off, it could have been his blood because this horrible weapon cut him too. You don't know, but it very well could be his and they didn't bother to try to find out. Now, the wound itself. The State is going to talk about all of the force that Mr. Fourney used to plunge this knife into Buster Hayes' chest, busted a rib, cut a rib, cut it loose from the breast bone. That's horrible, that will indeed probably take a whole lot of force. Do you really think Melvin Fourney had that much force? How much force would it take to do that, to cut a bone from the breast bone? Dr. Thomas said it was not plunged all the way to the hilt because there's no indention from this part of the knife. Now, if he used that much force, wouldn't it stand to reason that that would have happened? But it didn't. So how does the rib get broken? We don't really know that either. But what we do know is EMS got to the scene before anybody else took any pictures of the scene, the shirt is already cut open, he's already got the pads on him, clearly EMS has already worked on him. What does EMS do when they try to revive somebody? CPR. Where does that happen? The ribs. What can happen? They can break. No one can tell you how that rib got broken, but there's another explanation besides Melvin Fourney thrust this knife into the chest of Buster Hayes and he broke it. Going back to the force that he would have to use. You saw him on these videos, and I think the most telling one that

you can see is when he's talking to Agent Blackmon, and it's right up on his face and they're asking him to sign this form, the Miranda form, his rights, and you see him first of all have to lean forward and squint so he can see these. Now, ladies and gentlemen, that's not small print, my eyes are getting bad but I can still see that without glasses on. He's leaning forward and squinting so he can fill this out. You see how long it takes him to sign his initials, two letters, an M and F, it takes him that long to sign his initials? Is that really a person who has got enough force to thrust this knife into a chest and break a rib? I submit not. Also, and maybe you think I'm just crazy to suggest this, but think about it for a second, okay? Maybe Melvin just got the knife, he's been cut, he looks at this guy and he picks up the knife and says, "You ain't going to do this to me again," and Buster, high and drunk, "Really old man?" And then he impales himself on the knife because the force can come from either direction, it's either plunged this way or something comes this way, doctor can't tell you which direction it comes from. But it is plausible to believe that a person who has already decided to cut the hand that feeds him would bow up to him at that point. Now, again, I emphasize the State has the burden of proof here, Mr. Fourney doesn't have to prove a single thing. He doesn't have to call a witness, he doesn't have to introduce any evidence, he doesn't have to take the stand and testify, that

is all part of the way the process works. The State has to prove beyond a reasonable doubt that he did this, he doesn't have to prove a thing. So the State has got to prove that he committed this crime. But there's one additional thing in this case folks, he was acting in self-defense so the State has also got to prove that he was not, they've got to disprove self-defense. They can't do it, ladies and gentlemen. Reasonable doubt is is there any other reasonable explanation. Remember what I told you yesterday, it's not maybe he got mad at him and stabbed him, he could have got mad at him stabbed him, I think he possibly did that. No. Is there any other reasonable explanation? Yes, there's plenty. And you don't have the evidence that supports the State's theory. They simply don't have anything but speculation because these do not tell you anything. It's a terrible situation that you find yourselves in because you've got to weigh these facts, but again, only you can make the determination as what this evidence tells you. And I suggest to you Melvin Fourney wasn't doing anything but acting in his rights of protecting himself which every one of us has. You've heard no evidence to suggests he is this ornery old man that the State wants you to believe, in fact, you've heard quite the opposite. He was a good hearted guy who never caused anybody trouble, wasn't violent and did everything he could do to help out Buster Hayes who on this morning when he was high on crack and drunk decided

to attack Melvin Fourney first, shocked Melvin didn't know what to do but he was trying to protect himself. Ladies and gentlemen, that is not reaching the burden of reasonable doubt, the State fails to prove their case. Mr. Fourney was doing nothing but taking care of himself as everyone has a right to do and I ask you to find him not guilty. Thank you.

THE COURT: Thank you, Mr. Frick. Ms. Lively?

MS. LIVELY: Thank you, Your Honor, thank you, Mr. Frick and ladies and gentlemen of the jury. All right, ladies and gentlemen, the State has brought everything to you that we have, every single piece of evidence that was collected in this case whether it was tested or not I brought it to you because I wanted you to have the full pictures of what happened that morning. Because the only people that know what happened on the morning of September 1st of 2015 is the defendant who is here charged with murder, and Buster Hayes who is dead. But we do have someone else who had been there, and I contend -- and I can show that this person had absolutely nothing to gain, no bias and no reason to make up what he saw that day and that was Edward King Nelson. And if you remember that gentleman who came in here, he acted like or looked like he did not want to be here, just like he said that morning he got the heck out of there when he witnessed what happened. So I'm telling you that with everything you've heard with every piece of evidence or lack thereof, the thing that is very clear is that on the

morning of September 1st Melvin Fourney got mad, was tired of Buster Hayes, and instead of doing what a reasonable person would do, he picked up that knife that Buster had sat down and stabbed an unarmed man and that's murder. Like I said when I started this case whether you're 68, whether you're 20, whether you're 30 our law doesn't say it depends on what kind of age or anything like that whenever you decide to take someone's life. I didn't hide any of the ugly either. Yes, Buster Hayes had used crack, yes, Buster Hayes was drunk. I stipulated to the toxicology coming in, I didn't try to prove it. You need to have everything in order to make the right decision here because somebody's life is gone and can never be brought back, and there's only one person at fault for that and that's Melvin Fourney, so I'm going to talk to you about that. And I put stuff into just a power point because what that does is I want to try and help you remember everybody that testified, I want to try to highlight the points that were made by each one of the witnesses and the evidence that was presented and that hopefully helps you to remember what it was that was said. Because there's been a lot of testimony in this case and I know that you don't want to probably have all of that testimony replayed, I know that that's not the favorite thing for us as attorneys as well as Your Honor to have to sit here and listen through, but it's your right as a juror because you are the sole judge of the facts, not me, not Mr. Frick and not the

Judge so it is what you believe happened based on this evidence that you will make your decision. So here is one of the things that he's charged with. Murder. The Judge is going to read out after we're finished with the case what murder is in the State of South Carolina, what the elements are. The killing of a person. Well we have that, very clearly we have killing of a person. With malice aforethought, which is some type of ill will or evil heart or evil intent. And then it can be expressed, which means "I am going to kill you" and then you do it, or implied based on actions, based on circumstances, so I want you to kind of keep that in mind as we go. Now, if you don't find that this was an intentional malicious act then the Court is going to say there's a lesser-included, you've probably heard of that, there's also in some states they call it first degree, second degree, second degree murder, things like that, in South Carolina we have different levels of an intentional killing. And involuntary manslaughter the Court is going to say to you under the law that that's the taking of the life of another in sudden heat of passion, but that heat of passion has to also be coupled with sufficient legal provocation, and that's a fancy word or way of saying was it reasonable? Was there reasonable provocation by the victim? Because this would be an at-fault of the victim to actually cause the defendant to act in that heat of passion and to kill that person, all right? Words alone are not enough. So I want

you to keep that in mind as we go through this, okay? All right. And then finally, which I think it should be fairly easy for you to be able to come to a conclusion and that is that the use of a deadly weapon was used in the commission of this violent crime whether it's murder or voluntary manslaughter. All right. So those are the things that the Judge is going to read to you, and it's critical that you understand that when you're putting the facts together with that information. And then the Judge is going to talk to you about self-defense, and I put all of that up there but I don't want you to read it right now but I'm telling you this is what I'm going to go through. In order for him to claim self-defense he cannot be at fault for bringing on what led to the death of the victim, the defendant cannot be at fault. And he had to believe there was an imminent danger of death or serious bodily injury, all right? Keep that in mind. Now remember Ms. Hayes, she's actually been here through the entire trial, she's the mother of Leonard Buster Hayes, she's the victim's mother, she has six children, Buster was the youngest of her sons. She's related to the defendant. She is -- they went to school together. She did not know them to ever fight or argue, and she said if Buster would have ever wanted to come home to her he could just come to her house, and he did, he had another place to go, that wasn't a problem, and Ms. Hayes told you, she knew of no problems between the two of them. But she

remembers that phone call which may have never meant a thing to her but for the fact that it came true, about a month before Buster was killed she's on the phone with the defendant who she said sometimes would just get on the phone with her whenever she was talking with Buster and she was on the phone with the defendant and he just said, "You know, I'm going to kill Buster." And you know, it may have been, "I'm going to kill Buster one of these days," she said she didn't believe it, didn't take it seriously until September 1st of 2015 when it happened. Now, is that showing us a state of mind with the defendant at that moment, does he have a predisposition at this point to say, "I can't take it anymore, he's aggravating, I want him out of my house," and when the moment was right he got mad enough and he acted on that impulse and that's what he did. Now, here is the sad thing on top of the death of Buster, is that whenever Ms. Hayes goes to the house she's hearing rumors through the streets that her son is dead. Who calls and tells her what happened? No one. These people are family. No one called and told her, she had to find out from calling the coroner that her own son was dead. Even the defendant's son when she went to their house said, "Oh, he's in Rock Hill." No one told her he was dead. Already covering for the defendant. What about the 911 tape? Now, the 911 tape is really critical, and if you want to listen to it again it was actually one of ones that weren't that long, so everything else -- I know y'all

had to listen to some really long confession and I apologize for that and I know that the sound isn't that great. But the biggest thing is if you want to listen to that 911 tape, that's the tape where he actually gets on there and says, "Yep, I stabbed him, he's not breathing, he's cold to the touch." Remember, Teresa is there, she's on the phone. Well, why did he stab him? Hold on a minute. Okay. You are in the home with a dead body, blood is everywhere, a bloody knife is sitting on the table and you're just like, "Yeah, hold on a minute, I'll get him for you." Is this a crazy, scared, terrifying situation that this person has been in? No. I would tell you to listen to that and listen to how calm the defendant is. He was on that phone as a matter of fact whenever they were trying to figure out how long had he been sitting there, because she said -- and I don't want to be gross but I'm just repeating, there was flies on him. He was cold to the touch, she didn't -- she being Teresa, didn't want to do CPR, didn't want to try to remove him or put him on the floor, you remember her saying that. So the operator said this doesn't sound right. How long did it take? How long ago did this happen? Puts him back on the phone and what does he say? "Yes, how are you doing." Let's talk about the guy who you stabbed, Mr. Fourney, who is dead now in your living room. When did it actually happen? The eye witness, Edward King Nelson, he came in here, older gentleman, didn't want to be

here, subpoenaed to be in this courtroom, he didn't want to be there on that day whenever he unfortunately was the only eye witness other than Buster who is dead and the defendant, knows both of them, lives right around the corner from them, you saw the little house, this tiny house, so when he's in there he's right on top of whatever is happening, whatever conversation is going on. You've got Buster sitting there and he sat on the couch and they were being aggravating. We've all had a situation where we're aggravated, you're in aggravating conversations like, "Ga, I wish this person would leave, or I wish I could get off the phone," whatever the case may be. He said the defendant was aggravated, he saw him stand up, take the knife and stab Buster. I said "Now, Mr. Nelson, did you see Buster either touch or use the knife on Mr. Fourney, the defendant? Nope, he never did. Did he ever stand up? No, he was sitting down the whole time." He was sitting on the couch when he was stabbed. Never saw them physically fight, said they were arguing, they were aggravating to one another but never actually fighting. He said, "I got the hell out of there and went to a bar." He was there, he saw the whole thing. So when the defense says, "Well this could have happened, he could have stood up and lunged into the knife." You know, there's a lot of could, but what's reasonable? The State has to give you what's reasonable, beyond a reasonable doubt. All of you are reasonable people, you can use your common sense as to what is

reasonable in regards to what could have happened. And I submit that what did happen is what Edward King Nelson told you, the person who didn't want to be found, didn't want to be here, isn't related to either one of the parties and was in that room when it happened. James Tony Fourney. He said he got there, saw what happened and he got, out. He went and got his older brother. He also confirmed "I saw Edward King in the yard when I walked up and he said 'Deke done stabbed Buster, y'all better get in there." Now, there's no way that Edward King Nelson would have known that but for the fact that he had been in that house. We've got Teresa Fourney and we've got James Fourney who confirmed, "When we got there that's who was there, Edward King Nelson who was leaving." All right. Then I said, "Have you ever seen them physically fight? No, never seen it." He said, "He might touch on me or push on me but I've never seen that." Never heard him threaten the defendant. Teresa. She said it was about 15 minutes after we got that initial call and we showed up and saw the defendant with the victim, okay? She confirms "I saw Edward King Nelson," he said, "Y'all better get in there, Deke done stabbed Buster." Okay. Now we've got twice that he's being told that, still the police hasn't been called, and she walks in, sees Buster sitting on the couch slumped with the shirt on and his food bowl beside him. She never moved him, she didn't want to touch him. Asked the defendant, "Why did you stab Buster?" And you

heard her say what he told her, "I was tired of him." When are we going to get that moment that there's a reason for him to claim self-defense? When in that -- from that witness stand right there, from the confession that you heard from that defendant when are you going to see the evidence that he was entitled to claim self-defense? Because he never claimed it on the 1st or the 2nd, he's only claiming it now, only claiming it now, two and a half years later. He never once said he was afraid, never once said that he was attacked, never once said he felt like he would die, it was either himself or Buster. Never. Chester Police Department took photos, you've got all of those photos. All of this information is going to come back with you whenever you go back to do your deliberations. We have Levister went to the scene, took photos, went to the autopsy, submitted everything to SLED and we have the first statement that was done of the defendant. Now here is what I'm going to tell you about the crime scene, it was not done to what I would consider proper standards, it just wasn't. Because yeah, I would have liked for those blood drops to have been submitted to SLED. But here is what I'm going to tell you, I don't know why it wasn't, but I do know from going and looking at the information that sometimes when police get a confession and they have the murder weapon, which obviously has blood on it, they're like, "Is it going to matter which person's blood drops are on the floor?" I mean, was that maybe

a little bit lazy on the part of the police? Hey, like I said, I brought you the good, the bad and the ugly and I don't have anything to hide from you, but if it was the defendant's blood or the victim's bloods does it change the facts of what happened? So I was relieved to know that that wasn't going to be an issue, because under the circumstances it was either he was stabbed because he was defending himself or he was stabbed because he was -- he being the defendant, was tired of having him in his house and got mad and killed him. That's it, and that's what you have to focus on. So in that first confession and going back through it the defendant does say "Well, he snagged me with a knife and when he put it down I grabbed it and stabbed him," and he said, "He never said anything after that." So when the defense is saying, "Well, he put the knife down, why would he do that?" Well, it's because he knew he had hurt him bad enough to where there was no threat, he knew Buster wasn't getting up. You heard the doctor testify about the kind of blood. He bled out, it was that severe of a stab wound. It was not an "I just nicked him in the shirt." That's the reason why I had to show you those autopsy photos because I have the burden of proof to show you the violence of the actual attack. It wasn't a, "I'll show you," and a little nick. It was a full on "I'm putting my whole body force behind me and this knife is going into your chest and I'm not stopping until I can't go any further," that's what happened, and the evidence

supports that. So Agent Blackmon is brought in because the defendant's daughter-in-law works at the Chester PD, so in order to make sure there's not going to be a problem with someone saying, "Oh, well, you know, your daughter-in-law helped with the investigation, that's the reason why something wasn't done," you have to make sure that you give -- just the fact that there's a possibility of bias, you've got to be careful with law enforcement. So they bring in Agent Blackmon, he interviews those three witnesses including the defendant, okay? So he interviews the witnesses, and during his interview he doesn't show any type of injuries to his wrist, he's moved on now and talking about this particular situation and he seems to have maybe just a little bit of remorse at this point, he's been in jail overnight, and one of things that the defense brought up is that you saw how hard it was for him to sign the paperwork. How many of y'all remember that he was in handcuffs at the time so that probably was a problem. The other thing is, remember whenever he was doing the motion of how he stabbed Buster, his hands were in handcuffs and he showed, "Well, I picked up the knife and I did like this," and he's showing you the best that he can with his hands in handcuffs the motion that he used. And remember what the doctor said, that's consistent with someone who is sitting down and the knife goes downward and inward into the body, so we have that from the defendant himself. And the other thing that's so important

about what he says, the first statement he admits, "Did you stab him? Yes, I did," but he didn't say that he was afraid. "He snagged me with the knife, I got mad." This means Buster was unarmed at this point? Who had the knife? Who had the power? The defendant did. He said, "I never said I was defending myself, I was afraid, I felt like he was going to hurt me," never did he say that. Then we've got the second confession, and this one, ladies and gentlemen, goes into a little bit more detail. And the reason why we have this detail is because this SLED agent knew a little bit about more of the case, he's got a little bit more information at this point so he says, "You know what? If this guy is going to claim some kind of self-defense I need to ask the right questions," all right, that's his experience as a SLED agent. So he says, "Tell me about your relationship. Oh, we got along great. I considered him like my own son. He would cook for me, he would do different things, he bought cigarettes, we were buds, okay? Has Buster every hurt you? Nope, never has." He never said, "It was him or me so I stabbed him." As a matter of fact, whenever Agent Blackmon went through everything and he said, "Were you ever afraid of him? Nope. Did he ever hurt you? Nope. Were you afraid for your life that day? Nope." Guess what he just asked the defendant? Every single question and every element of self-defense that the Judge is going to read to you in a few minutes. It was not self-defense, ladies and

gentlemen, it wasn't two and a half years ago, and no matter how they try to twist the facts and change the facts it doesn't change how this knife was used on that day. Only blood on the knife was that of the victim. If there would have been bleeding or there was blood drops from the defendant or on the victim there could have been a mixture on the knife and we would have seen some level of a mixture. That's what happens when there's blood from two different individuals that gets onto a murder weapon. And a lot of times they do check for that because they want to see if there's any other injuries -- if they think somebody else has other injuries they want to check for the blood and there wasn't any other blood on it except for the victim's. He was stabbed once in and out, twisted. Now, the reason why that's so significant is because of the fact that when you hear the defendant talking about it he's saying, "I just thought I got him in the shirt." Okay. So let's think about that. In order for him to have gotten the victim the way he did he would have had to have gotten a knife all the way in and like the pathologist said when he was pulling it out he either twisted it when he pulled it out or he twisted it when it went in. That's forceful. And no one said that he has any kind of arthritis or medical condition. He's not a small man. Yes, he's 70. My dad is a 74 year old Marine and I promise you I would not try to go into the gym and try to keep up with him. Age is just a number, but killing somebody

intentionally doesn't count, the number doesn't count. It's what's in the ill will in your heart that counts. Look at all the different layers of tissue it went through, severing the fourth rib from the sternum, y'all saw that. I tried to tone down the picture and you're going to have that photos back there with you, I mean, that does take a level of force. But if you are mad your adrenaline is pumping and you're coming down on somebody with force and anger and you've got a sharp pointy blade, that's the kind of damage you can do. And that's the reason why I say it was intent, ladies and gentlemen, because he meant for it to go that far. It doesn't mean he couldn't have done it, it means that when he did it he wanted to get the job done, that's the point and the evidence supports that. Look at all of these different layers of tissue, all the way through the back of his heart. He bled out. So we're back to what I was telling you earlier, and y'all have been sitting here and I can tell some of y'all are having a hard time kind of staying focused, and it's okay because I know it's been long but this a murder trial, I need you to stick with me a couple of more minutes because I want you to understand that the information that I've gone through just now is to help you do the checklist for what I'm asking you to find in this case. This defendant killed an unarmed man eating his lunch sitting on the couch. He said a month before, "I'm going to kill that Buster," and he did it. He was tired of him. He never said he

was afraid, he never said he felt threatened and it's murder, ladies and gentlemen, whether he's 70 or 20. Ill will, hatred, here some things he said. Here are things he said, evil intent, ill will, all of those were from the mouth of the defendant himself. Total disregard for human life when he picked up that knife and plunged it in him. We know it was a violent crime, this murder. If you can't get to that level of that ill will and the malice and the heart which I would submit is here clearly, then at a minimum it would be voluntarily manslaughter, but both of them are violent crimes. It's the taking of a life and you had no right to. So self-defense. Remember, I told you don't worry about reading through this because I was going to come back to it. He has to show -- and I submit that we have proven beyond a reasonable doubt that you don't even get past number one, because he has to show that he was not at fault for bringing on the difficulty that resulted in the use of deadly force. He's the one that picked up the knife, he's the one that plunged that knife into Buster who was sitting down. Maybe he was being -- maybe Buster was being a jerk and mouthing off to him, but we all know that the laws are there for a reason and that's because we do not respond as ordinary prudent people by stabbing someone because we're aggravated, you just don't. Then let's say you get past that, did he feel that he had to use deadly force because he was in imminent danger of losing his life? That means he thought he

was going to die if he didn't kill Buster at that moment. Even somebody snagging him, let's say we believe that, we believe that he was snagged, which I contend he's the only one who is claiming that, he's the only one that's saying that so let's give him that, even if that's the case is that enough for you to pick up the knife after the person sets it down and says, "You know what? I'm tired of you," and you stab them and kill them. That is not sufficient legal provocation. Would a reasonable person in that same position do that? I would think that I might be a reasonable person. My brother comes up to me and asks me, "What are we having for dinner? And I'm like, "Get out of my face, this is what we're having," and I catch him either on the finger or the hand, I put the knife down, he picks it up and stabs me. There would never be able to be another Thanksgiving event in the whole history of the United States if people could stab their family members because they get aggravated at a meal, and I don't say that in a joking way, I say it because it's not reasonable. That's my point, it's not reasonable. We act as civilized citizens and we respond as civilized citizens and we follow the law. Would you have done the same thing is what the law is asking a reasonable person and it's not reasonable. Here is what does. Remember whenever I told you at the beginning of this case -- and I'm almost finished -- that he told you himself why he did this, he was tired of him. I don't know if he's ornery, I don't know him

personally, my opinion doesn't matter, what I have to bring you is what the evidence shows. You weigh the facts because you are the jury, what you say is the truth and what happened is what happened. I've given you every piece of evidence. I've shown you every single picture that we have, the good, the bad and the ugly, every witness that could give you information in this case, none of that information points anywhere except for guilt for an intentional killing without any legal excuse leaving the family of Buster Hayes without their son, brother and friend. Bring justice to this family, find him guilty. Have him pay the consequences of making a horrible decision that day to kill for no reason. Thank you.

THE COURT: Thank you, Madam Solicitor. Everybody stand up real quick, let's all stretch.

(Break in proceedings.)

THE COURT: Now, Madam Forelady and members of the jury, you've heard the testimony and the evidence and the arguments of both the State and the defense, I will now explain to you the law that applies in this case. Now, under the constitution and laws of South Carolina you are the finders of facts in this case. I don't have the right to pass upon the facts or even express any opinion I may have as to the facts because that's solely your discretion to do. It is your duty to determine the effect, value, weight and truth of the evidence that's been presented during this trial. As the trial judge it's been my

responsibility to preside over the trial and to rule upon the admissibility of evidence which has been offered. Now, you're to consider only the testimony and evidence which has been presented from this witness stand along with the evidence which has come into this courtroom and made part of the record, the additional duty I have as the trial judge is to charge you the law. As the presiding judge I am the sole judge of the law in this case. It is your duty as jurors to accept as correct and to apply the law as I now state it to you and use that to reach your verdict. The fact that I may instruct you on various subjects in this case must not be taken by you as indicating what you think my opinion of the facts are or what your verdict should be. Finally I charge you that you should not be concerned with what you think the law ought to be, but rather what I charge you the law is. You are the judges, the sole judges of the credibility, also known as the believability of the witnesses who have testified, and of the evidence which has been presented during this trial. And in deciding or passing upon credibility you can take into consideration many things such as the demeanor or the manner in which a witness testified, whether or not a witness had reason to be biased or prejudiced, whether or not a witness's testimony was contradicted on the one hand or supported and corroborated on the other hand. See, all of these things you'll consider bearing in mind that you must give the defendant the benefit of

any reasonable doubt that you may have. It becomes your duty as jurors to analyze and evaluate the evidence and determine that evidence which convinces you of its truth. I told you this before and I'll repeat to you, the fact that the defendant was arrested, charged and indicted is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilty. Let me talk to you about evidence. There's normally two types of evidence which comes in during a trial, direct evidence and circumstantial evidence. I'm going to give you some law school definitions and then I am going to try to explain it to you so you'll have an understanding of what I'm talking about. Direct evidence directly proves the existence of a fact. It doesn't require further deduction by you. Circumstantial evidence is a proof of a chain of facts and circumstances which when put together indicate the existence of a fact. Don't let your eyes glaze over, I'm going to explain it to you, okay? For example if on a winter night just like we're dealing with right now and were earlier in the week you look outside and before you go to bed you see brown grass on your lawn, okay? You go to bed, the next morning you wake up and you see snow on your lawn with footprints in it. Well, first you can infer that it snowed, secondly you can infer that somebody has been walking on your lawn. Now, see, these are things you can infer even though you didn't directly see it

snow and even though you didn't directly see somebody walking on your lawn, okay? So that's the difference between direct evidence like eye witness testimony and circumstantial evidence, okay? Now, crimes can be proven by circumstantial evidence, and the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. To the extent that the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. Now, if these circumstances merely portray the defendant's behavior suspicious the proof has failed. Now, the State has the burden of proving the defendant guilty beyond a reasonable doubt, and that burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or some combination of the two. The defendant has pled not guilty to these charges and that plea places the burden on the State to prove him guilty. A person charged with committing a criminal offense is never required to prove innocence. I charge you, ladies and gentlemen, that it is an important rule of law that a defendant in a criminal trial no matter what the seriousness of the charges may be will always be presumed to be not guilty of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you, the jury, of that guilt beyond a reasonable

doubt. Now, this presumption of innocence doesn't end when you begin your deliberations but it accompanies the defendant throughout the trial and throughout your deliberations until you've reached a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. Imagine if you will the defendant wearing a robe similar to what I'm wearing and let's call it the robe of righteousness and it's placed about his shoulders and it remains with him until it has been stripped away from him by the evidence that you weigh and which satisfies you of his guilt beyond a reasonable doubt. Now, this is not just a mere legal theory, ladies and gentlemen, presumption of innocence is not just a legal phrase, it's a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence presented to you of that defendant's guilt beyond a reasonable doubt. So what is reasonable doubt? A reasonable doubt is a doubt which makes an honest, sincere conscientious juror in search of the truth to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely on and act upon it in the most important of his or her own affairs. Now, proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the defendant's guilt. Ladies and gentlemen, there's very few things we know in this world with absolute certainty, and in criminal cases the law does not

require proof that overcomes every possible doubt. If based on your consideration of the evidence you're firmly convinced that the defendant is guilty then you must find him guilty. If on the other hand you think there's a real possibility that he's not guilty, you must give him the benefit of that doubt and find him not guilty. I have already told you about the standards for expert witnesses but I'll briefly repeat it to you. There were several expert witnesses in this case, and the law and the rules normally doesn't allow witnesses to testify as to opinions or conclusions, okay? However there is an exception when someone is qualified because of their education or experience, they can give an opinion in certain areas if the Court qualifies them that way, okay? To give opinion testimony in a certain area doesn't mean that you have to accept the opinion but it's evidence that you can use in any way you see fit, and any way you want to give it the weight and credibility you believe it deserves. An expert witness' testimony is to be given no greater weight than that of other witnesses just because they're an expert. Now, let's talk about the defendant's statements. There were some statements admitted into evidence in this case. You must determine, ladies and gentlemen, whether those statements were made by the defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation or by hope or a promise of leniency or

reward of any kind. In determining whether or not the statements were voluntarily you should consider both the characteristics of the defendant and the details of the questioning. Some of the factors that you must consider are the age of the defendant, the defendant's education or lack thereof, his mental ability or capacity, his IQ or intelligence, his background and environment, whether or not he was detained and if so where and the length of it, the nature of the questioning, whether or not there was advice or lack thereof of his constitutional rights including but not limited to his right to remain silent, that any statement could be used against him in a court of law. The right to have a lawyer present, if he could not afford a lawyer a lawyer would be appointed to represent him without any cost, and that he could stop making a statement at any time. You must carefully consider all of the surrounding circumstances before you give any weight to any statement. Now, the State has the burden of proving beyond a reasonable doubt that the statements were voluntarily given. If you determine they were you can give the statements any further consideration that you deem appropriate. You weigh it along with all of the evidence you received however you wish to. If you determine that the statements were not freely and voluntarily made then you should not consider them at all. Now, ladies and gentlemen, I instruct and emphasize to you the fact that the defendant did not testify in

this trial is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of the guilt or innocence of this defendant, it must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that he didn't testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is always on the State, the defendant is not required to prove innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt. In order to establish criminal liability criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that has to be determined by a jury from all of the circumstances surrounding the situation. There's no way you could prove intent to a mathematical certainty. Medical science. You can't dissect a person's brain and determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances which have been shown to have existed, that's how

you make a determination of whether or not the element requiring intent was present. It's not necessary to establish intent by direct and positive evidence, but intent can be established by inference in the same way as any other fact, by looking at the totality of the circumstances and the acts of the parties involved. Criminal intent is a mental state, it's a conscious wrongdoing. It's up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Let me talk to you briefly about the crimes alleged to have been committed, I'm going to give you the legal definitions that you must go by in your deliberations. The defendant is charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law would infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed, therefore there has to be a combination, or there must be a combination of the previous evil intent and the actual act. Now, malice aforethought can be expressed or implied or inferred however you want to call it, implied or inferred, they

mean the same thing. These terms expressed and implied don't mean -- do not mean different kinds of malice but merely the manner in which the malice may have been shown to have existed, that's either by direct evidence or by inference from the facts and circumstances which have been proven. Expressed malice has shown, for example, when a person speaks words which express hatred or ill will for another, or when the person has prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts for preparation going to show that the deed was within the defendant's mind, that's an example of expressed malice. Malice may be implied from conduct which shows a total disregard for human life. Now, if you find that the State has failed to prove beyond a reasonable doubt that the defendant committed murder you may consider whether the State has proved beyond a reasonable doubt that the defendant committed voluntary manslaughter. Now, to prove voluntary manslaughter the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Now, both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Sudden heat of passion may for a time affect a person's self-control and temporarily disturb a person's reasoning. The sudden heat of passion must be the type that would make an

ordinary person unable to cooly reflect on his actions and would produce an uncontrollable impulse to do violence. Sufficient legal provocation must be the type that would make a person of ordinary reason and caution to become enraged and lose temporary control. The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone however vulgar or insulting are not enough to be legal provocation. Where death is caused by the use of a deadly weapon the words must be accompanied by some overt threatening act which could have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled or if there was enough time between the provocation, if any, and the killing for the passion of a reasonable person to cool, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off you should consider all of the circumstances surrounding the killing. You may consider the nature of the provocation, if any, the defendant's mental and physical state and the circumstances and relationships between the parties. The defendant is charged with possession of a weapon during the commission of or attempt to commit a violent crime. The State must prove beyond a reasonable doubt that the defendant possessed or visibly displayed a weapon during the commission

of a violent crime. A knife is a weapon. It's an instrument or a tool with a sharp cutting blade whether or not fastened to a handle which can be used to inflict a cut, slash or wound. Murder and manslaughter are both classified as violent crimes. The defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find him not guilty. On the other hand if you have no reasonable doubt of his guilt after considering all of the evidence, including the evidence of self-defense, then you must find him guilty. The following elements are required to establish self-defense: Number one, without fault. First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. Imminent danger. The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury, or that he believed he was in imminent danger of death or serious bodily injury. Now, if the defendant was actually in imminent danger it must

be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he was in imminent danger of death or serious bodily injury it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the shame belief. In deciding whether a defendant actually was or believed he was in imminent danger of serious bodily or death you should consider all the facts and circumstances of the event, including the physical condition and characteristics of the defendant and the victim. And the third element of self-defense is no other way to avoid the danger. The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury then to act as he did in this particular incident. Evidence of prior difficulties between the defendant and the victim may be considered by you in deciding whether or not a threat existed, whether the defendant had a reason to believe a threat existed and whether or not the seriousness of that threat and what it meant. The relative sizes, age and weights of the parties may be considered in deciding the apparent or actual need for force for self-defense. The intoxication of the victim may be considered by you in deciding whether the defendant's fear of death or bodily harm was reasonable. Two more minutes, then we are done. Let me say something about

your deliberations, ladies and gentlemen of the jury. The word deliberations is defined as a careful consideration weighing up with a view to a decision. Now, the genius of our jury system is that it allows 12 good people, both men and woman from different backgrounds, life experiences and perspectives to consider the evidence, talk about it and ultimately reach a verdict. The task of the jury is called deliberations for a reason, you, the jurors, are to consider the evidence in this case carefully and deliberately. Discuss it in a calm, thorough and courteous manner. Remember, you're not partisans or advocates for one side over the other, you're the judges of the facts. Your sole duty is to sort through all the information that you've received in this trial and to find your verdict from the evidence presented in this courtroom. The supreme law of our land, the United States Constitution, affords everyone their day in court and a fair trial, so this case is very important to both sides because it's their day. I charged you, ladies and gentlemen, to listen to the views of your fellow jurors, carefully consider their view points and courteously discuss everything. Remember, you're doing something deliberately, you're not in a big hurry and you're tasked with a duty of utmost importance. Your verdict cannot be based on sympathy, passion, prejudice, emotion or any other consideration that's not in evidence in this case. In conclusion, ladies and gentlemen, you've been selected by both

the State and the defense to be fair and impartial jurors. It's your duty then in your deliberations to determine your verdict in this case giving the defendant the benefit of every reasonable doubt, and from the facts which you have determined in your deliberations you take and apply the law which I have just given you and thus arrive at your verdict. I've told you the standards that you have to apply to these charges, you've heard the evidence and now you've heard the law. Whatever your verdict is as to these indictments, guilty nor not guilty, Madam Forelady, you will indicate it by marking the jury's decision in the blank on the verdict form, you will then sign and date the verdict form down at the bottom. Here is the verdict form right here, I will go over it with you real quick. Number one, it says we, the jury, unanimously find the defendant, Melvin Fourney, Sr. concerning the offense of murder with the indictment number it says check one. You can't check it until all 12 of you agree. Once y'all have agreed on whatever it is you either check not guilty or you check guilty or you check guilty of the lesser offense of voluntary manslaughter, okay? And then number two, we, the jury, unanimously find the defendant, Melvin Fourney, Sr. concerning the offense of possession of a firearm or knife during the commission of a violent crime either not guilty or guilty, just check one, okay? Now remember, ladies and gentlemen, that the -- even though the forelady is the only juror who writes

the verdict, it's not her verdict alone, it has to be a unanimous verdict, that means all 12 of you have to agree to it. Now ladies and gentlemen, I am going to send you to your jury room but do not begin to discuss this case until you've received the verdict form and all of these exhibits, okay? And once you get everything in there that's your signal -- you don't have to hear from me again, that's your signal to start talking about the case. Now, once you start deliberating you'll deliberate until you've reached a verdict at which time you'll knock on the door, advise the bailiff and we'll bring you out here to receive your verdict. So at this time I am going to ask the 12 jurors to please go back to their jury room and I need Ms. Poague and Mr. Barber to just remain right where you'll are, okay?

(The jury left the courtroom.)

THE COURT: Any exceptions to the charge from the State other than previously stated?

MS. LIVELY: Not from the State, Your Honor.

THE COURT: Anything from the defense other than previously stated?

MR. FRICK: Just renew or objections previously stated.

THE COURT: And those objections are overruled.

(The alternates were dismissed.)

THE COURT: We've already dealt with Court's Exhibit Number 1, which is the first note from the jury where they

wanted to view the videos of the statements, they are through doing that, they sent the laptop back. But I wanted to put on the record that both the defense and the State agreed to send a laptop back with a DVD player for the jury to look at, it seemed appropriate rather than to bring them back here for an hour and a half looking at the video statements and that was done with a laptop. It has nothing on it, no Internet access, all they could do is view the DVD's. Is that what happened, Ms. Lively?

MS. LIVELY: Yes, sir, Your Honor.

THE COURT: Mr. Frick?

MR. FRICK: Yes, sir.

THE COURT: Court Exhibit Number 2 is a request from the jury, they want it appears the definition of voluntary manslaughter and then they wrote four steps underneath that, I don't know what that is. I am going to bring them back out here so I can find out what they mean by four steps and I will charge them voluntary manslaughter and I guess whatever else they want to be charged on, okay?

MS. LIVELY: Yes, sir.

(The jury returned to the courtroom.)

THE COURT: All jurors are present. Madam Forelady, I got your second request, definition of voluntary manslaughter. My two -- I don't know what that means and that's why I got you out here. Are you wanting me to recharge y'all on what the

voluntary manslaughter is?

THE JUROR: That's correct.

THE COURT: Okay. And what does four step underneath that, what does that mean?

THE JUROR: Well, there was one through four underneath the bullets on the video that I remember.

THE COURT: That was for self-defense. Do you want me -- do you wish for me to charge self-defense again?

THE DEFENDANT: No, just the voluntary manslaughter.

THE COURT: All right, and y'all listen carefully. If you find that the State has failed to prove beyond a reasonable doubt that the defendant committed murder you may consider whether the State has proved beyond a reasonable doubt that the defendant committed voluntary manslaughter. To prove voluntary manslaughter the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Sudden heat of passion may for a time affect a person's self-control and temporarily disturb a person's reasoning. The sudden heat of passion must be the type that would make an ordinary person unable to cooly reflect on his actions and would produce an uncontrollable impulse to do violence. Sufficient legal provocation must be the type that would make a

person of ordinary reason and caution to become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone however vulgar or insulting are not enough to be legal provocation. Where death is caused by the use of a deadly weapon the words must be accompanied by some overt threatening act which could have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled or if there was enough time between the provocation, if any, and the killing for the passion of a reasonable person to cool off the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off you should consider all of the circumstances surrounding the killing. You can consider the nature of the provocation, if any, the defendant's mental and physical state, and the circumstances and relationships between the parties. That is the definition of voluntary manslaughter. Y'all please return to your deliberations.

(The jury left the courtroom and resumed Deliberations.)

THE COURT: Everybody is present. It's my understanding we have a verdict and we will bring the jury in.

(The jury returned to the courtroom.)

JURY VERDICT

THE COURT: All members of the jury are present. Madam Forelady, it's my understanding that the jury has been able to reach a verdict.

THE JUROR: Yes, we have.

THE COURT: And is the verdict unanimous?

THE JUROR: Yes.

THE COURT: You may hand the verdict form to my bailiff. Madam Clerk, if you will please publish the verdict.

THE CLERK: Your Honor, we, the jury -- the State of South Carolina versus Melvin Fourney, Sr. "We, the jury, unanimously find the defendant Melvin Fourney Senior concerning the offense of murder, indictment number 2016-GS-12-012, guilty of the lesser offense of voluntary manslaughter. We, the jury, unanimously find the defendant, Melvin Fourney, Sr. concerning the offense of possession or display of a firearm or a knife during the commission of a violent crime, indictment number 2016-GS-12-013, guilty." This is signed by Lucy -- the foreperson, Lucy S. Wilson on January 10th, 2018. If this is your verdict please say so by the raising of your right hands. Thank you.

THE COURT: Thank you very much, Madam Clerk. Ladies and gentlemen of the jury, thank you so much for your jury service to Chester County and the State of South Carolina, your jury service has now ended not only for this trial but also for the week. You are free to leave which means you're exempt for the

next three years as well.

(The jury was dismissed.)

MR. FRICK: Your Honor, if I can defense would like to put a couple of post trial motions on the record.

THE COURT: Absolutely, Mr. Frick.

MR. FRICK: Your Honor, at this time defense would ask for a new trial based on denial of the -- well, based on your overruling of my motion to suppress the statements of my client for the Denno hearing. I would also join that with my request for the jury charges regarding good character, involuntary manslaughter, I believe there was one other that's on the record that the Court is aware of -- not charging duty to retreat, that would be, and any other objections particularly regarding the photos of the victim that were introduced over defense objection.

THE COURT: All defense objections are renewed then, is that what you're saying?

MR. FRICK: Yes, sir.

THE COURT: And I have considered all of those and I respectfully deny same. You are protected in the record.

MR. FRICK: Thank you, Your Honor.

MS. LIVELY: I have the sentencing sheet for convictions of voluntary manslaughter as well as possession of a weapon during the commission of a violent crime, I am going to hand these up to -- hand it up to the clerk for Your Honor at this

time. Your Honor, we actually -- prior to the start of this case one of the things that the State took into consideration was the fact that this defendant basically has no prior record. When we were dealing with assessing this case we documented that from his NCIC report he's got a disorderly conduct from 1985, in 1989 driving under the influence, and that's it on his record. Your Honor, in this particular case I will tell you we do have the victim's mother and sister here and they've been here through the entire process, I have just been told by my victim advocate that they do not wish to make a statement. I believe you had the perfect opportunity to see the grace of the mother, Ms. Thelma Hayes when she was on the stand and how she handled herself in dealing in the loss of her son. And Your Honor, I can tell you, I have met with the family on several occasions when we were trying to negotiate this case and they were the ones who came to me initially and said that if I made an offer to the defendant that they were okay with that because he was a family member but they did want justice for Buster, their brother, son. And the reason why we had to go through this this week, which is of course -- the defendant has a right to a trial, however this family had to go through that and see what happened to Buster and relive it when we've tried to do everything we can do to try to resolve this matter and that's his right and I understand that. Your Honor, we're just asking that -- judgment has already been reached in this case by the

jury, he killed an unarmed man and under the circumstances he needs to be punished. I know Your Honor is going to take everything into consideration in deciding what justice is for this particular case. Your Honor, the State at this time feels like we've presented the evidence, we have spoken on behalf of the victim so we're going to leave it in your hands, Your Honor, at this point.

THE COURT: Thank you.

MR. FRICK: Thank you, Your Honor. Your Honor, as you're aware Mr. Fourney is now 70 years of age and as the State has said he has no prior record. This is a difficult case for everybody involved in it, and it's a slightly unusual case I would say just given the circumstances and my client's situation of not having any record for almost 70 years of his life and then when he does get in trouble it is the ultimate crime. I do believe it's out of character. I do not believe that he had any intent to do what happened, I don't know that he clearly knows what happened or why it happened. I know in talking to my client that he regrets it deeply. He did view Mr. Hayes as his son and that's why they would fuss and fight and argue, and he has expressed great remorse. He's not the most emotional person as you've seen, but it has struck him. I've spoken with him several times while he was incarcerated and while we were preparing for this trial and it has hurt him greatly and I think he really wishes he could take it back,

Your Honor. There were some self-defense issues. Mr. Fourney and I went over all of the possibilities that we were looking at here today. I will tell you something I wouldn't normally tell you in this circumstance, the State was generous in some plea negotiations, I went over those with Mr. Fourney, we discussed those in detail. I finally asked Mr. Fourney, "What is our goal with this trial, what are you trying to do?" And I think what it comes down to, Judge, is quite frankly because he has beat and himself up so badly over the last two and a half years about what happened in his house to this person that he cared about that he didn't want to be the person that made the judgment call on how he was punished, and I tell you that so you'll understand why we're here. Obviously when we go to trial I handle strategy and it was my strategy to go forward with a self-defense argument, I will tell you quite candidly my client really has never told me that, he just said this is the facts of the case. He has been the most consistent client I've ever had. From the first day I talked to him at the jail he told me the same thing that he told to Captain Moore, he told to Agent Blackmon and that he continued to tell me through this week as we talked about this case. I think it just hurt him so badly that he is responsible for the death of this person that he truly cared for and he just did not have it within himself to make that call, I don't think he felt it was fair for him to judge himself. Judge, we ask for whatever leniency. We do

understand the severity of the situation. My client has been out on bond since some time in late 2015, I don't have the exact date right now but he has been on house arrest since that time. I would ask you to consider allowing me to figure out about that time and perhaps we can do a supplemental order that will give him that if you would allow him that credit. He was in the jail for a little bit of time but he was able to bond out a lot quicker than most of my clients so there is not a substantial amount of time that he was in jail but it was at least a few weeks. But Judge, we just -- we ask for what mercy can you show us.

THE COURT: Thank you, Mr. Frick. Mr. Fourney, I will be glad to hear from you, sir, before I impose sentence if you would like to say anything.

THE DEFENDANT: That's about all. He pretty much said about all.

THE COURT: The discretion that the State gives us for manslaughter is great, it's very wide and there is a reason for that, it's a minimum of two, no more than 30 years, that's a 28 year swing. You know, in this past month I had two manslaughter cases the lawyers are familiar with, Mr. Frick, you handled one of them down in Fairfield County and those couldn't have been more different. All of them, of course, had a person who was tragically killed but each one of them is different. Seventy years old, Mr. Fourney?

THE DEFENDANT: Yes, sir.

THE COURT: How's your health?

THE DEFENDANT: Not too good, fair.

THE COURT: Are you on pills? Do you take any medication for --

THE DEFENDANT: I take PC for my back pain, that's about all.

THE COURT: What type of work did you do?

THE DEFENDANT: State.

THE COURT: What did you do for the State?

THE DEFENDANT: Operated heavy equipment.

THE COURT: When did you retire from that?

THE DEFENDANT: In '84.

THE COURT: Did you work for DOT, department of transportation?

THE DEFENDANT: Maintenance out at Richburg and Chester.

THE COURT: How many years did you work for the state?

THE DEFENDANT: About 17. I worked for Springs, JP Stevenson when I was younger and then I worked for the State that is the last.

THE COURT: How many children do you have, sir?

THE DEFENDANT: I have five but my daughter passed.

THE COURT: How long ago did she pass?

THE DEFENDANT: Been about ten years because she was 43.

THE COURT: Do you have any grandchildren?

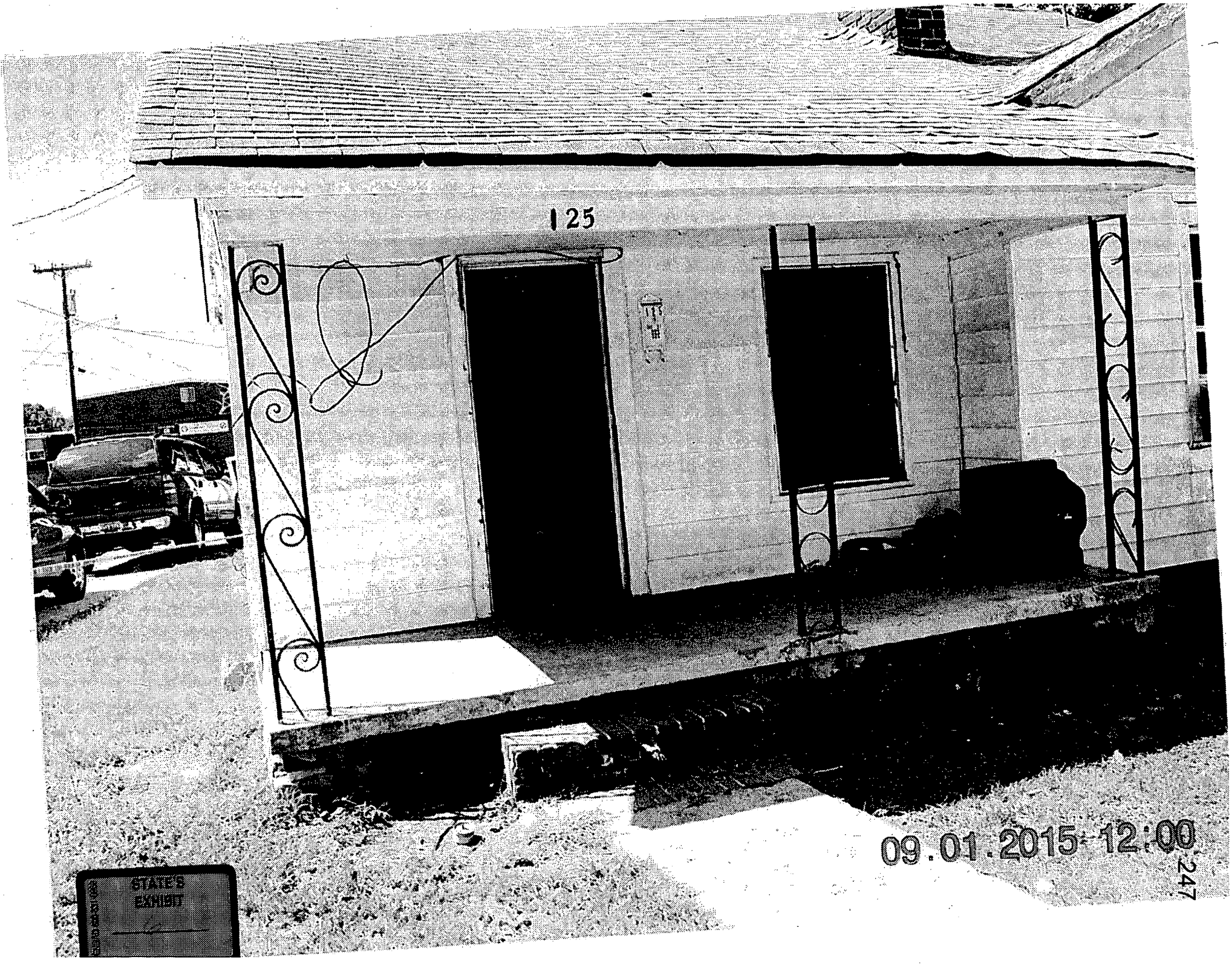
THE DEFENDANT: Oh yeah, about 14 or 15, and three great grandchildren.

THE COURT: I don't mean for you to choke up, but life is precious.

THE DEFENDANT: Yes, I know.

THE COURT: All right. As to indictment 16-GS-12-13 having been found guilty of possession of a weapon during the commission of a violent crime, sentence of the Court is five years in the South Carolina Department of Corrections, that will be concurrent to the sentence imposed on indictment 16-GS-12-12. You will also be given all credit for time served. I'm writing on the order, Mr. Frick, that I am going to grant your request that he be given credit for time that he spent on house arrest without any problems on house arrest, I have the discretion to do. I am going to write on this sentencing sheet that a supplemental order is forthcoming regarding credit for those days. As to 16-GS-12-12 having been found guilty of the crime of voluntary manslaughter the sentence of the Court is ten years in the South Carolina Department of Corrections. Good luck to you, Mr. Fourney. Concurrent.

(End of trail proceedings.)


125
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STATE'S EXHIBIT

STATE'S
EXHIBIT
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09.01.2015 12:01


S-12-313
ROSBY
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249

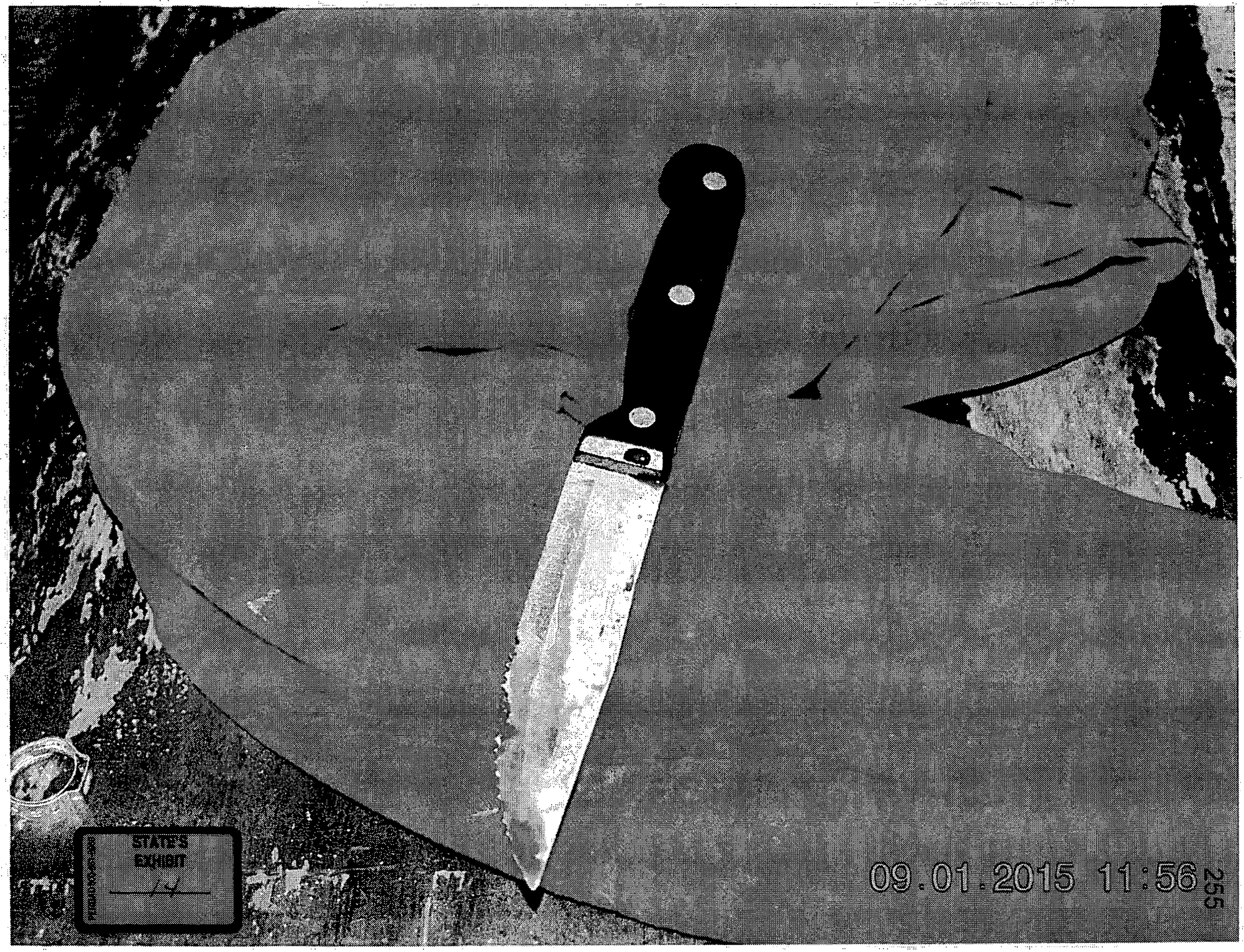

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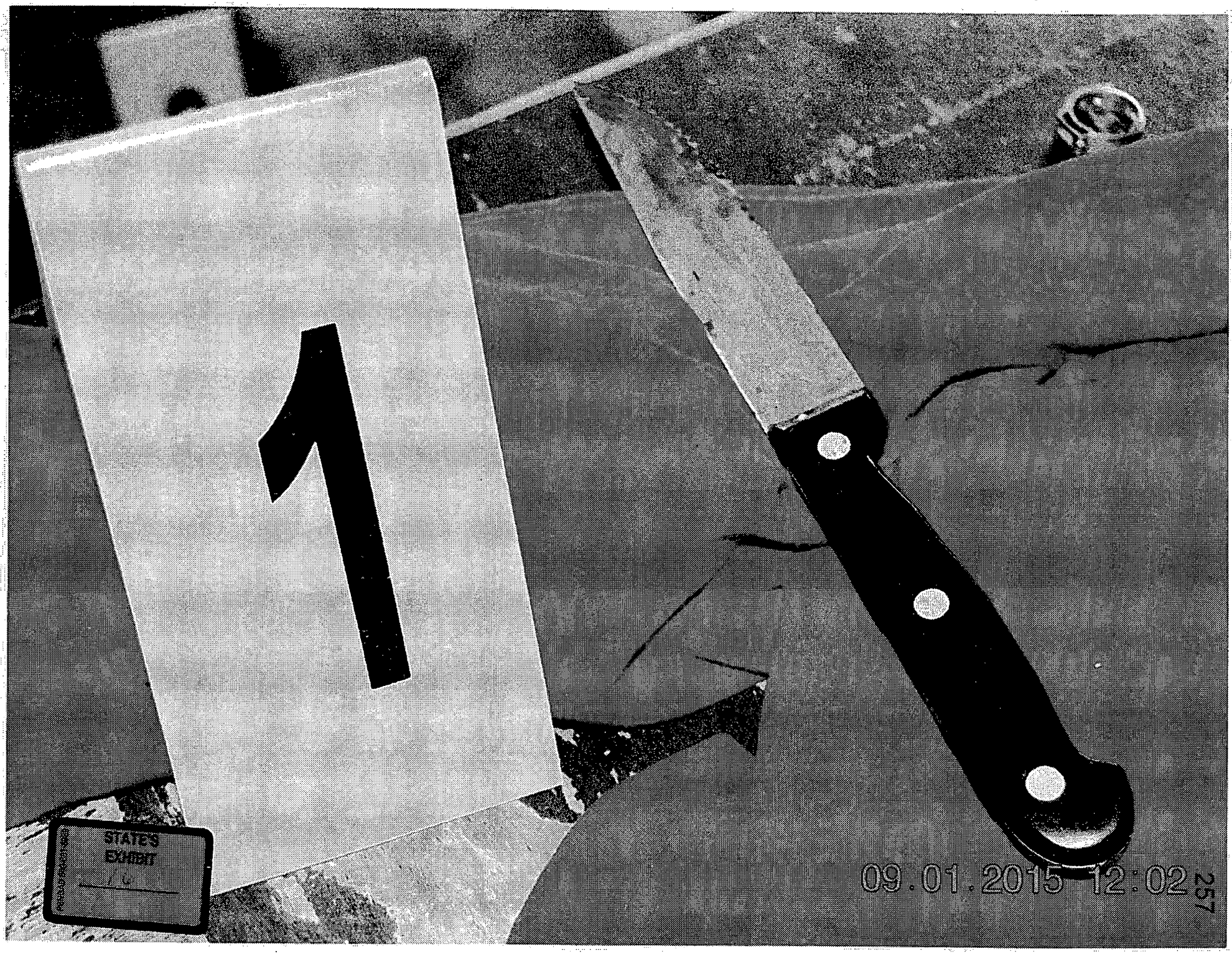

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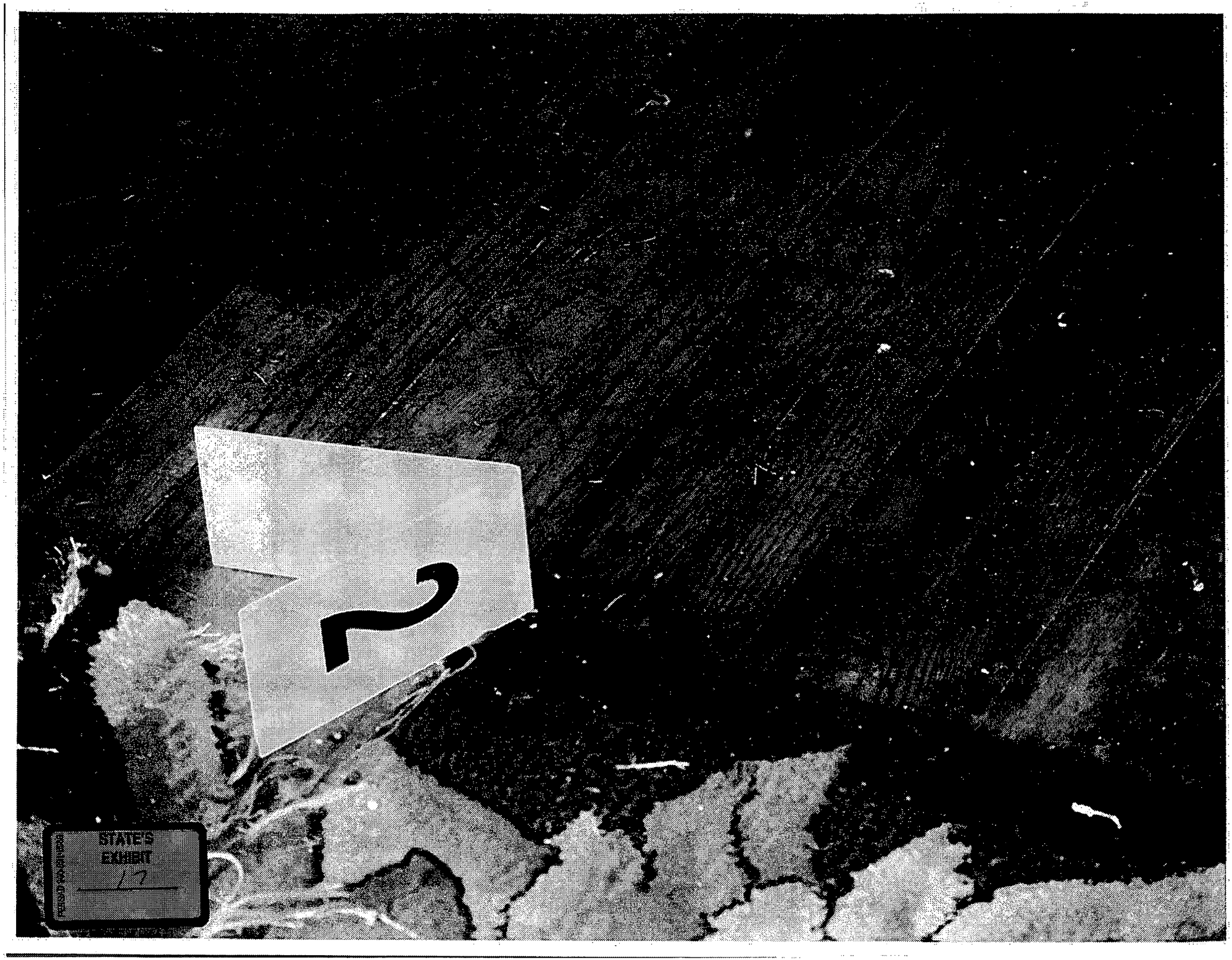

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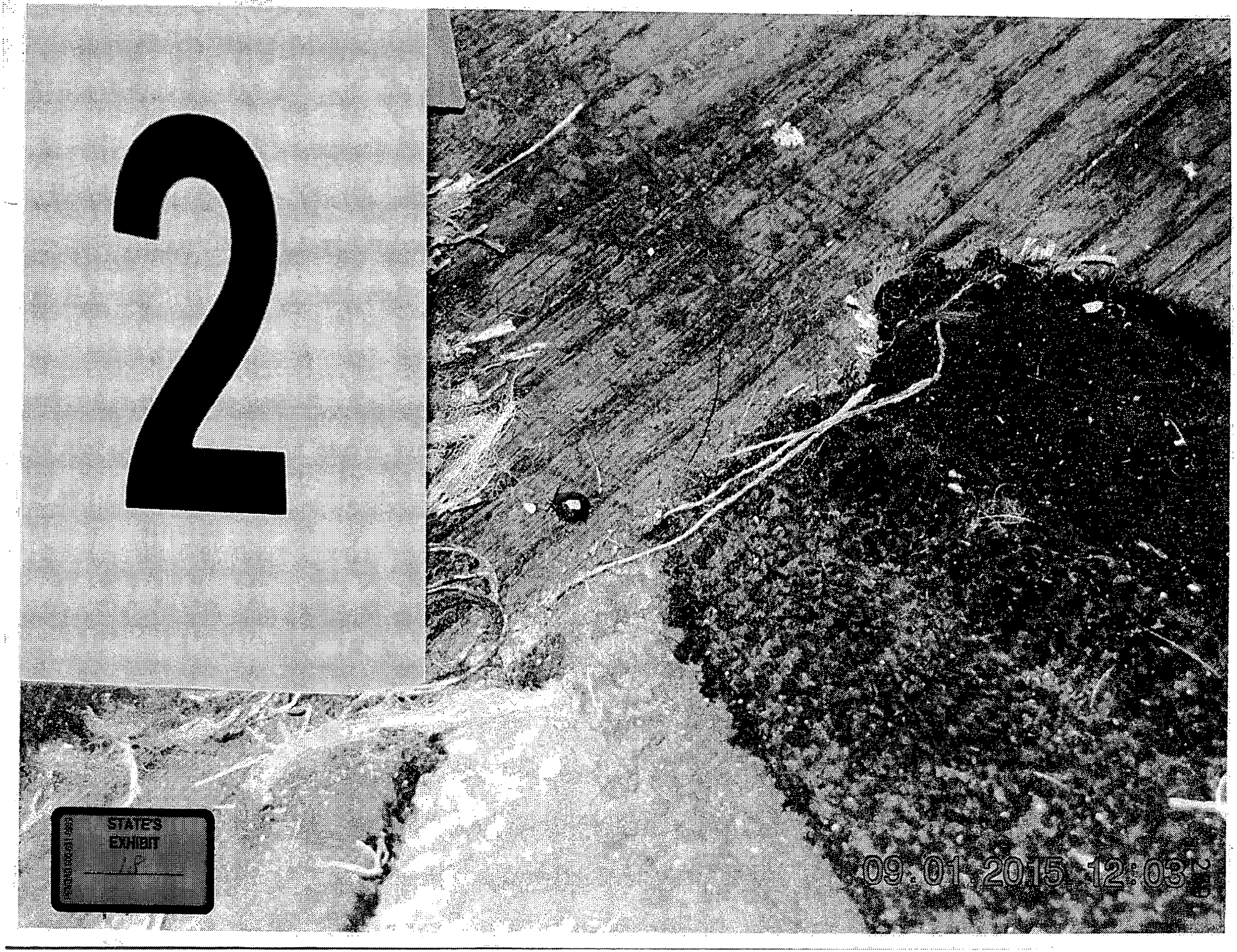

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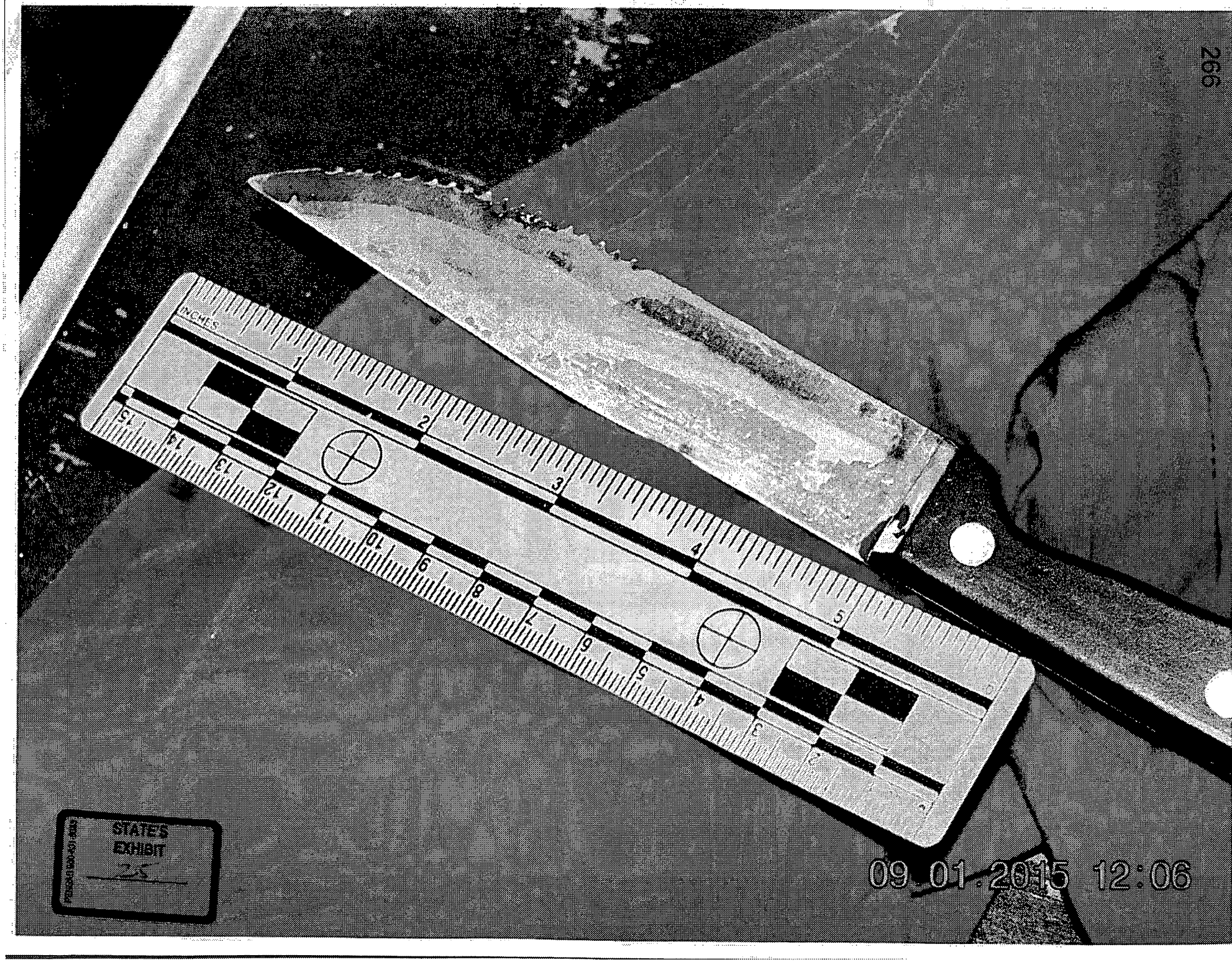

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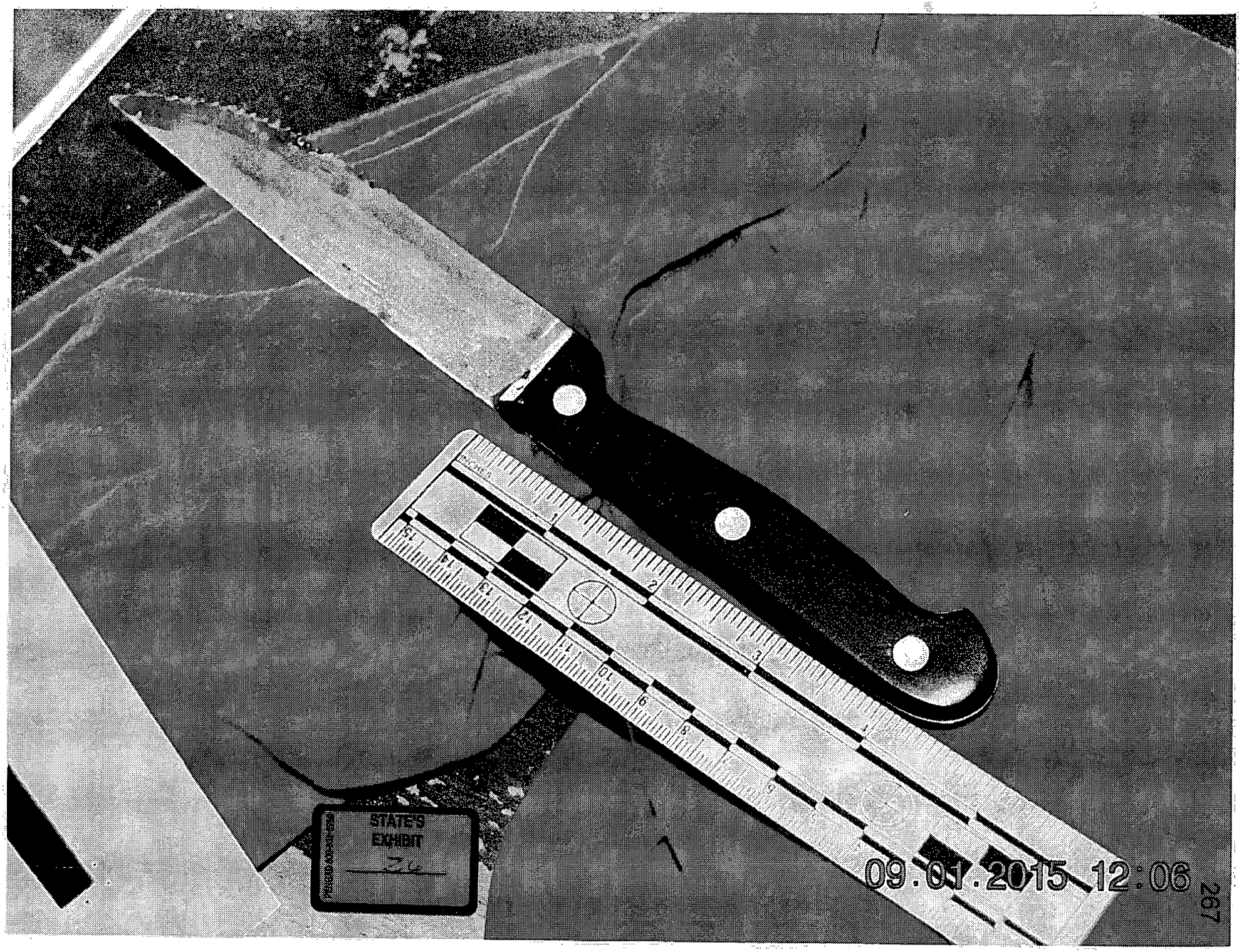

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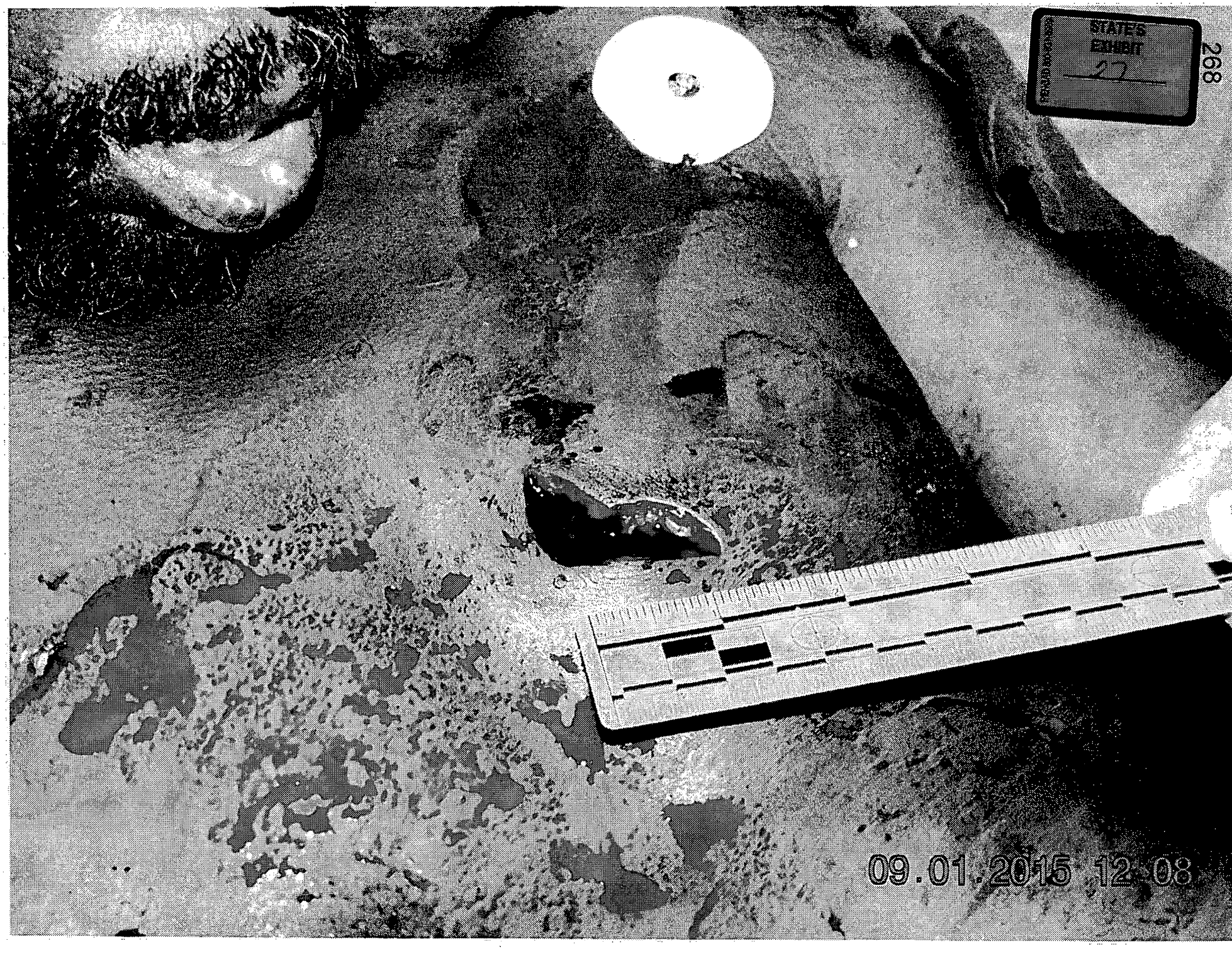

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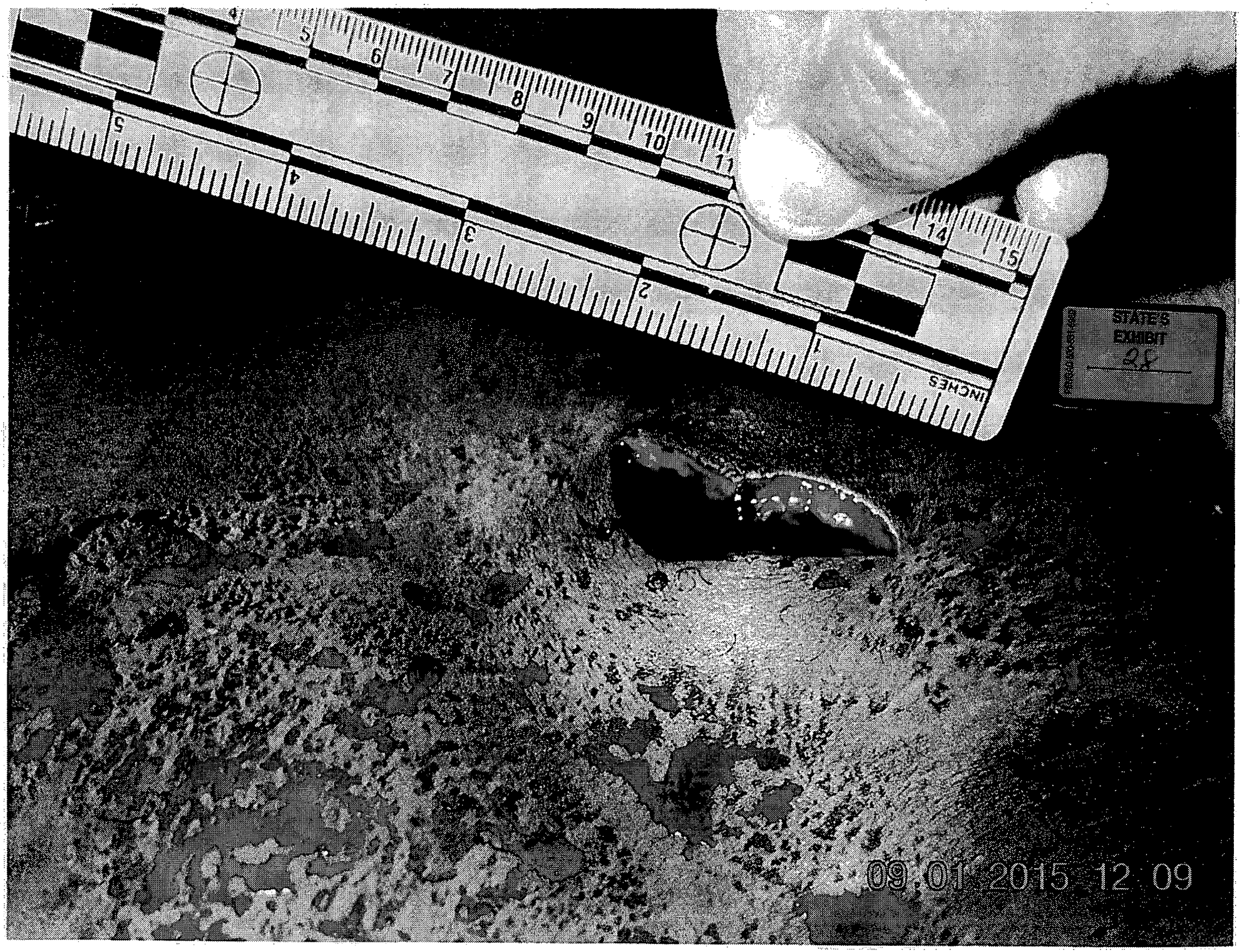

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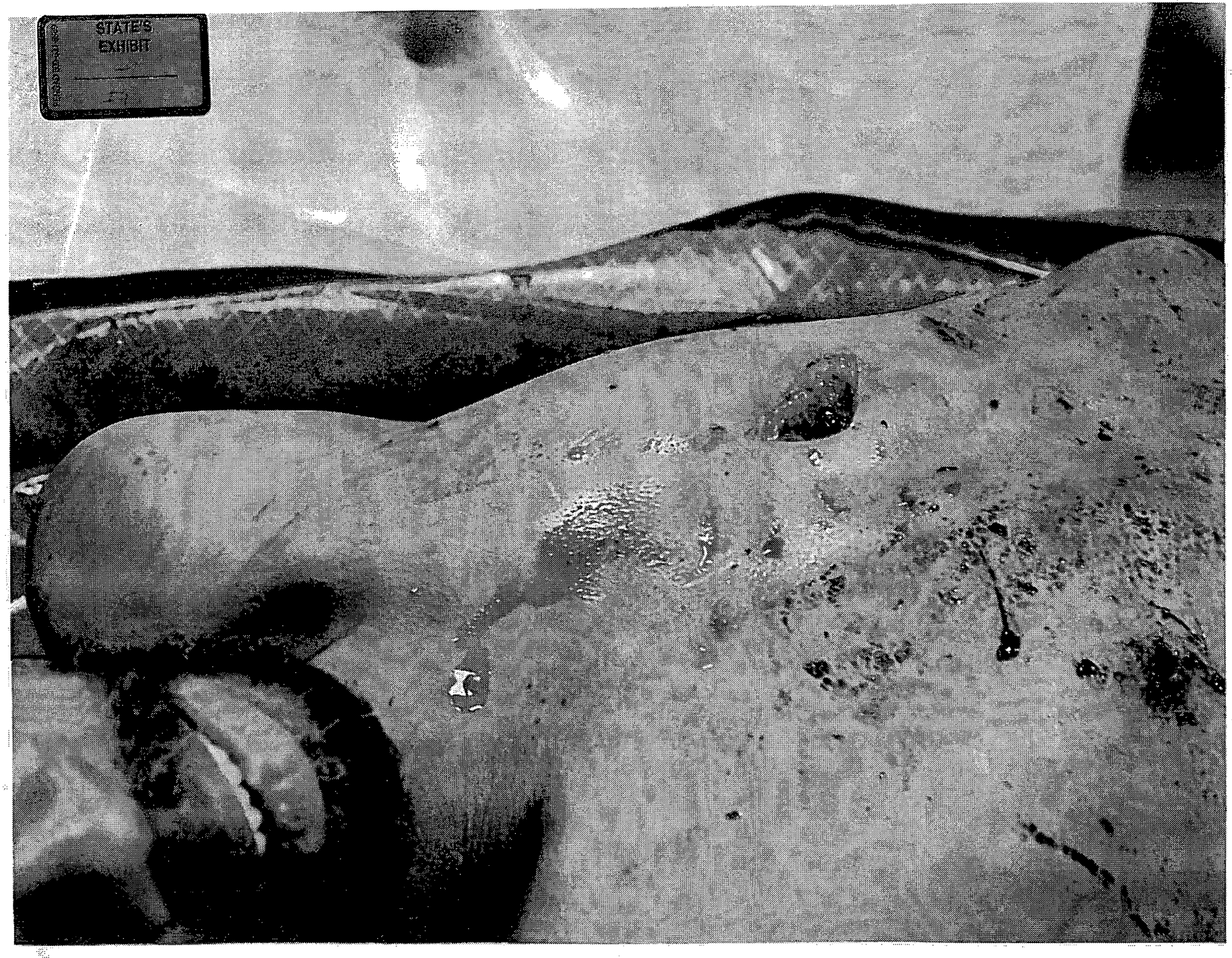
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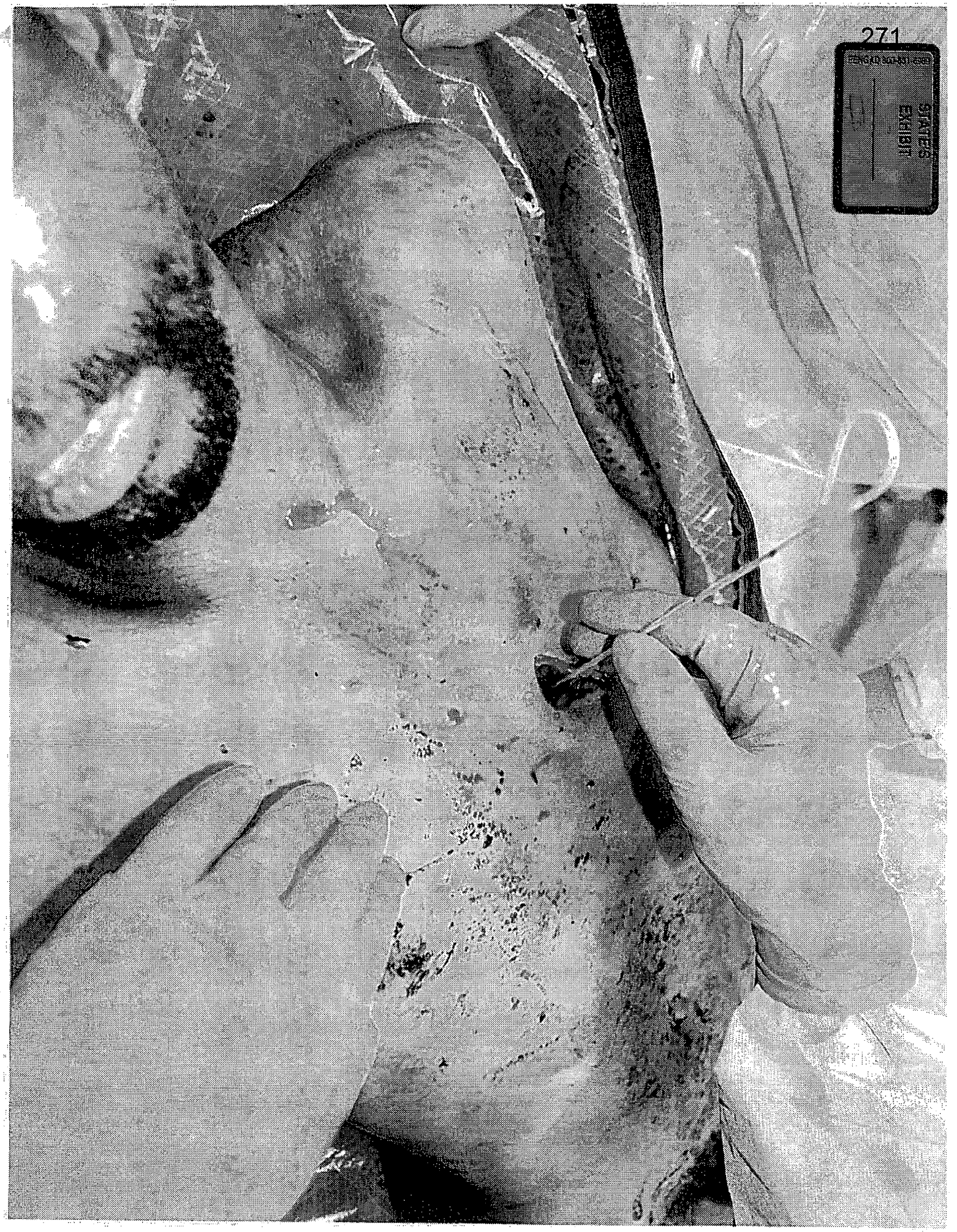

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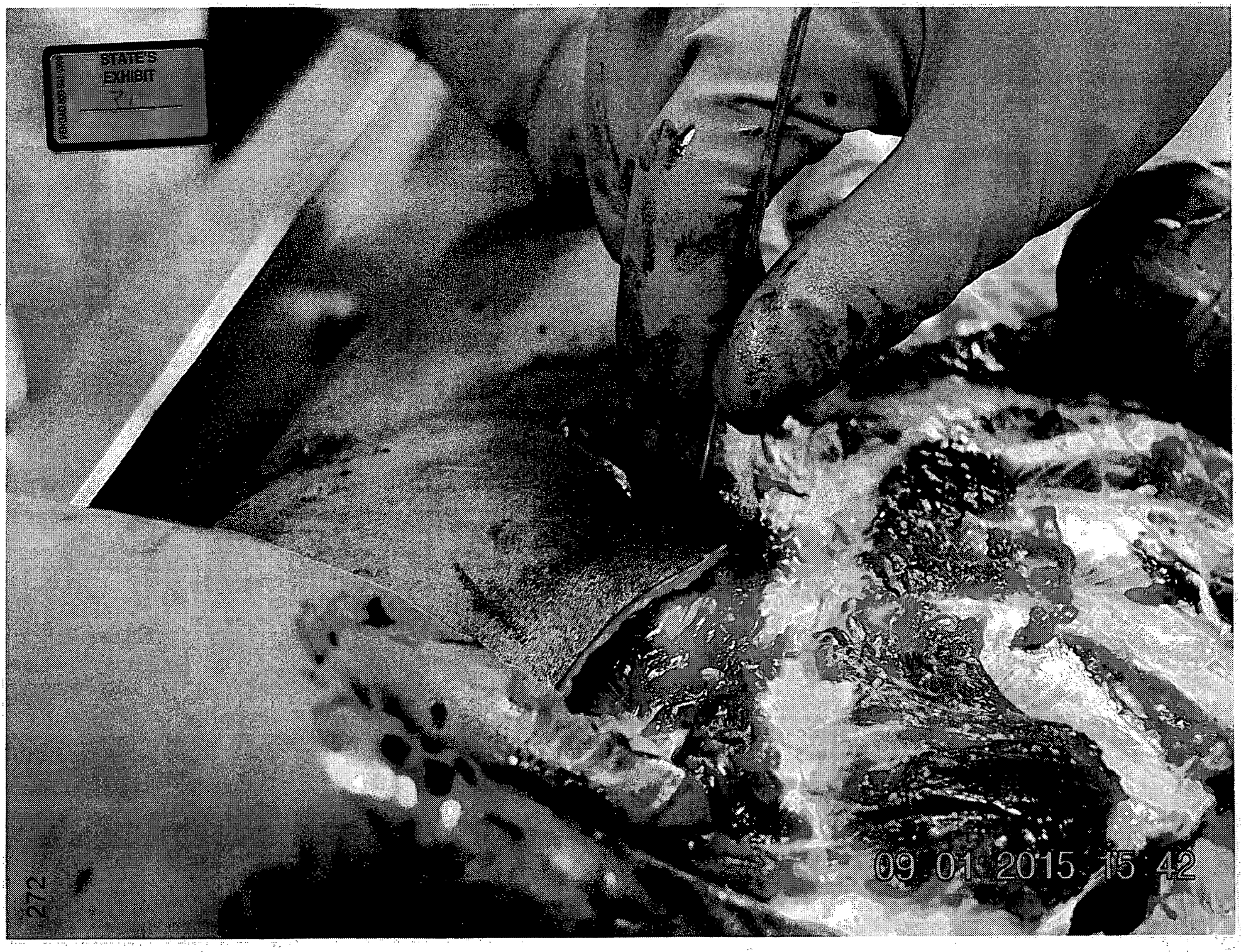

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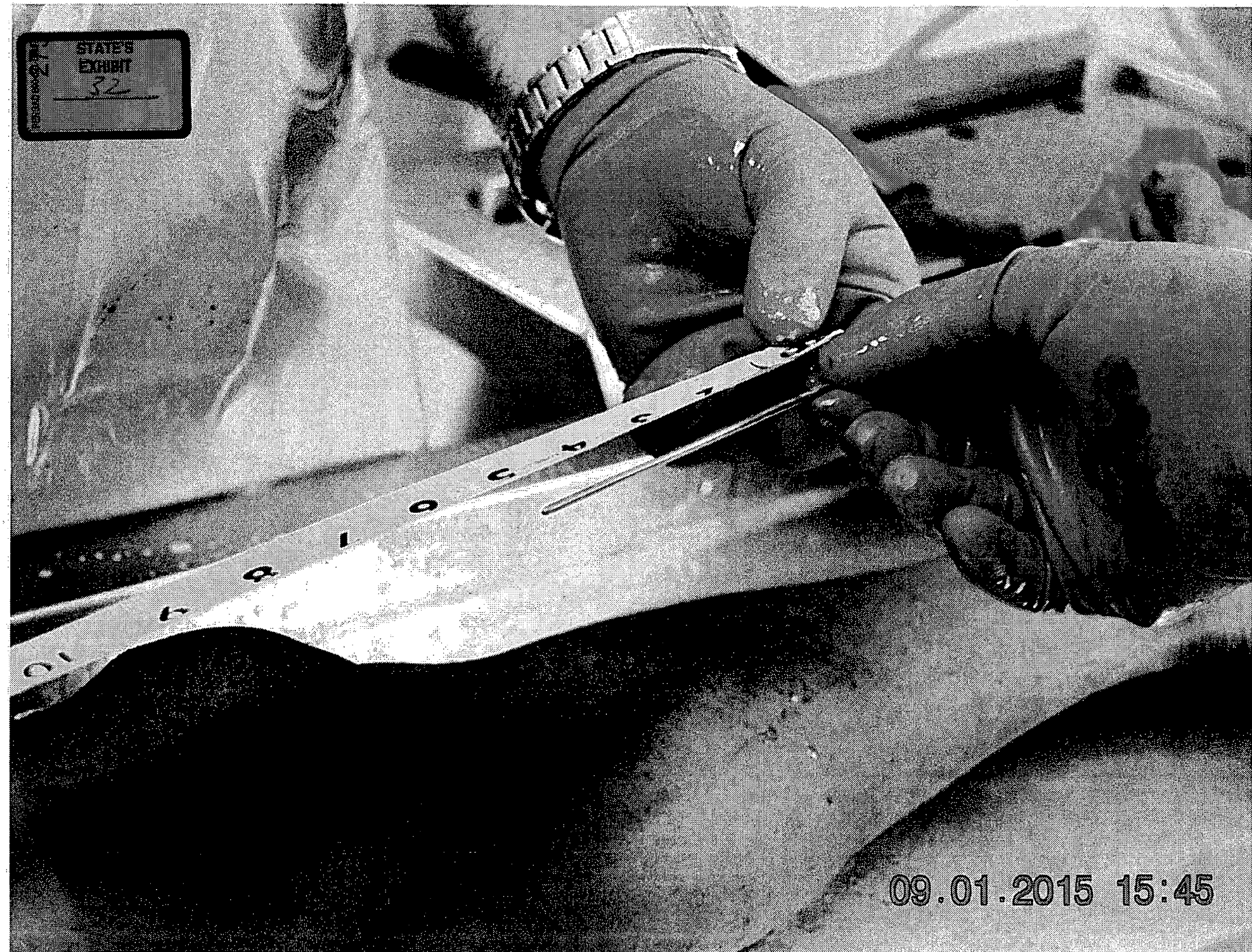

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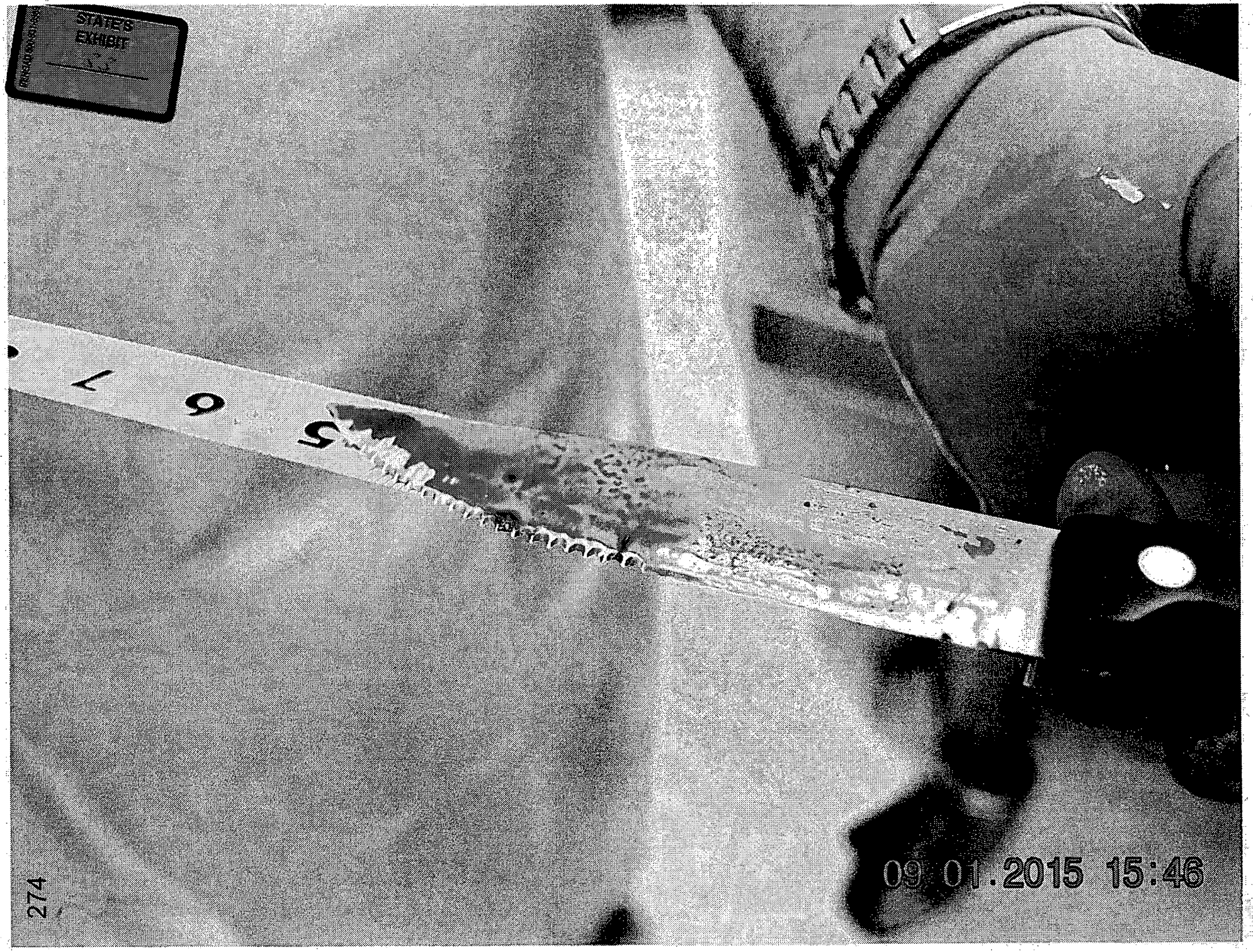

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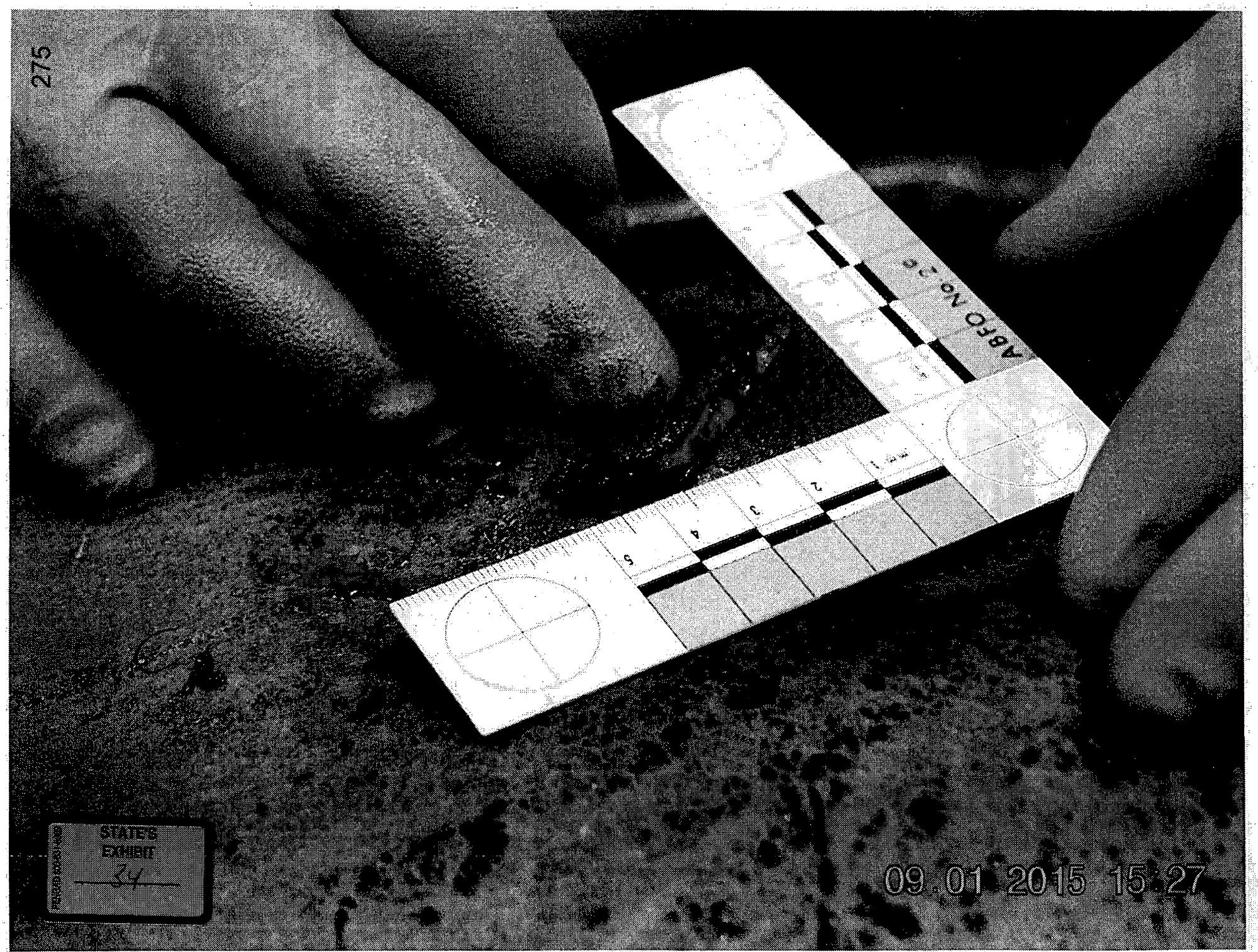

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STATE'S
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Incident Case #: 20151026



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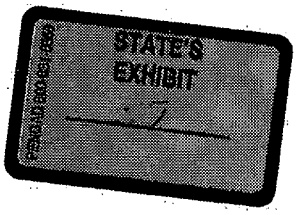
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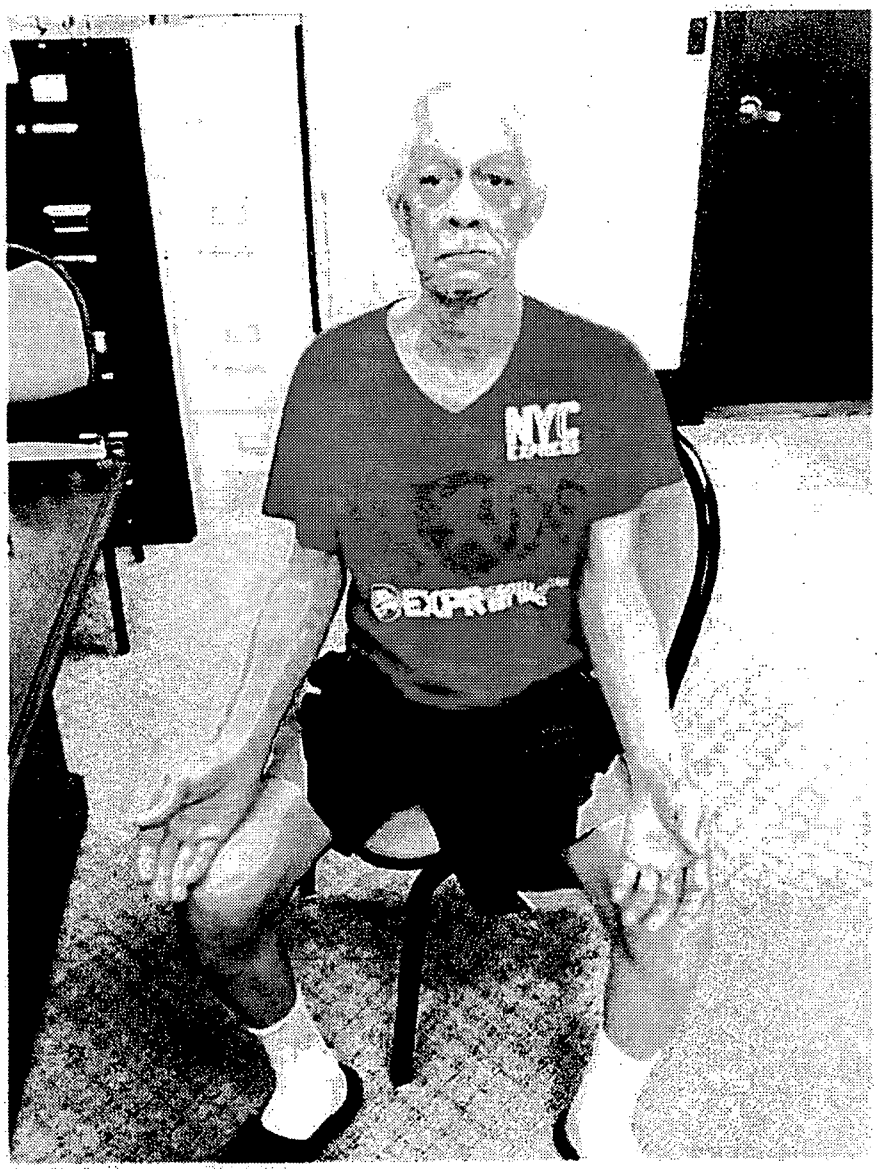


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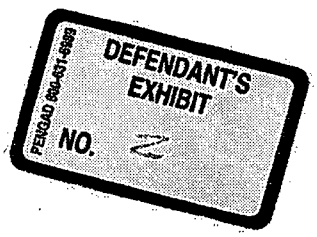
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DEFENDANT'S EXHIBIT
NO. /
PEBBLE BROOK 1-800-631-1380




DEFENDANT'S
EXHIBIT
NO. 2



DEFENDANT'S EXHIBIT
NO. 3
PENGAD 800-631-6989



DEFENDANT'S EXHIBIT
NO. 4
PENDAD 670-431-6689



DEFENDANT'S EXHIBIT
NO.
PENCO 800-451-5353

WITNESSES

Tammy Levister (CPD)

V.J Moss

ARREST WARRANT NUMBER/DOA

2015A1220100159 (DOA- 9-2-15)

ACTION OF GRAND JURY

TRUEBILL

Sanna Nelson

Foreperson of Grand Jury

Date: 1-14-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-12- 012

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

THE STATE

vs.

Melvin Fourney, Sr.

Indictment for

Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT

At a Court of General Sessions, convened on January 14, 2016, the Grand Jurors of Chester County present upon their oath:

MURDER

That Melvin Fourney, Sr. did in Chester County on or about September 1, 2015, feloniously, willfully and with malice aforethought kill and murder Leonard Niory Hayes by means of stabbing him with a knife in chest, and that the said victim did die as a proximate result thereof, in violation of the common law of South Carolina and §16-3-10, *Code of Laws of South Carolina, (1976), as amended.*

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

Randy E. Newman, Jr., SOLICITOR

WITNESSES

Tammy Levister (CPD)

V. J Moss

ARREST WARRANT NUMBER/DOA

2015A1220100160 (DOA-9-4-15)

ACTION OF GRAND JURY

TRUEBILL

Sanna Wilson

Foreperson of Grand Jury

Date: 1-14-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-12-013

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

THE STATE
vs.

Melvin Fourney, Sr.

Indictment for

Possession or Display of Firearm or Knife During Commission of a Violent Crime

SC Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT

At a Court of General Sessions, convened on January 14, 2016, the Grand Jurors of Chester County present upon their oath:

POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A VIOLENT CRIME

That Melvin Fourney, Sr. did in Chester County on or about September 1, 2015, possess or visibly display a firearm or knife, to wit: knife during his/her commission of a violent crime, to wit: Murder, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended.*

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

Randy E. Newman, Jr., SOLICITOR

288

STATE OF SOUTH CAROLINA)
COUNTY OF Chester)
STATE VS.)
Melvin Fourney Sr.)
AKA:)
Race: BLACK Sex: M Age: 70)
DOB: [redacted] SS#:)
Address: [redacted])
City,State,Zip: Chester, SC 297060000)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS12012
A/W#: 2015A1220100159
Date of Offense: 9/1/2015
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Manslaughter / Voluntary manslaughter

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☐MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☐ As Indicted, ☒Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 12123 _____ _____ _____
Lively, Candice SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: Supplemental order forthcoming regarding credit for days on house arrest.

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ ~~Deputy Clerk~~ Sue K. Carpenter
Court Reporter: Mike Watkins
Presiding Judge
Judge Code: 2168
Sentence Date: 1/10/18

SCCA/217 (07/2016)

✓ **STATE OF SOUTH CAROLINA**)
COUNTY OF Chester)
STATE VS.)
Melvin Fourney Sr.)
AKA:)
Race: BLACK Sex: M Age: 70)
DOB: [redacted] SS#:)
Address: [redacted])
City,State,Zip: Chester, SC 297060000)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS12013
A/W#: 2015A1220100160
Date of Offense: 9/1/2015
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐SERIOUS ☐MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 12123 _____ _____ _____
Lively, Candice SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 178.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____
_____
_____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Sue W. Carpenter
Court Reporter: Mike Watkins
Presiding Judge _____
Judge Code: 2168
Sentence Date: 4/10/18

SCCA/217 (07/2016)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of December, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

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PO Box 11589
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ATTORNEY FOR APPELLANT

This 12th day of December, 2018.

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